

**STUDY ON THE LEGAL PROTECTION OF CHILD  
DOMESTIC WORKERS IN ASIA-PACIFIC**  
*(A Review of the Existing Legal Framework for the Protection of  
Child Domestic Workers)*

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## I. INTRODUCTION

Domestic labour has been described as “one of the world’s oldest occupations, and one in which children have traditionally played a part.”<sup>1</sup> Indeed, in one study about the Philippines,<sup>2</sup> it was stated that as early as the pre-Hispanic times, children as well as women were already used to pay for the debts of the household;<sup>3</sup> and that during the Spanish era, children, in addition to doing chores for the household, became part of the Hacienda’s labour force.<sup>4</sup>

Although the existence of child domestic workers has been widely acknowledged and, in fact, categorised as belonging to the informal sector of labour; still, by and large, children in this work have remained fairly invisible in employment statistics. Such invisibility may be attributed to the fact that the nature of their job is not valued essentially as a “service” that deserves to be compensated but rather it is viewed more as an extension of their duties as children even though they are actually hired to do domestic work. This is especially true with girls.<sup>5</sup> Since children have been socialized early in life to help the family by sharing household responsibilities, this type of work is seen as one which comes “naturally” for them and therefore, should not be regarded as “serious work” deserving of a “real compensation” or “wage.” In Bangladesh, India, Nepal and Pakistan, the United Nations Economic and Social Council for Asia-Pacific (ESCAP) reports that there are significant gaps in the recorded incidence of child labour; most of the statistical and substantive invisibility attributed to the lack of data on working girls because surveys do not take into account the domestic work that these young girls are engaged in.<sup>6</sup>

Another important factor to consider in the invisibility of child domestic workers is the fact that they work within the confines of the home – not really a “workplace” where State scrutiny would be welcomed and even be expected. The privacy of homes is generally regarded beyond the reach of State intervention.

There is also limited interest in finding out about their situation because domestic work is not necessarily seen as an exploitative occupation for children. In fact, there is a general perception that children working in households are normally “cared for”<sup>7</sup> and that they are regarded as “half family” and “half servants” at the same time.<sup>8</sup> This perception is even strengthened in cases where the household turns out to be more comfortable for child domestic workers due to a higher standard of living that the household enjoys compared to their own

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<sup>1</sup> Innocenti Research Centre, *Child Domestic Work*, 5 Innocenti Digest (August 20, 2002) <<http://www.unicef-icdc.org/publications/pdf/digest5e.pdf>> [hereinafter Innocenti Research Centre].

<sup>2</sup> Amparita Sta. Maria et al., *Internal Trafficking in Children for the Worst Forms of Child Labour: Final Report*, (2001) (unpublished manuscript on file with the author).

<sup>3</sup> See ELIZABETH UY-EVIOTA, *The Political Economy of Gender* 36 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> Innocenti Research Work, *supra* note 1.

<sup>6</sup> See Economic and Social Commission for Asia and the Pacific, *Women in Asia and the Pacific: High Level Intergovernmental Meeting to Review Regional Implementation of the Beijing Platform for Action*, 26-29 October 1999, Proceedings, United Nations 443 (2000).

<sup>7</sup> *Id.*

<sup>8</sup> See Poonyarat, Chayanit, *Rights-Thailand: Child Workers are Half Family, Half Servants*, (August 20, 2002) <[http://www.oneworld.org/themes/country/country\\_764\\_1.shtml](http://www.oneworld.org/themes/country/country_764_1.shtml)>.

homes<sup>9</sup>; and by the fact that the children are guaranteed to be fed at least three basic meals for the day.

Indeed, even ILO Convention No. 182 does not consider domestic work *per se*, as a worst form of child labour. It calls for effective and time-bound measures to identify and reach out to children that are at special risk while the supplementing ILO Recommendation 190 calls attention to “the problem of hidden work situations, in which girls are at special risk.” What the Convention includes are practices resulting to the exploitation and/or commodification of children, though in the process these children may actually end up as domestic workers. Thus, it requires States as a matter of urgency to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, defined as follows:

- all forms of slavery or practices, 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;
- work which, by its nature or the circumstances in which it is carried, is likely to harm the health, safety or morals of children.

There is no doubt that domestic work may end up to be very hazardous to children especially where they find themselves working extremely long hours - extending well into late evenings, having very little hours of rest, enjoying very little mobility and other circumstances which endanger their health, safety or morals. It is within this context that the importance of documenting the working conditions of children in domestic service can never be overemphasised.

Admittedly, there seems to be more data and documentation on the commercial sexual exploitation of children though covert and invisible this industry may appear. The reason could be because these children are thought to be the most vulnerable to the worst forms of physical and sexual abuse. Hence, there is a great interest to inquire into their situations. The need for more serious and urgent responses from the State also appears to be warranted. It is thus, expected, that when exploitation of children is discussed, sexual exploitation captures the greatest attention and concern; and although exploitation of children for cheap labour and children engaged in hazardous work have also generated alarm and interest, domestic work seems not to be one which presents itself as a major cause for immediate attention and action for law or policy reform, notwithstanding its potential for becoming a worst form of child labour.

Despite the above observations, available literature and researches as regards child domestic workers that have been done so far sufficiently establish that indeed, children in domestic work are vulnerable to economic exploitation and to physical, sexual and psychological abuse. Information gathered by UNICEF<sup>10</sup> shows that despite the wide social, cultural and

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<sup>9</sup> *Id.* See Innocenti Research Centre, *supra* note 1.

<sup>10</sup> See Innocenti Research Centre, *supra* note 1.

economic differences existing in different regions of the world, studies on child domestic workers made in these regions have similar features, such as:

- domestic work is among the lowest status, least regulated, and poorest remunerated of all occupations, whether performed by adults or children;
- most child domestics live in, and are under the exclusive, round-the-clock control of the employer (normally the female head of household); they have little freedom or free time;
- about 90% of child domestics are girls; their powerlessness within the household renders them especially vulnerable to sexual abuse;
- since it is possible for very young children to undertake light household tasks, the age of entry can be as young as five;
- many child domestics do not handle their earnings; some are unpaid; the earnings of others are commonly given to parents or people often referred to as ‘aunties,’ but who in reality are unrelated recruitment agents; and
- the live-in child domestic is cut off from her or his own family, has little opportunity to make friends, and almost no social exchange with peers.

Given the potential for exploitation and abuse against children that domestic work entails, and the actual abuses and violation of rights that have already been documented, it becomes imperative for countries where these children are found to address these problems with the same urgency and importance as it would the other fields of employment where children are recognized as constituting a workforce.

Specifically, the Convention on the Rights of the Child (CRC) proclaims the rights that every child should be entitled to and has set the international standard for the minimum treatment of children. A number of ILO Conventions and Recommendations<sup>11</sup> have also provided for standards to be observed for working children, particularly the minimum age standard for their admission into work. However legal instruments are crafted or intended, their significance lies in the fact that they bind States to certain commitments, if not outright create obligations on their part. At the very least, these instruments manifest a collective sentiment among the States that the principles embodied therein serve as ideals to be achieved by the international community.

It is, thus, incumbent upon State-parties which have ratified these international instruments to have these standards articulated in their national laws and provide mechanisms for their implementation and enforcement. All countries included in this research have signed and ratified the CRC; and only three of these countries, *i.e.*, Cambodia, India and Lao People’s Democratic Republic, have not yet ratified ILO Convention No. 182.

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<sup>11</sup> See also International Covenant on Economic, Social and Cultural Rights, art. 10; ILO Convention Nos. 59, 77, 90, 138, 182 and ILO Recommendation Nos. 146 and 190.

### ***RESEARCH FRAMEWORK:***

The research examines the problem of child domestic workers from a legal perspective, focusing mainly on the existing labour laws, (including policies and programmes reflective of such policies) and enforcement mechanisms available in addressing this issue, and other problems related to it. The adequacy and responsiveness of the legal and enforcement mechanisms shall be analysed on the basis on how much of these measures have been effective in preventing the employment of children for domestic work; and how much protection the State has provided for those who are already engaged in such work. Thus, the research sets the following objectives:

(1) to identify the laws, policies and programmes in place to address child domestic labour;

(2) examine their responsiveness and effectiveness as a legal framework for protecting child domestic workers, especially for the girl-children and

(3) make recommendations primarily addressed to the law and policy makers to prevent the further increase in number of children in domestic work, and to protect them from the attending abuse and exploitation of such work.

### ***METHODOLOGY:***

The research made use of both case studies and survey findings. In the case of the former, an in-depth study of three (3) countries was made: the Philippines, Sri Lanka and Thailand. Questionnaires were distributed to identified government agencies and non-government organisations in order to collect information on existing laws for the protection of child domestic workers, the implementation of these laws and the problems accompanying such implementation. Interviews were also conducted to supplement the questionnaires. In the case of the second, the same set of questionnaires were sent to identified resource centres in 10 countries: Bangladesh, China including Hong Kong, Fiji, India, Lao PDR, Mongolia, Nepal, Pakistan and Vietnam, with the end in view of getting an overview of the problem of child domestic labour and the legal responses of each particular State. No personal interviews were conducted, although clarifications were carried on through e-mail correspondence. The research also utilised secondary sources such as former studies conducted on child domestic work and in the other areas of child labour, including its worst forms as identified in ILO Convention 182. Additional information on the web was also obtained to supplement the survey.

As much as possible, the text of relevant laws and cases dealing with child domestic work are also provided.

### ***SCOPE AND LIMITATIONS OF THE STUDY: (including Difficulties Encountered)***

The scope of this paper is limited to the available legal framework for the protection of child domestic workers. The focus, therefore, is on the existing labour laws and policies relevant to this sector of working children. However, due to the dearth of available laws directly dealing with them, other special laws were also examined including general provisions of the countries' respective Constitutions. Therefore, most of the legal protection laws or measures presented in this paper are neither domestic worker-specific, nor child domestic-specific. Nonetheless, the

recommendations embodied in this study lean heavily on legal and policy reforms: their enactment, amendment, formulation and resolute implementation.

The research encountered a number of difficulties. For one, the target respondents for the survey questionnaires required that they be both abreast with existing laws and at the same time, had a good knowledge of the situation of child domestic workers. Very few respondents possessed both qualifications. Thus, some responses were difficult to verify if indeed, they had legal basis. Some respondents were also not that confident to answer the questionnaires while a number did not even write back or acknowledge that they have received the questionnaires. Secondly, since most of the countries included in the research had no laws on child domestic workers, the questions (whether through interviews or e-mail correspondence) had to be reformulated in order to get the most information regarding whatever form of protection child domestic workers rely on within their own laws and policies. Furthermore, case studies could not easily be accessed because most of them are confidential.

Finally, this study was conducted within a period of less than two months. The data and all other information gathered and processed in this paper should be appreciated within this given timeframe.

## **II. LEGAL PROTECTION OF CHILD DOMESTIC WORKERS IN ASIA-PACIFIC: AN OVERVIEW**

(Bangladesh, Cambodia, China [including Hong Kong], Fiji,  
India, Lao PDR, Mongolia, Nepal, Pakistan and Vietnam)

This chapter presents the overview of the ten (10) countries (plus Hong Kong, SAR) in the Asia-Pacific. Data collected for each country is described in short narratives; but each of them also contains an annex where further elaboration of the legal and policy frameworks is presented in matrix form. The purpose of the matrix is to show the available legal and policy mechanisms on child domestic workers. The legal framework consists of labour laws supplemented by other legal documents such as the provisions of the Constitution and other special laws.

Explanation of the Matrix: Although there are laws in the matrices that obviously do not apply to child domestic workers, the assumption is that a number of them are applicable especially since there are no prohibitions to their applicability to domestic child workers that can be found within the provision of the laws. To emphasise, however, the distinction between laws that are children-specific, domestic worker-specific and those that are general in application, the **children-specific provisions** have been written in **bold print** while the *domestic worker-specific* provisions are in *italics*.

The format of the matrix follows the flow of the survey questionnaires. It starts with the legal framework using a rights-based approach; then, it is followed by protective measures and enforcement/monitoring mechanisms. The matrix also contains other policies and programmes relevant to children, mostly to the issue of child labour.

## BANGLADESH

The Government of Bangladesh recognizes the fundamental rights of its workers. These rights include the right of association, right to strike, right to organize and bargain collectively, right against forced labour and right to acceptable conditions of work. The right to association and right against forced or compulsory are provided for in the Constitution; while the others are enshrined in the various labour laws such as the Employment of Labour Act, The Factories Act, and Industrial Labour Relations Ordinance. However, there is no legislation that specifically covers workers in the domestic/household service.

The labour laws of the country provide for labour inspection, registration of worker's union, hours of work, minimum age for employment, and health and safety standards. They also provide penalties for violation of such laws. Bangladesh sets a standard of a 48-hour workweek with one day off. The Wage Commission sets the wages and benefits industry by industry. The Factories Act prohibits children below 14 years from working in factories. The Shops and Establishments Act bars employment of children below 12 years in commercial workplaces. However, the Ministry of Labour has fewer than 110 inspectors to monitor 180,000 registered factories and establishments. Outside of the export garment sector, there is no child inspection/monitoring enforcement.

With respect to child labour, the Government has enacted different labour laws addressing various sectors but none of these laws expressly deal with the plight of child domestic workers. It has formulated the National Plan of Action on Child Labour in order to better understand the problem and come up with legislation and enforcement, institution development, social security and rehabilitation of working children, prevention of child labour, and create awareness against child labour. It has launched various programmes in cooperation with international organizations such as UNICEF and non-governmental organizations (NGOs) for the prevention, elimination, and eradication of hazardous and worst forms of child labour. Such programmes also include advocacy, educational services, and crisis intervention.

The issues surrounding child domestic workers are presently being attended by the programmes of several NGOs with the support of the Government. Many of such programmes focus on education, vocational training, advocacy and other efforts to prevent children from entering the workforce.

Child domestic workers in Bangladesh are the largest and most open yet invisible form of child labour according to Shoishob, an NGO working with child domestics in Bangladesh. They are subjected to many forms of physical and sexual abuses and exposed to hazardous conditions close to servitude. Generally, they do not receive wages. Many of them are also victims of trafficking who are being forced into bonded labour and domestic work. Employers who abused domestic servants are criminally charged, however, impoverished families settle for financial compensation.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) under Convention No. 29 made the following notes and observations on the situation of child domestic workers in Bangladesh, These were published in 2002.

1. It has expressed concern on the large number of children who are working as domestic servants and that many of them work in hazardous and harmful conditions and are often vulnerable to sexual abuse and exploitation based on the report submitted by Bangladesh to the United Nations Committee on the Rights of the Child;

2. The Government states that forced child labour does not exist in Bangladesh, but due to extreme poverty in rural areas and urban slums, child labour exists. When the Committee requested information on the matter of child domestic workers, the Government provided no such information;
3. There are estimated 300,000 child domestic workers in Dhaka City. According to the National Report on Follow-up to the World Summit for Children prepared by the Ministry of Women and Children Affairs (MOWCA) in December 2000 the exploitation of children and adolescents is a problem in the country. They are often victims of violence like sexual harassment and rape;
4. The Country Programme Progress Report made by IPEC for Bangladesh from January to August 2001 states that one of the priority target groups during the period includes child domestic workers;
5. The question of child domestic labour is the focus of particular attention of the Government and of different organs and programmes of the United Nations (for example, the Committee on the Rights of the Child, the Working Group on Contemporary Forms of Slavery, and IPEC) and
6. The Committee noted the allegation of the World Confederation of Labour that the situation of child domestic workers in Bangladesh constitutes a violation of the Forced Labour Convention. It observes that even if child domestic work may not be necessarily be considered forced labour, it is necessary to examine such work both in terms of the conditions under which it is performed and in relation to the definition of forced labour, particularly as to validity of the consent given and the possibility of terminating employment, in order to determine if it is a situation within the scope of the Convention.<sup>12</sup>

The Bangladesh Domestic Workers' Association has asked the government to bring the services of domestic workers under the labour laws of the country so that those belonging to this sector could then negotiate for and fix duty hours, wages, period of leave and other benefits recognized under labour laws.<sup>13</sup> (See Annex 1 for Matrix)

## CAMBODIA

With a per capita income of US\$250 a year, Cambodia ranks as one of the ten poorest countries in the world. Three-quarters of the employed labour force is in agriculture. Industry takes up only 5 percent of the labour force and services the remaining 21 percent. Less than 10% of the entire workforce is engaged in wage labour, the rest being in small-scale units such as family farms or informal sector businesses. Therefore, it is no surprise that most working children do not work for wages, nor do they work in the industrial sector. Most working children are in the informal sector, in rural areas.<sup>14</sup>

<sup>12</sup> CEACR: Individual Observation Concerning Convention No. 29, Forced Labour 1930 Bangladesh (2002) <<http://ilolex.ilo.ch:1567/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6012&chapter=6&query=%23year%3D2002+%2B+Bangladesh%40ref&highlight=&querytype=bool&context=0>>.

<sup>13</sup> The Association generally conducts conferences, campaigns, rallies, and demonstrations for the recognition of domestic workers under the labour laws of Bangladesh. It is composed of domestic workers from different parts of the country. In one of its demonstrations, it submitted to the Labour Ministry a memorandum consisting of the following demands: (1) Recognition of the domestic workers as worker; (2) Legal rights and facilities for the domestics; (3) Appointment letter (contact letter) and Identity card for the domestics; (4) Minimum wages for the domestics and National minimum wage for the whole private sector workers; (5) Actions against killing, rape, burning and torture to the domestic workers; (6) Necessary step to stop kidnap & smuggle of women including domestic workers; (7) Health care and medical facilities for the domestic workers; (8) Education for the child domestic workers and for the children of the domestic workers and (9) "Workers Coloni" for the domestic workers and other low income workers.

<sup>14</sup> Athreya, Bama *Child Labor in Cambodia* (1995) <<http://www.iir.berkeley.edu/clre/publications/bama1.html>>.

The Cambodia Socio-economic Survey 1999 data indicates that the number of working children for the 5-17 age group is 672,083 or 16.5% of all children in this bracket. The incidence of child labour is greatest among children aged 14-17 years, *i.e.* about 42% of the children in this age group worked or had a job. The proportion of children aged 5-9 years who worked or had a job was negligible (about 2-3%), while 9-10% of children aged 10-13 years worked or had a job.

It was also estimated that there were 6,500 child domestic workers aged 14-17 years in Phnom Penh alone. This estimated number of domestic workers would need to be raised if children younger than 14 years were to be included. The high percentage of girl domestic workers was reported at 93%.<sup>15</sup>

The government is charged with the ultimate responsibility for the elimination of child labour. In protecting the fundamental rights of the children, Article 31 of the Cambodian Constitution provides that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the UN Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's rights and children's rights. Moreover, the 1997 Cambodian Labour Code defines the minimum age for employment as 15, although the law recognizes that children ages 12 to 15 can be hired to do light work provided it is not hazardous and does not interfere with their education. With regard to night and hazardous work, the minimum age is set at 18. However, the law is silent whether it covers the protection of child domestic workers. Article 1 (e) of the Labour Code simply provides that the law shall not apply to domestics or household servants, unless otherwise expressly specified, although these domestics or household servants are entitled to apply the provisions on freedom of union under the law. The government also enacted the Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings to protect both the rights of women and children. The UN General Assembly of 1994 defined trafficking as to include other illegal activities related to trafficking such as forced domestic labour, false marriages, clandestine employment and false adoption.

There are also other policies, programmes and mechanisms that the government and non-government organizations are taking into consideration. First are the advocacy monitoring and capacity building planning. Second is the prevention aspect - *i.e.*, cooperation for media campaign, community and school sensitisation, education to promote improved monitoring of children and sensitisation of local authorities. Third is legal protection which includes training of police and court staff. Last is the recovery and reintegration assistance through basic social work training of Social Action Staff and financial and technical assistance for selected crisis/rehabilitation centres. (See Annex 2 for Matrix)

## CHINA

As the number of children working in China is not known, it is impossible to assess how effectively the Chinese Government enforces child labour laws or prosecutes child labour law violators.

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<sup>15</sup> Working Papers: Country Paper Cambodia, The ILO\_Japan Asian Meeting on the Trafficking of Children for Labour and Sexual Exploitation, Manila (October 10-12, 2001).

## A. Laws in Place

The 1993 Constitution of the People's Republic of China provides for fundamental rights and duties that are applicable in general to citizens. Article 33 states that all citizens are equal before the law. The Constitution likewise ensures the freedom of assembly and association; however, the formation of autonomous or independent labour or trade unions by the workforce is prohibited. In Article 42, "Citizens of the People's Republic of China have the right as well as the duty to work. Through various channels, the state creates conditions for employment, enhances occupational safety and health, improves working conditions and, on the basis of expanded production, increases remuneration for work and welfare benefits..." The Constitution likewise provides specifically for the right of working people to rest (Article 43). It also provides for the equality of men and women in all spheres of life, in political, economic, cultural, social, and family life; applies the principle of equal pay for equal work to men and women alike and ensures the promotion of the all-round development of children and young people, morally, intellectually, and physically.

Corollarily, the new Labour Law which took effect on January 1, 1995, provides for protection of labour through the set standards regarding wage scales, hours of work, days of rest, social insurance and welfare, labour safety and sanitation and special protection for female staff or workers and juvenile workers. The right of workers to form unions and labour organizations are governed by another law which is the Trade Union Law promulgated last April 3, 1992.

### On Children

Under Article 15 of the same law, "Work units shall not employ workers who have not reached the age of 16."

There are other laws and regulations which are relevant to children. Aside from ILO Conventions 138 and 182 and the U.N. Convention on the Rights on the Child, the following provisions can be found in China's different laws. All are deemed beneficial to children:

Law on the Protection of Women's Rights and Interests, Article 22: "It is forbidden to employ women workers who have not reached the age of 16."

Compulsory Education Law, Article 18: "The State shall implement a nine-year compulsory education system." (1995)

Law on the Protection of Minors, Article 28: "Except for exceptions in separate State laws, no organization or individual shall employ persons under the age of 16." (1992)

Regulations on the Prohibition of Child Labour, Article 13: Grants labour administration departments the right to fine work units or individuals for employing child labour.

Notice on the Prohibition of Child Labour: Grants trade administration bureaus the right to fine or revoke the business licence of an employer using child labour. (1998)

## B. Protective Measures

The National Labour Law prohibits the employment of juveniles under the age of 16. However, there are no specific provisions regarding the hours of work of juvenile workers. Thus, the general provision on the hours of work which is not more than 8 hours per day or 40 hours per week applies to them. The law likewise prohibits overtime work exceeding 3 hour per day or 36 hours per month. Regulations promulgated in 1987 prohibit the employment of school age minors who have not completed the compulsory nine years of education. The Labour Law specifies administrative review, fines and revocation of business licenses of establishments that would illegally hire minors. Parents or guardians are also mandated to provide for children's subsistence. Despite provisions in the Labour Law regarding the protection of female and juvenile workers, there are no specific provisions addressing child domestic workers.

Although the Constitution provides for a nine-year compulsory education, in reality, many children in disadvantaged rural areas drop out from school and start working in various industries to alleviate their poverty. The law likewise prohibits forced and bonded labour including those perpetuated against children but these remain a serious problem in the country. Women and children are trafficked for purposes of prostitution or forced labour. The number of children working in contravention of the law is undetermined but there are certainly children who are engaged in agricultural work and Township and Village Enterprises in rural areas; while the children in urban communities take up jobs such as car washers, garbage collectors, and street vendors. Certain export industries like fireworks, garments and textiles, toys, sports equipment and games are reported to be hiring children in contravention of the law. However, no reports on domestic work are at hand except for children coming from other countries such as Vietnam, who are being trafficked to the country for such purpose.

The Law likewise provides for occupational health and safety standards but poor enforcement of such regulations continues to put the lives of workers, especially child workers at risk.

## C. Enforcement and Monitoring

The labour administrative departments are the ones in charge of supervising and inspecting employers in order to monitor whether they are in compliance with laws and regulations regarding labour. They have the power to stop any act in contravention of the labour law and order its correction. The powers of the labour supervisors and inspectors include investigation through visitation, inspection of labour spots and consultation on necessary data provided for by the employers.

Trade unions of various levels have the right to safeguard the legitimate rights and interests of labourers and supervise the employers in their compliance with the rules and regulations. Sanctions on violations of the Labour Law include, warnings, fines, and compensation for damages caused to the employees. Criminal responsibilities are imposed on employers guilty of forced labour, physical abuse or maltreatment of employees.

Hiring of juvenile workers in contravention with law warrants warning and an order for the correction of such practice. If the violation on the hiring of juvenile workers is serious, the labour administrator can revoke the business license of the employer.

#### D. Other Policies, Programmes and Mechanisms

China has also set up 2,763 courts to deal with cases involving juvenile delinquency and violation of children's rights, as well as 17 provincial committees for the protection of children. With regard to the problem of trafficking in women and children for purposes of prostitution and forced labour, the Ministry of Public Security, along with All China Women's Federation and other departments launched a campaign against trafficking in women and children. Rescue operations for trafficked victims and the execution of convicted traffickers were included in the campaign. The agencies involved in this program against trafficking are the Ministry of Public Security, the Supreme People's Court, the Supreme Procuratorate, the Ministry of Civil Affairs, the Central Office in Charge of Comprehensive Management of Public Order, and the Legislative Office of the State Council. In addition, the local government officials of Yunnan province have joined the Mekong Sub-Regional Project to Combat Trafficking in Children and Women which is sponsored by the ILO and other UN agencies, to re-enrol former child workers in school. (See Annex 3 for Matrix)

### **HONG KONG, SAR**

Hong Kong reverted from British to Chinese sovereignty last July 1, 1997. Hong Kong now enjoys a high degree of autonomy in all aspects except in defence and foreign affairs as stated in its Basic Law. The human rights of its residents and citizens are respected in general although there are still some incidence of human rights violations which include trafficking in women and children for purposes of prostitution and forced labour. China also has declared ILO Convention Nos. 29, 87, 98, 105, 111 and 182 applicable to Hong Kong, SAR.

#### Laws in Place

##### A. Fundamental Rights

The Hong Kong Special Administrative Region (SAR) has promulgated on June 6, 1991 its Hong Kong Bill of Rights Ordinance. It contains the fundamental rights of its residents in general. It specifically provides that all Hong Kong residents are equal before the law. Both men and women shall have an equal right to the enjoyment of all civil and political rights. It also specifically prohibits slavery or servitude and all forms and forced or compulsory labour. It likewise provides for the freedom or liberty of movement and freedom of association. Article 20 provides for the rights of the children to measures of protection without distinction and the right to be registered and be given a name.

##### B. Protective Measures

While there seems to be no specific ordinance in place that is focused on child domestic workers, there exists the Employment of Children Regulations that provide for the standards on the hiring or employment of children. These regulations govern the employment of children in all economic sectors. A child means a person under the age of 15 years. Among the provisions of the Regulations are: 1.) Children aged under 15 are prohibited from working in all industrial undertakings; 2.) Children aged 13 and 14 may be employed in non-industrial establishments, subject to the condition that they attend full-time schooling if they have not yet completed Form III of secondary education and to other conditions which aim at protecting their safety, health and welfare and 3.) Children under the age of 13 are prohibited from taking up employment. However, for the purposes of art and training, the Commissioner for Labour may grant special

permission for children to be employed as entertainers, subject to certain stringent conditions as the Commissioner may specify, such as ensuring a minimum of 9 years of education and protecting their safety, health and welfare. The hours of work for juveniles between 15 to 17 years of age is limited to not more than 8 hours per day and 48 hours per week which must be between 6 am to 11 pm. Overtime work is prohibited for all workers under the age of 18 in industrial establishments. Only 16 to 17 year old males are allowed to work in dangerous trades. The Basic Law provides for the general prohibition against forced or bonded labour by children. However, as earlier stated, there were no reported cases on the occurrence of bonded labour by children except for children trafficked from other countries for purposes of prostitution, marriage or forced labour.<sup>16</sup>

The main law governing both foreign and local workers (including domestic workers) is the Employment Ordinance. Chapter 1 of this ordinance states that it applies to all employees but provides for a few exceptions, one of which is in case of a family member who lives in the same dwelling as the employer (Chap. 1(4)).

All employees covered by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection including payment of wages, restrictions on wage deductions and the granting of statutory holidays, etc. Employees who are employed under a continuous contract are further entitled to such benefits as rest days, paid annual leave, sickness allowance, severance payment and long service payment, etc. An employee who works continuously for the same employer for four weeks or more, with at least 18 hours in each week is regarded as working under a continuous contract. (Chap. 1)

There is no statutory minimum wage except for foreign domestic workers. Wages are customarily fixed by individual agreements. However, the law provides that wages shall not include the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer (Chap. 3) although these items can be validly deducted from said wages. Furthermore, the employer should pay wages soon as practicable but in any case not later than seven days after the end of the wage period. An employer is required to pay interest on the outstanding amount of wages to the employee if he fails to pay wages within seven days when it becomes due.

Since its enactment in 1968, the Employment Ordinance has come to cover a comprehensive range of employment protection and benefits for employees including:

- Rest days - not less than one rest day in every period of seven days (Chap. 4)
- Holidays with Pay - if employee has been employed under a continuous contract for not less than three months (Chap. 4)
- Paid Annual Leave - for employees with continuous contract for every 12 months; entitlement increases progressively from seven days to a maximum of 14 days according to length of service (Chap. 4)
- Sickness Allowance - sum equivalent to four-fifths of the normal wages which the employee would have earned if he had worked on the sickness days (Chap. 5)
- Maternity Leave Pay - equivalent to four-fifths of the employee's normal wages to be paid for a period of 10 weeks (length of leave); wage period should be a period of not less than 28 days and not more than 31 days immediately preceding or expiring on the commencement of her maternity leave (Chap. 6).

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<sup>16</sup> Employment Ordinance, Chapter 57 (2002) <<http://www.info.gov.hk/labour/eng/legislat/content2.htm>>.

Severance Payment - where employee is laid off by reason of redundancy entitled to not less than 24 months under a continuous contract (Chap. 10)

Long Service Payment - employee entitled to not less than 5 years under a continuous contract where employee is dismissed not due to his serious misconduct, not by reason of redundancy, contract expired without being renewed, employee dies, employee resigns on ground of ill health, and employee, aged 65 or above, resigns on ground of old age but. (Chap. 10)

Employment Protection – right against illegal or unjustified dismissal (Chap. 9)

Termination of Employment Contract - right to termination by due notice or wages in lieu of notice (Chap. 8)

Protection Against Anti-Union Discrimination – membership and participation in trade unions (Chap. 11)

The Employees' Compensation Ordinance, Chapter 282 also makes an employer liable for compensation in respect of injuries sustained by employees as a result of an accident arising out of and in the course of employment; or in respect of occupational diseases specified in the Ordinance suffered by the employees.

While there is no law that specifically prohibits trafficking, there exist various laws and ordinances that allow law enforcement agencies to take action against traffickers.

There is a Child Care Centre Law that prevents unsuitable persons from providing child care services and facilitates the formation of mutual help child care groups. School in Hong Kong is free and compulsory for all children for nine years, consisting of six years of primary school and three years of junior secondary school.<sup>17</sup>

### C. Enforcement and Monitoring

The Labour department through its various divisions enforces regulations and ordinances pertaining to Labour and monitors compliance or violations to the law. It conducts regular workplace inspections and in the first ten months of the previous year, it has discovered 6 violations of the Employment of Children Regulations. Some of the cases resulted to convictions and fines. The Factory Inspectorate Division has also been restructured to strengthen its safety and health promotion and enforcement programme. The Social Welfare Department is the one in charge in cases of child abuse.

The Government likewise provides for legal aid to those who choose to pursue legal proceedings against an employer in the field of trafficking. Immunity from prosecution is often made available to those who assist in the investigation and prosecution of traffickers. (See Annex 4 for Matrix)

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<sup>17</sup> *Education Around the World Hong Kong* (2002) <[http://www. Ed.gov/offices/OUS/PES/int\\_hong\\_kong.html](http://www.Ed.gov/offices/OUS/PES/int_hong_kong.html)>.

## FIJI

Fiji is a small island nation in the South Pacific with multicultural, multiethnic and multi-religious population. It made continuous progress toward the restoration of a more responsive and democratic government, as the amended Constitution approved in 1997 came into effect in July. The provisions that amended the 1990 Constitution encourage multiethnic government while protecting traditional Fijian values. The Constitution also includes a strengthened bill of rights and a compact designed to protect the rights of all citizens. It alters the official name of the country to "Republic of the Fiji Islands" and designates all citizens "Fiji Islanders," avoiding designations specifying ethnicity.<sup>18</sup>

The government, in order to fully protect individual rights, constitutionally mandated the establishment of Commission on Human Rights which is empowered to monitor and investigate human rights abuses. It is also a signatory on several treaties and convention guaranteeing the protection of these rights.

The government of Fiji, being also a signatory on the Convention on the Rights of the Child, its legislation policy is geared toward the enactment of laws providing for the welfare of the children rights, but due to its failure to effectively implement these laws and its failure to ratify the Convention on Minimum Age (ILO 138), child labour is emerging to be one of the country's major problems.

The law regulating child labour is governed by Employment Act of 1965 as amended by employment ordinance of 1991. The law states that children under the age of 12 may not be employed in any capacity and that no one under the age of 17 may be employed in industry or work with machinery. Although the law provides certain protection to child labour, its effective implementation is another problem. Providing for a very low minimum age requirement for work, coupled with the country's economic problems have resulted to an increase in the number of working children.

Two main forms of child labour are apparent in Fiji. The first one refers to homeless children working in the informal sector. Family members working on family farms or businesses comprise the second category of child labour. This includes many children in the rural sector who are engaged to some degree in export production.<sup>19</sup> Although no sufficient data, statistics or information is available, Fiji's Ministry for Women, Social Welfare and Poverty Alleviation in its Committee Report confirms the existence of domestic workers in the country commonly called as house girls.

Unfortunately, Fiji does not have specific laws protecting child domestic work nor is there any express reference in its labour law about child domestic workers. This notwithstanding, there are many legal provisions in Fiji which deal with the protection, care and social welfare of child workers, though some of them do not expressly state that they are applicable to child domestic workers. Still, it is assumed that, in the absence of an express prohibition, these provisions will cover children engaged in domestic work.

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<sup>18</sup> *Country Report on Human Rights Practices for 1998: Fiji* (February 1999)

<<http://www.usis.usemb.se/human/human1998/fiji.html>> [hereinafter *Country Report: Fiji*].

<sup>19</sup> *Internationally-Recognized Core Labour Standards in Fiji, Report for the WTO General Council Review of the Trade Policies of Fiji* (9-10 April 1997) <<http://www.itcilo.it/english/actrav/telearn/global/ilo/standard/fiji.htm>>.

## Child Workers Rights

The 1997 Constitution of Fiji generally accords children the same rights and protection as all adult citizens. The Bill of Rights provisions found in Chapter 4 guarantee several individual fundamental rights: the right to life, property and personal liberty, freedom from servitude and forced labour, the right against cruel or degrading treatment, freedom from unreasonable searches and seizures of property, the right to a fair trial before a court of law, freedom of speech and expression, freedom of assembly and association, freedom of movement, the right to equality, the right to education and the right to privacy. Specifically with regard to labour relations, the same chapter of the constitution provides for the right of workers to form and join trade unions, to organize and bargain collectively and the right to fair labour practices, including human treatment and proper working conditions.

The Fiji Constitution specifically prohibits forced labour, including forced and bonded labour by children. There have been media reports, however, that a form of bonded labour may be practiced on remote copra plantation on an outer island. Other media reports also indicated that forced labour condition may exist in certain garment manufacturing plants.<sup>20</sup>

In compliance with the mandate of the constitution, various provisions in the laws offer full protection against torture or other cruel, inhuman or degrading treatment or punishment. However, there is no legal aid available to children who get in conflict with the law. There is no legal definition of the age at which children no longer need parental consent to receive certain health services or when they have complete right to privacy and confidentiality. Criminal proceedings are often lacking in providing sufficient protection to children from exposure to continued abuse or violence.<sup>21</sup>

## Protective Measures

The Employment Act of Fiji is the primary law that contains specific provisions governing the regulation and protection of child workers. The law for the purpose of employment classifies child workers either as a "child" which means a person who has not attained the age of fifteen years or as a "young person" which means a person of or over the age of fifteen but under the age of eighteen. As provided for in Part VIII- (Women, Young Persons And Children) of the law,

- no child under the age of twelve shall be employed in any capacity except when such child is employed in light work suitable to his capacity in an agricultural undertaking which is owned and operated by the family of which he is a member.
- A child shall be employed only upon a daily wage and on a day-to-day basis and upon the terms that he returns each night to the place of residence of his parent or guardian.
- No child shall be employed in any employment, which in the opinion of the proper authority is injurious to health, dangerous, or otherwise unsuitable.
- No employer shall continue to employ any child or young person after receiving notice either orally or in writing, from the parent, guardian or proper authority, that the child or young person is employed against the wishes of such parent or guardian.
- No child shall be employed in any industrial undertaking or undertaking in attendance on machinery.

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<sup>20</sup> *Country Report: Fiji, supra* note 18.

<sup>21</sup> Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention on the Rights of the Child* (1996).

- A child shall not be employed or permitted to be employed for more than six hours in a day nor for more than two hours without a period of leisure of not less than thirty minutes, and if such child is attending school the total time spent in employment and at school shall not exceed seven hours in day.
- No young person shall be employed or permitted to be employed for more than five hours a day without a period of leisure of not less than thirty minutes or for more than eight hours a day, and if young person is attending school the total time spent in employment and at school shall not exceed nine hours a day.
- There is also the restriction on employment of women and young persons on night work.
- Employers of children and young persons are required to keep registers indicating the ages of their employees, the date of commencement and termination of their employment, the nature and conditions of their employment and such other particulars as may be prescribed, and shall produce the register for inspection when required by proper authority.

Consistent with the purpose of providing for the welfare of children in general as expressed in the Convention of the Rights of the Child, several laws are also in place which can be invoked as additional legal protection in promoting the interest of child workers. The Juvenile Act provides specific provisions for the protection of children in conflict with the law. It also empowers some government institutions to remove, search or place in safety any child abused, neglected or ill treated. The law also makes the act of ill treatment, neglect or abandonment of a child a criminal offence.

#### Enforcement/ Monitoring

The Ministry of Labour and Industrial Relations is the government's agency entrusted to monitor the status of child labour employment, compliance with the requirement of minimum age for employment, setting the minimum wage for certain sectors, enforcement of safety standards and, in general, the enforcement of Fiji's Employment Act. As provided for in the Fiji Committee Report on the Convention on the Rights of the Child, the government established several administrative monitoring and protective mechanisms on children's rights and welfare. There is also the Human Rights Commission empowered to investigate allegations of human rights violations.

#### Other Policies/Programmes/Mechanisms

In resolving disputes and in the application of the law, it is the policy of the state to make the best interest of the child as the paramount consideration, as reflected in various laws such as the Matrimonial Causes Act, Juvenile Act and the Penal Code. Although education is not yet compulsory, the government provides free education for the first eight years of the child as provided for in the Education Act. There is also a conscious effort on the part of the government to uplift the conditions of Fiji women by providing gender sensitivity training and awareness in strategic sectors of society and by promoting equal opportunities for employment regardless of sex. (See Annex 5 for Matrix)

## INDIA

The Constitution of India recognizes the fundamental rights of its workers, which include the right to mobility, right against involuntary servitude, right against debt-bondage and right to organization. The Bonded Labour System Act “frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded labourers by the State.”

The protective measures of labour inspection, employment contract, social security, medical benefits, minimum wage, and minimum age for employment are also accorded to the workers. Article 24 of the Constitution prohibits the employment of children below 14 years in any factory, mine, or any hazardous employment. The Factories Act, Mines Act, and Plantations Labour Act have child labour provisions concentrated on the aspects such as reducing working hours, increasing minimum wage and prohibiting employment of children in hazardous work.

Child Labour (Prohibition and Regulation) Act of 1986 seeks to ban employment of children below the age of 14 years in specified occupation and processes and regulate the working conditions of children in other employment. In addition, the Act lays down penalties for employment of children in violation of the law. The Act does not include child domestic workers inasmuch as the national labour laws do not specifically provide for domestic work or household employment. Furthermore, an examination of the child labour related laws gives the impression that the Government does not consider child domestic work as illegal or classify it as a hazardous employment that needs to be regulated or prohibited. One study<sup>22</sup> even shows that 26.5% of child domestic workers are employed in the homes of government employees. There is an order banning government employees from employing child domestic workers. Under this order, the Government would be able to initiate disciplinary action against violators of the provision but there is lack of intervention and follow-up action.

The Children (Pledging of Labour) Act states that any agreement to pledge the labour of children is void. The Plantations Labour Act and Minimum Wage Act allow children to work in the plantation only where a certified surgeon grants a certificate of fitness.

The Government has many programmes and policies on child labour. There is the creation of National Authority of the Elimination of Child Labour, an agency that enforces the National Policy on Child Labour, and Elimination of Child Labour Programme. It has also started to implement the National Child Labour Projects by the government. In case of violation of the Child Labour Act, the court orders the payment of compensation by the offending employer.

A group of NGOs in India are campaigning and lobbying for the inclusion of child domestic worker as a prohibited occupation in the 1986 Child Labour Act because of the harsh reality that many of the child domestic workers are abused, tortured, and some are even killed by their employers.

The Government has come up with several plans of action and programmes for the elimination of child labour. It has consistently and openly upheld its commitment against child labour. However, lack of enforcement in the government's efforts is the main reason why the problem persists.

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<sup>22</sup> This is a study conducted by Peace Trust and 15 other NGOs in 19 major districts between January and March 2000. Ramya Ramya, *Study Shows Lack of Follow-up Action*. THE HINDU DAILY NEWSPAPER, September 20, 2000.

The Government finally passed on November 28, 2001 the 93<sup>rd</sup> Constitutional Amendment making education for children in the age group of 6-14 years a fundamental right. The Bill pending since 1997 was passed by 346-0 votes. The amendment provides that “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine.” The passage was hailed by civil society organizations. It was considered as a good stepping-stone for further achievements. (See Annex 6 for Matrix)

## **LAO PEOPLE’S DEMOCRATIC REPUBLIC**

In Lao PDR, hardly any data exists on the number of working children, the terms and the manner in which children have been recruited for work. In the context of the largely agrarian and rural economy of Laos, children participate in many economic activities. Traditional farming technique with little returns encourages the utilization of children as additional labour. Many children also assist in livestock raising, weaving and local handicraft production. While the participation in family economic activities is considered as preparation for the future, it sacrifices the child’s education. Young girls are almost often at a double disadvantage as they assume considerable domestic obligations. However, more disturbing are recent trends which show that children and young persons are increasingly found working outside their family environment, often in conditions that are exploitative and damaging to their health and well being. In Laos, children can be found working in garment factories, brick making factories, on construction sites, at market places, or as street vendors. Children also collect garbage or work as domestic helpers at their employers’ home.<sup>23</sup>

Under the Lao PDR Labour Act, children between 15 and 18 years of age may be recruited for employment provided that they do not work for more than six hours per day. It accordingly provides that children may work for their families, provided that such children are not engaged in dangerous or difficult work. The law likewise prohibits forced and bonded labour performed by children under the age of 15. Currently however, there is no law that exclusively addresses the issues of child domestic workers.

Nonetheless, the government exerts effort in enhancing the protection of these children against child labour. In 1991, Lao PDR ratified the Convention on the Rights of the Child (CRC) and signed the Declaration and Plan of Action of the World Summit for Children, emphasising its commitment to the survival, protection and development of children in the 1990s. The Lao government devoted itself to protecting and educating children as well as creating favourable conditions and providing facilities so as to enable them to develop to their fullest physical and mental potential. In the same year, Lao PDR Constitution was declared. The last paragraph of Article 20 of the Constitution specifies the government emphasis on the welfare of the mothers and children. It stresses the responsibilities of the concerned ministries and organisations involved in implementing specific rights and giving protection and care to children. The Family Law of 1990 also stipulates the responsibilities and commitments of parents towards their children. The Penal Law of 1990 have fixed measures dealing particularly with persons under the age of 18, stipulating that anyone who violates children will be harshly dealt with. In 1992, the National Commission for Mothers and Children (NCMC) was established and drew up the National Programme of Action for Children. In 2000, Lao PDR joined the ILO’s worldwide

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<sup>23</sup> Working Papers: Country Paper Lao PDR, The ILO\_Japan Asian Meeting on the Trafficking of Children for Labour and Sexual Exploitation, Manila (October 10-12, 2001).

International Programme on the Elimination of Child Labour (IPEC) with the signing of the Memorandum of Understanding between ILO and the Ministry of Labour and Social Welfare.

There are also other policies, programmes and mechanisms in protecting the rights of the children. One of the programmes is focused on planning, research and capacity building *i.e.*, cooperation for awareness raising and support participation of government in regional events, research and situation analysis on child labour and training in core skills for social work. The other programme focuses on prevention - community sensitisation, empowerment and planning activities for improved protection and monitoring of children. The third focus is on advocacy, monitoring and legal literacy training for children. (See Annex 7 for Matrix)

## MONGOLIA

Until 1990, the Mongolian government was modelled after the Soviet System where only the communist party was permitted to function. The democracy movement in Eastern Europe influenced the Mongolian people to launch several protests demanding for reforms. The dramatic shift toward democratic reform started in the early 1990s when the first organized opposition group, the Mongolian Democratic Union appeared, which led to the holding of the country's first multi-party election in July 1990. The new government, thereafter, created a new constitution, which established Mongolia as an independent, sovereign republic, guaranteeing a number of rights and freedoms and providing that the president would be elected by popular vote rather than by the legislature. The new constitution restructured the legislative branch of the government, creating a unicameral legislature, the State Great Hural.

The new Constitution adopted in 1992 by the Mongolian Parliament has integrated international human rights standards and is key to the promotion and protection of human rights in the country. Major international human rights instruments have been ratified by the Parliament. The government's recognition of individual rights led to the creation of the National Commission on Human Rights which is empowered to monitor and investigate human rights abuses.

Although the Government indeed generally respected the human rights of its citizen, still, problems remained in some areas. As stated in its Country Report on Human Rights Practices, 2001, there were some instances of forced labour, and of some women seeking overseas employment who may have ended as victims of trafficking schemes. In fact in October 2001, the National Commission on Human Rights published its first public report, which criticized the Government for abuses and faulted the Parliament and the Courts for failure to fully protect human rights.

Child labour in Mongolia continues to be one the major economic and social problems in the country. Due to increasing economic pressures, fewer children are staying in school. These children most often help in family work but reports of children working in factories or coalmines have increased. There are even reports that female street children sometimes face sexual abuse. According to Mongolia's Worst Forms of Child Labour Data, children are also employed informally as domestics and usually receive little or no wages. In some of these cases, the practice of adoptive servitude, in which families adopt young girls who serve as domestic workers is socially accepted.

Although Mongolia is not yet a signatory to ILO Convention 138 on Minimum Age, the Mongolian Labour Law of 1991 as amended in 1993 prohibits children under the age of 16 from

working. However, those who are 14 or 15 years of age may work up to 30 hours per week with parental consent. Those under 18 years of age may not work at night, engage in arduous work, or work in hazardous occupations such as mining and construction. Enforcement of these prohibitions, as well as other labour regulations, is the responsibility of state labour inspectors assigned to regional and local offices. These inspectors have the authority to compel immediate compliance with labour legislation, but enforcement is limited due to the small number of labour inspectors and the growing number of independent enterprises.

Unfortunately, the country's labour laws do not include any express reference to the rights and available protection for child domestic workers. In fact, there is no available information which sufficiently discusses the status and condition of child domestic work in the country.

### Child Workers Rights

Provisions related to the employment of children are incorporated in the Constitution, the Labour Code, the Education Law, the Law on the Rights of the Child, Population Policy of Mongolia and in several other Resolutions.<sup>24</sup>

The 1992 Mongolian Constitution provides several fundamental rights applicable to every individual. Chapter 2 entitled Human Rights and Freedom, guarantees the following rights; the right not be discriminated, the right to life, the right to healthy and safe environment, the right to property, the right to free choice of employment, favourable conditions of work, remuneration, rest and private enterprise, the right against forced work, the right to the protection of health and medical care, the right to education, freedom of association, freedom of expression and freedom of movement within the country.

Article 5 of the Mongolian Labour Code entitled Basic Rights and Obligations of Worker provides that the worker is entitled: to choose the occupation according to his specialisation, endowment and interest, to be ensured with healthy and safe working conditions, to receive wages commensurate with the results of his work, to defend his rights and interests through freely organized associations, to enjoy the right to rest, pension, allowances and other benefits as prescribed in the legislation of Mongolia.

### Protective Measures

The Labour Law of Mongolia provides that only persons who has reached 16 years of age may be admitted to employment. Persons who are 15 years of age may be admitted to employment only with the permission of their parents and or representatives. Children 14 years of age may be allowed to take up employment for the purpose of imparting vocational guidance and work experience with the consent and under the supervision of their parents and representatives. The employment of persons under 18 years of age in jobs under arduous, noxious or hot conditions or in underground work shall be prohibited. Night or overtime work or work on public holidays or weekly rest days are not allowed. A worker under 18 years of age shall be admitted to employment only after he has undergone medical examination and half-yearly medical check-ups shall be compulsory until he reaches 18 years of age. Where a worker under 18 years of age is given a medical certificate testifying against the continuation of his assigned job, the administration is obliged to provide the worker with another job meeting his health requirement.

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<sup>24</sup> Working Papers: Country Paper Mongolia, The ILO\_Japan Asian Meeting on the Trafficking of Children for Labour and Sexual Exploitation, Manila (October 10-12, 2001).

If a work performed by a worker under 18 years of age proves to be prejudicial or is likely to be prejudicial to his health, the contract of employment shall be terminated at the demand of his parents, guardians or wards or the body responsible for the supervision over the implementation of the labour legislation. It is forbidden to employ women and minors in jobs connected with lifting or carriage of loads whose weight exceeds the limit prescribed for this case by the central state administrative body responsible for labour questions.

The Law on the Protection of Child Rights provides that it is forbidden to engage children in work which is likely to harm their health and morals, exploit child labour as a means of profit-making or compensate their labour inadequately, force them to beg or illegally use their names for enrichment.

#### Enforcement/ Monitoring

The Ministry of Social Welfare and Labour through the State Labour Inspectors exercises supervision of the implementation of labour legislation. The latter works under the guidance of the Governor of the appropriate territorial level. There is also the National Commission on Human Rights empowered to monitor and investigate human rights abuses. The Department for Women and Youth Issues, together with the Ministry of Social Welfare and Labour, initiate programmes and policies to prevent and counter violence against women and child abuse.

#### Policies/Programmes

In compliance with the Memorandum of Understanding on Human Rights between the Government of Mongolia and the United Nations Country Team, several programmes were formulated and implemented by the government for the purpose of reinforcing Mongolia's commitment to human rights. A working group has been established to improve the Law on the Protection of Child's Rights in line with the newly adopted international instruments. Amendments with regard to child labour are envisaged. The Criminal Code of Mongolia is currently under revision. The draft Criminal Law has created a separate chapter on crimes against children, family and social morals. The draft describes the crimes in more detail and adds some new crimes such as forcing labour against a child.<sup>25</sup> (See Annex 8 for Matrix)

### NEPAL

Children in Nepal are employed in over 65 sectors throughout the country. In the rural areas, children are mostly employed to do farm work or any agricultural job. In the urban areas, there is a rapid increase in the employment of child domestic workers (better known in Nepal as DCLs or Domestic Child Labourers). In practice and by law, workers are classified into either Formal or Informal Sector. The Formal Sector covers those who work in establishments, factories, offices, etc. On the other hand, the Informal Sector includes DCLs. DCLs are further classified as Direct and Indirect Workers. Direct workers are those who are involved directly in some kind of manual job such as waiters, day labourers, house servants, garment workers and carpet weavers. On the other hand, Indirect workers are those DCLs who help parents in household works, traditional handicraft, farming, etc.

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<sup>25</sup> *Id.*

Only the workers in the formal sector are covered by Labour Laws. In fact, according to Ms. Shanti Adhikari of Nepal's Children-Women in Social Service and Human Rights, the Child Labour Rights is silent about the informal sector. Thus, DCLs are not protected by their national laws, for they are not even recognized to begin with. Further, the Executive Director of Child Workers in Nepal (CWIN), Gauri Pradhan has also said that only 10% of the country's Child Workers would be benefited with the passage of The Child Labour (Prohibition and Regulation) Act-2056 B.S in 2000, because "more than 90% of the under-aged labourers are found in the unorganised and informal sector. Thus, it will not be fully able to solve the problem of child labour.

As to those children covered by the national laws, several advocates of the abolition of child labour and slavery as well as non-governmental organizations claim that national laws in reality do not provide for adequate and efficient methods of enforcement to protect the children from further exploitation. According to the latest census conducted (2001):

- There are 2.6 million employed and 90% of such are DCLs working in the informal sector, the major sector of which is the domestic sector.
- 15% of the children working as DCLs are from ages 5 – 9, and 30% are 10 11 years of age;
- 46% of the total DCLs are female;
- Work participation of the children coming from the rural areas is nearly two times higher than that of the urban children.

There have been questions as to whether DCL is the worst form of child labour. According to Tarak Dhital, of the CWIN, in his article, there is a general belief that DCLs are enjoying a relatively comfortable life and it is a good option out of poverty. They even get the chance to go to school while working as a domestic. He stresses, however, that in reality, majority of the DCLs are in a miserable condition. The working condition of some DCLs give enough grounds to consider it as the worst form of child labour, because their fundamental rights to education, and to have a normal and safe development, are confined within the four walls of the households. It is also within these walls that they are subjected as well to different kinds of abuse, torture and sexual harassment. Furthermore, more than half of the DCLs do not get paid, work for long hours until midnight, and are in debt bondage. These are some of the situations faced by DCLs that it is considered by most as the worst form of child labour.

Paragraph 18 of the Children's Act, 2048 of 1992 pertains to protection of children from engaging in hazardous work, and goes on to provide that "[n]o child shall be engaged in work that is likely to be harmful to the child's health or to be hazardous to the child's life." However, said Act does not specifically list those jobs which the law considers as hazardous or "risky jobs" for the children. Some sectors that might belong to this list may be inferred and/or implied by reference to the other paragraphs of the act, those sectors that are harmful to the child's health or hazardous to the child's life. In paragraph 16, children are prohibited from working in immoral professions, or to sell or aid in the selling and/or distribution of alcoholic drinks, narcotic drugs or any other drugs for that matter. Still, there is no reference that domestic work is among the hazardous jobs.

The Children's Act of 1992 contains provisions that protect the welfare of children labourers in general. Said act also prohibits children under 14 years of age from working in hazardous occupations; working at night time; working for more than 3 hours without a break in between, etc.

However, while there are several laws that protect the interest and welfare on the country's child labour sector, these laws do not specifically pertain nor address the DCL sector. In fact, the Labour Act, Trade Union Act and even the Children's Act 2048 of 1992 and the latest Children's Act 2056 of 2000 are silent with regard to treatment and protection of DCLs. (See Annex 9 for Matrix)

## **PAKISTAN**

There are about 10 million child workers in Pakistan, 8 million of which are under 15 years of age and 6.7% are female child workers found in domestic help. These children have to work for 15 hours each day, seven days a week. The government usually omits the exact numbers of working children under 10 years of age, because these children are not considered part of the labour force.

Child labour is common and results from a combination of severe poverty, employer greed, and inadequate enforcement of laws intended to control it. While much of child labour is in the traditional framework of family farming or small business, the employment of children in larger industries is also widespread. Child labour is widely employed in the carpet industry, most of which is family-run. Children have also been employed in other export industries, such as textiles, leather tanning, surgical instruments, and sporting goods, though the extent is unclear.

The Constitution of Pakistan provides the fundamental rights afforded to labourers such as right to association, to organize and bargain collectively, and as well as prohibition of forced or compulsory labour. It also provides for protection against child labour. In fact, there is a minimum age for allowing a child to work. However, the government does not provide for mechanisms and programmes to enforce such laws and prevent the widespread hiring of children below 15 years of age. Rescue operations and different support programmes for child labourers are currently being conducted and done by several non-governmental organizations, with little help and support from national laws or legislation. (See Annex 10 for Matrix)

## **VIETNAM**

### Introduction

In the field of Labour, the Government of Vietnam is cooperating with the International Labour Organization (ILO) and international donors for the improvement of the implementation of existing labour laws and for the drafting or amendment of labour and labour-related legislation. In fact, the National Assembly approved last April of 2002 the amendments of certain provisions in the Labour Code pertaining to Labour Standards. Such amendments will take effect on the 1<sup>st</sup> day of January, 2003.

### Laws in Place

#### A. Fundamental Rights

The Socialist Republic of Vietnam has no special legislation that focuses mainly on child domestic workers. While the 1992 Constitution of Vietnam provides for the basic or fundamental rights of all its citizens and for the protection of labour in general, it has a Labour Code that deals specifically with labour standards and labour relations. The Code also contains specific

provisions for the protection of juvenile workers and house helpers or domestic workers. Thus, in its general provisions (Article 2), it states that the Labour Code “applies to all workers, and to all organizations or individuals employing workers under a labour contract in all economic sectors and all forms of ownership.” It further states that the Labour Code “also applies to trainees and apprentices, domestic helps, and the other categories of workers...”

Chapter V, Article 56 of the 1992 Constitution of the Socialist Republic of Vietnam states that “The State shall enact policies and establish regimes for the protection of labour. The State shall establish working times, wage scales, regimes of rest and social insurance for State employees and wage-earners; it shall encourage and promote other forms of social insurance for the benefit of the working people.” The standards for wage scale, working time, time of rest, and social insurance are provided for by the Labour Code. However, the minimum wage is determined from time to time based on various factors.

