

## **Chapter Five**

### **Child Labour Law**

#### **5.1 Introduction**

In this chapter, the writer wishes to critically examine the Children and Young Persons Act 1966, the present law that regulate child work in Malaysia. Some of the international instruments, which propose to regulate child labour, will also be considered, to see whether they can be adopted in Malaysia. It is hoped that a better law can be proposed in the light of this study.

There are a number of relevant international instruments on child labour. They include the United Nations Declaration on the Rights of the Child (1959), the Convention on the Rights of the Child (1989), the World Declaration on the Survival, Protection and Development of Children (1990) and the International Labour Organisation' s Minimum Age Convention, 1973 (No. 138). While all these international instruments mention the rights of children against child labour, more emphasis will be given to the Minimum Age Convention, 1973 as it is a measure specifically designed to deal with the problem of child labour. In Malaysia, the law that regulate child work is mainly found in the Children and Young Persons (Employment) Act 1966. As we shall see, the provisions of this Act are similar to that of the international instruments, except that the provisions of this Act are much more lenient than the international instruments. It is said that the more lenient provisions are to take into consideration local cultural values. (Yaqin, 1996:160)

## 5.2 Outline of International Instruments

Generally, most of the international instruments aim to impose a duty on the member states to prohibit child labour. What makes the International Labour Organisation' s Minimum Age Convention, 1973 different from the rest is that it does not only declare the rights of children, but also aims to abolish child labour in the long run, and to protect children at work in the short term, by providing specific measures. In addition to that it also takes a flexible approach, allowing its member states to progress through stages.

Normally not all kinds of child labour are prohibited by these international instruments. Only child work that would affect the health, education, or interfere with physical, mental and moral development of children are prohibited. A good example is in the United Nations Declaration on the Rights of the Child (1959). Besides its concern with the general welfare of children, Principle 9 also states that:

“The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment, which would prejudice his health or education, or interfere with his physical, mental or moral development. ”

### 5.2.1 United Nations Instruments

Besides the United Nations Declaration on the Rights of the Child there are a few other United Nation' s instruments which have some bearing on child labour. The following list of relevant instruments are produced by Fyfe, A. and Jankanish, M. (1997: 82-83):

- **UN Convention on the Rights of the Child** (entry into force: 2 September 1990; 187 ratifications as at 31 January 1996), see especially Article 12 and 13 (freedom of expression and right of children to express views on their life); Article 15 (freedom of association); Article 19 (protection of children from injury, abuse, exploitation, etc.); Article 27 (adequate standard of living); Article 28 (right to education including free compulsory primary education); Article 32 (protection from economic exploitation) and Article 34 (protection from sexual exploitation).

- **International Covenant on Economic, Social and Cultural Rights** (entry into force: 3 January 1976; 133 ratifications); see especially Article 10(3) on child labour; 11(1), 12(2)(a), 13(2)(a) (compulsory education) and 14 (progressive implementation of compulsory schooling).

- **International Covenant on Civil and Political Rights** (entry into force: 23 March 1976, 132 ratifications); see especially Article 8 (prohibition on slavery, servitude, compulsory labour) and 24 (protection of minors).

- **Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery** (entry into force: 30 April 1957; 114 ratifications); see especially Article 1(d) referring to debt bondage of children.

- **Convention for the suppression of the Traffic in Person and of the Exploitation of the Prostitution of Others** (entry into force: 25 July 1951; 70 ratifications). This instrument refers to earlier instruments that are still in force for many countries, including the **International Convention of 30**

**September 1921 for the Suppression of the Traffic in Women and Children**, as amended in 1947 (in force for 42 countries).

Of all these instruments, the United Nations Convention on the Rights of the Child 1989 is the most relevant instrument to child labour. This convention will become binding on the state once it is ratified by the state. Although Article 32 of the Convention refers specifically to economic exploitation, however exploiting child worker could result in violating many other Articles of the convention. In Fyfe, A. and Jankanish, M.' s (1997: 84) opinion there is a good opportunity to develop national programmes and policies against child labour around the central principle of the "best interest of the child " , i.e. the central principle of the convention, since virtually all countries have now ratified the convention.

