

The Optimal Path of Child Labor Rights under Multinational Enterprises

Shingsum Chan^{1,a}, Kexin Liu^{2,b}, Guanqi Wang^{3,c}, Huayi Wang^{4,d}

¹The School of International Law, China University of Political Science and Law, Beijing, China

²College of Chinese language and Literature, Xinjiang University, Urumqi, China

³School of Social Science, University of California, Irvine, Irvine, USA

⁴School of Medical Humanities, Tianjin Medical University, Tianjin, China

^ag19301031@cupl.edu.com, ^bkekeliu@stu.xju.edu.cn, ^cguanqiw@uci.ed, ^dwhy949@tmu.edu.cn

[†]Those authors contributed equally.

ABSTRACT

Today, there are around 160 million child labors worldwide under serious situation. Since some relevant international regulations are soft, the executive systems are not guaranteed by every country, international organizations do not take their responsibilities, and some international remedies are not activated, they cannot be protected by their families' employers, the government, and even the last screen, law. Multinational enterprises (MNE), indispensable participants in everyday commercial activities, sometimes utilize the articles of incorporations to evade legal consequences. Lately, three measures have been posed to ameliorate this phenomenon. The government should intervene in legislation proceedings under child labor so that public awareness can be changed. MNEs should protect their education right and basic life. Not only government supervision but also regulatory areas need to be strengthened. Different MNEs, mainly some small but labor-intensive subsidiaries, take different measures to improve child labor's current situation.

Keywords: *child labor; multinational enterprises; human rights*

1. INTRODUCTION

Multinational enterprises ("MNEs") are substantial economic entities that widely exist in each country and region. They play a significant role in advancing human rights undertaking, especially the rights of children labor. As the saying goes, "Children are the fountain of hope of the world." Countless child laborers worldwide, especially in developing countries, are struggling to survive in challenging environments. Multinational enterprises have many shortcomings in the aspect of protecting child labor. Moreover, the human rights of international labor have been infringed and overlooked by Multinational Enterprises. The due protection of child labor has become an international legal obligation. The current situation of child labor from Multinational Enterprises nowadays and the necessity of protecting child labor are in an urgent imperative for improvement. Contemporary Multinational Enterprises employing child labor is a severe infringement of human rights. Scholars in recent years have paid more attention to judicial shortcomings of the Multinational Enterprises, and they

explore the responsibility of the human rights of Multinational Enterprises. They pointed out that the obligation of protecting extraterritorial human rights contained two meanings: the first was that the state should assume extraterritorial human rights obligations. Secondly, the state had the right to prevent human rights violations by third parties [1]. However, the actions of infringing the human rights are understood by Multinational Enterprises, but they acquire benefits from these actions directly, and maintain the cooperative partnership with host governments [2].

There are also some opinions about researching rebuilding the efficient mechanism from the perspective of home countries. The reason is that for the home countries which always as the developed countries, they have a sound political and legal environment. They cannot provide efficient sanctions about the actions of infringing the human rights from overseas subsidiary companies of local Multinational Enterprises, to make the Multinational Enterprises escape from legal sanctions [3]. No one peels the rights of child labor from the human rights, then further investigates the question about the protection of the human rights of child labor in

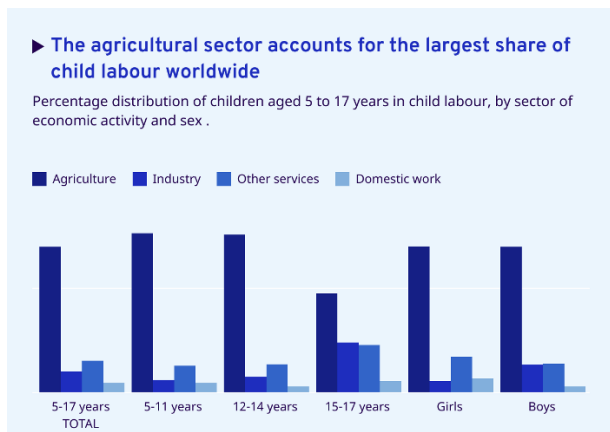
Multinational Enterprises. We will explore how to optimize the path of the rights of child labor in Multinational Enterprises.

