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ILO's Convention 182 on the Worst Forms of Child Labour: Challenges for Its Application in Latin America

Konwencja nr 182 MOP w sprawie najgorszych form pracy dzieci – wyzwania w zakresie jej stosowania w Ameryce Łacińskiej

ABSTRACT

Child labour, including its "worst forms", is spread in Latin America. According to the United Nations Children's Fund, the number of children engaged in work increased by 8.4 million between 2016 and 2020, marking the first rise since 2000, with millions more are at risk due to the impact of the COVID-19 pandemic. In this scenario, what is the role of the conventions of the International Labour Organization (ILO) related to child labour, specifically Convention 182 related to its worst forms? Even though this Convention was the first to achieve universal ratification its real impact on the situation of vulnerable children is not straightforward. This paper analyses the role of ILO conventions on child labour in the post-COVID scenario in Latin America and how they could contribute to improve the situation of vulnerable children in the region. A right-based approach is a valuable tool to monitor child labour, but the reinforcement of legal instruments requires an interdisciplinary approach together with social and economic policies. Finally, due to the specificity of the region, other issues like the naturalization of child labour demand a cultural change along with sufficiently effective and dissuasive penalties.

Keywords: Convention 182; worst forms of child labour; Latin America; COVID-19; children rights

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Data: 26/11/2026 23:21:54

INTRODUCTION

The past years saw some relevant milestones in the struggle to end child labour. The United Nations declared 2021 as the International Year for the Elimination of Child Labour, reaffirming the international commitment to adopt urgent and effective measures to end child labour in all its forms, in line with Target 8.7 of the 2030 Agenda, that calls for the eradication of forced labour, modern slavery and the prohibition of the worst forms of child labour. The International Labour Organization's (ILO) Convention 182 on the Worst Forms of Child Labour was the first to achieve universal ratification on 4 August 2020. It also became the most rapidly ratified convention in the history of the ILO (21 years).

However, the narrative of legality is not always corroborated by reality. The legal and symbolic achievements did not have a correlation in practice, and global progress against child labour has stalled for the first time since global estimates began to be produced two decades ago.[1] The latest global estimates show that 160 million children – 63 million girls and 97 million boys – were engaged in child labour at the beginning of 2020, representing nearly one in ten children worldwide. Of these, 79 million were in hazardous conditions that directly threatened their health, safety and development. In Latin America, more than 8 million children between 5 and 17 years old are engaged in child labour.[2] Additionally, the COVID-19 pandemic led to an increase in child labour due to lockdowns, economic disruptions, school closures and loss of income for millions worldwide. In many impoverished regions, child labour became the only means to sustain households.

In light of this situation, what is the real impact of the battery of legislation, protocols, conventions and treaties ratified in the region? We believe that the adoption of a legal instrument that fails to account for the economic and socio-political background will not achieve its objectives (what some authors called, referring to the ratification of the Convention on the Rights of the Child in Latin America, "the circulation of a text without the context"[3]). Despite the crucial role of legislation against child labour and its almost universal ratification, the situation regarding child labour in Europe and Latin America was quite different.[4] We review this path and the challenges for the full implementation of the ILO conventions against child labour in a region immersed in recurrent crises, where the law may just be

[1] International Labour Office, United Nations Children's Fund, *Child Labour, Global Estimates 2020: Trends and the Road Forward*, 2021.

[2] *Ibidem*, p. 8.

[3] See F. Pilotti, *Globalización y convención sobre los derechos del niño: el contexto del texto*, Washington 2000.

[4] This does not mean that there is no child labour in Europe, and although there may be an increase in child labour due to the COVID-19 pandemic. It is difficult to verify, since the reports of specialized agencies tend to focus on less developed regions.

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Data: 26/11/2026 23:21:54

a formal declaration without real impact on the practices rooted in the region, to try to understand what are the main obstacles that prevent the full application of Convention 182 in this complex scenario.

It is said that human rights are the most needed when they are most violated. But in this international landscape, filled with human rights protocols, conventions, treaties and declarations of all kinds, there is a wide gap between the promises embodied in these documents and the reality of millions of children who struggle for survival.

