Protecting the rights of working children instead of banning child labour: Bolivia tries a new legislative approach

On 4 August 2014, a Code for Children and Adolescents entered into force that sets new standards for the understanding and implementation of children’s rights. It is the first law in the world to have come into existence with a decisive input from children. It interprets children’s rights in the spirit of the traditions of indigenous communities and in the light of the country’s social and cultural realities. This is particularly true of the provisions that relate to ‘child labour’. For the first time, statutory rules for working children have been enacted which do not consist of a blanket ban on their working. Instead, they are accorded rights and protection mechanisms, which protect them from exploitation and the abuse of power while at the same time enabling them to work under decent conditions. This part of the law, which has given rise to international controversy, is the focus of this article.

First, I will describe the most important elements of the Code and discuss in particular its references to working children. Then I will reconstruct the troubled history of how the new Code came into existence, with reference to a draft law which working children and adolescents devised themselves. Finally, I will give a critical assessment of its significance for working children.¹

The Code for Children and Adolescents

The Code for Children and Adolescents (*Ley 548 Código Niño, Niña y Adolescente*) was passed unanimously on 3 July 2014 by the Legislative Assembly of the Plurinational State of Bolivia. After its promulgation on 17 July 2014 in a public ceremony at the Presidential Palace in the presence of

¹ I am grateful to Peter Strack, the head of the South America office of *Terre des Hommes* Germany, for his informative tips and notes on the manuscript.
Vice-President Álvaro García Linera, representing President Evo Morales, the Law entered into force on 4 August 2014. It applies to all children and adolescents up to their 18th birthday. It guarantees all children and adolescents living in Bolivia (regardless of their nationality) the full and effective exercise of their rights and requires all state bodies, and adults bearing responsibility for children, to make the children’s ‘best interests’ and all the rights set out in the Law, the guideline for their actions. The Code covers all areas and issues relating to children, prohibiting for example any physical or psychological violence against children in the family, at school and in other state institutions and in public, and obliges society to ensure the best possible conditions for their life and development. It guarantees children:

- that their interests will have ‘absolute priority’;
- that they are free and equal and possess dignity and rights, and must on no account be discriminated against;
- that they must in particular not be disadvantaged on account of their gender;
- that they may participate freely, actively and without restriction in family, community, social, school, academic, cultural, sporting and recreational life;
- that they will be listened to and respected in all areas of life and that they may express their opinion on all matters that concern them;
- that, in the light of the country’s cultural diversity, their individual and cultural identity will be recognised and respected;
- that they may develop their physical, cognitive, relational, emotional, mental and social abilities in a harmonious manner, with due consideration for the diverse ways in which these relate to each other and to their living conditions;
- that they must be able to exercise their rights in line with the development of their abilities, but must also meet the growing obligations that accompany this.

The Code specifically notes the special importance of the family for the protection, education and development of children and stresses that the state must ensure by means of appropriate programmes and measures that the family can fulfil its duties.

The individual chapters of the Code are devoted to the following areas:

- the right to life, health and a healthy environment, including reproductive health and protection of motherhood; particular consideration and encouragement for children with disabilities;
- the right to family life, including access to both parents; the killing of children is punishable by the severest penalty available (30 years’ imprisonment); the issue of national and international adoption is covered in particular detail, giving priority to adoptive families over the institutionalisation of children;
- the right to nationality, individual and group identity;
- the right to education, information, culture and recreation;
- the right of free speech, participation and petition (without the intermediary of an adult);
- the right to employment protection;
- the right to freedom, dignity, their own image and protection of privacy;

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3 The Code defines persons until they reach their 12th birthday as ‘children’ and from their 12th to 18th birthdays as ‘adolescents’.
4 The ‘best interests of the child’, rendered in Spanish as interés superior, is one of the leading principles of the UN Convention on the Rights of the Child.
5 The Spanish term recreativo is usually taken to mean leisure activities for purposes of relaxation and pleasure.
• the right to personal integrity and protection from violence (with particular reference to sexual violence and violence by persons in authority in the educational system).