2. CURRENT SITUATIONS

Although there are myriad of conventions and recommendations made by the International Labor Organization (ILO) and United Nations International Children’s Emergency Fund (UNICEF) to protect child labor, and many responsible countries take urgent mitigation action in eliminating this trouble, the child labor problem is still rampant all over the world.

According to ILO and UNICEF’s research [4], in the world, 160 million children-63 million girls and 97 million boys– were in child labor, accounting for almost 10% of all children worldwide, nearly half of whom 79 million children were in hazardous work. Plus, the agricultural sector accounted for the largest share of child labor worldwide. In family smallholder and commercial farming, common hazards included exposure to inorganic fertilizers, physically strenuous tasks. In the mining industry, artisanal and small-scale mining (ASM) could force children to work in deep underground shafts, haul heavy loads of rock, and use toxic chemicals to separate minerals or precious metals from ore. It would cause irreversible damage physically and mentally, sexual abuse, even death. In addition, more children had got to be pushed into this plight due to the extreme poverty driven by the pandemic. According to Worst Forms of Child Labor Convention, 1999 (No.182) §3(d), plentiful children working in hazardous environments constitute the worst forms of child labor, which must be considered as a “priority” to circumvent.

TABLE I. THE AGRICULTURAL SECTOR ACCOUNTS FOR THE LARGEST SHARE OF CHILD LABOR WORLDWIDE



Source: ILO and UNICEF; Child Labour: Global estimates 2020, trends and the road forward (New York, 2021).

Researchers also conveyed that the largest share of child labor occurred within families, and child labor was relevantly associated with being out of school. Low-income families would send their children to make

money rather than school. MNEs that employ child labor is seeking more profits. Companies do not need to sign a labor contract with children, and they can hire and pay less than other labor, regardless of legal consequences. The international conventions lack a competent executive system and strict legal responsibilities, which to some extent, undermine their validity level. Moreover, only their member states are responsible for these conventions. Plus, according to the Corporate Law in most developed economies, it is universally known that the parent company and subsidiary have two separate legal personalities, which means, as usual, parent companies with adequate capital do not need to take accountability from subsidiaries hiring child labor, for instance, the case of 19-416 Nestle USA, Inc. v. Doe (06/17/2021). Respondents, six individuals from Mali alleged Nestlé, Cargill, and others for trafficked into Ivory Coast as child slaves to produce cocoa under the Alien Tort Statute (ATS), however, failed. From our view, those giant chocolate MNEs practically constitute a substantial tort of hiring child labor, for which those MNEs “not only did buy cocoa from farms located there, but also provided those farms with technical and financial resources—such as training, fertilizer, tools, and cash—in exchange for the exclusive right to purchase cocoa.” However, justice Thomas concluded that “respondents here improperly seek extraterritorial application of the Alien Tort Statute.” [5]. Because “the corporation’s major operational decisions did not originate in the United States.” In addition, in 2001, Nestlé, Cargill and other six giant companies signed a Harkin-Engel Protocol to promise to eliminate “the worst forms of child labor” in the cocoa industry in 2005. However, they suspended the due to 2008, 2010, 2020, even now they have not finished yet. They delayed, again and again, subsequently, the promise of self-discipline in the chocolate industry had been progressively tending to be a mere scrap of paper and a subtle method to get rid of the supervision by federal regulators and other external institutions. Lastly, with the constant impact of pandemics, the child labor problem cannot be eliminated by 2025.

3. FACTORS BEHIND VIOLATIONS OF CHILD LABOR RIGHTS IN MNEs

3.1 The necessity to protect the human rights of child labor.

In economic globalization, due to the difference between the host country and home country, the economy develops unbalanced in different countries. If the host country knows something has risk which infringes their citizens’ legitimate interest, they can use the weapon of law or appropriate means, legal measure to protect the rights and interests of their citizens.

Countries can use a series of legislation at home or administrative laws and regulations to sanction multinational enterprises. These decisions humanize the national legal system.

