



International
Labour Office

Time-Bound Programme

Manual for Action Planning

T B P

M A P



Eliminating the
Worst Forms of
Child Labour under
Time-Bound Programmes:
Guidelines for Strengthening
Legislation, Enforcement and
Overall Legal Framework

International
Programme on
the Elimination
of Child Labour

Eliminating the worst forms of child labour under Time-Bound Programmes:

Guidelines for strengthening legislation, enforcement and overall legal framework

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1 Introduction

These Guidelines are one of a number of thematic guides prepared by ILO's International Programme on the Elimination of Child Labour (IPEC) under its Time-Bound Programme (TBP) approach to assist member States to eliminate the worst forms of child labour in line with the Worst Forms of Child Labour Convention, 1999 (No. 182). They aim to facilitate the review, reform and enforcement of legislation to prohibit the worst forms of child labour in accordance with the provisions of the Convention. They are meant to offer practical guidance for action in the country, but by no means to pre-empt or prejudice the ILO supervisory process. The Guidelines highlight the ILO's approach to labour law reform, which emphasizes tripartite consultation and social dialogue and the need to take national social, economic and legal backgrounds into account in the revision of legislation. They also emphasize the importance of broader community consultation to ensure ownership and sustainability of commitment to the objective of the laws. The Guidelines are intended for use by all those involved in the revision process to strengthen national laws to eliminate the worst forms of child labour, including governments, employers, workers, and their advisers, donors and ILO officials.¹

The worst forms of child labour covered by the Convention fall into two categories: 1) the "unconditional" worst forms of child labour comprising conduct that is to some extent covered by the penal laws of most countries as common

crimes and 2) "hazardous" labour falling within the scope of labour administration and which needs to be determined in each country after tripartite consultation.² The diversity of conduct covered by the Convention makes its implementation complex, requiring considerable coordination and collaboration between government and other agencies.



Implementing approaches in law reform and enforcement will be customized by individual countries to suit their needs and legal traditions. The present Guidelines provide insights and suggestions on the processes and outcomes that might assist countries to bring their laws into line with the mandatory requirements of the Convention as well as consider suggestions made in its accompanying Recommendation 190 to strengthen the enforcement of their laws. They draw attention to international instruments that have particular relevance to implementing the Convention and present examples of legislation from ILO member

¹ National provisions are mentioned in the text in order to illustrate concrete examples and encourage action. References to particular countries do not imply any judgment about their child labour practices. Failure to mention a particular country is not to be construed as a sign of inaction in the country, since it was not possible to reflect all existing initiatives and good practices in these Guidelines.

² See Global Report 2002 under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work – A future without child labour, International Labour Conference 90th Session 2002 (Report I (B)). See especially Figure 2 and paragraph 31.

States, demonstrating the variety of approaches. They also make recommendations that might be considered in law revision.

The *Labour Legislation Guidelines*³ issued by the ILO InFocus Programme on Social Dialogue, Labour Law and Labour Administration provide guidance on legislative drafting and technique and extensive examples of national labour legislation, including aspects of child labour and forced labour, some of which are relevant to the scope of the present Guidelines.

These Guidelines are neither exhaustive nor definitive. They recognize that there are different routes by which ILO member States may arrive at outcomes that fulfil their obligations under the Convention. There can be no single set of "model provisions" that would fit every country's context. The Guidelines are an examination of process and possible outcomes of law review and revision aimed at the abolition of the worst forms of child labour. Furthermore, some elements discussed in these Guidelines are, strictly speaking, not the direct requirements of the Convention (for instance, reviewing adoption laws), but touched upon because their improvement could help establish a comprehensive and solid legal framework conducive to the effective elimination of the worst forms of child labour in practice.

The Guidelines contain eight sections. Section 1 is contextual and provides an overview of the international framework for the elimination of child labour, of ILO's strategy for the abolition of child labour and imperatives for the elimination of the worst forms of child labour in the shortest possible time. It focuses briefly on IPEC's Time-Bound Programme approach and the place of these Guidelines in that strategy.

³ These are available on the website: www.ilo.org/public/english/dialogue/ifpdial/lhg/main.htm or by request from the ILO InFocus Programme on Social Dialogue at Tel: +41.22.799.7035, Fax: +41.22.799.8749.

Section 2 focuses on what constitutes the worst forms of child labour. It adopts the text of the Convention itself to provide a checklist of the steps that States that ratify it must take to comply with its provisions.

Section 3 raises the importance for States to articulate and adopt a national policy on child labour to underpin activities to eliminate its worst forms. It deals with the need for a comprehensive legal review as a first step to establish what laws, if any, have to be adopted to eliminate the worst forms of child labour in line with the Convention. It analyses the principles, procedures and actors that might be engaged in review and revision. It focuses on the crosscutting themes of the Convention, according priority to children's rights and the special situation of girls.

Section 4 looks into distinct areas of national law. It examines legal norms and procedures that are engaged by measures to eliminate the worst forms of child labour or significantly impact upon it. The Section emphasises the importance of a State's constitutional provisions in offering overarching protection for child labour victims and examines how laws on crime, family relations and labour and employment may affect its efforts to prohibit and eliminate child labour in its worst forms. Measures to provide redress for child victims, to take account of their vulnerabilities as witnesses in court proceedings, to remove, rehabilitate and socially reintegrate them are addressed; and child protection and welfare measures are emphasized.

Section 5 deals with hazardous child labour, focusing on the method of determination and the Convention's requirement of consultation with employers' and workers' organizations on implementation measures. The Convention's definition is examined and suggestions made in Recommendation No. 190 for fleshing out that definition for translation into national law considered. Institutional capacity problems likely to

attend detailed definition and periodic revision are examined.

Section 6 focuses on the centrality of tripartite consultation to the process to implement the provisions of the Convention. It argues that, in addition, broader consultation with other stakeholders, community groups and children themselves are essential for ownership, policing and sustainability of legal measures to eliminate the worst forms of child labour. The rationale that underscores this approach is outlined and the broader consultation process is focused upon.



Section 7 addresses institutional capacity issues and the weaknesses that bedevil implementation of laws in many developing countries. The establishment of dedicated child labour units within law enforcement and other public institutions are considered. Institutional adjustments for enhanced international cooperation and mutual assistance are suggested. The designation of a single national

authority with responsibility for coordinating, monitoring, implementing and promoting measures to raise public awareness is discussed.

The final Section considers the mandatory monitoring requirement of the Convention as it relates to the legal process, the value of monitoring in promoting the legal objectives and the competent authority to supervise and manage monitoring. It also touches briefly on the criteria for an evaluation to assess the legal measures introduced to eliminate the worst forms of child labour and make recommendations for improvement.

It is hoped that the Guidelines will assist ILO member States to consider the review and revision of their laws in full extent so as to bring them into line with the standards set by the Convention. The recommendations made by the Guidelines are informed suggestions. Only the bodies mandated by the ILO Constitution can make authoritative pronouncements on ILO standards. These Guidelines do not prejudice such mechanisms in any way. Following the unprecedented pace in the ratification of Convention No.182, there will also be many national efforts to review legislation, if not already done before ratification. Further expansion of Time-Bound Programmes into a larger number of countries would also give impetus to a thorough legal revision. Thus, in the coming years, there should be an increasing number of examples to be accumulated and help the users of these Guidelines.

2 International framework

2.1 International framework for protection

The ILO adopted its first Convention on child labour, the Minimum Age (Industry) Convention (No.5), in 1919, the year of its formation. The Convention proscribed employment or work of children under the age of 14 in industrial enterprises. Further standard-setting continued over the next fifty years with nine additional Conventions that set minimum ages for different sectors in agriculture, maritime work, non-industrial employment, fishing and underground work. In 1973 the principles were consolidated in a comprehensive instrument on child labour, the Minimum Age Convention, 1973 (No. 138) that applied to employment or work in all sectors of the economy, while incorporating flexibility, especially in respect of developing countries.

The key feature of Convention No. 138 was the requirement that ratifying States pursue a national policy to ensure the abolition of child labour and raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons. Ratifying States were obliged to fix a general minimum age for admission to work, which should not be lower than the end of compulsory education, and to set a higher minimum age for hazardous work, while exceptions and exclusions may be applied based on the country's development level. Although the Convention stipulated that the general minimum age should not be lower than 15 years, countries with insufficiently developed economies and educational facilities were permitted to specify a general minimum age of 14.⁴

⁴ Article 2. Where work was likely to jeopardize the health, safety or morals of young persons, a higher minimum age of 18 years had to be specified although exceptions from the age of 16 could be

Growing international concern for children's rights in the 1980s culminated in the United Nations Convention on the Rights of the Child in 1989. This Convention adopted a "child rights" approach by declaring the right of children to their mental and physical dignity, to protection from economic exploitation, illicit internal or transnational movement, sexual abuse or treatment as a chattel to be inviolable.⁵

In the light of evidence that children were subjected to extreme forms of economic exploitation, the ILO launched in 1992 the International Programme on the Elimination of Child Labour (IPEC) to mobilize action to support national programmes to combat child labour. A Declaration at the World Summit for Social Development in 1995 recognized the prohibition of child labour as one of the four basic rights of workers.

Similarly, a Declaration by the International Labour Conference in 1998 recognized the abolition of child labour to be a fundamental principle of international labour law. This was followed in 1999 by the adoption of the Worst Forms of Child Labour Convention (No. 182) ("the Convention") and its accompanying Recommendation No. 190.

The Convention underscores protection from child labour and its worst forms as a human right and a development issue. The worst forms of child labour are so fundamentally at odds with children's basic human rights that they are to be prohibited for all persons below 18 immediately irrespective of the level of economic development of the country. As poverty and social exclusion are understood to be the breeding grounds

authorized under strict conditions (Article 3). For light work, the minimum age was 13 years or, in the case of developing countries, 12 years (Article 7).

⁵ See respectively Article 32, Articles 9, 10 and 12, Article 34 and Article 35.

for child labour and vice-versa, the appropriate strategy is now clearly to address the problem both ways: that is, from bottom up, through broad-based development, poverty eradication and social mobilization, and from the top down, by establishing political priorities and appropriate legal and institutional frameworks. This strategy recognizes victims of poverty as bereft of rights to adequate food, health care and housing, participation in political processes, access to information and education, fair legal treatment and the benefits of citizenship. It recognizes that such deprivations are the worst for society's most vulnerable – children, in particular girls and younger children, who are seen to be in need of special protection and priority care.

2.2 ILO Convention No. 182 on the worst forms of child labour

The Convention does not revise or replace but complements Convention No. 138, which remains the fundamental instrument on child labour specifying standards of minimum age for admission to employment. It focuses on the need for countries that ratify it to take immediate action to prohibit and eliminate the most intolerable forms of child labour, such as bonded labour, armed conflict, trafficking, commercial sexual exploitation and hazardous work, for all girls and boys under 18 years of age, with no allowance made on account of a country's level of development.⁶ Its scheme for action is multi-sectoral. It requires countries to adopt and implement time-bound measures to:

- i. prevent the engagement of children in the worst forms of child labour;

- ii. provide the necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation;
- iii. ensure access to free basic education, and wherever possible, appropriate vocational training for children removed from the worst forms of child labour;
- iv. identify and reach out to children at special risk⁷; and
- v. take account of the special situation of girls.⁸

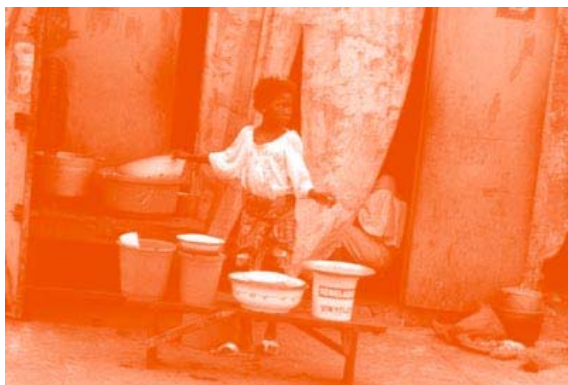
2.3 Time-Bound Programmes

IPEC has developed the Time-Bound Programme (TBP) approach to assist countries in designing and implementing integrated strategies for tackling the worst forms of child labour within a well-defined framework in line with the Convention. The TBP is a government-led effort that is designed to bring to bear the expertise of all relevant ministries and other actors within a single unified framework. The result should be massive reduction or complete elimination of selected worst forms of child labour within a specific time frame. It incorporates measures that prevent children from engaging in activities identified as "worst forms" by addressing the root causes and targets the withdrawal and rehabilitation of children who are already engaged in such activities.

⁶ In 2000 the United Nations General Assembly adopted two Optional Protocols to the Convention on the Rights of the Child, one on the sale of children, child prostitution and child pornography, and the other on the involvement of children in armed conflict. They reinforce the provisions of Convention No. 182 in most respects but take those provisions further in some others.

⁷ These would include in particular children with disabilities, children from poor families, migrants, asylum-seeking and refugee children, children from minority groups, children in the care system, and detained children. Their particular situation should be monitored and comprehensive strategies developed to target all forms of discrimination they suffer.

⁸ Article 7(2).



To ensure sustainability of success, the withdrawal of children from intolerable work situations must be accompanied by measures to offer alternatives to them and their families and to ensure those children's access to education, as well as measures to prevent other children from getting involved in the first place. Prevention strategies must therefore include efforts aimed at improving educational opportunities, raising household incomes, and sensitizing public opinion to child labour in its worst forms. Rehabilitation includes educational and skills training opportunities for children withdrawn from child labour. Other components relate to the protection of older children (above the legal minimum age for employment) from hazardous work through enforcement of labour standards and improvements in working conditions. The review and reform of national laws and enforcement mechanisms are key components of the national TBP. The design, implementation and enforcement of the law must be linked with other elements of the TBP if they are to produce the desired outcomes. Such synergizing is an effective way to ensure that the programmes generate commitment and ownership and are sustainable beyond their specific time-frame.

2.4 Why guidelines?

Convention No. 182 sets the minimum standards to be met by ratifying countries in tackling the worst forms of child labour. It is necessary for countries to carry out a comprehensive review of their

laws and enforcement to ensure that there is an adequate legal framework and a solid basis for a clear understanding of the worst forms of child labour and for direct interventions to be initiated. This exercise may reveal inconsistencies, inadequacies or other defects that require remedy. In order to achieve effective elimination of the worst forms of child labour, steps may need to be taken to consolidate or harmonize disparate laws; expand legislative coverage, increase penalties, provide compensation for child victims and protect them from reprisals, make sure that all girls and boys under 18 are covered, eliminate gaps, and reinforce labour inspection and other enforcement mechanisms.⁹

Recommendation 190, which accompanies the Convention, provides a source of useful suggestions going beyond the minimum requirements of the Convention and conducive to developing, strengthening and supplementing measures designed to tackle the worst forms of child labour.

