

# CHAPTER 1

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## Labour inspection and child labour

**Summary:** 1. Introduction. – 2. Concept of child labour. – 3. The extent of the problem and trends in child labour. – 4. ILO Conventions on child labour. – 5. The worst forms of child labour. – 6. ILO and the strengthening of child labour inspections. – 7. The link between labour inspection and child labour monitoring (CLM). – 8. Mandate of CLM. – 9. Focusing labour inspection action on child labour.

### 1. Introduction

Child Labour has no place in a well-functioning and well-regulated labour market. Child labour is driven in part by household vulnerabilities associated with poverty, risk and shocks. Labour protection and social security are critical to mitigating these vulnerabilities.<sup>1</sup> Without any access to credit, poor parents not able to postpone children's involvement in work or to invest in their education. It is more likely that they have to rely on child labour in order to meet basic needs and deal with uncertainty. Poor households respond to what they regard as a temporary reduction in their income by either borrowing or drawing from savings, but when these options are not available, parents resort to child labour.

At the beginning of 2013, the ILO estimated that there were 168 million children still involved in child labour. Despite the positive trends in respect of child labour, it was felt that the goal of eliminating the worst forms of child labour by 2016 would not be achieved and it was important for the

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<sup>1</sup> *World report on child labour: Economic vulnerability, social protection and the fight against child labour*, ILO, Geneva, 2013.

ILO working with other stakeholders to put in place a strategy to promote greater coherence, synergies and collaboration to achieve this object.<sup>2</sup>

An unprecedented opportunity to these efforts came in September 2015 when world leaders adopted the 17 sustainable development goals (SDGs) and 169 associated targets of the 2030 Sustainable Development Agenda. Of these, goal 8. 7 seeks to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour”.<sup>3</sup> The SDGs call on governments, social partners and other relevant stakeholders to eliminate child labour by 2025 and forced labour by 2030.

One of the key players in the fight against child labour is the labour inspectorate. By paying greater attention to child labour, labour inspectors can boost their visibility, and demonstrate the relevance of their modern role. For example, this was one of the strength of the Brazilian labour inspectorate. In their fight against child labour and forced labour, they were able to show to the national planners and Finance Ministry officials, the relevance of modern labour inspection and its role in the labour market governance. This was to eventually lead to more resources granted to the inspectorate with a view to upgrading and modernizing the Brazilian labour inspection system. Today, there is great potential for many other countries to take action against child labour, especially in respect of hazardous child labour and child labour monitoring and support the work of the national steering committees in implementing the National Plan of Action.<sup>4</sup> By addressing child labour issues, inspectorates can further demonstrate how their work can assist and protect vulnerable and exploited children, with a view to linking this with wider social issues.

Labour inspectors in many countries face many challenges today. This may be due in part to limited financial and human resources. Moreover, the growth of the informal economy and the issues concerning the employment

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<sup>2</sup> *Marking progress against child labour: Global estimates and trends 2000-12*, ILO, Geneva, 2013; [http://www.ilo.org/ipecc/Informationresources/WCMS\\_221513/lang--en/index.htm](http://www.ilo.org/ipecc/Informationresources/WCMS_221513/lang--en/index.htm) and *Resolution concerning the recurrent discussion on fundamental principles and rights at work*, International Labour Conference, 101st Session, Geneva, 2012; [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_194631.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_194631.pdf).

<sup>3</sup> GB. 328/POL/6, *Preparations for the IV Global Conference on Child Labour*, [http://www.ilo.org/gb/GBSessions/GB328/pol/WCMS\\_532236/lang--en/index.htm](http://www.ilo.org/gb/GBSessions/GB328/pol/WCMS_532236/lang--en/index.htm).

<sup>4</sup> Giuseppe Casale, Alangadram Sivananthiram, *Labour administration and labour inspection in Asian countries: Strategic approaches*, ILO, Geneva, 2015 and Giuseppe Casale, Alangadram Sivananthiram, *The Fundamentals of Labour Administration*, ILO, Geneva, 2010.

relationship have made the mission of labour inspectors even far more complex. Inspectorates need to develop policies to address child labour, to provide training on these policies, and to see how the compliance with child labour laws can be integrated in the daily work of inspectors. The activities of labour inspectors must also be seen as part of a larger collective effort to eradicate child labour, forming part of national and even international policy on the issue, and contributing to the global movement against child labour.<sup>5</sup>

In order to achieve this goal, labour inspectorates need to take steps including conducting proactive inspections and encourage compliance through providing information and advice to employers and workers on the most effective means of complying with the law. One hundred and eighty countries have ratified the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). Ratifying member States require their governments to take immediate and effective steps to prohibit and eliminate the worst forms of child labour. These measures require countries to prevent these forms of child labour and to investigate, prosecute and punish violations.