#### 5.2.2 International Labour Organisation Instruments

The International Labour Organisation has declared abolition of child labour as one of its main objectives since its establishment in 1919. However, the Organisation does not oppose all types of child work. For example the Organisation does not oppose child work that is an intergral part of the socialisation process of children, which allows parents to transmit skills to their children. Instead the Organisation is concerned with situations where children are compelled by poverty to work on a regular basis to earn a living for themselves or their families. It is believed that these children are often forced to do work that affect their physical, mental and social development (Bequele, A., 1986: 14).

The International Labour Organisation' s convictions on child labour are as follows (Fyfe and Jankanish, 1997: 76):

- a) childhood is a period of life which should be dedicated not to work but to education and development;
- b) child labour, by its nature or because of the condition in which it is undertaken, often jeopardizes children' s possibilities of becoming productive adults, able to take place in the community;
- c) child labour is not inevitable and progressing towards its reduction and even it' s elimination is possible when the political will to fight it exists.

In this study we see that these convictions may to some extent be in conflict with the Chinese culture in Malaysia. Although the Chinese will agree that education and development are important to children, they sometimes consider child labour as an alternative to or a form of education to make children productive adults. In some circumstances the Chinese also consider child labour an inevitable fact of life as not all children do well under our education system. If this belief is proven true than the Organisation should allow these types of child labour to continue as long as the child workers are carefully protected. As discussed above the Organisation does not oppose child work that is an intergral part of children' s socialisation process. However, the Organisation does give flexibility in Convention No. 138 for member states, whose education system are not so well developed to provide a more lenient law, as shall be discussed in more detail.

In order to achieve the Organisation' s objective the Minimum Age (Industry) Convention 1919 (No.5) was adopted immediately after the Organisation

was formed, to prohibit children under 14 years of age to work in industrial undertaking. Since then the Organisation had also adopted a series of conventions fixing the minimum age of admission to employment in different sectors, these sectors include employment at sea, agriculture, trimmers and stokers, non-industrial employment, fishing, and underground work.<sup>17</sup> Convention No. 138 is a consolidation of these earlier conventions. It is applicable to all sectors of the economy. In the preamble to the Convention, it is stated that: "the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sector, with a view to achieving the total abolition of child labour ". However, this does not mean that the earlier conventions are no longer valid. If a country is still not ready to commit to a general instrument, it can ratify the earlier conventions on a specific sector of the economy (Sweepston, 1986: 22).

In the long run Convention No. 138 aims to abolish child labour by fixing a minimum age under Article 2 for children to enter into employment or work (regardless whether children are paid or not). The minimum age shall be the age when children finish their compulsory education and in no case shall it be less than 15 years. The ratifying state shall progressively raise this minimum age to a level where the physical and mental development of children are at its fullest. However, the Minimum Age Recommendation, 1973 (No. 146) recommends 16 years as the minimum age. In the case of hazardous work Convention No. 138 sets the minimum

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<sup>17</sup> For details of the development, see Bouhdiba, Exploitation of Child Labour. New York: United Nations, 1982: 28-33.

age at 18 years. However, if the health, safety and morals of children are fully protected and adequate instruction and training are provided, children may engage in work that is considered hazardous at 16 years of age. The lowering of minimum age for hazardous work is a flexible approach of Convention No. 138. Convention No. 138 also allows progressive implementation of the convention. For ratifying states that have insufficiently developed economy and education system the general minimum age may be set at 14 years. On the other hand, Article 7 provides that a member state may allow children aged between 13 years to 15 years to be employed to do light work which is unlikely to affect children's health and development and education. As for those countries which have specified 14 years as the basic minimum age for children to be employed, the minimum age for light work can be further reduced to 12 years.

Besides allowing member states to lower the minimum age, the convention also allows member states to limit its application to limited categories of employment or work and limited branches of economic activity. Article 4 of the convention provides the member states with a wide discretion to exclude categories of employment or work from the application of the convention, if enforcement of the convention in the categories of employment or work is not feasible. However, the member state must first consult the appropriate employers' and workers' organisations and there must be special and substantial problems of application before a particular category of employment or work can be excluded. However employment or work which is likely to jeopardise the health, safety or moral of children cannot be excluded. Work in family undertaking, followed by domestic

work is most frequently excluded from the application of the convention (Sweepston, 1986: 23). In order to further limit abuses of the discretion, Article 4 also requires the member state who wish to limit the application of the convention to list the categories of employment or work excluded in the first report to the International Labour Organisation, and state the reasons for such exclusions. The member state who wish to limit the application of the convention must also state the position of the law and practice in respect of the categories of employment or work excluded in its subsequent reports.

