

ILO's Convention 182 on the worst forms of child labour: challenges for legality in the post-covid scenario of Latin America (iThenticate Similarity Report)

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ABSTRACT

Child labour, including its “worst forms” is spread in Latin America. According to UNICEF, the number of children engaged in work has increased in 8.4 million in the last four years and millions more are at risk due to the impact of COVID-19. 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 America Latina, 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

INTRODUCTION

The past years saw some relevant milestones in the struggle to end child labour: the UN 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. ILO's 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 Organization (21 years).

But the narrative of legality is not always verified in 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 ago¹. The

¹ International Labour Office (ILO) and UNICEF, *Child labor, global estimates 2020: Trends and the road forward*, 2021.

latest data shows that 160 million children – 63 million girls and 97 million boys – were in child labour at the beginning of 2020 (which means 1 in 10 of all children in the world). 79 million children were in hazardous work, which is work that endangers their health, safety and development. In Latin America, more than 8 million children between 5 and 17 years old are engaged in child labour². An increase in child labour was registered during the Covid pandemic, due to lockdowns, economic disruptions, school closures and loss of income for millions around the globe. In this scenario, child labour emerges as the only possibility to contribute to sustain a household in the impoverished regions of the world.

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 does not consider the specificity of the economic and socio-political background will not achieve its aim (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 central importance of legislation against child labour and its almost universal ratification, the course of 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 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 presents the following structure: first we review 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

² *Ibidem*, p.8

³ F. Pilotti, *Globalización y convención sobre los derechos del niño: el contexto del texto*. Washington: Organización de los Estados Americanos, 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 pandemic, it is difficult to verify, since the reports of specialized agencies tend to focus on less developed countries.

America. Finally, we analyse the impact of covid pandemic crisis the challenge it poses ¹ 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. ⁸ Estimates show that over 50 per cent of the workers in some British factories in the beginning of the nineteenth century were under the age of 14. Children were exploited in coal mining, factory work, and chimney sweeping, among others, working hours were extremely long, a ten-to-fourteen-hour day, with little to no breaks and injuries and health complications were common, as well as elevated accidents and injuries rates.⁵ No legislation protected working children making possible all kinds of abuse⁶. Despite extremely unhealthy and dangerous conditions, child labour was accepted by many as a preparation for adult work. ⁸⁰ The creation of the International Labour Organization (ILO) in 1919 came to change this scenario. It originate as a consequence of the labour and social movements which demanded ⁶⁵ social justice and better living conditions for the world's working people.⁷

Since the creation of ILO, several labour standards ⁹¹ -conventions and recommendations- were adopted, related to ⁷ protection of women workers, hours of work, rest and holidays with pay, labour inspection, vocational guidance and training, social security protection, workers' housing, occupational health and safety, conditions of work at sea, protection of migrant workers ⁸⁸ and child labour, and other topics considered fundamental rights at work.

¹ 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) 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

⁸ C. N. Trueman *Children in The Industrial Revolution* historylearningsite.co.uk. The History Learning Site, 2015.

⁶ Some regulations were implemented at the end of the 19th century, but were quite limited in their scope.

⁷ International Labour Organization History

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value” and the “emotional value” of children.⁸ Nowadays, the Fundamental Conventions that specifically address the situation of working children are the Convention No. 182 on the Worst Forms of Child Labour (1999) and Convention No. 138 on the Minimum Age (1973).

Convention 182 requests the prohibition and 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 - 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 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 UN Convention on the Rights of the Child (CRC) -ratified by all UN member States except the USA- and the Optional Protocols (2000) extending CRC obligations relating to the sale of children, child 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 to the ILO control mechanisms regarding the measures taken to implement that convention.⁹ 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

⁸ S. 20izer, *Pricing the priceless child: the changing social value of children*, New Jersey, Princeton University Press, 1985.

