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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Revised draft convention on the rights of the child (A/C.3/36/6)
Comments submitted by the International Labour Office
on 30 August 1983

1. The ILO previously submitted comments on certain provisions of the draft convention submitted by the Government of Poland set out in document E/CN.4/1349. These comments were reproduced in document E/CN.4/WG.1/WP.1/1 of 4 November 1980.
2. Since then alternative formulations for the draft convention have been suggested by the Government of Poland, as set out in document A/C.3/36/6 of 7 October 1981. The ILO wishes to submit the following comments in relation to certain provisions contained in that text.

Social security (document A/C.3/36/6 - Article 13)

3. This text would ensure to every child "the right to social security benefits for which he is eligible on account of the situation of his parents or legal guardians or another situation". This wording does not appear to reflect the true position with regard to entitlement to social security benefits. In general, the right to receive benefits is granted to the parent or guardian, by reason of his responsibility for the maintenance of the child. In these circumstances, it would appear preferable to use the wording previously proposed by the Government of Poland (as set out in document E/CN.4/1349, Article 14), with a minor correction in the English text to bring it into accord with the French version, as suggested in the ILO's previous comments. The article might accordingly read:

"The States Parties to the present Convention shall ensure to every child the right to benefit from social security and shall take appropriate legal and administrative measures to guarantee the implementation of this right".

Employment of children (document A/C.3/36/6 - Article 18)

4. In the ILO's previous comments, attention was drawn to the provisions of the Minimum Age Convention, 1973 (No. 138), a comprehensive instrument representing the latest position of the International Labour Conference on the question of the employment of children. The Convention makes provision for the pursuit of a national policy aimed at the abolition of child labour and the progressive raising of the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. It establishes different age levels for admission to employment in general, for employment dangerous to health, safety or morals, and for light work under specified conditions, and introduces various other elements of flexibility in regulating these matters.

5. Article 18, paragraph 3 of the draft set out in document A/C.3/36/6 would require the States Parties to prohibit the employment of children below the age of 14 years, in accordance with ILO Convention No. 5 of 1921.

6. This wording would give rise to a number of difficulties.

7. To begin with, ILO Convention No. 5 concerned only employment in industrial undertakings and is therefore insufficient in scope to cover the general problem of the employment of children which it is sought to deal with in the relevant article of the draft convention on the rights of the child.

8. Furthermore, ILO Convention No. 5 has been revised by the Minimum Age Convention, 1973 (No. 138), which is general in scope and - as indicated in its preamble - was intended to replace earlier Conventions on minimum age for employment applicable to limited economic sectors.

9. Lastly, Convention No. 138 does not set a single minimum age, but distinguishes between different types of work. Even as regards the ages for admission to employment in general, the Convention distinguishes between countries whose economy and educational facilities are insufficiently developed (which may initially establish a minimum of 14 years) and other countries, where the limit must not be less than 15 years or the age of completion of compulsory schooling, if higher. The minimum age for dangerous work has generally to be not less than 18 years.

10. In these circumstances, in order to ensure consistency with the existing international standards, it would appear desirable to draft Article 18, paragraph 3 of the proposed convention in more general terms. In the previous comments of the ILO, it was suggested that consideration might be given to a provision on the following lines:

"The States Parties to the present Convention shall prescribe a minimum age or minimum ages for admission to employment or work, with due regard to the provisions of paragraph 2 of this article, the need to safeguard school attendance and participation in vocational education and training programmes, and the provisions of other international instruments relating to the employment of children."

11. Some modification also appears desirable in the provisions of Article 18, paragraph 2 of the proposed draft. The words "and they undertake to sue persons acting to the contrary" are presumably intended to ensure that persons employing children illegally will be subject to penalties (as is provided, for example, in

Article 10, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights in similar circumstances). These penalty provisions should moreover apply also to contraventions of the protection laid down in paragraphs 1 and 3 of the same article.

12. It is accordingly suggested that the words "and they undertake to sue persons acting to the contrary" might be deleted from Article 18, paragraph 2; instead an additional paragraph 4 might be inserted, on the following lines:

"Persons acting contrary to the provisions of this article shall be subject to penalties established by law."