Article 5 of the convention also allows member states whose economy and administration facilities are insufficiently developed to apply the convention to limited economic sectors. However, the general condition of the child worker in the excluded sectors must be reported regularly, and the following seven sectors must be covered:

“Mining and quarrying; manufacturing; construction; electricity; gas and water; sanitary services; transportation, storage and communication; and plantations and other agricultural undertakings (excluding family and small-scale holdings mainly producing for local consumption and not regularly employing hired workers).”  
(International Labour Organisation, 1996: 26)

Article 5 is a measure to encourage those countries whose economy and administrative facilities that are insufficiently developed to adopt convention No. 138, instead of earlier conventions, as convention No. 138 is intended to replace the earlier conventions slowly.

However, the International Labour Organisation recognised that setting a general minimum age for children to engage in any type of work can only be



achieved in the long term. In the short run it has adopted some measures to protect children against exploitation by prohibiting certain types of work and regulating others.<sup>18</sup> Recommendation No. 146 recommends that measures should be taken to protect children or young person under the age of 18. Paragraph 13 recommends that there must be provision on:

- a) fair pay, in accordance with the principle of equal pay for equal work;
- b) strict limitation on hours spent at work in a day and a week. Overtime work should also be prohibited. This is to ensure enough time for education, training, play and leisure;
- c) a minimum of consecutive of 12 hours' night rest, and customary weekly rest days;
- d) annual holiday with pay of at least four weeks or not shorter than that given to adults;
- e) social security scheme;
- f) standard of safety and health, instruction and supervision.

Malaysia has taken this position, i.e. to protect children at work from exploitation. However, the labour standard set in the present law is much lower than that recommended by Recommendation No. 146.

Apart from Convention No. 123, Minimum Age (Underground Work), 1965 and Convention No. 29, Forced Labour, 1930, Malaysia has not ratified any International Labour Organisation Convention on child labour.

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<sup>18</sup> For details of the measures, see *ibid.*

Child labour was placed on the agenda of the 86<sup>th</sup> Session (1998) of the International Labour Conference (International Labour Organisation, 1998: 1). New instruments were proposed to deal especially with the intolerable or extreme forms of child labour, as the problem of child labour in the world is still serious (International Labour Organisation, 1998: 9). The proposed instruments differ from the other instruments in that it focuses entirely on extreme forms of child labour, and there are no exceptions on coverage irrespective of the country's level of development. This is because the instrument is supposed to deal with intolerable forms of child labour (International Labour Organisation, 1998: 10). Malaysia is one of the many countries which agree to this new instrument. However, Malaysia is of the opinion that the new convention need not apply to all children under the age of 18 years, consistent with other international instruments. Instead, Malaysia is of the opinion that the minimum age should be specified in national law on the condition that health, safety and morals of children are fully protected (International Labour Organisation, 1998: 39). This indicates that Malaysia's commitment to the new instrument is not strong.

The proposed definition of "extreme forms of child labour", which Malaysia agrees, is as follows (International Labour Organisation, 1998: 42-43):

- (a) all forms of slavery or practices similar to slavery, sale and trafficking of children, forced or compulsory labour including debt bondage and serfdom;
- (b) the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances, production of or trafficking

- in drugs or other illegal activities;
- (c) the use or engagement of children in any type of work which, by its nature or the circumstances in which it is carried out, is likely to jeopardise their health, safety and morals.

### **5.3 Outline of the Malaysian Law**

In Malaysia child labour is regulated by the Children and Young Persons (Employment) Act 1966. This section will outline some of the important provisions of the Act. Generally, this Act does not strictly prohibit child labour, in the sense that child participation in many kinds of work activities is permitted by the Act.

