

# Research on the Problem of the Right of Child Labour to Health under International Law

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**Abstract.** In the context of international human rights activities undertaken by the international community in various ways in recent years. On the legal level, child labor has been eased to some extent. However, international law is not double support the parent company and the management system of the host country because of lack of enforcement power. Child abuse phenomenon still exists around the world. Guided by multinational companies, this paper further discusses the governance of child labor and the subsequent implementation effects. This paper will discuss the following three parts. First of all, the status quo of the current labor market is clarified and the existing legal measures to solve the problem of child labor are pointed out. The implementation difficulties of the existing measures are discussed with data. The difficulties of both multinational companies and the host country are pointed out, and the importance of making changes is emphasized. Secondly, it lists specific existing international conventions, discusses the shortcomings of current measures to address child labour, and analyzes the enforceability of current international relations and labour market regulations. Finally, according to the situation of the labor market in different international regions, international organization need to harmonize regional supervision and international market assistance, strengthen the correct understanding of child labor at all levels, and fundamentally solve the child labor problem step by step.

**Keywords:** Human rights; Transnational corporation; Child labour.

## 1. Introduction

The basic labor rights are defined underneath the definition of legal labor employment, nevertheless, child labor issues are initially illegal in almost every nation that's now recognized as a sovereign independent state. Meanwhile, international law doesn't own the actual legal power as the laws domestically in one particular nation. The only way now to release the high pressure is to set the international legal aid agencies in the regions that have to show the bad situation in illegal labor employment including part of South Africa, Southern Asia and some South American countries which were underneath the commonwealth. The researches based on international child labor issues become complicated problems because of the lack of legal protection and huge differences in regional developing levels. [1] Background can make a better recognition which is helpful to understand the current situation, and then bring out a more specific point of view. [2] In the main body of the essay, it analyzed how multinational enterprises affected the solutions of child employment in an incomparable way, which was achieved by using the defects of solutions given by the agencies who have already gotten high social status. Moreover, it also demonstrated the reason why the government should pay more attention to the anti-child labour legislation instead of continuing focusing on the signs of progress in the national economic standard. [3] The conclusion shall build the final decision, and restate all the advantages and disadvantages of taking part in the child labor issue legislation. To emphasize the importance, making a plan on this topic will show the social-study significance of this topic, and those will be the structures participating in this essay.

## **2. Child labor and the right to health**

### **2.1 Legal definition of child labor and the right to health**

Child labor refers to minor children or juvenile workers, not all child laborers are engaged in labor. Children are divided into three categories by the International Labour Organization. The first is full-time students. The second is students engaged in economic activities including full-time and part-time children. The third is children who do not attend a school or have specific jobs. Child labor mainly refers to children engaged in the third type of economic activity [1]. In terms of age range, 18 years old is regarded by the United Nations as the boundary between children and adults. According to the regulations of the International Labour Organization, all persons under the age of 18 are children, and only children aged no less than 15 can engage in labor, and this age can be temporarily set as 14 under special circumstances [2]. The right to health refers to the right that human beings enjoy following the law to protect their physical health from illegal infringement [3].

### **2.2 Background**

#### **2.2.1 Conflict between State sovereignty and human rights Protection**

The human rights movement has made modern human society pay more attention to fair treatment in all respects. In the international labor market, the establishment of equal rights and welfare before and after work is also considered a matter for consideration by the international community. The rise of the ILO helped clean up the post-war international labor market, but the varying levels of national development led to violations of labor rights in the labor market, particularly those of multinational corporations.

Illegal employment of child labor is a problem that cannot be solved immediately. Child workers are deprived of the right to education and then became free labor in factories. Child workers engaged in a series of high-intensity work lines beyond physical acceptance and are exhausted from day-to-day compulsory work. Although a series of human rights abuses involving sweatshops have been exposed, there is no coercive solution in the international community to solve the problem because international organizations cannot put treaties on the protection of human rights above national sovereignty.

#### **2.2.2 Host countries lower access standards to comply with globalization**

Oppenheimer once said, "Sovereignty is the supreme authority, an authority independent of any other authority in the world." The sovereignty and independence of states are also one of the most important principles in current international relations [4]. With the further development of globalization, sovereignty has been subdivided into economic sovereignty, political sovereignty, and cultural sovereignty. Taking economic sovereignty as an example, in developing countries, to adapt to economic globalization, developing countries inevitably succumb to the economic attack of developed countries. Multinational companies can get favorable policy support from it, so multinational companies have undergone qualitative development, but the economic sovereignty of developing countries gradually shows a weakening trend. For developed countries, economic globalization also weakens the economic sovereignty of developed countries, but the degree of weakening is much lower than that of developing countries. In dealing with foreign economic affairs, developed countries strongly appeal to developing countries to expand the scope of investment and realize trade liberalization while they adopt strict standards in dealing with their financial industry and other industries. This trend leads to the fact that the economic lifeline of developing countries cannot be determined independently, and the lowering of access standards leads to an increase in foreign investment. Due to economic factors, there will be insufficient supervision and the use of child labor violates the human rights of child labor.