These Guidelines aim to assist countries to fully and effectively consider all aspects of the review and reform of their laws. They will look at what needs to be done to improve and enforce the relevant legislation under country TBPs. The Convention sets the minimum steps that have to be taken by member States. Where national provisions are found to fall short of these, revision of the law is indispensable. However, many aspects of the law review covered by these Guidelines go beyond the minimum requirements of the Convention. They draw upon the further measures suggested by Recommendation No. 190 to be adopted, if countries so desire, to enhance achievement of the ultimate

⁹ For a comprehensive guide to the TBP concept, see Guide Book II: *Time-Bound Programmes for Eliminating the Worst Forms of Child Labour - An Introduction*, available in the TBP MAP Kit or from the TBP MAP website: www.ilo.org/public/english/standards/ipecc/tbmes/timebound/index.htm

objectives of the Convention. They are considered to be conducive for improving and strengthening the overall legal mechanisms for tackling the problem of child labour in its worst forms. Not infrequently, the Guidelines also provide general insights and suggestions drawn from examples based on practice in ILO member States. It is the expectation that as more member States adopt the TBP approach further examples will emerge from accumulated experience to strengthen these Guidelines. In particular, they have the following aims:

- i. to consider the full range of laws that need to be examined in order to identify existing weaknesses;
- ii. to examine the key principles and steps in the legal review process, including tripartite and other consultations;
- iii. to identify and clarify the institutional capacity issues that arise in respect of legal process, enforcement, and interventions in areas such as education, welfare and rehabilitation; and
- iv. to analyse and recommend concrete proposals that may be considered in adopting law reforms that are likely to achieve the desired outcomes. The worst forms of child labour

2.5 What are the worst forms of child labour?

The Convention spells out the categories of the worst forms of child labour to be prohibited by national laws for all girls and boys under 18 years of age.¹⁰ They are:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour and including forced or compulsory recruitment of children for used in armed conflict;

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

It does not exhaustively enumerate the types of conduct that fall within each category and elaboration is required to ensure that national laws adequately cover them. The worst forms of child labour fall into two distinct types. The first, the "unconditional" forms¹¹, are what may be termed "common crimes" in that penal laws everywhere prohibit them although they may be neither adequately covered nor effectively enforced. The Convention does not contain flexibility clauses that would permit some countries (e.g., developing countries) to set a lower standard or age, as Convention No. 138 does. They also include the forced or compulsory conscription of children under 18 into national armies for combat as well as recruitment by insurgency groups.¹² The second, the "hazardous" forms, are relative in that, while they are broadly defined by the Convention, States are left

¹¹ See *Global Report 2002 under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work – A future without child labour*, op. cit.

¹² It is to be noted that the Statute of the International Criminal Court provides that conscripting or enlisting children under the age of 15 or using them in international or non-international armed conflict constitutes a war crime. In addition, the Optional Protocol to the CRC on the involvement of children in armed conflict provides that States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces (Article 2). Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

¹⁰ Articles 2 and 3.

to determine precisely what types of work fall within that definition. These determinations need to take account not only of the nature of the work but its conditions. Without such national determination, the general "prohibition" of hazardous work would remain empty and difficult to enforce.

2.6 Steps to tackle the worst forms of child labour

The Convention contains important information on how to address **the worst forms of child labour**.

According to Article 1

Take immediate and effective steps to adopt legislation to prohibit the worst forms of child labour and adopt other measures to eliminate such practices.

According to Article 2

Ensure that the prohibition of, and action against the worst forms of child labour cover all boys and girls under the age of 18.

According to Article 4

- i. Determine by legislation or by other means which types of work are likely to harm the health, safety or morals of children.
- ii. Consult employers' and workers' organizations in determining such types of work.
- iii. Take account of Recommendation No. 190 and other international standards in determining such types of work.
- iv. Consult with employers' and workers' organizations in identifying the places where such types of work occur.
- v. Ensure that the list of the types of work likely to harm the health, safety and morals of children is examined periodically and revised as necessary.

According to Article 5

- i. Establish or designate mechanisms to monitor implementation of the Convention.

Consult organizations of employer and workers in establishing or designating such mechanisms.

According to Article 6

- i. Design and start implementing programmes of action to eliminate worst forms of child labour.
- ii. Consult the relevant government institutions and employers' and workers' organizations in designing and implementing such programmes.
- iii. Take into account the views of other concerned groups.

According to Article 7

- i. Take all the necessary measures to ensure the effective implementation of the laws.
- ii. Provide for penal sanctions or other appropriate sanctions to enforce the laws.
- iii. Ensure these sanctions are being applied.
- iv. Take effective and time-bound measures to:
 - a. prevent the engagement of children in the worst forms of child labour;
 - b. provide direct assistance to remove children from the worst forms of child labour;
 - c. provide direct assistance for the rehabilitation and social integration of the children concerned;
 - d. ensure access to free basic education and, where possible and appropriate, to vocational training for such children;
 - e. identify and reach out to children at special risk;
 - f. take into account the special needs of girls;
- v. Designate the competent authority responsible for the implementation of the laws.

According to Article 8

- i. Cooperate with other countries to give effect to the provisions of the laws;
- ii. (For developed countries in particular) Provide enhanced assistance to other

countries in giving effect to the Convention, including support for social and economic development; poverty eradication programmes; and universal education.



3 Legal review

3.1 What States must do

In order to tackle the worst forms of child labour in accordance with the Convention, many actions and measures need to be undertaken in an integrated manner under the TBP. One of the first steps is to conduct a comprehensive review of existing laws.



Most countries have procedures for reforming their laws. In some, review and proposals for reform are made by government departments and in others by the national law reform commission or similar dedicated agency, or the two may collaborate. The Convention's multi-sectoral strategy means that the review and reform process will involve the functions of many different departments of government and many different areas of law. It is therefore necessary that an inter-departmental group be given primary responsibility for steering the review and making reform proposals.

3.2 National child labour policy

Countries do not have to wait until the ratification of the Convention to start adopting measures under the TBP approach nor is adoption of the TBP the only possible way to apply the Convention after its ratification. Ratification of the Convention and adoption of laws to implement its

provisions are not goals in themselves, but are, nonetheless, crucial actions against the worst forms of child labour. Policies and legislation to integrate the requirements of an ILO Convention into the national framework is one very important step.

However, policies and laws on paper are likely to fail to secure effective action unless governments accompany them with firm commitment, identifying relevant implementing agencies and backing them with adequate budgets and personnel. It would be helpful for governments to articulate and adopt national policies on child labour and specify their place in overall development policy. This might involve an agenda for action spelling out national plans with indicators, goals and budgetary allocations and identifying priorities. Such an agenda might also indicate what will happen at the end of the TBP in order to avoid the danger of being attracted to interventions that might give maximum short-term impact but would fail to provide longer-term sustainable benefits.

3.3 What laws should be reviewed

The review will need to examine the following areas of national law:

- i. the Constitution,
- ii. penal laws,
- iii. labour and employment laws (including laws on occupational health and safety and labour inspection),¹³

¹³ See ILO InFocus Programme on Social Dialogue: *Labour Legislation Guidelines*, op. cit., for a useful examination of substantive provisions of labour legislation and reform process. See in particular chapters VIII on the effective abolition of child labour; IX-XI on the drafting process, rules and practices.

- iv. family and child care laws (including laws on marriage and adoption),
- v. customary laws,
- vi. welfare laws,
- vii. laws of compensation,
- viii. evidence and procedure laws,
- ix. education laws,
- x. administrative laws ,
- xi. laws governing international movement, cooperation and assistance.
- vii. health, including HIV/AIDS (department of health);
- viii. media and information services;
- ix. child protection (human rights commission, children's commissioner, NGOs);
- x. customs and immigration; and
- xi. international and regional cooperation with other countries (department of foreign affairs).

3.5 Some key principles of law reform

The review should involve comprehensive study of the laws and of available data on prevalent worst forms of child labour within the country, including the findings of any surveys or studies. The experience of other countries in reforming their laws should also be useful. At this stage the review should be consultative and embrace diverse strands of opinion from individuals and organizations involved with issues that fall within the Convention.

3.4 Who should conduct the review

The membership of the review will include representatives of the relevant government departments, professional and academic groups and key NGOs. The following interests and expertise should be represented:

- i. law reform and enforcement (Attorney-General's Office, Justice Department, Police Department);
- ii. child care and probation services (Department of Social Welfare, Department of Women and Children);
- iii. key sectors of child labour, for example, mining, agriculture, fishing and tourism;
- iv. academics from relevant fields;
- v. economic and development planning departments or agencies;
- vi. education and vocational training (departments of education, social welfare and regional and local planning);

The scope of the worst forms of child labour is so broad that the relevant national laws will be scattered throughout many statutes and different divisions of the law. The purpose of the review is to measure what exists against what should exist and to make recommendations that resolve any discrepancy. In any event, it has to be ensured that reform measures cover all girls and boys under 18, eliminate gaps, increase penalties as necessary and provide compensation for child victims. In striving to achieve these outcomes, certain principles should permeate all proposals that are made:

Clarity and simplicity: The law should be drafted using language that is plain, unambiguous and comprehensible. At the same time, the text should be concrete enough to allow its enforcement by labour inspectors and others charged with upholding the law.

Internal coherence: All worst forms of child labour laws should aim at the same objective, be coordinated and not subject to different policy constraints.

Balance between authority and adaptability: Use of the full array of legal instruments as opposed to subsuming everything in a single act of parliament.

3.6 Children's rights and the law on children

The near universal ratification of the International Convention on the Rights of the Child, the single most comprehensive

treaty dealing with children's human rights, has led to the adoption by many countries of wide-ranging legislation elaborating and guaranteeing rights of children in line with that Convention. In countries where comprehensive children's rights legislation has been adopted, it has usually replaced and consolidated legal provisions that have traditionally been scattered through many different areas of the law. With the new legislation have come sweeping changes in the scope and nature of the law on children leading for the first time to the coalescing of the public (for example, care and supervision orders, emergency protection orders, education orders, welfare provision, adoption and fostering) and private (parental responsibility, residence, guardianship) spheres. Thus, in a number of countries, children's legislation now provide a clear and consistent code for the whole of child law and avoid the problems caused by conflicting powers in public and private law. Characteristically, they assert and promote the principles that the child's welfare is paramount and that children's needs are best served when they remain with their families.

The new-style children's legislation¹⁴ typically create new structures, including family courts and tribunals with children's panels which deal with issues involving children and their families and provide new systems of court orders applying to disputes between parents as well as orders making financial and welfare provision. They define the powers and duties of local authorities in relation to children and make radical provisions to deal with the emergency protection of children. They deal with the regime for the care of children in community or children's homes. Some have detailed provisions dealing with the employment of children, prohibit their engagement in hazardous work and specify responsible enforcement agencies.

¹⁴ Children's Acts have been introduced, for instance, in South Africa, Uganda, Ghana Brazil and the United Kingdom.

In countries where comprehensive children's rights legislation have been adopted they and their supporting structures provide an important framework to support TBPs. Even so, there may still be inconsistencies between such legislation and existing labour laws or the provisions of the Convention, particularly with respect to the minimum age for work. Care should be taken, therefore, that all existing provisions are updated, revised and abrogated if necessary to align them with the contents of the new law. Otherwise, adopting a new law without clearing the old ones could create confusion as to the current status, especially if different levels of standards are left to coexist. Where laws on children are still fragmented, however, a legal review is likely to reveal many gaps, conflicts and weaknesses that will need to be addressed by laws to deal with child labour and its worst forms. A general law on children may especially be a useful tool to cover work carried out by children in informal economies, which are often outside of the scope of labour legislation.

3.7 The special situation of girls

States are obliged to take account of the special situation of girls in adopting and implementing the provisions giving effect to the Convention.¹⁵ ILO studies and country surveys are replete with evidence of the increased risks faced by girls as domestic workers or as victims of commercial sexual exploitation. Yet laws that aim to protect them from sexual abuse and exploitation may be outdated, based on outmoded thinking, or on occasions discriminatory when compared with the protection offered to boys in similar situations.¹⁶ Girls suffer

¹⁵ Article 7(2)(e) of Convention No. 182

¹⁶ Sexual offences are often considered to be gender specific. Laws in many English speaking countries define the offences for sex with underage girls and boys differently – "unlawful sexual intercourse with a girl" by a man; and "indecent assault" by a woman on a boy. This creates inconsistencies in the way offenders are dealt with for what is essentially similar behaviour. Although girls have traditionally tended to receive lesser legal

disproportionately oppressive and abusive customary practices of marriage, slavery and bonded labour. Their opportunities for education and training are, among many families, often much reduced because they are required to work in the home or are passed over in favour of boys when parents cannot afford to educate all their children. When attending school, they may be excluded if they become pregnant, while the boys who made them pregnant continue their education.¹⁷



Gender equality should be incorporated into all laws and policy dealing with children. Guaranteeing equality of opportunity and treatment in access to training for women, including vocational training for adolescent girls, is a central theme in ILO's standard-setting work.¹⁸ Many countries now have sex discrimination legislation that makes it unlawful to treat women less favourably in the workplace or in training on account of their sex. Where such legislation exists, they commonly apply to sex discrimination in the provision of education by public authorities.¹⁹ The spirit of the Convention, however, goes much further in requiring States to seek out and protect girls because of their vulnerabilities to especially abhorrent forms of child labour. To facilitate this, research and consultation should gather gender-focused information and statistics. Policies and laws should affirmatively address the disadvantages suffered by girls.

The majority of constitutions contain equal protection clauses that could form the basis for government affirmative action programmes addressing the particular disadvantages of girls. Some constitutions, like those of India, Nigeria and Ghana,²⁰ in addition incorporate

protection from sexual abuse and commercial sexual exploitation than boys, there is some evidence that in some countries, sexual offences may attract higher penalties when the victims are boys. For example, section 216 of the Nigeria Criminal Code Act under which "unlawfully and indecently dealing with a boy under 14" attracts a maximum penalty of 7 years imprisonment. Section 222 of the same Act imposes a maximum penalty of 3 years when the same crime is committed against a girl under 13. This may of course reflect traditional attitudes toward homosexuality, which nonetheless have the effect of treating sexual offences against girls as less serious than those against boys. A number of ILO member States are in the process of reviewing their laws on sexual offences and are paying particular attention to issues of gender discrimination as well as trafficking and sexual offences. See United Kingdom, "Setting the Boundaries: Reforming the Law on Sex Offences" (Home Office document, 2000), Chapters 6 and 7, which provide examples from Australia, Canada and the Republic of South Africa.

¹⁷ See section 4.2.2 on Family laws for further discussion of some abuses of girls under marriage and adoption laws.

¹⁸ Most international labour standards apply without distinction to men and women workers. The following, however, refer specifically to women and apply to adolescent girls in vocational training or lawful employment: The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Workers with Family Responsibility Convention, 1981 (No. 156).

¹⁹ For example, the UK Sex Discrimination Act 1975 imposes a general duty on local education authorities and other educational bodies in the public sector to ensure that facilities provided by them are provided without sex discrimination. In the United States the right to non-discrimination in education on grounds of sex is enshrined in the Equal Educational Opportunity Act of 1974. Both the UK Act and the US Act provide scope in certain defined circumstances for positive action or affirmative action to be taken in favour of those in special need of training or education.

²⁰ India Constitution, 1950, Part IV; Nigeria Constitution, 1999, Part 1, Article 17(3)(f); Ghana Constitution, 1992, Article 37(2)(b) ;

directive principles of State policy that impose duties on the State to promote the protection and welfare of vulnerable groups and their basic human rights and freedoms.

The review should consider recommending statutory provisions requiring all public bodies to go beyond general standard setting and make specific provisions to redress gender imbalances in areas such as education and health. For example, excluding pregnant pupils from schools should be prohibited and the training packages for labour inspectors and all other enforcement agencies should contain a gender awareness component.²¹

3.7.1 Recommendations

- Legislation should never be assumed to have the same effect on boy and girl children alike but should take account of the different needs of girls. Any differential impact should be detected and assessed before the legislation is endorsed.
- Equally, care should be taken to ensure that in the effort to protect girls, legislation does not discriminate against boys.²²

²¹ See Y. Yeborah: *Institutional and Policy Study on Tanzania's country TBP*, April 2001, p22; and *Equal Opportunities for Women: The Implications of Adolescent Pregnancy and Childbirth in sub Saharan Africa*, (ILO, Geneva POP/WP183) pp. 23-4.

