

# LEGISLATIVE REFORM ON CHILD DOMESTIC LABOUR: A GENDER ANALYSIS

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PLANNING

**LEGISLATIVE REFORM ON CHILD  
DOMESTIC LABOUR: A GENDER  
ANALYSIS**

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Rangita de Silva-de-Alwis  
Senior Advisor on International Programs  
Wellesley Centers for Women

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**Legislative Reform on Child Domestic Labour: A Gender Analysis.**  
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# Legislative Reform on Child Domestic Labour Laws: A Gender Analysis

## Executive Summary

The Convention on the Rights of the Child recognises in Article 32 the right of the child “to be protected from economic exploitation; and from any work that is likely to ... interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”<sup>1</sup> In implementing this article, the CRC specifies that States should have “regard [for] the relevant provisions of other international instruments,” which refers particularly to the International Labour Office Conventions and Recommendations on the subject. In doing so, the CRC has stimulated many State parties to also ratify the ILO Conventions on child labour<sup>2</sup> and take legislative actions in order to prevent children from economic exploitation. However, while laws regulating the employment of children have changed, reform of labour provisions has only addressed the situation of children working in the formal sector. Reform of labour provisions has left behind the most invisible child workers: child domestic workers. Because child domestic workers are employed within an informal family environment they are not usually integrated as a professional group within conventional working systems since such integration would presuppose an acceptance of the idea of child domestic labour. At the same time, because they are left without legal protection, it is difficult to combat child domestic labour.

A recent estimate of the International Labour Organisation is that over 350 million children worldwide are engaged in work.<sup>3</sup> That means that over one fifth of the world’s children aged 5-17 years are exploited by child labour in its different forms. Of these, a large percentage work as domestic servants. Surveys have revealed that although boys do work as domestic servants, domestic service is primarily carried out by girls and has different implications in terms of girls’ health and development.

Child domestic work is a clear example of how gender identity contributes to the shaping of the different kinds of labour. Child domestic labour patterns correspond to deep-seated, sex-based divisions of labour.

This study adopts a gender perspective to look critically at the need for legislative reform in the area of child domestic labour. The paper argues that laws and policies developed to help protect and prevent child domestic labour cannot be developed in isolation from other laws that impact child domestic labour. The paper analyzes the need for a holistic approach to lawmaking in this area and sets out a methodology to create a legal policy

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<sup>1</sup> Article 32, Convention on the Rights of the Child (1989)

<sup>2</sup> Particularly ILO Convention no. 182 - Convention on the Worst Forms of Child Labour (1999)

<sup>3</sup> ILO *Global Child labor data review: A gender perspective*, Vol. 3 (ISBN 92-2-115294-4). Geneva, Switzerland (2004)

and programme framework to regulate and protect the domestic child worker. The framework does not pretend to be exhaustive but examines some critical elements that should be an integral part of lawmaking in the field of child domestic labour.

The paper concludes that having an understanding that gender discrimination is a leading cause of child domestic labour is critical to the protection of child workers as well as for the prevention and elimination of child domestic labour. Thus, legislative reform to protect child domestic workers must not only take into consideration the interrelatedness of issues affecting the social, economic and health ramifications of child domestic work but also address gender discrimination, making an anti-discrimination perspective critical to the examination of child domestic labour.

## Resumen Ejecutivo

La Convención sobre los Derechos del Niño reconoce en su artículo 32 el derecho del niño a “*estar protegido contra la explotación económica y contra el desempeño de cualquier trabajo que pueda ... entorpecer su educación, o que sea nocivo para su salud o para su desarrollo físico, mental, espiritual, moral o social*”<sup>4</sup>. Para la aplicación de este artículo, la Convención sobre los Derechos del Niño especifica que los Estados deben tener “en cuenta las disposiciones pertinentes de otros instrumentos internacionales”, lo que se refiere en particular a las Convenciones y Recomendaciones sobre el tema de la Oficina Internacional del Trabajo (OIT). Al hacerlo, la Convención sobre los Derechos del Niño ha alentado a muchos Estados parte a que ratifiquen también las Convenciones de la OIT sobre trabajo infantil<sup>5</sup> y tomen medidas de índole legislativa para evitar la explotación económica de los niños. Sin embargo, aunque las leyes que regulan el empleo de los niños han cambiado, la reforma de las disposiciones laborales ha abordado solamente la situación de los niños que trabajan en el sector estructurado. La reforma de las disposiciones laborales ha pasado por alto a los niños trabajadores más invisibles: los niños empleados en el trabajado doméstico. Debido a que los trabajadores domésticos infantiles están empleados en un entorno familiar no estructurado, no suelen estar integrados como un grupo profesional dentro de los sistemas laborales convencionales, ya que tal integración supondría una aceptación de la idea del trabajo doméstico infantil. Al mismo tiempo, debido a que carecen de protección jurídica, resulta difícil combatir el trabajo doméstico infantil.

Según una estimación reciente de la Organización Internacional del Trabajo, más de 350 millones de niños trabajan en todo el mundo<sup>6</sup>. Esto significa que más de una quinta parte de los niños de 5 a 17 años del mundo sufren explotación debido al trabajo infantil en sus diferentes formas. De ellos, un gran porcentaje trabajan como sirvientes domésticos. Las encuestas han revelado que aunque hay varones que trabajan como empleados domésticos, son las niñas quienes trabajan principalmente en el servicio doméstico, algo que tiene diferentes implicaciones para la salud y el desarrollo de estas niñas.

El trabajo doméstico infantil es un ejemplo claro de cómo la identidad de género ha configurado las diferentes clases de trabajo. Las tendencias del trabajo doméstico infantil corresponden a divisiones del trabajo muy enraizadas y basadas en el sexo.

Este estudio adopta una perspectiva de género para analizar críticamente la necesidad de realizar una reforma legislativa en la esfera del trabajo doméstico infantil. El documento sostiene que las leyes y las políticas establecidas para ayudar a proteger a los niños trabajadores domésticos y a evitar este tipo de trabajo no pueden desarrollarse aisladamente con respecto a otras leyes que tienen repercusiones sobre el trabajo doméstico infantil. El documento analiza la necesidad de adoptar un enfoque holístico a

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<sup>4</sup> Artículo 32, Convención sobre los Derechos del Niño (1989)

<sup>5</sup> Especialmente la Convención de la OIT no. 182 - Convención sobre las peores formas de trabajo infantil (1999)

<sup>6</sup> OIT, *Global Child labor data review: A gender perspective*, Vol. 3 (ISBN 92-2-115294-4). Ginebra, Suiza (2004)

la promulgación de leyes en esta esfera y establece una metodología para crear el marco jurídico de políticas y programas necesario para regular y proteger al trabajador doméstico infantil. El marco no pretende ser exhaustivo, pero examina algunos elementos fundamentales que deben formar una parte integral en la promulgación de leyes relacionadas con el trabajo doméstico infantil.

El documento concluye que una comprensión de que la discriminación de género es una de las principales causas del trabajo doméstico infantil resulta fundamental para proteger a los trabajadores infantiles, así como para prevenir y eliminar el trabajo doméstico infantil. Por tanto, la reforma legislativa para proteger a los trabajadores domésticos infantiles no solamente debe tener en cuenta las vinculaciones mutuas de los temas que afectan las ramificaciones social, económica y sanitaria del trabajo doméstico infantil, sino que también debe abordar la discriminación de género y lograr que emplear una perspectiva contra la discriminación sea uno de los elementos fundamentales en el examen del trabajo doméstico infantil.

## Résumé analytique

La Convention relative aux droits de l'enfant reconnaît dans son article 32 « *le droit de l'enfant d'être protégé contre l'exploitation économique et de n'être astreint à aucun travail comportant des risques ou susceptible de compromettre son éducation ou de nuire à sa santé ou à son développement physique, mental, spirituel, moral ou social*<sup>7</sup>. » Dans l'exécution de cet article, la CDE précise que les Etats devraient « *[tenir compte] des dispositions pertinentes des autres instruments internationaux* », qui se réfèrent en particulier aux Conventions et recommandations du Bureau international du Travail sur le sujet. Ce faisant, la CDE a incité de nombreux Etats parties à ratifier également les Conventions de l'OIT sur le travail des enfants<sup>8</sup> et à prendre des mesures législatives de protection des enfants contre l'exploitation économique. Toutefois, bien que les lois régissant l'emploi des enfants aient changé, la réforme des dispositions relatives au travail a seulement abordé le problème des enfants qui travaillaient dans le secteur de l'économie officielle. La réforme des dispositions relatives au travail a laissé pour compte les enfants invisibles : ceux qui sont employés de maison. Parce que les enfants effectuant ce travail domestique sont employés au sein d'un environnement familial ne relevant pas de l'économie officielle, ils ne sont pas habituellement intégrés comme groupe professionnel aux systèmes conventionnels ayant trait au travail, puisqu'une intégration de ce type présupposerait que l'on accepte l'idée du travail domestique des enfants. En même temps, le fait qu'on laisse ces enfants sans protection juridique rend le travail domestique des enfants difficile à combattre.

Selon une estimation récente de l'Organisation internationale du Travail, plus de 350 millions d'enfants dans le monde seraient engagés dans le secteur du travail<sup>9</sup>. Cela veut dire que plus du cinquième des enfants âgés de 5 à 17 ans dans le monde travaillent dans des conditions d'exploitation diverses. Un pourcentage important de ces enfants travaillent comme employés de maison. Des enquêtes ont révélé que bien que certains garçons soient bel et bien employés à ce titre, ce sont les filles qui se chargent principalement du travail domestique, ce qui a des répercussions différentes en termes de santé et de développement des filles.

Le travail domestique des enfants illustre clairement à quel point le sexe peut être un élément qui détermine divers types de travaux. Les schémas auxquels obéit le travail domestique des enfants correspondent à une division du travail définie par de profonds clivages et fondée sur le sexe.

Cette étude adopte une perspective sexospécifique pour procéder à un examen critique du besoin de réforme législative dans le secteur du travail domestique des enfants. Ce document invoque le fait que les lois et les politiques destinées à contribuer à la protection des enfants et à lutter contre l'emploi des enfants à la maison ne peuvent pas être élaborées en vase clos, sans tenir compte d'autres lois influant sur le travail domestique des enfants. Il analyse le besoin d'une approche législative holistique dans ce

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<sup>7</sup> Article 32, Convention relative aux droits de l'enfant (1989)

<sup>8</sup> En particulier la Convention no. 182 de l'OIT sur les pires formes du travail des enfants (1999)

<sup>9</sup> OIT : *Global Child labor data review: A gender perspective*, Vol. 3 (ISBN 92-2-115294-4). Genève, Suisse (2004)

secteur, et définit une méthodologie pour la création d'un cadre de politique et de programmation juridique destiné à réglementer le travail domestique des enfants et à protéger les enfants qui y sont engagés. Ce cadre ne prétend pas avoir une portée globale, mais examine certains éléments d'importance cruciale qui devraient faire partie intégrante du processus de législation concernant le travail domestique des enfants.

En conclusion, comme le précise ce document, la prise de conscience du fait que la discrimination sexuelle est une des causes principales du travail domestique des enfants est d'une importance vitale pour la protection des enfants chargés du travail domestique ainsi que pour la prévention et l'élimination du travail domestique des enfants. Les réformes législatives destinées à protéger les enfants travaillant au foyer ne doivent donc pas seulement tenir compte de l'interdépendance des problèmes touchant aux ramifications sociales, économiques et sanitaires du travail domestique des enfants, mais aussi aborder la question de la discrimination sexuelle, de façon à établir une perspective anti-discriminatoire cruciale pour l'examen du travail domestique des enfants.

## **Introduction**

The issue of child domestic labour is very complex and problematic. Domestic child labourers are among the most invisible child labourers. The number of children exploited in private households is unknown because of the hidden nature of the work. Many of these children are girls and in many countries domestic service is seen as the only employment option a girl might have. Children exploited in domestic service are paid little or nothing, are malnourished, are very vulnerable to further abuse and exploitation, and do not go to school. However, because child domestic workers are employed within an informal family environment, they cannot be integrated as a professional group within conventional working systems because such integration would presuppose an acceptance of the idea of child domestic labour. At the same time, without legal initiatives, it is difficult to combat child domestic labour. Furthermore, the terms, norms and standards to regulate the employment of children are lacking because children work in a largely invisible domain outside law and the public sphere and their domestic labour cannot be integrated under normal labour laws.

This study will adopt a gender perspective to look critically at the need for law reform in the area of child domestic labour. The paper will also analyze the need for a holistic approach to lawmaking in this area. As much as the causes leading to child domestic work phenomenon intersect, the laws and policies developed to help protect and prevent child domestic labour cannot be developed in isolation from other laws that impact child domestic labour.

Although the final goal of all laws should be the prevention and elimination of child domestic labour, it is acknowledged right at the outset that this is a long term goal. In the interim, there is a need to accept that children do, and will continue, to work until effective alternatives make it unnecessary for them to work. In the meantime, the “best interest” of the child principle together with the notion of the child as a “rights holder” should guide any lawmaking on child domestic work.

Law and policy reform can play a powerful constitutive and transformative role in improving and changing the lives of both the girl child and male child domestic worker; however, in re-envisioning workplace and domestic arrangements it is important to see that sex stereotypes are not reinforced. Just as much as law has the profound power to prevent and regulate domestic labour, it has the power to reinforce it by creating loopholes through which employers can continue to hire child domestic workers. Laws can often spark social change only if they are translated into action.

In drafting new laws or revising existing laws, child domestic labour should be seen in the context of historic sex discrimination. There is an apparent tension when laws and policies are blind to the differences between the girl child domestic worker and the male child domestic worker such as the girl child’s weak bargaining position and low status, which increases her vulnerability to coercion by her family and employer.

The question remains to what extent differences between the male child and girl child domestic worker are accounted for in lawmaking. While sameness should not be taken as the standard of equality, it is important to ensure that laws intending to help the girl domestic worker look at how gender discrimination is one of the main causes of girl child domestic work and that domestic work in turn becomes a way of relegating the girl child to jobs that are seen as extensions of her domestic responsibilities. The aim is to see that gender analysis is used to develop laws to address the reasons that devalue and subordinate the girl child before and after she enters the domestic labour market.

This study sets out to create a legal policy and programme framework to regulate and protect the domestic child worker. The framework does not pretend to be exhaustive but examines some critical elements that should be an integral part of lawmaking in the field of child domestic labour. Each important element of the law will first be examined within the framework of the governing international convention.

A gender perspective is a powerful tool to uncover laws gaps and biases. Gender analysis also assists in re-envisioning laws. Using this two-step process of gender analysis, the strengths and weaknesses of selected country laws will be examined in each section. Finally, the reconstructive capacity of gender analysis will be used to guide the recommended reforms to the legal system.

The suggested revisions to the law, stretches the potential of the law to restrict, protect and finally prevent child domestic labour. Thus by creating gender-aware legislation that guarantees equality in practice, law reform can become a catalyst for change.

# 1. Background

## 1.1. The Importance of a Gender Perspective in this Study

This section explores why it is important to use a gender perspective to craft child domestic labour laws and how these insights will help address the problems that all domestic child workers face.

Gender refers to constructed social differences and relations between men and women. Socialization of girls and boys is often not gender neutral but is influenced and shaped by the different roles and responsibilities boys and girls are assigned because of their sex.

Gender roles, along with family situation and cultural tradition, often determine the types of activities girls and boys engage in and the different societal expectations for girls and boys. These same gender perceptions colour domestic work and girls, boys, men and women are ascribed different roles in the realm of domestic labour. For example, often the girl child is engaged in work related to care giving and caretaking involving, baby sitting, house cleaning, cooking, washing dishes and mending clothes. The boy domestic worker on the other hand is engaged in running errands, gardening, and chores outside the realm of the strictly domestic sphere. The different gender roles and the segregation of gender at an early age results in gender discrimination and devaluing of girls and women in later life and in general a marginalization of the activities they engage in as they grow older.

Child domestic work is a clear example of how gender identity contributes to the shaping of the different kinds of labour. Child domestic labour patterns correspond to deep seated sex-based divisions of labour. For example, while the boy child might engage in higher paying domestic work, the girl child might engage in unpaid domestic work either in her home or in the home of a third party. As noted before, valuing unpaid domestic work was an important concern of the Beijing Women's Conference. On March 4<sup>th</sup>, 2005, the CSW reaffirmed the Beijing Platform of Action and adopted ten resolutions including a proposal to appoint a Special Rapporteur on laws that discriminate against women.<sup>10</sup> While the men's contributions to the family income have always been accounted for, women's and the girl child's contributions have been mostly ignored. Traditional gender roles have contributed to the assumption that women and girls make ideal domestic workers because they are subservient and meek. They are also expected to be well skilled at care giving, child rearing and house keeping, all activities considered to be an extension of the woman's natural role.

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<sup>10</sup> The other proposals include, Gender mainstreaming, HIV/AIDS, women in Afghanistan, Women in Palestine, Indigenous women, women and Natural Disaster, economical advancement of women, INSTRAW, and trafficking

Female children are also often considered burdensome and an economic liability. Many traditional cultures consider spending precious resources on a girl child a bad investment, especially when they are required to marry into their husband's family. Gender roles often affect parents' decisions on whether children should continue their schooling or go out to work. In families where resources are scarce, the girl child is often placed in a disadvantaged position compared to the boy child and the girl child's education is often sacrificed at the altar of her brother's education.<sup>11</sup> Child domestic labour maintains and continues the essential roles that men and women traditionally occupy. The high number of girls in child domestic labour reflects the impact of historical gender roles and reinforces gender segregation both in the home and labour market.<sup>12</sup>

Taken for granted and unquestioned assumptions can impact the ways in which the girl child and boy child form job preferences later in life. Women are often influenced and form their work preferences by the opportunities presented to them and it has been argued that women's work preferences are formed, created, and recreated at childhood. Child domestic labour can perpetuate gender biases and recreate the low status of women in adult life. Child domestic labour results in a generational chain, as children of child workers are often sent out to work to help support their families. The girl child is especially vulnerable to be locked into a generational chain of exploitation because of inter-relating causes of gender, poverty and tradition.

Gender analysis is a means of identifying violations and obstacles to the realization of rights that might remain unacknowledged. This brings to the surface *de facto* discrimination in laws as well as *de jure* discrimination whereby practices based on social norms are naturalized rather than identified as gender discrimination. Without gender analysis violations and obstacles to women's rights cannot be identified and the gap between laws on the books and laws in practice remains unacknowledged. Gender analysis then becomes a tool to map the conditions that result in gender discrimination.

Within this framework of inequality, domestic work (both within and outside the family) is seen as the natural domain of women and girls while boys and men occupy more lucrative labour opportunities. For example, the girl child who is sent away to work in return for her board is also often not viewed as a worker. In certain countries domestic workers are referred to as helpers rather than workers. Labelling them as such is a convenient way of avoiding proper remuneration for those doing the work. A gender perspective will bring to the surface the need to unmask the biases behind these terms.

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<sup>11</sup> "For example, the girl in case study 2 said that her parents had to sell cows to send her brothers to school but would not do the same for her and her sister who were both given out to work in Lusaka with two different employers." *Child Domestic Labour in Lusaka: A Gender Perspective The Case of Kamwala, Kabwata, Chilenje, Woodlands, Extension, Nyumba-Yanga*, by Omolara Dakore Oyaide, Department of Gender Studies, University of Zambia.

<sup>12</sup> Even within employment, there is evidence that the girl child works longer hours than the boy child. "Gender differences were found to exist in working hours. To start with, no boy started work before 07.00 hours, but 57 girls (78%) started work before 07.00 hours. While seven out of ten of the boys closed at 17.30 hours, most girls, fifty one out of the total sample of 83 girls (61%) closed later than 20:30 hours." ILO Report, *id* at p. 43.

A clear thread that runs through most of the laws on child domestic labour is that the vulnerability of the girl child to domestic work is not adequately considered. Very few laws deal with gender differences in employment and establish special provisions that are gender sensitive to combat child domestic labour in compliance with both the CEDAW and CRC.

Unless gender discrimination is factored in legislation - as a cause of and consequential of gender inequality, law reform in this area will not have the desired impact.

## **1.2. The Role of Gender Analysis in Law Making**

Societal biases describe essential and stereotyped views about women and men and ignore the realities of their lives. This in turn results in laws and practices that disadvantage women. In the process of lawmaking, women's voices have been largely absent and women's experiences are not reflected in the outcomes of the majority of these laws. The result of this historical exclusion of women from law is that the legislation and case law used by lawyers and judges reflect men's perspectives of the world, including the perspectives on women's roles.

Gender analysis has two dimensions. The first involves looking critically at the current laws and laying bare those biases. This methodology helps expose the ways in which current laws fail to reflect the woman's voice and to bring out these voices by asking whether these laws and practices reflect the reality of women's lives.