The paper is structured as follows. We begin with an overview of the origin of the ILOs fundamental conventions related to child labour, followed by a definition of child labour and its worst forms, and a depiction of the contrasting situation of children in Europe and in Latin America. Finally, we examine the impact of the COVID-19 pandemic and the challenge it poses for the eradication of child labour, especially its worst forms, in an already vulnerable region.

ILO AND THE FUNDAMENTAL CONVENTIONS RELATED TO CHILD LABOUR

Throughout much of the Industrial Revolution, child labour was a common practice in Europe and North America. Children formed a substantial part of the labour force in textile mills[5] but also in coal mining, factory work, and chimney sweeping, among others hazardous occupations. Working hours were extremely long, a ten-to-fourteen-hour day, with little to no breaks; health complications were common, as well as elevated accidents and injuries rates.[6] No legislation protected working children making possible all kinds of abuse.[7] Despite extremely unhealthy and dangerous conditions, child labour was often considered both necessary and desirable.[8] The creation of the ILO in 1919 came to change this scenario. It grew out of 19th-century labour and social movements which demanded social justice and better living conditions for the world's working people. Since the formation of ILO, several labour standards – conventions and recommendations – were adopted, related to, amongst

[5] C. Nardinelli, *Child Labor and the Industrial Revolution*, Bloomington 1990.

[6] C.N. Trueman, *Children in the Industrial Revolution*, 31.3.2015, https://www.historylearningsite.co.uk/britain-1700-to-1900/industrial-revolution/children-in-the-industrial-revolution/?utm_content=cmp-true (access: 19.8.2024).

[7] Some regulations were implemented at the end of the 19th century but were quite limited in their scope.

[8] H. Cunningham, P. Viazzo (eds.), *Child Labour in Historical Perspective, 1800–1895: Case Studies from Europe, Japan and Colombia*, Florence 1996, p. 41.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

other topics, protection of women workers,[9] hours of work,[10] rest and holidays with pay,[11] labour inspection,[12] social security protection,[13] workers' housing,[14] occupational health and safety,[15] protection of migrant workers,[16] and child labour.

The first instruments addressed at improving the situation of working children were the Minimum Age (Industry) Convention, 1919 (No. 5), Night Work of Young Persons (Industry) Convention, 1919 (No. 6), and Minimum Age (Agriculture) Convention, 1921 (No. 10). The awareness of the results and the causes of child labour was embedded on the growing legal instruments aimed at improving education and at the same time limiting the economic activities in which children could be involved. Another element present in the debate of the first laws on child labour was the shift in the perception of childhood, a transition between the "economic value" and the "emotional value" of children.[17] Nowadays, the ILO fundamental conventions that specifically address the situation of working children are Convention No. 182 on the Worst Forms of Child Labour (1999) and Convention No. 138 on the Minimum Age (1973).

Convention 182 requests the elimination of the worst forms of child labour, including slavery, forced labour and trafficking. It prohibits "the use of children in armed conflict, prostitution, pornography and illicit activities such as drug trafficking, and in hazardous work" (defined as work which, by its nature or circumstances in which it is carried out, is likely to jeopardise the health, safety, or morals of children – see Article 3 of Convention No. 182).

Convention 138 sets the general minimum age for admission to employment or work at 15 (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). The Convention also states that the minimum age could be set at 14 in countries where the economy and educational infrastructure and facilities may be "insufficiently developed".

Together with the Convention on the Rights of the Child (CRC) – ratified by all UN Member States except the United States of America – and the Optional Protocols (2000) extending CRC obligations relating to the sale of children, child

[9] The first two of them in the same year of creation of ILO: Maternity Protection Convention, 1919 (No. 3), and Night Work (Women) Convention, 1919 (No. 4).

[10] Hours of Work (Industry) Convention, 1919 (No. 1).

[11] Holidays with Pay Convention (Revised), 1970 (No. 132).

[12] Labour Inspection Convention, 1947 (No. 81).

[13] The Social Security (Minimum Standards) Convention, 1952 (No. 102), the Income Security Recommendation, 1944 (No. 67) and the Medical Care Recommendation, 1944 (No. 69).