### **3. Legal regulations and issues on child labor's right to health in the Context of Globalization**

#### **3.1 Convention on Minimum Age for Admission to Employment**

The ILO was founded in 1919, and its constitution made it clear that the protection of the child and underage workers was one of its urgent tasks. In suitable countries, based on the acknowledgement of the minimum age of employment convention from the International Labour Organization and multinational companies, proper domestic laws have been made to protect underage children from illegal employment. Such legal mechanism has already been applied in the minor protection law of China in order to regulate the employment of multinational companies, which solved the problem of underage employment fundamentally.

The clause should highlight the huge impact of underage employment on individual child employees, which greatly damaged the basic rights and interests of minors. Additionally, it should also illustrate the indelible influences on the education and growth of the next generation, which have posed a huge threat to the future development of the economy and social civilization. With an appropriate regulation towards minor protection, issues of the present situation will then be alleviated radically.

In the case of the 1973 Convention on the Minimum Age for Admission to Employment, The Minimum Age Convention for Permission of Employment stipulates that the minimum age for employment in all industries should be no less than 15, but in most typical cases of child labor, most statistics show that the age of child labor is well below 15. In countries where child labor is rampant, the use of child labor is illegal, but it does not affect the country's economic depression, lack of supervision, or neglect of its development.

The ILO Convention has become a wide-ranging pledge due to the lack of voter approval for most of the provisions. Recognizing that the resolution of child labor is not a short-term goal, the ILO lists the obvious and worst practices of child labor as the first step in the complete regulation of illegal employment in the labor market. This convention forbids using of recruitment or provision of illicit activities, especially the production and sale of drugs defined in international treaties. This convention also forbids working in environments that may be harmful to children's health and safety or ethics.

Article 7(1) of the Convention stipulates that all necessary measures, including the provision and enforcement of criminal sanctions, or other necessary sanctions, shall be taken to ensure the effective implementation and enforcement of the Convention. Section 2 provides that Member States should prevent children from being employed in the worst forms of child labor. Member States should provide direct and appropriate support for children's disconnection from the worst forms of child labor and rehabilitation and social integration. Member States should ensure free basic education. vocational training to identify and contact children in particularly dangerous situations. Member States should consider special cases of girls.

#### **3.2 Convention on prohibition and Immediate Action for the Elimination of the Most Harmful Forms of Child Labour**

The Convention distinguishes between harmful work and the most harmful forms of work. Article 3 of the convention lists the most harmful forms of child Labour. It includes all forms of slavery or slave-like practices, such as the sale and trafficking of children, bonded Labour and servitude, and forced or compulsory Labour, including the forced or forced recruitment of children for use in armed conflict. Meanwhile, the use, recruitment or supply of children for prostitution, the production of pornography or the performance of pornography are also included. It forbids using, admitting or providing children for illegal activities, in particular the production. Illegal trading of alcohol items identified in relevant international treaties can also jeopardize children. Another factor is that the work, which by its nature or in an environment in which work is performed, is likely to be harmful to the health, safety or morals of the child. These forms of labor for children will be unconditionally prohibited, and merely improving them will not be justified. Hazardous work is also provided for in

the Convention on the Minimum age for Admission to Employment, that is to say, children shall not perform work that is harmful to their health, safety, or morals. Recommendation 190 of the Convention also lists several factors for determining risk including exposure of children to dangerous substances and under the ground, under the water or at a dangerous height. Unlike the Convention on the Minimum Age for Admission to Employment, the Convention on prohibition and Immediate Action for the Elimination of the Most Harmful Forms of Child Labour has a clearer purpose and role and takes a more proactive approach to the right to health of child labour. However, as mentioned above, the protection of human rights by the international community cannot be placed above the protection of sovereignty. The International Labor Organization still has no coercive force on how to implement labor standards. Using moral and public opinion pressure to force state parties to comply with the convention cannot fundamentally protect the right to health of children in state parties.

### **3.3 The Convention on the Rights of the Child provides for children's work**

Compared with the international labor organization convention, the monitor, the CRC is established to protect children from any exploitation of a detailed framework, reiterated the under 18 who enjoy civil rights and political rights including freedom of speech and the right to receive a certain standard of living. Like the International Labour Organization, the Convention on the Rights of the Child establishes a committee on the Rights of the Child to monitor states' compliance with the Convention. The Convention on the Rights of the Child is the most complete statement of the rights of the child available [5]. However, it still has some shortcomings. First of all, the principles and purposes of the Convention need to be translated into domestic law by States, and child Labour standards are not effectively enforced. [6] In essence, its declarative effect is not enforceable. Second, one-third of States have made reservations about State immunity.

