CURRENT STATUS OF INTERNALIZING INTERNATIONAL LABOR STANDARDS ON THE PREVENTION, REMOVAL AND THE CASE IN VIETNAM

a Dao Mong Diep

ABSTRACT

Objective: The article researches on the internalization of international labor standards on the prevention and abolition of child labor in Vietnam's labor law, thereby pointing out similarities, differences and improvements child labor law.

Method: To conduct research on the issue of internalizing international labor standards on the prevention and abolition of child labor, the author uses a combination of social science and legal science methods such as methods. legal analysis methods, methods of comparison, deductive, inductive, statistical, commentary to achieve research objectives.

Results: Through assessing the situation of internalizing international labor standards on the prevention and abolition of child labor in Vietnamese law, the author proposes a group of solutions to improve the legal framework on labor. Children meet the requirements set out in the current period.

Keywords: law, labor, labor standards, elimination of all forms of forced labor, child labor.

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SITUAÇÃO ATUAL DA INTERNALIZAÇÃO DAS NORMAS LABORAIS INTERNACIONAIS EM MATÉRIA DE PREVENÇÃO, AFASTAMENTO E CASO NO VIETNAME

RESUMO

Objetivo: O artigo pesquisa sobre a internalização das normas internacionais de trabalho sobre a prevenção e abolição do trabalho infantil no direito do trabalho do Vietnã, apontando, assim, semelhanças, diferenças e melhorias no direito do trabalho infantil.

Método: Para realizar pesquisas sobre a questão da internalização das normas internacionais de trabalho sobre a prevenção e abolição do trabalho infantil, o autor usa uma combinação de ciência social e métodos de ciência legal, tais como métodos. métodos de análise jurídica,
métodos de comparação, dedutivo, indutivo, estatístico, comentário para alcançar os objetivos de pesquisa.

Resultados: Através da avaliação da situação da internalização das normas internacionais de trabalho sobre a prevenção e abolição do trabalho infantil na legislação vietnamita, o autor propõe um grupo de soluções para melhorar o quadro legal do trabalho. As crianças cumprem os requisitos estabelecidos no período em curso.

Palavras-chave: lei, trabalho, normas laborais, eliminação de todas as formas de trabalho forçado, trabalho infantil.

1 PUBLIC INTEREST STATEMENT
1.1 DESCRIPTION OF THE PAPER

Codifying basic international labor standards in general and labor standards on eliminating all forms of forced labor and child labor in particular in Vietnam's labor law, information is a matter of science and new method. Currently, Vietnam is very interested in the protection of child labor through regulation and control of the issue of eliminating all forms of forced labor and child labor. The issue of internalizing labor standards on eliminating all forms of forced labor and child labor in Vietnam's labor law still has certain limitations. The article compares and evaluates the implementation of labor standards on the elimination of all forms of radiation and child labor in Vietnam. From there, propose solutions to improve the law on eliminating all forms of urgent labor and child labor in particular and the labor law in general.

2 INTRODUCTION

Internalization is a common concept in legal science. Internalization is to create consistency of statutes, by-laws and their implementation process. In his research work, author Nguyen Ba Binh invoked HC. Gutridge’s point of view to share the consensus to this view that internalization is the process of developing model laws and implementing measures to encourage countries to accept and adopt these model laws in order to reduce differences in specific areas of law between different legal systems (Gutridge, 1971). In recent years, Vietnam has shown its efforts in internalizing international treaties in various fields (labor, banking, social security, etc.); thereby step by step creating compatibility between Vietnamese law and international legal practices; in which the internalization of international labor standards has always been paid special attention by legislators. In legal science, the internalization of international labor standards is basically the process of bringing the content of international labor standards regulations into the
content of national labor laws through *amendment and supplement, abolition or promulgation of new legal regulations* to have legal content consistent and compatible with international labor standards (Dieu, 2022). Among the four basic international labor standards that are recognized globally, the elimination of all forms of forced labor and child labor are two standards that have received great attention from the international community. The reason is that child labor and forced labor are two of the worst forms of exploitation that exist in society today (Cuc, 2020). According to a joint report of the International Labor Organization (ILO) and the United Nations Children's Fund (UNICEF) just released on June 9, 2021, there are currently 160 million children in the world who are victims of child labor around the world and 9 million others are at risk from the effects of the COVID-19 pandemic (ILO, “For the first time in two decades, child labor increased to 160 million”, 2021). The report also notes that currently, about 70% of child laborers (112 million) work in the agricultural sector, followed by the service sector, with 20% (31.4 million) and industry with 10% (16.5 million); in which nearly 28% of children at the age between 5-11 and 35% of children at the age between 12-14 work without schooling. The rate of child labor in rural areas (14%) is nearly 3 times higher than in urban areas (5%) (Linh, 2021). The ILO and UNICEF also argue that the existence of child labor forms gradually damages their education, limits their rights and future prospects, and leads to a vicious cycle of poverty and hunger and child labor from generation to generation. (Duong, 2021).

