



International
Labour
Organization

Reaching Behind Closed Doors

*A Survey of Legal and Policy Responses
to Child Domestic Labour in South Asia
together with Recommendations for Reform*

Subregional Office for South Asia, New Delhi

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Foreword

Almost without exception, children who are in domestic labour are victims of exploitation, often of several different kinds. They invariably are deprived of the rights due to them as children in international law, including the right to play, health, and freedom from sexual abuse and harassment, visits to or from their family, association with friends, decent accommodation, and protection from physical and mental abuse.

They are exploited economically and are denied fundamental workers' rights when they have to work long hours with no time off, low wages or no remuneration at all. They are exploited because they generally have no social or legal protection, and suffer harsh working conditions including, for example, having to handle toxic substances. Children who enter domestic labour often leave their own family at a very early age to work in the houses of others and are considered almost as 'possessions' of the household. They work in isolation and are subject to verbal, physical, emotional and in some cases, sexual abuse. They are deprived of an education and training, so that their longer term future is also blighted. Despite this, domestic service remains one of the most common forms of occupation for children, particularly girls. Existing research suggests that, across the globe and including in South Asia, more girls under 16 are employed in domestic service than in any other form of work.

In the framework of the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), the ILO recognizes three categories of child labour that must be abolished:

- All work done by children under the minimum legal age for that type of work, as defined by national legislation in accordance with international standards;
- Work that endangers the health, safety and morals of a child, either because of the nature of the work or because of the conditions under which it is performed;
- Unconditional worst forms of child labour, defined as slavery, trafficking, bonded labour, force recruitment into armed conflict, prostitution, pornography or illegal activities such as the sale and trafficking of drugs.

How these and other international standards, such as the Convention on the Rights of the Child, are reflected, or not as it were, in national legislation and policies in South Asia in order to eliminate child domestic labour is what this document aims to clarify. While the report shows a general dearth of child domestic labour specific legislation and policies in most countries, there is no doubt that there has been a palpable shift towards acknowledging the importance of this form of child labour. The recent decisions of the Government of India to add child domestic labour on its list of hazardous sectors

of employment for children¹ and the development of draft legislation in Pakistan and Sri Lanka are a testament to this.

Child domestic labour will not be eradicated through legislation and policies alone, the experience of ILO-IPEC across the world has demonstrated that only through holistic approaches can such complex and hidden forms of child labour be effectively tackled. However, the importance of a clear and solid legal and policy framework is a fundamental building block which not only provides a basis for legal action, but conveys an unambiguous message to all that the exploitation of children in domestic labour is unacceptable and will not be tolerated.

New Delhi
December, 2006

Leyla Tegmo-Reddy
Director
ILO Subregional Office for
South Asia, New Delhi

1. To become law on 10 October 2006.

Introduction

Whereas previously the issue of child labour in the domestic sector (“Child Domestic Labour”) struggled to gain a foothold on the government agenda in South Asia over the years, there has been a palpable shift toward acknowledging the importance of this issue.¹ Now, not only are some government and civil society members beginning to address the legal and policy dimensions of this problem, but also, and perhaps more significantly, domestic workers are organizing, demanding better working conditions and in the process are fighting to eliminate Child Domestic Labour. But even if an emergent movement is on the horizon, for the most part domestic work is still one of the least regulated and most poorly remunerated sectors where hundreds of thousands of children all over the region find employment. Accurate statistics on the number of children working in each South Asian country are not available; however, estimates hint at the magnitude of this problem. According to a 2004 rapid assessment survey conducted in Nepal, there were 55,655 children working in the domestic sector in urban areas alone, which accounts for 43.8% of children in the Worst Forms of Child Labour all over the country.² Meanwhile in Bangladesh, over 300,000 children are employed in this sector in both rural and urban areas making it the single largest hazardous child labour sector in the country.³ Few South Asian countries surveyed in this paper have tabled or are in the process of tabling legislation as well as launching policy level initiatives specific to the domestic sector.

This paper frames the international standard of protection in the context of Child Domestic Labour and reviews by comparison the extent of legal and policy measures relating to this sector across South Asia. The resulting inventory points out where legal protection exists as well as highlights gaps and limitations under national law which form the basis of recommendations that government can employ in regulating the domestic sector. Creating satisfactory working conditions would not only facilitate legitimate domestic work for persons over minimum working age but would also render this area more appealing to adult workers, which would contribute to gradually eliminating child labour in this sector.

1. The term South Asia as referred to in this paper includes Bangladesh, India, Nepal, Pakistan and Sri Lanka.
2. Government of Nepal, Ministry of Labour and Transport Management: *National Master Plan on Child Labour* at iii (Nepal, 2004).
3. This figure is based on the results of an ILO baseline survey and a UNICEF survey. In 2005, an ILO survey conducted in rural Bangladesh revealed that 273,543 children between the ages of 6-17 were employed in the domestic sector. Additionally, a UNICEF study also commissioned in 2005 limited to the Dhaka City area found that 121,965 children were employed in the domestic sector.

2 Reaching Behind Closed Doors

In researching this paper primary legal sources including laws from each South Asian country were consulted together with ILO and United Nations Conventions. Additionally, ILO publications as well as non-ILO materials on the issue of Child Domestic Labour were reviewed. National Plans of Action were also examined to distill relevant legal and policy developments affecting this sector. Lastly, representatives from government and Non-Government Organizations (“NGOs”) working in this area were interviewed.

An explanation of some of the terms used in this paper is worth having from the outset. Child Domestic Labour refers to situations where children are hired to perform domestic tasks in the home of a third party or employer under exploitative conditions. These include employment below the minimum working age of 14 or under unsatisfactory working conditions such as low wages; long working hours with little time for rest, leisure and educational activity; deficient safety and health standards as well as inadequate social protection.⁴ The extreme forms of Child Domestic Labour are referred to as the Worst Forms of Child Domestic Labour, and this includes trafficking, slavery or practices similar to slavery, or work which by its nature or the circumstances in which it is carried out is hazardous and likely to harm the health, safety or morals of children.⁵ ‘Helping hand’ type tasks that children do to help out at home do not fall within the scope of Child Domestic Labour and are generally seen as beneficial since children learn responsibility and practical skills.⁶

Domestic work continues to be seen as one of the lowliest menial occupations and on the whole still inhabits an invisible realm in South Asia for a variety of reasons. In part this is because the employment relationship exists behind closed doors of private homes, removing it from the scrutiny and awareness of the outside world. This is compounded by the limited legal protection reaching children working in this sector, largely due to the interest in protecting the privacy of the home. Society’s tacit acceptance also plays a role in erasing the existence of this practice from the public mind. Statistics all over South Asia indicate that domestic work is the domain of women and girls and is often not perceived as ‘real work’, which is yet another reason why this sector has been long ignored. The result has been inadequate legal and policy responses to eliminate Child Domestic Labour in the first place as well as to protect the rights and interests of workers in this sector.

Child workers in this sector are at the mercy of terms dictated by their employers which although at times can be favorable, more often than not are likely to infringe upon

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4. HELPING HANDS OR SHACKLED LIVES? UNDERSTANDING CHILD DOMESTIC LABOUR AND RESPONSES TO IT at 1 (ILO Geneva 2004); ILO Convention No. 138, Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297 (hereinafter ILO Convention No. 138); ILO Recommendation No. 146 concerning Minimum Age for Admission to Employment, June 26, 1973 (hereinafter ILO Recommendation No. 146).
 5. ILO Convention No. 182, The Worst Forms of Child Labour, art. 3, June 17, 1999, 38 I.L.M. 1207 (hereinafter ILO Convention No. 182).
 6. HELPING HANDS, *supra* note 4, at 5.

fundamental rights and do not shield against the Worst Forms of Child Domestic Labour. For instance, the terms of recruitment such as wages, days off, working hours, work load, leisure time and contact with family are not clearly defined in law and are controlled by the needs of the employer. Rarely do these needs align with fundamental child rights and workers rights protected under international law.

a. Fundamental Rights Violated through Child Domestic Labour

Domestic work consistently and systematically violates the right to be in contact with one's family, which is a fundamental child right. From the tender age of five, many children who enter domestic work are often separated and gradually lose contact with their families resulting in tremendous psychological isolation. In addition, working at a time when they should be in school deprives children of educational opportunities and locks them forever into lives of poverty and misery. Moreover, the overall well-being of children is threatened as a result the working conditions connected with this practice. Due to the 'servant' status associated with working in this sector, children are often treated as lesser beings and can be provided with leftover food and substandard accommodation that is commonly regarded as part of their compensation. This could mean anything from sleeping in a kitchen, to underneath a stairwell, to an area outside the home. The lack of avenues for redress provided to children in this sector only perpetuates the physical and sexual abuse inflicted upon them day after day.

Workers rights are also often negated as a result of the generally accepted terms and conditions of work prevalent in this sector. For instance, the lack of minimum wage regulation adds to wage disparities in a sector characterized by low wages. According to a report in a leading Indian newspaper, while some domestic workers are paid as little as Rupees 2 an hour, others are paid up to Rupees 10 an hour for the same work.⁷ Added to this, the lack of regulation dispossesses children in this sector of other fundamental child rights and workers rights. These include rights based in international law defined through ILO conventions on minimum age for employment, working hours and the right to organize. Lastly, the absence of social protection, adversely affects workers in this sector, as in other areas of the informal economy. In a published interview many domestic workers echoed the needs for social protection because a combination of low wages along with the lack of savings and social protection can have a devastating impact in times of sickness or employment related injury.⁸ Consider what this means for the hundreds of thousands of children that continue to toil in private homes all over South Asia.

7. *Kerala Workers Seek Better Deal*, THE HINDU, May 3, 2004, available at <http://www.hindu.com/2004/05/03/stories/2004050306670300.htm>.

8. *Bidding for a Fair Deal*, THE HINDU, May 31, 2004, available at <http://www.hinduonnet.com/thehindu/mp/2004/05/31/stories/2004053102260100.htm>.

b. The Underlying Factors

At the same time, effective legal and policy responses need to be cognizant of social actualities underlying the presence of children in this sector. Foremost among the supply side factors is poverty. This can either be in the form of a permanent state that confronts a family or a temporary financial crisis brought on by the death of a breadwinner, natural disasters or other events. Another factor is the devaluation of women in society as a consequence of which education is seen as a 'lost investment' as most girls marry and leave the family. In contrast, domestic work is perceived as preparation toward marriage and is therefore considered a better investment than education.⁹ Added to this, the misperception that the child is safe because of the live-in/work arrangement fosters an ignorance of the risks, especially those faced by female children in this sector.¹⁰ Another underlying cause is the lack of access to education, low quality of education where it is accessible, or educational opportunities that are at variance with the needs and aspirations of people from poor rural communities. It is little wonder then that under such circumstances poor families view domestic service not only as a viable option but more importantly as a means of survival which at a minimum ensures that their children will be provided with food, clothing, a 'safe' place to stay and some income.

On the demand side of the equation, the surge in demand for child workers correlates with the increase in economic success within South Asia. With more middle class nuclear families and more women joining the workforce the demand for cheap labour to help with domestic chores has also grown. In stark contrast, intense poverty persists in rural areas and this disparity of wealth has resulted in the proliferation of trafficking networks that ensnare and channel children into this sector.¹¹ As evidenced in a UNICEF report, children are born, sold and trafficked into domestic slavery in many parts of the world, some of whom make as little as \$1 a month.¹² The Nepal National Master Plan of Action lends support to this finding and provides that on an annual basis 5-7000 girls are trafficked into India, many of whom end up in the domestic sector.¹³ Many consider the hiring of child workers as an 'act of charity' as children are provided with basic needs that poverty denies them. While it is true that some child workers in this sector are

9. HELPING HANDS, *supra* note 4, at 19 and 29.

10. *Id.* at 22.

11. *Upwardly Mobile India Treads on the Young*, INTERNATIONAL HERALD TRIBUNE, November 6, 2005, available at http://www.iht.com/bin/print_ipub.php?file=/articles/2005/11/03/news/child.php.

12. *U.N. Urges Ban on Child Labour*, available at http://news.bbc.co.uk/1/hi/world/south_asia/4282715.stm.

13. Nepal National Master Plan, *supra* note 1, annex at xi. these instances and it is unreasonable to put the onus for reduced expenditure on the women. Also while the man remains the decision maker for large expenditure, it is the woman who is burdened with the responsibility of managing the budget: she has to put the food on the table, handle emergencies and clothe her children. Including men also involves them in the process of budgeting for the household. They become aware of the burden of increased expenditure.

afforded favourable conditions, this approach in fact supports the perpetuation of unregulated conditions that in effect expose many other children to exploitative and oppressive practices.