A brief chapter also lists the duties of children and adolescents. These include the duty to

• take care of their life and health;
• know and defend their rights and respect the rights of others;
• treat their parents, teachers and everyone with respect;
• keep the law;
• to behave honourably and responsibly in all circumstances;
• to protect the environment and ‘Mother Earth’;
• to value culture and local products, and
• to respect the national symbols of Bolivia.

It should be noted that enjoyment of the rights by children and adolescents is not made dependent on fulfilling their duties. No rules are laid down on the fulfilment of the duties, which are of the nature of a moral appeal.

To protect the rights of children, particular significance is accorded to the Commissioners for Children’s Rights (Defensorías de la Niñez y Adolescencia)\(^7\) which already exist in most municipalities. They are conceived as an integral part of the municipal authority responsible for the protection of children’s rights. They are to be composed of lawyers, social workers, psychologists and other professionals. In practice, however, these teams are mostly incomplete owing to the limited budget available. Their diverse duties include regular monitoring of state action on children’s rights, intervention in the event of injury, and providing information on children’s rights and the prevention of injury. They can also function as a complaints centre, which may be approached by children and others. They may represent complainant children to authorities and before courts.

Provision is also made for Children’s and Adolescents’ Committees (Comités de Niñas, Niños y Adolescentes) at all political levels as social participation bodies, which the authorities are to provide with the necessary technical and financial support. They are to be made up of representatives of pupils’ and other children’s and adolescents’ organisations aged between 10 and 18, of whom at least 50% are to be girls. Their task is to be involved at the relevant political level in devising child policy programmes and measures, and to monitor their implementation. The Children’s and Adolescents’ Committee at national level has the task of supporting the committees at municipal and departmental level and advising the ministries.

In addition to provisions on the protection of children’s rights as a whole, the Code for Children and Adolescents contains a section on juvenile courts, including the treatment of adolescents who have committed a criminal offence while under the age of 18. In contrast to current trends in other Latin American countries, the age of criminal responsibility in Bolivia has not been lowered, but raised from 12 to 14. For adolescents aged from 14 to 18 there is a diminished criminal responsibility, and for offenders in this age bracket special care establishments are to be created. However, very few such alternative establishments are currently on offer.

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\(^6\) This means that photos and video recordings of children and adolescents may not – as was hitherto common practice – be simply published without their consent, whether for advertising or political propaganda purposes or for police intelligence in newspapers e.g. in the event of a crime. This right mainly seeks to protect the human dignity of children and adolescents.

\(^7\) I am using here the common international term ‘Commissioners for Children’s Rights’ as the duties of these Defensorías go beyond traditional child protection and extend to comprehensive representation of children’s interests and rights. On the international debate, see. Lansdown, 2001 and UNICEF, 2012.
How the rights of working children are to be protected

One thing which constitutes an absolutely new departure in legislation on children and adolescents is the rules governing rights in relation to children’s work (the customary term ‘child labour’ [trabajo infantil] is avoided in the text of the Code). For the first time in a law on children and adolescents, specific reference is made to working children. They are guaranteed a right of protection at work. This is notable because the only ‘protection’ that previous legal texts and ILO Conventions have been aware of is to exclude or remove children up to a certain age from the processes of work by prohibiting them from working. These prohibitions, as has been shown in a number of studies (cf. Bharadwaj & Lakdawala, 2013; Bourdillon et al., 2010; Liebel, 2004), have actually tended to render children defenceless, because they prevent children from invoking any rights at work.

The new Code stresses that all working children have the right to be protected by the state at all its levels, via the family and via society, from economic exploitation and any work which is dangerous, and which in particular jeopardises their right to education, health, dignity and overall development. The state undertakes to carry out prevention and protection programmes at all political levels for working children under the age of 14, and in particular for families in extreme poverty.

There has been international controversy about the fact that the new Code, for the first time, does not provide for a general prohibition on children under 14 engaging in work (i.e. a ban on ‘child labour’) but instead opts for a system of rules which differentiates between types of work and children of different ages. Children aged from 10 to 14 are permitted to work in exceptional cases and under specific conditions, and are guaranteed appropriate employment rights and protection from violence and exploitation. Adolescents under 18 are generally allowed to work, subject to specific conditions, and such work must, like the work of younger adolescents and children, be registered with the municipal Commissioners for Children’s Rights and the Ministry of Labour and Social Affairs.