The Constitution likewise provides that “all citizens are equal before the law” and in Article 63, it provides specifically for the equality of rights between male and female in all fields-political, economic, cultural, social and the family. The same article further provides that “Men and women shall receive equal pay for equal work.”

The Constitution also protects the freedom of its citizens concerning mobility or movement and assembly or forming associations. It likewise states that “every citizen shall enjoy the inviolability of the person and the protection of the law with regard to his life, health, honour and dignity” and in Article 5 of its Labour Code, maltreatment of workers and the use of forced labour in whatever form are prohibited.

In Article 66, it states that “The family, the State, and the society shall create favourable conditions for young people to study, work, relax, develop bodies and minds...,” thus, children who are qualified under the law are allowed to work provided that they do so within favourable conditions.

The Labour Code and the Constitution have certain provisions regarding the formation of unions and collective bargaining but under certain restrictions. Article 53 of the Labour Code states that “the scope of activities of the provisional trade union organizations shall be determined by the Government in cooperation with the Vietnam General Confederation of Labour.”

## B. Protective Measures

The Labour Code provides for the standards regarding wages, hours of work, time or day of rest, occupational health and safety, and social insurance. The minimum age for children to be allowed to work is 15 years. Thus, in Article 6 of the Labour Code, a worker is defined as a “person of at least 15 years of age who is able to work and has entered into a labour contract.” Article 119 of the same Code further defines juvenile workers as “workers under 18 years of age.” The law prohibits the hiring of children under 15 years of age, but allows as an exception, the hiring of such children in certain categories as determined by the Ministry of Labour, Invalids and Social Affairs (MOLISA). The law also provides that trainees or apprentices for vocational training in establishments must be at least 13 years of age. In cases involving the employment or training of such children under 15 years of age, the agreement and supervision of the children’s parents or guardian is required. For the protection of juvenile workers, a separate record containing the full name, date of birth, work assignment, and periodical health check results must be kept and be presented to labour inspectors upon request. The hours of work of juvenile must not exceed 7 hours a day or 42 hours in a week. Overtime and nighttime work is allowed only in

certain categories of occupation in the list of MOLISA. The Code also provides in Article 121 that “an employer may only employ juvenile workers in work suitable to their health so as to ensure the development of their body, mind and personality, and is required to be concerned with the care of juvenile workers as regards their work, wage, health, and training in the course of their employment.” The prohibition on the employment of children in hard, dangerous work and work exposed to harmful substances is likewise stated in the same article.

While the code allows the employment of juveniles at least 15 years of age as household helpers, there is no available information on whether domestic work is under the categories determined by the MOLISA which allows for the employment of children under 15 years of age. However, the Labour Code has specific provisions for the protection of persons employed to help in households. The labour contracts of such employees may either be oral or written. Remuneration, time of work, time of rest and allowances of domestic helps are agreed by contract. The law also states that the employer must respect the honour and dignity of domestic helps and assume responsibility for their care and treatment when they suffer from sickness and accidents. The employer shall also pay for travel fares and expenses for them to return home at the end of their service except in cases where the domestic helper voluntarily leaves before the expiration of the contract.

**LIST OF OCCUPATIONS PROHIBITING THE EMPLOYMENT OF YOUNG WORKERS**  
(Attachment to Circular No 09 dated 13/4/1995 stipulating harmful working conditions and list of occupations prohibiting the employment of young workers)

1. *Direct boiling, pouring and transporting hot melted metal, disassembling moulds and cleaning molded products*
  - Arch electric kiln (irrespective of capacity)
  - Horizontal steel refining kiln
  - Car tunnel steel kiln
  - Blast furnace
  - Rotary kiln (for pig-iron)
2. *Rolling hot metal.*
3. *Refining non-ferrous metal ore (bronze, lead, tin, mercury, zinc, silver)*
4. *Firing kiln for refining coke*
5. *Firing steam engines*
6. *Welding in air-tight tank, welding over 5 meters above the ground*
7. *Digging wells in mines*
8. *Digging mines and doing other work in mines or working in deep holes over 5 meters deep*
9. *Hewing rock on mountains*
10. *Installing oil rigs*
11. *Working on off-shore oil-rigs (except for health and social services)*
12. *Drilling for oil and gas wells.*
13. *Drilling to explore, drilling holes for mines, lighting mines*
14. *Using portable steam machines having a pressure of 4 atmospheres and over (drilling, hammering machines).*
15. *Driving motor vehicles*
16. *Operating bridge cranes, cantilever cranes, portal cranes and electric hoists (except hand chain hoists)*
17. *Hooking or attaching loads to bridge cranes, cantilever cranes, portal cranes and electric hoists.*
18. *Operating lifts for passengers with goods; or goods lifts; lift trucks.*
19. *Driving heavy duty trucks such as excavators, bulldozers...*
20. *Driving farm tractor*
21. *Operating mud dredges*
22. *Operating boilers*
23. *Operating fiber-starching machines*
24. *Rolling hard and large leather pieces*

25. *Conducting river surveys*
26. *Underwater concreting*
27. *Diving*
28. *Working in submerged tanks.*
29. *Working in planes*
30. *Repairing electric lines in underground sluices or on open-air power line poles, high-voltage power lines; installing high voltage power line poles.*
31. *Installing, repairing underground or suspension communication cables*
32. *Uprooting trees having a diameter of over 40cm*
33. *Felling big trees; cutting high branches*
34. *Transporting big trunks of wood; loading and unloading them by hand*
35. *Floating rafts on rivers with many waterfalls*
36. *Feeling, catching and lifting timber from under the water by hand, gathering and -rolling timber overshore.*
37. *Sawing by hand*
38. *Working in scaffold, or working in saddle scaffold that is located higher 5 m, or other similar occupations*
39. *Assembling, disassembling and repairing scaffolds.*
40. *Exploiting sallagane nets, bat manure*
41. *Working on ocean-going ships*
42. *Guarding ships near sheer rocky shores*
43. *Working alone on railways; in tunnels in mountain; in underground constructions; in places reducing eyesight to under 400 meters; or in inaccessible places.*
44. *Moving carriages in garages or on railways*
45. *Operating disk or annular sawing-machine*
46. *Feeding or operating rock-grinding machines*
47. *Operating planing machines*
48. *Operating or metal processing with compression, team pressure or electric forging, striking, pressing and cutting machines*
49. *Installing, repairing, cleaning all kinds of compression, team pressure or electric forging, striking, pressing and cutting machines*
50. *Working in ship-building involving handling loads over 30kg.*
51. *Load handling limits;*

| <i>Age groups</i>                     | <i>On and off Handling</i> | <i>Continuous handling</i> |
|---------------------------------------|----------------------------|----------------------------|
| <i>From 15 years (180 months)</i>     | <i>Female: 12 kg</i>       | <i>8 kg</i>                |
| <i>to under 16 years (192 months)</i> | <i>Male: 15 Kg</i>         | <i>10 kg</i>               |
| <i>From 16 years (192 months)</i>     | <i>Female: 25 kg</i>       | <i>15 kg</i>               |
| <i>to under 18 years (216 months)</i> | <i>Male: 30 Kg</i>         | <i>20 kg</i>               |

52. *Operating or being on duty in low, medium or high voltage power stations*
53. *Checking, repairing or fixing 700v direct or 220 alternating current circuits*
54. *Lighting oil burning machines consuming 400 liters per hour*
55. *Manufacturing, using, transporting dangerous substances such as explosive materials, inflammable substances, oxygen, gas, guns, ammunition and fire-crackers very likely to cause explosion and fire;*
56. *Operating acetylene, oxygen, hydrogen, chlorine and other liquefied gases processing and bottling systems;*
57. *Operating freezing systems (ice producing and congealing).*
58. *Working in Workplaces where the amount of dust, rock or cement powder, coal dust, animal hair exceeds the permitted standards;*
59. *Repairing kilns, air-tight towers and pipes conducting chemicals;*
60. *Working in tobacco fermenting and cigarette drying kilns;*
61. *Burning glass melting kilns and blowing glass by mouth.*
62. *Rinsing paraffin in alcohol tanks*
63. *Working in contact with gasoline in cellars, such as receiving, delivering, maintaining, operating petrol pumps and petrol gauges*

64. *Sorting out lead minerals.*
65. *Laminating, pulling and striking lead products or lead-plated products,*
66. *Vulcanizing, forming and handling .big sized rubber products in, such as big fuel tanks and containers, motor car tyres;*
67. *Working in contact with organic solvents such as embalming sleepers laying emulsion of photographic paper, printing patterns on thin materials, printing labels on thin and smooth paper, laminating phenol plastic, operating phenol glue multi-condenser pots;*
68. *Dredging underground sluices; working in dirty water.*
69. *Burning down and killing cattle;*
70. *Operating on dead body, preparing dead body for coffin, burying and exhuming graves*
71. *Working in prisons or in mental hospitals;*
72. *Working in pubs, dance halls, or working in entertainment services;*
73. *Feeding wild beasts and poisonous animals;*
74. *Working in workplaces affected by radiation, X-ray and other harmful rays.*
75. *Working in radio, TV radar and telecommunication stations;*
76. *Working in direct contact with chemicals causing gene damage such as*  
- 5 Fluoro-uracil  
- Benzene
77. *Working in direct contact with chemicals causing harm to reproductive functions such as:*  
- Estrogen;  
- Axial cis retinoid;  
- Carbaryl;  
- Dibromua clo propan (DBCP);  
-Toluen diamine and dinitrotoluen;  
- Polyclorin biphenyls (PCBs);  
- Polybromua biphenyls (PBBs).
78. *Worklng in direct contact with likely-to-cause-cancer pesticides, herbicides containing the following chemical:*  
- 1.4 butanediol. dimethyl sulphate;  
- 4 aminobiphenyl;  
- Asbestos (amosite. Crocidolite. Chrysotile  
- Arsenic. Calcium Arsenic  
- Dioxins;  
- Dichlorometyl ether;  
- Precipitate Chromate compounds;  
- Coal-plastic and coal-gas;  
- Cychlophosphamite;  
- Diethylstilbestrol,  
- 2 Naphthylamine;  
- N. N - di (Chloroethyl)~; 2, Naphthylamine;  
- Thori dioxide;  
- Theosulpha;  
- Vinyl chloride. vinyl chloride;  
- 4- amino. 10- methyl flolic acid;  
- Mercury, methyl mercury compounds, methyl  
- Nitrogen pentoxide;  
- 2.3.7.8 tetrachloro dibenzene furan;  
3- alphaphenyl- heta axetyletyl;  
- Axety salicylic acid;  
Asparagine;  
- Benomyl;  
- Boric acid;  
- Cafein;  
- Dimetyl sulphuric;  
- Direct blue-1;  
- Focmamide;

- Hydrocortisone. Hydrocortisone acetate;
- Iodine (metal);
- Lead. acetate lead. nitrate lead (contact with paint petrol ink containing lead producing battery.
- Mercapto. purine;
- Kalium bromua. kalium iodua;
- Propyl- thio- uracil;
- Ribavirin;
- Natrium arsenat. natri Arsenic. natri iodua. natri
- Tetrametyl thiuram disulphide;
- Triamcicolon acetamid;
- Triton WR-1339;
- Trypan blue;
- Valproic acid;
- Vincristine sulphate;
- Vinazol gas.

79. Working in contact with the following chemicals without adequate personal protective equipment to prevent toxic gases, fumes and dust:

- Carbonic oxide (CO): such as operating kilns discharging coal-gas or cinder.
- Dye chemicals with origin of aniline, cylesin, tolusine, auramin;
- Cyanide compounds
- Phosphorus and compounds:  $P_2O_5$ ,  $P_2S_5$ ,  $PCl_3$ ,  $H_3P$ ;
- Trinitrotoluene (TNT);
- Manganese dioxide ( $MnO_2$ );
- Photgein ( $COCl_2$ );
- Disulphide carbon ( $CS_2$ );
- Nitrogen oxide and nitrogen acid;
- Chlo and.chlohdyric acid;
- Anhydrite sulphuric and sulphuric acid;
- Calcium Carbide ( $CaC_2$ ) such as in operating open Calcicum Carbide kilns or disposing cinder.

80. Working in direct contact with pharmaceutical products and their components, which is likely to cause addiction, such as products containing morphine, ephedrine and seduxent;

81. Working daily in contact with anaesthetics in emergency recovery Departments and infection sections of health services, in centers for intravenous infusions establishments producing vaccines, in health station using short waves and ultra-sounds in treatment or taking part in suppressing epidemics;

### C. Enforcement/Monitoring

The Government assumes the Uniform State Labour administration in the whole country. The state labour administration is under the power of the Ministry of Labour, Invalids and Social Affairs. The People's Committee of various localities perform the State administration of labour within their respective localities (article 181.2), with the help of local labour offices. These local labour offices play an important role in the conclusion of collective agreements.<sup>26</sup> The Vietnam General Confederation of Labour and trade unions at all levels participate in the supervision of State labour administration in accordance with the provisions of the law. As a general protective measure, State labour inspection includes general labour inspection, inspection of occupational safety, and inspection of occupational health. The first two falls under the function of MOLISA and local labour offices while the inspection of occupational health falls under the Ministry of Health and the local health authorities. The Labour inspector's decisions are given directly to the persons concerned which must clearly state the date of its effectivity, date of its complete execution and date of the next inspection. The decisions of labour inspectors are enforceable and

<sup>26</sup> ILO Ministry of Labour, War Invalids and Social Affairs (MOLISA) – Vietnam (2002)  
<<http://www.ilo.org/public/english/employment/gems/eoo/law/vietnam/molisa.htm>>.

may be appealed to competent authorities in accordance with the law. Breach or violation of any provision of the Labour Code results to warning, fine, suspension or withdrawal of permits or licenses, obligation of compensation, closure of the undertaking, or prosecution for penal responsibilities in accordance with the provisions of the law.

While the Labour Law provides for the protection of workers especially child or juvenile workers, in practice, such protection is still violated. For instance, the Labour Code prohibits all forms of forced or bonded labour, including such labour by children but there are certain reports on thousands of children working in exploitative situations. Trafficking in women and children within and across the borders of the country for purposes of prostitution, domestic work, or marriage is a common problem. “Three thousand Vietnamese women and children are trafficked to China for domestic work and to Cambodia for prostitution.”<sup>27</sup> There are cases wherein parents from poor families enter into “verbal agreements” with employers for the employment of their children with their salaries being directly sent to the parents.

Even with the minimum age set to 15 years or under in certain occupations, a widely-publicized MOLISA survey showed an estimate of about 40,000 children between 8 to 14 years of age worked full time or part time in violation of the Labour Law. Such estimate, according to the 2001 Country Report on Vietnam’s Human Rights Practices released by the U.S. Bureau of Democracy, Human Rights and Labour, may be low since many more children work in the informal sector like family farms or family businesses not within the scope of Labour Law. In such cases, children as young as 6 years of age start to work.

Given the Government’s power to sanction violations of the Labour Code and the Criminal Code, it still is unable to adequately enforce laws providing for children’s safety especially those working in mines and those in domestic work. “Children employed as household servants or maids are ones mostly exploited, and least protected groups of working children. The majority domestic workers are girls, who live with their employers and are totally dependent on them.”<sup>28</sup> However, cases of child exploitations in other fields have been detected by the Government and the children have been successfully removed from such exploitative situations and the employers, disciplined.

#### D. Other Policies, Programmes, and Mechanisms

Although other programmes or policies specifically dealing with child domestic workers are lacking, there are two ongoing projects by the United Nations Children’s Fund that involves Vietnam. The first project is the support implementation and monitoring of the Stockholm Agenda for Action Against Commercial Sexual Exploitation of Children (including trafficking). The cooperating partners of UNICEF includes International Save the Children Fund agencies, government counterparts (Committee in the Protection and Care of the Children, ILO/IPEC, and local non-government organisations. The second project is the Cooperate and Support Regional and Bilateral Activities to address cross border trafficking of women and children including Project on Illegal Labour Movement: The Case of Trafficking in Women and Children among others. This is in cooperation with Mekong Regional Centre (MRLC), UN Working Group on Trafficking in Women and Children, and International Organization for Migration.

Locally, official Vietnamese institutions including MOLISA, the Women’s Union, the Youth Union, and the Committee for Protection and Care of Children have active programmes of

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<sup>27</sup> ILO-IPEC, *Trafficking in Children and Women* (1999)

<sup>28</sup> Vu Ngoc Binh, *Vietnam Realities*, CHILD WORKERS IN ASIA (July-September 1994).

their own to address the problems of trafficking of children and women. These programmes include publicity and warning to women and girls on the dangers of trafficking, repatriation programmes to help female returnees, and vocational trainings for teenage girls in communities considered vulnerable to trafficking in persons. Government agencies work closely with international organisations for the temporary shelter, medical services, education and rehabilitation of trafficking victims. Mass media campaign, community outreach visits, leaflet distribution, and vocational trainings are being done by Government agencies for the prevention of trafficking. (See Annex 11 for Matrix)

### **III. LEGAL PROTECTION OF CHILD DOMESTIC WORKERS: CASE STUDIES ON THE PHILIPPINES, THAILAND AND SRI-LANKA**

This section of the paper deals with the three in-depth studies on the legal protection for child domestic workers in the Philippines, Thailand and Sri-Lanka. The specific laws applicable to child domestic workers for each country are also presented in matrix form (See Annexes 12, 13 and 14 respectively). An over-all thematic matrix for all the thirteen (13) countries can also be found in the annex portion of the paper. This is divided into four (4) sub-matrices, according to the following categories: Annex 15 – Fundamental Rights; Annex 16 – Conditions of Work; Annex 17 – Welfare/ Social and other Relevant rights and Annex 18 – Enforcement Mechanisms.

#### **LEGAL PROTECTION OF CHILD DOMESTIC WORKERS:**

##### ***Case Study on Philippines***

*ANA JANET F. SUNGA*

#### ***INTRODUCTION***

The employment of domestic workers in Filipino households is a distinctive and integral feature of Philippine society, deeply entrenched in the history and culture of the Filipino people. In the Philippines, domestic work is generally seen as a menial and unclean task that employers, even with the time to spare, would gladly pass on to someone else.<sup>29</sup> Domestic work in the Philippines is characterized by cheap services wherein more and more young girls are being lured into due to economic reasons and lack of better opportunities.

Considering that child domestic workers are an invisible work force, it is hard to estimate their actual number. Nevertheless, existing studies and surveys provide us a glimpse of the magnitude of their problem. Data from the National Statistics Office reveals that of the more than 75 million Philippine population, almost 35 million are children. An ILO-IPEC assisted study in the country shows that 18% of the overall population of children between the ages of 5 to 17 years old work.<sup>30</sup> In 1995, the National Statistics Office found that there were at least 766,000 domestic workers in the Philippines, of which at least 301,701 were 19 years old and younger.<sup>31</sup> Eighty-six percent of domestic workers 10-19 years old are female.<sup>32</sup> These figures, however refer to paid domestic workers and do not include children who work in exchange for

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<sup>29</sup> MA. CECILIA FLORES-OEBANDA, ET. AL., *THE KASAMBAHAY, CHILD DOMESTIC WORK IN THE PHILIPPINES: A LIVING EXPERIENCE 4* (hereinafter OEBANDA).

<sup>30</sup> ILO-IPEC, *Children in Hazardous Work in the Philippines* (1999).

<sup>31</sup> National Statistics Office Labour Force Survey (April 1995).

<sup>32</sup> *Id.*

room and board, or for the chance to study.<sup>33</sup> Statistical estimates made by Visayan Forum, a non-governmental organization focusing on the phenomenon of child domestic workers, give us an interesting look at this workforce from the vantage point of the household population.

If each household in the highest income bracket alone in 1997 had only one domestic worker in their employ, then in that year, there were at least 1.395 million domestic workers in the country. Some households have approximately 6 domestic workers with specialized tasks (baby sitting, gardening, cooking, cleaning, washing and ironing, and driving). If the top upper class employed an average of only 2 domestic workers per household, there may be as many as 2.5 million domestic workers in the Philippines. If the 1995 proportion remained consistent, then there were at least 549,490 domestic workers who were 19 years old or younger. Today, there may be as many as 1,098,980 child domestic workers in the country.<sup>34</sup>

The general conditions of work of child domestic workers in the country is a cause for alarm. They work an average of 15 hours a day, are on call 24 hours a day, and rarely have rest days. Those who are given days off have to content themselves with only one day off a month.<sup>35</sup> Young girls, some as young as 8 years old, are separated from their families for extended periods of time with little or no communication from their families. Their freedom of movement is also limited. Many are prohibited from even venturing beyond the house gates, except to do errands for their employers.<sup>36</sup> Child domestic workers are prone to verbal, physical and sexual abuse but they rarely leave as they are isolated from family and peers. Although not all forms of child domestic work may be considered as hazardous, anecdotal evidence reveals instances when they suffer grievous work conditions which even adults could not tolerate.<sup>37</sup> Many are tortured, beaten, sexually molested or raped. Children who attempt to escape from their employer's premises, or to report and file complaints against the employers, are falsely accused by their employers of theft and sent to jail, without due process.<sup>38</sup>

Child domestic workers are among the lowest paid workers in the country, if at all paid. In fact, some start their job already in debt to recruiters who advanced their lodging and transportation expenses on the way to their employment. The chances of children to develop their skills and potentials in life are hampered by their menial and repetitive tasks. Those who are allowed by their employers to pursue their studies eventually stop due to their heavy workload, long hours of work and school-related expenses which they could not afford.<sup>39</sup>

The Philippine government has not been totally remiss in its duty to care for and protect the rights of child domestic workers. A cursory reading of the laws, policies, remedies and programs available to protect and promote their rights would reveal a long list of guarantees and protection. Nevertheless, it is necessary to examine these laws and policies to determine their relevance to the needs of child domestic workers and their sufficiency or effectiveness in truly providing for the best interests of the children with the end view of eliminating the worst forms of child labour.

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<sup>33</sup> OEBANDA, *supra* note 29.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 5.

<sup>36</sup> Roland Pacis, *Cursorial Assessment Report, Towards a Time-Bound National Action on Child Domestic Workers in the Philippines 1* (May 8, 2002) [hereinafter Pacis].

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

## **LEGAL FRAMEWORK**

### **Declaration of Principles and Policies on Child Protection**

The country's national policies are clearly aimed at protecting all children from all forms of abuse and exploitation.

The Philippine Constitution guarantees the right of children to assistance and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.<sup>40</sup>

The Child and Youth Welfare Code passed in 1974 continues to serve as framework for the promotion and protection of the welfare of Filipino children. It defines the rights of children, including child workers, the rights and liabilities of parents and the roles of other institutions (community, religious groups, schools, home, etc.) in promoting the welfare of Filipino children. The Code pronounces 12 fundamental rights of every child, among which are:

- the right of every child, to protection against exploitation, improper influences, hazards and other conditions or circumstances prejudicial to the child's physical, mental, emotional, social and moral development;
- the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen; and
- the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.<sup>41</sup>

On July 26, 1990, the Philippine Senate ratified the United Nations Convention on the Rights of the Child ("CRC") which served as the moving force for the enactment of national laws to further protect children from different forms of abuse and exploitation.<sup>42</sup> Two years after the ratification of the CRC, the Philippine Congress passed Republic Act 7610, otherwise known as the Special Protection of Children Act. The Act provides stronger legislation and public policy for the care and protection of children in need of special protection. Such law declares it the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.<sup>43</sup>

### **Child Labour Regulation Through the Years**

As early as the American occupation in 1903, laws against slave holding and slave hunting were already in place. In 1923, Act No. 3071 was enacted to establish minimum ages for

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<sup>40</sup> PHILIPPINE CONSTITUTION, art. II, § 3(2).

<sup>41</sup> Presidential Decree No. 603, art. 3(8).

<sup>42</sup> On the issue of child labour, Article 2 of the Convention obliges states to take legislative, administrative, social and educational measures to ensure the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Specifically, the State is mandated to provide a minimum age for admission to employment, provide for appropriate regulation of the hours and conditions of employment, and provide for appropriate penalties or other sanctions to ensure the effective enforcement of such right.

<sup>43</sup> Republic Act 7610, art. I, § 2.

employment and to regulate the employment of women and children in shops, factories, industrial, agricultural and mercantile establishments.<sup>44</sup>

In 1932, the Revised Penal Code, a codification of the country's penal laws, was promulgated into law. The Code prohibits the "exploitation of child labour" which is akin to debt bondage, and the "exploitation of minors" which prohibits the employment of a minor under 16 years in dangerous exhibitions. The Code also contains provisions relating to slavery, prostitution, corruption of minors, illegal detention and kidnapping of minors.

In 1952, Republic Act No. 679 was promulgated to regulate the employment of women and children. This Act effectively repealed Act No. 3071. Under the new law, children below 14 years of age may only be employed to perform light work which is not harmful to their health or normal development, and which is not such as to prejudice their attendance in school. These requisites need not be complied with in case of employment of domestic workers below 14 years since the Act expressly excluded domestic work from the scope of such requirement. The minimum age for certain hazardous activities posing serious danger to the life or health of the child was raised to 18 years.<sup>45</sup>

In the years 1953 and 1960, respectively, the Philippines ratified three international conventions on child labour: ILO Convention No. 59, Minimum Age for Admission of children to Industrial Employment, ILO Convention No. 77, Medical Examination for Fitness for Employment in Industry of Children and Young Persons; and ILO Convention No. 90, Night Work of Young Persons Employed in Industry. The situation of child domestic workers is not captured in these Conventions since the latter only apply to industrial undertakings.

In 1973, Presidential Decree No. 148 or the Woman and Child Labour Law was decreed into law, setting a uniform minimum age of employment of 14 years. The only exception allowed for work below the minimum age is work under the sole responsibility of the child's parent or guardian, involving activities which are not hazardous in nature and which do not interfere with the child's schooling. Domestic work was, therefore, effectively removed from such exception. Under the same Act, any person between 14 and 18 years of age may be employed in any non-hazardous undertaking.

In November 1974, Presidential Decree No. 442, the Labour Code of the Philippines was enacted into law, incorporating provisions on employment of women and of minors and thereby repealing the Woman and Child Labour Law. The Labour Code, which remains effective to this date, raised the minimum age of employment to 15 years. The only exception to such minimum age is work directly under the sole responsibility of the child's parents or guardian, provided the child's employment does not interfere with his/her schooling. Domestic work, therefore, falls within the prohibition, save in instances where the children perform domestic work for their relatives who claim to be the children's guardians. The minimum age for hazardous undertakings, on the other hand, remains at 18 years. The Code, however, failed to provide the terms and conditions of employment of children, thereby creating a serious gap in the new law.

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<sup>44</sup> Act No. 3071 prohibited the employment of persons below certain ages, ranging from 14 to 16 years, depending on the type of work or establishment involved, usually, hazardous undertakings. Act No. 3071 also prescribed the conditions of work of children including working hours, meal periods, prohibition on night work and work during school days, requirement of birth certificates and consent of parents. The Woman and Child Labour Section of the Inspection Division of the Bureau of Labour was tasked to implement the Act.

<sup>45</sup> Conditions of work of children under Act No. 3071 were retained by Republic Act No. 679 with the additional requirement of medical examination. The implementation of Republic Act No. 679 was entrusted to the Women and Minors Division of the Bureau of Labour Standards.

In the same year, Presidential Decree No. 603 or Child and Youth Welfare Code was decreed by the President into law. The Code includes a host of benefits for working children such as the duty of employers to submit reports and to keep a register of employed children, the right of working children to self-organization, and welfare programmes.

Republic Act No. 7610 or the Special Protection of Children Act of 1992, devotes an entire chapter (article 8) to working children below 15 years. The Chapter provided for a minimum age of employment and prescribed penalties for its violation. This chapter was later amended by Republic Act No. 7658, otherwise known as the Child Labour Act, in order to strengthen the State's policy against child labour. Under this law, children below 15 years of age may not be employed except in exclusive family undertakings and in public entertainment or information. Specific safeguards to the child's education, health and development are provided.

The Philippines ratified ILO Convention No. 138 on June 4, 1998. The Convention serves as a mandate to the government to effectively abolish child labour by setting a minimum age for admission to employment or work, which shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years, and which shall not be less than 18 years for any type of employment or work which is likely to jeopardize the health, safety or morals of young persons. The Philippines, likewise, ratified ILO Convention No. 182 on November 28, 2000, obliging the country to take steps to immediately eliminate the worst forms of child labour<sup>46</sup> The country is also a signatory to the Convention on the Elimination of Discrimination Against Women and the Migrant Workers Convention. In the year 2002, the Philippine government ratified the Twin Optional Protocols to the CRC on the Sale, Child Prostitution and Child Pornography, and on the Involvement of Children in Armed Conflict.

### ***PHILIPPINE LAWS FOR THE PROTECTION OF CHILD DOMESTIC WORKERS***

Philippine laws are replete with provisions protecting both domestic workers and child workers. A few provisions, in fact, deal specifically with child domestic workers. Existing laws which may be invoked to protect child domestic workers are contained in various legislation encompassing the country's labour laws, civil laws, criminal laws, child and youth welfare code, and special laws on child abuse and exploitation, as well as, on child labour. Before these different laws may be explored to determine the extent of legal protection for child domestic workers in the Philippines, it is necessary to define "child domestic work" under Philippine laws.

#### ***DEFINITION OF "CHILD" AND "DOMESTIC SERVICE"***

Although, national laws do not specifically define who is a child domestic worker, such definition may be gleaned from legislation defining the terms "child" and "domestic service". In the country, a "child" is uniformly defined as, and is generally understood to mean, a person below the age of 18 years.<sup>47</sup> For purposes of the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (hereinafter "Special Protection of Children Act"), however, the definition of a child was expanded to cover a person over 18 years of age but is

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<sup>46</sup> ILO 182 categorized the worst forms of child labour into four areas: 1) all forms of slavery, such as the sale and trafficking of children, debt bondage and serfdom; 2) the use or offering of a child for prostitution or pornography; 3) the use or offering of a child for illicit activities such as the trafficking of drugs; and 4) 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.

<sup>47</sup> Republic Act No. 6809 (lowering the age of majority from twenty-one to eighteen years).

unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.<sup>48</sup>

“Domestic or household service”, on the other hand, is defined in the country’s Labour Code as services in the employer’s home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer’s household.<sup>49</sup>

Children and relatives of a househelper who live under the employer’s roof and who share the accommodations provided for the househelpers are not deemed as househelpers if they are not otherwise engaged as such and are not required to perform any substantial household work.<sup>50</sup> This provision unwittingly perpetuates the exploitation of children who are allowed to perform unpaid household work in addition to the work of their parents. No parameters are set to define the term “substantial”.

## ***CONDITIONS OF WORK***

### **Minimum Age of Employment**

The minimum age of employment of children, including child domestic workers, under Philippine law, is 15 years. This policy is mandated by the Labour Code and by the Special Protection of Children Act as amended by Republic Act No. 7658 (*hereinafter* “Child Labour Act”).

The Child Labour Act, prohibits the employment of all children below 15 years of age except in two instances, that is, 1) employment under the sole responsibility of parents/guardians in exclusive family undertakings,<sup>51</sup> and 2) essential employment in public entertainment or information.<sup>52</sup> Clearly, domestic service *per se* is not included in the aforementioned exceptions.

The foregoing prohibitions on child labour may be said to cover employment not only in the formal sector, but also in the informal sector where an employer-employee relationship is not that apparent. This is because, under the Rules and Regulations Implementing Republic Act No. 7658, the general prohibition on employment of children below 15 years has been expanded to cover situations where such children are “employed, *permitted or suffered to work*” in any public or private establishment in the Philippines.<sup>53</sup> Moreover, the term “employer” has been defined as

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<sup>48</sup> Republic Act No. 7610, art. II, § 3(a).

<sup>49</sup> Labour Code, art. 141.

<sup>50</sup> Omnibus Rules Implementing the Labour Code, book III, rule XIII, § 3.

<sup>51</sup> In the first exception, a child is allowed to work in any undertaking if such work is under the sole responsibility of his/her parents or legal guardian and where only members of the employer’s family are employed. The use of the terminology “legal guardian” would connote the need for a Court declaration of guardianship before a person, other than the child’s parents, can employ children in so-called family undertakings. The phrase “members of the family”, on the other hand, is defined and limited to the parent’s or legal guardian’s husband or wife, parents, children, other ascendants or descendants, brothers and sisters whether of full or half blood. In exclusive family undertakings, the following conditions of work are prescribed by law: (a) the employment does not endanger the child’s life, safety, health and morals; (b) the employment does not impair the child’s normal development; and (c) the employer parent or legal guardian provides the child with the primary and/or secondary education prescribed by the Department of Education.

<sup>52</sup> Republic Act 7658, § 1. In this second exception, a child is allowed to work or participate in public entertainment or information through cinema, theater, radio or television, provided that such work is essential and that the above conditions prescribed for family undertakings are met. In addition, there should be a written contract approved by the Department of Labour and Employment.

<sup>53</sup> § 1.

“any parent, legal guardian or producer acting as employer who hires or *engages the services of* any child below 15 years of age.<sup>54</sup> (Emphasis supplied.) It is clear from the foregoing that family members, including parents, may be treated as employers who must abide by the minimum set of conditions prescribed by law.

### **Minimum Age - Hazardous Work**

Children who are 15 years old and above may, as a general rule, be employed in domestic service. The employment of children 15 years old and above is governed by the country’s Labour Code. Under Art. 139 of the Code, children 15 years old and above may already be employed provided that such employment is not in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labour. To define further the list of hazardous work pursuant to such Labour Code provision, the Department of Labour issued Department Order No.4, series of 1999, also known as Hazardous Work and Activities to Persons Below 18 Years of Age. This Department Order or guideline supplanted the Department’s 1973 list of hazardous undertakings. The new guideline is divided into 5 major categories of hazardous work and activities prohibited for children, to wit:

1. Work which exposes children to physical, psychological or sexual abuse;
2. Work underground, under water, at dangerous heights or at unguarded heights of two meters and above, or in confined places;
3. Work with dangerous machinery, equipment and tools, or which involves manual handling or transport or heavy loads;
4. Work in unhealthy environment which may expose children to hazardous processes, to temperatures, noise levels or vibrations damaging to their health, to toxic, corrosive, poisonous, noxious, explosive, flammable and combustible substances or composites, to harmful biological agents, or to other dangerous chemicals including pharmaceuticals; and
5. Work under particularly difficult conditions such as work for long hours or during the night, or work where the child is unreasonably confined to the premises of the employer.<sup>55</sup>

**Department Order No. 4** further contains a detailed listing of specific work or activities under the foregoing categories of hazardous work.

Section 4 of the said Order is explicit with respect to the state’s policy on child domestic work, as follows:

[P]ersons between 15 and 18 years of age may be allowed to engage in domestic or household service, subject in all cases to the limitations prescribed in Nos. 1 to 5 of Section 3 herein.

Children between 15 and 18 years of age may be allowed to engage in domestic or household service, subject in all cases to the limitations prescribed under the 5 major categories of prohibited hazardous activities described above.<sup>56</sup> Hence, although domestic service is not *per se* a prohibited work activity for children between 15 years and 18 years old, it becomes a prohibited work activity for children once it involves, for example, the carrying of heavy loads,

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<sup>54</sup> § 2.

<sup>55</sup> § 3.

<sup>56</sup> § 4.

working in dangerous heights or for long hours, or unreasonable confinement to the employer's premises.

## **Terms and Conditions of Employment of Children**

### Opportunity for Education of Child Domestic Workers

In addition to the above-described limitations prescribed by Department Order No. 4 with regard to the conditions of employment of children in domestic service, the only other proviso contained in the country's laws which deal specifically with children in domestic service is that requiring employers of househelpers under the age of 18 years to give the latter an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.<sup>57</sup>

### Pre-Employment Requirements for Children Below 15 Years – Under Republic Act No.

7658

The Child Labour Act prescribes terms and conditions of employment of children below 15 years old in exclusive family undertakings and in the public entertainment and information industry. These include securing of a work permit from the Department of Labour after submission of the child's pictures, birth certificate, certificate of school enrollment, medical certificate of fitness for employment, and a certificate of a continuing programme for training and skills acquisition approved and supervised by competent authority.<sup>58</sup> A written undertaking is likewise required of the employer, ensuring that measures shall be instituted to prevent the child's exploitation and discrimination such as payment of minimum wage, hours of work and other terms and conditions required by law; and guaranteeing the protection, health, safety, morals and normal development of the child.<sup>59</sup> For children in public entertainment or information, in addition to the foregoing, a written contract of employment concluded by the child's parent or legal guardian (including the child if possible) with the employer is required.<sup>60</sup> These provisions, however, were not intended for child domestic workers considering that employment of child domestic workers below 15 years old is prohibited by law.

### Policy Instruction No. 23

The Department of Labour in 1977 (then Ministry of Labour) promulgated Policy Instruction No. 23, entitled Hours of Work of Children, Night Work and Physical Examination of Children. Such regulation, however, only covers children employed in an industrial undertaking and does not extend to children employed in domestic service.

## **Terms and Conditions of Employment of Domestic Workers**

Considering that existing laws governing the conditions of work of children are not sufficient to cover the situation of children in domestic work, resort may be made to laws dealing with the general domestic work force in order to protect child domestic workers. This is compatible with the Labour Code prohibition against child discrimination in respect to terms and

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<sup>57</sup> This exact provision is found in Art. 1691 of the Civil Code, in Art. 110 of P.D. 603 and in the Omnibus Rules Implementing the Labour Code.

<sup>58</sup> Department Order No. 18 (rules and regulations implementing Republic Act No. 7658) § 4.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

conditions of employment. Laws on domestic work are contained in the Labour Code and Civil Code.

#### Minimum Wage of Househelpers

Article 143 of the Labour Code, as amended by Republic Act No. 7655 or the Minimum Wage for Househelpers Act of 1993, prescribes minimum wage rates for househelpers in different cities/municipalities and requires employers to review the employment contracts of their househelpers every 3 years with the end in view of improving the terms and conditions thereof.<sup>61</sup> Under Article 145 of the Labour Code, no househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural workers.

#### Compensation and Amenities of Househelpers

Under the Labour Code, wages shall be paid directly to the househelper at least once a month and no deductions therefrom shall be made by the employer unless authorized by the househelper or by existing laws.<sup>62</sup> Under both the Labour Code and Civil Code, the househelper's compensation shall be paid to the househelper in addition to suitable and adequate lodging, food and medical attendance which the employer is required to furnish the househelper free of charge.<sup>63</sup> The househelper's clothes shall be subject to stipulation which should, at the very least, enable the househelper to afford and acquire suitable clothing.<sup>64</sup>

#### Hours of Work and Rest Day of Househelpers

The Labour Code's extensive provisions on working conditions and rest periods do not apply to "members of the family of the employer who are dependent on him for support, domestic helpers, and persons in the personal service of another," among others. The Civil Code, however, covers some of these gaps.

Under the Civil Code, househelpers shall not be required to work more than 10 hours a day. They shall be allowed 4 days vacation each month with pay.<sup>65</sup>

#### Termination of Services of Househelper

Indemnity for unjust termination of househelpers is provided under both the Labour Code and Civil Code. If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause.<sup>66</sup> If the duration of household service is not fixed, the law requires service of termination notice 5 days before the intended termination of the service.<sup>67</sup> The househelper also has the right to secure

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<sup>61</sup> As of this date, the minimum wage of househelpers remains at PhP800.00 a month for those working in highly urbanized cities in Metro Manila; PhP650.00 a month for those in other chartered cities and first-class municipalities; and PhP500.00 a month for those in other municipalities.

<sup>62</sup> Omnibus Rules Implementing the Labour Code, book III, rule XIII, § 9.

<sup>63</sup> Labour Code, arts. 144 and 148; Civil Code, arts. 1689 and 1690.

<sup>64</sup> Civil Code, art. 1693.

<sup>65</sup> Art. 1695.

<sup>66</sup> Labour Code, art. 149; Civil Code, art. 1697. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for 15 days by way of indemnity. In the same vein, if the househelper leaves without justifiable cause, he or she shall forfeit any unpaid salary due him or her not exceeding 15 days (Labour Code, art. 149; Civil Code, art. 1697).

<sup>67</sup> Labour Code, art. 150.

an employment certification from the employer upon the severance of the household service relation, specifying the nature and duration of the service and the househelper's efficiency and conduct as househelper.<sup>68</sup>

#### *FUNDAMENTAL RIGHTS*

##### Right of Children to Equal Treatment at Work

Art. 140 of the Labour Code contains a "prohibition against child discrimination" and prohibits an employer from discriminating against any person in respect to terms and conditions of employment on account of his age. Thus, in the absence of laws on the terms and conditions of employment specific to child domestic workers, laws intended to protect the regular domestic work force should be applicable to children in the same category of employment.

##### Right of Working Children to Self-Organization and to Join Unions

The Child and Youth Welfare Code guarantees the right of all working children to self-organization. It declares that working children shall have the same freedom as adults to join the collective bargaining union of their own choosing. Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union.<sup>69</sup>

##### Right of Domestic Workers to Humane Treatment

The Labour Code and Civil Code mandate employers of househelpers to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper.<sup>70</sup>

##### Right of Persons Against Involuntary Servitude

The right against involuntary servitude is a right guaranteed by the Constitution to all persons sojourning in the country. Under the Constitution's Bill of Rights "[n]o involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted."<sup>71</sup> The right against involuntary servitude is also encapsulated in the country's penal laws against slavery.<sup>72</sup>

##### Right of Persons Against Debt Bondage

The child domestic worker's right against debt bondage is protected under the country's penal laws. The crime Services Rendered Under Compulsion In Payment Of Debt is imposed upon any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm labourer.<sup>73</sup> Exploitation of Child Labour is another crime which is imposed upon anyone who, under the pretext of

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<sup>68</sup> Art. 151.

<sup>69</sup> Art. 111.

<sup>70</sup> Labour Code, art. 147; Civil Code, art. 1694.

<sup>71</sup> Art. III, § 18(2).

<sup>72</sup> Revised Penal Code, art. 272. Slavery is a crime committed by a person who shall purchase, sell, kidnap or detain a human being for the purpose of enslaving him.

<sup>73</sup> Revised Penal Code, art. 274.

reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of a minor, shall against the latter's will, retain him in his service.<sup>74</sup>

### Right of Persons to Mobility

The Constitution guarantees the right of all persons to liberty of abode and of changing the same, as well as, the right to travel except in the interest of national security, public safety, or public health, as may be provided by law.<sup>75</sup> Illegal detention or the deprivation of the liberty of any person is punishable under the penal code.<sup>76</sup> These laws may be invoked in cases where the employer of a child domestic worker unreasonably restricts the latter's right to leave the household premises.

### Rights of Labour

The Constitution guarantees certain fundamental rights to all workers which necessarily include child workers who form part of the country's labour force. These rights include the right to self-organization, collective bargaining negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.<sup>77</sup>

## ***LABOUR ADMINISTRATION AND PROTECTION***

### Employer's Reportorial Duties

The Child and Youth Welfare Code directs employers of children to submit to the Department of Labour a report of all children employed by him/her. A separate report shall be made of all such children who are found to be handicapped after medical examination.<sup>78</sup>

Every employer in any commercial, industrial or agricultural establishment or enterprise is also mandated to keep the following records:

- (1) A register of all children employed by him, indicating the dates of their birth;
- (2) A separate file for the written consent to their employment given by their parents or guardians;
- (3) A separate file for their educational and medical certifications; and
- (4) A separate file for special work permits issued by the Secretary of Labour in accordance with existing laws.<sup>79</sup>

There is no similar directive for employers of domestic workers to maintain the foregoing records.

### Employment Contract

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<sup>74</sup> Revised Penal Code, art. 273.

<sup>75</sup> Art. III, § 6.

<sup>76</sup> Revised Penal Code, art. 267-268.

<sup>77</sup> Art. XIII, § 3.

<sup>78</sup> Art. 108.

<sup>79</sup> Art. 109.

There is no strict legal mandate for the execution of a written contract of employment before an employer may hire a domestic worker. Several laws, however, may be invoked as basis for the execution of such contracts. The Civil Code states that “[n]o contract for household service shall last for more than two years. However, such contract may be renewed from year to year.”<sup>80</sup> Under the Labour Code, “the employer of a househelper may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper, which the latter shall authenticate by signature or thumbmark upon request of the employer.”<sup>81</sup> The Minimum Wage for Househelpers Act of 1993 requires employers to review the employment contracts of their househelpers every 3 years with the end in view of improving the terms and conditions thereof.

With respect to child workers, the legal requirement for the execution of an employment contract is confined to children below 15 years old who work in the public entertainment or information industry, in accordance with Republic Act No. 7658 or the Child Labour Act.

#### Work Permits

The procurement of work permits for children from the Department of Labour as a pre-employment requirement is, likewise, confined by the Child Labour Act to children below 15 years in undertakings which fall under the two allowable exceptions to the minimum age law. The Labour Code contains no such requirement for children below 18 years. The work permit requirement under the Child and Youth Welfare Code described earlier is not applicable to child domestic workers as such Code confines the same to employers of children in the commercial, industrial and agricultural establishments.

#### Age Verification

A crucial issue in the protection of child workers is proof of their age. Many employers skirt the law by feigning ignorance of the true age of the child. Moreover, some children have no record of their births in the first place. The initial Philippine report to the U.N. Committee on the Rights of the Child in 1995 stated that during the period under consideration, only 70 percent of total child births are registered.

Under the Child Labour Act, the submission of birth certificates is a requirement for the issuance of work permits for children below 15 years old who wish to work in exclusive family undertakings or in the public entertainment or information industry. There is no legal requirement for the submission of birth certificates or the keeping of such records for child workers between 15 and 18 years old. Thus, employers of child workers are not duty-bound by any specific law to verify the latter’s ages through submission of birth certificates or other proof of age.

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<sup>80</sup> Art. 1692.

<sup>81</sup> Art. 152.

## Social Rights and Health Benefits

### Social Security

#### Social Security of Househelpers

Article 143 of the Labour Code, as amended by R.A. No. 7655 or the Minimum Wage for Househelpers Act of 1993, mandates the compulsory coverage by the Social Security System of househelpers who are receiving at least PhP1,000.00 per month. It is to be noted that the minimum wage of househelpers in the metropolitan and urban areas is only PhP800.00 per month, thereby excluding many househelpers from coverage under the Social Security System.

Under the Implementing Guidelines on the Social Security Coverage of Househelpers, coverage in the Social Security System shall be compulsory upon all househelpers who are 60 years of age and below, and who are receiving a monthly cash compensation of at least PhP1,000.00.<sup>82</sup> Both the employer and househelper contribute their share in the monthly remittances to the Social Security System. All employers who are compulsorily covered under the Social Security Law are required to contribute and collect contributions to the Health Insurance Fund.<sup>83</sup> A covered househelper shall be entitled to the same benefits, loans and other privileges that are made available to a regular covered employee under the Social Security System, the Medicare/Health Insurance, and the Employees Compensation laws.<sup>84</sup> Thus, the househelper is entitled to benefits for sickness, maternity, disability, retirement, and death, as well as, a salary loan simultaneously with the Employees' Compensation Programme.

### Education

#### Compulsory Education

The International Labour Organization drew special attention to the close relationship between schooling and the minimum age for admission to employment or work. ILO Convention No. 138 states that the minimum age of employment shall not be less than the age of completion of compulsory schooling. In the Philippines, the compulsory education policy is based not on the age of the child but on the level of educational attainment. The Philippine Constitution declares that "without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age."<sup>85</sup>

The Child and Youth Welfare Code requires all parents to enroll their children in schools to complete, at least an elementary education.<sup>86</sup> By Philippine experience, the average age when children complete their 6-year elementary schooling is 11 years, while the age of completion of secondary school is 15 years which corresponds to the minimum age of employment. The Code attaches criminal liability to any parent who fails or refuses, without justifiable grounds, to enroll the child in accordance with the compulsory education requirement.<sup>87</sup> A parent who causes or permits the truancy of the child from the school where the child is enrolled is also criminally liable under such law.<sup>88</sup>

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<sup>82</sup> Circular No. 21-V, art. II, § 1.

<sup>83</sup> Medicare Act.

<sup>84</sup> Implementing Guidelines on the Social Security Coverage of Househelpers, art. V.

<sup>85</sup> Art XIV, § 2.

<sup>86</sup> Art. 71.

<sup>87</sup> Art. 59.

<sup>88</sup> Art. 59.

To implement effectively the compulsory education policy, the Code directs the State bodies to extend all necessary assistance possible to parents, specially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programmes which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.<sup>89</sup> This is in line with the Constitutional mandate to the State to establish and maintain a system of free public education in the elementary and high school levels.<sup>90</sup> Although such basic education is supposed to be free, the public educational system is not yet able to provide universal free education up to the secondary level due to limited infrastructure and human resource base for public secondary education. Children from poor families, therefore, seldom complete the full cycle of basic education.<sup>91</sup>

#### Non-formal Education for Working Children.

The Special Protection of Children Act mandates the Department of Education to promulgate a course design under its non-formal education programme aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.<sup>92</sup>

#### **Birth Registration**

The Philippine Civil Registry Law provides for mandatory registration of the birth of all persons. Proclamation No. 326 of 1994 declared as a national state policy the free registration of births, deaths, marriages and foundlings. Administrative Order No. 2 series of 1993 established a civil registration system for Muslim Filipinos in acknowledgment of Islamic traditions. Civil registrars and provincial statistics officers of the National Statistics Office are evaluated annually to monitor compliance with the law. Among the measures to improve the registration of child births are the mobile registration system and provision of out-of-town reporting of births. Children who have not been registered at birth have the following legal options: (1) delayed registration under Rule 12 of Administrative Order No. 1 Series of 1993, Implementing Rules and Regulations of the Civil Registry Law; (2) court action which establishes a child's filiation; and (3) civil action for recognition under the Family Code.<sup>93</sup>

#### ***ENFORCEMENT MECHANISMS***

##### **Community Level Mechanisms**

The Child and Youth Welfare Code provides for the creation of **Barangay Councils for the Protection of Children** (BCPC) in every barangay or village. The BCPC's are comprised of volunteers who are responsible members of the community including representatives of the youth, of government and private agencies concerned with the welfare of children. The Council is tasked among others, to:

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<sup>89</sup> Art. 72.

<sup>90</sup> CONSTITUTION, Art XIV, § 2

<sup>91</sup> Draft Second Philippine Country Report on the Convention on the Rights of the Child [hereinafter Draft 2<sup>nd</sup> Philippine CRC Report].

<sup>92</sup> Republic Act 7610, art. VIII, § 13.

<sup>93</sup> Draft 2<sup>nd</sup> Philippine CRC Report, *supra* note 91.

- Foster the education of every child in the barangay;
- Encourage the proper performance of the duties of parents and provide learning opportunities on the adequate rearing of children and on positive parent-child relationship.
- Protect and assist abandoned or maltreated children and dependents;
- Adopt measures for the health of children;
- Promote the opening and maintenance of playgrounds and day-care centers and other services that are necessary for child and youth welfare; and
- Coordinate the activities of organizations devoted to the welfare of children and secure their cooperation.

The organization and strengthening of functional BCPCs in every barangay, as well as, local councils for the protection of children at the municipal, city, provincial and regional level, remain a top priority in the crusade against child labour. It is currently being promoted as a feasible institutional mechanism for prevention, early intervention, surveillance, rescue, recovery and reintegration services for children in need of special protection.

The Child and Youth Welfare Code also directs the formation and organization of a *Samahan* (association) in communities by the barangay, municipal and city councils. Membership in the *Samahan* is on a voluntary basis from among responsible persons in the community working in commercial, industrial, and agricultural establishments or enterprises, whether belonging to labour or management.<sup>94</sup>

The *Samahan* is tasked to perform the following duties, among others:

- (1) Prevent the employment of children in any kind of occupation or calling which is harmful to their normal growth and development;
- (2) Forestall their exploitation by insuring that their rates of pay, hours of work and other conditions of employment are in accordance not only with law but also with equity;
- (3) Give adequate protection from all hazards to their safety, health and morals, and secure to them their basic right to an education;
- (4) Help out-of-school youth to learn and earn at the same time by helping them look for opportunities to engage in economic self-sufficient projects; and
- (5) Coordinate with vocational and handicraft classes in all schools and agencies in the barangay, municipality or city to arrange for possible marketing of the projects or articles made by the students.

The organization of such *Samahan*, however, remains a goal which has not yet been actualised to date. Currently, government and NGOs alike who are working on children's issues are concentrating their efforts first on the establishment and operationalization of functional BCPCs in communities which will hopefully pave the way for the creation of *Samahans*.

### **Inspection and Monitoring**

The monitoring of compliance with labour standards and laws related to child labour is a task assigned to the labour standards enforcement officers of the Department of Labour and Employment (DOLE). The DOLE may make use of its visitorial and inspection powers to confirm reports received regarding employer violations.<sup>95</sup> Department Order No. 4, Hazardous

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<sup>94</sup> Art. 104.

<sup>95</sup> This power is contained in the Labour Code, which provides that:  
"Art. 128. Visitorial and Enforcement Power. --

Work and Activities to Persons Below 18 Years of Age, mandates labour standards enforcement officers to adopt the Department Order guidelines in their monitoring activities.<sup>96</sup>

Since 1993, establishments suspected of employing child workers have been among the top of the list of priorities for inspection of the DOLE. Administrative Order No. 47 of 1997 directs all labour inspectors to prioritize the inspection of establishments employing children and women workers, security agencies, construction, shipping, and other establishments classified as hazardous or high risk. In 1999, child labour was again made a priority for inspection by Administrative Order No. 100.

In practice, however, the inspection and monitoring of household premises is not conducted by DOLE considering that the home is not a work establishment but a family haven which enjoys protection against State intrusion under the Constitution. Interviews with key personnel of the Inspection Standards Division, as well as, of the Wage and Hour Standards Division of the Bureau of Working Conditions of DOLE<sup>97</sup> disclosed that the coverage of the regular inspection by DOLE is limited to formal establishments, considering the impracticality of inspecting the multitude of households employing domestic workers. The number of establishments alone to be inspected by DOLE reaches to 800,000 which poses a daunting task for labour inspectors who only number around 250. According to the Bureau of Working Conditions, DOLE's intervention with respect to cases of child domestic workers is complaints-based and usually involves non-payment or underpayment of wages.<sup>98</sup>

### **Reporting, Surveillance and Rescue**

The local barangay (village) is usually the first recourse of child domestic workers in distress. The Barangay Justice System (Village Court) provides a venue for mediation between the child domestic workers and their employers.

The DOLE spearheads the *Sagip Batang Manggagawa* ("SBM") Project (Rescue Child Labourers Project). SBM is an inter-agency quick action team mechanism for detecting, monitoring, and rescuing children in hazardous and exploitative working condition and for eventually reintegrating them into their communities. It is comprised of the Department of Labour and Employment (DOLE), the Department of Social Welfare and Development (DSWD), the Department of Justice (DOJ), the National Bureau of Investigation (NBI), the Philippine National Police (PNP), the Commission on Human Rights (CHR), local government units, private organizations and non-governmental organizations.<sup>99</sup> SBM's objectives are:

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a. The Secretary of Labour or his duly authorized representatives, including labour regulation officers, shall have access to employers records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labour law, wage order or rules and regulations issued pursuant thereto."

<sup>96</sup> § 5.

<sup>97</sup> Interview with Emilia Anaya, Inspection Standards Division and Vivian Capili, Wage and Hour Standards Division, Bureau of Working Conditions, DOLE, in Manila (September 20, 2002).

<sup>98</sup> *Id.*

<sup>99</sup> The DOLE is the overall coordinator of activities under the inter-agency quick action team (QAT) of the SBM, such as standards setting, particularly in the improvement of conditions of work of children; banning of child employment in hazardous occupations; and enforcement of laws, standards and policies under the mandate of the Department.

The DSWD provides appropriate psycho-social services, custody, rehabilitation and reintegration services to child labour victims. The DOH provides appropriate medical and other related services for child labour victims. The National Center for Mental Health also provide services for the psychological/psychiatric needs of the child labour victims.

- (1) establishment of community-based mechanisms for detecting, monitoring and reporting most hazardous forms of child labour to proper authorities who can either refer cases to appropriate institutions or provide direct assistance;
- (2) establishment of 24-hour Quick Action Team Network Centers to respond to immediate/serious child labour cases;
- (3) effectuation of immediate relief for child labourers in hazardous/exploitative conditions through conduct of search and rescue operations and/or other appropriate interventions;
- (4) provision of appropriate, medical, psycho-social and other needed services for the child labour victims;
- (5) imposing sanctions on the violators of child labour laws;
- (6) provision of technical assistance in the prosecution of civil and/or criminal cases filed against employers and employment agencies violating laws and policies relative to child labour;
- (7) Facilitation of the return/commitment of child labourers to parents/guardians or appropriate child caring institutions;
- (8) Upgrading of capabilities of implementers in coming up with child-friendly procedures in protecting children.

The DOLE has designated child labour coordinators, within the Workers Amelioration and Welfare Division of the DOLE regional offices, to coordinate the SBM project. Upon receipt of child labour complaints or reports, these labour inspectors or child labour coordinators conduct initial validation of the complaints received. Where the investigation reveals that the work is hazardous or involves life and death situation, they recommend the conduct of a rescue operation by the SBM team, usually with law enforcement agencies and with the social workers of the DSWD or of the local Social Welfare and Development Offices.<sup>100</sup> Labour inspectors do not need to secure a search warrant in order to enter work establishments for purposes of inspection or rescue as long as they are armed with an inspection authorization from the DOLE regional director.<sup>101</sup>

With respect to child domestic workers, however, the DOLE usually refers the cases to the appropriate local government social welfare and development offices for purposes of investigation and rescue.<sup>102</sup> In practice, it is the DSWD which acts as the lead or focal agency

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The role of the DECS includes provision of special educational assistance to the rescued child labourers. It is tasked to provide appropriate interventions such as specialized tutorial classes. It shall also extend assistance for the return of the children to school and shall monitor the progress of the children's education.