Ever since the creation of the ILO's International Programme Against Child Labour (IPEC) in 1992,<sup>6</sup> IPEC has been working to strengthen the capacities of labour inspectorates and other enforcement agencies to take action against child labour, especially in respect of hazardous child labour. Labour inspectors have traditionally been in the forefront and are key partners in eliminating child labour. However, with the wide ratification of ILO Convention No. 182, they took further responsibility. The impact of IPEC's wide programme and the growing awareness of children's rights gave a boost to labour inspector's work.

In countries such as the Philippines, Brazil, Malaysia, Bangladesh, Myanmar, Jordan, Uganda Namibia and Ethiopia, the labour inspectorate has been entrusted as the main monitoring and enforcement agency to implement the requirements of Convention No. 182. This is mainly due to the inclusion of the sanctions against the worst forms of child labour in the labour legislation.

In many countries, discussions on enforcing child labour laws or improving working conditions are increasingly taking into consideration the views

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<sup>5</sup> *General Survey of the reports concerning the Labour Inspection Convention, 1947* (No. 81), and the *Protocol of 1995 to the Labour Inspection Convention, 1947*, and the *Labour Inspection Recommendation, 1947* (No. 81), the *Labour Inspection (Mining and Transport) Recommendation, 1947* (No. 82), the *Labour Inspection (Agriculture) Convention, 1969* (No. 129), and the *Labour Inspection (Agriculture) Recommendation, 1969* (No. 133).

<sup>6</sup> <http://www.ilo.org/ipeclang--en/index.htm>.

and participation of inspectors since they have the unique mandate to enter establishments where children work. The country level engagement and assistance to reduce child labour (CLEAR) Project implemented by IPEC has specific provisions to build capacities of labour inspectors in countries such as Uganda, Philippines, Bangladesh.

Under the Global Action Programme (GAP) on Child Labour Issues Project (Gap 11), ILO IPEC, among others, upgraded the capacities of labour inspectors in Ethiopia, Sierra Leone and Rwanda. These efforts went a long way to strengthen the link between labour inspectors and child labour monitoring, as it is the labour inspector who is empowered to reach child labourers in the workplace and initiate moves toward meaningful action.

The Roadmap for achieving the elimination of the Worst Forms of Child Labour (WFCL) established in a tripartite conference at The Hague in 2010, called for the prosecution of perpetrators of the WFCL, strengthening the inspection system including the monitoring machinery that brings these to light, and documenting child labour cases. Particular emphasis was placed on occupational health and safety. Such a roadmap further calls for “working towards regulating and formalizing the informal economy where most instances of the WFCL occur, including through the strengthening of state labour inspection and enforcement systems and capacities”.<sup>7</sup>

## 2. Concept of child labour

Not all work done by children should be classified as child labour.<sup>8</sup> Child labour is classified as children’s work which is of such a nature or intensity that it is detrimental to their schooling or harmful to their health and development. The ILO notes that “children’s or adolescents’ participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive”.<sup>9</sup>

ILO’s main concern is with children who are denied their childhood and their future or are working at too young age in the labour market. Instead of being in school, they may work long hours for low wages, and work under conditions harmful to their health and to their physical and mental develop-

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<sup>7</sup> ILO-IPEC, *Implementing the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016 – A Training Guide for Policy Makers, International Programme on the Elimination of Child Labour (IPEC)*, ILO, Geneva, 2013.

<sup>8</sup> <http://www.ilo.org/ippec/facts/lang--en/index.htm>.

<sup>9</sup> *Ibid.*

ment. In this process, they could be separated from their families or fully deprived of education. Such kind of child labour can create serious damage to the child and is in violation of child labour Conventions as well as of national child labour laws.<sup>10</sup> Furthermore, since there is no additional expenditure such as insurance or social security and low paid child labour may be viewed as a comparative advantage to maintain a competitive edge in national and international labour markets.

Children are also vulnerable for the following reasons:

1. they are very often physically, socially and politically weak;
2. they are very poorly organized and often not at all represented in trade unions;
3. they are often subject to discrimination, and to abuse;
4. they typically have to work in physical, geographical, social or cultural isolation.<sup>11</sup>

They are very often the victims of exploitation as they are easily intimidated, manipulated and controlled.

In labour intensive industries, children are often preferred as they can easily work with rudimentary technology that require laborious/repetitive work for long hours.