The Code distinguishes between different forms of work. Work undertaken by children in the family community is regarded as legitimate irrespective of the child’s age. This is meant to cover domestic and agricultural work carried out in connection with family subsistence agriculture or as collective projects by the community. The Code specifically locates this type of work in the historical and cultural contexts of the country. Art.128 states:

‘This is the activity undertaken by girls or boys together with their families in indigenous communities of farming, Afro-American and inter-cultural origin. These activities are culturally valued and accepted, and their aim is the development of the basic skills needed for their own lives, and to strengthen community life in the context of the Good Life (Vivir Bien). They are based on traditional knowledge and include sowing, harvesting, and the conservation of natural resources such as forests, water and animals. They always contain elements of play and recreation as well as artistic and religious elements.’

8 The Spanish original of the Code uses the term actividades comunitarias familiares.
9 In the indigenous languages of Aymara and Quechua, these activities are not described as ‘work’. The term ‘work’, which does not exist in a general sense in these languages, refers solely to the work in urban areas or industrial plantations for export, which arrived with the money economy and the capitalist business model.
10 The principle of Vivir Bien or Buen Vivir embraces indigenous cosmologies and ideas about the shaping of society for a life in harmony with oneself, the surrounding community and nature, which differs fundamentally from the Western development and growth model. It is enshrined in the Constitution of Bolivia as an objective of the state (cf. Fattheuer, 2011).
These types of work are expressly regarded in the Code (as in the Constitution) as having a positive function for the socialisation of children and their formation as active and responsible citizens. However, the Code also stresses that these types of work may in no way infringe the rights of children, deprive them of their dignity nor hinder their overall development and schooling. Special protection measures are not regarded as necessary, since it is obviously assumed that the family and the community will ensure that children are not overworked or exploited.

This type of work is distinguished in the Code from types of work, which arrived with the urban money economy or the capitalist business model and are generally undertaken to earn an income. The former is taken to cover work undertaken independently or ‘for one’s own account’ (e.g. like a small business or self-employed person in the informal sector), while the latter is work that depends on an ‘employer’ and is normally recompensed with money (work ‘for the account of another’). Under the Code these forms of work are prohibited for children under 14 as a general rule, but from certain age limits provision is made for ‘exceptions’. Accordingly, children from the age of 10 may carry out work on their own account and from the age of 12 may carry out dependent work, provided that certain conditions are met and that the work is approved by the relevant local Commissioner for Children’s Rights. Approval may only be given (but must then be given) if the work does not impair the children’s or adolescents’ right to education and does not endanger their health, dignity and overall development.\(^{11}\) For adolescents from the age of 14, a work permit from the Ministry of Labour and Social Affairs is required. For all types of work undertaken between the ages of 10 to 18, it is regarded as a fundamental principle that they must be carried out with the free will of the children and adolescents and must have their express consent. Furthermore, all working children and adolescents are listed in a register of children and adolescents at the Ministry of Labour and Social Affairs\(^{12}\) and are thus subject to particular supervision. Dangerous types of work, which could harm children are catalogued in a list which is to be updated every five years. No permits are to be issued under any circumstances for such work, which is prohibited for all children and adolescents until their 18th birthday.\(^{13}\)

For work to be undertaken for an employer, the permission of the mother, father or other guardian must be obtained. Before the work can be approved, a medical examination must at any event first be carried out to confirm the child or adolescent’s physical and mental fitness for the work to be done. To ensure ‘fair pay’, remuneration for adolescents from the age of 14 must not be less than that earned by an adult doing the same work, and must not be less than the statutory minimum wage.\(^{14}\) The pay must always be available to the adolescent and must enable him or her to attain a ‘better quality of life’. The employers must guarantee the necessary conditions for the adolescents’ safety and allow them two paid hours per day for their own studies. They must also not prevent them from involvement in trade unions. Working hours may not exceed eight hours a day and 40 hours a week and must finish before 22.00. For adolescents under 14 a maximum of six working hours a day and 30 hours a week is prescribed. For this age group no provision is made for the personal availability of the pay, the minimum wage or the payment of self-study hours. It is also not clear from the Code whether the same rules apply to this group regarding equal pay for equal work and the minimum wage as to adolescents from the age of 14.