²² The worst examples of measures to protect girls that do not cater for the equally legitimate needs of boys for protection relate to sexual offences. For example, the offence of having unlawful sexual intercourse with a girl under the age of thirteen (S. 5 of the UK Sexual Offences Act 1956) is replicated in many Common Law jurisdictions that do not have the counterbalancing offence in relation to boys. Similarly the abduction of an unmarried girl under 16 from her parents or guardian for the purposes of sexual intercourse is a criminal offence in many Common Law countries that do not have the equivalent offence in relation to boys. Thus a boy abducted from his parents for worst forms of child labour may not be covered at the present state of the law in some English speaking developing countries. Unified provisions which cover boys as well as girls in all sexual offences are recommended.

- If there exists differentiation between boys and girls in the protection from particular types of work (forexample, prohibiting certain jobs only for girls, or having different minimum age limits for boys and girls), such provisions should be reviewed critically so that differentiation not founded on medical or scientific grounds is not maintained.
- An equal opportunity element should be incorporated into all laws impacting on the worst forms of child labour, such as those on health and education, to ensure that the disadvantages suffered by girls are never ignored and gender impact assessments are built into all laws. In each case the following questions should be asked:
 - Is the law delivering equality of opportunity for girl and boy children alike?
 - Will the law achieve equal outcomes? In other words, will the law in practice lead to equal treatment of girls and boys?
 - What lessons are there for improving future gender impact assessments?
 - Who needs to be informed about the outcome of the gender impact assessment and how is the information to be presented?
- Specific measures should be adopted to ensure that the disproportionate number of girls without access to education either because they are in hidden work situations or are denied education for cultural or preference reasons are enabled to attend school.
- Powers of entry and investigation should be enhanced for the education and labour inspectorate in those sectors identified by research to be areas where girls are particularly at risk.

4 National laws

4.1 The constitution

National constitutions provide an overarching legal framework for dealing with issues raised by the Convention. Many fundamental rights commonly guaranteed by the constitution apply to adults as well as children and are relevant to the worst forms of child labour. These include the prohibition of slavery; the right to protection from torture, cruel and inhuman and degrading treatment or punishment; the right to equality and equal protection of laws; and freedom from discrimination on the grounds of race, religion, caste, ethnicity and sex.

Constitutions often contain enforceable provisions to protect the rights of children. The Federal Constitution of Brazil, for example, contains entrenched provisions protecting children from neglect, discrimination, exploitation, violence, cruelty and oppression.²³ Sri Lanka's proposals for a constitutional amendment accord to children's rights to protection from maltreatment, neglect, abuse and degradation, and employment in hazardous activity, as well as rights to basic nutrition, shelter, health care services, social services and free basic education.²⁴ These proposals, if adopted, will create entrenched and directly enforceable rights. India's constitution contains a chapter on the rights of the child, as does that of South Africa.²⁵

The Indian and South African models possess the advantage of enabling constitutional motions to be made directly to the court on the child's behalf.²⁶

4.1.1 Recommendation

- States might buttress efforts to combat the worst forms of child labour by adopting constitutional provisions that enshrine directly applicable rights specific to children.

4.2 Prohibition and elimination

4.2.1 Penal laws

Common Crimes: the "unconditional" worst forms of child labour: The first three categories of worst forms of child labour constitute "common crimes" against which most countries have some laws.²⁷ These are often scattered through many different offences and in most countries would be covered to some extent by laws on kidnapping, abduction, trafficking, procurement, sexual exploitation of children, obscene publications, beggary and vagrancy, cruelty to children, and grave sexual abuse. These laws may be couched in archaic language, based on outmoded thinking and subject to conflicting policies. They may not be comprehensive enough to cover the range of conduct or there may be gaps, mismatches, weaknesses and overlaps.

²³ Federal Constitution Code, 1998, Article 227.

²⁴ Article 22 of the Proposals for Constitutional Reform, October 1997.

²⁵ In contrast, the Ghana Constitution does not create directly enforceable rights. It requires Parliament to enact laws to protect children from a range of abuses including exposure to physical and moral hazards, hazardous work, torture or other cruel, degrading or inhuman treatment, the deprivation of education and work that threatens health, education or development (Article 28, Ghana Constitution, 1992). The Ghanaian parliament enacted a Children's Act in 1998, Part 1 of which is devoted to the protection of child rights and Part V

to the prohibition of exploitative child labour. In similar terms Brazil's Law No 8069 of 13 July 1990, "Statute of the Child and Adolescent", is intended to provide for the "full protection of the child and adolescent" and outlines fundamental rights and duties with policies for enforcement and guidelines for their implementation but it is left to individual State governments to translate the provisions into regulations at the local State level.

²⁶ The Constitution of India, Article 32 provides: "The right to move the Supreme Court...for the enforcement of the rights conferred...is guaranteed". The Constitution of South Africa, Article 38 contains a provision to similar effect.

²⁷ Article 3(a), (b) and (c) of Convention No. 182.

They may also leave certain ages or boys not covered.²⁸ Furthermore, family members may in some cases benefit financially from these offences while those in positions of authority or trust may turn a blind eye.

Increasing evidence of cross-border offences has highlighted the international dimension of the exploitation of children. Sexual exploitation resulting from tourism and foreign travel, the trafficking of young people across borders into exploitative working conditions, abductions from one country to another, abuses of inter-country adoption and the transfer of pornography via computer networks all involve other jurisdictions. If national laws lack sufficient extraterritorial reach perpetrators of such exploitation may escape punishment.

4.2.2 Recommendations

- For clarity and simplicity, States might consider consolidating all unconditional worst forms of child labour offences into a single piece of legislation with a preamble stating the principles and policies that are intended to be implemented in the body of the text.²⁹

²⁸ For instance, the Sri Lanka kidnapping laws exempt alleged traffickers from liability if it is proved that the child's parent or lawful guardian is involved (Penal Code, Sections 351 and 352). In Nigeria both consent (Criminal Code, Sections 221 and 222) and mistake of age are available defences to the offence of defilement of girls over 13 years, the prosecution must be brought within two months, and the defendant cannot be convicted on the uncorroborated evidence of one witness (Ibid., Section 185(3)).

²⁹ In the Philippines, Republic Act 7610 which came into force in 1992, specifically addresses the "Special Protection of Children against Child Abuse, Exploitation and Discrimination" including Child Prostitution and other Sexual Abuse (Article III), Child Trafficking (Article IV) and Obscene Publications and Indecent Shows (Article V). The Act requires the formulation by the Departments of Justice and of Social Welfare and Development, of a comprehensive programme to protect children against commercial sexual exploitation. Regulations under the Act provide for the reporting and investigation of child abuse cases and for measures to prevent the trafficking of children.

- Offences could be framed in a way that does not rely on the willingness of the victim to testify.³⁰
- Defences should be confined within narrow limits and there should be no exemption from liability on the grounds that:
 - the parent or lawful guardian of the victim is involved,
 - there is no element of personal financial gain or reward,
 - the child victim consents, and
 - the perpetrator has mistaken the age of the victim.
- There should be no time limit on prosecution.
- It should be an offence for any person in a position of authority or trust in relation to a child (such as relatives, guardians, custodians, teachers, doctors) who knows or suspects that any offence has been, is being or is about to be committed to fail to report it to an officer of a law enforcement authority.³¹

³⁰ The Philippines has found merit in the argument that the difficulty of actually finding a criminal in the very act of abusing a child justifies framing laws in such a way as to shift some of the onus of proof onto the accused; the Republic Act 7610 provides that merely to be found alone with a child who is not a relative inside a hotel or vehicle or other place constitutes an attempt to commit prostitution under Article III, section 6 and under section 5(a) the mere verbal offer of a child for the purposes of prostitution constitutes the offence of sexual abuse. In the United Kingdom some 29 statutes create offences that shift the burden of proof; in minor matters these provisions can save the prosecution time and effort in proving something that the defendant may readily know; in more serious cases they often address the difficulty of trying to prove a guilty mind or mental element on the part of the offender.

³¹ INTERPOL's Working Party has urged enactment of legislation which would require individuals and specifically professionals and others having the care, custody or control of children to report suspected abuse to the relevant investigative authorities. The Philippine Regulations under Republic Act 7610 impose mandatory reporting provisions on hospitals, doctors, nurses, teachers and law enforcement officials.

- Offences should be framed to cover cases in which a national or a resident commits an offence abroad.³²

4.2.3 Penalties

Modern technology, a global increase in organized crime and cross-border trafficking of children have combined to make the financial gains to be had for some forms of crimes against children substantial by any standards. It follows that the penalties for such offences, while they must be proportionate and commensurate, will need to have palpable deterrent effect. In many countries available penalties are inadequate not least because they were not primarily fashioned for crimes committed with a view to profit.³³



Penalties should reflect not only the seriousness with which the international community regards crimes against children but also raise the costs of such crimes to the point where suppliers and demanders abandon their intent. In Brazil, for example, penalties for rape and indecent exposure are increased by half if the victim is under 14 years³⁴ and the Constitution requires individual States to "impose severe punishment for the abuse, violence and sexual exploitation of children and adolescents".³⁵ For child trafficking, Australia's federal law provides for a maximum penalty of 25 years imprisonment³⁶ and the Republic of Ireland life imprisonment³⁷.

Because the lifeblood of child exploitation is money, confiscation or forfeiture of the proceeds of such crimes would send a strong message that there is an intention to dismantle criminal enterprises and to

³² See Recommendation No. 190, paragraph 15(d). New Zealand (Crimes Amendment Act 1995), Australia (Crimes (Child Sex Tourism) Amendment Act 1994), the Philippines (March 1996), Belgium (April 1995), France (February 1994) and Germany (September 1993) have all introduced measures to give their domestic courts extraterritorial jurisdiction in respect of offences committed by their nationals or residents against children abroad. Of course countries may, because WFCL conduct is so universally recognized as abhorrent and in the interests of the entire international community to suppress, decide to prosecute perpetrators regardless of their nationality, the nationality of victims or where the crime took place. The International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone are all specifically empowered to prosecute rape, sexual assault, torture and enslavement as crimes against humanity; such universal jurisdiction exists under general international law for grave breaches of the Geneva Convention, crimes against humanity, genocide and piracy.

³³ For example, Nigeria prescribes a maximum of two years imprisonment for the defilement of girls aged between 11 and 13 and for indecency with girls under 13 (Criminal Code, section 221 (1) and 222). Sri Lanka imposes a maximum term of 5 years for using a child to procure another for sexual intercourse although a minimum of 5 and a maximum of 20 years is imposed for actually procuring a child for sexual intercourse (Penal Code, section 288A (1)). Also keepers of brothels in which children are used for prostitution are liable on conviction to a maximum penalty of only 6 months imprisonment and/or a fine not exceeding Rs 500 (Sri Lanka Brothels Ordinance). In other

countries there is a tendency for the judiciary to trivialise cases of child trafficking and sexual exploitation by imposing penalties that may be considered too mild and ineffective considering the gravity of the crimes involved. Sri Lanka has addressed this problem by introducing minimum mandatory sentences (Code of Criminal Procedure (Amendment), 1995 and 1998).

³⁴ Law for Heinous Crime, 1990.

³⁵ Federal Constitution, 1998, Article 227, paragraph 4.

³⁶ Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999.

³⁷ Child Trafficking and Pornography Act, 1997.

ensure that crime does not pay. The United Kingdom, for instance, combats lucrative offending in drug trafficking by placing a duty upon the court to exercise its powers of confiscation in every case and for these purposes, to presume all property held at the date of conviction and in the preceding six years to be the proceeds of criminal activity.³⁸

4.2.4 Recommendations

- The penalties for offending should be severe enough to have a deterrent effect and minimum mandatory sentences³⁹ should be considered.⁴⁰
- The younger age of a child victim should be regarded as an aggravating feature and attract stiffer penalties.⁴¹
- Courts should be empowered to confiscate and forfeit the proceeds of offences.
- There should be established a Register containing names and details of convicted offenders, which may be consulted by appropriate government agencies.⁴²

³⁸ Proceeds of Crime Act, 1995.

³⁹ In Fiji, for example, a recent amendment inserted a new section to the Juveniles Act prohibiting the production, distribution or use of pornography featuring juveniles provided for punishment of up to 14 years imprisonment.

⁴⁰ It may be noted that, even though C182 does not require penal sanction for every worst form of child labour, C29 requires, as long as forced or compulsory labour is concerned, not only the provision of penalties but also their strict application.

⁴¹ States are urged to give special attention to younger children in Recommendation No. 190, paragraph 2(c)(i). The penal laws of most countries make provision for liability to be stricter or for penalties to be increased if the victim is under the age of 14 or 13. In sexual exploitation younger children are especially vulnerable not only to infection by HIV/AIDS and STDs but to being forced into commercial sexual exploitation because of prevalent myths in some countries that sexual intercourse with them disinfects an HIV positive person.

⁴² Recommendation No. 190, paragraph 11(c) recommends a registration requirement for offenders. In the United Kingdom the Sex Offenders Act 1997 stipulates that certain specified sexual offences automatically trigger a registration

4.2.5 Trafficking

Many countries deal with trafficking by the use of such offences as procuring, kidnapping and buying or disposing of persons for slavery, supplemented by other penal provisions on rape, forgery, deception, and inflicting grievous hurt. The law makes no distinction when the victim is a child. For example, New Zealand and the United Kingdom have no specific offences of trafficking, although trafficking girls and women and then sexually exploiting them break a very large number of laws.⁴³ Legislation should make child trafficking an offence for which there are severe penalties. Trafficked children are treated as chattels, not as persons possessing rights. If pimping, procuring, and brothel-keeping involving children are regarded as serious crimes, then the organized trade that leads children to be exploited is beyond the pale of all accepted behaviour. It is imperative for States to create a conceptual framework setting out the key elements of trafficking, namely, recruitment, transportation, transfer, harbouring or receiving a child for the purposes of exploitation.⁴⁴ The element of coercion and deception so vital in the case of

requirement. The problem of recidivism in relation to paedophiles and whether penalties should continue after service of their sentence has been addressed by INTERPOL's Working Party. It has recommended that countries consider whether persons who have been convicted of sexual offences against minors should be subjected to registration and restriction of their activities involving contact with children. Canada's Criminal Code (section 161) enables a court to impose a prohibition order on a convicted sex offender which will prohibit him from attending places where children congregate or from seeking employment which involves being in a position of trust or authority towards children

⁴³ See for example New Zealand's Crimes Act, 1961.

⁴⁴ See Article 3c) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

trafficked adults should play no role in the context of child trafficking.⁴⁵

By its nature, trafficking often involves lucrative international operations where the money gained leaves the country very quickly. This international dimension makes it difficult to trace or confiscate assets. A strong case can therefore be made for applying special powers similar to those available in cases of drug trafficking and money laundering offences.⁴⁶

On the specific issue of trafficking, reference could be made also to other international instruments such as the UN Convention against Transnational Organized Crime, and its Protocols regarding human trafficking and migrants' smuggling. Efforts of harmonizing legislation with neighbouring countries and cooperating in law enforcement are particularly important in coping with cross-border trafficking.

4.2.6 Recommendations

- There should be an overarching and specific offence of child trafficking committed by causing or enabling a child to be moved from one place to another for the purposes of exploitation.⁴⁷

⁴⁵ For example, Sri Lanka has introduced an amendment to its penal laws to make child trafficking an offence, but it is limited to situations where its specific purpose is for prostitution, illegal adoption, begging, carrying restricted articles or to the procurement of persons for sexual exploitation and does not extend to all crimes against children (Penal Code (Amendment) Ordinance 1995, 1998).

⁴⁶ The UN Convention against Transnational Organized Crime and its Protocols set the framework for international cooperation in action against transnational organized crimes including human trafficking by such concrete means as extradition, exchange of information and so on.