If the Multinational Enterprises become enormous, their power will be stronger than the local governments. These problems stem from the fact that MNEs are uniquely international, uniquely mobile, and uniquely powerful entities [6]. The infringement acts from Multinational Enterprises are hardly identified by governments. These problems stem from the fact that MNEs are uniquely international, uniquely mobile, and uniquely powerful entities [6]. People can directly make use of the regulations of international human rights laws to identify the actions from Multinational Enterprises, not only through countries which based on the obligations and responsibilities from human rights laws to control the Multinational Enterprises. The international agreements about international human rights establish a system of supervision, punishment, and accountability for the Multinational Enterprises that want to utilize the difference between countries to profit. The proclamation of the agreements has a better influence on Multinational Enterprises' actions on their territory and guarantees international human rights more firmly. The host country can protect its human rights from being infringed by Multinational Enterprises and protect human rights outside its territory.

The legislation of the protection of the human rights and systems have been set up in the world, improving the absence and overlook of the protection of human rights in the international trades by Multinational Enterprises. These laws can fill the loophole, which is the difference between different countries of protection of human rights, deepening people's comprehension and knowledge about the protection of human rights. The international laws of human rights are more beneficial to people worldwide by paying attention to international works and child labor, improving the people's consciousness of labor's human rights, and protecting the legal interest of labor.

According to the clauses of the host country, international convention in the world, or company rules and regulations, we can conclude that forbidding employing child labor. The international community has established a broad global consensus against child labor through various widely ratified conventions and some different national laws. An international convention is a multilateral treaty about a specific field approved by the international conference. Some international conventions about child labor include Un Conventional on The Rights of the Child (CRC)、ILO Minimum Age Convention (NO.138).

3.2 Reasons behind violations of human rights in child labor

Because of our low punishment of the act that violates the law, which we have concluded at legislation, many multinational enterprises are not afraid of the law. These punishments have not done some harm down to lose their basis. Not only the law's punishment is low, but also the law's punishments about human rights have judicial obstacles.

Different countries have something different between legislation and judicial procedure, and they all have their merit and defect belong to themselves. For example, enterprises have veils. The veils of enterprises can separate the legal liability of corporate shareholders and the legal liability of enterprises; also, from the perspective of the relationship between multinational enterprises' parent corporations and subsidiary corporations, the subsidiary corporations employing child labor which action violate the law. However, their parent-subsidiary corporations frequently do not accept responsibility. Even though they have an affiliation with economics, the subsidiaries have corporations with independent status in law.

Moreover, different countries have different stipulate about the ages of child labor. International law and international conventions are documents of a legal nature which some countries as entities formulate. Whereas multinational enterprises countries in a legal sense. So international laws and are not international conventions do not do any direct work and do not directly affect multinational enterprises. Whatever completely of laws and international conventions, there always have been acts of God in the practice process. These things made articles of laws implementation difficult. In many developing countries, especially the countries with most of the people struggle on the low-income level. Ordinary life is difficult for them, so it is impossible to discuss the right of child labor.

In the viewpoint of the international regime, there are some international organizations about human rights, and international organizations have not got a series of incentive mechanisms to praise and encourage the actions of not to hire child labor.

According to the conventional idea of a corporation, the instinct action of a company is the pursuit of profit. As everyone knows, child labor is in the gray zone of the law with bare league protection. The advantages of child labor are young, capacity weakly, and not fully educated. Insurance is not required for child labor, and it can save lots of money for capitalists. They can more easily control than adults to be paid less and work more time than a regular employee. To seek a handsome profit, some multinational enterprises always start a new subsidiary corporation in developing countries where the rule of law is weak, so they can take advantage of

suppliers or outsource people in business to employ child labor to reduce the cost of enormous production profit. The home countries and host countries have different standers of labor, so multinational enterprises can depend on the loopholes to make the regulations of corporations' escape human rights responsibilities. Some Multinational Enterprises have not got the regulations and policies about employing child labor. This measure will make the HR department in enterprises impunity by Multinational Enterprises, rather than envisage the risk of legal punishment.

Similarly, the consciousness of the protection of child labor in public is always not strength, and the public does not have a deep understanding of employing child labor seriously and badly; thus, people cannot report the Multinational Enterprises which employ child labor and may not cooperate with law enforcement agencies.

Even though governments have the actions of supervising illegal actions about employing child labor, considering the enormous fields of supervision, the shortage of law enforcement officers, and uncertain situations, child labor employment's illegal actions always appear in the corner.