### **3.4 The need for child labor to be protected by international law**

The number of children accounts for one-third of the world's population. If children become child laborers, it not only constitutes a serious violation of the right to their health, but also deprives them of their access to a good education. Besides, the problems of the world cannot be solved. At present, the problem of child labor is becoming increasingly serious in the world. Due to the COVID-19 pandemic in 2019, overlapping with the global phenomenon of child labor, child labor in Ghana still have to work 16 hours a day under the rampant epidemic, which seriously violated their right to health. In 2020, the pandemic increased the number of children in the poor families by 142 million. There are too many poor sections of society. Meanwhile, while children's work may help increase the income of their families, they are certainly detrimental to the sustainable development of the country's economy. "Children's wages are only half or less than half of adults" will have a certain negative impact on the employment of adults, and even lead to the loss of employment opportunities for adults. When the national governments cannot enforce child labor laws, the international community must intervene. Domestic law is not the only way to solve the problem of child labor, and the international law also has reasons to protect child Labor for the following reasons:

Firstly, the application of international laws can force host countries to strengthen their supervision. The lack of incentives to protect child labor in host countries contributes to the widespread problem of child labor. Connecting the Child labor issues with international law and giving responsibilities to the international law system. Although the international treaty does not have absolute coercive force on child labor protection, it can force the host country to strengthen the supervision of multinational companies using child labor by punishing them [7]. Secondly, the number of global child laborers is increasing due to the unreasonable social structure and the higher number of poor classes. Poverty is not only a problem that can have a great influence on a country. Given that child labor usually works longer hours than adult labor and is paid less than adult labor, it will also disrupt the international market order seriously, so, it requires international cooperation to eradicate poverty.

## **4. Countermeasure**

### **4.1 Transnational corporations are listed as one of the common subjects of international human rights law**

Universality is the principle of international human rights law, that is, protecting universal human rights around the world is one of the purposes [8]. In the Additional Protocol to the Geneva Conventions, it is stipulated that anti-government organizations should protect some basic human rights of people under their jurisdiction, which is one of the precedents for transnational corporations as subjects of international law.

It is the most effective means of guaranteeing child labor for us to classify those special transnational corporations as subjects of international human rights law. One tenet of the international human rights law is "making international human rights law become a universal law"[9]. Different countries have different national conditions, cultures, since the international law can give some less developed countries some "special provisions" to reduce the age of the child labor standards. The society can also set up a "special subject of human rights responsibility" in some countries where child labors are rampant to assume a range of human rights responsibilities. The Chinese Football Association has issued a "regulation fee" policy to regulate the situation of malicious investment by various clubs. The UN could also make a "regulatory fee" in countries where child labor is rife. Multinational companies that gain access have to pay a fee based on the size and capital of the company with the full refunding of the regulatory fee after a certain period if they complied well with regulations. In companies where child labor is used, after being used to compensate for child labor, the adjustment fee is given to those transnational corporations that have difficulties in production and operation but do not use child labor. This also reflects the improvement of the status of non-Governmental organizations in international legal relations [10]

### **4.2 The "responsibility for the protection of human rights of child labor" in the laws of the host country should be clarified and amended**

At present, multinational corporations have become one of the subjects of violating human rights, and all countries must revise their domestic human rights protection laws. Seeking domestic legal relief is the most effective way for child labor when transnational corporations violate the rights of child labor in the host country because the state bears the responsibility of protecting human rights and the Child labor issues are formed a chain supply [11] As mentioned above, most child labor comes from less developed countries. The construction of the rule of law in their countries is mostly in the early stage of development or the process of development. The protection of human rights, especially the human rights of child labor, in most host countries is still in a gray area. Solving problems comes from urgency. [12] When a multinational company uses child labor but fails to meet the punishment standard of criminal law, it relies more on the domestic administrative procedure law, while the punishment of the administrative procedure law of the host country is too light for the multinational company. Each state should clarify the amendments to the domestic human rights protection law. The host country should specify the scope of human rights protection, such as clarifying the definition, scope, manifestation, and relief methods of child labor human rights in the company law of various countries, rather than fuzzifying the protection of human rights in the general provisions of the company law.