⁴⁷ Thailand, Sri Lanka, the Philippines and Belgium have specific criminal offences for child trafficking. In March 1995 the European Union responded to the problem of trafficking by expanding the mandate of its Drug Unit. INTERPOL's Working Party has made recommendations to protect children from being trafficked including imposition of greater supervision and control on inter-country adoptions and establishment of a data base with records of

- This offence should trigger special powers to trace assets overseas.

4.2.7 Armed Conflict

Children living in areas of armed conflict are not only vulnerable to injury or death but are frequently induced or press-ganged into taking up arms as child soldiers or otherwise abused for sex and support functions such as scouts, spies, decoys, cooks, porters and messengers. They forgo education, their health and nutrition suffer and they are traumatised. Post-conflict, child labour is linked to an increased degree of vulnerability and precariousness as well as ruptured social and family support. Article 3(a) of the Convention prohibits "the forced or compulsory recruitment of children for use in armed conflict". During the second discussion of the draft Convention it was made clear that Article 3(a) did not apply to 16 and 17 year olds who lawfully volunteer for service in a nation's armed forces.⁴⁸ It would, however, apply to the

persons and organizations who have been found to be involved in the trafficking of children. Trafficking in women and girls has been an important focus of attention within the United Nations system, the international community and non-governmental organizations as well as at the regional and national levels. The Sub-Commission on the Promotion and Protection of Human Rights takes up trafficking in persons through the activities of the Working Group on Contemporary Forms of Slavery. More than 120 Member States signed the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. As of May 2002, 11 countries had ratified the Protocol.

⁴⁸ IPEC Document, "Frequently Asked Questions about Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child Labour", 2 November 2000. In the United Kingdom about one third of the annual intake of recruits into the armed forces are below the age of 18 years and those recruited are required to serve a minimum period of four years rising to six years in the case of very young recruits (see the Armed Forces Act, 1996) although the Emergency Powers Act, 1920 prohibits the imposition of any form of compulsory military service during a period of emergency. The Optional Protocol to the Convention on the Rights of the Child is unequivocal. Article 1 prohibits the use of children under 18 in hostilities and Article 2

conscription of children into national armies for combat. The forced use of children by insurgents is outlawed although a State would find it difficult to enforce outlawed conduct committed in areas over which it lacks *de facto* control. It could, however, take steps to prosecute rebel fighters who use children when control is restored. Under international law, such conduct may amount to a war crime for which universal jurisdiction exists.⁴⁹



As with all other worst forms of child labour the State is under a separate obligation to not treat children used by insurgents as terrorists but instead to take appropriate steps to demobilize

proscribes their compulsory recruitment into the armed forces.

⁴⁹ The Statute of the International Criminal Court provides that conscripting or enlisting children under the age of 15 or using children in international or non-international armed conflict may be charged as a war crime. The Statute of the Special Court for Sierra Leone (Security Council resolution 1315 (2000) defines 'crimes against humanity' to include widespread or systematic attack against any civilian population involving enslavement, imprisonment, sexual violence or other inhumane acts (Article 2); the conscripting or enlisting of children under the age of 15 into armed forces or groups or using them to participate actively in hostilities constitutes a 'serious violation of international humanitarian law' (Article 4).

them and provide for their rehabilitation and social reintegration.⁵⁰

4.2.8 Recommendations

- No child below 18 should be conscripted into the national army for combat.
- The minimum age of children's criminal responsibility should be reconsidered with a view to raising it especially for terrorism or other offence arising out of their use in armed conflict.⁵¹

4.2.9 Commercial sexual exploitation

States should create a set of specific offences to comprehensively cover sexual exploitation of children and not leave them to be dealt with by existing general offences. The Convention recognizes the powerlessness of children and their susceptibility to being abused and

⁵⁰ The special representative of the Secretary-General for Children in Armed Conflict has participated in significant successes in post-insurgency situations in Sierra Leone, Angola and the Great Lakes Region

⁵¹ Although Convention No. 182 includes no provision requiring that children subjected to child labour in its worst forms should not be criminalized, such criminalisation of children would be counterproductive for their rehabilitation and social integration, which C182 calls for. The Statute of the Special Court for Sierra Leone (2000) exempts children under the age of 15 from its jurisdiction (Article 7(1)); for a juvenile offender between the ages of 15 and 18 it lacks the power of imprisonment (Article 19) but is empowered to order provision of rehabilitation and re-integration services (Article 7(2)); on November 1, 2002, the tribunal's chief prosecutor, David Crane, announced at Kabala Secondary School that the court would not indict persons who were between the ages of 15 and 18 at the time of their offence; he said "The children of Sierra Leone have suffered enough both as victims and perpetrators. I am not interested in prosecuting children, I want to prosecute the people who forced thousands of children to commit unspeakable crimes." He indicated that he planned to prosecute "crimes against children" as war crimes. Child abduction and forced recruitment - both crimes under the court's statute - have never previously been prosecuted by any international tribunal.

induced or coerced into the commercial sex trade⁵².

The pervasiveness of child pornography on the Internet is an emerging problem as computer technology becomes more prevalent and replaces video as the dominant medium for the dissemination of obscene material. In some countries its penalization has been ruled to be unconstitutional or else an invasion of privacy⁵³. Legislative intervention is likely to be needed to address uncertainties related to applying existing offences to material generated or disseminated by computer⁵⁴.

States should not be content to punish producers of child pornography; they should go further by also attempting to stem demand by penalizing those who patronize them or advertise their trade.⁵⁵

4.2.10 Recommendations⁵⁶

- It should be an offence⁵⁷ to:

⁵² Policies and programmes were established with the Declaration and Agenda for Action, and the Global Commitment adopted in 1996 in Stockholm and reconfirmed in 2001 in Yokohama, at the World Congresses against Commercial Sexual Exploitation of Children.

⁵³ See, for example Ashcroft, Att-Gen, et al -v- Free Speech Coalition et al, No 00-795 (decided April 16 2002) where the US Supreme Court has held the criminalisation of pseudo-photographs provisions of the Child Pornography Prevention Act 1996 was overbroad and unconstitutional and Sharpe (2000) SCC 2 in which the Canadian Supreme Court ruled the private creation and possession of child pornography to be entitled to constitutional protection.

⁵⁴ See, for example, the Convention on Cybercrime of the Council of Europe (Budapest, 23.XI.2001) available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm> for "content-related offences".

⁵⁵ In Victoria the Classification (Publication, Films and Computer Games) (Enforcement) Act. 1995 restricts the display and sale of films, publications, computer games and possession of child pornography.

⁵⁶ See also *Labour Legislation Guidelines*, Chapters VI and VIII (ILO) on Commercial Sexual Exploitation.

⁵⁷ See Footnote 40 above (on C182 and C29 regarding penal sanctions).

- buy the sexual services of a child under 18;
 - recruit, induce or compel a child under 18 into commercial sexual exploitation;
 - participate, facilitate, advertise or allow the commercial sexual exploitation of a child under 18;⁵⁸ and
 - receive money or other reward, favour or compensation for the sexual exploitation of a child.
- Obscenity and indecency with children laws should be broadened to include the use of the Internet or other media in all its forms and to cover advertisers and possessors.⁵⁹

4.2.11 Illicit activities

One of the commonest forms of this category of offence is the organized use of begging gangs under the control of adults. This is not to underestimate shocking incidents of illicit activities such as the use of children in drug trafficking. In developing countries, however, the problem of vagrancy and begging are persistent and involve large numbers of children. Where vagrancy and beggary laws exist, States should ensure that it is the organizers and not the children who are arrested or prosecuted under them.

⁵⁸ Zimbabwe's Child Protection and Adoption Act makes it a criminal offence to allow a child to live in or frequent a brothel, to cause a child to be engaged in prostitution or immoral acts, to seduce a child or to allow a child to consort with someone engaged in prostitution.

⁵⁹ The Standing Working Party on Offences Against Minors of INTERPOL recommended in 1996 that countries should enact legislation, which make it an offence to produce, distribute or possess child pornography in its present and potential future forms. The Netherlands amended the Penal Code (Article 240b) to make it an offence to distribute, make, import or possess pornographic material depicting children manifestly under the age of 16; it is equally an offence to transfer or possess such material on a data carrier. In Austria, section 207a of the Penal Code outlaws the mere possession of child pornography, as is the case in Canada, Germany, the United States and the United Kingdom.

4.2.12 Recommendations

- The use of a child for the purposes of drug trafficking should be regarded as an aggravating feature and attract higher penalties.
- Vagrancy and beggary laws and laws relating to other illicit activities in which children are used by adults should not be used to prosecute children.

4.2.13 Customary family laws and practices (marriage and adoption)

Traditional customary laws govern marriage, adoption and fostering in many developing countries. While customary laws are recognized under a constitution, they are recognized to the extent that they are compatible with the provisions of that constitution. However, in many countries pernicious practices that subject children to slave-like conditions persist even in the face of specific legislation and government action to eradicate them.⁶⁰ The strengthening and effective enforcement of laws prohibiting such practices need to be reviewed if the worst forms of child labour are to be effectively eliminated.

4.2.14 Marriage

Some customary and religious practices under national laws of marriage permit girls to be promised or given in marriage without right of refusal and for in exchange for in money or payment in kind to their parents or guardians. Abusers of such practices may regard themselves as entitled to assume rights

⁶⁰ For example, "Trokosi", a practice by an ethnic group in Ghana that allows young girls to be placed in debt bondage by male members of their families under slave-like arrangements in which they are also at the disposal of the male creditor as wife is an example that has persisted despite being clearly unconstitutional and illegal. Other variants of debt bondage are known to exist in other areas of the world, including Southeast Asia. The practice can result in generations of children of the same family, in Trokosi predominantly girls, born into slavery and abused as child "wives", such abuse continuing into adulthood and for the duration of their lives

of proprietorship over the girl that can lead to trafficking and sexual exploitation particularly when the age gap between them is significant.⁶¹ This is especially pernicious where the marriage process disguises or lends an aura of legitimacy to sexual exploitation.

There are also cases where marriage under 18 confers a 'quasi majority' status on children, with the result that married minors are excluded from the benefits of child protection regimes. Such children, predominantly girls, may be vulnerable to abuse because of their relative lack of maturity when they assume substantial family responsibilities. Subsequently, they are more likely to fall victim to abusive conditions of work as domestic servants or in the sex trade. Thus, while a minimum age for marriage is not as such the concern of Convention No.182, it is considered that protecting vulnerable children, often girls, from early marriage and/or sexual activity is likely to result in reducing the risk of their falling into the worst forms of child labour and commercial exploitation.

4.2.15 Recommendations

- It should be an offence for an adult to have sexual intercourse with a child below a certain age (at least the age of puberty or possibly 16).
- Consideration should be given to raising the minimum age at which a person can contract a marriage to 18 years.

4.2.16 Adoption

Adoption and fostering are devices used to secure the better of children whose own parents are unable to look after them or those who are orphaned or otherwise neglected, abandoned or

⁶¹ The Supplementary Convention on the Abolition of Slavery, 1956, Article 1(c) requires States to encourage the use of facilities to secure consent and to prescribe suitable minimum ages of marriage. In the case of MC Case No 700/99 (Sri Lanka) trafficking and rape charges against a husband failed on proof that the parents had given their consent.

persistently ill-treated. However, they may also be used to disguise exploitation tantamount to trafficking or sale of children both within and across borders. Statutory adoption laws are circumvented as easily as more informal methods of customary adoption and fostering so prevalent in developing countries. The prime concern of adoption and fostering should be the welfare of the child involved. Despite attempts by the United Nations and European countries⁶² to establish international standards, inter-country adoption in most countries is dealt with under the ordinary and general legal provisions applicable to domestic adoptions. Rules fashioned for domestic situations lend themselves to abuse by unscrupulous international traffickers.

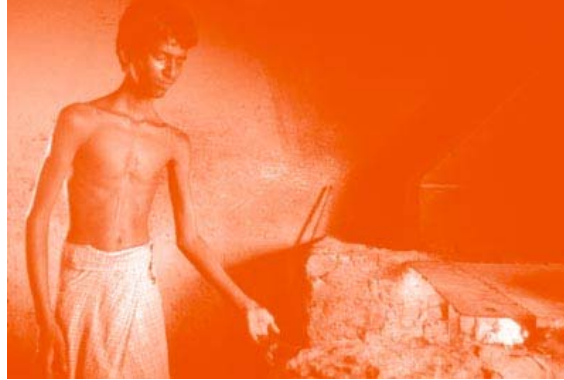
4.2.17 Recommendations

- All adoptions should be put on a formal statutory basis and their registration should be mandatory.
- Additional safeguards should be instituted to deal with foreign adoptions.

4.2.18 Labour and employment laws

The relationship between weak workers' rights and the prevalence of child labour is well documented.⁶³ Where workers' rights are consolidated, including the right to form organized trade unions, minimum conditions of work, equal opportunities, equal pay, and minimum wage requirements, there is a reduced incentive for employers to use children. One of the most effective ways of preventing the abuse of children at work

has been through collective bargain agreements between employers and unions. The strengthening of workers and trade union rights is an important step in the elimination of the worst forms of child labour.



The determination of hazardous labour and its prohibition for all girls and boys under 18 are the two key issues that arise within labour laws relevant to the worst forms of child labour.⁶⁴ It is also important to emphasize that workers' and union rights can contribute to a general enabling environment for eliminating child labour and its worst forms. Some of the following recommendations are intended to highlight rights for workers that might underpin the fight against the worst forms of child labour.

4.2.19 Recommendations

- Legal provision for a 'floor of rights' should be granted for individual employees.
- An effective minimum wage should be prescribed, taking account, among other factors, of the workers' need to maintain their families.⁶⁵

⁶² Concern over the worldwide increase in the number of inter-country adoptions led to the United Nations adopting, in December 1986, the "Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally". The Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoption.

⁶³ V. Muntahbhorn, "Child Rights and Social Causes: Child Labour Elimination as a Social Cause?", IJCR, 1998, pp 255-311.

⁶⁴ Section 5 deals with issues arising in respect of hazardous work and its determination.

⁶⁵ This is also a principle enshrined in the ILO Convention on the minimum wage fixing (No.131 of 1970), Article 3(a). Paying adult workers a living wage should reduce their need to count on children's earnings.

- The minimum wage should be applicable to young workers above the minimum age of employment, and any legislation providing for a lower minimum because of the worker's young age should be reviewed based on the principle of equal pay⁶⁶ for equal value of work, which would be conducive to eliminating child labour in general.
- Freedom from discrimination on grounds of sex should be entrenched by legislation.
- Job security should be secured by laws on unfair dismissal and redundancy.
- Provision should be made for equal protection for workers engaged in unregulated informal sectors, such as domestic service and small enterprises.
- Legislation should be enacted for enforceable collective bargaining agreements that contain clauses prohibiting the employment of children below the applicable minimum age for employment and protecting workers under 18 from hazardous work.⁶⁷
- Legislation should be enacted for a basic minimum age for admission to employment.
- Consideration could however be given to the means of protecting the rights (e.g. to claim wage payment) of children who have in fact been employed in breach of the minimum age.
- Legislative provision is needed to enable designated parties to have the right of access to monitor locations or

establishments where children are likely to be engaged in the worst forms.

- Working children should be entitled to join a trade union at the legislated minimum age for the type of work concerned.

4.3 Redress for victims

Adequate financial compensation for victims permits them to make a fresh start in life particularly where they were driven by poverty into worst forms of child labour. There are a number of ways in which a State's national laws can enable a victim of a worst form of child labour – often a crime under national laws – who has suffered injury or loss to obtain redress. These include criminal compensation, civil action for damages and state compensation.