Basically, the Act aims to regulate, as opposed to prohibit child work. However, the standard of protection is much lower than the standard proposed by the International Labour Organisation. Yaqin(1996: 160) comments that the law seems to be founded on the assumption that child labour is acceptable to local culture, therefore strict prohibition will not be effective or even detrimental. This is especially evidenced in Section 2(2)(a), where “employment involving light work suitable to [a child’ s] capacity ” is specially permitted within family undertaking. This could be due to the fact, as this study shows, that it is very common in our society for children to participate in family undertaking. However, in the writer’ s opinion, as we shall see in more detail, this Act does not respond to the local culture successfully.

### 5.3.1 General Prohibition

Section 2(1) of the Act provides that both children and young persons are prohibited from engaging in any "employment", except those permitted by the Act. It must be noted that the subsection only prohibits "employment" and not "work". In other words the Act only prohibit "wage employment". Section 1A(1) of the Act defines "employ" and "employment" to mean "employment in any labour exercised by way of a trade or for the purpose of gain, whether the gain be to a child, young person or to any other person"; and "employer" to mean "any person who has entered into a contract of service to employ any child or young person and includes the agent, manager or factor of such first mention person." Therefore, parents or relatives who ask their own children or a relative's child to work for them are not employers, unless there is a formal contract of service or employment. A contract of service or employment is needed in order for the Act to apply. The Act will also not apply in situations where children or young persons are working as independent contractors (for example in the cottage industry). Therefore, both children and young persons can engage in any "work" activity, under any condition, as long as they are not "employed". The prohibition is very narrow even if no exception is provided. However, as there are also many exceptions to the prohibition provided by the Act, the scope of protection offered by the Act is very narrow. However, this weakness does not exist in Convention No. 138, as it is intended to be applicable "to all sectors of economic activities, whether or not the children are employed for wages" (International Labour Organisation, 1996: 24). The term "employment" in Convention No. 138 means any form of

work regardless of the formal employment status of children (International Labour Organisation, 1986: 22).

### 5.3.2 The Exceptions to the General Prohibition

The Act defines those who have not completed 14 years of age as children, while those who are older than 14 years but have not completed 16 years of age, as a young person. The exceptions to the general prohibition in the case of children and young persons differ. Therefore the writer will treat them separately, although there is some overlap between the provisions.

#### 1. Provisions for Children:

Generally, children are permitted to engage in four categories of "employment " provided under section 2(2):

- a) employment in a family undertaking to do light work;
- b) employment in public entertainment, licensed under this Act;
- c) employment as part of a training programme approved or sponsored by the government;
- d) employment as an apprentice under an approved apprenticeship.

These provisions appear to be reasonable. However, these provisions are in fact ambiguous. For example the term, "light work " is difficult to define (Jomo K.S, et al., 1992). This study also shows that the conditions of children engaged in family work may be poor. So ideally, the law should provide some protection to children against unscrupulous parents or relatives.

Further conditions for employment are provided in Section 4 and Section 5(1). Section 4 provides that no children or young person shall be allowed to work continuously for more than 6 days in seven consecutive days. This is obviously a very low standard, as it is usual for most adults to work for only 5½ days in a week and 6 working days in a week is only a minimum standard provided by the Employment Act 1955 to protect adult workers. It seems that the law allows children or young persons to work for longer hours than a normal adult worker.

Under Section 5(1) children are not allowed to work under the following conditions:

- a) between 8pm to 7am;
- b) continuously for more than three hours without at least thirty minutes rest;
- c) more than six hours a day, or the sum of schooling time and working time cannot be more than seven hours;
- d) To begin a day' s work before a fourteen hours' rest.

It should be pointed out that these conditions are in line with the International Labour Organisation' s Recommendation No. 146, clause 13. However, some recommendations of the Recommendation No. 146, such as those relating to pay and fringe benefits, are not accepted fully. On such issues, children and young persons are treated by the Act as equivalent to adults, as provided by the Employment Act 1955.

Section 5(2) excludes children employed in public entertainment from the restriction under Section 5(1)(a). This provision seems to suggest that the law will give way when the nature of work requires it.

## 2. Provisions for Young Person:

Young Persons are allowed to engage in the following employment under Section 2(3):

- a) employment that children are allowed to engage in and is suitable to his capacity, whether or not in a family undertaking;
- b) employment as a domestic servant;
- c) employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association;
- d) employment in industrial undertaking suitable to a young person' s capacity;
- e) employment on any vessel under the personal charge of his parent or guardian.