Part A of this paper begins by laying out the rights accorded to children in the domestic sector, both as children and as workers under international law. Part B examines national laws protecting children working in this sector in each South Asian country and highlights gaps and limitations in comparison to the international standard. This section discusses laws that are specific to Child Domestic Labour and then turns to other relevant laws that protect the rights of child workers as children, as workers as well as against the Worst Forms of Child Domestic Labour. Part C discusses current and proposed national plans and programmes to address this sector by country. Lastly, part D of this paper provides recommendations for legal reform, proposing conditions for legitimate domestic work that harmonize with international standards.

DOMESTIC SERVICE SECTOR

The schematic set out below summarizes the international legal framework on Child Domestic Labour which is explored in greater depth in section A.

CHILD DOMESTIC LABOUR - A FORM OF CHILD LABOUR TO BE ELIMINATED UNDER INTERNATIONAL LAW

- Children below minimum working age defined as 14/15 according to ILO Convention No. 138 **or**
- Lacking recommended satisfactory working standards. See BOX A.

LEGITIMATE DOMESTIC WORK

- Persons over minimum working age 14/15 **and**
- Compliance with recommended satisfactory working standards. See BOX A.

WORST FORMS OF CHILD DOMESTIC LABOUR

Based on The Worst Forms of Child Labour as listed in article 3 of ILO Convention No. 182:

- Trafficking of children;
- Slavery or Practices Similar to Slavery;
- Hazardous Work (see BOX B); **or**
- Debt Bondage and Forced/ Compulsory labour.

BOX A: Recommended Satisfactory Working Standards

According to article 13(1) of the ILO Recommendation No. 146 on Minimum Age, in ensuring satisfactory working standards for children and young persons special attention should be given to:

- Provision of fair remuneration bearing in mind the principle of equal pay for equal work;
- Strict limitation of the hours spent in a day and in a week and the prohibition of overtime, so as to allow enough time for education and training, for rest during the day and leisure activities;
- The granting of a minimum consecutive period of 12 hours of night rest and of customary weekly rest days;
- Coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
- Granting of an annual holiday with pay of at least four weeks and in any case not shorter than that granted to adults;
- The maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

The Convention on the Rights of the Child also forwards several of the fundamental child rights outlined above. Among others, this includes the right of the child to education; to adequate rest and leisure; to remain in contact with one's family; to access health care services and the right to be protected from economic exploitation and hazardous work.

BOX B: When does Domestic Work turn Hazardous?

Hazardous work is defined in article 3(d) of ILO Convention No. 182 as work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety and morals of children.

ILO Recommendation No. 190 identifies factors that should be considered in determining hazardous work. These are:

- Work which exposes children to physical, psychological or sexual abuse;
- Work underground, under water, at dangerous heights or in confined spaces;
- Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health;
- Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

1. International Legal Framework

Although international conventions do not directly legislate on the issue of Child Domestic Labour, the rights and protections available to child workers set forth below as children and as workers under international law can be construed using ILO and U.N. conventions. It is worth noting that ILO Recommendation No. 190 alludes to the practice of Child Domestic Labour in providing that States should design and implement action programs that give special attention to the problem of hidden work situations, in which girls are at special risk.¹⁴

I. Child Rights Enshrined in International Conventions

a. Safeguarding the Overall Well-Being of Children

The U.N. Convention on the Rights of the Child (“CRC”) is the principal international legal instrument detailing the rights of children. The rights at issue include non-discrimination on the grounds of race, colour, sex, language, religion, ethnic or social origin, disability, birth or other status.¹⁵ Other fundamental rights are the right to know and be cared for by one’s parents as well as the right to maintain personal relations and be in direct contact with parents on a regular basis.¹⁶ Children have a fundamental right to be protected from all forms of sexual exploitation and sexual abuse.¹⁷ Protections that safeguard the overall well-being of children that are frequently compromised due to the nature of this practice are the right to enjoy the highest attainable standard of health and access to health care services.¹⁸ This includes a right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.¹⁹

b. Right to Education, Rest and Leisure

Other rights that are infringed through Child Domestic Labour are the right of the child to education including free compulsory primary education as well as access to higher

14. ILO Recommendation No. 190, Worst Forms of Child Labour Recommendation, art. 2(c)(iii), June 17, 1999 (hereinafter Recommendation No. 190).

15. Convention on the Rights of the Child, art. 2, Nov. 20, 1989, 1577 U.N.T.S. 3 (hereinafter CRC).

16. *Id.* arts. 7 and 9.

17. *Id.* art. 34.

18. *Id.* art. 24(1).

19. *Id.* art. 27.

education and vocational training.²⁰ In addition, the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child are also endangered.²¹

Additionally, ILO Recommendation No. 146 sets forth satisfactory standards that need to be considered in order to protect fundamental rights of working children over minimum age. It advises that a strict limitation of the hours spent at work in a day and in a week should be established including the prohibition of overtime so as to allow enough time for education, training and for rest during the day as well as leisure activities.²² ILO Recommendation No. 146 further supports the granting of 12 hours of night rest and of customary weekly rest days as well as an annual holiday with pay of at least four weeks.²³

II. Workers Rights Enshrined in International Conventions

a. Minimum Age

ILO Convention No. 138 determines the minimum age for employment which is a defining element of legitimate domestic work. In particular, it sets the minimum age for entry into any type of employment, including domestic labour at 15, which marks the completion of compulsory education. This requirement is entrenched in the principle that all persons should be equipped with a minimum level of education before they can start working on a full-time basis.²⁴ ILO Convention No. 138 also provides that children over 15, who have not completed compulsory schooling, can work in areas that are not likely to be harmful to their health and development and do not prejudice school attendance or participation in vocational training.²⁵ However, States with insufficiently developed economies and educational facilities are given some leeway and in such cases, the minimum age for employment can be lowered to 14. By establishing the legal minimum working age for entry into employment at 14/15 ILO Convention No. 138 implicitly requires that children below this age should be withdrawn from employment.

Although activities deemed as 'light work' are an exception to the minimum age requirement according to ILO Convention No. 138, this exception however does not apply to the domestic sector.²⁶ This is because working circumstances in this sector are hidden and inherently difficult to monitor and are likely to expose children under the age of 15, who are especially vulnerable by virtue of their age to exploitative conditions.

20. *Id.* art. 28.

21. *Id.* art. 31.

22. ILO Recommendation No. 146, *supra* note 4, part IV, art. 13(b).

23. *Id.* part IV, art. 13 (c) and (d)

24. ILO Convention NO. 138, *supra* note 4, art. 3.

25. *Id.* art. 7 (2).

26. *Id.* art. 7.

b. Fair Remuneration and Social Protection

Legitimate domestic work pertains to those situations where children over minimum age are employed under working conditions that are maintained at a satisfactory standard. To ensure such conditions ILO Recommendation No. 146 requires that among other factors special attention should be given to the provision of fair remuneration bearing in mind the principle of equal pay for equal work.²⁷ CRC provisions lend support to this principle in requiring that the economic exploitation of children should be prohibited.²⁸ As noted earlier, Child Domestic Labour is often beyond the purview of regulations including minimum wage laws and workers in this sector are grossly underpaid. Other ILO Recommendation No. 146 factors include coverage by social security schemes, including employment injury, medical care, sickness and benefit schemes.²⁹ The importance of maintaining satisfactory standards of safety and health as well as appropriate instruction and supervision, which are essential to the achievement of such working conditions, is also underscored within ILO Recommendation No. 146.³⁰

c. Freedom of Association

Another fundamental workers right that is compromised not only in the context of child labour in domestic service but also more broadly in the informal economy is the right to freedom of association. ILO conventions provide all workers with the right to freedom of association. More specifically, ILO Convention No. 87 provides that each member state shall take all necessary and appropriate measures to ensure that workers and employers may freely exercise the right to organize.³¹ Other U.N. conventions also support the right to freedom of association including the CRC, International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).³² As will be seen, laws in many South Asian countries do not expressly protect this fundamental right of child workers over minimum working age. Freedom of association is instrumental in helping older working children realize other rights and protections that are due to them under international law. On another level, organizing serves to counteract some of the negative features inherent in working in the domestic sector. By way of illustration, SUMAPI, a union of child domestic workers in the Philippines, has shown that organizing helps ease the sense

27. ILO Recommendation No. 146, *supra* note 4, part IV, art. 13(a).

28. CRC, *supra* note 15, art. 32(1).

29. ILO Recommendation No. 146, *supra* note 4, part IV, art. 13(e).

30. *Id.* part IV, art. 13(f).

31. ILO Convention No. 87, Freedom of Association and Protection of the Right to Organise, art. 11, June 17, 1948, 68 U.N.T.S. 17 (hereinafter referred to as ILO Convention No. 87).

32. CRC, *supra* note 15, art 15(1); International Covenant on Civil and Political Rights, part III, art. 22, March 23, 1976, 999 U.N.T.S. 171 (hereinafter referred to as ICCPR); International Covenant on Economic, Social and Cultural Rights, art. 8 (1) (1), Dec. 16, 1966, 993 U.N.T.S. 3 (hereinafter referred to as ICESCR).

of isolation and vulnerability that many children in this sector have to endure as it connects them to a greater network of people of the same age in similar circumstances.³³ Additionally, as demonstrated through the same example, unionizing has not only promoted advocacy and visibility of the issue but more importantly has empowered children to become their own spokespersons.³⁴ Lastly, SUMAPI shows that unionizing the domestic sector is probably the most efficient and effective self-monitoring tool.³⁵

III. The Worst Forms of Child Domestic Labour Proscribed under International Law

ILO Convention No. 182 establishes the Worst Forms of Child Labour some of which are relevant to Child Domestic Labour and qualify as the Worst Forms of Child Domestic Labour. In particular, this covers situations where children are trafficked into the domestic sector; are in a situation of debt bondage or of forced labour; are trapped in slavery or slavery-like practices; or are working under hazardous conditions.³⁶ ILO Convention No. 182 requires member states to take steps to eliminate these Worst Forms of Child Labour and by inference the Worst Forms of Child Domestic Labour as a matter of urgency and urges that effective and time-bound measures should be taken to withdraw children as well as to provide assistance for their rehabilitation and social integration.³⁷

a. Forced Labour and Slavery

In addition to ILO Convention No. 182, ILO Convention Nos. 29 and 105 urge States to take steps to suppress and refrain from the use of forced labour.³⁸ Furthermore, the U.N. Slavery Convention and the U.N. Supplementary Convention on the Abolition of Slavery require States to take all necessary steps to bring about the complete abolition of slavery in all its forms as well as debt bondage.³⁹

33. CHILD DOMESTIC LABOUR AND EMERGING GOOD PRACTICES TO COMBAT IT IN SOUTH EAST AND EAST ASIA 74 (ILO Bangkok 2005). SUMAPI stands for Samahan at Ugnayan ng mga Manggagawang Pantahanan sa Pilipinas which roughly translates as Association and Linkage of House Helpers in the Philippines.

34. *Id.*

35. CHILD DOMESTIC LABOUR IN SOUTH EAST AND EAST ASIA, *supra* note 34, at 75.

36. ILO Convention No. 182, *supra* note 5, art. 3.

37. *Id.* arts. 1 and 7(2)(b).

38. ILO Convention No. 29, Forced or Compulsory Labour, art. 1(1), June 10, 1930, 39 U.N.T.S. 55 (hereinafter referred to as ILO Convention No. 29); ILO Convention No. 105, art. 1 320 U.N.T.S. 291 (hereinafter referred to as ILO Convention No. 105).

39. Slavery Convention, art. 2(b), March 9, 1927, 182 U.N.T.S. 51; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, art. 1(a), April 30, 1957, 226 U.N.T.S. 3.

b. Trafficking

The U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons (“Palermo Protocol”) currently provides the most authoritative definition of trafficking in persons.⁴⁰ For child trafficking the Palermo Protocol sets a lower threshold and provides that child trafficking is the recruitment, transportation, transfer or receipt of a child for the purpose of exploitation.⁴¹ This definition applies to all children, in other words all persons under 18, as defined in the CRC and dispenses with the requirement for deceptive or fraudulent means required to qualify as trafficking of persons.⁴² Additionally, the CRC also condemns trafficking of children and provides that state parties should take all appropriate measures to prevent the sale of or traffic in children for any purpose or in any form.⁴³

c. Hazardous Child Domestic Labour

Although the international conventions do not define Hazardous Child Domestic Labour, ILO Recommendation No. 190 provides guidelines that are useful in determining when Child Domestic Labour turns hazardous. Because it is one of the Worst Forms of Child Labour, ILO conventions make clear that no one under 18 should be doing hazardous work. However, ILO Convention No. 138 does offer some latitude with older children (16 and over) who may be permitted to work under potentially hazardous conditions with sufficient training provided that adequate protections are taken to safeguard their health, safety and morals.⁴⁴

ILO Convention No. 138 provides a general definition of Hazardous Child Labour as “work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons.”⁴⁵ ILO Recommendation No. 190, supplementing ILO Convention No. 182, provides indicia that are useful in

40. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a) 2000 U.N. Doc A/55/383 (hereinafter referred to as Palermo Protocol). “Trafficking in Persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, or abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of other or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

41. *Id.* art. 3(c).