[14] Workers' Housing Recommendation, 1961 (No. 115).

[15] Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002.

[16] Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

[17] S. Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children*, New Jersey 1985.

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Data: 26/11/2026 23:21:54

prostitution, child pornography and to the involvement of children in armed conflict, these conventions constitute the basis for child legislation. Labour standards instruments are divided into conventions and protocols, which are legally binding international treaties, and recommendations, which act as non-binding guidelines. When a country ratifies an ILO convention it agrees to incorporate it into national legislation and submit periodic reports to the ILO control mechanisms regarding the measures taken to implement that convention.[18] Even though in the case of ILO conventions reservations are inadmissible, "interpretative declarations" are possible, and may often collide with what was the original spirit of the norm. Alternatively, conventions may be adopted but conflict with pre-existent legislation. For instance, in Latin America, the minimum age for admission to employment is not in harmony with the age for completion of compulsory education. In general, education is compulsory until the middle or secondary stage, which typically ends at 17 or 18 years, while employment is admissible below that age in all countries. Only Cuba and Panama have harmonized legislation between the age of admission to employment and completion of compulsory education. However, in both countries the age for completing compulsory education is one of the lowest in the region (15 and 14 years respectively).[19] Furthermore, nine countries admit employment from the age of 12 or 14: Bolivia, El Salvador,[20] Guatemala (with permission from the authorities it is admitted from the age of 12),[21] Honduras, Nicaragua, Panama (with the exception of agricultural and domestic work where it is admitted from the age of 12), Peru (12 years) Dominican Republic (14 years and 12 years for light work) and Venezuela (14 years).[22] Brazil allows rural work or as an apprentice from the age of 14.[23]

[18] The mere ratification of an agreement does not automatically transform its clauses into norms of domestic law. This depends on the legislative doctrine of each country. According to the monist doctrine, there is no separation between the international and domestic legal order, so that ratified treaties or conventions are automatically incorporated into the legislative framework applicable in each country. According to the dualist doctrine, international and domestic law constitute two separate orders, and ratified agreements must be the subject of a formal act by the legislator for their incorporation into the positive law of the country. See C. Etala, *Los convenios de la Organización Internacional del Trabajo y su interpretación*, 2001, http://www.derecho.uba.ar/institucional/etala-los-covenios-de-la-oit-y-su-interpretacion.pdf (access: 19.8.2024).

[19] United Nations Children's Fund, *La Adecuación Normativa a la Convención sobre los Derechos del Niño en América Latina: Avances y Deudas con la niñez*, 2019.

[20] The minimum age for employment is 14 years old according to the Constitution of El Salvador and the Labour Code. The same sources establish that children under the age of 12 can be employed for light work that does not harm their health or development or affect their schooling.

[21] Article 74 of the Guatemalan Constitution; Articles 32 and 148 of the 2017 Labour Code.

[22] A complete list of the minimum ages specified by each country at the moment of the ratification of Convention 138 is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312283 (access: 26.8.2024).

[23] Ministry of Labour and Employment of Brazil, Apprenticeship Manual, 2013.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

Bolivia constitutes an extreme case, since the adoption by the government of the Code for Children and Young Persons in 2014 that reduces the minimum age for admission to work for children from 14 to 10 years for own-account workers, and reduces it to 12 years for children in an employment relationship. The ILO Report of the Committee of Experts on the Application of Conventions and Recommendations notes that authorizing children to work from the age of 10 years clearly collides with compulsory schooling, which, in Bolivia, consists of a fixed period of 12 years, namely at least up to 16 years of age.[24] The Committee also noted that the high proportion of work in the informal economy (70%) may boost the work of children, since it is not subject to labour inspection. Moreover, Convention 138 aims to eradicate child labour and in order to do so it encourages the raising of the minimum age. Once the minimum age has been set, in the case of Bolivia in 14 years, reductions are not authorized. In general, these minimum ages for admission to employment are excessively low and are not justified in the exceptionality and temporality provided for in ILO Convention 138.