Gender analysis is also a powerful tool to unmask the causes of child domestic labour and ask why the girl child is disproportionately represented in child domestic labour. Women and children, and especially the girl child, are more often than men the victims of poverty and malnutrition. Moreover, women and the girl child face discrimination on a daily basis in every country. This includes discrimination in the enforcement of laws, denial of equal opportunity in education and employment, cultural and social norms that reinforce female stereotypes and developmental policies that have led to the feminization of poverty and subordination of women. In many countries in the world, the right to equality before the law has been rendered useless by customary laws that subjugate the woman and the girl child.

The second dimension of gender analysis is its reconstructive effort which is used to reconstitute and re-conceive laws and legal institutions so that they incorporate women's perspectives. One of the major achievements of gender analysis has been to dismantle the dichotomy between the public and the private. This is especially useful in the study of child domestic labour where much of the violations of children's rights take place within the precincts of the home – traditionally a domain that was outside the law.

Gender perspectives and gender analysis supports the principles of non-discrimination and equality. Supporting this concept is Section 11, Paragraph 21 of the Vienna Declaration and Program of Action, which urges states to ratify and implement the CRC

and advocates that non-discrimination and the best interest of the child be made primary considerations.<sup>13</sup>

Gender analysis also helps to bring the interrelatedness of rights to the surface. The interrelatedness of rights helps to bridge the gap between laws on the books and laws in action. For example, although the right to education is enumerated in laws around the world, the implementation of the laws on education results in a disproportionate impact on the girl child resulting in disadvantage and discrimination against girls and women. Gender analysis also contributes to the interdependence of individuals and groups. For example, children's rights often depend on the affirmation of women's rights. An inadequate recognition of the rights of women to live free from violence and to have access to economic resources will result in the deprivation of children's rights and the ultimate subordination of the family as a whole. This is well illustrated by the Special Rapporteur on Right to Food who writes: "In many countries, women do not have access to the ownership of land. In others they suffer from the unequal distribution of food within households. Yet women play a vital role in the realization of the right to food, since they bear and feed babies and children."<sup>14</sup>

Gender should be considered "a key determinant of vulnerability" in drafting laws. Thus incorporating gender perspectives in all human development and human security activities is important. Economic disempowerment of women, understanding that women are often last in line for health care, and are more vulnerable to infectious diseases and HIV/ AIDS will lead to better policies and programs to address child domestic labour.

### **1.3. Bringing National Laws in Compliance with International Norms**

Once the laws on the books and laws in practice of individual countries are reviewed and the gaps identified, it is important to study the international conventions that address child domestic labour. Domestic lawmaking should be informed and guided by the norms enshrined in international conventions.

States must first be urged to ratify the international legal instruments for the protection of children and harmonize national legislation with international standards. Once these international legal instruments are ratified, national laws must be amended, as necessary, to ensure that domestic workers receive the same rights as other workers, including a minimum wage, time off, and limits on hours of work.

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<sup>13</sup> The ILO has defined gender analysis as a tool to evaluate the differences and relations between girls, boys, men and women. According to this definition, gender analysis includes collecting data which is disaggregated; identifying gender differences in terms of division of labour, access to resources and benefits both at home and at work; understanding the different needs, constraints, opportunities in relation to knowledge and skills needed, conditions of work, societal protection, family responsibilities and economic and political decision making between men and women and the girl and boy; and finally reviewing and identifying inequalities in the laws and institutional mechanisms.

<sup>14</sup> E/CN.4/2001/53, paras. 78-79.

International human rights law does not automatically form part of the national law of a ratifying state unless that state belongs to a *dualist* regime, where international norms have the same status as domestic laws. In countries that follow the *monist* tradition, laws are not self-executing. That is, they do not have the force of law without the passage of additional transformational devices.

There are many international conventions that advance children's rights. These conventions do not prohibit child domestic labour but instead recognize the circumstances under which children enter the workforce and require states to set minimum ages for employment. These norms address the rights of children who work and guarantee basic human rights, especially the rights of children who work to continue to enjoy the right to education.

The following framework on the rights and protection of children in labour work outlines important elements integral to the regulations on child domestic labour. The objective of this framework is to serve as a drafting guide to legislators and organizations committed to lobbying their legislatures for laws, policies and programs on child domestic labour.

**The success of the law depends on the following factors:**

*Government Commitment*

- Compliance with international standards with the object of protecting the rights of children in child domestic labour.
- A coordinated response to child domestic labour through recognition of the role of the relevant agencies, NGO's other professions and the law enforcement.

*Legislation and enforcement*

- Maximum protection in cases ranging from physical and sexual to psychological abuse.
- A clause providing for civil and criminal law to be complementary and used in conjunction with relief.
- Clarity and simplicity of court and other tribunal procedures.
- Judges and quasi judicial officers trained to be sensitive to issues of child domestic labour and established sentencing guidelines.
- Broad ability of law enforcement officers to assist child workers, enforce the law effectively, and prevent further incidents of abuse.

*Capacity of Families and Communities*

- Development of a greater understanding within target communities and greater community participation in eradicating domestic labour.

### *Monitoring and Reporting*

- Monitoring of the law.
- Appointment of state and national rapporteurs with the power to report annually on trends in child labour and conduct studies on the functioning of the law.

### *Essential Services, including for prevention, recovery and reintegration*

- Relief and remedies available to the child who is a victim of the violation of the laws
- Infrastructure available to victims making a wide range of flexible and speedy remedies accessible and thereby discouraging violation of child domestic labour laws.
- The roles and duties of the service providers, protection officers and other officials
- Trained counsellors supporting police and judges in rehabilitating child workers.
- Programs to assist the prevention and elimination of child domestic labour
- Programmes, services, protocols and duties, including but not limited to education, rehabilitation and counselling programs and job training programs

The following sections will examine the salient features of the legal framework for the rights and protection of child worker. Each section will analyse the relevant international provision, followed by examples of country studies, their strengths and weaknesses and finally recommendations for law reform.

## **2. Definition of “Child” And Minimum Age of Employment**

A clear definition of a Child should be adopted with a view to compatibility with international standards. A comprehensive definition of child domestic labour should cover work done both in a third party’s house as well as in the family home.<sup>15</sup> The definition of child domestic labour can also include trafficking or slavery or practices similar to slavery and may include hazards to health, safety or the morals of children, which constitutes worst form of child domestic labour.<sup>16</sup> Child domestic work is the most insidious form of work because it is mainly conducted outside the public realm. The age of the child can be ascertained only if birth has been formally registered. This brings to the forefront the critical importance of “birth registration” as a cross cutting issue.

As you include “birth registration” as important for the protection of children in domestic labour, it may be worth inserting a few sentences on the link between birth registration and child protection in general. – highlighting it as a cross-cutting issues.

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<sup>15</sup> Performing household chores in the family homes less than four hours a day is not considered detrimental to the child’s development and is not counted as child domestic labour.

<sup>16</sup> See Helping Hands or Shackled Lives- ILO Report.

## 2.1. Relevant International Provisions

The CRC defines a child as a person under the age of 18. According to the CRC, children under the age of eighteen have a fundamental right to education and a healthy standard of living, and states should use the “best interest of the child” standard in evaluating laws regarding children. The CRC also provides for the implementation of penalties and sanctions if these rights are violated.

A State Party to the CRC is under obligation to take legislative, administrative, social and educational measures to protect children’s rights and to have regard for the relevant provisions of other international instruments.<sup>17</sup>

One of the most important conventions on child domestic labour is the 1973 ILO Convention No. 138, concerning the Minimum Age for Admission to Employment. In addition to establishing a minimum age for work conditions appropriate for children, the Convention sets a minimum age for joining the workforce. Article 2 of the ILO Minimum Age Convention states that the minimum age for admission to employment “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.”<sup>18</sup> An exception to the minimum age of fifteen is made only for a state “whose economy and educational facilities are insufficiently developed,” which may “initially specify a minimum age of 14 years.”<sup>19</sup> Article 5 allows countries with insufficiently advanced economies to be flexible in the application of the Convention.

This measure is only a transitional measure and States Parties that adopt the lower age must establish in their state reports the reasons for lowering the age.<sup>20</sup> In fact, ILO Recommendation No. 146 provides that states that have a minimum age below 15 should, as a matter of urgency, raise the minimum work age to 15. Article 2 (b) of the ILO Recommendation No. 146 also provides that it is open to a State Party to set its minimum age above 15.

Secondly, a comprehensive definition of child domestic labour should be adopted. While most commonly the ILO has defined child domestic labour as a situation where children are engaged in domestic work in the home of a third party or employer, UNICEF has gone beyond this definition to include the domestic work of the child in his her own home.<sup>21</sup> The hours spent working for the family are mostly invisible to the outside world and have often been discounted. ILO too has argued that, “work done by girls to maintain the family or care for siblings is just as much ‘work’ as the labour they bring to markets

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<sup>17</sup> Art. 32(2).

<sup>18</sup> Minimum Age Convention, art 2 (3).

<sup>19</sup> Minimum Age Convention, art 2 (3).

<sup>20</sup> See Art.2 (5) of Convention No. 138 and Art. 22 of the Constitution of the International Labour Organization on States Parties’ reports.

<sup>21</sup> Child domestic labour, Education and the Right to Non-discrimination, Elizabeth D. Gibbons, Global Policy Section, Friedrich Huebler and Edilberto Loaiza, Strategic Information Section Division of Policy Planning, UNICEF.

or farms. It is just as demanding of respect; it also may be equally deserving of protection or eradication.”<sup>22</sup>

More girls than boys are engaged in unpaid household chores and this reality has often been ignored in studies on child domestic labour. The Beijing Conference on Women in 1995 emphasized the need to measure and value unpaid work. The Beijing Platform of Action recommended governments improve their labour force data to show unremunerated work and the contribution of women and girls.

## 2.2. Selected Country Studies

In the **Philippines**, a child is defined as a person below the age of emancipation which is 18 years. The term "child" was given a new interpretation upon the enactment of R.A. 7610 in 1992, or the Child Protection Law. The new law broadened the definition of children to mean "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

The **Nepalese** Act to Provide for Safeguarding the Interests of Children, 1992 defines a child as a person below the age of 16 years. Although it prohibits a child under the age of 14 to work, it allows a child between the ages 14- 16 to work under certain conditions. The only applicable restrictions are those that prohibit a child from working from 6:00 p.m. to 6:00 a.m.; in hazardous work and against his will. As far as the child's duties are concerned, Section 22 provides that, "A child has the duty to keep himself or herself neat and to take part in housework appropriate to his or her age. "

The **Chilean** Labour Code establishes the minimum age for employment at 15 years in compliance with ILO Minimum Age for Employment Convention. Children under age 15 may work in theatrical productions with the proper legal authorization. Fifteen year olds are allowed to do light work if they have completed compulsory education and if the work will not affect their health, development or attendance in education or training. Children ages 16 to 18 can work with the permission of their parents. Children under the age of 18 are prohibited from working at night between the hours of 10 p.m. and 7 a.m. (with the exception of a family business), underground in nightclubs, or similar establishments in which alcohol is consumed, or in activities that endanger their health, safety or morals.

Although **Tunisia** has raised the minimum age of entry into the labour force from 15- 16, Article 58 of the Labour Code, provide for certain exceptions in non-agricultural and non-industrial activities, provided the work does not affect school attendance or training approved by public authorities and the work is not harmful to the health and development of the child. This would mean that children as young as 13 could work as domestic labourers.

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<sup>22</sup> Gender, Education and Child domestic labour in Lebanon, ILO Office, pg. 102.

**Ethiopia** under the Labour Proclamation sets the minimum age for employment as 14 and those between 14- 18 are termed “young workers”. Some countries like **El Salvador** have reserved the right to set the minimum age at 14 at the time of ratification of the ILO Minimum Age Convention.

Article 23 and 24 of the **Indian Constitution** provide that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 39 (e) and (f) too provides that the state shall direct its policy towards securing the health and strength of workers, men, women and children and that no one is forced by economic necessity to enter into employment not suitable to their age and strength. Article 45 strengthens the anti-child domestic labour clauses by emphasizing that the state shall provide special provisions for free and compulsory education for all children until they complete the age of fourteen years.

The Indian Child Labour (Prohibition and Regulation) Act of 1986 is flawed to the extent that it does not prohibit employment of children as domestic workers. However, in 1999, the government of India issued a notification prohibiting government servants from employing children below the age of 14 years for any kind of work.<sup>23</sup>

The definition of the term child is also not uniform in most of the Indian laws. Section 6 of the Child Marriage Restraint Act, 1929, as amended in 1978, provides that child means a person who if a male is under 21 years of age and if a female is under 18 years of age. Under the Children’s Act, 1960, a child means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. In the Bombay Children’s Act, 1948, a child is defined as a boy or girl who has not attained the age of sixteen years.

Article 14 (1) of the **Sri Lankan** Act states that employment regulations made in respect of employment of children may distinguish between children of different ages and sexes and between different localities, trades, occupations and circumstances.

According to Section 34 of the Act, the child is defined as a person under the age of 14 years and a Young Person as one between the ages of 14 and 18 years. Order No. 1116/5 of 2000 prohibits the employment of a person under the age of 14 years in any occupation. A child under this law means a person who is under the age of fourteen years. A young person is defined as a person who has attained 14 years but under the age of eighteen. The Nigerian Children’s Rights Act in providing a comprehensive legal framework for children has combined all its local legislation on child labour into one. Section 28 of the law prohibits exploitative labour, and provides strong sanctions of imprisonment and fine for offenders under this provision. Its Section 29 incorporates

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<sup>23</sup> The National Human rights Commission of India has taken suo-motu cognizance of child domestic labour employed by a senior Indian Administrative Service Officer in Andhra Pradesh.

Labour Act, Cap 198 of the Law of the Federal Republic of Nigeria 1990, prohibiting the use of children for exploitative labour.

### **2.3. Recommendations for Law, Policy and Programme Reform**

One of the most important first steps is for the law to set a minimum working age in each country and ILO Convention No. 138 is an important benchmark to guide this law making process. This will help to establish a legal framework that can take steps when the minimum age requirement is violated. Clarification of the minimum age requirement will also be a powerful advocacy tool against the employment of child domestic workers. Further, it is possible that a clear minimum age will decrease pressure on girls to end their schooling early for marriage or domestic work to support their family (discussed in greater depth below).

Along with the establishment of a minimum age for employment, the employment of all children under the age of eighteen in harmful or hazardous labour should be explicitly prohibited by law. Not all country laws have made this clear. Contradictions and ambiguities in the law leave open certain loopholes which allow for the employment of children below the minimum age. There is a certain duality in laws which raises the minimum age of employment but allows derogation in certain restricted areas of employment for those even as young as 13. The example of **Tunisia** is a case in point. Even when an age is set, there is confusion and ambiguity in this regard as there is little uniformity in all laws affecting child domestic labour. For example, **India** does not adopt a uniform definition of the child in all its laws affecting children. In India, the Child Labour Prohibition and Regulation Act of 1986 defines a child as a person who has not yet completed 14 years of age. However, the Children Pledging of Labour Act of 1933 defines a child as below 15 years of age. The age of the child also varies from state to state.

#### **Recommended provisions should include:**

- Definition of a child. Under the CRC a Child is a person of either sex below the age of 18.
- Definition of the working age of a child. Age fifteen is the recommended age of the ILO Convention. Unless reservations have been made, no derogation should be allowed.
- A clear prohibition against the employment of children under the age of 15. No exception should be made based on race, sex, caste, colour, community or ethnic group.
- The need for verification of the age of the child by the employer.
- A copy of the birth certificate should always be with the employer. In the event that there is no birth certificate, an official document from a medical officer should be made available.
- Non compliance should carry a penalty.

### **3. Non- Discrimination/ Equality Clause**

All over the world women and girls are discriminated in the private and public sphere. Negative cultural traditions are reflected, to name a few in practices of son preference, discriminatory feeding practices, child marriage, dowry, polygamy, the tradition of dedicating girls and women to a god or goddess who become temple prostitutes, the ethnic practice of forcing women to become prostitutes, the devaluing of a woman's education, unequal inheritance rights and lack of freedom of choice in marriage.

In public life, women and girls suffer unequal access to employment, services, benefits and retirement policies. The wage gap between men and women, labour market segregation and the glass ceiling are other factors that discriminate against women.

If law reform is to address the root causes of child domestic labour, principles of gender equality must inform and guide law making. Equality and equal protection is seen as the most important cross cutting theme that runs through all rights. An integrated approach to rights must support the formulation and implementation of laws and policies to promote women's and girls human rights. Laws must also as far as possible be integrated to recognize the cross cutting nature of rights. For example, access to reproductive health is an important cornerstone of gender equality and is central to women's and girls empowerment. Similarly, providing information about sexually transmitted infections including HIV or access to condoms need to be complemented by promotion of gender equality. Information about HIV or condoms will not be enough if girls and women do not have the power to negotiate safe sex and to reject unwanted sex. At the same time ensuring female property and inheritance rights will help empower girls and women both economically and socially. Discriminatory property and inheritance laws leave girls and women more vulnerable to poverty, AIDS, Violence and child labour.

The CEDAW Committee in its contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, noted that the Convention obliges states parties to work towards the realization of the human rights of women in all fields throughout their life cycle. This life cycle approach reinforces the view that the CEDAW applies to the girl child. The CEDAW Committee is also of the view that women all over the world continue to suffer multiple discrimination because of their sex and other factors of social exclusion.

#### **3.1. Relevant International Provisions**

The provisions of Article 2 of the CRC and CEDAW 1, 2 and 4 which call for anti-discriminatory law making are useful guides in this endeavour. The CEDAW in Article 4 stresses that anti discrimination law making includes, laws that embrace affirmative action or positive action plans for women.

Article 2 of the CEDAW prohibits discrimination against women and holds states parties accountable to a policy of eliminating discrimination against women through constitutional, legal, and other appropriate means. Article 2 (e) of the CEDAW covers both the private and public spheres and protects women from discrimination by any

“person, organization or enterprise.” Traditionally, international law could only govern state action and could not cover the acts of private parties. The CEDAW and the jurisprudence around the CEDAW took the lead in transforming this doctrine. This transformative jurisprudence has helped develop accountability for non-state actors especially in the case of the rights of children and women. Article 19 (2) of the CRC also provides a list of protective measures that include the establishment of social programs to provide support for children and for those who care for children.

Article 4 of the CEDAW supports the equality provision by guaranteeing special temporary measures in order to achieve de facto equality between men and women. This provision would support the establishment of special incentives for the girl child to attend schools in communities where there is a low attendance of girls in schools. Similarly, the CRC also affirms that states parties to the Convention are under a duty not only to prevent discrimination, but to ensure the positive enjoyment of rights which will enable children to be valued as equal members of society. Article 5 of the CEDAW recommends that state parties take all appropriate steps to modify the social and cultural patterns of conduct of men and women, which reinstate stereotyped roles of women. This Article imposes accountability on State Parties to identify whether there are certain kinds of work that are considered as “men’s work” or “women’s work” and whether girls and boys are expected to do different tasks in the home or at school.

Traditionally, international law focuses only on discriminatory laws and not on the direct and indirect consequences of those laws. The CEDAW is unique in that it goes beyond the examination of discrimination in the laws to examine the disproportionate or discriminatory impact of facially neutral laws. The CEDAW framework provides a powerful methodology to evaluate discrimination between different groups of children. This rights framework is useful to examine the unequal impact of facially equal laws and policies on women and the girl child.

Article 11 (1) of the CEDAW affirms women’s equal rights in employment and guarantees equal employment opportunities to women. This Article also provides women “all benefits and conditions of service equal to men, as well as equal remuneration, including benefits,” and equal treatment for work of equal value. Article 11 also protects women’s right to social security and the right to paid leave.

Article 16 of the CEDAW guarantees equality in the family and this covers the relations of the women and girls with other members in the family.

Apart from non-discriminatory rights enumerated in the CEDAW, Gender mainstreaming is defined by the UN economic Council (1997) as a strategy for making women’s, as well as men’s, concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of the policies and programs in all

political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated.<sup>24</sup>

The Political Covenant's Human Rights Committee has developed interpretations of its substantive articles by issuing general comments. Comments 4 and 13 interpret Article 3, which requires states to ensure for all individuals the rights recognized in the Political Covenant, as imposing a positive obligation on states to remedy sex discrimination. This positive obligation requires that states not only take measures to protect women, such as the enactment of laws, but also take measures of affirmative action designed to ensure the positive enjoyment of rights. It also imposes on states a duty to obtain information regarding the role of women in its jurisdiction in order to determine specifically what additional measures need to be taken.<sup>25</sup> Thus even in the absence of local legislation, or when there are lacuna in the enacted legislation, gender equality is a generally accepted human rights norm to which all state parties are obliged to conform.

Equality is a cornerstone of the CRC which states that rights of the child will be guaranteed without discrimination of any kind, irrespective of the child's or his parent's or legal guardian's race, colour, sex, language, religion, political or other opinion.

#### **Selected Country Studies: Examples of Non-Discriminatory Clauses**

In the front line of combating discriminatory aspects of child domestic labour is strong anti-discrimination and equality provisions which must regulate both the public and private spheres. These anti-discrimination laws must guarantee equality in the home and workplace.