The DOJ renders legal assistance to child labourers. It has committed its office to give priority to the preliminary investigation of complaints filed by the NBI and PNP relating to violations of child labour laws. The NBI and the PNP assist in the conduct of search and rescue operations. They also render technical assistance in the prosecution of civil and criminal cases filed in relation to child labour.

The DILG shall also develop and strengthen the capabilities of the local government units for effective detection, monitoring and response to child labour cases. It shall also help the local government units in the establishment of local SBM networks.

The CHR shall provide assistance to the child labour victims in terms of investigation of human rights violations against children. It shall initiate legal action for and in behalf of the child victims.

The trade unions, employers confederation, and NGOs/POs shall be the key cooperators for the implementation of the project. They shall develop mechanisms of surveillance and detection of child labour cases both in the formal and the informal work situations.

<sup>100</sup> Interview with Janice Fernandez, Labour and Employment Officer III, DOLE NCR, in Manila (September 20, 2002) [hereinafter Interview with Fernandez].

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

with respect to cases of child domestic workers, with the DOLE merely concentrating on the labour standards aspects of these cases.<sup>103</sup>

Social workers of the DSWD and local government units are mandated by law to investigate reports on child abuse which, in its general sense, encompasses child exploitation and child labour. Under the law, the DSWD shall, not later than 48 hours from receipt of a report, immediately proceed to the home or establishment where the alleged child victim is found and interview said child to determine whether an abuse was committed, the identity of the perpetrator and whether or not there is a need to remove the child from his home or the establishment where he/she may be found. Whenever practicable, the DSWD shall conduct the interview jointly with the police and/or barangay official.<sup>104</sup> Experiences of NGOs such as Visayan Forum show that government social workers who conduct visits and rescues of child domestic workers, usually seek the accompaniment of police and barangay officials to serve as a mediating force to cushion the tensions that may arise out of the confrontation with the employers.<sup>105</sup>

### **Protective Custody and Rehabilitation**

The power of protective custody granted by law (Special Protection of Children Act) to the DSWD is a vast artillery of the State to protect abused/exploited children in immediate danger. It encompasses the power of social workers of DSWD to visit homes without a search warrant in order to investigate reports of child abuse and to take immediate custody of the children where investigation discloses sexual abuse, serious physical injury or life-threatening neglect.<sup>106</sup> Nevertheless, even if no serious injury exists, the DSWD may still take immediate custody of the child where a glaring violation of the law, such as violation of the law on minimum age of employment, is found. Since rescue operations often lead to dislocation of the child workers, protective custody is usually given to the children by the DSWD, through its centers for children or through other licensed institutions which have facilities for temporary shelter. In the performance of this function, social workers or officers of the DSWD shall be free from any administrative, civil or criminal liability.<sup>107</sup>

The DSWD provides the rescued children intake and medical evaluations, counselling, psychological services and other rehabilitative services to help them deal with probable trauma and emotional disturbance. Child labourers needing more specialized medical or psychological services are referred to the Department of Health.

The parents, relatives or guardians of the children are then contacted for the eventual return of the children to their families. The DSWD is tasked with facilitating the return of child workers to their parents/guardians or place of origin, unless such is against the best interests of the children. If it is found out that the parents or guardians are unfit or are themselves responsible for the abuse and exploitation of their children, petitions for commitment of the children to the DSWD or any licensed child placement agency, as well as, petitions for the suspension or termination of parental authority, are filed in court by the DSWD in order to secure prolonged custody over the children.

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<sup>103</sup> *Id.*

<sup>104</sup> Rules and Regulations in the Reporting and Investigation of Child Abuse Cases, § 8.

<sup>105</sup> Interview with Ben Nibalvos, Legal Officer, Visayan Forum, in Manila (August 29, 2002).

<sup>106</sup> Republic Act 7610, § 28; Rules and Regulations in the Reporting and Investigation of Child Abuse Cases, § 8.

<sup>107</sup> Republic Act 7610, § 28.

## Recovery of Wages and Monetary Benefits

Complaints for the recovery of wages and other monetary benefits may be filed against the employer by the child domestic worker. Under article 129 of the Labour Code, upon complaint of any interested party, the Regional Director of the Department of Labour and Employment or any duly authorized hearing officer is empowered to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, owing to an employee or person employed in domestic or household service, provided that such complaint does not include a claim for reinstatement and that the aggregate money claim of the househelper does not exceed PhP5,000.00. The regional director or hearing officer shall resolve the complaint within 30 calendar days from the date of the filing of the same. Any sum thus recovered on behalf of the househelper shall be held in a special deposit account by, and shall be paid on order of, the Secretary of Labour or the Regional Director directly to the employee or househelper concerned.<sup>108</sup>

Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding PhP5,000.00, regardless of whether accompanied with a claim for reinstatement, shall be filed with the Labour Arbiters.<sup>109</sup>

Claims for work-related injury and welfare benefits are filed with the Social Security System.

## Criminal Prosecution

Employers who abuse or exploit child domestic workers may be criminally prosecuted under different laws for the following acts:

1. Violation of Minimum Age Law -- Art. VIII R.A. 7610 as amended by R.A. 7658;<sup>110</sup>
2. Employment of Minors in Hazardous Undertakings;<sup>111</sup>
3. Violation of Minimum Wage and Social Security Law;<sup>112</sup>
4. Sexual Harassment;<sup>113</sup>
5. Sexual Abuse and Exploitation;<sup>114</sup>

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<sup>108</sup> Labour Code, art. 129.

<sup>109</sup> Labour Code, art. 217.

<sup>110</sup> Violation of the provisions on working children under Sec. 16 of the Special Protection of Children Act, as amended by Republic Act 7658, is punishable with a fine of not less than One thousand pesos (PhP1,000.00) but not more than Ten thousand pesos (PhP10,000.00) or imprisonment of 3 months to 3 years, or both at the discretion of the Court. Repeated violations of the law shall cause the revocation of the offender's license to operate.

<sup>111</sup> The specific provisions under the Labour Code and Department Order No. 4 prohibiting the employment of children in hazardous undertakings contain no penal provisions. The general penal provision (Art. 288) of the Labour Code found in its final chapter, may, however, be invoked for any violation of the Code declared to be unlawful or penal in nature. It carries the same penalty as that provided for employment of children below 15 years under the Special Protection of Children Act, that is, a fine of not less than One thousand pesos (PhP1,000.00) but not more than Ten thousand pesos (PhP10,000.00) or imprisonment of 3 months to 3 years, or both at the discretion of the Court.

<sup>112</sup> Violation of any provision of Republic Act No. 7655 prescribing minimum wages for househelpers and requiring coverage in the Social Security System is punishable by the same act with an imprisonment of not more than 3 months or not more than PhP2,000.00 or both at the discretion of the court.

<sup>113</sup> All forms of sexual harassment in the employment environment are declared unlawful under Republic Act No. 7877, or the Anti-Sexual Harassment Act of 1995. The Act punishes an employer or any person who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted.

6. Physical Abuse and Maltreatment;<sup>115</sup>
7. Debt Bondage;<sup>116</sup> and
7. Other Acts of Abuse, Cruelty, Exploitation and Other Conditions Prejudicial to the Child's Development<sup>117</sup>

Complaints of child abuse, neglect and exploitation, including child labour, under the Special Protection of Children Act, as amended by the Child Labour Act, may now be filed by any of the following persons (R.A.7610, art. XI, sec. 27):

- a. offended party
- b. parent or legal guardian
- c. ascendant or collateral relative of the child within the third degree of consanguinity;
- d. a duly authorized officer or social worker of the Department;
- e. officer, social worker or representative of a licensed child-caring institution;
- f. Barangay Chairman; or
- g. at least (3) concerned, responsible citizens where the violation occurred.

The above provision was enacted in answer to the problem of non-cooperation or retraction by child victims and their families with respect to the prosecution of criminal cases against the perpetrators or employers, usually due to financial difficulties and the long trial process. There remains a problem, however, of marshalling evidence and witnesses to testify when the child victim is no longer interested in pursuing the case.

In response to the recommendation of the Committee on the Rights of the Child in 1995 for the Philippines to undertake comprehensive reforms in the children's justice system, the government has set out the creation of special desks, committees or units in key government institutions involved in the criminal justice system for the specialized or exclusive handling of children's cases. The Philippine National Police set up a Women's and Children's Desk in every city to handle cases of violation of women's and children's rights. The National Bureau of Investigation also has a similar unit known as the Anti Child Abuse, Discrimination and Exploitation Division to conduct the criminal investigation of child abuse, including child labour, cases. The Department of Justice, likewise, has its own Task Force or Special Committee for the Protection of Children, based in its central office, which takes charges of the preliminary

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<sup>114</sup> A child domestic worker who suffers from sexual abuse under the hands of his/her employer may sue for the crimes of rape, acts of lasciviousness and seduction under the Revised Penal Code. If the child is subjected to any other acts of sexual abuse or sexual exploitation by his/her employer, the child may sue for the crime of "child prostitution and other sexual abuse" under the Special Protection of Children Act which punishes a person who engages in, promotes or facilitates child prostitution or who derives profit or advantage therefrom. A person who hires, employs, induces or coerces a child to perform in obscene exhibitions, indecent shows, or pornographic materials is also liable under the Special Protection of Children Act.

<sup>115</sup> The commission by any person of mutilation, serious, less serious and slight physical injuries are punishable under the Revised Penal Code of the country. Whenever less serious physical injuries shall have been inflicted with the manifest intent to insult or offend the injured person, or under circumstances adding ignominy to the offense, a higher penalty is imposed. The Code also punishes maltreatment committed when a person shall ill-treat another by deed without causing any injury.

<sup>116</sup> Revised Penal Code, art. 274. "Services Rendered Under Compulsion In Payment Of Debt" is imposed upon any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm labourer.

<sup>117</sup> Section 10 of the Special Protection of Children Act is a catch-all provision which punishes a person who shall commit any other act of abuse, cruelty, or exploitation or be responsible for other conditions prejudicial to the child's development. The Act expanded the definition of "child abuse" which now includes psychological abuse, physical abuse, sexual abuse, cruelty neglect, emotional maltreatment and any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. It also includes unreasonable deprivation of the child's basic needs for survival, such as food and shelter. All the foregoing acts constitute "child abuse".

investigation and criminal prosecution of child abuse and child labour cases. The prosecution of criminal cases in court are tried before designated Family Courts.<sup>118</sup> The Family Courts Act of 1998 mandated the creation of family courts in every city to handle exclusively family relations and children's cases. Personnel and officers of the above-mentioned institutions have been receiving specialized trainings on children's rights, child sensitivity, and national laws, policies, strategies and interventions for the protection of children, conducted by the government and non-governmental organizations.

The New Rule on Examination of a Child Witness of 2000 governs the examination of a child witness in all criminal and non-criminal proceedings. It aims to create an environment that will allow children to give reliable and complete evidence, minimize their trauma, and encourage them to testify in legal proceedings. Among the features of the Rule are the provision of support persons such as interpreters, facilitators and guardians *ad litem* to assist the child during the trial. The Court is also directed to supervise the location and deportment of all persons in the courtroom, and to allow the child the use of testimonial aids and emotional security items as aids in testifying. Use of screens, one-way mirrors, videotaped depositions and live-link television in order to shield the child from the accused may also be permitted in the discretion of the Court.

Supreme Court Administrative Circular No. 23-95 enjoins all trial judges to act with dispatch on all cases involving children, including but not limited to child labour cases, cases of child abuse and pedophilia.

#### ***OTHER POLICY INITIATIVES AND PROGRAMMES***

The **National Programme Against Child Labour** ("NPACL") is a concerted effort of the government, trade unions, employers, international welfare and social development institutions, and non-governmental organizations with the over-all objective of eliminating exploitative and worst forms of child labour, removing children below 18 years of age from hazardous work and protecting and rehabilitating abused and exploited working children. NPACL's mission is to pursue mutually enabling partnerships with concerned sectors to enable children, their families and communities to unleash their actual and potential power. The primary focus of NPACL's efforts is on preventing children from engaging in worst forms of child labour and ensuring that where children are found so engaged, they are provided protection and/or withdrawn from it, healed and reintegrated into a caring society.<sup>119</sup> The flagship project of the National Programme Against Child Labour is the ***Sagip Batang Manggagawa***, described earlier.

The **Philippine Time-Bound Programme** ("PTBP") is a new programme being undertaken by the government and civil society, under the auspices of the ILO-IPEC, as part of the Philippine's commitment to take immediate, effective and time-bound measures to secure the prohibition and elimination of the worst forms of child labour under the mandate of ILO Convention No. 182 or the Convention on the Worst Forms of Child Labour. The National Programme Against Child Labour remains the backbone of PTBP. After a broad consultative process, domestic service was identified as among the target priority groups of children in the

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<sup>118</sup> Note, however, that where the penalty provided for the crime is imprisonment of 1 year or less and a fine of PhP5,000.00 or less, the case shall be first brought for amicable settlement before the Barangay Justice System ("Katarungang Pambarangay") if the parties actually reside in the same city or municipality or if their barangays adjoin each other, in accordance with the Local Government Code.

<sup>119</sup> Interview with Maribeth Casin, Chief Standards Division, and Charisma Lobrin, Senior Labour and Employment Officer, Bureau of Women and Young Workers, DOLE, in Manila (August 29, 2002) [Interview with Casin and Lobrin].

country under the PTBP. Other priority groups are prostitution, mining, quarrying, pyrotechnics, agriculture and deep-sea fishing. The implementation of PTBP will be in a phased approach that includes high-level mobilization and political commitment, broad-based consultations, and research and analysis. PTBP has two components. The first component targets the strengthening of the enabling environment for the elimination of the worst forms of child labour by intensifying efforts in policy and legislative reforms and in raising public awareness on the issue of child labour. Activities under this component include child labour-related laws and enforcement, education and training policies, social protection, gender-sensitive environment, poverty alleviation and employment policies, and public awareness. The second component aims at reducing the incidence of selected worst forms of child labour through focused and integrated action directed at child labourers, their families and communities. Activities under this component include prevention, withdrawal, healing and reintegration; access to education; community safety nets; alternative economic opportunities; and social mobilization.<sup>120</sup>

The **Visayan Forum's Philippine Kasambahay Programme** is one of the many sub-programmes that emerged from the overall country strategy of NAPCL. The Kasambahay Programme is a pioneering programme in the country directed at the protection of children trafficked for domestic employment. The programme provides integrated services for child domestic workers in 4 key cities in the country with a high incidence of child domestic work. The Kasambahay Programme has 4 major components, namely: (1) direct services and social protection; (2) empowerment and promotion of self-help organizations; (3) advocacy for employment policy and programmes; and (4) resource center of child domestic workers.<sup>121</sup>

The direct services and social protection component of the programme consists of providing immediate assessment, removal and interception during trafficking, if needed, and facilitating medical, legal, psychosocial and police assistance readily available. Visayan Forum has a temporary shelter facility for abused child domestic workers where they receive psychosocial services and life-skills trainings. It also operates a half-way house in the Manila port where victims of child-trafficking, who have been intercepted, stranded or run-away from home, could take temporary refuge. The Kasambahay Programme includes systematic coordination with school administrations and other partners to assist child domestic workers who combine work and study, and to offer alternative classes and trainings for them.<sup>122</sup>

The empowerment and promotion of self-help organizations component involves outreach services for child domestic workers in schools, churches, recreational parks, ports and waiting areas with a high concentration of child domestic workers. Outreach services include counseling, orientation on legal rights, and social security system registration. A significant aspect of this programme is the strengthening, formalization and registration of the organization of domestic workers, known as SUMAPI, as a workers' group.<sup>123</sup>

Advocacy for legislation, policies and programmes component includes the development and lobbying for the passage of a Magna Carta for Domestic Workers; advocacy campaigns with child domestic workers, parents, employers, communities, religious groups, media advocates, government institutions, policy-makers and the general public for the protection and promotion of the rights of child domestic workers, and the institutionalization of services for their benefit.<sup>124</sup>

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<sup>120</sup> *Id.*

<sup>121</sup> Interview with Virgilio Montano, Programme Officer, Visayan Forum, in Manila (August 29, 2002) [*hereinafter* Interview with Montano].

<sup>122</sup> Pacis, *supra* note 36.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

The Bill on **Magna Carta for Domestic Workers**, as well as, the Bill on **Magna Carta for Child Workers** have been filed in Congress. The bills are now undergoing discussions at the committee level.

**SUMAPI** or the Samahan ng mga Manggagawang Pantahanan sa Pilipinas (Association and Linkage of Domestic Workers in the Philippines) is the first association of domestic workers in the Philippines, the formation of which was brought about by the advocacy activities of the Kasambahay Programme. SUMAPI started in 1995 as an informal group of rescued abused domestic workers who decided to band together to help prevent other domestic workers from falling into the same fate as theirs, by empowering them with knowledge of their rights under the law.<sup>125</sup> Today, SUMAPI boasts of a membership of more than 5,000 domestic helpers in the country, with chapters in four cities. SUMAPI aims to end the years of ill-treatment, abuse, exploitation and other indignities suffered by domestic workers, especially child domestic workers, as well as, to restore the dignity and respect due to the domestic workers sector as partners in national development efforts.<sup>126</sup> It envisions the recognition and institutionalization of a national domestic workers association as a legitimate workers' organization in the formal sector, which embodies their dreams and aspirations. Such institutionalization is hoped to bring about a salary scaling for domestic workers to be regulated by the National Wage Board.<sup>127</sup> Among SUMAPI's projects/activities are: advocacy for and development of standard employment contracts for domestic service; orientation/education of child domestic workers on their basic rights and privileges as workers; and the development of the social and economic skills and talents of child domestic workers.<sup>128</sup>

## ***ANALYSIS AND RECOMMENDATIONS***

### ***LEGISLATION***

1. **Codification of Laws** - National laws for child domestic workers are strewn in different legislation the focus of which is either on the general work force, on domestic workers, on children, or on child workers in general. Only two provisions directly deal with the particular needs and issues of child domestic workers: the requirement that employers should give their child domestic helpers an opportunity to complete at least an elementary education, and the policy that children between 15 to 18 years old are allowed to work as domestic helpers subject to the limitations on hazardous undertakings. Such is a symptom of the lack of recognition by the government of the peculiar needs of child domestic work as a sector by itself. There is a need to study these laws and consolidate the beneficial provisions into a unified code with additional provisions to effectively deal with the peculiar problems faced by child domestic workers.

2. **Revision of Exploitative Provisions** - Legal provisions on domestic work, although sheer in number, still suffer from several infirmities which should be addressed.

It is recommended that the legal definition of domestic or household service as that "*desirable*" for the "*enjoyment*" of the employer's home and "*includes ministering to the*

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<sup>125</sup> *Id.*

<sup>126</sup> Interview with Mila Luna Tibubos, President 2001, SUMAPI, in Manila (August 29, 2002) [*hereinafter* Interview with Tibubos].

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

*personal comfort and convenience of the members of the employer's household”* be changed. This very broad definition enables employers, perhaps unintentionally, to treat domestic workers as virtual servants to whom they can assign unlimited tasks justified only by the comfort, enjoyment and convenience the tasks may serve the employers. A more limited definition focusing on the usual tasks of domestic workers in keeping with their dignity should be provided.

The Labour Code provision declaring that *children of househelpers who live under the employer's roof should not be deemed as househelpers if they are not otherwise engaged as such and are not required to perform any substantial household work* should be abolished or at least re-examined as it unwittingly perpetuates the exploitation of children who are allowed to perform unpaid household work. Parameters should be set to define the term “substantial”, in order to leave no room for exploitation by employers of the children of their househelpers.

**3. Penal Sanctions** - The criminal sanctions for violation of the minimum age of employment law and of the employment of minors in hazardous undertakings do not serve as sufficient deterrents to the continued violation of the rights of child domestic workers. At present the penalty is set at an imprisonment of 3 months to 3 years OR a fine of PhP1,000 (\$20) to PhP10,000 (\$200), at the discretion of the court. These penalties should be increased to give teeth to the law.

Penal sanctions can serve as effective deterrents to the illegal employment of children only if the public is aware of such penal laws and sanctions. It has been the experience of NGOs and SBM implementors that some employers of child domestic workers who have been rescued, claimed ignorance of the law on minimum age of employment. Some of these employers honestly thought they were doing a kind deed by providing the child domestic workers an opportunity to earn and, in some instances, study at the same time. Other employers, though hostile during the rescue operations, turned out to be cooperative during the hearings on the labour claims filed against them, after being advised by labour officers of the laws and regulations they have violated, and fearful of the further sanctions and charges that may be hurled against them. The raising of penal sanctions should, thus, be accompanied by the wide dissemination of these penal laws.

**4. Indemnity and Damages** - In recognition of the inherent vulnerability and special needs of minors, and as a further deterrence to the hiring of minors in hazardous undertakings or below the minimum age of employment, the law or rules should further mandate the payment of higher civil indemnity and damages to the child worker than that established for adult workers and on top of the unpaid benefits and wages due the child worker.

**5. Debt Bondage** – Many househelpers are victims of a modern type of debt bondage. Even before these househelpers start their employment, they are already in debt to recruiters or to their prospective employers who have advanced their recruitment fees, and transportation and lodging expenses on the way to the employer's premises, amounting to an average of two to three month's work or wages.<sup>129</sup> The househelpers, thus, spend their first few months of employment without pay in order to set-off their supposed debt. Many child domestic workers also borrow money from their employers in order to remit money to their families in the rural areas who rely on the earnings of the child domestic worker for survival or schooling, or to meet emergencies at home. The money thus borrowed from the employer gets deducted from the child's salary as loan

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<sup>129</sup> *Id.* at 17.

payment.<sup>130</sup> Some employers also deduct an amount from the salary of the child domestic worker as payment for the mistakes that the child commits in the course of his or her heavy work load.<sup>131</sup> These practices persist despite the laws which mandate the payment of wages directly to the househelper at least once a month, which prohibit deductions therefrom unless authorized by the househelper or by existing laws, and which outlaw bonded labour. These legal provisions are not sufficient to deter the above-described practices by employers and recruiters as the said laws do not squarely address the debt-bondage experience of many domestic helpers as described above.

It is, therefore, recommended that additional laws be enacted prohibiting the charging of recruitment fees to the househelper and outlawing the use of the latter's services as collateral for any loan or advances made by the househelper with the employer. The proposed Magna Carta for Domestic Workers contains the foregoing prohibitions on bonded labour and on charging of recruitment or finders fees. Its immediate passage into law is enjoined.

### ***LABOUR STANDARDS***

**6. Terms and Conditions of Work** - The fact that the law does not consider domestic work *per se* as a prohibited hazardous undertaking for children, yet raises it to the level of a hazardous undertaking upon meeting certain criteria relating to the work environment and type of activity, poses serious problems in monitoring and implementation. For instance, under the law, domestic work becomes illegal where the child is "exposed to" psychological abuse, or where the child works for "long" hours or during the night, or where the child is "unreasonably confined" to the premises of the employer. These qualifying factors are subjective leaving much room for discretion to be exercised by the monitoring or hearing officer. There is, therefore, a need to enact further guidelines specific to child domestic workers to set clear the work activities which are allowable or prohibited for them. Specific hours of work, rest hours, time-off for schooling, rest days or days-off, and other parameters to uplift the minimum working standards applicable to child domestic workers between 15 and 18 years should be set. It is to be noted that although the Philippines has laws governing the hours and conditions of work of domestic helpers in general (e.g. 10 hours of work daily, 6-day work week, 4 days vacation monthly, etc.), such standards are unfit for children and should not be applied to them.

**7. Wages** - The monthly minimum wage for househelpers (PhP800.00 or \$16.00 for highly urbanized cities; PhP650.00 or \$13.00 for other chartered cities; and PhP550 or \$12.00 for other municipalities) is glaringly low. Moreover, the requirement for compulsory coverage of househelpers receiving a wage of at least PhP1,000.00 in the Social Security System is rendered nugatory by the fact that the minimum wage is below the wage set for compulsory coverage in the System. In fact, because the wages of many househelpers are low, some have chosen not to avail of this benefit in order to get hold of hard cash which they badly need to support themselves and families back home.<sup>132</sup> Investment for future retirement or sickness seem not feasible to domestic workers whose current financial needs exceed their resources. There is therefore an evident need to raise the minimum wage of househelpers.

Househelpers should be made aware of the Minimum Wage for Househelpers Act and its provision requiring employers to review the employment contracts of their househelpers every 3 years with the end in view of improving the terms and conditions thereof. This provision should be advocated for as basis for domestic helpers to demand an increase in wages every 3 years.

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Interview with Montano, *supra* note 121.

At present, househelpers are excluded from the benefits of the Thirteenth Month Pay Law. It is also recommended that entitlement to thirteenth month pay be made compulsory for domestic helpers.

8. **Social Security** - Some househelpers who could afford to or who wish to avail of social security benefits, are not able to do so because of lack of knowledge of the procedures to apply for one. With their limited educational background, they need guidance to understand the intricacies of the system and of the application procedures. Registration with the Social Security System (SSS) is also hampered by the fact that government offices are closed during weekends when the househelpers take their days-off. In response to this problem, the SSS has initiated with Visayan Forum, regular registration sessions on weekends to increase coverage among child domestic workers.<sup>133</sup> It is suggested, that the SSS registration of househelpers be localized to the LGUs or barangay level, where SSS employees may be assigned to process their applications, or at the very least, where an LGU officer may be assigned to facilitate such processing with the SSS.

#### ***LABOUR REGULATION***

9. **Work Permits** - Philippine laws do not require the issuance of work permits and execution of employment contracts as pre-conditions for the hiring of domestic helpers or of children of employable age. These are essential tools to effectively regulate the employment of child domestic workers and monitor their situation. It is recommended that work permits be made a mandatory requirement for the employment of child domestic workers of employable age. Approval and issuance of work permits should be a function of local government units, preferably the local social welfare and development office or the local/barangay councils, rather than the DOLE, considering the heavy load that the labour inspectorate is saddled with. Pre-employment requirements for the issuance of work permits should include the submission of birth certificates or other proof of age; medical certificates of fitness for employment; certificate of enrollment in school or an accredited alternative or non-formal education programme; and a contract of employment signed by the employer, the child and his/her parents or guardian.

10. **Employment Contracts** - The execution and approval of employment contracts should be made mandatory for all employers employing minors and domestic workers. The contract should contain the agreed wage and terms and conditions of employment (which shall not be less than the minimum standards mandated by law for such type of employment), description of work activities, and an undertaking by the employer guaranteeing the protection, health, safety, morals and normal development of the child. It is also recommended that a standard contract of employment be adopted by the state to guide employers and domestic helpers in the drafting of their own contracts. Before such contracts are approved by the appropriate body (e.g. local social welfare and development offices, or the Barangay Councils for the Protection of Children), the child domestic worker and his/her parents or guardians should be interviewed and counseled to ensure that they fully understand the contents of the employment contract.

11. **Registration** - There is no system of registration of domestic workers in the country today except in connection with their application for social security coverage with the Social Security System (SSS) office. To reiterate, very few domestic workers actually register with the SSS considering that the salaries of most domestic workers are too low to meet their basic needs and that of their families, and that the salaries of many do not even meet the salary range for

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<sup>133</sup> Pacis, *supra* note 36, at 37.

compulsory coverage in the SSS. Some villages and subdivisions, usually from affluent districts, have established their own registration system for domestic workers, albeit primarily for the security and protection of the homeowners against the threat of strangers or disreputable persons barging through their posh villages or homes and disturbing the peace.

It is recommended that a system of compulsory registration of all domestic workers, whether adults or minors, be institutionalized in the local government units, preferably down at the barangay level, as an effective means of prevention and monitoring. To limit compulsory registration to child domestic workers would give employers an escape hatch by simply claiming that their domestic helpers are already of age. A separate list of child domestic workers should be maintained, however, in order to prioritize the monitoring of the conditions of work of this more vulnerable group.

Considering the enormous number of private dwellings which employ domestic workers, the registration and monitoring of domestic workers cannot be entrusted to the national or regional government machineries such as DOLE and DSWD. The local government social welfare and development offices, or the existing barangay councils may be tapped as the focal agencies to perform such functions.

Registration serves not only the purpose of identifying the domestic workers' whereabouts, but also serves as a preventive tool in ensuring that the domestic workers are of employable age, that the appropriate employment contracts have been executed and that the domestic workers have fully understood their contents, and that the corresponding work permits have been approved. Moreover, registration provides the venue for employers and domestic workers alike to be acquainted with existing laws and regulations, their rights and responsibilities, and modes of redress under the law, which should be explained to them by the registering body through personal counseling and through distribution of reader-friendly hand-outs.

### ***ENFORCEMENT***

**12. Community Surveillance Systems** - Despite the enactment of minimum work-age laws and labour standards provisions to protect househelpers, inadequate enforcement of such laws remains a widespread problem. To begin with, inspection of homes to monitor compliance with such laws is not mandated by any particular law or issuance, as it is not only impractical, but may contravene the constitutional provision on the inviolability of the home and its protection against unlawful State intrusions. Government, therefore, is constrained to take a reactionary rather than a pro-active role in the prevention of abuse and exploitation of child domestic workers. This predicament highlights the need to institutionalize community surveillance systems for information and data-gathering to identify child domestic workers. Coordination with agencies and institutions working on the grassroots should be established or strengthened since these are the ones who have the means of contact with and knowledge of the dynamics of child domestic workers and their employers. Advocacy among barangay officials, homeowners associations and local church groups for prevention, detection and monitoring, should be pursued.

The Sagip Batang Manggagawa ("SBM") experience showed significant gains in the establishment of community-based mechanisms for detection and reporting of child labour. Existing local organizations such as the BCPCs were tapped by the SBM to detect and monitor child labour cases. Through advocacy activities and orientation meetings, child labour concerns

were mainstreamed into the local organization's agenda resulting to reports of incidence of child labour.<sup>134</sup>

When it comes to detection, NGOs such as Visayan Forum and SUMAPI are in the forefront of developing strategies to attract other domestic workers as allies in the detection and monitoring of the situation of child domestic workers in their communities.<sup>135</sup> The establishment of a telephone hotline for domestic workers by Visayan Forum has also facilitated the reporting of violations of the rights of child domestic workers. Since the establishment of the hotline, calls for assistance have been made by the child domestic workers themselves, or their relatives and friends.<sup>136</sup> The DOLE and DSWD, and other NGOs such as Bantay-Bata 163, also have their own hotlines for general child labour or child abuse complaints. The creation and/or maintenance of hotlines in cities and municipalities where domestic workers abound, practically all cities and municipalities, should be ensured. Hotline operators should be given sufficient training on child-sensitivity, on relevant laws, and on mobilizing agencies and NGOs for coordinated and collaborative response.

### **13. Localization and Institutionalization of Inter-Agency Quick Action Team Programme**

- The Programme Implementation Committee of the National Programme Against Child Labour (NPACL) has already been brought down to the regional level, while efforts are on the way to bring it further down the local level.<sup>137</sup> In line with these efforts, the current SBM implementors have suggested that the SBM be integrated into the local development plans and strategies of the Local/Barangay Councils for the Protection of Children (LCPC/ BCPC).<sup>138</sup> Agreements with appropriate local government units should be forged, and formulation of local ordinances regarding the same should be encouraged and supported in order to sustain the SBM.

**14. Rescue Operations** - With respect to surveillance and rescue, SBM records show that from the years 1993 to the second quarter of 2002, SBM has conducted a total of 376 rescue operations nationwide involving 1,249 minors in different work establishments. Special trainings for labour inspectors, law enforcers, social workers and other members of the SBM quick action team for almost a decade have eventually borne fruit to more child-sensitive and effective rescues.

Among the factors which facilitated the conduct of surveillance and rescue were the availability of communication and transportation facilities, availability of temporary shelters for rescued child labour victims, support extended by local executives, existence of BCPCs, and trained SBM implementors on child labour laws. Among the factors that hampered the conduct of surveillance and rescue activities were the lack of commitment and competence of members of the rescue team, priority and workload of member agencies or organizations, lack of coordination among agencies/organizations conducting rescue operations, and limited manpower, funding and facilities for rescue activities.<sup>139</sup>

It has been suggested that the help of individuals with special position in the community such as the parish priest or teacher may be sought to facilitate the peaceful and orderly removal of domestic helpers.<sup>140</sup> Where rescue operations have been conducted with efficient coordination,

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<sup>134</sup> Department of Labor and Employment, *A Consolidated Report of the Assessment Workshops on Sagip Batang Manggagawa* (2001) [hereinafter *SBM Consolidated Report*]; Interview with Casin and Lobrin, *supra* note 119.

<sup>135</sup> Interview with Montano, *supra* note 121.

<sup>136</sup> *Id.*

<sup>137</sup> Interview with Casin and Lobrin, *supra* note 119.

<sup>138</sup> *SBM Consolidated Report*, *supra* note 134.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

with utmost secrecy and upon the children's own requests through the telephone hotline, the results were felt by these children to have served their best interests from their own point of view.<sup>141</sup>

**15. Addressing the Trafficking in Children** - As a prevention measure, the close link between child trafficking and child domestic work should be given primordial attention. Most child domestic workers were first victims of child trafficking, having been duped by recruiters to travel from rural or remote areas to urbanized cities with the promise of good-paying jobs. Many child domestic workers are lured into urbanized cities, such as Cebu, Davao, Bacolod and Batangas, by the profusion of educational institutions offering vocational schemes in these cities. Later, armed with their newly acquired skills, they step migrate to Manila in the hope of obtaining better jobs.<sup>142</sup> In the process, they fall prey to the deceptions of illegal recruiters which operate on a large scale around the country. In an effort to increase their marginal profits due to minimal finder's fee, illegal recruiters are pressured to supply more children into domestic work and resort to deception such as salary deductions, or diversion of children to prostitution.<sup>143</sup>

The problem of trafficking should, therefore, be addressed to prevent entry and re-entry of children into abusive domestic work. The port areas where children disembark are the best places where interventions, programmes, and services could be provided. One such programme is the agreement between the Philippine Ports Authority and Visayan Forum where a building at the port area was converted into a halfway house for women and children who have been rescued, or who have escaped from their unscrupulous recruiters. Visayan Forum has worked closely with the port community – port police/coast guards, owners, crew and staff of shipping companies, and workers' organizations such as porters and vendors -- in conducting surveillance and monitoring at the port area. Their collaborative work eventually led to the interception and arrest of illegal recruiters and the rescue of children.<sup>144</sup>

The proper licensing of local recruitment agencies by DOLE is another step in solving the problem of trafficking. The licenses of recruitment agencies found violating the law against illegal recruitment and trafficking of children should be cancelled even for the first violation. Unlicensed recruiters should also not go unpunished. According to a DOLE official, the DOLE currently has no authority to go after unlicensed recruiters, since there are no licenses to be cancelled in the first place.<sup>145</sup> Redress with respect to unlicensed recruiters can and should, however, be sought through regular courts.

Current legislation on child trafficking, nevertheless, suffers from a serious gap. The Special Protection of Children Act limits the crime of child trafficking to situations akin to purposes of illegal adoption.<sup>146</sup> Legislation punishing the trafficking in children for purposes of illegal employment should, therefore, be enacted. The trafficking in children should be treated as a separate offense from the exploitation resulting from it and penalized separately from child labour, child abuse, illegal recruitment, and other acts of violence or exploitation against children.

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<sup>141</sup> Draft 2<sup>nd</sup> Philippine CRC Report, *supra* note 91.

<sup>142</sup> Pacis, *supra* note 36, at 11.

<sup>143</sup> *Id.* at 38.

<sup>144</sup> *Id.* at 32; Interview with Montano, *supra* note 121.

<sup>145</sup> Interview with Fernandez, *supra* note 100.

<sup>146</sup> Child trafficking is defined under section 7 of such Act as the trading and dealing with children including, the act of buying and selling of a child for money, profit or other consideration. Attempt to Commit Child Trafficking is also punishable by the same Act, committed through the following means: when a person recruits women to bear children for the purpose of child trafficking, or when a doctor, midwife, local civil registrar or any person simulates birth for the purpose of child trafficking.

It should be noted that the Magna Carta on Child Labor bill, now pending in Congress, contains a trafficking provision which has for its purpose the engagement of a child for work or service.

**16. Post-Rescue Support Services** - It is important that the removal of children from work be accompanied by a range of supportive measures. The child's right to survival, health, education, and rehabilitation during the helping process, as well as, in the delivery of after-care services should not be neglected. Generally, basic services for rescued child labourers are available in all regions of the country. These services were the result of cooperation and merging of the resources of various partner-agencies of the SBM. Support services ranged from provision of food and shelter, medical and dental services, psycho-social services, educational and livelihood assistance, as well as, legal assistance, although the availability and extent of such services vary from region to region.<sup>147</sup> Nevertheless, the quantity and quality of these support services still remain a problem. To this date, the lack of political will of local government officials to allocate sufficient resources for rescued child labour victims, persists. There is also a problem with respect to the capacity of temporary shelters to accommodate the number of rescued children.<sup>148</sup>

Considering the inadequacy of resources, government agencies and NGOs involved should further study the implication of rescue operations on the children, given the invasive nature of these operations and the lack of long-term shelters and after-care programmes, as well as, practical alternatives and transition programmes for education, rehabilitation and reintegration of the rescued children. Rescuers should proceed with caution in order not to alienate the children themselves who are being rescued. Priority in conducting rescues should be focused on the worst forms of domestic work.

**17. Recovery of Wages and Monetary Benefits** - In practice, complaints of child workers for underpayment of wages and other benefits are filed by the Labour Standards Enforcement Division of the DOLE regional offices, which summon employers, child workers and their parents, guardians or social workers for a hearing.<sup>149</sup> Labour inspectors serve as mediators in these cases. According to labour inspectors hearing child labour claims for compensation, such cases have very high success rates in terms of payment by employers of the amount awarded to the child workers.<sup>150</sup> Nevertheless, experience of NGOs working with child workers, such as Visayan Forum, Panlipi and the Ateneo Human Rights Center, reveal that child workers get a poor deal during the settlement of cases before labour hearing officers. The children or their guardians opt to settle for a lesser amount of compensation, unpaid wages and benefits than what they are really entitled to under the law, so that they could return back to their hometowns and resume their normal lives sooner than if they would wait for the hearings to finish.<sup>151</sup> Some employers settle with the children and their families outside the mediation proceedings and away from the probing eyes of the labour officers, and NGO paralegals/lawyers who may counsel the children against accepting the employers' proposals. Employers take advantage of these opportunities to let the children sign quitclaims, waiving their rights to any further action or claims against the employers.<sup>152</sup>

The foregoing problem highlights the need to hasten the hearing of labour claims and to empower the children with knowledge of their rights as workers under the law. According to one

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<sup>147</sup> *SBM Consolidated Report*, *supra* note 134.

<sup>148</sup> *Id.*

<sup>149</sup> Interview with Fernandez, *supra* note 100.

<sup>150</sup> *Id.*

<sup>151</sup> Interview with Tricia Oco, Legal Officer, Children's Desk, Ateneo Human Rights Center, in Manila (September 4, 2002).

<sup>152</sup> *Id.*

labour hearing officer, child labour cases before the DOLE take around one to two months or around three hearings to finish. As much as possible, hearings of child workers are now scheduled twice a week in order to expedite the case resolution.<sup>153</sup> The DOLE NCR director has, in fact, instructed its hearing officers last year to prioritise the hearings and computation of wages of child labour cases.<sup>154</sup> A good practice worth propagating is that of trained labour inspectors and hearing officers who counsel the children regarding their rights as workers, even before the mediation proceedings begin, in order to embolden the children and help equalize their bargaining power with that of their employers. It has also become a practice by DOLE NCR hearing officers to seek or award higher compensation for child workers than for adults, considering the vulnerability of these children.<sup>155</sup> These recommendations should be institutionalised as a policy by the DOLE regional offices and by the National Labour Relations Commission when hearing claims for compensation by child workers.

Resort to other third-party mediation is also a viable alternative for the resolution of labour claims. Considering that the *barangay* (village) justice system requires parties residing in the same or adjoining barangays to bring their complaints before the same for possible settlement, barangay officials or accredited community volunteers should likewise be trained to serve as effective mediators in the settlement of labour/compensation claims by domestic helpers. Child domestic helpers with claims before the barangays should be provided with guardians or paralegals from respected community members or NGO workers, to explain to the children their rights and to guard the children's interests.

It is also recommended that, where child workers desire to go back to their hometown pending labour proceedings, the children's guardians or NGOs be authorized to pursue the labour claims on behalf of the children despite the latter's absence. The children may execute "powers of attorney" to ensure that the complaints are pursued and that due compensation are given them. According to a labour hearing officer of the DOLE, claims for compensation of child domestic workers who have already returned to their hometowns may be continued by the DSWD on behalf of the children. The DSWD will take care of remitting the sums eventually awarded to the children.<sup>156</sup> This good practice poses a solution to the problem of overcrowding of institutional facilities and of children's impatience in the tedious legal process, and also facilitates the speedy rehabilitation and reintegration of children into their communities or place of origin.

## ***PROSECUTION***

**18. Problems in Prosecution** - SBM statistics show that most cases filed with the Department of Justice and/or the Courts for violation of the Child Labour Law or the Child Abuse Law were dismissed due to technicality or because the cases were settled extra-judicially. Of the limited number of child labour cases that have reached the Court level since 1996, only 5 child labour cases have resulted to convictions. The rest of the cases were settled extra-judicially or were dismissed due to several factors: (1) the lack of documents such as birth certificates or other proof of age; (2) insensitivity of prosecutors and judges which causes children to withdraw; (3) lack of empathy or understanding by prosecutors and judges of the problem of child labour; (4) lack of interest on the part of the children to pursue the case; (5) SBM implementers' unfamiliarity with the rules on jurisdiction and procedure resulting to wrong filing; (6) children have returned to

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<sup>153</sup> Interview with Fernandez, *supra* note 100.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Interview with Janice Fernandez, *supra* note 100.

their hometowns and no longer appear in court; (7) wrong procedure in the conduct of rescues; and (8) weak documentation of cases.<sup>157</sup>

**19. Marshalling of Evidence** - A pressing problem which hampers the successful prosecution of child labour cases is the lack of or improper documentation to prove the violation of the employer. The use of falsified documents is a common occurrence among child workers who are issued work permits. There is also difficulty in procuring documents to establish the real age of workers. Sometimes there is no proper documentation of the pre- and post-rescue activities of the team.<sup>158</sup> Experience of SBM implementers reveal that prosecutors dismiss cases even at the preliminary investigation level due to lack of evidence or documents such as birth certificates to prove the essential elements of the crime charged. To this date, many child workers do not have birth registration records. Although the civil registration system in the country has been greatly improved with the computerization and consolidation of all civil registry data with the National Statistics Office, the problem of non-registration of births still impede the successful prosecution of children's cases. Because prosecutors are under time-pressure to resolve cases before them, many do not have the patience to wait for the submission of secondary proof of age which takes time considering that the baptismal and school records of the children, as well as, the testimonial evidence through affidavits of parents have to be procured in far flung areas of the provinces where the children's family reside.<sup>159</sup> Efficiency in the system of birth registration and issuance of birth records, therefore, plays a major role in the solution of the child labour problem. Requiring the submission of birth certificates and other acceptable proof of age as pre-employment requirements and as pre-conditions to the grant of work permits would also ease the burden upon the prosecutor of proving the children's age.

It is also recommended that a pool of government doctors or dentists, as well as private volunteer doctors, with expertise on dental-ageing or other medically acceptable proof of age, be tapped as partners in the SBM programme, who may offer their services and expert evidence in the trial of cases of child workers.

**20. Sustaining Children's Interest** - With respect to extra-judicial settlements, SBM experience reveals that most parents of working children did not pursue the cases in court due to lack of financial resources to sustain the family during the case-duration, or due to threats from the accused who are usually influential people or who have connections to such persons. Other causes for withdrawing are the parents' and children's lack of interest in pursuing the cases and frustration with the slow pace of the justice system. These makes them vulnerable to accepting a measly sum of money in exchange for their desistance.<sup>160</sup>

**21. Strengthening Partnerships in the Criminal Justice System Through Capability-Building, Team-Building and Advocacy** - Problems in documentation of cases, insensitivity of law enforcement and court officials, and non-observance of legal procedures by SBM implementors, should be addressed to ensure proper enforcement of the laws and prosecution of violators. It is recommended that more officers from key government agencies (e.g. Philippine National Police, Department of Justice, DOLE, DSWD, etc.) be tapped and designated to handle primarily, if not exclusively, child labour and child abuse cases, and to form part of the SBM teams. Continuing capability-building and skills upgrading for SBM team members and their partner organizations/agencies in the areas of detection, rescue and surveillance, case

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<sup>157</sup> SBM Consolidated Report, *supra* note 134.

<sup>158</sup> *Id.*

<sup>159</sup> Interview with Fernandez, *supra* note 100.

<sup>160</sup> Interview with Montano, *supra* note 121; Interview with Tubibos, *supra* note 126.

management, proper handling of children, documentation, legal procedures, evidence gathering, and other para-legal skills should be undertaken through GO-NGO collaboration. Team-building activities should also be undertaken for SBM members to have a clear delineation of their roles and functions and to strengthen their partnerships.

It is to be reiterated that key government offices have already established special units for the handling of children's cases,<sup>161</sup> yet there remains a problem in their handling of child labour cases. One reason is that some of these specialized units have not been devolved to their local counterparts. For example, the Department of Justice Task Force on Child Protection which is a member of the SBM, is centralized in Manila and its functions and set-up have not been devolved to the city levels where many city prosecutors remain insensitive to the plight of child domestic workers.<sup>162</sup> The concern on the permanence of focal persons for SBM should also be addressed considering the fast rate of turn-over among implementers. Some of the trained implementers were promoted to a regular position not connected with the child labour programme or transferred to a different bureau or division.<sup>163</sup> Continuous and sometimes repetitive training therefore becomes necessary.

The need for ready and available technical, para-legal and legal assistance to duty-bearers and service-providers, especially the SBM team members and assisting NGOs, in the prosecution of civil or criminal cases against employers and employment agencies should also be explored. Philippine experience has shown that although there are well-meaning and dedicated prosecutors and hearing officers, their heavy case load makes it difficult for them to gather the necessary evidence, prepare the witnesses, and strategize and prepare for the case hearings or trial. In response to this challenge, legal NGOs specializing on children's rights, such as the Ateneo Human Rights Center's Adhikain Para sa Karapatang Pambata and the Child Justice League, Inc., have been tapped as SBM partners in providing legal assistance, such as legal education, legal consultation, legal/paralegal training, and litigation (as private prosecutors) in child labour cases and child abuse cases.

**The appointment of Court Appointed Special Advocates/ Guardian Ad Litem (CASA/GALS)** who are accredited private volunteers from the community, to guide, assist, accompany, prepare and speak for the children as they go through the process of the criminal justice system during the duration of their legal cases should also be encouraged. The New Rule on Examination of Child Witness of 2000 has paved the way for such arrangement and several Family Courts have already appointed CASA/GALS to stand for the best interests of children in court. CASA/GALS also perform the important function of facilitating the delivery of support services for the children while their cases are pending in court.

Continuing advocacy on the rights of child domestic workers and on child sensitivity should be undertaken at all levels of the criminal justice system, from the community level to the prosecution and courts level in order to gain more allies in the crusade against child labour. Skills training is useless if the trainees are not motivated to enforce child labour laws and do not perceive the employment of children as domestic workers a problem. So long as they perceive child domestic work as a necessary ill for many indigent families, they cannot be expected to perform their roles well in prosecuting or sanctioning offending employers.

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<sup>161</sup> See discussion on page 50.

<sup>162</sup> Interview with Fernandez, *supra* note 100.

<sup>163</sup> *Consolidated SBM Report*, *supra* note 134.

## ***REHABILITATION AND REINTEGRATION***

22. **After-Care Services** - A common gap identified by SBM members from the different regions is the lack of available, accessible and quality after-care services for children and their families. The lack of support services and meaningful alternatives for families and children in the sending communities force the children to return back to the labour market.<sup>164</sup> There is also inadequacy of funding support from the national and local government for alternative services.<sup>165</sup> It is not surprising therefore that some children themselves refuse to go back home to their families.

Another factor that affects the delivery of after-care services for child domestic workers is the DSWD's difficulty in locating the children's parents or guardians for reintegration purposes. In other instances, cases are not properly turned-over to community-based implementers by national or regional offices, thereby resulting to lack of follow-up after-care services in the community-level.<sup>166</sup>

The foregoing gaps highlight the need to establish or improve psycho-social support services and programmes for children and their families at the sending communities where the children eventually return to. Programmes such as poverty alleviation, health and nutrition, and income generation and employment creation for adults which address the underlying social and economic conditions that contribute to child domestic work should be supported by the national and local governments.

## ***ORGANIZING AND MOBILIZING PUBLIC SUPPORT***

23. **Advocacy with Parents** - The lack of cooperation from parents in the effort to rehabilitate or reintegrate their children were cited by SBM implementers as one of the big hindrances to the realization of the objectives of the SBM. The parents' apathy or ignorance of the detrimental effects of child labour, coupled with the sweet persuasion of illegal recruiters, cause the children to return to their employment. Since many of these parents had also worked when they were young, it was hard for them to reconcile the children's need for protection with the realities of their own family's economic needs.<sup>167</sup> It is to be noted that NGOs and government agencies focusing on child labour have started reaching out to parents of working children to inform them about the rights of children and the negative impact of premature employment of their children.<sup>168</sup>

It is recommended that public awareness of children's rights and the dangers of premature entry into the workforce, especially into the domestic work sector, be intensified. Information campaigns on child labour laws and penalties should also be undertaken.

24. **Advocacy with Employers, Church Groups and Homeowners** - Advocacy efforts should also include the employers of domestic workers. Government and NGOs alike recognize the fact that there are also well-meaning employers of househelpers. In fact, church and religious groups, as well as, homeowners' associations, comprised of individuals who are employers of domestic workers have started implementing projects for the benefit of child domestic workers, which include case referrals, emotional support, awareness workshops for employers on child domestic work, trainings on models and best practices on treatment of househelpers, skills-training for

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Pacis, *supra* note 36.

domestic workers, and initiating/supporting regular gatherings of househelpers using church/homeowners facilities.<sup>169</sup> Strategies should, therefore, include employers as partners in uplifting the relationship of employers and child domestic workers.

**25. Advocacy with Child Domestic Workers** - The organization of child domestic workers as effective advocates for the rights of their own sector should be supported. Children are inherently resilient despite the traumas they have undergone. Their inherent competencies should be cultivated and supported. Since DOLE cannot deal with direct organizing of child domestic workers, grassroots organizations should take over this task. Visayan Forum has been in the forefront of child participation programmes involving child domestic workers. In fact, some of the rescued child workers now work with Visayan Forum in their advocacy and education programmes for child domestic workers.<sup>170</sup> The experience of SUMAPI, an organization of domestic workers, has shown that domestic workers are the most effective advocates of their rights. Their own experience serves as their teacher and as the driving force in their determination to uplift the conditions of their fellow workers. They are in the best position to develop strategies and approaches to combat the exploitation of domestic workers and to develop their full potentials as partners in national development.

**26. Local Child Labour Committees** - Advocacy, protection and rehabilitation programmes for child domestic workers should be institutionalized in the communities through the BCPCs. The establishment of *Samahans* or “child labour committees” in the communities to oversee the protection and promotion of the rights of child workers, as discussed earlier and as mandated by the Child and Youth Welfare Code, should be supported.

## **EDUCATION**

**27. Responsive Education** - Education is an important part of the solution to the problem of child domestic work, especially in the Philippines where many children work to be able to afford the expenses for schooling. While compulsory education has been in the country’s laws for many years now, experience has shown that it has not really been an effective tool in the efforts to combat child labour. For one, no one has yet been prosecuted for violation of such penal provision as contained in the Child and Youth Welfare Code. The wisdom of penalizing parents for such failure to send their children to school due to economic difficulties has in fact been doubted by many. In the Philippines, despite the Constitutional mandate of compulsory education and of free public primary and secondary education, many child workers have dropped out of school due to inaccessibility and the prohibitive hidden costs of attending school. The low self-esteem of many child domestic workers, as a result of working in isolation, has moreover, added to their problems in learning. In many areas, available schooling is of poor quality and are perceived by some families as irrelevant to their needs. Most educational schemes are not structured to accommodate the erratic hours of child domestic workers.<sup>171</sup>

Programmes that aim to improve compliance with and enforcement of compulsory education laws should make school a viable option for children by alleviating the costs that prevent poor families from sending their children to school and by providing a curriculum that is more responsive to the needs of working children. The most promising approaches tried to date include the provision of financial assistance in the form of scholarships; support programmes that

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<sup>169</sup> Interview with Montano, *supra* note 121.

<sup>170</sup> Interview with Montano, *supra* note 121; Interview with Tubibos, *supra* note 126.

<sup>171</sup> *Pacis*, *supra* note 36.

prevent children from dropping out of school (e.g. subsidizing transportation, costs of school meals, uniforms, supplies and books, and eliminating school fees), and supervised school and work programmes.<sup>172</sup> Many NGOs have been involved in these initiatives. For example, NGOs such as Visayan Forum have engaged in technical cooperation with several school administrations to improve school curriculum by incorporating the teaching of the rights of child domestic workers and life skills, and by providing tutorials, remedial classes and night classes. Teachers have also been trained in their role as caregivers and have therefore become second parents to child domestic workers.<sup>173</sup>

## CONCLUSION

The Philippines indeed is replete with laws to protect and promote the rights of a child domestic worker -- as a child, as a citizen, as a member of the country's work force, as a domestic worker, as a victim of abuse and exploitation, and as a witness. These rights are guaranteed no less than by the Constitution and a host of other laws of the land. Avenues for redress of rights violations through the criminal courts, civil courts, labour courts and the barangay justice system are in place. Nevertheless, this study has pointed out the shortcomings of such laws, foremost of which is the lack of recognition of the special needs of the child domestic worker as a member of such workforce. While the law on minimum age of employment clearly covers children in domestic work, there is a dearth of laws to protect child domestic workers above the minimum employable age, considering that domestic work is not *per se* considered a prohibited hazardous undertaking for children. Existing legal provisions governing the terms and conditions of work of domestic workers seem unfit for children. The laws for child workers and domestic workers in general also suffer from several infirmities and gaps, which must be cured through legislation. As a first step, domestic service by itself, should be acknowledged by the government as work which contributes immensely to national development and, therefore, entitled to greater legal protection and regulation. Intensified campaigns for the immediate passage of the bills on Magna Carta for Child Workers and the Magna Carta for Domestic Workers should help address the problem. More than this, however, is the need to enact specific rules, regulations and guidelines to govern the peculiar needs of child domestic workers.

While the government has a concrete policy and programme against child labour, it has long neglected the plight of both adult and child domestic workers. Domestic work, by itself, should be integrated with policies regarding national development, poverty alleviation, social protection and education. It is also high time for the DOLE to have a distinct programme for child domestic workers which incorporates alternative mechanisms, procedures and tools to effectively deal with the informality of the child domestic workers sector. Recently, the Philippine Time Bound Programme, still in its initial stage, has identified child domestic work as a target priority group, thereby holding the promise of a better life for child domestic workers.

Legislation without enforcement is futile. This study has pointed out the need to strengthen the existing national machinery (e.g. government, employers, workers and civil society) to work collectively in detecting, monitoring, and rescuing child domestic workers using non-violent or non-confrontational approaches. Coordination among the different agencies and organizations involved in the SBM process should be strengthened, and continuous training, skills upgrading and advocacy at all levels of the justice system must be carried out. Prosecution of

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<sup>172</sup> Draft 2<sup>nd</sup> Philippine CRC Report, *supra* note 91.

<sup>173</sup> Pacis, *supra* note 36.

cases must, likewise, be pursued and strengthened as the success of cases serves the dual purpose of rendering justice to the child and serving as deterrent to further violations.

This paper has also shown that SBM can only be effective if support structures are in place for provision of continuous financial, psychological, social, moral, educational, recreation and rehabilitation services and programs for the children from the time of reporting and rescue, until the duration of the trial and after-care phase. The setting-up of additional homes and centers for these purposes is also necessary. The government and NGO implementers therefore, need to consolidate, re-channel or seek additional financial, logistical and technical resources to ensure the availability of such support services and facilities.

Localization of government interventions, such as the SBM, is necessary to reach out effectively to child domestic workers who are hidden from the public's eyes. Institutionalization of government programmes and policies at the level of the barangay and local government units must, therefore, be pursued. A system of compulsory registration of all domestic workers at the barangay level will also serve as an effective means of prevention, monitoring, and facilitating delivery of support services to child domestic workers.

The study has also highlighted the need for community involvement in actions against child domestic labour. For the success of programmes at the local level, it is essential that the community itself, including parents, teachers, social workers, youth, church and civil society groups, be involved in devising solutions and in their implementation. Involvement of child domestic workers at all levels of programme implementation is also important. The existing programmes of NGOs, such as the Kasambahay Programme, which include outreach activities for domestic workers in parks, schools and churches; skills training; alternative education; medical, legal and psycho-social support services and referrals; advocacy with community, parents and employers on the rights of child domestic workers and on the adverse effects of pre-mature employment; organization, education and mobilization of child domestic workers; development of appropriate rules and guidelines such as a Magna Carta for Domestic Workers, a standard employment contract, and voluntary codes of practice concerning employment of child domestic workers; among others, serve as good practice models for communities to follow.