42. *Id.*

43. CRC, *supra* note 15, art. 35.

44. ILO Convention No. 138, *supra* note 4, arts. 3(1) and 3(3); ILO Recommendation No. 190, *supra* note 14, art. II(4).

45. ILO Convention No. 138, *supra* note 4, art. 3(1).

specifically determining what constitutes Hazardous Child Labour and by inference Hazardous Child Domestic Labour. As indicated earlier, it provides in relevant part that consideration should be given to the following set of factors:

- (a) Work which exposes children to physical, psychological or sexual abuse;
- (b) Work underground, under water, at dangerous heights or in confined spaces;
- (c) Work with dangerous machinery, equipment and tools or which involves the manual handling or transport of heavy loads;
- (d) Work in an unhealthy environment which may for example, expose children to hazardous substances, agents or processes or to temperatures, noise levels, or vibrations damaging to health;
- (e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.⁴⁶

The CRC also condemns Hazardous Child Labour and provides that children have a right to be protected from performing hazardous work that is likely to interfere with the child's education or is harmful to the child's health or development.⁴⁷ Furthermore the CRC also recognizes the right of children to be free from sexual exploitation and abuse which are encountered with a degree of frequency in this practice.⁴⁸ It also provides that States should take all appropriate measures to protect the child from physical or mental violence, neglect, abuse, maltreatment or exploitation.⁴⁹ As regards the last factor listed in ILO Convention No. 182, being 'unreasonably confined' is not merely a product of the live-in nature of the domestic service employment relationship. It also relates to the deprivation of fundamental child rights as a result of highly constrained terms of employment precluding a child's right to education, rest, leisure and contact with family.

d. Monitoring the Domestic Sector

Central to the realization of these rights is the issue of monitoring the domestic sector. ILO conventions and recommendations urge States to implement monitoring mechanisms to secure effective implementation. For instance, ILO Convention No. 182 requires States to establish appropriate mechanisms to monitor the implementation of its provisions.⁵⁰ ILO Recommendation No. 146 suggests measures to ensure the effective application of the minimum age standards including the strengthening of labour inspection and related services, by the special training of inspectors to detect abuses in employment or work of children and young persons and to correct such abuses.⁵¹

46. ILO Recommendation No. 190, *supra* note 14, art. 11, § 3 (a) - (e).

47. CRC, *supra* note 15, art. 32(1).

48. CRC, *supra* note 15, art. 34.

49. *Id.*, art. 19.

50. ILO Convention No. 182, *supra* note 5, art. 5.

51. ILO Recommendation No. 146, *supra* note 4, part V, art. 14(1)(a).

14 *Reaching Behind Closed Doors*

ILO Recommendation No. 146 lays emphasis on the role that inspectors can play in supplying information and advice on effective means of complying with relevant provisions as well as in securing enforcement.⁵² Many argue that monitoring this sector is a challenge because of the difficulty in counterbalancing seemingly irreconcilable concerns: people's interest in protecting the privacy of their homes versus protecting the fundamental rights of children. However, international standards provide a precedent for transcending privacy interests where the protection of fundamental rights is at stake. In particular, ILO Convention No. 177 concerning Home Work regulates work carried out by a person in his or her home or in premises other than the workplace of the employer and provides for a monitoring system whereby inspectors can enter a home to ensure the enforcement of labour standards.⁵³ This reinforces the argument for adopting a similar standard in the domestic sector where the protection of children's rights outweighs privacy interests as the home is also a workplace.

52. *Id.* part V, art. 14(3).

53. ILO Convention No. 177, Home Work, art. 9(1), June 20, 1996, (hereinafter referred to as ILO Convention No. 177); and ILO Recommendation No. 184, Home Work Recommendation, art. III(8), June 20, 1996, (hereinafter referred to as ILO Recommendation No. 184).

2. National Laws and their Gaps and Limitations

This section discusses gaps and limitations under national law relevant to the rights of children in the domestic sector when compared to the international standard outlined earlier. It first examines laws that are specific to Child Domestic Labour and then considers other relevant laws for each country surveyed.

I. Bangladesh

a. Laws specific to Child Domestic Labour

Currently in Bangladesh, laws or government guidelines specifically directed at protecting the rights of children working in the domestic sector seem to be limited. The only controlling law, albeit with limited impact, is the Domestic Servants Registration Ordinance. According to this Ordinance, all those persons who take up employment as domestic servants must register with the local Police Station within fifteen days of taking up employment. This Ordinance falls short of defining the rights of domestic workers or the duties of employers; and therefore, mainly serves an administrative function and appears to be deficient in regulatory value.

b. Other Relevant Laws

1. Protecting Child Rights

(i) *Safeguarding the Overall Well-Being of Children* : The Children Act is considered the principal child protection legislation in Bangladesh.⁵⁴ Although mostly focused on criminal procedure with regard to youth offenders, it contains a few clauses on the rights of working children. The relevant section, states that: “Whoever secures a child ostensibly for the purpose of menial employment but in fact exploits the child for his own ends, withholds or lives on his earning shall be punishable with a fine.”⁵⁵ The Oxford Dictionary defines menial employment as one requiring little skill or lacking status.⁵⁶ Given society’s perception of domestic labour in South Asia and the unskilled nature of the work it could be argued that Child Domestic Labour is covered within the scope of this section of the Act. That said it needs to be pointed out that this provision narrowly

54. M.M. Aminul Islam Sazal: *Discussion paper for the National Workshop on Determining the Provisional List of Hazardous Child Labour*.

55. The Children Act, art. 44(1) (1974).

56. Oxford Dictionary at 558 (Oxford University Press 2001).

frames workplace exploitation within the context of withholding or living on the earning of a child as well as in the somewhat ambiguous situation of exploiting the child for the employer's own ends. The Children Act furthermore protects against the sexual exploitation of child workers and provides as follows: "Whoever secures a child ostensibly for the purpose of menial employment but exposes such child to the risk of seduction, sodomy, prostitution or other immoral conditions shall be punished."⁵⁷ The sexual abuse inflicted on children in the domestic sector can be read into the term "other immoral conditions," providing legal recourse for abuse of this nature. The child protection clauses of the Children Act also state that: "If any person who has the custody, charge, or care of any child assaults, ill-treats, neglects, abandons or exposes such child or causes such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or injury to his health such person shall be punished."⁵⁸

Many children in the domestic service sector live in the employer's house. This live-in/work arrangement gives the employer de facto custody, charge or care of the child. As a result, in the role of the child custodian, the employer can be held liable for ill-treatment, neglect and abandonment suffered by the child. According to one report, no cases relating to offenses against children have been filed under the Children Act so far. Therefore, it is unclear how a court would adjudicate these protections in the context of Child Domestic Labour.⁵⁹ Overall, this protective framework appears to lack, in a legally meaningful way, a clear definition of working standards to ensure legitimate domestic work as well as to safeguard the right of the child to remain in contact with his or her parents and to prevent workplace exploitation in keeping with ILO and CRC principles.

(iii) *Right to Education, Rest and Leisure:* The Bangladesh Constitution provides for free and compulsory education to all children.⁶⁰ According to a UNICEF report, the Bangladesh government has taken steps to bring this constitutional right to fruition by introducing a stipend program for primary school children which benefits poor children from rural areas.⁶¹ Additionally, in 1990, Bangladesh enacted the Compulsory Primary Education Act which makes primary education free and compulsory for children over the age of six.⁶² The outcome of this law is that many families employing children as domestic workers are sending these children to school on a part-time basis.⁶³

57. The Children Act, *supra* note 57, art. 44(2) (1974).

58. *Id.* part VI, § 34.

59. LEGAL FRAMEWORK ON TRAFFICKING IN BANGLADESH, NEPAL AND SRI LANKA 14 (ILO Kathmandu 2002).

60. Bangladesh Const. ch. II, art. 17.

61. Education in Bangladesh, *available at* http://www.unicef.org/bangladesh/children_355.htm (last visited Sept. 20, 2006).

62. IPEC in Action: Asia, *available at* <http://www.ilo.org/public/english/standards/ipecc/publ/field/asia/bangla98pr.htm> (last visited Sept. 20, 2006).

63. Discussion Paper on Hazardous Child Labour, *supra* note 56, at 22.

2. Protecting Workers Rights

(i) *Minimum Age and Other Conditions:* The protections geared toward maintaining satisfactory standards such as minimum age and working hours that allows for adequate rest and leisure are fragmented over several laws in Bangladesh. This includes the Employment of Children Act, the Employment of Children Rules, the Childrens Act, the Factories Act and the Factories Rules, to name a few. These laws are highly sector-specific and exclude the domestic sector from their scope of protection. For example, the Employment of Children Act selectively regulates working conditions in the transportation and cargo industry as well as in ‘workshops’ carrying out certain listed processes.⁶⁴ As a result, working conditions and the minimum age of entry into domestic sector employment remain beyond the purview of these laws. Under the present legal framework in Bangladesh, there are no laws that give effect to the ILO Convention No. 138 principle requiring children below the minimum working age to be withdrawn from employment and in this case domestic labour.

(ii) *Fair Remuneration:* As regards the right to minimum wages, the Minimum Wage Ordinance specifically includes domestic work within its scope of protection. It defines workers as: “Any person including an apprentice employed in any industry to do any skilled or unskilled, intellectual, technical, clerical, manual or other work, including domestic work, for hire or reward.”⁶⁵ Within the definition section, the Ordinance makes a distinction between adult workers i.e. those that have completed 18 years of age and juvenile workers.⁶⁶ However, the definition of worker as stated above extends to ‘any person’ including juvenile and adult workers within its scope. Additionally, this definition manifestly includes domestic work, without making any distinction as to age. Furthermore, the act regulates minimum wages in the domestic sector by providing that: “No employer shall pay any worker wages at a rate lower than the rate declared under this ordinance to be the minimum rate of wages for such worker.”⁶⁷ The Minimum Wage Ordinance vests the labour courts or a magistrate with

64. The Employment of Children Act § 3(a) and (b) (1938) provides that “no child who has not completed his fifteenth year shall be employed or permitted to work in any occupation connected with the transport of passengers, goods or mail by railway or (b) involving the handling of goods within the limits of any port.”

The processes listed in the schedule of the Employment of Children Act include bidi making, carpet weaving, cement manufacture, including bagging of cement, cloth printing, dying and weaving, manufacture of matches, explosives and fireworks, mica cutting and splitting, shellac manufacture, soap manufacture, tanning and wool cleaning.

65. Minimum Wages Ordinance art. 2(9) (1961).

66. *Id.* art. 2(7).

67. *Id.* art. 9.

the power to adjudicate disputes relating to minimum wage and provides penalties for the non-payment of minimum wages.⁶⁸

(iii) *Freedom of Association*: The Constitution of Bangladesh provides every citizen with the right to freedom of association.⁶⁹ The Industrial Relations Ordinance of Bangladesh which consolidates the law relating to trade unions and industrial disputes limits the right to unionize to workers employed in an ‘establishment’ or ‘industry’.⁷⁰ Therefore, this basic workers right appears not to extend to domestic work and other sectors of the informal world.

3. Combating the Worst Forms of Child Domestic Labour

(i) *Forced Labour and Slavery*: As regards the Worst Forms of Child Domestic Labour, the Constitution of Bangladesh prohibits all forms of forced labour which may include Child Domestic Labour.⁷¹ Furthermore, the Children Pledging of Labour Act addresses child bonded labour and declares all agreements to pledge the labour of children as void.⁷² An agreement to pledge the labour of a child is defined as: “A written, oral, express or implied agreement whereby the parent or guardian of a child undertakes to allow the services of the child to be utilized in any employment.”⁷³ Thus, the Act also condemns bonded labour relationships in the domestic sector. One limitation of this law is that it defines a child as any person under the age of fifteen.⁷⁴ Therefore, it does not prohibit bonded labour practices affecting children under the age of 18 as mandated by ILO Convention Nos. 182, 29 and 105 relating to forced labour.

(ii) *Trafficking*: Deemed to be the most important piece of trafficking legislation in Bangladesh, the Women and Children Repression Prevention Act penalizes trafficking in children. It provides in relevant part that: “Any person (who) brings in from abroad

68. Minimum Wages Ordinance art. 10 (1961). According to art. 9(3) “any employer who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to five thousand Taka or with both. If the Court trying the contravention so directs, the worker concerned shall be paid the amount as may be specified in the order to represent the difference between the amount actually paid to such worker and the amount which would have been paid to him had there been no such contravention.”

69. Bangladesh Const. part III, art. 34.

70. The Industrial Relations Ordinance art. 3(a) (1969). Art. 2(xxviii) defines a worker as “any person who is employed in an establishment or industry.” Art. 2(ix) defines ‘establishment’ as any office, firm, industrial unit, transport vehicle, undertaking, shop or premises in which workmen are employed for the purpose of carrying on any ‘industry’ which is defined in art. 2(xiv) to mean any business, trade, manufacture, calling, service, employment or occupation.