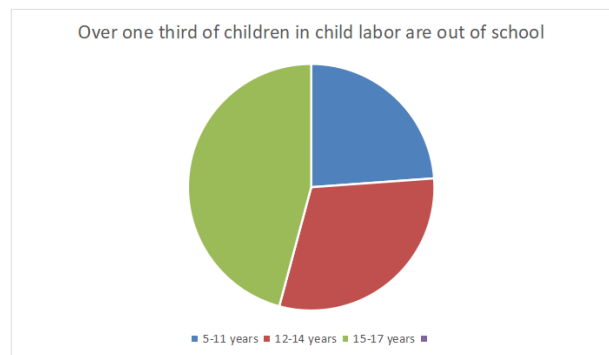
4. MEASURES AND INCENTIVES

4.1 Change of concept

Critics further argue that a social clause is not necessary to reform the status quo, because child labor will end naturally as poverty decreases and economic growth increases. Testimonies of activists in the field rebuts this claim. Kailash Satyarthi, chairperson of the South Asian Coalition on Child Servitude-which represents over 150 NGOs, trade unions, and other organizations in South Asia-testified: "It is always said that poverty and unemployment are not the reasons for child labor; the truth is the other way around. --PharisJ. Harvey, Executive Director of the International Labor Rights Education and Research Fund also verified this statement, by testifying that child labor caused poverty, not the reverse. Harvey also stated that the poverty argument was just an excuse for inaction [7]. Some countries that highly value private rights and individual freedom must give too much intervention to families at all levels of justice and society after realizing the importance of juvenile protection. The state should establish a concept of appropriate intervention through legislation so that everyone from government officials, judicial personnel to ordinary people can establish such an understanding: a series of problems such as minors' education, rights protection, crime prevention, and punishment are no longer a "family internal affairs," The handling of such affairs will directly represent the civilization of the rule of law in a country and society

[8]. Children are the country's future, although labor is an essential asset or even a company. However, the use of child labor is undoubtedly drying up. He is to obtain short-term economic benefits at the expense of improving the overall quality of the labor force and the further optimization of labor skills. Therefore, as an essential participant in the market economy, transnational corporations must strengthen the overall awareness of protecting child labor for child laborers with special skills hired under laws and regulations. Effective mechanisms should be formed within enterprises to protect child labor, ensure physical and mental health, and provide strong guarantees for their professional skills upgrading and education rights. It is necessary to form a sense of caring for these groups internally and provide them with a relaxed and pleasant working environment. Enterprises should resolutely crackdown on those child laborers who do not comply with laws and regulations. Internal rules and regulations and strict rewards and punishments are formed to prevent such situations from happening.

TABLE II. OVER ONE THIRD OF CHILDREN IN CHILD LABOR ARE OUT OF SCHOOL



Source: ILO and UNICEF: Child Labour: Global estimates 2020, trends and the road forward (New York, 2021).

4.2 Company's systems and measures

At present, for child labor, the Labor Law of the People's Republic of China stipulates that units are prohibited from employing minors under the age of sixteen. At the international level, the International Labor Organization has also put relevant measures to protect child labor. The United States also clearly defined the age of child labor, the type of labor performed, and working hours in the Fair Labor Act of 1938. The legal departments of major transnational corporations have also formulated relevant provisions to protect child labor under domestic and international labor laws.

For example, IKEA Group in Sweden explicitly requires suppliers and subcontractors to provide the location of all its production bases. After the development of child labor, the employment relationship should be terminated on time, and appropriate compensation should be paid. That is, if H&M, a large international clothing manufacturer, develops suppliers

to use child labor, it will terminate the cooperation agreement with suppliers and impose huge, liquidated damages.

The United States could try to impose trade restrictions and claims that they do not violate the GATT treaty. For example, the protection of a universal right may take precedence over the GATT provisions. This requires that the protection of children from the dangers of child labor be classified as a universal right. Because these rights derive from the "rules concerning the basic rights of the human person," the U.N. Convention on the Rights of the Child almost certainly classifies the protection of children as a universal obligation. A country signing on to the Convention accepts such an obligation. For those countries, then, this universal obligation may override the GATT provisions. The United States may also sidestep retaliation under GATT by classifying the imposed sanctions as a general exception under GATT Article XX. In the case of child labor, the statistics would show that the production of goods via child labor is harmful to human health [9].