Certain countries have enshrined the rights of children in their Constitutions. For example, the **Vietnamese** Constitution prohibits discriminatory treatment among children of the family. In certain Latin American constitutions, international treaties are given a higher standing than domestic laws and stand on the same level as the Constitution and are complementary of the rights recognized in the constitution. For example, the **Argentinean** Constitution of 1994 enshrines several of the treaties it has ratified including the CRC. This guarantees that the spirit and the letter of the non-discrimination provisions in the CEDAW and CRC define the interpretation of equality.

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<sup>24</sup> In its agreed conclusions 1997/2, the Economic and Social Council provided the following definition of gender mainstreaming:

Mainstreaming a gender perspective is the process of assessing the justified implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy of making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

<sup>25</sup> U.N. GAOR, 36<sup>th</sup> Sess., Annex 7, at 109, U.N. Doc. A/36/40.

Equality clauses have been added to national children's rights laws. The **Indian** National Charter for Children, 2003 enshrines an anti discrimination clause by stating the following: "The State and community shall ensure that all children are treated equally without discrimination on grounds of the child's or the child's parents or legal guardian's race, colour, caste, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth, political status or any other consideration."

Discrimination within the family too is addressed in the Charter. There is a clear recognition of the shared duties of both parents in the rearing and caring of children in the provision which states unequivocally that "the State recognizes the common responsibilities of both parents in rearing their children."

Further, the charter recognizes historic discrimination against women and provides that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking must be eradicated. The Charter also makes special mention of the need to in partnership with the community to undertake special social, education and legal measures to ensure greater respect for the girl child in the family and society.

The Charter also provides for the gender sensitivity in education so as to promote the healthy development of the girl child and children of varied backgrounds.

Strong anti- discrimination provisions will help address inequalities in the home that place the burden of housework disproportionately on the girl child and/ or the woman. It will also help address discriminatory treatment against women outside of the home. In the recent past equal employment opportunity laws from around the world have prohibited discrimination against any person on the ground of gender between women and men who perform work which is regarded as equal or of equal value.<sup>26</sup> Several countries have laws that prohibit discrimination in wages, conditions of work, nature of work, and work-related benefits and retirement and pension policies between male and female employees and any difference in assessing the value of work performed by employees in the same establishment.<sup>27</sup> Such equal employment opportunity laws have been drafted in South Africa, Philippines, Japan and many developing countries.

For example, the **Australian** Sex Discrimination Act of 1984 calls for the elimination so far as possible of discrimination on the grounds of sex, marital status, pregnancy, or potential for pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of all laws and programs.

In **South Africa**, The Law on the Promotion of Equality and Prevention of Unfair Discrimination prohibits gender-based violence and sexual harassment and "any practice,

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<sup>26</sup> Australian Sex Discrimination Act 1984

<sup>27</sup> Canadian Human Rights Act

including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well being of the girl child.” It also prohibits discrimination based on access to opportunities, including access to services or benefits such as health, education and social security.

In order to combat discrimination both in the public and private spheres, it is important to draft equality laws that regulate family relations. One good example of the way in which discrimination both in the home and work place have been addressed is the **Icelandic law** on equality. This law provides for the reconciliation of work /family obligations by both men and women. This guarantees the rights of both men and women to shoulder equal responsibilities in care work and paid work.

It is important to adopt a holistic approach to drafting legislation. Apart from drafting child rights laws it is important to draft gender-aware legislation that addresses gender discrimination both in law and practice. Children’s rights cannot be achieved without a focus on an interrelated approach, which looks at the causes of child rights violations. Laws that do not recognize the gender dimensions of child domestic work will fail to protect the rights of girls and women. News laws include equality clauses in the Constitution, anti-discrimination laws, anti- domestic violence laws, anti-trafficking laws and anti-sexual harassment laws.

### **3.2. Domestic Violence**

In many homes where domestic violence causes the disruption of the family and the child’s entry into the labour market, it is important to examine the laws on domestic violence. Apart from poverty and unequal traditions, child domestic labour has been attributed to negative social conditions in the family. Thus it is important to address violence in the home as having a disproportionate impact on women and children in the family and a reason which drives children to work. On the other hand children themselves run away from environments of systemic violence and find refuge in the streets. Although the common law exemptions on domestic violence have now been removed, certain countries still allow men to moderately chastise their wives and children. Curbing domestic violence will be another way to combat the congruence of causes which push and pull children to domestic labour. While prejudices and customary practices that are based on the idea of the inferiority and superiority of either of the sexes leads to domestic violence, seeing women occupy subordinate positions as domestic workers further perpetuates and reinstates norms of male power and control over women.

Domestic violence laws in many countries provide for child support and family maintenance as part of the injunctions or mandatory restraining orders. For example, the **Singapore Women’s Charter** of 1961 provides for the care of child victims of violence and alcohol. The law also provides for the extended protection of all victims of domestic violence. A variety of programs such as therapeutic group work, support group work and healthy start programs and victim support groups are all part of the programs set up under the anti- domestic violence laws to protect and prevent women and children from violence

in the home in **Taiwan, Korea, Japan and Malaysia**. These laws have an indirect impact on combating child domestic labour.

The **Indonesian** domestic violence law of 2004 is unique in that it covers everyone in the household including domestic workers. Similarly, the proposed bill on Sexual Harassment in **India** covers “domestic servants in employment”.

In several countries anti- domestic violence laws cover both women and children. For example, the **Philippines** Anti- Violence against Women and their Children Act of 2004 covers violence against women and children. This Act covers both children in and outside the family living in the house.<sup>28</sup>

It is also important in law making to see the linkage between child domestic labour and the right to housing. Certain countries have dealt with the right to economic and social rights, especially the right to housing in their Constitutions. For example, Article 65 of the **Portuguese Constitution** states that “all have the right, both personally and for their family to a dwelling of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal and family privacy. In order to ensure the right to housing, it is incumbent on the State to draw up and implement a housing policy as part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities and to promote in conjunction with local authorities, the construction of economic and social housing.

In the **Philippines**, the Urban Development and Housing Act of 1992 guarantees the access to land and housing to the underprivileged and homeless citizens and guarantee an equitable land tenure system that shall guarantee security of tenure to program beneficiaries.

Equality clauses have been added to national Children’s rights laws. The Indian National Charter for Children, 2003 enshrines an anti- discrimination clause by stating, “The State and community shall ensure that all children are treated equally without discrimination on grounds of the child’s or the child’s parents or legal guardian’s race, colour, caste, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth, political status or any other consideration.

Discrimination within the family too is addressed by the provision in the charter which states unequivocally that “the State recognizes the common responsibilities of both parents in rearing their children.”

Also, reform of other laws including domestic violence laws have provide extra protection to a broad class of persons resident in the home, not just family members. For example, the **South African** Domestic Violence Law of 1998 provides protection to a broad category of persons who share or recently shared a residence, and provides a model

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<sup>28</sup> Anti- Violence against their Children Act of 2004, Republic Act No. 9262.

for other countries to follow. The **Indonesian** domestic violence law of 2004 provides protection for domestic workers from domestic violence.

### **3.3. Recommendations for Law, Policy and Programme Reform**

A strong anti-discrimination clause should be the centrepiece of the law on child domestic labour. This provision should cover work done at home as well in a third party's house.

- No child will be discriminated due to the child's origin, sex, national and civil identity, place of residence, language, religion, race, colour, caste, disability, education and community. Children born in wedlock and out of wedlock enjoy equal and comprehensive protection of the state.
- State and non-state parties will ensure that all children are treated equally without discrimination on grounds of the child's or the child's parents or legal guardian's race, colour, caste, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth, political status or any other consideration.
- Every child will be provided equal remuneration for the equal work without discrimination of any kind based on the child's origin, sex, national and civil identity, place of residence, language, religion, race, colour, caste, disability, education and community.
- The State shall undertake measures to ensure greater respect for the girl child in the family and community. Family relationships will be guided by principles of non-discrimination and equality.
- Unpaid work must be strictly prohibited.

## **4. Right to Education**

While not independently sufficient, education for children is the best medicine against child domestic labour and child labour generally. The correlation between education and child labour is most starkly shown by the fact that in Pakistan, a country with one of the highest population of child workers, nearly six million children aged 5-9 remained out of school.<sup>29</sup>

The right to education must be an integral part of the lawmaking initiative. Provisions on education must be informed by the relevant international conventions. This right should be examined thoughtfully and creatively to establish innovative non-discriminating laws and policies.

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<sup>29</sup> State of Human Rights in 2003, Human Rights Commission of Pakistan, P. 259.

## 4.1. Relevant International Provisions

The right to education is recognized in the Universal Declaration of Human Rights and guaranteed in other treaties like the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Primary education must be “compulsory and available and free to all.”<sup>30</sup> Secondary education, including vocational education, must be “available and accessible to every child,” with the progressive introduction of free secondary education.<sup>31</sup> Under the CRC different forms of secondary education including vocational education must be accessible to all children and appropriate measures must be taken to introduce free education and financial assistance in case of need. With regard to the connection between child domestic labour and education, the Convention on the Rights of the Child explicitly guarantees children the right “to be protected from performing any work that is likely . . . to interfere with the child’s education . . . .”<sup>32</sup> Access to secondary education also works to impede child labour because families, and children especially, might be willing to commit a few additional years of education for the greater freedom of career choice and greater remuneration possibilities it makes available.

In addition, the International Covenant on Civil and Political Rights guarantees each child the right to “such measures of protection as are required by his status as a minor,” a provision that the Human Rights Committee has interpreted to include education sufficient to enable each child to develop his or her capacities and enjoy civil and political rights.<sup>33</sup> Although the right to education is a right of progressive implementation, meaning that implementation may take place over a period of time, subject to limits on available resources, the right to education is predicated on the basis of equal opportunity. Thus Article 28 (1) places a duty on state parties to recognize the right of the child to education on the basis of equal opportunity. State parties also undertake to implement immediate measures to prohibit discrimination from arising and eliminating discrimination when it has already occurred when a state party to the International Covenant on Economic, Social and Cultural Rights agrees “to take steps . . . to the maximum of its available resources” to the full realization of the right to education.<sup>34</sup>

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<sup>30</sup> CRC, Art. 28(1)(a). The principle of compulsory education in Article 28 of the CRC is only applicable to children, thus illustrating the high premium that the CRC places on the child’s right to education. Article 28 (d) also prohibits discrimination in access to education between different groups of children.

<sup>31</sup> The International Covenant on Economic, Social and Cultural Rights provides that primary education “shall be available to all” and that secondary education “shall be made generally available and accessible to all by every appropriate means.” International Covenant on Economic, Social and Cultural Rights, art. 13. Article 28 of the Convention on the Rights of the Child recognizes “the right of the child to education;” states parties undertake to make secondary education “available and accessible to every child.”

<sup>32</sup> CRC 32 (1).

<sup>33</sup> See International Covenant on Civil and Political Rights (ICCPR), opened for signature December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976), art. 24; Human Rights Committee, *General Comment 17: Rights of the Child*, para. 3, in *Compilation of General Comments and General Recommendations* p. 145.

<sup>34</sup> International Covenant on Economic, Social and Cultural Rights, art. 2(1). See also Convention on the Rights of the Child, art. 28. Still “[t]he realization of the right to education over time, that is ‘progressively,’ should not be interpreted to mean that States have unrestricted discretion to apply these rights. Progressive realization means that states parties have a continuing obligation ‘to move as

According to the General Comment No. 13 of on The Right to Education by the Committee on Economic, Social and Cultural Rights, both primary and secondary education must include elements of “availability, accessibility, acceptability and adaptability.”<sup>35</sup> The CESCR defines availability to mean “functioning educational institutions and programmes... to be available in sufficient quantity within the jurisdiction.”<sup>36</sup> Educational institutions must be accessible to all without discrimination, to be within safe physical reach either by attendance at some reasonably convenient geographic location” and to be “affordable to all.”<sup>37</sup> The Committee stated that although primary education should be “free to all” states parties are “required to progressively introduce free secondary and higher education.”<sup>38</sup>

The CRC Committee also provides insights and concrete examples of how to combat child domestic labour using a gender perspective. The Committee has consistently referred to the need to strengthen rights of the child to access education. In the Concluding Observations of the Committee on the Rights of the Child to the **Ethiopian** State Party report, the CRC recommended that the State Party take urgent steps to provide, among other things, education, health care, nutritional aid and alternative care to children living or working in the streets. Further, the Committee was very concerned at the very low rates of primary and secondary school enrolment and was especially concerned at the low rate of enrolment among girls and the very high drop-out rates among girls.<sup>39</sup> With regards to **Pakistan**, the CRC Committee has stated that eradication of child domestic labour should take place by addressing its root causes through poverty eradication and access to labour.<sup>40</sup>

The CEDAW also clearly guarantees the equal access to education for the girl children and women. Article 10 of the CEDAW provides for the elimination of discrimination against girls in education, including access to schooling, reduction of female student drop-out rates, and programs for girls who have left school prematurely. The CEDAW also guarantees equal conditions for career and vocational guidance in educational establishments of all categories both in urban and rural areas. The Convention especially mentions that “this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.” Article 10 of CEDAW is extremely useful in guiding alternative policies to child domestic labour and providing the opportunities to escape the sometimes intergenerational trap of domestic work. The Article provides for the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to

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expeditiously and effectively as possible’ towards the full realization of article 13” of the covenant. Committee on Economic, Social and Cultural Rights, *General Comment 13, The Right to Education*, U.N. Doc. E/C.12/1999/10 (1999), para. 44, in *Compilation of General Comments and General Recommendations*, p. 79.

<sup>35</sup> U.N. Doc. E/C.12/1999/10, December 8, 1999. para 6.

<sup>36</sup> Ibid, para. 6 (a)

<sup>37</sup> ibid., para 6(b)

<sup>38</sup> ibid.

<sup>39</sup> U.N. Doc. CRC/C/15/Add.144 (2001).

<sup>40</sup> U.N. Doc. CRC/C/15/Add.217 (2003).

achieve this aim and, in particular, by the revision of text books and school programs and the adoption of new teaching methods.

Article 10 of the CEDAW is particularly important in the context of child domestic labour. This article guarantees equal access to education on a basis of equality of men and women. This right reiterates the rights guaranteed by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The equality of women is to be ensured in pre-school, general, technical, professional and higher technical education, and all types of vocational training. Article 10 supports Article 2 of the CEDAW, which prohibits *de facto* and *de jure* discrimination and guarantees formal and substantive equality as well as relates to Article 5 of the CEDAW, which prohibits negative cultural traditions that devalue women. The CEDAW also recognizes women's and girls' equal opportunities to participate in sports and physical education and the equal resources available to promote those activities. Article 10 (g), which requires the same opportunities to participate actively in sports and physical education, is specially relevant to the girl child domestic worker who may not be able to exercise this right.

The use of CEDAW in conjunction with the CRC and other conventions provide a strong base to prevent child domestic labour as well as to make sure that even child domestic workers have access to the enjoyment of their rights. The consideration of CEDAW will provide the analytical framework to examine the plight of the girl domestic worker.

The CEDAW and CRC guarantees on education must be read with the UNESCO Convention and Recommendation against Discrimination in Education (1960), which defines educational discrimination as:

Any distinction, exclusion limitation or preference ... based on race, colour, sex, language, and religion, political or other opinion ... and in particular:

- Of depriving any person or group of persons of access to education of any type or at any level;
- Of limiting any person or group of persons to education of an inferior standard;
- Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

The Worst Forms of Child Labour Convention highlights “the importance of education in eliminating child domestic labour” and calls on states to ensure access to free basic education for all children removed from the worst forms of child domestic labour.

## **4.2. Selected Country Studies**

**East Turkey** has adopted an innovative approach to the education of girls. Although in 1997, Turkish law was revised to make education compulsory for children 5-8 years of age; this law could not be enforced unless some practical steps were first taken to make education accessible to the girl child. Conscious of this, the ILO/IPEC Action Program for vocational training for rural and child domestic labour in East Turkey cooperated with the Ministry of Education to offer girls the opportunity to enrol in a distance learning

program provided by the Ministry of Education. Along with the partner organization, ILO /IPEC established study centres in target villages, so girl students could focus on their education without attending school.

In **Tunisia**, the high drop-out rate of girls from schools has been acknowledged and schooling has been made mandatory from 6-16 years and sanctions have been made available for non-compliance. Equality of opportunities for children of both sexes in urban and rural areas has been made one of the parameters for educational planning in Tunisia.<sup>41</sup>

In certain countries, non- formal education programs have been set in motion to cater to the needs of the working child. **Lebanon** is a case in point. Parallel to the formal educational track a newly designed curriculum has put in place a vocational educational track for boys and girls over 12 years of age. Children can shift between the formal and non-formal tracks.

The **Cambodian** Development Goals provision on education shows the linkage between gender and children's education. These lines of action include: providing scholarships for girls to accelerate their retention in the education system; building safe and healthy dormitories for accommodation of girls studying away from home; building separate toilets for girls and boys at secondary and tertiary levels; expanding new approaches in community-based non-formal education to increase female literacy; implementing night-school programs in urban areas to encourage girls to attend school after work.

In **Bangladesh**, the food for education program and the abolition of tuition fees for primary schools was met with much enthusiasm by the CRC Committee,<sup>42</sup> as a way creating incentives and affirmative programs to send children back to school.

The CRC Committee has also been deeply concerned at the situation of child domestic workers in **Haiti** (*restavèk*) where under Article 341 of the Haiti Labour Code children can be placed with families (without any kind of remuneration). The Committee noted that most of these children are girls and that they are forced to work long hours under extreme conditions and are subject to abuse and ill treatment. The Committee recommends that the root causes of the phenomenon be examined and that *restavèk* should be provided services for their physical and psychological recovery and social reintegration, including access to education.

One of the most important reforms undertaken by the **Chilean** government is to initiate reforms to improve the quality, equity and efficiency of the country's educational system. This effort to comply with Articles 31 and 32 of the CRC is a laudable provision. The government also operates a family income support program through which families living below the poverty line receive incentives if they can demonstrate that young children are registered in school. This has significantly increased school registration. The

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<sup>41</sup> U.N. Doc. A/50/38, paras. 218-277 ( 1995).

<sup>42</sup> Bangladesh, U.N. Doc.CRC/C/15/Add. 221 ( 2003).

government's Rural Basic Education Program also provides additional funding and targeted program for rural students and teachers. In 1996, the government initiated a new program which implemented new incentives for teacher professionalisms and developed a network to model and disseminate innovative teaching, learning and managerial practices at the secondary level.

In the **Philippines**, Under Article 146 of the Labour Code, if the "househelper" is under the age of eighteen (18) years, the employer must provide him or her opportunity for at least elementary education. The cost of such education shall be part of the "househelper's" compensation. Art. 1691 of the Civil Code too provides for the same requirement. Philippines Republic Act No. 7610 also provides for the "Special Protection of Children against Child Abuse, Exploitation and Discrimination. One of the highlights of this law is that it provides flexibility in the provision of education for Children. Article viii, Section 13 provides that the Department of Education shall provide non-formal education programs aimed at promoting the intellectual, moral, and vocational efficiency of working children who have not undergone or finished elementary or secondary school.

Apart from these laws that deal directly with children in employment, Philippines Child and Youth Welfare Code of 1977, addresses the rights of children in the home, education, in religion and in the community. It also addresses the needs of special categories of children. Further, the Free Public Secondary Education Act of 1988 provides secondary school education for both girls and boys and Act No. 6728 of Providing Assistance to Students and Teachers provides for government assistance to financially disadvantaged students and teachers in private primary and secondary education, in the form of tuition fee supplements, textbooks assistance fund, scholarships and loans.

**Indonesia** supports the right to education and supports access to education for all for the first six years of primary education and three years of lower secondary education. In 2003, a new law was passed guaranteeing the right to basic education from ages 7 to 15. However, neither primary nor secondary education is free and both are considered a shared responsibility between national and regional governments and the community. Direct and indirect costs associated with schooling are a huge impediment to the full realization of the child's right to an education.

The child's right to education is enshrined in the Indonesian Educational Act. No. 91-65 of 29 July 1991 concerning the educational system. Schooling is compulsory and free between the ages of 6 and 16 and administrative measures have been put in place to ensure the exercise of this right. A very good enforcement strategy is that various penalties can be used against any parent who attempts to prevent a son or daughter from attending school.

The prohibitions against child domestic labour in **Pakistan** must be seen in light of provisions made to prevent child domestic labour such as in the area of education. The Constitution of Pakistan also guarantees the right to education. In Article 37, the State is obligated to promote with special care, the educational and economic interests of

backward classes or areas and remove illiteracy and provide free and compulsory secondary education within the minimum possible period and make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

The **West Pakistan** Primary Education Ordinance 1962 and The Punjab Compulsory Primary Education Act of 1994 provide similar provisions on compulsory primary education in any district for a child residing within such area. Except in the case of a reasonable excuse, the child must attend a recognized school until the child has completed the primary education course. The only excuse for non-attendance is when the child is “unable to attend school because of sickness, infirmity or other unavoidable cause; where the child is receiving instruction other than in a recognized school, which in the opinion of the competent authority is efficient; where there is no recognized school, which in the opinion of the competent authority is efficient; where there is no recognized school within a prescribed distance from the residence of the child; where a recognized school has been refused to the child and where the competent authority is satisfied that by reason of the child’s mental incapacity, it is not desirable that the child should be compelled to pursue her studies further”.