As a country ratifying the ILO Convention for the Elimination of the Worst Forms of Child Labor No. 182 (1999) and ILO Minimum Age Convention No. 138 (1973) on 24 June 2003 and 19 December 2000, respectively; Vietnam has committed to addressing child labor through the relevant legal system, policy and institutional building. Matthias Doepke & Fabrizio Zilibotti also argue that international labor standards and government policies reduce child labor prohibition and abolition (Matthias Doepke & Fabrizio Zilibotti, 2010). Since joining the above-mentioned conventions, Vietnam has made efforts to perfect the legal system related to the minimum working age and eliminate the worst forms of child labor, disseminating, interpreting and educating the legislation on these issues through programs at the national level; strengthen state management and labor inspection over child labor issues; integrate concerns about child labor into socio-economic development programs and projects; strengthen international cooperation in the fight to eliminate child labor (Vu Cong Giao, Nguyen Hoang Ha, 2017). The results of a
survey conducted by the Ministry of Labor, Invalids and Social Affairs (MOLISA) in collaboration with the General Statistics Office with technical support from the International Labor Organization (ILO) show that the percentage of child labor in Vietnam is about 2%, lower than the average rate in the Asia and Pacific region (ILO, “Vietnam's child labor rate is 2% lower than the average in the region”, 2020).

In general, Vietnamese legislation on the abolition of child labor is compatible with the basic provisions of ILO Conventions 138 and 182. However, considering some specific issues, there are still shortcomings which are shown through the data of the National Investigation on Child Labor published by the ILO by the General Statistics Office and the Ministry of Labor, Invalids and Social Affairs in 2020, as can be seen, that there are still 198,505 children, accounting for 12.9% work in self-commodification and self-consumption jobs (out of a total of 344,166 children at age of 5-17 years old who are economically active with jobs in the group of self-commodification and self-consumption products, which are in the group of excluded objects according to the spirit of Convention 138) is defined as child labor due to participation in jobs with arduous, hazardous and dangerous elements, which negatively affect the development of children (ILO G. S., 2020). This situation stems from many reasons, mainly because some regulations are not compatible with the labor standards of ILO. Since then, the situation of using child labor and invasion of the rights of child labor have been quite common. Kaushik Basu in his research on Child Labor: Cause, Consequence, and Cure, with Remarks on International Labor Standards also makes this point (Basu, 1999). The situation of forced labor, discrimination in terms of region, age, gender, etc., at various degrees, takes place not only in enterprises but also in many localities across the country (Nguyet, 2021).

3 CURRENT STATUS OF INTERNALIZING INTERNATIONAL LABOR STANDARDS ON PREVENTION AND ELIMINATION OF CHILD LABOR

3.1 INTERNATIONAL LABOR STANDARDS FOR THE PREVENTION AND ABOLITION OF CHILD LABOR

Child labor is considered one of the most serious violations of children's rights, prohibited by many international treaties. However, the fight against child labor abuses and exploitations only really gained the common voice of the international community when the International Labor Organization (ILO) was born in 1919 (Thanh, 2021). As a specialized organization of the United Nations to assist countries in promoting and
improving working conditions, the ILO has developed a certain international legal framework for the prevention and abolition of child labor on the basis of Convention No. 138 on the Minimum Age of Child Labor of 1973 and Convention No. 182 on the Prohibition and Urgent Action for the Elimination of the Worst Forms of Child Labor of 1999; with the following basic contents:

### 3.1.1 Firstly, minimum working age

Convention 138, fully known as the Minimum Age Convention, was adopted by the ILO on June 26, 1973, and entered into force on June 19, 1976. The Convention establishes the minimum age for employment that States parties must adhere to, in order to prevent the exploitation of child labor. These age ranges are outlined in the table below:

<table>
<thead>
<tr>
<th>Minimum working age</th>
<th>Minimum working age according to Convention No. 138</th>
<th>Minimum working age as prescribed by Vietnamese law</th>
</tr>
</thead>
<tbody>
<tr>
<td>General minimum age</td>
<td>Not less than 15 years old</td>
<td>Not less than 14 years old (for developing countries)</td>
</tr>
<tr>
<td>Minimum age applicable to heavy, hazardous and dangerous jobs</td>
<td>Not less than 18 years old</td>
<td>Not less than 16 years old (But safety and dignity of children must be ensured)</td>
</tr>
<tr>
<td>Minimum age applicable to light work</td>
<td>13 - 15 years old</td>
<td>12-14 years old (for developing countries)</td>
</tr>
</tbody>
</table>