\(^{11}\) Detailed rules will be provided in the implementing provisions, which are due to form part of the Code and are currently being worked out.\(^{12}\) Sistema de Información de Niñas, Niños y Adolescentes (SINNA). It would be good if the information collected were not restricted to the registration of formal data but also included investigations into the actual life situations in which the experiences, views and expectations of the children and adolescents are expressed.\(^{13}\) The wording used in ILO Convention 182 (1999) ‘worst forms of child labour’ is, however, avoided. The types of work included in the list are also in some cases different from those defined in the Convention as ‘worst forms’.\(^{14}\) The monthly minimum wage in Bolivia is currently equivalent to EUR 152. In 2005, it was EUR 46.
For work on one’s own account, which may be permitted from the age of 10, the parents or other guardians are required to allow the child to attend school and ensure working conditions that enable the child to relax and take part in cultural and other leisure activities. Work must finish before 22.00. No other details about working hours are given. On no account may work be carried out that endangers the life, health, integrity or reputation of the child.

A separate article is devoted to paid housework in households of third parties. The Code lays down that this may only be undertaken by adolescents from the age of 14. The employment contract must specify what work is to be carried out, e.g. cooking, washing, cleaning or childcare. If the children of adult domestic staff live with them in the employer’s household, they may not be called upon to work. No specific rules are laid down for housework carried out by children in their own families, i.e. no provision is made concerning special protection rights for them.

A further article lays down prohibitions on certain specific working conditions. For example, it is not permissible to exploit children and adolescents economically, to employ them without their consent, without ‘fair remuneration’ or outside the country. For employment at varying places of work, the express consent of the parents or other guardians is required. Adolescents under the age of 14 may not be asked to work overtime. The use of private agencies for their recruitment and employment is prohibited.

The list of prohibited types of work distinguishes between on the one hand work, which by its very nature is harmful and unacceptable for children or adolescents to perform, and on the other hand work, which is harmful and unacceptable under specific circumstances. The first group includes: sugar cane and chestnut harvesting; work inside mines (specific types of work are listed); fishing (except in a family or community context); brickmaking; alcohol sales; refuse collection (where the refuse is hazardous); hospital cleaning; security service; work in other households (when combined with accommodation); and work in gypsum processing plants. Types of work, which are prohibited under certain conditions include: agricultural labour, rearing of large animals and building work (where such work is contrary to children’s development needs and is not undertaken in a family or community context); work in quarries or masonry work; modelling work (where there is an erotic element); and in general all work carried out at night (after 22.00). This list is to be updated regularly, at least every five years, with the involvement of ‘stakeholders’ (i.e. including working children and adolescents).

All children and adolescents (from the age of 12) working for an employer are guaranteed the right to social security, for which the employer must deduct the statutory proportion from their wages. Adolescents must not be treated less favourably than adults. Adolescents working on their own account may join the social security scheme voluntarily by paying a contribution proportionate to their income.

**The troubled history of the Code**

I mentioned at the beginning that the drafting of the Code took place with the active participation of children. This was not, however, the legislators’ original intention, and does not apply to the same extent to all parts of the Code. It is mainly the chapter concerning children’s rights in relation to work that was influenced by children, and it is no accident that this diverges particularly widely from the child and adolescent laws of other countries.

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15 The Code itself does not specify what constitutes ‘economic exploitation’ or what level of pay may be regarded as ‘fair’. On the question of economic exploitation and possible criteria for fairness, see Liebel, 2004: 194-215.

16 Bolivian working children are claiming that this task should be a concern of the state authorities.
In the draft Code, which was submitted in December 2013, the text simply dealt with the topic of ‘child labour’ by stating that work was prohibited for persons under the age of 14. This met with vigorous protests in particular from working children, who had repeatedly in previous years expressed their dissenting views in negotiations with the Parliament and Government. In several provinces, they took to the streets – an everyday occurrence in Bolivia – and had a distinctly unfriendly reception from state bodies. In the capital, La Paz, there were violent clashes with the police, who used tear gas and truncheons, and a number of the protesting children were injured. Nevertheless, this was not the end of the matter. The children’s protests highlighted the latent contradictions within the Government and Parliament. However, the most important factor was that the President, Evo Morales, who had on an earlier occasion revealed his past as a working child, took the children’s side. The wide media coverage of the confrontation between the children and the police, leading to calls from abroad not to ignore the children’s right to a hearing, also had an effect.