These provisions are so broad that they cover almost all kinds of employment. Such a wide provision makes the general prohibition of little meaning. Although section 2(3)(a) and (d) specified that the work must be suitable to the capacity of a young person, there is no clear definition as to what is meant by " suitable to the capacity of a young person ". It is also not clear, for example under Section 2(3)(d) whether young persons are allowed to work only in certain kinds of industrial undertaking,

where its method of production is deemed suitable to the capacity of young person to participate in it, or young persons are allowed to work in any kind of industrial undertaking, as long as they only do work that are suitable to their capacity. If the interpretation is the latter, then this will make the law extremely difficult to enforce, as the inspector does not only need to prove that the young person is working in an industrial undertaking, he also has to prove that in that industrial undertaking the young person is doing work that is not suitable to his capacity. The requirement of the suitability of the work to the capacity of a young person is not provided under section 2(3)(b), (c) and (e). Therefore, it is also not clear whether young persons who work in these places or perform these types of jobs must also do work that is suitable to their capacity.

Despite the above provisions the Minister responsible for labour may allow a child or a young person to be engaged in an employment not mentioned as an exception, with or without imposing conditions, if he is satisfied that it is not hazardous under Section 2(4). This section suggests that children and young persons are allowed to engage in work that is not mentioned as an exception, as long as they get the approval of the Minister. This provision makes the exceptions to the general prohibition even wider. Nevertheless, the Minister may prohibit a child or a young person from participating in any detrimental employment under Section 3.

However, under Section 2(3) a female young person is not allowed to work in hotels, bars, restaurants, boarding houses or clubs that are not managed or controlled by her parents or guardian. Nevertheless, with the approval of the



Director General female young person can work in a club not managed or controlled by her parent or guardian.

Section 4 also prohibits young persons from working continuously for more than six days. Here young persons are treated like adults under the Employment Act 1955. Under Section 6(1) young persons are not allowed to work under the following conditions:

- a) between 8pm to 7am;
- b) more than four hours without a thirty minutes rest;
- c) more than six hours a day or the sum of schooling time and working time cannot be more than seven hours;
- d) to begin work before a fourteen hours' rest.

However, Section 6(2) provides that (a) shall not apply to young person employed in agricultural undertaking, public entertainment or in any vessel. These exemptions are against the general objective of the Act. Therefore, it seems that the spirit of the Act is that young person should be protected from bad working conditions as long as bad working conditions is not an inherent nature of his work. However, when the inherent nature of his work requires him/her to work under bad conditions the Act will provide an exemption, such as in the case of agricultural undertaking, public entertainment or in a vessel where sometimes require a person to work between 8pm to 7am.

### 5.3.3 Additional Provisions

The Act further provides in Section 2(5) that no child or young person can be employed contrary to the Factories and Machinery Act 1967 and the Electricity Act 1949. Under the Factories and Machinery Act 1967, a young person, who is a person who has not completed his sixteenth year of age, is not allowed to manage, attend or work in proximity to a machinery. While the Electricity Act 1949 (Revised 1973) prohibits a person below sixteen years, to be employed to manage, attend or be in proximity to a "live " apparatus not effectively insulated.

Section 7(1) of the Children and Young Persons (Employment) Act 1966 provides that a person may not employ a child or young person in public entertainment, unless he acquires a licence from the Director General of Labour or from his authorised representative. The Director General may prescribe some conditions in the licence. The Director General will not grant a licence if he is of the opinion that the employment will be dangerous to the life, limb, health or morals of the child or young person.[Section 7(2)]

Section 8 empowers the Director General to prescribe a minimum wage for any class of work, after inquiry into the nature or the conditions of the class of work. However, this power has never been exercised.

### 5.3.4 Enforcement Mechanism

The Department of Labour, under the leadership of the Director General of Labour is responsible for the enforcement of the Act. The Act is enforced by way of inspections. Every year the Department of Labour has to undertake about thirty

thousand inspections. One can imagine the number of inspectors needed and the cost involved in carrying out these inspections. As a result, the Department of Labour only inspects establishments that are registered with them. And, there are about 198,000 places of employment registered with the department in 1993 (Abdul Rahim, 1993:17).