In terms of scope of impact, Convention 138 applies to all economic sectors and to all types of occupations and employment, whether contracted or uncontracted, wage work or self-employment, paid or unpaid work, work within or outside the home environment. However, under Article 6, the Convention does not apply to:

*Firstly,* labor performed by children or youngsters in general education institutions, in vocational or technical schools or in vocational training schools;

*Secondly,* labor performed by persons at 14 years of age or older in establishments that comply with the conditions prescribed by the competent authority (after consultation with employers and employees) and is an integral part of: (i) a vocational or educational program whose primary responsibility is of a school or vocational training school; (ii) a vocational training program, approved by the competent authority and conducted mainly or wholly to the extent of an establishment; (iii) a vocational program intended to
facilitate the choice of a career or a particular direction of vocational training (Vu Cong Giao, Nguyen Hoang Ha, 2017).

3.1.2 Secondly, working conditions of children

ILO Convention 182 (fully called as Convention for the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor), was adopted by the ILO on 17 June 1999, and entered into force on November 19, 2000. In particular, the ILO requires Member States to immediately take effective measures to prevent and eliminate the worst forms of child labor as a matter of urgency. These forms include:

(i) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt and serfdom and forced or compulsory labor, including forced labor or forced recruitment of children for use in armed conflict;
(ii) Using, bribing or providing children for prostitution, pornography production or pornographic performances;
(iii) Using, bribing or providing children for illegal activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
(iv) Work which, by its nature or the circumstances in which it is performed, is likely to harm children's health, safety or morals.

Article 1 of Convention 182 identifies a general obligation of States to immediately take effective measures to ensure the prohibition and elimination of the worst forms of child labor as a matter of urgency. To fulfill this obligation, the Convention defines requirements in principle with States, which are:

- Establish or designate a national mechanism to monitor the implementation of the Convention;
- Establish and implement a national action plan to prioritize the elimination of the worst forms of child labor;
- Implement effective measures within a limited time, taking into account the importance of education, to prevent child labor and protect children in working;
- Take all necessary measures, including appropriate sanctions, to ensure effective implementation of the Convention;
- Designate a competent authority responsible for the implementation of the Convention;
Take appropriate measures for international assistance and cooperation.

3.2 CURRENT STATUS OF VIETNAMESE LABOR LAW IN INTERNALIZING INTERNATIONAL LABOR STANDARDS ON PREVENTION AND ABOLITION OF CHILD LABOR

Vietnam is the first country in Asia and the second in the world (after Ghana) to ratify the United Nations Convention on the Rights of the Child. At the same time, Vietnam has also ratified two basic International Labor Organization (ILO) Conventions directly related to child labor, namely the 1973 Convention No. 138 on the minimum working age and Convention No. 182 on prohibition and immediate action to eliminate the worst forms of child labor; efforts in internalizing the international legal provisions on child labor (Khuc Thi Trang Nhung, Pham Thi Huong Giang, 2021). In general, Vietnam has made great efforts in internalizing international labor standards on prevention and abolition of child labor in Vietnamese labor law in recent times, shown in the following:

3.2.1 Firstly, definition of the law on child labor

Authors Eric V. Edmonds and Nina Pavcnik in Child Labor in the Global Economy, Journal of Economic Perspectives argue that: “Most child laborers live in low-income countries. These countries often lack reliable data on many aspects of their labor markets. Even more troubling, some policymakers until recently defined "child labor" as economic activities harmful to children's health. So, rather than assuming that all child labor by definition is harmful to children, it would be more helpful to define child labor to include all aspects of child labor and then study it. study the impact of that work” (Eric V. Edmonds and Nina Pavcnik, 2005). In terms of legislative techniques, the 2019 Labor Code does not provide a definition of child labor in its concept, but uses the term of minor labor to protect those who do not have full legal capacity and act capacity. Accordingly, a minor employee is an employee who is under 18 years of age (Clause 1, Article 143 of the 2019 Labor Code). For the purpose of protecting minor workers when participating in labor relations, the best conditions for vocational training, employment, income, health as well as full physical and mental development are guaranteed. In addition to the general regulations, the previous Labor Codes as well as the 2019 Labor Code have separate regulations for this type of labor. The use of the term of minor labor and the introduction
of the concept of a minor labor (an employee under 18 years of age) in Article 143 of the 2019 Labor Code is considered to be consistent with the provisions of the 2015 Civil Code on determining age, capacity and responsibility of subject.

