



FACULTY OF LAW
Lund University

Fatuma Nanziri Bwanika

Combatin the Worst Forms of
Child Labour: A Case Study of
Children Trafficked for Domestic
Work in Uganda

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Supervisor
Lee Swepston

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Summary

The problems faced by children trafficked for Domestic Work seems to be a continuing problem. Whereas states have ratified the various conventions aimed at protecting children in this field, the problem persists.

Trafficking of children is usually portrayed in a way that most times; the children are trafficked across borders from country to country for purposes of being economically exploited. However, in many instances, children are trafficked for purposes of placing them as domestic workers within their own countries of origin. This involves moving them from their homes (most commonly rural areas) and taking them to urban centres or cities or even sometimes outside their home countries. This thesis will mainly focus on children that are trafficked internally, within their own country of origin. That is to say, children who are trafficked from rural areas into someone else's home in the urban centres as domestic workers.

The main factors contributing to the increasing number of children trafficked for Domestic work include; poverty, orphanage, HIV/AIDs scourge, poor education systems among others.

Having grown up in a household that depends on Child Domestic help and as a legal practitioner, it has come to my knowledge that these children lack special legal protection. This is so because they are deemed to be in the informal setting where it is hard for law enforcers to interfere in businesses of private homes. Though, international human rights law has put in place some laws aimed at protecting Children trafficked for domestic work, a problem still arises when it comes to implementation by the member states.

The Child Domestics do all sorts of work ranging from house cleaning, feeding the children of their employers, cooking among others. They perform household tasks while living with their employers. These duties affect the child's development both physically and psychologically.

There is no specific mention of child domestic workers in all the instruments aimed at combating the Worst Forms of Child Labour. Their protection lies in implied provisions and depending on how a State party wishes to interpret the relevant provisions.

The main goal of this thesis is to map a road towards the complete elimination of child labour in specific reference to child domestic workers through sufficient legal protection. The thesis will examine the legal protection accorded to child domestic workers both international and domestic followed by an analysis of ILO Conventions Nos.138 and 182.

The world risks losing young and fresh minds who may be the leaders of the next generation if the rights of these children are not protected at a

tender age. Children have a right to be free economic exploitation, abuse, right to go to school, freedom from trafficking for forced labour among others. Hence, if these children are recruited into the domestic service business it is very unlikely that they will enjoy these rights to the fullest.

Preface

In Uganda, so many children are economically exploited and worst is that it happens in the informal sector where they are involved in Worst Forms of child Labour. The community has to understand the causes and effects of why children join the labour sector and then find ways of eliminating the Worst Forms of Child labour as a matter of urgency.

The thesis aims at providing information to the reader on the importance of eliminating the Worst Forms of Child Labour. The research examines the causes of why there are so many children trafficked for domestic service and the effects thereof in order to help the reader understand that even though there are laws aimed at protecting children in such scenarios, the same are not properly or sufficiently implemented hence growing range of exploitation.

The main message is that the fight belongs to not only government but also everyone including parents and employers, trade unions, NGOs, teachers, social workers and children themselves.

More precisely, the thesis examines and analyses the International labour standards (Convention No's 138, on Minimum Age and 182 on Worst Forms of Child labour) among others to show the role they play in the fight against child labour. The thesis is structured to give the reader practical outlooks and measures to the problem of child labour in Uganda. To this end, it cites international, regional and national legal Instruments that have been put in place to address the problem.

I would like to thank everyone who has been a part of this thesis, in one way or another throughout the process, right from the inception of the topic, throughout the research and writing to the point of the defence. It was not easy at all but your assistance and encouragement made it a lot easier and for this, am grateful. Nevertheless, more specifically I would like to acknowledge the following:

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My wonderful family who have always believed in me. Dad and mum, thank you so much for everything and most especially loving me unconditionally. Sifa and Sofi, words cannot describe how grateful I am to both of you, you are the world's greatest sisters. Yasin, Isaac, Junior, Ramla, Azida, Halphan, Mustapha list is endless. Uncle Segujja, Uncle Madi and Uncle Rashid, thank you all so much.

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To you all and all those that may have skipped my mind, I am forever grateful and pray that the almighty rewards you abundantly.

Dedication

To my Parents, Hajji Bwanika Erias and Hajjat Zam Nassozi. Thank you both and May the almighty reward you now and in the hereafter.

Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
CEACR	Committee of Experts on the Application of conventions and Recommendations
Convention No.29	Forced Labour Convention Convention, 1930, in force since 1932
Convention No.138	Convention concerning Minimum Age for admission to employment of 1973
Convention No.182	The Worst Forms of child labour Convention, 1999, in force since 2000
CRC	Convention on the Rights of the Child, 1989, entry into force 2 September 1990
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	United Nations International Covenant on Civil and Political Rights, 1966, in force since 1976
ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights, 1966, in force since 1976
ILO	International Labour Organisation
IPEC	International Programme on the Elimination of Child Labour
MoGLSD	Ministry of Gender, Labour and Social Development
NGO	Non-Governmental Organisation
SIMPOC	Statistical Information and Monitoring Programme on Child Labour

TBP	Time Bound Programmes
UDHR	Universal declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
WFCL	Worst Forms of Child Labour

1 Introduction

“Eliminating the worst forms of child labour involves a sustained combat that goes much beyond legislating: it presupposes a vision of society and of development. To be effective and sustainable, any action aimed at prohibiting and eliminating the worst forms of child labour should be inspired, on the one hand by an awareness of the complexity of the economic, social and cultural issues involved, and on the other by practices that have proved to be effective.”¹

According to article 32 (1) of the Convention on the Rights of the Child (hereinafter, CRC)

“State parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”²

The thesis will analyse the protection accorded in the ILO system to children trafficked for Domestic work, more specifically Convention Nos. 138 and 182 but that this protection is insufficient when it comes to implementation at the National level.

Despite the legislation put in place to protect children from Worst forms of child labour, economic exploitation continues in many jurisdictions but mainly in developing countries where poverty has acted as the main reason for the increasing number of children forced to work. Note however that though recent statistics show a decrease in the number of victims, the problem persists. This thesis therefore seeks to address the following questions:

- i. What Constitutes Worst forms of child Labour under both international and national law?
- ii. Under what category does Child Domestic labour fall?
- iii. How effective are the measures put in place to combat worst forms of labour?

It is therefore important that Children be protected from economic exploitation. States through international co-operation and respect of both domestic and international legal norms aimed at protecting children can look towards total elimination of all worst forms of Child labour that hinder the development of children.

¹ . J.Martin and D.Tajgman, *Eliminating the Worst Forms of Child labour: A Practical guide to ILO Convention No.182*, Handbook for parliamentarians No.3-2002 (Inter-Parliamentary Union/ILO, Geneva, 2002) p.6

² . *Convention on the Rights of the Child* adopted by the General Assembly on 20 November 1989, General Assembly Resolution 44/25, article 32(1).

1.1 Background Information

The League of Nations and the International Labour Organisation (hereinafter, ILO) created after World War 1, set in motion a global codification process of human rights. The urgency was inspired by the 'barbarous acts which have outraged the conscience of mankind' perpetrated by the European and East Asian fascist regimes in World War II. The Universal Declaration of Human rights (hereinafter, UDHR),³ from which these words are quoted, relaunched the codification that, 18 years later, gave rise to the International Covenant on Civil and Political Rights (hereinafter, ICCPR) and the International Covenant on Economic, Social and Cultural Rights (hereinafter, ICESCR).⁴ Other Conventions like the CRC later came into play together with Conventions under the ILO aimed at protecting the rights of children.

Bohning remarks that the World Summit for Social Development held in Copenhagen in 1995 gave labour rights a political boost when Heads of State committed their countries to respecting a set of fundamental International Labour Organisation conventions.⁵

At present, the Labour Standards that are regarded as Fundamental date back to the early years of the codification process of human rights: Freedom of Association and the protection of the Right to Organise, 1948; Forced labour 1930; Minimum Age, 1973; Discrimination 1958 among others. Children, on the other hand, are new comers to the world of international Human Rights, because besides the Minimum Age Convention, not much legislation catered for their rights in the earlier days of the ILO. That is to say, that the earlier legislation in which children could claim protection was not considered human rights. The addition of children emerged from the humanistic concerns and worries about physical, educational and economic development. The 1989 Convention on the rights of the Child signalled this elevation to human rights status.⁶

In 1973 the ILO adopted an international standard designed 'to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest and mental development of young persons' Minimum Age Convention (hereinafter, Convention No. 138, (article 1)).⁷

Note however though that efforts by the ILO to limit the minimum age for admission to employment or work were first earlier seen in 1919 the year when the organisation was founded, with the adoption of the Minimum

³ . *Universal Declaration of Human Rights*, adopted December 10, 1948, General Assembly Resolution 217A (111), U.N. Doc. A/810.

⁴ . W.R.Bohning, *Labour Rights in crisis. Measuring the Achievements of Human Rights in the World of Work* (Palgrave Macmillan, New York 2005), p.1.

⁵ . *Ibid*, p.2.

⁶ . *Ibid*

⁷ . *Ibid*

Age industry Convention of 1919. Borzaga describes the process in the following way;

“... in 1919 the ILO started a very wide activity against child labour, with particular regard to three different fields of intervention: the fixing of a minimum age for the admission to employment or work; the prohibition (with exceptions) of night work for children, and the establishment of compulsory medical examination for working persons under 18 years of age. Among these three fields of intervention, the most important efforts of the ILO in combating child labour, at least in the first fifty years of the organisation, concentrated on the limitation of the minimum age for the admission to employment or work, ten in all between 1919 and 1965 concerned different economic sectors and had diverse contents. In 1973, the international labour conference decided to adopt a general consolidated convention, fixing a minimum age valid for all economic sectors and thus having a very broad scope.”⁸

The members elaborated a further standard that obliges ratifying states to eliminate as priority the Worst Forms of Child Labour (hereinafter WFCL), Convention No.182, (hereinafter, Convention No.182). According to Bohning, “1998 therefore marked the step of elevating the abolition of Child Labour to a fundamental principle and right in the ILO when it became one of the four subject matters singled out by the declaration on Fundamental principles and rights at Work and its follow up. Convention No.138 thus joined the ranks of core labour standards, and convention No. 182 became part of them when it entered into force in 2000”.⁹

In all, Trebilcock and Raimondi are of the view that, the ILO, since its inception has grappled with the situation of children and young persons in relation to the world of work. In their introduction, they indicate that the preamble to the constitution under paragraph 2 addresses children both directly (with protection of children and young person’s cited as an example of conditions of labour requiring urgent improvement) and indirectly (as part of the regulation of labour supply, and as beneficiaries of vocational and technical education).¹⁰

1.2 Definition of key words

Child is a person under the age of 18.¹¹

Child labour strictly defined is work that affects the child’s enjoyment of his or her fundamental rights: civil, political, or economic, social and

⁸ . M. Borzaga, ‘Limiting the Minimum Age: Convention 138 and the Origin of the ILO’s Action in the field of Child labour’, in G. Nesi, L. Nogler and M. Pertile (eds.), *Child labour in a Globalized World; A Legal Analysis of ILO Action*. (Ashgate, England, 2008) p.40.

