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**Analysis of the Child Labour Issue
in Small-Scale Mining Operations in the Philippines**

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FOREWORD

Before conducting this thesis, I considered myself against child labour. Thus, I looked at child labourers with pity while silently harbouring contempt at their parents for making their children work in spite of their age. Those children had to be excluded, nay, rescued from work, I would say, and their parents penalized with the full force of the law. As I started work on this thesis and got deeper into the world of Filipino child miners, however, I realised that I may have been looking at child labour from the wrong direction. In this thesis, I take a second look at the abolitionist child labour regime as inspired by the child miners in the Philippine small-scale mining industry.

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Ghent, May 2016

List of Abbreviations

CRC	Convention on the Rights of the Child
ILO C-138	Convention concerning Minimum Age for Admission to Employment
ILO C-182	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
UDHR	Universal Declaration of Human Rights
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPEC	International Programme on the Elimination of Child Labour
UNEP	United Nations Environment Programme
UNICEF	United Nations Children's Fund

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INTRODUCTION

In principle, a child labour ban excludes children from employment or work on the assumption that any economic activity is not suitable to them on account of their age. Instead of engaging in economic activity, the proponents of a child labour ban contend that children should be attending school to pursue their education to build human capital. Moreover, a child labour ban is believed to protect children from exploitation and safety, health and moral hazards. The proponents of this abolitionist view believe that a legal solution to the problem shall eliminate child labour.

Those opposed to an outright ban on child labour, for their part, assert that children should be allowed to work. According to anti-abolitionists, a child labour ban often leads to the exploitation of working children and condemns poor families that had to resort thereto into deeper poverty. The proponents of this view believe that legalistic solutions to the problem fail to address socio-economic realities that motivate child labour and, thus, will not eradicate child labour.

As a State Party to the CRC,¹ ILO C-138² and ILO C182,³ collectively referred to in this thesis as the “International Child Labour Regime”, the Philippines has, through national legislation, placed together a legal framework which bans the employment of children on the basis of the said international instruments.⁴ Yet, despite the foregoing international instruments and the domestic legislations implementing them, millions of Filipino children engage in employment or work, even as a great number of them toil under hazardous and exploitative conditions.⁵ With this, the merits of the abolitionist approach in terms of eradicating child labour and protecting children from exploitation and work hazards are seriously put in doubt.

¹ Adopted 3 November 1989, United Nations Treaty Collection, Chapter V, Human Rights, Convention on the Rights of Child, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en, last accessed 05 May 2016

² Adopted on 26 June 1973

³ Adopted on 20 November 1989

⁴ Republic Act No. 8231, An Act Providing For The Elimination Of The Worst Forms Of Child Labor And Affording Stronger Protection For The Working Child (2003), Amending For This Purpose Republic Act No. 7610, As Amended, Otherwise Known as the "Special Protection Of Children Against Child Abuse, Exploitation And Discrimination Act" (1992)

⁵ The Philippine government has reported that there are about 3.3 million children working children in 2011, 2 million of whom are engaged in hazardous work. For a more comprehensive discussion on this, please see Chapter I.

The case of thousands of working children in the Philippine small-scale mines presents an opportunity to assess the merits of the International Child Labour Regime and the Philippine national legislation based thereon, as well as the alternatives proposed by those who oppose the said regime. Admittedly, this analysis requires a delicate balancing act between the two paradigms. On the one hand, there is a need to protect child miners from exploitation and other hazards of work. On the other hand, excluding them from work, which is often their only means of subsistence, shall drive the child miners and the families they support into starvation. Furthermore, making child labour illegal may lead children who need to augment family income into worse forms of exploitation in the informal sector.

Having the foregoing in mind, I seek to assess the following: (i) the situation of children working in the small-scale mines in the Philippines and the causes and consequences thereof; (ii) the Philippines' international obligations relating to child labour and its national legislations and programmes implementing them; (iii) alternative approaches to the abolitionist approach and their individual merits in terms of eradicating the causes of child labour, protection of the right of children and possibility of success in the Philippine small-scale mining industry; and (iv) possible legal and policy solutions to effectively address the situation of child labour in the Philippine small-scale mines.

Chapter I of this thesis investigates the Philippine small-scale mining industry, the working conditions of child miners and the causes and consequences of child labour in the mines through the use of official information from the Philippine government, studies of international institutions/organisations and legal scholarship.

In Chapter II, a brief background and description of the of the CRC, ILO C-138 and ILO C-182 as well as relevant Philippine legislation on child labour are provided by surveying the relevant international treaties and national law, as well learned articles from legal scholars. Chapter III then proceeds with a critical analysis of the International Child Labour Regime through a review of available legal scholarships and official data from international institutions.

Moving forward, Chapter IV identifies and critically evaluates the various alternatives to the abolitionist International Child Labour Regime namely the protectionist or regulatory approach, the empowerment approach, a combination of both approaches and the child centered approach with a view to determining whether or not they address the causes of child

labour and protect the rights of working children. In addition to the foregoing, an evaluation of the proposition that the child labour issue should be joined with the human rights debate is provided. The merits of incorporating the “best interests of the child” principle and participation rights with the alternative approaches to the problem is also provided in the latter part of this Chapter.

Chapter V provides legal and policy recommendations that may be considered by the Philippine government to address the child labour problem in the Philippine small-scale mining industry.

Thereafter, I provide my conclusions.

CHAPTER I

THE CASE OF CHILDREN WORKING IN SMALL-SCALE MINES IN THE PHILIPPINES

For a better understanding of the position of the Republic of the Philippines (“Philippines”) on child labour or, in more neutral terms, the matter of children working below the legal age, the case of children working in the artisanal and small-scale gold mines is a good starting point. The present Chapter discusses the peculiar case of the children working in the small-scale mines in the Philippines, the cause and consequences of such employment and the situations which call into question the country’s position on the matter of child work.

1.1 The Philippine Small-Scale Gold Mining Industry

1.1.1 Definition of Small-Scale Mining

Small-scale mining, as understood in the Philippine legal system, is any mining activity “which rel[ies] heavily on manual labor using simple implement and do not use explosive or heavy mining equipment”.⁶ The term includes artisanal mining, whether cast or open cast or shallow underground mining.⁷ In terms of production, the mining operation must have an annual production of not more than 50,000 metric tons to be considered small-scale.⁸ For purposes of this thesis, the term “small-scale mining” includes artisanal mining as defined above.⁹

1.1.2 Small-Scale Gold Mining and the Philippine Economy

For a better understanding of the general direction of the policies, statutes and programmes of the Philippine government on the matter of child labour particularly under hazardous circumstances such as the topic of this thesis, it is only proper to mention a few words about the country’s small-scale mining industry and its contribution to the economy.

⁶ Sec. 3 (b), Republic Act No. 7076, An Act Creating a People’s Small-Scale Mining Program and for Other Purposes, otherwise known as the People’s Mining Act, last accessed 15 February 2016 7:03 p.m. through http://mgb.gov.ph/images/stories/RA_7076_s1991.pdf

⁷ Presidential Decree (P.D.) No. 1899, Establishing Small-Scale Mining as a New Dimension in Mineral Development, 1984

⁸ P.D. No. 1899

⁹ For the interpretation of the terms, please see Philippine Supreme Court case entitled *S.R. Metals, Inc., et al. v. Reyes*, G.R. No. 179669, June 4, 2014

The Philippine mining industry sits on a vast deposit of untapped mineral resources valued at around \$840 billion¹⁰ to \$1.4 trillion¹¹. Along with copper, gold forms the backbone of the country's mineral industry¹² with estimated reserves amounting to 5,080,785,289 metric tons.¹³ As with other gold producing countries from the developing world,¹⁴ artisanal and small-scale gold miners in the Philippines contribute a vast majority to the country's annual gold produce. Thus, the Environmental Management Bureau ("EMB") of the Philippine government and the UNEP estimates that artisanal and small-scale mining contributes about 80% of the Philippine's annual gold production.¹⁵ In terms of economic value, small-scale gold mining production was valued at PhP1.1 billion¹⁶ or roughly 20 million Euro in 2015 according to official data by the Philippine government.¹⁷ However, since about 80% of small-scale mining operators in the Philippines are conducting operations illegally¹⁸ and that an estimated 90% of the total sector production is diverted into the black market,¹⁹ the actual impact of small-scale gold mining on the Philippine economy could be exponentially higher than officially reported.

The small-scale gold mining industry often constitutes an important source of livelihood of rural folks within the proximity of mining establishments. In 1998, the ILO published a study stating that small-scale mining has then generated or supported at least 20,000 formal and informal small enterprises or businesses. Most of these are individuals and families who are

¹⁰ United States Department of State, <http://www.state.gov/outofdate/bgn/philippines/85081.htm>, accessed 07 May 2016

¹¹ Joint Foreign Chambers of the Philippines, Arangkada Philippines, Mining Policy Brief No. 3 September 2014, http://www.investphilippines.info/arangkada/wp-content/uploads/2015/09/Mining_Policy_Brief_PDF.pdf accessed 07 May 2016; see also Trefor Moss, Mining Companies in Philippines Face Many Travails, The Wall Street Journal, <http://www.wsj.com/articles/mining-companies-in-philippines-face-many-travails-1431467078>, accessed 07 May 2016

¹² Travis Q. Lyday, The Mineral Industry of Philippines, U.S. Geological Survey, <http://minerals.usgs.gov/minerals/pubs/country/1995/9326095.pdf>, accessed 07 May 2016

¹³ Environment Management Bureau and United Nations Environment Programme, National Strategic Plan for the Phaseout of Mercury in Artisanal and Small-Scale Gold Mining in the Philippines, page 12, accessed 07 May 2016

¹⁴ see Norman S. Jennings, study on Peru, Niger and the Philippines, International Labor Office, Geneva (1999), http://staging.ilo.org/public/libdoc/ilo/1999/99B09_99_engl.pdf, accessed 07 May 2016

¹⁵ Environment Management Bureau and United Nations Environment Programme, National Strategic Plan for the Phaseout of Mercury in Artisanal and Small-Scale Gold Mining in the Philippines (2011), page 12, accessed 07 May 2016

¹⁶ Philippine Peso

¹⁷ Mines and Geosciences Bureau, Historical Industry Statistics, <http://mgb.gov.ph/attachments/article/162/HistoricalMineralIndustryStatistics.pdf>, last accessed 07 May 2016

¹⁸ Rappler, RR Rañeses, Whose Mine is it?, <http://www.rappler.com/thought-leaders/62988-npa-mining>, last accessed 07 May 2016

¹⁹ Reuters, Philippines' black market is China's golden connection, Rosemarie Francisco, 22 August 2012, <http://www.reuters.com/article/us-philippines-gold-idUSBRE87M02120120823> last accessed 07 May 2016

mining in subsistence levels.²⁰ In terms of scope, the UNEP study estimates that small-scale mining occurs in more than thirty (30)²¹ out of the eighty-one (81)²² Philippine provinces. The same study considers the small-scale mining sector as an important source of subsistence to an estimated 200,000 to 300,000 people and, as such, directly and indirectly support the livelihood of around two million people especially in the rural areas.²³ Of the 200,000 to 300,000 miners stated above, the UNEP suggests that about 18,000 are women and children.²⁴

At the outset, it must be stated that this thesis is limited by lack of reliable data on the number of children working in the small-scale gold mines in the entire country. As it stands, reliable data on the subject is virtually impossible to find owing to the informal nature of the industry and the fact that no employer even with a valid permit from the government would volunteer information on child workers for fear of sanctions for illegal employment of children.²⁵ At any rate, this thesis shall refer to official data provided by the Philippine government, legal scholarship on the country's selected small-scale mines and studies thereon conducted by non-government organisations (NGOs). The following subsection discusses the conditions of employment of children working in the small-scale mines and the effects of such work to them.

1.2 Conditions of Work in the Small-Scale Mines

Work in a dangerous environment such as in a mine is considered to be a “worst form of child labour” under ILO C-182 as it could harm could harm the children's health or well-being and/or expose them to danger.²⁶ As stated above, small-scale gold mining relies heavily on manual labour with the use of simple tools. The industry employs children usually for fetching of water, carrying sacks of rocks, logs and panning of gold which are usually done by girls. Boys aged 15-17 usually go inside the mining pits.²⁷ The mining process employs crude methods that

²⁰ Edmund Bugnosen, Country Case Study on Artisanal and Small-scale Mining: Philippines, Mining, Minerals and Sustainable Development No. 83 (2001), <http://pubs.iied.org/pdfs/G00732.pdf>, last accessed 07 May 2016

²¹ N. S. Jennings, study on Peru, Niger and the Philippines

²² Number of Provinces, Cities and Municipalities by Region, Department of Interior and Local Government, <http://www.dilg.gov.ph/facts-and-figures/Number-of-Provinces-Cities-Municipalities-and-Barangays-by-Region/30>, last accessed 19 February 2016

²³ N. S. Jennings, study on Peru, Niger and the Philippines

²⁴ N. S. Jennings, study on Peru, Niger and the Philippines

²⁵ Statutes dealing with employment of children will be discussed in the next Chapter.

²⁶ ILO, The Worst Forms of Child Labour, <http://www.ilo.org/ipec/Campaignandadvocacy/Youthinaction/C182-Youth-orientated/worstforms/lang--en/index.htm>, accessed 07 May 2016

²⁷ See Crispin B. Beltran Resource Center, A Baseline Study for the Community-based Approach in Combatting Child Labor in Hazardous Industries in Plantation and Mining, (2014) Commissioned by EILER, Funded by the European Union, 2014, xvii

expose the working children to health and safety hazards. As the children are mixed with adults in the mines, they are also introduced to the latter's activities which are said to be not appropriate to their age. Moreover, working in the small-scale mines leave the children with little or no opportunity to get formal education or to get back to school. Yet, with all their toil, children aged five to seventeen receive very low pay and without any social benefits. The foregoing conditions and circumstances shall be discussed in the following subsections on the basis of case studies conducted by local and international researchers and organisations.

1.2.1 Health and Safety Hazards to Child Miners

Mercury exposure

The Philippine small-scale mining industry is notorious for its use of mercury in extracting gold. The process, which is the most popular in the country, is called amalgamation.²⁸ According to a study conducted by the EMB together with UNEP, the industry is the “single largest mercury emitting sector in the Philippines” discharging “about 70 metric tons or more than 30% of the country's annual mercury releases.”²⁹ As the use of mercury in the small-scale mining industry has gone almost unabated in the country despite a mercury ban,³⁰ the workers including the children employed therein are vulnerably exposed to this toxic chemical thereby endangering their health.

