

Tool 8

Legal Framework and Indicators on Child Labour

Content developed by the Fair Labor Association (FLA) as part of the project “Remedies Towards a Better Workplace” with input from project partners: Hivos, Arisa, Unicef, AGT/SER, SAVE, READ, CCR CSR, WE Fashion, O’Neill, Prénatal, Hunkemöller, FNG, Cool Investments.

For whom: for AGT signatories, FLA affiliates, brands and companies.

Objective: This document provides an overview of the most important international standards and definitions on child labour. It also includes indicators for identifying child labour or the risk thereof.

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1. International Conventions and Frameworks

- United Nations Convention on the Rights of the Child (UNCRC)¹
- ILO C138 - Minimum Age Convention, and R146 - Minimum Age Recommendation²
- ILO C182 - Worst Forms of Child Labour Convention³ and R190 Recommendation on Hazardous Work
- International Labor Organization’s (hereafter ILO) ICLS Resolution II concerning Child Labour⁴
- ILO/IPEC-SIMPOC⁵ Framework on Child Labour Definitions
- European Social Charter⁶
- Children’s Rights and Business principles⁷

¹ <http://www.mfa.gov.tr/convention-on-the-rights-of-the-child.en.mfa>

² http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102893

³ http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102893

⁴ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_112458.pdf

⁵ <http://www.ilo.org/ipec/ChildlabourstatisticsSIMPOC/lang--en/>

⁶ http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/COE_UPR_TUR_S08_2010_CouncilofEurope_Document6_1.pdf

⁷ <http://childrenandbusiness.org/>

2. Definitions and International Legal Frameworks on Child Labour

| Term | Definition and International Legal Frameworks |
|---|---|
| Child | A child is any individual less than eighteen (18) years of age. ⁸ |
| Children in employment | <p>Children in employment is defined by the ILO⁹ as those engaged in any activity falling within the production boundary in the SNA (System of National Accounts)¹⁰ for at least one hour during the reference period. They consist of:</p> <p>(a) those in child labour within the SNA production boundary (described under chapter 3. Child Labour, chapter 4. Child Engaged in the Worst Forms of Child Labour (WFCL), chapter 5. Hazardous Child Labour (HCL), chapter 6. Children at High Risk of Engaging in Child Labour (CAHR))</p> <p>(b) children doing permissible light work (described under chapter 2.1 generally and 2.1.1 Light Work);</p> <p>(c) adolescents at or over minimum working age and under 18 years engaged in work not designated as one of the worst forms of child labour (described under chapter 2.1.2 Young Worker).</p> |
| Acceptable work for children (legally working) | <p>The ILO distinguishes between child work, which may be acceptable under certain conditions, and child labour, which needs to be eliminated. ‘Acceptable work’ is not specifically defined in ILO Conventions, however it is acceptable for children aged between 14 – 18 years (for the light work minimum age of 14 years and for other permissible ordinary works minimum 15 years) to work provided:</p> <p>children are not subjected to exploitative or dangerous work; the work of children is continually monitored; the workplace is safe and special consideration is given to children workers; children are given proper training and instruction; work hours are limited; work is flexible; and work does not prevent a child from receiving the full benefit of an education and receiving vocational training.</p> |
| Light Work for Children (legally working) | <p>Light Work is defined in Article 7 of ILO Convention 138 as employment or work performed by children age from 13 years, that:</p> <p>does not fall under the scope of the worst forms of child labour; is not likely to be harmful to their health or development; and does not prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority or their capacity to benefit from the instruction received.</p> |
| Young Worker (legally working) | Young worker is defined as an employed worker of at least the minimum working age but younger than 18. |

⁸ Article 1 of the United Nations Convention on the Rights of the Child (UNCRC), ratified by Turkey in 1990; Article 3 of the Child Protection Law of Turkey, No. 5395, enacted May 22, 2003; Article 6 of the Penal Code, Law No. 5237, enacted September 26, 2004.