### **3. The extent of the problem and trends in child labour**

Child labour remains a matter of grave concern with a significant number of children employed in potentially hazardous jobs. According to the ILO, “some 168 million children remain trapped in child labour while at the same time there are 75 million young persons aged 15 to 24 years who are unemployed and many more who must settle for jobs that fail to offer a fair income, security in the workplace, social protection or other basic decent work attributes”.<sup>12</sup>

Child labour has “declined by one third since 2000, from 246 million to

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<sup>10</sup> *Child labour “in a nutshell” – A Resource for Pacific Island Countries*, International Labour Office, International Programme on the Elimination of Child Labour (IPEC), ILO, Geneva, 2014.

<sup>11</sup> See: *Module 9, ILO IPEC Training modules on labour inspection*, ILO, Geneva, 2010.

<sup>12</sup> *World report on Child Labour 2015: Paving the way to decent work for young people*, ILO, Geneva, 2014, [http://www.ilo.org/ipecc/informationresources/WCMS\\_358969/lang--en/index.htm](http://www.ilo.org/ipecc/informationresources/WCMS_358969/lang--en/index.htm).

168 million children. More than half of them, 85 million, are in hazardous work". These figures show a downward trend from 171 million in 2000. The ILO report also confirmed that as in previous surveys, Asia and the Pacific still has the largest number (almost 78 million or 9.3% of child population). The Sub-Saharan Africa continues to be the region with the highest incidence of child labour (59 million, over 21%). In Latin America and Caribbean, there are still 13 million children followed by Middle East and North Africa which has 9.2 million.

Child labourers are vulnerable to all the hazards that adult workers face in the same employment situation. However, these hazards pose greater risk to their health and well-being. The ILO estimates that some 22,000 children are killed at work every year. The number of children injured or made ill because of their work is not known.

In almost all cases, children are more vulnerable to work hazards because of their unique anatomical, physiological and psychological characteristics. Children also:

1. react differently (and less rationally) to imminent danger;
2. lack life experience, knowledge of risks and appropriate reactions;
3. are untrained or inadequately trained; and
4. tire sooner and suffer lapses of attention that can result in vulnerability to injury.

Children may also be subjected to bullying and exploitation because they are more easily intimidated, and are regularly given work that is too difficult or dangerous for them to do.

Agriculture remains by far the most important sector where child labourers can be found (98 million, or 59%). Children work mainly on small family farms or large plantations, caring for domestic animals, weeding and harvesting, collecting fodder and fuel. A large number of these children are missing out on school and many are regularly exposed to serious hazards and exploitation.

The agricultural sector has the highest numbers also in terms of fatalities, non-fatal accidents and occupational diseases. However, the majority of these are engaged in farming on their parent's farm as unpaid family workers. The work that children perform is often invisible and unacknowledged because they help their parents or work under a quota system on larger farms, sometimes as part of migrant worker families. In services, there are (54 million children) and industry (12 million children) – mostly in the informal economy.

## **4. ILO Conventions on child labour**

At the dawn of the decade in the 1970s, there was a realization among the countries that childhood is a period of life which should be dedicated, not to work, but to education and development. Furthermore, child labour, by its nature or because of the conditions in which it is undertaken, often jeopardizes children's chances of becoming productive adults, able to take their place in the community. In addition, child labour can jeopardize a country's present reputation and long-term productivity by denying education to the future workforce. Child labour is not inevitable and progress towards its reduction and even its elimination is possible.

The first ILO Convention on child labour was: the Minimum Age Convention (No. 138) of 1973 which is also one of the fundamental international standards on child labour. The accompanying Recommendation No. 146 is an important standard for labour inspectors. It provided the link between combatting child labour and the role of labour inspectors in providing guidance on enforcement measures and the handling of child labour issues.

The Minimum Age Convention No. 138 sets the minimum age for countries and requires member States to develop national policies to ensure the effective abolition of all forms of child labour. This was a daunting task and it met with much resistance, including the resistance from traditional cultural attitudes.

Such a situation led the ILO to create the International Programme on the Elimination of Child Labour (IPEC) in 1992. Seven years after its creation in 1999, there was the unanimous adoption of the Convention No. 182 on the worst forms of child labour.<sup>13</sup> This Convention, has been ratified by 180 member States. For the labour inspectorate, these two ILO fundamental Conventions are important as they include provisions and provide guidelines on the role of labour inspection vis-à-vis child labour.