Under Section 14, upon conviction the offender will receive a fine not exceeding two thousand ringgit or imprisonment for a term not exceeding six months, or both. In the case of subsequent offence the maximum fine is increased to three thousand and the maximum term of imprisonment is extended to two years (Section 14). The government proposed to increase the fine to ten thousand and make it compulsory for employers to register child workers, but to date these have yet to materialise (Star, 6 Dec 1995).

#### **5.4 Effectiveness of the Law**

Perhaps, the fairest way to assess the law is to see whether it achieves its stated purpose. In this case the Children and Young Persons (Employment) Act 1966 seeks to protect children and young persons against exploitation and detrimental work conditions. We have seen in earlier sections that there are obvious inherent weaknesses in the law itself and the labour standard demanded by the law is low. However, if we take the labour standard as it stands, there are still numerous violations of the low standard. This shows that working children are barely protected.

Take the full-time child workers in Balakong New Village for example. The law states that children and young persons are not allowed to do work that involve management of, or attendance on, or proximity to, any machinery and live apparatus not effectively insulated. However, as it is found in this study there were so many children working as machine operators in factories and as assistant electricians. Children and young persons were also engaged in work like welding and work that involve climbing to a high place. Although these are not works that involve heavy load but it is questionable as to their suitability to capacity of children and young persons.

With regard to working conditions, the law is also widely violated in the case of children in Balakong New Village. Among the respondents there were 8(28.57%) full-time child workers who worked for more than 6 days in a week. All the full-time child workers worked for more than 7 hours in a day. This has not included overtime work. Some child workers were still working after 8pm in the evening. This is clearly in violation of Sections 5(1) and 6(1) of the Children and Young Persons (Employment) Act 1966.

Although most of the part-time child workers are engaged in works that are permissible by the law, most of their work conditions violate the condition specified by the law. Night work was very common, as they were going to school in the morning or afternoon. Most child workers who did night work were those who were engaged in hawking, serving beer and working in cottage industry. There were also three part-time child workers who were required to work for more than 6 days in a week. As children and young persons spend about 5 hours in school for their normal

school day, children are only allowed to work for not more than 2 hours and young persons are allowed to work for more than 3 hours, in their normal school days. If the children and young persons are not attending school or during school holidays or weekend, they are not allowed to work for more than 6 and 7 hours respectively. However, 33.33% of the part-time child workers worked longer than this time limit. The majority of part-time child workers, especially family workers, were not given a break in between their work hours as specified by Section 5(1) and 6(1) of the Children and Young Persons (Employment) Act 1996.

It seems that in many cases the use of child labour in Balakong New Village violates at least one of the conditions set by the Act. However, in many cases "employers" of these children had not committed an offence, as there was no employment contract between them and the children. Even in cases where employment contract exists the law was still not enforced. There were places where children work such as, at home, which is virtually enforcement free. The weakness of the present enforcement mechanism, by way of inspection of work place is very obvious. The ineffectiveness of the present enforcement mechanism is shown clearly in the fact that from 1986 to 1990, for example there were less than 10 convictions under the Act each year, while thousands of inspections had been conducted in a year (Abdul Rahim, 1993: 18).

Besides, we must be careful that an ineffective child labour law such as the present Malaysian law may make the position of the child workers worse, instead of helping or protecting them. It is often argued that child labour law often pushes children to work in the informal sector that is difficult to regulate. This study

discovers that many child workers are not given the fringe benefits prescribed by law due to the illegality of their employment. When there are accidents they may not be compensated and their families are reluctant to take legal action against their employers because they thought the children may have also committed an offence by being a child worker.

### **5.5 Awareness and Effectiveness of the Law**

The most effective law is one that is able to create a norm of obedience. Besides, the public's willingness to report cases of violation is also an important factor influencing the effectiveness of the law. In this study parents, who have a lot of control on whether children work, are obviously unwilling to obey the law. The villagers in Balakong New Village are also unwilling to report to the authority any violation of child labour law.

