

Child Labour Protection in Myanmar: A Case Study in Yangon

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Abstract

This research paper studies child labour in Myanmar, taking an international and domestic legal approach. There are many national laws that are either directly or indirectly related to the elimination of child labour and the protection of child labour in Myanmar. There is however no specific law dealing with child labour in Myanmar. Although several International Conventions protect the rights of child labourers, Myanmar has signed and ratified Convention No. 138 (1973) concerning minimum age for admission to employment, Recommendation No. 146 (1973), ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and Recommendation No. 190 (1999), and the United Nations Convention on the Rights of the Child. The paper emphasises performance indicators for measuring the impact of urban models designed to protect the rights of child labourers in Myanmar. The paper is based on learning from Save the Children Myanmar's urban intervention on child labour, specifically targeting child domestic workers and child labour in the industrial zones of urban Yangon. This study seeks to understand the real-life situation of child labourers, their experiences, points of view, perspective, and rights, and how to face the challenges and difficulties in protecting child labourers. The expected outcomes of my paper are that home-based domestic child labourers and their families have access to effective prevention and full child rights protection legislation. A focus will be on understanding the challenges and barriers to the protection child labourers. This paper can propose an implementation process of the issues of child labourers, effective reduction of child labour.

Keywords: Child Labour, Child right; hazardous forms; minimum legal working age, Children, Protection

Introduction

Child Labour is an important issues facing children today in both the developed and developing countries of the world. The mental and physical development of children is linked to the future development of the country. Child labour is a serious violation of human rights and of fundamental rights and principles at work, and thus represents a barrier to decent work. According to UNICEF, there are more than one million unregistered children in Myanmar (ILO, 2017).

In Myanmar, children in work places are faced with many difficulties, as well as exploitation, and violence. Children need to be protected and the government in

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Myanmar needs to target the elimination of child labour. This research paper takes a legal approach and examines child labour under international and domestic law. It investigates whether Myanmar's domestic legal framework is adequate to meet international human rights standards relevant to child labour and also focuses on the challenges of ensuring child labour rights in Myanmar. The paper researches emphasizes on child labour in the urban Yangon area in Myanmar. Yangon served as the capital city of Myanmar until 2006 when the military government relocated administrative functions to the purpose-built capital city of Naypyidaw in northern central Myanmar. Yangon is the most populated and the largest commercial centre in the Republic of the Union of Myanmar. The interview data analysed for this study suggests that principle causes of child labour are poor educational backgrounds, poverty, natural disasters, lack of awareness of law, and family indebtedness.

The objective of this study is to compile, consolidate and validate available information on child labour to determine how best to support those seeking to protect child labourers', to overcome challenges and barriers to reducing and eliminating child labour in Myanmar. This paper also hopes to support the implementation process of child labour rights, the effective reduction of child labour and drive an updating of legislation and policy related to child labour protection in Myanmar. To achieve the research objectives, legal analysis has been applied to national and international labour laws and related laws. Moreover, the Myanmar domestic legal framework has been studied to determine whether it is sufficient to meet international human rights standards relevant to child labour.

Research Question

1. What are the challenges in protecting child labour rights in Myanmar?
2. Is Myanmar's domestic legal framework adequate to meet international human rights standards relevant to child labour?

Research Methodology

This study applies qualitative research methods, using secondary data review of related literature, analysing domestic and international laws. It also collects primary data, making semi-structured interviews with eleven concerned stakeholders including lawyers, judges, officers of the Social Welfare Department, police officers, child labour experts and those from development areas in Yangon City where child labour is

prevalent. This allows an assessment of problems around the issue of child labour as a method of data gathering alongside document analysis.

This study presents the causal factors, the impacts of the problems of child labourers, the interventions and responses currently being offered to them, and the emerging gaps. This paper concludes with potential strategies for intervening in the short and long terms and makes a comparison with the relevant international and domestic laws relating to the rights of child labourers.

Legal Framework on Child labour

Children are in danger of being forced into child labour, recruitment by armed organisations, trafficking, and forced into marriage. The literature review indicates that in many countries, child labourers are exploited by working long hours in difficult conditions for low pay. In Myanmar, child labourers are also faced with these difficulties. The Government in response has promulgated laws, rules, and regulations in line with international laws and standards.