⁹ 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 (C.Etala, *Los convenios de la Organización Internacional del Trabajo y su interpretación*, 2001)

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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 ⁵ 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).¹⁰ Furthermore, 9 countries admit employment from the age of 12 or 14. Bolivia, El Salvador, Guatemala (with permission from the authorities it is admitted from the age of 12), 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 and Venezuela. Brazil allows rural work or as an apprentice from the age of 14.

Bolivia constitutes an extreme case, since ¹ the adoption by the government of the Code for Children and Young Persons in 2014 that reduces ¹ 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. ⁵⁴ 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 ¹ Bolivia, consists of a fixed period of 12 years, namely at least up to 16 years of age.¹¹ The Committee also noted that the high proportion of work in the informal economy (70 per cent) may boost the work of children, ¹ since it is not subject to labour inspection. Moreover, Convention 138 aims to eradicate child labour and in order to do so ¹ it encourages the raising of the minimum age. ¹ 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

⁴ The latest global figures indicate that the number of children engaged in work has risen to 160 million all over the world, which means ⁴ an increase of 8.4 million children in the last four years. Around 63 million girls and 97 million boys were in child labour globally at the beginning of 2020, accounting for almost 1 in 10 of all children worldwide¹². A joint report by

¹³ UNICEF, *La Adecuación Normativa a la Convención sobre los Derechos del Niño en América Latina: Avances y Deudas con la niñez*, 2019

¹¹ International Labour Office (ILO) 2022b, *Application of International Labour Standards 2022*, p.405

¹² International Labour Office (ILO) and UNICEF, 2021, *Op. Cit.*

ILO and UNICEF states that global progress to end child labour has been interrupted for the first time since 2002. While the number of children aged 5 to 17 years in dangerous work has risen by 6.5 million to 79 million in the last 6 years.

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 harmful. It is considered as child labour when they are either too young to work 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.¹³ 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 labor and the use of children in armed conflict. They also cover the recruitment and use of children for prostitution and pornography; and for the production and trafficking of drugs.¹⁴

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 labor, 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 labor".¹⁵

The specific sectors and types of activities to which Convention 182 refer have not been specifically defined: the convention only determines the general parameters, and each country has to make specific agreements and identify what are the worst forms of child labour, together with the government, trade unions and employees organizations, since the ILO is a tripartite organization. But not all the countries have complied with the obligation to identify the worst forms of child labor within their borders, much less have generated statistics on the children who perform these jobs. About some countries there is no information available; in countries

¹³ UNICEF, Child labour, may 2022

¹⁴ International Labour Organization (ILO), *Worst Forms of Child Labour Convention, C182*, 17 June 1999

¹⁵ *Ibidem*.

where research has been done, the numbers as well as the estimates vary enormously. This appears to be the result of ⁷⁵ the lack of a universal definition of what constitutes child labour as well as differences in the methodologies used to collect data.¹⁶ The lack of consensus around the practices that constitute or not child labour, but also the lack of a harmonized legislation between the countries in the region are two of the many obstacles that make possible the ⁷¹ persistence of the exploitation of children.

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

During the industrial revolution children acquire a productive functionality for economy, through their incorporation as a cheap and submissive labor force in factories, chimney sweeps, cotton spinning mills and coal mines. In 1833 children and teenagers accounted for ³⁹ between one third and two thirds of all workers in many British textile factories, and more than a quarter of the workforce in mines in 1842. The labour force participation rate for children began to decline ¹⁰ around 1870, when public education was introduced in the industrialized countries. The United States reached a participation rate of 17 per cent in 1900, while the first census carried out in France indicated a child labour rate of 20 per cent in 1896. ¹⁰ Thus, the era of widespread child labour in industrial nations ended when the participation rate of children in the economy fell below 20 per cent. The main reasons for the decrease in child labour in industrialized nations were:

-Decrease of poverty: as households income increased, the need for an economic contribution by children decreased; in addition, the rise in the salary of adults made it possible for ⁶³ families to send their children to school.