⁹ . W. R. Bohning, *supra* note 4, p.3.

¹⁰ . A. Trebilcock and G. Raimondi, ‘The ILO’s Legal Activities Towards the eradication of Child Labour: An Overview’, in G.Nesi,L. Nogler and M.Pertile(eds.),*Child labour in a Globalised World: A Legal Analysis of ILO Action*(Ashgate, England,2008)Chap 2 ,p.17

¹¹ . CRC, *supra* note 2, article 1.

cultural-particularly the broad right to survival and development of the child.¹²

Child domestic labour refers to situations where children perform domestic tasks in the home of a third party or ‘employer’ under exploitative conditions (long working hours, with no or little wages, for example, or below the minimum working age). The children, working behind closed doors in a private home, are extremely vulnerable to exploitation and abuse.

In extreme cases, children may find themselves traded or trafficked into someone else’s home, toiling seven days a week, in conditions that endanger their physical and psychological health and safety. They may be confined to the house at all times, suffer beatings, be denied access to family, friends, health services and decent food. They may have to handle toxic substances and face severe heat or cold. This extreme form of child domestic labour is in this thesis referred to as a worst form of child labour, to reflect the extreme nature of the exploitation and the importance of immediate action.¹³

Child Trafficking refers to the recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation. That is to say, that child trafficking can occur when a child is transferred, recruited, harboured and so forth, for the purpose of exploitation alone. There is no need of proof of threats, force or other forms of coercion to establish the crime of trafficking.¹⁴ Note, however that for purposes of this thesis, the definition of child trafficking shall encompass recruitment and transfer of children from rural to urban areas for economic exploitation as domestic workers.

The Forced labour Convention (hereinafter, Convention No.29) defines *Forced Labour* as all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.¹⁵

Worst Forms of Child labour (hereinafter, WFCL) Convention No.182 defines WFCL as comprising all forms of slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour including the forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and work which by its nature or the

¹² . J. Gallinentti, ‘Worst Forms of Child labour: A View from Out of Africa’, in Julia Sloth-Nielsen (ed.), *Children’s Rights in Africa* (Ashgate, England, 2008) p.323 chap 18.

¹³ . ILO-IPEC, ‘*helping hands or shackled lives: Understanding Child Domestic Labour and Responses to it.*’ (Geneva: ILO, 2004), p.1.

¹⁴ . Palermo Protocol, supplementing the UN Convention against Transnational Organised Crime, entered into force 25 December 2003, article 3(c).

¹⁵ . ILO Convention No.29 concerning Forced or Compulsory labour(Forced labour Convention),adopted June 28,1930,entered into force May1,1932),art.2(1)

circumstances in which its carried out, is likely to harm the health, safety or morals of children.¹⁶

1.3 Statement of the Problem

It is very common to find children working as caregivers, cooks, cleaners, gardeners and general house-helpers in almost all parts of the world. Much of the available literature shows that child domestic labour is a common phenomenon and a traditional form of child labour that dates back in time.¹⁷ These children are mostly trafficked from rural areas and taken to urban centres in the guise of getting a better life and living conditions.

Rapid Assessment research conducted as part of IPEC Time Bound Programmes preparatory activities in Uganda, it was noted that; “[c]hild trafficking has become a serious human problem attracting worldwide attention... [w]orld-wide, estimates of children in unconditional worst forms of child labour stand at 8.4 million, this includes child trafficking(1.2 million); forced and bonded labour (5.7 million); armed conflict as fighters(0.3million); prostitution and pornography (1.8million); and illicit activities(0.6 million)...”¹⁸

It was further noted in the aforementioned research that;

“There is strong evidence that trafficking of children exists in Uganda. Whereas cross-border trafficking of children is believed to be growing in Uganda, the domestic trafficking of children is a much bigger problem. Child trafficking includes recruiting, harbouring and moving a child from his/her home for commercial sexual exploitation or to work in other forms of exploitative labour. The movement of boys and girls from rural areas to urban areas is of such large proportion that it has taken on a life of its own and is almost considered the norm among the rural populace. The parents and guardians of the affected children are made to believe that there are great employment opportunities in the urban areas. And yet such children mostly end up in exploitative situations like working on the streets, hawking and vending, Commercial Sexual Exploitation (CSE), domestic work and in other undesirable places.”¹⁹

There is a general lack of sufficient legal protection to child domestic workers because they are confined to the informal sector where law enforcers cannot interfere in the affairs of private homes. Human rights

¹⁶. ILO Convention no.182 concerning Worst Forms of Child labour(Worst Forms of Child Labour Convention,1999),adopted June 17 ,1999,entered into force November 19,2000),art.3

¹⁷. ILO-IPEC, *Supra note 13*, p.6.

¹⁸ . *Rapid Assessment Report in trafficking of children into Worst Forms of Child Labour, Including Child Soldiers in Uganda. A Study conducted in the districts of Busia, Pader, Kalangala, Masaka and Kampala as part of the IPEC TBP Preparatory Activities*, (Kampala, ILO-IPEC February 2007), p.5.

¹⁹ . *Ibid*, p.1.

abuses against domestic workers are hidden from the public eye since they take place in private homes. The abuses range from physical, psychological, and sexual abuse; forced confinement in the workplace; non payment of wages; and excessively long working hours with no rest days among others. It becomes worse when the child domestic workers are trapped in situations of forced labour or have been trafficked into domestic work in conditions akin to slavery.²⁰

From the time the child enters the employer's home, he or she becomes hidden from view. The consequence is that the employer gets total control of the child's life that is most times risky because in case violence happens behind the closed doors, it goes unnoticed by the outside world. Such a situation is described as a Worst Form of Child Labour, and in such cases, the child is considered to be in a worst form of child labour since as early as 1989, the ILO stated that "youngsters working as household domestic servants may be the most vulnerable and exploited children of all, and the most difficult to protect".²¹

There is a general lack of statistics on the number of children involved in domestic work at the national level. "Categorized as "informal labour" most governments consider domestic work beyond the scope of regulation and scrutiny. Hidden in private households, domestic workers may remain unregistered and uncounted-literally invisible".²²

Overall, the number of children trafficked for labour exploitation is unknown. Lack of statistics on the prevalence of worst forms of child labour, especially in the rural areas has been a major setback in the efforts to eradicate the problem. The Problem of child trafficking is feared to grow worse, particularly as the Acquired Immune deficiency Syndrome (hereinafter, AIDS) and other diseases, orphan increasing number of children in Uganda.²³

Lastly, it should be noted that though not specifically mentioned as a Worst form of Child labour, Child domestic labour is by nature susceptible to being or becoming a worst form of child labour. Not only are many children in domestic labour very young, the tasks they perform are difficult to monitor or regulate. It follows that the child is in a situation of extreme risk and subjected to lots of abuse. Being that such situations cannot easily be regulated, they are hence hazardous and must be eliminated as a matter of urgency.²⁴

²⁰ . Human Rights Watch: *Swept under the Rug, Abuses against Domestic Workers around the World*, Volume 18, Number 7 (c), July 2006.p.1

²¹ . Still so far to go: *Child Workers in the world today*, (Geneva, ILO, 1989) quoted in J. Blagbrough: *Child domestic work in Indonesia, a preliminary situation analysis*, (London, Anti-Slavery international, 1995), p.14.

²² . HRW, *Supra* note 20, p.2.

²³ . Kampala ILO-IPEC, *Supra* note 18, p.5.

²⁴ . ILO-IPEC, *Supra* note 13,p.5

1.3.1 Causes and Effects of Trafficking Children for Domestic Work

Poverty is one of the biggest contributory factors to children joining the work force at an early age. This happens when the family income is not enough to cater for the needs of all members of the family leading to finding other means of how to fill the gaps hence forcing children to find work.²⁵

Lack of access to education for instance due to high costs involved, in accessibility to the schools, lack of sufficient and available resources, poor quality teaching leads to many children in many parts of the world to look to domestic service as a path to education.²⁶

“According to Uganda Bureau of Statistics (UBOS), 2002, 38 percent of Uganda’s population live below the poverty line, corresponding to nearly 9.8 million people... [t]rafficking of children in the cities to work as domestic servants partly stems from the long-standing African tradition of parents from poor rural families sending their children to go live and work with wealthier families often in urban centres. This was considered a form of fostering arrangement, but the practice has been exploited by traffickers leading to an increase in the number of children engaging in child domestic labour.”²⁷

AIDS is another reason why many children end up in domestic work. Many of such children have a lost a parent or two and are left orphaned to the extent that some become heads of households who have to look after their younger siblings. In a 2004 ILO/IPEC report, it was stated that:

“...It is estimated that 11.8 million young people between the ages of 15 and 24 are living with HIV/AIDS and more than 7,000 young people become infected each day. These children are often rejected by family and community and forced into labour of many kinds to survive. HIV/AIDS is also responsible for the increase in child - headed families in many parts of the world. Sub-Saharan Africa is badly affected; 12 million children there have lost a mother or both parents to HIV/AIDS and this figure is expected to more than double in the first decade of the 2000s. Much recent research on child domestic labour in Africa show that most of the children in service have no or only one parent alive”.²⁸

“...AIDS related cases have remained high in Uganda. More than 1 million people are estimated to be living with HIV/AIDS in Uganda (MoGLSD 2004). The inference here is that children will continue to be orphaned far into the future unless further gains are made in reducing the HIV prevalence. The problem of orphans in Uganda has continued to increase, despite efforts by the government and civil society to avert this phenomenon. The orphaned crisis is now estimated at 1.8 million orphans (MoGLSD 2002). According to the UNAIDS global AIDS report 2004, currently in Uganda over 900,000 children below 17years are estimated to have lost one or both parents to AIDS alone. The traditional extended family system that had absorbed the brunt of this impact is slowly losing meaning, given the fact that majority of the people who care for orphans are old and live below the poverty line making children

²⁵ . ILO-IPEC, *supra* note13, p.17

²⁶ . ILO-IPEC, *supra* note 13, p.23.

²⁷ . Kampala, ILO-IPEC, *supra* note 18, p.8.

²⁸ . ILO-IPEC, *supra* note 13, p.24.

far worse off and more vulnerable to trafficking by exploiters. There is also a high dependency on the surviving parents, who may also be sick and unemployed, with inadequate social assistance thus increasing the economic burden in homes”.²⁹

Other factors that contribute to trafficking of children into domestic work include: the inadequate legislation and poor law enforcement, conflicts and wars, ignorance of the risks involved, lack of access or poor quality education among others.

Worst forms of child labour particularly trafficking of children for Domestic work has affected the lives of Children involved, socially, physically, morally, psychologically, only to mention a few.