There are many national laws that are either directly or indirectly related to the elimination of child labour and the protection of child labour in Myanmar. There is however no specific law dealing with child labour in Myanmar. In 2016 both the Shops and Establishments Act and the Factories Act were reviewed and amended, changing the minimum age for work to 14 years. The 2008 Constitution of Myanmar prohibits forced labour as a criminal offence punishable by imprisonment or fines (The Constitution, 2008, Section 359). “Every citizen shall, in accord with the health policy laid down by the Union, have the right to health” (the Constitution, 2008, Section 367). But a police officer interviewed said that a “specific system in place to protect children from forced labour with transparency” should be present in workplaces, as well as policies and guidelines, alongside a clear working age. There is neither a constitutionally guaranteed right to protection nor an established minimum working age, as well as uncertain health insurance for citizens.

Sections 75 to 78 of the Law Amending the Factories Act, 1951 and Section 13(a) of the Shops and Establishments Law, 2016, regulate the ages and conditions of child workers. The Factories Act also addresses the health and safety of child labourers in factories. The Law Amending the Factories Act prohibits a child younger than 18 years from working in dangerous circumstances and also provides certain parameters

regarding the employment of young persons (The Law Amending the Factories Act, 1951, Secs 75&77). The amendment of the Shops and Establishments law, 2016 prescribes some minimum standards for the safety conditions of child labourers aged 14 years or above, who may be employed, and children between the ages of 14 and 16 years who may only work four hours each day, with 30 minutes' rest, and not between the hours of 6 pm and 6 am. No child younger than 15 years will be required or allowed to work in a dangerous workplace. A young person between the ages of 14 and 18 years is prohibited from working unless in possession of a medical certificate proving fitness to do so (The Shops and Establishments Law, 2016: Secs 14 & 15).

These laws' provisions are not however sufficiently applied to children working for example with fish and seafood. To eliminate child demands the efficient implementation of existing related laws for the minimum age of child-workers. Such implementation is one of the challenges in Myanmar because some child labourers birth certificates are not available.

The Anti-Trafficking in Persons Law of 2005 laid out the creation and guidelines of a central body and working groups to combat trafficking efforts in Myanmar. It provides for a series of harsh penalties for individuals who traffic women, children, and youth. However, the implementation of this law remains problematic in investigation processes and law enforcement action on wrongdoer.

In Myanmar, respective Ministries are implementing measures on protection, survival, development, education, and participation so that every child may fully enjoy their rights under the law. According to the legal analysis of the domestic laws of Myanmar, labour laws need to provide specific standards and criteria for dangerous work (such as handling dangerous machinery, equipment and tools) and dangerous workplace (such as underground, under-water, at dangerous heights, in confined spaces, or an unhealthy environment) for child labour. Existing labour laws in Myanmar do not cover and protect all issues relating to dangerous work and workplaces of child labourers. Moreover, to address the child labour issue, one must seek to define child labour. Child labour is not defined in Myanmar's labour laws or related child laws.

The Gap between Domestic and International Law

Although several International Conventions protect the rights of child labourers, three international conventions of ILO are most explicit: Convention No. 138 (1973) concerning minimum age for admission to employment, Recommendation No. 146 (1973), ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and Recommendation No. 190 (1999), and the United Nations Convention on the Rights of the Child. Myanmar has signed and ratified these three main conventions to protect child labourers.

In Myanmar, the 2008 Constitution provides enforceable guarantees related to a range of rights, some of which apply to citizens only and some of which are more broadly applicable. Moreover, although a State has duties to respect, protect and fulfil children's rights in Myanmar as a party of the UNCRC, most of these guarantees do not fully reflect international human rights standards, due to the range of qualifiers and caveats they contain. Myanmar ratified UNCRC on 15 July 1991 and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in 2001 on 16 January 2012 (OHCHR, 2012).

Therefore, to implement the rights enshrined in the CRC in Myanmar, the Child Law 1993 was enacted on 14 July 1993, and the Rule related to the Child Law, 2001 promulgated in 2001. The Myanmar National Plan of Action for Children (2006 – 2015) has four focused areas – health and nutrition, water and sanitation, education and child development, and child protection. However, the provisions of the age of the child under the Child law, 1993 was not in line with the CRC. To be consistent with the UNCRC, the new Child Rights Law 2019 repealed the 1993 Child Law on 23 July 2019 and defines a child as aged under 18 years.

