



An Analysis of Child Labor Rights in the African Region

Haowen Miao ^{1,*}

¹ School of Law, Xiamen University, Xiamen, 361000, China.

*Corresponding author. Email: 12920202201233@stu.xmu.edu.cn

ABSTRACT

The issue of child labor is one of the issues that legal developments have always made it difficult to solve completely. As the world's economies develop and laws develop, many regions are well able to address child labor through legal constraints. In some regions, such as Africa, the use of child labor is still prevalent under the evolving legal system. This is because the legal system in the African region does not match the situation of its child labor use. The mainstream, universal legal system is not effective in addressing the needs of child labor in the African region. This paper therefore addresses the incongruity between the legal system of child labor and the plight of child labor in the African region. Through a comparative analysis of the region, a philosophical analysis of law and an economic analysis of law, this paper attempts to propose a more reasonable legal solution. This paper argues that a moderate relaxation of the minimum age limit for child labor and legal, social and international coordination are better measures. These tools can help African child laborers to escape the legal grey areas and obtain the remuneration and security of labor they need to survive.

Keywords: *child labor, Africa, Legal system.*

1. INTRODUCTION

Child labor is a product of the market economy. According to ILO statistics, almost half of all child labor takes place in Africa (72 million). [1] Numerous countries and regions have targeted children for protection. Children are protected in labor laws by restricting and excluding their labor qualifications. Child labor has a special status in law. In terms of human rights, it is the subject of widespread resistance to the world's legal values. The problem of child labor is particularly acute in the African region. It is characterized by large numbers, young age, heavy workloads and poor conditions. The relevant laws in the African region are also difficult to change positively. This shows that there is still room for adjustment in their legal systems. There is currently a tendency to recognize the labor status of child labor in some regions where child labor is widespread. However, the legal status of child labor is controversial internationally. Some scholars believe that improvements in the use of child labor should be channeled through the World Trade Organization. Others believe that the World Labor Organization should be directly involved. [2] This paper argues that child labor in Africa needs legislative

protection, not legislative encouragement. The paper first clarifies the recognition of child labor worldwide by clarifying the legal definition of child labor. It then looks at the particular causes of child labor in Africa. Finally, by comparing the historical and current situation, developed and developing countries, the paper attempts to bring together to suggest more feasible and effective legal ways to better change the problem of child labor in the African region.

2. THE SITUATION OF CHILD LABOR

2.1. Legal Definition of Child Labor

Article 1 of the UN Convention on the Rights of the Child states that "for the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, the child attains majority before the age of 18 years". Thus, the Convention on the Rights of the Child sets the maximum age of the child at 18 years, which is acceptable to most countries. While at the same time providing for flexibility in order to accommodate the different circumstances of certain countries. That is to say, the child is not bound by the upper age limit of 18

years if he or she attains majority before the age of 18 years. It is important to note that majority is not necessarily linked to a specific age. Adulthood can be attained either by meeting the age criterion or by criteria other than age. [3]

The information in The ILO No 138 Convention No. "On the minimum age of employment" standard indicates that the minimum age criteria for child labor include both universal and specific. Meanwhile, it shows that there are universal and exceptional minimum age requirements for child labor recognized internationally, because the legal definitions of developed countries are the ones that are generally accepted and accepted internationally. Most of the exceptions are specific to developing countries particularly in Africa. The minimum age for child labor varies accordingly depending on the specific content of the labor. The economic activities of children are divided into acceptable child labor and child labor that needs to be eliminated depending on whether it is potentially harmful to the child. [4] Acceptable child labor includes part-time work such as delivering newspapers as a babysitter or doing simple farm work on the family farm. Unacceptable child labor, on the other hand, refers to economic labor practices that are harmful to children's physical and mental health and are performed in stressful or hazardous working conditions. More specifically it refers to the exploitation of children as cheap labor by endangering their safety, health or welfare, taking advantage of their low defenses, which is detrimental to their development and hinders their access to education or training. [5]

At the level of international law, the establishment of a minimum age of employment for child labor is also a minimum protection for children in the form of legislation. It is an important legal way to be able to protect them from exploitation and abuse. Since 1919, the International Labour Conference has established 11 conventions on the minimum age for employment. These conventions set the minimum age for admission to employment generally at 14 years, which was raised to 15 years after the 1930s, and set a higher age for employment for work harmful to the health, safety or moral development of children.

2.2. The Recent International Legal Framework for the Protection of Child Labor Rights

Although *the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of the Child and the United Nations Convention on the Rights of the Child* do not directly provide for the protection of child labor rights, their provisions on the protection of children's rights.