However, the above methods only ensure that the company is exempt from legal disputes to a certain extent. It does not fundamentally protect the interest in child labor. Transnational corporations should demand the termination of employment relations when dealing with child labor and guarantee the right to education and primary livelihood of child labor after unemployment, such as requiring child labor units to pay them education and living allowances monthly until they reach adulthood. Moreover, suppliers cannot be punished blindly. Training courses should also be arranged for suppliers to upgrade their professional skills, and awareness-building and strengthening of workers' protection of child labor should also be strengthened. At the same time, internal complaints and reporting channels should be established within the company, such as setting up a reporting phone number and informing every employee of the unit and supplier. Through the above improvements, the protection of child labor will make more significant progress [10].

Severe circumstances were sentenced to imprisonment of not more than three years or criminal detention. Article 94 of the labor law of the people's Republic of China stipulates that if an employing unit illegally recruits minors under the age of 16, the labor administrative department shall order it to make corrections and impose a fine; If the circumstances are severe, the administrative department for Industry and Commerce shall revoke its business license. If the circumstances are severe, per the first paragraph of article 244 of the criminal law of the people's Republic of China, in violation of labor-management regulations, hire minors under the age of 16 to engage in Ultra-intensity physical labor or engage in high-altitude and underground operations, or work in explosive, flammable,

radioactive, toxic, and other dangerous environments. If the circumstances are severe, the person responsible shall be sentenced to fixed-term imprisonment of no more than three years or criminal detention and fined accordingly. If the circumstances are dire, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined. If any enterprise, institution, or individual industrial and commercial household recruits' minors aged 16 to engage in labor, it is of the nature of child labor and belongs to an illegal act. This is the critical protection measure of national law for young minors.

4.3 Government delimitation supervision

Empirical evidence and the literature on child labor suggest that a comprehensive solution to the problem of child labor involves a multi-faceted approach, including the following six elements. Firstly, measures must combat the social acceptance of child labor by increasing awareness of the problem. Secondly, educational facilities and programs need to be created to absorb children who are released from work. Thirdly, national governments in these countries must provide greater social security to the poor. Fourthly, multilateral instruments, such as ILO convention guidelines, along with international agencies and NGOs, should fight against child labor. Fifthly, countries in which child labor violations are occurring must enforce their child labor laws vigorously. This strategy was critical to Hong Kong's success in eliminating child labor. Sixth, the United States and other nations should attempt to amend the WTO to include IFLS, such as child labor provisions [7].

The illegal use of child labor will affect children's studies and pose a threat to their health and personal safety. The child labor incident reflects many problems, such as the lack of guardianship and lax law. Taking China as an example, although there are legislations implemented to protect the rights and interests of children, the relevant departments intervene only after recognizing the child labor issue and executing belated actions in actual circumstances. There are no standardized and reasonable ex-ante and in-control measures. The regulatory area is mainly concentrated in urban areas where industrial and mining employment is relatively frequent, and the supervision of townships and rural areas is insufficient. The regulatory authority should first further strengthen the supervision during and in advance. Every industrial and mining enterprise that may use child labor should send people to give lectures. In the process of operation, the frequency of surprise inspection will also be increased. In the regulatory area, township labor protection agencies need to expand the inspection scope because some black brick kilns are produced far away in remote areas. It reflects that the employment of child labor post is hard physical work,

like some jobs requiring high-end technical operation will not hire child labor [11]. These areas are blind spots for a law enforcement inspection. With the above measures taken, it is bound to open up a new situation for the supervision of child labor protection.