Lastly, it must be stressed that prevention is still the best strategy to protect the rights of child domestic workers. Once the children have left their homes to seek better lives through employment elsewhere, it would be difficult to tract them, rehabilitate them and reintegrate them back into their communities. Families must be provided with alternatives to persuade them to keep their children in school and away from hazardous work. Again, the underlying social and economic conditions that contribute to child domestic work must be addressed through poverty alleviation, income generation, and other socio-economic development programmes. These recommendations will entail vast resources and thus will need a strong political will from the national and local government to actualize.

***Case Study on Thailand***  
**AMPARITA S. STA. MARIA**  
*with the assistance of*  
**SHABNAUM Q. AMJAD**

***BACKGROUND***

Working children are generally held in high regard by Thai society, for they are viewed as helpful, grateful and good role models in their families. However, engaging in domestic work still remains a lowly career in this culture. As in other Asian countries, child domestic work is an invisible form of child labour in Thailand. It remains out of reach by labour and other social legislation or protective measures. Not available to inspection for scrutiny because they work within the confines of a private dwelling, the situation of child domestic workers remains a fertile ground for practices that would readily qualify child domestic work under the worst forms of child labour.<sup>174</sup>

Although there is a high demand for child domestic workers among households of middle and upper classes in the urban areas, this sector seems not to be a priority for action in the context of worst forms of child labour. Some of the reasons that could account for this are the following: (1) to a certain extent communities of origin have developed mechanisms and social networks to ensure confidence in the recruitment and conditions of their children into this labour market; (2) there is scarcity of Thai child domestic workers due to the successful expansion of education in remote areas; (3) domestic work is not as popular among child labourers as other jobs and (4) as a consequence thereof, child domestic labourers are perceived to have more negotiation power with their employers due to their scarcity.<sup>175</sup>

It should be noted, however, that while there is a reported decrease of Thai child domestic workers, it could not be said to hold true for foreign child workers, particularly those coming from Lao PDR and Myanmar, who enter into domestic work in Thailand.<sup>176</sup> This fact can have a profound impact on the urgency and priority that the Thai government might be willing to devote to child domestic work even if this problem is seen within the context of the worst form of child labour, since Thai children appear to be at a decrease in number in this particular sector. It is also a fact that Thailand has expressed its reservation to Article 22 of the Convention on the Rights of the Child (CRC) concerning refugee children.<sup>177</sup> These factors are not very encouraging for advocates who want to lobby for a more responsive legislation towards child domestic workers. It is true, though, that the Committee on the Rights of the Child has noted that despite the fact that Thailand is not a signatory to the Convention relating to the Status of Refugee of 1951 and its Protocol of 1967, it has abided by many of the principles enshrined in said Convention. The Committee likewise noted the protection and humanitarian assistance that the Thai government has extended to displaced children.<sup>178</sup> At the same time, however, the Committee noted that “[t]here is a large group of children trafficked into Thailand

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<sup>174</sup> Nawarat Phlainoi, *Child Domestic Workers: A Rapid Assessment*, International Labour Office (April 2002)

<sup>175</sup> *Id.* at. 16.

<sup>176</sup> *Id.*

<sup>177</sup> Article 22, par. 1 states that: “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

<sup>178</sup> See Committee Consideration of the Report Submitted by Thailand under Article 44 of the CRC, Nos. 380 and 381 <<http://www.hri.ca/fortherecord1998/documentation/tbodies/crc-c-11-add13.htm>> [hereinafter Committee Consideration of Thailand CRC Report].

from neighbouring countries who are classified by Thai law as illegal immigrants” and that these children do not enjoy access to education and to legal protection, and that most of them are exploited in prostitution or child labour.<sup>179</sup>

In 2001, the Foundation of Child Development conducted a research on child domestic workers.<sup>180</sup> In a sampling of 40 female children aged between 15-18 years old, half of the respondents were Thai and the other half were Burmese (11), Lao (eight) and Cambodian (one). As a means of entering the domestic work, the Thai children were introduced by acquaintances or peer groups, whereas foreign children were convinced or procured by brokers. In some cases the children were taken from their parents at a very young age with the promise of education and guardianship, but the promises were never kept. The children also revealed that they worked between 12 to 15 hours a day without holidays and the job was entirely dependent on the satisfaction of their employers though some of them reported that they had generous and kind employers who regarded them as family members so they stayed on. The research also revealed that there were two groups of child domestic workers: the first was only responsible for doing household chores in individual homes; while the other had to perform both household chores and help with the businesses of their employers. The children in the second group found their work much harder than the first group. The minimum daily wage given was 30 Baht, averaging about 700 Baht per month.<sup>181</sup>

Aside from the information provided above, the ILO Rapid Assessment Study on Thai Child Domestic Workers also presented data (based on those gathered by Children Foundation and Children’s Rights Protection Centre) on the reported types of abuses that children have suffered, though the statistics were not exclusively on child domestic workers. The data reported physical, mental and sexual abuse and neglect; and on the basis of information derived from rescued children, the other types of violations perpetuated against them included sexual harassment and rights related to child labour.<sup>182</sup> Although the study did not specifically include statistics on the worst forms of child labour, information gathered on these child domestic workers reveals that their situation is indeed conducive to exploitation and abuses, and that domestic work in this context could very well fall under child labour in its worst form.

#### ***LEGAL FRAMEWORK AND POLICY RESPONSES***

Thailand has signed and ratified several international conventions including:

- 1) The Forced Labour Convention (C29)
- 2) The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
- 3) Convention on the Rights of the Child (CRC)
- 4) Convention on the Worst Forms of Child Labour (C182)

As the provisions of the above instruments are not directly enforceable in Thai courts of law,<sup>183</sup> there is need for the enactment of laws if the commitments in these treaties are to be reflected in the legal framework of Thailand and give rise to enforceable rights.

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<sup>179</sup> *Id.* No. 50

<sup>180</sup> See Nawarat Phlainoi *Thailand Child Domestic Workers: A Rapid Assessment* (April 2002) <<http://www.ilo.org/public/english/standards/ipecc/simpoc/thailand/ra/domestic.pdf>. Accessed August 20, 2002>.

<sup>181</sup> *Id.* ¶ 3.5.1

<sup>182</sup> *Id.* at 27.

<sup>183</sup> Committee Consideration of Thailand CRC Report, *supra* note 178, at 1.

## THE CONSTITUTION

The 1997 Constitution of Thailand embodies a number of principles which are also found in the CRC, and can be regarded as beneficial to children in general, including working children. These are the following:

- Articles 26 and 28 - regard to human dignity, rights and liberties
- Article 30 - equality before the law; equal protection under the law; equal rights between men and women; prohibition against unjust discrimination on the grounds of the difference in race, sex, age, personal status and economic or social standing, among others
- Article 43 - equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.
- Article 45 - liberty to unite and form an association, a union, league, co-operative, farmer group, private organisation or any other group
- Article 51 - right against forced labour save in extraordinary cases (war, calamity, etc.)
- Article 53 - right of children, youth and family members to be protected by the State against violence and unfair treatment; right of children and youth with no guardian to receive care and education from the State.
- Article 80 - protection and development of children and youth; promotion of the equality between women and men, and creation, reinforcement and development of family integrity and the strength of communities.
- Article 86 – promotion by the State of people of working age to obtain employment; protection of labour, especially child and woman labour, and provision for a system of labour relations, social security and fair wages.

## SPECIFIC LAW ON CHILD DOMESTIC WORKERS

As can be seen from the Thai Constitution, the protection and promotion principles need to be articulated in specific national laws.

To date, there is no specific law addressing child domestic workers. Initiatives toward the passage of domestic worker laws are also wanting. The low priority of this issue among circles of government and even non-governmental organisations (NGOs), prevents any specific legislation from being passed. The current rights afforded to domestic workers are minimal, in comparison to other organized sectors of labour (*e.g.* factory workers).

### *Labour Protection Act B.E. 2541 (1998)*

The Labour Protection Act (LPA) took effect in 1998. Most of the provisions of this law are not applicable to domestic workers. Consequently, even the provisions regarding working children exclude children in domestic work. Nevertheless, those provisions which are applicable to domestic workers are also deemed applicable to children engaged in this kind of work.

The most glaring exclusion under the LPA that affects child domestic workers is the prohibition to hire children who are below 15 as employees. **Section 44 of the LPA provides that “An Employer shall not employ a child under fifteen years of age as an Employee.”** Thus, under Ministerial Regulations B.E. 2541 (1998), issued under the Labour Protection Act. B.E. 2541 (1998),

“By virtue of the paragraph two of Section 4 and Section 6 of the labour Protection Act B.E. 2541 (1998), the Minister of Labour and Social Welfare hereby issues the following Ministerial Regulation;

“The exclusion of application in who or in part of the Labour Protection Act B.E. 2541 (1998) to any type of employers should be based on the following rules:

x x x

x x x

x x x

“(2) The following provisions shall **not apply to employers who employ employees to do housework which is not part of a business operation:** Sections 12, 18, 21, 22 of Chapter 1 - General Provisions, Sections 23-37 except Section 30 of Chapter 2 – Employment Labour in General, Sections 38 to 43 of Chapter 3 – Employment of Women, Sections **44** to 52 of Chapter 4 – Employment of Young Workers, Sections 53-77 except payment of Wages under Sections 53, 54, 55 and 70 of Chapter 5 – Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay, Sections 78 to 91 of Chapter 6 – the Wage Committee, Sections 92 – 99 of Chapter 7 – Welfare, Sections 100 to 107 of Chapter 8 - Occupational Safety, Health and Environments, Sections 108 to 115 of Chapter 9 - Supervision, Section 116 and 117 of Chapter 10 – Suspension from Work, Sections 118 to 122 of Chapter 11 - Severance Pay, and Sections 126 to 138 of Chapter 13 – the Employee Welfare Fund.] “Given on this 19<sup>th</sup> day of August B.E. 2541 (1998).”<sup>184</sup> (emphasis supplied)

Furthermore, under Ministerial Regulation No. 9, (B.E. 2541[1998]), the LPA “shall not apply to employers who employ employees to perform work in the following: (1) agricultural work; or (2) homework.” Further elaboration of this regulation can be found in the Explanation issued by the Ministry of Labour and Social Welfare.

According to the Explanation of the Notification of the Ministry of Labour and Social Welfare, excerpts of which are reproduced here, only provisions on wages, annual holidays and sexual harassment are applicable to domestic workers.

Explanation of the Notification of the Ministry of Labour and Social Welfare on the Enforcement of the Labour Protection Act B.E. 2541

“As the Labour Protection Act B.E. 2541, which is the most recent labour protection legislation, first coming into effect on August 1998, 2541(B.E.), was initially drafted during the country's economic boom, but took effect only at the present time of economic crisis, there have been suggestions from many sectors to issue supplemental Ministry Regulations and rules of a

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<sup>184</sup> Labour Protection Act B.E. 2541 (A.D. 1998) (International Labour Affairs Division, Department of Labour Protection and Welfare, trans.) at 62-63.



### ***On Wage/Basic Pay***

Section 11- Wages shall enjoy preferential rights on all property of the employer in the same manner as taxes and duties under the Civil and Commercial Code.

Section 51- No payment of wages to a person of other than the child employee; No deduction of wage in payment for advances made to parents

Section 53 – Equal pay for equal work for male and female employees

Section 54 – Payment of wages in Thai currency unless employee consents to be paid in foreign currency

Section 55 - Payment of wages at the place of work of the employee, unless employee consents to be paid elsewhere

Section 70 – Payment of wages on a monthly, daily or hourly basis shall be made not less than once a month unless otherwise agreed upon by employee

Section 76 – No deductions from wages as a general rule. (The exceptions provided do not seem to apply to domestic work)

Section 77 – Where employee consent is required in secs. 54,55 and 76, written consent is prescribed.

### ***Annual Holidays***

Section 30 – An employee who has worked continuously for one full year shall be entitled to an annual holiday of not less than six working days which shall be fixed in advance by the employer or set out in an agreement made between the employer and the employee.

Section 56 – Employer shall pay employee equivalent to wages of a working day for annual holidays.

Section 67 – Where an employer terminates employee who has not committed any offence under Section 119, the employer shall pay basic pay in respect of his annual vacation for the year in which employment was terminated, in proportion to the number of days of annual vacation to which the employee is entitled, including accumulated annual vacation pursuant to Section 30.

### ***Penalties***

Sections 144,146,147 and 149 provide for penalties for violation of the above provisions.

### ***Working Children under the LPA***

Sections 44,45, 46, 47, 48, 49, 50 and 52 fall under Chapter Four (4) of the LPA which deals with employment of “Young Workers.” These provisions are applicable to children 15 and above who work in business establishments. Section 45 provides for notification of the Labour Inspector on matters such as the employment and termination of a child worker and a record of the child’s employment conditions. Section 46 provides for rest periods; sections 47 and 48 prohibit night work and overtime or work on holiday respectively; sections 49 and 50 prohibit workers below 18 from engaging in an enumeration of what is considered hazardous work and from working in places considered as hazardous workplace respectively and finally, section 52 provides for leave entitlements from employment in cases of seminars, meetings or training.

Thus, if a child domestic worker happens to also work for the business enterprise of his or her employer, then the provisions in this Chapter shall be applicable to such child, because he or she is considered employed in a business. Therefore, he or she acquires the protection that the law provides working children because of his or her employment in the business of the employer and not because he or she works as a domestic worker for the same employer.

## **OTHER LAWS THAT MAY BE RELEVANT TO THE PROTECTION OF CHILDREN FOUND IN DOMESTIC WORK**

### **NATIONAL EDUCATION ACT OF 1999**

The Act prescribes the compulsory education of children for nine (9) years. Thus, children remain at school until the age of 15. The Act also aims to extend compulsory education to 12 years so that the children will be in school until they are 18. To actualise these goals, several measures such as free education, free textbooks and free lunch are provided to poor children. The success of these measures appears to have an impact on Thai working children whose numbers have been reportedly reduced.<sup>186</sup>

### **THE CRIMINAL PROCEDURE AMENDMENT ACT (NO. 20) OF 1999**

This Act includes measures for the protection of child victims, offenders and witnesses through the following: 1.) use of videotape recording of statement of child victims; 2.) use of video link trials testimony with the aid of a psychologist or social worker and 3.) taking of depositions from the child victim in case there is difficulty for the child to be brought to court for the purpose of giving his or her testimony.<sup>187</sup>

### **RULE OF THE MINISTRY OF LABOUR AND SOCIAL WELFARE GOVERNING THE INSTITUTION OF CRIMINAL PROCEEDINGS AND SETTLEMENT AGAINST OFFENDERS IN ACCORDANCE WITH LABOUR PROTECTION ACT B.E. 2541**

Under Chapter 1, Clause 7 (3) of this Rule, the competent officer for settling shall immediately make a complaint or press charges to the interrogation officer in cases involving abuse and child labour while Clause 7(5) provides for the verification of sexual harassment claim by an employee who is a woman or child, before making a complaint or pressing charges.

### **PREVENTION AND SUPPRESSION OF TRAFFICKING OF WOMEN AND CHILDREN ACT (1997)**

This piece of legislation indirectly aids child domestic workers since children from the surrounding Mekong region are at risk of being trafficked and eventually end up in the domestic workforce in Thailand.<sup>188</sup> This law criminalizes the offence of trafficking in women and children, with a penalty for traffickers up to twenty years of imprisonment. The most important provision of this law is that it does not label children as illegal immigrants, but as victims. Thus, help and rescue are the main responses for these victims. The Act on Prevention of Traffic in Women and Children of 1928 was amended in 1997 to include boys and was made more suitable to deal with the various forms of present-day trafficking. Officials are now given wider authority to search

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<sup>186</sup> See Working Papers: Country Paper Thailand, The ILO\_Japan Asian Meeting on the Trafficking of Children for Labour and Sexual Exploitation, 10-12 October, 2001, Manila, Philippines, at 5 [hereinafter Thailand Working Papers].

<sup>187</sup> *Ibid.*, p. 4

<sup>188</sup> See Christina Wille, *Thailand-Lao People's Democratic Republic and Thailand-Myanmar Border Areas Trafficking in Children into the Worst Forms of Child Labour: A Rapid Assessment* (November 2001) <<http://www.ilo.org/public/english/standards/ipecc/simpoc/thailand/ra/border.pdf>> [hereinafter *Rapid Assessment: Thailand*].

and inspect establishments. Provisions are made to facilitate legal proceedings.<sup>189</sup> According to researchers from Mahidol University, though officials have wider authority to search and inspect establishments, it is unclear whether or not private households are covered under these “establishments.”<sup>190</sup>

Victims will be treated by relevant governmental agencies according to guidelines of the Memorandum of Understanding (MOU): Common Guidelines for Relevant Agencies in Protecting Women and Children Who Are Victims of Trafficking (1999).<sup>191</sup> The MOU creates a network of agencies to rescue, rehabilitate, and reintegrate trafficked victims into their own communities. As a brief background, there are three sets of MOUs: first, among government agencies; second, among NGOs and third, by and between the government and NGOs.

The first MOU (among government agencies) has been signed and implemented since 1999. This MOU was undertaken in an effort to achieve a comprehensive approach to trafficking that promotes multi-ministerial and inter-departmental dialogue and information sharing. It also took into account the differences in mandates of the agencies involved and their individual working principles. The second MOU (among NGOs), which was targeted to be officially signed and implemented in the first quarter of 2002, represents the parallel effort on the part of NGOs. During the process of drafting this MOU, it was clear in the minds of the drafters that the end product must be complimentary to, and not in conflict with, the government MOU. The third MOU (by and between the government and NGOs) was the most complex and challenging among the three MOUs. The major challenges in the drafting of this MOU were in the areas of cooperation between the government and the NGO sector and how a balance could be achieved that would insure complementarity with the two other MOUs, and yet preserving its operational flexibility. This meant that the MOU should not be too binding but compromising enough to allow for effective coordination between both the government and NGO sectors. This MOU was likewise targeted to be signed and implemented in the first quarter of 2002.

#### THE VOCATIONAL TRAINING PROMOTION ACT (1994)

The Act aims to develop the skills of new workers and to improve skills of those already in the work force to enhance their potentials and productivity. The Act calls for co-operation between the employers and the educational institutes in providing students with on-the-job training. It has also offered tax incentives to employers who are providing for training by allowing them to deduct the training costs from taxes. Although this law does not seem to have a direct impact on child domestic workers, its actual effect lies on the fact that with training that these children would receive as new hires under this law, they will be less vulnerable to ending up in domestic work in case of termination or dismissal. The assumption is that with the skills training that these children have acquired, domestic work will not be as popular a choice among them compared with other jobs.

#### THE THAI NATIONALITY ACT B.E. 2508 (1965)

This Act was amended by the Nationality Act of 1992 (version 2). Thai nationality is now conferred to a child who has either a Thai mother or father. Article 7 is applicable to all persons born between 5 August 1965 and 25 February 1992.

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<sup>189</sup> Keitaya Archavanitikul, *Trafficking in Children for Labour Exploitation including Child Prostitution in the Mekong Sub-Region*, (July 1998) 61 [hereinafter Archavanitikul].

<sup>190</sup> *Id.*

<sup>191</sup> Foundation for Child Development, *Report on Child Domestic Workers in Thailand* 8 (2002) [hereinafter Foundation Report].

“Article 7: The following people can obtain Thai nationality by birth:

1. All persons with Thai parents, regardless of the place of birth.
2. All persons born to Thai mothers, regardless of the place of birth, including those without legal fathers, as well as those with fathers of no nationality.
3. Any person born in the Kingdom.

“Article 7 (1) Those born before the Nationality Act was enacted are eligible to obtain Thai nationality.”<sup>192</sup>

Child domestic workers whose mothers are Thai can now avail of this provision and have the right to be registered as Thai nationals. This is important not only in establishing the filiation between the children and their parents but also in ascertaining the relationship of these children with the State which has the duty to protect them and promote their rights as children. Having child domestic workers recognized as Thai nationals and being registered as such can have far-reaching implications on the protection that the government can extend them including access to education and monitoring their whereabouts. (For an elaboration of the Amendments on the Nationality Act, please refer to Table 1)

## **PENAL CODE**

### THE PENAL CODE AMENDMENT ACT (NO. 14) OF 1997

The Act provides for the protection of children under 18 against sexual offences, sexual harassment, sale of children for begging, forced labour and labour exploitation. The Act also includes offenders committing the crime both within the country or abroad.<sup>193</sup>

### OTHER PROVISIONS IN THE PENAL CODE

Thailand’s Penal Code also contains specific provisions against child cruelty. Domestic workers who are predisposed to abuses in the household could very well avail of these provisions. The Committee on the CRC in its report took note of the following:

“a) Criminal laws. Though section 398 of the Penal Code simply states that a person who commits acts of cruelty on a child who is below the age of 15 and who is a dependant faces a maximum of one month’s imprisonment or a 1,000 baht fine or both, there are other criminal laws (sects. 293, 295, 297, 303) which can also be applied to child cruelty cases in addition to the following specific ones:

(i) If anyone tortures a child resulting in the death of the child, the offender is guilty of torturing a child and is liable to 3 to 20 years’ imprisonment (sect. 290);

(ii) If anyone commits an act of cruelty or similar acts on a child who is dependent upon him for a living or otherwise until the child is driven to attempt suicide, regardless of whether the suicide succeeds or not, the offender is liable to a maximum of seven years’ imprisonment and a fine of not more than 14,000 baht (sect. 292);

(iii) If anyone tortures a child and causes permanent mental or physical harm to the child, the offender is liable to a maximum of three years’ imprisonment or a fine of not more than 6,000 baht or both (sect. 295). If the torture results in the

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<sup>192</sup> See Bangkok Post (June 9, 2002) ,[http://www.bangkokpost.net/chiangmai/news/090602\\_news07.html](http://www.bangkokpost.net/chiangmai/news/090602_news07.html)>.

<sup>193</sup> See Thailand Working Papers, supra at 186, at 4.

child being critically injured, the offender is liable to prison terms ranging from 2 to 10 years (sect. 298);  
(iv) If an offender has committed a child cruelty act and has infringed the child's freedom, he is liable to criminal punishment under the Thai Penal Code (sects. 309-320);”<sup>194</sup>

## RELEVANT POLICIES ON CHILD DOMESTIC WORKERS

As in laws, there are no policies and programmes/plans that are specific to child domestic workers that can be isolated from child labour.

### CABINET-APPROVES MEASURES

On June 14, 1988, the Cabinet met and adopted 27 measures to tackle the problem of child labour. Though some of these measures were seen as too broad and without clear directions when it came to implementation, they nevertheless indicated that there was official awareness and concern about the problem of child labour. Since then, these measures were reduced to 15. Those that were clearly implemented had to do with the setting-up, training and increase in the number of Labour Inspectors. The setting-up of hot-line centre for reporting of cases of child labour exploitation was also implemented. The success of the implementation of the other measures could not be readily ascertained because they essentially involve a process of raising the level of awareness on the part of the public (including community leaders, employment agencies and employers) regarding the issues of child labour and labour protection laws.<sup>195</sup>

The most significant accomplishments in the above measures, however, have to do with law and policy reforms. Thus, in 1992, the compulsory education policy for children was changed from six years to nine years, enabling children to enter the labour market only upon reaching the age of 15 instead of earlier. In 1998, this policy was further reinforced upon the passage of the Labour Protection Act (LPA), which prohibited the hiring of children below 15 as employee. Finally, in 1999, the National Education Act embodied this policy, providing for a compulsory education for nine (9) years and effectively mandating that children remain in school until the age of 15.

In 1998, the LPA also provided penalties for violation of the provisions of said Act, including those relevant to child domestic workers. (See previous discussion on LPA)

### CHILD LABOUR PROBLEM: PREVENTION AND SOLUTION PLAN, 1997-2001

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<sup>194</sup> See Committee Consideration of Thailand CRC Report, *supra* note 178; Initial Reports of States Parties due in 1994 Addendum Thailand <<http://www.hri.ca/fortherecord/1998/documentation/tbodies/crc-c-11-add13.htm>>.

<sup>195</sup> Saisuree Chutikul, et. al., *Thailand Country Study Towards a Best Practice Guide on Sustainable Action Against Child Labour* 39-40 (January 1998). The 15 Measures are summarized as follows in the report: 1.) to speed up labour inspection and labour protection law enforcement; 2.) to launch a national campaign against exploitation of child labour and seek cooperation from different partners; 3.) to provide information for community leaders and the general public on proper development of child labour; 4.) to meet job placement offices to inform them about regulations on the use of child labour; 5.) to meet enterprise owners to inform them about the use of child labour and labour protection law; 6.) registration of child migrant labour; 7.) set up special committees for child labour protection at the central and provincial levels; 8.) seek cooperation from hospitals in Bangkok and the provinces to report on suspected cases of child labour abuse and torture; 9.) set up labour inspection offices in 36 districts I Bangkok; 10.) increase the number of labour inspectors appointed from government agencies; 11.) extension of six years compulsory education to nine years; 12.) skill development promotion for non-school children under 15 years; 13.) training of labour inspectors for efficiency improvement; 14.) set up a hot-line centre for public reporting of cases of child labour exploitation; and 15.) increase the degree of punishment of labour protection law.

In 1997 the “Child Labour Problem: Prevention and Solution Plan, 1997-2001” was developed by the Ministry of Labour and Social Welfare (MOLSW) in an attempt to systematise the national approach to child labour and develop an effective framework for action.<sup>196</sup> It is a follow-through of the 27 (and the 15) measures adopted by the Cabinet. The major strategies adopted in this plan are categorised into Prevention and Protection levels. For the former, the strategies are for the extension of education opportunities and prohibition of hiring child workers below 15 through the enactment of laws. On the prevention level, among the strategies adopted are the upgrading of skills through the cooperation of employers; strengthening of monitoring mechanism against child labour through increase in the number of labour inspectors; creating a network for monitoring children from their homes to the workplace and mobilising other agencies to coordinate responses to child labour problems, including financial support.<sup>197</sup>

#### THE EIGHTH (1997-2001) AND NINTH (2002-2006) NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT PLAN

Accordingly, the Eighth National Economic and Social Development Plan has the clearest statements on child labour as it sets as priorities the acceleration and prompt enforcement of legislation to increase the minimum age for labour from 13 to 15, and the assurance of protective measures and provision of decent benefits for young labourers in both agricultural and industrial sectors.<sup>198</sup> Indeed, it was within the years covered by this plan that the LPA was passed providing for the protection of working children and also for the applicability of a few provisions of the law to domestic work.

It has been feared that the focus of this plan on human resource development including child labour and child rights would be diluted during the review of its structure and by budgetary constraints.<sup>199</sup> However, judging from the main philosophy of the Ninth Plan, it is hopeful that the thrust on human resource development will continue. According to said Plan, it will emphasize on

“sufficiency economy” as the main philosophy for “sustainable development and well-being of the Thai people.” It will be focused on development integration with people as the centre for development and the balanced development in economic, social, politics and environment aspects. Furthermore, the Thai people must be aware of the necessity of changing concept idea, attitude and working process as to be in line with the changing administration system aiming at efficiency, quality and modernization. They should be able to efficiently utilize knowledge and technology, able to protect themselves, be moral and honest as well as flexible to adapt to the changes.”<sup>200</sup>

#### **CHILD PROTECTION ACT (CPA): Legal Instrument on the Horizon**

Thailand is in the process of drafting the “Child Protection Act.” This law provides that in case parents are unable to provide for the care of a child, the government will step in for the

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<sup>196</sup> *Id.* at 40.

<sup>197</sup> *Id.* at 40-41, 145.

<sup>198</sup> *Id.* at 43.

<sup>199</sup> *Id.* at 44.

<sup>200</sup> See Country Report on Infrastructure Development Thailand: Framework of the Ninth National Economic and Social Development Plan (2002-2006), Office of The National Economic And Social Development Board (March 2001) <<http://www.unescap.org/tctd/gt/files/thailand2001.pdf>>.

child's welfare. It also provides for systems and networks to protect children from acts of violence to be set up at communal, provincial and national levels. It establishes a minimum standard of care that a child is entitled to, as well as specifies the punishment for anyone violating the rights of a child.<sup>201</sup>

Although not specifically focused on child domestic workers, this act would aid them by establishing a minimum standard of living. No one could use children for work if said work is deemed harmful to the physical, mental, or social development of the child. [§ 28 (8)]<sup>202</sup>

A member of the drafting committee, Mr. Sunpasith Koomprapan, states that the "Child Protection Act would cover more than what is expected from the Convention on Worst Forms of Child Labour – C 182."<sup>203</sup> This Act calls for full participation by all levels of the community. In short, the CPA will change social relations among the Thai people. Greater respect for children's rights will be highlighted.

CPA began its legislative journey around 1999, under Prime Minister Chuan Leekpai. Mr. Sunpasith is hopeful that it will pass within the next two years. CPA calls for more social workers to be with the local administration in monitoring the use of children in the workforce. Another highlight of the CPA is the network of professionals that will support efforts dealing with children's rights.

Even though many sections of the CPA describe the acceptable relationships of children with employers, the main theme of the act is child welfare promotion. Some relevant sections include:

Section 26. Require the care and nurturing of a child not to be below the standard stated in the decree.

Section 29. Anyone who sees children who are in difficulty and need to be helped can give a helping hand, primary assistance and inform proper authorities.

Section 30. NGOS are allowed to register with the MOLSW and become an authorized agent to intervene on behalf of the child in case of emergencies – allowing police power to enter the home of an abused child [§ 30 page 20].

#### ***ASSESSMENT OF RESPONSIVENESS AND EFFECTIVITY OF LAWS, POLICIES AND ENFORCEMENT MECHANISMS***

From what can be gathered from the legal framework of Thailand, children in domestic work are accorded some rights as workers but they do not enjoy the same rights and protection as those children who are engaged in other categories of work belonging to the formal sector. Furthermore, the rights and protection measures that they are entitled to are guaranteed and provided by law to them because of their categorisation either as domestic workers or as children in general, and not because they are child domestic workers. Be that as it may, what will be discussed in this section is a summary of the rights and available protection measures applicable

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<sup>201</sup> See Ministry of Foreign Affairs, Kingdom of Thailand: Human Rights Promotion in Thailand, <<http://203.150.20.51/web/24.php>>.

<sup>202</sup> This is based on an unofficial translation of the Child Protection Act. Interview with Sunpasith Koomprapan, in Bangkok (August 1, 2002).

<sup>203</sup> *Id.*

to them as child domestic workers and whenever possible, information shall be given on how effective these measures have been in upholding, promoting and protecting their rights.

## FUNDAMENTAL RIGHTS

### *Right against debt-bondage*

Under the Thai Constitution, the right to human dignity and the right against forced labour are guaranteed. Thus, child domestic workers can be said to enjoy the right to mobility and the right against debt-bondage. They should be able to leave the work premises freely and not be unduly kept or detained even if their families are in debt with their employer. The LPA further strengthens this by providing that the payment of wages should be made to the child employee only and that his or her wages should not be deducted on account of advances made by his or her parents (Section 51). There is no information if the practice of debt-bondage in domestic work persists especially for Thai children. However, it can be safely assumed that this problem is becoming more common with foreign children entering Thailand for domestic work, especially those who have been trafficked for domestic labour.

### *Right against Sexual Harassment*

This right is embodied in Article 16 of the LPA. However, the implementation and enforcement of this provision has been minimal at best. In an interview, according to one Professor, the anti-sexual harassment clause has been “nearly impossible to enforce” or has “hardly been enforced.” Apparently, in Thai, “kuk kam tang pate” refers to the act of putting a female worker in a condition of being sexually exploited;<sup>204</sup> and child domestic workers, especially the girls are vulnerable to “kuk kam tang pate” since their workplace is in a private home, where such abuses are less likely seen by other people and are less likely to be reported.

Furthermore, the composition of guilt to prove someone has done the act, and to collect the evidence to prove that this act occurred, are quite difficult for children, who naturally lack the power to assert themselves compared to their employers. If the case is brought to court, “the one who is damaged can hardly win the case.”<sup>205</sup> Sexual harassment is also a topic that has a low priority in Thai society.<sup>206</sup> In sum, Section 16 of the LPA is rarely enforced. Since sexual harassment is taboo in Thai society, the likelihood of someone reporting such abuse is also rare.

### *Right to Education*

There is a general observation that the compulsory education law has been implemented quite successfully because there have been improvements in the number of Thai children entering school<sup>207</sup> and a corresponding decrease in Thai children entering in domestic work.<sup>208</sup> However, others have noted that compulsory education is not effective since the existence of poverty pushes parents to send their children away to earn money instead of going to school;<sup>209</sup> and that there is

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<sup>204</sup> Interview with Lae Dilokvidhyarat, Associate Professor of Economics, Director of Labour Management Development Center, in Bangkok (August 1, 2002) [hereinafter Interview with Dilokvidhyarat].

<sup>205</sup> *Id.*

<sup>206</sup> See Appendix 2.

<sup>207</sup> Interview with Khemporn Wiroonrapun, Foundation for Child Development, in Bangkok (July 31, 2002) [hereinafter Interview with Wiroonrapun].

<sup>208</sup> See *Rapid Assessment Thailand*, *supra* note 188.

<sup>209</sup> Interview with Dilokvidhyarat, *supra* note 204.

still a prevailing attitude in the family that after grade school, one should work because only good students go for higher education. Furthermore, there are also gaps for hill tribe children in that even though the education is free, there are others costs that are not affordable for them such as uniforms, books, supplies, transportation and accommodations.<sup>210</sup>

## CONDITIONS OF WORK

### *Minimum Age and Minimum Wage*

Child domestic workers do not come under the proscription against hiring below the age of 15. They do not also enjoy the right to a minimum wage. These two important factors which bear upon protection of labour rights are absent in the context of child domestic work. They are discussed here to further emphasise the impact of their absence.

The lack of a legal definition for domestic workers and domestic work presents many problems for child domestic workers advocates. No standards of domestic work exist since the nature of domestic work is considered irregular and impossible to supervise. For example, the working hours, expectations from the employer, and wages vary from household to household. This irregularity, coupled with the limited access of researchers into private homes, hinder the effort to gather and publish accurate studies that reflect the true plight of child domestic workers.

These limitations were captured by a study conducted by the Foundation for Child Development, “Child Domestic Workers in Thailand,” which states:

In general child domestic workers is not an interesting issue for several concerned organization as it should be. There is no quantitative survey at the national level. There is no policy that deals directly with domestic work protection. What is available now is policy that allows immigrants to do domestic work that does not specify clear protection. The law covers some aspects and **lacks** protection in basic rights – minimum age, minimum wage, days off, holidays, and benefits. Many organizations do not specify child domestic workers as a separate major target group. It is combined with other groups of children and receives the same services.<sup>211</sup> [emphasis supplied]

Under the LPA, an employer may not employ children under 15.<sup>212</sup> However, a private household can hire anyone under 15 years old and it would be legal.<sup>213</sup> According to the MOLSW, anyone may hire a child (less than 18 years old) to work as a domestic servant -- this is legal.<sup>214</sup> Even though the LPA states that employers are not allowed to hire anyone under the age of 15, private households can employ such persons and there is no penalty for doing so if said children are only performing housework. If they are required to do some work in the family

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<sup>210</sup> Interview with Wiroonrapun, *supra* note 207.

<sup>211</sup> Foundation Report, *supra* note 191, at 7.

<sup>212</sup> Labour Protection Act B.E. 2541 (A.D. 1998) chap. 4, § 44 (Department of Labour Protection and Welfare, International Labour Affairs Division, trans.) 15 (March 2002) (As this Act is compiled and translated by International Labour Affairs Division, Department of Labour Protection and Welfare, it does not carry any legal authority. Only the original text in Thai has legal force.)

<sup>213</sup> Group Interview with Ministry of Labour and Social Welfare, in Bangkok (August 2, 2002) [hereinafter Interview with MOLSW].

<sup>214</sup> *Id.*

business, then the age prohibition and other provisions of the LPA for working children would apply to them.<sup>215</sup>

While the services provided by domestic workers are an absolute necessity for many working couples, the impetus to create laws that would protect domestic workers, especially child domestic workers from abuse is far from being realized. Lacking a legal definition of domestic worker, a minimum wage standard, and a minimum age for entering as domestic workers, the service known as domestic work readily provides an environment conducive to exploitation and abuse.

### *Wages and Holiday Pay*

According to the Foundation for Child Development, “being taken advantage of in salaries – no payment or very low payment” is one of the main problems of child domestic workers.<sup>216</sup> If employers consider food and housing as a form of payment for the service rendered by child domestic workers, then the payment for their services might be insufficient or non-existent. This comes with the lack of a legal definition of domestic worker and the idea that the work they perform is not “real work.” Since they are not performing real work, real wages are not in order. Section 53 requires equal payment for male and female workers, which reflects the Thai commitment to gender equality. Section 54 requires the employer to pay in Thai currency and Section 55 requires the payment to be made at the place of employment. Finally, Section 70 lays out a time schedule for payment of wages; but while all of these sections are important to the distribution of wages, the problem for child domestic workers seems to be at a more basic level – receiving wages from their employer.

Even though these sections of the LPA apply to child domestic workers, the enforcement of sections 53-55 and 70 are nearly impossible to achieve. Labour inspectors do not usually enter private homes unless there has been a report of abuse. However, in a case mentioned by the MOLSW, five child domestic workers (2 Burmese and 3 Laotian) were awarded USD\$ 21,000 in back wages.<sup>217</sup> After repeated abuse from their employer, MOLSW was finally contacted. Then labour inspectors entered the house and assessed the damages. Ultimately these migrant child workers were sent back to their respective countries.

Section 30 of the LPA describes the 6-day holiday leave. In theory, if a person does not receive his or her 6 days leave, after a year of service, that person may file a complaint with the Labour Protection Department. But reality shows that days of leave are usually given depending on the discretion of the employer. Many employers may observe the general practice of holiday leave during the Thai New Year, “Song Kram” from April 12-15<sup>th</sup>.<sup>218</sup> Professor Lae opines that if an employee is on good terms with their employer, there is a tendency to compromise and not ask for the leave of absence;<sup>219</sup> furthermore, “most people are unaware of the 6 day leave provision” in the LPA.<sup>220</sup>

Implementing and enforcing this clause has been difficult since many people are unaware of their rights. Since domestic workers continue to be considered low in priority for labour inspectors and their registration is not required by the MOLSW, there is no way to ensure that

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<sup>215</sup> *Id.*

<sup>216</sup> Foundation Report, *supra* note 191, at 6.

<sup>217</sup> Interview with MOLSW (unverified by actual records).

<sup>218</sup> Interview with Wiroonrapun, *supra* note 207.

<sup>219</sup> Interview with Dilokvidhyarat, *supra* note 204.

<sup>220</sup> *Id.*

child domestic workers or domestic workers would be getting their leave of absence. With only 30-40 labour inspectors dealing directly with children, many child domestic workers may go on working without having the benefit of this clause being enforced.<sup>221</sup> Enforcing this section is difficult since 1) this entitlement is not widely known and 2) no one knows exactly where all the domestic workers are – again, they are a low priority for labour inspectors – unless it is a case of physical abuse – then labour inspectors would enter the house, but if that does not happen, then labour inspectors would not be poking into private homes.

## ENFORCEMENT AND MONITORING MECHANISMS

### *Hotline Service*

Many child domestic workers may be unaware of the service hotline sponsored by the Woman and Child Labour Division of the MOLSW. This hotline was designed to receive and solve complaints of women and child labour abuse.<sup>222</sup> From 1999-2000 only 36 cases were received by this hotline, however, not all the cases were from child domestic workers or domestic workers.<sup>223</sup> An increase in the number of calls may demonstrate an increase in awareness, knowledge and use of such a service. However, such a low number of calls might reflect the public's hesitation or lack of knowledge in using government sponsored help lines. Indeed, this service should reach more people. Awareness raising campaigns must be conducted to introduce this mechanism and inform the public and civil society that the Woman and Child Labour Division offer this hotline as a service to women and children.

### *Registration*

A system of registration for child domestic workers or domestic workers does not exist. Birth registration could be used as a means to track child domestic workers or their entry into the workforce. If such a system were implemented, monitoring the well being of child domestic workers and domestic workers would be easier. At the very least, labour inspectors would know where the workers are located should there be any instances of abuse. A problem with registration is the fact that quite a number of child domestic workers are foreign born, so access to their birth records are unavailable.

In the interviews and surveys conducted in this study, majority of the interviewees felt that the efficiency of the labour inspection services were “not effective.” This could be due to the small number of labour inspectors that are assigned to work in each province. Also, since the only time labour inspectors are required to make an appearance in private household is if there is a report of abuse, monitoring the welfare of child domestic workers is nearly impossible. The efficiency of child monitoring agencies was considered “least effective.” Given the task of monitoring all forms of child labour, these agencies might not have the capacity to take on the issue of child domestic workers. Again, the problem of being a “low priority” was the reason for concluding that child-monitoring agencies were not effective in preventing the employment of children for domestic work.

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<sup>221</sup> A rough estimates provided by Dilokvidhyarat is 30-40 Labour inspectors. He cautions that this is not an official count. (Interview with Dilokvidhyarat, *supra* note 204.)

<sup>222</sup> WOMAN AND CHILD LABOUR DIVISION, DEPARTMENT OF LABOUR PROTECTION AND WELFARE, ADMINISTRATION OF WOMAN & CHILD LABOUR.

<sup>223</sup> Interview with MOLSW, *supra* note 213.

### *Inspection*

The duties of labour inspectors are described in Chapter 14 of the LPA. The importance and need for proper training of these officials is necessary for the rights of child domestic workers to be upheld. There are roughly 1,400 labour inspectors in Thailand, or approximately 19 inspectors in each of the 76 provinces. There is no specialized training for inspecting houses in cases of child domestic workers abuse. With this small number of labour inspectors, and the need for inspection of factories and larger business enterprises, the inspection of private homes for child domestic workers abuse is not high on their priority list. Since NGOs would likely be charged with trespassing, labour inspectors must be afforded with special privileges to enter private homes and make assessments and ensure that there is no abuse perpetuated against the child domestic worker. Again, labour inspectors are allowed into private homes only where there are reports of abuse. Regular inspection of households is not within the duties listed in the LPA:

Section 139. In the performance of their duties, labour inspection officials shall have the power as follows:

- (1) To enter into the place of business or office of the employer and working place of the employees during business hours so as to inspect the working condition of the employees and conditions of employment, make enquiries as to the facts, take photos, make copies of documents relating to employment, payment of wages, overtime pay, holiday pay, holiday overtime pay and the employees' register, collect samples of material or products of analysis of safety in working, and do any other acts to obtain the facts for the execution of this Act.

Their role in securing the welfare of child domestic workers is crucial. In order to put these children high on the priority list for labour inspectors, there must be more awareness on their part of the importance of monitoring these children for abuse and exploitation.

### *Redress to Courts*

In the survey conducted, most of the protective mechanisms available to child domestic workers ranged from “not applicable,” to “least effective.” These included a reporting mechanism in place to record increased or decrease in incidence of work-related (domestic) abuse /exploitation, which was found to be “not applicable” in Thailand. The efficiency of prosecuting system for violators was also “not effective” since very few cases are filed in court. No one cited a specific case of labour violation in regard to child domestic workers. Indeed, answering the questions about the protection of child domestic workers from abuse and exploitation was difficult for most of the interviewees since the information on this issue is so scarce. The number of convictions, rescue operations, protective custody, recovery measures, and reintegration measures were virtually answered as “not effective” or “not applicable.”

Very few cases have been filed against abusive employers. Throughout the interviews, this sentiment was reiterated from members of the Ministry of Labour and Social Welfare (MOLSW) and different NGOs. However, the exact “few cases” could not be identified. Dissemination of this type of information is not widely publicized. One interviewee suggested that generally there is no interest in disputes between domestic workers and employers. Furthermore, many more cases occur, but they go unreported. Parents are encouraged by

employers to take of sum of money instead of dragging the matter through the court.<sup>224</sup> Most cases that were filed against employers were under violations of the criminal code, and not the LPA. According to the MOLSW, no cases of child domestic worker abuse have been filed in the courts on the premise of violation of labour laws.<sup>225</sup> This suggests that even though labour laws may be placed in writing, the implementation and enforcement of such laws are still difficult to achieve.

Finally, severe penalties for violations of the labour code were deemed not effective. One interviewee stated that, “if there is no complaint, there is no inspection, if there is no inspection, there is no penalty!”<sup>226</sup>

## CONCLUSIONS AND RECOMMENDATIONS

The implementation of the law and policy on compulsory education appears to have a positive effect on Thai children, in general. As stated earlier, not only was there a decline in their number entering in domestic work, but there was also a relative increase in the number of said children remaining in school. It can be, thus, presumed that compulsory education has effectively deterred the further increase in number of children engaging in domestic work. It has also been apparent from researches conducted that the scarcity of Thai children in domestic work has actually been to the advantage of those who have remained in such work because they are now in a better position to bargain or negotiate with employers. Still, concern remains for children who are non-Thai by nationality and citizenship, as they are the ones filling the demand for domestic work. Since most of them enter illegally and a number of them are trafficked, they are the ones rendered most vulnerable by the lack of protection laws and measures for domestic workers.

From the modest research that has been done in this study and from the interviews conducted, it is apparent that there are important issues which need to be addressed by the passage of law and formulation of policy. It has been clearly established that domestic work is an invisible industry and domestic workers, a good number of which are children, are an invisible workforce. They are hardly aware of the few provisions in the Labour Protection Act which apply to them. It does not help that the section of the law stating these provisions’ applicability to them are couched in an exception clause; and that what is actually highlighted are the provisions which do not apply to domestic workers. It is no wonder that very few of them are actually aware that there are provisions on wages that apply to them - as least as far as regularity of receipt of the wage is concerned; who should receive the same and where and in what currency said wages should be received. The same goes true for the annual holiday which the law mandates that domestic workers should also enjoy.

Thus, this study recommends to intensify efforts at making these rights and remedies that are already available to child domestic workers known or popular, especially to those who should avail of them. As a consequence of the fact that these children are faintly aware of the few labour provisions that apply to them, there is also a dearth of cases that reach the courts for the redress of their grievance. In fact, this study has revealed that the few cases which reached the courts did not invoke labour rights violations but violations under the criminal code. Hence, abuses occurring within the context of domestic work might easily be viewed as an ordinary case of physical or

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<sup>224</sup> Interview with Dilokvidhyarat, *supra* note 204.

<sup>225</sup> Interview with MOLSW, *supra* note 213.

<sup>226</sup> Interview with Dilokvidhyarat, *supra* note 204.

sexual abuse or isolated acts of cruelty such that the realization that these incidents happened within the domestic work environment is easily lost or forgotten.

The lack of awareness regarding one's enforceable rights will lead to ineffective reporting and redress system. Consequently, there will also be few documentation on the matter and this situation will invariably perpetuate even more the invisibility of child domestic work. This would also explain why even the Hotline Service has not been very popular for reporting abuses against child domestic workers.

There should also be a strong campaign on registration of working children regardless of whether or not they belong to the formal or informal sector of work. Needless to say, those in the informal sector, such as domestic workers, need to be more visible and registration is one viable means to monitor their whereabouts. At least the government would know where the child domestic workers are located. These children would also be more accessible to Labour Inspectors if their locations were easily verifiable. Eventually, a scheme may be developed so that there would be a possibility of making periodic check-ups on them, if these labour inspectors were given more access to private homes.

Another recommendation is to pass laws on domestic work and provide for a framework for the working conditions of child domestic workers. First of all, enacting a law on child domestic workers is acknowledging that the State recognizes the existence of this sector; their need for protection, and that there could be serious problems created by their work environment. Putting child domestic work within the legal framework is also one step towards instilling in the consciousness of the people, especially to those who are most vulnerable, that there are serious problems in having domestic work remain invisible and informal. Priority among these laws should be setting a minimum age for hiring children in domestic work. Excluding them from the 15 years minimum age for hiring children in the formal sector makes them more invisible and vulnerable. With their exclusion, households can practically hire domestic workers of any age below 15. With the relative success of the compulsory education in Thailand, setting the minimum age of 15 years old for domestic workers will compliment and strengthen the enforceability of the compulsory education programme.

It is apparent, however, that convincing the government and other sectors that child domestic workers are a priority problem that needs to be addressed is a problem in itself. Rallying support to address the issue of child domestic workers and convincing the general public, other members of civil society, and government agencies that abuse may and does occur against them is a difficult task. However, organizations such as the Foundation for Child Development, Centre for the Protection of Children's Rights, Child Workers in Asia, and researchers from Mahidol University have begun working with this issue. The lawmakers must be convinced that child domestic workers can no longer be considered a low priority, especially since there is a growing demand for domestic help which, in turn, is being supplied by foreign children as indicated by their continuous flow from bordering states such as Lao PDR, Myanmar and Cambodia. This understudied phenomenon carries with it the pressing need for prevention and protection from abuse, especially since it is further complicated by illegal migration and trafficking in children.

Establishing a legal definition of domestic work, who are considered domestic workers and who are allowed to engaged in domestic work will also set the parameters for data gathering and research. Presently, documenting the situation of child domestic workers is already difficult by itself, because of its invisible nature. It cannot be denied, however, that data gathering and research are vital in assessing the nature and magnitude of the problems that their situation brings especially when seen in the context of the worst forms of child labour. A better understanding of

the context of child domestic workers, in turn, ensures that the law and policies issued in addressing the problem are adequate and responsive. Furthermore, the policy statement of the law can help determine the direction of the programmes designed for the prevention and protection of child domestic workers and also give focus to the manner of collecting data. For instance, a recognition of the need to enact laws on domestic workers, most of whom are children and girls means that it is necessary to come up with a sex-disaggregated and age-disaggregated data respectively, or a combination of both.

It will take a concerted effort by both the State, child advocates and the rest of civil society to tackle the problem of child domestic work and only a coordinated effort on the part of all those concerned can any law or policy be effectively implemented and carried out. Though having a legal and policy framework is important, they can only be as responsive and effective as the political will of a State and the resolve of stakeholders and advocates would allow them to be.

*Case Study on Sri Lanka*  
REA A. CHIONGSON

*INTRODUCTION/ BACKGROUND*

Child labour, including children engaged in domestic work has been considered as a serious social problem in Sri Lanka. In 1999, the Department of Census and Statistics Survey placed the total number of working children at 926,038 or 21.3%. Out of this number, 577,409 were males while 348,627 were females. A total of 877,603 were from rural areas while 48,433 were from the urban areas. Only 19,111 were identified as employed in domestic work.<sup>227</sup>

Despite the low number of identified child domestic workers, it is maintained that domestic work is the most prevalent form of child labour in Sri Lanka.<sup>228</sup> The difficulty in ascertaining their numbers and conditions rests on the fact that they are hidden in the privacy of homes and therefore, have been outside the scope of public scrutiny. Rough estimates of children in domestic work range from 50,000 to 100,000.<sup>229</sup> A study in Galle indicates that nine percent (9%) of the households have child domestic workers. Areas with tea estates in the vicinity register 14%.<sup>230</sup> A recent survey of 700 household in urban areas in the South concluded that 1 in 12 houses has a child servant and that 1/3 of the domestic labour force consisted of children.<sup>231</sup>

Both boys and girls are employed as child domestic workers. The Department of Census and Statistics Survey reported 13,533 were females and 5,578 were males; 78.7% were from the rural sector, while 21.2% were from the urban areas. They worked long hours and without rest days. The survey also showed that 75.1% of children worked 7 days a week and about 45% work for at least 7 hours per day.<sup>232</sup> They were often physically, sexually and emotionally abused. They were deprived of food and nutrition.<sup>233</sup> Children as young as 6 years old were being engaged in domestic work.<sup>234</sup>

In a preliminary survey done on February 1-28, 1997, various reasons were cited why children engage in domestic work. Poverty, need for additional income and/or better living standards, breakdown of parental relationships and the need for security for the future were among the grounds cited. Employer's inducements, kidnapping and "safekeeping of children" while parents go abroad were also indicative as to why child domestic work occurs.<sup>235</sup> The recent developments of Sri Lankan women seeking employment in the Middle East as domestic helpers, the demands for higher wages by adult service personnel, the high cost of feeding an adult, and the refugee situation in communities affected by the internal conflict also contribute to the reasons for employing a child domestic worker.<sup>236</sup>

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<sup>227</sup> Department of Census and Statistics, *Child Activity Survey in Sri Lanka* (1999) [hereinafter Dept. of Census] as cited in Uditha Gunaratne, *Status of Child Labour in Sri Lanka* [hereinafter Gunaratne] and *Poverty, Children in Employment and the Law*, 1 KANTHA 1-2 (2000) [hereinafter *Poverty*].

<sup>228</sup> Gunaratne, *supra* note 227, at 32.

<sup>229</sup> *Poverty*, *supra* note 227, at 1.

<sup>230</sup> Second Country Report on the Implementation of the Convention on the Rights of the Child 85 (1998) [hereinafter Sri Lanka 2<sup>nd</sup> CRC Report].

<sup>231</sup> D. G. Harendra de Silva *Child Abuse in Sri Lanka*, Seminar on Child Labour organized by The Ministry of Justice, Sri Lanka and International Programme on the Elimination of Child Labour-International Labour Organization, Colombo 21 (May 26, 2001) [hereinafter De Silva].

<sup>232</sup> Dept of Census, *supra* note 227 as cited in Gunaratne, *supra* note 227, at 25-26.

<sup>233</sup> De Silva, *supra* note 231, at 21.

<sup>234</sup> Gunaratne, *supra* note 227, at 34-35.

<sup>235</sup> *Id.* at 35.

<sup>236</sup> De Silva, *supra* note 231, at 21.

## ***THE LEGAL FRAMEWORK***

This paper seeks to identify laws that are relevant to the protection of children engaged in domestic work. Specific legislation on child domestic workers is sparse. However, the general protection afforded by the Constitution, labour laws, the Penal Code, social welfare provisions and special statutes can be claimed by child domestic workers. The State's institutional and policy framework for the protection and promotion of the rights of child domestic workers are also discussed in this chapter.

### THE CONSTITUTION

In its Directive Principles of State Policy and Fundamental Duties, the Constitution provides that:

*27(13). The State shall promote with special care the interest of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.*

It further provides other guarantees such as:

- (a) the right against torture, inhuman and degrading treatment or punishment<sup>237</sup>;
- (b) right to equality and equal protection of the law, which includes the possibility of special provisions for the advancement of children<sup>238</sup>;
- (c) non-discrimination on grounds of race, religion, language, caste, sex, political opinion and place of birth<sup>239</sup>;
- (d) freedom of speech and expression, peaceful assembly and association, subject to restrictions prescribed by law in the interest of racial and religious harmony<sup>240</sup>;
- (e) freedom to engage in any lawful occupation, profession, trade, business or enterprise, subject to restrictions prescribed by law in the interest of the national economy<sup>241</sup>; and
- (f) freedom of movement subject to restrictions prescribed by law in the interest of the national economy<sup>242</sup>.

The exercise of the rights enumerated in (b) to (f) are subject to restrictions prescribed by law in the interest of national security, public order, public health, morality, general welfare, and recognition and respect for the rights and freedoms of others.<sup>243</sup> Any infringement or imminent infringement of the said rights may be the subject of an application for an executive or administrative action before the Supreme Court.<sup>244</sup> It should be noted though that Art. 27(13), as a mere directive, does not “confer or impose legal rights or obligations, and (are) not enforceable in any court or tribunal. No question of inconsistency with such provision(s) shall be raised in any court or tribunal.”<sup>245</sup>

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<sup>237</sup> SRI LANKA CONSTITUTION, art. 11.

<sup>238</sup> Arts. 12(1); 12(4).

<sup>239</sup> Art. 12(2)

<sup>240</sup> Arts 14(1)(a)(b) (c); 15(2)(3)(4)

<sup>241</sup> Arts. 14(g); 15(5)

<sup>242</sup> Arts. 14(h); 15(6)

<sup>243</sup> Art. 15(7).

<sup>244</sup> Art. 17.

<sup>245</sup> Art. 29.

In the Second Country Report on the Implementation of the Convention on the Rights of the Child, it was reported that proposals were submitted to Parliament for constitutional reforms in the area of children's rights. The proposals include the following:

- (a) protection from maltreatment, neglect, abuse and degradation;
- (b) right to family or parental care or appropriate alternative care when removed from the family environment;
- (c) right to basic nutrition, shelter, basic health care services and social services; and,
- (d) protection from employment of children in any hazardous activity<sup>246</sup>.

#### CHILD LABOUR LAWS

The most relevant law relating to child domestic workers is the Employment of Women, Young Persons and Children Act of 1956 (EWYPCA). The law defines a child as a person who is under the age of 14 while a young person is one who has attained the age of 14 but is under the age of 18.<sup>247</sup>

A new set of regulations promulgated by the Gazette Extraordinary No. 1116/5 of January 26, 2000 provides that: "No child shall be employed in any occupation." Young persons, on the other hand, can engage in lawful employment. As a result, the 2000 regulations allow young persons to be employed in domestic work. Its only prescriptions are that: (a) every young person employed as a domestic worker must be entitled to three hours of leisure between 6 am to 8 pm, and enjoy at least seven consecutive days of leisure in every period of four months.