First, the fact that children at such a tender age are supposed to be attending school, their exploitation interferes with the period when they are supposed to be in school. “An adequate and appropriate education is globally recognised as a prerequisite to earning a livelihood, breaking out of the poverty cycle and building a more secure future. Sadly, however, research shows clearly that children in domestic service rarely have access to any form of education and have often left education early in order to work, or indeed may never have been sent to school at all”.³⁰

In addition to the above, children because of their age and the conditions in which they work, are affected health wise. They are susceptible to both physical and psychological harm and many undertake jobs that are inappropriate to their age and physical strength, for example carrying heavy pails of water, firewood, in the kitchen, children may be exposed to toxic cleaning chemicals, boiling liquids, extreme heat or cold. They may have to operate equipment they are not ready to handle, as well as sharp knives, woodcutting implements or other tools inappropriate for a child.³¹

On the other hand, abuse may take the form of physical and sexual abuse from the employer. Physical may take the form of severe beatings for mistakes made and sexual abuse may arise from instances where the child works for a male bachelor or even an alcoholic.

Many a times it is often forgotten that children in domestic service are, above all, children with a right to childhood hence a right to be with other children of their own age and to play. In many instances, children in domestic service are denied these rights leading them to suffer emotional distress when they see other children in the same household enjoying these right that they have been denied.³²

²⁹ . Kampala, ILO-IPEC, *supra* note 18, p.8.

³⁰ . ILO-IPEC, *supra* note13,p.49

³¹ . ILO-IPEC, *supra* note 13, p.50-51.

³² . ILO-IPEC, *supra* note 13, p.53

Overall, several factors contribute to children being trafficked for domestic work upon which their lives and development are affected in one way or another. Among the causes and effects, the above-mentioned are considered as the major ones.

1.4 Scope of the Thesis

The elimination of child labour specifically the worst forms of child labour is a duty of everyone. The Government, NGO's, trade unions, parents, children and the international community all have a role to play in this effort. Specifically the protection of children from being economically exploited is of paramount importance. This thesis shall focus on Children trafficked for domestic work within Uganda that is from rural to urban centres.

The Thesis is divided into five chapters. Chapter 1 introduces the topic of elimination of child labour with a brief background. Further, the chapter in its statement of the problem discusses the estimates of the number of children who are affected, nature of the problem and evidence of abuse. It also briefly outlines the causes and effects of trafficking children for domestic work.

Chapter 2 outlines the international instruments that provide for children not to be economically exploited, their applicability in combating the worst forms of child labour, loopholes in these laws among others. Chapter 3 discusses in detail the nature and extent of the problem.

Chapter 4 outlines the national legal system in Uganda that protects children from economic exploitation. That is, besides the International provisions and more specifically the ratified conventions, how far has Uganda gone in trying to implement the international legal norms through the domestic system? Chapter 5 is a comparative study of the legal protection accorded to child domestic workers (in South Africa, Philippines and Thailand) and lessons Uganda can learn from them.

Lastly, Chapter 6 outlines the general and specific recommendations among others that can be implemented in-order to improve the situation plus the need to revise and amend some of the legislation in place. Finally, a general conclusion follows.

2 The International Legal Framework for the Protection of Children Against Trafficking and Domestic Work

The 2002 ILO global report describes child labour under international law to fall under three main categories namely:

- I. The unconditional worst forms of child labour, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment of children for use in armed conflict, prostitution and pornography, and illicit activities.
- II. Labour performed by a child who is under the minimum age specified for that kind of work (as defined by national legislation, in accordance with accepted international standards), and that is likely to impede the child's education and full development.
- III. Labour that jeopardises the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, known as "hazardous work".³³

From the above definition, one can say that besides the mention of trafficking, there is no specific mention of child domestic work, leaving it to national authorities to decide whether to categorise it as worst form of child labour as prescribed under article 4(1) of ILO Convention No.182. That is to say that governments are left with the mandate of determining whether to categorise child domestic labour as a worst form of child labour or not. See below in chapter 2.4.1

2.1 International Bill of Rights

"Within the United Nations (hereinafter, UN) system, only a few general norms have been developed to address child labour as such, often only indirectly. A more substantial normative and implementation framework is devoted to the elimination of specific problems, which are defined as 'worst forms' of child labour in the context of the ILO..."³⁴

³³ . ILO: *A future without child labour*. Global report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference, 90th Session, Geneva 2002, Para.26.

³⁴ . A.Fodella, 'Freedom from child labour as a Human Right: The Role of the UN system in implementing ILO Child labour Standards', in G.Nesi, L. Nogler and M. Pertile (eds.), *Child Labour in a Globalized World: A legal Analysis of ILO Action*. (Ashgate, England, 2008), p.205.

2.1.1 The International Covenant on Civil and Political Rights

Article 24(1) of the ICCPR³⁵, provides that ‘Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state’.

Though the concept in the ICCPR does not specifically address child labour as such, the Human rights Committee, (hereinafter HRC) treaty body in charge of monitoring the implementation of, and compliance with, the covenant, seems to suggest that the provision may be linked to the establishment of a minimum age for work (even if no specific standard is set), that is that its implied therein that there is a need to set a minimum age and to a more general prohibition of child exploitation for labour purposes.³⁶

Considering the initial report of Uganda, the HRC at its 2191st meeting held on 31st March 2004 observed with concern the forced employment of children in activities harmful to their health and wellbeing, as well as the ineffectiveness of the measures adopted to deal with the problem. Committee was of the view that the State party should adopt measures to avoid the exploitation of child labour and to ensure that children enjoy special protection, in accordance with article 24 of the Covenant .It was further urged to adopt effective sanctions against those involved in such practices.³⁷

While the prohibition of slavery and servitude in the ICCPR is absolute, article 8(3), (c) provides for some exceptions to the prohibition of forced labour. It is therefore unclear whether these apply to forced labour of children as well.³⁸ That is, for instances where the term forced labour does not apply for example detention in consequence of a lawful order of court, any service of a military character or any work or service which forms part of normal civil obligations, this does not specify whether children too can perform such work without it being categorised as forced child labour. Therefore given the fact that child recruitment is prohibited in other international instruments, it is likely that the ICCPR would be interpreted as allowing these practices.

The benefit of the inclusion of slavery and forced labour of children within the ICCPR lies with its monitoring mechanism. The ICCPR also provides for an optional mechanism of inter-state complaints and individual

³⁵ . *International Covenant on civil and Political Rights*. Adopted by the General Assembly of the United Nations on 16 December 1966. Available at www.ohchr.org/english/law.

³⁶ . A. Fodella, *supra* note 34, p.205.

³⁷ . Human Rights Committee, Concluding Observations on Uganda, (CCPR/CO/80/UGA), S.20.

³⁸ . A. Fodella *supra* note 34 ,p.214

redress, in addition to Concluding observations and General Comments. This ‘quasi-judicial’ mechanism gives also evidence of the nature of the ICCPR’s obligation in this field: the Covenant requires States to adopt positive measures to ensure that rights included therein, but it contains also subjective rights, which are capable of being immediately implemented, and which are directly applicable, enforceable and justiciable.³⁹

2.1.2 The International Covenant on Economic Social and Cultural Rights

The ICESCR⁴⁰ embodies general principles ranging from protection of children from exploitation, *inter alia* by setting minimum age limits for their paid employment and by prohibiting those forms of work that may be harmful or dangerous for them, or that may hamper their normal development and interfere in their education.⁴¹

Article 10 (3) stipulates that:

“...[C] hildren and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, dangerous to life, or likely to hamper their normal development should be punishable by law.⁴²

General comment No.3⁴³ on the nature of state party obligations (article 2, paragraph 1) states that provision 10(3) is considered as one of those provisions among others, which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self executing would seem to be difficult to sustain.

As far as minimum age is concerned, Article 10(3) of the ICESCR provides that states should set age limits below which the paid employment of child labour should be prohibited and punishable by law.

The above provision goes to show that ICESCR establishes a general prohibition of exploitation and of harmful work. For minimum age requirements, the covenant establishes only a general obligation to set a minimum age, without providing an international standard, thus leaving much flexibility to the state parties. Moreover, minimum age, in the covenant, refers only to ‘paid employment’, with the result that the ICESCR does not prohibit unpaid employment or work by children under a certain age.⁴⁴

³⁹ . *Ibid.*

⁴⁰ . ICESCR, adopted by the General Assembly of the United Nations on 16 December 1966, entered into force on 3 January 1976.

⁴¹ . A.Fodella, *supra* note 34, p. 206

⁴² . ICESCR, *supra* note 40, art. 10(3)

⁴³ . CESCR, General comment No.3,section 5(a)

⁴⁴ . A.Fodella, *supra* note 34, p.207.

It is therefore clear that the Covenant because of its general provisions is difficult to implement directly when it comes to protecting children from exploitation. The minimum age for work is not defined and the provisions relate to paid work hence leaving a gap that is filled by ILO convention Nos.182 and 138, a discussion of which will follow under chapter three. However, had the Covenant set a definite minimum standard, the situation would have been different for this would set a platform on which member states would act.

What the Committee on Economic, social and cultural rights has done through the comments and observations is to encourage state parties to ratify the relevant ILO instruments. Though the comments and observations are non-binding, the weight they carry in clarifying the precise scope of ICESCR obligations is undoubtedly a significant one. The work done by the CESCR amounts to a *de facto* critical contribution to the monitoring and implementation of ILO standards in this field and should not be underestimated and or ignored.⁴⁵

2.2 Convention on the Rights of the Child

The CRC⁴⁶ is considered one of the first UN treaty to address child labour in a comprehensive manner, laying down not only general principles, but also dealing with critical issues that are also worst forms of child labour.⁴⁷

However, though the CRC is very comprehensive, it merely provides for a general protection without spelling out a specific age at which children should not be engaged in work, leaving it to other international instruments in this case the ILO to set the minimum age.

Article 32 of the CRC provides that:

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, State parties shall in particular:
 - a. Provide for a minimum age or minimum ages for admission to employment;
 - b. Provide for appropriate regulation of the hours and conditions of employment;
 - c. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

The above Article is considered the main article under the CRC most closely related to child labour. Descriptively, the article begins, in paragraph

⁴⁵ . A. Fodella, *supra* note 34, p.209

⁴⁶ . CRC, *supra* note 2.

⁴⁷ . A. Fodella, *supra* note 34, p.209

1, with the general expression of the right of the child to be protected from economic exploitation and from performing any harmful work, followed by a direct reference to the ILO's standards – to provide for minimum age for employment, regulation of hours and conditions of work, and the provision of penalties to ensure enforcement is also contained therein.⁴⁸ Article 32 subsection 2 contains the core protection of children against child labour that requires provision for a minimum age or ages of admission to employment.⁴⁹

The prohibition of exploitation is further reinforced under article 36 of the CRC, which provides that States parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the Child's welfare.

In addition to the above, trafficking is specifically provided for under the CRC. Article 35 thereof specifically refers to issues of trafficking and sale of children and obliges states to take all appropriate national, bilateral and multilateral measures to prevent these actions against children. The article acts as a 'fail safe' protection for children at risk of abduction, sale or trafficking and is seen as a safety net to ensure that children are safe from being abducted and not procured for these purposes or any other purpose. The article further provides a double protection for children in that it provides 'blanket -action' on abduction, sale or traffic of children for any purpose or in any form.⁵⁰

Unfortunately, the CRC deals very broadly with the sale and trafficking of children and fails to give any guidance on what constitutes trafficking and sale of children in a specific manner leading to increased abuse and exploitation.⁵¹ Though it obliges governments to set a minimum age, it does not state at what age they should set as a minimum.