An extremely important provision in this ordinance is that it calls for a school attendance authority to ensure that every child be required to attend a school. Further, penalties are attached to the non compliance of these provisions. Any parent who fails to comply with an order of the Authority shall on conviction be punishable with a fine. At the same time, any person who after receiving warning from the authority continues to employ a child required to attend school, with or without remuneration shall on conviction before a Magistrate be punishable with a fine.

The **Indian** National Charter for Children, 2003 reiterates that the State recognizes a child’s access to free and compulsory education. What is most important about the charter is that it recognizes the special needs of disadvantaged communities. The Charter provides special incentives to children from disadvantaged social groups in order to secure the retention and participation of all children in schooling.

The Charter also enumerates that the education should be child- oriented and meaningful and sensitive to the healthy development of the girl child and to children of varied cultural backgrounds.

**Ghana**, in 1996, started its Free Compulsory and Universal Basic Education (FCUBE) program to serve as the focal point for all domestic and internationally funded initiatives to improve basic education. The aims of the FCUBE are to improve the quality of teaching and learning, access to basic education facilities, and management efficiency. A special focus of the program is the enrolment, retention and provision of various educational services to girls. International donors are helping Ghana to build new classroom facilities, conduct school feeding programs, provide training to teachers and educational administrators, and help families defray the cost of children’s school fees and other expenses. As an incentive to teachers in rural areas and to supplement low salaries,

the government has offered accelerated promotions and bicycles to teachers willing to work in rural areas. Ghana has also initiated a Needy Child Fund that helps up to fifty children in each of Ghana's 110 districts qualify for help with basic school needs, and programs on girls' education.

The Government of **Ethiopia** is also developing primary education, institutional development, and program management aimed at funding school feeding programs aimed at improving school children's nutrition, attendance and participation in school, and parental involvement in school activities.

Despite rigorous laws on the books which aspire to comply with the CRC provisions on the child's rights to education, law enforcement remains weak. There is also very little sensitivity to the gender differentials in access to education or an attempt made to address the special needs of the girl child.

### **4.3. Recommendations for Law, Policy and Programme Reform**

A gender-sensitive approach to lawmaking in the arena of education will bring to the surface the need for gender equality in education and through education.

The girl child faces many cultural, economic and social barriers to attending school. These reasons range from scarce family resources, the competing needs of the family and the perceived obligations of a girl child to her family and the devaluation of a girl's education.

#### *Free and Compulsory Education*

- Free and compulsory education should be available for both girls and boys at least from kindergarten through grade nine.
- Access to higher education and financial assistance in case of need must be made available.

#### *Implementation Mechanisms*

- School attendance authorities must ensure that every child be required to attend a school. Further, penalties must be attached to the non-compliance of these provisions. Any parent who fails to comply with an order of the authority shall be subject to a fine or removal of a subsidiary. At the same time, any person who after receiving warning from the authority continues to employ a child who is required to attend school, with or without remuneration shall on conviction be punishable with a fine.
- Supporting activities like school registration, transportation, school clothes and school lunches should be provided.
- Measures should be taken to defray the costs of school supplies, books, clothing, transportation and other indirect costs associated with attending school. These

### *Family Incentives*

- Provide a family income support program through which families living below the poverty line receive incentives if they can demonstrate that young children are registered in school.

### *Implementation Mechanisms*

- Provide special incentives to the family to send their daughters to school. Establish temporary special measures under Article 4 of the CEDAW so that girls will overcome traditional bias against girl's access to education.
- Opportunity costs in terms of the child's labour at home should be factored in when providing subsidies and incentives to families. En example of such an incentive can be a food for education program initiated in certain countries.
- Provide education to the community about the value of a woman's education. These programs should address family and community prejudices and cultural factors regarding a girl's education.

### *Education and Training for the Working Child*

- No person shall employ a child in such a manner as to prevent the child from attending school or vocational training.

### *Implementation Mechanisms*

- Establish alternative educational programs for children who work during the day. All education programs should be aimed at promoting the intellectual, moral and vocational efficiency of the working child.
- Arrange special help for child domestic workers who attend school during the day so that their domestic labour does not result in poor performance at school.
- Apart from formal education, develop vocational educational programs that will relate to the real life experiences of the child.
- Develop special educational and skill training programs for children who are being rehabilitated into the community.
- Establish community education programs in the child's community as well as the employer's community on rights of children and how to report cases of child abuse and exploitation.

### *Special Focus on the Needs of the Girl*

- Make schools safe and secure for all students. Ensure that educational institutions are fit for use. They should be inspected under safety codes.

### *Implementation Mechanisms*

- Ensure sanitary facilities for girl and boy students.
- Ensure schools are accessible to girls. Recognize that girls in traditional societies are often not able to attend school un-chaperoned.
- Transportation to school must be safe and secure. Special attention must be paid to ensure the safety of vulnerable student populations, especially girls.<sup>43</sup>
- Ensure schools are girl-friendly and accommodate the needs of pubescent girls. Recognize that girls are also disenfranchised by schools where male hierarchies dominate.

### *Educational Content*

- Revise the education curriculum, course materials and teaching methods to make it more meaningful to the child's needs.

### *Implementation Mechanisms*

- Revise course content and course materials so as to eliminate stereotypes about gender roles. These courses should also strive to reduce any existing gap between men and women.<sup>44</sup>
- Make gender sensitivity training integral to the school curriculum. Change perceptions of gender through educational initiatives.
- Ensure that that boys and girls have access to the same curricular, same examinations, teaching staff and equipment and the same opportunities to participate in sports and physical education on a basis of equality.<sup>45</sup>
- Educational and vocational training must take into account the children's needs, capabilities, the culture and the communities they are from.
- Provide marketable skills on technological education, with a special focus on girls.
- Consult children in developing programs and trainings they would like to be engaged in and tailor those programs to their needs.
- In accordance with the CRC Article 28 make international cooperation in matters relating to education a priority. This cooperation should facilitate the development of modern teaching methods and innovative scientific and technical knowledge.

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<sup>43</sup> The Human Rights Commission of Pakistan reports that in 2003, several girls reported that they were being sexually harassed by their rickshaw drivers on their way to school in Lahore. In Faisalabad in the same year, girls have reported abductions and rape on their way to school.<sup>43</sup> Transportation to school and back, especially in remote areas can be a big hurdle to children attending school.

<sup>44</sup> CEDAW Article 10 (e)

<sup>45</sup> CEDAW Article 10 (c and g).

## **5. The Right to Health**

A child's access to health care should not be subordinated in the case of a child who works. Since the right to health is affected in myriad ways when children are engaged in work in their own or other people's homes, the child who works needs special attention to his or her health.

### **5.1. Relevant International Provisions**

Article 6 of the CRC enshrines the right to the maximum possible survival and development of the child. Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties are obliged to pursue the full implementation of this rights will the establishment of appropriate measures. This must be read together with Article 12 of the CEDAW which guarantees the right to health care on a basis of equality with men. Article 12 of the CEDAW is also the first human rights treaty to make specific mention of family planning. Further, General Recommendation 15 of the CEDAW Committee called upon states parties to intensify efforts to raise public awareness of the risk of HIV/AIDS, particularly in women and children. It was also recommended that States adopt programs that take into account the particular vulnerability of women to HIV infection resulting from their reproductive role and their subordinate position.

The CEDAW in Article 12 also provides women the equal right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction. In its General Recommendation on Women and Health (no. 24, 1999), the CEDAW Committee has called on states to give special attention to the needs of migrant women.

### **5.2. Selected Country Studies**

The Child Labour Prohibition and Regulation Act of 1986 in **India** provides for the health and safety of the child as well as for cleanliness, disposal of waste, ventilation and moderate temperature in the place of employment. The Indian Charter for Children, 2003 promotes high standards of health and nutrition for children. The measures provide for both preventive and curative facilities with special focus on immunisation and prevention of micronutrient deficiencies. Special measures are recommended for all children of families below the poverty line. Access to safe drinking water, environmental sanitation and hygiene are given priority in the Charter. Moreover, children are to be guarded against practices that are detrimental to their physical and mental health.

The Pakistan Employment of Children Act of 191 provides in Section 13 the rules for the health and safety of working children. The employment of Rules of 1995 further regulates in detail the need for cleanliness, ventilation and safety in the payment, including the arrangement of drinking water.

The Philippines law also mandates that the employer shall ensure “the protection, health, safety and morals of the child.”

### **5.3. Recommendations for Law, Policy and Programme Reform**

- A clear prohibition against children’s employment in any hazardous labour categorized in ILO Convention 182.
- Prohibited categories of employment should include: work carried out five feet above or below ground level; care of persons with contagious diseases; work involving sharp and dangerous tools or objects; work involving chemicals, insecticides or pesticides; work involving explosives; and living and working alone.

#### *Implementation Mechanisms*

- Child workers should receive nutritious food necessary for their growing bodies and physical and mental well being.
- Child workers must receive proper medical care and assistance.
- Necessary immunization processes and special dietary requirements to maintain good health must be undertaken by the employer.
- The girl child shall not be subject to any form of health or food discrimination.
- The special needs of a girl child in relation to menstruation, reproductive health and sexual education must be taken into consideration.
- Employer must ensure access to clean water, sanitary surroundings and hygiene.
- The Child domestic worker at no time should be subject to corporal punishment, berated or humiliated in any manner. He or she must be treated with dignity and respect at all times.
- In order to prevent dislocation, the child domestic workers must not be moved around from one employer to another unless the place of employment poses a risk to the health and safety of the child.
- Child domestic workers must be allowed frequent and intimate contact with their biological families in keeping with CRC Articles 7, 8 and 9 which enshrine the child’s right to parental nurture and guidance. The child domestic worker must be provided with opportunities to maintain family contact and travel home for festivals and special occasions. The employer should ensure the safety of the child domestic worker during travel period.
- Abuse of children who are in domestic labour must be quickly identified and addressed. Abuse includes physical abuse, sexual abuse, and denial of nutrition, mental and psychological abuse.
- Children who are trafficked or in bonded labour also often suffer from sexual and physical abuse. They may also be tortured into submission. Special attention must be paid to this aspect of bonded children.

- Special rehabilitation centres must be established for children who might be victims of sexual abuse.<sup>46</sup>

## 6. The Right to Be Protected Against Exploitation

Trafficking, forced labour and slavery, sexual exploitation, involuntary servitude and prostitution are all considered the worst forms of child labour. At the same time, the fact that few regulations govern conditions of domestic work has resulted in exploitation and ultimately forced labour. Child workers are on call all the time and are expected to be available at all times. In most countries, very few regulations govern the world of domestic work. Even when regulations apply, discriminatory laws exempting domestic workers from normal work hours may exist. Exceptions to overtime and holiday pay also frequently apply to domestic workers. Domestic workers are frequently exempted from the standard number of rest days available to other workers. In Haiti, the minimum age for employment as it relates to child domestic workers is often lower than the minimum age of employment in labour code.

Poor work conditions and neglect often contribute to the exploitation of the child worker both at home and in a third party's home. Exploitative working conditions include fetching water from streams and wells; chopping firewood; using heavy or dangerous equipment, all of which pose a threat to the safety of the child.

### 6.1. Relevant International Provisions

The Worst Forms of Child Labour Convention, adopted by the International Labour Organization in 1999 as Convention 182, presents a global consensus to end the worst forms of child domestic labour<sup>47</sup>, and requires states to take immediate measures to abolish such practices, defined as:

- a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) 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;
- d) 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>48</sup>

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<sup>46</sup> In El Salvador, a Rapid Research Assessment found that 66.4 percent of the girls in domestic work reported physical or psychological abuse. The impact of such abuse on the girl child's reproductive health can be particularly severe.

<sup>47</sup> As mentioned in ILO, understanding child domestic labour, the worst forms of child domestic labour include children who were previously trafficked and end up as child domestic labourers, those who are beaten and not allowed to leave the house and those who may handle toxic substances.

<sup>48</sup> Worst Forms of Child domestic labour Convention 182, Art. 3.

These forms of employment are unacceptable and non-negotiable and children must immediately be removed from such an environment, and steps must be taken to eliminate such work. Other types of work are prohibited if they constitute “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>49</sup>

Under the Worst Forms of Child Labour Convention, state parties determine what constitutes prohibited hazardous work in consultation with workers’ and employers’ organizations, considering “relevant international standards, in particular . . . the Worst Forms of Child Labour Recommendation.”<sup>50</sup> In doing so, national bodies are guided by paragraph 3 of Recommendation 190, which accompanies Convention No. 182. Among others, the recommendation calls for consideration of the extent to which the work “exposes children to physical, psychological or sexual abuse” or involves “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>51</sup>

Article 32 of the CRC protects the child from economic exploitation and from performing any work that 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. To this end, states are obliged to take legislative, administrative, social and educational measures to ensure the implementation of this article. Article 32 (b) also provides for appropriate penalties or sanctions to ensure the effective enforcement of the article. Article 36 of the CRC seeks to protect the child against all forms of exploitation. Article 39 of the CRC is also applicable as it covers child victims from all forms of abuse and exploitation. These rights may be violated in the case of child domestic labour. Article 39 holds state parties accountable to take all appropriate measures to promote the physical and psychological recovery and social reintegration of children who have suffered from social exploitation. These articles should be seen in conjunction with Article 34 (a) of the CRC which seeks to protect the child from the inducement or coercion to engage in any unlawful sexual activity.

CEDAW in Article 6 prohibits the exploitation of women asks States Parties to take all appropriate measures, including legislation to prohibit trafficking of women and all exploitation of prostitution of women.

Additionally, Recommendation 19 of the CEDAW protects domestic workers from sexual harassment in the workplace. The Committee on the Elimination of Discrimination against Women has noted that sexual harassment impairs equality in employment, in violation of the principle of non-discrimination.<sup>52</sup>

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<sup>49</sup> *Id.* at Art. 3 (a)(d).

<sup>50</sup> Worst Forms of Child domestic labour Convention (1999), art. 3 (a) (d).

<sup>51</sup> Worst Forms of Child domestic labour Recommendation, Recommendation 190 (1999), para.3

<sup>52</sup> The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (known as the Convention of Belém do Pará) explicitly prohibits workplace sexual harassment as a

## 6.2. Selected Country Studies

Article 36 of the **Ethiopian** Constitution stipulates that children are not to be subjected to hazardous work or exploitative practices that may be hazardous to their health. Under the Labour Proclamation, employers are forbidden to employ young workers when the nature of the job or the conditions under which it may be carried out may endanger the life or health of the children. Some prohibited activities include transporting by air, land or sea, working with electric power generators and performing underground work.

The **Chilean** Constitution and the labour code prohibit forced labour and the Penal Code prohibits prostitution of children, corruption of minors and involvement of children in pornography. The trafficking of children for prostitution is also prohibited under the Penal Code.

The penal code does not expressly prohibit the worst forms of child labour.

In 2002, in Chile projects to prevent the sexual exploitation of children and to establish the worst forms of child domestic labour were begun. A number of activities have already been characterized as the worst forms of child domestic labour in the national register, including child prostitution; child pornography; trafficking of children for the purpose of commercial sexual exploitation drug use and production; underground work and work with toxic substances.

The **Indonesian** government, in 2002, passed the Child Protection Act as the enabling legislation for the CRC. The law defines a child in accordance with the CRC as anyone under the age of eighteen and prohibits economic or sexual exploitation of children, as well as violence and abuse of children. The law sets forth penalties for economic or sexual exploitation of a child, and for committing violence, including torture, against a child. Although the law can be used to prosecute employers it is little used. There are also no regulations requiring local manpower offices to receive complaints from domestic workers about workplace abuse or exploitation. The labour law of 2003 in Indonesia does prohibit anyone from employing children and engaging them in the worst forms of child domestic labour, such as slavery or practices similar to slavery; jobs that procure or offer a child for prostitution, pornography or gambling or involve a child in the production of alcoholic beverages. A child in this case is defined as a person under the age of 18.

The 1987 Constitution of the **Philippines** enshrines the right of children to assistance and protection from neglect, abuse, cruelty, exploitation and other conditions which might be an impediment to their development. The Philippines labour code too provides special provisions for children by guaranteeing the provision of a non-hazardous work environment for children.

The **Philippines** Child Prostitution and Other Sexual Abuse law no. 7610 has model provisions on protection, prevention, restitution, remedies and sanctions. The Act

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form of violence against women, and the ILO considers sexual harassment to be a form of sex discrimination prohibited by the Discrimination (Employment and Occupation) Convention, 1958.

mandates a program in coordination with the Department of Social Welfare and Development and the Department of Justice within one year of the laws passing. This program will protect children against child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, other acts of abuse and circumstances which endanger the normal development and survival of the child.

The law also covers intimidation of street children or any other child to beg or use begging as a means of living, or act as a conduit or middleman in drug trafficking. The law also prohibits the use of children in commercials or advertisements promoting alcohol, tobacco or violence.

Art. 1689 of the **Philippines** Civil Code provides that household service shall always be reasonably compensated and that any stipulation that household service is without compensation shall be void. Such compensation shall be in addition to the “househelper's” lodging, food, and medical attendance. Article 146 of the Labour Code mandates that all domestic workers should be treated in a just and humane manner and in no case shall physical violence is used upon them.

Article 3 of the Pakistan Constitution calls for the elimination of exploitation and ensures the elimination of all forms of exploitation and the general fulfilment of the fundamental principle, from each according to his ability to each according to his work. Article 11 of the **Pakistan** Constitution prohibits slavery and forced labour, and trafficking. Article 11 (3) of the 1973 Constitution of **Pakistan** states that no child below the age of fourteen shall be engaged in any factory or mine or any other hazardous employment.

Article 24 of the **Indian** Constitution mandates that no child below the age of 14 shall work in a factory, mine or any other hazardous environment. The Indian National Charter for Children, 2003 which was promulgated under Article 15 of the Constitution also provides protection to children from economic exploitation and from performing tasks that are hazardous to their well being. Further, the Charter guarantees that all children have a right to be protected against neglect, maltreatment, injury, and trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.

Under the Charter strict measures can be taken to ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence.

The **Indian** Supreme Court in *MC Mehta v. The State of Tamil Nadu* and *M.C. Mehta v. Union of India* have directed that measures be taken to withdraw children from hazardous occupations and to establish a welfare fund for them. The Supreme Court has also regulated the working conditions in non-hazardous occupations. Recently the Indian Supreme Court ordered the Central government to respond by the end of August whether the draft Bill on Unorganized Workers can be modified to the extent that domestic workers are included.<sup>53</sup>

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<sup>53</sup> National Domestic Workers Wel. Trust and ORS v. Union of India and ANR. Petition of 8/4/2005.

Trafficking laws are very important to combat child domestic labour. **Philippines** also provide special protection for child victims of trafficking. Although the Anti- Trafficking law of No. 9208 of 2003 covers both women and children, when children are trafficked, Republic Law N. 7610 or the law providing for Stronger Deterrence and Special Protection against Child Abuse and discrimination and for other Purposes applies. Section 7 of the law provides for punishment for any person who engages in trading and dealing with children. Section 8 of the same law refers to the Attempt to Commit Child Trafficking and punishes a person who engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centres, or other child-caring institutions. Act No. 9208 covers other means of trafficking including through adoption. The Philippines law is a progressive law in that unlike other trafficking laws, consent or lack of consent of the trafficked person is irrelevant.<sup>54</sup>

The steps taken to address trafficking of children include a Presidential Decree that established several regulations for issuing authorizations for minors (anyone under the age of 18) to leave the country. Under this decree, any adult wishing to exit the country with a minor must request permission in writing from the regional authority and must have permission from the chief of a village or the mayor of a community

The **Vietnam**, National Program of Action Against Crimes trafficking in Women and Children 2004-1010 calls for supporting with education, employment and community re-integration for trafficked women and children and for regular communication and education for high-risk target groups around the country.

**Anti-trafficking in Women and Children Law in China** law has been an important part of Chinese criminal law since the 1980s. Since 1980, due to more serious crimes in trafficking women and children, the Supreme People’s Court, the Supreme People’s Procuratorate, the All-China Women’s Federation and other agencies jointly issued “A Notice on Striking Crimes of Abducting and Trafficking in Women and Children.” In 1991, the Standing Committee of the NPC promulgated “Decisions of the Standing Committee of the National People’s Congress Regarding the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women or Children.” The Criminal Law Code of 1997 incorporated the substance of the above mentioned decision. The

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<sup>54</sup> The 1997 **Thailand** law on the Prevention and Suppression of Trafficking in Women and Children defines trafficking as:

“... buying, selling, vending, bringing from or sending to, receiving, detaining or confining any women or child or arranging for any woman or child to act or receive any act, for sexual gratification of another person, for an indecent sexual purpose, or for gaining any illegal benefit for his/herself or another person, with or without the consent of the woman or child.”