The protection of children's rights to education, development, equality and health, for example, is important for the protection of child labor rights. The protection of children's rights including the right to education, the right to development, the right to equality and the right to health, is equally important for the protection of child labor rights. [6] The ILO realised at the end of the 20th century that the emergence of child labor could be curbed by explicit legal prohibition in developed countries. In developing countries, however, poverty is an ineradicable factor. Long-term solutions in Africa depend on social progress brought about by sustained economic growth, particularly in the areas of poverty eradication and universal education. [7] Thus, in 1999, ILO introduced Convention 182, which was the *Worst Forms of Child Labor Convention*. This Convention makes the prohibition and elimination of the worst forms of child labor a priority objective for national and international action. The universality of labour rights is twofold. It includes the wide geographical scope of application and the comprehensive nature of the subject of the right. [2]

Labor standards vary to varying degrees depending on the situation in each country and region. The concept of "core labor standards" was first introduced at the Social Development Summit in Copenhagen in 1995 in order to achieve a relatively uniform set of labor standards. In the report *Trade, Employment and Labor Standards: A Study of Workers' Core Rights and International Trade* by the OECD, it was argued that only a small number of labor standards could be called "core labor standards". [7] These standards are carefully selected and together they form a whole of human rights protection.[8] One of the core standards is the elimination of exploitative child labor.

2.3. Shortcomings of Child Labor Legislation in the African Region

In the African region, many countries have legal safeguards and social protection in place due to the influence of colonial and developed countries. In Rwanda, for example, the country has signed a series of international conventions to protect child labor including ILO C. 182, Worst Forms of Child Labor, UN CRC, Palermo Protocol on Trafficking in persons. In terms of domestic legislation, Rwanda's labor law and penal code all provide for the under-age labor force. The legal minimum age for children to work is sixteen, and the minimum age for hazardous work is 18. [9]

In fact, the practical effects of these acts have been less than satisfactory. The Rwandan legal system and framework is merely a response to the international situation and a continuation of the legal systems of developed countries. The practical effect of these laws is likely to be counterproductive, leaving a large number of child workers in a grey area of the law without the

means to obtain protection. Many parts of Africa like Rwanda, have child labor legislation that is not compatible with their own. Such legal developments are hardly likely to help child laborers and countries in practice. This is because these acts protecting child labor are too old or are merely a copy of world labor laws. It is difficult to adapt them to the needs of actual production on the ground.

3. ANALYSIS OF THE CAUSES OF CHILD LABOR

This article prefers to refer to the "child labor problem" in Africa as "child labor phenomenon". Because, from an extra-legal perspective, child labor in Africa is a product of the realities of the situation. To some extent, it is not even the transnational corporations that actively seek child labor, but rather the children who actively seek ways to earn money and thus become child laborers. The use of child labor in Africa clearly undermines the right to education, the right to development, the right to health and even the right to life. However, it is unrealistic to protect the human rights of child laborers in the same way as in developed countries. For developing countries, the problem is not so simple. For even if they legislate a strict ban on child labor and impose heavy penalties for its use, they still cannot solve the problem of child labor. However, risk pushing it into an even poorer and more miserable existence. [10] Given the particular economic and legal situation in Africa, it is important to analyse the causes from the perspective of the workers.

3.1. Legal-philosophical Analysis

The starting point for the protection of child labor under the law is the value-oriented approach of good law and good law, i.e. the protection of the weak. As a reserve for the development of society, it is more important for children to be educated to stimulate their potential and make a greater impact when they are put into society in the future. The law therefore takes a more macro view than a utilitarian one, focusing only on the productive benefits of the moment. Besides, the reason why child labor is repeated in Africa is indeed the result of poor legal regulation. Yet, it is hollow to talk about good law and good practice, leaving aside the realities of their societies. The care that we recognise should be given to children is based on an average standard of living, which gives rise to extended rights such as the right to education and the right to development. The reality in Africa is that it is below average, where children's survival, not to mention education and development, is in many cases the most important consideration. Many children in Africa are expected to do light work to help their families, and it is this reality that has led many children to accept the practice of child labor. They may take this labor for granted, which can

exacerbate the abuses of child laborers. On the one hand, the employer will increase the number of hours worked by child laborers. On the other hand, it will undercut the wages of child laborers, seriously increasing the severity of their illegality.

Objectively, the use of child labor also contributes to the development of the local economy. Countries near the equator, such as Rwanda, Côte d'Ivoire and Ghana, for example, have the natural advantage of being able to grow cocoa to produce chocolate. But it has to be admitted that chocolate factories give child labourers and families of child labourers a little more economic income.