2.3 The Palermo Protocol

Considered by far the most relevant international instrument relevant to trafficking is the UN Convention Against Transnational Organized crime of 2000⁵² and its optional protocol to Prevent, Suppress and Punish trafficking in persons, Especially women and children(Palermo Protocol)⁵³.

Though the UN Convention against Transnational Organised Crime does not specifically deal with trafficking per se, it does criminalize

⁴⁸ . L. Swepston, 'The Convention of the Rights of the Child and ILO', 61/62 *Nordic Journal of International law*(1994)p.10

⁴⁹ . *Ibid.*

⁵⁰ . J. Gallinetti and D. Kassan, 'Trafficking of Children in Africa: An overview of research, International Obligations and Existing legal Provisions', in J.S-Nielsen (ed.), *Children's Rights in Africa: A legal perspective* (England, 2008), p.243.

⁵¹ . *Ibid.*

⁵² . Adopted by General Assembly Resolution 55/25, entered into force 29 September 2003

⁵³ . Palermo Protocol, *supra* note 14.

participation in organised criminal groups. Note however though that the preamble to the Palermo protocol indicates that while the mother convention was not adequate to address trafficking because of its broader focus on organized crime, an instrument specifically dealing with trafficking was required. Therefore, while this Convention sets out the general international obligations regarding transnational organised crime, the specific details relating to trafficking are dealt with in the Palermo protocol.⁵⁴

The overarching purposes of the protocol are to prevent and combat trafficking in persons (especially women and children), to protect and assist victims of trafficking (article 6), and to promote co-operation amongst state parties to meet the above objective.

As already discussed in the definition section, the protocol provides a detailed definition of trafficking under Article 3(a) and states that:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the 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 others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”

In respect to children trafficked, article 3(c) defines trafficking as; ‘the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in sub-paragraph (a) of this article.

From the above, one can rightly assert that child trafficking can occur when a child is transferred, recruited, harboured and so forth, for the purposes of exploitation alone, and proof of threats, force or other forms of coercion among others, is not necessary to establish the crime of trafficking in children.⁵⁵

However, the initial deliberations did not specifically deal with trafficking in children and that the above definition was only created after a submission made by the International Organisation for Migration, United Nations International Children’s Emergency Fund.(hereinafter, UNICEF), the Office of the UN High Commissioner for Human Rights and the UN High Commissioner for Refugees. Note though that the submission called for far greater protections for children than those that were finally included in article 3(c) and a further submission to expand the list of end-purposes of trafficking to include the worst forms of child labour as defined in ILO Convention 182 was not successful.⁵⁶

⁵⁴ . J.Gallinetti and D.Kassan’, *supra* note 50, p.244.

⁵⁵ . J.Gallinetti and D.Kassan, *supra* note 50, p.245.

⁵⁶ .*Ibid.*

The Protocol under article 6 sets out specific measures that states parties need to include in their domestic legal and administrative systems in order to assist and protect victims of trafficking. It deals with measures to provide for the physical, psychological and social recovery of victims of trafficking. Unfortunately, though Uganda signed the Protocol (12 December 2000), it has not yet ratified the same making implementation more like an inspiration or distant intention.

J. Gallinetti and D. Kassan remark that the Protocol has been criticised for containing very little in the way of hard obligations requiring states to protect victims of trafficking. While there is a range of protection provisions, these provisions are formulated in weak terms and therefore do not place clear and mandatory obligations on the ratifying state party. That is to say that, the measures provided for in the protocol is left to the discretion of the State party in relation to their implementation. A clear example of this is Article 6(3) which provides that; “each State party *shall consider* implementing measures to provide for the physical, psychological and social recovery of victims”.⁵⁷

In all, the fact that the UN Trafficking Protocol’s definition of trafficking is the only one so far, its importance cannot be underestimated and or ignored: No other international instrument has a definition as relevant as the one provided under the protocol, meaning that it should be adopted by all the actors-States, international organisations, non-governmental organisations, research institutions, etc-dealing with the trafficking phenomenon.⁵⁸

2.4 International Labour Standards aimed at Protecting Children From the Worst Forms of Child Labour

2.4.1 Conventions Nos.138 and 182

Taken together, Conventions Nos.138 and 182, both of which Uganda has ratified set the boundaries of the types of work of children that are unacceptable under International standards. To the international community, the term “Child Labour” does not encompass all work performed by children under the age of 18years. The Consensus view is that work that falls within the legal limits and does not interfere with children’s health and development or prejudice their schooling can be a positive experience.⁵⁹

⁵⁷ .*Ibid.*

⁵⁸ . S. Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford, 2008) pp.7-8.

⁵⁹ . Inter-Parliamentary Union/ILO: *Eliminating the Worst forms of child labour: A practical guide to ILO Convention No.182*, Handbook for parliamentarians No.3-2002 (Geneva, 2002), p.15.

As defined under the definition section (see 1.2), Child Domestic labour refers to situations where children are engaged to perform domestic tasks in the home of a third party or employer under exploitative conditions. In cases where the exploitation is so extreme to the extent that children are trafficked, perform work similar to situations of slavery, or work in hazardous circumstances, then this constitutes a worst form of child domestic labour, that needs to be eliminated as a matter of urgency.⁶⁰

The ILO Minimum Age Convention No. 138⁶¹, accompanied by Recommendation No.146 is the universal child labour treaty dealing with standards applicable to working children having consolidated ten earlier conventions dealing with minimum age for admission to work. Right at the outset, article 1 requires states to ‘pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons’. This provision puts the target of eliminating child labour at the forefront, and at the same time intimates that despite the convention setting a minimum, it is just that; a minimum, which states are required to progressively raise as the level of development goes higher.⁶²

The age set under Convention 138 must not be below 15 years (for developed countries) and 14years (for developing countries), or the age of completion of compulsory schooling, whichever is higher. Such minimum age with the exception of ‘light work’ in which the minimum age of 13 and 12 are applicable for developed and developing countries respectively.⁶³ It should be noted however that a lower age only applies if the country concerned decided to take it; otherwise, the set minimum age would apply.

It is clear from the above provision that Convention 138 introduced both a general-age limit for admission to employment and a number of flexibility clauses aimed at encouraging less – developed countries to ratify the same.⁶⁴

Though the Convention is characterised by a certain degree of flexibility, M. Borzaga is of the view that;

“...it has been accused, in the last decades, of reflecting a rigid Western or Eurocentric approach to the fight against child labour. The reason for this seemingly inconsistent view is that C.138 was certainly based on a Western view of the problem of child labour, because of the western countries

⁶⁰ . ILO-IPEC, *supra* note 13, p.5.

⁶¹ . Minimum Age Convention ,1973(No.138) ,Adopted on 26th June 1973 by the General Conference of the International Labour Organisation at its 58th Session, Entry into force 19th June 1976.

⁶² . J. Gallinetti, *supra* note 12, p.327.

⁶³ . *Ibid.*

⁶⁴ . M. Pertile, ‘Introduction: The fight Against Child Labour’, in G.Nesi, L Nogler and M. Pertile (eds.), *Child labour in a Globalised World: legal Analysis of ILO Action* (Ashgate, England, 2008), p.2.

predominance amongst the ILO membership of those years. The flexibility clauses were considered flexible enough to foster ratification but this belief collided with the difficulties of the new member states, which resulted from decolonisation. The difficulties of the new member states in ratifying the convention were due to legal and economic as well as cultural reasons. This is clearly confirmed by the number of ratifications of C.138, which, until 1998, was very low (only 46), when compared to the number of ratifications of the other Conventions constituting the so called 'core labour standards'.⁶⁵

At present, the situation has changed in the sense that there are more ratifications of C.138 since the reluctance to ratify has been overcome by greater promotion and assistance to Member States.

It is noted under the ILO/IPEC report of 2004 concerning the inclusion and or exclusion of child domestic labour under the convention that;

“ILO Convention No.138 has no specific provision either including or excluding child domestic labour. However, the Convention does allow limited categories of work to be excluded from the scope of minimum age standards, and domestic work is frequently included in such exclusions as national standards are set. This recognises the difficulty of enforcing the law within private households, and child domestic labour is not covered by national minimum age legislation in most countries. And yet it is clear that children in domestic service are more often than not in fact in child domestic labour”.⁶⁶

In terms of standard setting on child labour, 1999 marked yet another milestone in the struggle to combat child labour with the unanimous adoption of the Worst Forms of Child labour Convention (No. 182) and Recommendation (No. 190).

D. Rishikesh describes the relationship between Convention 182 and 138 in the following manner:

“While Convention 182 is similar to Convention 138 in that both are fundamental Conventions that seek, in the final analysis, to attain the abolition of child labour, the immediate goal of Convention 182 and the means used to attain this goal are substantially different from those pursued under Convention 138. Unlike Convention 182, Convention 138 does not require that measures be taken to abolish child labour within a certain time frame. The primary objective of Convention 138 is the pursuit of a 'national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work. Convention 182, on the other hand focuses on certain forms of child labour that cannot be tolerated by member states, whatever their level of development or national circumstances, and therefore cannot be subject to progressive elimination.”⁶⁷

ILO Convention No. 182 under article 4(1) requires States parties to come up with a list after consultation with employers and workers organisations concerned of the types of work that they consider harmful to

⁶⁵ . M. Borzaga, *supra* note 8, p.40.

⁶⁶ . ILO-IPEC, *supra* note 13, p.8.

⁶⁷ . D. Rishikesh, 'The Worst Forms of Child labour: A Guide to ILO Convention 182 and recommendation 190', in G. Nesi, L. Nogler and M. Pertile (eds.), *Child labour in a Globalised world. A Legal Analysis of ILO Action*. (Ashgate, England 2008) pp.84-85.

the health, safety and morals of children. Uganda has through its national child labour policy of 2006 listed domestic service as one of the WFCL.

2.4.2 Convention No.29 on Forced labour

In many instances, child domestic workers find themselves in situations similar to those of forced labour. The children are forcefully confined to the employer's homes, with restricted communication and movement, abused physically and psychologically, work under threats, all of which amount to forced labour. Under international law, forced labour is work or service extracted by menace of penalty and without consent.⁶⁸

The Forced labour Convention defines forced or compulsory labour as “all work or service that is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily.”⁶⁹

“Menace of any penalty” has been interpreted by the ILO to include: physical violence against a worker or close associates, physical confinement, financial penalties, denunciation to the authorities (police, immigration) and deportation, dismissal from current employment, exclusion from future employment, and denial of rights and privileges. Examples of involuntary nature of work include physical confinement in the work location, psychological compulsion (order to work backed up by a credible threat of a penalty), induced indebtedness (by falsification of accounts, inflated prices, excessive interest charges, etc.), deception about types and terms of work, withholding and non payment of wages, and retention of identity documents or other valuable personal possessions.⁷⁰

Article 3(a) of the Worst forms of child labour convention, provides that the worst forms of child labour include “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour...” In 1999, the report of the International Labour Conference, Committee on Child Labour (conference committee responsible for adoption) remarked that the fact that convention No.182 does not itself contain any definition of forced labour, the definition contained in Article 2 of Convention No.29 has been considered valid for the purposes of convention no.182.⁷¹

The two concepts of ‘menace of penalty’ and ‘involuntariness’ contained in ILO convention No.29 have been clarified by the ILO to be linked to forced labour by indicating that:

⁶⁸ . HRW, Swept under the rug, *supra* note 20, pp.23-24.