The children were helped by the fact that they were organised and well prepared. Since the end of the 1980s, there had been coordination at national level. Furthermore, in 2003 working children had also formally created for themselves an organisation at national level called the ‘Union of working children and adolescents of Bolivia’ (UNATSBO)17 which is active in nearly all parts of the country. This organisation, often referred to in the media as a ‘children’s trade union’, had already succeeded in influencing the Constitution and achieving the inclusion there of a wording on children’s work which reflected the realities in the country. With regard to the rights of children, Article 61 of the 2008 Constitution, confirmed in a referendum in 2009, expressly prohibits ‘any kind of violence against children, in the family or in society’. However, instead of prohibiting child labour per se, which is the usual procedure everywhere else, the Code focuses on prohibiting ‘forced labour and exploitation of children’. On the other hand, ‘the activities of children within their families and society promote their full development as citizens, and have a formative function’.

In subsequent years, with support from some NGOs, UNATSBO had devised its own draft law, which it termed a ‘regulatory proposal on the recognition, promotion, protection and defence of the rights of working children and adolescents’, and which was published in December 2010 (UNATSBO, 2010: 101-131; cf. Liebel, 2012: 136-138).18 This draft law, with its focus on the topic of children’s work, expressed for the first time the point of view of working children and adolescents, and was based on the idea that children, too, have a right to work. They succeeded in having some of the ideas and even some of the wordings of this draft law taken over in the negotiations on the new Code for Children and Adolescents. For the purposes of comparison, I will now describe the essential elements of this draft.

The working children’s draft law

In contrast to the ILO Conventions on Child Labour19 and the former legal situation in Bolivia, the UNATSBO draft law does not set a minimum age for starting work. Each boy and girl should be able to decide for themselves at what age they want to start work. The rules and rights set out in the draft law are intended to apply to all children and adolescents up to their 18th birthday. The

17 Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO). The title specifically draws attention to the fact that it includes both genders. UNATSBO is part of a network of similar organisations in Latin America (see: http://molacnats.org).
18 The original title of the draft law is: Propuesta normativa para el reconocimiento, promoción, protección y defensa de los niños, niñas y adolescentes trabajadores.
19 In particular ILO Convention 138 from 1973.
distinction between working children (up to age of 12) and working adolescents (from 12 to 18) is drawn only in cases where special rules apply. The definition the working children and adolescents gave of themselves in their draft law (UNATSBO 2010: 109) was this:

‘They engage in productive activities or provide services of a material, intellectual or other nature, as dependent workers or for their own account, and receive a wage or earn an income for this. They engage in activities that serve to satisfy the bare necessities of life and enable the survival of the individual and the family, both in rural and urban areas; where the work is of a family or communal nature, there is no dependency on an employment contract and no wage is paid.’

This definition seeks to cover the widely differing realities faced by working children without blurring distinctions, as happens in the official discourse on ‘child labour’. The text expressly does not refer to child labour, but speaks instead of working children. This is to make clear that there is not simply a ‘social problem’ to be resolved, but that real people living and working under different conditions, have their own interests and a right to rules, which take account of their specific situation and are designed to improve it. It stresses on the one hand that – particularly in the urban environment – most children work to earn a monetary income, which in this case they need to cover living costs. On the other hand, it takes account of the fact that – particularly in rural areas – many children live in social contexts, which are marked by indigenous and Afro-American traditions and whose work does not focus on a monetary income but on the production of goods to be used. The other provisions of the draft law focused on the question of whether and in what way children, in their work, are exploited or otherwise disadvantaged or treated in an undignified way, and how this can be effectively counteracted.

The draft law treats working children and adolescents as ‘social subjects in their own right’ who have both the right and the ability to ‘participate actively in production and service provision in society’. The state should be obliged to recognise and value the economic, social and cultural contribution, which children and adolescents make with their work, thereby also recognising and valuing the fact that the work of children and adolescents represents an integral part of their identity and a form of participation, and serves as the context for their socialisation and acquisition of values and standards.