The **Cambodian** law on the Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings, penalizes “any person who lures another person, male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer any money or jewelry, whether or not there is consent from that person, by ways of forcing, threatening or using of hypnotic drugs in order to kidnap him/her for trafficking/sale or for prostitution, shall be subject to imprisonment from ten to fifteen years.

amended Criminal Law Code in 1997 includes several sections relating to the abducting and trafficking of women and children. They are: “Crime of trafficking in women or children” (Art. 240), “Crime of gathering people to prevent functioning of a state organ from rescuing a sold woman or child” (Art.242), “Crime of malpractice to rescue a woman or child who is abducted, sold or kidnapped”(Art.416-1), “Crime to hinder the rescuing a sold woman or child” (Art.416-2). The punishments for the above mentioned crimes were increased. In 1999, the Supreme People’s Procuratorate issued “Regulation on Standards for the People’s Procuratorate Directly Investigate Cases”, which stipulates that cases of inaction to rescue or to hinder the rescue of abducted and sold women and children should be directly investigated by the People’s Procuratorate. In 1999, the Supreme Court issued Interpretation of the Supreme People’s court on the Application of law Trying the Cases of Abduction and Trafficking Women. In 2000, the Ministry of Public Security issued “Opinions on How to Implement Laws and Policies to Strike Crimes of Abduction and Trafficking in Women and Children.” Furthermore, the Chinese government has promulgated, “The law on the Protection of the Rights and Interests of Women, Labour Law,” “Law on Protection of Juveniles”, “Law on Prevention of Juvenile Delinquency”, “Marriage Law”, “Law on Adoption” and other laws, regulations and rules.

### **6.3. Recommendations for Law, Policy and Programme Reform**

#### *Government Commitment*

- Promulgate guidelines on the specific roles and responsibilities of departments of Labour, health and employment and other relevant national governmental agencies.
- Promulgate roles and responsibilities of Local Government Units to monitor and document cases of trafficked children and other exploited children.

#### *Legislation and Enforcement*

- Promulgate laws making it unlawful to recruit, transport, transfer, harbour, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage. Ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence.
- Establish penalties and sanctions for the offences enumerated in the Act. Any person dealing with children, but not limited to, the act of buying and selling a child for money or influencing a child to engage in sexual intercourse or any conduct which amount to sexual exploitation or obscene conduct shall suffer a penalty.

- Establish penalties for any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for conditions prejudicial to the child's health and development.
- Establish and implement preventive, protective and rehabilitative programs for trafficked persons. Victims of trafficking, especially women and children will be protected from re-victimization.
- Strengthen training for law enforcement, immigration and other relevant officials. The trainings must take into account human rights and other gender sensitive issues. These trainings shall encourage cooperation with other non-governmental and civil society organizations.

#### *Open Discussion*

- Undertake information campaigns against trafficking and exploitation of children. Undertake measures such as research, information and mass media campaigns and economic initiatives to prevent trafficking in children and child domestic labour. Policies, programmes and other measures should include cooperation with non-governmental and other relevant civil society organizations where appropriate.

#### *Capacity of Families and Communities*

- Encourage and support community based initiatives which address trafficking in children and child domestic labour

#### *Monitoring and Reporting*

- Improve data on trafficking in children, and all other forms of exploitative treatment of children by integrating critical and relevant indicators into the monitoring system for children.
- Draft guidelines on investigating and reporting on child trafficking and other forms of exploitation.

#### *Essential Services, including for prevention, recovery and reintegration*

- Afford legal protection to those victims of the above mentioned offences.
- Make legal assistance available for all victims of the above mentioned crimes.
- Adopt policies and measures that will protect and promote the rights and welfare of children victims of trafficking and coordinate and monitor their implementation.
- Provide basic social services for the prevention, rescue, rehabilitation and reintegration/ after care support services to child victims of trafficking and exploitation.
- Provide psycho-social counselling, temporary shelter and other support services to victims of trafficking, child domestic labour and their families.
- Make available special skill training to victims and survivors of trafficking.

- Adopt comprehensive programs for gender sensitive and child friendly programs for the recovery, rehabilitation, and reintegration of victims/ survivors of trafficking.

## **7. Addressing Traditional Practices**

Traditional customs have led to some egregious child domestic labour practices such as bonded labour, debt bondage and pledging of labour. In India and Pakistan, children are bonded with families to work on farms of landlords or as domestics for moneylenders as repayment of loans. In countries where such practices prevail, laws must strike them down. Bonded labour, a type of labour most prevalent in South Asia, might be another way in which a child becomes enslaved by her parents' debt obligation to the landlord/employer. Pledging of labour is a written or oral agreement whereby the parent or guardian of a child undertakes to allow the services of the child in any employment in return for a payment or benefit.

Apart from the above mentioned practices, gender analysis will draw attention to some of the major causes of child domestic labour. Customary practices might subordinate a family and drive the child to domestic labour. A family may also be poor because of deep seated cultural factors; Women and girls are especially vulnerable and suffer the double burden of the family's low status because of immutable caste, class and gender factors. Traditions of son preference result in girls being devalued, fed less, educated less and deprived of opportunities that are more readily available to boys.

There is also a strong perception that domestic work is an extension of "women's work" and is indeed a training ground for young girls for marriage and their future lives; often this argument is used as a justification for child marriage. As part of their upbringing and day-to-day activities, the girl child is expected to fetch water, take care of younger siblings, wash dishes and clothes, prepare meals and clean the house and yard. This training is considered preparation for her later life and gives her the necessary skills to perform this work for wages in a third party's home. In some parts of the world, girls are pulled into domestic service because it is hoped that they might meet a man who will marry them. Girls are also considered to be more docile and dutiful and therefore more amenable to household chores in their own or a third party's home. Here again, when families are forced to expend scarce resources on educating children, the girl child is often neglected in favour of the son. In many countries, girls are removed from school specifically to enter domestic service.

Traditional morals dictate that educating a boy will be a better investment to the family than educating a girl who is expected to marry in to her husband's family. On the other hand, in some communities, deep seated cultural biases militate against the education of girls. Girls who pursue education are not highly valued and resources spent on educating a girl are considered to be a waste. Derogatory statements about the intellectual prowess of women and girl children are replete in many cultures. In cultures where son preference is particularly strong, the birth of a daughter is considered inauspicious and one that

spells doom to the whole family. In these cultures, domestic work at home or in a third party's home is the only option open to the girl child who is lucky enough to make it through her infancy.

## 7.1. Relevant International Provisions

Gender stereotyping and negative customary practices that subordinate women and girl children are prohibited by Article 5 of the CEDAW. This becomes a powerful tool to combating cultural traditions that lead the girl child to domestic labour.

The CRC Committee in its Concluding Comments to the Bangladesh Report was concerned that gender based discrimination in schools contributed to the high drop out rate of the girl child.<sup>55</sup> The CRC Committee's Concluding Observation on India's report in 2000 also called upon the State to abolish discriminatory practices and implement free and compulsory education for all children. The Committee has repeatedly stated that the girl child is among the most disadvantaged groups of children and has called upon states to pay attention to children involved in domestic labour.<sup>56</sup>

The CRC Committee has also been especially sensitive to the connection between violence against women and its negative impact on children.<sup>57</sup> At the same time, both Committees have highlighted the linkages between certain traditional attitudes and the subordination of the girl child. The CRC Committee has expressed concern that traditional customs and practices are detrimental to women and girls and are the root causes of discrimination against women both in the private and public spheres. Negative cultural traditions are reflected in practices of son preference, child marriage, dowry, polygamy, the tradition of dedicating girls to a god or goddess who become temple prostitutes, the ethnic practice of forcing young girls to become prostitutes, and the devaluing of girl's education. These discriminatory cultural traditions are all root causes, however indirect, that drive families to send their daughters as domestic workers. In turn, the girl child domestic worker is trapped in a cycle of subordination from which she finds it difficult to break free.

## 7.2. Selected Country Studies

Some countries have recognized that girls are disproportionately represented in child domestic labour<sup>58</sup> and have adopted a gender sensitive approach to drafting domestic labour laws.

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<sup>55</sup> U.N. Doc. CRC/C/15/Add.221 (2003)

<sup>56</sup> See *Concluding Observations of the CRC*, Bolivia, U.N. Doc. CRC/15/Add.95 (1998).

<sup>57</sup> Concluding Observation of the CRC, Ethiopia, U.N. Doc. CRC/15/Add.144 (2001).

<sup>58</sup> For example, in the Dominican Republic, 50 percent of the mothers of children in domestic service in Santo Domingo were domestic servants themselves. This shows that in certain cultures it is almost a family tradition to send girl children away as domestic servants. Statistics further advance the notion that domestic service is often seen as an occupation for girls. For example, in Nicaragua one in every six girls under the age of 18 is engaged as a domestic worker; in Honduras one in five girls is a domestic worker; while in Costa Rica, one in four and in Panama almost half of all girls under 18 are in some kind of domestic work outside their own homes. The Vietnam NGO report to Beijing Plus Ten states

In the **Philippines** the National Charter for Children adopted in February 2004. Article 11 of the Charter provides for the protection of the girl child. 11 (b) provides that the State in partnership with the community must undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society. Article 12 further empowers the State and community to take all steps to provide the necessary education and skills to adolescent children. This section too focuses on the girl child and provides that programmes be undertaken to improve the health and nutritional status of the adolescent girl. Though commendable, this Charter only has educational and inspirational value and cannot be enforced in a court of law.

The Indian National Charter for Children, 2003 also addresses gender discrimination, as a major cause that may lead to child domestic labour. The Charter states in Article 11 that the State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.

Furthermore, the State shall in partnership with the community undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society.

Article 37 of the **Pakistan** Constitution calls for the promotion of social justice and eradication of social evils. The State is responsible for promoting with special care, the educational and economic interests of backward classes or areas; remove illiteracy and provide free and compulsory secondary education within a minimum possible period; make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

**Article 4 of the Bonded Labour System Act 1992 of Pakistan** abolishes the bonded labour system. The Pakistan Penal Code punishes the procurement of a minor child under Section 366-A. Section 366-B provides a penalty for the importation of girl from foreign country and Section 373 addresses the buying of minor for purposes of prostitution. The Children Pledging of Labour Act 1933 established an agreement to pledge the labour of a child void.

**The Indian** Children Pledging of Labour Act of 1933 too declares an agreement, written or oral to pledge the labour of a child below 15 years of age by the child's parents or guardians as void and liable for penalties. The **Indian**, National Child Labour Policy of 1997 has adopted a project based plan of action for launching of projects for the welfare of working children in areas of high concentration of child domestic labour.

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that 20 percent of family income comes from children's work and that, "in general, girl children at age eleven and higher are more involved in economic activities much earlier than urban children."

**Ghana's** Constitution prohibits slavery and forced or bonded labour. The Ghana Children's Act sets the minimum age for general employment at 15 years, although 13 years is the minimum age for light work, defined as work that is not harmful to the health or development of a child and does not affect the child's attendance at school.<sup>59</sup> The Children's Act prohibits children less than 18 years from engaging in hazardous labour, including work in mines and quarries, manufacturing industries, at sea, where machines are used, in bars, and in any job that necessitates carrying heavy loads. Children may serve as apprentices at the age of 15 years, so long as their employers provide a safe and healthy work environment.

### **7.3. Guidelines for Law, Policy and Programme Reform**

- All forms of child domestic labour in pursuance of any customary or social obligation should be abolished.
- All forms of child domestic labour which renders the child a debtor to any person for a specified or unspecified period of time either without wages or for nominal wages shall be unlawful.
- Any type of employment which forfeits the freedom of employment or forfeits the right to move freely from place to place is unlawful.
- In the first instance, it is important for the law to adopt a gender perspective and acknowledge that gender identity shapes the domain of child domestic labour. In most cultures discrimination against girls starts at birth and continues throughout life.
- The elimination of child domestic labour must be linked to the promotion of gender equality in general. Prevention of child domestic labour and the elimination of discrimination against girls have as its end result the need for equal opportunities for girls and boys and the elimination of exploitation and abuse. Toward this end, there must be periodic review of the entire legal framework to ensure the elimination of all forms of discrimination against girls.
- Laws and policies must take into account and address traditional mores that prevent the girl child from attending school. This would involve developing laws, policies and recommendations that are sensitive to cultural standards that require gender segregated bathrooms and classrooms.
- Texts and curricular should be careful to address stereotypes that subjugate women. These laws must also take into consideration the needs of at-risk children and bonded children who are freed.
- In targeting the girl child it is also important to design temporary special measures or affirmative action policies as recommended by CEDAW Article 4 to combat the legacy of historical and customary discrimination against women and the girl child. Special temporary measures such as school vouchers and scholarships which help retain the girl child in school should be established.

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<sup>59</sup> Government of Ghana, Act 560, The Children's Act, 1998, Part V, Employment of Children, Sub-Part I, Child domestic labour

- Projects for the welfare of working children must be launched in areas of high concentration of child domestic labour and where traditional practices of child domestic labour like bonded labour is common.

## **8. Child Domestic Labour Regulations: Terms and Conditions of Employment**

It is critical to regulate domestic work and provide for the rights of child domestic workers through the law. Labour laws in many countries do not cover domestic workers and leaves this sector unregulated. Even in countries where the minimum age of employment is 15, the under enforcement of such regulations has been a severe problem, especially in the informal sector. Law reform must provide for the need for a labour contract; hours of employment; minimum wages; rest periods, holidays, visits to family, health care, terms of dismissal and penalties and sanctions for non-compliance etc.

### **8.1. Relevant International Provisions**

Although the CRC does not provide details as to the conditions and limitations of the hours of child domestic labour, Article 32 places state parties under a duty to provide for appropriate hours and conditions of work and to provide for penalties and sanctions when necessary. Article 32 (1) enshrines a general provision of the right of the child to be protected from economic exploitation. Under Article 32 (2)(c), if a state party has excluded a particular economic sector from outside the scope of Convention No. 138, it will still be obliged to provide for penalties and other sanctions for the economic exploitation under the CRC.

Article 11 of the CEDAW guarantees the right to equal remuneration, including benefits and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

ILO Recommendation No. 146 Paragraph 12(1) recommends that the conditions under which those under the age of 18 are employed should be supervised and maintained at a satisfactory standard.

### **8.2. Selected Country Studies**

#### ***Indonesia***

**Indonesia's** labour law does not cover domestic workers. Domestic workers thus do not enjoy the minimum protections afforded to Indonesian workers employed in the formal sector. This has a disproportionate impact on women and girls who form the largest percentage of domestic workers.

In March 2003, Indonesia introduced a new labour law, the Act Concerning Manpower (Manpower Act), which sets forth wage and hour protections for workers in the formal sector, but excludes, among others, domestic workers. The labour code arbitrarily

distinguishes between employers in the formal and informal sector; obligating only “entrepreneurs”- employers in the formal sector—to abide by laws governing work agreements, minimum wages, overtime, hours, rest, and vacation. The categories of work which damage the health, safety, and morals of children are not defined in the Manpower Act, but were determined by a ministerial decree in October 2003. The Decree of the Minister of Manpower and Transmigration (Ministerial Decree), promulgated in October, 2003, establishes the working age of all children at fifteen, and prohibits children under the age of eighteen from performing work that is hazardous to their health, safety, or morals. Although the decree applies to child domestic workers, it cannot be enforced in a court of law. The decree also only prohibits employers in the formal sector from employing children to work overtime. Not only do more children work in the informal sector than the formal sector, but such a distinction in the protections afforded to child workers in the formal as against the informal sectors contradicts the CRC and the Worst Forms of Child Labour Convention, which do not differentiate between employment sectors in their prohibition on economic exploitation of children.

The Ministerial Decree further describes as hazardous work in locked places and work conducted between 6:00 p.m. and 6:00 a.m. The decree, however, fails to specifically identify as hazardous work that exposes children to physical, psychological, or sexual abuse; involves long hours; or that unreasonably confines a child to the employer’s premises, as set forth in the Worst Forms of Child Labour Recommendation. The ILO has established that a child domestic is engaged in hazardous work when “‘on call’ 24 hours a day, including night-time hours, who has no time off and who is not allowed to leave the premises except to perform controlled tasks, is working under particularly difficult conditions and is unreasonably confined.”

The Manpower Act holds the government responsible for enacting regulations “to overcome problems concerning . . . children who work outside of [an] employment relationship” (the latter defined in the law as an employment relationship between formal sector employers and workers).

A local regulation in Jakarta governing domestic workers has been in existence since 1993. Jakarta Provincial Regulation No. 6/1993 provides that domestic workers are entitled to annual leave, regular payment of salaries, clothing, food, rest, and housing.

Children over fifteen may work, but only upon written permission from their parents. The regulation does not specify the hours of work per day, hours of rest, or minimum wage. The law also regulates domestic worker placement agencies, requiring them to be licensed, to house prospective employees, and to provide skills training. Violations of these provisions can result in three months of imprisonment or a fine.

The recently passed Domestic Violence Law of 2004 is an important piece of legislation which used the CEDAW framework to guide its lawmaking. The law prohibits physical, psychological, and sexual violence against a husband, a wife, children, family members living in the home, and persons working in the home, and provides for sanctions against perpetrators of the abuse.

### *Ethiopia*

According to the Labour Proclamation of **Ethiopia**, young workers (those between 14-18) are prohibited from working over 7 hours per day; overtime; between the hours of 10 p.m. and 6 a.m.; during weekly rest days; and on public holidays. Ethiopia's Penal Code in Article 605 explicitly prohibits child trafficking which is punishable by imprisonment of up to 5 years and a fine of up to USD 10,000. The law also prohibits forced or bonded labour of children.

### *El Salvador*

Under Article 38 (2) of the **Salvadoran Constitution**, “[e]very worker has the right to earn a minimum wage, which shall be set periodically.” Although El Salvador does not have a minimum wage specifically for domestic workers, it set a minimum wage for all commercial, industrial, and service workers. In El Salvador, domestic workers may be dismissed without notice for a wide variety of reasons that include “having vices or bad habits that place in danger or prejudice the domestic order or alter the moral condition of the household” and committing “grave acts of disloyalty or insubordination” against members of the household.

Under the Salvadoran labour code, domestic workers may be required to work up to twelve hours per day. According to Article 30 of the Labour Code, employers must give domestic workers two hours off during the day for meals and ten consecutive hours off each night. But child domestic labour is subject to more restrictive hours. The Salvadoran Constitution in Article 38 (10) provides that “[t]he work day of minors under sixteen years shall not be greater than six hours daily and thirty-four weekly, in any type of work.” The labour code reiterates this provision and states, “Likewise, [minors under sixteen years] may not work more than two hours of overtime in a day nor carry out work that requires great physical effort. Minors under eighteen years may not work during the night.”

### *India*

The Minimum Wages Act of 1948 extends to the whole of **India** except to Jammu and Kashmir. The Act defines a child as a person below 15 years and provides minimum wages for children and apprentices. It also provides regulations for hours of work and physical fitness.

The Child Labour Prohibition and Regulation Act of 1986 provide that no child be allowed to work between 7 p.m. and 8 a.m., and to work overtime. No child shall work for more than three hours before the child has a rest interval of at least an hour. The total working hours including the rest time should not be more than six hours a day.

The law also makes provisions for the health and safety of the child and provides for cleanliness, disposal of waste, ventilation and temperatures in the place of employment.

Each child is also allowed a day holiday each week. The act also provides for penalties and sanctions for non-compliance with any of the provisions of the law.

### *Sri Lanka*

In **Sri Lanka**, the governing law on child domestic labour is Act No. 47 of the Employment of Women, Young Persons and Children 1956

Although the Act does not provide a specific proscription against domestic child work, According to Amendment Act No. 8 of 2003, a child can be employed only under the following conditions:

- In light agricultural work carried out by members of the same family only and also before the formal starting time of school or after closure of school.
- In activities of a training institution operating under government supervision.
- Apart from the above, no child should be employed in any occupation.

Section 15 of the Act charges an authorized officer to remove a child if the officer is convinced that a child is being employed in a manner detrimental to his or her health, physical development or education. Further under Section 17 of the Act, a child cannot be employed in a manner preventing his attendance at school. The Minister of Labour is also authorized to make orders regarding employment of young persons.