⁶⁹ . ILO Convention No. 29, *supra* note 15, article 2(1).

⁷⁰ . ILO, *A Global Alliance Against Forced Labour: Global Report under the follow-up to the ILO Declaration of Fundamental Principles and Rights at Work 2005*, International Labour Conference, 93rd Session, 2005, p.6.

⁷¹ . ILO, *Record of Proceedings*, ILC, 87th Session, 1999, Geneva, report of the Committee on Child Labour, para.136.

“...forced labour occurs when people are being subjected to psychological or physical coercion (the menace or the imposition of a penalty) to perform some work that they would otherwise not have accepted to perform at the prevailing conditions (the involuntariness). The use of deception, or fraud, and the retention of identity documents in order to achieve the consent of workers, are illegitimate and can lead to forced labour.”⁷²

On how forced labour has been linked to Worst Forms of Child labour, S Sanna laments that:

“Though not many governments have reported to the ILO supervisory body on measures to combat the forced labour of children, some particularly harmful circumstances have been addressed in light of the risk of their developing into authentic forms of forced labour... Domestic labour is one of the activity potentially ending up in forms of forced labour, since children, usually hidden from view in private households and isolated from their families, are under the total control of their employers, often deprived of emotional support, good nutrition and education. The victims may be subjected to long hours and harsh conditions of work, as well as physical, psychological or even sexual abuse. Furthermore, in the majority of cases they are denied legal protection, because their situation is not covered by labour legislation...”⁷³

In all, where a child is through physical or psychological coercion, is trafficked into the domestic business, wherein he or she is confined to the employers premises to perform work that he or she would otherwise not accept to perform given other circumstance or options, in that case ,the child is deemed to be under forced labour.

2.4.3 Link between Child Domestic labour and Worst forms of Child labour

“The terms child domestic labour and Worst Forms of Child domestic labour are derived from the broader concepts of child labour and worst forms of child labour spelled out in international instruments aimed at eliminating them. Although these instruments may not specifically mention domestic labour, it is clear that the conditions described in the instruments relate closely to the experiences of children in child domestic labour or the worst forms of child domestic labour.”⁷⁴

Article 3 of ILO Convention No. 182 points out four WFCL to be tackled as a matter of urgency. These include all forms of slavery or practices similar to slavery, child prostitution and pornography, child trafficking and work which by its nature or the circumstances in which it is

⁷² . P.Belser, M De Cock and F. Mehran, *ILO Minimum Estimate of Forced labour in the World* (ILO, 2005) p.7-8.

⁷³ . S. Sanna, ‘Slavery and Practices Similar to Slavery as Worst Forms of Child Labour: A Comment on Article 3(a) of ILO Convention 182’, in G. Nesi, L. Nogler, and M. Pertile (eds.), *Child Labour in a Globalized World: A Legal Analysis of ILO Action* (Ashgate, England 2008) pp.120-121.

⁷⁴ . ILO-IPEC, *supra* note 13, p.7

carried out is likely to harm the health, safety or morals of the child. One of these conditions has to be present for a child in domestic service to be considered as working under WFCL and falling into one of the aforementioned instances when:

- i. The child has been trafficked into the household in this case from the rural, to urban households;
- ii. The child is working to help pay the bonded debt of parents;
- iii. The child is under the minimum age of employment;
- iv. The child works without pay, works excessive hours, in isolation or at night;
- v. The child is abused, physically beaten, sexually harassed, or suffers cruel or degrading punishment;
- vi. The child undertakes tasks that are hazardous, illicit, or too onerous for his or her size and age.⁷⁵

The CRC prohibits economic exploitation and employment of children in work that is likely to be hazardous, interfere with their education, or be harmful to their health or development.⁷⁶ Domestic work by children ranks among the worst forms of child labour, as identified in ILO Convention No.182. Under that Convention, children under the age of eighteen may not be engaged in work, which is likely to harm their health, safety, or morals. Prohibited labour includes work that exposes them to physical, psychological, or sexual abuse; forces them to work for long hours or during the night; or unreasonably confines them to their employers' premises.⁷⁷

The act of trafficking alone links child domestic labour to worst forms of child labour, where children have entered into domestic work by this route. In addition to the trafficking aspect, the nature of work done by the children in domestic service also links it to worst forms of child labour. Article 3 (d) of convention No.182 defines WFCL as work, which by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children. In situations where the exploitation is extreme to the extent of including trafficking, slavery or the circumstances in which its carried out is hazardous and likely to harm the health, safety or morals of children, then it constitutes a worst form of child labour that needs to be eliminated.

Studies conducted by the ILO's International Program for the Elimination of Child Labour (hereinafter, IPEC) around the world, has found that working conditions of children in domestic service are so exploitative to the extent that they constitute a worst form of child labour.⁷⁸

⁷⁵ . M. Black, *child domestic workers: A handbook on good practice in programme interventions* (The Printed word, Horsham, UK November 2005) Anti-Slavery, Today's fight for tomorrow's freedom, p.6.

⁷⁶ . CRC, *supra* note 2

⁷⁷ . ILO, Convention No.182, *supra* note 16, art 1, 2, 7.

⁷⁸ . HRW, Swept Under the rug, *supra* note 20, p.3.

2.5 African Charter on Rights and welfare of the Child

The African Charter on Rights and Welfare of the Child (hereinafter, ACRWC)⁷⁹ and in the words of D.Olowu, “...emerged out of the sentiment that the CRC ignored vital socio-cultural and economic realities of the African milieu. It stresses the need to consider African cultural peculiarities in matters relating to the Rights of children”.⁸⁰

Right from the outset, the ACRWC sets out in its preamble that “Noting with concern the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child’s physical and mental immaturity he or she needs special safeguards and care”.

Article 29 of the ACRWC is similar to article 35 of the CRC discussed in chapter 2.2 above since they both deal with the sale, trafficking and abduction of children. According to Gallinenti, the inclusion of the words ‘by any person including parents or legal guardians of the child’ in article 29 of the ACRWC further clarified the issue of sale, trafficking and abduction that helped create a much stronger protection platform for the child.⁸¹

The Charter contains a specific article on child labour and provides that:

” Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development”.⁸²

The ACRWC is unique compared to other instruments that provide for protection to children against exploitation in that it provides for coverage of the informal sector which is rare or absent in other instruments. It provides under article 15(2) that:

“ State parties to the present charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the ILO’s instruments relating to children, states parties shall in particular:

- a. Provide through legislation, minimum age for admission to every employment;
- b. Provide for appropriate regulation of hours and conditions of employment;
- c. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- d. Provide the dissemination of information on the hazards of child labour to all sectors of the community.

⁷⁹ . Adopted on 11 July 1990 and entered into force on “9 November 1999.

⁸⁰ . D. Olowu, ‘The Regional System of Protection of Human Rights in Africa’, in J.S-Nielsen (ed.), *Children’s Rights in Africa. A Legal Perspective* (Ashgate, England, 2008), p.23.

⁸¹ . J. Gallinenti and D. Kassan, *supra* note 50, p.243.

⁸² . ACRWC, art 15(1).

In all, the ACRWC is considered as an instrument that took a twist by taking into consideration the social, cultural and economic situation of the African community, specifically the situation of the African child in fighting the child labour problem. The fact that the article provides for inclusion of the informal sector where children trafficked for domestic work are deemed to be working, shows how the charter demonstrates a different scenario as opposed to other instruments.

2.6 Conclusion

Uganda has ratified all the aforementioned international instruments and conventions save for the Palermo protocol, which though signed, has not yet been ratified. This means that Uganda is portraying a positive image since upon ratification it consents to being bound by the provisions therein. What is then left is to examine whether legislation has been enacted to give effect to the instruments ratified and whether implementation is complied with.

3 Coverage of the Problem(Relationship between trafficking and Child Domestic Work)

3.1 The Difference between the Right to Work and Rights at Work in relation to Children.(Fundamental Rights:Rights based approach)

“Since the 1960’s the children’s rights movement has campaigned for the recognition of children as rights-holders. This rests on a developmental model of childhood: every child has the right to be prepared to have an individual life in society and to be brought up in the spirit of the ideals proclaimed in the Charter of the UN. This rights-based approach finds its expression in the crucially important UN Convention on the Rights of the Child (1989) (CRC). This sets out a number of rights of the child including ‘the right of children to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education or be harmful to the child’s health or physical, mental, spiritual, moral or social development’ (article 32).⁸³

There is a major difference between the right to work and the rights at work. In respect to children, the types of work that are permissible for them to work and once permitted what rights they are entitled to in the workplace differ in great length. Note however, that there is no legal right to work for children but upon being recruited into work, children are entitled to work in dignity as a basic human right. Children should for instance be able to benefit from standards that limit hours of work, restriction of overtime, rest and so on and so forth (a further discussion of the entitlements will follow in subtitle 3.2.2).

The UDHR under article 23(1) states that:

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. The ICESCR under article 6(1) also states that “ The States parties of the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”.

⁸³ . B. Hepple, ‘Is the Eradication of Child labour ‘Within Reach’? Achievements and Challenges Ahead’, in G. Nesi, L. Nogler, and M. Pertile (eds.), *Child Labour in a Globalized World. A Legal Analysis of ILO Action*. (Ashgate, England, 2008) p.419

Children have a right to grow up in an environment free from abuse and exploitation. However when trafficked, children are denied their rights to full enjoyment of their childhood. Trafficking also violates the universal human right to life, liberty and freedom from slavery in all its forms among others.⁸⁴

Hanson and Vandaele are of the view that:

“The prohibition of child labour, i.e., the setting of minimum ages for admission to the employment market, can very well be read together with the freedom to work. Minimum ages for admission to employment are not *per se* incompatible with children’s freedom to work. Essentially, they can be analysed as a particular way of regulating the freedom to work. Because participation rights have to be read together with the right to freedom to work, the former can never claim an absolute freedom of children to work. There will always remain a certain degree of regulation to be taken into account in the child labour field.”⁸⁵

A question that arises is how the different rights can be classified as they appear in the different international instruments. Hammerberg⁸⁶ suggests a classification based on the four Ps and illustrates that:

“...Participation, protections against discrimination, protection against harm, and provision for assistance with basic needs. Participation is recognised in respect of the rights of the child to freedom of association (CRC, article 15), and children may be clearly ‘workers’ protected in their rights to freedom of association and collective bargaining under ILO Conventions No’s, 87 and 98. Protection against discrimination is specifically recognised in article 2(1) of the CRC, and children as workers are covered by the ILO conventions on discrimination. Protection against harm is recognised in both the CRC and Convention 182’s provisions on hazardous work. Provisions for assistance with basic needs are to be found mainly in the CRC. This shows the importance of the links between these international instruments in creating children’s rights.”⁸⁷

The ILO puts as priority number one, the prohibition of child labour before any other consideration like the rights a child may be entitled to in case he or she joins the world of work. It should be noted that rights in work form an integral part of the body of work-related rights. The recognition of a person’s right to work, both as a right to work and as right to freedom to work, implies the recognition of his or her right to just conditions at work (rights in work). The underlying principle is that as is the case for the prohibition of child labour, the recognition of the rights in work aims at

⁸⁴ . Kampala ILO-IPEC , *supra* note 18, p.5

⁸⁵ . K.Hanson and A. Vandaele, ‘Working children and International Labour Law: A Critical Analysis’, 11: 73-146 *The International Journal of Children’s Rights* (Kluwer Law International, Netherlands, 2003), pp.91-92.