## **5. The worst forms of child labour**

The international community has declared that there are four types of child labour that are particularly evil. These are: slavery, sexual exploitation, illicit activities, and hazardous work. The first three categories are likely to be illegal and usually the police have jurisdiction. Labour inspectors are usually concerned with the last category, although as part of a larger team

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<sup>13</sup> <http://www.ilo.org/ipec/lang--en/index.htm>.

and more comprehensive approach, they have a major role to play. Of particular concern to labour inspectorates is that Convention No. 182 calls on ratifying States to set up mechanisms to monitor implementation of the new laws that have been set up regarding the worst forms of child labour, and allows for effective enforcement, including penal or other sanctions. The accompanying Recommendation No. 190 calls for appropriate training for the government officials concerned, especially labour inspectors and law enforcement officials.

As stated above, the decline in child labour of the past few years has taken place thanks to a global movement against child labour involving a multiplicity of actors including the role of the labour inspectors. More recently a good number of countries have strengthened labour inspections and national legislation on child labour. In addition, many countries have recently taken action for the establishment or revision of their lists of what constitutes hazardous work. There is, therefore, a need to continue strengthening the legal frameworks in line with an emphasis on appropriate identification, prohibition and protection against hazardous work, on improving the responsiveness of labour inspection and law enforcement mechanisms to deal with child labour cases, and on ensuring the rights of employers' and workers' organizations to contribute to combating child labour in enterprises – especially in the informal economy.

## **6. ILO and the strengthening of child labour inspections**

By realizing the potential of labour inspectors as an actor of ILO's action against child labour, the IPEC programme built the capacities of labour inspectorates and other enforcement agencies to take action against child labour, especially in the area of hazardous child labour. With the establishment of IPEC and with the ratification of the two child labour conventions, their role began to take on additional responsibility. In many countries, child labour units were created and inspectors trained through ILO's assistance to support the National Action Plans as well as that of the work of the Steering Committees.<sup>14</sup> More specifically the training focused on:

- a) how to tackle hazardous child labour with soft skills for inspectors and to give information on hazardous child labour to employers and workers including advice on how to eliminate it;

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<sup>14</sup> Training, including TOT training, was provided to inspectors under the GAP/CLEAR projects in Ethiopia, Ghana, Sierra Leone, Rwanda, Azerbaijan, Philippines, Bangladesh, Namibia.



- b) using their legal enforcement powers in the workplace to ensuring that that children are withdrawn from workplaces where hazardous work is taking place, and referred to appropriate authorities who can then get them into school or skills training;
- c) ensuring the health and safety of children who have reached the minimum legal age to work 14-17 years of age depending on the country, is fully protected in the workplace;
- d) optimising child labour compliance through strategic collaboration between labour inspectorate and child labour monitoring programmes.

## **7. The link between labour inspection and child labour monitoring (CLM)**

The concept of “CLM” emerged in the 1990’s in an effort to improve and intensify the detection of child labour. The intention behind CLM was to create a sustainable localized mechanism that would complement broad based labour inspection and that would help identify working children where child labour had not been eradicated by earlier efforts.

CLM is a process of periodically checking locations and communities where child labour may be found and taking action in line with the age and needs of the child, when found working. CLM is a procedure involving the assessment of workplaces to see if they employ child labour. An equally important part of CLM is the following-up on abuses that may be carried on even after specific child labour projects are completed.<sup>15</sup> Labour inspectorates are crucial partners in CLM. However, since most child labour is found in the informal economy and hence in areas that are not easily accessed by labour inspection, there is a need to enlist other partners able to and follow-up on children who are at risk of exploitative work. These include employers’ and workers’ organisations and other stakeholders that have access to home-based workshops, farms, fishing areas or even the shadowy world of illicit sectors. Child labour monitors offer additional hands and eyes to labour inspectorates,<sup>16</sup> complementing labour inspectors’ tradi-

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<sup>15</sup> ILO-IPEC, *e-Learning tool on Child Labour for Labour Inspectors and Child Labour Monitors*, 2014.

<sup>16</sup> *General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81)*, and the *Protocol of 1995 to the Labour Inspection Convention, 1947*, and the *Labour Inspection Recommendation, 1947 (No. 81)*, the *Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82)*, the *Labour Inspection (Agriculture) Con-*

tional access to larger, formal economy enterprises. CLM is designed to support labour inspectorates and should not be considered as a private system.

## 8. Mandate of CLM

As said above, CLM is a process of periodically checking places where child labour may be found and then launching action in line with the age and needs of the child:

*Older children* (over the legal working age) will need protection from exploitation and hazards;

*Younger children* must be removed from work and provided with schooling.