The law should not only consider guilt and innocence, right and wrong. Rather, it should be better adapted to the needs of the people, so that the law can be as effective as it should be. Absolute protection of child labor or industry is irrational, as the two are not totally incompatible, but even interdependent. The protection of child labor can lead to the decline of industry and worsen the economic situation of child laborers and their families, while the protection of industry can seriously undermine the rights of child laborers to health, education and other rights and deprive a region of its development potential. Understanding the causes of child labor therefore requires an understanding of the relationship between child labor and local industry. It is also important to see that the legitimate needs of child labor can co-exist with the development needs of local industry. This requires government subsidies and concessions of benefits from industry. Giving child laborers more economic benefits while employing them rationally will not only encourage child labor, but will also promote the long-term development of industry.

3.2. Economics of Law Analysis

There should be no distinction between good and bad law. In other words, the law of a developed country is not necessarily applicable to a developing country. Kaushik Basu, a professor of economics at Cornell University in the USA, examined in 1999 a survey published by the International Labour Organisation in 1996 on child labour in four countries between 1992 and 1993. He noted that the degree of economic development of a country and its use of child labour were inversely correlated. The African country with the lowest GDP per capita (\$672 per capita) had 41.4 per cent of its children economically active, while North America, the richest region, had no child labor. [11] This means that there is a contrast between the state of economic development and the state of labor, which cannot be generalised.

The African region has a poor economic base and therefore its superstructure is less developed and its human rights are less well developed. Due to historical

inertia, the issue of child labor is treated as a normal phenomenon and is not brought to the attention of the public. [12] It is inappropriate to demand that the African region take child labor protection directly into account in this context. Such a demand directly cuts across the economic base and places too high a demand on the superstructure. This is because Africa's colonial history has made its laws more advanced due to the influence of developing countries, but the actual economic base is not compatible with such laws.

In Rwanda, for example, the minimum working age is set by law at 16. But many quarries use child laborers under the age of 14. Meanwhile, it means that many child laborers cannot obtain legal status as workers and gives employers an excuse to reduce pay and use child laborers at a much lower rate than legal workers. In this practical situation, what was intended to be a benevolent protection for child laborers becomes a negative factor in limiting their access to remuneration. It is easy to see that, in the face of large numbers of child laborers, Rwanda's laws cannot be adapted to its particular economic situation.

In order for a region or country like Rwanda to better address the problem of child labor, it should not just be banned. However, it should be given the proper permission and relaxation so that child laborers at a younger age can become legal workers and become protected by law and reasonably integrated into the economy. In a situation of repeated prohibition, legislators should no longer impose a ban. Rather, they should reflect on the rationale and use the advantages of child labor to suit the needs of existing industries. It is important that companies that use child labor have laws that respect not only the right to health and life, but also the right to remuneration and the right to rest. As a result, child labourers can receive remuneration commensurate with their work and have the courage to claim justice for themselves in the face of injustice. Sound legislation allows the State, the company and the child worker to interact positively with each other to promote economic development.

4.SETTING REGULATORY MECHANISMS TO MAKE CHILD LABOR MORE COMPATIBLE

4.1. Domestic Intervention

The domestic sphere is the most direct area of regulation and has the most effective means of dealing with child labor. The African region needs to protect the right to survival, labor and remuneration of child laborers, considering the actual needs. The protection of child labor should be incorporated into the protection of the Labor Code. On the one hand, the cost of breaking the law should be increased for users of child labor. On the other hand, child laborers should be given the same

compensation treatment as legal workers in terms of compensation benefits. [13] Concerted interventions by education authorities, labor authorities and legislatures can all lead to a brighter future and realistic labor gains for child laborers. This article suggests that this can be done in the following ways. Firstly, legislators should revise the minimum age for legal child labor, so that younger child laborers can become legal workers. Depending on the stage at which the incidental obligations arise, they can also be divided into pre-contractual obligations, obligations incidental to the performance of the contract, post-contractual obligations, etc. [14] Secondly, law enforcement should strictly limit the number of hours worked by child laborers and increase the cost of breaking the law for overtime employment. Thirdly, the wages of child laborers should be adjusted to the content and intensity of child labor, and the cost of child labor should be increased, so as to allow the market to regulate the number of child laborers. Then, the entry of child laborers should be strictly restricted in some areas with special working conditions to protect the physical health of child laborers. Finally, the government should compel companies to take on the obligation to invest in education, linking the right to use child labor with the obligation to invest in education, while promoting child labor and industrial development. The legal system is the pallet of child labor protection, and only pockets that are adapted to fit can be used effectively from legislation. Law enforcers are the correctors to apply and correct legislative deficiencies in practice and to feed back into legislation. Social linkage is the protective shield, creating an upper limit for child labor protection and bringing into play the power of the community to monitor and support it.