4.3.1 Criminal compensation

The criminal court may be able to award compensation at the same time that it sentences the offender. This is effective only if the court has competence to award full compensation, but its drawback is that those who are successfully prosecuted are often minor players in the criminal chain of exploitation and thus poor, while companies which have resources may be more difficult to convict. Many countries, such as those following the civil law tradition, allow compensation to be ordered in criminal proceedings. Compensation should be awarded to child victims of the worst forms of child labour offences. This would provide financial redress for the child's private loss. That loss should be measured not only by reference to any physical or psychological harm suffered but also the restitution value of any services rendered. Child victims should be saved the burden, delay and expense occasioned by other, more elaborate avenues of civil redress. In the United Kingdom for example, the power of the court to award criminal compensation is limited because the court has to take account of the means of the

⁶⁶ See also Paragraph 13 (1) (a) of Recommendation No.146, which complements C.138.

⁶⁷ The appropriateness of using legislation to promote and develop collective bargaining, and the appropriate level of detail to include in legislation will depend on national conditions. Recommendation No 91, paragraph 3(1) suggests that collective agreements should bind the signatories and those on whose behalf the agreement is concluded.

defendant.⁶⁸ By contrast Sri Lanka, in cases of grave sexual abuse, enables the court to award full compensation to the child victim.⁶⁹

4.3.2 Civil compensation

Civil proceedings instituted to claim damages provide the child victim with another avenue for compensation.⁷⁰ However these often involve cumbersome procedures, expense and delay and set the conditions they require to award damages too high. For example a child who has suffered abuse at the hands of more than one abuser may be unable to prove the precise extent of the defendant's contribution to the harm suffered. Also the fear and confusion victims commonly feel may cause them to delay coming forward.

4.3.3 State-funded compensation

The criminal and civil models of redress will, in practice, reach only a small fraction of children who suffer personal victimisation since they are dependent on identification and conviction of an offender who may have means. The most direct and effective model would be one in which compensation would be provided from a state-funded scheme under which claims officers authorize payments based on need and the degree of harm suffered. This enjoys the advantages of speed and simplicity. It is conceptually not that different from a state-funded rehabilitation programme providing education, vocational training and welfare support to victims. For many poorer countries the latter is likely to be all that the State can afford.

⁶⁸ Compensation orders have been a sentencing option for criminal courts within the UK for over 20 years (Powers of the Criminal Courts Act, 1973, section 35(1)), in Ireland since 1993 and they also figure in some continental jurisdictions (Germany, the Netherlands and Spain).

⁶⁹ Penal Code, section 365B and 308A

⁷⁰ In the civil law procedure the victim's claim for compensation is dealt with simultaneously with the criminal proceedings against the offender. Commonly known as the *partie civile* or *adhansionsverfahren*, this procedure applies with some variation throughout the civil law states.

4.3.4 Recommendations

- Ensure that statutory and administrative measures exist for the provision of assistance and information about court proceedings to victims of the worst forms of child labour and their families to enable their concerns to be duly considered in any proceedings, as appropriate under the law; and where necessary provide them assistance in presenting any court claims.
- Empower criminal courts, following conviction, to order an offender to pay the child full compensation for any personal injury, damage or loss resulting from the offence.
- Empower both civil and criminal courts to direct welfare or other appropriate agencies to make arrangements for the protection, rehabilitation and welfare of the victims of worst forms of child labour, and establish mechanisms to facilitate the implementation of such orders.
- Consider establishing a government-funded compensation scheme for victims in addition to any rehabilitation programmes they are offered.⁷¹ This could be part of the Time-Bound Programme against the WFCL, as "Rapid Response" measures.⁷²
- Specify by statute that civil liability attaches to anyone who is proved to have contravened a worst forms of child labour law.⁷³

⁷¹ New Zealand and Australia operate state-funded schemes. In the United Kingdom the Criminal Injuries Compensation Board provides compensation fixed according to a tariff as in the public law of social security.

⁷² See Guide Book IV: *Policy Choices and Programme Interventions for Time-Bound Programmes*, available in the TBP MAP Kit or from the TBP MAP website: www.ilo.org/public/english/standards/ipecc/themes/ti/mebound/index.htm

⁷³ The German Civil Code, paragraph 823 provides: "Liability also attaches to a person who contravenes a statute designed for the protection of another". A more limited cause of action for breach of statutory

- Limitation periods should not begin to run against victims until they have attained their majority or until they have fully recovered from post-traumatic stress whichever happens last.⁷⁴

4.4 The laws of evidence and procedure

4.4.1 Proof of age

The proof of age is central to the application of child labour laws and in countries where the registration of births is not universal there will be obstacles in the way of their effective enforcement. This underscores the need for countries to introduce and implement universal birth registration.⁷⁵ In the absence of documentary proof of age and subject to other evidence to the contrary, it should be presumed that the child was below 18 when the offence was alleged to have been committed. Exploiters of children must be taken to have assumed the risk of offending.

4.4.2 Burden of proof in civil compensation

In claims for compensation victims should not be made to re-live their ordeal by requiring them to prove the facts of the case again when the defendant has been convicted. It is an unnecessary burden for the victim, causes unnecessary delay and is wasteful of institutional resources. One solution could be to introduce a rule that would enable evidence of the

criminal conviction to be adduced in the civil proceedings and create presumption of fact that, unless the contrary is proved, the person convicted did commit the offence. The burden of proof of 'the contrary' would be the ordinary burden in civil actions, namely the balance of probabilities. In the face of a conviction (under the criminal standard of proof of beyond reasonable doubt), it is likely to be an uphill task.⁷⁶

4.4.3 Special protection for child victims and witnesses

Cases that are brought to court may fail because the taking of evidence from children is mishandled and and/or dismissed as unreliable. Additionally, delay in getting a case to trial, the lack of family or institutional support and lack of education may all conspire to undermine the quality of a child's evidence. Child-sensitive procedures for investigating and hearing evidence should therefore be introduced and provision made for maintaining privacy and confidentiality during court proceedings. Children and other witnesses may be unwilling to come forward to expose violations or give evidence in legal proceedings against violent offenders for fear of reprisals against themselves and their families. If they do, measures and procedures should be adopted to protect them.⁷⁷ It is among the recommended measures under R.190 (Paragraph 15(i)) to make provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the Convention.

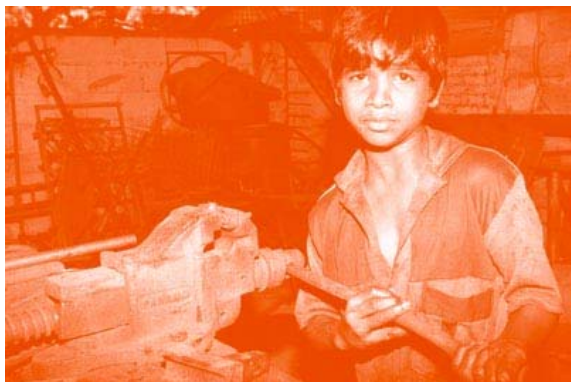
duty is known to the common law: see Clerk and Lindsell on Torts, 18th edition, 2000, Chapter 11.

⁷⁴ See Ontario Limitation Act Report (1991, recommendation 9, pp 30-31.

⁷⁵ Ghana's Children Act, 1998, section 122 allows proof of age by baptismal or medical officer's certificate in the absence of a birth certificate. The Australian Crimes (Child Sex Tourism) Act 1994 makes provision for alternative methods of proving the age of a person under the age of 16, such as by appearance or from medical opinion. In Nepal, it has been recommended that the implementation of the Birth, Death and Other Personal Incidents (Registration) Act should be strengthened so that the authentic record of the age of a child would be available.

⁷⁶ See, for example, the United Kingdom Civil Evidence Act, 1968, section 11.

⁷⁷ The Children in Trouble: Expert Group Meeting set up under the auspices of the United Nations Crime Prevention and Criminal Justice Branch urged in Part V of its Report of the Meeting in November 1994 in Vienna that sanctions for sexual exploitation of children be applied to adults rather than the child victims and that sexually exploited children be given access to the mechanisms of justice, such as legal aid, safe housing and support services. There are likely to be continued and more recent initiatives of a similar nature especially within the framework of instruments against Trans-national Organized Crime.



4.4.4 Recommendations

- Unless there is clear evidence to the contrary, the burden of proving that a victim had attained the age of 18 at the date of the commission of the offence could be placed on the accused.⁷⁸
- In civil proceedings proof that the defendant has been convicted could properly stand as proof of any issue on which the conviction was based unless the defendant is able to prove the contrary.
- Special measures should be introduced to assist the child in giving evidence in any of the following ways:
 - their examination through an intermediary;⁷⁹
 - giving of evidence in private;

⁷⁸ The European Human Rights Commission has held that a presumption against an accused in this way does not, provided it is confined within reasonable limits, violate fair trial guarantees or the presumption of innocence (*X -v- United Kingdom* 42 CD 135 (1972)).

⁷⁹ The United Kingdom has enacted the Youth and Criminal Evidence Act, 1999, section 29 makes provision for an official intermediary to act as the child's conduit. Similar provisions aimed at protecting child witnesses from the trauma of court proceedings and of confronting their abuser exist in New Zealand, Thailand and other jurisdictions.

- giving evidence in a setting that is appropriate to their age or maturity;
 - use of video recorded evidence-in-chief or cross-examination; and
 - giving of evidence behind screens or by video link.⁸⁰
- Public exclusion procedures should be introduced for court proceedings to protect the safety and anonymity of child victims and witnesses; the press should, where appropriate, be prohibited from reporting any details by which a child could be identified.⁸¹
 - Cases should be heard without delay and court-listing procedures should provide for them to be heard as a matter of urgency and priority.⁸²

4.5 Removal and rehabilitation

4.5.1 Emergency Protection

The Convention requires that children are removed and are rehabilitated from the worst forms of child labour. Pre-emptive interventions could also be made to prevent children from falling victim in the first place.⁸³ The TBP strategy could include the adoption of rapid response measures⁸⁴ to enable this to be done

⁸⁰ Australian courts are empowered under the Crimes (Child Sex Tourism) Amendment Act 1994 to take evidence by video link and even administer oaths or affirmations by video link.

⁸¹ See for example Sri Lanka's Children and Young Persons Ordinance, 1939, Revision 1956.

⁸² In Sri Lanka the courts are required to give priority to the prosecution of child abusers and to the hearing of appeals: Code of Criminal Procedure (Amendment) – Act No 28, 1998

⁸³ The TBPs for Nepal, Tanzania and El Salvador have established specific targets in terms of the number of children to be reached and the specific sectors of activity where the worst forms of child labour will be eliminated over the next ten years, including children in bondage, child domestic workers, child soldiers, child trafficking, drug trafficking, commercial agriculture, fishing, garbage dumps, mining, sexual exploitation and working street children.

⁸⁴ See Guide Book IV: *Policy Choices and Programme Interventions for Time-Bound Programmes*, available in the TBP MAP Kit or from the TBP MAP website:

promptly and effectively. These measures would need to be underpinned by legal procedures that can be accessed with speed and are available to be invoked by a wide variety of officials, concerned individuals and organizations. The usual powers of the police to investigate offences and make arrests are normally available. Welfare and child protection agencies and labour inspectors are also authorised to investigate allegations of child abuse and breach of occupational health and safety laws respectively. Key children's charities may equally be given "authorized person" status.⁸⁵ The legal review should identify the gaps that exist in statutory powers and emergency procedures that might impede action at short notice.

These would be indispensable tools for emergency or "rapid response" interventions.⁸⁶ Courts should also have the powers to make orders, for instance, to authorize the removal of a child or prevent the removal of a child.⁸⁷ They will also already have an inherent jurisdiction to protect a child from harm. The range of measures to be deployed in rapid response would require an array of court orders including:

- i. orders for emergency protection;
- ii. orders for maintenance, support and education; and
- iii. orders that determine who is to have care and parental responsibility, or guardianship for a child.

www.ilo.org/public/english/standards/ipec/themes/timebound/index.htm

⁸⁵ Under the United Kingdom's Children Act 1989, the National Society for the Prevention of Cruelty to Children (NSPCC) has been granted this status.

⁸⁶ Rapid Response strategies are being developed for a select number of country TBPs, including one for the Philippines.

⁸⁷ See the United Kingdom's Children's Act, 1989, Part V, sections 43-52. In the United Kingdom, the implementation of the Child Abduction Act of 1984 and a port alert system in 1986 has reduced the importance of wardship in this area, although it remains particularly useful for children of 16 and over.

4.5.2 Recommendations:

- Statutory provisions should confirm and underline police powers to make an arrest on reasonable suspicion that an offence has been committed or is about to be committed and to remove children at risk to a place of safety.
- Statutory powers should be given to child protection agencies and "authorized persons" to take temporary measures in an emergency situation to remove and protect a child without a court order.
- Courts should be conferred with jurisdiction to make a wide range of orders to remove, protect and make provision for children at risk or in need.
- The inherent jurisdiction of a court to protect children from harm should be given statutory confirmation and made available to any concerned person or organization in emergency situations.

4.5.3 Basic education

The Convention recognizes education to be critical to the elimination of child labour. There is consensus that the right to education is a basic human right and that good quality education helps to keep children out of unacceptable forms of work. Child labour prevents children from attending and benefiting from school. The end of compulsory schooling should coincide with the minimum age for admission to employment. If the child is allowed to work legally before ending compulsory education, the temptation to drop out will be strong; and if there is a gap after the end of compulsory education before the minimum working age, forced idleness will result. There should be clarity in the law regarding entitlement to education, enforceability of rights and, above all, responsibility for failure to provide education or, where there is provision, the failure to attend.⁸⁸

⁸⁸ Tanzania's Education Act, 1978, section 35 provides for education between the ages of 7 and

Where educational provision is woefully inadequate and its content irrelevant to the lives of children and their communities, enforcement and truancy laws become purely academic. Legal provisions prescribing “free, compulsory and universal” education are often made subject to the availability of resources, thus making them unenforceable as practical rights.⁸⁹ Recognizing resource constraints that poor countries face, the Convention calls for more cooperation and assistance.⁹⁰ Evidence of recent decline in the quality and availability of basic education in many African countries makes this call ever more urgent. While the attainment of free basic education may have to be achieved gradually, national laws should target the following key aims:

- the right to free primary education should be embodied in statutory law;
- where education is obligatory, the compulsory school age should be stipulated by legislation;
- there should exist a corresponding duty on the central or district authority to provide sufficient schools in number, character and equipment for that purpose;
- financial assistance should be provided to poor families with children of school going age;⁹¹

13 to be compulsory and for parents to ensure that their child regularly attends school. The Primary School (Compulsory Enrolment and Attendance) Rules, 1979 hold parents criminally liable if they fail to ensure that their child is enrolled and regularly attends primary school; also liable is anyone who interferes with a child’s school attendance. However, the Rules fail to specify penalties for parents or persons interfering with attendance and they do not make clear who is responsible for the enforcement of the rules.

⁸⁹ Ghana Constitution, Article 38(1), provides, for example, “[t]he State shall provide educational facilities at all levels and in all the regions of Ghana, and shall to the greatest extent feasible make those facilities available to all its citizens”

⁹⁰ Article 8.

⁹¹ Such provisions exist in all developed countries. Interestingly the government of the United Kingdom recently announced a decision to pay up to £40 a

- the duty to provide education should be made enforceable before the courts;
- parents’ responsibility to send their children to school should be clearly declared, and penalties for not discharging this responsibility could be considered under certain circumstances;
- a system of monitoring children’s entry, attendance, and completion of school must be designed and effected, with a mechanism for following up cases of children having dropped out prematurely as many of these may be entering or returning to work; and
- consideration could be given to a prohibition of employing children or letting them work in such a way that hinders their compulsory education. However, the fact that a child goes to school should not be a justification of condoning work by children that is otherwise prohibited.

