

THE  
**COLOURED GEMSTONES  
WORKING GROUP**



# Child Labour

**GUIDANCE**

**2021**

**TDi**

Sustainability

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# Introduction to this Guidance

This Guidance has been designed to introduce you to the topic of child labour and to accompany you through the process of ensuring the rights of young workers are protected, in line with your Anti-Child Labour commitment.

This Guidance includes:

- **An explanation** of the topic of child labour;
- **A description of the key steps** that you can take to implement an Anti-Child Labour commitment; and,
- **A glossary** containing an explanation of key terms (highlighted in yellow) relating to the topic of Child Labour.

# Explanation of Child Labour

As defined by the UN Convention on the Rights of the Child, a child is anyone under the age of 18. Not all work carried out by a person under the age of 18 is classified as 'child labour'. In fact, whether or not particular forms of work can be called 'child labour' depends on the child's age, the type and hours of work performed, the conditions under which it is performed and the relevant laws in individual countries.

In general, 'child labour' refers to work that interferes with children's schooling, by depriving them of the opportunity to attend school, obliging them to leave school prematurely, or requiring them to attempt to combine school attendance with excessively long and heavy workloads.

To protect children from the risk of interference with their schooling, the minimum age for employment "shall not be less than the age of completion of compulsory schooling and, in any

case, shall not be less than 15 years." In limited circumstances, children of the age of 14 can be employed in countries where "the economy and educational facilities are insufficiently developed".<sup>1</sup>

Child labour is a serious issue that affects more than 152 million children around the world.<sup>2</sup> Child labour is driven by complex socio-economic factors, with financial needs being the most common. Families living in poverty may depend on children to earn incomes. This means that efforts to address child labour must be approached with economic considerations and sensitivity to the alternatives available.

Child labour ultimately impedes economic growth and development as it deprives children of the opportunity to be educated for productive and decent work, often consigning them to low-paying and unskilled jobs in adulthood. Child la-

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<sup>1</sup> ILO, Minimum Age Convention (No. 138)., Adopted 26 Jun 1973, Entered into force 19 Jun 1976, Accessed online: 30 December 2020, <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CO-DE:C138](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CO-DE:C138)>.

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<sup>2</sup> International Labour Organisation, 'Child Labour' Website, accessed online 7 May 2020, <https://www.ilo.org/global/topics/child-labour/lang--en/index.htm>

bour may also have a negative impact on adult working conditions as it creates a downward pressure on wage levels, leading to increased unemployment rates for adults. This in turn reinforces the problems of poverty and lack of development that drive child labour in the first place.

While child labour takes many forms, special focus is given to the eradication of work that “by nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of children.”<sup>3</sup> Such forms of child labour are known as ‘hazardous child labour.’ Hazardous child labour includes work that is carried out in dangerous or unhealthy conditions and could thus result in a **child** being killed, injured or made ill. Because of the severity of its consequences, the minimum age for employment falling under the definition of **hazardous work** shall not be less than 18 years.

Hazardous work constitutes one of the ‘**Worst Forms of Child Labour**,’ (WFCL) which also includes:<sup>4</sup>

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

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<sup>3</sup> International Labour Organization, Worst Forms of Child Labour Convention, 1999 (No. 182), Adopted 17 Jun 1999, Entered into force 19 Nov 2000, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

<sup>4</sup> Ibid.

- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and,
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

According to the International Labour Organization (ILO), hazardous child labour is the largest category of the WFCL, with an estimated 73 million children aged 5-17 working in dangerous conditions in a wide range of sectors, including agriculture, mining, construction and manufacturing, among others.<sup>5</sup>

## **Child labour in the mineral supply chain**

Child labour in the mining sector is considered to be hazardous as it meets one or more of the following criteria specified in the ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190):

- work which exposes children to physical, psychological or sexual abuse;
- work underground, underwater, at dangerous heights or in confined spaces;
- work with dangerous machinery, equipment

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<sup>5</sup> International Labour Organization, International Programme for the Elimination of Child Labour (IPEC), accessed online 7 May 2020, <https://www.ilo.org/ipec/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm>.

- and tools, or which involves the manual handling or transporting of heavy loads;
- work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibration damaging to their health; and,
- work under particularly difficult conditions, such as work for long hours or during the night, or work in which the child is unreasonably confined to the premises of the employer.

