



International
Labour
Organization

AGE VERIFICATION

Protection for unregistered children from child labour



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Protection for unregistered children from child labour

Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)

International Labour Organization (ILO)

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ILO Convention No. 138 on Minimum Age for Admission to Employment, and Convention No. 182 on the Worst Forms of Child Labour and their Recommendations provide the fundamental principles that guide States towards eliminating child labour within their borders. Convention 138 (Article 9.3) urges States to oblige employers to keep registers or documents that “shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs [...] and who are less than 18 years of age.” Recommendation 146 (Paragraph 16) reiterates the need to keep records of individuals’ ages and also encourages States to “maintain an effective system of birth registration [...]” and to issue licences or documents indicating eligibility to work to “children and young persons working in [...] circumstances which make the checking of employers’ records impracticable.”

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1. INTRODUCTION

The verification of an individual's age allows States and organisations to translate their policies into practices in compliance with many international standards. Age verification is indispensable, as it supports States in the provision of, for example, compulsory education, basic social protection, as well as of adequate and timely healthcare. Ascertaining the age of an individual is also particularly important in the context of cross-border migration, where States require official documents to determine the individual's rights and the State's responsibilities. In numerous cases and for many reasons, due to the absence or deficiency of systems for universal birth registration, official documents may not be available however.

In the context of the labour market, the inability to verify age exacerbates the problem of child labour. When employing an individual without official documents, businesses run the risk of using child labour; the person may be below the general minimum age for work, or may be above the minimum age but below 18 years of age and therefore prohibited from being engaged in hazardous work.

The focus of this research is on the role of age verification in eliminating child labour. The paper contrasts the duty and means to determine an individual's age of States (or other relevant authorities) against those of private enterprises. It provides a thorough background to age verification and an in-depth description of the methods that can support employers in the fulfilment of their legal obligation to respect children's right to be free from child labour.



2. BIRTH REGISTRATION AND CHILD LABOUR

A comprehensive national system of birth registration is absent in many countries.¹ According to UNICEF research, the births of an estimated 230 million children under five years of age have never been registered.² The highest incidence (or proportion) of unregistered births are found in sub-Saharan Africa, where only approximately 44 per cent of births are registered, ranging from 3 per cent in Somalia to 95 per cent in South Africa.³ Juxtaposing these findings with the most recent global estimates of child labour, the problem becomes clearer.

The most recent global estimate of child labour reveals the Asia and the Pacific region as that where the highest numbers in absolute terms of child labourers are found.⁴ In this region, there was a decline from 113,607,000 child labourers in 2008 to 77,723,000 in 2012. The highest incidence of child labour is in sub-Saharan Africa, 25.3% in 2008, falling to 21.4% in 2012 (Figure 1). Despite this decrease within sub-Saharan Africa, the region accounts for approximately 5% more of the world's child labourers today (35.1%) than in 2008 (30.6%). Half of today's child labourers are engaged in hazardous child labour⁵ and there are over four times as many children in this type of work who are between 15-17 years of age (13%) than between 5-14 years of age (3.1%).