### **4.3 International organizations and the host countries strengthen their efforts to eliminate child labor**

Children, as a group with weak legal rights and interests, should be protected by the United Nations Convention on the Rights of the Child and should have related measures to protect their rights that society attaches great importance to. However, the proportion of the implementation of the Convention is uneven at different levels of social development. The United Nations, as an international organization playing the role of the adjudicator in the Convention, should strengthen the

cooperative relationships with regional labor arbitration tribunals within their capacities, the supervision controllability of the arbitrator rotation system, and the universality of opinions. In areas with frequent child labor cases in history, the legal responsibility of the host country is not only strengthened, but the buffer measures are also set up due to the difficulty of solving the problem including strengthening local medical care, education and infrastructure, which has a certain mitigation effect in the process of promoting the implementation of the solution.

At the same time, the application of the public interest litigation system should be popularized. The main direct reason that the rights of the health of child laborers in some less developed countries are being violated is not the gap in the law, but the lack of the awareness of protecting their rights. When the right to the health of the juveniles is violated, the victims or their guardians have the right to require the related department to deal with it or file a lawsuit in people's court. However, juveniles, as victims, don't have the awareness or the ability to protect their rights. Their guardians will also be afraid of filing a lawsuit due to the lack of legal knowledge and the fear of power. At the same time, the rights and interests of the juveniles can't be guaranteed. The most effective ways to solve the phenomenon are to enhance the number and quality of the host country's public interest litigation organizations and grant the qualification of public interest litigation to the legal person of more social organizations. When children get support, they can safeguard their rights more actively.

#### **4.4 Transnational corporations should improve the internal mechanism for protecting the right to health of child labors**

The code of conduct of transnational corporations has some shortcomings. First of all, the only motivation for multinational companies to formulate and implement codes is pressure from consumers. The more negative news a multinational company has, the more likely it is to perfect the code of conduct. The purpose of the code of conduct is more for its image, and those little-known small enterprises will lose the motivation to formulate codes of conduct. There are more small and medium-sized enterprises in MNE than in large enterprises and they are more likely to use child Labour. Therefore, this leads to a mechanism for codes of conduct that is not positive. Second, corporate codes of conduct lack external regulatory mechanisms. The codes formulated by multinational companies themselves can only be evaluated internally for compliance and lack an effective external supervision mechanism. Therefore, multinational companies will weigh the cost of compliance and the economic benefit of non-compliance, which greatly reduces the effect of codes of conduct. [13] Here are some suggestions for corporate governance.

Firstly, the parent companies of transnational corporations should strengthen the practice of the human rights code of their subsidiaries [14]. Self-supervision is always the most effective and ineffective way. Self-supervision is similar to a person's faith. A faithful believer will not violate his faith, but an unbeliever will do the opposite. The human rights code formulated by the parent company for its subsidiaries is a change made to realize the development of long-term interests. Different regions may not show the same patterns in the Child Labor situations, but the parent companies can make a principle. The parent companies of transnational corporations mostly come from developed countries, which have a high level of legal level and awareness of human rights protection. However, to some extent, the internal human rights code does not have legal force, so there may be a phenomenon that the human rights code is temporarily formulated due to the rush to obtain access. It is imperfect and still needs to be modified to achieve effective results. At the same time, strengthening the implementation of human rights codes has a great impact on promoting transnational corporations to take responsibility. For the protection of labor rights, the host country has perfect laws to regulate the corresponding violations. The human rights of child labor are relatively more in need of the protection of the company's internal human rights code. As a vulnerable group, child labor is difficult to check and balance with multinational companies with strong capital by their strength. It is of great significance to put child labor's right to health on the agenda as soon as possible in the internal human rights code. For example, in some countries, children have the right to work moderately and receive

remuneration. By adopting human rights codes to regulate the use of child labor and strengthening supervision, the parent company can avoid unnecessary disputes and obtain a good brand image.

Secondly, the cultivation of senior managers of transnational corporations on the awareness of the human rights protection of child labor should be strengthened. As the makers of the company's behavior, the senior managers of transnational corporations determine the company's business strategy and objectives to a great extent [15]. Executives are the solvers of transnational cultural conflicts. Meanwhile, child labor works most in the agriculture industries which showed that they are cheap and easy-used labor. Their practices affect the company's values by determining the company's decisions. By strengthening the training of human rights of senior managers of transnational corporations, the parent company can ensure that the practices of managers can take into account the protection of human rights in most cases and maximize the protection of the right to health of child labor.

## 5. Conclusion

Under the high pressures of international relations, the global labor market should be supervised by different agencies that can show better fairness and receive more significant feedbacks. As Multinational Enterprises will play an important role in future market innovations, the other factors that can affect the situation such as legislation processes and the advocacy by international organizations would also bring the conveniences to solve all kinds of child labor disputes by legal methods. The legislation should be accepted as the final enforceable power to adjust the unfair phenomenon in every field. The society need to know the larger blueprint that will be made to support the human right issue solutions.

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