In contrast to domestic work, young persons employed in the formal sector may be able to avail of general labour laws. This is because the regulation of their employment is governed by industry-specific legislation. To cite examples: Work in factories is covered by the Factories Ordinance which contains special provisions for the safety and protection of young persons.<sup>248</sup> The Shop and Office Employees Act, on the other hand, covers employment in a shop or office. These laws contain provisions on conditions of employment which young persons as workers can use. In addition, the EWYPCA gives special protection to young persons employed (a) in an industrial undertaking, (b) at sea and (c) in the entertainment industry.<sup>249</sup>

In relation to prosecution and enforcement, the following are the applicable provisions to child domestic workers:

- (a) Section 29 of the EWYPCA provides for exclusivity in the prosecution of offenses, that is: "No prosecution for any offense under this Act shall be instituted except by or with the written permission of the Commissioner of Labour."
- (b) Section 22(1) states that the employer, parent or guardian of any young person must furnish a labour officer with information regarding the employment of a young person when required by such officer.<sup>250</sup>

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<sup>246</sup> Sri Lanka 2<sup>nd</sup> CRC Report, *supra* note 230, at 24.

<sup>247</sup> Employment of Women, Young Persons and Children Act (Act. No. 47 of 1956) as amended by Act. No 43 of 1964 ; Law No. 29 of 1973 and Act. No. 32 of 1984, § 34 [hereinafter EWYPCA].

<sup>248</sup> Lawyers for Human Rights and Development, Orientation Manual on Law Relating to Child Abuse and Child Labour, p. 19. (2002) [hereinafter LHRD Orientation Manual]

<sup>249</sup> See EWYPCA, *supra* note 247.

<sup>250</sup> Although generally thought to cover only employment in the formal sector, Part IV of the EWYPCA entitled "Provisions Applicable to All Employment", may also be applicable to young persons engaged in domestic work.

(c) Section 39(1) mandates that “An authorized officer may require any Government medical officer to examine any person who appears to be a young person or child to ascertain his age or for any other purpose of this Act”.

Violations of the minimum age of employment as well as of the provisions of the EWYPC is penalized by a fine not exceeding one thousand rupees or imprisonment for a period not exceeding 6 months or both.<sup>251</sup> There is no provision on the grant of compensation under the law. However, in practice, most Magistrate Courts, with the acquiescence of the Ministry of Labour, have settled the cases by compelling the employers to provide compensation. In cases of conviction, fines are generally imposed rather than the penalty of imprisonment.<sup>252</sup> In relation to children below 14, authorities do not provide payment for work done citing the illegality of the employment as a bar.<sup>253</sup>

It should be noted that Section 21 (1) of EWYPCA empowers the drafting of regulations with respect to young persons, including: (a) the number of hours in each day or in each week, and the times of day that they may be employed, (b) meal intervals and rest periods, (c) allowable holidays, and (d) any other conditions to be observed in relation to their employment. Furthermore, section 31(1) states that: “The Minister may make regulations in regard to all matters for which regulations are required or permitted by this Act to be made and for prescribing all matters which are required or permitted by this Act to be prescribed.” Using this provision, the Labour Department has the authority to initiate a proactive approach concerning the need for more regulations on child domestic workers instead of awaiting new legislation.

#### THE PENAL CODE

Sections of the Penal Code define a child as a person less than 18 years of age.<sup>254</sup> These provisions are often used. Court records have shown that most of the victims of the crime of cruelty to children are child workers, including those engaged in domestic work.<sup>255</sup>

The offense of cruelty to children is committed as follows:

308A (1) Whoever having the custody, charge or care of any person under 18 years of age, willfully assaults, ill-treats, neglects or abandons such person or causes or procures such person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, commits the offense of cruelty to children.

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<sup>251</sup> EWYPCA, *supra* note 247, § 14(3) and 21(3)

<sup>252</sup> Interview with Mahinda Gammampila, Secretary, Ministry of Labor and Employment; Mahinda Madihahewa, Commissioner General Labour, Ministry of Labour and Employment; and Ms. Pearl Weerasinghe, Office of the Commissioner of Labour, Women and Children Affairs Division, Department of Labour, Ministry of Labour, in Colombo (August 12, 2002) [hereinafter Interview with Ministry of Labour].

<sup>253</sup> *Id.*

<sup>254</sup> Penal Code, § 288(2), 288A(2), 288B(2) as amended by Penal Code (Amendment) Act of 1995, § 2, Penal Code (Amendment) Act of 1998, § 3 and Penal Code, § 360b and 360C amended by Penal Code (Amendment) Act of 1995, § 8.

<sup>255</sup> LHRD Orientation Manual, *supra* note 248, at 1. Cases include: a girl of ten years, a domestic servant who was kept confined to a room tied to the leg of a bed. A girl of 7 years was burnt with red hot iron spike all over her body for eating leftovers in the pots and pans she washed at the water tap. The spike had been inserted in her vagina. A boy of 12 years employed in a house at Battaramulla was admitted to a hospital with 108 injuries, 2 fractured ribs and his life was in danger [Gunaratne, *supra* note 227, at 34]

Section 308A(2) Whoever commits the offense of cruelty to children shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine and be ordered to pay compensation of an amount to be determined by the court to the person in respect of whom the offense was committed for the injuries caused to such person.<sup>256</sup>

Lawyers for Human Rights and Development states that prior to this amendment, the police needed to refer the matter to the Mediation Board. The payment of compensation during the mediation proceedings and the strict requirement for medical evidence showing recent injuries on the child made further prosecution difficult. Because of this, the courts leaned towards the payment of compensation and the imposition of suspended jail sentences. All these were changed by the Criminal Procedure Code (Amendment) Act. No. 19 of 1997 which made the offence indictable by the High Court and has taken away the discretion to impose a suspended jail sentence. However, even after the amendment, due to the lack of proper understanding of the law, police continue to file charges before the Magistrate's Court. Despite absence of jurisdiction, some Magistrate Courts took cognisance of the cases.<sup>257</sup>

Section 360B covers sexual exploitation of children. It states that:

360B (1). Whoever—

- (a) knowingly permits any child to remain in any premises, for the purposes of causing, such child to be sexually abused or to participate in any form of sexual activity or in any obscene or indecent exhibition or show;
- (b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse;
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- (d) takes advantage, of his influence over, or his relationship to, a child, to procure such child for sexual abuse;
- (e) threatens or uses violence towards, a child to procure such child for sexual intercourse or any form of sexual abuse;
- (f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure such child for sexual intercourse or any form of sexual abuse...

(2) In this section “child” means a person under eighteen years of age.

The penalty is a term of not less than 5 years and not exceeding 20 years. The offender can also be punished with a fine.<sup>258</sup>

The following Penal Code provisions are also relevant for domestic workers:

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<sup>256</sup> Penal Code (Amendment) Act, No. 22 of 1995.

<sup>257</sup> LHRD Orientation Manual, *supra* note 248, at 2.

<sup>258</sup> Penal Code (Amendment) Act, No. 22 of 1995.

- (a) Section 311 defines the crime of grievous hurt as emasculation; permanent privation or impairment of sight of either eye; permanent privation or impairment of hearing of either ear; privation of any member or joint; destruction or permanent impairment of the powers of any member or joint; permanent disfiguration of the head or face; cut, fracture or dislocation of bone, cartilage or tooth; any injury which endangers life or the results in an operation of the thoracic, abdominal or cranial cavities; or any injury which causes the person severe bodily pain or inability to follow his pursuits for twenty days.
- (b) The crime of sexual harassment is described in Section 345 as: “Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment...” Unwelcome sexual advances used by a person in authority in a work place or in any other place shall constitute sexual harassment.
- (c) Rape and grave sexual abuse is punishable under Sections 363 and 365A of the Penal Code. Age of consent is 16 years old (statutory rape). The penalty for rape is higher in cases of statutory rape; when its has been committed on a child inmate by the staff of a remand home or a place of custody established by law or in a children’s institution; or when the woman is under 18 years of age.
- (d) Section 360C punishes trafficking as engaging “in the act of buying or selling or bartering of any person for money or for any other consideration”.

For the child abuse offences under the Penal Code, the Code of Criminal Procedure (Amendment) Act No. 28 of 1998 requires that priority should be given to them.<sup>259</sup> This mandate, however, should be taken in the light of other cases which are also given priority status—e.g. those involving military, constitutional, land and partition cases.

The Code further states that a Magistrate is empowered to order the detention for investigation of a person arrested for child abuse for 3 days.<sup>260</sup> Where it appears to a court that the child victim of abuse requires care and protection, it may order the child to be kept in a place of safety for care and protection, pending trial.<sup>261</sup>

#### CHILDREN IN NEED OF CARE AND PROTECTION

The Children and Young Persons Ordinance of 1939 (CYPO) is the main statute on juvenile justice. It deals with the establishment of Juvenile Courts; procedures with regard to children and young persons; the establishment of rehabilitation centres and procedures for children in conflict with the law; and defines offences in relation to children. The latter though has, unfortunately, not been brought into operation.<sup>262</sup>

Although primarily dealing with children in conflict with the law, section 34(1) of the CYPO enables a Juvenile Court to make an order with respect to children “in need of care or protection”. A “child in need of care and protection,” includes a child or young person (a) (1) who has no parents or guardian; (2) whose parent or guardian is unfit to exercise care and guardianship, or (3) whose parent or guardian is not exercising proper care and guardianship and (b) (1) is either falling into bad associations;(2) exposed to moral danger; or (3) beyond control. A child or young person who is a victim of offences defined in the First Schedule, e.g.

<sup>259</sup> Code of Criminal Procedure (Amendment) Act No. 28 of 1998, § 453A.

<sup>260</sup> *Id.* § 43(A)(3)

<sup>261</sup> *Id.* § 451(1)

<sup>262</sup> Center for Policy Alternatives, *National Legislation on Trafficking in Children (Draft)* 15 (2002) [hereinafter CPA].

abandonment (Section 308 of the Penal Code), kidnapping, sexual harassment, bodily injury and rape, is also considered as a child in need of care and protection.<sup>263</sup>

When a child or young person is brought before the Juvenile Court, it may

- (a) order him to be sent to an approved or certified school; or
- (b) commit him to the care of any fit person willing to undertake his care; or
- (c) order the parent or guardian to enter into a bond to exercise proper care and guardianship; or
- (d) make an order placing the child or young person under the supervision of a probation officer for a specific period of time.<sup>264</sup>

A large number of child labour cases come before a Juvenile Court. These cases are brought not by the Labour Department who has exclusive right to prosecute child labour cases but by the police as cases of children in need of care and protection. It is contended that due to the nature of a Juvenile Court, *i.e.*, a court for juvenile offenders, and due to the non-intervention of the Labour Department, the court does not have the power to impose penalties on employers for violating labour laws affecting child domestic workers. Juvenile courts have, therefore, tended to order payment of compensation to which employers agreed to readily.<sup>265</sup>

Special efforts must be made for the court to differentiate between a child victim and a child in conflict with the law. Prescriptions of the law with regard to special treatment for children as opposed to adults in their procedures must be followed. These shortcomings are mainly due to lack of facilities, support services and training.<sup>266</sup>

#### PLACEMENT OF CHILD VICTIMS

As far as the placement of a child in need of care and protection is concerned, CYPO makes almost no distinction between a child domestic worker and a child offender. Immediately upon rescue, a child is referred to the Department of Probation and Child Care Services (DPCCS). It is the agency responsible for the protection and rehabilitation of children while the Provincial Departments of Probation and Child Care Services are the primary agencies on probation and childcare.<sup>267</sup> A probation officer drafts a report to ascertain the needs of the child. The officer also looks into the feasibility of returning the child to the parents. Otherwise, he may suggest that the child be brought to a childcare institution.<sup>268</sup>

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<sup>263</sup> LHRD Orientation Manual, *supra* note 248, at 33.

<sup>264</sup> *Id.* at 34.

<sup>265</sup> K. Tiranagama, *The Experiences of the Child Rights Lawyers' Network in the Enforcement of Child Rights*, Seminar on Child Labour organized by The Ministry of Justice, Sri Lanka and International Programme on the Elimination of Child Labour-International Labour Organization, Colombo 33-34 (May 26, 2001) [hereinafter Tiranagama]. There have been instances where in such situations the case has been settled in the court with the employer being ordered to pay substantial compensation to the child. Generally, the Juvenile Court computes compensation at the rate of Rs. 1000 to Rs. 1500 for each month of employment and orders the employer to deposit such compensation in a Savings deposit in the name of the child. In a recent case, an employer was ordered to pay Rs. 84,000 as compensation. Persons who employ children readily comply with these orders. (Tiranagama, at 33-34).

<sup>266</sup> CPA, *supra* note 262, at 42.

<sup>267</sup> CONSTITUTION, 13<sup>TH</sup> AMENDMENT (1987) *as cited in* CPA, *supra* note 262, at 52.

<sup>268</sup> CPA, *supra* note 262, at 54.

Pending trial though, the child may be kept in a remand home<sup>269</sup> until he is finally dealt with by the court. Education and vocational training may be provided at some of these remand institutions, however, they lack the capacity to “promote physical and psychological recovery and social reintegration of a child victim”.<sup>270</sup> These remand homes are over-crowded and congested. Child victims come into contact with child offenders and are influenced by them. There were reports that children were maltreated, harassed, assaulted and even sexually abused by inmates and staff at these institutions. These conditions also occur in some of the children’s homes run by NGOs and religious organizations. At present, there are pending cases against persons in charge of three children’s homes for raping over 20 girls between 7-14 years old.<sup>271</sup>

There being no other institution available for remanding or placing children coming before the Courts, the Magistrates have no option but to send the children to the remand homes. In the meantime, custody of children is handed over to prison authorities until they are transferred to the remand homes. Furthermore, children who take the stand as witnesses are brought to court and back in prison vehicles together with other child suspects. They are kept together by the side of the remand cell in the courthouse until they are taken back at the end of the day.<sup>272</sup>

The above situation highlights the urgent need for better childcare facilities. A maximisation of efforts in enforcement requires that children be placed in a better situation; otherwise, the principle of best interest of the child is violated.

#### NATIONAL CHILD PROTECTION AUTHORITY

National Child Protection Authority Act No, 50 of 1998 established the National Child Protection Authority (NCPA). It is envisioned as a coordinating agency for the different agencies and organizations involved in child abuse issues.<sup>273</sup>

Art. 39 of the law defines a child as any person less than 18 years of age. It defines child abuse as follows:

- any act or omission relating to a child which would amount to a contravention of any of the provisions of—
- (a) sections 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364A, 365, 365A and 365B of the Penal Code;
  - (b) the Employment of Women, Young Persons and Children Act;
  - (c) the Children and Young Persons Ordinance;
  - (d) the regulation relating to compulsory education made under the Education Ordinance;
- and includes the involvement of a child in armed conflict...

Specifically, the functions of NCPA include:

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<sup>269</sup> Remand homes are shelters established for the purpose of providing safety and protection to children temporarily detained and awaiting trial.

<sup>270</sup> LHRD Orientation Manual, *supra* note 248, at 36.

<sup>271</sup> *Id.* at 35.

<sup>272</sup> *Id.* at 36.

<sup>273</sup> Sri Lanka 2<sup>nd</sup> CRC Report, *supra* note 230, at 13.

(a) to advise the government in the formulation of a national policy on the prevention of child abuse and the protection and treatment of children who are victims of such abuse;

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(d) to create an awareness of the right of a child to be protected from abuse and the methods of preventing child abuse;

(e) to consult the relevant ministries... and recommend all such measures as are necessary, for the purpose of preventing child abuse and for protecting and safeguarding the interest of the victims of abuse;

(f) to recommend legal, administrative and other reforms required for the effective implementation of the national policy;

(g) to monitor implementation of laws relating to all forms of child abuse;

(h) to monitor the progress of all investigations and criminal proceedings relating to child abuse;

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(j) to take appropriate steps where necessary for securing the safety and protection of children involved in criminal investigations and criminal proceedings;

(o) to conduct, promote and co-ordinate, research in relation to child abuse and child protection;

(r) to organise and facilitate workshops, seminars and discussions relating to child abuse;

(s) to liaise and exchange information with foreign governments and international organisations, with respect to detection and prevention of all forms of child abuse.<sup>274</sup>

An important power granted to the NCPA is the power to enter and search any premise. Section 33 states that:

33. The Authority may, where it has reason to believe that there is child abuse on any premises and that application to court for a search warrant may prejudice investigation into such child abuse, authorise in writing an officer of the Authority to enter and search such premise...

34. (1) Any authorised officer may—

(a) enter and inspect any premises of any institution by which child care services are provided;

(b) enter and inspect any premises, where he has reason to believe that children are being kept for (i) the purpose of child abuse; (ii) any other unlawful purpose; (iii) illegal adoption.

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(e) interrogate any person in any such premises for the purpose of ascertaining the activities carried on in such premises and whether there is any contravention of any law relating to children.

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<sup>274</sup> National Child Protection Authority Act No. 50 of 1998, § 14.

NCPA's authority overrides the requirement for a search warrant. Furthermore, the officer may in fact enter any premises for any other unlawful purpose. This broad authority is in contrast to the limited power granted to the Labour Department which only allows searches in a building or place where an industrial undertaking is carried out or in a vessel.<sup>275</sup> This power has already been used by NCPA to enter a house to rescue a child domestic worker who delivered a baby after having been sexually abused by her employer.<sup>276</sup> Admittedly, it is an important component in the rescue of a child domestic worker. Caution, however, is suggested in the use of this power as it allows interference in a person's enjoyment of his or her right to privacy and against unreasonable searches. The general rule must be the acquisition of a search warrant; the use of a letter of authority is merely an exception in cases of severe urgency.

#### LAW ON DOMESTIC WORKERS

An Ordinance to Provide for the Registration of Domestic Servants (Ordinances Nos. 28 of 1871 and 18 of 1936) requires for the registration of domestic workers with a Registrar of Domestic Servants who is under the general supervision and control of the Inspector-General of the Police. The Inspector-General shall satisfy himself that there are reasonable grounds to believe that such applicants are fit and proper persons to enter domestic service. If satisfied, he shall register them by recording their previous employment and the names of the persons certifying to their respectability.<sup>277</sup> The law is old and enforcement is almost non-existent. Furthermore, it is clear from the provisions that it was passed for the benefit of the employers rather than the domestic workers. It focuses on security and crime prevention. As registration is with the police, which has no jurisdiction over labour matters, it is obvious that monitoring of the minimum age and conditions of employment of domestic workers are not within the ambit of this legislation. A registration system with the Labour Department or the National Child Protection Authority is preferred.

#### OTHER RELEVANT LAWS

The Education Ordinance of 1997 requires the compulsory attendance of children at school for persons not less than 5 and not more than 14 years of age.<sup>278</sup> This measure was intended to reduce the incidence of child labour.<sup>279</sup> The effectivity of compulsory school attendance is yet to be seen especially as 691,419 or 74.6% of Sri Lanka's working children are engaged in economic activity and schooling.<sup>280</sup>

The Trade Union Ordinance of 1935 restricts children under the age of 16 years from joining a union. Children 16 year of age are permitted to join labour unions, unless the rules of any union provide otherwise. Subject to the rules of the union, such children may enjoy all the rights of members, except being executive members or trustees of the union.<sup>281</sup>

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<sup>275</sup> EWYPCA, *supra* note 247, § 25(1)

<sup>276</sup> Interview with Ninhadini Gunaratne; Predhika Sakalooriya, National Child Protection Authority, in Colombo (August 12, 2002).

<sup>277</sup> An Ordinance to Provide for the Registration of Domestic Servant, Ordinances No.s. 28 of 1871 and 18 of 1936, § 8.

<sup>278</sup> *Id.* § 2.

<sup>279</sup> Sri Lanka 2<sup>nd</sup> CRC Report, *supra* note 230, at 54.

<sup>280</sup> Dept. of Census, *supra* note 227.

<sup>281</sup> Sri Lanka 2<sup>nd</sup> CRC Report, *supra* note 230, at 21.

The Evidence (Special Provisions) Act, No. 32 of 1999 states that, in any proceeding relating to child abuse, a video recording of a preliminary interview between an adult and a child witness on any matter relating to the proceedings, may be given in evidence<sup>282</sup>.

A Report of the Subcommittee on the Study on the Substantive and Procedure Laws relating to Children Requiring Reforms noted that child domestic workers are kept in employment through “de facto” adoptions.<sup>283</sup> A perusal of the Adoption of Children Ordinance would show that such as defence is a possibility in a child domestic labour case. Sec. 8 states that any person who has a child in custody and has brought up, maintained and educated such child as his or her own under any *de facto* adoption may adopt such child without the consent of any parent or guardian, if a court is satisfied that the circumstances of the case show that it is for the child’s welfare that no such consent be required.

#### PERTINENT AGENCIES AND OTHER POLICY RESPONSES

The main agencies involve in addressing the issue of child domestic workers are the following:

1. A Women and Children Affairs Division was created in the Ministry of Labour to focus on measures to minimize child labour in Sri Lanka. Its functions include responsibility for inspection, data gathering and prosecution of persons violating the EWYPCA.<sup>284</sup> Of the total 267 labour inspectors, only three are assigned to work with the division.<sup>285</sup> From 1997-2002, out of 1245 complaints, the number of successful prosecutions is only 71.<sup>286</sup> The Ministry explained that a considerable number of reports are false while others were dismissed due to insufficiency of evidence, *i.e.*, inability to prove age and employment as a child domestic worker. This must be seriously addressed. As the exclusive prosecutor for child labour cases, it is suggested that specialised and intensive training on the law relating to child domestic workers as well as prosecution and investigation skills must be provided to the labour officers.

The Ministry has also been criticised for not providing a monitoring system for the protection of child domestic workers. It admits that they heavily rely on complaints received, thus addressing the problem of child domestic workers in a reactive rather than proactive manner.<sup>287</sup> In recent years though, intensive and popular advertising of a hotline and a postal address to report child labour cases have been very effective in raising awareness and in getting complaints from the general public.<sup>288</sup> Statistics from the Department of Labour showed that in 1997, only 69 complaints were received. Due to awareness campaigns, this increased dramatically in 1998 to 506. The years 1999, 2000, 2001 and 2002 (until July) recorded 139, 194, 255 and 82 cases respectively. As detection seems to be a major challenge, a “globalisation of awareness”<sup>289</sup> or intensive awareness campaigns which can produce community participation can answer the present lack of monitoring and detection systems by the State.

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<sup>282</sup> § 163A.

<sup>283</sup> Law Commission of Sri Lanka. *Report of the Subcommittee on the Study on the Substantive and Procedure Laws Relating to Children Requiring Reforms* (25 March 1999).

<sup>284</sup> CPA, *supra* note 262, at 51

<sup>285</sup> Vijaya Samaraweera, *Report on the Abused Child and the Legal Process of Sri Lanka* 56.

<sup>286</sup> Statistics from the Ministry of Labour: 1997-2002 (until July)

<sup>287</sup> Interview with Ministry of Labour, *supra* note 252.

<sup>288</sup> CPA, *supra* note 262, at 51. Statistics from the Department of Labour showed that in 1997, only 69 complaints were received. This was increased dramatically in 1998 to 506. 1999, 2000, 2001 and 2002 (until July) recorded 139, 194, 255 and 82 respectively.

<sup>289</sup> Interview with Shirani Thilakwardena, Justice of the Court of Appeals, in Colombo (August 13, 2002).

2. Enforcement of the provisions of the Penal Code rests with the police. Prosecution is made by them before the Magistrate's Court and by the Attorney General's Office in the High Court. To assist in the prosecution and rescue of children, in 1993, after the drafting of the Women's Charter for Sri Lanka, a National Child Abuse and Violence against Women Desk (Women and Children's Police Desk) was set up at Police Headquarters. Children and Women Units were eventually set up in 33 police stations.<sup>290</sup> The functions of these desks include:

- (a) application of laws with regard to child abuse;
- (b) better police response on incidents of child abuse;
- (c) adoption of prevention models;
- (d) networking with both local and foreign agencies;
- (e) training and sensitising of police officers;
- (f) research and information-gathering; and
- (g) assisting victims with medical care and legal counseling.<sup>291</sup>

The setting up this specialised desk within the police force has been welcomed. Furthermore, the police hotline has been very useful in receiving complaints of child domestic labour.<sup>292</sup> The police has been responsive to complaints on child domestic work, even in cases where the children are treated well.<sup>293</sup> In instances where the child domestic worker is in danger of being hidden or passed on, the police even took the initiative to rescue the child without a search warrant and without the labour and probation officers. Ordinarily a warrant is required and the presence of the two officers is desirable.<sup>294</sup> Suggestions for the desk's improvement include the enactment of clear guidelines setting out its tasks. Officials at the units need to be given additional training in investigations and basic guidelines on child psychology. There is a need for bilingual staffs.<sup>295</sup> A 24-hour emergency service at this desk is highly recommended.<sup>296</sup> The need for a probation officer or a social worker at the time of the rescue must be highlighted so that the needs of the child may immediately be determined and addressed. As previously mentioned, a warrant must be secured, except when the need for urgency demands otherwise.

3. The Department of Probation and Child Care Services (DPCCS) is the central agency responsible for the protection and rehabilitation of children. Its Provincial Departments of Probation and Child Care Services (Provincial DPCCS) are the lead agencies on probation and childcare.<sup>297</sup> DPCCS is also mandated to provide institutional care as a temporary measure to children in need of care and protection.<sup>298</sup> DPCCS's mission statement states that it seeks "to provide equal opportunities for unprotected children and others in conflict with the law while promoting and preserving their rights in keeping with national policies and international standards for children."<sup>299</sup> Once a child is referred to the DPCCS, the probation officer studies the case in

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<sup>290</sup> Although there are 346 police stations in the country, the Women and Children's are limited to 33 divisional bureaus (CPA, *supra* note 262, at 56).

<sup>291</sup> *Id.* at 55.

<sup>292</sup> Interview with Nirupi Leanage and Asoka de Silva, Women in Need, in Colombo (August 14, 2002) [hereinafter Interview with Leanage, et. al]; Premela Divakana, Senior Superintendent of Police, Women and Children's Desk, in Colombo (August 15, 2002) [hereinafter Interview with Divakana].

<sup>293</sup> Interview with Anthony Lodwick, Janaka Samarakone, Gerald Lodwick, G. Weerkoon, Mary Dickman, Lilanthi de Silva, Chitta Swarnadhipathi, National Workers Congress, in Colombo (August 14, 2002) [hereinafter Interview with National Workers Congress].

<sup>294</sup> Interview with Divakana, *supra* note 292.

<sup>295</sup> CPA, *supra* note 262, at 57.

<sup>296</sup> *Id.* 56.

<sup>297</sup> 13<sup>TH</sup> AMENDMENT TO THE CONSTITUTION (1987 *as cited in* CPA, *supra* note 262, at 52.

<sup>298</sup> Sri Lanka 2<sup>nd</sup> CRC Report, *supra* note 230, at 36.

<sup>299</sup> CPA, *supra* note 262, at 52 *citing* Vijaya Samaraweera, *The Abuse Child and Legal Process of Sri Lanka* (July 4, 1997).

order to ascertain the necessary assistance to be given to the child, including whether the child will be returned to the parents.<sup>300</sup> Existing institutions lack space or resources to receive custody of children. Children needing care and protection and children in conflict with the law are kept together.<sup>301</sup>

Several criticisms have been levelled against DPCCS. Lack of financial resources led to very low standards of and/or inhumane living conditions in children's homes. The Provincial DPCCS do not have enough probation officers.<sup>302</sup> This is aggravated by the lack of basic training in childcare and rehabilitation<sup>303</sup> The absence of basic facilities and infrastructure for childcare also aggravates the problem. The lack of transportation facilities or the fact that such is done by the prison authorities severely highlights its compromised ability to provide proper care. It is painful to note that such lack of vehicle has been discussed since 1992 in inter-governmental meetings and still no intervention has been done to address such problem. These difficulties are indicative of the clear lack of priority being given to childcare in general and to child domestic workers, in particular.

4. The NCPA has been extensively discussed in the earlier pages. As a new institution, the NCPA has divided its functions into six major areas: (a) advocacy and awareness creation; (b) legal reforms; (c) training and skills development; (d) rehabilitation of victims; (e) improving coordination; and (f) monitoring and evaluation, including research.

Its members come from different agencies and disciplines, that is: senior psychiatrists; medical practitioners engaged in forensic medicine; senior psychologists; a senior officer of the Attorney General's Department; a senior officer of the Department of the Police; and persons with wide experience, capacity and recognition in law, child welfare, education and other related field. The Commissioner of Probation and Child Care, the Commissioner of Labour and the Chairman of the Committee established under the Sri Lanka Children's Charter<sup>304</sup> are *ex officio* members.<sup>305</sup>

Some of its present initiatives include: the establishment of School Child Protection Committees; creation of District Child Protection Committees; a child abuse manual for medical officers; training in counseling skills, recording of video evidence; skills development workshops for legal and medical professionals and the police, among others.<sup>306</sup>

Presently, because of its interdisciplinary and multi-agency membership as well as its broad mandate, the NCPA is regarded as a forum for coordinating efforts to combat child labour. It is still too early to make any conclusions on the effectivity of the NCPA as it has only been set up in 2000 and its police unit was only established in 2001. The NCPA obviously sees the importance of coordination and puts forward a multi-disciplinary cooperation approach as a tool for implementing its mandate. This approach is described as "that all agencies should pool their

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<sup>300</sup> CPA, *supra* note 262, at 54.

<sup>301</sup> *Rights of Children Violated in Institutions*, 2 KANTHA 1, (2001).

<sup>302</sup> Interview with Ramani Muthetuwigama, Lawyers and Society Trust, in Colombo (August 13, 2002) [hereinafter Interview with Muthetuwigama]; Interview with Divakana, *supra* note 292.

<sup>303</sup> CPA, *supra* note 262, at 54 *citing* Renuke Senanayake, *No Place to Call Home*, DAILY MIRROR, Sept. 29, 2000; Interview with Mr. S Thurairajah, Senior State Counsel, Attorney General's Department, in Colombo (August 13, 2002) [hereinafter Interview with Thurairajah].

<sup>304</sup> See Children's Charter (Ministry of Reconstruction, Rehabilitation and Social Services and the Department of Probation and Child Care Services, art. 40 [hereinafter Children's Charter].

<sup>305</sup> National Child Protection Authority Act No. 50 of 1998, § 3.

<sup>306</sup> Harendra de Silva, Summary of the Report of the National Child Protection Authority of Sri Lanka, (unpublished, paper available at the National Child Protection Authority, Colombo).

resources and work with each other as opposed to working in isolation or sometimes even in competition with each other...more efficient services with regard to child protection work can be anticipated.”<sup>307</sup> It should take its coordinating function very seriously and must go beyond the routine meetings and referrals. The drafting of memoranda of agreement or joint procedural guidelines in the handling of cases involving child domestic must be prioritised.

5. A Children’s Charter articulates the State’s policy on child labour:

Art 32. Protection from Child Labour.

- (1) The State shall protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, and to protect from any which is harmful to the child’s health or physical, mental, spiritual, moral; and social development;
- (2) The State shall take appropriate legislative, administrative, social and educational measures to ensure the implementation of this Article; and in particular provide—
  - (a) for a uniform minimum age for employment in respect of different categories of employment;
  - (b) for conditions of employment and working hours;
  - (c) penalties and other sanctions to ensure the effective enforcement of this Article.

A National Monitoring Committee (NMC) monitors compliance with provisions of the Charter as well as creates awareness and promotes legislative reforms and recommendations on its policies.<sup>308</sup> Monitoring Committees were established in the province, district and divisions to assist.<sup>309</sup>

#### SELECTED ONGOING INITIATIVES

1. The National Workers Congress (NWC), a trade union, in July 2001 established a Domestic Workers Desk which seeks to organise domestic workers, including child domestic workers. NWC believes that this initiative is particularly important in providing recognition to this sector of the labour force and in legislating for their welfare. The process of organising domestic workers is a difficult task. NWC identifies these workers from the sending communities and maintains contacts with them when they get employed. The programme was started by returning migrant workers who came from the same communities and sought to organise themselves in Sri Lanka.<sup>310</sup> Some of the programmes of the NWC include a legal and counseling clinic, training and skills development programmes, and advocacy work on the drafting of a legislation on domestic workers, particularly focusing on the following areas: (a) definition of a domestic worker, (b) minimum wages, (c) hours of work and rest periods, (d) termination of employment, (e) mode of payment of wages, (f) social security, (g) leave entitlements, (h) registration of

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<sup>307</sup> Udiksha Gunasekera, Multi-Disciplinary Cooperation and Suggested Methods of Its Implementation (unpublished, paper available at the National Child Protection Authority, Colombo).

<sup>308</sup> Children’s Charter, *supra* note 304, art. 40.

<sup>309</sup> Gunaratne, *supra* note 227, at 40.

<sup>310</sup> Interview with National Workers Congress, *supra* note 293.

domestic workers, (i) relief measures, and (10) penal provisions.<sup>311</sup> This legislation will be of utmost importance to child domestic workers.

2. A draft legislation entitled, The Domestic Employees (Regulation of Employment and Wages) Act is presently being considered. It proposes the following:

2(a). Every employer shall...cause such employees to be registered with the Commissioner of Labour.

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3(a) No employer of domestic employees shall employ such person in excess of fourteen hours per day. This period ...shall include a rest period of not less than four hours each day.

(b) Every person employed in domestic service shall in respect of each week be allowed one day as a holiday, without loss of wage.

4. The Commissioner shall determine a minimum rate of wages...provided till such time the Commissioner determine a minimum wage, employees in domestic service shall be paid not less than the minimum wage fixed under the Wages Board for the engineering trade.

7(1). The Commissioner (of Labour) or any Officer...shall have the power:

(a) to enter and inspect at all reasonable hours by day or night any premises where domestic servants are employed for the purpose of ascertaining whether the provisions of this Act are complied with or of examining any register or record required by and under this Act to be kept.

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(b) to require any person found in any premises or believe to be employed therein to furnish his name and address and such information as to identify his employer or as to any alleged contravention...

Every employer is required to maintain a record of the (a) wage period, (b) name of worker, (c) wages paid, (d) date of payment of wages, and (e) deductions.

3. The Report of the National Steering Committee on International Programme on Elimination of Child Labour (IPEC) on November 22, 2001 identified work which by its nature or by the circumstances in which it is carried out is likely to harm the health, safety or morals of children and thus are of a hazardous nature and constitutes worst forms of child labour for persons below 18 years old. It did not consider domestic work *per se* as a worst form of child labour. Possibility of its inclusion may be made only under paragraph 20 on “any form of night work between 8 pm and 6 am” or paragraph 25 on “any work connected to lifting, carrying or moving of any load”.<sup>312</sup>

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<sup>311</sup> National Workers Congress, *Protection of Domestic Workers Programme* (unpublished, paper available at National Workers Congress, Colombo).

<sup>312</sup> Report of the Committee to Determine the Types of Child Labour likely to Harm the Health, Safety and Morals of Children (submitted to the National Steering Committee on International Programme on Elimination of Child Labour).

4. The Register General of births, deaths and marriages and NMC initiated a programme to ensure that children have birth certificates. A house-to-house survey and deployment of mobile teams in areas where there are large percentage of non-registration were among the steps taken. It is estimated that at least 80% of births are registered.<sup>313</sup> An SLIMG survey noted that 40% of their respondent child domestic workers do not have birth certificates while 20% do not have any knowledge of birth certificates. This disparity highlights the fact that special attention must be given to the sector and social groupings to which the families of these child domestic workers belong to. Forged birth certificates also abound.<sup>314</sup> In cases of its absence, legal provisions allow a doctor's age certificate as evidence. However, these certificates provide an age range rather than a specific age, which therefore do not guarantee successful prosecution. In some cases, the problem lies not with the fact of registration itself but immediate access to the birth certificate.

### ***OBSERVATIONS, ISSUES AND RECOMMENDATIONS***

Various observations and recommendations are made on the effectivity and efficiency of the existing legal framework in addressing the issue of child domestic workers. They are:

1. Inclusion for Settlements and Its Drawbacks. It is evident that the State has preferred to settle a majority of the cases involving child domestic workers. This has been resorted to mainly to secure compensation for the child. The length of litigation, the absence of a written contract and the non-existence of conditions of employment mandated by law also makes prosecuting the employer difficult. Thus, although there are several drawbacks to preferring settlements, *e.g.* (a) a culture of impunity is perpetuated in the reluctance of the courts to impose a stronger penalty and that (b) as these cases never reached a higher court, the opportunity for the creation of jurisprudence which may be beneficial to a child domestic worker, the practical considerations far outweigh these drawbacks. Thus, the recommended legal reforms, especially those relating to the grant of compensation, must be pursued.

2. Strengthening Coordination. Coordination of the various programmes and efforts addressing child domestic workers needs be strengthened. As there are many aspects of exploitation of children in domestic work, different agencies are tasked with specific interventions. Lack of coordinated efforts can prejudice the child. A good example of the need for coordination is a case of a child worker who has been abused (*e.g.* cruelty or sexual exploitation). Often, the prosecution only focuses on the child abuse aspect ignoring the violation of the labour laws. Labour officials are quick to point out that such circumstance is a police matter. Police officers, on the other hand, lament that they are helpless to prosecute for unlawful employment since they have power only to initiate an action for abuse.<sup>315</sup> Furthermore, they correctly state that labour issues are matters for the Department of Labour to handle. A prosecution can only be instituted with the written permission of the Commissioner of Labour.<sup>316</sup> Although there is a strict segregation of mandate and exclusivity in terms of prosecution, joint cooperation (*e.g.*, in collection of information, immediate notification in cases of detections, sharing and gathering of

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<sup>313</sup> Sri Lanka 2<sup>nd</sup> CRC Report, *supra* note 230, at 16.

<sup>314</sup> Interview Ministry of Labour, *supra* note 252; Interview with Muthetuagama, *supra* note 302; Interview with Renuka Senanayake and Shermila Antony, Center for Policy Alternatives [hereinafter Interview with Senanayake, et. al.].

<sup>315</sup> The Police have no power to arrest a person who employs a child without a court order. In SC Application No. 395/99, the Supreme Court stated that the police not being included in the term "authorized officers" have no power to make an arrest under the EWYPC. (Tiranagama, *supra* note 265, at 33).

<sup>316</sup> Lalani Perera, *Sri Lankan Laws Regulating Child Labor*, Seminar on Child Labour organized by The Ministry of Justice, Sri Lanka and International Programme on the Elimination of Child Labour-International Labour Organization, Colombo 17 (May 26, 2001).

evidence for prosecutions, preparation of trial materials, and the like) helps in ensuring the proper implementation of both laws. More efforts at coordination and cooperation are required in guaranteeing that offenders are charged for two offences: employing an under-aged child and violation of penal laws.<sup>317</sup>

Better coordination is also hoped for between probation officers, on the one hand and the police and the Labour Department, on the other hand. When a complaint is made to the latter, DPCSS must be informed without delay so that the interest of the child is immediately protected from inception.<sup>318</sup>

A memorandum of joint cooperation where the roles and responsibilities of each agency are identified is vital. This may be done through inter-agency meetings (NMC or NCPA) where NGOs and other relevant organizations are invited to join. Confidence-building measures among these institutions must be initiated to improve accessibility. Tapping local officials, especially at the village level, is important in any coordination effort. They should be included in all programmes and activities addressing child domestic workers.

3. Legal Literacy. A common observation is the lack of legal literacy among the various agencies and actors involved in protecting child domestic workers. Obviously, there is a need for legal literacy on the existing legal framework on child domestic workers. Trainings for lawyers, judges, prosecutors, police, probation officers, social workers, and labour officers must be conducted. A comprehensive and coordinated approach to the legal framework is suggested so that each agency looks at how it can assist in the overall response to child labour issues rather than being concerned only about its specific mandate. As there is a greater need for more personnel to address the concerns of child domestic workers and resources are very limited, training will also increase the number of child-sensitive officers without the need to hire new employees.

Skills training is also necessary. Legal knowledge, procedure and techniques must be taught on a more intensive basis, especially special skills in handling children. Trainings must be more than just sensitisation.<sup>319</sup> An illustrative case is the need to train the Labour Department and police officers in prosecuting cases. The determination of relevant evidence and the preparation of a solid case require specialised knowledge which must be transmitted to these officers. International exchange and technical assistance must also be provided. Lessons, good practices and challenges faced by other countries may provide new ideas on combating child domestic labour.

4. Legal Reform. Legal reform in various areas relevant to child domestic workers is of utmost importance. Suggestions from the relevant agencies range from amendments of the existing legislations, enactment of a special law on domestic workers to the drafting of a Magna Carta on child domestic workers. Those who prefer the latter argue for the need for a single enactment to avoid confusion and complexities.

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<sup>317</sup> Interview with Mr. K Tiranagama, Executive Director, Lawyers for Human Rights and Development, et. al, in Colombo (August 14, 2002) [hereinafter Interview with Tiranagama, et. al.]

<sup>318</sup> Interview with Senanayake, *supra* note 314.

<sup>319</sup> Interview with Thurairajah, *supra* note 303.

## Law on Domestic Work

It should be emphasised that as there is no specific law on child domestic workers, protection for them has to be culled from the various general laws. Although a blanket legal protection is afforded to children below 14 years due to the absolute prohibition mandated by the EWYPCA, children from 14-17 years of age (young persons) are particularly vulnerable. There is no special protection afforded to them, in terms of conditions of work (other than hours of work and rest period), wages, registration, grievance procedures and others. Unlike young persons in the formal sector who can avail of the general laws governing the industry or sector they are employed in, the absence of legislation or regulation on domestic workers impacts heavily on those employed as domestic workers. A law on domestic workers, therefore, is important.

A domestic workers law must discuss the definition of a domestic worker, including what tasks constitute domestic work. It must also define the term employer and must determine whether extended family members are included in such definition. This is particularly important since domestic work performed in the homes of relatives is often not considered as employment by law enforcers.<sup>320</sup> Moreover, the law must discuss (a) conditions of employment, such as minimum wages and allowable deductions; hours of work and rest periods; provision of food and shelter and social security; (b) conditions for termination of employment; (c) grievance and relief machineries; (d) monitoring and inspection procedures; and (e) penalty for violations. The law, however, should not focus solely on adult domestic workers. Special provisions must be made for children, that is, those from 14 to below 18 years of age. Tasks inappropriate to their age, well-being, health and development must be identified. The potential of domestic work as one being of a hazardous nature must be recognised.

Registration of child domestic workers must be made compulsory. In endeavouring to secure the best interest of a child, registration would allow constant monitoring of his or her condition. Pre-employment and periodic medical examination of the child domestic worker, on the employer's expense, can also ensure the child's welfare.<sup>321</sup>

### Amendments to the EWYPCA

The penalty for violation of the EWYPCA has led to the trivialisation of child labour. This, coupled by the lack of legal authority to grant compensation to the child victim, has obstructed effective prosecutions. In order to assist the child financially, the Labour Department and the Courts have tended to forego the imposition of penalties in favour of compensation. The law must, therefore, be amended to increase the penalty for violations of the minimum age of employment. Compensation for the harm suffered by the child as well as payment of a reasonable amount for the services rendered by the child as a domestic worker (even if such work is illegal) must be provided for under the amendment.

It is argued that police officers should be considered authorised persons to prosecute a labour case. However, over and above prosecution, a more important consideration is the need to expand the number of persons who can file a complaint on behalf of the child. The labour officials, the police, local government officials, probation officers, teachers and neighbours must be given such standing to file a complaint on behalf of the child with the prosecutor. This affirms that child labour is a special concern of the community as a whole.

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<sup>320</sup> Interview with Divakana, *supra* note 292; Interview with Senanayake, et. al, *supra* note 314.

<sup>321</sup> Interview with Tiranagama, et. al, *supra* note 265.

## Amendment to the Trade Union Ordinance

Trade Unions ordinance should be amended in recognition of the right of child workers to join and form trade unions of their own. Trade union membership should be open to children below 16.<sup>322</sup> Strict guidelines and special protective measures though, must be provided under the law to ensure that their participation rights are not trampled upon or exploited by adult members of the union.

## Amendment to Judicature Act

A proposal was made that the Judicature Act should be amended to permit child rights/human rights groups or NGOs to represent the interest of the child before the court. Presently, NGOs assist child domestic workers in preparing for and following up the case. They give legal advice, do their own investigation and brief the police or Ministry of Labour on their findings. The efforts of these organisations are important in ensuring that the interest of the child is not subjugated to the interest of the State. There is, however, no structural and institutional mechanism for their incorporation in the legal system. Their participation is subject to the personal discretion of the prosecuting officer.

The Subcommittee on the Study on the Substantive and Procedure Laws relating to Children Requiring Reforms considers this NGO participation proposal as going against the basic tenet that only lawyers should be permitted to represent any party in court. An interesting recommendation in this regard though is the constitution of Court Appointed Special Administrators/ Guardians Ad Litem (CASA/GAL). A CASA/GAL programme consists of a pool of committed adult volunteers from the community who, after proper training, is mandated by the court to look after the best interest of a child during a court process. He is tasked to coordinate the various interventions and services to ensure that the child's interest is paramount. He presents his recommendations to the judge periodically, thus assisting the court in forming a decision suitable to the child's best interest.<sup>323</sup> A CASA volunteer bases his recommendations on talks with the child, parents, relatives, social workers, school officials, health providers and others who are knowledgeable about the child's history. He looks into all records pertaining to the child -- school, medical caseworker reports and other documents. He provides crucial background information to assist attorneys in representing the child.<sup>324</sup> During the court process, a CASA volunteer also helps out by researching the proper homes, medical treatment and educational institution for the child.<sup>325</sup>

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<sup>322</sup> Interview with Senanayake, et. al, *supra* note 314.

<sup>323</sup> Manual for CASA/GALS. Adhikain Para sa Karapatang Pambata-Ateneo Human Rights Center.

<sup>324</sup> CASA Fact Sheet (September 22, 200) <<http://www.nationalcasa.org/newsroom/factsheet.htm>>.

<sup>325</sup> Examples of CASA success stories are the following: "Anne's second case required advocating for an infant who was reported abused due to is family's religious Rastafarian beliefs. The family practiced a strict Rastafarian diet – one which left the child severely malnourished. Anne spent countless hours discussing and researching the child's medical condition with various doctors at Children's Hospital, family members and social workers. She finally identified alternative medical treatment that did not conflict with the family's religious beliefs. (Anne Marie Caulkins, Alexandria CASA Program, Alexandria, VA); Mary Jo's advocacy efforts for a seven-year-old girl helped encourage the girl's mother to complete Alcoholics Anonymous, get a stable job, attend counselling, attend visits with her daughter on a regular basis, and stay drug free. Mary Jo worked diligently in locating a residential drug rehabilitation facility for this family and with DHS approval, the mother and daughter now reside at the facility. (Mary Jo Warren, CASA of the 2<sup>nd</sup> Judicial Circuit, Jonesboro, AR). [CASA Volunteer Stories (September 22, 2002) <<http://www.nationalcasa.org/volunteer/volunteer-stories.htm>>].

## A Comprehensive Definition

There is no one law providing for a unified definition of a child applicable to all legislation. Each law defines a child according to its own purpose. Although a legislation creating a single definition will definitely aid in the uniformity of application of standards, it should, however, be kept in mind that there is no prohibition on the State to create special categories of children on the basis of their age in identifying their rights and obligations. What is more important to note is the protection being afforded by the State to the child, whatever he or she is termed.

5. Custody and Other Support Services. The availability of institutions and facilities to which child victims may be referred for safe custody pending trial is of urgent need.<sup>326</sup> This urgency cannot be underscored enough, especially in view of the influx of complaints received due to the effectivity of the awareness campaigns, e.g. the hotline services. The government must secure proper placement for children rescued from domestic work. They must be kept in separate homes and vehicles from other victims of abuse and from juvenile offenders. Recovery, rehabilitation and reintegration facilities must be provided specially for the needs of child domestic workers. Secondary victimisation of these children in these institutions must be addressed.<sup>327</sup> These services must be available immediately upon rescue until the child has fully recovered and reintegrated himself or herself in the community.

6. Access to legal Aid. Child domestic workers-focused legal aid centres must be set up. At present, the interest of the child is represented by the prosecutors. However, the prosecutors' role is limited by their governing law. The legal aid centres may be able to advise the child or his or her parents/guardians on legal avenues to pursue which go beyond the prosecutory framework.

7. Special Focus on the Girl Child. Majority of child domestic workers are girls. Providing lady officers to deal with girl domestic workers has been the easy answer for most agencies. Few programmes address their special needs. There is, therefore, a need to set up special care and services to girl-children, especially in the area of reproductive rights. Gender-segregated data and child and gender-friendly procedures must be established. A gender component must be included in all interventions and services. Child and gender sensitivity training must be given to all stakeholders, especially to the relevant agencies.

8. Education. Compulsory school attendance and compulsory education have been identified as preventive measures in other countries. In Sri Lanka, however, it has not been effective in addressing child domestic labour. A survey showed that 74.6% of its children are engaged in economic activity and in schooling simultaneously. However, although not a preventive tool, one should look at education's value not merely as a deterrent but also as the tool for bringing about development and acquisition of skills for the child domestic worker. Thus, even when it cannot stop child domestic work, education can be used as an instrument for advancement. It can be a venue for awareness raising campaigns on child labour and children's rights. Compulsory school attendance must, therefore, be enforced.

9. Registration of Births. Although Sri Lanka has an effective birth registration system, continued efforts must be made to secure the registration of all births, particularly in domestic workers sending areas. A birth certificate's usage it is not merely for evidentiary purposes for legal

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<sup>326</sup> Perera, *supra* note 316, at 17.

<sup>327</sup> LHRD Orientation Manual, *supra* note 248, at 27.

proceedings. It will aid inspection and monitoring, especially if used with an effective system of child domestic workers registration.

10. Database. There is a need to develop a proper mechanism for the flow of information. This cannot be emphasised enough primarily since child domestic work is hidden work. Data, therefore, on their status and condition is very important. A comprehensive database or repository of information is suggested.

11. Awareness Campaigns and Civil Society Participation. Sri Lanka has been successful in raising the awareness of the community in general on the issue of child labour. To use as the only indicator of its effectivity whether or not those who already know that it is a crime still send and receive children is short-sighted. Awareness raising can, in the interim, substitute for the present lack of detection, inspection and monitoring systems. As the State is mandated to protect the sanctity of the dwelling, police officers or labour inspectors cannot acquire entrance in homes without a search warrant. There is therefore heavy reliance on complaints made by the community. A highly aware and sensitised community can act as the eyes and ears of the State in detecting child domestic workers and in testifying against employers. It is, therefore, suggested that popular information campaigns be continued and intensified.

12. Addressing other issues concerning Prosecution and the Justice System. It is often cited that prosecutors are overburdened with work and thus, the time they can allot to the case is limited. This is harmful to the interest of the child who at times may require patience in telling his or her story. It may be useful to explore a system where private prosecutors may assist the State prosecutor in the preparation and prosecution of a case. The private prosecutor will be under the full control and supervision of the State prosecutor. A system of registration may be installed to ensure that the private prosecutors are competent on child domestic workers issues. In the Philippines, for example, where a private lawyer may prosecute any criminal case under the control and supervision of a State prosecutor, Child Justice League, a legal child rights organisation, estimates prosecuting 50 cases annually.<sup>328</sup>

Another serious concern is the delay in attaining justice. In the normal process, it takes two years or more before a simple case in a Magistrate is terminated.<sup>329</sup> This delay forces a child domestic worker to agree to settlements instead of vindicating his or her rights. Other legal remedies are also disregarded, *e.g.* the possibility of obtaining damages or compensation through torts, because of the length of time, expense and effort it requires to litigate successfully.<sup>330</sup>

### ***PRIORITISING CHILD DOMESTIC WORKERS***

Laws and policies fail to recognise child domestic work as a special category of child labour requiring distinct interventions because of circumstances unique to it. Furthermore, it is evident that an over-arching reason for the lack of protective mechanisms is the fact that child domestic workers are not in the State's list of priorities. The low status accorded to domestic workers coupled with a child's lack of voice on matters pertaining to his or her own protection and development also contribute greatly to the legal framework's silence. It is vital for the State to prioritise the problem of child domestic work. Hopefully, the observations and recommendations identified in this paper can assist in this prioritisation and corollarily, in restoring the dignity of this silent and hidden sector.

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<sup>328</sup> Interview with Annie Sunga, Director, Adhikain Para sa Karapatang Pambata, in Manila (September 1, 2002).

<sup>329</sup> Interview with Tiranagama, *et. al*, *supra* note 265.

<sup>330</sup> *Id.* Interview with Leanage, *et. al*, *supra* note 292.

#### IV. OVERALL ANALYSIS AND OBSERVATIONS

Very few countries in this study explicitly provide for legal protection of child domestic workers. The Philippines has the most “domestic worker” and “child domestic worker”-specific laws while Thailand allows for three areas in its Labour Law to benefit domestic workers in general. The same goes true for Hong Kong (SAR), where the Employment Ordinance covers domestic workers without distinction whether said workers are children or adults. In Vietnam, the law leaves the terms and conditions of a domestic employment contract to the specifications of the parties, if the domestic worker happens to be at least 15 years of age. The rest of the countries covered in this study have laws which, though not specifically addressing domestic workers, nevertheless extend the mantle of their protection to them because they happen to be children or children working in the formal sector.

*A. There are laws and/or policies which bear significance on the situation of child domestic workers. They can be appreciated for their potential both as prevention and protection tools. Therefore, these laws or policies should be carefully studied and pursued in a framework where they can provide the best possible benefits for child domestic workers.*

1. **Minimum Age Requirements** – Most countries have set a minimum age for hiring children ranging from 12 to 15 years. While some laws appear to contain a blanket prohibition as in the case of Hong Kong, Nepal, Pakistan and Sri Lanka, some contain prohibitions within the context of children working in an industry or establishment, or children engaging in hazardous occupations. Nonetheless, providing for a minimum age for working children is one of the more important standard-setting norms for the prevention of exploitation of child labour and the protection of children against hazardous work. It would be more desirable, though, if these laws specifically take into account children in the non-formal sector work such as domestic service. Other examples of standard-setting norms which can be found in majority of the laws of the countries in this study are provisions against discrimination on the basis of sex or equality of sexes provisions and the prohibition against forced or bonded labour.
2. **Registration** – Very few countries in the study provide for the registration of births in their written laws. Birth registration at first glance may not seem important to child domestic workers but this document can facilitate their identity, nationality and age. Birth certificates can be a vital proof in enforcing prohibitory laws against hiring children below a certain age. They are also proof of the children’s identity. Article 7 of the Convention on the Rights of the Child provides that the child shall be registered immediately after birth and has the right to a nationality. Article 8 also speaks of the right of the child to preserve his or her identity, including nationality, name and family relations. Clearly, it is important for child domestic workers and children in general to have birth registration papers especially because they give accurate information as to the child’s name and age. These papers can also facilitate in monitoring their working conditions; and in countries where children are compulsorily required to attend school, they can greatly assist in identifying who are supposed to be attending school, and if indeed, these children are in school.
3. **Education** – Most of the countries provide for free and/or compulsory education for children, at the very least, at the primary level. The assumption behind this policy is that children will stand a better chance of landing a good job if they possess the necessary skills and level of education demanded by the employment market. At the same time, the State also recognises that children have the right to education and that they should be in school especially in their formative years. In Thailand, making education compulsory until the age of 15 had been quite

successful. This has been supplemented by a prohibition against hiring children in establishments who are below 15. Ironically, however, the proscription against hiring children below the age of 15 does not apply to domestic workers. It appears that in the other countries, the compulsory education requirement has made little significance in preventing children from entering domestic work or engaging in other remunerated activities. In Sri Lanka, for instance, the case study indicated that around 75% of children were engaged in economic activity while at the same time attending school. There is no further study on how these children have actually fared in school. In the Philippines, on the other hand, a recent study<sup>331</sup> concludes that the education system is not “friendly” with children who are working because of certain socio-cultural and economic factors in the child’s environment. Specifically, not all parents appreciate the value of sending their children to school as much as having them help out financially by working. Working children also have difficulty adjusting in school because their particular situation is not taken into consideration and therefore, no adjustments are made to accommodate their special circumstance as working children. For free and compulsory education to achieve its fullest potential, the State must be able to create support mechanisms to ensure that children attend school on a regular basis and that school is not sacrificed for the sake of work. The value of education should be inculcated not only to children but also to the parents who are a major influence on the child’s decision to take school seriously and consistently. Indeed, as in the case of Thailand, education can deter children from engaging in domestic work and it is this same education which also makes it possible for them to opt for other forms of remunerated activity in the formal sector after they have finished their compulsory education.

*B. There is an obvious problem of enforceability of laws or policies affecting child domestic workers.*

Enforcement Mechanisms – The effectiveness of existing laws on child domestic workers, or whatever laws/policies are available in a State that can be relied upon by these workers for their protection, are only as good as their proper implementation. In this study, aside from the obvious problem of lack of laws focusing on child domestic workers, the countries which contain some provisions for their benefit have a problem with implementation. For instance, in Thailand, the law against sexual harassment which applies to child domestic workers, is rarely enforced. In Sri Lanka, the law requiring the registration of domestic workers with the office of the Inspector-General of the Police is not being used, though it seems that this law was created more for security purposes and not really for the protection of domestic workers. Likewise, in the Philippines, the social benefit of insurance coverage is hardly realisable for child domestic workers because they themselves do not appreciate its long-term benefit. Thus, a lot of them do not want to be covered as it also entails contribution on their part – an unwelcome deduction from their wages.

There is also a problem with accessing justice for redress of grievances in cases of non-payment of wages, physical injuries and other acts of cruelty or abuse. Since child domestic workers are generally unaware of what their rights are under labour or even penal laws, there are very few cases that reach the courts and still, very few of these cases secure conviction because they are settled out of court or compromised. Thus, laws that aim to penalise erring employers fail to achieve their purpose. On the other hand, some measures which purport to protect child domestic workers are also problematic.