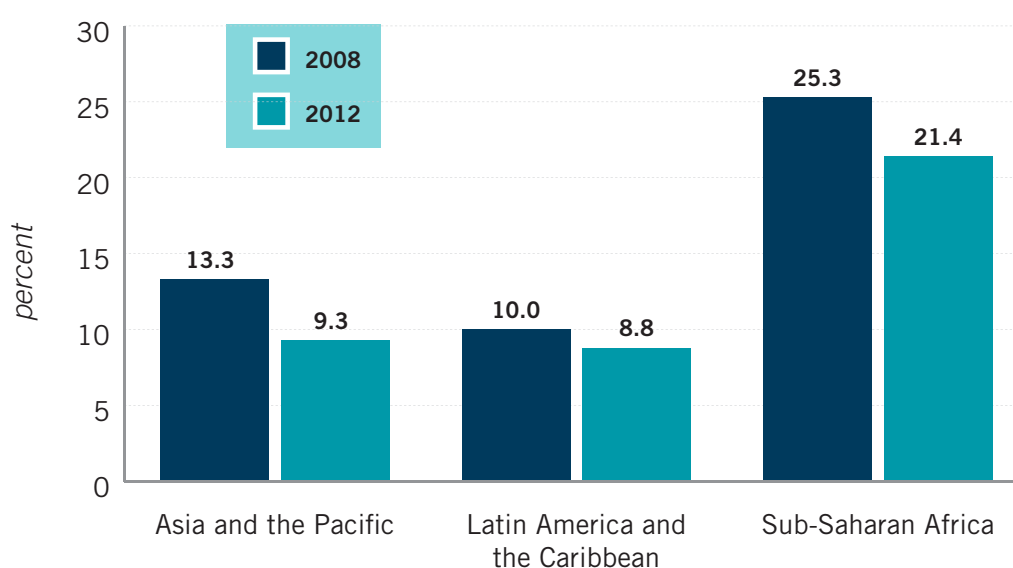


Figure 1: Regional trends in incidence of child labour, 5-17 years age group, 2008 and 2012

Source: IPEC: *Marking progress against child labour – Global estimates and trends 2000-2012*. ILO, Geneva, 2013.

1 "The child shall be registered immediately after birth..." and have the right from birth to a name, nationality and suitable care of its needs. UN Convention on the Rights of the Child, Article 7.1.

2 UNICEF: *Every Child's Birth Right: Inequities and Trends in Birth Registration*. Division of Policy and Strategy. New York, 2013.

3 Ibid.

4 IPEC: *Marking progress against child labour – Global estimates and trends 2000-2012*. ILO, Geneva, 2013.

5 Article 3, d of ILO Convention No. 182 states that the worst forms of child labour comprise "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." Hazardous child labour has also been explained to be "work in dangerous or unhealthy conditions that could result in a child being killed or injured/maimed (often permanently) and/or made ill (often permanently) as a consequence of poor safety and health standards and working arrangements." ILO: *Handbook on Hazardous Child Labour*. Bureau of Employers' and Workers' Activities. Geneva, 2011 (p. 17).

The incidence of those in child labour, without official proof of age, is unknown. This paper, however, connects these findings made by UNICEF and the ILO. It contributes to filling the knowledge gap of available methods for businesses to take action in the area of age verification – particularly in relation to sub-Saharan Africa and to children between the minimum age of employment and 18 years. This paper also reinforces the call for the establishment of universal birth registration systems by state actors, as it provides guidance only to businesses attempting to comply with international labour standards in contexts where state services do not make this possible. There can be no substitution for universal, state-run birth registration systems, and the guidance contained in this paper is in response to a critical governance gap.



3. STRUCTURE

This paper is structured in two parts. Having described the context of the research in sections one and two, the following section describes international law and recommendations, and the ways in which age is verified in varying situations: 1) immigration, migration and asylum; 2) juvenile justice; and 3) child soldiers. These areas are important with regard to the role of the state. Furthermore, the findings of age verification methods in these areas have a high impact on the child in question. The aim of presenting the role of age verification in these settings is twofold: firstly, to provide an exposé of current practices; and secondly, to bring to the fore the baseline described in international standards.

The second part provides an analysis of country-level policy on age verification aimed at employers in the form of labour codes and employment acts. Ten national policies are reviewed of countries in South-East Asia and sub-Saharan Africa, thus focussing on geographical locations, where the absolute number and the incidence of child labour is highest.⁶ The paper concludes with a summary of the findings as well as a description of its limitations and areas for future research.



4. APPLICATION OF METHODS BY THE STATE

In the context set out above, the role of age verification in reducing child labour becomes clear. Not only does age verification provide critical support to States seeking to comply with international law enshrined in, first and foremost, ILO Conventions and the UN Convention on the Rights of the Child, but it also allows businesses to respect children's rights in the context of their involvement in the labour market. As demonstrated by the recent statistics at the outset of this paper, the absence of genuine and correct documentation may hinder compliance and support age verification by other means.

This section describes international law and recommendations alongside common practices undertaken by state agencies and other state actors to ascertain the age of an individual. UNICEF highlights two areas in which age verification is particularly important: immigration, migration and asylum and juvenile justice.⁷ As an explicitly identified worst form of child labour, this section also addresses the theme of child soldiers and the role of age verification in this context.