71. Bangladesh Const. part III, art. 34.

72. Children Pledging of Labour Act § 3 (1933).

73. *Id.* art. 2.

74. *Id.*

or sends out of the country or traffics or sends or buys or sells any child for any immoral or illegal purpose or takes possession of, keeps in his or her custody with the said purpose shall be liable.”⁷⁵ Under this Act, a child is defined as a person under the age of 16.⁷⁶

One caveat is that the law defines a child as someone under the age of 16 and not 18 as is required by the CRC therefore, its protections do not extend to all children.⁷⁷ Another limitation in scope is that this law provides a penalty for the trafficking of children in the limited instance of trafficking for the purposes of prostitution, illicit intercourse or unlawful and immoral activities.⁷⁸ Thus, this Act does not mirror the protections provided in ILO Convention No. 182, CRC and the Palermo Protocol which mandate the elimination of all child trafficking for any purpose.

(iii) *Hazardous Child Labour*: As regards Hazardous Child Domestic Labour, at present, the Factories Act and the Factories Rules regulate hazardous working conditions. However, as the titles suggest, both of these laws apply to working conditions in factories, defined as a place employing 10 or more workers where a manufacturing process is carried out.⁷⁹ Thus, this law excludes the home as a workplace, keeping the domestic sector beyond its scope. Legal protections available to prohibit, mitigate or at a minimum set age requirements to protect children from the hazards they encounter on a day-to-day basis in the domestic sector, appear to fall short of the standards established by ILO Convention No. 182 and the CRC, both of which legislate against Hazardous Child Labour.

II. India

a. Laws Specific to Child Domestic Labour

In a recent development the Indian central government banned Child Domestic Labour in August 2006 through an amendment to the Child Labour Prohibition and Regulation Act (“Child Labour Act”).⁸⁰ Accordingly, Child Domestic Labour is now considered a hazardous occupation and is prohibited for children under the age of 14.⁸¹ The penalty for transgressors under the amended Act ranges from a fine to imprisonment for a

75. Women and Children Repression Prevention Act art. 19(2) (2000) as cited in ANTI-CHILD TRAFFICKING LEGISLATION IN ASIA: A SIX-COUNTRY REVIEW 61 (ILO Bangkok 2006).

76. *Id.* art. 2(1).

77. *Id.*

78. *Id.* art. 8.

79. The Factories Act art. 2(f) (1965).

80. Ban on Children in Domestic Labour, available at <http://labour.nic.in/> (last visited Sept. 20, 2006).

81. *Id.*

several months.⁸² Previously, the only legal instrument that impacted this area was a government guideline that urged all government employees not to hire children.

It is worth noting that in 2004, the central government has launched a welfare program on a pilot basis in 50 districts known as the Unorganized Sector Workers Social Security Scheme. The Scheme provides adult domestic workers with social security benefits such as old age pension, medical insurance and personal accident insurance based on a monthly contribution by the worker, employer and the government.⁸³ However, the Scheme does not reach children in the domestic sector.⁸⁴

In India, legislative powers are distributed between the central government and state governments with some areas falling within the exclusive jurisdiction of each governmental authority. All legislation concerning the subject of labour such as minimum wage, child labour and trade unions falls within the concurrent jurisdiction of both the central and state governments.⁸⁵ As will be seen, in this survey's section on State Based Initiatives, a few states have independently enacted laws that specifically cover the domestic sector.

b. Other Relevant Laws

1. Protecting Child Rights

(i) *Safeguarding the Overall Well-Being of Children:* The Juvenile Justice (Care and Protection of Children) Act ("Juvenile Justice Act") consolidates the law relating to juveniles in conflict with legal authorities as well as children in need of care and protection. This is a central legislation enacted in 2000, and some states are still in the process of implementing this law. The Juvenile Justice Act defines a juvenile or child as any person under 18.⁸⁶ It provides for punishment in cases of child abuse or of exploitation of child employees and states in relevant part: "Whoever having actual charge or control over a child, assaults, abandons, exposes or willfully neglects the child or causes or procures him to be assaulted, abandoned or neglected in a manner likely to cause such child unnecessary mental or physical suffering shall be punished."⁸⁷

82. *Id.*

83. Unorganized Sector Workers Social Security Scheme art. 7 (2004).

84. Pilot testing results indicate that the scheme's viability has been undermined because employers have not been contributing toward the fund. As a result, the scheme is in the process of being re-examined.

85. In case of inconsistency between laws, those enacted by the central government will prevail. See Indian Const. part XI, ch. 1, art. 254(1).

86. Juvenile Justice (Care and Protection of Children) Act ch. I, art. 2(k) (2000).

87. *Id.* ch. II, art. 23

As discussed earlier, in the case of a similar provision under Bangladesh law, the employer hiring a child domestic labourer can be seen to have actual charge or control over a child because of the live-in/work arrangement, which is a characteristic of this sector. Whether the protection of this Act can be extended to such situations remains clouded with uncertainty in the absence of enforcement information including definitive judgements.

In the context of workplace exploitation the Act provides that: “Whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of the child or uses such earnings for his own purposes shall be punishable with a fine.”⁸⁸ The section entitled Children in Need of Care and Protection requires the creation of child welfare committees to defend human rights, provide basic needs and rescue and rehabilitate children where necessary.⁸⁹ The elements of the definition of a Child in Need of Care and Protection relevant to domestic work are: “If someone who resides with a person (whether guardian of a child or not) and such a person has either threatened to kill or injure the child or has killed, abused or neglected some other child and there is a reasonable likelihood of the child in question being in danger of such treatment.”⁹⁰ Additionally, a Child in Need of Care and Protection is also defined as “someone who is being or likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.”⁹¹ As will be seen, the provisions of the Juvenile Justice Act represent the cornerstone of successful action undertaken to rescue and rehabilitate children working under oppressive conditions in the domestic sector in Karnataka state.

(ii) *Right to Education, Rest and Leisure*: To be effective in protecting children, legal provisions should not only shield against these extreme forms of exploitation but should also extend to and penalize other forms of exploitation that are deemed socially unacceptable and that infringe upon fundamental child rights. These include fundamental rights forwarded by the CRC which even though has been ratified by India has not been fully adopted and as a consequence, some of the rights enshrined in this Convention enjoy limited jurisprudential force. Such rights include the right to be in contact with one’s family, the right to rest and leisure and the right to be protected from hazardous work. Moreover, in contravention of the CRC and the ILO conventions there are no legal provisions requiring that child workers over minimum working age be provided with educational and vocational training.

In the context of the right to education, all children in India under the age of 14 have a constitutional right to free and compulsory education.⁹² This harmonizes with CRC

88. *Id.* ch. II, art. 26.

89. *Id.* ch. III, arts. 29 and 31.

90. *Id.* ch. I, art. 2(d)(ii).

91. *Id.* ch. I, art. 2(d)(vi).

92. India Const. part IV, art. 45.

principles and practical efforts are underway to bring this right to fruition. This has been in the form of the Sarva Shiksha Abhiyan or Education for All initiative under which the central government in partnership with the state governments all over the country plans on opening new schools and improving existing school facilities as well as the quality of education so as to provide elementary education for all children between the ages of 6 -14 by the year 2010.⁹³ Additionally, on a legislative level, the Right to Education Bill, makes the provision of free and compulsory education for all children in the age group of 6-14 a legal right.⁹⁴ This Bill also prohibits the employment of children belonging to this age group.⁹⁵

2. Protecting Workers Rights

(i) *Minimum Age:* In India, the Child Labour Act is the principal legislation prohibiting and regulating child labour. This law does not offer a blanket prohibition of child labour in all industries, occupations and processes instead, it prohibits and regulates child labour in a limited group of sectors. A glimpse into the legislative history reveals the government's reasons underlying this limitation. In 1979, the government instituted its first special committee known as the Gurupadswamy committee to study the issue of child labour in India and provide recommendations to combat it.⁹⁶ The study observed that child labour was a consequence of poverty and that legal prohibition therefore was not the solution. The committee's recommendations were therefore to prohibit child labour in hazardous sectors and to regulate working conditions in non-hazardous sectors.⁹⁷ Under the 2006 amendments to the Child Labour Act domestic work is recognized as a hazardous activity and is therefore a prohibited occupation for children under 14.

(ii) *Fair Remuneration and Social Protection:* The Minimum Wages Act fixes minimum wages in certain listed employments referred to as 'scheduled' employments and does not include domestic labour.⁹⁸ Karnataka is the first state to issue a notification that does prescribe minimum wages in this sector.⁹⁹ India also has an Equal Remuneration Act, the purpose of this Act is to eliminate wage discrimination between men and women but it does not limit such discrimination between adults and children over minimum working age for same or similar work.¹⁰⁰

93. More information on the Government of India's Education for All initiative is available at <http://www.ssa.nic.in> (last visited Sept. 20, 2006).

94. Right to Education Bill ch. II, art. 3 (2005).

95. *Id.* ch. VIII, art. 48.

96. Initiative towards Elimination of Child Labour Action Plan and Strategy, available at <http://www.labour.nic.in/cwl/ChildLabourMain.htm> (last visited Sept. 20, 2006).

97. *Id.*

98. Minimum Wages Act art. 3 (1948).

99. *Id.* art. 2(e).

100. Equal Remuneration Act ch. II, art. 4 (1976).

(iii) *Freedom of Association*: The Indian Constitution provides that all citizens have the right to form associations and unions.¹⁰¹ Under the Trade Unions Act in India, any person over 15 has the right to be a member of a trade union.¹⁰² As a result, children over 14, who have the legal right to work in many sectors under national law, do not have the right to join unions. Consequently, many children in the domestic labour sector are deprived of this fundamental worker's right in contravention of ILO Convention No. 87, ICCPR and the ICESCR.

Although the 2006 amendments to the Child Labour Act prohibit Child Domestic Labour, the domestic labour sector has not yet been regulated to safeguard the fundamental rights of all persons above minimum age in this sector. To recapitulate, these are rights forwarded by ILO Convention No. 138 on minimum age and ILO Recommendation No. 146 together with the CRC, stipulating factors necessary to secure satisfactory standards for working children.

3. Combating the Worst Forms of Child Domestic Labour

(i) *Forced Labour and Slavery*: Fundamental rights guaranteed under the Indian Constitution prohibit trafficking in human beings and forced labour.¹⁰³ Constitutional provisions and the Bonded Labour System (Abolition) Act outlaw bonded labour and void all agreements by virtue of which any person is required to do any work or render any service as a bonded labourer.¹⁰⁴ Effective implementation continues to be a challenge particularly in the areas of rural and informal economy where bonded labour is most prevalent. This is an area that invites rigorous law enforcement and well-formulated rehabilitation schemes focussing on fundamental human rights.

(ii) *Trafficking*: Legislation specific to trafficking in India does not fully embody the absolute prohibition on human trafficking enshrined in the Constitution. For example, existing laws, such as the Immoral Trafficking Prevention Act ("ITPA"), legislate against trafficking in the context of prostitution.¹⁰⁵ As a result, the process of trafficking of children itself which can lead to other exploitative outcomes is not deemed an offence and can persist without corresponding sanctions. Additionally, the Act does not reflect the lower threshold established by the Palermo Protocol for child trafficking nor does it adhere to the standards enshrined in ILO Convention No. 182 and the CRC which prohibit child trafficking for all purposes.

101. India Const. part III, arts. 19(1)(c) and 19(4).

102. Trade Unions Act art. 21 (1926).

103. India Const. part III, art. 23(1).

104. Bonded Labour System Abolition Act ch. II, arts. 4 and 5 (1976).

105. Immoral Trafficking Prevention Act art. 5(a) - (c) (1956).

(iii) *Hazardous Child Labour*: The Indian Constitution provides that: “No child below the age of 14 shall be employed in any factory or mine or engaged in any other hazardous employment.”¹⁰⁶ As already stated, since the 2006 amendments to the Child Labour Act, Child Domestic Labour is now regarded as a hazardous form of child labour. However as pointed out, regulations defining hazardous working conditions need to be formulated to protect the rights of all workers in this sector.

4. State Based Initiatives

Recently, there have been a number of state-based initiatives in India to combat Child Domestic Labour. The following section summarizes the progress made and describes legislative efforts underway to address this sector:

(i) *Andhra Pradesh*: In 2001, the Andhra Pradesh legislature adopted a unanimous resolution to eliminate child labour by the year 2004.¹⁰⁷ Even though child labour remains a challenge in this state, this resolution spawned important government-sponsored educational, legislative and enforcement initiatives. As part of this campaign, the government of Andhra Pradesh declared that any child out of school is a child labourer.¹⁰⁸ While the state government has launched several measures to combat child labour, few are directly focused on the domestic sector. One such measure is an amendment of the Civil Service Conduct Rules to abolish Child Labour in the domestic sector for state government employees.