Section 21 of the Act details the areas where such regulations can be made and thereby enshrines the spirit of Article 32 of the CRC which places the state party under a duty to provide for appropriate hours and conditions of work:

- The number of hours they can be employed within a day or a week, and the periods they can be employed during the day time
- The intervals to be granted to them for meals and rest
- The number of full day or half day leave to be given
- Conditions to be followed when employing them

The Act set out the conditions for employment of young persons between the ages of 14 and 16 and regulates that a child can not be employed for more than 9 hours a day inclusive of an hour for lunch. Moreover, a child cannot be employed for over 5 1/2 days on the sixth day and the seventh day must be a full holiday. In total the working hours in a week, including the hours for lunch should not exceed 50 1/2 hours. These provisions setting out conditions of employment are a very important first step to regulate the conditions of child domestic labour but without strict enforcement will not have the desired impact/

The law also is very strict about regulating the rest period for young persons employed in domestic services. The law prescribes the following:

- A rest period of at least 3 hours between 6 am and 8 pm should be allowed on all days
- An additional 3 hours rest once a week, should be allowed, extending the above mentioned 3 hours continuously

- 2 days leave of absence for 7 continuous days, should be allowed, once in 3 months

The law however does not adequately provide for penalties and sanctions as required by Article 32 of the CRC.

### *Philippines*

The **Philippines** Republic Act No. 7658 of 1993 prohibits the employment of children below 15 years of age in public and private undertakings. This law provides for the rules in employment of children below 15 years of age. Further, Republic Act No. 7610 is an Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violations, and for Other Purposes. This act promulgated in 1992 obliges 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. It also provides sanctions for their commission and directs that programs be carried out to prevent and deter situations of child abuse, exploitation and discrimination.

The Philippines labour code mandates that both adults and children who are employed as “househelpers” must be paid a minimum wage. The Philippines Labour Code further states that wages shall be paid directly to the “househelper” to whom they are due at least once a month and no deductions shall be made unless prior authorization had been given. The minimum wage shall be in addition to suitable and sanitary lodging, adequate food and medical attendance. Though the “househelper's” clothes are a matter subject to stipulation, any contract for household service shall be void if, thereby, the “househelper” cannot afford to acquire suitable clothing. Further, the employer must also review the employment contracts every three years for the purpose of improving the terms of the conditions. The Philippines labour law also provides that if the period of household service is fixed, it may not be terminated before the expiration of the term, except for a just cause. If termination takes place, the domestic worker shall be paid the compensation already earned plus that for 15 days by way of indemnity.

The Republic Act of No. 7655, which sets out to increase the minimum wage of house helpers, not only increases minimum wage of domestic house helpers but makes social security available to them. House helpers can now be members of the Social Security system and avail of its benefits. The law commonly known as the Woman and Child Domestic Labour Law by presidential decree affords the protection and promotion of equality in employment and ensures equal work opportunities regardless of sex, race or creed. These include health and safety benefits for women employees. An Act to Regulate the Employment of Women and Children, To Provide Penalties for Violation and Other Purposes (Republic Act No. 679) lays down rules regarding the employment of children and the employment of women. The Act also provides for non-formal education for working children aimed at promoting the intellectual, moral and vocational efficiency of working children which is deemed effective under the given conditions.

The Women and Minors Bureau established in the Department of Labour by Act no. 2714 is responsible for enforcing women and child domestic labour laws and formulating standards and policies which promote working conditions and advancement for women and children. This bureau recognizes the unique needs of women and children in the labour force.

The Philippines law which sets out a minimum wage for domestic workers, and provides for social security is a laudable step. A whole range of child friendly laws provide for coordination by different government agencies, departments, local government ( *Barangay* ) officials and relevant NGO's to provide protection to children against abuse, exploitation and discrimination. Furthermore a coordinate partnership approach of the above actors is called upon to guarantee the working child's rights to education, health, recreation and free expression. The act regulating the employment of Women and Children provides for penalties for violations of this act. However, without an adequate study of the implementation of these laws, most of these laws are privileged in the breach.

### **8.3. Recommendations for Law, Policy and Programme Reform**

#### *Conditions of Employment*

- Set a minimum wage for domestic service, guaranteeing domestic workers fair wages that are comparable to wages earned for other forms of work that require equivalent skills and hours.
- Ensure child domestic workers have the same rights as other workers with respect to, rest periods, vacation and time off. The maximum number of hours that a child is expected to work; including the time spent on formal or informal education should be set down.
- Time should be reserved for leisure, play and recreation as well as meals, rest and sleep.
- The child worker should be entitled to all public holidays.
- Categories of work covering the health safety and moral of the child should be spelt out and children should be prevented from such conditions of work

#### *Registration of Child Workers*

- A child worker should be registered with the proper authority concerned. The registration has to be done within one month of starting employment. No person shall employ a child as a domestic worker unless he or she has been registered by the authorized officer as an employer of a young person.
- The authorized officer after registration will provide the employer a log book in which hours of work, leave; salary etc. can be entered and maintained by the employer.
- The log book will be monitored at periodic intervals.
- Non- registration by an employer would be considered an offence.

- The consent of the young person and the parent guardian should be included in the registration
- The authorized officer should be informed by the employer in case of termination of employment or in the event the child worker has run away or is missing.

#### *Duties of the Responsible Office*

- The office will have the following functions: Coordinate and monitor the implementation of the law promulgated by the State party.
- Establish and manage a central database.
- Investigate all offences and coordinate with other agencies.

#### *Duties of the Employer*

- The employer must register the child and secure a work permit from the relevant Department or Agency.
- The employer shall ensure the protection, health, safety and morals of the child.
- The employer shall not exploit or discriminate against the child and will abide by the work contract to provide fair remuneration, rest times, holidays and vacation.
- Maintain a log-book in which the salary payments or deposits are noted. The log book must be signed by the authorized officer at the time of inspection. Non compliance would be an offence which would result in a fine.
- Provide adequate well balanced nutritious meals for the child worker.
- Provide medical attention, lodging in sanitary conditions, and adequate clothing.
- Arrange for annual medical examinations and then as when needed.
- Ensure that all children enjoy the right to education by formulating and implementing a continuous program for formal/informal/ educational or vocational training and skill acquisition in consultation with the authorized officer.
- Allow the child worker to practice his or her religion and provide her with the facilities for all religious observances.
- Allow the child worker creative playtime and entertainment appropriate to his or her age.

## **9. Monitoring and Implementation of Laws**

An examination of the above laws reveal that while inadequate labour laws governing child domestic labour plague most countries, the countries that have legislation in this area have inadequate enforcement mechanisms. Often some of the progressive legal and policy provisions that do exist to protect around the world are not implemented.

Writing legislation that is progressive, comprehensive and attends to the holistic needs of children is not sufficient in itself. The implementation of legislation, transforms legislation into living reality. Implementation requires the monitoring of implementation of legislation and policy and its impact on effective service delivery to children. In the words of the **South African** Law Reform Committee, monitoring is “a continuous follow-up of the activities of government, non-government organizations (NGO’s) and other child related structures to ensure the effective implementation of the Convention of the Rights of the Child and child welfare legislation”.

Appropriate and independent monitoring of the implementation of laws relating to children is essential as it assists in evaluating the gaps in the legislative provisions, gaps in implementation and also what accounts for the gaps in implementation and what can be done to address the issues. Monitoring can also inform legislators as to the need for further law reform – either as a result of the legislation being unworkable or as new problems and challenges arise in the social context that require some legislative intervention.

Monitoring systems need to be independent of the structures that are being monitored. Around the world, the lack of enforcement of existing labour laws is the biggest impediment to protection of children’s rights. There is also little awareness of the rights of child domestic workers. Monitoring of existing law enforcement and dissemination of information is the biggest challenge in this field. This is in clear contradiction of the CEDAW and CRC which affirm the implementation of laws and policies.

Few countries provide for monitoring of the domestic work world. The private/public dichotomy applies here as most of the domestic sphere is considered outside the control of law enforcement. Although most countries have labour ministries and child protection authorities, the difficulty of monitoring the informal sector poses a large problem. Law enforcement also is weak in these countries where police often refrain from investigating and prosecuting these violations of the law and very few sanctions are available for the violation of these laws.

Regulations also do not work effectively because the public and government officials are unaware of the law and community education programs are not made part of the law. The lack of resources for law enforcement is one of the major problems inhibiting implementation of laws. As was examined before, many countries have established national advisory councils and action plans to eradicate child domestic labour but these programs and plans have little outreach. Unless backed by political will to provide the necessary budgets for these plans, these programs will have little effect. The CRC has also recommended in many of its Concluding Observations that child domestic labour vigilance committees and labour inspectors be adequately resourced.

Law enforcement also involves sensitivity training of law enforcement officials. As mentioned before public security agencies are reluctant to intervene in instances of domestic labour. Training programs which focus on the how to respond to reports of child domestic labour is crucial to law enforcement. Law reform should mandate that

law enforcement institutions, the police, prosecutors and judges undergo rigorous training in children's rights and enforcement of relevant laws. A good example of such training is South Korea, where police are required to take a course on domestic violence laws and are required to pass an examination on domestic violence laws before taking on duties.

Difficulties in collecting evidence of child domestic labour are another drawback in the area and makes prosecution of such offences problematic. At the same time lack of witness protection impedes the investigation process. The fear of reporting must be addressed with certain protections to child victim of domestic labour. One way to address this would be to consider the families consent or lack of consent to be irrelevant to the offence of child domestic labour. The lack of a proper tribunal in which to try these cases also creates barriers to effective law enforcement. It is important to establish quasi administrative tribunals to try complaints of exploitation in child domestic work.

## 9.1. Relevant International Provisions

Article 4 of the CRC establishes that States shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the CRC. Article 3 further enumerates that in all actions undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child will be the primary consideration.

The anti-discrimination clause of the CEDAW in Article 2 provides not only for legislative and other measures but sanctions where appropriate to guard against violations of gender equality. The implementations of these laws are to be ensured by "competent national tribunals and other public institutions". Article 4 of the CEDAW which guarantees special measures to accelerate equality between men and women implies that enforcement mechanisms must be established to guarantee de facto equality. In implementing Article 5 of the CEDAW on the prevention of sex stereotyping, States are asked to set up special procedures to deal with sexual abuse of children.

## 9.2. Selected Country Studies

A number of countries have adopted monitoring mechanisms and structures into their children's legislation in order to ensure meaningful monitoring of the implementation of the legislation and an effective response to problems in implementation.

For example:

- **Austria** has established a Children's Ombudsman to promote and defend children's rights.
- The **South Africa** Law Reform Commission's Draft Children's Bill contains a Chapter (22) that proposes the Development of an Office of the Children's Protector
- **Canada** has established a Children's Commission through the Children's Commission Act in order to ensure that key aspects of government services to children are monitored, the quality of their work assessed and reported on publicly.

- **Kenya**, through the country's Children's Act of 1998, has established a National Council of Children's Services which exercises general supervision and control over the planning, financing and co-ordination of child welfare activities and to advise government.

In some countries, for example, Sweden and Philippines, children's rights are monitored by NGO or NGO coalitions.

A novel enforcement mechanism has been adopted by Pakistan which calls for under Section 12 of the **Pakistan** Act for notices of the types of work prohibited for children and the penalties for such contravention to be displayed in a conspicuous place. The Act in Section 17 also calls for appropriate inspectors for securing the compliance with the Act.

The development of monitoring structures to oversee the implementation and effectiveness of legislation affecting the lives of children is a matter of concern in a number of countries around the world and has been proposed as an issue for debate at the 16th International Congress on Child Abuse and Neglect to be held in York, UK. 2006.

### **9.3. Recommendations for Law, Policy and Programme Reform**

The following recommended provisions will be useful as implementation mechanisms of the laws:

#### *Reporting Child Domestic Labour in Violation of the Law*

- Any person who has any knowledge or knows of facts or circumstances that give rise to a reasonable belief that a child may be working in violation of the law, may either orally or in writing or through other means report the same to the official responsible, law enforcement agency etc.
- Set up witness immunity programs.

#### *Creation of an effective office for the inspection, enforcement, and monitoring of child domestic labour laws*

The powers and functions of the Office should be as follows:

- Receiving investigating and resolving complaints regarding any matter relating to the Children's Statute.
- Have the power to take legal action on behalf of a child where this is required.
- Authorize and/or conduct inspections of children's facilities.
- Receive and investigate reports of children's deaths in alternate care.

#### *Set up Guidelines for Investigation*

- Inspectors must respond promptly to information
- Investigation should commence promptly on receipt of information

- A report on the investigation must be filed. The report should include the date and time at which information was received, nature of the information, names of witnesses etc.
- Create child-friendly adjudication procedures.

#### *Who May File a Complaint*

- The child in issue
- Parents or guardians
- Official, social worker or local government official
- An accredited NGO or NGO representative
- A Community advocate/ community watch member

#### *Filing of Cases and Prosecution*

- Notification of the party responsible for filing charges (labour department, police etc.)
- The birth certificate or probable age certificate or certificate from a doctor confirming the age of child.
- All examination must be accompanied by a medical examination of the child in relation to child abuse.

#### *Available Remedies*

- The law must provide clear sanctions and penalties against the violators of the law and provide for remedies to the victims. The remedy must be easily accessible.
- A non-obstinate clause must ensure that this law compliments other laws and does not take away existing relief under civil or criminal law.

#### *Protection of victims of child domestic labour in court*

- Provide assistance to enable the child's views and concerns to be presented and considered in court, in a manner not prejudicial to their rights.
- Provide counselling and information, in particular as regards their legal rights.
- Provide medical, psychological and material assistance.
- The court should take into account the age, gender and special needs of children when making an order for compensation.

#### *Appointment of Special Rapporteurs*

The State party should appoint persons with experience of working on issues of children's rights as national state rapporteurs.

Their duties will include:

- To undertake studies and make recommendations for the effective implementation of the law
- To review from time to time the provisions of the law
- To advise on the planning on rehabilitation reintegration and counselling

#### *Composition of Inspectors/Monitors/ Rapporteurs*

- The appointment of monitors/inspectors/ rapporteurs should be governed by principles of gender equality
- An equal number of men and women should compose the office of inspectors/monitors/ rapporteurs

#### *Clarify the Role of Local Governments and NGO's*

- NGO's and local governments must monitor the implementation of the law and community response to the law.
- NGO's and local governments must be active in education and information dissemination.
- Guidelines to media reporting on child domestic labour must be developed.

#### *Funds and Resources*

- The heads and departments of agencies concerned shall include in their annual appropriations the funding necessary to implement programs and services required by this law.
- All funds imposed under this law shall accrue to a Trust Fund to be administered and managed for the exclusive use of the programs to be set to protect child workers and prevent the violations of this law.

#### *Judicial or special quasi- judicial tribunals set up to address violations of law.*

- Clarity and simplicity of procedure should inform such proceedings. All matters and procedures relating to children, viz., judicial and administrative should be child- friendly.
- Special administrative hearings will be established under the law. This will not exclude the jurisdiction of any court of law.

#### *a) Court System:*

A powerful forum to challenge discriminatory practices against children is the court system of a country. Although courts are effective in varying degrees in different countries, the examples below show that the court system is a powerful tool to give individual relief and make new law.

All of the cases below show the court's acceptances of the CRC as persuasive authority in their courts and have used international conventions as a guide to judicial decision making.

Although these cases are not specifically related to child labour, they are examples of how judges, especially in the Common Law countries have played a critical role in recognizing children's rights.

### ***South Africa***

In *Grootboom v. Oostenberg Municipality*, the High Court of South Africa turned to the meaning attached to international treaties in order to resolve the issue whether certain South African municipalities should be ordered to provide shelter and other social services to the 390 adult and 510 child applicants. The applicants were squatters who had been evicted from their lands and had no place to live. In order to do this, the court referred to the General Comments of the Committee on Economic, Social, and Cultural Rights. Thus the Court recognized the institutions of the international human rights system.

The Constitutional Court ruled that the State must protect the right of access to adequate housing "within its available resources and to achieve the progressive realization of these rights." In giving flesh and blood to the meaning of progressive realization, the Court stated that "accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and where possible lowered over time."

Corporal punishment used in schools also makes children reluctant to attend schools. In *S v. Williams*, a 1995 ruling of the Constitutional Court of South Africa prohibited the whipping of juveniles as constituting cruel and unusual punishment. The Court in doing so considered international treaties which prohibit corporal punishment as a violation of the inherent right to dignity that attaches to personhood.

### ***India***

The recognition of social and economic rights can be a guarantee against child domestic labour. The justifiability of social and economic rights has been recognized by courts in India. In the 1990 case of *Shanti Star Builders v. Narayan Khimalal Totame and Ors*, The Indian Supreme Court held that a "Reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in the right to life provision."

In 1996, the Supreme Court of India ruled that children working in hazardous occupations should be taken away from such exploitative occupations and rehabilitated. The court also state that that non-hazardous work should be subject to standards and, that compensation should be paid to the children by their employers. The court went so far as to recommend that a Child Domestic Labour Rehabilitation Fund should be set up and, most importantly, that employment should be found for an adult member of the child's family in place of the child.

This case also highlights the difficulty in eliminating child domestic labour which requires that action be taken to provide alternatives to improve the child's family income.

In *M.C. Mehta v. The State of Tamil Nadu* and *M.C. Mehta v. Union of India*, the Supreme Court ruled that compensation funds be established for child domestic labourers.

Similarly, in *People's Union for Civil Liberties v. Union of India and Ors* (Writ Petition No. 196 of 2001), the Indian Supreme Court ordered that the Central Government shall take necessary action in order to ensure the implementation of the Government food distribution schemes and the mid day meals for school children.

In these cases, the Indian Supreme Court has directed that the targeted public distribution system be fully implemented by January 2002 and that the governments issue ration cards and distributes 25 kg of gram per family per month by that day.

The Court in *People's Union for Civil Liberties v. Union of India and Ors* (Writ Petition No. 196 of 2001), ordered that The Central Government shall collate all the facts and thereafter take necessary action in order to ensure the implementation of the governments food distribution schemes. The Court also ordered that the Food for Work Programme also implemented in the various States. In various Orders the Court directed that the States identify Below Poverty Line (BPL) families and commence distribution of food.

The Court also directed that the State Government implement the Mid Day Meal Scheme by providing every child in every government and government assisted Primary School with a prepared midday meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. In drought affected areas, mid-day meals were to be supplied even during the summer vacation. The Court further directed that safe drinking water etc. should be provided for children of primary schools. The court went so far as to direct that in appointment of cooks and helpers, preference should be given to Dalits, Scheduled Castes and Scheduled Tribes. All Chief Secretaries/ Administrators are directed to file compliance reports in regard to these directions.

The Court also appointed Commissioners to report on the implementation of the court orders, to look into grievances that may persist and to recommend a course of action to ensure compliance with the Court's order.

Further, the Courts ordered that States should identify the beneficiaries from National Old Age Pension Schemes; Integrated Child Development Schemes; National Maternity Benefit Schemes; National Family Benefit Schemes; and Antyodaya Anna Yojana (AAY) programme which are a food-based social security for destitute households. The court ordered that once these families were identified, it must be made sure that full compliance under the Scheme is carried out.

The Court directed that costs for a cooked meal, under no circumstances shall be recovered from the children, or their parents. Moreover, the Court has ordered that widows and other single women with no regular support and primitive tribes be prioritized.

*b) Human Rights Commissions and Quasi Judicial Tribunals*

Law making will be only as successful as the machineries established to enforce these laws. Thus implementing machinery with independence and resources and investigative powers should be a key factor in all law reform efforts.

The United Nations Commission on Human Rights in 1992 adopted a set of guidelines concerning the composition, jurisdiction, and powers, guarantees of independence and pluralism, and methods of operation, such as quasi-judicial competence, of human rights commissions. Known as the *Paris Principles*, these Principles have come to define the role and functions of a national human rights commission set up under a statute and have endorsed a number of minimum criteria for the establishment of national institutions.

The Beijing Platform for Action adds a new and additional focus to the role of national machineries in promoting the status of women: the mandate to support mainstreaming gender in all government policies and programs.<sup>60</sup>

One critical area of the Platform deals with the girl child and mother, specifically with institutional mechanisms that should be put in place to ensure the implementation of the eleven substantive areas.

The Beijing Platform of Action provides guidance as to the functions of national machineries but says less about the structures of national machineries required to achieve gender mainstreaming. National machineries might include bodies such as a Human Rights Commission, Ombudsperson or Equal Opportunity Commission, with responsibility for ensuring compliance with gender equality legislation.

The CRC Committee in 2002 stated that every state needs an independent human rights institution with responsibility for promoting and protecting children's rights.

There is much debate as to whether a stand alone children's commissioner or Ombudsperson should be established or whether it should be folded it into an already existing or new general human rights commission. The CRC Committee's remarks in its General Comments on "the role of the promotion and protection of the rights of the child" provide some insights on this. The General Comments state that the

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<sup>60</sup> The document identifies the mainstreaming of gender issues as the central responsibility of national machineries when it states that: "A national machinery for the advancement of women is the central policy coordinating unit inside government. Its main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas." (paragraph 201).

“institution what ever its form should be able to independently and effectively monitor, protect and promote children’s rights.”

When resources are scarce the Committee acknowledges the efficiency of a general human rights mechanism with clear divisions or departments working on the rights of women and children. The Committee states: “available resources are used most effectively for the promotion and protection of everyone’s rights, including children’s.” However, the Committee has stated that within such a broad-based institution, there must be a person or division specifically responsible for children’s rights. If these institutions are to have legitimacy, these institutions must be created by legislation and have the resources and the powers to act as watchdog and monitor the rights and interests of children.