4.1 IMMIGRATION, MIGRATION AND ASYLUM

Much has been written on age verification in the context of immigration, migration and asylum. This literature is based on the tenet that age verification is fundamental in determining whether an individual, as a child, is "entitled to welfare, health and educational support not available to adults and may be protected from detention and removal."⁸ A prominent example of policy on ensuring such entitlement can be found in the Separated Children in Europe Programme (SCEP)⁹ that outlines the principles that attempts to establish an individual's age should be a last resort; and when carried out, it should be done using a multi-disciplinary approach by individuals trained or with expertise in the child's ethnic and cultural background.¹⁰ Importantly, the SCEP recommends that, where there is a doubt regarding the individual's age, s/he ought to be treated as a child until proven otherwise.

There are of course a number of limitations to each element of a multi-disciplinary approach. The accuracy of medical approaches, though often seen as more scientifically rigorous than non-medical procedures, is affected primarily by the significant variation in the rate of human physical development. Moreover, no medical indicator "can provide a precise assessment of chronological age in individuals between 15 and 20 years of age – the very group for whom the issue of age assessment is most salient."¹¹ Non-medical approaches to age verification are numerous (e.g. obtaining school certificates, conducting interviews with families and communities; see section 4.4) and are subject to varying degrees of bias caused by variables, such as the level of training provided to the staff concerned; lack of credibility of the process of issuing age-related documents (in cases where documents are present); and a 'culture of disbelief' resulting in incorrect age assessment.¹²

7 Smith, T. and Brownlees, L.: *Age assessment: a technical note*. Working Paper. Programme Division. UNICEF, New York, 2013.

8 Aynsley-Green, A. et al.: *Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control*. British Medical Bulletin, No. 102, p. 18, 2012.

9 An NGO network of 33 organisations in 28 European countries.

10 Separated Children in Europe Programme: *Statement of Good Practice*. 4th Revised Edition. Save the Children, Copenhagen, 2010.

11 Aynsley-Green, A. et al. (2012), op. cit.

12 Crawley, H.: *When is a child not a child? Asylum, age disputes and the process of age assessment*. International Law Practitioners' Association Research Report. ILPA, London, 2007.

4.2 JUVENILE JUSTICE

In the same vein as the SCEPT that an individual ought to be treated as a child until proven otherwise, international law, in the context of juvenile justice, States that an individual, whose age is unproven to be at or above the minimum age of criminal responsibility (MACR), shall not be held criminally responsible.¹³ The 'Beijing Rules' stipulate that the MACR shall not be set at a level that is 'too low' having taken into account "the facts of emotional, mental and intellectual maturity."¹⁴ An individual's responsibilities are often linked to other civil and social rights and duties, for example the minimum age of consent and to marry. These minimum ages would serve as guidelines as to whether the national MACR has been set at a level that is 'too low'.

In spite of these recommendations, reports on juvenile justice proceedings have noted that the mandate to ascertain age has been at times removed from the state and given to the child or a relative¹⁵ or even the presiding judge.¹⁶ Findings have also shown that individuals are often treated as adults based on criteria other than an independent and unbiased age assessment. Reports have noted such cases, for example, while the individual's age assessment is pending¹⁷ and if the individual is/has been married (regardless of her or his chronological age).¹⁸

4.3 CHILD SOLDIERS

Child soldiers, or children associated with an armed force, "refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities."¹⁹ ILO Convention No. 182 explicitly identifies children's involvement in armed conflict as a form of child labour to be targeted for immediate elimination (Article 3a, see also Article 3d). Children are not only involved in combat, but also in a variety of support functions that also entail hazardous work.²⁰ The dangers of children's involvement in these activities are clear and the importance of verifying the age of individuals engaged in this activity cannot be understated. In the context of children's involvement in armed forces, the Paris Principles²¹ oblige States to implement recruitment procedures that include a requirement for proof of age (Article 6.6.0, p. 17). Where state-issued documents are unavailable,

13 United Nations Committee on the Rights of the Child (2007). General Comment No. 10: Children's Rights in Juvenile Justice, Paragraph 35. In Smith and Brownlees, 2013, p. 50.