Owing to the informal and traditional nature of the small-scale mining industry, workers in the small-scale mines perform their tasks without appropriate training in handling equipment and gears such as masks, gloves and goggles to offer themselves minimum protection from being exposed to mercury over long periods of time.³¹ Thus, these children, some of whom started working at the age of five, are vulnerably exposed to mercury and its deleterious health effects.

In a Report published in 2015, Human Rights Watch (“HRW”) documented the experiences of

²⁸ Amalgamation with mercury is the dominating method for gold extraction used by 10 million small-scale gold miners (SSGM) in more than 50 countries, resulting in that several hundred to possibly 1000 tons of Hg are annually released into soil, air, and water. Source: Lars D. Hylander et al., Comparison of Different Gold Recovery Methods with Regard to Pollution Control and Efficiency, http://www.unep.org/chemicalsandwaste/Portals/9/Mercury/Documents/PartnershipsAreas/HylanderEtal_CLEAN-07.pdf, accessed 07 May 2016

²⁹ Supra, note 17, p. 6

³⁰ *ibid.*

³¹ *ibid.*

adult and child miners including girls who, as a result of exposure to mercury in the small-scale mines, suffered from symptoms consistent with mercury poisoning. Among these symptoms are tremors, spasms and skin diseases.³² Interestingly, HRW reports that most of the children they interviewed have limited, and sometimes false information about mercury and, as such, they usually do not know the risks of exposure and how to protect themselves from it.³³

Underwater and Underground Mining Hazards

Children working in the small-scale mines likewise face the hazards of the illegal mining practice³⁴ of compressor or underwater mining. In this type of mining, “miners work underwater, breathing through a slender tube attached to a compressor on the surface – hence the name.”³⁵ Heinrich illustrates the process of underwater mining as being performed by teams with some of them digging holes in shallow water for the purpose of digging and sifting for gold deposits trapped in ore. Another team member digs deeper into the hole and stays underwater for periods of about two to three hours below the surface then hands the buckets of mud he dug to another miner.³⁶ The miner who goes underwater in 10-meter-deep shafts receives air from a tube attached to a compressor run by diesel on the ground.³⁷

Aside from running out of oxygen or inhaling diesel fumes, carbon monoxide and other pollutants through the tube, underwater miners also risk damage to their brains and lungs caused by nitrogen bubbles formed in the bloodstream which may even be aggravated when the diver rushes to the surface in the event that the compressor stops unexpectedly.³⁸ Because of the dirty underground water teeming with animal waste, underwater miners also risk being infected by skin diseases including the deadly leptospirosis.³⁹

³² Human Rights Watch, What If Something Went Wrong, Hazardous Child Labor In Small-Scale Mines in the Philippines, pp. 19-20, <https://www.hrw.org/report/2015/09/29/what-if-something-went-wrong/hazardous-child-labor-small-scale-gold-mining>, last accessed 07 May 2016

³³ HRW, What If Something Went Wrong, p. 19

³⁴ Larry Price, The Philippines: Dangerous and Illegal Compressor Mining, Pulitzer Center, November 16, 2012 <http://pulitzercenter.org/reporting/philippines-compressor-gold-mines-child-labor-mercury-pollution-economy>, accessed 07 May 2016

³⁵ L. Price, The Philippines: Dangerous and Illegal Compressor Mining

³⁶ Edward Heinrich, Underwater Gold Mining Threatens Filipinos, The Borgen Project, <http://borgenproject.org/underwater-gold-mining-threatens-filipinos/>, accessed 07 May 2016

³⁶ E. Heinrich, Underwater Gold Mining Threatens Filipinos

³⁷ L. Price, The Philippines: Dangerous and Illegal Compressor Mining

³⁸ Richard C. Paddock, In Philippines, workers toil among hazards in compressor mining, The Center for Investigative Reporting, <http://cironline.org/reports/philippines-workers-toil-among-hazards-compressor-mining-5666>, accessed 07 May 2016

³⁹ *ibid*, citing Julie Hall, WHO representative to the Philippines

Filipino child miners likewise risk their health and safety in underground mining pits with depth reaching up to 25 feet. In this case, miners are lowered into the pit via a rope and mine there for several hours. They get their oxygen only through a blower if the pit is deep. If not, they do not work with a blower in which case they may find it difficult to breathe. Aside from this, they also risk the danger of being trapped in case of mine collapse.⁴⁰

1.2.2 Moral Hazards to Child Miners

As shown, work in the mines may not be suitable for children of tender age. However, due to some factors that will be discussed below, child miners are forced to find a living in the mines to help their families. As such they are exposed to such difficult working conditions along with adults. As Ecumenical Institute for Labor Education and Research (“EILER”) notes, the child miners are forced to live like adults. Thus, exposure to activities that are usually done by adults such as gambling, drinking, and smoking are a common thing for children in the mines. EILER even reports the use of illegal drugs among children working in the mines to keep them awake.⁴¹ Verily, these children are exposed to vices and habits which may be difficult to correct as they grow older.

1.2.3 Very low wages and other poor labor standards

Children working in the small-scale mining industry have no fixed wages. They do get their shares on the value of gold extracted which on the average is at PhP150 or less than three euros (based on the current exchange rate of EUR1:PhP52) daily including meals when they work in the mines according to the EILER baseline study.⁴² However, as this baseline study suggests, this does not mean that the miners receive their wages everyday because mining operations could take months before actual gold production. Thus, they only receive their wages when actual gold is produced. Among the respondents in the study, 69.2% perform work in the mines for eight to ten hours a day while the remaining child miners work for the same amount of time for about three to four days a week. Furthermore, child miners and their adult co-workers do not receive benefits such as hazard pay, health and other social security benefits from their

⁴⁰ supra, note 39, p. 13

⁴¹ Crispin B. Beltran Resource Center, A Baseline Study for the Community-based Approach in Combatting Child Labor in Hazardous Industries in Plantation and Mining, (2014) Commissioned by EILER, Funded by the European Union, p. 69

⁴² ibid, p. 23

employers.⁴³ With very low wages and no benefits from the employers, it is clear that the children working in the mines are being exploited or susceptible to exploitation by the operators to their great prejudice.

1.2.4 Missing out on formal schooling

In 2011, there were about 3.3 million Filipino children aged 5-17 who worked. Out of these, around 1.173 million or about 35% had not attended school due to work with mostly children aged 15-17 followed by those aged 10-14 not attending school.⁴⁴

With particular reference to child miners, EILER's study which was conducted on six mining and plantation municipalities with 92 child labourers found that 56% of them did not complete elementary education while 44% completed the same but did not proceed further because they started working in mines and plantations.⁴⁵ This study reflects the situation nearly twenty years ago when a similar study was conducted by the Philippine government on child labour in small-scale mining towns. Thus, in its 1998 study, the Occupational Health and Safety Center (OHSC) of the Department of Labor and Employment found that 56.2% of the respondent child miners said that they combine school with work while some claim missing school in favor of work.⁴⁶ Based on the foregoing studies, it can be assumed that schooling is disrupted or even stopped altogether once a child goes to work. As work on the mines require eight to ten hours of work on each work day, it will be difficult to upset this trend in the coming years unless the Philippine government does something drastic to alleviate the situation of the children.

Further to the foregoing, as children miss out on school, they are bound to miss out on their formal education. As some scholars suggest, the effects of lack of education for these children can have long term effects on society. According to Satz, children who do not go to school are liable to lack the capacity they need to effectively exercise their agency.⁴⁷ On a broader scale, she argues that child labour can lead to an illiterate and minimally productive workforce which

⁴³ id.

⁴⁴ Philippine Statistics Authority, Final Results of the 2011 Survey on Children, Table 3, <https://psa.gov.ph/content/estimated-number-working-children-5-17-years-old-who-worked-during-past-week-was-33-million>, accessed 07 May 2016

⁴⁵ supra, note 38, page 103

⁴⁶ Occupational Safety and Health Center, A Case Study of Children in Small-Scale Mining, 1998, page 22

⁴⁷ Debra Satz, Child Labor: A Normative Perspective, The World Bank Economic Review, Vol. 17, No. 2, December 2003, p. 304

may also lead to reduction of wages of adults and undermine health and lead to a passive, and ignorant citizenry.⁴⁸ However, studies such as these do not consider that the families of child miners, just like other child workers, are so poor that they cannot even afford to send the latter to school.

1.3 Why do children work in the small-scale mines?

Child labour, with all its hazards to children, persists for a variety of reasons. While it may be said that it is universally accepted that poverty is one of the most compelling reasons why children go to work,⁴⁹ legal scholarship and country studies show that child labour is the product of a complex web of factors that go deep into the economic and social arena, along with lack of enforcement of anti-child labour laws. The foregoing driving factors of child labour in the Philippines, in general, and its small-scale mining industry, in particular, will be examined below.

1.3.1 Poverty

Poverty is said to be the most important reason why children work.⁵⁰ In the Philippines, poverty seem to be a family affair. According to an ILO study conducted in the small-scale mining industry in Peru, Niger and the Philippines, most children are driven to work to support their families.⁵¹ Poverty arise from interrelated factors such as unemployment of one's parents.⁵² In this regard, Esguerra, citing empirical evidence, suggests that unemployment among adults in the Philippines increases the likelihood that children will work except in the case where the jobs arise out of self-employment. Thus, it has been postulated that children in households that fall below the poverty line are more likely to work.⁵³ This finding is supported by EILER which cited government data indicating that the areas covered by its study are among those with high incidence of poverty. Based on the said study, only 1% among the plantation and small-scale

⁴⁸ D. Satz, *Child Labor: A Normative Perspective*, p. 304; But see contrary view, Chapter III.

⁴⁹ UN, *Child Labour*, <http://www.un.org/en/globalissues/briefingpapers/childlabour/>, last accessed 07 May 2016

⁵⁰ Zehra Arat, *Analyzing Labour as a Human Rights Issue: Its Causes, Aggravating Policies and Alternative Proposals*, *Human Rights Quarterly*, Volume 24, Number 1, February 2002, p. 185

⁵¹ N. S. Jennings, study on Peru, Niger and the Philippines

⁵² As Basu, *infra*, suggests, an increase in adult unemployment is associated with an increased incidence of child labor.

⁵³ Emmanuel Esguerra, *An Analysis of the Causes and Consequences of Child Labor in the Philippines*, Paper submitted to the International Labour Organisation as part of an ILO/International Programme on the Elimination of Child Labour (IPEC) study (2002), pp. 29-30

mining households are above the poverty threshold. Verily, parents could not provide the needs of the household thereby causing some of their children to stop schooling and work instead to augment family income.⁵⁴

Another poverty-related factor is the location of the children. Thus, Esguerra found that locational variables showed a significant positive relationship with the incidence of child labour in the Philippines. According to this study, a negative sign for urbanity means higher probability of child labour as rural areas tend to experience deeper poverty where economic activities are mostly connected with agriculture and with the use of family labour, and where the authorities have more difficulty in enforcing laws against child labour.⁵⁵ Not surprisingly, studies on child labour in small-scale mining areas by the ILO and international and local NGOs affirm this assertion as most mining activities are located in remote regions where little or no government presence can be found.

1.3.2 Other economic factors

Aside from poverty, it has been argued that economic growth has a positive correlation with the decline of the incidence of child labour. Basu, for example, citing the case of Sub-Saharan Africa as shown by Ethiopia, suggests that poor economic growth has positive relationship with the increase in child labour. On the other end of the spectrum lies China which had seen rapid economic growth between 1980 and 1990 and experienced a steep decline in child labour incidence. He submits, however, that economic growth is not the only factor, nor the most important factor.⁵⁶

In the case of children in the Philippines small-scale mining industry, it may not necessarily be scant or no economic growth that fuels child labour. On the contrary, it may well be the growing economic prospects in the gold industry that significantly contribute to the employment of children in the small-scale mines. It is well to note that the Philippines is a country whose economy grew between six and seven percent in the last four years⁵⁷ and had 3.3 million

⁵⁴ Crispin B. Beltran Resource Center, *Child Labor in Mining and Plantation Communities*, pp. 1, 67, 69

⁵⁵ N. S. Jennings, study on Peru, Niger and the Philippines

⁵⁶ Kaushik Basu, *Child Labor: Cause, Consequence and Cure*, with Remarks on International Labor Standards, *Journal of Economic Literature*, Vol. 37, No.3 (Sep. 1999), <http://pubs.aeaweb.org/doi/pdfplus/10.1257/jel.37.3.1083>, last accessed 07 May 2016

⁵⁷ <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>, last accessed 08 May 2016

working children in 2011 with 2 million doing hazardous work.⁵⁸ While there is still no official data for the years 2012 to 2015, it may be argued that economic growth did not necessarily reduce child labour incidence in the small-scale mining sector. As the Philippines is forecasted to have one of the best performing economies in the world in the coming decades⁵⁹ and with the expected increase of gold miners due to the recent exponential increase in the precious metal's prices,⁶⁰ it is safe to assume that the number of children working in the mines will likewise increase. As Arat points out, employers use child labour because it is profitable as they are docile, willing to work for lower wages and under undesirable conditions, incapable of collective bargaining and easier to manage.⁶¹ As profit is still the name of the game in any commercial venture, hiring children will surely be rewarding to the small-scale mining operators due to the aforesaid factors.

1.3.3 Low Education Attainment of Parents

Aside from the abovementioned push factors, low educational attainment of parents is also seen as a reason why children go to work. Thus, Esguerra states that the educational attainment of both parents is negatively related to the probability of child work.⁶² As is the usual case in the Philippines, parents who have completed formal or vocational education are more likely to secure employment than those who have not. Thus, as stated above, unemployment among the parents are most likely to bolster their decision to let their children work to augment the family income.