In addition to the legislative activities of the local government legislature and the enforcement measures of the executive, there can be regulation by NGOs to make child labor more reasonable. Voluntary human rights organisations and foundations can improve the social climate and give a more comprehensive understanding of the conditions in which child labor is practised, so that more precise help can be given. The supervisory role played by voluntary social organisations can complement government monitoring, and some children's funds can provide sponsorship and workplace improvements for working children.

4.2. International Intervention

The African region is more dependent on international economic development. Therefore, international forces have an important influence on child labor in Africa. International conventions including the Minimum Age for Admission to Employment (Industry) Convention (No. 5), the Minimum Age for Admission to Employment Convention (No. 138) and the Worst Forms of Child Labor Convention (No. 182) are mandatory as a

means of safeguarding the working environment and the right to protection of child labor. International instruments act as a bottom-up protection if domestic law is not able to take effective measures.

Here, the multi-stakeholder model of Bangladesh can be drawn upon. US NGOs, the International Labor Organization, UNICEF, relevant Bangladeshi employers' organizations and others have all intervened to eliminate child labor in the garment industry in Bangladesh and have succeeded in bringing down the number of children laborers in the industry and getting them into school. The implementation of *the International Program on the Elimination of Child Labor (IPEC)* by the international and national community cannot be accomplished by unilateral action, and the trend is towards a multifaceted approach to labor issues. [15] However, the international rubric may be too rigid to be truly adapted to the particularities of Africa, and can only serve to promote domestic reform, rather than it cannot eradicate child labor.

In terms of rationality, the WCL is better suited to the African region than the child protection organizations. From the perspective of the worker, the World Labor Organization gives child laborers a more equal labor status with other workers, affirming their rights to work, to be paid and to life and health. In practice, child laborers are not looking for work away from the factory, but for the qualification to enter the factory so that they can have a better life. In contrast to traditional child protection, labor protection can be better aligned with the economic systems and institutions of the African region and encompass a wider range of local economic content. Not only does it help child laborers and industries in the African region to find a way out, it also affirms their production at the legal level and protects the international acceptance of the raw products of child labor in the region.

5. CONCLUSION

This paper examines the incongruity of child labor legislation and child labor in the African region. It focuses on the historical development of child labor legislation, the causes of child labor in the African region, and the responses to the problem. The main measures proposed to address this problem include legislative recognition of the status of child laborers, increased responsibility of employers and extensive international and social monitoring. The main research significance of this paper is to revisit the legal dilemma of child labor in Africa and to focus on the practical needs of child labor in Africa from the perspective of social reality. In contrast to the traditional definition of the illegality of child labor use, this paper explores the rationality and science of the win-win situation between the local economy and the survival of child labor in the context of the legalization of child labor in Africa. It

looks at the harmonious development of the economic base and the superstructure of child labor. It is hoped that it will serve as an inspiration to the governments, societies and employers in the African region. It proposes feasible legal solutions for all areas where child labor is used including the African region, to guarantee the simultaneous development of economy and human rights.

REFERENCES

- [1] Z. D. Li, Global Child Labor Rises to 160 Million, in: *Procuratorial Style*, vol. 4, 2022, pp.58-59.
- [2] S.C. Yang, *Research on the Protection of Labor Rights in International Trade*, Hunan University, 2008.
- [3] Y.M. Wang, *Study on the International Law of Children's Rights Protection*, East China University of Political Science and Law, 2009.
- [4] A.A. Korikova, International Child Labor Regulation101: What Corporations Need to Know About Treaties Pertaining to Working Youth, in: *Brooklyn Journal of International Law*, vol. 34, 2008, pp.207-238.
- [5] L.J. Dai, *Study on International Law of Child Labour*, Hunan Normal University, 2010.
- [6] X. Y. Chen, *The International Protection of Child Labor Rights*. Xiamen University, 2007.
- [7] Q. Kang, *Research on the Legal Governance of Child Labor*, Southwest University, 2010.
- [8] C. Z. Zhou, *Globalization and China's Legal System*, Nanjing University Press, 2003.
- [9] *Labour Code of the Republic of Rwanda*, 2001.
- [10] Y.L. Luan, *Research on the legal aspects of international child labour standards*, Fudan University, 2009.
- [11] Y.X. She, Controversies and Solutions to Child Labor in the International Community, in: *Journal of the China Institute of Labor Relations*, vol. 24, 2010, 83-90.
- [12] C. H. Li, *A Study on the Governance of Child Labor in Mongolia*, Dalian Maritime University, 2017.
- [13] D. Cao, *Research on the Legal Protection of Child Labor in China*, Jilin University, 2013.
- [14] F. Y. Wang, Reflections on Improving the Child Labor Protection System, in: *Capital Digest (Management Edition)*, vol. 1, 2009, 172.
- [15] G. Zhou, *International Labor Standards*

Enforcement: A Theory of Multidimensional Cooperation, Wuhan University, 2014.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