14 UN Standard Minimum Rules for the Administration of Juvenile Justice (1985), otherwise known as "The Beijing Rules", Rule 4.1.

15 Jaromay Laurente Pamaos Law Office: Revised Rule on Children in Conflict with the Law, 2007.

16 Ibid.

17 Kamara, H.: *The Problem of Age Determination of 'Juveniles' and its impact on the Juvenile Justice in Sierra Leone*. Centre for Accountability and Rule of Law, 2008.

18 Mardite, H. *The Juvenile Justice System in Indonesia*. 129th International Senior Seminar Participants' Papers. Resource Materials Series No. 68, undated.

19 ICRC: *Child Soldiers and other children associated with armed forces and armed groups*. International Committee of the Red Cross, Geneva, 2012.

20 Office of the UN SRSG for Children and Armed Conflict.

21 UNICEF: *The Paris Principles: The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. New York, 2007.

Table 1:

Extract of the
a completed
Malawi (area
June 2008

Year and month of birth	Age in months	Local e
2008		• Year (8 Jun
June	0	• Nation • Child dewa
May	1	• Kamu • Labor • Harve • Xeno May)
April	2	• Secor • West stalk • Newc
March	3	• East • First • Aucti
February	4	• Criti • Green • Comp
January	5	• John • First • New • "Ban

Source: FAO, 2008. *Guidelines for Estimating the Number of Young Children*. FAO, Rome, p. 21

the example of
calendar for
a of Lilongwe),

Events

the National Census took place
(June 2008)

National Population census (8 June)
Health Days (vitamin A,
worming –early June)

Uguzi Day (14 May)
Labour Day (1 May)

Testing
Diphtheria in South Africa (end)

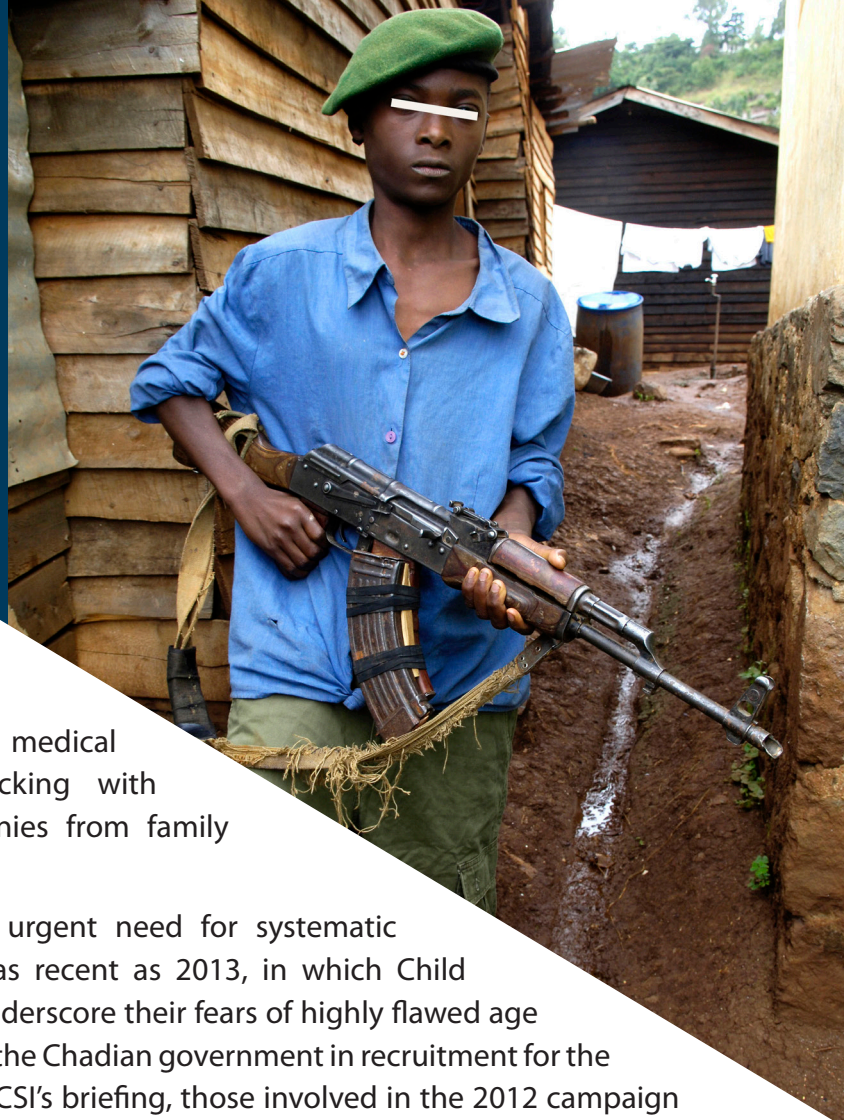
End school term starts (17 April)
Tobacco/burley/flue cured tobacco
uprooting
Diphtheria disease vaccination