In 2003 the state government proposed the Andhra Pradesh Child Labour Abolition and Compulsory Education Bill, which potentially impacts the domestic service sector.¹⁰⁹ While the draft legislation does not specifically mention Child Domestic Labour, it takes an expansive definition of child labour to mean “any child who is employed or working in any employment, occupation, process or activity which interferes with full-time schooling.”¹¹⁰ It also accords with ILO Convention No. 138 standards in establishing 15 as the minimum age for entry into employment. Moreover, in keeping with ILO Convention No.182 it also prohibits the Worst Forms of Child Labour; and therefore, the Worst Forms of Child Domestic Labour. Furthermore, it protects the child’s right to free and compulsory education as enshrined in ILO Convention No. 138 and the CRC.

However, the draft law does not seem to delineate the rights for those children aged 15 to 18 i.e. over minimum working age which are at issue on account of the nuances associated with employment in the domestic sector. These are standards to ensure

106. India Const. part III, art 24.

107. Andhra Pradesh State Legislature Notice (2001).

108. Abolition of Child Labour in Andhra Pradesh at 1.

109. Andhra Pradesh Child Labour Abolition and Compulsory Education Bill (2003).

110. *Id.* ch. 1, cl. 2, art. 3(a) (2003). Cl. 2(1) defines a ‘child’ as any person who has not completed the age of fifteen years.

legitimate working conditions including working hours to ensure adequate time for rest and leisure as well as the right to remain in contact with one's family as defined in the ILO conventions and the CRC.

The draft code vests law enforcement with fairly invasive monitoring powers and provides that inspectors can enter and search any premises including a house where there is reliable information that a child is working or upon a complaint made to the Child Labour Abolition Authority.¹¹¹ The question that follows is whether these powers are sufficient to monitor employment in domestic service. In this case, the law does not provide for continuous monitoring and instead takes a reactive approach in relying on external information to trigger enforcement action.

(ii) *Goa*: The Goa Children's Act specifically prohibits employment for all children under 14 in the domestic sector.¹¹² It also prescribes a fine of Rupees 50,000 for any person employing children in domestic labour.¹¹³ Furthermore, it provides that the State needs to ensure that rehabilitation programs are in place before child labourers, defined as all working children under the age of 14, are released and placed in protective care facilities.¹¹⁴

(iii) *Karnataka*: A recent pioneer in the fight against Child Domestic Labour, Karnataka is the only state in India to implement a Child Domestic Labour elimination project. Initiated in August 2004, in the city of Bangalore, and still in its pilot stages this project is a joint initiative between the state government, UNICEF and NGOs. Overall, this intervention has also been reported to be quite successful in that over 750 children have been identified out of which 250 withdrawn from work and rehabilitated, many of whom have also been enrolled in formal schooling.¹¹⁵

The project adopts a multi-pronged approach spanning identification, release and rehabilitation of child domestic labourers together with law enforcement awareness raising. The two legal instruments that were critical to this endeavor include the Karnataka State Minimum Wage Notification for Domestic Workers ("Minimum Wage Notification") and the Juvenile Justice Act. The Minimum Wage Notification establishes a minimum wage for the domestic sector in prohibiting the employment of children below 14.¹¹⁶ Legislative history reveals that a major concern of the drafters was whether authorized labour inspectors enforcing minimum wage standards would compromise the privacy of the home.¹¹⁷ To counter this concern, it was negotiated that the inspectors

111. *Id.* ch. 5, cl.15, art. 2.

112. Goa Children's Act art. 7(2)(c) (2003).

113. *Id.* art. 7(5)(c).

114. *Id.* arts. 7(3) and (4).

115. ILO internal note on the progress of the Child Domestic Labour Elimination Project in Karnataka at 2.

116. Domestic Workers Notification arts. 1, 2 and 6 (2004).

117. LABOUR ADMINISTRATION AND CHILD LABOUR MONITORING IN THE INFORMAL ECONOMY IN INDIA 20 (ILO 2005).

would not have the power to enter and inspect a home on their own and could only do so when directed by the Commissioner of Labour.¹¹⁸ Although this enfeebled the protections provided, the legislation nonetheless had a positive impact in increasing the bargaining powers of domestic workers. Most notably, early this year domestic workers with the Karnataka Domestic Workers Movement, the local chapter of an India-wide NGO, submitted a memorandum to the Commissioner of Labour and rallied for the abolishment of child labour as well as for the payment of minimum wage and improved working conditions to ensure dignity of labour.¹¹⁹ Central to the success of this project was the involvement of ChildLine, a hotline for children in need of aid and assistance run by an India-wide NGO supported by rescue operations of law enforcement agencies. This arrangement helped rescue children that were later presented in front of child welfare committees established under the Juvenile Justice Act. Reports indicate that over 80 children were rescued through ChildLine and produced before child welfare committees and that to-date eight cases of abuse and violence have been filed against employers.

(iv) *Kerala*: Although concrete legislative protections are yet to emerge, newspaper reports suggest that the Minimum Wages Act in Kerala will soon be amended to prescribe a minimum wage specifically for employment in the domestic sector.¹²⁰

(v) *Tamil Nadu*: According to the Tamil Nadu action plan, the State's objective is to eliminate child labour in all hazardous occupations by 2005 and all non-hazardous occupations by 2007.¹²¹ Although this has resulted in many ad-hoc interventions to fight child labour, at present policy measures aimed specifically at Child Domestic Labour appear to be limited.¹²² However, the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act regulates the conditions of work and provides various welfare measures for manual workers including those in domestic work. It prohibits the employment of children under 16 in any scheduled employment including domestic labour.¹²³ The Tamil Nadu Manual Workers Social Security and Welfare Scheme also covers the domestic sector and provides workers with accident insurance, educational assistance, marriage expenses, maternity and limited health benefits as well as life insurance.¹²⁴

118. *Id.*

119. *Domestic Workers Take out Rally in Support of Demands*, THE HINDU, February 2, 2006.

120. *Domestic Workers Day Observed*, THE HINDU, January 10, 2006, available at <http://www.hindu.com/2006/01/10/stories/2006011001310200.htm>.

121. Government of Tamil Nadu: *Child Labour Eradication Action Plan* (2003).

122. Based on an interview with Lally Ganesan, Assistant Commissioner of Labour, Tamil Nadu Government.

123. Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Service) Act (1982).

124. Tamil Nadu Manual Workers Social Security and Welfare Scheme (2001).

III. Nepal

a. Laws Specific to the Domestic Sector

The only legal limitation on children working in the domestic sector is in the form of a government directive issued in 2004 prohibiting government employees from hiring children. Although this directive does not explicitly refer to Child Domestic Labour, in practice; however, its protections have been extended to cover this sector as well. This directive has helped raise the profile of children working in the domestic sector among government employees and more broadly within Nepal. As a result, there has been a marked decrease in the employment of children below the age of 14 in this sector. In addition, many government employees have enrolled their child domestic helpers in government schools.

b. Other Relevant Laws

1. Protecting Child Rights

(i) *Safeguarding the Overall Well-Being of Children:* The Constitution of Nepal provides that special provisions may be enacted for the protection and advancement of the interests of children.¹²⁵ The Children Act is the prevailing law designed to safeguard the rights and interests of children.¹²⁶ It provides a general prohibition against torture and cruel treatment of children with the caveat that the act of scolding or beating by a father, mother, member of the family, guardian or teacher for the interest of the child itself is not a violation of the provisions of this section.¹²⁷ Since this protection is not specifically extended to reach harm inflicted on children in an employment context it is not clear if children in domestic service are legally protected against sexual abuse and other forms of maltreatment by this Act.¹²⁸

(ii) *Right to Education, Rest and Leisure:* The Child Labour Prohibition and Regulation Act ("Child Labour Act") is the key legislation in Nepal protecting the rights of working children.¹²⁹ This act regulates hours of work for children aged 14 - 16 and provides that no child shall be engaged in work during a period from 6 p.m. to 6 a.m.¹³⁰ Additionally, the Child Labour Act stipulates that no child shall be engaged in work

125. Nepal Const. part III, art. 11.

126. Childrens Act (1992).

127. *Id.* ch. 2, art. 7.

128. *Id.*

129. Child Labour (Prohibition and Regulation) Act ch. 4, art. 15 (2000). The Act refers to 'establishment' which is defined as any factory, organization, association, firm, company or their group established under prevailing law with the objective of carrying on any industry, occupation or service.

130. *Id.* ch. 3, art. 9(1).

exceeding six hours a day and 36 hours a week.”¹³¹ It also provides that a child must be given “half an hour’s rest time everyday, after he has worked for three hours consecutively and one day’s leave in each week.”¹³² Although this provides much-needed limitation of working hours, at the same time it does not affirmatively forward other fundamental child rights advanced by the CRC and ILO conventions including the right of access to education and the right to remain in contact with one’s family.¹³³ The Constitution of Nepal recognizes the importance of these fundamental child rights as it provides that the State shall make necessary arrangements to safeguard the rights and interests of children and ensure that they are not exploited and make gradual arrangements for free education.¹³⁴

The Children Act recognizes the obligation of parents “to make arrangements so as to bring up the child and to provide education, health care, sports and recreation facilities to the child according to the economic status of their family.”¹³⁵ A corresponding obligation is not imposed on employers in domestic service who are effectively guardians of the child as the working relationship frequently severs the child from the family.

2. Protecting Workers Rights

(i) *Minimum Age*: The Child Labour Act defines a child as someone who has not completed the age of 16.¹³⁶ It states that “nobody shall engage in work a child who has not completed fourteen years of age as a labourer.” Although the Child Labour Act does not define the term ‘labourer’ this could be interpreted to prohibit the engagement of children below the age of 14 in any kind of employment, including domestic work. To the extent that this reading holds, the Child Labour Act is in compliance with the standards set by ILO Convention No. 138.

(ii) *Fair Remuneration* : Geared toward protecting the rights of persons working in ‘establishments’, i.e. the formal economy, legal protection provided to informal economy counterparts including the domestic sphere appears to be limited. For example, provisions for equal remuneration, minimum wage protection and health and safety

131. *Id.* ch. 3, art. 9(2).

132. *Id.* ch. 3, art. 9(3).

133. Under art. 8(1) of The Children Act, the right of the child to remain in contact with parents is protected in those cases where the parents are divorced.

134. Nepal Const. art. 26(8).

135. Children’s Act ch. 2, art. 4(1) (1992).

136. Child Labour (Prohibition and Regulation) Act ch. 12(a) (2000).

standards are only made applicable to workers at 'establishments'.¹³⁷ Thus many children in domestic service do not enjoy these basic child and worker rights protections.

(iii) *Freedom of Association*: The right to freedom of association does not reach workers in the informal economy. While the Nepalese Constitution grants all citizens freedom to form unions and associations, this right is abridged by the Trade Union Act, which only extends this fundamental right to workers at 'enterprises'.¹³⁸ Additionally, although the Child Labour Act provides for a system of registration and inspection, these monitoring mechanisms only apply to work undertaken in 'establishments', leaving the domestic sector among other sectors bereft of such protection.¹³⁹

3. Combating the Worst Forms of Child Domestic Labour

(i) *Forced Labour and Slavery*: The Constitution of Nepal prohibits and punishes traffic in human beings, slavery, serfdom and forced labour in any form.¹⁴⁰ In the context of slavery and forced labour, the Child Labour Act provides in relevant part that: "Nobody shall engage a child in employment under fear of threat or coercion or in any other way against his will."¹⁴¹ Officially outlawed since July 2000, the bonded labour system in Nepal practiced mostly in the agricultural sector is commonly referred to as the *kamaiya* system.¹⁴² Under this system, landlords include the labour of children within the terms of debt repayment. As regards child bonded labourers it has been found that boys often work as livestock herders and girls (referred to as '*kamalharis*') are frequently trapped in domestic servitude.¹⁴³ In compliance with ILO Convention No. 182, the *Kamaiya Labour Prohibition Act* ("Kamaiya Act") prohibits bonded labour; frees bonded labourers and extinguishes debt flowing from such arrangements.¹⁴⁴ As a result of the *Kamaiya Act*, many bonded girls in domestic servitude have been withdrawn and reintegrated with their families. There has also been increased activism from local

137. Labour Act ch. 4, art. 21 (1992); Child Labour (Prohibition and Regulation) Act, ch. 1, art. 2(b) (2000). Under the latter, 'establishment' means any factory, organization, association, firm, company or their group established under prevailing law with the objective of carrying on any industry, occupation or service.

138. Nepal Const. art. 12(2)(c). According to the Trade Union (First Amendment) Act ch. 2, art. (3)(1), 'enterprise' is defined to mean any factory, company, organization, association, firm or a group thereof established under prevailing law for the purpose of operating any industry, profession or service whereon ten or more workers or employees are engaged and this word shall also denote tea estates established under the law for commercial purpose; enterprise operating within the industrial estate whereon less than ten workers or employees are engaged.