CLM consists of four main actions:

1. **direct observations**, regularly repeated, to identify child labourers and, in the case of children of legal working age, to see if they are working in hazardous conditions;
2. **referral** of the case to the labour inspectorate or other authority;
3. **referral** of the child to the appropriate service (school, social welfare, vocational training) so that they can take the appropriate action in line with previously-agreed plans and agreements;
4. **recording** the action taken for reporting purposes and follow-up.<sup>17</sup>

Child labour easily recurs if there is no follow up or a system of regular surveillance in place. Although in special cases CLM has been used in formal industry, it was developed primarily for keeping an eye on workplaces in the informal economy – shops, fields, streets, home-based workshops and services – areas that are difficult for the inspectorate to reach or cover adequately.

In CLM, it is important to emphasize the importance of recording information generated on working girls and boys: who they are, where they come from, what hazards they are exposed. This information helps policy-makers at all levels know where the problem lies so they can plan accordingly. CLM provides information but it is primarily a means of action.

An important aspect of the monitor's work is focused on educating the

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vention, 1969 (No. 129), and the *Labour Inspection (Agriculture) Recommendation*, 1969 (No. 133).

<sup>17</sup> Source: *Child Labour Monitoring. Pointers for Action*, ILO, Geneva, 2010.

parents of the children about the dangers and potential harm to the child of the work in question, and ensuring that community members uphold agreed rules with respect to child labour.

Over the years, the focus has shifted from monitoring the industry to monitoring the child as s/he is removed from work and provided with social protection services. Furthermore, the attention has also moved from the “withdrawal” of children from work to a more coordinated child protection effort.<sup>18</sup> This process involves the identification, referral, verification and tracking that targeted children are provided with satisfactory alternatives. Another notable shift was a change which has occurred from monitoring specific target sectors to an area-based approach to monitor all types of child labour in larger geographical areas.

The success of monitoring in the informal economy is founded on the social status of the community’s respect for the monitors. Traditional chiefs, religious leaders and basic-service professionals such as health workers and school teachers, generally comprise the pool of potential child labour monitors for CLM.

A CLM system can be a practical way of initiating or reinforcing collaboration among a wide range of actors – workers’ organizations, employers’ associations, ministries (education, social welfare, labour), and civil society. All of these stakeholders have a unique role to play in setting up the political and legal framework for CLM, deciding on its procedures, assigning structures for reporting, oversight and accountability, and making arrangements with the agencies to which children will be referred. CLM, therefore, promotes integrated action and reduces duplication of services.

CLM has been used to highlight the work of the labour inspectorate and its importance in enforcing laws concerning the protection of children. Through training on child labour, CLM strengthens the capacity of the labour inspectors and provides them with additional eyes and ears on the types of work beyond registered establishments such as streets and informal economy.

CLM systems face several challenges in addressing unlawful child labour. Child labour monitors do not have the same degree of legal authority to enforce child labour law provisions as do labour inspectors. They do not have the legal right to enter workplaces, (which is a unique labour inspector power provided for by the ILO Labour Inspection Convention, 1947 No. 81), nor do they have the power to sanction employers for violating the law.<sup>19</sup> Further, child labour monitors are also in a weaker legal position than

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<sup>18</sup> <http://www.ilo.org/ipec/Action/Childlabourmonitoring/lang--en/index.htm>.

<sup>19</sup> *Guidelines for developing child labour monitoring (CLM) processes* – <http://www.ilo.org/ipecinfo/product/viewProduct.do;?productId=1500>.

labour inspectors in terms of potential remedies afforded to them to stop child labour violations once they have been identified.

Without the legal power to enter workplaces, child labour monitors must rely instead on the voluntary consent of the employer. As indicated above, the child labour monitors are not legally authorized to issue sanctions or take other legal remedial action if they find evidence of child labour. Rather, the primary strategy of CLM is to build trust in communities and hope to gain information about child labourers through the “eyes and ears” of the community. CLM therefore will have to work towards establishing positive relations with community and business leaders, so that they will be invited into private homes or to meetings in neutral locations such as schools with a view to identifying child labourers.

## **9. Focusing labour inspection action on child labour**

Labour inspection is a legal and public function mandated by the State, which ensures that employers, workers and other duty-holders comply with labour legislation. According to ILO Convention No. 81 of 1947, labour inspection is defined in Article 3 which provides that the operations and activities of a system of labour inspection are intended to secure the enforcement of legal provisions relating to conditions of work and the protection of workers – including the employment of children and young persons.