In addition, the regulations on minor labor include 3 groups by age: Employees from full 15 years old to under 18 years old, employees from full 13 years old to under 15 years old and employees under 13 years old, from which to determine the scope of employment, working conditions, and directions to protect minor labor in labor relations are reasonable. The contents of working time, rest time, especially regulations on 3 lists of jobs and workplaces (prohibited, allowed and permitted) corresponding to 3 groups of minor labor by age, generally in accordance with the conventions of the International Labor Organization and the laws of the countries of the world, such as the study on Elimination of Child Labor: Standards and Role of International Labor Organization by Professor Csilla Kollonay – Lehoczky, Faculty of Legal Studies, Central European University in also mentioned the age of entry. Children's work is similar to Vietnamese law (Lehoczky, 2009).

3.2.2 Secondly, the 2019 Labor Code has regulations on minor employees

First, in addition to identifying subjects as minor labor, the 2019 Labor Code stipulates prohibited acts in the labor field, including the illegal employment of minors. (Clause 7, Article 8 of the 2019 Labor Code);

Second, regulations on the principle of using typical minor labor such as it is stipulated that juvenile laborers are only allowed to do jobs suitable for their health to ensure the physical, intellectual, and personality development and the employer’s responsibility in concerning and caring for the health of the minor labor (Article 144 of the Labor Code 2019).

In the spirit of Article 144 of the 2019 Labor Code, employers must pay attention to three issues of physical strength, intelligence and personality that minor employees are vulnerable to or negatively affected during the working process. Accordingly, employers must arrange jobs suitable to their health and abilities when employing minor labor. It is strictly forbidden to employ minor labor to do heavy, hazardous or dangerous work or arrange a workplace, a job that adversely affects their personality. For example, jobs related to producing and trading alcohol, wine, beer, tobacco or other addictive substances, etc. Because minor labor is young, who is easy to be depraved, and tempted
by those addictive things, and at the same time, because they are young, have no life experience, and don't understand society, they are also easy to snobbish or indulge in dissipation when given the conditions and opportunities (Huong, 2018).

Minor workers are still at school-age and have not completed the general education program, so they need to continue to improve their knowledge and working skills for the future. For this reason, it’s stipulated that the employer is responsible for taking care of the employee in terms of labor, health and learning during the employment. Along with ensuring the same rights as adult workers, the employer must also ensure that the minor laborers may learn culture and vocational training to improve their qualifications. That means that the employer must not seek to obstruct or take other actions that affect the right to work, study and other rights under the law on children, the law on education, vocational training, etc. of minor labor (University, 2018).

When employing minor labor, obtaining the consent of the minor employee's parent or guardian is mandatory. The consent of the parent or guardian of the minor labor is intended to ensure the minor employee's performance of the labor obligation and the compensation obligation in case the minor labor violates the employer's provisions that damage the employer's property. In addition, the employer must set up a separate monitoring book, recording full name, date of birth, work in progress, results of periodic health checks and present it when state agencies have authority required. This monitoring will create conditions for employers to accurately and fully capture information about minor labor to take appropriate measures of guarantee and support. This is a mandatory issue; in case of failure to strictly implement and violations, it will be handled in accordance with the law (Nguyen Huu Chi, Nguyen Van Binh, 2021).

Third, in addition, the competent authorities have also issued many by-law documents to guide the implementation of contents on the protection of minor labor, especially the Prime Minister issued Decision No. 782/QD-TTg dated May 27, 2021, approving the Program of Prevention and reduction of illegal child labor for the period of 2021-2025, with orientation to 2023.

3.2.3 Thirdly, labor law stipulates occupations and jobs that can use child labor

Accordingly, Circular No. 09/2020/TT-BLDTBXH dated November 12, 2020 of the Minister of Labor, Invalids and Social Affairs Detailing and guiding the implementation of a number of articles of the Labor Code regarding minor workers
stipulated a list of light jobs that may use employees from full 13 years old to under 15 years old, including specific jobs such as: i) Performing arts; ii) Sports athletes; iii) Software programming; iv) Traditional occupations: ceramic glaze; shell sawing; poonah-paper making; making conical hats; dotting conical hats; matting; making drum; weaving brocade; brocade embroidery; making rice vermicelli; making glass noodle; making bean sprouts; making rice paper; silk weaving; threading lotus; Painting lacquer, burning incense, making votive paper, etc.