4.5.4 Vocational training

Vocational training is an important means to equip children removed from the worst forms of child labour with income-generating skills in order to enhance their lives and to prevent them from returning to those same situations. This, together with the provision of basic education, are seen by the Convention⁹² as primary routes to rehabilitation.

4.5.5 Recommendation

- Ensure that education provision or vocational training is included in any statutory welfare scheme.

4.5.6 Provision of social welfare

Services needed to support traumatised survivors may be found within existing welfare and educational structures including laws governing social welfare,

week to assist children over 16 years to remain at school

⁹² Article 7(2)(c).

family and children's services and social security. Current trends, in line with the wide-ranging provisions of the International Convention on the Rights of the Child, have seen many countries adopt comprehensive and consolidated children's legislation⁹³ making provision for the maintenance, protection and care of children in need. Any specific measures designed for the rehabilitation of survivors could take advantage of these welfare and educational structures where they exist. The countries that are likely to make greater achievements in the elimination of the worst forms of child labour will be those that already have broader structures in place for the protection of children. Measures fashioned for the rehabilitation of children removed from the worst forms of child labour will benefit from and be enhanced by such structures.

4.5.7 Recommendation

- Consider establishing statutory child welfare schemes to provide physical, psychological and social recovery for victims of the worst forms of child labour.



⁹³ As in Uganda, South Africa, Ghana (1998) and the United Kingdom (1989).

5 Hazardous work

5.1 What is hazardous work?

The Convention defines hazardous work in general terms as work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety and morals of children. Countries are obliged to determine for themselves the types of work that fall within this definition, after tripartite consultation. It has to be emphasized that a provision in a labour law that repeats the general terms of the Convention (for instance "the employment of a person under 18 shall be prohibited in any work which is likely to harm their health, safety and morals") is not specific enough for effective action, such as removing children from the hazardous task and applying the sanctions to the employer; further determination of such work needs to be made.

The legal boundary between hazardous and non-hazardous labour differs from country to country because the types of work and the way they are carried out will differ. However, children around the world are all similar in terms of their physical or psychological vulnerabilities.⁹⁴ For this reason, Recommendation No. 190 gives guidance for identifying hazardous labour, including the following:

- i. work which exposes children to physical, psychological or sexual abuse;
- ii. work underground, under water, at dangerous heights or in confined spaces;
- iii. work with dangerous machinery, equipment and tools, or which involves manual handling or transport of heavy loads;
- iv. work in unhealthy environments which may expose children to hazardous substances or processes, or temperatures, noise levels or vibrations which are damaging to their health;
- v. work under particularly difficult conditions such as long hours or during the night or where the child is unreasonably confined to the premises of the employer;

Since risk is greatly influenced by age, it is important to look closely at the health and development implications of light work that children perform outside of school, since what is not dangerous for a 15 year old, may well put a 13 (or 12) year old⁹⁵ at risk. Similarly, if any hazard is present, the age of employment must be raised to 18 years of age. In this way, identification of work hazards is extremely important in the case of young people 15-17 years of age.

Other international standards are also an important source of guidance, especially the occupational health and safety Conventions. One of the most important is the ILO Convention on Health and Safety in Agriculture, No. 184 because such a high proportion of child workers are found in this sector. Other ILO standards provide useful information as

⁹⁴ *The following are examples.* Uganda (the Children Statute, 1996), Zimbabwe (Labour Relations (Employment of Children and Young Persons) Regulations, 1977) and Ghana (Children Act 1998) have all made provisions to protect children under 18 from harmful employment. Nigeria's Labour Act, 1974, section 59(5) and (6) prohibits the employment of children under the age of 16 years underground or on machine work or in employment which is injurious to health, dangerous or immoral; under Tanzania's Labour Act, 1975, Part II, section 7 and its Employment Ordinance, 1959, section 79(1), it is prohibited to employ a person under the age of 18 on work which is harmful to health, dangerous or "otherwise unsuitable" for a young person.

⁹⁵ Article 7 of Convention No.138 allows substitution of age 12 .

well.⁹⁶ Work that might otherwise be considered hazardous, could be authorized for adolescents between the ages of 16 and 18 if:

- their health, safety and morals are fully protected; and
- they have received specific instruction or vocational training in the particular type of work.

Where these conditions are ensured, such work does not need to be eliminated as a worst form of child labour under Convention No.182. However, this can be a question under Convention No. 138 concerning the minimum age for employment and work.

5.2 Factors to consider in determining hazardous work

The following factors ought to inform the determination of hazardous work:⁹⁷

- i. Hazardous work belongs to a separate category from the unconditional worst forms of child labour which are common crimes and do not conform to general notions of

economic activity. The two categories may however overlap. For example, children in bonded labour may be working children and trafficked children end up in factories, sweatshops and other economic activities.

- ii. “Health and safety” refer not only to physical dangers but include factors such as stress and psychological well-being, as well as threats to the normal intellectual and social development of a child.
- iii. Work likely to corrupt the morals of young persons includes work that in **itself** may not be hazardous but **is** carried out in contexts where children are exposed to corrupting influences, such as work in nightclubs selling alcohol, or involvement in the making and distribution of pornography.
- iv. It is necessary to examine both the nature of the work and the conditions in which it is carried out. It is work that is “likely” to harm and not work that is **proved** as having that effect.
- v. Activities not in themselves harmful may be rendered harmful by the circumstances in which they occur, for example the hours of work, place of work or the working conditions and environment.
- vi. Rather than designating entire sectors or occupations as hazardous, it is preferable to identify the specific tasks within each sector that are likely to pose a risk to young people. For example, agriculture as a whole may not necessarily be dangerous and therefore legislated as off-limits to anyone under 18, but pesticide application is indeed dangerous and must be proscribed.
- vii. It is necessary to identify where in the country such work takes place, after tripartite consultation with workers’ and employers’ organizations (Art. 4(2) of Convention No. 182)
- viii. The types of work determined to be hazardous must be re-examined periodically and be revised as necessary (Art. 4(3) of Convention

⁹⁶ In particular paragraphs 3 and 4 of Recommendation No. 190. Provisions concerning the fixing of a minimum age for employment, specific work or work process in order to protect children from particularly hazardous or arduous work include: White Lead (Painting) Convention, 1921 (Article 3), which prohibits the employment of all males under 18 and all females in any painting work of an industrial character involving the use of white lead; Radiation Protection Convention, 1960, which prohibits employment under 16; Benzene Convention, 1971, which prohibits employment under 18; Maximum Weight Convention, 1967, protecting workers under 18 from manually transporting adult load; and Occupational Safety and Health (Dock Work) Convention, 1979, which bans the lifting of cargo or cargo handling by persons under 18.

⁹⁷ IPEC can provide technical assistance in determination of hazardous work by children and examples of how other countries have done this (see brochure entitled “Eliminating Hazardous Child Labour Step by Step” ILO, IPEC, available at: www.ilo.org/public/english/standards/ipecc/publ/hazard/hazardous_work.pdf. Fact Sheets on hazards to children in specific agricultural crops (e.g. tea, coffee, cocoa, and General Worksite Observation Form for identifying hazards in agriculture.

No. 182). Periodic review will ensure that new forms of hazards arising from new social practices, advancement in technology, new processes of mechanization or new chemicals are taken on board. Equally, technological advancement may result in improved safety.

5.3 Who determines hazardous work?

The types of hazardous work to be prohibited for children under 18 must be determined by national laws or regulations or by a competent authority.⁹⁸ The competent authority must also identify the location where they exist.⁹⁹ Relevant employers' and workers' organizations (social partners) must be consulted and their views taken into account; it is also helpful to discuss with the communities affected. In many countries parliament enacts primary legislation and delegates to the Minister for Labour powers to make regulations by subsidiary legislation and to revoke, amend and re-enact after consultation with employers' and workers' organizations.¹⁰⁰ The list of determined hazardous work would thus be published by means of regulation.

States will be in breach of their obligations under Convention No.182 if they fail to consult the social partners or to take the outcome of any such consultation into account in reaching decisions. The method of consultation is left up to each State to decide for itself. The national authority should be alert to the danger of enabling offenders to challenge the validity of regulations if it entrenches the consultation requirement too rigidly into the primary legislation. It may be preferable to make the minister accountable to parliament for any failure to consult rather than lay the validity of the regulation open to collateral legal

challenge by offenders for failure to consult.¹⁰¹

Throughout the process of determination of hazardous work, it is very important to involve occupational health and safety specialists or others with relevant medical training. This is not just a legal matter but also one where technical expertise is needed.

5.3.1 Recommendations

- Determination of hazardous child labour can be used as an important first step in a Time Bound Programme to generate concern and participation of stakeholders because the public and policy-makers can easily appreciate the need to move quickly and definitively when children's health or lives are in danger.
- The list of hazardous work must not be limited to those sectors where risks are obvious. Often important categories are omitted because they do not fit the stereotype of "hazardous work". Frequently omitted are:
 - Gender-specific hazards (e.g. relating to pregnancy)
 - Work done by children of only one sex (e.g. work done by child domestic workers – predominately girls)
 - Working conditions (e.g. work at night or in the heat)
 - Psycho-social hazards (e.g. isolation, intimidation)

⁹⁸ Convention No. 182, Article 4(1).

⁹⁹ Convention No. 182, Article 4(2).

¹⁰⁰ see for example the UK's Factories Act, 1961, sections 62 and 74)

¹⁰¹ See generally, A.Trebilcock, *Towards Social Dialogue: Tripartite Cooperation in National Economic and Social Policy-making* (ILO, Geneva, 1994). The high level of social partners' involvement required by C.182 in the process of labour law reform may be achieved through (a) formal arrangements involving permanent tripartite bodies (as in Colombia, Hungary, Portugal and South Africa), (b) ad hoc arrangements (as in Indonesia) and (c) regional arrangements (as in the Caribbean, through CARICOM) and Southern Africa (through SADC).

- ❑ Work done by older youth, in the age group 15-17
- The statutory prohibition of hazardous work should cover all girls and boys under 18 years of age in principle.¹⁰²
- The Minister for Labour or any other appropriate authority should be empowered, after consultation with worker's and employers' organizations, to make regulations or other types of legislation which:
 - ❑ declare and publish a list of occupations, particular work processes and conditions of work amounting to hazardous work to be prohibited for all children under 18 years of age. Note that "hazardous work" does not necessarily refer to an entire occupation but rather to a specific work process, such as operation of particular machinery or handling of specified chemicals. Consideration should also be given to prohibiting night work and overtime for under-18 workers, irrespective of the type of work;
 - ❑ such a list should be reviewed and updated periodically.
- Consultation is recommendable also with the relevant government departments including occupational health and safety specialists and other relevant organizations.
- The following measures should be considered to strengthen enforcement of the regulation:
 - ❑ institute and consolidate a coherent system of registration and inspection of business establishments, self-employment and labour;
 - ❑ establish procedures for the verification of the age of persons under 18 prior to their being engaged in employment;
 - ❑ provide for the designation of special child labour inspectors, or at least the granting of a mandate to general labour inspectors to intervene on hazardous work carried out by children;
 - ❑ elaborate the powers and functions of child labour inspectors;
 - ❑ provide for the recruitment, training and supervision of labour inspectors;
 - ❑ provide for the emergency removal of children from situations of hazardous labour to a place of safety;
 - ❑ provide for the maintenance of a register by every employer giving full details of the employers' place of business, nature of business, the name, address, and date of birth of every person appearing to be under 18 employed, the type of work performed and the hours of work;
 - ❑ in cases of persistent violation, provide for temporary or permanent revocation of permits to operate; and
 - ❑ authorize labour inspectors and police officers to enter and search any premises where there are reasonable grounds to believe that a child is involved in prohibited hazardous labour.

¹⁰² Exceptional authorization of hazardous work might be allowed, after tripartite consultation, for children who have reached 16 years of age, on condition that their health, safety and morals are fully protected, and that they have received adequate specific instruction or vocational training in the relevant branch of activity. (See Paragraph 4 of R.190. This is also a question of minimum age under C.138, Article 3(3).)

6 Consultation

6.1 Tripartite consultation

The requirement that governments consult their social partners at all key stages of the implementation of measures giving effect to the Convention reflects the tripartite structure of ILO which formally involves stakeholders both in the elaboration of standards and in their supervision. As explained in the preceding section, the Convention requires that governments consult relevant employers' and workers' organizations in the determination of hazardous work in identifying where such work exist, and in periodically examining and revising the list of hazardous work. Governments are also required to consult employers' and workers' organizations in other concrete measures to make the provisions of the Convention a reality in the country. The actions requiring consultations with employers and workers under Convention No.182 may be summarized as follows:

- Determining what types of work are hazardous.¹⁰³
- Identifying where such determined work exists.¹⁰⁴
- Periodic revision of the determined list of hazardous work.¹⁰⁵
- Establishing appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention.¹⁰⁶
- Designing and implementing programmes of action to eliminate the worst forms of child labour.¹⁰⁷

The consultation with workers' and employers' representatives in the above listed actions is mandatory and failure to carry out tripartite consultations amounts to a breach of obligations on the part of a State ratifying the Convention.

Among the above listed, the tripartite consultation relating to hazardous work is obviously an area which concerns most directly the *legislative* review, because its outcome should take the form of "national law or regulations or (a determination) by the competent authority." However, it should also be borne in mind that more general measures such as the establishment of mechanisms to monitor the implementation may be achieved by means of legislative provisions that set up the relevant structures as well as procedures. Programmes of action, or at least their basic principles, may also be incorporated or reflected in some legislative provisions of general nature or preambular parts of a law.



¹⁰³ Article 4(1). See Trebilcock, *Towards Social Dialogue*, *op cit.*, and footnote 101 on some approaches to tripartite consultation.

¹⁰⁴ Article 4(2).

¹⁰⁵ Article 4(3).

¹⁰⁶ Article 5.

¹⁰⁷ Article 6(2).

Reference should also be made to the ILO Convention No.144 of 1976 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards. Since Time-Bound Programmes and the related legislative review are so central in a country's

efforts to implement the ILO Convention No.182, it goes without saying that employers' and workers' organizations have a special role and place in the process. In turn, an active involvement of employers' and workers' organizations in the legislative review in the context of Time-Bound Programmes addressing the worst forms of child labour could be a good entry point for these organizations to be able to improve not only the formal employment relationships under labour laws, but also more general social issues and situations of work in the informal economy.

6.2 Broader consultation and social mobilization

6.2.1 Concerned Groups

National authorities should also take the views of concerned groups into account in designing and implementing programmes of action.¹⁰⁸ Concerned groups include non-governmental organizations, community groups, the media, religious groups and organizations and traditional associations. The Recommendation goes further to suggest that the views of children themselves¹⁰⁹ and their families be taken into account, and that political opinion, civic organizations, the judiciary and the general public be mobilized to support the implementation of the Convention. Such consensus building and collective action is important in generating commitment, ownership and results¹¹⁰ not only for programmes of

¹⁰⁸ Convention No. 182, Article 6(2).

¹⁰⁹ There is international consensus welcoming and encouraging the increasing participation of and consultation with children in government, local authorities and civil society. The UN Committee on the Rights of the Child recommends State parties to take steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society, including schools, like school councils. It further recommends that procedures be formed to acknowledge publicly the views expressed by children and the impact they have on developing programmes and policies, and reflect how they were taken into consideration.

¹¹⁰ This section draws upon the developing experience and materials of the World Bank's Legal

action but also for the law and its enforcement.

6.3 Why consultation is important

The process through which laws and regulations are conceptualized, drafted, enacted, publicised and enforced is key to their effectiveness. Effective and coherent legal reform requires a comprehensive and sustainable approach that avoids imported models that are at odds with national legal and socio-economic norms, cultural norms and levels of development. Such an approach places comprehensive consultation involving all relevant branches of government, workers' and employers' organizations and, as appropriate, public agencies and key non-governmental organizations and the public at the very centre of the process. It is equally important where legal reform is aimed to incorporate the requirements of international standards.