There is generally no common view or agreement on whether and how CLM programmes should engage the labour inspectorate at an operational level, or conversely, whether or how the labour inspectorate should engage with CLM programmes. While there are instances of CLM programmes and labour inspectorates collaborating,<sup>20</sup> one of the earliest experiments was made in Bangladesh where labour inspectors joined the monitoring teams in the CLM system of the garment industry. This arrangement has typically been on ad hoc basis. In most cases, labour inspectorates do not routinely consider the benefit of including CLM programmes in their national labour inspection strategies because of the challenges facing the labour inspection system. In others, they have been unable to overcome legal and political hurdles to implement an effective collaboration. The two systems operate independently of one another in most countries.

Moreover, there is a lack of communication and coordination across insti-

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<sup>20</sup> *Overview of child labour monitoring (CLM) – [http://www.ilo.org/ipecc/Information/resources/WCMS\\_IPEC\\_PUB\\_1501/lang--en/index.htm](http://www.ilo.org/ipecc/Information/resources/WCMS_IPEC_PUB_1501/lang--en/index.htm).*

tutional boundaries. Under ILO Convention No. 81, inspectorates often have limitations on the information on investigations and enforcement strategies that they can share with other parties. Labour inspectorate frequently have many other priorities and many other enforcement functions whereas CLM programme has only one, and both systems are subject to different levels and forms of oversight and accountability. These communication barriers between labour inspectorates and CLM programmes have hampered opportunities for complementary and coordinated action.

In this volume, we look at the trends and challenges facing labour inspection and child labour inspections in selected transition economies. There are very few scholarly efforts to date that have attempted to document these trends and disseminate the lessons learned from the experience. There are few publications able to showcase the role of labour inspection in the fight against child labour. In this book, the reader will have access to examples ranging from developing national strategies to combat child labour, developing a data base to documenting the prevalence of child labour, and facilitating coordination and communication between government ministries and other stakeholders to devise innovative approaches to address unique situations.

The case studies show new developments within the child labour inspection in some countries with the recruitment of new labour inspectors and the professionalization of existing systems. Several countries were able to break out the traditional perception of child labour inspection work as bureaucratic, legalistic and moved towards the use modern technology, new ways of organizing child labour inspections and make progress in terms of developing the analytical framework and methodological tools. We will examine such changes and experiments on labour inspection and child labour with a view to strengthening labour market governance and sustainable developments.



## CHAPTER 2

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### **Child Labour and Labour Inspection in Azerbaijan**

**Summary:** 1. Introduction. – 2. The incidence and nature of child labour in Azerbaijan. – 3. Causes of poverty. – 4. The labour legislation on child labour. – 5. The existing child enforcement mechanisms in Azerbaijan. – 6. List of industries and jobs with arduous and hazardous conditions. – 7. The labour inspection. – 8. Child labour inspector. – 9. Trafficking of child labour. – 10. Coordination of child labour monitoring and inspections. – 11. Policy issues and recommendations for enhancing child labour inspection. – 11.1. Prevention. – 11.2. Mapping child labour hot spots. – 11.3. Planning of Inspections. – 11.4. Outreach to informal economy. – 11.5. Developing a training strategy. – 11.6. Coordination. – 12. Conclusion.

#### **1. Introduction**

Azerbaijan is a fast-growing nation with a relatively young population. The country has a population of 9.5 million with 22.3% below the age of 15 years and a further 18.3% between the ages of 15 and 24 years. The World Bank has placed Azerbaijan favourably with many countries in Central Asia as a good place to do business.<sup>1</sup> Overall, poverty is declining quite quickly and was about 5% in 2015. In 2009, the percentage of the population below the official poverty line had declined to 11% from well over 40% a decade earlier. However, plunging oil prices in 2015 cut export earnings in Azerbaijan, and sharp currency depreciation reduced household consumption and public investment, slowing growth to 1.1%. This has implications for child labour too.

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<sup>1</sup> <https://www.adb.org/countries/azerbaijan/poverty>.

One of the thorns in the flesh of Azerbaijan's remarkable achievement is child labour found in certain pockets and geographical locations and very often in worst forms of child labour (WFCL) which comprises work that is likely to harm the health, safety or morals of children.

## **2. The incidence and nature of child labour in Azerbaijan**

In 2005, the ILO's *Child Labour Survey (SIMPOC)*, estimated that approximately 128,000 children (or roughly 6.1% of the 5 to 17 year olds) in Azerbaijan are in child labour.<sup>2</sup> Of this number, at least 61,000 children over 14 years, though legally permitted to work, were found undertaking work that was likely to harm their health, safety and morals. For labour inspectors, these workers who have a higher risk of engaging in harmful work becomes a priority *in planning inspections*. According to the 2005 survey, the majority of child labourers (59,3%) are unpaid family workers, especially in agricultural undertakings. The survey also indicated that among the child labourers, there were slightly more boys than girls. This could be attributed to higher work participation rates among boys, but could also signify that girls work in more invisible forms of child labour which are often not captured in a household survey.