The state, represented by the Government and by the regional and local authorities, should be required by law to promote the labour rights of children and adolescents as ‘social actors’, to protect them in their work against abuse and exploitation, and to guarantee them integral education and occupational training in accordance with their wishes, nature and abilities. ‘Civil society’ organisations are called upon to cooperate in promoting the rights of working children and adolescents.

With a view to implementing these rights, children and adolescents should be assured equality before the law and should enjoy the same protection and guarantees as adults. No child or adolescent should be excluded, discriminated against or favoured on account of his or her age, gender, skin colour, sexual orientation or identity, origin, culture, nationality, language, religious belief, political views, membership of a political party, civil status, economic and social situation, occupation, level of education, feature perceived as a disability, pregnancy or other reason.

The draft Law is based on workshops and polls held by UNATSBO with the support of three children’s rights organisations\(^{20}\) in various regions of the country. The ideas and expectations of work-

\(^{20}\) *Terre des Hommes* in Germany and Switzerland, and *Save the Children Bolivia*. 
ing children obtained were summarised in a brochure issued by UNATSBO (UNATSBO, 2010) as follows:

- Social and political recognition for working boys and girls in Bolivia;
- Right to an education which is accessible to all working boys and girls, inclusive and linked to better life chances;
- Recognition of the organised participation of working boys and girls in devising new laws and proposals to bring about the transformation of a colonial state into a plurinational and community state\(^{21}\) and reflect its needs;
- Protection and support for working boys and girls against infringements of their rights at their places of work and in schools, families and communities;
- Ending discrimination against, and stigmatisation of, working children (boys and girls);
- Recognition of the economic contribution, which working boys and girls make to the country.

Drafting a whole new law was not easy, particularly for children, who are not normally called on to take decisions in this area. Even when, as here, they had legally trained advisors supporting and showing solidarity with them, they first had to have the courage to do this. They had to find wordings, which met legal criteria and were general enough to embrace their personal experiences and specific interests. In claiming a right to work, children had – and still have – ranged against them international agreements and set patterns of thought which all too easily assume that they are seeking to legitimise ‘child labour’.

**What benefits does the new Code for Children and Adolescents bring for working children?**

The same is true of the passages in the new Bolivian Code for Children and Adolescents, which relate to children’s work. While working children have not been accorded a right to work, as they had called for in the UNATSBO draft\(^{22}\), the very prospect of legalising work for children from the age of 10 and/or adolescents from the age of 12 ‘in exceptional cases’, calls the existing ‘official’ thinking and international agreements, which seek to prohibit and ‘abolish child labour’ into question. The conflict, which this triggers was expressed by Vice-President García Linera in the words he used in promulgating the Code on 17 July 2014\(^{23}\):

> ‘It was not easy to draw up [this Code], as there are many international agreements which the state has signed in relation to the rights of children and adolescents. However, there is also the reality in Bolivia, our own particular version of the working and living situations of boys and girls in our country.’\(^{24}\)

The Code tries to reconcile the ILO Conventions on Child Labour, which aim at putting a comprehensive prohibition into practice, with the fact that the work of hundreds of thousands of chil-

\(^{21}\) In Spanish: Estado plurinacional comunitario.

\(^{22}\) On the right to work, demanded by several working children’s and adolescents’ movements and organisations, see Liebel, 2004; Nieuwenhuys, 2009; Liebel, 2013; Taft, 2013.


\(^{24}\) In justifying the Code, the Vice-President was fully entitled to rely on the UN Convention on the Rights of the Child, which does not prescribe a ‘ban on child labour’, but guarantees the right of children to be protected from ‘economic exploitation’ (Article 32).
Children is a reality in a wide variety of forms and contexts in Bolivia. It does this in two ways. On the one hand, children’s work is given differentiated treatment according to its different conditions and contexts, and a large proportion of this work is removed from the scope of ‘child labour’ as set out in the ILO Conventions. This largely reflects the ideas set out in the UNATSBO draft law. On the other hand, the legalisation of types of work covered by the ILO Conventions is stated to be the ‘exception’ and is tied to clear conditions. In this way, the Code emphasises its compliance with the ILO Conventions on ‘Child Labour’, while at the same time making it possible to focus on the problems with which many working children have to deal in reality: the economic exploitation and abuse of power, which characterise the everyday experience of many children in their work. Thus, it is particularly important that the Code provides for protection mechanisms and support measures for working children and their parents, which the authorities are expressly required to supply. This would not have been possible in the case of a blanket prohibition.