139. Child Labour (Prohibition and Regulation Act) ch. 4, art.15(1) and ch. 3, art. 8.

140. Nepal Const. art. 20(1).

141. Child Labour Act ch. 2(4) (1992).

142. Nepal: Action against Bondage, IPEC Support for NGOs, available at <http://www.ilo.org/public/english/standards/ipec/about/factsheet/facts11.htm> (last visited Sept. 20, 2006).

143. *Id.*

144. *Kamaiya Labour Prohibition Act* arts. 3, 4, and 5 (2002).

community groups and organizations especially during the Maghi festival held in January each year, which has traditionally served as recruiting grounds for bonded labourers. Due to these efforts there has been a reduction in the number of bonded girls in domestic servitude. However, these initiatives have not been as successful in reaching out to little boys, many of whom remain in bonded labour arrangements.

(ii) *Trafficking*: In advancing the Constitutional prohibition on Trafficking, the Trafficking and Selling in Person Activity Prohibition Act bans trafficking and trade in people.¹⁴⁵ The Act deems the following activities as trafficking or selling of a person:

- (1) Selling of anyone with any intention;
- (2) Trafficking anyone to a foreign country with an intention to sell him/her;
- (3) Letting any women to prostitute using force, or any forms of coercion or false promises or deceptive activities;
- (4) Actions related to assist or facilitate another person for committing the activities mentioned above or encouraging anyone for such crimes.¹⁴⁶

These provisions do not reflect the lower standard for child trafficking as defined in the Palermo Protocol which dispenses with the need for threat or use of force or other forms of coercion and exploitation in this context. They also fall short of the standards established by ILO Convention No. 182, the Palermo Protocol and the CRC by not condemning child trafficking for any purpose.

(iii) *Hazardous Child Labour*: As far as Hazardous Child Domestic Labour is concerned, there is a lack of specific protection reaching children in the domestic sector. The Constitution of Nepal provides broad protections in stating that “no minor (person under the age of 16) shall be employed in work in any factory or mine, or engaged in any other hazardous work”.¹⁴⁷ At present, the Child Labour Act gives effect to this constitutional provision and prohibits employment of children in specified hazardous occupations referred to as risky occupations, which does not encompass the domestic sector.¹⁴⁸ This list is not based guidelines provided in ILO Convention No. 182 or ILO Recommendation No. 190; however, efforts are being undertaken to develop a list of hazardous occupations that harmonize with the ILO framework. Likewise health and safety arrangements which the Child Labour Act requires do not appear to extend to the domestic sector as they are limited to the context of ‘establishments’.¹⁴⁹ There are no laws which extend this constitutional protection to the domestic sector and define what constitutes hazardous work for children over minimum working age within this sector.

145. Trafficking and Selling in Person Activity Prohibition Act art. 3 (1986).

146. *Id.* art. 4.

147. Nepal Const. art. 20(2).

148. Child Labour Act ch. 2, art. 3(2) (1992).

149. Child Labour Act ch. 5 (1992).

IV. Pakistan

a. Laws Specific to Child Domestic Labour

On the whole, there are few legal limitations on work done within the domestic sector in Pakistan. Of these, the Provincial Employees Social Security Ordinance is a social protection law that impacts workers in the domestic sector. It requires employers to provide medical care to their domestic helpers.¹⁵⁰ Domestic helpers are defined broadly according to the Ordinance to include “any person working full-time in connection with work of any household for any consideration whether in cash or in kind.”¹⁵¹ Thus, this definition can be interpreted to extend protections to both adult and juvenile domestic workers. The provisions of the Minimum Wages Ordinance defining ‘worker’ make reference to any person and make specific mention of the domestic sector.¹⁵² Thus both adult and child workers over minimum working age can benefit from this fundamental workers right.¹⁵³

Legislative powers in Pakistan are divided between federal and provincial governments.¹⁵⁴ Laws protecting child rights and workers rights fall within the concurrent jurisdiction of both.¹⁵⁵ The following section examines other federal and provincial laws that impact the rights of children working in the domestic sector.

b. Other Relevant Laws

1. Protecting Child Rights

(i) *Safeguarding the Overall Well-Being of Children*: The Employment of Children Act controls the prohibition and regulation of child labour in Pakistan. This law defines children as persons under the age of 14 and does not completely ban the use of child

150. Provincial Employees Social Security Ordinance, ch. V (a), art. 55A (1965). Art. 45 defines medical care to include:

- (a) General practitioner care, including visiting domiciliary;
- (b) Specialist care in hospitals for in-patients and out-patients and such specialist care as may be available outside the hospital;
- (c) Essential pharmaceutical supplies as prescribed by a medical practitioner;
- (d) Hospitalization where necessary including cases of pregnancy and confinement;
- (e) Pre-natal confinement and post-natal care either by medical practitioners or by qualified midwives.

151. *Id.* art. 7(a).

152. Minimum Wages Ordinance art. 2, § 9 (1961).

153. *Id.*

154. Pakistan Const. part V, ch. 1, art. 141.

155. Pakistan Const. Fourth Schedule, art. 70(4), Concurrent Legislative List arts. 5, 26 and 47. According to part V, ch. II if there is a conflict of law, federal law will prevail over provincial law.

labour as stipulated by ILO Convention No. 138.¹⁵⁶ Instead it prohibits the employment of children in certain listed occupations and processes and regulates working conditions of children in ‘establishments’ connected with the formal economy.¹⁵⁷ The domestic sector is not included within the prohibited and regulated areas of child labour.¹⁵⁸ The Factories Act and the Mines Act also regulate child labour but are sector specific.¹⁵⁹ It also follows that other fundamental child rights outlined in the CRC such as the right of the child to be in contact with the family infringed upon through employment in domestic labour are not legally protected as such.

As regards provincial laws in the area of child rights, both the Punjab Children Ordinance and the Sindh Children Act provide protections against employers who exploit and sexually abuse children. They state in relevant part that: “Whoever having actual charge of or control over a child willfully assaults, neglects abandons, exposes or negligently fails to provide adequate food, clothes, medical aid or lodging for the child that is likely to cause unnecessary mental and physical suffering shall be punished.”¹⁶⁰ To the extent that employers in the domestic sector have actual charge and exert control over the child, they would be accountable for abusing or failing to adequately provide for their child employees. Both of these laws also provide protection against sexual abuse, however this protection falls short as it is limited to girls under the age of 16 and does not prohibit sexual abuse for all children under 18.¹⁶¹

In the context of health and safety standards the federal Employment of Children Act provides that the government can make rules for the health and safety of children employed or permitted to work in any establishment or class of establishments.¹⁶² Here again, since the domestic sector does not fall within the scope of the term ‘establishment’, and therefore, the determination of health and safety for children working in this sector is left to the employer’s discretion.¹⁶³

(ii) *Right to Education, Rest and Leisure:* Although the Employment of Children Act stipulates rest and leisure time for child workers, these protections do not extend to the domestic sector due to the limited reach of the law. The Pakistan Constitution makes education compulsory through the primary level and certain provinces have enacted laws to give effect to his constitutional directive. For example, the West Pakistan Primary

156. Employment of Children Act art. 2(iii) (1991).

157. *Id.* part II, art. 3. Art. 2(v) defines establishments as a shop, commercial establishment, workshop, factory, farm, residential hotel or restaurant.

158. *Id.* part I-Occupations, part II-Processes.

159. The Mines Act (1923) and Factories Act (1934).

160. Punjab Children Ordinance part V, art. 19 (1983); Sindh Children Act part I, art. 48 (1955).

161. Punjab Children Ordinance part V, art. 26 (1983); Sindh Children Act part VI, art. 56 (1955).

162. Employment of Children Act part III, art. 13 (1991).

163. *Id.* part I, art. 2(v). Here ‘establishment’ is defined to include a shop, commercial establishment, workshop, factory, farm, residential hotel or restaurant.

Education Ordinance makes it compulsory for parents to make children attend primary school unless there is a 'reasonable excuse'.¹⁶⁴ In addition, provincial laws in force within the North West Frontier Province and Sindh that also reflect the same principles.

2. Protecting Workers Rights

(i) *Minimum Age*: As stated earlier, the Employment of Children Act prohibits the employment of children under 14 in certain hazardous sectors and regulates their employment in other non-hazardous sectors. As Child Domestic Labour is not listed in either of these categories, there is no legally established minimum age for entry into employment within this sector. It also follows that since domestic service is neither a prohibited nor a regulated area of child labour there are no laws specifically requiring that children below minimum working age need to be withdrawn from employment in this sector.

(ii) *Fair Remuneration*: As noted, the Minimum Wages Ordinance in Pakistan covers workers in the domestic sector.

(iii) *Freedom of Association*: The Constitution of Pakistan provides that every citizen has the right to form unions subject to reasonable restrictions.¹⁶⁵ Following this constitutional principle, the federal Industrial Relations Ordinance consolidates the law on trade unions and on relations between employers and workmen. Its scope however, is limited to "all persons employed in any establishment or group of establishments or industry."¹⁶⁶ The Ordinance grants workers the right to form a trade union or to join a trade union of their choice within the 'establishment' of 'industry' they are employed in.¹⁶⁷ Both these terms are defined in the context of the formal economy, thus excluding in the informal sector including domestic service from this fundamental workers right.¹⁶⁸

164. Reasonable excuse under the West Pakistan Primary Education Ordinance can include legal disability, medical reasons or if the child is receiving some other form of satisfactory education or if there is no school within the vicinity of 2 kilometers.

165. Pakistan Const. part II, ch. 1, art. 17.

166. Industrial Relations Ordinance ch. 1, art. 1(4) (2002).

167. *Id.* ch. II, art. (3)(a).

168. *Id.* ch. 1, art. 1(xi) defines 'establishment' as any office, firm, factory, society, undertaking, company, shop, premises or enterprise which employs workmen directly or through a contractor for the purposes of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and profit and loss account and except in section 54, includes a collective bargaining unit, if any, constituted under the section in any establishment. Section 1(xvii) defines 'industry' to mean any business, trade, manufacture, calling, service, occupation or employment engaged in an organized economic activity of producing goods or services for sale, excluding those set up exclusively for charitable purposes, operating through public or private donations where 'charitable purpose' includes provision of education, medical care, emergency relief and other needs of the poor and indigent.

3. Combating the Worst Forms of Child Domestic Labour

(i) *Forced Labour*: As regards the Worst Forms of Child Domestic Labour, there are laws in Pakistan specific to each of these human rights violations. The Constitution of Pakistan prohibits all forms of trafficking and forced labour in human beings.¹⁶⁹ The Bonded Labour System Abolition Act implements this constitutional directive and bans the practice of bonded labour and extinguishes debt flowing from such agreements.¹⁷⁰

(ii) *Trafficking*: Trafficking of children into this sector is the other Worst Form of Child Labour at issue. In Pakistan, the Prevention and Control of Human Trafficking Ordinance is the controlling legislation. In relation to the trafficking of children, it does not reflect the lower standard established by the Palermo Protocol as it requires the use of coercion, kidnapping and abduction or giving or receiving of any benefit which the Palermo Protocol dispenses with in the context of child trafficking.¹⁷¹ Additionally, this law also limits legal protection by confining child trafficking for the purposes of exploitative entertainment whereas the Palermo Protocol and ILO Convention No. 182 condemn child trafficking for any exploitative purpose.

(iii) *Hazardous Child Labour*: The Constitution of Pakistan provides that no child below 14 shall be engaged in any factory, mine or other hazardous employment.¹⁷² National jurisprudence is being developed to give full effect to this constitutional principle. Most recently, in December 2005, the national list of hazardous occupations was expanded to include 34 occupations and processes. Child Domestic Labour, however, has yet to be included. Government efforts to qualify Child Domestic Labour as a hazardous form of child labour could bring much needed health and safety protections to workers in this sector.

V. Sri Lanka

a. Laws Specific to Child Domestic Labour

The main legislation in force protecting the rights of working children is the Employment of Women, Young Persons and Children Act ("EWYPC Act"). Although this Act does not specifically mention Child Domestic Labour, its provisions nevertheless can and often

169. Pakistan Const. part II, ch. 1, art. 11(2).

170. Bonded Labour System (Abolition) Act art. 4 - 6 (1992).

171. Prevention and Control of Human Trafficking Ordinance art. 3(iii) (2002). This section states that "Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit, for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine."