Awareness of the law and the impact of child work are important factors that influence the willingness of parents to obey the law and the public's willingness to report cases of violation. In this case the awareness of the Children and Young Persons (Employment) 1966 is very low. Only 53.13% of the villagers were aware of the existence of the law. However, none of them could state one of its rules accurately. The nearest answers were perhaps: "Those who are below 16 cannot work "; and "There is a limit to the working hours ". The awareness of parents of working children were even lower, only 9 out of 38 (23.68%) parents said they were aware of the law. Again, none of them could state any of the rules accurately. The nearest answers were perhaps: "Those who are below 16 cannot work "; and

“children are not allowed to do dangerous work ” . One possible reason for the low awareness of the law among parents of working children is that they want to use their “ignorance ” to justify the fact that their children are working<sup>19</sup>.

On the other hand, 40.9% of the parents of non-working children said they were aware of the law. Nevertheless, when asked to state one of the rules, none of them gave an accurate answer. The answers that they give are much the same as those given by parents of working children. Nevertheless, to a small extent we may conclude that parents’ awareness of the law does influence the practice of child labour.

Obviously, there is a clear need to educate the public about the law. But, as Aubert, A.(1966) stated in his study of the Norwegian Housemaid Law of 1948, that the influence of the law will depend on its ability to communicate a message to the housewives and housemaids without legally trained intermediaries. We may say the child labour law must be able to communicate a message to the parents, employers and general public without the help of lawyers. Generally, the present law is difficult to be communicated to the public, as the law is too detail and complex. Therefore, to be effective, we need a clear and simple law.

However, clearness and simplicity of the law alone is not a guarantee that the law will be effective. In this study parents of working children were given a hypothetical situation, where children who are 16 or below are clearly prohibited from participating in work activities. They were asked in this situation would they

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<sup>19</sup> As there is a saying in Chinese that “no offence is committed by those who are not aware ” ( 不知者不罪).

still allow or send their children to work? One third (33.33%) of the parents of full-time working children said they would still allow or send their children to work. Many of those who said they would still allow or send their children to work express their concern as to what should their children do if they are not going to school anymore. To them it is better for them to violate the law by sending their children to work than let their children stay idle and become lazy or more delinquent. While 47.62% said they would not allow or send their children to work. Almost all of these parents (except one) actually do not want their children to work. They wanted their children to stay in school and study more, however, as indicated in chapter four they were unable to control their children. If the law clearly prohibited child labour, it may be a good opportunity for them to keep their children in school. The remaining 19.5% said they were not sure and the majority of them did not give their reasons.

On the other hand, 31.25% of the parents of the part-time working children said they would still allow or send their children to work. Generally they did not think that prohibiting child labour is good for the children for various reasons. Interestingly, some of them distinguished work that was good for children, such as helping parents and some light work, from work that which was dangerous. They said they would still send their children to do work that was beneficial to their children. While 56.25% of the parents said they would not allow or send their children to work. Many of them did not give their reasons but a few of them said they do not want to violate the law. The remaining 12.5% said they were not sure.

It seems that a clear prohibition of child labour will be more effective than the present law. However, there were still one third of the parents of the working



children who were prepared to violate the law. It seems that parent' s opinions about the law and child labour is another important determinant of the effectiveness of the law. We have seen in Chapter Four that the majority of the parents of working children do not agree that their children have a right not to work. This is probably one of the reasons why they are willing to violate the law. Therefore, besides being clear, the law must also communicate a message that is acceptable to the subjects. The subjects must be convinced that the law is in their favour and not to create inconveniences to them. In other words, the subject must be able to internalise the value behind the law. Besides, the law must be able to deal with the social and cultural factors that influence the practice of child labour.

The present law assumes that poverty is the root of the problem of child labour, therefore, it tries to protect the children at work from exploitation and work hazards in the short term, and hopes that economic development will do the magic of eliminating child labour. It is submitted that this hope will be futile, at least in the Chinese community under study. The assumption simply misses the point all together. A simple prohibition of child labour or the setting of a minimum age for children to engage in work activities will be more effective than the present law. However, it will still leave some issues without answer and may cause some hardship to certain people. Take for example those who drop out of school. What should they do if they are below the minimum working age? In such a circumstance work seems to be a reasonable alternative to many people, including parents, although they do not agree to children dropping out of school and entering the job market at this young age.