Nevertheless, it remains a matter for concern that the defensive argument underlying the ‘exceptional cases’ rule conceals many traps and pitfalls and entails the risk of bureaucratisation and abuse. Accordingly, it is likely that, in the current negotiations on the implementing provisions, international organisations such as UNICEF and the ILO, in fulfilling their respective institutional mandates and out of concern that international standards may be watered down, will urge a restrictive interpretation of the Code. On the other hand, working children have hitherto had little opportunity to influence the practice of the Commissioners for Children’s Rights. As children have no seat and no votes on these bodies, they are reliant on lodging complaints against refusals to allow exceptions, and have to hope that the Children’s Commissioners will understand their arguments and comply with the legal time limits.

The Code is a political compromise, hard-won against opposition from many quarters – including the Government, MPs and the public. Without the persistent pressure and persuasive work of the children and adolescents of UNATSBO it would probably never have come into existence. From statements by UNATSBO and by individual children and adolescents (see ‘Message’ in the Annex) it is clear that the children are seeing themselves respected for the first time as working children and hope the Code will provide them with better protection at work, an end to discrimination, and an improvement in their living conditions. However, only when the Code is offensively tested will it be possible to see how much use it actually is to working children. Appeals to Commissioners of Children’s Rights are crucially important in this connection. They will presumably only be able to carry out their allotted duties properly if they are adequately resourced and have qualified staff who is able to put themselves in the shoes of working children and are prepared to support

25 UNICEF and children’s rights organisations estimate that some 850 000 children and adolescents in Bolivia are working, that is 28% of all children aged between 5 and 17. Admittedly, this is a rough estimate, in which the criteria for ‘child labour’ are unclear and which can only partially be supported by statistical data.

26 In an interview, the Bolivian MP Javier Zavaleta thought as late as the end of 2013 that it would be impossible to draft a Code, which did not prohibit child labour. ‘We have no choice. If we comply with our Constitution, we will be penalised by the international community. It would be easier to rewrite the Constitution.’ (cited in Blasberg, 2013: 15).

27 In a press release of July 28, 2014, the ILO chose its words carefully, expressing its ‘concerns regarding [the] new law in Bolivia dealing with child labour’ (http://www.ilo.org/ipec/news/WCMS_250366/lang--en/index.htm). The view of some politicians and NGOs (such as Human Rights Watch), also reflected in some of the media, that the Code infringes the UN Convention on the Rights of the Child and the ILO Conventions on ‘child labour’, is completely unfounded. It is based on inadequate familiarity with, or a selective reading of, the Code, and in some cases on simple Euro-centric prejudice. Some European politicians have gone so far as to threaten secretly to deprive Bolivia of its GSP status, and thus of advantageous customs tariffs on trade with the EU, in other words a kind of economic blockade.

28 The job description of the Commissioners for Children’s Rights contains a contradiction, as they strictly speaking also bear responsibility for supporting the complaints in the interest of children’s rights. Children will frequently only make use of their right to complain if they are supported by adults with the necessary legal knowledge.
them.\textsuperscript{29} It should also be guaranteed that children and adolescents might have an influence on their work.

The Children’s and Adolescents’ Committees proposed for the first time in the Code could offer new prospects. Though these committees have so far existed mostly only on paper, in some municipalities they have already been set up – partly at the initiative and with the participation of working children and adolescents – and others are currently being created. In the near future, it will be important to see how these Children’s and Adolescents’ Committees are reinforced and become able to exert an influence at national level too. To that end there will be a need for a change in society and ultimately legal regulations to enable children and adolescents under the age of 18 to participate directly in political decisions at all levels.