172. Pakistan Const. part II, ch. 1, art. 11(3).

are interpreted to protect children between the ages of 14 - 18 working in this sector, referred to as 'young persons' under the Act. The EWYPC Act envisages the enactment of regulations with respect to the employment of young persons that prescribe working hours, rest and vacation time and other employment conditions.¹⁷³ Pursuant to this, the 1957 Regulations stipulate rest and vacation time due to young persons employed in domestic service as follows:

1. A rest period of at least 3 hours, between 6 a.m. and 8 p.m. should be allowed on all days.
2. An additional 3 hours rest once a week should be allowed extending the above mentioned 3 hours continuously.
3. Leave of absence for 7 continuous days should be allowed once in 3 months.¹⁷⁴

Other regulations affecting this sector are ordinances that require the registration of domestic workers with the local police officer.¹⁷⁵ However, reports indicate that in practice these ordinances are seldom enforced seem to have limited impact in ensuring workers rights such as minimum age and conditions of work. For the most part these ordinances appear to be used as a tool for crime prevention.¹⁷⁶

Since January 2002, a Code of Conduct for young persons in domestic labour is being pilot tested in Sri Lanka. This Code will be used to amend the EWYPC Act to ensure that the rights of children over minimum age working in domestic service are protected. The discussion that follows analyzes how the Code mirrors the standards established by ILO and U.N. conventions.

Consistent with the minimum age requirement of ILO Convention No. 138, the Code prohibits any person below the age of 14 years from working in the domestic sector.¹⁷⁷ The Code protects fundamental child rights enshrined in the CRC and ILO Recommendation No. 146 by requiring the employer undertake every possible effort to arrange for the 'young person' to have access to informal education or vocational training and also to ensure overall well-being by providing adequate food, clothing and medical attention.¹⁷⁸ Under the Code, employers also have the responsibility of ensuring that the child is protected from all forms of abuse and neglect.¹⁷⁹ Furthermore, it stipulates that a young person can work for a maximum of seven hours a day and also

173. Employment of Women, Young Persons and Children Act part IV, art. 21(1) (1956).

174. HANDBOOK ON LAWS PERTAINING TO THE PREVENTION OF CHILD LABOUR IN SRI LANKA 15 (ILO 2005).

175. Ordinance Nos. 28 and 18 (1936).

176. STUDY ON THE LEGAL PROTECTION OF CHILD DOMESTIC WORKERS IN THE ASIA-PACIFIC 86 (ILO Bangkok 2002).

177. Draft Code of Conduct for Employers of Young Persons (2002).

178. *Id.* art. 3, § (a), (b) and (d).

179. *Id.* art. 3, § (f).

defines rest and leisure periods during each working day.¹⁸⁰ In this respect it provides a degree of local law enforcement participation and oversight as it allows the accumulation of paid vacation on condition that prior written sanction is sought from a law enforcement officer.¹⁸¹ Additionally, in keeping with the CRC principles, the Code also provides that persons between the ages of 14 - 18 in domestic work should be given the opportunity to remain in contact with his/her family and be allowed to travel home.¹⁸²

Workers rights of children legally entitled to work are also protected under the Code as it fixes a minimum wage and, as stated earlier, strictly limits working hours to allow for adequate rest and leisure time in conformity with the requirements of the CRC and the ILO conventions.¹⁸³

The Code prohibits Hazardous Child Domestic Labour and states that no young person shall be employed in any hazardous labour categorized in ILO Convention No. 182 or under Sri Lankan labour laws, including lifting or carrying heavy weights, cleaning sewage systems, using corrosive chemical substances and other hazardous conditions. However, other hazardous activities may occur in the household. Thus, although a comprehensive list of hazardous activity serves as an important guideline, the Code could cover a greater spectrum of hazardous activity by reflecting the standards of ILO Conventions No. 138 and 182 in prohibiting all hazardous activity that harm the health, safety and morals of children under 18.

Registration of employees is also required under the Code. As part of this mechanism, the employer is required to maintain a log book detailing hours of work, leave and salary particulars, to be inspected by a law enforcement officer.¹⁸⁴ Beyond these requirements, the EWYPC Act, which the Code will ultimately be integrated into, does not grant law enforcement active monitoring powers. While registration is a condition precedent to building an effective regulatory framework for Child Domestic Labour only monitoring action can ensure enforcement of the protections guaranteed under the Code. Otherwise, the burden of enforcement lies solely with the employer, whose primary objectives may not always coincide with the well-being of the child.

b. Other Relevant Laws

1. Protecting Child Rights

(i) Safeguarding the Overall Well-Being of Children: The Sri Lankan Constitution includes a section entitled Directive Principles of State Policy and Fundamental Duties which

180. *Id.* art. 4, § 1 and 2.

181. *Id.* art. 4, § 5.

182. *Id.*

183. *Id.* art. 4, § 4.

184. *Id.* art. 1, § 3(m).

provides that the State shall promote with special care the interests of children and youth, so as to ensure their full physical, mental, moral, religious and social development and to protect them from exploitation and discrimination.¹⁸⁵ This provision does not create any specific legal rights yet it establishes the importance of child welfare.¹⁸⁶ The Constitution also supports the creation of legislation for the advancement of women and children.¹⁸⁷

Court records in Sri Lanka are a testament to the fact that the majority of victims of the crime of cruelty to children are child workers including those in the domestic sector. The Penal Code has been used to punish employer perpetrators for child abuse. Relevant sections state that: “Whoever having the custody, charge or care of any person under 18 years of age, willfully assaults, ill-treats, neglects or abandons such person or causes or procures such person to be assaulted, ill treated, neglected or abandoned in a manner likely to cause him suffering or injury to health, commits the offense of cruelty to children.”¹⁸⁸ Other sections of the Penal Code prohibit sexual exploitation and abuse of children as well as sexual harassment and can be used to protect against abuses of this nature which children endure in domestic service.¹⁸⁹

The National Child Protection Authority Act establishes a government agency, the National Child Protection Authority (“NCPA”) for the purpose of formulating a national policy on the prevention of abuse and the protection of children who are victims of such abuse.¹⁹⁰ The NCPA is granted the right to permit an officer to enter and search any premises where it has reason to believe that there is child abuse.¹⁹¹

As already mentioned, the EWYPC Act does not have a monitoring mechanism to secure enforcement of its provisions. It merely provides that the employer, parent or guardian of any child is required to furnish information to an authorized officer regarding the child’s employment as the officer may require.¹⁹²

(ii) Right to Education, Rest and Leisure: Part III of the EWYPC Act deals with Employment in Sectors other than Industrial Undertakings and at Sea, which by inference covers the domestic sector. As stated earlier, regulations enacted pursuant to this Act control working hours and rest and leisure time in the context of employment of young

185. Sri Lanka Const. art. 27(13).

186. *Id.* art. 29.

187. *Id.* art. 12(4).

188. Penal Code Amendment Act No. 22 art. 308A(1) (1995).

189. *Id.* arts. 360B, 311, 345, 262 and 365A (1995).

190. National Child Protection Authority Act No. 50 (1998).

191. *Id.* art. 33.

192. Employment of Women, Young Persons and Childrens Act part IV, § 16 (1956).

persons.¹⁹³ In addition, employers are prohibited from setting onerous terms of employment that prevent children from attending school.¹⁹⁴ The 2003 amendment of the Act increases the penalty for contravening this provision and in addition requires monetary compensation to be paid directly to the child.¹⁹⁵ Additionally the Compulsory Schooling Regulation enacted under the Education Ordinance makes school attendance compulsory for children between the ages of 5 - 14.¹⁹⁶ This is consistent with the principles forwarded by the CRC and ILO Recommendation No. 146. The Constitution also forwards this standard in its Directive Principles of State Policy and Fundamental Duties and provides in relevant part that: "The State should eradicate illiteracy and assure all persons of the right to universal and equal access to education at all levels."¹⁹⁷

2. Protecting Workers Rights

(i) *Minimum Age*: As already stated the EWYPC Act is the principal legislation protecting the rights of working children. According to a government order enacted under this act, no child, defined as a person under the age of 14 is permitted to work in any occupation.¹⁹⁸ Again the 2003 amendments to the Act reaffirm this by stating that "no child may be employed except by his or her parents in agricultural work or as part of a vocational training program."¹⁹⁹ Thus, 14 is the minimum age for employment in the domestic sector in conformity with ILO Convention No. 138. The EWYPC Act provides penalties including a fine of rupees 10,000 and imprisonment for employing children below minimum age.²⁰⁰ Existing laws however, do not provide for the withdrawal of children below minimum working age in domestic service.

(ii) *Fair Remuneration*: The protections of the minimum wage legislation in Sri Lanka do not reach the domestic sector, as a result of which workers in this sector are deprived of this fundamental right.

(iii) *Freedom of Association*: The Sri Lankan Constitution provides that every citizen is entitled to freedom of association and the freedom to form and join a trade union.²⁰¹ Because the Trade Union Ordinance limits this right to children over the age of 16,

193. The 1958 Regulations provide the young persons aged 14 - 16 should not be employed for more than 9 hours a day or 50 ½ hours a week and those between the ages of 16 - 18 should not work more than 10 hours per day and a maximum of 55 ½ hours per week.

194. Employment of Women, Young Persons and Children's Act part IV, § 17(1) (1956).

195. The 2003 Amendment of the EWYPC Act makes the employer liable to a fine not exceeding ten thousand rupees or imprisonment for a period not exceeding 12 months and in addition requires compensation to be paid to the child. EWYPC No. 8 § 17 (2003).

196. Education Ordinance (1997).

197. Sri Lanka Const. art. 27, § (2)(h).

198. Order No. 1116/5 of 2000 as cited in HANDBOOK ON LAWS, *supra* note 168, at 12.

199. Employment of Women, Young Persons and Children Act §14 (a) and (b) (2003).

200. Employment of Women, Young Persons and Children Act § 13(3) (2003).

201. Sri Lanka Const. art. 14, § (c) and (d).

children that are between 14 - 16 i.e. over minimum working age in domestic service or other employment are denied the benefits flowing from unionization which have been discussed in an earlier section.²⁰²

3. Combating the Worst Forms of Child Domestic Labour

(i) *Forced Labour*: The Directive Principles of State Policy and Fundamental Duties provide that the State shall take measures to eliminate exploitation of people by other people or by the State.²⁰³ In accordance with this Constitutional directive, national laws have criminalized The Worst Forms of Child Labour, including forced labour and slavery-like conditions.

(ii) *Trafficking*: The Penal Code Amendment defines the offense of child trafficking as follows: "Whoever recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law shall be guilty of the offence of trafficking."²⁰⁴

This reflects the definition of child trafficking provided in the Palermo Protocol as it dispenses with the requirement of forceful or coercive means needed to qualify as trafficking in persons. Its definition of a child as a person under the age of 18 harmonizes with the Palermo Protocol. One difference is that the definition in the Penal Code frames a list of exploitative outcomes of child trafficking rather than adopting the broad standard forwarded by the Palermo Protocol, ILO Convention No. 182 and the CRC all of which condemn all child trafficking for any purpose.

(iii) *Hazardous Child Labour*: Child Domestic Labour has officially been recognized in Sri Lanka as one of 49 forms of Hazardous Child Labour. This represents a development in defining minimum health and safety parameters for child workers in this sector.

202. Trade Union Ordinance (1935) as cited in STUDY ON THE LEGAL PROTECTION OF CHILD DOMESTIC WORKERS IN THE ASIA PACIFIC, *supra* note 174, at 86.

203. Sri Lanka Const. art. 27, § 7.

204. Penal Code Amendment art. 360, § (c)(1) (2006).

3. National Plans and Programmes on Child Domestic Labour

While international legal frameworks and national laws pertaining to Child Domestic Labour are a matter of public record, the information available on national plans and programmes in this area is incidental. The section that follows represents an effort to collate information detailing current and proposed policy developments relevant to Child Domestic Labour. It should also be noted that although government action on child labour generally, undoubtedly impacts the domestic sector, this section only discusses those measures that are specifically tailored to Child Domestic Labour. Discussed in this section are national plans and programmes which are in place in addition to the legal frameworks addressed before and may include policies to enact further domestic labour specific legislation.

I. Bangladesh

Although currently the number of programmes in Bangladesh in the area of Child Domestic Labour appears to be limited, the National Plan of Action (“NPA”) for 2004-2009 recognizes Child Domestic Labour as an important area of child labour that needs to be addressed.

One NPA provision generally targeting child labour that will potentially impact Child Domestic Labour includes the strengthening of the existing labour inspectorate and developing a comprehensive child labour monitoring system.²⁰⁵ Another development is a government plan to help all child labourers, including those in the domestic sector, to organize in order for them to collectively pursue their interests.²⁰⁶ The policy measures outlined in the NPA include conducting studies in the area of Child Domestic Labour and introducing a registration system for child workers in this sector.²⁰⁷ A further measure of a much more limited nature is the formulation of a child-friendly code which however, is intended to be mandatory for employees of all public, private and international children’s welfare and rights organizations employing child domestic labourers.²⁰⁸ Other

205. *Id.* at 94.

206. *Id.* at 93.

207. Government of Bangladesh: *National Plan of Action* at 93 (2004).

208. *Id.*

measures foreseen in the NPA include regulations regarding minimum wage and protective standards for health, leisure and education of Child Domestic Labourers.²⁰⁹

II. India

Under the August 2006 amendments to the Child Labour Act, Child Domestic Labour is included in the list of hazardous occupations. While specific policies and programmes flowing from this ban on Child Domestic Labour remain to be defined, this development marks the beginning of government-supported action against child labour in this sector.