CHILD LABOUR AND ITS WORST FORMS

The latest global estimates indicate that 160 million children worldwide are engaged in child labour. Of these, 63 million are girls and 97 million are boys, accounting for almost one in ten of all children worldwide.[25] A join report by ILO and UNICEF states that global progress to end child labour has stalled for the first time in 20 years, with the number of children aged 5 to 17 years in hazardous work rising by 6.5 million to 79 million since 2016.

It is worth noting that children around the world are consistently engaged in diverse forms of work (either paid or not paid) that are not necessarily harmful. It is considered as child labour when they are either too young or are involved in dangerous activities that constitute a risk to their physical, mental, social or educational development. In the poorest countries, more than one in four children (ages 5 to 17) are engaged in some kind of work that can be dangerous or harmful to their health and development.[26] In ILO's classification, the worst forms of child labour include slavery or practices similar to slavery; the sale and trafficking of children, debt bondage, servitude, forced or compulsory labour and the use of children in

[24] International Labour Office, *Application of International Labour Standards*, 2022, p. 405.
[25] International Labour Office, United Nations Children's Fund, *Child Labour…*
[26] United Nations Children's Fund, *Child Labour*, May 2022.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

armed conflict. They also cover the recruitment and use of children for prostitution and pornography, and for the production and trafficking of drugs.[27]

At the regulatory level, Convention 182 requires the abolition of all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, the deposit in payment of debts and servitude and forced or compulsory labour, including the recruitment of children for their use in armed conflicts, for prostitution, for the production of pornography, for illegal activities, for the production and trafficking of drugs, and for any work that could harm the health, safety or morals of children. This Convention requires that states that ratify it provide adequate assistance to free children from the worst forms of labour. It also establishes that states must guarantee free access to basic education, and "whenever possible and adequate, to professional training for children who have been freed from the worst forms of child labour".[28]

The sectors and activities to which Convention 182 refer have not been specifically defined. Rather, the Convention establishes general parameters, and each country must make specific agreements and identify what are the worst forms of child labour, together with the government, workers' and employers' organizations, since the ILO is a tripartite organization. However, not all countries have fulfilled their obligation to identify the worst forms of child labour within their borders, nor have they generated reliable statistics on the children who are engaged in such labour. In some cases, there is no available information at all. Furthermore, estimates on the prevalence of child labour vary significantly across countries due to the lack of a universal definition of what constitutes child labour, as well as differences in the methodologies used to collect data.[29] The lack of consensus around the practices that constitute child labour, but also the lack of a harmonized legislation between the countries in the region are two of the obstacles that make possible the persistence of the exploitation of children.

THE CONTRASTING PATHS OF CHILD LABOUR IN EUROPE AND IN LATIN AMERICA

During the Industrial Revolution children acquired a productive functionality for economy, through their incorporation as a cheap and submissive labour force in factories, chimney sweeps, cotton spinning mills and coal mines. In 1833, children and teenagers accounted for between one third and two thirds of all workers in

[27] International Labour Organization (ILO), Worst Forms of Child Labour Convention (No. 182), 17 June 1999.

[28] *Ibidem*.

[29] IREWOC, *Las Peores Formas de Trabajo Infantil en América Latina: Identificación y Opciones Estratégicas*, Amsterdam 2008.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

many British textile factories, and more than a quarter of the workforce in mines in 1842.[30] The participation rate of children in the economy began to decline around 1870 with the introduction of public education in industrialized countries. The United States reached a participation rate of 17% in 1900, while the first census carried out in France indicated a child labour rate of 20% in 1896. Thus, the era of widespread child labour in industrial nations ended when the participation rate of children in the economy fell below 20%. Some of the main reasons for the decrease of child labour in industrialized nations were:

1) decrease of poverty: as household incomes increased, the need for an economic contribution by children decreased; in addition, the rise in the salary of adults made it possible for families to send their children to school;
2) technology: the first phase of the Industrial Revolution was labour intensive, but as technology became more sophisticated, the demand for child labour decreased;
3) legislation: a battery of regulations on the minimum age for admission to employment and the compulsory nature of education contributed to the decrease of child labour (legislation was essential to achieve these aims, but also the availability of resources that financed its application);
4) changes in the perception of childhood: children began to be recognized as holders of rights that should be guaranteed by the State, asserting the right not to work.