1.3.4 Failure of the Government to Enforce Laws Against Illegal Employment of Children

As discussed, work in the mines is considered to be one of the worst forms of child labour as it exposes children to health, safety and moral hazards and that it economically exploits children. On paper, the Philippines has one of the most stringent laws on defining and punishing employers who hire children to do hazardous and economically exploitative work. In fact, the

⁵⁸ Philippine Statistics Authority, Final Results of the 2011 Survey on Children

⁵⁹ Hong Kong and Shanghai Banking Corporation, The World By 2050, downloaded from www.hsbc.com on 07 May 2016

⁶⁰ N. S. Jennings, study on Peru, Niger and the Philippines

⁶¹ Z. Arat, Analyzing Labour as a Human Rights Issue: Its Causes, Aggravating Policies and Alternative Proposals, p. 185

⁶² E. Esguerra, An Analysis of the Causes and Consequences of Child Labor in the Philippines

United States Department of Labor praised the efforts of the Philippines in this regard calling such actions a “significant advancement” in terms of eliminating the worst form of child labour under Convention No. 182.⁶³ However, the matter of enforcement is a serious problem. Thus, in its report on child labour on Philippine small-scale mines, HRW exposed the absolute lack of enforcement by the government of these laws thereby contributing as one of the factors that lead children to engage in prohibited child labour .⁶⁴

⁶³ U.S. Department of Labor, Findings on the Worst Forms of Child Labor, Philippines, <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2014TDA/philippines.pdf>, last accessed 07 May 2016

⁶⁴ HRW, What If Something Went Wrong, Hazardous Child Labor In Small-Scale Mines in the Philippines

CHAPTER II

THE ABOLITIONIST APPROACH AND THE PHILIPPINE LEGAL FRAMEWORK ON CHILD LABOUR

The child labour conundrum has been the subject of intense debates. On one side of the debate, the dominant position calls for an abolitionist approach and argues, first, that children should not be allowed to work until reaching a certain age and, second, pursues the prohibition and elimination of work that is hazardous to the life and limb of the child. The Philippines, owing to its international obligations, adheres to the abolitionist approach. In this Chapter, I shall give a brief overview of the abolitionist approach and the Philippine legal framework on child labour.

2.1 Abolitionist Approach

The abolitionist approach aims at the full abolition of child labour.⁶⁵ As White notes, the historical approach to the child labour problem views the exploitation of juvenile workers as the problem. Hence, abolitionists campaign for the enactment and enforcement of legislation for the “abolition of child labour”.⁶⁶ According to him, such legislation typically provides a general prohibition on child labour by fixing a minimum age for admission to employment. In addition to fixing a minimum age for admission to employment, such type of legislation likewise provide an additional category of “young persons” who are then subjected to protective legislation as they are allowed only to perform or engage in certain types of employment under certain conditions.⁶⁷

In the international legal sphere, the abolitionist approach is grounded chiefly on the CRC, ILO C-138 and ICO C-182. As a party to the three Conventions, the Philippine national legislation and programmes adhere to the International Child Labour Regime.

⁶⁵ Karl Hanson and Arne Vandaele, *Working Children and International Labour Law*, *The International Journal of Children’s Rights* 11: (2003), Kluwer Law International, pp 73–146, p. 77

⁶⁶ Ben White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children, Institute for Social Studies, The Hague (1994) p. 1

⁶⁷ B. White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children, p. 1

i. The CRC

a. *The CRC in general*

The CRC is the primary international law source of the Philippines' obligation towards the recognition and enforcement of children's rights in general. It is founded on the general principles of non-discrimination, best interest of the child, right to life, survival and development and respect for the views of the child.⁶⁸ Hailed for breaking new ground as the first international legal instrument that explicitly recognises the child as possessing rights,⁶⁹ the CRC forms part of the International Bill of Rights under UN human rights framework which includes the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESC), among others.⁷⁰

b. *The CRC on child labour*

In respect of child labour, the CRC's role in the international abolitionist approach is highlighted by accounting the States to recognize the right of children to be protected from economic exploitation. Under Article 32(1) of the CRC, it is explicitly provided that States shall recognize the right of children "to be protected from economic exploitation and from performing any work is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." To this end, Article 32(2) of the same Convention enjoins States Parties to take legislative, administrative, social and educational measures providing for minimum age for work or admission to employment, hours and conditions of employment, as well as penalties and sanctions to ensure effective enforcement thereof.

As may be gleaned from the foregoing, Article 32(1) does not define what is meant by economic exploitation. However, the Committee on the Rights of the Child stated that "in any event", the following types of work must be forbidden: "activities jeopardising the

⁶⁸ UNICEF, The Convention on the Rights of the Child, Guiding Principles: General Requirements for All Rights, http://www.unicef.org/crc/files/Guiding_Principles.pdf, last accessed 07 May 2016

⁶⁹ Alfred Glenn Mower, Jr., "The Convention on the Rights of the Child: International Law Support for Children, 1997, Westport, Conn.: Greenwood Press (1997), p.3

⁷⁰ Office of the High Commissioner for Human Rights, The International Bill of Human Rights, <http://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf>, last accessed 07 May 2016; Fact Sheet No. 20: The United Nations Human Rights Treaty System, An introduction to the core human rights treaties and the treaty bodies, <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>, last accessed 07 May 2016

development of the child or contrary to human values and dignity; activities involving cruel, inhuman or degrading treatment, the sale of children or situations of servitude; activities that are dangerous or harmful to the child's harmonious physical, mental and spiritual development or are liable to jeopardise the future education and training of the child; activities involving discrimination, particularly with regard to vulnerable and marginalised social groups; all activities under the minimum ages referred to in Article 32(2) of the CRC and in particular those recommended by ILO; all activities using the child of legally punishable criminal acts, such as trafficking in drugs or prohibited goods.”⁷¹

ii. ILO C-138

The 1973 ILO C-138 prescribes the minimum age for work or admission to employment. The main task of this Convention is to “ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”⁷² In doing this, Article 2(1) obliges ratifying Member States to specify a minimum age for admission to employment or work within their respective territories stating that no child under the specified age under national legislation shall be permitted to work in any occupation.

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Article 2(3) of ILO C-138 establishes that the general minimum age for admission to employment or work mentioned in Article 1 “shall not be less than the age of completion of compulsory schooling and in no case shall be less than 15 years of age”. By way of exception, however, Article 2(4) provides that ratifying Member States whose “economy and educational facilities are insufficiently developed” are permitted to lower the minimum age to 14 years.

Given the wide scope of the Convention, Article 4 thereof gives the competent authority of ratifying States the authority to exclude certain types of work from the application of the minimum age stated above. However, the Convention does not specify the types of work that may fall under the exception. According to Creighton, the omission was deliberate with a view

⁷¹ K. Hanson and A. Vandaele, *Working Children and International Labour Law*, pp. 108-109

⁷² Article 1, ILO C-138

to giving domestic authorities much leeway in adapting the application of the “Convention to the national situation.” However, he suggests that employment in family undertakings, domestic or home work are among the possible exclusions under Article 4.⁷³

In addition to the above, the Convention, through its Article 7, provides that national laws or regulations may permit children aged 13 to 15 years to perform “light work” which is not likely to be harmful to their health or development and not prejudicial to their attendance at school. For developing countries, such ratifying Member States are allowed to lower the age for light work between 12 and 14 years.⁷⁴

As regards employment or work that which is “likely to jeopardise the health safety or morals of young persons”, Article 3(1) fixes the minimum age at 18 years. The same Article leaves to the national authorities of ratifying States, after consultation with employers, the discretion to identify the types of work under this typology. However, Article 3(3) states that ratifying Member States may authorise employment or work specified under Article 3(1) as from the age of 16 years “on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.”

iii. ILO C-182

ILO C-182 defines and prohibits the worst forms of child labour. A 1999 instrument, it demands upon Member States to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”.⁷⁵

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The Convention defines a child as all persons below the age of 18 years. The forms of child labour that are prohibited for children below 18 years of age are the following:

⁷³ Breen Creighton, *Combating Child Labour: The Role of International Labour Standards*, *Comparative Labour Law Journal*, 18 *Comp. Lab. L.J.* 362, 396 (1996-1997), p. 374

⁷⁴ Article 7(4) in relation to Article 2(4), ILO C-138

⁷⁵ Article 1, ILO C-182

- “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁷⁶

The foregoing worst forms of child labour can be grouped into two categories. First, those which are unconditionally prohibited which fall under paragraphs (a) to (c) “that are so fundamentally at odds with children’s human rights that they are absolutely prohibited for all persons under the the age 18”.⁷⁷ Second, those which are conditionally prohibited which can be found under paragraph (d) which are to be prohibited by competent authorities if they are likely to harm the health, safety and morals. The second category is likewise called “hazardous work”.⁷⁸

As regards Article 3(d) or hazardous work, Article 4(1) of the Convention provides that the types of work falling thereunder shall be determined by national laws or regulations or competent authority. To aid the ratifying Member States in defining the categories of hazardous work, the ILO, through ILO Recommendation No. 190, enumerated a number of factors that should be considered as follows:

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

⁷⁶ Article 3, ILO C-182

⁷⁷ Deepa Rishikesh, *The Worst Forms of Child Labour: A Guide to ILO Convention 182 and Recommendation 190, Child Labour in a Globalized World, A Legal Analysis of ILO Action*, Edited by G. Nesi, L. Nogler and M. Pertile, Aldershot (United Kingdom), Ashgate (2008) pp. 83-99, p. 85

⁷⁸ D. Rishikesh, *The Worst Forms of Child Labour: A Guide to ILO Convention 182 and Recommendation 190, Child Labour in a Globalized World, A Legal Analysis of ILO Action*, pp. 83-99, p. 85

- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.”⁷⁹

On the basis of Article 1 of ILO C-182, Member States are enjoined to take “immediate” and “effective” measures to prohibit and eliminate the same “as a matter of urgency.”

iv. *The role of the ILO in the fight against child labour*

In eliminating child labour, the ILO plays the lead. The role of the ILO in the fight against child labour dates back to its inception. While not explicitly geared towards the elimination of child labour, the Preamble of the ILO Constitution reveals that the institution is geared towards the protection of children by enhancing their working conditions.⁸⁰ At present, the ILO, through the IPEC has “the overall goal of the progressive elimination of child labour, which was to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour.”⁸¹ The IPEC assists Member States in their obligations toward the elimination of child labour through traditional country programmes, regional capacity-building programmes, and comprehensive support projects for national time-bound programmes.⁸²

2.2 Philippine Legal Framework on Child Labour

As a party to the International Child Labour Regime, the Philippines has placed together a synergy of legislations and programmes for the elimination of child labour in its territory. For a better appreciation of the Philippine child labour problem, a discussion of the Philippine’s legal framework on child labour is provided below.

⁷⁹ ILO Recommendation No. 190 (1999)

⁸⁰ 2nd paragraph of the Preamble, ILO Constitution; see also Marco Pertile, Introduction: The Fight Against Child Labour in a Globalized World, Chapter 1 of *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, p. 1

⁸¹ About the International Programme on the Elimination of Child Labour, <http://www.ilo.org/ipec/programme/lang--en/index.htm>, last accessed 07 May 2016

⁸² IPEC at a Glance: April 2007, <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=3984>

i. Philippine anti-child labour laws

a. *Anti-Child Abuse Act and Act Providing for the Elimination of the Worst Forms of Child Labor*

In the main, the Philippines adheres to the International Child Labour Regime through its Special Protection of Children Against Abuse, Exploitation and Discrimination Act, hereinafter “Anti-Child Abuse Act”.⁸³ Under Section 2 of the Anti-Child Abuse Act, it is a declared policy of the State to “to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development including child labor and its worst forms” and to “provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination”. It makes direct reference to the CRC providing that the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child”.⁸⁴

The Act defines children as all persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.⁸⁵ Consistent with ILO C-138, the Act fixes the minimum age for admission to employment or work of at 15 years.⁸⁶ However, children below this age may be allowed to work if under the supervision of their parents or legal guardian where only members of his/her family are employed. In any event, such employment must neither endanger their life, safety, health and morals, nor impair their normal development and on the condition that the children be provided the prescribed primary or secondary education.⁸⁷

As may be noted, the Act itself including the amending law, does not define child labour.

⁸³ Section 2, Republic Act No. 7610 (1992) as amended by Republic Act 9231, An Act Providing for the Elimination of the Worst Forms of Child Labor (2003)

⁸⁴ Republic Act No. 7610 as amended

⁸⁵ Section 3(a) Republic Act No. 7610 as amended

⁸⁶ Section 12(a), Republic Act No. 7610 as amended

⁸⁷ Section 12(a), Republic Act No. 7610 as amended

However, in the implementing rules and regulations (IRR) of the amending law, 2003 Act Providing for the Elimination of the Worst Forms of Child Labor, child labour has been defined as “any work or economic activity performed by a child that subjects him/her to any form of exploitation or is harmful to his/her health and safety or physical, mental or psychosocial development”.⁸⁸ In addition to the foregoing, “child worker” refers to any of the following:

- i. when the child is below eighteen (18) years of age, in work or economic activity that is not child labor as defined in the immediately preceding sub-paragraph; and
- ii. when the child is below fifteen (15) years of age, (i) in work where he/she is directly under the responsibility of his/her parents or legal guardian and where only members of the child ‘s family are employed; or (ii) in public entertainment or information.⁸⁹

On the matter of prohibiting the worst forms of child labour under ILO C-182, Section 12(d) of the Act provides that the phrase shall refer to any of the following:

"(1) All forms of slavery, as defined under the "Anti-trafficking in Persons Act of 2003", or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or

"(2) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or

"(3) The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or

"(4) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:

"a) Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

"b) Exposes the child to physical, emotional or sexual abuse, or is found to be highly

⁸⁸ Section 3(c), Department Order no. 65-04, Department of Labor and Employment, Rules and Regulations Implementing Republic Act No. 9231 Amending R.A. 7610, as amended

⁸⁹ Section 3(d), Department Order no. 65-04, Department of Labor and Employment, Rules and Regulations Implementing Republic Act No. 9231 Amending R.A. 7610, as amended

- stressful psychologically or may prejudice morals; or
- "c) Is performed underground, underwater or at dangerous heights; or
- "d) Involves the use of dangerous machinery, equipment and tools such as power- driven or explosive power-actuated tools; or
- "e) Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or
- "f) Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or
- "g) Is performed under particularly difficult conditions; or
- "h) Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or
- "i) Involves the manufacture or handling of explosives and other pyrotechnic products."

b. The Labor Code of the Philippines

The Anti-Child Abuse Act is complemented by the Labor Code of the Philippines⁹⁰ (the “Labor Code”) which sets the minimum age for admission to employment or work at 15 and, for hazardous work at 18 years.⁹¹ The Labor Code grants the Department of Labor and Employment, through its Secretary, enforcement and visitorial powers.⁹²

On the ground, the Bureau of Working Conditions under the aforesaid Department conducts inspection of employer premises to determine compliance with labour laws including the hiring and working conditions of children in the formal and informal sectors.⁹³ According to a US Department of Labor Report on the Worst Forms of Child Labour in the Philippines, the Philippine Department of Labor has, in 2012, deployed some 200 labour inspectors whose work cover the entire country. Based on the said Report, in that year alone, there were 800,000 employment establishments in the Philippines.