March (23 March)
School term ends (17 March)
School floors open

Local hunger period
Planting maize (mid-February)
Harvest making

Chilembwe day (15 January)
School term starts (7 January)
Year (1 January)
Planting and top dressing"

Guidelines for Estimating the Month and Year of Birth of



the Principles recommend a medical examination or 'cross checking with other persons' (e.g. testimonies from family members).

Prominent accounts of the urgent need for systematic age verification have been as recent as 2013, in which Child Soldiers International (CSI) underscore their fears of highly flawed age verification methods used by the Chadian government in recruitment for the armed forces.²² According to CSI's briefing, those involved in the 2012 campaign to improve military recruitment practices had no expertise on age verification and were not provided with guidance on verifying an individual's age without a birth certificate. Similar flaws have been highlighted in other contexts, including the Philippines, where a study conducted by the ILO found the average age of the child soldier to be 14.²³

4.4 OTHER RELEVANT APPLICATIONS

In the context of healthcare, the Food and Agriculture Organisation (FAO) published guidance for healthcare professionals working "in situations where there is no accurate written record of date of birth or a tradition of remembering birth dates."²⁴ The publication provides detailed advice on, first, constructing a calendar based on local events, of which the dates are known (Table 1). The publication also provides structured examples of how the calendar can be used in interviews held with mothers or close relatives to estimate the child's birth month.

This guidance focuses on children below the age of 5. One reason for this may be the limitation of differences in relatives' ability to recall certain local events, the variation of which may be greater than findings of medical assessments. This limitation may be mitigated, however, through its use in parallel in conjunction with other methods.

22 Child Soldiers International: *Briefing on the status of implementation of the June 2011 Action Plan on children associated with armed forces and groups in Chad*, 2013.

23 IPEC: *Investigating the Worst Forms of Child Labour No. 21 – (Philippines) Child Soldiers in Central and Western Mindanao: A Rapid Assessment*. ILO, Geneva, 2002.

24 FAO: *Guidelines for Estimating the Month and Year of Birth of Young Children*, p. 1. Rome, 2008.

4.5 SUMMARY

Studies and reports across these three themes (immigration, migration and asylum; juvenile justice; and child soldiers) attest to the limitations of the isolated use of one method of age assessment.²⁵ For example, the outcomes of medical examinations are based solely on observation of physical maturity despite the legal requirement to ascertain chronological age and are therefore more credible when triangulated with non-medical methods. It has been recognised on numerous occasions, moreover, that the only reliable method to overcome this problem is the implementation of a systematic state birth registration system.²⁶ In interim efforts to determine age, States of physical and psychological maturity need to be taken into account through the use of holistic methods, thus including where possible, consultation of school records/certificates, family testimonies and employing culturally-/gender-sensitive interview techniques with the individual.

Table 2:
Analysis of labour codes in Asia
and the Pacific and Africa

Methods	Birth certificate	Medical certificate	Interview	School certificate	Testimony
Country					
Nepal	✓	✓			
Philippines					
India	✓	✓			
Indonesia					
Pakistan		✓			
Bangladesh	✓	✓		✓	
Cambodia					
Ghana	✓	✓			
Malawi					
Côte d'Ivoire					

²⁵ UNICEF: *Justice for Children: The Situation for Children in Conflict with the Law in Afghanistan*. UNICEF, New York, 1995.

