



International  
Labour  
Organization

# ILO CONVENTION No. 138 AT A GLANCE



## WHAT IS THE **PURPOSE** OF CONVENTION No. 138?

### The aim of **ILO Convention No. 138 on Minimum Age (C138)**

is the effective abolition of child labour – which is work that is hazardous to children’s health, safety or morals, work that interferes with compulsory education or for which they are simply too young.

C138 requires countries to:

- 1| establish a minimum age for entry into work or employment<sup>1</sup>, and
- 2| establish national policies for the elimination of child labour.

<sup>1</sup> The requirement in C138 to establish a minimum age has its corollary in Article 32(1) &(2) (a) of the **UN Convention on the Rights of the Child** which stipulates that: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development (para.1). To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: Provide for a minimum age or minimum ages for admission to employment; (para.2 (a)).

### ● **Minimum Age(s)**

C138 was adopted by the International Labour Organization (ILO) in 1973. It stipulates that States should progressively raise the minimum age to a level consistent with the fullest physical and mental development of young people. It establishes **15 as the minimum age for work in general**.

What is important is that States ensure that children go to school at least until this age; C138 requires the age at which a child leaves **compulsory education to be aligned with the minimum age for work**. Only when children have at least a basic education will they be prepared for a productive and fulfilling work life.

Of course, a 15 year old is still a child (defined in international law as a person under 18). They are still developing mentally and physically; they are more vulnerable than adults to workplace hazards; and they need protection. Therefore C138 sets **18 as the minimum age for hazardous work**, which is defined as work that, due to its nature or the circumstances in which it is carried out, is likely to jeopardize children’s health, safety or morals.

Some work is inherently dangerous and therefore off limits to children. Circumstances may make work that is otherwise safe, hazardous.

An example of this is night work, which interferes with children's sleep and may make them more prone to suffer accidents on the job. In addition, long hours can make work hazardous; recognizing this, many countries limit the number of hours that children from 15-17 can work.

Countries must adopt laws or regulations that specify what constitutes hazardous work at the national level, after consulting with workers' and employers' organizations.

Mining is an example of work that is hazardous by its nature— children should not work in mines under any circumstances.

## ● National Policy

C138 recognizes that **effective abolition of child labour should be at the centre of social and economic development**. Fixing a minimum age is needed to provide critical legal protection to children. However simply passing a law is not enough: other measures are required to ensure that there are viable alternatives to child labour, and these should be anchored in public policies.<sup>2</sup>

Although there are still 152 million children in child labour, the world has made significant progress since 2000, with a drop of more than one-third. ILO analysis of this progress indicates that a smart mix of government policies, including ratification of C138, has been a crucial factor.

The **Recommendation No. 146** which accompanies Convention No. 138, stresses that national policies and plans should provide for: poverty alleviation and the promotion of decent jobs for adults, so that parents do not need to resort to child labour; free and compulsory education and provision of vocational

<sup>2</sup> This point is emphasized in ILO Convention No. 182 on Worst Forms of Child Labour (1999), which states in its preamble "child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education."

training; extension of social security and systems for birth registration; and appropriate facilities for the protection of children, and adolescents who work. To achieve the elimination of child labour, laws setting minimum ages for work should be embedded in such comprehensive policy responses.

In countries such as Mexico and Brazil, governments have introduced "conditional cash transfer" programmes that have proven highly effective in addressing root causes of child labour. These programmes provide stipends to underprivileged families, so that children are able to stay in school and be free from child labour.

## WHY IS C138 SO WIDELY RATIFIED?

As is the case with all ILO Conventions, C138 was drafted by ILO's tripartite constituents. That means that in addition to governments, workers' and employers' organizations, from all regions ensured their concerns were incorporated.

C138's responsiveness to the widely varying conditions among ILO member States is reflected in its high rate of ratification by countries in all regions and all stages of development. As of April 2018, **171 countries have ratified the Convention**, and with India's ratification in 2017, some 93% of the world's children are now covered by it. That such a number of countries with such diverse social and economic conditions have ratified the Convention speaks not only to the universal values that it underpin it, but to the flexibility built into the Convention, which allows countries to adapt it to meet to their needs.





# C138's FLEXIBILITY CLAUSES

C138 recognizes that not all work carried out by children below the age of 18 is child labour to be eliminated and that certain types of work appropriate to a child's age and performed with adequate protection may be beneficial to his or her development. Hence, the Convention can be adapted in a variety of ways through the use of several "flexibility clauses". A short description of these clauses follows.

## ● Admission to employment or work

While C138 establishes 15 years<sup>3</sup> as the minimum age for work, developing countries have the **option of setting a minimum age of 14** as a transitional measure as they strengthen their education systems and economies. Out of the 171 member States that have so far ratified C138, 51 have set the minimum working age at 14, after consulting the most representative organizations of employers and workers. The children in these countries may work legally from the age of 14, provided they are not performing hazardous work and they have completed compulsory education.

<sup>3</sup> Some countries have chosen to set the minimum age at 16.

## ● Light work

C138 allows countries to permit light work for children younger than the minimum age. For countries that set the minimum age at 15, this means children aged 13-14, and for those that set it at 14, children aged 12-13 may engage in light work, which is defined as **work that does not interfere with children's schooling, or their ability to benefit from it, and that is not harmful**. If they choose to allow light work, States must determine what activities are considered light work, and the hours and the circumstances under which they may be carried out.

Light work can contribute to children's development and to the wellbeing of their household and is a complementary activity to their education. Close to half of the States that have ratified C138, in all regions in all stages of economic and social development, have opted to legalize light work in this way.



## ● Hazardous work

C138 allow countries to permit **hazardous work** exceptionally as from 16, provided that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or training.

## ● Exempting categories of work and branches of economic activity

C138 also **allows countries to exclude certain categories of work** from the application of the Convention, when special and substantial problems in applying the Convention would arise. Hazardous work may not be excluded. Developing countries may exclude some **branches of economic activity**, but not sectors such as mining, construction and commercial agriculture; however family farms producing for local consumption without regular hired labour, for example, may be.

## ● Work as part of children's education

C138 does **not apply to work done by children in schools** as part of their education or training. Nor does it apply to work done by children at least 14 years old in enterprises, provided that the work is part of a programme of a school or training institution, or is an apprenticeship approved by government authorities. In both cases, hazardous work is not allowed however.

## ● What about young artists?

What's more, children below the minimum age may participate in artistic performances if they have been granted an individual permit by the competent national authority that defines the maximum number of hours and the working conditions for the child.

## ● And household chores?

C138 does not prohibit children from doing household chores as long as it does not interfere with their education, and it is not hazardous—including that the hours are not too long. Household chores are performed mostly by girls, and special attention should be paid to make sure such chores do not harm their development.

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