⁹⁰ Presidential Decree No. 442 (1984) as amended

⁹¹ Article 139, Presidential Decree No. 442 as amended

⁹² Article 37, Presidential Decree No. 442 as amended

⁹³ International Labour Organization, Philippines, Labor Inspection Structure and Organization, http://www.ilo.org/labadmin/info/WCMS_209367/lang--en/index.htm, last accessed 07 May 2016

ii. Philippine anti-child labour programmes

a. *Philippine Program Against Child Labor*

Aside from laws which aim to eliminate child labour, the Philippines has, to that end, placed together a number of social programmes, among others. One such programme is the Philippine Program Against Child Labor instituted by the Philippines' Department of Labor and Employment. The vision of the Program according to its Strategic Framework 2007-2015 is a "child-labor free Philippines" by 2015. The Program aims to "transform the lives of child laborers, their families, and communities, towards their sense of self-worth, empowerment and development."⁹⁴ Moreover, the Program "works towards the prevention and progressive elimination of child labor through protection, withdrawal, healing and reintegration of child workers into a caring society".⁹⁵ Thus, child labour was set to be eliminated in the Philippines in the year 2015 or one year before this thesis.

Pursuant to the Philippine Program Against Child Labor, the Philippines pursues its Child Labor-Free *Barangays*⁹⁶ campaign seeking to synchronize government action against child labour down to the smallest political units.

b. *Conditional Cash Transfer Program (Pantawid Pamilyang Pilipino Program)*⁹⁷

Another program which is geared towards the elimination of child labour is the Philippines own Conditional Cash Transfer (CCT) program. Patterned after the same programme in Latin America, the "basic common structure of CCTs refers to transferring monetary and non-monetary resources to the poor or poorest families who have school-aged children on the

⁹⁴ Philippine Program Against Child Labor Strategic Framework 2007-2015, <http://bwsc.dole.gov.ph/programs-and-projects-submenu1/clpep.html>, last accessed 07 May 2016

⁹⁵ Philippine Program Against Child Labor Strategic Framework 2007-2015, <http://bwsc.dole.gov.ph/programs-and-projects-submenu1/clpep.html>, last accessed 07 May 2016

⁹⁶ Under the Philippine Local Government Code, a "barangay" is the basic political unit in the Philippines created out of a contiguous territory which has a population of at least two thousand (2,000) inhabitants in outside of the National Capital Region and at least five thousand (5,000) inhabitants within the National Capital Region.

⁹⁷ Karin Schelzig, Bridging Program for the Filipino Family, The Social Protection Support Project in the Philippines, Pioneering Policy Reforms for Poverty Reduction, Asian Development Bank, <http://www.adb.org/sites/default/files/publication/162012/social-protection-project-phi.pdf>, last accessed 07 May 2016

condition that they meet certain commitments aimed at improving their capacities”.⁹⁸ Principally, the Program “provide(s) cash transfers to families living in extreme poverty in exchange for commitments in education and healthcare.”⁹⁹ The Program is aimed specifically at households with child labourers as the cash transfer is conditioned upon compliance with a prohibition to cause/allow children to engage in hazardous child labour and keeping them at school.¹⁰⁰

⁹⁸ Celia M. Reyes and Aubrey D. Tabuga, Conditional Cash Transfer Program in the Philippines: Is It Reaching the Extremely Poor?, Philippine Institute for Development Studies, Discussion Paper Series No. 2012-42 (2012), p. 2

⁹⁹ C. M. Reyes and A. D. Tabuga, Conditional Cash Transfer Program in the Philippines: Is It Reaching the Extremely Poor?, p. 2

¹⁰⁰ C. M. Reyes and A. D. Tabuga, Conditional Cash Transfer Program in the Philippines: Is It Reaching the Extremely Poor?, p. 2

CHAPTER III

ANALYSIS OF THE ABOLITIONIST APPROACH

As stated, the abolitionist approach finds legal basis on the CRC, an instrument pertaining to children's rights in general, and ILO C-138 and ILO C-182 which both deal specifically with the elimination of child labour. The following discussion offers an analysis and critique of the International Child Labour Regime along with the Philippine legal framework on child labour. In the process, I shall also discuss the role played by general children's rights under the CRC in the child labour debate.

3.1 Observations on the International Child Labour Regime

i. Standards on child labour

The International Child Labour Regime, particularly the CRC and ILO C-182, define who a child on the basis of age but do not go as far as providing a precise definition of child labour. Under the CRC, a child refers to every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.¹⁰¹ Under its Article 32, economic exploitation of children is proscribed but does not go as far as defining what constitutes "exploitation". However, the Committee on the Rights of Child interpreted as the following as economic exploitation and hence, should be prohibited by law:

- Activities jeopardising the development of the child or being contrary to the child's dignity;
- those involving cruel, inhuman or degrading treatment, the sale of children or any form of servitude;
- those capable of jeopardizing the education of the child or being detrimental to the child's health;
- activities involving discrimination, particularly with regard to vulnerable and marginalised groups;
- activities performed under the minimum ages for employment, in the light of the Convention and relevant ILO standards;

¹⁰¹ Article 1, CRC

- activities using the child for criminal acts, including drug trafficking.¹⁰²

ILO C-182, for its part, while defining a child in the same way as the CRC and identified the worst forms of child labour did not give a precise definition of the the latter. ILO C-138 does not define who a child is, rather, it merely fixes minimum ages for certain types of work, thus permitting work for children falling within the said minimum ages.

According to Myers, the term “child labour” used to be divided between “child labour as an approximate synonym of child work” and “child labour as that subset of child work which is injurious to children.”¹⁰³ These two views still remain today.

The first view argues that children should not engage in any economic activity at all. Thus, the objective is to keep children out of the workforce until reaching their teens.¹⁰⁴ The first view is taken by the ILO finding legal basis from ILO C-138 which prescribes work at 15 years of age. One of the main arguments in favour of this view is that “engagement in work impedes young children’s healthy development”¹⁰⁵.

The second view on the other hand, widely known to be taken by the institutions such as the United Nations Children’s Fund and the ILO under C-182, espouses the idea that child labour is injurious to children or their best interests and establishes the prohibition only on work or conditions of work that are detrimental to children.¹⁰⁶ This view is carried by the CRC as well. As stated, the CRC under Article 32 thereof contains a similar legal obligation for Member States to protect the children from economic exploitation.

As the three Conventions are all in force, the two definitions of child labour remain. From this, it can be inferred that not all forms of child labour are prohibited. With respect to prohibited child labour, however, the two Conventions differ: (1) under ILO C-138, the prohibition is

¹⁰² Taken from M. Santos Pais, *The Question of Child Labour in a Child Rights Perspective*, International Conference on Child Labour, Oslo, October 1997, *Documentação e Direito Comparado*, nos. 73/74 (1998), p. 77

¹⁰³ William E. Myers, *Considering Child Labour, Changing terms, issues and actors at the international level*, *Childhood* Volume 6 no. 1 (1999), p. 22

¹⁰⁴ W. E. Myers, *Considering Child Labour, Changing terms, issues and actors at the international level*, p. 22

¹⁰⁵ M. F.C. Bourdillon Ben White William E. Myers, (2009), "Re-assessing minimum-age standards for children's work", *International Journal of Sociology and Social Policy*, Vol. 29 Iss 3/4 pp. 106 - 117

¹⁰⁶ W. E. Myers, *Considering Child Labour, Changing terms, issues and actors at the international level*, p. 22

based on minimum age and (2) under ILO C-182, the prohibition applies to activities that have detrimental effects on children.

Aside from lack of uniform definition of child labour, the difference in approach in terms of priority is also an issue. Before ILO C-182, the ILO's action is geared towards the progressive elimination of child labour based on minimum age standards just mentioned under ILO C-138. In 1999, the position of the ILO on child labour changed considerably with the ratification of ILO C-182. As seen, both ILO C-182 and C-138 seeks to abolish child labour and complement each other.¹⁰⁷ However, ILO C-182 narrowed down the multi-sectoral and progressive approach of ILO C-138 to the elimination of the four "worst forms" of child labour and demanded immediate and effective measures as a matter of urgency. As compared to ILO C-138, ILO C-182 specifically sets out four types of child labour for the elimination of the Member States. Moreover, the obligation to eliminate these "worst forms" of child labour is time bound enjoining the Member States to take "immediate" and "effective" measures to prohibit and eliminate the same "as a matter of urgency."

The matter of prioritising the four worst forms of child labour is of course susceptible to criticism. With the adoption of ILO C-182, it is made clear that the elimination of other forms falling under ILO C-138 does not require immediate action and is not a matter of urgency for the ILO and the Member States. This may not sit well with the proponents of a wholesale elimination of child labour in all forms as they believe that all forms of child labour undermine the rights of children. At any rate, it has been said that ILO C-182 forged a consensus on the common core of child labour on a global scale.¹⁰⁸

On the basis of the varying definitions and priorities, it is evident, as noted by Pertile, that the International Child Labour regime suffers from an overproduction of standards.¹⁰⁹ Consequently, the lack of a precise definition tends to divide the international law response to the issue. If any, it accommodates the proponents of the two competing views and keeps both standards of child labour in place.

¹⁰⁷ M. Pertile, Introduction: The Fight Against Child Labour in a Globalized World, Chapter 1 of Child Labour in a Globalized World, A Legal Analysis of ILO Action, Edited by G. Nesi, L. Nogler and M. Pertile, Aldershot (United Kingdom), Ashgate (2008), p. 3

¹⁰⁸ M. Pertile, Introduction: The Fight Against Child Labour in a Globalized World, Chapter 1 of Child Labour in a Globalized World, A Legal Analysis of ILO Action, p. 3

¹⁰⁹ M. Pertile, Introduction: The Fight Against Child Labour in a Globalized World, Chapter 1 of Child Labour in a Globalized World, A Legal Analysis of ILO Action, p. 3

Judging the effects in practice of this divisive yet win-win situation for the divided international anti-child labour agenda, it would seem that the strategy of keeping both while putting emphasis on eradicating the perceived worst forms of child labour is not so successful after all. In fact, the ILO itself reported that there are still 168 million children engaged in child labour with 18 million of them in hazardous work.¹¹⁰ To put it bluntly, the approach could be considered a failure in view of the fact that the ILO targeted the eradication of all forms of child labour by 2016.¹¹¹

As far as the Philippines is concerned, child labour is no doubt prohibited under the law. However, the term child labour is defined only in the implementing regulation of the Elimination of the Worst Forms of Child Labor Act of 2003. As stated, employment or work by any child under the age of 15 is prohibited unless such employment or work is under the supervision of his/her parents or legal guardian and that such employment does not endanger his life, safety, health and morals, and that he/she is provided primary or secondary education. From this, it can be concluded that, save “hazardous work”, any person aged 15 to 17 years may be admitted to employment or work. Slavery, bonded indebtedness or forced labour, along with sex trafficking and the use of children for illicit activities are absolutely prohibited under any circumstance under the Philippines’ Anti-Child Abuse Act of 1992 as amended by the Elimination of the Worst Forms of Child Labor Act of 2003.

As far as implementing Article 3(d) of ILO C-182 (re: on hazardous work) is concerned, the prohibition provided under the Elimination of the Worst Forms of Child Labor Act of 2003 shall apply if such type of employment or work is likely to harm the health, safety and morals of children as determined under national law. As stated in the previous Chapter, a long list of hazardous child labour is enumerated and, hence, prohibited under the Elimination of the Worst Forms of Child Labor Act of 2003.

Curiously, the Elimination of the Worst Forms of Child Labor Act of 2003 does not indicate that the elimination of worst forms of child labour shall be prioritized over the elimination of minimum age-based child labour under the 1992 Anti-Child Abuse Act. Thus, it would seem

¹¹⁰ The ILO’s Global Action Plan to Eliminate Child Labour, http://www.ilo.org/ipec/programme/WCMS_113276/lang--en/index.htm, last accessed 07 May 2016

¹¹¹ The ILO’s Global Action Plan to Eliminate Child Labour

that in the Philippines, both forms of child labour defined by law are treated with equal urgency as far as eliminating them are concerned. This is confirmed by the Philippine Program Against Child Labor's vision of child labour-free country by 2015. As the definition of child labour under the IRR encompasses both standards under ILO C-138 and C-182, it appears that the elimination of both are equally prioritised.

- ii. It tackles the effects, not the causes, of child labour

The International Child Labour Regime is largely aimed at preventing the perceived “ill-effects” of child labour. One argument by proponents of the abolitionist legal approach is that child labour displaces children's schooling and hence disrupts the formation of human capital.¹¹² Another reason advanced by abolitionists is that child labour displaces adult labour and, as such, reduces the wage rates of adults as well as increase adult unemployment.¹¹³ Likewise, as may be gleaned from the International Child Labour Regime, abolitionists attempt to protect children from exploitation and thus enhance their development. Yet, the ban does not take into account the causes of child labour such as poverty and the web of complex factors that lead families to allow or even ask children to work even under hazardous and exploitative situations.

Thus, if poverty eradication is not a target of the International Child Labour Regime and national legislations banning them, the abolitionist legal solutions will not stop poor children or their families to send them to work. Moreover, since they cannot legally find work in the formal sector because of the existing prohibition, they are left with no choice but to find work in the informal sectors where their activities are hard to detect. Evidently, poor children and their families in the countryside will continue to be so and, unless they find work for their subsistence, it will be very difficult, if not impossible, to survive. And since they cannot be employed legally, children such as those in the small-scale mining industry, are left with no choice but to engage in such hazardous work available in the informal sectors.

¹¹² Martin Ravallion and Quentin Wodon, Does Child Labour Displace Schooling? Evidence on Behavioural Responses to an Enrollment Subsidy, *The Economic Journal* Volume 110, Issue 462 (2000) pp. 158–175; Hideo Akabayashi & George Psacharopoulos, The trade-off between child labour and human capital formation: A Tanzanian case study, *The Journal of Development Studies*, *The Journal of Development Studies*, Vol.35, No.5 (1999), Frank Cass, London, pp.120-140

¹¹³ Richard Anker, The economics of child labour: A framework for measurement, *International Labour Review* Volume 139 No. 3 (2000), p. 263

iii. A legal solution and nothing more

The International Child Labour Regime endeavors to set universal rules on child labour. Thus, it sets the minimum age whereupon children may work, defines work which are detrimental to them and imposes upon on the Member States an obligation to prohibit and eradicate child labour based on these standards. In this respect, it aims to forge an international consensus on the definitions of child labour and, consequently, paves the way, at least in theory, to a uniform legal response among Member States to the problem. However, as observed, these internationally imposed standards ignore the cultural, social and economic realities in Members States especially in developing countries where an overwhelming majority of the children are engaged in child labour.¹¹⁴

Let us consider the setting of minimum age for admission to work or employment. The prescriptive, yet flexible, approach of ILO C-138 is said to be the product of Western-centric concept of child labour and thus disregards diverse cultures.