An examination of CRC Committee Concluding Observations of States Party reports show that the Committee consistently advocates the establishment of independent institutions to States and recommends that they be governed by the *Paris Principles* dealing with the necessary criteria of independence, investigative powers and resources of a functioning human rights commission.

Although in the last 15 years there has been a proliferation of independent national children’s rights institutions, such as commissioners and children’s ombudsman’s offices to monitor the application of laws, some of them fall short of the standard that has been recommended by the CRC Committee as well as the Paris Principles. The degree of independence from the government and the way in which complaints are investigated and processed raise the most concerns.

These institutions worldwide have played differing roles and among their functions has been the role of advocate of children; reporting to the CRC Committee and collaboration among independent institutions. It is however not clear whether these institutions have played an important role in addressing and combating child domestic labour.

When court procedures become time consuming and exhaust meagre resources, it is important that human rights/child rights commissions provide a more efficient and expeditious avenue to address child domestic labour cases that are in violation of the laws. It is also important for these commissions to play a more central role in gathering data and reporting on child domestic labour. In this effort it can work with other government and non- governmental agencies. Commissions that are responsible for reporting to the CRC and CEDAW Committees must ensure that gender disaggregated data and other relevant information on child domestic labour is included in these reports.

It is important that children’s ombudsman offices, national machinery for children’s rights and other human rights mechanisms prioritize child domestic labour as a critical concern.

## **10. Key Actors and Partners in Prevention, Regulation, Rehabilitation, Reintegration**

Key alliances with all intersectoral agencies and NGO's are key to the effective enforcement of laws. National laws on domestic violence have provided the need for partnerships with NGO networks.

### **10.1. Relevant International Provisions**

A fundamental principle of international human rights law is the indivisibility and interdependence of rights. The Committee on the Rights of the Child has stated, "All rights are indivisible and interrelated, each and all of them being inherent to the human dignity of the child. The implementation of each right set forth in the Convention should therefore take into account the implementation of and respect for, many other rights of the child." The spirit of interdependence and indivisibility of rights should govern all law making and a holistic approach must be taken to address and prevent child domestic labour

Article 18 (2 ) of the CRC calls for protective measures to establish social programs for children; and Article 2, 3, 4 and 5 of CEDAW ensures anti-discrimination laws and practices which support the equal rights of women.

The CRC emphasizes the role of the international community in supporting children's rights. By including the phrase "where needed, within the framework of international co-operation" in the article concerning available resources, the CRC connects the duties of the States Parties with those of international development partners. Moreover, a number of articles call for international cooperation to support implementation, for example, the child's rights to health, to special care when disabled and education.

Moreover, in the poorest of countries, where child domestic labour is most prevalent, laws and initiatives to prevent and eliminate child domestic labour cannot be developed without the assistance of international aid and technical support. For example, the CRC Committee in its Concluding Comments on the initial report of the Ivory Coast in May 2001, urged Ivory Coast to seek international assistance in promoting education and opening more schools as well as in providing for more teachers and school inspectors and in general increasing the rate of enrolment of children in schools. It also recommended that assistance be sought for school fees, uniforms, and other school supplies for poor families.<sup>61</sup>

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<sup>61</sup> CRC Concluding Observations: The Ivory Coast, CRC/C/15/Add.155, July 2001.

## 10.2. Selected Country Studies

National Action Plans have established national focal points and developed an action framework based on intersectoral cooperation to eliminate child domestic labour. The National Plans of Action to prevent and eliminate child domestic labour in Costa Rica, Nicaragua and Honduras emphasize child domestic labour as an area for special attention.

In **Cambodia**, the National Plan of Action against child domestic labour indicates, in a section on ‘social welfare and protection,’ that the aim of ‘reducing the incidence of child domestic work and children carrying heavy loads’ can be met through education and understanding of children, families and communities; the provision of skills and vocational training to children and families; the provision of credit schemes to working children and their families; and encouragement and assistance in providing educational opportunities for children. It tasks government, NGOs and international organizations, employers’ and workers’ organizations, the community, and children and parents to achieve this in the ‘medium term’.

In **South Africa**, several intergovernmental agencies come together on child protection issues. These include: 1) the National Programme of Action Steering Committee, located in the Office on the Rights of the Child which has established a Data Collection and Monitoring Task Group for the specific purpose of monitoring the implementation of the Convention on the Rights of the Child and the Africa Children Charter; 2) The South African Human Rights Commission, established in terms of the Country’s Constitution. A Committee on the Rights of the child has been established within the South African Human Rights Commission ( SAHRC). This committee has the functions (inter alia) of advising the SAHRC on child rights issues and on strategic planning for implementing the protection and promotion of the rights of the child and to ensure that violations of children’s rights are investigated and dealt with; and 3) The Parliamentary Joint Monitoring Committee on Children, Youth and Persons with Disabilities. The function of this committee is to monitor and evaluate progress with regard to the improvement in the quality of the life and status of children, youth and disabled persons, with special reference to the Government’s commitments in respect of any applicable international instruments and to duties and responsibilities in respect of any applicable legislation.

The **Chilean** Ministry of Labour’s Inspection Agency monitors child domestic labour laws in the formal sector. Although the National Service for Minors within the Ministry of Justice investigates exploitative child domestic labour related to pornography and the sale of drugs and other criminal activities, these inspections are infrequent.

The Chilean government has established a focal point -- The National Advisory Council to Eradicate Child Domestic Labour. In 2001, the Council developed a National Action Plan which aims to ensure that children’s rights are protected by the year 2010. The plan has five focus areas: nation wide awareness raising; data collection; promotion of legislative reform in compliance with ILO Conventions; development of age specific

targeted intervention programs; and on going monitoring and evaluation. With support from ILO-IPEC, the committee has designed programs for working children in different regions of Chile, such as Temuco and the suburbs of Santiago.

Prohibiting child domestic labour without providing alternatives and safety nets could leave children worse off. Such prohibitions could easily lead them to street life, prostitution or other dangerous occupations. For example, in 1993, garment employers in **Bangladesh** fired 50,000 children fearing a passage of a law in the United States to ban imports made with child domestic labour. Although the law was not passed, the threat was enough to ban children from factories in Bangladesh. Without an alternative in place, children who were sent out to the street began engaging in stone crushing, prostitution and hustling. After extended negotiations, the ILO, UNICEF and the Bangladesh Garment Manufacturers and Associations agreed to jointly establish schools and encourage families to send their children to school by providing stipends.

The **Chilean** government is also collaborating with NGO's to gather more statistics on child domestic labour, to create and exchange best practices on child domestic labour inspection systems, to promote legislation in line with ILO Conventions 138 and 182 throughout the region, to strengthen civil society partners and to remove and prevent children from entering child domestic labour. With assistance from ILO –IPEC, the Chilean government is collaborating with other countries in the region to ensure that assessment of child domestic labour law compliance becomes part of all inspections.

In 1994, the Government of **Benin** implemented a national study on child domestic labour and exploitation, and in 1996 signed a Memorandum of Understanding (MOU) with the International Labour Organization's International Program on the Elimination of Child Labour (ILO-IPEC). Benin also launched a national program of action to prevent children from entering the labour market and improve the conditions of work for some children as a first step toward the elimination of child domestic labour.

In 1997, **Benin** established a program for the Judicial Protection of the Child to monitor juvenile justice cases and to develop research on how to draft legislation that protects children's rights. The program has created a national databank on trafficking in children, monitoring legal cases that involve trafficking in children, and revising legislation on trafficking. Task forces work with nongovernmental organizations to reintegrate victims of trafficking into their families and operate a telephone hotline for reporting violations of children's rights. UNICEF and nongovernmental programs help provide technical support to these initiatives.

In 1999, Benin and eight other countries joined the ILO- IPEC regional project to combat trafficking of children for exploitative labour in West and Central Africa, funded by the U.S. Department of Labour. The project included assessments of the trafficking problem in nine countries in West and Central Africa, including a sub regional report synthesizing the main findings. Efforts were also made to rehabilitate children who had been trafficked and to channel these children to NGOs providing counselling and support. Radio and television broadcasts were developed to create awareness among local communities in rural areas and sensitizing parents about problems of trafficking in children.

An important step undertaken by Benin is to begin working with the U.S. Agency for International Development (USAID), and UNICEF, and other international organizations to revamp its rather outdated education sector and improve institutional capacity for educational planning, management and curriculum revision. UNICEF also promotes “Project on Children in Need of Special Protection,” in advancing girls’ access to education.

In **Sri Lanka**, the Department of Probation and Child Care has a national training and counselling centre at Paraththa in Panadura (Paraththa National Child Training and Counselling Centre of Panadura) to rehabilitate girl child victims of exploitative employment. The rehabilitation process is achieved through counselling and vocational skills training. The girls are then reintegrated with their families through foster-care arrangements.

Apart from the Paraththa National Child Training and Counselling Centre of Panadura, the National Child Protection Authority (NCPA) was established in 1999 at the recommendation of a Presidential Task Force appointed in 1996.

The NCPA acts in cooperation with government and non- government organizations. The District Child Protection Committees have been set up at district level comprising multi- disciplinary teams of professionals such as medical officers, judicial medical officers. Officers of the Dept. of Probation and Child care, Labour, Education, Police, Attorney General, and members of NGO’s.

The **Anti- Trafficking in Persons Act of 2003 in the Philippines** calls for comprehensive gender sensitive, and child friendly programs for the recovery, rehabilitation and reintegration of victims/ survivors of trafficking.

The law calls for the following:

- Implementation of residential care, child placement, educational assistance, livelihood and skills training and other community- based services which are responsive to the specific needs and problems of the victims/survivors and their families;
- Active involvement and participation of the victims/survivors in the rehabilitation and reintegration process in order to prevent the re-victimization; and active cooperation and coordination with NGO’s and other members of the civil society including the business community, tourism related industries as well as the media in the rehabilitation process.

The law also provides for the capability building of service providers. Frontline agencies are required to undergo training and other capability enhancing activities to enhance knowledge and skills to handle cases of trafficking.

The **Vietnam**, National Program of Action Against Crimes of Trafficking in Women and Children 2004- 2010, establishes receiving centres and recommends educational, employment and community reintegration for trafficked women and children and strengthening training and building capacity for the staff working on anti trafficking in women and children.

As in **Pakistan**, apart from establishing labour inspectors, it is important to create a legal system whereby every child is required to attend a school, with attached penalties for non- compliance as in the laws on the books.

The **Indian** National Charter for Children, 2003 enumerates that the State shall take all steps to draw up plans for their identification, care, protection, counselling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically and re-integrate into society.

The CRC Committee in its Concluding Observations has provided many guidelines on rehabilitation, reintegration, counselling and networking with NGO's and interagency actors. The CRC committee in its Concluding Observations on **India's** state party report in January 2000 is a case in point.

The Committee suggested that India encourages states and districts to establish and oversee child domestic labour vigilance committees and ensure that a sufficient number of labour inspectors are adequately resourced to carry out their work effectively. A recommendation was also made that a national mechanism be established to receive and address complaints of violations and to file First Information Reports.

The Committee also recommended that India undertake a national study on the nature and extent of child domestic labour and that gender disaggregated data, including violations is compiled and kept up to date in order to serve as a basis for designing measures or evaluating progress.

The Committee further recommended that India undertake campaigns to inform and sensitize the general public especially parents and children of work hazards and to involve and train employers, workers, civil organizations etc.

The Committee also called upon India to ensure that competent authorities cooperate and coordinate activities with respect to education and rehabilitation of programs and recommended that present coordination between the State party and relevant UN agencies such as ILO, UNICEF and other NGOs be expanded. The CRC Committee also recommended that India ratify ILO Convention No. 138 concerning the Minimum Age for Admission to Employment.

### **10.3. Recommendations for Law, Policy and Programme Reform**

- Secure from any department, bureau, office, and agency or from an NGO and other civic organizations such assistance as may be needed to effectively

implement the law. One good practice would be to exchange best practices on child domestic labour inspection methods through collaboration with NGO's. This can be mandated by law. Since the lack of enforcement of existing labour laws is the growing challenge in the area, it is important to confront these problems with education, and awareness raising through partnerships with NGO's. In this area it is important to access technical and financial assistance from NGO's as well as international donor agencies that can help in guiding innovative educational schemes and support to families.

- Establish community-based and neighbourhood-based vigilance committees to prevent sex trade and trafficking in children
- Ensure care and support to children who escape domestic labour and have suffered physical or sexual violence, including treatment of sexually transmitted diseases.
- Rehabilitation centres which focus specifically on the girl child should be established
- Establish programs to reintegrate children into their families (including programs to support and assist the children's families).
- Key policy alternatives such as national campaigns through the mass media to increase awareness of gender stereotypes, hiring more female teachers, and increasing community participation on the need for changing gender roles must be established. Particular attention must also be paid to rural areas where these stereotypes are most prevalent.
- Create legislative hearings at which children's voices can be privileged. Listening to children's testimonies will be an important avenue to identify the difficulties that the child worker faces in her home where the girl child might be disproportionately burdened with home work and is thus unable to exercise her rights. Children's testimonies and especially narratives of girl children are also an effective way to gain insights into the conditions in which child domestic labour exists.

### **Training of Counsellors**

- Train police, prosecutors, judges, social workers and inspectors
- Trainers and counsellors must provide support to the police, judges, victims of child domestic labour and child abuse.

*The training must include:*

- The nature, extent, causes and consequences of child domestic labour.
- The legal rights and remedies available to victims of child domestic labour.
- The services and facilities available.
- The legal duties imposed on law enforcement to make arrests, to prosecute the offender and to offer protection and assistance to the victim.

## Victim Support Network

- One stop crisis centres and shelters must be established. A special sexual assault unit must come within this.
- Victim support network must collaborate with the police, the social welfare department, and the department of justice, the department of education, hospitals and NGO's.
- Mandatory counselling must be provided to victims

## 11. Collecting Gender Disaggregated Data

In order to engage in effective law reform that is gender sensitive it is important to collect data to support the revision or drafting of the law.

Apart from reviewing laws on the books it is important to review laws in practice. This will reveal the gaps in the law and the institutional barriers. Action research and data collection is important to understand what protections are absent in the laws. For example, when women's groups in Thailand organized to lobby for a provision on domestic violence to be included in the 1997 Constitution, a task force of women from different organizations collected data to show how domestic violence impacted a large number of women.

Several countries in the world have included the need for collection of data in their laws on domestic violence and gender equality. Similarly, gender disaggregated research and data is critical to the efforts to understand the problem and to eliminate child domestic labour. The data should be collected in disaggregated form to allow the variations in the children's experiences to be understood and to assess the relevance of age, sex and other variables to the situation of the child.<sup>62</sup>

Gender disaggregated data will be a powerful tool to understand the causes and consequences of child domestic labour. The CRC Committee has consistently called upon States parties to collect gender disaggregated data on the prevalence HIV/AIDS and the rights of children.<sup>63</sup> The CEDAW Committee has asked for gender disaggregated data in the efforts to address trafficking of women and girls.<sup>64</sup>

Empirical evidence informed by gender analysis can challenge indirect discrimination and show the unequal impact of facially equal laws on women. Gathering empirical data based on gender analysis will provide better insights into gender differences in child domestic labour either in the child's home or in the home of a third part.

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<sup>62</sup> It is also important to adopt a uniform term for child domestic labour. For example, in Philippines a national campaign was launched to replace the many denigrating terms used for household worker with the word *Kambahay*. In Haiti too the often used pejorative *Restavek* is unacceptable.

<sup>63</sup> Bangladesh, U.N. Doc.RC/C/15/Add.221 ( 2003)

<sup>64</sup> Vietnam: U.N. Doc. A/56/38, paras. 232-276 ( 2001).

## 11.1. Selected Country Studies

The **Philippines** Law on Anti- trafficking in Persons 2003 provides for the development of gender responsive documentation of data and the accreditation of NGO's who provide such assistance to the Department of Social Welfare and Development and the National Commission on the Role of Filipino Women.

The **South African** National Report on Child Domestic Labour (2002) in South Africa is a good example of how gender perspectives can be built into data collection and analysis so that the particular situations and needs of girls and boys are identified and considered in programming. The report disaggregates and analyses data on both paid and unpaid domestic work by girls and boys and reveals some important gender-based differences, for example that boys are more likely to be paid for domestic tasks whereas girls, although they spend much longer on such tasks, are not. It also showcases tasks that girls undertake that are often not ignored in discussions on domestic service, for example collecting fuel and water.

Some of the observations of the CRC and CEDAW Committee are useful indicators to analyze and address the need for data within a gender sensitive framework. The CEDAW Committee has recommended that data be collected on the needs of the girl child, children living and or working in the streets, child victims of sexual abuse and exploitation etc.

The CRC Committee too has often commented on the lack of comprehensive and systematic collection of gender disaggregated data.<sup>65</sup>

The following questions should inform the collectors of data. These questions are only a starting point and are not meant to be exhaustive.

### *Household Tasks*

- Are girl/female children or boy/male children responsible for obtaining water and fuel for domestic use, taking care of children in the household, cooking, doing the laundry and house work?
- Who is responsible for obtaining water and fuel for domestic use, taking care of children in the household, cooking, doing the laundry and house work?
- Is school attendance limited by the need to employ their labour in family tasks such as caring for younger children?
- Are there gender differences in the nature of work engaged in by children in their own homes?
- Are there gender differences in the hours of work engaged in by children in their homes?
- Are there gender differences in payment for domestic work in homes of third parties?

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<sup>65</sup> For example, the initial report of the Ivory Coast in May 2001 Concluding Observations of the CRC, CRC/C/15/Add.155, July 2001.

- Is there gender differences in the hours and types of work engaged in by children in third parties homes?
- Are there gender differences in controlling the access to health care for children?

### *Educational Opportunities*

- The transport needs for purposes of attending school or engaging in economic activity;
- Are there gender differences in literacy?
- Are there gender differences in primary, secondary, or tertiary school enrolments or attendance, in drop out rates?
- Do girls have the same opportunities as boys to participate in sports and physical education in schools?
- Does sex stereotyping, such as depictions of women as secretaries rather than managers, exist in programmes, curricula, textbooks, etc.? If so, how much? Have measures been introduced to address this stereotyping?
- The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training
- Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality
- The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teach methods.
- The same opportunities to benefit from scholarships and other study grants
- The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.
- Are there gender differences in edibility for to training in certain occupations?
- Are there gender differences in access to telephones, the internet, and other sources of information?

### *Work Opportunities*

- Are certain occupations closed to women?
- Does the legal framework- both formal and customary laws and their enforcement- discriminate on the basis of gender with respect to education, transport, health or employment, either directly or indirectly?
- Are there any distinctions in recruitment and employment practices between men and women?

- What legislative or other measures have been taken to promote equal employment opportunities for women and men?
- Are there professions that, by law or custom, tend to be filled predominantly by women? What are they?
- Do opportunities exist for women in occupations which are not traditionally pursued by women?
- Are women entitled by law to receive equal pay for equal work of the same value as that performed by men?
- Have measures to address sexual harassment and violence against women in the workplace been introduced?
- Are there certain kinds of work considered men's work or women's work?
- What kind of work are women forbidden to do, either by law or by custom?
- What measures and steps have been taken to concretise and inform law enforcement officials of the issue of violence against women, particular within the home?

#### *Violence against Women and Girl Children*

- Have shelters been established for women faced with violence in the family?
- How are women victims of violence treated by law enforcement?

#### *Cultural Taboos*

- What cultural and traditional practices, or way of life if any, hamper women's advancement in society?
- What measures have been taken to change social and cultural patterns that lead to stereotyping or reinforcing the idea of inferiority of women?

## **12. Addressing the Reasons and Demand for Child Domestic Labour in Legislation**

In order to draft child- sensitive and gender- sensitive laws, it is important to study the economic and social needs that drive children to work and the traditional and cultural norms that accept without questioning the role that a girl child plays in domestic work in her family or third party's home.

Family poverty is one the main reasons, though not the only reason, for child domestic employment. Poverty comes in many forms. Sometimes it is caused by a sudden economic downturn or natural disaster, or it may be due to a family crisis, such as a death or illness in the family and the need may arise to supplement the family income.

Laws should provide support for AIDS orphans and recognize the specific vulnerabilities that drive these children to domestic work. Care for AIDS patients and other terminally ill members in the family also fall disproportionately on women and the girl child. A

gender sensitive approach will look at how all members of the family can reconcile the care of family members and allocate equal responsibilities to all. Article 16 of the CEDAW which guarantees equality in family life should guide these considerations.

As economies develop and new middle classes emerge in Asia, Africa and Latin America, the demand for cheap household workers also increases.<sup>66</sup> As certain women find mobility in the formal work world, another group of subterranean workers, mostly women and girl children fill the vacuum created by the woman who has entered the formal labour force.

A child's own desire for change and mobility may be another reason for child domestic work. Often, moving to another village or city or to a place where education is available may be the child's only chance of receiving an education. Attempts should be made to ensure that social, economic and educational opportunities are available to the child in the child's own community.