⁸⁶ . T. Hammerberg, ‘The UN Convention on the Rights of the Child and How to make it Work’, *Human Rights Quarterly*, Vol. 12, 1990, pp.99-100.

⁸⁷ . B. Hepple, *supra* note 83, p.420

protecting the child and its regulation can give rise to acceptable working conditions for children and do away with exploitative working conditions.⁸⁸

In conclusion, the criterion used in prohibiting child labour is the regulation of minimum age that varies from country to country and according to the nature of the work, education obligations and development of the child.⁸⁹

3.2 Worst Forms of Child labour

Convention No. 182 on the worst forms of child labour requires ratifying states to take immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency. The Convention singles out an area of priority action, which is well within the scope of the Minimum Age convention, No.138.⁹⁰

3.2.1 Legal Regime providing for Minimum Age

According to Borzaga, "...Convention No.138 Minimum Age Convention of 1973, alongside the Recommendation 146 of the same year, represents the latest and most advanced ILO tool for the limitation of the minimum age for the admission to employment or work".⁹¹

Under International law, child labour is often defined in terms of minimum age and this is the same way in which the ILO approaches the issue. Convention No.138 is remarkable in this aspect, for in its preamble, the ILO commits itself to 'achieving the total abolition of child labour' and imposes on the treaty parties to 'pursue a national policy designed to ensure the effective abolition of child labour'.⁹²

Article 1 of ILO Convention No.138 states that; "each member for which the Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young person's".

The most important provision of Convention 138 is certainly article 2, that obliges ratifying member states to set a minimum age for admission to employment or work, specifying it in a declaration appended to the ratification (paragraph. 1).According to paragraph 3 of article 2, the specified minimum age cannot be lower than that for completion of

⁸⁸ . K. Hanson and A. Vandaele, *supra* note 85, p.125

⁸⁹ . *Ibid*, p.101.

⁹⁰ . ILO, *supra* note 59, p.20.

⁹¹ . M. Borzaga, *supra* note 8, p.45.

⁹² . K. Hanson and A. Vandaele, *supra* note 85, p.98-99.

compulsory schooling, and, in any case, may not be lower than 15 years. Furthermore, article 2 establishes that ratifying Member States may notify the Director –General of the ILO of the increase of the minimum age set by the original ratification (paragraph. 2). Having established the necessity of setting the minimum age, paragraphs 4 and 5 of the same article 2 introduce a flexibility clause that permits ratifying states ‘whose economy and educational facilities are insufficiently developed’, to reduce the minimum age to 14 years.⁹³

There are exceptions to the 15 years minimum age limit mentioned above. Meaning that the 15 year minimum age is not absolute hence making Convention No.138 an instrument that is not static, but “a dynamic one aimed at encouraging the progressive improvement of standards of promoting sustained action to attain the objectives.”⁹⁴

In countries where economy and educational facilities are insufficiently developed, the minimum age is fourteen years.⁹⁵ Furthermore, different minimum ages apply for light and hazardous work. Light work can be undertaken from age thirteen,⁹⁶ or in countries where the economy and educational facilities are insufficiently developed, from twelve years, on condition that it does not jeopardise education.⁹⁷ In case of hazardous work, the minimum age raises to eighteen,⁹⁸ or to sixteen, when the safety and morals are fully protected and the young persons have received adequate specific instruction or vocational training.⁹⁹ Finally, where the compulsory schooling age is higher than fifteen, the minimum age for employment rises to the schooling age. However where the economy and educational facilities are insufficiently developed, after consultation, initially specify a minimum age of 14 years as the case may be.¹⁰⁰

In all, Convention No.138 contains instances where limited categories of employment or work may be excluded from the application of the Convention. According to article 4, national authorities may exclude limited categories of employment or work in respect of which special and substantial problems of application arise from the application of this Convention after consultation with the organisations of employers and workers concerned.¹⁰¹ Hanson and Vandaele remark that whereas it is possible to exclude employment in family undertakings, domestic service in private households in earlier Conventions such exclusions were explicitly provided, article 4 only created the possibility for national authorities to make such exceptions, without however automatically excluding these types of work. The promulgation of Convention 138 has helped in the goal of

⁹³ . Convention No.138, *supra* note 61, article 2.

⁹⁴ . K Hanson and A. Vandaele, *supra* note 83, p.99.

⁹⁵ . Convention No. 138, *supra* note 61, article 2(4).

⁹⁶ . Convention No. 138, *supra* note 61, article 7(1).

⁹⁷ . Convention No. 138, *supra* note 61, article 7(4).

⁹⁸ . Convention No.138, *supra* note 61, article 3(1).

⁹⁹ . Convention No. 138, *supra* note 61, article 3(3).

¹⁰⁰ . Convention No. 138, *supra* note 61, article 2(3) and (4).

¹⁰¹ . Convention No.138, *supra* note 61, article 4(1).

eradicating child labour and has received many advocates and debates until today.¹⁰²

3.2.2 Abuse and Exploitation

In addition to the effects outlined in chapter 1.3.1, children trafficked for domestic service work in circumstances are potential for abuse and hazards that make the type of work they do one of the worst forms of child labour that needs urgent attention.

International human rights law establishes the right to life, security of person, and the right to be free from torture and other forms of cruel, inhuman, and degrading treatment.¹⁰³

In addition to the above, the UDHR provides that everyone has the right to rest and leisure, including reasonable limitation of working and periodic holidays with pay, as well as the right to just and favourable remuneration to ensure “an existence worthy of human dignity.”¹⁰⁴The ICESCR reiterates these rights in recognising the right of all persons to just and favourable conditions of work.¹⁰⁵The ILO has also adopted conventions dealing virtually with all aspects relating to workers rights. These include among others, Convention No.95 on the protection of wages, which specifies that wages should be paid directly and regularly to workers, and that workers should be informed of the conditions of payments before beginning employment; Convention No. 155 concerning Occupational safety and health; Convention No.111 concerning Discrimination; Convention No. 1 concerning hours of work; Convention No. 14 concerning weekly rest; Holiday with pay Convention, No. 132 and Night work Convention, No. 171 among others.

In addition to the above, the CRC affirms the right of all children to be free from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.”¹⁰⁶The ILO ConventionNo.182 also prohibits work that is likely to harm the health, safety or morals of children.

Furthermore, the UDHR stipulates that everyone has the right to the “realisation...of the economic, social and cultural rights indispensable for his dignity and the free development of his personality” and to “a standard of living adequate for the health and well being of himself and his family,

¹⁰² . K. Hanson and A. Vandaele, *supra* note 83, p.100.

¹⁰³ . UDHR, article 3, 5, ICCPR, article 6, CRC, article 6, 37.

¹⁰⁴ . UDHR, article 23 and 24.

¹⁰⁵ . ICESCR, article 7.

¹⁰⁶ . CRC, article 19(1).

including food ,housing, and medical care.”¹⁰⁷ The ICESCR protects the right to the highest attainable standard of physical and mental health; the CRC also explicitly guarantees this right to children.¹⁰⁸

The employers of child domestic workers have played a big role in abusing and exploiting the same as seen from the 2004 ILO report wherein it was stated that:

“It is a sad reality that some employers look upon children who are working in their households as akin to slaves, the ‘property’ of the employer and without any rights. Children in such situations maybe confined to the house, never allowed to leave. Although physical restraint is not the only criterion defining slavery or practices similar to slavery, it is an indication of the relationship between employer and child in which the employer has clearly defined the child’s situation as one of total servitude.”¹⁰⁹

“Children in domestic service may also suffer direct physical abuse, being systematically beaten to ensure that they remain compliant, or as punishment when they are seen to be slow or uncooperative, or to make mistakes in their work. They may be burned or otherwise tortured, and not only by the adult members of the family but by children in the family who see cruelty as a valid relationship with ‘inferior’ members of the household, or by other domestic helpers trying to impose a hierarchy even among those being exploited.”¹¹⁰

In addition to the above, a report by Human Rights Watch noted that; “Governments around the world have failed to acknowledge the rights of domestic workers perhaps most egregiously by systematically excluding these workers from key labour protections afforded to most other categories of workers under national laws. Such rights include guarantees of a minimum wage, overtime pay, rest days, annual leave, fair termination of contracts, benefits, and workers’ compensation. This exclusion denies domestic workers equal protection under the law...”¹¹¹

In conclusion, it is hard to regulate the conditions of work for child domestic workers in order to protect them from abuse and exploitation since they are mostly confined in the informal sector. In addition to their work being illegal, they are hidden from view and therefore are unable to claim the rights available to other workers hence escalating abuse and exploitation.

3.2.3 Role of International Programme for Elimination of Child Labour

The International Programme for the Elimination of Child labour (IPEC) created in 1992 is probably the most significant turning point in the

¹⁰⁷ . UDHR, articles 22 and 25(1).

¹⁰⁸ . ICESCR, article 12(1) and CRC, article 24.

¹⁰⁹ . ILO-IPEC, *supra* note 13, p.54.

¹¹⁰ . *Ibid*, p.55.

¹¹¹ . HRW, *supra* note 20, p.34.

involvement of the ILO in the fight against child labour. With its more than 450 staff and its annual budget of some 60 million US dollars, IPEC is not only the largest single programme within the ILO, but also the most important actor in the field of technical cooperation against child labour.¹¹²

“IPEC’s aim is the progressive elimination of child labour worldwide, emphasizing the eradication of the worst forms as a priority. Guided by the principles enshrined in the ILO’s Minimum Age Convention No. 138 and Worst Forms of Child Labour Convention No. 182, IPEC works to achieve this in several ways, for example through traditional country programmes, regional capacity-building programmes, and comprehensive support projects for national time-bound Programmes. Other measures include international and national campaigning intended to change social attitudes and promote ratification and effective implementation of the two labour conventions”.¹¹³

“Since its inception in 1992, IPEC programmes have had considerable impact in both removing hundreds of thousands of children from the workplace and raising general awareness of the scourge of child labour...Over the course of the biennium 2006-2007, so far approximately 250 projects have been active. Most projects have components directed at creating an enabling environment for child labour action. Such components focus on legal reform, national planning, capacity building and awareness raising, although the relative importance of each varies from project to project. Some of the sub regional projects have a thematic focus, such as trafficking, commercial sexual exploitation, commercial agriculture, vocational training through apprenticeships, etc.” Uganda was under the sub regional project on combating HIV/AIDS and child labour in sub-Saharan Africa.¹¹⁴

In addition to IPEC, ILO established the statistical research programme (SIMPOC) in 1998, a statistical unit of IPEC whose role is well elaborated by Pertile in the following words:

“...The ILO Bureau of Statistics had first carried out experimental child labour surveys in 1992-93. Obviously, estimating child labour at the global level may prove very difficult as different regions, contexts are involved, and data of different institutions and sources must be taken into account and compared. Collecting data on domestic work performed by children and on the worst forms of child labour is even more difficult, given their hidden nature and/or their inevitable contiguity with the black market and the world of organised crime. Nevertheless, SIMPOC statistics, often compiled in cooperation with UNICEF, are generally recognised as a point of reference in this field. Subsequent information papers on global estimates on child labour were adopted in 2000 and 2004 and became the factual basis for the two global reports adopted by the international labour conference in 2002 and 2006. The method employed by SIMPOC for estimating child labour may obviously be debated and put into question. However, the fact remains that method has not changed significantly over the years and that the global estimates are fully comparable. Therefore, irrespective of the uncertainties surrounding the figures, the global estimates are crucial in assessing emerging trends in the field.”¹¹⁵

¹¹² . M. Pertile, *supra* note 64, p.3.