However, in Latin America children did not have the same opportunities as in developed countries, and child labour remained widespread. Children and their families continued to be part of the forms of production of peripheral capitalism, with the request of intensive work. While in Europe the children of workers were removed from industrial jobs and could access some level of protection thanks to the school and welfare systems, the children of indigenous people, slaves and mestizos in Latin America continued to participate in the forms of production typical of the periphery of the world system.[31] In the postcolonial regions of the world the analysis of child labour is, still today, inseparable from the precariousness of the labour market. In Latin America, after a prolonged period of economic growth and reduced unemployment, it again hit the high level of informality that characterizes their labour markets. At least 140 million people work in informal conditions in the region, which represents around 50% of workers.[32] The COVID-19 pandemic

[30] F. Collier, *The Family Economy of the Working Classes in the Cotton Industry, 1784–1833*, Manchester 1964.

[31] S. Pedraza Gómez, *El trabajo infantil en clave colonial: consideraciones histórico-antropológicas*, "Nómadas" 2007, no. 26, pp. 80–90.

[32] International Labour Office, *Un crecimiento débil y crisis global frenan la recuperación del empleo en América Latina y el Caribe*, Serie Panorama Laboral en América Latina y el Caribe, 2022.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

caused a significant loss of jobs and income in 2020.[33] However, poverty (and related issues like labour informality), even though one of the main causes of child labour, is not the only one, and cultural factors, like tolerance, resignation, or the idea of its "inevitability" also contribute to its persistence. Some of the most prevalent forms of child labour in Latin America are:

1) commercial sexual exploitation: considered by the Declaration of the Stockholm Congress (1996) as a severe violation of the human rights of children, and a form of economic exploitation comparable to slavery and forced labour. Human trafficking generates annual revenues of more than US$150 billion worldwide.[34] The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines trafficking as: recruitment, transportation, transfer, shelter or receiving people, resorting to the threat or use of force or other forms of coercion;
2) labour in agricultural plantations: concentrates most of the working children worldwide, around 132 million.[35] This work is often not even registered since it is usually considered a "family help", which contributes to its persistence and naturalization. The agricultural sector encompasses the majority of the world's poor; in Latin America, it is estimated that 5.5 million children work in agriculture;[36]
3) domestic work: one of the most widespread and invisible forms of child labour, usually carried out in the context of family structures in which adults are absent for long periods, the tasks of domestic care fall on children, to a greater extent girls. In semi-urban areas, housing with deficient infrastructure and services, the burden of domestic work may involve carrying water, firewood or coal, and the risks are increased due to deficient or non-existent electrical installations, earthen or brick floors, open kitchens, coal or firewood and non-availability of drinking water inside the home. In the worst forms of child labour, domestic work can be carried out in someone else's home (under the figure of servitude or "criadazgo"), where children, especially girls are exposed to all kinds of abuse.[37]

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[33] Economic Comission for Latin America, *Panorama Social de América Latina*, 2020 (LC/PUB.2021/2-P/Rev.1), Santiago 2021.

[34] International Labour Office, *Profits and Poverty: The Economics of Forced Labour*, Special Action Programme to Combat Forced Labour (SAP-FL), 2014.

[35] International Labour Office, *Un crecimiento…*

[36] Food and Agriculture Organization of the United Nations, International Labour Organization, *Estudio regional sobre trabajo infantil en la agricultura en América Latina y el Caribe*, 2019.

[37] ILO Convention No. 189 on domestic work (2011) states that general minimum age for admission to employment must be respected. The Committee on the Rights of the Child has recently required some states to classify domestic work as dangerous and prohibited work for all persons under 18 years of age.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

Even though these activities have different legal dynamics, they all have in common the condition of vulnerability of the victims and constitute crimes against children and a violation of their basic rights. When applying the law is fundamental to remember that children who were forced into an illicit activity should never be considered criminal, but the person who used him or her for this purpose.[38]

The Penal Code of Argentina, for instance, in its Article 148 bis of 2013, states that anyone who takes financial advantage of the work of a child in violation of national regulations that prohibit the use of child labour, will be punished with a prison term of 1 to 4 years. Tasks that have exclusively "pedagogical or training purposes" are excepted. According to the same provision, the father, mother or guardian of the child who engages in the described conduct will not be punishable. While such provisions intend to prevent the criminalization of poverty, they may serve as concessions to the exploitation of children.