Myanmar ratified ILO's Convention No. 182 on the Worst Forms of Child Labour in 2013 and is implementing it through a national plan for the eradication of child labour in dangerous workplaces. The plan aims to end the worst forms of child labour by 2030. Myanmar is also a signatory of ILO Convention No 182 which expresses political commitment to eliminate the worst forms of child labour and ILO Forced Labour Convention, 1930 (No.29), another important international instrument relevant to eliminating child labour in its worst forms (ILO, 2015). Myanmar signed ILO 138 Convention on 8 June 2020, that establishes a general minimum working age of 14 years. Myanmar is the 178th signatory state of the Convention and it will enter

into force for Myanmar on 08 June 2021. As a signatory of these two core ILO conventions Myanmar needs to put in place laws and policies for the effective implementation of the elimination of child labour.

Most of the provisions of the new Child Rights Law, 2019 are in line with the UNCRC and other international conventions relating to child rights, Myanmar needs however to provide special protection measures for children deprived temporarily or permanently of their family environment, in situations of emergency, children in conflict with the law, in situations of exploitation including physical and psychological recovery and social reintegration and children belonging to a minority or indigenous group. Additionally, Myanmar's labour laws need to provide specific definitions of terms such as domestic child labour, child labour, dangerous work, dangerous workplace, etc.

Challenges Facing Child labour Protection

According to the analysis of the interview data, there are two main categories of child labour in Yangon, domestic child labour and child labour in the industrial zones. These have a common characteristic of home-based labourers and thus hidden labour. Some of the most significant violations of these children's rights include the loss of childhood, lack of opportunities to explore their full potential, lack of education, exploitation, and abuse experienced through labour. In Myanmar, there is no specific provision for, or definition of domestic child labour. That is one of the challenges facing action against child labour in the urban Yangon area which has many domestic child workers.

From the interview data collected for this study, it is clear that some children are engaged in hazardous situations, or working with chemicals and pesticides in agriculture or with dangerous machinery. Interviewees said there are many child labour issues in the urban Yangon area and efforts to protect child labourers face many challenges.

Officers of the Social Welfare Department (SWD) said if there is a violation of the rights of the child in the district, anyone can file a complaint to the child rights committee at the state level, the Department of Social Welfare, the National Committee for the Rights of the Child, or the Women and Children's Rights Committee. To reduce

child labour demands the participation and support of NGOs, INGOs, and CSO volunteers.

Police officers, lawyers and those from the SWD complaint can be filed with the child rights committees at townships, district, and the state level or with the Nay Pyi Taw Social Welfare Department, the National Committee for the Rights of the Child and Committee on Women's and Children's Rights. But this information is not known to most people. This demonstrates that public awareness is important in reducing child labour. This is the challenge to those seeking to protect child labour because information on child labour cases is important.

One police officer said there was a need for a specific system in place to protect children from forced labour as well as transparency. The exclusion of all child labour from the manufacturing process requires both employer and employees to control demand and supply on both sides to avoid child labour. Many interviewees said there is no legal provision around domestic child labour in Myanmar, and so they cannot effectively protect domestic child labourers. It is important to solve issues of such hidden child labourers. A Domestic Child Labour Law is in preparation for submission to the Legislature, Pyidaungsu Hluttaw. Before Myanmar had signed ILO Convention 138, several interviewees that without such commitment it is difficult to implement child labour rights. Convention 138 was signed by Myanmar on June 8, 2020 and after the signing some interviewees said some difficulties remain, but these can be overcome. Some said that now Myanmar has signed the two core ILO Conventions, 138 and 184, they hope that it will be more effective implementation to protect of child labourers.

Most interviewees said the impacts of child labour include an increase in child malnutrition, mortality and morbidity, child exploitation and violence, and other forms of abuse. The two experts said that the impact of child labour connects with the development of the country, violation of human rights, exploitation, and abuse and forced labour.