### **Children in ASMs**

Almost all child miners work in artisanal and small-scale mining (ASM). The complex drivers behind child labour in ASM are rooted in poverty and often include the parents' need to access quick cash to cope with household emergencies, schooling costs, and chronic poverty. In some countries, children work because they have been orphaned by conflict, disease or natural disaster.

The decision to either refuse children at ASM operations or consciously accept child labour can pose a serious dilemma. Because of the complexity of the socio-economic drivers that lead a child to work, just refusing work to a child will not help the child and his/her household eradicate the root causes of child labour and may actually exacerbate them. Better alternatives should be sought so that children don't have to revert to working. To be in line with best practices and standards, you should:

- If you find that children living outside family or guardian care are in child labour in ASM under your control, you must use the guiding principles of the UN Convention on the Rights of the Child to ensure the children's well-being and safety.
- If you find young workers in the worst forms of child labour in ASM under your control, you must withdraw them immediately and find safe alternative income-generation opportunities for them, including flexible schooling if they are younger than minimum working age.
- If you find child labour in ASM that is not under your control but is in or near your concessions, you should engage in broader programmes aimed at withdrawing child labour from mining and providing remedy.

In 2017, the OECD created the Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains. The Practical Actions set out recommendations for companies in the mineral supply chain to assess and address the risk of the WFCL.

### **Key Legal Instruments**

On 20 November 1989, the United Nations General Assembly unanimously adopted the Convention on the Rights of the Child (CRC). The Convention articulates the basic human rights to which children everywhere are entitled, such as the right to survival and the right to the development of their full physical and mental potential.

The ILO has passed two major conventions on child labour:

- The Minimum Age Convention 138 (1973). This convention sets the minimum working age at 15 years old, or statutory school-leaving age, whichever is higher. Under certain conditions, a member country whose economy and educational facility are insufficiently developed may initially specify a minimum working age of 14 years old. There are two main exceptions to the minimum age of 15 as set in Convention 138:
  - A higher minimum age of 18 for hazardous work;
  - A lower age minimum of 13 for **light work**. Factors to consider in determining whether a particular job constitutes light work for a young person are hours of work, school attendance and performance, and the working environment. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:
    - a. not likely to be harmful to their health and development; and,
    - b. not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

The ILO Convention 138 does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by

persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of:

- A course of education or training for which a school or training institution is primarily responsible;
- A programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or,
- A programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

The Worst Form of Child Labour Convention 182 (1999). This Convention calls on member states to prohibit and eliminate the Worst Forms of Child Labour and applies to all children under the age of 18. ILO Convention 182 is accompanied by Recommendation 190 which gives guidance on whether work can be considered as 'hazardous' (explained above).

### **National Law**

Most countries have national legislation establishing a minimum working age, often with particular provisions for different sectors. In India in 2012, for example, the Union Cabinet approved amendments to the Child and Adolescent Labour Act, 1986. The Act bans all forms of child labour under the age of 14 and makes the employment of these children a criminal offence. The Act

prohibits employment of anyone under the age of 18 in hazardous work, which includes:

- Any occupation connected to mining and collieries;
- Gem cutting and polishing; and,
- Any processing that involves toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.

In Tanzania, the Law of the Child Act was enacted in 2009. To assist with the implementation of the act, the government created a free-of-charge helpline, available throughout the country, used to report children's rights violations.

Brazil's constitution addresses child labour by prohibiting night work and any work. Considered "dangerous or unhealthy" for those under 18. Minors under the age of 16 are not allowed to work, except for apprenticeships for minors over 14 years old.

# Implementation

Businesses have a responsibility to respect human rights, which includes youths' right to be free from child labour. Businesses should avoid causing or contributing to child labour through their own activities and, where human rights abuses occur, provide for or cooperate in remediation. Furthermore, they should seek to prevent or mitigate child labour that is directly linked to their operations, products or services by their business relationships.

Ultimately, proactive participation is required by the private sector, in collaboration with local governments and stakeholders, in order to effectively prevent, manage and eradicate child labour. There are a variety of steps all businesses can take to address child labour in their business:

A

Commit to addressing child labour



PLAN

## 1 WRITE AN ANTI-CHILD LABOUR POLICY

Write an Anti-Child Labour Policy that clearly communicates to your staff, suppliers, customers and business partners that your business takes the issue of child labour

seriously. An Anti-Child Labour Policy of this nature will formalise your business's vision and commitment to a responsible supply chain.