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<sup>331</sup> Emma Porio, *An Assessment of Education and the Worst Forms of Child Labour: How Do Education Policies and Programs Work (or Do Not Work) for Children? (Draft)*.

a.) Inspection – Laws providing for labour inspections are generally focused on monitoring industries and establishments, rather than individual homes where child domestic workers are found. Labour Inspectors (or social welfare officers, as the case may be) only step into the picture in instances where there are reported cases of child abuse necessitating immediate verification and action. Thus, at most, inspections for the purpose of monitoring the situations of child domestic workers are reactive – they are only done if there are reports of possible abuse or injury. Otherwise, they are not regarded as a monitoring tool for child domestic workers.

b.) Registration as child domestic workers – The non-existence of the registration requirement for child domestic workers in most laws or policies of the countries in this study is a reflection of the reality that the need to document, collect data on and monitor this particular work sector is not a priority for governments. It is unfortunate that this relatively simple procedure is not made use of since it can be an effective tool for tracking the whereabouts of the children and it would also facilitate gathering information about them, their conditions and other concerns. Registration would make child domestic workers a little visible and possibly pave the way for more measures for their protection.

c.) Rescue Operations and Hotlines – Rescue operations take place when a child domestic worker is taken into protective custody or “rescued” by an authorised person. This person is also authorised to enter the premises and get the child or at the very least, demand from the employer the release of the child. This happens when there is a report of abuse or injuries suffered by the child domestic worker. The report is usually made through the use of telephone hotline service. Rescue operations have been effective in the Philippines and Sri Lanka as a protection measure. However, in the Philippines, the problem lies with the fact that there are very few criminal cases which are actually filed against the abusive employers and because this procedure takes time, the children are just sent home. Thereafter, there is no more follow-up on them. At least for money claims, the children can be represented by social workers so that they do not have to wait for the termination of the case before they could be sent home. In Sri Lanka, there is a serious problem of where to put the children after the rescue. Because of lack of facilities, they are sometimes sent to detention centres and lumped together with children in conflict with the law who are also waiting to be tried before the courts. Even the vehicles used for their trip to case hearings are the same vehicles used for transporting inmates who are likewise being tried in court. Because of the awareness of the general public of the hotline services, reports of abuse suffered by the child domestic workers are made not only by parents or concerned relatives, but also by neighbours and NGOs. Unfortunately, hotline services for child domestic workers are not quite as successful in Thailand compared to the Philippines and Sri Lanka. Aside from the fact that there might be little awareness of the existence of hotline services in Thailand, the fact that many of these children are foreigners from neighbouring countries make it difficult for them to access this service because of language barrier. There is also fear of being in trouble with the law especially if these children were trafficked.

There are not enough laws or policies covering the protection of child domestic workers. For the few that exist, there is an evident problem in implementation primarily due to low prioritisation and lack of resources. Those who are in a position to enact laws or formulate policies on children should begin to pay attention to the concerns being raised by some groups in the society regarding the situation of child domestic workers. They should realise that the longer these children remain invisible, the more will they be vulnerable to abuse and exploitation. Initial measures such as registration or even inspection need not necessarily be expensive. One needs only to be innovative and skilled in resource mobilisation in order to maximise these measures to

ensure the greatest benefit possible to the children. In the Philippines for example, the surveillance, detection and monitoring of situations of child domestic workers has been brought down to the local level. A community-based mechanism has been set up and involved local organisations as well as the local government. Both the facilities and resources of these local entities have been tapped to ensure the success of the programme.

## V. CONCLUSIONS AND RECOMMENDATIONS

A common situation that can be observed from all the 13 countries is that most of the fundamental laws applicable to child domestic workers are actually not exclusive to them. These laws are part of the legal system not solely to protect child domestic workers; but rather, they were enacted for the purpose of protecting and/or promoting rights of all citizens or nationals, whether they are adults or children. Although other laws or measures are child-specific, they focus on the welfare of children in general and do not likewise distinguish whether said children are working or not. Finally, for those that focus on working children, the concentration is on children in the formal sector and not on domestic work.

The lack or absence of laws and policies addressing child domestic workers shows that there is little or no recognition at all that children in domestic work need to be addressed separately either through law or policy. As a group, these children are not seen as vulnerable to the worst forms of child labour. On the contrary, there is a general belief that children engaged in domestic work are cared for and somehow treated as one of the members of the family. Hence, there seems to be no urgency to prioritise their cause.

Ideally, children study and play while adults work to earn a living. Thus, when children are placed in a situation considered for adults, they become vulnerable. For one, their physical make-up is such that they do need more time to rest than adults. Thus, they should not be made to work overtime and do night time work. In fact, other laws which regulate hours of working children usually prohibit these two activities. Unfortunately, in domestic work, these activities are more expected rather than prohibited. In the few case studies that have been used in this research, children were shown to be working for more than eight hours. They were practically “on call” anytime by their employers – a fact which does not happen even in regular employment of adults.

The vulnerability of these children is heightened not only by the fact that they are working but also because their work environment is hidden. They are invisible from scrutiny or investigation such that a complaint for abuse is almost necessary before they could be reached by law enforcement or labour inspectors. Since they work within the confines of a private dwelling, child domestic workers may be easily subjected to abuses – something that might be more difficult to do in remunerated activities falling under the formal sector of work.

Based on the information gathered in this research, this paper makes the following recommendations:

1. Enactment of a law specific on child domestic workers, where a legal definition is given to domestic work, domestic workers and child domestic workers. A domestic worker’s law must discuss the definition of a domestic worker, including what tasks constitute domestic work. It must discuss (a) conditions of employment, such as minimum wages and allowable deductions; hours of work and rest periods; provision of food and shelter and social security; (b) conditions for termination of employment; (c) grievance and relief machineries; (d) monitoring and inspection procedures; and (e) penalty for violations. The law, however,

should not focus solely on adult domestic workers. Special provisions must be made for children, that is, those from 14 to below 18 years of age. Tasks inappropriate to their age, well-being, health and development must be identified. The potential of domestic work as one being of a hazardous nature must be recognised. It should also set the direction of the programmes designed for the prevention and protection of child domestic workers from abuse and exploitation.

2. Registration of child domestic workers. Registration of child domestic workers must be made compulsory. In endeavouring to secure the best interest of a child, registration would allow constant monitoring of his or her condition. There should also be a strong campaign on registration of working children regardless of whether or not they belong to the formal or informal sector of work. Needless to say, those in the informal sector, such as domestic workers, need to be more visible and registration is one viable means to monitor their whereabouts. At least the government would know where the child domestic workers are located. These children would also be more accessible to Labour Inspectors if their locations were easily verifiable. Eventually, a scheme may be developed so that there would be a possibility of making periodic check-ups on them, if these labour inspectors were given more access to private homes.
3. There is a clear need to strengthen the existing national machinery (government, employers, workers and civil society) to work collectively in detecting, monitoring, and rescuing child domestic workers. There must be coordination among the different agencies in order for recovery, rehabilitation and reintegration measures to be supportive of each other. The child's right to survival, health, education, and rehabilitation during the helping process, as well as, in the delivery of after-care services should not be neglected.
4. There is a need for legal literacy on the existing legal framework for the protection of child domestic workers. Trainings for lawyers, judges, prosecutors, police, probation officers, social workers, and labour officers are a necessity. A comprehensive and coordinated approach to the legal framework is suggested so that each agency looks at how they can all assist in the overall response to child labour issues rather than being concerned only about their specific mandate. As there is a greater need for more personnel to address the concerns of child domestic workers and resources are very limited, training will also increase the number of child-sensitive officers. Skills training is also necessary. Legal knowledge, procedure and techniques must be taught on a more intensive basis, especially special skills in handling children. Child and gender sensitivity must also be necessary components in the training.
5. Awareness raising. Efforts must be intensified at making the rights and remedies that are already available to child domestic workers known or popular, especially to those who should avail of them. A necessary consequence of lack of knowledge as to available remedies is also the dearth of cases that reach the courts for the redress of their grievance. The lack of awareness regarding one's enforceable rights will lead to ineffective reporting and redress system. Consequently, there will also be few documentation on the matter and this situation will invariably perpetuate even more the invisibility of child domestic work.
6. Continuing capability-building. This is vital for concerned government agencies and their partner organisations/agencies in the areas of detection, rescue and surveillance, case

management, handling children, documentation, legal procedures and para-legal skills. Team-building activities should be undertaken to have a clear delineation of their roles and functions and to strengthen their partnerships.

7. Continued research, documentation and data gathering. Data gathering and research are vital in assessing the nature and magnitude of the problems that their situation brings especially when seen in the context of the worst forms of child labour. A better understanding of the context of child domestic workers, in turn, ensures that the law and policies issued in addressing the problem are adequate and responsive.

**ANNEX 1: BANGLADESH MATRIX**

Fundamental Rights (Labour Standards)

| <b>Rights</b>                              | <b>Origin</b>   |  |
|--|---|--|
|  | <b>Labour Laws</b>  | <b>Other/ General</b>  |
| Right to and Against                       |   |  |
| Right of association                       |   | The Constitution provides for the right to join unions and—with government approval—the right to form a union; |
| Right to strike                            | Industrial Relations Ordinance – Workers have the right to strike in the event of failure to settle. If the strike lasts 30 days or longer, the Government may prohibit the strike and refer the dispute to the labour court. In the law, the right to strike is not specifically recognized. |  |
| Right to organize and bargain collectively | Employment of Labour (Standing Orders) Act; The Factories Act; Industrial Relations Ordinance – Collective bargaining occurs on occasion of large private enterprises. In small private enterprises, collective bargaining generally does not occur.  |  |
| Right against forced or compulsory labour  |   | <b>The Constitution prohibits forced or compulsory labour including that performed by children.</b>            |
| Right to acceptable conditions of work     | Same; these laws set forth wage and hour and occupational safety and health standards.  |  |

Protective Measures

| <b>Measures</b>           | <b>Origin</b>  |                       |
|---------------------------|--|-----------------------|
|                           | <b>Labour Laws</b>   | <b>Other/ General</b> |
| Inspection                | The Ministry of Labour has fewer than 110 inspectors to monitor 180,000 registered factories and establishments. Outside of the export garment sector, there is no child labour law enforcement. Most child workers are employed in agriculture and other informal sectors where no government oversight occurs. |                       |
| Registration              | 30% workplace participation in the union is required for a union to obtain and maintain its registration.  |                       |
| Hours of work             | The law sets a standard 48-hour workweek with 1 day off mandated. A 60-hour workweek, inclusive of maximum 12 hours overtime, is allowed.  |                       |
| Minimum wage              | There is no national minimum wage. The Wage Commission sets wages and benefits by industry using a range based on skill level.   |                       |
| Minimum age of employment | <b>The Factories Act bars children under the age of 14 from working in factories. The Shops and Establishments Act</b>   |                       |

|                             |  |  |
|-----------------------------|--|--|
|                             | <b>prohibits the employment of children younger than 12 years in commercial workplaces;</b>      |  |
| Health and safety standards | The Factories Act is comprehensive enough in providing occupational health and safety standards. |  |

#### Enforcement/ Monitoring

| Measures  | Body in Charge  | Origin  |  |   |
|---|---|---|--|---|
|   |   | Labour Laws   | Children   | Other/ General  |
| Laws  | Ministry of Labour<br><br>Ministry of Education                                   | Essential Services Ordinance;<br>Industrial Relations Ordinance;<br>Employment of Labour (Standing Orders) Act; | <b>The Factories Act; Shops and Establishments Act; Employment of Children Act; Children’s Act 1974 and Children’s Rules 1976; Mines Act; Minimum Wages Ordinance; Children (Pledging of Labour) Act; Plantations Labour Ordinance</b> | <b>Women and Children Repression Act, 1996.</b><br><br><b>Bangladesh Primary Education Act – provides for penalty in case the parents do not send the child to school</b> |
| Penalties for violations of labour laws<br><br>Penalties for violation of trafficking laws (women and children are being trafficked for bonded labour or domestic labour) | Labour Inspector;<br>Bangladesh Garment Manufacturers’ and Exporters’ Association | Same  | Same   |   |
| Examination on the existing labour laws with the goal of updating and consolidating them into a “Labour Code”   | National Labour Law Commission  |   |  |   |

#### Other Policies/ Programmes/ Mechanisms

| Policies/ Programmes/ Mechanisms  | Labour Laws | Other/ General   |
|---|-------------|--|
| National Programme of Action on Children by National Government in coordination with NGOs and International Organizations |             | <b>U.N. Convention on the Rights of the Child</b>  |
| Integrated Non Formal Education Programme – efforts to prevent many children from entering the workforce                  |             | Bangladesh Primary Education Act   |
| National Plan of Action on Child Labour   |             | <b>Formulated by the Government for better understanding of the problem, legislation and enforcement institution development, social security and rehabilitation of the working children, prevention of child labour through formal education, non-formal education and vocational training, awareness raising against child labour.</b> |
| Cooperation with international organizations such as UNICEF to  |             |  |

|  |  |                         |
|--|--|-------------------------|
| develop non- formal educational and other support programmes for working children  |  |                         |
| Preventing and Eliminating Worst Forms of Child Labour in Selected Formal and Informal Sectors (includes child domestic workers) |  | U.S. DOL Funded Project |
| Eradication of Hazardous Child Labour in Bangladesh  |  | U.S. AID Funded Project |
| Advocacy, educational services, and crisis intervention  |  | NGOs                    |

**ANNEX 2: CAMBODIA MATRIX**

**Fundamental Rights (Labour Standards)**

Note: Scope of Application of Labour Code, art. 1, last paragraph: This law shall not apply to: (e) domestics or household servants, unless otherwise expressly specified under the law. These domestics or household servants are entitled to apply the provisions on freedom of union under this law.

| <b>Rights</b>  | <b>Origin</b>   |  |
|--|---|--|
| <b>Rights to and Against</b>   | <b>Labour Laws<br/>1997 Labour Code</b>   | <b>Other/ General</b>  |
| Right to mobility: no unreasonable restriction to leave household premises |   |  |
| Right against involuntary servitude (work against one's own will)          | <p><i>Art 15: Forced or compulsory labour is absolutely forbidden in conformity with the International Convention No. 29 on the forced or compulsory labor, adopted on June 28, 1930 by the International Labor Organization and ratified by the Kingdom of Cambodia on Feb. 24, 1969.</i></p> <p><b><i>This article applies to everyone, including domestic or household servants and all workers in agricultural enterprises or businesses.</i></b></p> |  |
| Right against debt-bondage (work to pay debt of family)                    | Art 16: Hiring for work to pay off debts is forbidden.  |  |
| Right to equal/ humane treatment at work                                   |   | Constitution, art. 31: The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the UN Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's rights and children's rights. |
| Right to unionize  | <i>Chapter XI: Trade Union Freedom and Workers, arts. 266 – 299, in relation to art. 1: Domestic or household servants are entitled to apply the provisions on freedom of union under this law.</i>   |  |
| Right to collective bargaining unions                                      | Chapter V: Collective Labour Agreements, arts. 96 – 101:<br>The collective agreement can also extend its legally recognized roles to trade union organizations and improve the guarantees protecting workers against social risks.  |  |
| Right to affiliate with trade unions                                       | <p>Chapter V: Collective Labour Agreements, arts. 96 – 101:<br/>The collective agreement can also extend its legally recognized roles to trade union organizations and improve the guarantees protecting workers against social risks.</p> <p>Art. 271: It provides workers with the right to form professional organizations of their own choosing without prior authorization, and all workers are free to join the trade union of their choice.</p>    |  |

|  |   |  |
|--|---|--|
|  | Membership in trade unions or employee associations is not compulsory |  |
|--|---|--|

Protective Measures

| Countries | Measures   | Origin   |                |
|-----------|--|--|----------------|
|           |  | Labour Laws<br>1997 Labour Code  | Other/ General |
|           | Registration                                     | Chapter VI: General Working Condition, sec. 8<br>Child Labor – Women Labor<br><b>Art. 179: All employers must keep a register of children aged less than 18 years old, whom they employ, indicating their date of birth. This register must be submitted to the Labor Inspector for visa, observation and warning.</b>   |                |
|           | Inspection                                       | Chapter VI General Working Condition<br>Sec 8 Child Labor – Women Labor<br><b>Art 178: The Labor Inspector can request a physician, who is in public service, to examine children less than 18 years of age employed in an enterprise in order to establish that their jobs are not beyond their physical capabilities. If this is the case, the Labor Inspector is empowered to demand that their job be changed or that they be let out of the establishment upon the advice or examination of the physician, if their parents so protest.</b> |                |
|           | Employment Contract                              | Chapter IV: The Labour Contract, arts. 65-95: A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.  |                |
|           | Social Security                                  |  |                |
|           | Medical benefits in case of work-related illness |  |                |
|           | Compensation in case of work-related injuries    | Arts. 247–257: Set out the rules relating to accidents at work. The employer is responsible for having a clean and safe work place. A  |                |

|  |  |  |  |
|--|--|--|--|
|  |  | <p>victim/beneficiaries are entitled to compensation from the employer where there is a work-related accident, whether temporary (Art. 252) or permanent (Art. 253).</p> <p><i>Art. 249: Managers of enterprises are liable for all work-related accidents stipulated in the Article above regardless of the personal status of each worker.</i></p> <p><i>The same liability applies to:</i></p> <ul style="list-style-type: none"> <li>• <i>property owners, only for their domestic workers.</i></li> </ul> |  |
|--|--|--|--|

#### Enforcement/ Monitoring

| Measures   | Body in Charge   | Origin   |  |  |
|--|--|--|--|--|
|  |  | Labour Laws  | Children   | Other/ General   |
| Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings | Ministry of Labour<br>Ministry of Social Affairs   | The National Assembly of the Kingdom of Cambodia passed the law on 16 January 1996.  |  |  |
| Laws on underground mines or quarries  | Labour Inspector under the Ministry in Charge of Labor in consultation with the Labor Advisory Committee | <p>Art. 359: Those guilty of violating the provisions of the articles in Chapter XVI of this law shall be fined or imprisoned or both.</p> <p>Fines are imposed by the Labor Inspector and the Labor Controller.</p> | <b>Art. 174: Minors less than 18 years old cannot be employed in underground mines or quarries</b>   | <b>Prakas No. 297 on Vocational Training to the Minors to Work Underground</b> |
| Laws on night work   | Labour Inspector under the Ministry in Charge of Labor in consultation with the Labor Advisory Committee | <p>Art. 359: Those guilty of violating the provisions of the articles in Chapter XVI of this law shall be fined or imprisoned or both.</p> <p>Fines are imposed by the Labor Inspector and the Labor Controller</p>  | <p><b>Art. 175: Children aged less than 18 years cannot be employed to perform night work</b></p> <p><b>Prakas No. 144: Child labour at night – Children between 16 and 18 years of age can be employed to work at night in iron and steel, glass, paper, sugar and gold factories where they have to operate continuously. However, they can only be employed</b></p> |  |

|  |  |  |   |  |
|--|--|--|---|--|
|  |  |  | <b>for apprenticeship or training purposes.</b>   |  |
| Laws: on light work vs. hazardous                              | Labour Inspector under the Ministry in Charge of Labor in consultation with the Labor Advisory Committee | <p>Article 359: Those guilty of violating the provisions of the articles in Chapter XVI of this law shall be fined or imprisoned or both.</p> <p>Fines are imposed by the Labor Inspector and the Labor Controller</p>   | <p><b>Art. 177(4): Children aged 12-15 can be hired to do light work provided it is not hazardous and does not interfere with their education.</b></p> <p><b>Art. 177(2): Minimum age for work considered to be hazardous is 18.</b></p> <p><b>Art. 177(3): Children over 15 may be employed in hazardous work if the work does not harm them and they are gaining vocational training.</b></p> |  |
| Policies: Legal action imposed in violation of the labour code | Labour Inspector   | <p>Art. 359: Those guilty of violating the provisions of the articles in Chapter XVI of this law shall be fined or imprisoned or both.</p> <p>Fines are imposed by the Labor Inspector and the Labor Controller</p> <p>Art. 387: Labor courts shall be created that have jurisdiction over the individual disputes occurring between workers and employers regarding the execution of the labor contract or the apprenticeship contract.</p> <p>Art. 388: The organization and functioning of the Labor Courts shall be determined by law.</p> <p>Art. 389: Pending the creation of the Labor Courts, disputes regarding the application of this law shall be referred to common courts.</p> | <p><b>Article 368: Employers who employ children less than eighteen years of age under conditions contrary to the provisions of <u>Articles 173, 174, 175, 176, 177 and 178</u> of this law are liable to a fine of thirty-one to sixty days of the base daily wage.</b></p>  |  |

Other Policies/ Programmes/ Mechanisms

| Countries  | Policies/ Programmes/ Mechanisms   | Labour Laws | Other/ General   |
|--|--|-------------|--|
| Cambodia   | <p>Programmes on trafficking for: domestic work and forced labour:</p> <p>Child Rights ASIANET: Has provided training to staff of non-governmental and governmental organizations, particularly law enforcers throughout the Mekong sub-region.</p> <p>Mekong Region Law Centre (MRLC): Is cooperating with other agencies to address the legal issues in the exploitation of migrant labour and particularly the trafficking trade in the sub-region.</p> <p>GAATW: Developed the Standard Minimum Rules for the Treatment of Trafficked Persons.</p> |             |  |
| Cambodia   | <p>Advocacy Monitoring: Support implementation and monitoring of the Stockholm Agenda for Action Against Commercial Sexual Exploitation of Children (including trafficking) and the Beijing Platform for Action</p> <p>- Status: ongoing</p>   |             | Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region |
| Cambodia   | <p>Advocacy Capacity Building Planning: Cooperate and support regional and bi-lateral activities to address cross border trafficking of women and children including:</p> <p>- Project on Illegal Labour Movements: The Case of Trafficking of Women and Children</p> <p>- Status: ongoing</p> <p>-</p>  |             | Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region |
| Cambodia: 6 provinces (Sien Reap, Battambang, Bantey Mean Chey, Svay Rieng, Prey Veng, Kompong Thom) | <p>Prevention: Cooperation for:</p> <ul style="list-style-type: none"> <li>- Media Campaign</li> <li>- Community and School sensitization and education to promote improved monitoring of children</li> <li>- Sensitization of local authorities</li> <li>- Status: planned</li> </ul>   |             | Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region |
| Cambodia: Selected provinces   | <p>Legal Protection:</p> <ul style="list-style-type: none"> <li>- Training of Police</li> </ul>  |             | Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region |

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|  | <ul style="list-style-type: none"> <li>- Training of court staff</li> <li>- Status: pilot completed, full training planned</li> </ul>   |  |  |
| Cambodia: 11 provinces (capacity building) and 3 towns (Centers) | <p>Recovery and Reintegration Assistance:</p> <ul style="list-style-type: none"> <li>- Capacity building through basic social work training – Social Action staff;</li> <li>- Support for Ministry of Social Affairs, Labour and Veterans Affairs (MSALVA) case monitoring of reintegrated children and families;</li> <li>- Financial and technical assistance for selected crisis/ rehabilitation centers</li> <li>- Status: ongoing</li> </ul> |  | Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region |
| Cambodia: National   | <p>Advocacy Capacity Building by the Cambodian National Council for Children (CNCC)</p> <ul style="list-style-type: none"> <li>- Technical assistance, support and capacity building for policy, planning and regional cooperation</li> <li>- Status: ongoing</li> </ul>  |  | Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region |

**ANNEX 3: CHINA MATRIX**

Fundamental Rights

| <b>Rights</b>                | <b>Origin</b>  |                            |  |
|------------------------------|--|----------------------------|--|
| <b>Rights to and Against</b> | <b>Labour Laws</b>   | <b>Domestic Worker Law</b> | <b>Other / General</b>   |
| Mobility                     |  |                            | The Constitution provides for the inviolability of the freedom of person of the citizens.                                  |
| Involuntary servitude        |  |                            | All citizens of the People Republic of China are equal before the law.   |
| Debt-bondage                 | Prohibits the use of violence, threat or illegal deprivation of freedom to force labour  |                            |  |
| Equal/humane treatment       | Women shall enjoy equal rights as men in employment.   |                            | Women shall enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life.  |
| Trade unions                 | Labourers shall have the right to participate in and organize trade unions in accordance with the law.   |                            | Citizens shall enjoy the freedom of speech, of the press, of assembly, of association, of procession and of demonstration. |
| Collective bargaining        | Labourers shall take part in democratic management through workers congress, workers representative assembly, or any other forms in accordance with the law. |                            |  |

Protective Measures

| <b>Measures</b>  | <b>Origin</b>  |                             |  |
|------------------|--|-----------------------------|--|
|                  | <b>Labour Laws</b>   | <b>Domestic Workers Law</b> | <b>Other / General</b>   |
| Labour standards | <p><b>Employers are banned from recruiting juveniles under the age of 16; arts, sports and special-skill units that plan to recruit juveniles under the age of 16 shall go through examination and approval procedures according to relevant State regulations and guarantee the right of the employed to receive compulsory education.</b></p> <p><b>It is forbidden to engage underage workers in work under wells at mines, poisonous or harmful work, labour grade IV physical labour intensity as stipulated by the State.</b></p> <p>The working hour system limits the hours of work to not more than 8 hours a day and no more than 40 hours a week on the average.</p> <p>Distribution of wages follows the principle of distribution according to work and equal pay for equal work.</p> |                             | <p>Citizens have the right as well as the duty to work. Through various channels, the State creates conditions for employment, enhances occupational safety and health, improves working conditions and on the basis of expanded production, increases remuneration for work and welfare benefits.</p> <p>Working people have the right to rest.</p> <p><b>The State promotes the all-round development of children and young people, morally, intellectually and physically.</b></p> <p><b>The law prohibits trafficking of women and children.</b></p> |

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|  | -social insurance is mandated in cases of retirement, work-related injuries, becoming jobless, and giving birth. |  |  |
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Enforcement Monitoring

| Measures          | Body in Charge  | Origin  |                      |               |
|-------------------|---|---|----------------------|---------------|
|                   |   | Labour Laws   | Domestic Workers Law | Other/General |
| Labour inspection | Labour administrative departments under people's governments at or above the county level | <p>Violation of the Labour law warrants warnings, orders for corrections, fines and criminal responsibility in cases of forced labour or physical maltreatment.</p> <p>Revocation of business license in addition to warning and fine in serious cases of hiring juveniles in violation of the law; compensation in cases where there was harm done to the underage worker.</p> |                      |               |

Other Policies/ Programmes/ Mechanisms

| Policies/Programmes/Mechanisms   | Labour Laws | Domestic Workers Law | Other / General |
|--|-------------|----------------------|-----------------|
| <p>China had set up 2,763 courts to deal with cases involving juvenile delinquency and violation of children's rights as well as 17 provincial committees for the protection of children.</p> <p>The Ministry of Public Ministry together with All China Women's Confederation and other departments launched a campaign against trafficking in women and children.</p> <p>The Government created a new State Administration for Work Safety to ensure occupational health and safety standards in the private sector.</p> |             |                      |                 |

**ANNEX 4: HONG KONG MATRIX**

**Fundamental Rights**

| <b>Rights</b>  | <b>Origin</b>  |   |  |
|--|--|---|--|
|  | <b>Rights to and Against</b>   | <b>Hong Kong Bill of Rights Ordinance</b>   | <b>Labour Law –Employment Ordinance – applies to both local and foreign workers in all sectors</b> |
| Mobility<br>Involuntary servitude<br>Debt bondage<br>Equal/humane treatment<br>Trade unions<br>Collective bargaining | Freedom or liberty of movement and freedom of association.<br><br>Prohibits slavery or servitude and all forms of forced or compulsory labour.<br><br>Hong Kong residents are equal before the law. Both men and women shall have an equal right to the enjoyment of all civil and political rights.<br><br>Labourers shall have the right to participate in and organize trade unions in accordance with the law.<br><br>Labourers shall take part in democratic management through workers congress, workers representative assembly, or any other forms in accordance with the law. | Chap. 11: Protection Against Anti-Union Discrimination – membership and participation in trade unions |  |

**Protective Measures**

| <b>Measures</b>  | <b>Origin</b>   |   |                        |
|------------------|---|---|------------------------|
|                  | <b>Labour Laws</b>  | <b>Employment Ordinance</b>   | <b>Other / General</b> |
| Labour standards | <p><b>Employment of Children Regulations: Children under the age of 13 are prohibited from taking up employment.</b></p> <p><b>Employment of Children Regulations: Children aged 13 and 14 may be employed in non-industrial establishments, subject to the condition that they attend full-time schooling if they have not yet completed Form III of secondary education and to other conditions which aim at protecting their safety, health and welfare.</b></p> <p><b>The hours of work for juveniles between 15 to 17 years of age is limited to not more than 8 hours per day and 48 hours per week which</b></p> | <p><b>Chap. 3: Wages shall not include the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer although these items can be validly deducted from said wages. Employer should pay wages soon as practicable but in any case not later than seven days after the end of the wage period</b></p> <p><b>Chap. 4: Rest days - not less than one rest day in every period of seven days</b></p> <p><b>Chap. 4: Holidays with Pay - if employee has been employed under a continuous contract for not less than three months</b></p> <p><b>Chap. 4: Paid Annual Leave - for employees with continuous contract for every 12 months; entitlement increases progressively from seven days to a maximum of 14 days according to length of service</b></p> <p><b>Chap. 5: Sickness Allowance - sum equivalent to four-fifths of the normal wages which the employee would have earned if he had worked on the sickness days</b></p> |                        |

|  |   |   |  |
|--|---|---|--|
|  | <p>must be between 6 am to 11 pm. Overtime work is prohibited for all workers under the age of 18 in industrial establishments. Only 16 to 17 year old males are allowed to work in dangerous trades.</p> | <p>Chap. 6: Maternity Leave Pay - equivalent to four-fifths of the employee's normal wages to be paid for a period of 10 weeks (length of leave); wage period should be a period of not less than 28 days and not more than 31 days immediately preceding or expiring on the commencement of her maternity leave.</p> <p>Chap. 10: Severance Payment - where employee is laid off by reason of redundancy entitled to not less than 24 months under a continuous contract.</p> <p>Chap. 10: Long Service Payment - employee entitled to not less than 5 years under a continuous contract where employee is dismissed not due to his serious misconduct, not by reason of redundancy, contract expired without being renewed, employee dies, employee resigns on ground of ill health, and employee, aged 65 or above, resigns on ground of old age.</p> <p>Chap. 9: Employment Protection – right against illegal or unjustified dismissal.</p> <p>Chap. 8: Termination of Employment Contract - right to termination by due notice or wages in lieu of notice.</p> <p><i>Employees' Compensation Ordinance provides for the liability of employer for compensation if employee sustains injury or death by accident arising out of and in the course of his/her employment and for incapacity arising from an occupational disease.</i></p> |  |
|--|---|---|--|

Enforcement Monitoring

| Measures  | Body in Charge  | Origin      |                      |               |
|---|---|-------------|----------------------|---------------|
|   |   | Labour Laws | Domestic Workers Law | Other/General |
| <p>Enforces regulations and ordinances pertaining to labour and monitors compliance or violations of the law. It conducts regular workplace inspections and in the first ten months of the previous year, it has discovered 6 violations of the Employment of Children Regulations. Some of the cases resulted to convictions and fines. The Factory Inspectorate Division has also been restructured to strengthen its safety and health promotion and enforcement programme.</p> <p>Cases of child abuse.</p> <p>Provides for legal aid to those who choose to pursue legal cases against employers in the field of trafficking. Immunity from prosecution is often made available to those who assist in the investigation and prosecution of traffickers.</p> | <p>The Labour department through its various divisions</p> <p>The Social Welfare Department</p> <p>The Government</p> |             |                      |               |

**ANNEX 5: FIJI MATRIX**

Fundamental Rights

| <b>Rights</b>   | <b>Origin</b>      |   |
|---|--------------------|---|
| <b>Rights to and Against</b>  | <b>Labour Laws</b> | <b>Other/ General</b>   |
| Shall have the right to be provided with working conditions that comply with safety and sanitation requirements.  |                    | Occupational Health and Safety Legislation of 1997<br>Constitution, Bill of Rights, chapter 4, sec. 33 (3); |
| Shall have the right against discrimination on the basis of race, sex, place of origin, political opinion, color, religion or creed.                      |                    | Constitution, Bill of Rights, chapter 4, sec. 38 (1)<br>Education Act                                       |
| Shall have the right to freedom of movement within the country, foreign travel, emigration and repatriation.  |                    | Constitution, Bill of Rights, chapter 4, sec. 34 (3)  |
| Shall have the right to form and join unions, elect their own representatives, publicize their views on labour matters, and determine their own policies. |                    | Constitution, Bill of Rights, chapter 4, sec. 33 (10)   |
| Shall have the right to organize and bargain collectively.  |                    | Constitution, Bill of Rights, chapter 4, sec. 33 (2)  |
| Shall have the right against forced or compulsory labour.   |                    | Constitution, Bill of Rights, chapter 4, sec. 24 (1)  |
| Shall have the right to life, liberty, security and protection of the law.  |                    | Constitution, Bill of Rights, chapter 4, secs. 22 & .23   |
| Shall have the right to protection of property and privacy.   |                    | Constitution, Bill of Rights, chapter 4, sec. 26 (1)  |

Protective Measures

| <b>Measures</b>  | <b>Labour Laws</b> | <b>Other/ General</b> |
|--|--------------------|-----------------------|
| <b>No child under the age of twelve years shall be employed in any capacity whatsoever: Provided that the provisions of this section shall not apply to any such child employed in light work suitable to his capacity in an agricultural undertaking which is owned and operated by the family of which he is a member.</b> | Section 59         |                       |
| <b>A child shall be employed only; a) upon a daily wage and on a day to day basis; and b) upon the terms that he returns each night to the place of residence of his parent or guardian.</b>   | Section 60         |                       |
| <b>No child or young person shall be employed in any employment which in the opinion of the proper authority is injurious to health, dangerous, or is otherwise unsuitable.</b>  | Section 61 (1)     |                       |
| <b>No employer shall continue to employ any child or young person after receiving notice, either orally or in writing, from the parent, guardian or proper authority, that the child or young person is employed against the wishes of such parent or guardian.</b>  | Section 62 (1)     |                       |

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|---|--|---|
| <p><b>No child shall be employed in any industrial undertaking.<br/>No child shall be employed in any undertaking in attendance on machinery.</b></p> <p><b>A child shall not be employed or permitted to be employed for more than six hours in a day nor for more than two hours without a period of leisure of not less than thirty minutes, and if such child is attending school the total time spent in employment and at school shall not exceed seven hours in a day.</b></p> <p><b>No young person shall be employed or permitted to be employed for more than five hours without a period of leisure of not less than thirty minutes or for more than eight hours in a day, and if the young person is attending school the total time spent by him in employment and at school shall not exceed nine hours a day.</b></p> <p><b>No woman or young person shall be employed at night between the hours of 8 p.m. and 6 a.m. in any industrial undertaking, subject to certain exceptions.</b></p> <p><b>No young person shall be employed on any ship except on a ship approved by the Permanent Secretary for Education as a school or training ship.</b></p> <p><b>Every employer of young persons in an industrial undertaking, or of children employed in an occupation which forms part of an industrial undertaking, and which has been deemed under the provisions of any order made under section 58 not to be employed in an industrial undertaking for the purposes of this Part, shall keep a register of all such children and young persons in his employment and shall include in such register particulars of their ages or apparent ages, the date of commencement and termination of their employment, the conditions and nature of their employment and such other particulars as may be prescribed, and shall produce the register for inspection when required by the proper authority.</b></p> <p>Existence of Workmen's Compensation Act and An Accident Compensation Plan</p> <p><b>Union Agreement's with Employers generally only cover workers aged 17 or older</b></p> <p><b>Making the act of ill treatment, neglect or abandonment of a child, a child being under 17 years, a criminal offense against children</b></p> <p><b>Empowering the Department of Social Welfare and the police to detain, remove, search for or place in safety any child abuse, neglected or ill treated</b></p> <p><b>Sexual exploitations of females generally and of girls and minors are classified as offences against morality</b></p> | <p>Section 63 (1)<br/>Section 63 (2)</p> <p>Section 64 (1)</p> <p>Section 64 (2)</p> <p>Section 65 (1)</p> <p>Section 68</p> <p>Section 71</p> | <p>Workmen's Compensation Act</p> <p>Employment Act</p> <p>Juvenile Act</p> <p>Juvenile Act</p> <p>Criminal Procedures Code</p> |
|---|--|---|

Enforcement Monitoring

| Measures   | Body in Charge  | Origin      |          |                                   |
|--|---|-------------|----------|-----------------------------------|
|  |   | Labour Laws | Children | Other/ General                    |
| Administrative monitoring and protective mechanisms on children's rights and welfare                               | Coordinating Committees on Children (CCC), Children's Unit within the Ministry of Health, Child Abuse Unit within the Police Department |             |          | Convention on the Rights of Child |
| Setting the minimum wage for certain sectors   | Ministry for Labour and Industrial Relations  |             |          |                                   |
| Government enforcement of safety standards   | Labour Ministry   |             |          |                                   |
| Monitoring the status of child labour employment and compliance with the requirement of minimum age for employment | Ministry of Labour and Industrial Relations   |             |          |                                   |
| To investigate allegations of human rights violations and discrimination in employment                             | Human Rights Commission   |             |          | Human Rights Act of 1999          |

Other Policies/ Programmes/ Mechanisms

| Policies/ Programmes/ Mechanisms   | Labour Laws | Other/ General   |
|--|-------------|--|
| Government's commitment to protect children's rights and welfare   |             | Child Welfare Committee / Convention on the Rights Of Child  |
| Providing free education for the first eight years, although education is not yet compulsory   |             | Education Act  |
| Government's Poverty Alleviation Programmes which include family assistance funds for persons unable to work, housing benefit and micro enterprise development |             | Ministry of Women and Ministry of Children   |
| Promoting the Employment of Women in the Labour Market   |             | Convention on the Elimination of all Forms of Discrimination Against Women   |
| Promoting Equal Employment Opportunities   |             | Employment Act   |
| Gender Sensitivity Training and Awareness in Police Academy and Media  |             | Convention on the Elimination of All Forms of Discrimination Against Women, Fiji Media Watch and Media Council, Fiji National Council of Women |
| Formulation of legislation to protect children from various forms of exploitation  |             | Convention on the Rights of Children   |
| Adoption and implementation by the Ministry of Health of several health care programmes for children   |             | World Declaration on the Survival, Protection and Development of Children, 1990 World Summit for Children                                      |

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| Formulation of Policy on Child Abuse for Fiji Health Institute |  | Convention on the Rights of Child                |
| Making the best interest of a child a paramount consideration. |  | Matrimonial Causes Act, Juvenile Act, Penal Code |

**ANNEX 6: INDIA MATRIX**

Fundamental Rights (Labour Standards)

| <b>Rights</b>   | <b>Origin</b>   |   |
|---|---|---|
| <b>Rights to and Against</b>  | <b>Labour Laws</b>  | <b>Other/ General</b>   |
| Right to mobility   | Fundamental rights of workers are provided in the labour laws.<br><br>(Based on three questionnaires answered.) | These rights are also recognized in the Constitution.<br><br>The Bonded Labour System Act of 1976: Frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded labourers by the state. |
| Right against involuntary servitude   |   |   |
| Right against debt-bondage  |   |   |
| Right to equal/humane treatment of work<br>Right to unionize<br>Right to collective bargaining unions<br>Right to affiliate with trade unions |   |   |

Protective Measures

| <b>Measures</b>  | <b>Labour Laws</b>   | <b>Other/ General</b>   |
|--|--|---|
| Inspection<br>Employment Contract<br>Social Security<br>Medical Benefits<br>Compensation in case of work related injuries<br>Minimum Wage<br>Minimum Age | These measures are said to be provided in the Labour laws of the country.<br><br>(Based on three questionnaires answered.) | <b>Art. 39 (e): “that the health and strength of workers... and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”</b><br><br><b>Constitution, art. 24: No Child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment.</b><br><br><b>Child Labour Act of 1986: prohibits the employment of children who have not completed their 14<sup>th</sup> year in specified hazardous occupations and processes and regulates the working conditions of children in other employment. It lays down penalties for employment of children in violation of the Act and other Acts which forbid the employment of children and brings uniformity in the definition of the “child” in related laws.</b><br><br><b>Factories Act; Mines Act; Plantations Labour Act – provisions on child labour concentrated on aspects such as reducing of working hours, increasing minimum wage and prohibiting employment of children in occupations and processes detrimental to their health and development.</b> |

Enforcement/ Monitoring

| Measures                | Body in Charge  | Origin      |   |  |
|-------------------------|---|-------------|---|--|
|                         |   | Labour Laws | Children  | Other/ General   |
| Laws                    | Ministry of Labour  |             | <p><b>Child Labour Act of 1986 (see above): prohibits the employment of children below 14 years in specified hazardous occupations; regulates the employment of children in non-hazardous occupations; provides penalties for violations of the Act.</b></p> <p><b>The Children (Pledging of Labour) Act, 1929: any agreement to pledge the labour of children is void.</b></p> <p><b>Plantations Labour Act of 1951; Minimum Wages Act 1948: Children are allowed to work 27 hours a week; permitted to work in plantation only where certificate of fitness is granted by a certified surgeon; one day's leave with wages is to be allowed on completion on 15 days work.</b></p> |  |
| Policies                | National Authority for the Elimination of Child Labour<br><br>Ministry of Education |             |   | National Policy on Child Labour<br><br>Elimination of Child Labour Programme<br>National Policy on Education |
| Programmes              | National Government   |             | National Child Labour Projects  |  |
| Penalties for violation | Courts of Law   |             | Payment of compensation by the offending employer in contravention of the Child Labour Act  |  |

Other Policies/ Programmes/ Mechanisms

| Policies/ Programmes/ Mechanisms  | Labour Laws | Other/ General   |
|---|-------------|--|
| National Policy for Children: comprehensive health programme, free and compulsory education up to the age of 14 years, prevention of exploitation of children, etc. |             | The Children Act; U.N. Convention on the Rights of the Child |
| Grant-in-aid scheme for voluntary organizations working in the field of child labour  |             |  |
| National Agenda for Governance: aim is to ensure that no child remains illiterate and that measures will be taken to eliminate child labour.                        |             |  |

**ANNEX 7: LAO PDR MATRIX**

**Fundamental Rights (Labour Standards)**

| <b>Rights</b>  | <b>Origin</b>  |  |
|--|--|--|
|  | <b>Labour Laws<br/>1990 Labour Law, updated in 1994</b>  | <b>Other/ General</b>  |
| Right to mobility: no unreasonable restriction to leave household premises |  |  |
| Right against involuntary servitude (work against one's own will)          | Sec 4. Prohibition of forced labour. Employers shall not use forced labour.  |  |
| Right against debt-bondage (work to pay debt of family)                    |  |  |
| Right to equal/ humane treatment at work                                   |  | Constitution, art. 29: The right of Lao citizens in their bodies and houses are inviolable.  |
| Right to unionize  | Sec 3: Workers and employers shall have the right to organize and to belong to mass and social organizations that have been formed lawfully.   | Constitution, art 31: Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations, which are not contrary to the law. |
| Right to collective bargaining unions                                      | No right to organize and bargain collectively. Labour Code 1990 stipulates that disputes be resolved through workplace committees composed of employers, representatives of the local labour union and Federation of Lao Trade Union (FLTU). |  |
| Right to affiliate with trade  | Chapter II: Labour Management Rules, sec 11: Role of trade unions and worker's representatives.  |  |

**Protective Measures**

| <b>Measures</b>                                  | <b>Origin</b>  |  |
|--|--|--|
|  | <b>Labour Laws<br/>1990 Labour Law, updated in 1994</b>                                      | <b>Other/ General</b>  |
| Registration                                     |  |  |
| Inspection                                       |  |  |
| Employment Contract                              | Chapter III: Conclusion and Termination of Employment Contract, sec. 12: Employment Contract |  |
| Social Security                                  | Chapter IX: Income Tax and Social Security, sec. 48: Social Security Fund.                   |  |
| Medical benefits in case of work-related illness | Chapter X: Labour Protection, sec. 50: Where it is   | Constitution. art. 26: Lao citizens have the right to work and |

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|   | established that workers have contracted an occupational disease at a specific workplace, their employer shall be responsible for their medical treatment in accordance with the regulations in force. | engage in occupations, which are not against the law. Working people have the right to rest, to receive medical treatment in time of ailment, to receive assistance in case of incapacity and disability, in old age, and other cases as prescribed by law. |
| Compensation in case of work-related injuries | Chapter XI: Occupational Injury<br>Sec. 51: Occupational Injury.<br>Sec 52: Assistance to victims of an occupational injury.<br>Sec 53: Compensation to victims of occupational injury or disease.     |   |

#### Enforcement/ Monitoring

| Measures   | Body in Charge   | Origin  |  |  |
|--|--|---|--|--|
|  |  | Labour Laws   | Children   | Other/ General   |
| Laws: Employment of persons under 18 years of age      | Ministries of Interior and Justice<br>Labour Protection Division | Chapter VI: Employment of Women and Young Persons   | <b>Sec 37: An employer may employ young workers between 15 &amp; 18 years of age provided that they do not work for more than 6hrs/day or 36hrs/wk. The young workers shall not be employed to perform arduous work or work which is damaging to their health, including:</b> <ul style="list-style-type: none"> <li>- All mining and quarrying work</li> <li>- work involving chemicals or explosives and poisonous substances</li> <li>- work involving the handling of human corpses</li> <li>- other work specified under Sec25 of this Act</li> </ul> |  |
| Policies: Penalties for violation of children's rights | Ministry of Justice  | Chap. XIV: Sanctions, sec. 60: Any person or corporation that contravenes the provision of the Labour Act shall be punished in accordance with the law. |  | <b>1990 Penal Code has provisions against the violation of children's rights:</b><br><br>Art. 69: Provides for penalties against individuals who mislead officials in sending people abroad or illegal immigration<br><br><b>Sec 92: Penalizes the trade and abduction of children for ransom or sale.</b><br><b>Sec 119-120 which protect children against sexual abuse</b><br><br>Constitution, art. 34: Lao citizens have the obligation to respect the Constitution and laws, and to observe |

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|   |   |  |  | labour disciplines, the regulations in carrying out livelihood in society, and the regulations and order of the country.   |
| <p>Programmes on child labour</p> <ul style="list-style-type: none"> <li>- National Commission for Mothers and Children with the support from the UN Children's Fund</li> <li>- Lao Women's Union and the Lao People's Revolutionary Youth Union</li> <li>- A pilot scheme to implement a justice system for child criminal cases</li> <li>- Establishment of the Child Labour Office in the MoLSW</li> </ul> | <ul style="list-style-type: none"> <li>- Chairman, Foreign Minister</li> <li>- Vice Chairpersons, Vice Ministers of Health and Education</li> <li>- Ministry of Justice and Save the Children UK</li> </ul> |  |  | <p>It continues an active programme against child sexual exploitation and slave labour</p> <p>It drew up the National Programme of Action for Children</p> <p>Channels of mobilizing action against trafficking</p> <p>Study on the Resolution of Child Labour</p> <p>The pilot scheme is aimed at setting up the appropriate access to resolving the problems children encounter when involved in criminal acts. The access aims at punishment without imprisoning, using training methods to conciliate criminal acts which do not severely impact on the nation.</p> <p>In response to ILO-IPEC Action Programme on Child Labour "Strengthening and Enhancing the Role of the Ministry of Labour and Social Welfare, Coordinating The Combat Against Child Labour."</p> |

Other Policies/ Programmes/ Mechanisms

| <b>Policies/ Programmes/ Mechanisms</b>   | <b>Labour Laws</b> | <b>Other/ General</b>  |
|---|--------------------|--|
| <p>Planning, Research and Capacity Building: Cooperation for:</p> <ul style="list-style-type: none"> <li>- Awareness raising/ support participation of government in regional events</li> </ul> |                    | <p>Under United Nations Children's Fund (UNICEF) East Asia and Pacific Region<br/>UNICEF Vientiane</p> |

|   |  |   |
|---|--|---|
| <ul style="list-style-type: none"> <li>- Research/ situation analysis on sexual exploitation/ child labour – focus on trafficking</li> <li>- Training in core skills for social work</li> <li>- Status: ongoing</li> </ul>  |  |   |
| <p>Prevention: Community sensitization, empowerment and planning activities for improved protection and monitoring of children</p> <p>Status: ongoing</p>   |  | <p>Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region<br/>UNICEF Vientiane</p>  |
| <p>Advocacy Monitoring: Support implementation and monitoring of the Stockholm Agenda for Action Against Commercial Sexual Exploitation of Children (including trafficking) and the Beijing Platform for Action</p> <p>Status: ongoing</p>  |  | <p>Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region<br/>UNICEF Vientiane</p>  |
| <p>Advocacy Capacity Building Planning: Cooperate and support regional and bi-lateral activities to address cross border trafficking of women and children including:</p> <ul style="list-style-type: none"> <li>- Project on Illegal Labour Movements: The Case of Trafficking of Women and Children (MRLC)</li> <li>- Status: ongoing</li> </ul>  |  | <p>Under United Nations Children’s Fund (UNICEF) East Asia and Pacific Region<br/>UNICEF Vientiane</p>  |
| <p>Educational Programmes: designed to educate girls and young women about the schemes of recruiters (provided by the Lao Women’s Union and the Youth Union, National Commission for Mothers and Children)</p> <p><b>Non-formal education aims to eradicate illiteracy among children and young people aged from 15 to 40 years who do not have access to schools or have abandoned primary school.</b></p> |  | <p>Constitution, art. 19, Part III: States that “primary education should be compulsory. The State authorizes the establishment of private schools operating in accordance with the State curriculum....”</p> <p>Constitution, art. 25: Lao citizens have the right to receive education.</p> <p>Convention on the Rights of the Child</p>                            |
| <p><i>Mekong Project:</i></p> <ul style="list-style-type: none"> <li>- identification of new economic opportunities</li> <li>- skills and business training</li> <li>- improved access to credit, markets, family support structures and social security</li> <li>- awareness raising and sensitization on critical issues of importance to women and girls</li> <li>- legal literacy training</li> </ul>   |  | <p>Convention on the Rights of the Child</p> <p><b>1990 Family Law Decree, Part III: Dictates parental responsibilities and commitments towards their children.</b></p> <p><b>1990 Family Law, art. 32(2): Provides that the court shall revoke parental rights if parents abuse their parental authority, or employ unethical methods toward their children.</b></p> |

joint forces by GENPROM and IPEC

**Constitution, art. 20: The State pays attention to pursuing the policy toward mothers and children.**

**ANNEX 8: MONGOLIA MATRIX**

**Fundamental Rights (labour standards)**

| <b>Rights</b>  | <b>Origin</b>   |   |
|--|---|---|
| <b>Rights to and Against</b>   | <b>Labour Laws</b>  | <b>Other/General</b>  |
| Shall have the right to be provided with working conditions that comply with safety and sanitation requirements.   | Article 5   | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 4  |
| Shall have the right to receive compensation for his work.   | Compensation of an employee under the age of 18 may be calculated on a piecework basis or at an hourly rate, and reduced hours shall be considered hours work.      | -same-  |
| Shall have the right to take a vacation as provided in applicable internal regulations.  | Article 5   | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 4  |
| Shall have the right to assemble with other employees for the purpose of protecting his rights and legal interest through a representative or representative organization.             | Article 5   | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 10   |
| Shall have the right to receive a pension, social insurance and other benefits.  | Article 5   | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 6  |
| Shall have the right against discrimination, or the establishment of limitations or privileges based on nationality, race, sex, social origin or status, wealth, religion or ideology. | Article 6<br>Male and female employees performing the same work shall receive the same compensation.  | Constitution, Convention on the Elimination of all Forms of Discrimination against Women, Convention on the Elimination of all Forms of Racial Discrimination |
| Shall have the right against deprivation of liberty.   |   | Constitution, Criminal Law, Human Rights and Freedom, chapter 2, art. 26, sec. 1  |
| Shall have the right to reasonable hours of work and rest.   | <b>The hours of work per 1week of employees 14 to 15 years of age shall not exceed 30 hours, and for employees 16 to 17 years of age shall not exceed 36 hours.</b> | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 4  |
| Shall have the right to enter into a contract of employment.   | <b>A person who reaches 16 years of age has the right to conclude a contract of employment.</b>   | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 18   |
| Shall have freedom of movement within the country as well as the right to travel abroad and return without restriction.  | Article 12  | Constitution, Human Rights and Freedom, chapter 2, art. 16, sec. 4  |
| Shall have the right against forced labour.  |   |   |

Protective Measures

| Measures  | Origin      |               |
|---|-------------|---------------|
|   | Labour Laws | Other/General |
| A minor shall not be employed in a job which will adversely affect his intellectual development or health.  | Article 86  |               |
| A person who reaches 15 years of age may conclude a contract if employment only if permitted by his parents or guardians.   | Article 85  |               |
| A minor employee may not be required to perform overtime work or to work on public holidays or weekends.  | Article 79  |               |
| A minor employee may not be required to lift or carry loads that exceed weight limitations established by the Member of the Government responsible for labour matters.  | Article 87  |               |
| A minor employee may not be required to perform work under abnormal working conditions.   | Article 86  |               |
| A minor employee may be employed subject to the approval of the relevant medical authority after he has undergone a medical examination, and further biennium medical examination shall be required until he reaches 18 years of age. | Article 86  |               |
| Minimum compensation is determined by law.  |             |               |

Enforcement/ Monitoring

| Measures  | Body in Charge   | Origin      |                                       |
|---|--|-------------|---------------------------------------|
|   |  | Labour Laws | Other/General                         |
| Monitoring the enforcement of labour laws.  | Ministry of Social Welfare and Labour, State Labour Inspectors                                 |             |                                       |
| Monitoring human rights abuses, initiating and reviewing policy changes and coordinating with human rights NGO's.     | National Commission on Human Rights, UN Development Programme                                  |             |                                       |
| Providing hotline services, shelters, and conducting training for police on how to deal with domestic violence cases. |  |             | Universal Declaration of Human Rights |
| Making efforts to prevent and to counter violence against women and child abuse.                                      | National Center Against Violence   |             |                                       |
| Coordinating policies and women's interest among ministries and NGO's.  | Department for Women and Youth Issues, Ministry of Social Welfare and Labour; National Council |             |                                       |

Other Policies/ Programmes/ Mechanisms

| Policies /Programmes/Mechanisms   | Labour Laws | Other/ General  |
|---|-------------|---|
| <p>Action Plan for Children</p> <p>National Action Plan for the Advancement of Women</p> <p>Promotion and dissemination of human rights and democratic knowledge and practice through training on democratic governance and human rights for governors, civil servants, community workers and representatives from the civil society.</p> <p>Integration of human rights into curriculum at the tertiary education level, including production of textbooks and training of lecturers.</p> <p>Capacity building for local authorities in participatory planning and management of human development activities at the grassroots level.</p> <p>Promotion of community-based approach in health and education related activities.</p> <p>Promotion of women's participation in local decision-making through involvement of female head of households in human development activities at the grassroots level.</p> <p><b>Recognizing the importance of education in eliminating child labour, the government provides children of both sexes with free public education until the age of 16.</b></p> <p><b>A working group has been established to improve the Law on the Protection of Child Rights in line with the newly adopted international instruments.</b></p> <p><b>Revision of the Criminal Code to include crimes against children, family and social morals.</b></p> |             | <p>In follow up to the World Conference on Children, New York, 1990</p> <p>In follow up to the Conference on Women, Beijing 1995</p> <p>Memorandum of Understanding on Human rights between the Government of Mongolia and the United Nations Country Team</p> <p>-same-</p> <p>-same-</p> <p>-same-</p> <p>Education Act</p> <p>Law on the Protection Of Child's Rights</p> <p>Committee Report on the Convention on the Rights of Child</p> |

**ANNEX 9: NEPAL MATRIX**

**Fundamental Rights (Labour Standards)**

Note: According to both the Nepalese Constitution and the National Child’s Rights Act, children under 14 years of age are prohibited from working, although such laws do not specifically provide for DCLs.

| <b>Rights</b>                              | <b>Origin</b>   |  |
|--|---|--|
|  | <b>Labour Laws</b>  | <b>Other/ General</b>  |
| <b>Rights to and Against</b>               | <b>National Child’s Rights Act (1992)</b><br><b>Labour Act of 1991</b>  |  |
| Fundamental rights guaranteed              |   | <b>The 1990 Constitution of the Kingdom of Nepal seeks to protect the interest of children by conferring certain fundamental rights.</b><br>It also imposes certain duties in the form of the “directive principles and policies of the state.”<br><b>It provides directives to ensure the rights and welfare of children and their free basic education, thereby prohibiting all kinds of exploitation of children.</b> |
| Labour Standards                           | <b>Labour Rules of 1993, sec. 3: Provides that no minor 14 to 16 years of age shall be employed in any establishment for more than 6 hours a day and 36 hours a week.</b><br><br><b>Sec. 3: Minors above the age of 16 years may be employed as workers or employees during hours other than between 6.00 a.m. and 6.00 p.m. through mutual agreements between such workers or employees and the general manager.</b><br><br>The same prohibitions are also provided in Section 16 of the Nepal Children’s Act (2048) of 1992.<br><br><b>Labour Act of 1992, sec. 5: Prohibits employment of children in any establishment, especially between 6 pm – 6 am.</b> |  |
| Right to mobility                          |   |  |
| Right against involuntary servitude        | <b>Nepal Children’s Act (2048) of 1992, sec. 17, par. 3: Mandates that a child who shall not be made to be engaged to it, nor work against his will.</b>  | 1990 Constitution prohibits, among others, forced labour.  |
| Right against debt – bondage               |   |  |
| Right to equal or humane treatment of work | <b>Children under 16 years of age are prohibited from working.</b><br><br><b>Children are allowed to work for 6 hours a day, with a rest day of one day per week.</b><br><br><b>Children are prohibited from working during nights (6 pm – 6 am), as provided in section 47 of the Children’s Act of 1992.</b><br><br><b>Both Acts strongly prohibit any form of child labour and/or child exploitation.</b>  |  |

|                                       |   |  |
|---------------------------------------|---|--|
|                                       | The National Child's Rights Act does not provide for measures protecting Domestic Child Labourers (DCL) |  |
| Right to unionise                     |   |  |
| Right to collective bargaining unions |   |  |
| Right to affiliate with trade unions  |   |  |

### Protective Measures

| Measures  | Origin   |   |
|---|--|---|
|   | Labour Law<br>1998 Labour Code   | Other/ General  |
| Registration as Domestic Workers                              | Registration in Ward Offices of respective Metropolitan Cities<br><br><b>Children's Act of 1992: Provides that an employer or organization employing a child shall furnish the Children Welfare Board with the child labourer's photograph and particularities. The approval of the Child Welfare Board and of the child's guardian or parents are needed before the child could work.</b>   |   |
| Inspection of Child Domestic Labour                           |  |   |
| Employment Contract   | Ministry of Labour and Transport Management is in charge of monitoring employer-employee relationships in the workplace.   |   |
| Social Security   |  |   |
| Medical benefits in case of work-related illness              | Labour Rules of 1993, secs. 15 & 16: (See explanation below.)  |   |
| Compensation in case of work-related injuries                 | Labour Rules of 1993, secs. 15, 16 & 27: Provides for compensation for the workers in case of work-related injuries, upon the recommendation of the managers of the establishment where the employee is working .  |   |
| Protection against employment in sectors considered hazardous | <b>The Labour Rules of 1993, sec. 39: Provides for guidelines for workers in lifting loads. It provides that workers shall not be employed to lift or carry or move any load heavier than the following:</b><br><ol style="list-style-type: none"> <li>1. Adult male: 55 kg;</li> <li>2. Adult female : 45 kg;</li> <li>3. Minor male (16 – 19 years): 25 kg;</li> <li>4. Minor female (16 – 18 years): 15 kg.</li> </ol><br><b>National Children's Act of 1992, sec. 18: Provides that no child shall be engaged in work that is likely to be harmful to the child's health or to be hazardous to the Child's life.</b> | <b>1990 Constitution places an obligation on the State to make special provision to prohibit the employment of minors in factories, mines and in other hazardous work</b> |

|  |  |  |
|--|--|--|
|  | <p><b>Trade Union Act, sec. 28:</b> Provides that before a child or adolescent is made to work and operate a machine, the employer should make sure that such worker has been fully instructed and has received sufficient training to work at the machine; and as well as thorough knowledge and experience of the machine.</p> <p><b>Trade Union Act, sec. 32:</b> Children and Women are not allowed to work in any part of a factory for pressing cotton in which a cotton opener is at work, unless such is in a separate room. (</p> |  |
| Protection against child labour and sexual exploitation of a girl child. |  | Civil Code<br>Foreign Employment Act<br>Human Trafficking Act<br>Act Against Violence against Women (still under consideration by the Parliament). |

#### Enforcement/ Monitoring

##### Notes:

- Since the Child Labour Act is fairly new, some cases concerning Domestic Child Labourers (DCLs) are still filed with the District Administrator by virtue of Public Offense Act.
- Criminal Actions are filed for physical/sexual abuses inflicted upon DCLs by anyone, mostly by non-governmental organizations.

| Measure                        | Body in Charge   | Origin  |   |               |
|--------------------------------|--|---|---|---------------|
|                                |  | Labour Laws   | Children  | Other/General |
| Laws                           | Ministry of Labour and Transport Management (1998)<br><br>Labour Courts<br><br>In some cases, Civil Courts | It is charged with formulation of labour policies, and with matters concerning labour administration and management, including the relationship between trade unions and the employers.<br><br>If the case is filed with the civil courts, the penalties imposed upon the employers are 1 week imprisonment and payment of a fine amounting to 75,000 rupees. | It is the branch of the government that is in charge of the elimination of child labour<br><br>In labour courts, penalty imposed upon those violating the Child Labour Act are 3 months imprisonment and a fine of 50,000 rupees. |               |
| Programmes on domestic workers | Ministry of Labour and Transport Management  | Ministry of Labour and Transport Management, by providing for vocational and skills development   |   |               |

|  |   |  |  |   |
|--|---|--|--|---|
|  |   | training.  |  |   |
| Child labour elimination programme                           | Ministry of Labour and Transport Management<br><br>Government<br><br>Government   | Ministry of Labour and Transport Management executes programmes, with the cooperation of GOs, NGOs, INGOs, UN agencies employers and employees   |  | The State empowers women – children by conducting special programmes related to their empowerment<br><br><i>Also, it prevents and rehabilitates DCLs, with the increasing participation of non-government sectors</i><br><br>By ratifying to several international agreements such as the UN Convention of the rights of a child. |
| Raising the Status of Women and Children                     | Ministry of Women, Children and Social Welfare<br><br>National Council on Women and Children (formed by the Prime Minister) |  |  | <b>Mandate is to raise the status of children through Child Rights protection and Promotion.</b>  |
| Further strict discouragement on the employment of children. | Kathmandu Metropolitan City (KMC)   |  |  | <i>Prohibition of employment by the staff and employees of KMC of children below 14 as DCL*</i>   |
| Educational Programmes                                       | UNICEF  |  |  | An Out of School Programme (OSP) in some Municipalities   |
| Advocacy and lobbying  | National Human Rights Commission, with NGOs (CWIN), trade unions and the media  |  |  | <i>Different awareness programmes against the exploitation of DCL , including the formulation of a code of conduct for government employees for putting restriction in employing children below 14 years as a DCL</i>   |
| Enforcement and Monitoring Board                             | Central Labour Advisory Board<br><br>Child District Court   | Section 45 of the Labour Rules of 1993 establishes the Board who shall be in charged with promotion and improving the welfare of workers. It shall serve as mediators for resolving disputes between workers and employees, among others.<br><br>The Child District Court, by virtue of the Children’s Act, shall be responsible for every petition filed by any person regarding violations of the said Act |  |   |

### Other Policies/ Programmes/ Mechanisms

| Policies/ Programmes/ Mechanisms   | Labour Laws   | Other/ General   |
|--|---|--|
| Reporting Mechanism in place to record increase/decrease in incidence of work-related (domestic) abuse / exploitation. | Child Labour Act -- this has been passed by the Parliament but not actually enforced*   | Non-governmental organizations play the most active part in the advocacy for the elimination of all forms of child labour.   |
| Efficiency of prosecuting system for violators   |   | <i>Civil Courts Procedure – Courts are traditional and judges are hard to convince of the existence of violations and abuses done on DCLs, by reason of the fact that DCL belong to the informal sector.</i>   |
| Rescue operations and recovery measures of DCL   |   | This is not provided for in national laws, so these are done by non-governmental organizations.  |
| Awareness raising on issues and problems associated with child domestic work   |   | Non-governmental organizations continue lobbying for a more effective procedure and mechanism to be used by the labour courts, and not by the civil courts.  |
| Legal literacy on DCL<br>Advocacy for law and policy reform<br>Child's rights education                                |   | Non-governmental organizations are those who conduct different programmes to actualize these policies, through media-sensitization, forums, lobbies and support systems by way of technical trainings and educational packages for deserving children. |
| Drop – in center for DCL (See notes.)  | Officials of Kathmandu Metropolitan City, with the cooperation of NGOs and the ILO/IPEC |  |

#### NOTES:

- Most of these mechanisms are done by several non-governmental organizations that advocate, among others, the elimination of all forms of child labour, specifically child domestic labour.
- The Drop-in center is being funded by NGOs and ILO/IPEC Time Bound Programme, which directly aims at issues concerning DCLs. The programme centers on advocacy, educational support, rescue and rehabilitation. Under this IPEC programme the Kathmandu Metropolitan City (KMC) has started to register DCL in local war offices and run a drop-in center for DCL as a pilot programme in 3 wards out of 35. In these drop-in centers, they are provided non-formal education classes, and recreation and health services.