IMPACT OF THE COVID-19 PANDEMIC ON CHILD LABOUR

The harmful effects of the pandemic were most damaging in the poorest countries and communities, and for those who are already in a disadvantaged or vulnerable situation, such as children in child labour and victims of forced labour or trafficking, particularly women and girls.[39] These vulnerable groups are specifically affected by income loss and may have limited or none access to social welfare, including health insurance and unemployment assistance. Lessons learned from past crises, such as the 2014 Ebola epidemic, highlight the critical role of social protection coverage in mitigating the risks of child labour and forced labour.[40]

The COVID-19 crisis threatens to further erode global progress against child labour, with an estimated 9 million additional children at risk of work due to rising poverty driven by the pandemic. A simulation model suggests that this number could rise to 46 million if children do not have access to critical social protection coverage.[41] Additional economic shocks and school closures caused by the pandemic may have worsened the conditions in which children work, and for many of them mean more working hours due to the losses in incomes among vulnerable families.[42]

In Latin America, for instance, poverty and extreme poverty reached in 2020 the highest levels of the last 12 and 20 years, respectively. It was also registered a wors-

[38] International Labour Office, *Eliminating the Worst Forms of Child Labour: A Handbook for Parliamentarians*, 2002.

[39] International Labour Office, *COVID-19 Impact on Child Labour and Forced Labour: The Response of the IPEC+ Flagship Programme*, 2020.

[40] *Ibidem*.

[41] International Labour Office, United Nations Children's Fund, *Child Labour…*

[42] *Ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

ening of inequality and of employment and labour participation rates, despite of the emergency social protection measures that countries have put in place to stop it.[43] According to the Economic Comission for Latin America projections,[44] in 2020 the extreme poverty rate stood at 12.5% and the poverty rate reached 33.7% of the population (totalling 209 million of poor people, 22 million more than the previous year).

These numbers are particularly concerning, given that an increase of one percentage point in the poverty level may result in a 0.7%, or greater, increase in child labour.[45] Vulnerable groups, such as those working in the informal sector and migrant workers, are disproportionately affected by economic recessions, increases in informality and unemployment, as well as by the general deterioration in the quality of life. As a result, more children could be forced into dangerous and bonded labour. It is important to note that gender inequality may worsen, as girls are especially vulnerable to exploitation in the agricultural sector and in informal or domestic work where they may be burdened with increased household chores and caregiving responsibilities.[46]

DISCUSSION

International agencies have established criteria for defining and addressing child labour, but these standards do not always account for the socioeconomic specificity of Latin America. In this region, the dynamics of childhood and families followed a very different trajectory than in Europe. While European children received increasing pedagogical and medical attention, Latin American children from colonial societies were converted into subordinates like their parents and entered the productive circuits of servility and slavery.[47] European children were gradually relieved of work, education became compulsory and free, and working classes could access basic medical and hygiene services. Meanwhile, children living under (post)colonial regimes continued to be part of the cheap labour resources. The coloniality of power, more than a consequence of the conquest of America, appears as constitutive of the

[43] Economic Comission for Latin America, *op. cit*.

[44] *Ibidem*, p. 89.

[45] International Labour Office, United Nations Children's Fund, *COVID-19 and Child Labour: A Time of Crisis, a Time to Act*, New York 2020.

[46] Moreover, all over Latin America, programs related to gender violence have been defunded since many budget items were reallocated to fight the COVID-19 pandemic, one of which consequences was a raise in gender violence since women were trapped with their abusers and without the opportunity to distance themselves or to ask someone for help. See United Nations Refugee Agency, *La pandemia del coronavirus aumenta el riesgo de violencia de género hacia mujeres y niñas desplazadas y apátridas*, 2020.