When effectively carried out, consultation should yield information and views on aspects of child labour practices that will inform proposals for law revision. It should also help to foster a sense of country ownership of legal reform and its outcomes and underscore public participation in monitoring and enforcement. Consultations should be central to the law making process, of which the review of existing laws and the legal framework is a first step.

Consultation does not mean that the review should follow blindly what those consulted demand. Its remit is to exercise 'governance' of law reform recommendations as long as it acknowledges that those for whom democratic power is exercised should have input into decisions taken for them. Proposals that fail to seek the views of

and Judicial Reform programme in developing and transitional economies. It also draws on several UK Home Office consultation exercises including the Consultation Paper on the review of the Sex Offenders Act 1997.

potential actors and users will carry little conviction when it comes to explaining decisions and is unlikely to bring about lasting change.

6.3.1 Systematic information gathering

Recommendation No. 190 suggests that detailed information and statistical data on the nature and extent of child labour be compiled and kept up to date to determine priorities for action to eliminate the worst forms of child labour as a matter of urgency. The complexity of child labour and the fact that its worst forms are often hidden from public view means that there are often gaps in understanding situations and conditions in which children work. In collaboration with national statistical agencies, research institutions and groups of local researchers, ILO/IPEC has carried out a large number of investigations at national and local levels, many of them through its Statistical Information Monitoring Programme on Child Labour (SIMPOC). The growing number of national household surveys and studies based on quantitative and qualitative approaches have contributed to a substantial increase in knowledge about the incidence, nature, causes and consequences of child labour in the countries concerned, including information about the conditions in which children work. Such information is crucial for the process of strengthening legislation and enforcement.

Many of the studies have used a rapid assessment methodology devised by IPEC and UNICEF.¹¹¹ The rapid assessments

seek to quickly obtain information on the nature of child labour, its causes, conditions, and consequences concerning the target group. The assessments use a variety of methods, such as literature review, in-depth discussions with key informants, systematic observations of children, in-depth unstructured informal interviews, interviews with structured questionnaires for collecting quantitative data, and focus group discussions.

The rapid assessment methodology has the advantage of speed and also raising awareness in the community concerned. The data produced can be important in law-making because it enhances the reformers' understanding of the range and dynamics of the child labour practices in their countries, thus making them better able to draft laws that are both responsive and target appropriate law enforcement devices. However, it is not a substitute for the wider consultation with stakeholders that is necessary for winning a broad-based public commitment to the objectives of the law.

6.4 Consultation and legal review

Public participation should be seen as the principal means of ensuring sound rule-making procedures. Legal review and consultation are two facets of a single process. The purpose of legal review is to examine existing laws, enforcement mechanisms and institutional structures to make proposals for improvement.¹¹² The review process will be consultative since membership of the steering group will be inter-departmental and will also include representatives of bodies with special expertise. To keep the steering group manageable in size, there may need to be a second group of experts

¹¹¹ See IPEC: *Investigating Child Labour: Guidelines for Rapid Assessment: A Field Manual*, (ILO, Geneva, 2002) available from the SIMPOC website,

www.ilo.org/public/english/standards/ipec/simpoc/guides. Rapid Assessments studies have been carried out in many countries including all those implementing or designing Time-Bound Programmes. They have variously focused on children in bondage, child domestic workers, child soldiers, child trafficking, hazardous work in commercial agriculture, fishing, garbage scavenging, mining and the urban environment, sexual exploitation and working street children. For

copies of study reports, go to the SIMPOC website. For discussions of data collection approaches for TBP design, see Guide Book III: Creating the Knowledge Base for Time-Bound Programmes, available in the TBP MAP Kit or from the TBP Map website: www.ilo.org/public/english/standards/ipec/themes/timedbound/index.htm

¹¹² See Section 3 of this document.

external to the steering group, whom it can freely consult when necessary.

6.5 Criteria for effective consultation

6.5.1 Who to consult

The key to an effective consultation is to have a broad membership that is as open and inclusive as possible, but also which includes the necessary expertise. In the case of determination of hazardous child labour, occupational health and safety specialists are advised. It is necessary in this context to employ a variety of consultation methods to suit different groups and contexts. The institutions and stakeholders crucial to achieve effective reform of the laws already listed at Section 3.4 should be included.

6.5.2 How to consult

The types of consultation chosen will depend on the subject matter and purpose of consulting. The methods of consultation need to be as varied as the uses to which the information sought is to be put. Different methods might include public meetings with open agendas in strategic venues (schools, orphanages, housing projects), conferences and panel meetings for specific user groups, seminars with focus groups and relevant government agencies for determining priorities and potential areas of service delivery, newsletters, magazines and articles in the national and local media, face-to-face interviews, surveys and questionnaires and local radio phone-ins.



In addition, it is a good idea to hold consultation conferences, focus group meetings, seminars and community meetings with academics, practitioners, the media, representatives from religious faiths and schools, chiefs and traditional elders, concerned organizations, police, prosecutors and the judiciary. The information gathered from these conferences will help the review to focus on key issues identified by those involved in assisting victims, investigating and defending cases, social services and organizations caring for children, non-governmental organizations as well as representatives from government departments.

The purposes of consultation need to be borne in mind throughout the development of a policy. The main purpose is to improve decision-making, by ensuring that decisions are soundly based on evidence, that they take account of the views and experience of those affected by them, that innovative and creative options are considered and that new arrangements are workable. Effective consultation ought also to ensure that everyone concerned feels they have had their say or that their interests have been taken into account.

It is common practice to issue a consultation paper prepared by the steering group after a review of the law and initial consultations. This can take the form of a draft policy document setting out comprehensively the government's policy on child labour and its worst forms, or indeed draft legislation. But there will be need to modify proposals to suit the particular group of respondent. Oral presentations and discussions are likely to be the most suitable.

Every effort should be made to ensure that consultation really counts. It is necessary to plan the process in detail at the outset and allow sufficient time for it. The objectives of consultation should be carefully defined and use made of existing information from other government departments to avoid

duplication and to reduce costs. Issues on which views are sought might usefully include, the prevalence and mode of worst forms of child labour, matters of detection and of law enforcement. There should be built into the process

opportunities for the expression of any concerns specifically relating to the consultation process itself. Such information will prove to be useful when the whole process is evaluated.



7 Monitoring, enforcement and institutional capacity

7.1 Institutional capacity concerns

The law and justice institutions of developing countries are often weak and lack the internal consistency to be effective. Legislation is often outdated and incomplete, and the resources of the enforcement authorities are inadequate such that the incentive framework does not attract, retain or engage the commitment of qualified or sufficient personnel to achieve the necessary coverage. These weaknesses hamper judges, court prosecutors, the police, inspectorates and child protection and welfare officers. They present real challenges, which TBPs will have to take into account. The strengthening in law should be accompanied by a political decision to secure a commensurate level of budgetary resources for those functions. The existing systems of labour, health, or school inspection should be assessed at the outset, as well as other law enforcement mechanisms, and strengthened so that they can effectively address child labour. This cannot possibly be achieved with legislative revision alone. Therefore, a comprehensive system known as "child labour monitoring" is advised in order to augment and strengthen the authorities responsible for enforcing child labour legislation.

7.2 Child labour monitoring system

Child labour monitoring (CLM) is an active tool for preventing and stopping child labour. At the local level, CLM is used to identify children who are working and to refer them to school or similar alternative. It draws attention to those at risk and sets in motion action to protect them. As part of a larger national system, CLM supports child labour efforts over the long term, independent of a specific project, and thus becomes an

important tool of the TBP. It provides crucial information on child labour trends to guide those in government, the ILO, and partner agencies who are undertaking action on child labour or whose work has the potential to prevent or reduce risk to children.

CLM is an expanded version of the traditional inspectorate. It engages auxiliary "monitors" to carry out regular direct observations of workplaces, whether these are factories, home-based workshops, agricultural plantations, or street-side vending. The results of these visits are documented and reports provided to the appropriate authorities, usually the official inspectorates for follow-up action. However, the monitors need to be empowered to take action themselves in the form of (a) referring under-age workers to school or training, (b) advising employers on how to remove hazards from the workplace, and (c) if the children are at substantial risk, to remove them immediately from the site.

7.2.1 Recommendations

The following measures should be considered to strengthen enforcement of the regulation:

- a coherent system of child labour monitoring to extend the reach of the inspectorates into the informal and agricultural sectors where most child labour is found
- procedures for registration of business establishments, self-employment, informal sector, and agricultural enterprises and maintenance of a register by the employer giving full details on all employees, including date of birth, the type of work performed and the hours of work;
- procedures for birth registration and verification of age of persons under

18 prior to their being engaged in employment;

- designation of special or auxiliary inspectors for child labour as part of a CLM system, with clear delineation of their powers, functions, and reporting structure;
- recruitment, adequate support and supervision of labour inspectors and training intervene appropriately when they encounter children in hazardous work;
- authorize labour inspectors and police officers to enter and search any premises where there are reasonable grounds to believe that a child is involved in prohibited hazardous labour;
- provision for the emergency removal of children from such situations to a place of safety;
- in cases of persistent violation, dear and prompt sanctions such as temporary or permanent revocation of permits to operate.

7.3 Dedicated child labour units within public institutions

Focused and intensified action to eradicate the worst forms of child labour requires specialisation within law and justice institutions to deal with the detection, prosecution and adjudication of offences.¹¹³ Dedicated child protection units with expertise in child labour abuse could be established because offences may be found to be too unfamiliar or specialized to be readily pursued without that degree of specialist knowledge. Capacities have to be strengthened through improved training by developing ongoing training programmes on

¹¹³ A number of countries, such as Colombia, Kenya, Thailand and Turkey, have established specialized bodies within government to supervise and implement action on child labour. Turkey set up a Child Labour Unit in the Ministry of Labour in 1992 to coordinate child labour activities. The Brazilian government created the inter-ministerial Executive Group on the Eradication of Forced Labour to combat forced labour including forced child labour.

eliminating the worst forms of child labour for all professional groups working for and with children, including judges, lawyers, law enforcement officials, civil servants, local government officials, teachers, doctors and other health personnel. Consideration may be given to the following measures:

The judiciary: develop a pool of specialist judges and magistrates with an understanding of the nature and forms of child labour and with skills in child-sensitive court procedures.¹¹⁴

Prosecutors: develop within the office of the attorney-general or ministry of justice a child rights protection division whose members are sensitized to the effects of unconditional worst forms of child labour as well as hazardous labour on children's lives, and who are trained to deal with children, to use expert testimony, argue for appropriate penalties and compensation orders and monitor worst forms of child labour cases.¹¹⁵

The police: create a specialized unit of the police force trained to flush out potential¹¹⁶ offenders, perceptive in investigating and uncovering offences, aware of the possible risks faced by child victims and witnesses from violent offenders, and aware of any established arrangements for protecting them.¹¹⁷

¹¹⁴ See Section 4.4.3 above. In the United Kingdom, the Judicial the Studies Board prepares programmes for training judges.

¹¹⁵ Thailand has a Child Rights Protection Division within the Office of the Attorney-General. In the Philippines a Force against Child Abuse exists within the Ministry of Justice.

¹¹⁶ Such an approach may entail the review of the laws of evidence. In countries such as the US, evidence obtained from entrapment is admissible in cases, whereas in the United Kingdom and many European countries it is not.

¹¹⁷ For example, the United Kingdom has a Paedophile Unit at New Scotland Yard. The Beijing Rules (General Assembly Resolution 40/33 (1985)) recommends that within the national police force there should be specialization for police officers who frequently or exclusively deal with juveniles.

Labour inspectorate: a special unit could be set up and trained to detect and investigate offences, obtain evidence, liaise with other enforcement agencies and be astute to uncover practices in the informal and hidden sectors of child labour and how and in what circumstances to issue temporary or permanent prohibition notices. Although labour inspectors are normally not involved in the detection and policing of the common crimes which constitute unconditional worst forms of child labour, given that these and hazardous labour may overlap, it is important that they receive training that equips them to recognize, uncover and report such crimes.

Education inspectorate: they can be law enforcers when they inspect and visit schools to ensure that any compulsory attendance laws are being complied with. They should be trained in following up absenteeism, gaining access to homes and ascertaining why any girl or boy children are not attending school.

Immigration officers: special units could be set up and trained on the incidence and forms of child trafficking with expertise in their detection and emergency procedures to ensure the removal of children from danger and the apprehension of offenders. It is essential to set up child-sensitive procedures for repatriation and reintegration of child survivors of trafficking. Equally important is the principle of treating children without valid travel documents, not as criminals, but as victims in need of assistance and support services.

Customs service: a unit could be established within the customs service and trained to detect and follow up interceptions in cooperation with immigration and the police.¹¹⁸

¹¹⁸ For example, a Child Pornography and Protection Unit exists within the United States Customs Service.

Child welfare officers: Local and district authorities could designate special children's officers – social workers with expertise in child protection and sufficient understanding of emergency protection procedures and how to use them; the range of available social services and support available to children in need and how to access these; and with a knowledge of the laws relevant to investigation and rehabilitation.

7.4 International cooperation and assistance

Crime has ceased to be largely local in origin and effects and often operates on an international scale. This process is both assisted and accelerated by the increased freedom of movement of people and goods, the availability of international telecommunications and the development of information technology. States can only tackle this explosion in cross-border crime through effective international and national action by concluding mutual assistance treaties and introducing wide-ranging national legal mechanisms to secure the evidence required for its investigation, prosecution and punishment.¹¹⁹ In civil matters there is a need for similar international cooperation in procedures for service of process, providing evidence and recognizing and enforcing judgments.¹²⁰

The Convention emphasizes the importance of enhanced international cooperation and assistance in detecting and investigating, prosecuting and enforcing laws against cross-border offences.¹²¹

7.4.1 Recommendations

- Flexible arrangements should be made for exchanging information,

¹¹⁹ See, for example, the Memorandum of Understanding concluded by the United Kingdom and Philippines government in 1997 to combat child sex tourism.

¹²⁰ David McClean, *International Co-operation in Civil and Criminal Matters*, Oxford University Press, 2nd Edition, 2002.

¹²¹ Convention No. 182, Article 8.

detecting offences, extraditing and prosecuting offenders, registering and seizing the property of perpetrators and recognizing and enforcing foreign judgments.¹²² These could include:

- ❑ increased and improved information sharing and cooperation between prosecuting authorities for gathering and presenting evidence;
- ❑ increased cooperation in the investigation of cross-border offences;
- ❑ recognizing the unconditional worst forms of child labour to be extraditable offences to be included in extradition treaties;
- ❑ for States that have ratified the Convention, recognizing it as a sufficient basis for extraditing offenders even where no extradition treaty exists;

alternatively adopting the simplified United Nations procedures for expediting extradition "agreements";¹²³

- ❑ tracking and seizing proceeds of offending conduct and other property of offenders for compensation purposes; and
 - ❑ recognizing and enforcing foreign judgements and awards for compensation.
- Fast-track procedures might be put in place to enable treaties that deal with social and economic development or poverty alleviation, human rights or international crimes to be speedily ratified.