The Child Workers in Nepal (CWIN) has been running a Helpline to serve as a call center for addressing the issues in child's rights violation and for providing emergency relief, support and counseling for children at risk. With the help of the law enforcement agents, CWIN has rescued several DCLs.

**ANNEX 10: PAKISTAN MATRIX**

**Fundamental Rights (Labour Standards)**

| Rights   | Origin  |  |
|--|---|--|
| Rights to and Against  | Labour Laws   | Other/ General   |
| Right of children to work  | <p><b>The Employment of Children Act of 1991 is the latest government legislation on child labour. This Act makes the definition of "child" uniform (a person under 14 years of age) with respect to all laws affecting children. The Act prohibits the employment of children in a number of hazardous work areas, restricts working hours, prohibits children from working overtime or holding more than one job, and provides for breaks and a weekly holiday.</b></p> | <p><b>11 statutes and Article 11 of the Constitution limits the employment of children.</b></p> <p><b>Factories Act of 1934:</b><br/> <b>Sec. 50: Prohibits employment of children below the age of 14.</b><br/> <b>Sec. 51: They are not allowed to work in factories unless a certificate granted to him by a certifying surgeon has been given to the manager of the company.</b></p> <p><b>The same prohibition could be seen in the Mines Act of 1923 and The Shops and Establishments Ordinance of 1969.</b></p>   |
| Right to mobility: no unreasonable restriction to leave household premises   |   |  |
| <p>Right against involuntary servitude (work against one's own will)</p> <p>- Under the bonded labour system, families are trapped by pay advances (peshgi) given to them by employers. Supposedly the family need only work long enough to repay the debt, but low wages and cheating by employers combine to effectively "bond" the family to the employer indefinitely. Debts are passed down from parents to children and in the case of a father's death the child bears full responsibility for repayment.</p> <p>- Contract labour is another form of bondage in which a parent or employer contracts the labour of a child or employee to someone else in return for a cash advance.</p> |   | <p>The constitution and the law prohibit forced labour.</p> <p>Bonded debt is illegal under the Constitution.</p> <p>Bonded Labour System (Abolition) Act of 1992. It outlaws the practice of bonded labour, cancels all existing bonded debts, and forbids lawsuits for the recovery of bonded debts. Technically, this means that all debt recovery suits brought against "escaped" bonded labourers by their employers should be thrown out of court.</p> <p>The 1989 Supreme Court decision on this case limited peshgi advances to one week's wages and granted bonded labourers the right to hold identity cards and vote. It also granted bonded labourers the right to work where they wanted and to make their own arrangements to repay their debts.</p> |
| <p>Right against debt-bondage (work to pay debt of family)</p> <p>- Bonded labour, a contemporary form of slavery according to the UN definition, is common in the brick, glass, and fishing</p>   |   | <p>The Bonded Labour System (Abolition) Act, adopted in 1992, outlawed bonded labour, canceled all existing bonded debts, and forbade lawsuits for the recovery of existing debts. However, the provincial governments, which are responsible for enforcing the law, have failed to establish enforcement mechanisms, and the law is largely ineffective.</p>  |

|  |  |  |
|--|--|--|
| industries and is found among agricultural and construction workers in rural areas. Conservative estimates put the figure of bonded workers at several million. Of the 20 million bonded workers, 7.5 million are children.  |  |  |
| Right to equal/ humane treatment at work   |  | <p><b>Factories Act of 1934 prohibits factory work for a child for more than 5 hours in any day;</b></p> <p><b>The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day; and</b></p> <p><b>No child or adolescent shall be allowed to work in a factory except between 6 am and 7 pm.</b></p> |
| Right to unionize<br>Right to collective bargaining unions   | The right of industrial workers to organize and freely elect representatives to act as collective bargaining agents is established in law. However, the many restrictions on forming unions preclude collective bargaining by large sections of the labour force, e.g. agricultural workers, who are not guaranteed the right to strike, bargain collectively, or make demands on employers.   | The Industrial Relations Ordinance of 1969, sec. 3: Provides that workers, without distinction as to age or standing, etc, shall have the right to join and establish their own unions and associations.   |
| Right to Strike  | Legally required conciliation proceedings and cooling-off periods constrain the right to strike, as does the government's authority to ban any strike that may cause "serious hardship to the community." Strikes are rare and, when they occur, usually illegal and short. The government regards as illegal any strike conducted by workers who are not members of a legally registered union. The law does not protect leaders of illegal strikes |  |
| Right to minimum standards at work<br><br>- Although this wage provides a meager subsistence living for a small family, minimum wage benefits and other regulations affect only a small part of the work force, and most families are large. In general, health and safety standards are poor. | <p>Monthly minimum wage of about 42 dollars (1,650 rupees);</p> <p>A maximum workweek of 54 hours, rest periods during the workday;</p> <p>Annual holidays are paid.</p>   |  |

|   |  |  |
|---|--|--|
| Right to association                          |  | <p>The Industrial Relations Ordinance of 1969 enunciates the right of industrial workers to form trade unions but is subject to major restrictions in some employment areas. In practice, labour laws place significant constraints on the formation of industrial unions and their ability to function effectively.</p> <p>The Essential Services Maintenance Act of 1952 restricts normal union activities in sectors associated with "the administration of the state," e.g. government services and some public utilities, but the government has reduced its application.</p> |
| Right against employment in hazardous sectors | If the child is working for his own family or in a State-supported school, legal restrictions on hazardous work areas and working conditions do not apply. |  |

#### Protective Measures

| Measures   | Origins  |               |
|--|--|---------------|
|  | Labour Laws  | Other/General |
| Registration                                     | <p><b>Factories Act of 1934, sec. 53: An adolescent worker in the factory, by virtue of the is required to acquire a certificated of fitness to work in a factory as an adult, otherwise such worker is considered to be still a child.</b></p> <p>Sec. 57: Provincial government is to prescribe the form of Registration of the workers</p>  |               |
| Inspection                                       | <p>Provincial Labour Welfare Departments do not at present have enough labour inspectors to adequately enforce legislation or to collect evidence of non-compliance. According to the Ministry of Labour, the provincial governments will need to appoint new inspectors to enforce the 1991 legislation but have not yet done so.</p> <p><b>Employment of Children Act of 1991, sec. 9: Provides that every owner of an establishment to which a child works shall send to the inspector a written notice containing particularities.</b></p> |               |
| Employment Contract                              |  |               |
| Social Security                                  |  |               |
| Medical benefits in case of work-related illness |  |               |
| Compensation in case of work-related injuries    |  |               |

Enforcement/ Monitoring

| Measures                               | Body in Charge   | Origins   |                |                 |
|--|--|---|----------------|-----------------|
|  |  | Labour Laws   | Children       | Other / General |
| Laws                                   | The Pakistani police                                       | Factories Act of 1934, secs. 67 & 68: Imposes penalty of a fine, for anyone using a false certificate of fitness and upon a guardian who permits his ward to have a double employment.  | Not applicable | Not applicable  |
| Policies                               | Ministry of Labour<br>Provincial Labour Welfare Department |   |                |                 |
| Programmes on domestic workers         | Not applicable   |   |                |                 |
| Notice of periods for work of children | Provincial Government                                      | <b>Factories Act of 1934, sec. 55: Provides that Notice of Period for Work of Children shall be displayed and correctly maintained in every factory. Such notice shall clearly show when the children are only allowed to work.</b> |                |                 |

NOTE:

According to Bonded Labour Liberation Front's (BLLF) founder Ehsan Ulla Khan, "the state has done nothing to enforce the anti-slavery laws or even to inform the public that child and bonded labour have been outlawed. It's evident that if the enslaved workers are to be delivered from bondage, private citizens will have to do the delivering. That is, we will have to proclaim the end of slavery, educate workers, monitor employer compliance, and take legal action when necessary, because the state lacks the will and resources to do so." Since its founding, in 1988, the BLLF has led the fight against bonded and child labour, liberating 30,000 adults and children--frequently entire families--from brick kilns, carpet factories, and farms, and placing 11,000 children in its own primary school system. It has won 25,000 high-court cases against abusive and unscrupulous employers, and helped to push the recent labour legislation through the National Assembly.

Other Policies/ Programmes/ Mechanisms

| Policies/ Programmes/ Mechanisms  | Labour Laws | Domestic Workers Law | Other/ General   |
|---|-------------|----------------------|--|
| Awareness raising on issues and problems associated with child domestic work.           |             |                      | Non-governmental organizations continue lobbying for a more effective procedure and mechanism to be used by the Labour courts, and not by the civil courts.  |
| Legal literacy on DCL<br>Advocacy for law and policy reform<br>Child's rights education |             |                      | Non-governmental organizations are those who conduct different programmes to actualize these policies, through media-sensitization, forums, lobbies and support systems by way of technical trainings and educational packages for deserving children. |

Protective Measures

| Measures | Origin      |                      |                |
|----------|-------------|----------------------|----------------|
|          | Labour Laws | Domestic Workers Law | Other/ General |
| None     |             |                      |                |

Enforcement/ Monitoring

| Measures              | Body in Charge | Origin      |  |                      |          |                |
|-----------------------|----------------|-------------|--|----------------------|----------|----------------|
|                       |                | Labour Laws | Children   | Domestic Workers Law | Children | Other/ General |
| Rehabilitation of DCL | Government     |             | In 1998, the government made significant further efforts to improve enforcement of laws against child labour and is cooperating with the ILO on a range of programmes with the goal of eliminating child labour. It has also encouraged the establishment of an independent child welfare foundation designed to rehabilitate child labourers and to oversee child labour-free certification programmes. |                      |          |                |

Other Policies/ Programmes/ Mechanisms

| Policies/ Programmes/ Mechanisms               | Labour Laws | Domestic Workers Law | Other/ General   |
|--|-------------|----------------------|--|
| “The Charter of Freedom”                       |             |                      | NGO such as Bonded Liberation Front strongly protect such. |
| Rescue operations and recovery measures of DCL |             |                      | Done by NGOs.  |

NOTE: Pakistan, as of May 2001, has not ratified ILO Convention 138.

**ANNEX 11: VIETNAM MATRIX**

**Fundamental Rights**

| <b>Rights</b>                | <b>Origin</b>  |                            |  |
|------------------------------|--|----------------------------|--|
| <b>Rights to and Against</b> | <b>Labour Laws</b>   | <b>Domestic Worker Law</b> | <b>Other / General</b>   |
| Mobility                     |  |                            | The constitution provides for the enjoyment of the freedom of movement and of residence within the country; freely travel abroad and return for home in accordance with law.                   |
| Involuntary Servitude        | Every person has a right to freely choose an employment and occupation. Maltreatment of workers and the use of forced labour are prohibited.<br><br>Use of forced labour is prohibited.                  |                            | The constitution likewise provide for the forbiddance of the use of all forms of harassment and coercion, torture, violation of honor and dignity against a citizen.                           |
| Debt bondage                 | Ensures the right of women to work equally with male.  |                            | All citizens are equal before the law.   |
| Equal/humane Treatment       | Prohibits any act of discrimination by the employer based on gender.   |                            | Male and female citizens have equal rights in all fields: political, economic, cultural, social, and family.<br><b>The State and society shall recognize no discrimination among children.</b> |
| Unionise                     | Federation of Labour shall set up at provincial levels, trade union provisional organizations in every undertaking.  |                            |  |
| Collective bargaining        | The law likewise provide for the negotiation and enforcement of collective agreements between the representative of the workers and the employer.  |                            |  |
| Affiliate with trade unions  | The provisional trade union organizations are affiliated with the Federation of Labour and the scope of its activities are determined by the Government and the Vietnam General Confederation of Labour. |                            |  |

Protective Measures

| Measures         | Origin  |                      |  |
|------------------|---|----------------------|--|
|                  | Labour Laws   | Domestic Workers Law | Other / General  |
| Labour standards | <p><b>The law provides for the minimum age for workers which is 15 years of age. Children below 15 are allowed to work in certain categories determined by the Ministry of Labour, Invalids, and Social Affairs (MOLISA). Trainees and apprentices must be at least 13 years of age.</b></p> <p><b>Children below 15 years of age who are workers or trainees must have the agreement and be under the supervision of their parents or guardian.</b></p> <p><b>The hours of work of juveniles or children shall not exceed 7 hours per day or 42 hours in a week.</b></p> <p><b>Nighttime and overtime work for children are permitted only in certain categories of work determined by the MOLISA.</b></p> <p><i>Remuneration, hours of work, rest and allowances of household helpers are determined by contract or agreement, which may be oral or written.</i></p> <p><i>Employers are mandated by the Labour Code to respect the dignity of their household helpers and to provide for their care and assistance in case of accident and sickness. They shall also pay for the travel expenses of the household helper on their return home except when the helper voluntarily leaves before the expiration of the contract.</i></p> <p><b>Favorable conditions in the workplace for juvenile workers is mandated by law. The law prohibits the hiring of children in hard and dangerous work or work exposed to harmful substances.</b></p> <p><b>Establishments hiring children must keep a separate record wherein full name, date of birth, work assignment, and regular health check results of the child workers are mentioned. It must be presented upon request of the Labour inspector.</b></p> |                      | <p>The constitution provides for the protection of labour through the establishment by the State of working times, wage scales, regimes of rest and social insurance for State employees and wage-earners.</p> |

### Enforcement Monitoring

| Measures  | Body in Charge   | Origin  |                      |   |
|---|--|---|----------------------|---|
|   |  | Labour Laws   | Domestic Workers Law | Other/General   |
| Uniform State Labour Administration<br><br>State Labour Inspection which includes general labour inspection, inspection | The Government under the Ministry of Labour, Invalids and Social affairs with the assistance of the People's Committee, local labour offices and the Vietnam General Confederation of Labour<br><br>MOLISA and local labour offices; Ministry of Health and local health authorities | Breach and violation of the Labour Code entitles a warning, fine, revocation of license or permits, or prosecution for violation of penal provisions. |                      | <b>Directive on the strengthening of the task of protecting children, preventing and tackling the problem of street children and child labour abuse</b> |

### Other Policies/ Programmes/ Mechanisms

| Policies/Programmes/Mechanisms   | Labour Laws | Domestic Workers Law | Other / General   |
|--|-------------|----------------------|---|
| <p>UNICEF projects:</p> <p>1) Support implementation and monitoring of the Stockholm Agenda for Action Against Commercial Sexual Exploitation of Children (including trafficking);</p> <p>2) Cooperate and support regional and bilateral activities to address cross border trafficking of women and children including project on Illegal Labour Movements of the Mekong Regional Law Centre;</p> <p>3) Cooperation for:</p> <ul style="list-style-type: none"> <li>-Advocacy &amp; information/ communication activities</li> <li>-Policy Reform</li> <li>-Establish networks of Committees for the Protection and Care of Children</li> <li>-Integrated Minorities Development Project</li> <li>-Support of government participation in regional and national events</li> <li>- An ongoing project for the national, provincial and community levels, in cooperation with Vietnam's Committee for the Protection and Care of Children, the Government (including Justice, Labour and Social Affairs, Interior), Central and Local Women's Unions, courts, prosecution offices, border guards and NGO's;</li> </ul> <p>4) Advocacy for legislation and policy reform and child rights training for law enforcement officers to afford legal protection in the national level.</p> <p>Mass Media movement, leaflet dissemination, and vocational trainings by the MOLISA, the Women Union and the Youth Union for the prevention of trafficking and assistance to trafficking victims.</p> <p>"Vietnam National Programme of Action for Children" (2001-2010).</p> |             |                      | Special legislation of the National Assembly: Decision No.23/2001/QD-TT-objectives: to create optimum conditions to fully meet the needs and basic rights of children, prevent the harming of children, and to build a safe and healthy environment for Vietnamese children to have the opportunity to be protected, cared for, educated and develop in all fields. |

**ANNEX 12: PHILIPPINES MATRIX**

**LAWS PROTECTING CHILD DOMESTIC WORKERS IN THE PHILIPPINES**

| CONSTITUTION   | LABOR LAWS  | CIVIL CODE   | REVISED PENAL CODE  | SPECIAL LAWS  |
|--|---|--|---|---|
| <p>Art. II, sec. 3(2): Guarantees the right of children to assistance and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.</p> <p>Art. III, sec. 18(2): No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.</p> <p>Art. III, sec. 6: Guarantees the right of all persons to liberty of abode and of changing the same, as well as, the right to travel except in the interest of national security, public safety, or public health, as may be provided by law.</p> <p>Art. XIII, sec. 3: Right to self-organization, collective bargaining negotiations, and peaceful concerted activities, including the right to strike in accordance with law; entitlement to security of tenure, humane conditions of work,</p> | <p>Labor Code, art. 139: Children 15 years old and above may be employed in an undertaking which is not hazardous or deleterious in nature.</p> <p>Department Order No.4, series of 1999, Implementing Republic Act 7658, sec. 4: Prohibition on Hazardous Work and Activities to Persons Below 18 Years of Age: Sec. 3. Coverage:</p> <ol style="list-style-type: none"> <li>1. Work which exposes children to physical, psychological or sexual abuse;</li> <li>2. Work underground, under water, at dangerous heights or at unguarded heights of two meters and above, or in confined places;</li> <li>3. Work with dangerous machinery, equipment and tools, or which involves manual handling or transport or heavy loads;</li> <li>4. Work in unhealthy environment which may expose children to hazardous processes, to temperatures, noise levels or vibrations damaging to their health, to toxic, corrosive, poisonous, noxious, explosive, flammable and combustible substances or composites, to harmful biological agents, or to other dangerous chemicals including pharmaceuticals; and</li> <li>5. Work under particularly difficult conditions such as work for long hours or during the night, or work where the child is unreasonably confined to the premises of the employer.</li> </ol> <p>Sec. 4: Persons between 15 and 18 years of age may be allowed to engage in domestic or household service, subject in all cases to the limitations prescribed in Nos. 1 to 5 of Section 3 herein.</p> <p>Omnibus Rules Implementing Labor Code:</p> | <p>Art. 1691: Requires employers of householders under the age of 18 years to give the latter an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary</p> <p>Art. 1689 and 1690: The househelper's compensation shall be paid to the househelper in addition to suitable and adequate lodging, food and medical attendance which the employer is required to furnish the househelper free of charge.</p> <p>Art. 1693: The househelper's clothes shall be subject to stipulation which at the very least enable the househelper to afford and acquire suitable clothing.</p> <p>Art. 1695. Househelpers shall not be required to work more than 10 hours a day and be allowed 4 days vacation each month with pay.</p> | <p>Art. 272: Slavery is committed by a person who shall purchase, sell, kidnap or detain a human being for the purpose of enslaving him.</p> <p>Art. 274: The crime of Services Rendered Under Compulsion In Payment of Debt is imposed upon any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm labourer.</p> <p>Art. 273: The crime of Exploitation of Child Labour is another crime which is imposed upon anyone who, under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of a minor, shall against the latter's will, retain him in his service.</p> <p>Art. 267-268: Illegal detention or the</p> | <p><b>State Policies:</b><br/>P.D.603 Child and Youth Welfare Code, art. 3(8): Ensures the right of every child, to protection against exploitation, improper influences, hazards and other conditions or circumstances prejudicial to the child's physical, mental, emotional, social and moral development; and<br/>The right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen;</p> <p>R.A. 7610 or the Special Protection of Children Act: Declares it the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.</p> <p><b>Minimum Age:</b><br/>R.A.7610, art. VIII, as amended by R.A.7658 or the Child Labour Act: Prohibits the employment of all children below 15 years of age except in two instances, that is, 1) employment under the sole responsibility of parents/guardians in exclusive family undertakings, and 2) essential employment in public entertainment or information.</p> <p>R.A. 7610 as amended by R.A. 7658: Penalty provided for employment of children below 15 years is fine of not less than One thousand pesos (PhP1,000.00) but not more than Ten thousand pesos (PhP10,000.00) or imprisonment of 3 months to 3 years, or both at the discretion of the Court.</p> <p><b>Regulations:</b><br/>R.A.7610, art. VIII as amended by R.A.7658 or the Child Labour Act: Pre-employment requirements – Requires employers of children below 15 years under the allowable exceptions of R.A. 7658 to secure a work permit from the Department of Labor</p> |

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| <p>and a living wage; right to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.</p> <p>Art XIV, sec. 2: Elementary education is compulsory for all children of school age without limiting the natural right of parents to rear their children,</p> <p>Art XIV, sec. 2: Mandates the State to establish and maintain a system of free public education in the elementary and high school levels.</p> | <p>Requires employers of househelpers under the age of 18 years to give the latter an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.</p> <p>Labor Code, art. 143, as amended by Republic Act No. 7655, Minimum Wage for Househelpers Act of 1993: Prescribes minimum wage rates for househelpers in different cities/municipalities and requires employers to review the employment contracts of their househelpers every 3 years with the end in view of improving the terms and conditions thereof.</p> <p>Labor Code, art. 145: No househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural workers.</p> <p>Labor Code, art. 143, as amended by Republic Act No. 7655, Minimum Wage for Househelpers Act of 1993: Mandates the compulsory coverage by the Social Security System of househelpers who are receiving at least PhP1,000.00 per month.</p> <p>Implementing Rules of Social Security of Househelpers: Covered househelpers are entitled the same benefits, loans and other privileges available to a regular covered employee under the Social Security System, Medicare/Health Insurance and Employees Compensation Laws</p> <p>Omnibus Rules Implementing the Labor Code, book III, rule XIII, sec. 9: Wages shall be paid directly to the househelper at least once a month and no deductions therefrom shall be made by the employer unless authorized by the househelper or by existing laws.</p> <p>Labor Code, arts. 144 and 148: The househelper's compensation shall be paid to</p> | <p>Art. 1697: If period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for 15 days by way of indemnity. If the househelper leaves without justifiable cause, he or she shall forfeit any unpaid salary due him or her not exceeding 15 days</p> <p>Art. 1694: Mandates employers of househelpers to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper.</p> <p>Art. 1692: No contract for household service shall last for more than two years. However, such contract may be renewed from year to year</p> | <p>deprivation of the liberty of any person is punishable</p> <p>Rape, acts of lasciviousness, seduction and other forms of sexual abuse are punishable under the Revised Penal Code.</p> <p>Mutilation; serious, less serious and slight physical injuries are punishable under the Revised Penal Code of the country.</p> <p>Revised Penal Code punishes maltreatment committed when a person shall ill-treat another by deed without causing any injury.</p> | <p>which requires the submission of the child's pictures, birth certificate, certificate of school enrollment, medical certificate of fitness for employment, and a certificate of a continuing programme for training and skills acquisition approved and supervised by competent authority. A written undertaking is likewise required of the employer, ensuring that measures shall be instituted to prevent the child's exploitation and discrimination such as payment of minimum wage, hours of work and other terms and conditions required by law; and guaranteeing the protection, health, safety, morals and normal development of the child.</p> <p>For children in public entertainment or information, a written contract of employment concluded by the child's parent or legal guardian with the employer is required. The contract shall bear the express agreement of the child, if possible, and shall state the nature or full description of the job and the justification that the child's employment or participation is essential.</p> <p>P.D. 603, art. 108: Directs employers of children to submit to the Department of Labour a report of all children employed by him/her.</p> <p>P.D. 603, art. 110: Requires employers of househelpers under the age of 18 years to give the latter an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.</p> <p>P.D. 603, art. 111: Guarantees working children the same freedom as adults to join the collective bargaining union of their own choosing. Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union.</p> <p><b>Other Criminal Sanctions:</b><br/>Anti-Sexual Harassment Act of 1995, R.A. 7877, sec. 3: Punishes an employer or any person who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor</p> |
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|  | <p>the househelper in addition to suitable and adequate lodging, food and medical attendance which the employer is required to furnish the househelper free of charge.</p> <p>Labor Code, art. 149: If period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for 15 days by way of indemnity. If the househelper leaves without justifiable cause, he or she shall forfeit any unpaid salary due him or her not exceeding 15 days</p> <p>Labor Code, art. 150: If duration of household service is not fixed, a termination notice must be given 5 days before the intended termination of the service.</p> <p>Labor Code, art. 151: The househelper has the right to secure an employment certification from the employer upon the severance of the household service relation, specifying the nature and duration of the service and the househelper's efficiency and conduct as househelper.</p> <p>Labor Code, art. 140: Prohibits an employer from discriminating against any person in respect to terms and conditions of employment on account of his age.</p> <p>Labor Code, art. 147: Mandates employers of househelpers to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper.</p> <p>Circular No. 21-V, Implementing Guidelines on the Social Security Coverage of Househelpers, Art. II, sec. 1: Coverage in the Social Security System shall be compulsory upon all househelpers who are 60 years of age and below, and who are receiving a monthly</p> |  |  | <p>from the other, regardless of whether the demand, request or requirement for submission is accepted</p> <p>R.A. 7610, Art. III, sec. 5: "Child Prostitution And Other Sexual Abuse" - Punishes a person who engages in, promotes or facilitates child prostitution or who derives profit or advantage therefrom. A person who hires, employs, induces or coerces a child to perform in obscene exhibitions, indecent shows, or pornographic materials is also liable.</p> <p>R.A. 7610, sec. 10: Punishes "Other Acts of Abuse, Cruelty, Exploitation and Other Conditions Prejudicial to the Child's Development".</p> <p><b>Education:</b></p> <p>P.D. 603, art. 71: Requires all parents to enroll their children in schools to complete, at least an elementary education.</p> <p>P.D. 603, art. 59: Attaches criminal liability to any parent who fails or refuses, without justifiable grounds, to enroll the child in accordance with the compulsory education requirement.</p> <p>P.D. 603 Art. 59 - A parent who causes or permits the truancy of the child from the school where the child is enrolled is also criminally liable under such law</p> <p>P.D. 603 Art. 72 - directs the State bodies to extend all necessary assistance possible to parents, specially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programmes which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.</p> <p>R.A. 7610, art. VIII, sec. 13: Mandates the Department of Education to promulgate a course design under its non-formal education programme aimed at promoting the intellectual, moral and</p> |
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|  | <p>cash compensation of at least One thousand pesos (Php1,000.00).</p> <p>Medicare Act: Both the employer and househelper contribute their share in the monthly remittances to the Social Security System. All employers who are compulsorily covered under the Social Security Law are required to contribute and collect contributions to the Health Insurance Fund.</p> <p>Implementing Guidelines on the Social Security Coverage of Househelpers, art. V: A covered househelper shall be entitled to the same benefits, loans and other privileges that are made available to a regular covered employee under the Social Security System, the Medicare/Health Insurance, and the Employees Compensation laws.</p> <p>Labour Code, art. 152: The employer of a househelper may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper, which the latter shall authenticate by signature or thumb mark upon request of the employer.</p> <p>Minimum Wage for Househelpers Act of 1993: Requires employers to review the employment contracts of their househelpers every 3 years with the end in view of improving the terms and conditions thereof.</p> <p>Labour Code, art. 128.: Visitorial and Enforcement Power. -- The Secretary of Labour or his duly authorized representatives, including labour regulation officers, shall have access to employers records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labour law, wage order or rules and regulations issued pursuant thereto.</p> |  |  | <p>vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.</p> <p><b>Monitoring, Enforcement, Prosecution:</b><br/>P.D. 603, art. 87: Provides for the creation of Barangay Councils for the Protection of Children (BCPC) in every barangay or village.</p> <p>P.D. 603, art. 104: Directs the formation and organization of a “Samahan” in communities by the barangay, municipal and city councils</p> <p>Rules and Regulations in the Reporting and Investigation of Child Abuse Cases, Sec. 8: The DSWD shall, not later than 48 hours from receipt of a report, immediately proceed to the place where the alleged child victim is found and interview said child to determine whether an abuse was committed, the identity of the perpetrator and whether or not there is a need to remove the child from his home or the establishment where he/she may be found. Whenever practicable, the DSWD shall conduct the interview jointly with the police and/or barangay official.</p> <p>R.A. 7610, art. XI, sec. 27: Complaints for child abuse, neglect, and exploitation, including child labour, may be filed by any of the following:</p> <ol style="list-style-type: none"> <li>a. offended party</li> <li>b. parent or legal guardian</li> <li>c. ascendant or collateral relative of the child within the third degree of consanguinity;</li> <li>d. a duly authorized officer or social worker of the Department;</li> <li>e. officer, social worker or representative of a licensed child-caring institution;</li> <li>f. Barangay Chairman; or at least (3) concerned, responsible citizens where the violation occurred.</li> </ol> |
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|  | <p>Department Order No. 4, sec. 5: Also known as Hazardous Work and Activities to Persons Below 18 Years of Age. Mandates labour standards enforcement officers to adopt the department order guidelines in their monitoring activities.</p> <p>Administrative Order No. 100: Child labour was made a priority for inspection.</p> <p>Administrative Order No. 47 by the Department of Labour (1997): Directs all labour inspectors to prioritize the inspection of establishments employing children and women workers, security agencies, construction, shipping, and other establishments classified as hazardous or high risk.</p> <p>Labour Code, art. 129: Upon complaint of any interested party, the Regional Director of the Department of Labour and Employment or any duly authorized hearing officers is empowered to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, owing to an employee or person employed in domestic or household service or househelper, provided that such complaint does not include a claim for reinstatement and that the aggregate money claim of the househelper does not exceed Php5,000.00. The regional director or hearing officer shall resolve the complaint within 30 calendar days from the date of the filing of the same. Any sum thus recovered on behalf of the househelper shall be held in a special deposit account by, and shall be paid on order of, the Secretary of Labour or the Regional Director directly to the employee or househelper concerned.</p> <p>Labor Code, art. 217: Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an</p> |  |  |  |
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|  | <p>amount exceeding Php5,000.00 regardless of whether accompanied with a claim for reinstatement shall be filed with the Labour Arbiters.</p> <p>Labour Code, art. 288: may be invoked as penalty for any violation of the Code declared to be unlawful or penal in nature.</p> <p>Republic Act 7655: Violation of the Act which prescribes minimum wages for househelpers and which requires coverage in the Social Security System, is punishable by with an imprisonment of not more than 3 months or not more than Php2,000.00 or both at the discretion of the court.</p> |  |  |  |
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**ANNEX 13: THAILAND MATRIX**

**PROTECTION OF CHILD DOMESTIC WORKERS**

| Constitution   | Labour  | Labour cont...  | Penal   | Other / Special  |
|--|---|---|---|--|
| <p>Arts. 26 and 28: Regard to human dignity, rights and liberties.</p> <p>Article 30: Equality before the law; equal protection under the law; equal rights between men and women; prohibition against unjust discrimination on the grounds of race, sex, age, personal status and economic or social standing, among others</p> <p>Article 43: Equal right to receive education for not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.</p> <p>Article 51: Right v. forced labour save in extraordinary cases (war, calamity, etc.)</p> <p>Article 53: Right of children, youth and family members to be protected by the State v. violence and unfair treatment; right of children and youth with no guardian to care and education from the State.</p> <p>Article 80: Protection and development of children and youth</p> <p>Article 86: Promotion by the State of people of working age to obtain employment; protection of labour, especially child and woman labour, and provision for a system of labour relations, social security and fair wages.</p> | <p><b>Wages:</b></p> <p>Sec. 11: Wages shall enjoy preferential rights on all property of the employer same as taxes and duties under Civil and Commercial Code.</p> <p>Sec. 51: Payment of wages only to the child employee; No deduction of wage in payment for advances made to parents</p> <p>Sec. 53: Equal pay for equal work for male and female employees</p> <p>Sec. 54: Payment of wages in Thai Baht unless employee agrees to be paid in foreign currency.</p> <p>Sec. 55: Pay wages at place of work of the employee, unless employee consents to be paid elsewhere</p> <p>Sec. 70: Pay wages on a monthly, daily or hourly basis and not less than once a month unless otherwise agreed upon by employee</p> <p>Sec. 76: No deductions from wages as a general rule. (The exceptions provided do not seem to apply to domestic work)</p> <p>Sec. 77: Where employee consent is required in secs. 54,55 and 76, written consent is prescribed.</p> | <p><b>Annual Holiday:</b></p> <p>Sec. 30: Annual holiday of not less than six working days for employee who has worked continuously for one full year, to be fixed in advance by the employer or set out in an agreement made between the employer and the employee.</p> <p>Sec. 56: Employer shall pay employee equivalent to wages of a working day for annual holidays.</p> <p>Sec. 67: Where an employer terminates employee who has not committed any offence under Section 119, the employer shall pay basic pay in respect of his annual vacation for the year in which employment was terminated, in proportion to the number of days of annual vacation to which the employee is entitled, including accumulated annual vacation pursuant to Section 30.</p> <p><b>Penalties:</b></p> <p>Sections 144,146,147 and 149 provide for penalties for violation of the above provisions.</p> | <p>THE PENAL CODE AMENDMENT ACT (NO. 14) OF 1997: Protects children under 18 against sexual offences, sexual harassment, sale of children for begging, forced labour and labour exploitation; includes offenders w/in the country or abroad.</p> <p>CRUELTY PROVISIONS IN THE PENAL CODE, section 398: States that a person who commits acts of cruelty on a child below 15 and who is a dependant faces a maximum of one month's imprisonment or a 1,000 baht fine or both. , there are other criminal laws. Sections 293, 295, 297, 303 can also be applied to child cruelty cases in addition to the following specific ones:</p> <p>(i) If anyone tortures a child resulting in death - liable to 3 to 20 years' imprisonment (Sec. 290);</p> <p>(ii) If anyone commits an act of cruelty or similar acts on a child who is dependent upon him for a living or otherwise until the child is driven to attempt suicide, regardless of whether the suicide succeeds or not, the offender is liable to a maximum of seven years imprisonment and a fine of not more than 14,000 baht (Sec. 292);</p> <p>(iii) If anyone tortures a child and causes permanent mental or physical harm to the child, the offender is liable to a maximum of three yrs. imprisonment or a fine of not more than 6,000 baht or both (Sec. 295). If the torture results in critical injury, the offender is liable to two to 10 years prison term (Sec. 298);</p> <p>(iv) If an offender has committed a child cruelty act and has infringed the child's freedom, he is liable to criminal punishment under the Thai Penal Code (Secs. 309-320).</p> | <p>NATIONAL EDUCATION ACT OF 1999 -prescribes compulsory education of children for nine years.</p> <p>THE CRIMINAL PROCEDURE AMENDMENT ACT (No. 20) OF 1999: Includes measures for the protection of child victims, offenders and witnesses through 1.) use of videotape recording of statement of child victims; 2.) use of video link trials testimony with the aid of a psychologist or social worker and 3.) taking of depositions from the child victim in case there is difficulty for the child to be brought to court for the purpose of giving his or her testimony.</p> <p>PREVENTION AND SUPPRESSION OF TRAFFICKING of Women and Children Act (1997): Aids trafficked children who end in domestic work - help and rescue are the main responses</p> <p>THE VOCATIONAL TRAINING PROMOTION ACT (1994): Skills training and upgrade to make children less likely to end up in domestic work</p> <p>NATIONALITY ACT OF 1992 (version 2): Thai nationality conferred to a child who has either a Thai mother or father.</p> |

**ANNEX 14: SRI LANKA MATRIX**

**PROTECTION OF CHILD DOMESTIC WORKERS**

| CONSTITUTION   | LABOUR  | PENAL  | SPECIAL   | SOCIAL/OTHERS   |
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| <p>Art. 27(13): The State shall promote with special care the interest of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.</p> <p>Art. 11: The right against torture, inhuman and degrading treatment or punishment;</p> <p>Art. 12(1); Art 12 (4): Right to equality and equal protection of the law, which includes the possibility of special provisions for the advancement of children;</p> <p>Art. 12(2): Non-discrimination on grounds of race, religion, language, caste, sex, political opinion, place of birth;</p> <p>Art 14(1)(a)(b) and (c); Art. 15(2)(3)and (4): Freedom of speech and expression, peaceful assembly and association, subject to restrictions prescribed by law in the interest of racial and religious harmony;</p> <p>Art. 14(g); Art. 15(c): Freedom to engage in any lawful occupation, profession, trade, business or enterprise, subject to restrictions prescribed by law in the interest of the national economy;</p> | <p>Gazette Extraordinary No. 1116/5 of January 26, 2000: No child shall be employed in any occupation. Young persons can be employed in domestic work, provided that: (a) he is entitled to 3 hours of leisure between 6 am to 8 pm, and to at least 7 consecutive days of leisure in every period of 4 months<sup>1</sup>.</p> <p>Employment of Women, Young Persons and Children Act of 1956 (EWYPCA), sec. 34: A child as a person who is under the age of 14; young person is from 14 but is less than 18.</p> <p>EWYPCA, sec. 22(1): Furnish information regarding the employment of a young person</p> <p>EWYPCA, sec. 29: “No prosecution for any offense under this Act shall be instituted except by or with the written permission of the Commissioner of Labour.”</p> <p>EWYPCA, sec. 30(1): Medical officer to examine any person who appears to be a young person or child to ascertain his age.</p> <p>EWYPC, secs. 14(3) and 21(3): Penalties for violation.</p> <p>EWYPCA, sec. 21 (1): Empowers the drafting of regulations with respect to young persons.</p> | <p>Sections of the Penal Code [Penal Code (Amendment) Act, No. 22 of 1995] defines child as a person under 18 years of age<sup>2</sup>.</p> <p>Cruelty to children:<br/>Sec. 308A (1): Whoever having the custody, charge or care of any person under 18 years of age, willfully assaults, ill-treats, neglects or abandons such persons or causes or procures such person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, commits the offense of cruelty to children.</p> <p>Sec. 360B (1): Sexual exploitation of children--</p> <p>Sec. 311: Grievous Hurt<br/>Sec. 345: Sexual Harassment</p> <p>Secs. 363 and 365A: Rape and grave sexual abuse.</p> <p>Sec. 360C: Trafficking as engaging “in the act of buying or selling or bartering of any person for money or for any other consideration”.</p> <p>Code of Criminal Procedure (Amendment) Act No. 28 of 1998: Re persons arrested without a</p> | <p>Section 34(1) of the Children and Young Persons Ordinance (CYPO) enables a Juvenile Court to make an order in respect of children “in need of care or protection”.</p> <p>(b) CYPO-- Definition A “child in need of care and protection”; Powers of the Juvenile Court</p> <p><u>National Child Protection Authority</u> Act No, 50 of 1998 established the National Child Protection Authority (NCPA).</p> <p>39. Child as any person under 18 years of age; definition of child abuse; functions of NCPA</p> <p>33. The Authority may, where it has reason to believe that there is child abuse on any premises and that application to court for a search warrant may prejudice investigation into such child abuse, authorize in writing an officer of the Authority to enter and search such premise...</p> <p>35. (1) Any authorized officer may—<br/>(a) enter and inspect any premises of any institution by which child care services are provided:<br/>(b)enter and inspect any premises, where he has reason to believe that children are being kept for (i) the purpose of child abuse; (ii) any other</p> | <p>Department of Probation and Child Care Services (DPCCS). It is the agency responsible for the protection and rehabilitation of children while the Provincial Departments of Probation and Child Care Services are the primary agencies on probation and child care.</p> <p>An Ordinance to Provide for the Registration of Domestic Servants (Ordinances Nos. 28 of 1871 and 18 of 1936) provides for the registration of domestic workers with a Registrar of Domestic Servants who is under the general supervision and control of the Inspector-General of the Police.</p> <p>The Evidence (Special Provisions) Act, No. 32 of 1999, Sec 163A: States that in any proceeding relating to child abuse a video recording of a preliminary interview between an adult and a child witness on any matter relating to the proceedings, such video recording may be given in evidence.</p> <p>Sri Lanka Children’s Charter, art 32: Protection from child labour.</p> <p>The Education Ordinance: Compulsory Attendance of Children at School for children not more than 14 years of age.</p> <p>Trade Union Ordinance: Restricts</p> |

<sup>1</sup> In contrast to domestic work, young persons employed in the formal sector may be able to avail of general labor laws covering specific areas of work, e.g. Factories Ordinance Shop and Office Employees Act, EWYPCA [for young persons employed (a) in industrial undertaking, (b) at sea and (c) in the entertainment industry.]

<sup>2</sup> Sections 288(2), 288A(2), 288B(2) of the Penal Code as amended by Section 2 of the Penal Code (Amendment) Act of 1995, Section 3 of Penal Code (Amendment) Act of 1998 and Sections 360b and 360C of the Penal Code as amended by Section 8 of the Penal Code (Amendment) Act of 1995.

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| <p>Art. 14(h); Art. 15(6): Freedom of movement subject to restrictions prescribed by law in the interest of the national economy.</p> | <p>A <u>Women and Children Affairs Division</u> was created in the Department of Labour to focus on measures to minimize child labour in Sri Lanka.</p> | <p>warrant with respect to child abuse, a Magistrate is empowered to order his detention for 3 days for investigatory purposes. It also requires that cases on child abuse be given priority. It prescribes a form for referral of child abuse cases to Institutes of Care and Protection.</p> <p>(a) <u>National Child Abuse and Violence against Women Desk</u> (Women and Children's Police Desk) was set up at Police Headquarters.</p> | <p>unlawful purpose; (iii) illegal adoption.</p> <p>(c) interrogate any person in any such premises for the purpose of ascertaining the activities carried on in such premises and whether there is any contravention of any law relating to children.</p> | <p>children under the age of 16 years from joining a union.</p> |
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**ANNEX 15: FUNDAMENTAL RIGHTS MATRIX**

| Country           | Non-discrimination<br>Equality/equal treatment  | Humane treatment | Forced Labour,<br>Involuntary Servitude,<br>Debt Bondage  | Mobility | Association/ Affiliation<br>with Trade Unions/<br>Collective Bargaining and<br>the Right to Strike   | Others  |
|-------------------|---|------------------|---|----------|--|---|
| <b>Bangladesh</b> |   |                  | <p>Constitution: Prohibits forced or compulsory labour including that performed by children.</p> <p>The Children (Pledging of Labour) Act, 1937: Prohibits the making of agreements to pledge the labour of children and the employment of children whose labour has been pledged. The Act defines “child” as a person who is under the age of 15 years.</p>  |          | <p>Constitution: provides for the right to join unions and— with government approval— the right to form a union.</p>   | <p>The Children’s Act, 1974: The Act defines a “child” as a person up to 16 years of age and provides special treatment for children under the law.</p>   |
| <b>Cambodia</b>   |   |                  | <p>1997 Labour Code, art. 15: Forced or compulsory labour is absolutely forbidden in conformity with the International Convention No. 29 on the forced or compulsory labour, adopted on June 28, 1930 by the International Labour Organization and ratified by the Kingdom of Cambodia on Feb 24, 1969.</p> <p>This article applies to everyone, including domestic or household servants and all workers in agricultural enterprises or businesses.</p> <p>1997 Labour Code, art. 16: Hiring for work to pay off debts is forbidden.</p> |          | <p>Labour Code, Chapter XI Trade Union Freedom and Workers Arts. 266 – 299 in relation to Art 1: Domestic or household servants are entitled to apply the provisions on freedom of union under this law.</p> <p>Labour Code, art. 271: It provides workers with the right to form professional organizations of their own choosing without prior authorization, and all workers are free to join the trade union of their choice.</p> <p>Labour Code: Membership in trade unions or employee associations is not compulsory.</p> | <p>Constitution, art. 31: The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the UN Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s rights and children’s rights.</p> |
| <b>China</b>      | <p>Constitution, art. 33: All citizens are equal before the law.</p> <p>Constitution: Women shall enjoy equal rights with men</p> |                  | <p>1995 Labour Law: Prohibits use of violence, threat, or illegal deprivation of freedom to force labour .</p>  |          | <p>Constitution: Freedom of Assembly and Association; however formation of autonomous or independent labour or trade unions by the workforce is prohibited.</p>  |   |

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|                      | in all spheres of life, in political, economic, cultural, social and family life.  |  |  |  | <p>1995 Labour Law: Labourers shall have the right to participate in and organize trade unions in accordance with the law.</p> <p>1995 Labour Law: Labourers shall take part in democratic management through workers congress, workers representative assembly, or any other forms in accordance with the law.</p>  |   |
| <b>Hong Kong SAR</b> | Hong Kong Bill of Rights Ordinance: Hong Kong residents are equal before the law. Both men and women shall have an equal right to the enjoyment of all civil and political rights. |  | Hong Kong Bill of Rights Ordinance- prohibits slavery or servitude and all forms and forced or compulsory labour | Hong Kong Bill of Rights Ordinance- freedom or liberty of movement and freedom of association  | <p>Hong Kong Bill of Rights Ordinance- Labourers shall have the right to participate in and organize trade unions in accordance with the law.</p> <p>Hong Kong Bill of Rights Ordinance-Labourers shall take part in democratic management through workers congress, workers representative assembly, or any other forms in accordance with the law.</p> <p>Chap. 11, 1968 Employment Ordinance- Protection Against Anti-Union Discrimination – membership and participation in trade unions</p> | Art. 20, Hong Kong Bill of Rights Ordinance- right of a child to measures of protection   |
| <b>Fiji</b>          | Constitution, sec. 38(1); Education Act: Shall have the right against discrimination on the basis of race, sex, place of origin, political opinion, color, religion or creed.      |  | Constitution, sec. 24(1): Shall have the right against Forced or Compulsory Labour                               | Constitution, sec. 34(3): Shall have the right to Freedom of Movement within the country, Foreign Travel, Emigration and Repatriation. | <p>Constitution, sec. 33 (10): Shall have the right to form and join unions, elect their own representatives, publicize their views on labour matters, and determine their own policies.</p> <p>Constitution, sec. 33(2): Shall have the right to Organize and Bargain Collectively</p> <p>Employment Act: Union</p>   | <p>Constitution, secs. 22-23: Shall have the right to life, liberty, security and protection of the law.</p> <p>Constitution, sec. 26 (1): Shall have the right to protection of property and privacy</p> |

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|                |  |   |   |  | Agreement's with Employers generally only cover workers aged 17 or older  |  |
| <b>India</b>   |  |   | <p>Constitution of India, 1949 , art. 23: Prohibition of traffic in human beings and forced labour – (1) Traffic in human beings and <i>begar</i> and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.</p> <p>Art. 39: Certain principles of policy to be followed by the State – The state shall, in particular, direct its policy securing – (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.</p> <p>The Bonded Labour System Act of 1976: “Frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded labourers by the state.”</p> <p>The Children (Pledging of Labour) Act, 1929: Any agreement to pledge the labour of children is void</p> | Constitution, Labour Laws: Right to Mobility |   | <p>Constitution of India, 1949 art. 39: Certain principles of policy to be followed by the State – The state shall, in particular, direct its policy securing – (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.</p> |
| <b>Lao PDR</b> |  | Constitution, art. 29: The right of Lao citizens in their bodies and houses are inviolable. | 1990 Labour Law, sec. 4: Prohibition of forced labour. Employers shall not use forced labour.   |  | Constitution, art.31: Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations, which | Constitution, art. 20: The State pays attention to pursuing the policy toward mothers and children.  |

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|                 |   |  |   |   | are not contrary to the law.<br><br>Labour Laws, sec 3:<br>Workers and employers shall have the right to organize and to belong to mass and social organizations that have been formed lawfully.                                  |   |
| <b>Mongolia</b> | Constitution: Shall have the right against discrimination, or the establishment of limitations or privileges based on nationality, race, sex, social origin or status, wealth, religion or ideology.<br><br>Labour Laws, art. 6:<br>Male and female employees performing the same work shall receive the same compensation. |  |   | Constitution, art. 16, sec. 4;<br>Labour Laws, art. 12:<br>Shall have freedom of movement within the country as well as the right to travel abroad and return without restriction | Constitution, art. 16, sec. 4;<br>Labour Laws, art. 5: Shall have the right to assemble with other employees for the purpose of protecting his rights and legal interest through a representative or representative organization. |   |
| <b>Nepal</b>    | The Constitution of the Kingdom of Nepal, 1990, art. 11: Guarantees equality before the law to all citizens and equal protection of the law to all persons. It further lays down that the aforesaid provisions will not prevent the state from making special provisions for the protection and advancement of children.    | The Children’s Act of 1992, sec. 18: Prohibits engaging a child in work likely to be harmful or hazardous to the child’s health and life.<br><br>Sec. 25: Prohibits a guardian from engaging a child in work requiring more labour than his physical capacity or which “may hurt his religious or cultural usage.” | The Constitution of the Kingdom of Nepal, 1990, art. 20 – Guarantees the right against exploitation. Declares that traffic in human beings, slavery, serfdom, or forced labour in any form is prohibited.<br><br>Nepal Children’s Act (2048) of 1992, sec. 17(3): Mandates that a child who shall not be made to be engaged to it, nor work against his will. |   |   | Constitution directives to ensure the rights and welfare of children and their free basic education, thereby prohibiting all kinds of exploitation of children.<br><br>The Constitution of the Kingdom of Nepal, 1990, art. 26(8): Places an obligation on the state to make necessary arrangements to safeguard the rights and interest of children and to ensure that they are not exploited. |
| <b>Pakistan</b> |   | Constitution of Pakistan, 1973, art. 11(3): No child below the age of 14 years shall be engaged in any factory or mine or any hazardous employment.  | Constitution: Prohibits forced labour.<br><br>Constitution: Bonded debt is illegal.<br><br>Bonded Labour System (Abolition) Act of 1992: Outlaws the practice of bonded labour, cancels all existing bonded debts, and forbids lawsuits for the recovery of bonded debts.   |   |   |   |