-Technology: the first phase of the Industrial Revolution was labor intensive, but as technology became more sophisticated, the demand for child labor decreased.

-Legislation: a battery of regulations on ¹ 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).

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¹⁶ IREWOC, 2008, *Las Peores Formas de Trabajo Infantil en América Latina: Identificación y Opciones Estratégicas*. Amsterdam ISBN-13: 978-90-79078-17-2

-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.

None of these causes by themselves accounts for the drastic reduction in child labor, they operated jointly. But in Latin America events turned out quite different and children did not have the same opportunities as in developed countries. In this region child labour remained spread and 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 the workers were removed from industrial jobs and could access some level of protection thanks to the school and social system, 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.¹⁷ 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. In the region at least 140 million people work in informal conditions, which represents around 50 per cent of workers.¹⁸ The COVID-19 pandemic caused a significant loss of jobs and income in 2020.¹⁹ But 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 a 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:

-Commercial sexual exploitation: is considered by the Declaration of the Stockholm Congress (1996) as a form of severe violation of the human rights of minors, and a form of economic exploitation comparable to slavery and forced labour. Human trafficking generates annual revenues of more than US\$ 150 billion dollars worldwide.²⁰ 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.

¹⁷ S. Pedraza Gómez, *El trabajo infantil en clave colonial: consideraciones histórico-antropológicas*, “Nómadas”, Universidad Central Colombia, 2007, núm. 15 pp. 80-90.

¹⁸ International Labour Office (ILO) 2022a, *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

¹⁹ ILO, *Panorama Social de América Latina, 2020* (LC/PUB.2021/2-P/Rev.1), Santiago, 2021.

²⁰ International Labour Office (ILO), *Profits and poverty: The economics of forced labour* (SAP-FL), 2014

-Labour in agricultural plantations: concentrates most of the working children worldwide, around 132 million.²¹ 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 ⁶⁷ the majority of the world's poor. In Latin America it is estimated that 5.5 million children work in agriculture.²²

-Domestic work: It is ⁷⁴ one of the most widespread and invisible forms of child labor. Domestic work ^{is} 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 peripheral urban areas, housing with deficient infrastructure and services, the burden of domestic work involves 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. ³³ 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 kind of abuses.²³

Despite the fact that these activities have different legal dynamics, they all have in common the condition of vulnerability of the victims and all of them 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 consider criminal, but the person who used him or her for this purpose.²⁴ Otherwise, children may be imprisoned with adult criminals with all the adverse consequences this could entail.

The penal code of Argentina, for instance, in its article 148 bis of 2013, states that anyone who financially takes advantage of the work of a child in violation of national regulations that prohibit the use of child labour, ⁷⁸ 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 article, ⁷³ the father, mother or guardian of the child who engages in the described conduct will not be punishable. This maybe contribute to avoid criminalizing poverty, even though probably no concession should be made when it comes to the exploitation of children.

²¹ ²³ International Labour Office (ILO) 2022a, *Op. Cit.*

²² FAO/ILO, *Estudio regional sobre trabajo infantil en la agricultura en América Latina y el Caribe*, 2019

²³ ILO Convention no. 189 on domestic work (2011), states that general minimum age for admission to employment must be respected. The Committee on ³¹ 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.

²⁴ International Labour Office (ILO), *Eliminating the worst forms of child labour, a handbook for parliamentarians* n3, 2002.