Girls are more likely than boys to be unpaid family workers or self-employed, whereas boys are more likely to be wage earners at someone else's undertaking. In the agricultural sector, the 2005 survey indicated that children were more likely to work in cotton tea and tobacco industries while girls used to work as domestic helpers. However, over the years farmers have switched to growing vegetables both for export and domestic consumption. The number of children working in vegetable farming is also unknown including the risk these children face due to the high levels of use of agrochemicals.<sup>3</sup>

In 2001, ILO took the lead in placing the issue of trafficking on the national agenda. The ILO's concerns were over trafficking of children in commercial sexual exploitation (CSEC) notably in prostitution and possibly in the production of pornography, children working in bar and night clubs and children begging in the streets. These are often associated with an element of force. Following the ILO's initiative, there has been determined effort to

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<sup>2</sup> State Statistical Committee and ILO: *Working Children in Azerbaijan*, Baku, 2005.

<sup>3</sup> *Child labour in Azerbaijan: An out-line of the status and possible ways forward*, unpublished report by Birgitte Krogh-Poulsen for ILO IPEC, 2013.



eliminate human trafficking and forced labour in Azerbaijan. Over the past decade and public awareness on human trafficking, including child trafficking is growing. The evidence base on trafficking is more extensive compared to the information on the worst forms of child labour which makes it more problematic for inspectors to target child labour. The training of inspectors in November 2014 underlined the need for mapping child labour in certain sectors and geographical locations. Trade participants at the training also expressed the view that over the years, widespread child labour linked to household poverty is declining with the economic development in Azerbaijan.<sup>4</sup>

### 3. Causes of poverty

The 2005 survey noted that poverty in Azerbaijan is largely a rural phenomenon. The majority of poor people work on small-holder family plots in rural areas where a substantial proportion of child labourers work. Furthermore, the rural to urban migration has been further reinforced by the uneven distribution of services and this rural-urban divide has grown with economic development. It has also widened the gender wage gap with women increasingly earning less than men.<sup>5</sup>

**Table 1:** *Statistics on Children’s Work. Key indicators on children’s work in Azerbaijan by US DOL 2015. (Working children, ages 5 to 14 (% and population)*

|             |       |
|-------------|-------|
| Agriculture | 91.0% |
| Industry    | 0.8%  |
| Services    | 7.2%  |
| Others      | 1.0%  |

Source: adapted from 2015 *Findings on the Worst Forms of Child Labour*: <https://www.dol.gov/agencies/ilab/resources/reports/child-labour/Azerbaijan>.

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<sup>4</sup> See: *Report on training of labour inspectors on child labour inspection skills*, Baku 2-6 November 2015, ILO, IPEC (unpublished).

<sup>5</sup> European Commission: *Social Protection and Social Inclusion in Azerbaijan*, Baku 2011, State Programme on Poverty Reduction and sustainable development (SPPRS) 2008-15.

**Table 2: Overview of children’s work by sector and activity**

|              |  |
|--------------|--|
| Agriculture  | Production of cotton, tea, tobacco, commercial/domestic agriculture. |
| Industry     | Not available.   |
| Construction | Not available.   |
| Services     | Street work, begging, washing cars, Commercial sexual exploitation.  |

Source: adapted from *2015 Findings on the Worst Forms of Child Labour*: <https://www.dol.gov/agencies/ilab/resources/reports/child-labour/azerbaijan>.

#### 4. The labour legislation on child labour

Azerbaijan has ratified all major international instruments, including the UNCRC and ILO Convention No. 138 on minimum age and Convention No. 182 on elimination of the worst forms of child labour. The Anti-Trafficking Law 2013 further provides for the formulation, adoption and implementation of national action plans on human trafficking.<sup>6</sup> It also provides establishment of a specialized police unit to facilitate coordination between different government and non-government entities. Following the enactment of the legislation, the government set up a framework for a Plan of Action to prevent and protect both children and adults from trafficking between different government and non-government entities.<sup>7</sup>

The minimum age for employment is 15 years in Azerbaijan. Currently, the children below 15 can engage in light work with parental permission. The minimum age for undertaking hazardous work is 18 years. Children from 15 to 18 years are strictly forbidden from working at night and in places where alcohol is sold or consumed. The minimum age for military service is 19 years.<sup>8</sup>

When the ILO Convention No. 138 was ratified by Azerbaijan, the minimum age of 16 was specified under *Article 2(1)* of the Convention. At present, section 42(3) of the Labour Code allows a person who has reached the age of 15 to be part of an employment contract and section 249(1) specifies

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<sup>6</sup> Birgitte Krogh-Poulsen, *Child labour in Azerbaijan*, cit.