According to Borzaga, the dominant view at the time of the deliberation of ILO C-138 is that children have the right not to work. Furthermore, the presence of children in the workplace was viewed as the crux of matter of child labour and that limiting the number of children in the workplace would lead to the reduction of unemployment of adults. Such way of thinking which was traced to Western ideology was later on challenged by the then increasing number of new Member States coming from the developing countries.¹¹⁵

The difference in approach is well defined. On the one hand, the Northern countries assert that childhood and adulthood should be strictly kept separate and, thus, children cannot work even to help support the family. On the other hand, the Southern countries argue that complete separation of childhood and adulthood is not suitable to them. According to this approach, children become mature at adolescence and are expected to play an important role in the family

¹¹⁴ William E. Myers, *The Right Rights?*, Children in a Globalizing World, The Annals of the American Academy of Political and Social Science No. 1, May 2001, p. 41

¹¹⁵ M. Borzaga, *Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour*, pp. 53-54

in order to enhance its wellbeing.¹¹⁶ As argued, ILO C-138 exemplifies the perpetuation of the Northern view into the problem¹¹⁷ which postulates that children derive benefits from being taken out of the workplace.¹¹⁸ As Bourdillon, et al. argue, “there is little empirical evidence to support this assumption and considerable evidence to question it.”¹¹⁹

Without taking a position on the validity of the origins of setting a minimum age for children to work at 15 years, an argument can be made that such a prescription disregards the practice in some countries of allowing children to work at a younger age especially in times of difficulty for the family.

In the Philippines, for example, the probability of a child helping the family to meet its needs especially in times of poverty is almost a certainty and this is evident in EILER’s study on the small-scale mining and plantation industries.¹²⁰ As to why the Philippines adopted hook, line and sinker the standards set by the International Child Labour Regime is puzzling given the inherent distinction of the conditions in the country, which of course has millions of children engaged in child labour, and the Northern states’ outlook set by the subject Conventions.

Assuming that the national child labour ban is properly implemented, it will result in a large-scale elimination of the source of subsistence of millions of children and their families. As stated, around two million people depend on work in the Philippine small-scale mining industry. Removing the children therefrom without the slightest consideration of their socio-economic predicaments would be tantamount to oppression.

Based on the foregoing, it may not be amiss to state that insisting on preventing a child to work on account of his/her age may not be suitable to address the problem. On the contrary, it may even aggravate the economic position of the family and render the children defenceless instead of protecting them.¹²¹ Whilst difficult to achieve, it stands to reason that the International Child

¹¹⁶ M. Borzaga, *Limiting the Minimum Age: Convention 138 and the Origin of the ILO’s Action in the Field of Child Labour*, pp. 53-54

¹¹⁷ W. E. Myers, *The Right Rights?*, *Children in a Globalizing World*, p. 41

¹¹⁸ M. F.C. Bourdillon, B. White and W. E. Myers, "Re-assessing minimum-age standards for children's work", p. 108

¹¹⁹ M. F.C. Bourdillon, B. White and W. E. Myers, "Re-assessing minimum-age standards for children's work", p. 108

¹²⁰ Crispin B. Beltran Resource Center, *Child Labor in Mining and Plantation Communities*, pp. 1, 67, 69

¹²¹ Manfred Liebel, *Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach*, *The International Journal of Children’s Rights* Vol. 23 Issue 4, No. 3 (2014), p. 874

Labour regime should be more sensitive to diverse cultural, social and economic realities especially in developing countries where the bulk of child labour subsists.

iv. Overemphasis on the negative effects of child labour

The proponents of abolition of child labour usually paint a child toiling under hazardous conditions, losing out on education and suffering from exploitation by their employers. Thus, the only way to take them out of such a harsh childhood is to keep them out of work. It cannot be denied that the arguments against the perceived negative effects of child labour have compelling value. Keeping children out of danger, ensuring formal education and fighting out exploitation may of course be considered in shaping a general legal and policy-driven measures to address child labour. However, the positive effects of child labour should likewise be considered to weigh the most suitable response to the issue.

Under the current International Child Labour regime, one of the main arguments against child labour is its negative impact on the child's education. Thus, ILO C-138 fixes the minimum age for admission to employment which "shall not be less than the age for completion of compulsory schooling which in any case shall not be less than 15".¹²²

Along the same line, ILO C-182 obliges States Parties to take into account the importance of education in eliminating child labour.¹²³ The CRC, for its part, enjoins states to protect children from work that is likely to interfere with their education.¹²⁴ Indeed, the IPEC states that education is central to tackling child labour.¹²⁵ This explains why the Philippines prohibits employment of children below the age of 15 unless they are provided basic compulsory education. Furthermore, the country's CCT programme which conditions the provision of cash allowance to poor families with their school age children's attendance in school follows this line of thinking of the International Child Labour Regime.

The International Child Labour Regime thus sees education and child labour on the opposite ends of the equation whereby a child who engages in work will most likely lose out on his formal education. It is, under this legal framework, the anti-thesis of education and, therefore,

¹²² Article 2(3), ILO C-138

¹²³ Article 7(2), ILO C-182

¹²⁴ Article 32(1), CRC

¹²⁵ International Labour Organization, *Combating Child Labour Through Education*, 2008, p. 2

said to diminish the possibility of getting out of poverty. But this can be a restrictive view of the situation. In all probability, an impoverished family which earns below its needs would at some point need additional contributors to the family's coffers. As is mostly the case, the child, on the family or parents' prodding, or even on his own behest, may join the labour force to help augment the family income. As the UN itself reported, through its Economic and Social Commission for Asia and the Pacific, children work mainly because their families need money.¹²⁶ Given the difficulties the family faces, it may do well for it to ask another family member, although at times a child of tender years, to work.

Contrary to the position of the International Child Labour Regime, Liebel points out that considering child work and education as incompatible antagonisms is simply wrong. According to him, treating child work as a "development obstacle" to economic growth and poverty reduction limits the discussion to the negative aspects of child labour.¹²⁷ Indeed, the working child as he earns a living for himself and his family might even help the family send or keep him or another child to school.¹²⁸ In this scenario, the State may do well not to interfere at least in the decision of the parents or the child to work lest it wants the family to wither in poverty. Thus, as Liebel suggests, child work should be viewed also with its positive effects on the child, his family and society in general and not simply confined to its perceived detrimental effects on the child's formal education.

Of course, it is here recognised that compulsory formal education can be an important tool to eradicate poverty as posited by IPEC and other proponents of the abolitionist approach. Moreover, there are types of work that are truly detrimental to children, i.e. forced labour, bonded indebtedness, sex trafficking of children, and thus must be unconditionally stopped at all costs. However, it is equally true that some forms of child work, even if viewed as dangerous, can also be helpful in dealing with poverty and also provide a different, yet important, learning experience to children.¹²⁹ As such, it must be given equal consideration in designing laws and policies dealing with the matter.

¹²⁶ Z.F. Arat, *Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals*, p. 200

¹²⁷ Manfred Liebel, *The new ILO report on child labour: a success story, or the ILO still at a loss?*, *Childhood*, Sage Publications 2007, downloaded from <http://chd.sagepub.com/content/14/2/279>, last accessed 07 May 2016

¹²⁸ Sylvain E. Dessy and Stéphane Pallage, *A Theory of the Worst Forms of Child Labour*, *The Economic Journal*, 115, January 2005, pp. 68–87.

¹²⁹ See generally M. Liebel, *The new ILO report on child labour: a success story, or the ILO still at a loss?*

At this juncture, it should likewise be considered that aside from helping the family, child workers may also find satisfaction in what they do. In a study by Woodhead, for example, some child workers while aware of the exploitative and harmful conditions of their work, gave positive evaluations of their own occupation. The positive evaluation is linked to the economic benefits of work. Thus, the children interviewed view schooling as desirable but find work as necessary as the latter provides income for themselves and their families along with additional costs associated with their schooling.¹³⁰ With this in mind, I agree with the foregoing scholars that the positive effects of child labour must likewise be recognized and considered in designing programs for international intervention on the subject. In any event, I am of the opinion that the hazards posed by employment or work may be prevented or minimized with the active participation of the State and the help of the employers and the community.

What can be reasonably concluded from Woodhead's study is that work could be as much of a learning experience as well. Earning for the family from their toils at the mining pits might also result in positive outcomes in the child's development. In a not so adverse situation, a child is expected to fully develop his human potential at school along with other learning experience, part-time work included.¹³¹ However, these working children in the small-scale mining industry are not living in an ideal world.

As stated, many child miners completely lose the opportunity to go to school. Yet, with their work, they contribute to the family's coffers, however little, from which they may also derive positive learning experiences. In the Philippine small-scale mining industry, the hazardous nature of the work is out of the question. The hazards of mercury and underwater diving can of course harm children who work there. But then, in this situation, removing them from the mining pits will only drag them into deeper poverty. Taking work as a positive reinforcement to their subsistence, the Philippine government may well strictly implement the mercury ban under existing national legislation instead of condemning them to unemployment. In the same manner, I believe that a strict implementation and monitoring of safety and health standards in the workplace will also help reduce the risks of fatal accidents in the underwater mining pits.

¹³⁰ Martin Woodhead, *Combatting Child Labour, Listen to What Children Say*, *Childhood* Vol. 6(1), Sage Publications 1999, pp. 33, 39, 43

¹³¹ See Robbie Gilligan, *Adversity, resilience and young people: the protective value of positive school and spare time experiences*, *Children & Society* Vol. 14, Issue 1, February 2000

In other words, one way of dealing with the dangers in the small-scale mining pits is to strictly implement the existing protective laws and not excluding those needy child miners therefrom.

v. Children are often the victims of a child labour ban

Work performed by children is said to be considered as a central element of childhood in many developing countries and this tends to be “unjustly neglected or condemned” by the “rich country ethnocentrism”¹³² that fuels the International Child Labour Regime. To those opposed to the abolitionist approach, the main argument against abolition is that in such an approach, children are often the victims of child labour ban.

As Hanson and Vandaele points out, a formal ban on child labour prevents children from invoking fundamental rights of workers that are instrumental in eradicating exploitation in the work place.¹³³ Those who argue along this line believe that legislations prohibiting children at a certain age to engage in work are often forced to take up jobs in the informal sector where working conditions and pay can be worse.¹³⁴ The same can be said for those who are employed but who are excluded from work because of the prohibition.¹³⁵ Thus, it is argued that such ban is regressive and counterproductive and even drive children to work underground let alone expose them to worse exploitative practices by some unscrupulous employers.¹³⁶

In recent years, banning child labour and punishing it with trade sanctions had been the abolitionist proponents’ *modus operandi*. However, it had failed largely to alleviate the situation of the working children and their families. Indeed, as shown by the experience of the textile child workers in Bangladesh, their removal from work made their plight much worse.

¹³² W. E. Myers, *The Right Rights?*, Children in a Globalizing World, pp. 41-52, citing Jo Boyden, *Childhood and the Policy Makers Comparative Perspective on the Globalization of Childhood In Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, 2d ed Allison James and Alan Prout. London (1997): Falmer Press, p. 42

¹³³ K. Hanson and A. Vandaele, *Working Children and International Labour Law*, pp. 120-121

¹³⁴ Ben White, *Globalization and the Child Labour Problem*, Working Paper Series No. 221, Institute of Social Studies, The Hague, 1996, p. 6

¹³⁵ B. White, *Globalization and the Child Labour Problem*, p. 6

¹³⁶ W. E. Myers, *The Right Rights?*, Children in a Globalizing World, pp. 41-52, citing Jo Boyden, *Childhood and the Policy Makers Comparative Perspective on the Globalization of Childhood*, In *Constructing and Reconstructing Childhood: Contemporary issues in the sociological study of childhood* Vol. 2 (1997), pp. 190-229

Bangladesh and the trade sanctions on child labour

The case of child workers in Bangladesh clearly illustrates the negative effects of excluding children from work. On this subject, White narrates that in 1993, garment manufacturers in Bangladesh were forced to dismiss child workers *en masse* (estimated at about 55,000 child workers) on account of pressure from the Bangladeshi group of garment exporters to comply with the then applicable law which prohibits the employment of children below fifteen years of age.¹³⁷ The pressure from the exporters association, according to White, was motivated by fear of an international boycott, particularly by the United States, where bulk of their products were exported and where a general a ban on exports from industries that use child labour was in place. Interestingly, it had been reported that the children who remained working with the garment factories had better nutrition and health than those who were dismissed.¹³⁸

Moreover, as it turned out, half of the several hundred Bangladeshi children interviewed by the ILO and UNICEF after their dismissal had found jobs in the informal sector and other street activities while others actively sought jobs. For those employed after their dismissal, their economic situation got worse as their new jobs offered smaller income.¹³⁹ Further, here it was established that not one of the children dismissed from the garment factories returned to school.¹⁴⁰

As Arat notes, a ban on child labour and imposing trade sanctions on countries that allow it will not result in the elimination of suffering of poor children and their families. This is because, according to her, the scheme fails to consider the root causes of the problem which are multi-faceted and complex. Moreover, they are only aimed at export-oriented countries which she dismissed as problematic.¹⁴¹ To support her contention, she offered four reasons.