5. CONCLUSION

With the further deepening of economic and social globalization, more and more multinational companies have emerged. China is currently in a period of social transformation. All kinds of contradictions occur and collide fiercely. In recent years, the frequent child labor and human rights protection incidents of transnational corporations affect the physical and mental health of children and have a wide range of harmful effects. Children are the hope of the nation. The future of the motherland and their healthy and happy growth are directly related to the future development of China and the fate of the motherland. Everyday protection of the rights and interests of child labor is the fundamental guarantee for children's healthy growth and the prerequisite for happy growth. The protection of child labor rights in transnational corporations is one of the responsibilities of government management and one of the critical considerations of the government's governance level. Whether adequate child labor human rights protection can be carried out is of great importance to establish the government's image. Therefore, they are of great significance to the smooth development of child labor human rights protection for strengthening the research on the management mechanism of child labor human rights protection incidents in transnational corporations, building a management mechanism in line with the human rights protection incidents of child labor in transnational corporations, and enhancing the practicality of government management mechanisms. This paper has carried out an all-round study on the protection of the human rights of transnational corporations and child laborers and found that transnational corporations have certain shortcomings in the protection of child labor, which are reflected in which interest-driven child labor is difficult to guarantee the human rights. There are shortcomings in soft law itself: industry self-discipline makes it circumvent external supervision, and the government and external supervision are not in place. These shortcomings will cause certain problems in transnational corporations at the level of child labor protection, resulting in illegal child labor in working in transnational corporations. At the same time, the rights and interests of these child workers will be harmed, causing a series of social problems, which will have a negative impact. Regarding the problems existing in the protection of the human rights of child labor in current multinational companies, the cause of this phenomenon will be studied here. We analyze the literature and the information collected

rigorously and carefully, which are mainly in the following aspects including the necessity at the legal level, the company itself, the personal situation of child labor, and the government. Based on this, measures taken at the institutional level are proposed. Child labor compares with the systems of relevant transnational corporations to find out what measures transnational corporations have implemented under this system; it is essential to compare the systems and measures between transnational corporations to analyze which systems and measures are effective, which need further improvement how to improve. By discovering the reasons and providing practical suggestions on the right situation, these effective suggestions and measures will fill the theoretical gap in China's research on the human rights protection level of child labor in transnational corporations. Besides, they play a specific theoretical reference for transnational corporations to develop better and protect human rights [12].

Through the study of protecting and managing the human rights of child labor in transnational corporations, the timeliness of the human rights protection and management of child labor in transnational corporations will be improved, the harm to children's rights and interests caused by child labor safety emergencies in transnational corporations is reduced, and the negative impact of the incident is reduced.

REFERENCES

- [1] Yao Huang, Lvli Yuan (2021), *On the Obligation of Home States to Prevent Extraterritorial Human Rights Violations by Transnational Corporations*, Academic Research, vol.05, pp.62-70.
- [2] Deqiang Chi (2012), *Theory of the Human Rights Responsibility of Transnational Corporations*, Law Review, vol.01, pp.100-105.
- [3] Huiru Wang (2021), *The Dilemma of Judicial Remedies for Human Rights Violation by Transnational Corporations Interaction Between International Law and Domestic Law as a Solution*, Global Law Review, vol.04, pp.178-192.
- [4] International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF. New York. 2021. License: CC BY 4.0. pp.12-46.
- [5] NESTLE USA, INC. v. DOE ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 19-416. Argued December 1, 2020—Decided June 17, 2021.

- [6] Joseph (2015), *S. Taming the Leviathans: Multinational Enterprises and Human Rights*. *Neth Int Law Rev*, vol.46, pp. 171–203
- [7] Garg A. (1998), *A Child Labor Social Clause: Analysis and Proposal for Action*. *NYUJ Int'l L. & Pol.*, vol.31, pp. 473-533
- [8] Marlenga B, et al. (2007), *Changing the Child Labor Laws for Agriculture: Impact on Injury*. *American journal of public health*, vol.02, pp. 276-282
- [9] Glut, T. A. (1995). *Changing the Approach to Ending Child Labor: An International Solution to an international problem*. *Vanderbilt Journal of Transnational Law*, vol.05,1203-1244.
- [10] Edmonds E V, Pavcnik N. (2005), *Child Labor in the Global Economy*. *Journal of Economic Perspectives*, vol.01, pp. 199-220
- [11] Reinerth D, Busse C, Wagner S M. (2019), *Using country sustainability risk to inform sustainable supply chain management: a design science study*[J]. *Journal of Business Logistics*, vol.03, pp. 241-264.
- [12] Basu K, Tzannatos Z. (2003), *The Global Child Labor Problem: What Do We Know and What Can We Do*. *The world bank economic review*, vol.02, pp. 147-173.