Your Anti-Child Labour Policy should include the following:

- a. A commitment to never engaging or supporting child labour as defined by ILO Convention 138 and Recommendation 146, which sets the minimum age for work as 15, unless in developing countries where school ends earlier than 15, in which case the minimum working age may be 14, subject to applicable law.
- b. A commitment to never engaging in or supporting the Worst Forms of Child Labour, as defined by ILO Convention 182 and Recommendation 190, which mentions:
  - Hazardous Child Labour, as stated in Key Legal Instruments, above.
  - All forms of child slavery and practices similar to slavery, including debt bondage, the trafficking of children, forced child labour and the use of children in armed conflict.

## B

### Implement your anti-child labour commitment



DO

## 2 ASSIGN THE RESPONSIBILITY

Assign the responsibility of overseeing your Anti-Child Labour commitment. Your business should be able to demonstrate that it takes child labour seriously. To this end, at least one person within your business should be responsible for finding out all applicable law and ensuring that your business is compliant. It is therefore important to appoint someone, for example a Labour Specialist, to be responsible for understanding these laws and for the general oversight of your commitment. This will depend on the size of your business. In smaller companies, this responsibility might fall on someone familiar with applicable law, such as a Human Resources Manager. In any case, this person will be responsible for monitoring all applicable

laws and regulations and for reviewing relevant policies and procedures every year, to ensure that your company continues to comply with changing laws and adequately addresses child labour.

### 3 CONDUCT A RISK ASSESSMENT

A risk assessment will assess where there may be a risk of child labour. A risk assessment of this nature should include the following steps:

#### 1. Verify the age of workers

Almost all countries have set a minimum working age of 14, 15 or 16 years of age, in accordance with international standards. Without proof of age, you cannot decide if a certain type of work is suitable for an individual. Reliable techniques to check age include the following:

- Multiple written documents and affidavits;
- Culturally sensitive interviews with employees and applicants who appear to be too young;
- End of compulsory schooling certificate for those above minimum age; and/or,
- School enrolment certificate for those in light work.

#### 2. Identify areas of hazardous labour

Identifying hazardous work in your business is an important step in preventing child labour. If young people (of a legal working age) work in safe, non-hazardous conditions, then this is called youth employment and is not considered child labour. Each country creates a list of hazardous activities by consulting with workers' and employers' organisations, with the list describing types of work that must not be carried out by children. This list is usually attached to a country's labour law.

Tips for identifying areas of hazardous labour:

- Begin by walking around your workplace and look at what could cause harm;
- Consult workers and/or their representatives about any problems they have encountered. Often the quickest and surest way to identify the details of what really happens is to ask the workers involved in the activity being assessed. They will know what process steps they follow, whether there are any short cuts, or ways of getting over a difficult task, and what precautionary actions they take;
- Systematically examine all aspects of the work, that is:
  - i. Looking at what actually happens in the workplace or during the work activity (actual practice may differ from the works manual);
  - ii. Thinking about non routine and intermittent operations (e.g. maintenance operations, changes in production cycles); and,
  - iii. Taking account of unplanned but foreseeable events such as interruptions to the work activity.
- Consider long term hazards to health, such as high levels of noise or exposure to harmful substances, as well as more complex or less obvious risks such as psychosocial or work organisational risk factors;
- Look at company accident and ill health records.
- Seek information from other sources such as:
  - i. Manufacturers' and suppliers' instruction manuals or data sheets;
  - ii. Occupational health and safety websites;
  - iii. National bodies, trade associations or trade unions; and,
  - iv. Legal regulations and technical standards.
- Account should be taken of workers interacting with each identified hazard.

## 4 IMPLEMENT A REMEDIATION PROCESS

A remediation process should be implemented for instances where child labour is found within your business. Your business should develop a child labour remediation process that includes steps for the continued welfare of the child and considers

the financial situation of the child's family (or lack thereof). Remediation should include:

- Immediately withdrawing anyone under the age of 18 who you discover is engaging in the WFCL or any type of hazardous labour, as identified in steps A and B
- Immediately withdrawing anyone under the legal minimum working age in your jurisdiction from doing any work at your business.
- For a child not still subject to compulsory education laws or attending school, finding alternative income generation and/or vocational training opportunities which can include decent and permissible employment.
- For a child still subject to compulsory education laws or attending school, offer the child adequate support in order to enable the child to attend and remain in school until the completion of their compulsory education.
- An annual review to your business's approach to avoiding child labour that identifies root causes of non-compliance and implements controls to avoid any reoccurrences.