²⁶ e.g. Defence for Children International: *National Conference on Juvenile Justice: a practical approach*. Outcome document, 2009.

5. AGE VERIFICATION AND NATIONAL LABOUR LAW

In terms of practices of an individual business, Better Work²⁷ Viet Nam (BWV) reported several instances of workers under the age of 15.²⁸ The BMV assessors reported a weak age verification system in the factories in question²⁹ and it was recommended that “BWV should consider providing training to garment factories on issues such as age verification systems [...]”.³⁰ This is just one example of findings highlighting not only the need in the longer term to establish systematic birth registration mechanisms but also, in the immediate and short term, to align age verification policies in recruitment practices with national labour law or, in the absence of this, with international law.

A preliminary desk review of national labour codes regarding age verification has shed light on state requirements of recruitment and employment practice (see [Table 2](#)). All ten countries in this review are located in the Global South and were selected based on their geographical location, where either the absolute number or the incidence of child labour is highest: Asia and the Pacific (77.7m) and sub-Saharan Africa (21.4%), respectively.

No method indicated	Other
	The employer shall obtain a state work permit for under-15s
✓	
✓	
✓	
✓	

Three of the codes require a birth certificate to be presented as proof of working age. In the absence of a birth certificate, a medical exam is required to verify an individual’s age (Nepal, India and Bangladesh).³¹ A school certificate can also be accepted as proof of age in Bangladesh. In two of the countries in the review (Côte d’Ivoire and Pakistan), only a medical examination is legally required to ascertain the individual’s capacity to work, in the absence of state-issued documentation.³² The labour code of Côte d’Ivoire, for example, States that the role of the medical examination is to ensure that the “work to be undertaken does not exceed their physical capacity”;³³ rather than to ascertain the individual’s chronological age. This is also the case in Cambodia (see Box below), where a physician can be requested to examine “children less than eighteen years of age employed in an enterprise in order to establish that their jobs are not beyond their physical capabilities.”³⁴ It is important to note that, given their current level of development, following some national labour codes may not address all children in or at risk of entering child labour. Businesses must therefore follow international best practice.

In the absence of documentation, none of the labour codes in this review recommended the use of interviews or other means to verify the findings of medical examinations. In Asia and the Pacific, the

27. Better Work is global partnership programme between the ILO and the International Finance Corporation (IFC). Launched in February 2007, the programme aims to improve labour standards and competitiveness in global supply chains. Better Work provides compliance assessment and advisory services to apparel factories producing for international buyers.

28. Better Work Viet Nam, *Garment Industry: 6th Compliance Synthesis Report*. ILO/IFC, Geneva, 2013.

29. IPEC, *Strategy Paper: Solutions for Addressing Child Labour in Urban Garment Manufacturing Areas of Ho Chi Minh City, Viet Nam*. Working Paper, ILO, Geneva, 2013.

30. *Ibid.*, p. 33.

31. Government of Nepal: *Child Labour (Prohibition and Regulation) Act, 2000*, paragraph 12; Articles 1 and 2; Government of India: *Child Labour (Prohibition and Regulation) Amendment Bill, 2012*, paragraph 10; Government of Bangladesh: *Act No. 30 of 2013, An Act adopted to amend further the Bangladesh Labour Act, 2006*, known as the *Bangladesh Labour (Amendment) Act, 2013*, paragraph 17.

32. A draft bill is currently under consideration in Pakistan that States that if the age of an individual is in question between an Inspector and an ‘occupier’ and that there is no birth certificate, the issue shall “be referred by the Inspector for decision to the prescribed medical authority”.

33. “L’inspecteur du travail et des lois sociales peut requérir l’examen des femmes et des enfants par un médecin agréé en vue de vérifier si le travail dont ils sont chargés excède pas leurs forces” (Code du travail, Loi numéro 95/15 du 12 janvier 1995, Article 23-9).