<sup>7</sup> See *Report on training of labour inspectors on child labour inspection skills*, Baku 2-6 November 2015, ILO IPEC, 2015.

<sup>8</sup> *Findings on the Worst Forms of Child Labour*: <https://www.dol.gov/agencies/ilab/resources/reports/child-labour/azerbaijan>.

“persons who are under the age of 15 shall not be employed under any circumstances”. As the minimum age specified in the Labour Code is still below that specified by the Government upon ratification, the government is taking the necessary measures to ensure that no child under the age of 16 years is permitted to work, except for light work as permitted under *Article 7* of the Convention. The fundamental objective of the ILO Convention No. 138 is to progressively raise the minimum age for admission to employment.<sup>9</sup>

Children under sixteen are also prohibited from working more than twenty-four hours per week, while sixteen-to-eighteen-year-olds can work no more than thirty-six hours per week. Section 53.9 of the Code on Administrative Offences provides that persons who employ persons under the age of 15 shall be punished with a fine of between a AZN 1,000–1,500 (approximately US\$1,271–1,907) and legal entities shall be fined between AZN 3,000–5,000 (approximately US\$3,815–6,358). Section 53.10 of the Code of Administrative Offences states that a person who employs children in activities which threaten their life, health and morality, shall be fined between AZN 3,000–5,000, while legal entities shall be fined between AZN10,000 and AZN13,000 (approximately US\$12,717–16,533). The State Inspectorate also ensures the protection of children’s rights, providing a range of guarantees, including 25 or 30 hours of working hours per week and longer vacations.

The Labour Code only applies to workers with written employment contracts. As a result, labour protections do not apply to children working without a written employment agreement. This means that labour inspection coverage of child labour in the informal economy will be not effective. However, in February 2014 the President signed amendments to the Administrative Offences Code and the Criminal Code that impose a fine or imprisonment for employing people without an effective employment agreement, thereby attempting to ensure that all working children will be working with a written contract.

In June 2014, the Government amended the Labour Code to require all employment contracts to be registered in a central database, including the retroactive entry of all current valid contracts. Additionally, the legislation requires all businesses to register with the Government in order to grant contracts to any employee. Companies that do not enter their contracts into the database are subject to the same penalties as those who employ workers

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<sup>9</sup> *Observation by the Committee of Experts for the Application of Conventions and Recommendations (CEACR)*, adopted in 2014, 104th ILC session, 2015.

without a contract. This will assist with the enforcement of child labour laws by facilitating the detection of child workers who are employed without a contract.

One of the obstacles which inspectors face in child labour inspections is that although ILO Convention on labour inspection No. 81 and Convention No. 129 on labour inspection in agriculture provide labour inspectors with the power to inspect establishments without prior permission, the national law states, that labour inspections must be planned and communicated in advance to the Ministry of Economic Affairs for publication. This means that labour inspectors cannot take rapid action in response to information or complaints and neither can they conduct unannounced visits in cases where there is indication that children work illegally in an undertaking.<sup>10</sup>

## **5. The existing child enforcement mechanisms in Azerbaijan**

The Government of Azerbaijan has acknowledged the problem of child labour and has taken ownership of the issue as evidenced in the formulation of various national policies and programs.

The Ministry of Labour and Social Protection is the key ministry in the fight against child labour and in the implementation of ILO Conventions Nos. 138 and 182. The Ministry of Labour and Social Protection, through the Labour Inspectorate and through the Labour Policy Department, is engaged directly in revising and enforcing the labour legislation, including its provision of child labour. At the end of 2015, there were 280 labour inspectors in the country compared to 220 in 2014.<sup>11</sup>

The State Labour Inspectorate Service of the Ministry of Labour and Social Protection is an executive body carrying out state control over implementation of the Labour Code and all other labour related legislative norms and regulations of Azerbaijan. They cover all foreign and locally registered companies in the country. The State labour inspectorate acts in accordance with the Constitution, labour laws, presidential decrees, ratified international conventions, decisions and decrees of the Minister of Labour and Social Protection.

The scope of the labour inspectorate involves ensuring compliance on

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<sup>10</sup> Birgitte Krogh-Poulsen, *Child labour in Azerbaijan: An out-line of the status and possible ways forward*, unpublished report by ILO IPEC, 2013.

<sup>11</sup> *Findings on the Worst Forms of Child Labour: Azerbaijan*: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/azerbaijan>.