First, Arat asserts that the sanctions, even if carried out effectively would have an impact only on 5% of child workers because, as per ILO study, a majority of full time working children are working in the commercial agricultural industry. Second, many export items produced through

¹³⁷ B. White, *Globalization and the Child Labour Problem*, p. 6

¹³⁸ B. White, *Globalization and the Child Labour Problem*, p. 6

¹³⁹ B. White, *Globalization and the Child Labour Problem*, p. 6

¹⁴⁰ B. White, *Globalization and the Child Labour Problem*, p. 6

¹⁴¹ Z. F. Arat, *Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals*, pp. 117-204

the use of adult labor depend on the availability of raw materials which, according to her, are produced by child labour. Third, she contends that such a ban would reduce the demand for such goods and, as a result, would likewise reduce demand for labour in general and ultimately trigger a decline in wages. Fourth, a ban of such nature would push child labourers away from relatively more secure and better paying jobs into the informal sector noting that they usually led to establishments which are illegally operated and prostitution. She further states that those who leave the underground employment join the ranks of street children who survive on begging, shining shoes, scavenging, among others, while eventually some of them would be involved in the commission of crimes.¹⁴²

I agree with these observations. It bears repeating that the abolitionist approach fails to see the economic and social context in most developing countries where child labour is often resorted to by the families in order to survive. As shown, excluding children from work does not guarantee a better situation for them. In fact, it can be worse given the tendency of poor children to find work in the informal sector where monitoring by the public authorities is almost non-existent due to factors such as administrative and financial constraints. The case of the child miners in the Philippine small-scale mines is likewise a testament to this. Furthermore, such a ban does not always lead the children back to school. As may be gleaned from the case of Bangladesh above, the economic conditions of the subject children had driven them to find work elsewhere even if it meant that they had to stop schooling to work under worse conditions. In the Philippine small-scale mines, the result will be the same since there are no other alternatives except to find work elsewhere and, most probably, in another informal job or out on the streets where the hazards are much worse.

As can be seen in the case of Bangladesh, the success of programmes intended to protect working children is not necessarily dependent on their removal from work. With this, authorities should focus on providing better working conditions and better alternatives to promote their economic and social status.¹⁴³ Lest the Philippine government changes its perspective on child labour, the exploitation of children will never cease to exist.

¹⁴² Z. F. Arat, *Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals*, pp. 198-199

¹⁴³ W. E. Myers, *The Right Rights*, citing Jo Boyden, *Children and the Policy Makers: A Comparative Perspective on the Globalization of Childhood*, 1997

CHAPTER IV ALTERNATIVES TO THE ABOLITIONIST APPROACH

At this point, I have already attempted to establish that the abolitionist International Child Labour Regime may not be the solution to the child labour problem. As shown, there are at least 168 million engaged in child labour with 18 million of them in hazardous work. In the Philippines, there are two million children aged 5-17 who are engaged in hazardous work. Considering the targets of both the ILO and the Philippines to eradicate child labour by 2016 and 2015, respectively, the abolitionist approach may be considered a miserable failure in combatting child labour. Thus, there is an imperative need to look for other solutions to the problem. In this Chapter, I shall discuss alternative approaches which the Philippines may consider in addressing child labour. Taking off from the observations I made in Chapters II and III, I will analyse the following approaches in terms of attacking the causes of child labour and the protection of children within the context of child labour in the Philippine small-scale mines. Where necessary, I shall state other relevant issues concerning these alternatives.

Part I

4.1 Protectionist or regulatory approach

The protectionist or regulatory approach pursues “short and long-term measures in such areas as the provision of services, protection and advocacy” for child workers.¹⁴⁴ According to this approach, children can work when adequate protective legislations are in place.¹⁴⁵ Thus, instead of prohibiting child labour, this approach advocates for minimum wages, conditions of work, number of hours of work, safety in workplace and such other measures which protect workers in general. The argument is that, where the adult workers are protected by these legislations, children must also be covered by them. Accordingly, the protectionist or regulatory approach proponents contend that if children are to be protected, then their status as workers must be acknowledged in order that they may benefit from protective legislations which apply to all workers.¹⁴⁶

¹⁴⁴ B. White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children, p. 7

¹⁴⁵ K. Hanson and A. Vandaele, *Working Children and International Labour Law*, p. 78

¹⁴⁶ See, generally, B. White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children

4.1.1 Does it address the causes of child labour in the Philippine small-scale mines?

The protectionist or regulatory approach suffers from the same infirmity as the abolitionist regime in that it is just a legal solution and nothing more. Thus, while protecting working children may be laudable, it does not and will not address the socio-economic and political factors that lead children to take up potentially exploitative work in the small-scale mines. In this situation, where implementation has been proven to be difficult with almost the entirety of small-scale mines operating informally in remote areas, the influx of children working in the mines will not be abated.

4.1.2 Will it protect children working in the Philippine small-scale mines?

In principle, the protectionist or regulatory approach may protect children from exploitation. However, one potential issue concerning this approach is the difficulty in implementation. As stated in Chapter I, small-scale mines are mostly undertaken by illegal and informal operators. Worse, they are mostly situated in remote countryside areas. In such a case, government regulators, assuming the government decides to just regulate child labor in small-scale mines instead of banning it, will have the monumental task of identifying the operators and the working children scattered across the Philippines in order to give effect to such protective legislations. Along with implementation problems, this also means appropriating additional budget and training for such personnel tasked to implement and monitor compliance of labour standards by small-scale mining operators.

It may also be relevant to state that this approach may lead to the unintended consequence of encouraging families who are not necessarily living below the poverty line to allow, request or order their children to work in the mines. This possibility may be reinforced by the idea that working children are in principle protected by legislation.

4.1.3 Possibility of success

This approach views child labour as a natural occurrence and thus resorts to regulation rather than an outright ban. Since protection of working children is the only goal, legislations may in principle lead to that result. Pertinently, if the protectionist or regulatory approach will be adopted in the case of small-scale mines, implementation of the laws and regulations should be

the priority of the Philippine government. Unfortunately, as HRW notes in its Study referred to above, poor implementation of laws relating to child labour is one of the issues the Philippine government will have to address.

4.2 Empowerment approach

The empowerment approach “views children more as active subjects or agents of change, and focuses on promoting the self-organization of working children”.¹⁴⁷ Through self-organisation, working children’s groups such as the *Niños y Adolescentes Trabajadores* (NATs) from Latin America and the Caribbean claim a “right to work in dignity” and to participate in the debate on child labour.¹⁴⁸ During the Fifth Meeting of the Working Children of Latin America, the NATs made the following declaration:

“We NATs [working children and adolescents] from Latin America and the Caribbean, like our friends in Africa and Asia, see ourselves as producers of life, opposed to the culture of death which refuses us any rights and our complete integration in society. Not to recognise this, means excluding us still more than hitherto. To speak at the time of civil rights is mockery.”¹⁴⁹

Accordingly, the participatory approach rests on the assumption that the best way to protect working children from “exploitation, mistreatment and disparagement by society” is through the said children’s groups participation in the child labour debate.¹⁵⁰ In essence, proponents of this approach such as the NATs feel that they have the right to work in dignity and to participate in “working out proposals for alternatives to the existing system...”¹⁵¹ While the NATs have no presence in the Philippines, their ideas are being used here for reference.

¹⁴⁷ B. White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children, p. 7

¹⁴⁸ K. Hanson and A. Vandaele, *Working Children and International Labour Law*, p. 78

¹⁴⁹ Manfred Liebel, *Working Children as Social Subjects*, The contribution of working children’s organizations to social transformations, *Childhood* Vol. 10(3) (2003), Sage Publications, p. 270

¹⁵⁰ M. Liebel, *Working Children as Social Subjects*, The contribution of working children’s organizations to social transformations, pp. 270-271

¹⁵¹ Fifth Meeting of the Working Children of Latin America, cited in Manfred Liebel, *Working Children as Social Subjects*, The contribution of working children’s organizations to social transformations, p. 271

4.2.1 Does it address the causes of child labour in the Philippine small-scale mines?

As with the protectionist approach, the participatory approach also does not address the causes of child labour. As can be seen, the thrust of this approach is to allow child workers to participate in designing and implementing policies and legislations relating to child labour and not so much on eliminating its causes such as poverty and other socio-economic factors. For this reason, it will also not likely reduce or eliminate the child labour phenomenon in the Philippine small-scale mines.

4.2.2 Will it protect children working in the Philippine small-scale mines?

The participatory approach has a great potential to improve the plight of children working in the mines. Indeed, if their active participation in the child labour debate could lead the Philippine government to recognize their right to work, children, if organised, will be in a position to bargain for the recognition of their rights in work including their protection against hazardous substances such as mercury and such other practices in the mines that pose health and safety hazards.

4.2.3 Possibility of success

At present, the Philippines' working children have no known significant working children's organisations. With this, the participatory approach is inexistent in the Philippines. Evidently, the lack of organisation among working children is a huge stumbling block towards the realisation of this approach in the Philippines in general and in the small-scale mines in particular.

4.3 Combination of the protectionist or regulatory approach and the empowerment approach

According to White, the regulatory and empowerment approaches can be combined and are "complementary" and "mutually reinforcing" to one another.¹⁵² Based on this proposition, he states that child workers can empower themselves by claiming the rights and protections under

¹⁵² B. White, Children, Work and "Child Labour": Changing Responses to the Employment of Children, p. 7

the protectionist legislations. Furthermore, by organising themselves, he asserts that children enable themselves to influence the content of protectionist measures.¹⁵³ Thus, White argues that better working conditions for children can most likely be achieved through a combination of “protection from above” and “empowerment from below”.¹⁵⁴

Liebel advocates for protection to working children and empowering them through participation instead of banning them from work. Much of Liebel’s arguments focus on children’s voices often expressed through children’s organisations. He gives importance to children’s aspirations and the many benefits of work to them. He believes that children are already participants in society who are not simply to be designated to roles that are determined by adults. Children’s role in research is also given significance. He says that it is not sufficient to record what the children say, rather serious account should be taken on what they say especially those positive values they ascribe to work.¹⁵⁵ In essence, Liebel argues that children have a comprehensive set of rights and calls for the recognition of their right to work and for provision of better protection rather than excluding them from work.

Liebel cites the case of Bolivian law on children’s rights as a paragon of championing children’s right to work. For the first time, specific reference to “working children” was made in a law dealing with children and adolescents. The Bolivian code provides that working children have the right to be protected at all levels through the family and society. Liebel celebrates the Bolivian Code in that the children are to be protected from economic exploitation, dangerous work and that which jeopardises their right to education, dignity and overall development.¹⁵⁶

The law, Liebel states, reconciles the ILO Conventions referred to above with the realities within the Bolivian context. Thus, “children’s work is given differentiated treatment according to its different conditions and contexts, and a large proportion of this work is removed from the scope of ‘child labour’ as set out in the ILO Conventions.”¹⁵⁷ However, the law also

¹⁵³ B. White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children, p. 8

¹⁵⁴ B. White, *Children, Work and “Child Labour”*: Changing Responses to the Employment of Children, p. 48

¹⁵⁵ Michael Bourdillon, *Children and Work: A Review of Current Literature and Debates* (2006), *Children and Work: A Review of Current Literature and Debates. Development and Change*, 37: 1201–1226. doi: 10.1111/j.1467-7660.2006.00519.x, citing Liebel, M. (2004) *A Will of their Own: Cross-Cultural Perspectives on Working Children*. London and New York: Zed Books.

¹⁵⁶ M. Liebel, *Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach*, p. 4

¹⁵⁷ M. Liebel, *Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach*, p. 10

emphasises compliance with the ILO Conventions while focusing on the problems confronting working children such as the need for better protection in the workplace. In this regard, Liebel notes the importance of protective mechanisms and measures that aim to support children which the authorities, under the law, are required to provide.¹⁵⁸ Throughout the entire process of legislating the Bolivian code, the active role of children and adolescents was instrumental in articulating their right to work and be provided with protection instead of being excluded from work.¹⁵⁹

A more pragmatic strategy to address child labour is offered by some authors. Just like Liebel, the proponents of this view argue that children can claim a right to work. However, they suggest that children's right and freedom to work may be regulated independently of children's rights in work and instrumental rights (i.e. the right to join unions, collective bargaining). Under this approach, it is pointed out that it is possible for children to be recognised as *de facto* workers with rights to be determined in accordance with the distinct context under which they are working and based on the rights and freedoms of children as provided under the CRC.¹⁶⁰

For their part, Hanson and Vandaele believe that a comprehensive approach shall result in "fully considering children as legal subjects and as rights holders."¹⁶¹ To them, "if children are recognised as legal subjects, then also their work-related rights have to be acknowledged."¹⁶² Following this line of argumentation, the protection of working children can be achieved only if their rights are recognised.

At this juncture, it is important to stress that, in the above approaches, the crucial role of the participation rights of children in shaping the law that would directly have an impact on them is acknowledged. In Bolivia, as expressed by Liebel, children have strong organisations that have the capability to participate in issues concerning them and to have meaningful role in the decision-making process. However, in countries like the Philippines where children have not the same level of organisation, it is difficult to see how children will be taken seriously by policy makers through dialogues or such a child-centered approach could flourish. Moreover,

¹⁵⁸ M. Liebel, Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach, p. 10

¹⁵⁹ M. Liebel, Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach, p. 10

¹⁶⁰ K. Hanson and A. Vandaele, Working Children and International Labour Law, p. 129

¹⁶¹ K. Hanson and A. Vandaele, Working Children and International Labour Law, p. 132

¹⁶² K. Hanson and A. Vandaele, Working Children and International Labour Law, p. 132

a law such as that in Bolivia runs the risk of breaching the two ILO Conventions on child labour because it sets a lower minimum age for employment or work instead of progressively increasing it as mandated by ILO C-138 and legalising certain types of “hazardous work” covered by ILO C-182 on the condition only that they are performed within the family or community context.¹⁶³

As to legal challenge to the Bolivian Code just mentioned, it is worth considering that the legality of recognizing the children’s right to work may be supported by Article 23 of the UN Declaration of Human Rights (UNDHR) and Article 6(1) of the ICESCR which provide that every human being has the right to work.

At any rate, save for the legal questions just adverted to, the Bolivian experience is a significant victory for proponents of protectionist perspective and participation rights for children. However, it remains to be seen how it shall contribute to poverty reduction and the protection of working children.

4.3.1 Does it address the causes of child labour in the Philippine small-scale mines?

A combination of the protectionist/regulatory and participatory approach does not and, therefore, will not, address the causes of child labour in the Philippine small-scale mines. Without meeting the causes of child labour in the small-scale mining industry in the Philippines, child labour will continue to subsist.

4.3.2 Will it protect children working in the Philippine small-scale mines?

4.3.3 Possibility of Success

In principle, a combination of the two above approaches will protect children working in the small-scale mines. As stated above, with this approach, child workers can empower themselves by claiming the rights and protections under the regulatory legislations.¹⁶⁴ Thus, child workers in the mines will benefit from regulations which seek to standardize their wages with the

¹⁶³ Children’s Rights International Network, Labour Rights and Protecting Working Children, <https://www.crin.org/en/library/publications/labour-rights-child-labour-and-protecting-working-children>, last accessed 07 May 2016

¹⁶⁴ B. White, Children, Work and “Child Labour”: Changing Responses to the Employment of Children, p. 7

prevailing wages of adults and their hours of work, as well as prevent their exposure to harmful substances such as mercury and unsafe and unsanitary working conditions.