34. Government of Cambodia, *Labor Code* (adopted by the National Assembly on January 10th, 1997), Article 178.

Labour Code of Indonesia details the country’s policy response to its ratification of ILO Convention No. 138 on Minimum Age and No. 182 on the Worst Forms of Child Labour, in 1999 and 2000 respectively.³⁵ The Code does not, however, require employers to obtain evidence (documentary, medical or otherwise) of an employee’s age. Similarly, the Employment Act of Malawi does not go further than establishing employers’ obligation to maintain records of child employees and does not provide guidance on appropriate action in the absence of state-issued proof of age.³⁶

Whereas guidance in other areas reliant on the verification of an individual’s age seeks to employ where possible a more holistic and triangulated approach to verifying an individual’s age, these national-level policies largely rely on a medical certificate in absence of state-issued documentation.



Case study

CAMBODIA - THE CHALLENGES OF AGE VERIFICATION

Savery’s first job was in a garment factory in Chom Chao commune. She was only 12 years old. She had left school in search of a job to support her mother. After only one month she was fired for being underage. She soon got a job with another factory, but 4 months later the factory closed. Just a few weeks after her 13th birthday, she started her third job in a new factory in the same area.

For all three jobs she used the family book, a relative’s birth certificate and her older sister’s election card to apply. The family book and birth certificate had no photos attached, but the voting card did and she put her photo on her sister’s voting card and her mother got it stamped by the local commune office. The only questions the factories’ human resources departments asked here were “How old are you?” and “Do these documents belong to you?” She answered “yes” and was hired each time. Only for her third factory job was she required to undergo a medical check-up – which is a requirement in the Cambodian labour code. She was still hired despite being underage and subsequently no one in a supervisory or management role approached her about the possibility that she was too young to work.

Savery had been working in the third factory for about two months when Better Factories Cambodia (BFC) conducted an assessment of the factory and identified her as being in child labour. She was referred to a remediation program run by a local NGO under the terms of the remediation agreement supported by the factory, the Garment Manufacturers Association in Cambodia (GMAC) and BFC. She now has shelter, food, her monthly salary paid by the third factory and benefits from vocational training. She would like to run a small tailoring shop when she turns 15 and is old enough to work.



³⁵ Government of Indonesia. Act of the Republic of Indonesia Number 13 Year 2003 concerning Manpower. Articles 68-75.

³⁶ Government of Malawi. Employment Act, No. 6 of 2000. Articles 21-25.

6. CONCLUSION

The verification of an individual's age allows States and organisations to translate their policies into practices in compliance with many international standards. In the context of the labour market, the inability to verify age exacerbates the problem of child labour. When employing an individual without official documents, businesses run the risk of using child labour, where the employee is in reality either too young to work or old enough to work but not in unsuitable conditions for that age. ILO Conventions 138 on Minimum Age of Employment, 182 on the Worst Forms of Child Labour and their Recommendations provide the fundamental principles that guide States towards eliminating child labour within their borders.

This paper provided three overviews of contexts (immigration, asylum and migration; juvenile justice; and child soldiers), in which the ability to verify an individual's age is of primary importance. In these areas, state-actors are criticised for implementing age verification methods that are too reliant on medical observation. Policy recommendations in these areas highlight the importance of triangulating medical findings with other recommended methods that would provide more credibility to the findings of a medical examination. These methods include obtaining other documentation (school certificates, family testimonies etc.), and conducting interviews that are sensitive to gender and culture. Practitioners may also benefit from guidance on constructing an events-based calendar to use as a basis for interviews.

Dangers of not including other methods could amount to the incorrect estimation of an individual's age and the assignment of unsuitable tasks, assuming the individual is old enough to work in the first place. Following the warning of the unreliability of medical age verification methods (particularly in older children), the time invested by a potential employer to go beyond the national labour code and to conduct an interview in order to ascertain the age of an individual would decrease the likelihood of employing a child too young to work or, indeed, assigning hazardous work to a child above the minimum age for employment.

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This paper serves as an introduction to the role of age verification methods in the realm of employment and as a basis for future research in this area. This research could be extended in a number of ways, including:

1. the analysis of more labour codes in South-East Asia and sub-Saharan Africa to identify policy deficiencies;
2. the development of case studies and policy recommendations of employers' age verification practices; and
3. the development of programmes to develop employers' and employers' organisations capacities to verify an individual's age as part of recruitment practice.

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