3.2.4 Fourthly, labor law stipulates prohibited acts when using child labor

In addition to regulations on occupations and jobs that can accept child labor, the labor law also has stipulated jobs and workplaces that prohibit using employees aged from 15 to under 18 years old. Specifically, the law prohibits using employees from full 15 years old to under 18 years old to do jobs such as: i) Carrying and lifting of heavy things which are beyond his/her the physical capacity; ii) Production, sale of alcohol, tobacco and neuro-stimulants and other narcotic substances; iii) Production, use or transport of chemicals, gas or explosives; iv) Maintaining equipment or machinery; v) Demolition; vi) Melting, blowing, casting, rolling, pressing, welding metals; vii) Marine diving, offshore fishing; viii) Other works that are harmful to the development of his/her physical health, mental health or personality, such as directly smelting metal ores; burning and coking furnace; burning steam locomotive furnaces; operating the refrigeration system, etc.

Regarding legal techniques, Article 147 of the 2019 Labor Code lists jobs and workplaces that are prohibited from employing workers from full 15 years old to under 18 years old. This is an essential regulation, in order to strictly protect minors as well as define the responsibility of the employer and the State for the cause of care, education and development of minors - the future generation of the country. For heavy, toxic, dangerous jobs or extremely heavy, toxic and dangerous jobs, all jobs with unfavorable working postures, constriction, lack of oxygen; jobs that require physical training and high skills; workplaces associated with or related to, which may negatively affect the personality formation process (casinos, bars, discos, karaoke rooms, hotels, guest houses, saunas, massage rooms; lottery business, electronic game services); other workplaces that cause harms to health or cause dangerous diseases (such as infectious diseases, genetic mutations, causing bad moral consequences...) are on the list of prohibited
employees from full 15 years of age to under 18 years of age. This is the concretization of the principle of using minor labor in Article 144 of the Labor Code 2019. In case of violation, the employer may be subject to the liabilities prescribed by the law. International labor laws and national regulations all pay attention to the protection of minor labor through the identification of a list of prohibited employment of minors such as U.S. Department of labor’s bureau of international labor affairs office of child labor, forced labor, and human trafficking (U.S, 2012). At the same time, there are severe penalties if the employer violates such regulations.

However, in the author's opinion, Article 147 of the 2019 Labor Code should not list works and locations that are prohibited from using workers from full 15 years old to under 18 years old. The listing will not be comprehensive in the legislation, moreover, it is easy to lead to insufficiency or omission. Therefore, like the list of light works (for people from full 13 years old to under 15 years old) and the list of works can be done by people under 13 years old, the Labor Code should stipulate a list of prohibited works and workplaces for employees aged 15 to under 18, instead of the current provision.

3.2.5 Fifthly, the labor law stipulates the working hours of minors

Because minor workers have limited understanding of society and life, their ability to protect themselves is not high, and they are vulnerable to exploitation and taking advantage. In fact, many employers in small private enterprises, cooperative groups, individuals in craft villages, construction establishments, and employers producing handmade consumer goods have extended working hours during the day. There are even cases of maximum exploitation of the labor force of minor labor up to 14, 15 hours a day. They hardly have time to rest, study or participate in other social activities, significantly affecting minor labor's full physical and mental development.

Therefore, in order to protect minor labor when participating in labor relations, in addition to regulations on occupations and jobs that are allowed to use minor labor, conditions for recruitment of minor labor, rights on employment, wages, etc., the law also pays special attention to hygienic and safe working conditions and working hours. Accordingly, Article 146 of the Labor Code 2019 specifically limits the working hours of minors in general, mainly for minor labor, when participating in labor relations. Specifically, the employer must arrange reasonable working hours within the ceiling prescribed by the Labor Code. Especially for people under 15 years old, the employer is
not allowed to arrange them to work more than 04 hours in 01 day, 20 hours in 01 week, which is equal to half the working hours of adult laborers who do normal work under normal conditions. The purpose is to facilitate them to rest, spend time studying and participate in other social activities.

For people from full 15 years old to under 18 years old, working hours must not exceed 08 hours in a day and 40 hours in a week, and at the same time may only do occupations or jobs under normal working conditions. Because people from full 15 to under 18 years old have had relatively developed physical, health and intellectual development, in order to meet their income needs and the labor demand of the medium and small-sized craft enterprises in Vietnam today, they can work overtime and at night. However, it was not always that they are allowed to agree on overtime work or night-shift work, but only in certain occupations and jobs according to the list issued by the Minister of Labor, Invalids and Social Affairs. The purpose of this regulation is to ensure the full physical and mental development of minor labor. If the employer violates the regulations on working time for minor labor, it will be considered a violation of the law and will be handled according to regulations.