Then again, two problems hamper the potential of this approach to protect children from exploitation. First, the lack of children's organisations that will represent other working children in clamoring for the recognition of children's right to work and protective measures against exploitation. Second, even if the children's right to work is recognised and protective legislations are in place, implementation by the Philippine government remains an issue. In this regard, the government and concerned private organisations may consider joining hands in promoting and encouraging self-organisation of children working in the mines and educate them of their rights. Moreover, the same level of cooperation between public and private actors, including mining communities, should be forged to find ways to close the gap in implementing protective legislations to child miners.

At any rate, a combination of the two approaches is a feasible alternative to the problem of child labour in the Philippine small-scale mines. As mentioned, there are thousands of children working in the mines, excluding those not captured by official statistics of the national government. As the small-scale gold-mining industry is expected to grow in the coming years, the Philippines may have to deal with this reality and recognise their right to work while ensuring that they receive proper protection in the workplace.

4.4 Child-centered approach

Similar to the above, a child-centered approach has been suggested instead of an outright abolition of child labour. However, more than a legal framework, proponents of this approach believe that all actions to protect children should be founded on promoting their welfare and development. Thus, according to Myers and Boyden, a child-centered approach “challenges the notion that child work is primarily a labour issue”.¹⁶⁵ Rather than seeing child work as a labour issue, they suggest that focus should be directed at the fulfillment of the children's potential and what could be done to realise the said potential. Thus, according to them, child

¹⁶⁵ William Myers and Jo Boyden, *Child Labour: Promoting the Best Interests of Working Children*, Second Edition, Save the Children, London (England) (1998), p. 16, <http://files.eric.ed.gov/fulltext/ED430712.pdf>, accessed 07 May 2016

work is seen less from a legal perspective but more on the children's "social ties, aspirations, skills and competencies and evolving sense of self-worth"¹⁶⁶

A child-centered approach, continues Myers and Boyden, does not make use of minimum age laws in dealing with child labour as it sees the futility of these laws in actually taking the children out of danger for they do not really address the real factors of children working (i.e. poverty, accessibility of education.). Instead, it gives due importance to the importance of work to the role that work has to play in children's lives. In so doing, this approach, say the authors, "rely more on mobilizational activities such as poverty reduction, advocacy and campaigning on children's rights, economic and social incentives, participation of children and their parents in policy and programme planning, improvement of school accessibility and quality, and the introduction of workplace protections and safeguards for both children and adults."¹⁶⁷ In other words, it tends to zero in on the causes of child labour with the promotion of the children's rights and their protection.

At the core of all these is the child's best interest articulated through their participatory rights under the CRC. However, it must be said that the child-centered approach advocated by the above-mentioned authors likewise recognize that work which are hazardous to children as stated under Article 32 of the Convention must be "vigorously resisted".¹⁶⁸ Yet, based on this approach, the authors say that there ought to be recognition that some types of work may be appropriate for children such as those that promote their social and economic skills, confidence, self-esteem, among others. In sum, while it promotes resistance to hazardous work for children, it nevertheless does not suggest the curtailment of the ability of children to engage in work that does not pose a danger to them.¹⁶⁹

4.4.1 Does it address the causes of child labour in the Philippine small-scale mines?

4.4.2 Will it protect children working in the Philippine small-scale mines?

From the description of the child-centered approach, it appears that it attempts to address the causes of child labour. Thus, it is aimed at poverty reduction and other activities such as

¹⁶⁶ W. Myers and J. Boyden, *Child Labour: Promoting the Best Interests of Working Children*, p. 16

¹⁶⁷ W. Myers and J. Boyden, *Child Labour: Promoting the Best Interests of Working Children*, p. 16

¹⁶⁸ W. Myers and J. Boyden, *Child Labour: Promoting the Best Interests of Working Children*, p. 16

¹⁶⁹ W. Myers and J. Boyden, *Child Labour: Promoting the Best Interests of Working Children*, p. 16

economic and social mobilization. Other than addressing the causes of child labour, it concerns itself with the improvement of human capital while attempting to set protections and safeguards for children at work and encourage the participation of children and their parents in planning. As such, the child-centered approach may be considered to be a combination of the protectionist and empowerment regimes but with an economic and social dimension.

4.4.3 *Possibility of success*

In my opinion, the child-centered approach can possibly address the child-labour problem in the Philippines.

The child-centered approach is the closest mirror image of the Philippine approach to child labour except that it does not call for the imposition of a legal prohibition on child work based on minimum age standards and where participation of children in programme planning is inexistent. Be that as it may, the protective measures promoted by this approach can be utilized in full-force to ensure that children working in the mines are insulated from exploitation and safety issues such as the use of mercury and other hazardous practices.

Going hand in hand with protective measures, the economic and social incentives such as the Philippines' *Pantawid Pamilyang Pilipino Program* may somehow alleviate the financial distress of families depending on child work in the mines while reducing the incidence of children missing out on education. Of course, I do recognise that this may be just a stop-gap measure for the child miner-dependent families and, as suggested by Reyes and Tabuga, the Philippine CCT may not be accurately targeting the extremely poor families,¹⁷⁰ but it may pave the way for the reduction of dependence on child work in the mines. That is, of course, dependent on the proper implementation of the Programme. However, I believe that aside from this Programme, the Philippine government may consider other long term economic and social programmes aimed at poverty reduction to totally address the child labour problem.

In addition to the above, the fact that the child-centered approach puts the children and their parents at the heart of policy and programme-planning on child labour, it is highly likely that

¹⁷⁰ C. M. Reyes and A. D. Tabuga, *Conditional Cash Transfer Program in the Philippines: Is It Reaching the Extremely Poor?*, p. 12

the Philippine government may be informed on the real needs of families that are dependent on child labour in the small-scale mines. In this way, the child workers and their parents are empowered to make choices in the matter of child employment. With this, the government may design its policies and programmes in a manner that is truly sensitive to the needs of the small-scale mining labour-dependent families.

Part II

In addition to the foregoing alternative approaches to child labour, it has been said that the child labour issue should be seen through the lens of human rights and the best interests of the child principle under the CRC. I shall deal with the foregoing proposition below.

4.5 Child labour may be joined with the human rights debate

An argument has been made that setting the minimum age for admission to work or employment ignores the CRC which sets the upper limit of childhood at age 18.¹⁷¹ In the same manner, it conflicts with Article 23 of the UN Declaration of Human Rights (UNDHR) and Article 6(1) of the ICESCR which recognises that every person has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, and the right to the opportunity to gain his living by work which he freely chooses or accepts. Thus, the minimum age-based prohibition on employment of children is susceptible to a legal challenge pitting the ILO Convention against the International Bill of Human Rights provisions mentioned.¹⁷²

In any case, I believe the opportunity to join the child labour issues with the human rights debate is more important than the legal challenge to the abolitionist approach to child labour. As shown, the CRC and the International Bill of Human Rights, specifically the ICESCR and the UDHR, provide that every person has the right to work. According to Bourdillon, White and Myers, an investigation of minimum-age policies on children should include a discussion of their human rights.¹⁷³ With this, a Child Labour Regime which acknowledges not only that

¹⁷¹ M. Bonnet, *Child Labour in Africa*, *International Labour Review*, Vol. 132, No. 3 (1993), p. 372

¹⁷² See in this regard, M. F.C. Bourdillon, B. White and W. E. Myers, "Re-assessing minimum-age standards for children's work", p. 114

¹⁷³ M. F.C. Bourdillon, B. White and W. E. Myers, "Re-assessing minimum-age standards for children's work", p. 114

they are in need of protection but, at the same time, holders of rights may open up the possibilities for an international legal framework that is more suited to the needs and aspirations of working children or those who wish to work in dignity.

As stated by Reynaert, et al., “[j]ust like human rights more generally, children’s rights originate from the quest for human dignity and social justice”.¹⁷⁴ Thus, while there are tensions between human rights in general and children’s rights, the aforesaid writers suggest that they “should be conceptually analysed in conformity with general human rights whenever possible.”¹⁷⁵ That children’s rights are supposedly weak than the general human rights because it views children as a passive subject in need of protection should not deter children’s rights proponents from pursuing the realization of these rights through a human rights perspective.

In this regard, I find it worth noting that the CRC, just like the International Bill of Human Rights, views children as needing special care and protection. To illustrate, Article 24 of the ICCPR while providing for non-discrimination of children provides that they are entitled “to such measures of protection as are required by his status as a minor.” Article 10 (3) of the ICESCR likewise provides special measures of protection and assistance to be taken on behalf of children and thereby enjoin States to protect them from, *inter alia*, economic and social exploitation. To be sure, the CRC along with the International Bill of Rights recognise the special nature of childhood which they seek to protect by giving children special treatment in terms of rights and enforcement measures.

In my opinion, this approach is not entirely wrong *per se* but it also does not remove the child labour phenomenon from the human rights framework. Indeed, childhood has a special nature and, necessarily, it requires special attention. However, in the process of protecting children, which is what the ILO Conventions appear to promote in the first place, policy makers must take heed of the fact that children likewise “want to be respected, get a decent wage, have work breaks and access to education and health care”¹⁷⁶ just like adults.

¹⁷⁴ Didier Reynaert, Ellen Desmet, Sara Lembrechts and Wouter Vandenhole, A Critical Approach to Children’s Rights, The Routledge International Handbook of International Children’s Rights Studies (2015), edited by Wouter Vandenhole, Ellen Desmet, Sara Lembrechts and Didier Reynaert, p. 5

¹⁷⁵ D. Reynaert, E. Desmet, S. Lembrechts and W. Vandenhole, A Critical Approach to Children’s Rights, p. 7

¹⁷⁶ Z. F. Arat, Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals, p. 200

In any event, as has been repeatedly stressed herein, I believe that the legality of recognizing the children's right to work may be supported by Article 23 of the UNDHR and Article 6(1) of the ICESCR which provide that every human being has the right to work. As to whether children are excluded from this right, I am of the opinion that just like any legal issue, this proposition may be a matter of interpretation. In any event, I agree that as argued by leading scholars on the subject of child labour, the "stronger human rights provisions" must prevail.¹⁷⁷ Indeed, it is my view that a positive conferment of a right on children would seem more compatible with the human rights framework of empowering the subject with rights.

In the spirit of protecting child workers including those working in the Philippine small-scale mines, children must be seen with the fundamental human right to work. Aside from legal support coming from the relevant provisions of the UNDHR and ICESCR just mentioned, there is no express prohibition of child labour under the Philippine Constitution. As such, I believe that child labour is implicitly allowed under the Constitution. However, to erase all doubts, the Philippines may amend its Constitution by expressly providing for the right of children to work. Thus, existing national legislations must likewise be amended or revised to recognise this right. With the legal challenge already discharged, Philippine authorities can focus its resources on the implementation of protective measures designed to prevent exploitation of working children including child miners.

4.6 Incorporating the "best interests of the child" principle and participation rights in the alternative approaches to child labour

To a certain extent, the international child labour debate can be informed by the CRC. As noted by Myers, the CRC, specifically its provisions on the best interests of the child and participation rights, has contributed significant changes in the child labour debate and the advocacy of international institutions and non-governmental organisations.¹⁷⁸ There is thus a vast opportunity as well as a challenge for the International Child Labor Regime to set standards based on the aforesaid principles under the CRC.

¹⁷⁷ M. F.C. Bourdillon, B. White and W. E. Myers, Re-assessing minimum-age standards for children's work, p. 108

¹⁷⁸ See generally, W. E. Myers, Considering Child Labour: Changing terms, issues and actions at the international level, *Childhood* 6(1), pp. 13-26

As can be seen, Article 32 of the CRC and Article 3(d) of ILO C-182 prohibit exploitative and hazardous work for children while ILO C-138 imposes a minimum-age based prohibition on child labour. Thus, these instruments overlook the will and living conditions of the receiver of the protection or their families who may need or require the children to work to make ends meet. Here, I see an apparent conflict with the right to protection against economic exploitation and the necessity of the child or his family for him to have work. It has to be considered that most children are driven to work even under exploitative or hazardous circumstances precisely to help their impoverished family out of starvation. As such, prohibiting them from taking exploitative work, which could be the only viable option to help the family in times of urgency, might only aggravate their poverty.

In this problematic situation, the voice of the children, the ones who are directly affected by such absolute and conditional bans on child labour, must be considered. I agree, as has been suggested, that child labour must be so constructed in the broadest view taking into account the diverse ideas the world over.¹⁷⁹ Thus, in a matter that directly affects children, it is only proper to consult them. With this, it is my considered opinion that pursuant to this proposition and so as not to condemn the child and his family to further poverty and to being labelled as illegal workers, Article 32 should be read together with Articles 3 and 12 of the CRC.

The significance of the Articles 3 and 12 of CRC in the international child labour debate is widely recognized.¹⁸⁰ According to the Committee of the Rights of the Child, the best interests of the child principle and the right to participate have complementary roles. Thus, Article 3(1) have the purpose of realizing the child's best interest while the right to participate provides the methodology for hearing the views of the child together with their inclusion in all matters affecting them.¹⁸¹

Under Article 3 of the CRC, it is provided that “the best interests of the child shall be the primary consideration” in all actions concerning children. According to Myers, Article 3 is “so fundamental to the CRC” because it covers all actions “intended as expression or implementation of the Convention.” With respect to child labour, he suggests that the Article

¹⁷⁹ M. Borzaga, *Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour*, pp. 53-54 citing William E. Myers, *The Right Rights? Children in a Globalizing World* (2001)

¹⁸⁰ See on this subject, W. E. Myers, *Considering Child Labour: Changing terms, issues and actions at the international level*, pp. 13-26

¹⁸¹ Committee on the Rights of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf, last accessed 07 May 2016

has the potential effect of redefining child work issues in that any intervention shall be “accountable to children before adults”. Specifically, he points out that Article 3 has the potential impact of redefining the traditional approach that children’s economic activity should be abridged because it has an adverse effect on the economic welfare of adults.¹⁸²

Article 12 for its part in relation to Article 13 on the freedom of expression, provide for participation rights of children and a legal mechanism by which their will may be articulated. Under Article 12, States are obliged to assure the right of the child to express his views freely in all matters affecting him.¹⁸³ In regard to child labour, the participation of children in policy design and implementation is crucial in articulating their best interests.

In several instances, a majority of the members of working children’s organisations called for “greater protection” at work rather than the elimination of child labour.¹⁸⁴ This working children’s groups more commonly known as NATs claim a “right to work in dignity” and to participate in the debate on child labour.¹⁸⁵ While not representative of all the entire working children’s population, Article 12 of the CRC requires that due weight should be given to their views especially so in this case when they are the ones directly affected by any policy or legislation hampering their so-called “right to work in dignity”.