⁹ The 18th International Conference of Labour Statisticians

¹⁰ <http://unstats.un.org/unsd/nationalaccount/docs/SNA2008.pdf>

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| | <p>Principles of employment of child and young workers: According to the European Social Charter, adopted in 1961 and revised in 1996, Article 7, signatory states are obliged to ensure that</p> <p>the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;</p> <p>the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;</p> <p>persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;</p> <p>the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development¹¹, and particularly with their need for vocational training;</p> <p>the right of young workers and apprentices to a fair wage or other appropriate allowances is recognized;</p> <p>the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day¹²;</p> <p>employed persons under 18 years of age shall be entitled to a minimum of four weeks annual holiday with pay¹³;</p> <p>persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations¹⁴;</p> <p>persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control¹⁵;</p> <p>there is special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.¹⁶</p> <p>the child's parents providing supervision and guidance is an essential principle in the case of employment of young and/or children workers.</p> <p>employers shall ensure children and young workers are protected against every type of risk which may endanger their development linked to their lack of experience, ignorance of actual and probable risks or the fact they are not fully developed, and their health and safety.</p> <p>children and young workers may work in jobs that do not impede those at school in their continuation and success at school, and do not impede their preparation for vocational choices and their participation in vocational training whose adequacy has been accepted by the authorized offices.</p> <p>Several countries have specified the type of work or jobs in which young workers may be employed.</p> |
| <p>Children engaged in Child Labour (CL)</p> | <p>Child Labour is defined by the ILO as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development; is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work.</p> <p>Minimum age for working: According to ILO/IPEC-SIMPOC and ILO Convention 138 on the Minimum Age (1973), child labour refers to any person less than 15 years of age who is</p> |

¹¹ Article 5 of Regulation on the principles and procedures for the employment of children and young persons, Enacted April 6, 2004.

¹² Article 12 of the Vocational Education, Law No. 3308, enacted June 1986

¹³ Article 10 of the Regulation on the principles and procedures for the employment of children and young persons, Enacted April 6, 2004

¹⁴ Tasks that can be performed by young workers between 17-18, Annex 3, Regulation on the Principles and Procedures Governing the Employment of Children and Young Workers - 'enacted Feb 21, 2013.

¹⁵ Article 13 of Regulation on the principles and procedures for the employment of children and young persons, Enacted April 6, 2004

¹⁶ <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Presentation/ESCRBooklet/English.pdf>

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| | <p>economically active (in paid work) for 1 or more hours per week¹⁷, unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age would apply.</p> <p>IPEC/SIMPOC makes the suggestion that all children below five years of age be assumed not to be economically active.</p> <p>Minimum age for child labour, light work and young labour, hazardous/prohibited work standards will be applied in this category. See definition and sub-chapter on Hazardous Child Labour.</p> <p>Child labour is therefore a narrower concept than “children in employment”, as child labour excludes children: doing permissible work; working only a few hours a week in permitted work; and above the minimum age whose work is not classified as a worst form of child labour (WFCL), which includes hazardous child labour.</p> |
| <p>Children engaged in Worst Forms of Child Labour</p> | <p>ILO Convention No. 18218 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, considers the following practices as worst forms of child labour:</p> <p>All types of slavery, including the sale and trafficking of children; forced labour to pay off a debt; any other type of forced labour, including using children in war and armed conflict. All activities which sexually exploit children, such as prostitution, pornography or pornographic performances.</p> <p>Any involvement in illegal activities, especially the production or trafficking of drugs. Any work which could by its nature damage the health, safety or well-being of children.</p> <p>In this Convention, the word “child” refers to anyone younger than 18 years of age.</p> <p>While Convention No. 182 leaves to the discretion of the countries the establishment of criteria for the identification of hazardous work, Recommendation No. 190 specifies that particular consideration as a form of WFCL should to be given, inter alia, to:</p> <ul style="list-style-type: none"> • work that exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights, and in confined spaces; • work with dangerous machinery, equipment, and tools, or which involves the manual handling or transport of heavy loads; • 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; • 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. |
| <p>Hazardous Child Labour (HCL)</p> | <p>The international legal framework for “hazardous child labour” stems from Part D of Article 3 of ILO Convention 182. Said convention defines “hazardous child labour” as: 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.</p> |

¹⁷ Towards an internationally accepted statistical definition of child labor: children’s activities and their definitions, ILO/IPEC-SIMPOC, Geneva, dated 18 Jan. 07.