¹ IMPACT OF THE COVID-19 PANDEMIC ON CHILD LABOUR

ILO reports point out that the harmful effects of the pandemic were most damaging in the poorest countries and communities, and for those who are already in a ¹ disadvantaged or vulnerable situation, such as children in child labour and victims of forced labour or trafficking, especially women and girls.²⁵ These groups are most affected by loss of income and may also have limited or none ¹ access to social protection systems, including health insurance and unemployment assistance. Previous crisis situations, like the Ebola epidemic in 2014, made it evident that all these factors ²² can play a determining role in the increase of child labour and forced labour.²⁶

The COVID-19 crisis posed a threaten to global progress against child labour: analysis show an additional ⁶⁶ 9 million children could be in child labour as a result of rising poverty driven by the pandemic. A simulation model shows this ¹⁹ figure could rise to 46 million unless they access critical social protection aid.²⁷ Economic crisis and school closures caused by COVID-19 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.²⁸

In Latin America for instance, poverty and extreme poverty reached in 2020 levels the highest levels of the last 12 and 20 years, respectively. It was also registered a ⁵⁶ worsening of inequality, and of employment and labour participation rates, despite of the emergency social ³ protection measures that countries have put in place to stop it.²⁹ According to the ECLAC projections, in 2020 ² the extreme poverty rate stood at 12.5 per cent and the poverty rate reached 33.7 per cent of the population (totalling 209 million of poor people, ⁴⁸ 22 million more than the previous year).

³⁵ This figures are even more relevant if we consider that an increase of one percentage point in the poverty level leads to an increase of 0.7 per cent, or more, in child labour.³⁰ Vulnerable groups, ⁴ particularly those working in the informal sector and migrant workers,

¹² International Labour Office (ILO), 2020, *COVID-19 impact on child labour and forced labour: The response of the IPEC+ Flagship Programme*.

²⁶ *Ibidem*.

²⁷ International Labour Office (ILO) and UNICEF, 2021, *Op. Cit.*

²⁸ *Ibidem*. ¹⁶

²⁹ ECLAC, *Panorama Social de América Latina, 2020* (LC/PUB.2021/2-P/Rev.1), Santiago, 2021

³⁰ International Labour Office (ILO) and UNICEF, *COVID-19 and Child Labour: A time of crisis, a time to act*, ILO and UNICEF, New York, 2020

suffer the most from the economic recession, the increase in informality and unemployment, as well as the general deterioration in the quality of life.¹⁹ As a result, more children could be forced into dangerous and bonded labour. It is relevant to notice that gender inequality is likely to worsen, as girls are particularly vulnerable to exploitation in the agricultural sector and in informal or domestic work (girls can be overwhelmed by increased household chores and caregiving responsibilities).³¹

DISCUSSION

The criteria established by international agencies set a standard in terms of the definition and ways of addressing child labour that does not really consider the socioeconomic specificity of Latin America. The dynamics of childhood and families followed a quite distinct path in the region: while in Europe children could access pedagogical, educative and medical attention, children from the European former colonies got into the economic circuits of servility and slavery.³² European children were gradually relieved of work, education was made compulsory and free, and working classes could access basic medical and hygiene services. In the meantime, 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 region and continued even after the independence.³³ The colonial character was present in the new nations and manifested in the reproduction of discrimination all aspects, specially concerning the labour market and education. But even though human rights treaties were mostly produced in western or central countries, this does not mean that their “Eurocentric” nature makes impossible their application in other contexts. We believe that the history of a concept is irrelevant to its validity, since there may be good reasons for universalizing a particular concept.³⁴

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

³¹ 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 (UNHCR, 2020)

³² S. Pedraza Gómez, *Op. Cit.* P.48

³³ A. Quijano, *Colonialidad del poder, eurocentrismo y América Latina*, in: “Cuestiones y horizontes : de la dependencia histórico-estructural a la colonialidad/descolonialidad del poder”, Buenos Aires, CLACSO, 2014

³⁴ M. Freeman, *Human Rights*. 2nd edition, Polity Press Cambridge, 2011

perspective address 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.³⁵ 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.³⁶