The Child Labour Prohibition Bill proposed by the Labour Ministry in 1998 remains under consideration by the National Human Rights Commission. If enacted into law, this Bill will raise the minimum age for employment to 15 uniformly for all sectors. At the same time it will make it mandatory for children under 15 to attend school.

III. Nepal

Deemed to be one of The Worst Forms of Child Labour according to the Master Plan for the Elimination of Child Labour ("Master Plan"), Child Domestic Labour is identified as a priority area within the government's agenda to eliminate the Worst Form of Child Labour.²¹⁰ The Master Plan notes that the government aims to make Nepal a 'child-labour free' society through eliminating the Worst Forms of Child Labour, including Child Domestic Labour, by 2009 and other forms of child labour by 2014.²¹¹

Planned programs targeting children working in the service sector including domestic work foresee the formulation of a code of conduct to dissuade people from employing children. Furthermore, advocacy programs are envisaged to raise awareness on the issue of child labour as a means to influence the demand side of the equation. Recognizing the importance of monitoring child labour, the Master Plan envisions as one of its strategies the creation of intelligence networks among various governmental organizations and NGOs to monitor and protect children working in the domestic service sector. Other planned programs are legal reform to bring the existing labour laws into compliance with international standards. Lastly, the Master Plan provides for the strengthening of rescue and reintegration mechanisms through the establishment of rehabilitation centers in urban areas equipped with appropriate health, education and counseling facilities.²¹²

209. *Id.*

210. Government of Nepal, Ministry of Labour and Transport Management: *National Master Plan on Child Labour* at xix, xxvii (2004).

211. *Id.* at xvii.

212. *Id.* annexes at 7.

IV. Pakistan

Recent efforts by the Ministry of Social Welfare to introduce a Bill that would regulate the domestic sector were discontinued because of challenges inherent in enforcement. The Ministry is working with the ILO to integrate Child Domestic Labour concerns and issues within the Employment of Children Act. This process is being supported by UNICEF and a number of NGOs in Pakistan. The Ministry is also working towards including Child Domestic Labour in its official list of hazardous occupations. Additionally, the Ministry has established a social development agency called the Pakistan Baitul Maal for vulnerable families including working children. Its programme for 2005 - 2010 has included children in domestic labour as a target group for non-formal education interventions.

V. Sri Lanka

As noted, the NCPA is a government agency that contributes to the protection of children through investigations, law enforcement, legal reform, advocacy, research and legal aid. It has conducted programmes in collaboration with the ILO, to strengthen policy and advocate against children being employed in domestic labour as well as other forms of labour.²¹³

One of the projected goals of the National Plan of Action ("NPA") for the years 2004 - 2008 is to amend the Penal Code to criminalize The Worst Forms of Child Labour listed in ILO Convention No. 182, being trafficking, debt bondage, slavery and hazardous work.²¹⁴ This initiative could also have an impact on Worst Forms of Child Labour feeding into the practice of Child Domestic Labour. Another proposed change is to amend the Penal Code on trafficking to reflect the provisions of the Palermo Protocol, so as to facilitate prosecution and reduce the incidence of child trafficking.²¹⁵

The policy objectives include developing centers for functional literacy, community learning as well as vocational training to expand educational opportunities of out-of-school youth.²¹⁶ These measures aim to create greater opportunities for children from communities that are vulnerable to entering the domestic sector or other forms of child labour.

213. HANDBOOK ON LAWS, *supra* note 168, at 30.

214. Government of Sri Lanka: *National Plan of Action for the Children of Sri Lanka* at 36 (2004 - 2008).

215. *Id.*

216. *Id.* at 12.

4. Recommendations for National Legal Reform

While some argue that regulating domestic work amounts to a legitimization of Child Domestic Labour and that creating favorable working conditions will have the unintended effect of encouraging children to enter this sector, the ILO conventions and recommendations reflect broad consensus concerning the need to regulate this sector so as to control minimum age of employment as well as working hours and conditions. This would not only help to directly combat Child Domestic Labour but as stated, could also render this sector more attractive to adult workers, bolstering the movement to end child labour in this sector.

It is obviously desirable that a protective framework that is all-encompassing in respect of rights enshrined in ILO and U.N. conventions should be enacted but until such time as such a framework can be established legal recognition of even a subset of fundamental domestic workers rights such as minimum wage and minimum age for example could serve as preliminary steps towards fulfilling the need for comprehensive regulation in this sector. For instance, even in the limited instance of the minimum wage law in the Indian state of Karnataka the fact that the law did not provide a comprehensive inspection mechanism did not eclipse the benefits flowing from the legal protections that were provided which included establishing a minimum wage and prohibiting the domestic employment of children below 14.²¹⁷ Even if they were limited in scope, these measures served as an official recognition of the rights of domestic workers, whose increased bargaining power provided further stimulus to the movement for improved working conditions and the elimination of Child Domestic Labour. In contrast, keeping this sector unregulated would leave employers free to engage children of any age to pay them low wages and to treat them with scant respect for fundamental child rights and human rights more broadly. The point worth stressing again here is that defining legal parameters can help to counteract such practices and at the same time advance the creation of legitimate domestic work opportunities for all.

While the foregoing section identifies gaps and limitations under national law with regards to Child Domestic Labour in the countries surveyed, set forth in this section are a set of recommendations that summarize the international legal standard that may be applied in addressing these limitations. These recommendations recapitulate the legal framework already discussed in Section A of this paper.

217. The Karnataka Child Domestic Labour elimination project is described in detail on page 26.

Even if a legal framework is a necessary condition to defining and protecting child rights and workers rights, it is not alone sufficient in combating Child Domestic Labour. Durable solutions consist of a whole range of interventions directed at preventing children from entering domestic work or other exploitative sectors; identifying, rescuing and rehabilitating those children in domestic work; and addressing the underlying dynamics of the problem through the creation of economic security and opportunity within vulnerable communities. Because such interventions are beyond the scope of this paper, they are not explored in the recommendations that follow, which seek to define legitimate domestic work conditions within the framework of the ILO and U.N. conventions. Legitimate domestic work refers to those conditions where the persons employed are above the minimum age of employment and satisfactory working standards are maintained.

a. *Fixing a Legal Minimum Age for Entry into Domestic Work*

- ILO Convention No. 138 states that a minimum age for entrance into any type of employment, including domestic work, shall not be less than the age of completion of compulsory education and in any case, shall not be less than 15 years.²¹⁸ States with insufficiently developed economies and educational facilities are given some leeway and in such cases, the minimum age can be lowered to 14.²¹⁹ ILO Recommendation No. 146 provides that where the minimum age for employment is below 15 years, urgent steps should be taken to raise it to that level.²²⁰
- As a further exception ILO Convention No. 138 provides that national laws may permit the employment on light domestic work of persons who are 13 - 15 and have not completed their compulsory schooling. From a protection and policy point of view this is not a viable option for the domestic sector, because the working conditions in this sector are hidden, difficult to monitor and can easily infringe fundamental child rights, running contrary to the object of the ILO conventions.²²¹
- The minimum age requirement established by ILO Convention No. 138 implies that children below the minimum working age, i.e. children below the age of 15 or 14 (as the case may be) should be withdrawn from domestic work.

b. *Regulating Working Conditions to Ensure Satisfactory Working Standards*

- In order to ensure that the conditions under which children and young persons under the age of 18 are employed are maintained at a satisfactory standard,

218. ILO Convention No. 138, *supra* note 4, art. 2(3).

219. *Id.* art. 2(4).

220. ILO Recommendation No. 146, *supra* note 4, art. II, § 7(2).

221. ILO Convention No. 138, *supra* note 4, art. 7(1).

ILO Recommendation No. 146 provides that special attention should be given to:

- (a) The provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work;
 - (b) The strict limitation of the hours spent at work in a day and in a week and the prohibition of overtime so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;
 - (c) The granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours of night rest, and of customary weekly rest days;
 - (d) Coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
 - (e) The maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.²²²
- In addition, the CRC requires that States should respect the right of the child to education, health care services, rest and leisure, and contact with parents on a regular basis.²²³
 - Another fundamental workers right that should be granted to all children over minimum age in domestic work is the right to freedom of association. This right is supported by ILO Convention No. 87, CRC, ICCPR and the ICESCR.²²⁴

c. Enacting Laws and Policies to Eliminate the Worst Forms of Child Domestic Labour

Ensuring legitimate conditions also requires the elimination of The Worst Forms of Child Domestic Labour:

- The Worst Forms of Child Domestic Labour can be inferred from the Worst Forms of Child Labour provided in ILO Convention No. 182, which urges States to take effective measure to secure the prohibition and elimination as a matter of urgency.²²⁵ States are also required to take time-bound measures to provide necessary and appropriate direct assistance for the removal of children from the

222. ILO Recommendation No. 146, *supra* note 4, art. IV, § 13.

223. CRC, *supra* note 15, arts. 24(1), 31 and 9(3).

224. CRC, *supra* note 15, art. 15(1) and (2); ILO Convention No. 87, *supra* note 31, art. 11; ICCPR, *supra* note 33, art. 22; ICESCR, *supra* note 31, art. 8 (1)(1).

225. ILO Convention No. 182, *supra* note 5, art. 1.

Worst Forms of Child Labour and for their rehabilitation and social integration.²²⁶ Based on the application of these provisions, the Worst Forms of Child Domestic Labour comprise of:

- (a) Slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and forced or compulsory labour; and
- (b) Hazardous work defined as 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.²²⁷

Additionally, States should ensure that these Worst Forms of Child Labour are considered to constitute criminal offenses.²²⁸

- In determining Hazardous Child Domestic Labour consideration should be given to the following Hazardous Child Labour factors listed in ILO Recommendation No. 190:
 - (a) Work which exposes children to physical, psychological or sexual abuse;
 - (b) Work underground, under water at dangerous heights or in confined spaces;
 - (c) Work with dangerous machinery, equipment and tools or which involves the manual handling or transport of heavy loads;
 - (d) Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health;
 - (e) Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.²²⁹

In order to avoid unreasonably confining a child to the employer's premises as listed in ILO Recommendation No. 190 factor (e), employers should ensure implementation of satisfactory working standards detailed in ILO Recommendation No. 146 and the CRC.

- Both ILO Convention No. 138 and 182 specify that children below the age of 18 should not be employed in hazardous work.²³⁰ An exception can be made to this rule for children from the age of 16 years after consultation with organizations of employers and workers to authorize employment or work of on

226. *Id.* art. 7, § 2(b).

227. *Id.* art. 3(a) and (d).

228. ILO Recommendation No. 190, *supra* note 14, art. 12(a).

229. *Id.* part II, art. 3 (a) - (e).

230. ILO Convention No. 138, *supra* note 4, art. 3(1); ILO Convention No. 182, *supra* note 5, arts. 1 and 2.

condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction and vocational training.²³¹ ILO Recommendation No. 146 as well emphasizes the importance of maintaining the minimum working age for hazardous occupations at 18 and provides in relevant part that where the minimum age for admission is below 18, immediate steps should be taken to raise it to that level.²³² In addition to the ILO conventions, the CRC also recognizes the right of the child to be protected from performing hazardous work.²³³

d. Strengthening Enforcement Mechanisms

- The effective application of standards summarized in this section requires appropriate monitoring and enforcement mechanisms to ensure compliance. ILO Recommendation No. 146 requires the strengthening of labour inspection, for example by the special training of inspectors to detect abuses in the employment or work of children and young persons and to correct such abuses. Emphasis should be placed on the role of such inspectors in supplying information and advice on effective means of complying with relevant provisions.²³⁴
- ILO Convention No. 182 obliges states to monitor the implementation of steps to eliminate The Worst Forms of Child Labour.²³⁵ Additionally, interventions lead by the ILO across the world in the context of Child Domestic Labour demonstrate that in addition to labour inspectors, effective monitoring mechanisms include working with community watch groups and trade unions among others.
- In addition to the foregoing points which recap the legal framework, birth registration is fundamental to law enforcement efforts directed at combating child labour as it plays a key role in enforcing minimum age legislation. It also impacts the child's right to education because unregistered children are unable to access educational opportunities in a timely manner. According to a UNICEF survey commissioned in 2000, South Asia has the largest number of unregistered children, accounting for approximately 22.5 million or over 40% of the world's unregistered births.²³⁶ This study also finds that 63% of the births went unregistered in South Asia.

231. ILO Convention No. 138, art. 3(3).

232. ILO Recommendation No. 146, *supra* note 4, art. III(9).

233. CRC, *supra* note 15, art. 32(1).

234. ILO Recommendation No. 146, *supra* note 4, art. V(14).

235. ILO Convention No. 182, *supra* note 5, art. 5.

236. Child Protection from Violence, Exploitation and Abuse, *available at* http://www.unicef.org/protection/index_birthregistration.html (last visited Sept. 20, 2006).