¹¹³ . *IPEC at a Glance* (April 2007) – Fact sheet, available at www.ilo.org/childlabour.

¹¹⁴ . *Ibid*

¹¹⁵ . M. Pertile, *supra* note 64, p.12.

The progress made during the biennium 2006-2007 ranges from national time bound programmes and support from IPEC. The focus of IPEC activities is to support member states in reaching outcomes and producing results.

In specific reference to child domestic labour, IPEC through its inter- regional project on the prevention and elimination of exploitative child domestic work through education and training, which covered countries in Anglophone Africa, South East and South Asia and central America, as well as global activities, closed in April 2006. However, child domestic labour continues to be addressed through national TBP's and associated IPEC projects to support them, as well as country programmes that have prioritized child domestic labour. Through these projects, models of intervention have been pilot-tested and methodologies and strategies have been further refined. In general terms, IPEC's strategy is two-pronged: withdrawal and rehabilitation for those found working below the minimum age for employment and those trapped in slavery like conditions and or victims of trafficking.¹¹⁶

In respect to Uganda, the period of 2006-2007 has seen IPEC having a number of projects undertaken with an aim of combating the worst forms of child labour generally, but also in the field of child domestic work these include among others. The TBP support project that ended in April 2007, the regional projects focusing on children in specific worst forms where Uganda was listed under the 'prevention and integration of children in armed conflict' (ended May 2007), child domestic labour and tobacco farming (ended June 2007). Other regional projects included; regional project on skills training and vocational education to combat worst forms of child labour in informal sector, HIV/AIDS and child labour in sub-Saharan Africa and building foundations for eliminating the worst forms of child labour in Anglophone Africa that ended in May, 2006. Lastly the Bipartite and tripartite action against child labour.¹¹⁷

All in all, IPEC is faced with so many challenges when it comes to Africa like the insufficient awareness of the child labour problem at all levels, from the family to the policy makers level; lack of viable developmental alternatives to child labour, mainly educational and vocational; consideration of a specific circumstances of a critical nature such as HIV/AIDS, food crises and traditional practices that encourage child labour; and inadequate capacity at the implementing partners' level, causing implementation delays and administrative problems.¹¹⁸ However, its role in offering technical assistance through its projects should not be underestimated, as this has led to many children being withdrawn from worst forms of child labour and rehabilitated at the same time.

¹¹⁶ . IPEC *Action against child labour, Progress and Future Priorities 2006-2007* (Geneva, ILO 2008), p.46.

¹¹⁷ . *Ibid*, annex I, p.105(Africa)

¹¹⁸ . ILO, *supra* note 116, p.65

Rapid Assessment research,¹¹⁹ in a study aimed at establishing whether there are children who have been prevented and withdrawn from the practice of trafficking it was noted that 59 percent of the children had not heard of any withdrawn children from trafficking, while 41 percent observed that there were programmes for withdrawing children from WFCL. Interventions assisting children have mainly concentrated on reaching out to street children (53 percent), child domestic workers (34 percent), and adolescent in commercial sexual exploitation (10 percent). Children and adults were largely uninformed about services that assist children affected by trafficking.¹²⁰

3.3 Monitoring and Supervision

Since the focus of this thesis is on the two international labour standards, Conventions Nos. 138 and 182, a discussion of the monitoring and supervision system under the ILO constitution will suffice though it is worth noting that CRC has its own system.

Noguchi describes the process of supervision in the following words:

“All ILO Conventions are subject to the ILO’s own supervisory mechanism, which ensures international monitoring in two aspects: regular supervision and ad hoc procedures. Since the system is based on the provisions of the ILO constitution, separate Conventions like Convention 182 do not contain their own provisions on reporting and monitoring. First, regular supervision is based on Governments’ regular reports to be submitted to the ILO in accordance with article 22 of the Constitution (to be submitted every two years for both C.138 and C. 182) on the implementation of ratified Conventions. These reports together with other information such as the country’s legislation, employers’ and workers’ comments are examined by the independent Committee of Experts on the Application of Conventions and Recommendations. Their report is submitted to the International Labour Conference, where a tripartite committee, including discussion of selected individual cases, discusses it. Situations of children’s forced labour in some countries have received international attention in this way”.¹²¹

The Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR) is another vital component of the ILO regular supervisory system. Though not referred to in the ILO constitution, the Governing Body set it up in 1926. It is composed of 20 prominent jurists appointed by the Governing Body for a renewable term of office of three years. The main purpose is to provide an impartial and technical evaluation of the status of application of international labour standards. Its annual report is submitted to the General conference of the

¹¹⁹ . Kampala, ILO-IPEC, *supra note* 18, p.38.

¹²⁰ . *Ibid.*

¹²¹ . Y. Noguchi, ‘ILO Convention No.182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child’, *The International Journal of Children’s Rights* 10:355-369, 2002. (Kluwer law international, Netherlands 2002), p.366.

ILO, where it is examined by the conference Committee on the application of Standards.¹²²

Trebilcock and Raimondi describe the tools or methods used by the CEACR in the following words:

“Two main tools are used by the CEACR when considering the implementations of a given international labour convention by a state having ratified it are: the *direct request* and the *observation*. When noting a possible problem, the Committee normally addresses to the concerned state a *direct request*, containing technical questions or requests of further information. Direct requests are not published in the Committees report, although they are available on the ILO website. In most cases, the reply of the concerned State to the direct request meets the Committee’s concerns. Where that is not the case, and notwithstanding the government’s explanations the Committee still sees a fundamental question raised on the application of a particular convention, then the committee adopts an *observation*; that is, a published comment on such a question. The observation is included in the annual report, and thus submitted to the General Conference for its consideration.¹²³

Furthermore, in some instances where non-observance of a ratified Convention is realised, the ILO Constitution provides for ad hoc procedures including Representations and Complaints under article 24 and 26 of the ILO Constitution respectively. A Representation under article 24 arises upon an allegation of non-observance of a ratified Convention. It may be submitted by an employers’ or workers’ organisation (national or international) and examined by a committee set up by the Governing Body of the ILO to examine the particular case; On the other hand, Complaints under article 26 of the Constitution may be submitted by a State alleging non- observance by another State of a Convention ratified by both of them (or initiated by the Governing Body or a Conference delegate) and examined by a Commission of inquiry of independent persons.

In addition to the above, Trebilcock and Raimondi remark that:

“The existence of such ad hoc procedures constitutes a valuable feature of the ILO standards to complement CRC and other general instruments without such mechanism. In the past, Conventions concerning child labour have not been the subject of these Constitutional procedures, except for the forced labour Convention that applies to both children and adults. With an increasing global concern and awareness, especially under convention No. 182, the situation may become different. Even if it is not actually used, the existence of such possibility as a last resort has a strong influence in pressurizing governments to take action.¹²⁴ To date, no representation or complaint has been filed in respect to convention Nos. 138 and 182, however, a number of representations filed in relation to other conventions concern child labour like those brought under the forced labour convention”.¹²⁵

¹²² . A. Trebilcock and G. Raimondi, *supra* note 10, p.30.

¹²³ . *Ibid.*

¹²⁴ . Y. Nogushi, *supra* note 121, p.367.

¹²⁵ . A. Trebilcock and G. Raimondi, *supra* note 10, p.31.

In a recent report of 2009, the Committee of Experts on the Applications of Conventions and Recommendations, it was noted that:

“The involvement of the social partners- employers and workers constitute a formal part in the supervisory system, able to initiate the above ad hoc procedures and involved in examining for instance a case of representation is another feature of the ILO’s system of monitoring and supervision. These have a power to channel concerns of civil society into the mechanisms of international standards. Under this procedure, workers and employers organisations are very much encouraged to submit their comments and observations on the government’s reports. This is especially important to assess the degree of application of a Convention in practice. Child labour is one of the topics that tend to encounter a wide disparity between the legal norm and the actual practice in many countries. Although other NGO’s as such are not given the role of supplying information officially to the ILO’s system, there have been cases where formal constituents such as workers’ organisations submit their comments based on detailed information accumulated by concerned NGO’s. This possibility can be more widely used to make the function of the ILO’s system closely responsive to child labour situations that are hard for official records and statistics to capture. Rapidly increasing ratification of both Conventions Nos. 138 and 182 means an increasing number of countries covered by this international net of vigilance.¹²⁶

Observations made by employers and workers organisations in Uganda include; Federation of Uganda Employers (FUE) on Conventions No’s 111 and 138, Central Organisation of Free Trade Unions (COFTU) and National Organisation of Trade Unions both made Observations on Conventions No’s 81, 87, 100 and 111¹²⁷.

In addition, the Director –General submits a Global report to conference on one of the four themes each year. Child labour was subject of the Global Report presented and discussed at the ILO conference in June 2002,¹²⁸ followed by the latest one of 2006¹²⁹.

Recommendations on the other hand, are intended as guidelines for legislation and policies member states may wish to adopt on certain subjects. They are not subject to ratification, and a state can thus undertake no legal obligation to implement them. They often supplement conventions, which are normally less detailed and lay down minimum standards of performances.¹³⁰

¹²⁶ . Y. Noguchi, *supra* note 121, p.367.

¹²⁷ . Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (IA) (Part IA), International labour Office Geneva, 2009, p.731.

¹²⁸ . ILO, *supra* note 33.

¹²⁹ . ILO, ‘*The end of child labour: Within reach*’ Global Report under the Follow-up to the ILO Declaration on Fundamental principles and Rights at Work, Report I (B), International labour Conference, 95th Session, (Geneva 2006).

¹³⁰ . Human Rights at Work; *Supervisory mechanisms of the International Labor Organization* by Lee Swepston available at <http://www.Leeswepston.net>. updated 2 may 2009.