It is equally important to create work and training alternatives for children and adolescents that meet the criteria for ‘legal’ work under the Code for Children and Adolescents and offer them better chances for development in addition to schooling, or to transform their existing work situation so that the rights of children are complied with. The Code’s application of labour standards to children and adolescents (on such matters as the minimum wage and working hours), and its guarantees of protection, are a first step. However, the Code for Children and Adolescents is not intended merely as a pragmatic emergency solution to ease the way out of poverty for children and their families. Rather, it contains the promise and the challenge of enabling people in Bolivia who are still living in major poverty to have a decent and satisfying life.

The particular significance of the Code – for other countries too – is that it does not regard children, as has usually been the case, simply as ‘social cases’ but as social subjects who can actively contribute to the necessary changes in society. Admittedly, this can only succeed to the extent that the country is able to emerge from international economic dependency and to produce economic forms and labour relationships, which meet the principles of the ‘good life’ enshrined in the Constitution.

\textsuperscript{29} In an interview with Peter Strack in May 2014, the Bolivian Senator Adolfo Mendoza said that the Commissioners for Children’s Rights were not yet operational all over the country and were currently overwhelmed with the task of combating violence against children (see Strack, 2014). It is doubtful whether the resources, which Mendoza says have been allocated by the Finance Ministry and UNICEF will be sufficient to fund them adequately. The governments of prosperous countries would be well advised to contribute to the adequate funding of these Commissioners for Children’s Rights in the context of development cooperation.
Laws and Conventions:

Estado Plurinacional de Bolivia (2008): *Nueva Constitución Política del Estado*;
http://www.patrianueva.bo/constitucion/

Estado Plurinacional de Bolivia (2014): *Ley 548 Código Niño, Niña y Adolescente*;
http://www.derechoteca.com/gacetabolivia/ley-no-548-del-17-de-julio-de-2014/


International Labour Organisation (ILO) (1999): Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;


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http://www.boell.de/sites/default/files/endf_buen_vivir_engl.pdf


**Annex**

**Message from a working girl in Bolivia (August 2014)**

Hello!

I am Lourdes Cruz Sánchez,
Speaker of the Potosí Working Children’s and Adolescents’ Council.

Greetings to you all! Never give in!

If you plan something, you want to achieve it.
Work gives people dignity.
But when working conditions are bad,
we must fight for better conditions.
Not just for us and for our families.

Here in Bolivia, for many years the work done by children has not been recognised.
Although many children have been working.

Now, though, after great efforts we have achieved recognition.
What we need now is for everyone to know and apply the Code.
And show respect for children.

Children are people too,
the only difference is that they start working at a young age.
Not because they are forced to,
but because they need the earnings.
And when they are working under intolerable conditions,
please help to improve them!

Then the children themselves and their families will be able to move forward and to help their country.

Yes to work, no to exploitation of children!

I have a request for the organisations that work with the ILO:
Before you devise laws or programmes for countries,
you have to look at the realities there.
A chef doesn’t tell a schoolteacher how to do his job,
because he doesn’t understand how he works.
To design programmes you have to know the situation in the country concerned.
I am a Bolivian and I like my country. 
But Bolivia is not yet in a position to allow children not to work. 
We are not calling for children of 10 or 12 to work. 
We are calling for protection for children, who do work, 
and for their contribution to be recognised.

Abstract 
In Bolivia, a new Children and Youth Act has come into force on August 4, 2014, which sets new standards for the understanding and implementation of children’s rights. It is the first act worldwide designed with children in a leading role. It interprets children’s rights in the scope of traditions of indigenous communities and with respect to the social and cultural reality of the country. This is particularly so in the regulations of the act referring to children’s work/child labour. For the first time, regulations are stipulated for working children, which do not simply prohibit their work. Instead, there are granted rights and protective measures to protect them from exploitation and power abuse and at the same time enables them to live in dignity. This section of the act, which triggered controversial debates internationally, is at the core of this paper. First, the most significant elements of the act are depicted to then address the issue of working children. Its conflict-ridden history is reconstructed by reflecting on an earlier draft that had been elaborated by working children and adolescents themselves. Finally, the meaning of the new act for working children is critically acclaimed.

Keywords: Children’s Rights; Children’s Interests; Working Children; Child Labour; Ombudspersons; Bolivia