Economic downturns caused by structural adjustment policies, privatization, or displacement caused by natural disasters or developmental projects, can result in the family looking to children as a source of income. Safety nets and other protective measures must be set in motion in the aftermath of social and economic calamities, in order to protect the vulnerabilities of children and especially girls.

Studies show clearly that globalization has had a disproportionate impact on women.<sup>67</sup> <sup>68</sup> The lack of even the minimal labour standards and employment – related benefits and other protective mechanisms in the informal sector - has thus affected women the most. These protections must be made available in all sectors of employment.

Increases in morbidity, loss of livelihood and income of parents, food insecurity, lack of access to mobility and public domain, breakdown of community, breakdown in physical and mental health, violence against women and the lack of housing are all “push” factors that give rise to child domestic labour. Lawmaking should take into consideration interim measures that can support the child.

Around the world, different minority and ethnic groups are more vulnerable to be exploited as child domestic labour. The demand for child workers belonging to disadvantaged groups is fuelled by societal acceptance of historic discrimination and

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<sup>66</sup> For example, a report from Bangladesh states: “the embarrassing truth is that behind today’s modern emancipated women advancing in her new role, are the sacrifices of another specific group of women. In every household, these are the domestic workers of different ages. In the process of establishing human rights for the women of Bangladesh, the human rights of these domestic workers are being violated and neglected in every household.”<sup>66</sup>

<sup>67</sup> “While on the one hand, women have entered the work force in large numbers; the process of liberalization has spawned a huge growth in the informal sector where women are mostly concentrated in” The Realization of economic, Social and Cultural Rights: Globalization and its impact on the full enjoyment of human rights. Preliminary report Submitted by J. Oloka-Onyango and Deepika Udagama, in accordance with Sub- Commission resolution 1999/8. E/CN.4/Sub.2/2001/13.

<sup>68</sup> Ibid.

marginalization of these ethnic groups. Clear anti-discrimination legislation which addresses discrimination against race, gender, class, ethnicity, caste and sexual identity is extremely important in addressing the demand for certain minority child workers

Law making should adequately address the demand for child domestic workers. It is important to target groups that are most likely to hire domestic workers and analyze the reasons for such hiring. In India, the government issued a notification in 1999, prohibiting government servants from hiring of child domestic workers. Several cases have been brought against civil servants under this regulation. Thus the power structure created by a civil servant employer and child worker often creates a relationship in which the child worker or her family finds it difficult to escape from. The nature of civil service which finds the employer posted in different rural areas where child workers are easily accessible and are often under the control of the civil servant employer makes this relationship possible. The above law shows that attention can be paid to certain communities that are more prone to hire child domestic workers.<sup>69</sup>

## 12.1. Selected Country Studies

The **Indian** National Charter for Children, 2003 provides a good example of a framework that attempts to address the root causes of child domestic labour. Although the Charter cannot be enforced in a court of law, it is of persuasive authority.

The Charter is promulgated under Article 15 (3) of the Indian Constitution which recommends that the State make special provisions for children.

The Charter provides State assistance for early childhood care and education until the age of six years.

Several of the provisions in Charter guarantees state protection for children of families below the poverty line. These measures include:

- a) Provision for preventive care through immunization and prevention of micronutrient deficiencies.
- b) The specialized care and treatment of children in primary health care facilities.
- c) Adequate pre-natal and post-natal care for mothers along with immunization against preventable diseases.
- d) All steps to ensure the mental and physical health of children.

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<sup>69</sup> Although child domestic labour pervades class, caste and other barriers and exists in different communities. Studies reveal that with the increasing mobility of women in developing countries, an underclass of women and girl children are created to support this mobility. For example, studies in Sri Lanka have revealed that child workers are most often employed ironically in the home of female teachers.

The State also guarantees that in partnership with the community certain basic minimum needs and security will be met. This includes providing children and families below the poverty line adequate nutrition, safe drinking water, environmental sanitation and hygiene. At the same time the State guarantees adequate opportunities for play and leisure for the healthy development of children. This includes programmes which will stimulate the physical and cognitive capacities of children.

A provision that will help address both the causes of and demand for child domestic labour is a provision which states that the State in partnership with the community will provide for a child care centre in every village where children of working mothers can be cared for.

The Charter also addresses gender discrimination, a major cause that may lead to child domestic labour. The Charter states in Article 11 that the State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.

Furthermore, the State shall in partnership with the community undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society.

The Charter also acknowledges the special vulnerability of children from disadvantaged communities and strives to protect their rights by providing for special intervention and support in matters pertaining to education, health, recreation and supportive services.

Apart from the Charter, the government of India has introduced some measures which if implemented can combat child domestic labour. For example, the Mid- Day Meal Scheme introduced in India in 1995 requires a cooked meal to be given to all children in government and government assisted schools. This was however implemented fully only in Tamil Nadu.

In a series of cases filed by the Human Rights Law Network and People's Union for Civil Liberties, relief was asked to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them.

## **12.2. Recommendations for Law, Policy and Programme Reform**

- Laws should be drafted with a special emphasis on impacting target communities.
- Families below the poverty guidelines should be identified.
- State protection should be available for children of families below the poverty line. This includes providing children and families below the poverty line adequate nutrition, safe drinking water, environmental sanitation and hygiene and housing.

### *Implementation Mechanisms*

- The State shall undertake to improve the health and nutritious status of children 0-18 years by providing supplementary food and by coordinating with state health departments to ensure delivery of required health inputs.
- Provide conditions necessary for pre-school and school age children's psychological and social development through early stimulation and education.
- Provide a nutritious mid-day meal at school. The minimum calorie, protein and vitamin contents of the meal should be established.
- Ensure equal distribution of food and nutritious supplements to both girls and boys and women and men.
- Marginalized groups such as tribal and ethnic minorities should be given preference in the food distribution.
- Provide pregnant and lactating women with food supplements.
- Enhance the mother's ability to provide proper child care through health and nutrition education.
- Achieve effective coordination of policy and implementation among the various departments to promote child development.
- Establish a rigorous quarterly or bi-yearly reporting mechanism to implement the scheme
- Create state subsidized day care centres in every community. This will help reduce the reliance on inexpensive labour.
- Address the needs of families that have to cope with the loss of income generated by the child domestic worker.
- Connect long term poverty alleviation laws and policies to prevent families from sending their children to domestic work.
- Ensure the participation of women as health care workers in the context of HIV/AIDS.
- Special programmes should be undertaken to improve the health and nutritional status of girls.
- Demystify terms of patronage (for example "house daughter"). Laws should make sure that all those who come within these categories are able to exercise their rights and are covered by the law.
- Special incentives for disadvantaged communities to access education should be established.
- The State and community must undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society.
- Ensure equality in the family by providing for equal responsibilities and duties for daughters and sons.
- With the support of the community, measures should be taken to combat discriminatory practices in the family, including domestic violence and all other discriminatory practices that subordinate women and girls and disrupt family harmony.

- Undertake special measures to eradicate gender specific discriminatory practices against the girl child, including those practices that force her into child domestic labour, trafficking and prostitution.
- The State and community must recognize the common responsibilities of both parents and equal family duties for daughters and sons.
- The State and community must undertake special measures to encourage the production and dissemination of child-friendly information on child domestic labour laws.
- All measures must be undertaken to move towards a progressive abolition of all forms of child domestic labour. These measures must promote child- oriented plans of action, strategies and laws, policies and programmes.

## **Conclusion**

Continued poverty; illiteracy and ignorance of poor parents; increase in population; inadequate family income; large families; indebtedness; absence of social security schemes; and lack of strict enforcement of the provisions for compulsory education; migration from rural areas to urban areas; the cheap costs of child domestic labour all contribute to child domestic labour. Further, families plagued by dysfunction, abandonment, violence, alcohol, drug abuse can push children early into work. Economic transition both in and out side the home can contribute to the rise in child domestic labour. When adults are struck by life threatening diseases like HIV/AIDS children are forced to carry the burden of extra household work and or go out to work.

Poverty is both causative and consequential to the problem of child domestic labour. Child workers can perpetuate poverty because child domestic labourers, deprived of education or healthy physical development, are likely to become adults with low earning capacity.

Poverty is most often intertwined with gender inequalities. Not only are women more vulnerable to poverty, but in families where males occupy dominant roles, gender-defined roles carry low expectations for girls and women.

Unless the gender dimensions of poverty are addressed, law reform on domestic labour will have very little avail. The CEDAW provisions in Articles 2 and 3 which call for equal protection both in laws and practice must guide the reform of laws in this area. The unequal and disproportionate impact of facially neutral laws must be critically examined in this effort.

Most empirical studies show that girls are traditionally overrepresented in the domestic work world and other informal service sector jobs. This is shaped by the socially constructed role that girls are traditionally meant to occupy. The low status given to the girl child and the poor bargaining power of the girl child also makes her a more attractive employee. This observation is not meant to advocate for greater employment of boys in domestic work outside of their own homes. Rather, it has not been possible within the

scope of this paper to address the myriad differences between child domestic labour in the home and in third party households. Those distinctions carry many implications for the type of laws and programmes which should be implemented as well as their efficacy and are greatly deserving of further research.

The devaluation of the girl child, the pressures of early marriage and the need for a dowry in certain cultures drive girls to work as domestic workers. In cultures where daughters are responsible for household chores, the opportunity costs of a daughter's schooling maybe higher than a son's. The fact that the work domestic workers perform are viewed as an extension of housework makes domestic work invisible.

Law reform must be guided by Article 5 of the CEDAW and address the cultural factors that result in the devaluation of girls and women. Further, law reform must be guided ay Article 4 of the CEDAW which call for special temporary measures in law and practice to achieve equality of result.

Girls are also discriminated against in the kind of work they engage in. Girls engage in work which fall in line with her gender roles and this work is not always considered work. Girls are also assigned roles and placed in work that define and restrict their mobility. Although their economic participation is largely unrecognized, young girls are open to work-related hazards and exploitation, especially sexual advances and physical and verbal abuse. The work engaged in by girls, open the way to sexual abuse.

Gender equality legislation/ anti- gender discrimination legislation must be drafted to counter discriminatory employment practices informed by CEDAW Article 11.

There is a need to consider the gender dimensions of child domestic labour and the need to analyze the impact of child domestic labour on health, specifically sex and gender differentiated impacts within the framework of the CEDAW and CRC.

Similarly, it is important to use the CRC and CEDAW provisions to critically examine the gender gap relating to schooling. There is a critical need to redesign laws and regulations on educational programmes in a gender sensitive manner. Teaching schedules need to take into account whether children can actually participate in classes- at what time they need to leave their homes if schools are located far away. Shelter from elements adequate space school equipment, blackboards, chalk, pens and pencils are essential requisites.

In certain cultures, a girl's chances of going to school might depend on the availability of separate school facilities for girls and the convenience of transportation to school. The lack of separate school facilities and the presence of a female teacher will often deprive girls of an education.

The girl child's education will have numerous implications including on the health. Gender inequality in education also has a correlation with reductions in GDP per-capita as well as other indicators of development such as life expectancy and infant mortality.<sup>70</sup>

Education concerning child domestic labour should target young boys and men in relation to gender identities, male attitudes and discriminatory behaviour towards girls.

Law reform must take into consideration the interrelatedness of issues and draft laws that strengthen the alternatives to child work as well as take into account the social, economic and health ramifications of child domestic work.

Finally, it is important to create a holistic rights- based legal framework emphasizing the universality, interdependence, indivisibility and justiciability of political, economic, social and cultural rights of children in order to address domestic work by children.

An understanding that gender discrimination is a leading cause of child domestic labour is critical to protect child workers and to prevent and eliminate child domestic labour. It is equally important to examine domestic work for the role it plays in reinforcing and perpetrating gender stereotypes that subordinate women. This cause and effect relationship between domestic child work and gender bias has in some situations created an inter-generational cycle of discrimination which needs to be addressed.

Several countries are increasingly looking at laws and legal reform for realizing children's rights. Over the past years, new laws have been passed or initiated and good practice developed. Despite a strong commitment to equal rights lawmaking, there is a gap in the implementation of those laws. Although monitoring and implementation of equality and anti-discrimination laws should take the centre stage in addressing child domestic labour, laws alone will be ineffective unless accompanied by education on the value of the rights of all children.<sup>71</sup>

In conclusion, gender inequality is the thread that intertwines most of the major causes of child domestic work and drives more girls than boys to work as domestic workers. Discrimination against children occurs not only when there is discrimination between children and adults but between different groups of children. Children and families living in rural communities, and especially girl children, may have less access to essential resources which may drive them into domestic work. That is why an anti-discrimination perspective is critical to the examination of child domestic labour.

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<sup>70</sup> See Susan Wendy Parker and Carla Pederzini, *Gender Differences in Education in Mexico*. 1999.

<sup>71</sup> Certain children's Law provide for education on the rights of the child. See for example, Section 19 of the Latvian Law on the Protection of the Rights of the Child, which provides that the child must have the opportunity to acquire a basic knowledge of the rights of the child as part of the curriculum in secondary or other educational institutions.

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## Appendix

### CHILD DOMESTIC LABOUR<sup>72</sup>

#### CHECKLIST<sup>73</sup>

##### I) International Conventions:

1. Has the country made a General reservation to the Convention on the Rights of the Child?<sup>74</sup>
2. Has the country made specific reservations to the CRC in the context of employment of children in hazardous and non- hazardous employment? If so, please explain?
3. Has the country made reservations to the definition of a ‘child’ under CRC? If so, please explain?
4. Has the country ratified Worst Form of Child Labour Convention 1999 (No. 182)?
5. Has the country ratified the Minimum Age Convention, 1973 (No.138)?
6. Has the country ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)? If so, has the country made reservations to CEDAW? Please list the reservations.
7. Has the country ratified the International Covenant on Economic, Social and Cultural Rights? If so, are there reservations?

##### II) Definition of Child

1. Does the law have a uniform definition of a ‘child’ across different Statutes? If so, what is the minimum age?
2. if not, are there differences in the definition of a ‘child’ on the basis of:
  - a) minimum age of employment in non hazardous employment
  - b) minimum age of employment in hazardous employment
  - c) minimum age of employment in domestic work, if a separate category
  - d) minimum age for compulsory education (specify any possible exemption procedures, if any, that would allow a child work instead of accessing the compulsory level education)
  - e) minimum age of marriage (specify variations on grounds of sex if any)
  - f) minimum age for civil matters
  - g) minimum age for criminal matters
3. Is there a difference in the definition of a child on the basis of sex?

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<sup>72</sup> Source – UNICEF, Global Policy Section, Division of Policy and Planning (Legislative Reform Initiative), 2006

<sup>73</sup> In this Check List the Term Child Domestic Worker or Child Domestic Labourer are used synonymously. Similarly, Domestic Worker and Domestic Labourer are used interchangeably.

<sup>74</sup> For instance, a general reservation on all provisions of the CRC that are incompatible with Shari’a law

III) Birth Registration

1. Is there compulsory birth registration in the country?
2. Is the employer mandated to verify the age of the child worker?
3. Does the employer need to retain a copy of the birth certificate of the child worker?

IV) Minimum Age of Employment

1. Has the country ratified the 1973 ILO Convention No. 138 concerning the Minimum Age for Employment?
2. Is there a minimum age of employment permitted by law?
3. Is there a distinction on the basis of sex, race or other grounds?
4. Is there a distinction on the basis of nature of employment or trade or occupation or circumstances?
5. Do different provinces or regions or states of the country have differing minimum age of employment?
6. Is there a legal prohibition against under age employment?
7. Is there a criminal or civil punishment, in the case of a violation?

V) Child Domestic Labour

1. Does the law define 'Child Domestic Labour'? If so, what is the definition?
2. Does the definition cover:
  - a. work done both within the home for the family and in a third party's home?
  - b. remunerated and unremunerated work?

VI) Non-Discriminatory Clauses & Equal Opportunity Clauses

Non- Discrimination Clauses:

1. Does the Constitution, or other laws or national child rights laws have anti-discrimination clause?
2. If so, does this anti-discrimination clause or definition ensure that all children are treated equally without discrimination on grounds of child or child's parents or legal guardian's race, colour, caste, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth, political status, pregnancy or other consideration?
3. Does the law address discrimination within the family?
4. If so, is there a clear recognition of shared duties of parenting in the rearing and caring of children by the parents?
5. Does the law prohibit traditional practices that discriminate against women and girls

6. If so, does the law proscribe crimes and atrocities committed against the girl child, including child marriage, and forcing girls into prostitution?

Equal Opportunity Clauses:

1. Does the country have equal employment opportunity laws?
2. If so, do these laws prohibit discrimination on the basis of gender, of those who perform equal work of equal value?
3. Does the country have laws that prohibit discrimination in wages, conditions of work, nature of work and work-related benefits and retirement and pension policies between male and female employees?

Laws that govern domestic work

1. Does the country have specific laws that govern domestic work?
2. If so, do these laws provide for the application of minimum wages, maximum hours of work, holidays to domestic work?
3. Do these laws prohibit discrimination on the basis of gender, age and wage parity?
4. Do these laws protect the domestic workers especially female domestic workers from violence, harassment and exploitation?

VII) Prohibition of Violence and Harassment

1. Does the country have a law that prohibits gender-based violence?
2. If so, does the definition of such violence include traditional practices, customary or religious practices that impair the dignity or girls and women?
3. Does the country have a law that prohibits sexual harassment?
4. Does such a law cover sexual harassment in the work place?
5. In this context, is the 'home' where domestic work being done, considered a work place?
6. Does the country have a law against Domestic Violence?
7. If so, does the law extend to protecting Domestic Workers?

VIII) Education

1. Does the law mandate a minimum level of education as mandatory for all children?
2. Is there a right to education enshrined in the Bill of Rights or the Constitution?
3. Does the law provide for free primary education?
4. Is there a law that provides that the employer must provide the child worker with the opportunity for a primary education in school?
5. Is there law or policy that specially reaches out to educate girls?

6. Is there any incentive program in place, to ensure that families below the poverty line send their children to school?

IX) Right to Health

1. Is there a clear prohibition against children's employment in any hazardous labour' that is dangerous for to the health and development of children?
2. Are their laws and rules in place that ensures that children who are employed receive access to clean water, nutritious food and medical care?

X) Right to be Protected from Exploitation

1. Does the law prohibit forced labour or slavery or involuntary servitude, or debt bondage?
2. Does the law prohibit prostitution of children?
3. Does the law enshrine the right of children to assistance and protection from neglect, abuse and cruelty?
4. Does the law prohibit and punish child abuse?
5. Does the law provide that household service shall be fairly compensated?
6. Does the law provide that those children employed in hazardous occupations shall be prohibited and have welfare measures in place post for the children who were previously employed in these types of occupations?
7. Does the law provide for anti-trafficking measures?
8. Does the law provide for legal assistance and rehabilitation of trafficked persons?

XI) Terms of Employment

1. Is there a minimum wage in the country?
2. If so, is Child Domestic Labour covered by the minimum wage law?
3. Do domestic workers have the same rights as other workers with respect to:
  - a. hours of work
  - b. rest periods,
  - c. vacation and
  - d. occupational safety
  - e. right to collective bargaining or the ability to unionise
4. Is there a maximum number of working hours per day in place for Child Domestic Labour?
5. Are Child Domestic Labourers entitled to all public holidays?

XII) Registration of Child Workers

1. Does the law require that child workers be registered with proper authorities?
2. If so, is the consent of the young person and guardian included in the registration?
3. Does the registration law require that the authorized officer should be informed by the employer in case of termination of employment or in the event the child worker goes missing?
4. Is there an authorized officer or institution or office that investigates all offences against Child Domestic Labour or Domestic Labour in general and coordinates with other agencies?
5. Does the authorized officer maintain a log book with salary received by the child worker?

XIII) Monitoring and Implementation Laws

1. Is there a Children's Ombudsman/Children's Commission to promote and defend children's rights?
2. Is there a specific ministry in the Government that monitors children's work including child domestic work?
3. Can this office or officer investigate and resolve complaints regarding matters relating to the Children's laws in force?
4. Can this office or some other office have the power to take legal action on behalf of the child?
5. Does the law allow any person who has knowledge or knows of facts that give rise to a reasonable belief that a child may be working in violation of the law, to either orally or in writing or through other means report the same to law enforcement or the relevant officials?
6. Are their child friendly adjudication procedures in place?
7. Does the law provide for clear sanctions and penalties against violators of the law and remedies for the victim?
8. Does the law provide assistance to enable the child's views and concerns to be presented and considered in court, in a manner not prejudicial to their rights?
9. Does the law provide for counselling and information, as regards their legal rights?





For more information, please contact:

**The United Nations Children's Fund (UNICEF)**

3 United Nations Plaza,  
Gender, Rights and Civic Engagement Section  
New York, NY 10017, USA

E-mail: [workingpapers@unicef.org](mailto:workingpapers@unicef.org)

Website: [www.unicef.org/policyanalysis](http://www.unicef.org/policyanalysis)