4 ASSESSMENT OF THE COMPATIBILITY OF VIETNAMESE LAW WITH INTERNATIONAL LABOR STANDARDS ON THE PREVENTION AND ABOLITION OF CHILD LABOR AND PROPOSE SOLUTIONS FOR IMPROVEMENT

Child labor has always been an object of interest to many international organizations and governments around the world, including Vietnam. In the report “Child labor - Global estimates 2020, trends and the road forward,” published in June 2021 by ILO and UNICEF, the situation of child labor worldwide is alarming. The progress made in improving child labor over the past two decades is seriously threatened by the Covid-19 pandemic, which has spurred and added 8.9 million child laborers worldwide by the end of 2022 (ILO, Child Labour: Global estimates 2020, trends and the road forward, 2021). At the launching ceremony of the National Program on Prevention and Reduction of illegal child labor for the period 2021-2025, with an orientation to 2030 taking place on December 1, 2021, the ILO representative in Vietnam observed: “Child labor not only causes risks to Vietnam’s reputation as an international trading partner and undermines the capacity of the country’s future workforce, but also erode children's rights and
increase poverty in cycles. The implementation of the National Program to prevent and reduce child labor will ensure that this commitment is put into practice, facilitating Vietnam's deeper integration into the global economy; This is very important for the country's economic recovery after Covid-19 (Anh, 2021)

It can be seen that, since joining Conventions 138 and 182 of the ILO, Vietnam has made a lot of efforts in internalizing international labor standards on preventing and eliminating child labor in the labor law with relatively adequate provisions in order to create a legal basis, create conditions for protection, prevention of child labor from being exploited and build a safe and sound environment for both physical and mental development. In general, Vietnamese law is basically similar to the primary contents of the Convention on the Rights of the Child and Conventions No. 138 and No. 182 of the ILO. However, besides the achieved results, some provisions of the current law are still not compatible with international labor standards, leading to child labor in Vietnam recent years having signs of an increase, especially under the negative impact of the COVID-19 pandemic, which is reflected in the results of the Vietnam Sustainable Development Goals Survey on Children and Women 2020-2021, in coordination with the General Statistics Office and UNICEF, pointed out some basic contents about the current situation of using child labor in Vietnam (UNICEF, 2021):

- Among children aged 5-17, girls (7.6%) are more likely to participate in child labor than boys (6.4%).
- The proportion of children in rural areas participating in child labor is higher than that of children in urban areas (8.1% vs 4.6%)
- Children who do not attend school are 5 times more likely to engage in child labor than schooling children (26.2% vs 5.7%)
- Children in poorer households, children whose mothers have less education, and children from ethnic minority groups are more likely to participate in child labor than other groups.
- Among ethnic minority groups, children of the Mong ethnic group have a much higher risk of child labor participation than the national average (25.5% vs 6.9%).
- The proportion of children aged 5-17 working in hazardous working conditions is negatively correlated with the household's living standard group and the mother's education level. Children from poorer families and mothers with less education are more likely to do hazardous work.

Figure 1: Data on forms of child labor by type of work and age group in 2020-2021 (unit: %)

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Economic activities</th>
<th>Do housework</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-11 years old</td>
<td>6.4</td>
<td>1.4</td>
</tr>
<tr>
<td>12-14 years old</td>
<td>4.9</td>
<td>3.9</td>
</tr>
<tr>
<td>15-17 years old</td>
<td>4.6</td>
<td>0</td>
</tr>
</tbody>
</table>

Sources: (Unicef, 2021).

Figure 2: Framework for identifying child labor and child labor in heavy and hazardous work in the population of children aged 5-17 according to the results of the ILO survey in 2020

- Children doing jobs permitted by law
- Child laborers work 40 hours/week or more in jobs that are not arduous, hazardous, or dangerous
- Child laborers work in heavy, hazardous or dangerous jobs

Sources: (ILO G. S., 2020)

Figure 3: Structural chart of child labor's school attendance according to ILO survey results in 2020 (%)

- 1% never went to school
- 49% Non-enrolled
- 50% Being schooling

Sources: (ILO G. S., 2020)
In addition, the situation of forced labor against children has persisted in recent times, although the authorities have made many efforts to eliminate this phenomenon. Typically, the incident occurred in early February 2021, Quang Ngai Provincial Police, in collaboration with Tu Nghia District Police, successfully rescued 08 girls locked in the Hoang Gia karaoke bar in Nghia Thuong commune, Tu Nghia district. According to the testimonies of the victims, after being rescued, because of their family's difficult circumstances and obeying the temptations of some subjects, these young women went to the Royal Karaoke bar to apply for jobs. During the process of working here, the group of employees mentioned above was always locked by the employer, confiscated their phones, not allowed to leave there and took turns receiving guests. More seriously, they were tortured, beaten and used many torture methods such as stripping their clothes to electrocute them, threatening to cut off their fingers and toes, and mental intimidation forcing the victims to work (Newspaper, 2021).