7.5 A central child labour authority

The designation of competent authorities with responsibility to implement the provisions giving effect to the Convention is a mandatory requirement.¹²⁴

Inevitably, responsibility for implementing and enforcing the many areas of domestic law relevant to the Convention will fall within the competence of a number of different national agencies or government departments. Public institutions mentioned in section 7.2 above show the range of authorities concerned. States are encouraged to ensure that the competent authorities which have responsibilities for implementing national provisions cooperate with each other and coordinate their activities.¹²⁵ Although such cooperation and coordination may be achieved in different ways, the diverse strands of activity involved in putting the provisions of the Convention into effect suggest that there may be room to consider designating a central coordinating and monitoring agency or

¹²² See the Model Treaty on Mutual Assistance in Criminal Matters available at: www.un.org/documents/ga/res/45/a45r116.htm Cote d'Ivoire and Mali have concluded an agreement to fight cross-border trafficking and provided for joint preparation of national plans of action for prevention, control, repatriation and rehabilitation. The General Assembly, the Commission on the Status of Women, the Commission on Human Rights and the Commission on Crime Prevention and Criminal Justice have adopted resolutions to address the complex and global nature of trafficking and the seriousness of related issues. The Commission on Crime Prevention and Criminal Justice has developed a Global Programme against trafficking in human beings, especially women and children which includes field projects in a selection of countries to test promising strategies, such as new structures for collaboration between police, immigration, victims' support and the judiciary, both within countries and internationally (linking countries of origin to destination countries). The General Assembly, in its resolution 55/67 encouraged the sharing of knowledge and best practices in dealing with the problem of trafficking of women and girls and requested the Secretary-General to compile, as reference and guidance, successful interventions and strategies in addressing the various dimensions of the problem based on reports, research and other materials from within the United Nations, including the United Nations Office for Drug Control and Crime Prevention, as well as from outside the United Nations.

¹²³ Model Treaty on Extradition drafted by the Crime Prevention and Criminal Justice Branch of the United Nations available at: www.un.org/documents/ga/res/45/a45r117.htm

¹²⁴ Convention No. 182, Article 7(3).

¹²⁵ R190, para. 9.

body with adequate powers and backed with resources to oversee the government's entire policy and programmes for eliminating the worst forms of child labour. Indeed it is difficult to envisage effective implementation of such wide ranging and multi-agency remit in the absence of a central coordinating body or system. While the enforcement of each piece of legislation may still remain in the mandate of each corresponding body (for instance, labour inspectorate overseeing the enforcement of labour legislation), there could be a body seeking an overview of how the progress is being made for the effective elimination of the worst forms of child labour as a whole.



The absence of a central mechanism to co-ordinate the implementation of the Convention would make it difficult to achieve a comprehensive and coherent programme of action. The diffusion of functions and powers between central government, government agencies, district and local authorities and other entities intensifies the need for effective coordination. This coordinating task could be assigned to a highly visible and easily identifiable permanent body with an adequate mandate and adequate resources.

This need not entail the creation of a new institution, however.¹²⁶ Many countries have independent human rights or children's rights commissions or government departments or agencies with sufficient institutional capacity to absorb a specialized authority dedicated to the elimination of the worst forms of child labour. The success of the International Convention on the Rights of the Child has inspired many countries to adopt comprehensive children's legislation and establish commissions dedicated to the protection of children's rights and the promotion of their interests.¹²⁷ These institutions generally

¹²⁶ The UN Committee on the Rights of the Child recommends that States establish human rights institutions with a broad mandate and appropriate powers and resources in accordance with the Paris Principles (General Assembly resolution 48/134, to monitor, protect and promote all the rights of the CRC for all children.

¹²⁷ South Africa has established the Child Rights Committee, a statutory body of the South African Human Rights Commission; Mauritius established the National Children's Council in 1991; Rwanda has created the National Assembly for Child Rights. National commissions on human rights have been created in more than 10 countries in Western and Central Africa, including Benin, Cameroon, Cape Verde, Central African Republic, Chad, Ghana, Liberia, Nigeria, Senegal, Togo and Zambia. El Salvador has established a National Steering Committee to coordinate all child labour initiatives and provide guidance on priorities and implementation. Columbia established the National Commission for the Elimination of Child Labour in 1995 to monitor the country's national policy across a wide range of economic sectors and government institutions and to work with the Family Welfare Institute and NGOs to provide psychological counselling, training and income earning opportunities. Norway already had in place a Commissioner for Children it had created in 1981 to promote the interests of children with public and private authorities and to follow up the development of the conditions under which children grow up. New Zealand has created a separate office of Commissioner for Children. In Wales, the Care Standards Act, 2000 (Part V) provides for the establishment of the Children's Commissioner for Wales with functions to review and monitor the operation of certain arrangements by service providers to ascertain whether and to what extent they are effective in safeguarding and promoting the rights and welfare of children. In Queensland the Children's Commissioner and Children's Services Appeals Tribunal Act, 1996 provided for a Children's Commission to be set up to formulate and promote child welfare services.

monitor and evaluate policies undertaken in favour of children and challenge decisions that may disregard their rights. Their focus tends to be general. Many countries also have Human Rights Commissions whose commissioners have substantial legal powers to investigate breaches of human rights and make determinations or declarations.¹²⁸ Where no suitable statutory body or government department is available to play a central coordinating and monitoring role for the elimination of the WFCL, consideration may be given to strengthening and empowering the IPEC National Steering Committee to discharge the role, if it has a suitable profile.¹²⁹

¹²⁸ See for example the SA Human Rights Commission Policy Paper, 1997.

¹²⁹ The Philippine and Tanzania provide prime examples. In the Philippines the National Child Labour Committee functions as the steering committee on the child labour programme, overseeing its implementation and monitoring its progress; it has an organizational structure at national and regional level and its members include the Department of Labour and Employment, the Department of Social Welfare and Development, the Department of Education, Culture and Sports, the Department of Interior and Local Government, the Department of Health, the Philippine Information Agency, the Employers' Confederation of the Philippines, the Labour Advisory Consultative Council and the National Council for Social Development, the ILO and UNICEF. In 1997 the Committee approved new guidelines to accredit additional NGO membership; the inclusion of the National Statistics Office in the committee aims to provide improved access to birth registration records as well as advisory services on child labour statistics to the national child labour programme. The Committee is supported by inter-agency technical working groups. The Child Labour Project Management Team of the Department of Labour and Employment serves as the Committee's secretariat and is responsible for reviewing work and financial plans of participating agencies and the monitoring of their progress; it also serves as an important resource centre in the advocacy, social mobilization and alliance-building activities of the partners. Similarly, in Tanzania, the National Child Labour Elimination Steering Committee defines objectives and priorities for interventions, approves intervention projects, oversees implementation of action projects, receives monitoring and evaluation reports and advises the government on various issues on child labour in the country; its membership includes representatives from employers' associations, trade unions, government (Ministries of Education and Culture, Community

On the one hand, making use of an existing organization may save costs and expedite the commencement of programmes. On the other hand, any existing organization with a broad and long-term agenda and possibly limited resources, may encounter difficulties in trying to implement a Convention No. 182 and TBP agenda that requires focused and urgent measures achievable within a relatively short time-frame. Whatever the institutional base of the authority, substantial legal powers will be required for its tasks, and the responsible agency will have to be accorded the highest priority by government.

If the proposed child labour authority is to be endowed also with the power to investigate and make determinations on individual complaints, it becomes even more important that it is given a sufficiently independent status. Independence may be most effectively secured by charging its administrative expenses, salaries, allowances and pensions to the Consolidated Fund or to some other independently-sourced Fund and free from government or political influence.

7.5.1 Awareness raising

Studies show that most children are not aware of their rights. This arises in part because adequate dissemination, awareness-raising and training activities in a systematic and targeted manner are often lacking. There is a need to expand dissemination of information on the laws pertinent to eradicating the worst forms

Development, Women's Affairs and Children, Labour and Youth development, Prime Minister's Office, the Information Services Department, Higher Learning Institutions and NGOs. ILO, IPEC and UNICEF are ex-officio members. The Child Labour Unit within the Ministry of Labour is the secretariat for the NCLESC and is responsible for the coordination of child labour policy and child labour programme activities, liaising with other government ministries, organizing workshops and seminars, promoting networking with other stakeholders, analysing child labour related data and coordinating all child labour activities in the country. Enforcement of minimum age legislation is done through the Labour Inspectorate also under the Ministry of Labour.

of child labour and their implementation among children and parents, civil society and all sectors and levels of government, including initiatives to reach vulnerable groups.

The proposed authority should have among its functions public awareness raising, including legal literacy campaigns targeting parents, children, employers, workers and the general public. The population, and in particular the social groups most at risk, lack information because of insufficient diffusion of information, dissemination in a language which is not the ordinary language of the population, or dissemination only through the written press whilst the population at risk are illiterate. This lack of information and more generally the lack of education on human rights is a crucial point for action.

The authority will have to develop information packages that are suitable for the different target audiences. They should cover basic information about children's rights in general; child labour and its worst forms and its effect on children, their families and society, the essence of the law prohibiting it and the rationale behind it; and equip them with sufficient knowledge of the law to involve them in detecting, preventing, reporting and monitoring the law. Child-friendly versions of this should explain basic rights, what is forbidden, why and how to seek help or inform an adult.

7.5.2 Recommendations

Consider establishing or designating a child labour authority whose functions could include powers to:

- facilitate cooperation and coordination between all the activities of all competent authorities in the implementation of the measures giving effect to the provisions of the Convention;¹³⁰

¹³⁰ See paragraph 9 of Recommendation No. 190.

- investigate complaints and alleged or suspected violations of the laws prohibiting the worst forms of child labour and take appropriate steps, including reports to the attorney-general. This should include collaborating with the relevant authorities to establish or improve mechanisms for international cooperation in detecting and investigating crimes against children, in facilitating the provision of evidence by children through exchange of information, technology and expertise, and in apprehending offenders;
- initiate proceedings in a competent court for a remedy;
- establish practical safeguards to prevent the unlawful removal of children from the jurisdiction;
- take measures to remove children from worst forms of child labour situations and provide for their rehabilitation and reintegration into their families and communities;
- provide legal assistance to child victims (or where necessary their parents) to enable them to claim their rights;
- establish appropriate mechanisms to monitor the implementation of relevant laws, undertake periodic examination and evaluate such laws and their enforcement;¹³¹

¹³¹ Recommendation No. 190, paragraph 7 recommends that the information gathered through the monitoring requirement should be reported to the International Labour Office on a regular basis. This is a responsibility of States which may meet the reporting requirements of the ILO's system of supervision of its international conventions. The UN Committee on the Rights of the Child recommends State parties to establish a nation-wide system such that disaggregated data are collected on all persons under 18 years for all areas covered by the CRC, including the most vulnerable groups, and that these data are used to assess progress and design policies to implement the Convention. It also encourages the development of regular reports and the promotion of wide public and parliamentary debate on them.

- review and promote good practice and international standards;
 - initiate practical programmes for the prevention of child labour, including educating the public as to children's rights;
 - make and publish recommendations and guidelines on any matter relevant to child labour and child welfare issues and to the enforcement of laws relevant to the worst forms of child labour; and
 - inform, sensitize and mobilize the general public.
- of any institutional conflict. It could have powers to:
- require any government agency to furnish data or other information relating to the worst forms of child labour;
 - question any person on any subject matter under investigation by it;
 - issue subpoenas requiring attendance of any person before it and the production of any information relevant to any investigation;
 - in its quasi-judicial role, investigate, hear and make determinations on any complaint it receives; it should not, however, be enabled to entertain a matter which is pending before a judicial tribunal.

In all of these functions the authority should be required to consult and, where appropriate, collaborate with relevant government departments and employers' and workers' organizations, and to take into account the views of concerned groups. The authority would need to be given adequate powers to discharge its responsibilities effectively and without undue impediments or hindrance. If the Convention's objectives are to be fully realized it must be ensured that the Authority is accorded priority in the event

The head of the authority would, given the weight of the responsibilities and powers, clearly need to be a person of high personal integrity with a proven record of service in a senior legal, academic or public position and with recognized experience of child protection issues.



8 Monitoring and evaluation

8.1 Why monitor?

States are required to establish national monitoring mechanisms to ensure effective implementation of measures giving effect to the provisions of the Convention.¹³² Such monitoring mechanisms should cover legal as well as programmatic measures giving effect to the Convention. Governments must consult their social partners as a prerequisite to establishing such mechanisms.

Monitoring is a continuous process of scrutiny and examination of the impact of the laws, policies and programmes. Monitoring the operation of the law is essential in order to establish whether the law is working as intended and achieving the desired results. It should ideally encompass the legal process in its entirety, to the extent that it relates to the worst forms of child labour, including the law review process. To be effective, law and policy-making must be a learning process that involves finding out what works and what does not and making sure that lessons are learned. It helps to determine how well law and policy are meeting their goals and provides opportunities for improvements. Monitoring of the legal process might ideally feed into and draw upon information gathered on other measures to implement the Convention.¹³³

Experience in implementing laws may suggest that some aspects could be strengthened. It is important to have a system for collecting such information and evaluating it. The mechanism for doing so is best instituted as soon after the initial law review and reform as possible. Indeed it would seem prudent and practical to consider the establishment of the monitoring mechanism during the law review and reform process, in order to build the statutory basis for it into any law reform.

It is important to know, for example, whether offences are being successfully investigated and prosecuted or whether prosecutors are bargaining away the charges; whether judges and court administrators are following provisions to protect child victims during the course of trials; the rate of compliance with registration, health and safety and training requirements (where 16-17 year olds are employed); whether powers to remove children from worst forms of child labour situations and statutory duties in respect of their rehabilitation are adequate or need to be modified; whether the functions of child labour inspectors are being impeded in anyway and how this can be addressed by changes in their powers or by other means. It is an ongoing process of keeping the law and its enforcement under review.

8.2 Establishing a legal basis for monitoring

Provisions to implement the monitoring requirements should, following tripartite consultation, clearly designate the competent authority to be responsible for ensuring that arrangements are established. The statutory child labour authority discussed in Section 7.4 could be designated the appropriate body for this in view of its coordinating role and its proposed significant powers to obtain information outlined above. It would be

¹³² Convention No. 182, Article 5. It is important to emphasize that although this section focuses on the monitoring of the legal process, the requirement to monitor is not limited to the legal process but extends to all measures required to give effect to the provisions of the Convention. See IPEC: *Guidelines for Preparing Child Labour Monitoring Systems* (ILO, Geneva, forthcoming), which deals comprehensively with monitoring of the child labour situation.

¹³³ The broader child labour monitoring. See IPEC: *Guidelines for Preparing Child Labour Monitoring Systems* (ILO, Geneva, forthcoming).

well placed to oversee the process, coordinate actions and supervise reporting. All relevant government departments and public agencies could be placed under a statutory duty to cooperate in reporting and supplying information to this authority.

8.3 Evaluation

Information gathered from the monitoring process needs to be analysed and evaluated to identify areas of difficulty as well as strengths and to enable lessons to be learned to guide future actions. Such an appraisal if thorough, comprehensive and objective, could provide valuable insights and new impetus to advance further implementation. While each country will determine when a first evaluation should take place, assuming a time frame of say 5–10 years for a TBP, an evaluation at 3-5 years into the TBP would allow a reasonable period for the accumulation of experience, while leaving sufficient time after evaluation for recommendations to be put into effect.

Criteria for evaluation might include any quantitative and qualitative targets, such as the extent to which the worst forms of child labour declined in the 3-5 years following the rationalisation of laws under the TBP in line with C182, whether changes were in the direction expected and whether they were significant, as well as criteria that are more specifically focused on the content of the laws and the functioning of the legal process and its institutions. Ultimately, however, the appraisal of laws and policies for their effectiveness, efficiency and their sustainability is a technical task that would need to be undertaken by a team with particular expertise and experience.

8.3.1 Recommendations

- The statutory child labour authority might be designated as the competent authority to manage and oversee monitoring and evaluation; it should possess all the powers, functions and discretions necessary to carry out the tasks likely to be required for the exercise.
- All government departments and agencies involved in the implementation and enforcement of child labour laws and policy could be placed under an express duty to make periodic reports to the monitoring authority.