Remember that instances of child labour require careful responses that take into consideration local circumstances and applicable law. Other points to remember:

- If children are found to be performing hazardous tasks, it may be a crime that needs to be reported to relevant authorities in your jurisdiction.
- Where a child not engaged in WFCL remains in partial employment during a remediation process, it is vital to ensure that: they are not employed during school hours; the combined hours of daily transportation to and from work and school, time at school and work does not exceed 10 hours a day; there is a minimum period of 12 hours for night time rest; there are customary weekly rest days; fair payment is provided; and, there is prohibiting of overtime.
- Ensure that any light work undertaken by children, subject to applicable law, does not interfere with schooling.
- Subject to the size and reach of your business, you should consider supporting community development programs aimed at eradicating the root causes of child labour. These efforts can be implemented in co-operation with other agencies such as national or local government, international institutions such as the ILO, NGOs and community groups. If you take this route, consider programs and projects that aim to improve access to education, and withdraw larger groups of

children from child labour to enrol them in school or vocational training.

## 5 MAINTAIN RECORDS

Record keeping should be an integral part of your Anti-Child Labour commitment. Maintaining copies of documentary evidence of worker ages on file is important in order for you to investigate any potential discrepancies. For any workers under the age of 18, records should include a description of the worker's role or duties, so as to confirm there is no involvement in hazardous work or the WFCL.

## 6 WRITE AN ANTI-CHILD LABOUR PROCEDURE

Write an Anti-Child Labour Procedure to designate day-to-day activities. A written procedure will help ensure that your staff have the guidance they need to integrate your policy into business activities. In particular, the procedure should detail the responsibilities of the appointed party in overseeing your Anti-Child Labour commitment.

## 7 TRAIN YOUR STAFF

Train your staff to make sure they are aware of your Anti-Child Labour policies and procedures. All relevant staff should be trained to ensure they are all aware of their obligations and how to follow policies and procedures correctly. Relevant staff may include those in your human resource's department and on-the-ground site managers.



## Monitor and review your Anti-Child Labour commitment



CHECK

### 9 REGULARLY MONITOR, REVIEW, UPDATE

Regularly monitor, review, and where necessary update your Anti-Child Labour commitment, including: the activities that are performed by the relevant staff and your policy and procedure to identify any potential areas in need of improvement and to ensure that your commitment is up to date.

# Child Labour Glossary

## **Child:**

A person under the age of 18, unless, under the law applicable to the child, majority is attained earlier.

## **Child Labour:**

Work done by children that deprives them of their childhood, potential and dignity, and that is harmful to their social, physical and mental development. In particular, it refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children;
- deprives them of the opportunity to attend school;
- obliges them to leave school prematurely; or
- requires them to attempt to combine school attendance with excessively long and heavy work.

## **Hazardous work:**

Work that puts a child's (or young worker's) physical or psychological well-being at risk because of the nature of the work or the conditions under which it is carried out. This includes:

- work that exposes children to physical, psychological or sexual abuse;
- work underground, under water, at dangerous heights or in confined spaces;
- work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- work in an unhealthy environment, for example one that exposes children to

- hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health; and
- work under particularly difficult conditions such as long hours, night work or work that unreasonably confines children to the employer's premises.

Hazardous work is one of the Worst Forms of Child Labour.

### **Light Work:**

Work that is not likely to harm the health or development of children, and does not prejudice their attendance at school, their participation in legitimate vocational orientation or training programmes, or their capacity to benefit from the instruction received.

### **Worst Forms of Child Labour:**

The following forms of child labour:<sup>6</sup>

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- 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 work).

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<sup>6</sup> ILO, Convention No. 138, Adopted 17 June 1999, Entered into force 19 Nov 2000, Accessed online: 21 December 2020, <[https://www.ilo.org/dyn/normlex/en/f?p=NOR-MLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](https://www.ilo.org/dyn/normlex/en/f?p=NOR-MLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)>.

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