Therefore, in the coming time, it is necessary to perfect the current Vietnamese legal framework on the prevention and abolition of child labor on the basis of creating compatibility with international labor standards, with specific solutions as follows:

4.1 FIRSTLY, REGARDING THE MINIMUM AGE TO JOIN THE LABOR FORCE

The minimum age is the basic standard of labor law, which has been defined in ILO Convention No. 138 on the minimum working age with a floor age of not less than 15 or not less than the age at the end of the compulsory education program (Clause 3,

Article 2). As a country ratifying Convention No. 138, Vietnam's regulation on the minimum age for children to be employed is completely consistent with international standards because of its flexibility by type of work. The general regulation of the Labor Code 2019 is 15 years old (Clause 1, Article 3). However, Article 143 of the Labor Code 2019 stipulates minor labor as follows: For some specific jobs such as working at restaurants, hotels, and bars, some heavy, hazardous and dangerous jobs and working for foreign organizations and individuals in Vietnam, the minimum age is 18; people from 13 to 15 years old are only allowed to do light jobs according to regulations and people under 13 years old are only recruited for art, physical training and sports jobs. Section 68 Appendix III promulgated under Circular No. 09/2020/TT-BLDBTXH dated November 12, 2020 of the Ministry of Labor, Invalids and Social Affairs detailing and guiding the implementation of a number of articles of the Labor Code regarding minor workers stipulates on work requiring carrying and lifting heavy objects that exceed the physical condition of minors of the group aged from 180 months - 15 years old to under 216 months - 18 years old (Circular No. 09/ 2020). This regulation only applies to the case of minor labor engaged in a job related to carrying a certain weight. Still, it does not apply to all jobs and occupations where the employment of minor labor is prohibited. In addition, Section 35, Appendix III of Circular No. 09/2020 regulates jobs on seagoing ships, not specific to the scope of work. This can create conditions for employers to take advantage of the ambiguity in regulations to exploit minor labor. In general, Vietnam's regulation on the minimum age for children to be employed is completely consistent with international standards; however, there is no concretization for types of jobs permitted to use child labor.

Therefore, the author recommends section 68 of Appendix III be promulgated with Circular No. 09/2020 stipulating the work requiring carrying and lifting heavy objects exceeding the physical condition of minors for the age group from 180 months (15 years old) to under 216 months (18 years old) should expand the scope of application to all jobs and occupations that are prohibited from using minor labor, not only the type of carrying work.
4.2 SECONDLY, REGARDING LIST OF OCCUPATIONS THAT ARE PROHIBITED FROM USING CHILD LABOR

Circular No. 09/2020/TT-BLDTBXH dated November 12, 2020 of the Ministry of Labor, Invalids and Social Affairs stipulates the list of works that harm the physical, mental and personality development of the minors (69 jobs) in Appendix III, the list of workplaces that harm the physical, intellectual and personality development of minors (06 locations) in Appendix IV. It can be seen that this Circular has added many jobs and groups of jobs that are prohibited from using minor labor compared to Circular No. 10/2013/TT-BLDTBXH dated June 10, 2013 promulgating the list of jobs and workplaces that prohibit using minors, especially those in the heavy industry, chemicals, traditional craft villages, the private sector and the home economy where the child labor situation are complicated. However, Circular No. 09/2020 has not yet stipulated that a number of occupations in the fisheries and agriculture sectors are assessed as dangerous due to the use of equipment and machinery not meeting occupational safety standards, including heavy and toxic factors such as plowing, harrowing, etc. in the field of agriculture. In addition, in Section 35, Appendix III of Circular No. 09/2020 on the list of jobs that damage the physical, mental and personality development of minors, it stipulates jobs on seagoing ships but has not yet clarified whether fishing and seafood processing are included. Meanwhile, this is also considered a heavy and dangerous job for minor labor.

Therefore, the author strongly believe that it is necessary to supplement the list of occupations and jobs that prohibit the use of child labor according to the standards set by the ILO in Convention No. 182 on prohibition and immediate action to eliminate the worst forms of child labor and Convention No. 138 on the minimum working age as in agricultural sectors (plowing, harrowing, etc.). At the same time, clarify the scope of work on seagoing ships, including fishing and seafood processing in Section 35, Appendix III promulgated under Circular No. 09/2020 to prevent employers from taking advantage of the ambiguity in the legal regulations to abuse and exploit minor labor.