¹⁸ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182

Adopted and opened for signature, ratification and accession by 87th ILC Session of 17 June 1999 entry into force 19 November 2000. Turkey ratified the convention on 25 January 2001.

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| | <p>According to ILO Convention 182, hazardous work “shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards...” As this suggests, forms of work identified as “hazardous” for children [Article 3(d)] may vary from country to country.</p> |
| <p>Children at High Risk of Engaging in Child Labour (CAHR)</p> | <p>Children at High Risk of Engaging in Child Labour: Children at high risk (CAHR) of engaging in child labour refers to children who are not yet in child labour but experience a set of living conditions and circumstances that make them prone to be working in child labour. Indicators include: Any child who was at one time engaged in child labour, but is no longer engaged in any form of child labour, will be considered a CAHR of engaging in child labour.</p> <p>Children who are without work during a short reference period and are currently available for/seeking work.</p> <p>Any child aged 5 through 17 who meets at least one of the following criteria:</p> <ul style="list-style-type: none"> has migrated with his/her family seasonally for agriculture work, one or more times in the last 12 months. has a sibling engaged or formerly engaged in child labour. in a family with a single parent in the household. belongs to a family who cannot afford social security. with parents who both lacked resources to attain education after secondary school. is not attending school or has low attendance rate. |

3. Root causes of child labour

Child labour is difficult to identify. Therefore, it is important to get a better understanding of the different root causes. In many cases, a combination of different root causes contribute to the prevalence of child labour. Make sure that company staff from different departments are well informed and aware of the root causes of child labour that can help them identify child labour risks.

- Because of **social norms/tradition**, parents do not value education as important and therefore do not send their children to school. Common arguments are:
 - Girls do not need much education
 - It is more valuable to learn a profession than to go to school
 - Social norm of 'inheriting' a profession
- **Lack of decent jobs and income for adults** can push children into paid and unpaid work. The income of parents is too low to meet family needs and the income of the child is needed for the family income and/or is used by the child for their own personal needs.
- Low incomes make families vulnerable to **economic shocks** like special events (funerals, weddings, festivals, health care, crop failure). In case of such events, additional income is needed such that child(ren) are involved in paid work or need to support paying back **loans and debts** (often with high interest rates).
- Children have to **take care of younger siblings** when parents are working, a task mostly taken up by girls. Especially in cases where parents are working overtime (mandatory or 'voluntarily' to increase the household income), children have to take care of siblings and domestic tasks, or support parents in home-based work (e.g. embroidery).
- **Poor access to and low quality of education** prevents children from being in school and instead to work (both paid and unpaid). This can lead to child labour, but it important to fully understand the causes. There may be obstacles to enrolling children in school (language, documents, birth certificates), **discrimination** (caste and

gender) and physical abuse by teachers. **School expenses** (uniform, books) may be too costly for parents. Parents may feel that their children are not treated well at school or they cannot trust teachers. In situations where **teachers are often absent**, children may not learn sufficiently at school so parents may rather let their children work.

- **Expenditure practices** of parents may lead to their inability to support schooling of children (which lead children to work). Priority may be given to expenses other than education of children. Income may be spent on harmful habits (alcohol, gambling, tobacco) which are often caused by or lead to dysfunctional families.
- Parents do not give their children attention and have **no willingness to invest** in them.
- Absence of **child labour laws** and policies and/or **poor law enforcement** by governments.

Pull factors for hiring children. Employers may seek out children because they know they can pay them lower wages and exert more control over them (e.g. in working hours, type of work, etc.). Children are unaware of their rights and are unlikely to protest.