One expert said that problem of child labour demands the addressing of more than one cause. Four main factors must be considered: economic and socio-economic factors, people's awareness, solution based in the family, and educational background. Some children were employed as familial labour and were expected to contribute to the household economy such as small home-based businesses, tea shops or small shops. The other expert said some factories or industries preferred to employ child workers

wherever possible because child workers were cheap and easy to control. The exclusion of child labour from the manufacturing process requires approaching both employers and workers to control demand and supply. Employers abide by by-laws relating to child labour and should not emphasise only their immediate self-interest, and collaborate in the reduction of child labourers, and behave as good citizens. All interviewees said that “employers must strictly follow the legal provisions concerning child labour. There is a need to ensure an effective implementation process to protect children.”

An individual who lives in an area where child labour is prevalent said, “no laws specifically prohibit child labour and it is not clear that where child labourers are sent. This is a huge challenge for their Protection”. She also said most people do not know that children under the age of 14 are not allowed to work and that children between the ages of 14 and 16 years need a doctor’s certificate to work.

One of the SWD officers said that education requires a lot of work and so the elimination of child labour plays an important role in the work of the Ministry of Education. Education helps to alleviate poverty and improve economic progress.

Another SWD officer said that workplace inspectors do not know whether or not there is child labour in the workplace if the employers do not disclose this. Only if those the area share information about child labourers with inspectors, can they know about this.

Both an expert and a judge said child labour problems are not easy to solve. The child labour phenomenon arises on due to poverty, lack of education, debt, civil war, natural disasters etc. To reduce child labour demands measure that engage with their life, to understand why a child works. One must establish a strong database and survey working places about child labour. Child labour encourages exploitation by domestic and foreign companies.

According to the legal analysis and literature review, child labour is especially prevalent in rural areas where the capacity to enforce minimum age requirements for both schooling and work is lacking. Children work for a variety of reasons, the most important being poverty and the pressure they feel to escape it. Although children are not well paid, they are still major contributors to family income in developing countries. Education challenges also contribute to child labour, whether it is the inaccessibility of schools or the lack of quality education which spurs parents to see their children engage

in more profitable pursuits. Traditional factors such as rigid cultural and social roles in certain countries further limit educational attainment and increase child labour.

To overcome the challenges facing child labour protection and to reduce child labour issues in Yangon, everyone must have awareness of the law concerning child labour and must help children who are employed as child labour. To eliminate child labourers, Government, NGOs, INGOs, volunteers, and the public must collaborate. The first investigation of child labour issues fails to police forces, social welfare officers, social workers, and respective ministries, as well as NGOs, INGOs, and the public.

Conclusion and Recommendations

In conclusion, to reduce child labour in Yangon, larger focused interventions are needed, including better housing, development of socio-economic plans for families, all-inclusive urban development policies, and an increased number of boarding schools for poor children in both rural and urban areas. This study seeks to understand the real-life situation of child labourers, their experiences, perspective, and rights, and how to face the challenges and difficulties of those seeing to protect child labourers. The common needs of child labourers are food, shelter, health care, vocational training, education, and socio-economic support. The interview findings indicate that educational problems, poverty, natural disasters, and family debt are the main drivers of child labour in the urban Yangon areas. Most child labourers are challenged to attend free primary education or school because they spend so much time at work, and cannot pay bus fares or the expense of hidden school activities. To address this respective Ministries and the public need to collaborate with child labour and families of child labour.

To force a child to work as a beggar is the worst form of child labour because it destroys a child's happiness, well-being, development, and reputation. In Myanmar, there are many challenges and barriers to solving these problems. To eliminate child labour in Myanmar, the Government's support is important. The government is conducting a thorough, effective, and transparent large-scale investigation of child labour practices and human rights violations in the community. Moreover, the main problem in preventing child labourers from exploitation is the general public not knowing the law on the minimum working age of children. Many employers, for

example, do not know the stipulated minimum working age and limits on working hours for children. Therefore, public awareness of the most important legal provisions relating to child labour is urgently needed. In Myanmar, there is a need to establish widespread advocacy and awareness-raising groups to lead the implementation of child labour awareness.

According to the second research question, findings indicate that Myanmar's domestic legal framework needs to provide specific provisions defining terms such as child labour, dangerous works and dangerous workplaces in line with international child labour standards. To succeed Government must have effective implementation processes and such definitions will provide and enhance people's awareness of child labour. These technical terms are important to the protection and prevention of child labour. Another barrier is related to the public's lack of awareness of laws around child labour. To eliminate child labour requires efficient engagement with communities and urgent action to address child labour with effective implementation in Myanmar.

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