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| <b>Philippines</b> | <p>Labor Code, art. 140: Prohibits an employer from discriminating against any person in respect to terms and conditions of employment on account of his age.</p>  | <p>Constitution, art. XIII, sec. 3: Entitlement to humane conditions of work, and a living wage.</p> <p>Civil Code, art. 1694: Mandates employers of householders to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper.</p> <p>Labor Code, art. 147: Mandates employers of householders to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper</p> | <p>Constitution, art. III, sec. 18(2): No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.</p> | <p>Constitution, art. III, sec. 6: Guarantees the right of all persons to liberty of abode and of changing the same, as well as, the right to travel except in the interest of national security, public safety, or public health, as may be provided by law</p> | <p>Constitution, art. XIII, sec. 3: Right to self-organization, collective bargaining negotiations, and peaceful concerted activities, including the right to strike in accordance with law; entitlement to security of tenure, humane conditions of work, and a living wage; right to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.</p> <p>P.D. 603, art. 111: Guarantees working children the same freedom as adults to join the collective bargaining union of their own choosing. Neither management nor any collective bargaining union shall threaten or coerce working children to join, continue or withdraw as members of such union</p> | <p>Constitution, art. II, sec. 3(2): Guarantees the right of children to assistance and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.</p> <p>P.D.603 Child and Youth Welfare Code, art. 3(8): The right of every child, to protection against exploitation, improper influences, hazards and other conditions or circumstances prejudicial to the child's physical, mental, emotional, social and moral development</p> |
| <b>Sri Lanka</b>   | <p>Constitution, art. 12(2): Non-discrimination on grounds of race, religion, language, caste, sex, political opinion, place of birth.</p> <p>Constitution, art. 12(1); art 12 (4): Right to equality and equal protection of the law, which includes the possibility of special provisions for the advancement of children.</p> | <p>Constitution, art. 11: The right against torture, inhuman and degrading treatment or punishment.</p>  |  | <p>Constitution, art. 14(h); art. 15(6): Freedom of movement subject to restrictions prescribed by law in the interest of the national economy.</p>  | <p>Constitution Art 14(1)(a)(b) and (c); Art. 15(2)(3)and (4): Freedom of speech and expression, peaceful assembly and association, subject to restrictions prescribed by law in the interest of racial and religious harmony</p> <p>Trade Union Ordinance— restricts children under the age of 16 years from joining a union.</p>   | <p>Constitution, art. 27(13): The State shall promote with special care the interest of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.</p>   |
| <b>Thailand</b>    | <p>Constitution, art. 30: Equality before the law; equal protection under the law; equal rights between men and women; prohibition against unjust discrimination on the grounds of race, sex, age, personal status and</p>   | <p>Constitution, art. 53: Right of children, youth and family members to be protected by the State v. violence and unfair treatment; right of children and youth with no guardian to care and education from the State.</p>  | <p>Constitution, art. 51: Right v. forced labour save in extraordinary cases (war, calamity, etc.).</p>  | <p>Constitution, Art. 26; 28: Regard to human dignity, rights and liberties.</p>   | <p>Constitution, Art. 45: Liberty to unite and form an association, a union, league, co-operative, farmer group, private organisation or any other group</p>   | <p>Constitution, Art. 80: Protection and development of children and youth.</p>  |

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|                | <p>economic or social standing, among others</p> <p>Labour Protection Act, sec. 53: Equal pay for equal work for male and female employees</p>  |   |  |   |  |  |
| <b>Vietnam</b> | <p>Constitution: All citizens are equal before the law; Constitution, art. 63,: Male and female citizens have equal rights in all fields: political, economic, cultural, social, and family. Men and women shall receive equal pay for equal work.</p> <p>Labour Code: Prohibits gender discrimination.</p> | <p>Constitution: Provides for the forbiddance of the use of all forms of harassment and coercion, torture, violation of honor and dignity against a citizen.</p> <p>Labour Code, art. 5: Every person has a right to freely choose an employment and occupation. Maltreatment of workers and the use of forced labour are prohibited.</p> | Constitution, art. 5: Forced labour is prohibited. | Constitution: Provides for the enjoyment of the freedom of movement and of residence within the country; freely travel abroad and return for home in accordance with law. |  |  |

**ANNEX 16: CONDITIONS OF WORK MATRIX**

| Country           | Hours of Work   | Wages  | Minimum Age  | Rest Days (including holidays and other benefits)   | Termination / Illegal Dismissal / Duration  | Free Accommodations / Others | Humane Treatment / Safe Working Conditions / Sexual Harassment / Abuses |
|-------------------|---|--|--|---|---|------------------------------|---|
| <b>Bangladesh</b> |   |  |  |   |   |                              |   |
| <b>Cambodia</b>   |   |  |  |   |   |                              |   |
| <b>China</b>      |   |  |  |   |   |                              |   |
| <b>Hong Kong</b>  | <p>Employment of Children Regulations: The hours of work for juveniles between 15 to 17 years of age is limited to not more than 8 hours per day and 48 hours per week which must be between 6 am to 11 pm. Overtime work is prohibited for all workers under the age of 18 in industrial establishments. Only 16 to 17 year old males are allowed to work in dangerous trades.</p> | <p>Employment Ordinance, chapter 3: Wages shall not include the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer, although these items can be validly deducted from said wages. Employer should pay wages soon as practicable but in any case not later than seven days after the end of the wage period</p> | <p>Employment of Children Regulations: Children under the age of 13 are prohibited from taking up employment.</p> <p>Employment of Children Regulations: Children aged 13 and 14 may be employed in non-industrial establishments, subject to the condition that they attend full-time schooling if they have not yet completed Form III of secondary education, and to other conditions which aim at protecting their safety, health and welfare.</p> | <p>Employment Ordinance, chapter 4: Rest days - not less than one rest day in every period of seven days.</p> <p>Employment Ordinance, chapter 4: Holidays with Pay - If employee has been employed under a continuous contract for not less than three months</p> <p>Employment Ordinance, chapter 4: Paid Annual Leave - For employees with continuous contract for every 12 months; entitlement increases progressively from seven days to a maximum of 14 days according to length of service.</p> <p>Employment Ordinance, chapter 5: Sickness Allowance - Sum equivalent to four-fifths of the normal wages which the employee would have earned if he had worked on the sickness days.</p> <p>Employment Ordinance, chapter 6 - Maternity Leave Pay - equivalent to four-fifths of the employee's normal wages</p> | <p>Employment Ordinance, chapter 9: Employment Protection – Right against illegal or unjustified dismissal.</p> <p>Employment Ordinance, chapter 8: Termination of Employment Contract - Right to termination by due notice or wages in lieu of notice.</p> |                              |   |

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|             |  |   |   | <p>to be paid for a period of 10 weeks (length of leave); wage period should be a period of not less than 28 days and not more than 31 days immediately preceding or expiring on the commencement of her maternity leave.</p> <p>Employment Ordinance, chapter 10 - Severance Payment – where employee is laid off by reason of redundancy entitled to not less than 24 months under a continuous contract.</p> <p>Employment Ordinance, chapter 10: Long Service Payment - Employee entitled to not less than 5 years under a continuous contract where employee is dismissed not due to his serious misconduct, not by reason of redundancy, contract expired without being renewed, employee dies, employee resigns on ground of ill health, and employee, aged 65 or above, resigns on ground of old age.</p> |  |  |  |
| <b>Fiji</b> | Employment Act: child shall not be employed or permitted to be employed for more than six hours in a day nor for more than two hours without a period of leisure of not less than thirty minutes, and if such child is attending school the total time | Employment Act: A child shall be employed only; a) upon a daily wage and on a day to day basis; and b) upon the terms that he returns each night to the place of residence of his parent or guardian. | Employment Act: No child under the age of twelve years shall be employed in any capacity whatsoever: Provided that the provisions of this section shall not apply to any such child employed in light work suitable to his capacity |   |  |  | <p>Employment Act: No child or young person shall be employed in any employment which in the opinion of the proper authority is injurious to health, dangerous, or is otherwise unsuitable.</p> <p>Making the act of ill</p> |

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|                 | <p>spent in employment and at school shall not exceed seven hours in a day.</p> <p>No young person shall be employed or permitted to be employed for more than five hours without a period of leisure of not less than thirty minutes or for more than eight hours in a day, and if the young person is attending school the total time spent by him in employment and at school shall not exceed nine hours a day.</p> |  | <p>in an agricultural undertaking which is owned and operated by the family of which he is a- member.</p>  |   |  |  | <p>treatment, neglect or abandonment of a child, a child being under 17 years, a criminal offense against children.</p> <p>Sexual exploitations of females generally and of girls and minors are classified as offences against morality.</p> |
| <b>India</b>    |   |  | <p>Child Labor Act of 1986: Pohibits the employment of children below 14 years in specified hazardous occupations; regulates the employment of children in non-hazardous occupations; provides penalties for violations of the Act.</p> <p>The Children (Pledging of Labour) Act, 1929: Any agreement to pledge the labour of children is void</p> |   |  |  | <p>Constitution , art. 39 (e): “that the health and strength of workers... and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”</p>   |
| <b>Lao PDR</b>  |   |  | <p>Labour Law, sec 37: An employer may employ young workers between 15 &amp; 18 years of age provided that they do not work for more than 6hrs/day or 36hrs/wk.</p>  |   |  |  |   |
| <b>Mongolia</b> | <p>Labour Law and Constitution, Human Rights and Freedom, chap. 2, art. 16, sec. 4 – The hours of work per</p>  |  | <p>Labour Law, art. 5; Constitution, Human Rights and Freedom, Chap. 2, art. 16, sec. 4: Right to receive</p>  | <p>Labour Law, art. 5; Constitution, Human Rights and Freedom, chap. 2, art. 16, sec. 4: Right to take a vacation</p> |  |  | <p>Labour Law, arts. 86: A minor shall not be employed in a job which will adversely affect his intellectual development</p>  |

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|              | <p>1week of employees 14 to 15 years of age shall not exceed 30 hours, and for employees 16 to 17 years of age shall not exceed 36 hours</p> <p>A minor employee may not be required to perform overtime work or to work on public holidays or weekends</p>   |  | <p>compensation for his work</p> <p>Compensation of an employee under the age of 18 may be calculated on a piecework basis or at an hourly rate, and reduced hours shall be considered hours work</p> | <p>as provided in applicable internal regulations</p>   |  | <p>or health.</p> <p>Labour Law, art. 86: A minor employee may not be required to perform work under abnormal working conditions</p> <p>Labour Law, art. 87: A minor employee may not be required to lift or carry loads that exceed weight limitations established by the Member of the Government responsible for labor matters</p> <p>Labour Law, art. 5; Constitution, Human Rights and Freedom, chap. 2, art. 16, sec. 4: Right to be provided with working conditions that comply with safety and sanitation requirements</p> |
| <b>Nepal</b> | <p>Labour Act of 1992, sec.5: Prohibits employment of children in any establishment, especially between 6 pm – 6 am.</p> <p>Children’s Act of 1992, sec. 47: Children are prohibited from working during nights (6 pm – 6 am).</p> <p>Labour Rules of 1993, sec. 3; National Children’s Act Sec. 16: No minor in the age group of 14-16 shall be employed in any establishment for more than six hours a day and 36 hours a week.</p> |  | <p>Labour Act of 1992: Children under 16 years of age are prohibited from working.</p> <p>Prohibition of employment by the staff and employees of KMC of children below 14 as DCL.</p>                | <p>Labour Act of 1992: Children are allowed to work for 6 hours a day, with a rest day of one day per week.</p> |  | <p>National Children’s Act of 1992, sec. 18: Provides that no child shall be engaged in work that is likely to be harmful to the child’s health or to be hazardous to the Child’s life.</p>   |

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| <b>Pakistan</b>    | Employment of Children' Act of 1991, sec. 7:- No child or adolescent shall be required or permitted to work in any establishments in excess of such number of hours as may be prescribed for such establishment or class of establishments. The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has an interval of at least one hour for rest. The period of work on each day shall be so arranged that inclusive of the interval for rest, it shall not exceed seven hours, including the time spent in waiting for work on any day. No child shall be permitted or required to work between 7:00 pm to 8:00 am. No child shall be required or permitted to work over-time. No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment. |   | Employment of Children's Act, sec. 3: Children under 14 years of age are prohibited from working  | Employment of Children's Act of 1991, sec. 8: Every child employed in an establishment shall be allowed in each week a holiday of one whole day |  |  |   |
| <b>Philippines</b> | Civil Code, art. 1695: Househelpers shall not be required to work more than 10 hours a day and be allowed 4 days vacation each month with pay.  | Labor Code, Art. 143, as amended by R.A.7655, Minimum Wage for Househelpers Act of 1993: Prescribes minimum wage rates for househelpers in different cites/municipalities and requires employers to review the employment | R.A.7610, Special Protection of Children Act as amended by R.A. 7658: Prohibits the employment of all children below 15 years of age except in two instances, that is, 1) employment under the sole responsibility of |   | Civil Code, art. 1697: If period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly | Civil Code, arts. 1689 and 1690: The househelper's compensation shall be paid to the househelper in addition to suitable and adequate lodging, food and medical attendance which the employer is required to | Civil Code, art. 1694: Mandates employers of househelpers to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper. |

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|  |  | <p>contracts of their householders every 3 years with the end in view of improving the terms and conditions thereof.</p> <p>Omnibus Rules<br/>Implementing the Labor Code, book III, rule XIII, sec. 9: Wages shall be paid directly to the househelper at least once a month and no deductions therefrom shall be made by the employer unless authorized by the househelper or by existing laws.</p> <p>The Minimum Wage for Householders Act of 1993: Requires employers to review the employment contracts of their householders every 3 years with the end in view of improving the terms and conditions thereof.</p> | <p>parents/guardians in exclusive family undertakings, and 2) essential employment in public entertainment or information.</p> |  | <p>dismissed, he or she shall be paid the compensation already earned plus that for 15 days by way of indemnity. If the househelper leaves without justifiable cause, he or she shall forfeit any unpaid salary due him or her not exceeding 15 days</p> <p>Civil Code, art. 1692: No contract for household service shall last for more than two years. However, such contract may be renewed from year to year.</p> <p>Labor Code, art. 149: If period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for 15 days by way of indemnity. If the househelper leaves without justifiable cause, he or she shall forfeit any unpaid salary due him or her not exceeding 15 days.</p> <p>Labor Code, art. 150 : If duration of household service is not fixed, a termination notice must be given 5 days before</p> | <p>furnish the househelper free of charge.</p> <p>Civil Code, art. 1693: The househelper's clothes shall be subject to stipulation which at the very least enable the househelper to afford and acquire suitable clothing.</p> <p>Labor Code, Arts. 144 and 148: Under both the Labor Code and Civil Code, the househelper's compensation shall be paid to the househelper in addition to suitable and adequate lodging, food and medical attendance which the employer is required to furnish the househelper free of charge.</p> | <p>Labor Code, art. 147: Mandates employers of householders to treat the latter in a just and humane manner and prohibits employers from inflicting physical violence upon the househelper.</p> <p>Anti-Sexual Harassment Act of 1995, R.A. 7877, sec. 3 - punishes an employer or any person who, having authority, influence or moral ascendancy over another in a work environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted</p> <p>The Revised Penal Code punishes with fine and imprisonment .the crimes of slavery, debt bondage, illegal detention and all other forms of abuses such as rape, acts of lasciviousness, seduction, mutilation, serious, less serious and slight physical injuries, maltreatment (committed when a person shall ill-treat another by deed without causing any physical injuries)</p> <p>R.A. 7610, sec. 10 : Punishes any other acts of abuse, cruelty, exploitation and other</p> |
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|                  |  |   |   |   | <p>the intended termination of the service.</p> <p>Labor Code, art. 151 - The househelper has the right to secure an employment certification from the employer upon the severance of the household service relation, specifying the nature and duration of the service and the househelper's efficiency and conduct as househelper.</p> |  | <p>conditions prejudicial to the child's development.</p>  |
| <b>Sri Lanka</b> |  |   | <p>Employment of Women, Young Persons and Children Act of 1956 (EWYPCA), sec. 34: A child as a person who is under the age of 14; young person is from 14 but is less than 18.</p> <p>Gazette Extraordinary No. 1116/5 of January 26, 2000: No child shall be employed in any occupation.</p> | <p>Gazette Extraordinary No. 1116/5 of January 26, 2000: Young persons can be employed in domestic work, provided that: (a) he is entitled to 3 hours of leisure between 6 am to 8 pm, and to at least 7 consecutive days of leisure in every period of 4 months.</p> |  |  | <p>Cruelty to children-- 308A (1): Whoever having the custody, charge or care of any person under 18 years of age, willfully assaults, ill-treats, neglects or abandons such persons or causes or procures such person to be assaulted, ill-treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, commits the offense of cruelty to children.</p> <p>360B (1): Sexual exploitation of children—</p> <p>360C: Trafficking as engaging “in the act of buying or selling or bartering of any person for money or for any other consideration”.</p> |
| <b>Thailand</b>  |  | Labour Protection Act, section 51: Payment of |   | Labour Protection Act sec. 30: Annual holiday   |  |  | The Penal Code Amendment Act (No.  |

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|                |   | <p>wages only to the child employee; No deduction of wage in payment for advances made to parents</p> <p>Section 54 – Payment of wages in Thai Baht unless employee agrees to be paid in foreign currency.</p> <p>Section 55: Pay wages at place of work of the employee, unless employee consents to be paid elsewhere</p> <p>Section 70: Pay wages on a monthly, daily or hourly basis and not less than once a month unless otherwise agreed upon by employee</p> <p>Section 76: No deductions from wages as a general rule. (The exceptions provided do not seem to apply to domestic work)</p> <p>Section 77: Where employee consent is required in secs. 54,55 and 76, written consent is prescribed.</p> |  | <p>of not less than six working days for employee who has worked continuously for one full year, to be fixed in advance by the employer or set out in an agreement made between the employer and the employee.</p> <p>Sec.56 : Employer shall pay employee equivalent to wages of a working day for annual holidays.</p> <p>Sec. 67: Where an employer terminates employee who has not committed any offence under Section 119, the employer shall pay basic pay in respect of his annual vacation for the year in which employment was terminated, in proportion to the number of days of annual vacation to which the employee is entitled, including accumulated annual vacation pursuant to Section 30.</p> |  | <p>14) of 1997: Protects children under 18 against sexual offences, sexual harassment, sale of children for begging, forced labour and labour exploitation; includes offenders w/in the country or abroad.</p> <p>Cruelty Provisions in the Penal Code Section 398 punishes a person who commits acts of cruelty on a child below 15 and who is a dependant.</p> <p>Sections 293, 295, 297, 303 punish other acts of child cruelty.</p> <p>Sec. 290: If anyone tortures a child resulting in death – liable to 3 to 20 years' imprisonment</p> <p>Sec. 292: If anyone commits an act of cruelty or similar acts on a child who is dependent upon him for a living or otherwise until the child is driven to attempt suicide, regardless of whether the suicide succeeds or not.</p> |
| <b>Vietnam</b> | <p>Remuneration, hours of work, rest and allowances of household helpers are determined by contract or agreement, which may be oral or written.</p> <p>Labour Laws: The hours of work of juveniles or children shall not exceed 7 hours per day or 42</p> |   | <p>Labour Law provides for the minimum age for workers which is 15 years of age. Children below 15 are allowed to work in certain categories determined by the Ministry of Labor, Invalids, and Social Affairs. Trainees and apprentices must be at least 13 years of age.</p> |   | <p>They shall also pay for the travel expenses of the household helper on their return home except when the helper voluntarily leaves before the expiration of the contract.</p> | <p>Employers are mandated by the Labour Code to respect the dignity of their household helpers and to provide for their care and assistance in case of accident and sickness.</p> <p>Labour Law provides for favorable conditions in the workplace for</p>  |

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|  | hours in a week. Nighttime and overtime work for children are permitted only in certain categories of work determined by the MOLISA. |  | Children below 15 years of age who are workers or trainees must have the agreement and be under the supervision of their parents or guardian. |  |  |  | juvenile workers is mandated by law. The law prohibits the hiring of children in hard and dangerous work or work exposed to harmful substances. |
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**ANNEX 17: WELFARE, SOCIAL AND OTHER RELEVANT RIGHTS MATRIX**

| <b>County</b>        | <b>Education</b>  | <b>Registration (of Births)</b>   | <b>Social Security</b>  | <b>Medical and Health Benefits</b>  |
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| <b>Bangladesh</b>    | Bangladesh Primary Education Act:<br>Provides for penalty in case the parents do not send the child to school   |   |   | Labour Laws, arts. 247 – 257: Set out the rules relating to accidents at work. The employer is responsible for having a clean and safe work place. A victim/beneficiaries are entitled to compensation from the employer where there is a work-related accident, whether temporary or permanent<br><br>Labour Laws, art. 249: Managers of enterprises are liable for all work-related accidents stipulated in the Article above regardless of the personal status of each worker. The same liability applies to: property owners, only for their domestic workers |
| <b>Cambodia</b>      |   |   |   |   |
| <b>China</b>         | Compulsory Education Law, art. 18: "The State shall implement a nine-year compulsory education system."   |   | 1995 Labour Law: Social insurance is mandated in cases of retirement, work-related injuries, becoming jobless, and giving birth |   |
| <b>Hong Kong SAR</b> |   | Hong Kong Bill of Rights Ordinance, art. 20: right to be registered and to be given a name. |   | Employees' Compensation Ordinance provides for the liability of employer for compensation if employee sustains injury or death by accident arising out of and in the course of his/her employment and for incapacity arising from an occupational disease.  |
| <b>Fiji</b>          | Education Act: Provides free education for the first eight years, although education is not yet compulsory.   |   |   | Workmen's Compensation Act: Existence of Workmen's Compensation Act and An Accident Compensation Plan.  |
| <b>Lao PDR</b>       | Constitution, art. 19: "Primary education should be compulsory. The State authorizes the establishment of private schools operating in accordance with the State curriculum."<br><br>Constitution, art. 25: Lao citizens have the right to receive education. |   | Labour Laws, sec. 48: Social Security fund.   | Constitution, art. 26 - Lao citizens have the right to work and engage in occupations, which are not against the law. Working people have the right to rest, to receive medical treatment in time of ailment, to receive assistance in case of incapacity and disability, in old age, and other cases as prescribed by law.<br><br>Labour Laws, sec. 50: Where it is established that workers have contracted an occupational disease at a specific workplace, their employer shall be responsible for their  |

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|                    |   |  |  | <p>medical treatment in accordance with the regulations in force.</p> <p>Labour Laws, secs. 51-53: Occupational Injury; Assistance to victims of an occupational injury; Compensation to victims of occupational injury or disease</p> |
| <b>Mongolia</b>    | Education Act: Provides children of both sexes with free public education until the age of 16.  |  | Constitution, art. 16, sec. 6.; Labour Laws, art. 5: Shall have the right to receive a pension, social insurance and other benefits.   |  |
| <b>Nepal</b>       | Constitution-directives to ensure the rights and welfare of children and their free basic education, thereby prohibiting all kinds of exploitation of children.   |  |  | Labour Rules of 1993, Sec. 15-16: Provides for compensation for workers in case of work-related injuries.  |
| <b>Pakistan</b>    |   |  |  |  |
| <b>Philippines</b> | <p>Constitution, art XIV, sec. 2, - elementary education is compulsory for all children of school age without limiting the natural right of parents to rear their children; mandates the State to establish and maintain a system of free public education in the elementary and high school levels.</p> <p>Civil Code, art. 1691: Requires employers of householders under the age of 18 years to give the latter an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary</p> <p>P.D.603 Child and Youth Welfare Code, art. 3(8): The right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen;</p> <p>P.D. 603, art. 110: Requires employers of householders under the age of 18 years to give the latter an opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.</p> <p>Omnibus Rules Implementing Labor Code: Requires employers of householders under the age of 18 years to give the latter an</p> | Philippine Civil Registry Law provides for mandatory registration of the birth of all persons. | <p>Labor Code, art. 143, as amended by Republic Act No. 7655, Minimum Wage for Householders Act of 1993 - mandates the compulsory coverage by the Social Security System of householders who are receiving at least Php1,000.00 per month.</p> <p>Implementing Guidelines on the Social Security Coverage of Householders, art. V: A covered househelper shall be entitled to the same benefits, loans and other privileges that are made available to a regular covered employee under the Social Security System, the Medicare/Health Insurance, and the Employees Compensation laws</p> <p>Circular No. 21-V, Implementing Guidelines on the Social Security Coverage of Householders, art. II, sec. 1: Coverage in the Social Security System shall be compulsory upon all householders who are 60 years of age and below, and who are receiving a monthly cash compensation of at least One thousand pesos (Php1,000.00).</p> <p>Medicare Act: Both the employer and househelper contribute their share in the monthly remittances to the Social Security System. All employers who are compulsorily covered under the Social Security Law are required to contribute and collect contributions to the Health Insurance Fund.</p> |  |

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|                  | <p>opportunity for at least elementary education. The cost of such education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.</p> <p>P.D. 603, art . 71: Requires all parents to enroll their children in schools to complete, at least an elementary education.</p> <p>P.D. 603, art. 59: Attaches criminal liability to any parent who fails or refuses, without justifiable grounds, to enroll the child in accordance with the compulsory education requirement.</p> <p>P.D. 603, art. 59: A parent who causes or permits the truancy of the child from the school where the child is enrolled is also criminally liable under such law.</p> <p>P.D. 603, art. 72: Directs the State bodies to extend all necessary assistance possible to parents, specially indigent ones or those who need the services of children at home, to enable the children to acquire at least an elementary education. Such assistance may be in the form of special school programmes which may not require continuous attendance in school, or aid in the form of necessary school supplies, school lunch, or whatever constitutes a bar to a child's attendance in school or access to elementary education.</p> <p>R.A. 7610, art. VIII, sec. 13: Mandates the Department of Education to promulgate a course design under its non-formal education programme aimed at promoting the intellectual, moral and vocational efficiency of working children who have not undergone or finished elementary or secondary education. Such course design shall integrate the learning process deemed most effective under given circumstances.</p> |  |   |  |
| <b>Sri Lanka</b> | The Education Ordinance: Compulsory Attendance of Children at School for children not more than 14 years of age.  |  |   |  |
| <b>Thailand</b>  | Constitution, art. 43: Equal right to receive education for not less than twelve years which shall be provided by the State   |  | Constitution, art. 86: Promotion by the State of people of working age to obtain employment; protection of labour, especially |  |

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|                | <p>thoroughly, up to the quality, and without charge.</p> <p>Constitution, art. 53: Right of children and youth with no guardian to care and education from the State.</p> <p>The Vocational Training Promotion Act (1994): Skills training and upgrade to make children less likely to end up in domestic work.</p> |  | <p>child and woman labour, and provision for a system of labour relations, social security and fair wages.</p>  |  |
| <b>Vietnam</b> |  |  | <p>Constitution: Provides for the protection of labour through the establishment by the State of working times, wage scales, regimes of rest and social insurance for State employees and wage-earners.</p> | <p>Labour Code: Employers are mandated by the Labour Code to respect the dignity of their household helpers and to provide for their care and assistance in case of accident and sickness.</p> |

**ANNEX 18: ENFORCEMENT MECHANISMS MATRIX**

| Country           | Inspection/ Monitoring  | Regulation as Worker<br>(Registration/ Work Permit/<br>Employment Contract)  | Redress<br>- Labour  | Redress<br>– Civil/ Custody/ Psycho-social/<br>Rehabilitation        | Redress<br>- Criminal/ Courts   |
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| <b>Bangladesh</b> | <p>The Ministry of Labour has fewer than 110 inspectors to monitor 180,000 registered factories and establishments. Outside of the export garment sector, there is no child labour law enforcement. Most child workers are employed in agriculture and other informal sectors where no government oversight occurs.</p> <p>Essential Services Ordinance and the Employment of Labour (Standing Orders) Act, Employment of Children Act and Children (Pledging of Labour) Act are enforced and monitored by the Ministry of Labour</p> <p>National Government in coordination with NGOs and International Organizations implement the National Program of Action on Child Labour</p> |  |  |  | <p>Women and Children Repression Act, 1996.</p> <p>Penalties are provided for violations of Labour laws, Employment of Children Act, and Children (Pledging of Labour) Act.</p> <p>Penalties are provided for violation of trafficking laws (e.g. women and children trafficked for bonded labour or domestic Labour)</p> <p>Bangladesh Primary Education Act: Provides for penalty in case the parents do not send the child to school</p> |
| <b>Cambodia</b>   | <p>Domestic workers are excluded from the scope of the 1997 Labour Code, including provisions on Inspection and Working Conditions for Children and Women.</p> <p>Labour laws are implemented and monitored by the Ministry in Charge of Labour</p> <p>1996 Law on Suppression of Kidnapping, Trafficking and Exploitation of Human Beings is implemented and monitored by the Ministry of Social Affairs</p>   | <p>1997 Labour Code excludes domestic helpers from its prohibition on employment of minors, requirements for keeping of registers, and labour contracts.</p> <p>Domestic workers can only apply the provisions on freedom of union under the Labour Code, unless other provisions clearly state their applicability to domestic workers.</p> | <p>Labour Code, arts 247 – 257 set out the rules relating to accidents at work. The employer is responsible for having a clean and safe work place. Victims/beneficiaries are entitled to compensation from the employer where there is a work-related accident, whether temporary (Art 252) or permanent (Art 253).</p> <p>Art 249: Managers of enterprises are liable for all work-related accidents stipulated in the Article above regardless of the personal status of each worker.</p> <p>The same liability applies to:</p> <ul style="list-style-type: none"> <li>- property owners, only for their <b>domestic workers</b></li> </ul> | <p>Recovery and reintegration assistance by Social Action staff.</p> | <p>Labour Code, Art. 16: Hiring for work to pay off debts is forbidden.</p> <p>Art. 359: Violation of Labour Code provisions is punishable either by fine or imprisonment or both.</p> <p>Art. 389: Pending the creation of Labour Courts, disputes regarding the application of the Labour Code shall be referred to common courts.</p>  |

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|                              |   |  | Art. 359. Violation of Labour Code provisions is punishable by fine or imprisonment. Violation of minimum age provisions is punishable by fine. Fines are imposed by the Labour inspector and the Labour Controller.  |  |  |
| <b>China</b>                 | Labour administrative departments under people's governments at or above the county level are in charge of supervising and inspecting employers in order to monitor whether they are in compliance with laws and regulations regarding labour. They have the power to stop any act in contravention of the labour law and order its correction. The powers of the labour supervisors and inspectors include investigations through visitation, inspection of labour spots and consultation on necessary data provided by employers. |  | <p>Violation of the Labour law warrants warnings, orders for corrections, fines and criminal responsibility in cases of forced labour or physical maltreatment.</p> <p>Revocation of business license in addition to warning and fine in serious cases of hiring juveniles in violation of the law; compensation in cases where there was harm done to the underage worker.</p> <p>The Government created a new State Administration for Work Safety to ensure occupational health and safety standards in the private sector.</p> <p>Social insurance is mandated in cases of retirement, work-related injuries, becoming jobless, and giving birth.</p> |  | <p>Law prohibits trafficking of women and children</p> <p>China had set up 2,763 courts to deal with cases involving juvenile delinquency and violation of children's rights as well as 17 provincial committees for the protection of children.</p> <p>The Ministry of Public Ministry together with All China Women's Confederation and other departments launched a campaign against trafficking in women and children.</p> |
| <b>China (Hong Kong SAR)</b> | <p>The Labour Department conducts regular workplace inspections and in the first ten months of the previous year, it has discovered 6 violations of the Employment of Children Regulations.</p> <p>The Labour Department enforces regulations and ordinances pertaining to and monitors compliance or violations of the law.</p>  |  | Violation of Employment of Children Regulations can lead to convictions and fines.  | The Social Welfare Department monitors and assists child abuse cases.  | <p>Violation of Employment of Children Regulations are punishable by convictions and fines.</p> <p>Child abuse is punishable.</p> <p>The government provides for legal aid to those who choose to pursue legal cases against employers in the field of trafficking. Immunity from prosecution is often made available to those who assist in the investigation and prosecution of traffickers.</p>                             |
| <b>Fiji</b>                  | Ministry of Labor and Industrial Relations monitors the status of Child Labor Employment and compliance with the requirement of Minimum Age for Employment.   |  |   | The Juvenile Act empowers the Department of Social Welfare and the police to detain, remove, search for or place in safety any child abused, neglected or ill treated. | The Juvenile Act makes the act of ill- treatment, neglect or abandonment of a child (under 17 years) a criminal offense against children.  |

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|                | <p>Administrative Monitoring and Protective Mechanisms on Children's Rights and Welfare are conducted by Coordinating Committees on Children (CCC), Children's Unit within the Ministry of Health, Child Abuse Unit within the Police Department.</p> <p>Government enforcement of Safety Standards is conducted by the Labor Ministry.</p> <p>Commission on Human Rights investigates allegations of human rights violations and discrimination in employment.</p> |  |   |   | <p>Sexual exploitations of females generally, and of girls and minors are classified as offences against morality.</p>   |
| <b>India</b>   | <p>National Authority for the Elimination of Child Labour is in charge of enforcement/ monitoring the situation of child labourers</p>  |  | <p>1986 Child Labour Act: Payment of compensation by the offending employer in contravention of the Child Labour Act (but excludes child domestic workers)</p> <p>Children (Pledging of Labour) Act, 1929: Any agreement to pledge the labour of children is void.</p> <p>There is a government order banning government employees from employing child domestic workers under pain of disciplinary action.</p> |   | <p>1986 Child Labour Act: Prohibition on employment of children below 14 years in specified hazardous undertakings does NOT include domestic work.</p>   |
| <b>Lao PDR</b> | <p>Child Labour Office in the Ministry of Labour and Social Welfare; and Ministries of Interior and Justice Labour Protection Division are in charge of enforcement and monitoring of laws on employment of persons under 18 years of age</p>   |  | <p>The Labour Law contains provisions on employment contract, social security, and medical benefits in case of work-related injury, compensation and assistance in case of work-related injury.</p> <p>Labour Code, chap. XIV, sec. 60, sanctions/ punishes any person or corporation that contravenes the provision of the Labour Act.</p>   | <p>1990 Family Law, art. 32(2): Courts shall revoke parental rights if parents abuse their parental authority or employ unethical methods towards their children.</p> | <p>Labour Code, chap. XIV, sec. 60 sanctions/ punishes any person or corporation that contravenes the provision of the Labour Act.</p> <p>1990 Penal Code contains provisions against the violation of children's rights.</p> <ul style="list-style-type: none"> <li>- Art 69 provides for penalties against individuals who mislead officials in sending people abroad or illegal immigration</li> <li>- Sec. 92 penalizes the trade and abduction of children for ransom or sale</li> <li>- Secs. 119-120 protect children against sexual abuse</li> </ul> |

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|                 |   |  |   |  | Ministry of Justice is implementing a pilot scheme aimed at setting up the appropriate access to resolving the problems children encounter when involved in criminal acts. The access aims at punishment without imprisoning, using training methods to conciliate criminal acts which do not severely impact on the nation  |
| <b>Mongolia</b> | <p>Ministry of Social Welfare and Labour, state labour inspectors monitor and enforce compliance with labour laws.</p> <p>National Commission on Human Rights monitors human rights abuses, initiate and review policy changes, and coordinate with Human Rights NGO's.</p> <p>Department for Women and Youth Issues, Ministry of Social Welfare and Labour coordinates policies and women's interest among ministries and NGO's.</p> | <p>Labour Code:<br/>Art. 86. A minor employee may be employed subject to the approval of the relevant medical authority after he has undergone a medical examination, and further biennium medical examination shall be required until he reaches 18 years of age.</p> <p>Art. 85. A person who reaches 15 years of age may conclude a contract of employment only if permitted by his parents or guardians.</p> <p>Labour Code; Constitution, Chapter 2, Art. 16, Sec. 18. A person who reaches 16 years of age has the right to conclude a contract of employment.</p> |   | <p>National Commission on Human Rights provides hotline services and shelters, and conducts training for police on how to deal with domestic violence cases.</p> <p>National Center Against Violence has efforts to prevent and to counter violence against women and child abuse.</p>   |  |
| <b>Nepal</b>    | <p>Ministry of Labour and Transport Management is in charge of monitoring employer-employee relationships in the workplace and of eliminating child labour.</p>   | <p>Registration in Ward Offices of respective Metropolitan Cities</p> <p>Children's Act of 1992 provides that an employer or organization employing a child shall furnish the Children Welfare Board with the child labourer's photograph and particularities. The approval of the Child Welfare Board and of the child's guardian or parents are needed before the child could work.</p> <p>The National Human Rights Commission, with NGOs, trade unions and the media are formulating a code of conduct for</p>   | <p>The Labour Rules of 1993 require medical benefits and compensation in case of work-related injuries .(Note: The provisions seem more applicable to commercial/industrial establishments)</p> <p>In labour courts, penalty imposed upon those violating the Child Labour Act are 3 months imprisonment and a fine of 50,000 rupees.</p> <p>Section 45 of the Labour Rules of 1993 established the Central Labour Advisory Board who shall be in charge of promotion and</p> | <p>Civil Code:<br/>- If the case is filed with the civil courts, the penalties imposed upon the employers are 1-week imprisonment and payment of a fine amounting to 75,000 rupees.</p> <p>Ministry of Labour and Transport Management and Ministry of Women, Children and Social Welfare prevent and rehabilitate DCLs with the increasing participation of non-government sectors.</p> | <p>Nepal Children's Act of 1992 prohibits child labour, work against child's will and child exploitation.</p> <p>The Child District Court, by virtue of the Children's Act, shall be responsible for every petition filed by any person regarding violations of the said Act.</p> <p>Foreign Employment Act and Human Trafficking Act protect against child labour, trafficking and sexual exploitation of a girl child.</p> <p>Since the Child Labour Act is fairly</p> |

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|                    |   | government employees for putting restriction in employing children below 14 years as a DCL   | improving the welfare of workers. It shall serve as mediator for resolving disputes between workers and employees, among others.  |   | new, some cases concerning DCLs are still filed with the District Administrator by virtue of Public Offense Act<br><br>Criminal Actions are filed for physical/sexual abuses inflicted upon DCLs by anyone, mostly by non-governmental organizations  |
| <b>Pakistan</b>    | Labour inspectors of Provincial Labour Welfare Departments enforce labour legislation and collect evidence of non-compliance.   | Employment of Children Act of 1991, sec. 9, provides that every owner of an establishment to which a child works shall send to the inspector a written notice containing particularities.  | Remedies through the Labour Courts are available. (Non-governmental organizations continue lobbying for a more effective procedure and mechanism to be used by the Labour courts, and not by the civil courts.)   | The government has encouraged the establishment of an independent child welfare foundation designed to rehabilitate child labourers and to oversee child labour-free certification programmes.<br><br>Rescue operations and recovery measures of child domestic workers are done by NGOs.   | The Constitution and the Employment of Children Act of 1991 prohibit forced labour and bonded labour. The Employment of Children Act prohibits employment of children in hazardous work areas, overtime work, more than one work, etc..<br><br>Abuses by employers may be filed with the high courts. (Note: The Bonded Labour Liberation Front has won 25,000 high-court cases against abusive and unscrupulous employers)   |
| <b>Philippines</b> | Labour Code, art. 128, gives the Secretary of Labour or his duly authorized representatives, including labour regulation officers visitatorial and enforcement power over all premises where work is being undertaken..<br><br>Department Order No. 4, sec. 5, also known as Hazardous Work and Activities to Persons Below 18 Years of Age, mandates labour standards enforcement officers to adopt the department order guidelines in their monitoring activities.<br><br>Administrative Order No. 100 by Department of Labour: child labour was made a priority for inspection.<br><br>Administrative Order No. 47 by the Department of Labor (year 1997) – directs all labour inspectors to | The Child and Youth Welfare Code, art. 108, directs employers of children to submit to the Department of Labour a report of all children employed by him/her. A separate report shall be made of all such children who are found to be handicapped after medical examination.<br><br>Labour Code, art. 152: The employer of a househelper may keep such records, as he may deem necessary to reflect the actual terms and conditions of employment of his househelper, which the latter shall authenticate by signature or thumb mark upon request of the employer.<br><br>Civil Code, art. 1692: No contract for household service shall last for more than two years. However, such contract may be renewed from | The local barangay is usually the first recourse of child domestic workers in distress. The Barangay Justice System (Village Court) provides a venue for mediation between the child domestic workers and their employers regarding terms and conditions of employment.<br><br>The Regional Director of the Department of Labour and Employment or any duly authorized hearing officers is empowered to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, owing to an employee or person employed in domestic or household service or househelper, provided that such complaint does not include a claim for reinstatement and that the aggregate money claim of the | R.A.7610, Special Protection of Children Act, Sec. 28, grants the Department of Social Welfare and Development (DWD), the power to take immediate protective custody over abused children.<br><br>The DSWD provides the children intake and medical evaluations, counselling, psychological services and other rehabilitative services to help them deal with probable trauma and emotional disturbance.<br><br>Under Section 8 of the Rules and Regulations in the Reporting and Investigation of Child Abuse Cases, the DSWD shall, not later than 48 hours from receipt of a report, immediately proceed to the place where the alleged child victim is found and interview said child to determine whether an abuse was committed, the identity | Violations of R.A.7658 (Child Labor Law) or the 15-year minimum age of employment law, as well as, violations of the Labor Code provision prohibiting employment of children under 18 years in hazardous undertakings are punishable by a fine of Php1,000.00 to Php10,000.00 and/or imprisonment of 3 months to 3 years.<br><br>The Minimum Wage for Househelpers Act punishes non-payment of minimum wage of househelpers and failure to comply with requirement of social security for househelpers.<br><br>The Special Protection of Children Act or R.A.7610 punishes perpetrators of all forms of child abuse, which includes sexual abuse, child prostitution, physical abuse, |

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|  | <p>prioritize the inspection of establishments employing children and women workers, security agencies, construction, shipping, and other establishments classified as hazardous or high risk.</p> <p>The police and coast guard officers, and investigators of the National Bureau of Investigation, provide assistance in surveillance and rescue of trafficked or abused children, the arrest of their abusers, and the conduct of initial investigation.</p> <p>The Department of Social Welfare and Development (DSWD) is mandated by law to investigate reports on child abuse.</p> | <p>year to year.</p> | <p>househelper does not exceed Php5,000.00. The regional director or hearing officer shall resolve the complaint within 30 calendar days from the date of the filing of the same. Any sum thus recovered on behalf of the househelper shall be held in a special deposit account by, and shall be paid on order of, the Secretary of Labour or the Regional Director directly to the employee or househelper concerned.</p> <p>Labor Code, art. 217: Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding Php5,000.00, regardless of whether accompanied with a claim for reinstatement, shall be filed with the Labour Arbiters.</p> <p>By practice, labour inspectors may serve as mediators in labour cases filed by children</p> <p>Claims for work-related injury and welfare benefits are filed with the Social Security System.</p> | <p>of the perpetrator and whether or not there is a need to remove the child from his home or the establishment where he/she may be found</p> | <p>maltreatment, emotional/ verbal / psychological abuse upon a child. It also punishes child trafficking and other forms of child exploitation.</p> <p>The Revised Penal Code punishes slavery, debt bondage, illegal detention and all other forms of abuses (rape, acts of lasciviousness, seduction, physical injuries, etc.) with fine and imprisonment.</p> <p>The Sexual Harassment Act of 1995 punishes employers who demands or requests any sexual favor from the worker.</p> <p>P.D. 603, art. 59, attaches criminal liability to any parent who fails or refuses, without justifiable grounds, to enroll the child in accordance with the compulsory education requirement.</p> <p>P.D. 603, art. 59, also punishes a parent who causes or permits the truancy of the child from the school where the child is enrolled.</p> <p>The Commission on Human Rights (CHR) provides assistance to child labour victims in terms of investigation of human rights violations against children. It shall initiate legal action for and in behalf of the child victims.</p> <p>Complaints of child abuse, exploitation and neglect, including child labour, under the Special Protection of Children Act, as amended by R.A.7658, may be filed by any of the following:</p> <ul style="list-style-type: none"> <li>-offended party</li> <li>-parent or legal guardian</li> <li>-ascendant or collateral relative of the child within the third degree of consanguinity;</li> <li>-a duly authorized officer or social worker of the Department of Social</li> </ul> |
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|                  |  |   |  |   | <p>Welfare, a social worker or representative of a licensed child-caring institution;<br/> -Barangay Chairman; or<br/> - at least (3) concerned, responsible citizens where the violation occurred.</p> <p>Supreme Court Administrative Circular No. 23-95 enjoins all trial judges to act with dispatch on all cases involving children, including but not limited to, child labour cases under R.A.7610, cases of child abuses and pedophilia.</p> <p>The New Rule on Examination of Child Witnesses of 2000 allows use of support persons such as interpreters, facilitators and guardians ad litem to assist the child during the trial. The Court is also directed to supervise the location, movement and department of all persons in the courtroom, to allow the child to testify other than the witness stand, and to permit the use of testimonial aids and emotional security items as aids in testifying. Use of screens, one-way mirrors, videotaped depositions and live-link television in order to shield the child from the accused is also permitted in the discretion of the Court.</p> |
| <b>Sri Lanka</b> | <p>A Women and Children Affairs Division was created in the Department of Labour to focus on measures to minimize child labour in Sri Lanka.</p> <p>National Child Protection Authority (NCPA) Act of 1998, established the NCPA. Under Art. 33, the NCPA may, where it has reason to believe that there is child abuse on any premises and that application to court for a search</p> | <p>Employment of Women, Young Persons and Children Act (EWYPCA), Art. 22(1) requires employers to furnish information regarding the employment of a young person.</p> <p>EWYPCA, sec. 30(1) requires medical officer to examine any person who appears to be a young person or child to ascertain his age.</p> <p>An Ordinance to Provide for the</p> | <p>EWYPCA, sec. 29: No prosecution for any offense under this Act shall be instituted except by or with the written permission of the Commissioner of Labour.</p> <p>(Compensation is awarded in the same case.)</p> | <p>Department of Probation and Child Care Services is the agency responsible for the protection and rehabilitation of children, while the Provincial Departments of Probation and Child Care Services are the primary agencies on probation and childcare.</p> <p>Section 34(1) of the Children and Young Persons Ordinance (CYPO) enables a Juvenile Court to make an order in respect of children “in</p> | <p>EWYPCA, 14(3) and 21(3) provides penalties for violation of the Act.</p> <p>The Penal Code punishes: Cruelty to children-- Sec. 308A (1). Whoever having the custody, charge or care of any person under 18 years of age, willfully assaults, ill-treats, neglects or abandons such persons or causes or procures such person to be assaulted, ill-treated, neglected</p>   |

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|                        | <p>warrant may prejudice investigation into such child abuse, authorize in writing an officer of the Authority to enter and search such premise.</p> <p>(1) Any authorized officer may</p> <p>(a) enter and inspect any premises of any institution by which child care services are provided;</p> <p>(b) enter and inspect any premises, where he has reason to believe that children are being kept for (i) the purpose of child abuse; (ii) any other unlawful purpose; (iii) illegal adoption.</p> <p>(c) interrogate any person in any such premises for the purpose of ascertaining the activities carried on in such premises and whether there is any contravention of any law relating to children.</p> | <p>Registration of Domestic Servants (Ordinances Nos. 28 of 1871 and 18 of 1936) provides for the registration of domestic workers with a Registrar of Domestic Servants who is under the general supervision and control of the Inspector-General of the Police.</p> |  | <p>need of care or protection”.</p>  | <p>or abandoned in a manner likely to cause him suffering or injury to health, commits the offense of cruelty to children.</p> <p>Sec. 360B (1). Sexual exploitation of children.</p> <p>Sec. 311. Grievous Hurt</p> <p>Sec. 345. Sexual Harassment</p> <p>Secs. 363 and 365A. Rape and grave sexual abuse</p> <p>Sec. 360C. Trafficking as engaging “in the act of buying or selling or bartering of any person for money or for any other consideration”.</p> <p>Code of Criminal Procedure (Amendment) Act No. 28 of 1998: Re. persons arrested without a warrant with respect to child abuse, a Magistrate is empowered to order his detention for 3 days for investigatory purposes. It also requires that cases on child abuse be given priority. It prescribes a form for referral of child abuse cases to Institutes of Care and Protection.</p> <p>The Evidence (Special Provisions) Act, No. 32 of 1999, sec. 163A, states that in any proceeding relating to child abuse, a video recording of a preliminary interview between an adult and a child witness on any matter relating to the proceedings, may be given in evidence.</p> <p>National Child Abuse and Violence against Women Desk (Women and Children’s Police Desk) was set up at Police Headquarters to investigate cases of child abuse.</p> |
| <p><b>Thailand</b></p> |  |   |  | <p>Prevention and Suppression of Trafficking of Women and Children Act (1997)</p> <p>aids trafficked children who end in</p> | <p>The Labour Code provides penalties for violation of provisions on wages and annual holidays.</p>   |

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|  |  |  |  | <p>domestic work - help and rescue are the main responses</p> <p>The Vocational Training Promotion Act (1994): Skills training and upgrade to make children less likely to end up in domestic work.</p> | <p>The Penal Code Amendment Act (no. 14) of 1997 protects children under 18 against sexual offences, sexual harassment, sale of children for begging, forced labour and labour exploitation; includes offenders w/in the country or abroad.</p> <p>Cruelty Provisions in the Penal Code:<br/> Sec. 398 punishes a person who commits acts of cruelty on a child below 15 and who is a dependant. Secs. 293, 295, 297, 303 can also be applied to child cruelty cases in addition to the following specific ones:<br/> (i) If anyone tortures a child resulting in death. (Sec. 290);<br/> (ii) If anyone commits an act of cruelty or similar acts on a child who is dependent upon him for a living or otherwise until the child is driven to attempt suicide, regardless of whether the suicide succeeds or not. (Sec. 292);<br/> (iii) If anyone tortures a child and causes permanent mental or physical harm to the child (Sec. 295). If the torture results in critical injury. (Sec. 298);<br/> (iv) If an offender has committed a child cruelty act and has infringed the child's freedom. (Secs. 309-320).</p> <p>The Criminal Procedure Amendment Act (No. 20) of 1999 includes measures for the protection of child victims, offenders and witnesses through 1.) use of videotape recording of statement of child victims; 2.) use of video link trials testimony with the aid of a psychologist or social worker and 3.) taking of depositions from the child victim in case there is difficulty for the child to be brought to court for the</p> |
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|                |   |   |   |  | purpose of giving his or her testimony.   |
| <b>Vietnam</b> | <p>The Ministry of Labor, Invalids and Social Affairs (MOLISA) with the assistance of the People's Committee, local labour offices and the Vietnam General Confederation of Labor is in charge of Uniform State Labor Administration.</p> <p>Inspection is done by MOLISA and local labour offices, and by the Ministry of Health and local health authorities.</p> | <p>Under the Labour Laws, establishments hiring children must keep a separate record wherein full name, date of birth, work assignment, and regular health check results of the child workers are mentioned. It must be presented upon request of the Labour inspector.</p> | <p>Breach and violation of the Labor Code entitles a warning, fine, revocation of license or permits.</p> |  | <p>Breach and violation of the Labor Code and other laws entitles prosecution for violation of penal provisions</p> |

**TABLE 1**  
**Royal Thai Consulate General**  
**Vancouver, Canada**  
**Consular Information To Acquire Thai Nationality**

The possibility for a person born of a father or a mother of Thai nationality, whether within or outside the Thai Kingdom, to acquire Thai nationality can be seen below, in accordance with the Thai Nationality Act (2535 B.E.).

**Born within the Territory of the Kingdom of Thailand**

| <b>Case</b> | <b>Nationality of Father</b> | <b>Nationality of Mother</b> | <b>Matrimony Status</b> | <b>Nationality of the Child</b> |
|-------------|------------------------------|------------------------------|-------------------------|---------------------------------|
| 1           | Thai                         | Thai                         | Registered              | Thai                            |
| 2           | Thai                         | Thai                         | No                      | Thai                            |
| 3           | Thai                         | Legal Alien                  | Registered              | Thai                            |
| 4           | Thai                         | Legal Alien                  | No                      | Thai                            |
| 5           | Thai                         | Illegal Alien                | Registered              | Thai                            |
| 6           | Thai                         | Illegal Alien                | No                      | Thai                            |
| 7           | Legal Alien                  | Thai                         | Registered              | Thai                            |
| 8           | Legal Alien                  | Thai                         | No                      | Thai                            |
| 9           | Illegal Alien                | Thai                         | Registered              | Thai                            |
| 10          | Illegal Alien                | Thai                         | No                      | Thai                            |
| 11          | Legal Alien                  | Legal Alien                  | Registered              | Thai                            |
| 12          | Legal Alien                  | Legal Alien                  | No                      | Thai                            |
| 13          | Legal Alien                  | Illegal Alien                | Registered              | Cannot acquire Thai Nationality |
| 14          | Legal Alien                  | Illegal Alien                | No                      | Cannot acquire Thai Nationality |
| 15          | Illegal Alien                | Legal Alien                  | Registered              | Cannot acquire Thai Nationality |
| 16          | Illegal Alien                | Legal Alien                  | No                      | Cannot acquire Thai Nationality |
| 17          | Illegal Alien                | Illegal Alien                | Registered              | Cannot acquire Thai Nationality |
| 18          | Illegal Alien                | Illegal Alien                | No                      | Cannot acquire Thai Nationality |

**Born outside the Territory of the Kingdom of Thailand**

| <b>Case</b> | <b>Nationality of Father</b> | <b>Nationality of Mother</b> | <b>Matrimony Status</b> | <b>Nationality of the Child</b> |
|-------------|------------------------------|------------------------------|-------------------------|---------------------------------|
| <b>1</b>    | <b>Thai</b>                  | <b>Thai</b>                  | <b>Registered</b>       | <b>Thai</b>                     |
| <b>2</b>    | <b>Thai</b>                  | <b>Thai</b>                  | <b>No</b>               | <b>Thai</b>                     |
| <b>3</b>    | <b>Thai</b>                  | <b>Other Nationality</b>     | <b>Registered</b>       | <b>Thai</b>                     |
| <b>4</b>    | <b>Thai</b>                  | <b>Other Nationality</b>     | <b>No</b>               | <b>Thai</b>                     |
| <b>5</b>    | <b>Other Nationality</b>     | <b>Thai</b>                  | <b>Registered</b>       | <b>Thai</b>                     |
| <b>6</b>    | <b>Other Nationality</b>     | <b>Thai</b>                  | <b>No</b>               | <b>Thai</b>                     |

Source: <http://www.thaicongenvancouver.org/Citizenship.htm>

**TABLE 2**

 Convention ratified     Convention not yet ratified

| Country     | Freedom of association and collective bargaining |          | Elimination of forced and compulsory labour |           | Elimination of discrimination in respect of employment and occupation |           | Abolition of child labour |           | CEDAW | CEDAW OP | CRC | CRC OPAC | CRC OPSC | Migrant Workers Conv. |
|-------------|--|----------|---|-----------|---|-----------|---------------------------|-----------|-------|----------|-----|----------|----------|-----------------------|
|             | Conv. 87   | Conv. 98 | Conv. 29                                    | Conv. 105 | Conv. 100   | Conv. 111 | Conv. 138                 | Conv. 182 |       |          |     |          |          |                       |
| Bangladesh  |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Cambodia    |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| China       |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Fiji        |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| India       |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Indonesia   |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Lao PDR     |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Mongolia    |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Nepal       |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Pakistan    |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Philippines |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Sri Lanka   |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Thailand    |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |
| Vietnam     |  |          |   |           |   |           |                           |           |       |          |     |          |          |                       |

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## TABLE OF CONTENTS

|  | Page |
|--|------|
| I. Introduction  | 1    |
| Research Framework   | 4    |
| Methodology  | 4    |
| Scope and Limitation                                       | 4    |
| II. Legal Protection Overview                              | 5    |
| Bangladesh   | 6    |
| Cambodia   | 7    |
| China  | 8    |
| Hong Kong SAR  | 11   |
| Fiji   | 14   |
| India  | 17   |
| Lao PDR  | 18   |
| Mongolia   | 19   |
| Nepal  | 21   |
| Pakistan   | 23   |
| Vietnam  | 23   |
| III. Legal Protection of Child Domestic Workers            |      |
| Case Studies of Philippines, Thailand & Sri Lanka          | 30   |
| Philippines  | 30   |
| Thailand   | 67   |
| Sri Lanka  | 87   |
| IV. Analysis and Observation                               | 108  |
| V. Conclusion and Recommendation                           | 111  |
| VI. List of Annexes of Legal Framework of the 14 Countries |      |
| 1 - Bangladesh Matrix                                      | 114  |
| 2 - Cambodia Matrix  | 117  |
| 3 - China Matrix   | 123  |
| 4 - Hong Kong SAR Matrix                                   | 125  |
| 5 - Fiji Matrix  | 127  |
| 6 - India Matrix   | 131  |
| 7 - Lao PDR Matrix   | 133  |
| 8 - Mongolia Matrix  | 138  |
| 9 - Nepal Matrix   | 141  |
| 10 - Pakistan Matrix                                       | 146  |
| 11 - Vietnam Matrix  | 151  |
| 12 - Philippines Matrix                                    | 154  |
| 13 - Thailand Matrix                                       | 160  |
| 14 - Sri Lanka   | 161  |
| Thematic Matrices Involving the 14 Countries               |      |
| 15 - Fundamental Rights Matrix                             | 163  |
| 16 - Conditions of Work Matrix                             | 169  |
| 17 - Welfare and Social Rights Matrix                      | 178  |
| 18 - Enforcement Mechanisms                                | 182  |
| VII. List of Tables  |      |
| 1 - Thai Nationality                                       | 192  |
| 2 - ILO and UN Ratification                                | 194  |
| References   | 195  |