4. Definitions and International Legal Frameworks on Forced Labour of Children

| Term | Definition and International Legal Frameworks |
|------------------------------------|---|
| Worst Forms of Child Labour | <p>ILO Convention, No. 182¹⁹, 1999</p> <p>ILO Convention No. 182, the Worst Forms of Child Labour Convention, states that “worst forms of child labour” shall include “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”.</p> <p>The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (the “Palermo Protocol”)</p> <p>The Palermo Protocol is a supplemental protocol to the United Nations Convention Against Transnational Organized Crime. The Protocol’s definition of trafficking in persons has become a standard model for national legislation. The definition of trafficking in the Protocol is:</p> <p>The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.</p> <p>Coercive sexual exploitation and forced prostitution are included in the definitions of forced or compulsory labour. The consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means specified above have been used. In the case of a child, there is no need for any of the means cited above to be used; the child is a victim of trafficking if he or she is subject to recruitment, transportation, transfer, harbouring or receipt for the purpose of exploitation.</p> |

¹⁹ http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182

9. Forced Labour of Children²⁰

Forced labour of children is defined as work performed by children under coercion applied by a third party (other than his or her parents) either to the child or to the child’s parents, or work performed by a child as a direct consequence of their parent or parents being engaged in forced labour. Regarding forced labour, in legal terms, a child below the age of legal majority (18 years old) cannot him or herself give consent to work (that is, the notion of “offering oneself voluntarily”), and therefore the consent of the parent(s) must be considered instead. The coercion may take place during the child’s recruitment, in forcing the child or his/her parents to accept the job, or once the child is working, to force him/her to do tasks which were not part of what was agreed at the time of recruitment or to prevent the child from leaving the work. If a child is working as a direct consequence of his or her parents being in a situation of forced labour, then the child is also considered to be in forced labour.

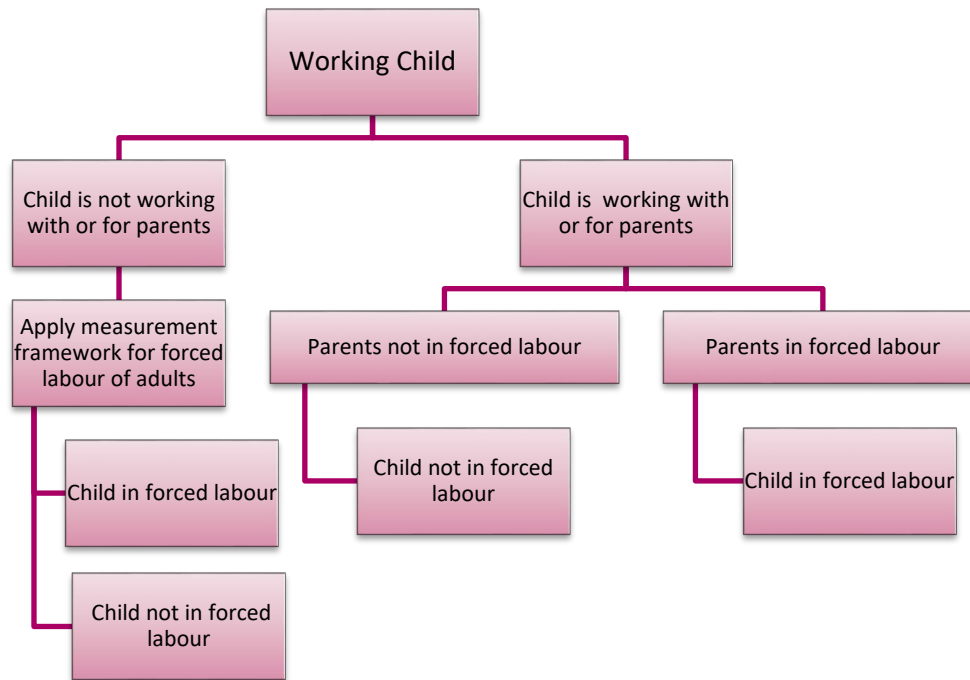
As with forced adult labour, forced child labour may take four different forms:

- **Unfree recruitment of children**, which covers both forced and deceptive recruitment. *Forced recruitment* is when, during the recruitment process, constraints are applied to force a child to work for a particular employer – **it again being understood that poverty and the family’s need for a supplementary income are not recognized as indicative of forced recruitment**. *Deceptive recruitment* occurs when a child is recruited through false promises made to the child or to his or her parents, which introduces an element of involuntariness insofar as, had either been aware of the real working or other conditions involved, the child would not have accepted or been allowed to undertake the job.
- **Work and life of children under duress** covers adverse working or living situations imposed on a child by the use of force, penalty or threat of penalty. “Work under duress” may entail an *excessive volume of work or tasks* that are beyond what can reasonably be expected of a child given his or her physical and mental capacity. “Life under duress” relates to situations where restrictions on freedom or excessive dependency are imposed on a child by his or her employer.
- **The impossibility for children to leave their employer** is treated as a distinct dimension. The difficulty to leave an employer is characteristic of forced labour in situations where leaving would entail a penalty or punishment which, in the case of children, might be something seemingly less significant than for an adult, for example, an inference that his or her parents would be extremely unhappy or disappointed if he or she were to leave, and that the family would suffer as a result.
- Regarding **coercion of children**, the four sub-categories of coercion of adults listed above also apply. The “penalty” can be applied to the parents, rather than directly to the child.