[47] S. Pedraza Gómez, *op. cit.*, p. 48.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

region and continued even after the independence.[48] The colonial legacy persisted in the newly-formed nations and manifested itself in the form of discrimination across all aspects of society, particularly in the realms of education and the labour market. That is why we believe that, even though human rights treaties were mostly produced in Western or central European countries, their "Eurocentric" nature does not make their application impossible in other contexts. The history of a concept is irrelevant to its validity, since there may be good reasons for universalizing a particular concept.[49]

Viewing child labour as a violation of human rights also contributes to it becoming a relevant public concern rather than a private matter among families. Above all, the human rights perspective addresses some of the worst forms of exploitation that most affect girls (domestic work, commercial sexual exploitation, child marriage) as a crime against girls. These forms disproportionately affect girls because of their sex, and despite laws that are neutral on the surface, women and girls are often *de facto* unequal before the law.[50] Moreover, laws have traditionally been created following a masculine image, that is why when considering laws and legal strategies it is essential to incorporate the life experiences of girls and women who have so often been excluded from the law.[51]

Some authors have expressed scepticism about the CRC, that can be extensive to other legal instruments related to childhood: on the ground that they do not consider the causes of children's suffering, and give the illusion of providing a solution, while its vague and legalistic language permits governments to evade their responsibilities.[52] Also, there is an ideological idealization of the family that assumes that children are always loved and nurtured by their parents.[53] However, many children do not live in such conditions and are vulnerable to death squads, starvation, preventable diseases, exploitation or sexual abuse. In Latin America, the ratification of the CRC coincided with the consolidation of the transition to democracy, leaving behind dictatorial regimes and massive violations of human rights widespread in the region between the 1960s and 1980s. This was followed by an internal adaptation process and the elaboration of special laws for children and adolescents.

The causes of children's suffering are so complex and multidimensional that legislation alone is not enough to revert it. But even though the battle against child labour cannot be won only through legislative action, it can certainly not be won

[48] A. Quijano, *Colonialidad del poder, eurocentrismo y América Latina, Cuestiones y horizontes: de la dependencia histórico-estructural a la colonialidad/descolonialidad del poder*, Buenos Aires 2014.

[49] M. Freeman, *Human Rights*, Cambridge 2011.

[50] United Nations Children's Fund, *Child Marriage and the Law*, New York 2008.

[51] *Ibidem*.

[52] M. King, *Children's Rights as Communication: Reflections on Autopoietic Theory and the United Nations Convention*, [in:] *Children's Rights: A Comparative Perspective*, ed. M.D.A. Freeman, Aldershot 2004, pp. 311–327.

[53] M. Freeman, *op. cit.*

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

without it.[54] Legal instruments can and must complement long-term structural and anti-poverty-oriented policies to protect children and adolescents from exploitation. Child labour cannot be seen in isolation from education and poverty. Extending and improving schooling for vulnerable children is one of the most forceful long-term strategies for eradicating child labour.[55] In Latin America, cultural factors are often used to justify its existence, weighing its "socializing" or "educational" role, to the expense of the physical and psychological damage to the children who perform it. Child labour has been shown to be correlated with poverty, unemployment/informal work, and school dropout and repetition. Over the years, extensive documentation has highlighted the harmful consequences of working during childhood, including adverse impacts on physical and psychological health, reduced access to education, play and recreation, and risks to overall physical, mental and social development.

The Oslo International Conference on Child Labour in 1997 was embodied in the ILO Declaration on Fundamental Principles and Rights at Work, which calls for the effective abolition of child labour. The Declaration also emphasizes that children have the same general human rights as adults. Likewise, by not having the knowledge, experience or physical development of adults, children also have specific rights to be protected by reason of their age. One such right is the protection from economic exploitation and work that is detrimental to their health, morals or development.