4.3 THIRDLY, REGARDING WORKING TIME AND REST TIME OF CHILD LABOR

Minors are a specific subject of labor, so the regulation of working and rest time ensures that children have time to study and rest for physical development.
Regarding working hours, the 2019 Labor Code still maintains the regulations on the duration of no more than 04 hours/day and 20 hours/week for employees under 15 years old. Minor employees from full 15 years old to under 18 years old are allowed to work no more than 08 hours/day and 40 hours/week (Article 146). Compared with adult workers, minor workers work less than 08 hours/week. Regarding overtime work, the Labor Code 2019 stipulates minor employees aged 15 to under 18 are allowed to work overtime or at night in certain works as prescribed by law (Clause 2, Article 146). However, ILO Recommendation No. 146 stipulates the minimum age prohibits overtime work for child labor to spend time for education, rest and other activities (Paragraph 13). Thus, Vietnamese law is not compatible with international conventions on this provision.

Regarding rest time, currently, there is no separate regulation for minor labor, and this issue still complies with the regulations on rest time of employees in general (from Articles 109 to 116 of the Labor Code 2019). Ensuring rest time has always been an institution of great importance to the laws of many countries, and it is regulated in several ILO Conventions such as Convention No. 106 on weekly leave in commerce and office 1957 or the 1970 Convention No. 132 on working hours and leave days. As a physically and mentally specific subject of labor, the regulation of a specific rest time is to optimally protect the legitimate interests of employees and prevent the illegal abuse of child labor.

Therefore, as for the author, it is necessary to add regulations on separate rest time for minor employees, ensuring enough time for their physical and mental development and study activities. According to the Labor Code 2019 provisions, the rest time of employees, in general, includes: rest breaks, breaks between shifts, weekly breaks, public holidays, annual leave, and personal leave. Minor employees can still apply the same regulations as employees in general on holidays, Tet (11 days), annual leave, and personal leave. However, the regime of rest breaks, breaks between shifts and weekly breaks should be considered to be adjusted to suit the physical condition of the minor labor. Specifically: Rest breaks for at least 45 minutes; at least 18 hours off after shifts; Weekly rest for at least 02 days, continuously for 48 hours. Compared with adult workers, minor laborers have not had a comprehensive biological development; the consumption of the brain, nerves and muscles will occur faster. Therefore, minor employees need to have a suitable rest time to recover their health. At the same time, the law should remove regulations on overtime and night work for employees from full 15 years old to under 18 years old to ensure compliance with international standards.
5 CONCLUSION

Child labor is a global social issue, attracting the attention of international organizations and progressive countries around the world. Children are special citizens of society who need to be given priority by the state and society and create a healthy environment for comprehensive physical and intellectual development. But in reality, child labor abuse is common (Eric V. Edmonds and Nina Pavcnik, 2005). Child labor abuse always leaves severe consequences and repercussions, depriving children of the opportunity to develop to their fullest potential, significantly affecting their physical and mental health, and adversely affecting the sustainable development of society and the future of each country and nation (Son, 2022).

With many efforts made by countries and international organizations, many international conventions have been created, showing the international community's strong commitment to protecting children, preventing and mitigating child labor. (ILO, International Programme on the Elimination of Child Labor (IPEC), Review on Legislations, Policies and Programs for The Elimination of Child Labor in Indonesia, 2011). Specifically, the 1973 International Labor Organization's Convention No. 138 on "Minimum age for employment." with the aim of effectively eliminating child labor - which are jobs that are hazardous to the health, safety or morals of the child, affecting their compulsory education or simply that the jobs which children are too young to do. In addition, there is the 1999 International Labor Organization's Convention No. 182 on "Prohibitions and immediate action to eliminate the worst forms of child labor" lists the worst jobs and immediate actions to be taken by countries to stop the worst form of child labor. To ensure that children are not exploited for labor, Vietnam has ratified Convention 138 and Convention 182. It is committed to taking measures to address child labor through the development of a legal system and policy, establishing a strong legal framework appropriate to the national context and in harmony with international law (Lan, 2021). Despite many encouraging results, demonstrating Vietnam's efforts in internalizing international labor standards on preventing and eliminating child labor gradually creates compatibility with the fundamentals of international law. However, the Vietnamese legal system on child labor still has some limitations and shortcomings that need to be further improved, thereby leading to many challenges for Vietnam in preventing and mitigating child labor in all forms in the context of international integration.
REFERENCES


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