Please see **Figure I** for forced child labour conceptual framework.

²⁰ Hard to See, Harder to Count; Survey guidelines to estimate forced labor of adults and children, ILO, 2012.

Figure 1: Forced Child Labour Conceptual Framework



5. Indicators for forced labour of children

- **Forced labour of children** is defined as work performed by children under coercion applied by a third party (other than by his or her parents) either to the child or to the child’s parents, or work performed by a child as a direct consequence of their parent or parents being engaged in forced labour.
- The coercion may take place during the child’s recruitment to force the child or his/her parents to accept the job, or once the child is working, to force him/her to do tasks that were not part of what was agreed at the time of recruitment or to prevent the child from leaving the work. If a child is working as a direct consequence of the child’s parents being in a situation of forced labour, then the child is also considered to be in forced labour.
- The indicators of forced labour presented in the following section are designed specifically to enable identification of forced labour of children (excluding children working with parents who are themselves engaged in forced labour), and are derived from the indicators for adults presented above. All indicators are considered to be of equal severity in the case of children, regardless of severity of medium and/or strong.

1. Indicators of unfree recruitment of children

Indicators of involuntariness:

- Child is born into a bonded family and is forced to work for his or her parents’ employer
- Recruitment as collateral for a loan given to parents or relatives
- Recruitment as part of the employer’s agreement to employ the parents or relatives
- Recruitment in exchange for a cash advance or loan to the parents
- Recruitment in the context of a tradition perpetuated by those in power
- Deception about:
 - access to education
 - living conditions
 - location of the job
 - wages
 - quantity of work

Indicators of penalty:

- Family would lose benefits (land, housing, etc.)
- Other family members would lose their job
- Exclusion of family members from future employment
- Violence against child
- Violence against family members
- Exclusion of family members from access to loans ^[L]_[SEP]

2. Indicators of work and life under duress of children

Indicators of involuntariness:

- Forced overtime (beyond legal limits)
- Forced to work for the employer's private home or family ^[L]_[SEP]
- Forced to work when sick or injured
- Limited freedom of movement outside the workplace
- Food, clothing and housing provided by employer in lieu of a wage
- Degrading living conditions ^[L]_[SEP]

Indicators of penalty:

- Physical violence ^[L]_[SEP]
- Psychological violence
- Wage deductions ^[L]_[SEP]
- Threat of dismissal
- Threats against family
- Punishment/violence inflicted on other children in front of child
- Constant surveillance
- Withholding of wages
- Retention of identity paper

3. Indicators of impossibility of leaving employer

Indicators of penalty:

- Under constant surveillance
- Family would lose benefits (land, housing, etc.)
- Other family members would lose their job
- Exclusion of family members from future employment ^[L]_[SEP]
- Threats or violence against child
- Threats or violence against family members
- Exclusion of family members from access to loans ^[L]_[SEP]
- Withholding of wages
- Confiscation of identity papers ^[L]_[SEP]
- Punishment inflicted on other children in front of child ^[L]_[SEP]
- Threat of further deterioration in working conditions ^[L]_[SEP]
- Threat of forced sexual exploitation

How to know if there is indeed forced child labour?

- The dimension “unfree recruitment” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present.
- The dimension “work and life under duress” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present.
- The dimension “impossibility of leaving employer” is positive when at least one indicator of involuntariness and one indicator of penalty (or menace of penalty) relating to that dimension is present.
- Any child worker for whom the dimension of unfree recruitment OR^[1]life and work under duress^[1]OR impossibility of leaving the employer, can be considered a victim of forced labour.