It is essential to acknowledge that eradicating child labour does not entail denying the agency or self-determination of children (the principle of "progressive autonomy", established in the CRC). Nevertheless, advocates of child labour argue that children have "the right to choose to work" and that prohibiting child labour infringes on their "freedom of choice". However, this argument overlooks the fact that poverty and vulnerability frequently compel children to work in order to meet their basic needs. In other words, the right of children to choose to work is raised, but there is really no freedom of choice when working is the only option available to reach the minimum resources necessary for subsistence.[56]

CONCLUSIONS

The eradication of child labour in Europe was achieved through the implementation of universal education, healthcare and a comprehensive legal framework, backed by sufficient funding. The importance of economic rights in enabling the

[54] International Labour Office, *Protecting Children in the World of Work*, "Labour Education" 1997, vol. 3(108).

[55] *Ibidem*.

[56] C. Zsögön, *Discourse Analysis around the Issue of Child Labour in the Global South*, "Language, Discourse & Society" 2021, vol. 9(1).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 26/11/2026 23:21:54

realization of other rights cannot be overemphasized. The strong symbolic stance of zero tolerance for child labour in Europe has also contributed to its minimal prevalence.

In contrast, in Latin America, the invisibility and naturalization of child labour, the idea that it constitutes an acceptable practice or that it does not necessarily represent a risk for children, has resulted in insufficient prevention and eradication mechanisms. At the structural level, the remnants of colonialism, the labour-intensive economy and the high rates of unemployment, informality and poverty, mean that child labour continues to be necessary as an additional income to sustain the household.

Legal instruments are necessary but not sufficient to eradicate child labour. However, we highlight their paramount importance since they "give the status of reality to the social groups whose rights they guarantee".[57] In this sense, the law recognizes their existence by the basic action of nomination, giving visibility to groups and practices that otherwise would be ignored by the political agenda, and, finally, "it is impossible to name human rights violations in the absence of human rights norms and standards".[58]

Specifically, Convention 182 played a central role in stating that certain practices constitute serious crimes against children and should not be tolerated. This symbolic act had important practical consequences in regions like Latin America, where the notion of patriarchalism that considers women – and girls – as objects of consumption is still widespread. Such attitudes, combined with a lack of respect for the law and complicity among those who should reinforce it, created conditions that perpetuate the exploitation of children. However, one of the key factors contributing to the persistence of child labour is the denial of its existence. Identifying, analyzing and adequately addressing the root causes of child labour and exploitation continues to be a major challenge, and for it, the ILO's fundamental conventions are a valuable tool since they provide the language and the framework to combat these practices.

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[58] U. Baxi, *Human Rights in a Posthuman World: Critical Essays*, Oxford 2007, p. 89.

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ABSTRAKT

Praca dzieci, w tym jej „najgorsze formy", jest zjawiskiem powszechnym w Ameryce Łacińskiej. Według UNICEF liczba dzieci zaangażowanych w pracę wzrosła o 8,4 mln w latach 2016–2020, co stanowi pierwszy wzrost od 2000 r., a miliony kolejnych są zagrożone z powodu wpływu pandemii COVID-19. Jaka według tego scenariusza jest rola szeregu konwencji Międzynarodowej Organizacji Pracy (MOP) w sprawie pracy dzieci, zwłaszcza Konwencji nr 182, dotyczącej jej najgorszych form? Nawet jeśli była ona pierwszą z powszechnie ratyfikowanych konwencji, jej rzeczywisty wpływ na sytuację narażonych dzieci nie jest prosty. W artykule analizie poddano znaczenie konwencji MOP dotyczących pracy dzieci w warunkach po pandemii COVID-19 w Ameryce Łacińskiej oraz sposób, w jaki mogą przyczyniać się do poprawy sytuacji narażonych dzieci w regionie. Podejście oparte na prawach podmiotowych jest cennym narzędziem monitorowania zjawiska pracy dzieci, ale wzmocnienie instrumentów prawnych wymaga podejścia interdyscyplinarnego i polityki społeczno-gospodarczej. Wreszcie ze względu na specyfikę regionu, jak np. społeczna akceptacja pracy dzieci, konieczna jest zmiana kulturowa wraz z odpowiednio skutecznymi i przekonującymi karami.

Słowa kluczowe: Konwencja nr 182; najgorsze formy pracy dzieci; Ameryka Łacińska; COVID-19; prawa dzieci