Some authors have expressed scepticism about the Convention on the Rights of the Child, 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 gives the illusion of providing a solution, whereas its vague and legalistic language permits governments to evade their responsibilities”.³⁷ Also, “children suffer from the ideological idealization of the family that assumes that parents love and nurture their children”.³⁸ But many children do not live in such conditions and they can be targeted by death squads, die of starvation and preventable diseases, exploited as cheap labour or subject to 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 sixties and the eighties. 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 without it”.³⁹ Legal instruments can and must complement long term structural and anti-poverty-oriented policies to protect children and adolescents from exploitation”. In this sense child labour should be addressed together with education and poverty. To grant access -and permanence- in quality education for vulnerable children is one of the most relevant strategies for eradicating child labour⁴⁰. Moreover, in the

³⁵ UNICEF, *Global Policy Section, Child marriage and the law*, New York, 2008

³⁶ *Idem.*

³⁷ M. King, *Children’s rights as communication: reflections on autopoietic theory and the United Nations Convention*. In M.D. A. Freeman (ed.), *Children’s rights*, 2004. Aldershot: Dartmouth 311-27.

³⁸ Freeman, *Op. Cit.*

³⁹ International Labour Office (ILO), *Protecting children in the world of work*, “Labour Education” 1997/3 No. 108

⁴⁰ *Ibidem.*

region cultural factors are often used to justify the existence of child labour, weighing its “socializing” or “educational” role, to the expense of the physical and psychological damage to the children who perform it, in addition to the correlation between child labour and poverty, unemployment/informality, and school dropout and repetition. Over the years, the harmful consequences of work in childhood and adolescence have been widely documented, as well as its impact on the deterioration of physical and psychological health, in the opportunities of access to education, recreation, play, and as a risk for physical, mental and social development.

The Oslo International Conference on Child Labour of 1997 embodied in the ILO Declaration on Fundamental Principles and Rights at Work regarding the effective abolition of child labour: children enjoy 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. They have the right, among other things, to be protected from economic exploitation and from work that is detrimental to their health and morals or that impedes their development.

It should also be clarify that the need to eradicate child labour does not collide nor denies the agency or self-determination of children (the principle of “progressive autonomy”, established in the Convention on the Rights of the Child), on the contrary, we consider that this argument used by enthusiastic defenders of child labour represents a fallacy, since it tries to transmute into a “free choice” an activity imposed by the situation of poverty and vulnerability. In other words, the right of children to choose to work is raised, but we believe there is really no freedom of choice when working is the only alternative to reach the minimum resources necessary for subsistence.⁴¹

CONCLUSIONS

European children were withdrawn from labour thanks to the implementation of universal education, health care, along with a battery of laws and the budget to implement them (if there is no financing, there is no right that can be fully and effectively implemented, that is why economic rights are enabling of the rest of the rights). On a symbolic level, zero tolerance for child labour and the consensus around the need to eradicate these practices, have also contributed to its minimal prevalence in Europe. In Latin America, the invisibility and

⁴¹ C. Zsójón, *Discourse analysis around the issue of child labour in the Global South*, *Language, Discourse & Society*, vol. 9, no. 1(17), 2021

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 degree 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 these practices. However, we highlight its paramount importance since they “give the status of reality to the social groups whose rights they guarantee”.⁴² 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”.⁴³

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 has important practical consequences in regions like Latin America, where the notion of patriarchy that considers women -and girls- as objects of consumption is still widespread. This attitude, together with the scant respect for laws and the complicity of those who should reinforce legality, constitutes a breeding ground for the persistence of the exploitation of children. But one of the main factors for the persistence of child labour is the denial of its occurrence. Identifying, analyzing and adequately addressing the root causes of child labour and exploitation continues to be one of the main challenges, and for it the ILOs fundamental conventions are a valuable tool since they provide the language and the framework to combat these practices.

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C. Etala, *Los convenios de la Organización Internacional del Trabajo y su interpretación*, 2001.

⁴² Bourdieu, *O Poder Simbólico*. Rio de Janeiro: Bertrand Brasil, 1989.

⁴³ U. Baxi, *Human Rights in a Posthuman World: critical essays*. Oxford: Oxford University Press, 2007, p. 89.

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