I do not claim here that all children have the ability to comprehend and articulate their ideas and aspirations with respect to their employment. In fact, I have not heard of child miners in the Philippines who have recorded statements, either individually or collectively, on their views on the propriety of child labour. This is because in the Philippines, child labour organisations or membership in labour unions by children are totally unheard of. With their limited education, child miners or even their parents may not even be aware that working in the mines have legal, economic, health and safety implications. Be that as it may, I find it abundantly clear that the voices of children must at least be heard on the matter of child labour legislation where they are the ones directly affected.

¹⁸² W. E. Myers, *Considering Child Labour: Changing terms, issues and actions at the international level*, pp. 15-16

¹⁸³ Article 12(1), CRC

¹⁸⁴ Antonella Invernizzi and Brian Milne, *Are children entitled to contribute to international policy making? A critical view of children's participation in the international campaign for the elimination of child labour*, *The International Journal of Children's Rights* 10 (2002), pp. 403-431, p. 409

¹⁸⁵ K. Hanson and A. Vandaele, *Working Children and International Labour Law*, p. 78

CHAPTER V
MOVING FORWARD:
SUGGESTED LEGAL AND POLICY CHANGES FOR BETTER PROTECTION OF
CHILD WORKERS IN THE PHILIPPINE SMALL-SCALE MINING INDUSTRY

So far, I have endeavored to establish that the International Child Labour Regime suffers from infirmities and will inevitably fail, as it has failed over the years, to eradicate child labour. Moreover, it injures rather than protect the rights of working children. While there are alternatives to the abolitionist approach, I find it impossible for any such theoretical approaches to effectively address the child labour problem. In moving forward, I have here a number of pragmatic legal and policy suggestions or corrections to better protect working children. These suggestions are hoped to shield the children from exploitation and safety and health hazards in the workplace in general and in the small-scale mines in particular.

5.1 Recognition of children's right to work in dignity: It's about time

As has been said all along in this thesis, children may receive better protection from exploitation and safety and health hazards by recognising that they have the right to work, or more to the point, the right to work in dignity as advocated by the NATs. Thus, existing national legislations must be amended to recognise this right. With the recognition of children's right to work in dignity, the appurtenant rights in work such as minimum wages, collective bargaining, safe and healthy working environment and other work benefits that adults are entitled to must likewise accrue to working children. In this way, the children are placed under the protective mantle of labour laws which are put in place to guard against exploitation of all workers by unscrupulous employers.

This is not to say, however, that children should be allowed to work under all circumstances. Thus, children's right to work in dignity and their rights in work should be recognised but the prohibition of forced labour, sex trafficking and other illicit, inhuman and degrading work classified under Sections 3(a) to 3(c) of ILO C-182 and other inherently cruel, inhuman or degrading employment must be maintained.

In the small-scale mining sector, the recognition of the right of the child miners to work in dignity is very crucial. As stated, the small-scale gold mining industry is expected to grow in

the coming years and, naturally, albeit not necessarily desired, more and more children will be employed in the mines. If the Philippines intends to protect the rights of child miners from exploitation and other hazards, the only logical alternative is to recognise their right to work. In this way, the government can identify and monitor the children working therein, ensure their safety, and be targeted as beneficiaries of its socio-economic programmes. Moreover, legitimising the work of child miners removes the stigma of being labeled as illegal workers and allow them to work with dignity.

In this connection, since most of the small-scale mining operators that engage children as workers or employees are in the informal sector, the government should provide a legal framework which paves the way for easier procurement of licenses to operate. By attracting informal small-scale mining operators to legitimise their businesses, they are likewise placed within the radar of labour monitoring and inspection particularly as regards the conditions of work and other terms of employment of workers most especially children. Aside from monitoring compliance with wage and other labour standards, it will also facilitate easier inspection and enforcement of mercury-use regulations and other hazardous practices in the mines.

5.2 Dealing with health and safety hazards

As far as the use of mercury and other harmful substances in the extraction of gold is concerned, the Philippine government has an existing ban on the use of mercury¹⁸⁶ in mining and other related industries. On this subject, the UNEP notes the difficulty of phasing out the toxic substance in the small-scale mining industry due largely to economic factors and lack of information on alternatives. Thus, it recommended only the gradual phase out thereof in the small-scale mines.¹⁸⁷ *Ban Toxics!*, a non-government organisation based in the Philippines, has documented success stories of nearly total phase outs of mercury in small-scale mining establishments in selected areas in the Philippines. In these cases, the contribution of the small-scale mining associations and local governments was deemed crucial.¹⁸⁸ This indicates that

¹⁸⁶ Section 11(e), Executive Order No. 79 (2012)

¹⁸⁷ Environment Management Bureau and United Nations Environment Programme, page 25

¹⁸⁸ Richard C. Gutierrez, Current Experience on the Mercury-Free Transition in Artisanal and Small-Scale Gold Mining in the Philippines, *Ban Toxics!* (2013), Presentation delivered at the Asia-Pacific Regional Conference on Artisanal and Small Scale Mining Chinggis Khaan Hotel, Ulaanbaatar, Mongolia, <http://www.eisourcebook.org/cms/End%20June%202013/Philippines%20ASM%20Mercury-free%20transistion%20experience.pdf>, last accessed 07 May 2016

total phase out of mercury is possible given the political will and proper intervention to do so. As small-scale gold production is projected to increase in the ensuing years as repeatedly stressed above, the government must speed up the process of phasing out mercury and, while it does, find alternatives thereto to protect children and adult workers from its health hazards.

As regards underwater mining, the government may consider requiring the mining establishments to provide adequate safety measures such as the provision of safety equipment and the presence of trained first aid providers on site. Here, government intervention and the cooperation of the small-scale mining industry is essential. Aside from the government and the employer sector, non-governmental organisations may also play a key role in training key employer personnel on the information, education and communication of safety standards and the use of equipment in such activities.

In the long run, health and safety in the small-scale mines will not only protect child and adult miners from toxic substances and hazardous practices, it will also benefit the environment which should be the concern of any responsible government.

5.3 Make education more accessible to working children

Again, it is here recognised that education is an important tool in building human capital. However, since many poor families cannot afford to send their children to school, the best possible alternative is to combine school with work. In this regard, the government may make available schools for child miners and other workers in the countryside. This can take the form of night or weekend schools to accommodate the schedule of child workers. While typically limited by budgetary, manpower and distance constraints, the State as *parens patriae* must make this a priority in its overall policy for the protection and overall development of child miners. In any event, under the Philippine Constitution, “[t]he State shall assign the highest budgetary priority to education”¹⁸⁹ and “[e]ncourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs”.¹⁹⁰ Indeed, while compulsory education is free, it may not be accessible to working children such as the child miners who are working in

¹⁸⁹ Article 14, Section 5(5), 1987 Philippine Constitution

¹⁹⁰ Article 14, Section 2(4), 1987 Philippine Constitution

the remotest areas in the Philippines and mostly within school hours. Needless to state, education must not only be free, it must likewise be accessible.

In making education accessible to child workers, the Philippines' CCT or *Pantawid Pamilyang Pilipino Program* has been utilized to achieve that result. However, it remains to be seen if the CCT truly reach the extremely poor families who in all probability have children working in the small-scale mines.¹⁹¹ Again, I must state that this is not an all-encompassing solution to the poverty problem which pushes families to allow children to work in the small-scale mines. Nevertheless, it has the capacity to help reduce the child miners' families' dependence on mining work. Thus, while the Philippines have yet to implement effective long term socio-economic programmes, the CCT may be utilized to help child miners' families cope with financial difficulties and, hence, reduce the incidence of child labour in the mines.

Considering that the Philippines has had sustained economic growth over the past few years with recorded budget surplus,¹⁹² it must make as a priority the appropriation of funds for the establishment, manning and maintenance of such schools exclusively devoted to working children. In respect of children working in small-scale mines, this shall mean that resources should be appropriated in the remotest areas in the countryside where the mines are usually situated and getting quality teachers. On the matter of attracting quality teachers to work on this Programme, incentives in the form of premium pay and other perquisites may be considered by the government. This is a monumental task but the Philippine government has to start implementing an educational system that revolves around providing basic formal and practical education to working children especially child miners.

5.4 Address the causes of child labour

Most importantly, for the better protection and overall development of children not only in the small-scale mines but in all other sectors employing children, the Philippine government has the imperative duty to address the causes of child labour. Thus, long term measures for eradication of poverty and other socio-economic push factors should be put in place. Again,

¹⁹¹ C. M. Reyes and A. D. Tabuga, Conditional Cash Transfer Program in the Philippines: Is It Reaching the Extremely Poor?, p. 12

¹⁹² National budget surplus in November at P6-billion, Official Gazette, <http://www.gov.ph/2016/01/07/budget-surplus-november-p6-billion/>, last accessed 07 May 2016

given the economic gains of the country in recent years, I believe that the reduction of poverty and other socio-economic child labour push factors, although gradually, can be achieved.

CONCLUSION

As shown, thousands of children work in the Philippine small-scale gold mines despite the presence of a national ban on child labour. Every day, the said child miners face the dangers of mercury exposure and other hazardous practices. They do so with little pay and without the usual social benefits given to workers in the formal sector whose right to work and to basic labour standards are guaranteed under the Philippine constitution and labour laws. As with most countries where child labourers exist, the Philippine child labour phenomenon in the small-scale mining industry and any industry for that matter is primarily fuelled by poverty thereby causing them to lose out on their education. There is also evidence that child labour is motivated by the needs of the industry as children can be paid less and are more susceptible to exploitation than adults. Child miners are also driven to work on account of their parents' low level of education thus suggesting a cycle that runs for generations. Lastly, the Philippine government's poor implementation of child labour laws contribute to the proliferation of child workers in the mines.

On the matter of child labour, the prevailing obligations of the Philippines are as follows: the CRC, ILO C-138 and ILO C-182. Prohibiting child labour on the basis of minimum age standards and the hazards they pose to children, the International Child Labour Regime is an abolitionist legal solution which does nothing more. It fails to address the causes of child labour and is thus bound to fail in fulfilling its promise of eradicating child labour. Worse, the abolitionist approach of the Regime tends to injure children rather than protect them. This is exemplified by the case of child workers in Bangladesh's textile industry as shown most of whom did not return to school and had to find jobs in the informal sector where exploitation can be worse.

The Philippine legal framework on child labour is inspired by the International Child Labour Regime, hence, it is also bound to fail and, as a matter of fact, failed as of the moment to eradicate child labour.

Realising the futility of the abolitionist International Child Labour Regime, alternative approaches to the problem have been proposed.

First, the protectionist or regulatory approach which treats child labour as more or less a natural phenomenon and thus sees protectionist legislations as the best way to deal with the matter. However, other than offering protection through legislation, this approach fails to address the reasons why child miners go to work in the mines in the first place. Be that as it may, protectionist regulations can be a viable alternative at least in respect of protecting child miners from exploitation and other hazards. However, much of the success of this approach rests on the the government's strict implementation of such protective regulations notwithstanding manpower, distance and budgetary constraints.

Second, the empowerment approach is founded on the proposition that children too have rights and they can articulate this rights within the context of the child labour debate through self-organisation. However, just like the regulatory approach, this approach does not squarely address the causes of child labour but could be a good alternative to the abolitionist regime in that it advocates children's right to work and rights in work. As stated, this approach might not be suitable to address the child labour issue in the small-scale mining industry simply because child workers in the the country in general have not the same level of organisation as the NATs in Latin America.

The same conclusions in respect of the first two approaches are adopted for the third approach which is a combination of the said approaches.

Aside from the foregoing, there is the child-centered approach. The approach attempts to address the causes of child labour as it is aimed at poverty reduction and other activities such as economic and social mobilization putting the children's overall development at the heart of every policy and legislation in matters affecting them. As stated, the child-centered approach is the closest mirror image of the Philippine approach to child labour except that it does not prohibit of child work based on minimum age standards. Moreover, the Philippine approach to children labour does not expressly include the participation of children in programme planning. At any rate, the protective measures promoted by this approach can be utilized in full-force to ensure that children working in the mines are insulated from exploitation and safety issues such as the use of mercury and other hazardous practices.

In addition to the above approaches, I believe that children working in the Philippine small-scale mines can receive better protection if they are recognised as having the fundamental right

to work. This necessitates joining child labour issues with the human rights debate. Moreover, debates on the problem of child labour will end up nowhere if their interests are not considered. Be it remembered that Article 3 of the CRC enjoins States to put the best interests of the child in all matters concerning children. With this in mind, law and reason dictate that the best interest of children, in this case, the child miners, be considered in designing policies and legislations affecting them.

Considering all the foregoing, I submit that it is about time for the Philippine government to recognise the right of children to work. To repeat, the small-scale gold mining industry is expected to grow in the coming years. As a consequence, more children will be employed in the mines. Thus, it is with more reason that their right to work be recognised to better protect them from exploitation and other hazards of work in the small-scale mines. With this, the government can identify child miners and the conditions in their workplace. Moreover, legitimising the work of child miners removes the stigma of being labeled as illegal workers and will allow them to work with dignity.

Further to the above, the Philippine government should focus on the strict implementation of laws and regulations to ensure the safety of child miners. As shown, the ban on the use of mercury has long been in place in the country. While it may be argued that total eradication of mercury use in small-scale mining is difficult, there is evidence from some mining communities suggesting that it can be done albeit gradually with the help of responsible institutions, operators and the mining community. The government should also strictly require small-scale mining operators to have basic safety gears for miners and train key personnel on the information, education and communication of safety standards and the use of equipment in such activities.

In addition to the foregoing, the Philippine government must set aside an adequate budget to make education more accessible to child miners and other working children. Thus, it may establish schools that especially cater to these children. This presupposes that schools are built within the proximity of areas where small-scale mining operations are situated. The government must also aim to attract quality teachers to ensure the quality of education of these child workers. Whilst difficult to achieve, the government must prioritise the implementation of any such plan.

Lastly, and I say most importantly, the government must evolve and implement an ambitious plan to gradually address the causes of child labour not only in the small-scale mines but in the entire Philippines. As has repeatedly been stressed in this thesis, a legal solution cannot and will not address the causes of child labour. As complex as it is, a single legal solution has been proven inadequate to end the causes of child labour. Thus, a strong socio-economic programme must be put in place to effectively deal with the problem.

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