It should further be noted that ILO and CRC's supervision and monitoring systems are closely linked when it comes to issue of child labour. Noguchi illustrates this link and or relationship in the following format:

“The unique supervisory system of the ILO standards, together with the follow-up to the ILO declaration that can cover all ILO members even where the Conventions are not ratified, is complementary to the UN system of monitoring the CRC. In practice, information flows between the two systems in both ways: ILO to CRC (Committee on the Rights of the Child) – outstanding comments of the ILO supervisory organs, as well as IPEC activities in the country and other practical information help CRC examine the issues of child labour in detail when examining a report of a country; CRC to ILO – the information supplied by governments to CRC in their reports has been extremely useful for the ILO, especially concerning the practice of child labour or economic exploitation, but also as it covers other aspects such as the definition of the child, education, sexual or other types of child exploitation and abuse. In short, between the two systems – i.e., ILO standards, and UN children's rights – the complementarity of the contents as mentioned above naturally leads to the complementarity in international monitoring.”¹³¹

Uganda, a member of the ILO since 1963 has tried to adhere to the monitoring and supervision system by sending reports on ratified Conventions. However, a lot remains to be done basing on the fact that the CEACR has had occasions where it has made *observations* and even issued *direct requests* to Uganda. For example, a report was requested in respect of Convention No.138 with replies to a direct request made by CEACR in 2008 and a report on Convention No. 182 was requested. Furthermore, the committee made an observation in 2008 on Convention No.182 among others.

Hepple remarks that the biggest gap in supervision is the absence of express linkage between the follow-up mechanisms under the Declaration and the regular supervisory machinery of the ILO. He suggests that there is a need to have a more satisfactory follow-up of the core conventions on child labour by creating a Governing Body Committee, similar to the Committee on Freedom of Association, to consider complaints of breaches of the core standards. This Committee would report to the Governing Body, which could then consider further action against defaulting States. Moreover, the ILO should adopt methods of coordination. This would require the targeting of specific groups of countries at a similar stage of development to maximize peer pressure, with an effective monitoring system, as an essential part of expanded ILO technical assistance.¹³² Note, however that this is a technical possibility that is unlikely to happen though legally feasible, in addition to the fact that no such suggestion has come before the Governing Body yet.

¹³¹ . Y. Noguchi, *supra* note 121, p.368.

¹³² . B. Hepple, *supra* note 83, p.427

3.4 Nature of State Party Obligations and Violations

International legal obligations are generally framed as duties on States to ‘recognise’ or to ‘protect’ certain rights, in this case those of children from exploitation. The special feature of convention no. 182 is that States are obliged to ‘design and implement programmes of action to eliminate as a priority the worst forms of child labour’.¹³³

Convention No.182 requires ratifying States to design and implement Programmes of action to eliminate the worst forms of child labour as a priority and establish or designate appropriate mechanisms for monitoring implementation of the Convention. It also says that ratifying states should take time bound measures for prevention; provide support for the removal of children from the WFCL and their rehabilitation; ensure access to free basic education or vocational training for all children removed from the WFCL; identify children at special risk; and take account of the special situation of girls.¹³⁴

It should be noted that; “[e]valuating the situation of children in domestic service against the criteria drawn up in the international instruments targeting child labour allows governments, law makers, labour sector organisations and all those working for children to judge when the work that the child is doing constitutes child labour to be eliminated or is, indeed, one of the worst forms of child labour...”.Measures should aim at ensuring that children are withdrawn or removed from such situations and also ensure that such situations cease to exist.¹³⁵ Failure of which, the member state can be said to be in violation of its obligations.

One of the most effective ways of eliminating abuses of child labour would be the adoption and enforcement of minimum ages for admission to employment.

In addition to the above obligations, Article 32 of the CRC that tackles the issue of child labour states under subsection 2 that;

“States parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular: (a). Provide for a minimum age or minimum ages of admission to employment; (b). Provide for appropriate regulation of the hours and conditions of employment; (c). Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article”.

¹³³ . B. Hepple, *supra* note 83, p.421.

¹³⁴ . Convention No.182 *supra* note 16, Article 6, 5 and 7.

¹³⁵ . ILO-IPEC, *supra* note 13, p.11.

In all, as Hepple points out, governments in developing countries are forced to choose between their international obligations and the pressure of western donors to eliminate child labour on the one hand, and the persisting attachment of the population to traditional ways of socialising children with in the family on the other hand. One way of fighting the pressure can be by framing development strategies aimed at improving the living conditions of the poorest families so that these families can meet the educational needs of their children. Rather than speak loosely of eliminating child labour in general, it would be better to make it clear that, at the present stage, the target is the ‘worst forms’ of exploitative child labour identified in Convention No. 182.¹³⁶

3.5 Implementation at the National Level

As the second Global Report on child labour under the Declaration Follow-Up highlighted:

“... The most pressing challenge ahead is strengthening the worldwide movement as the principal catalyst for more effective mainstreaming of child labour concerns at the national level, where the battle against child labour is waged and must be won.”¹³⁷

The implementation of Convention No. 182 on worst forms of child labour is ensured on a three-fold basis. First, article 6 points out the national element in the implementation of the Convention. According to article 6(1), Member states shall design and implement programmes of action to eliminate as priority the worst forms of child labour. Moreover, article 6(2) stipulates that such ‘programmes of action shall be designed and implemented in consultation with relevant government institutions and employers’ and workers’ organisations, taking into concern the views of other concerned groups as appropriate’.

Paragraph 2 of recommendation No.190 indicates that the programmes of action referred to in article 6 of the Convention should be designed and implemented as a matter of urgency. The relevant government institutions and employers’ and workers, organisations should be consulted, and the views of the children directly affected by the worst forms of child labour, their families and, as appropriate, other concerned groups committed to the aims of the Convention and the Recommendation, should be taken into consideration. The programmes should aim at *inter alia*:

- a. Identifying and denouncing the worst forms of child labour;
- b. Preventing the engagement of children in or removing them from the worst forms of child labour;
- c. Giving special attention to younger children, the girl child and other groups of children with special vulnerabilities or needs;

¹³⁶ . B. Hepple, *supra* note 83, p.424.

¹³⁷ . ILO, The End of Child labour Within Reach, *supra* note 129, p.84.

- d. Identifying, reaching out to and working with communities where children are at special risk; and
- e. Informing, sensitising and mobilising public opinion and concerned groups, including children and their families.

Secondly, Convention No. 182 under its article 7(1), obliges State parties to undertake all necessary measures to ensure the effective implementation and enforcement of the Convention, including the provision and application of penal sanctions or, as appropriate, other sanctions. Article 7(2) goes on to further oblige Member States to take into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- a. Prevent the engagement of children in the worst forms of child labour;
- b. Provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- c. Ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- d. Identify and reach out to children at special risk; and
- e. Take account of the special situation of girls.

It should be noted that the convention does not spell out the types of sanctions to be imposed. The reasoning behind this is that sanctions if imposed, may either be penal or of any other nature as may be appropriate. A member state has the discretion to impose fines, sentences of imprisonment, temporary or permanent prohibition from exercising a specific activity or damages with interest among others.¹³⁸

In addition to the above, Rishikesh writes that:

“It is worth noting that the time bound measures mentioned in article 7(2) which are also linked to the ILO-IPEC programme, have had a demonstrable impact in terms of the implementation of the Convention. They represent the latest step in IPEC’s evolution, aim to eliminating the worst forms of child labour in a country within a specified and relatively short period. TBPs are designed as a comprehensive framework that governments can use to chart a course of action with well-defined targets, these are ambitious undertakings.”¹³⁹

Finally, according to article 8, member states have to assist each other through enhanced international co-operation and or assistance including support for social and economic development, poverty eradication programmes and universal education. Paragraph 11 of recommendation No. 190 provides suggestions on the manner in which Member states could

¹³⁸ . D.Rishikesh, *supra* note 67, p.89.

¹³⁹ . *Ibid*, p.90

cooperate and or assist in international efforts to prohibit and eliminate the worst forms of child labour. This could be done by:

- a. Gathering and exchanging information concerning criminal offences, including those involving international networks;
- b. Detecting and prosecuting those involved in the sale and trafficking of children, or in the use, procuring or offering of children for illicit activities, for prostitution, for the production of pornography or for pornographic performances; and
- c. Registering perpetrators of such offences

Paragraph 16 provides that such international cooperation and or assistance should include; mutual legal assistance, technical assistance including the exchange of information, and support for social and economic development, poverty eradication programmes and universal education.

Much has been written about programmes that aim at sensitising children engaged in domestic work about their rights as workers. In many instances, such children have reached the minimum legal working age in their countries but are below 18, the age recognised as the end of child hood in international law. Such children are therefore entitled not only to the protection of labour laws and standards, including international labour instruments, but also the rights guaranteed to them by the CRC.¹⁴⁰

There is little or no statistics on actions that have been taken on children in the WFCL this could be due to the age of the victims because of their age, or because of the hazardous and exploitative nature of the work, they do. For such children, the ultimate response must be 'exit', although circumstances may dictate that such exit is the end stage of a phased response that provides protection while the exploitative situation is being dismantled.¹⁴¹

Implementation of C.138 at the national level has had challenges and Borzaga argues that this stems from the cultural and juridical differences amongst the ILO member states. After having established a minimum age for admission to employment or work of 15 years, Convention 138 provides for many exceptions and flexibility clauses as discussed earlier. However an issue arises when it comes to trying to understand the clauses therein which over the years have favoured the domestic implementation of international minimum age provisions, or if they have had the paradoxical effect of deterring ratification by many developed and developing countries.¹⁴²

Borzaga further argues that the flexibility clause provided by article 4, allows the competent authorities of the ratifying states to exclude some categories of employment or work from the scope of the convention. This seems to be an important source of flexibility, especially for particular situations like employment in family undertakings or homework. The

¹⁴⁰ . ILO-IPEC, *supra* note 13, p.63.

¹⁴¹ . *Ibid*

¹⁴² . M. Borzaga, *supra* note 8, p.55

exclusions are subject to one condition in particular – that is, they have to be listed in the first report prepared by the member state in accordance with article 22 of the ILO Constitution. Accordingly, it is not possible to modify the list of categories subsequently. As a result the flexibility clause of article 4 in actual fact displays a high level of rigidity.’¹⁴³

In conclusion, implementation at the national level calls for a lot of commitment and good political will of the ratifying state by detecting and prioritising the areas that need immediate attention like child labour.

3.5.1 Policies for Implementation at the National level

For the Government of Uganda to succeed in reducing and or combating child labour, the government should in addition to protecting the rights of children from exploitation, eradicate poverty and ensure that, it enrolls children in school as a starting point.

In a rapid assessment conducted in conjunction with ILO/IPEC, the report came to a conclusion that overall, the status of working children especially those who have been trafficked is not well documented. Lack of statistics on the prevalence of WFCL, especially in the rural areas has been a major setback in the efforts to comprehensively address the problem. The problem of child trafficking, in this case for domestic work in Uganda is estimated to grow worse, particularly as AIDS and orphan increasing numbers of children in West, East and Central Africa.¹⁴⁴ Although Uganda has set the minimum age for admission to employment at 14 years, a lot remains to be done.

The Government of Uganda adopted a National Child labour Policy in November 2006. The vision of the policy is a society free of exploitative child labour, in which all working children enjoy their right to childhood, education, dignity and the full development of their potential. In addition to the vision, the mission of the policy is to provide an enabling environment for the protection and elimination of child labour. It is intended to establish guiding principles in Uganda’s efforts to eliminate child labour and priorities for government and stakeholder action.¹⁴⁵

In addition to the above, the objectives of the policy are to integrate child labour issues into national and community-level programs; establish networks for coordinating, monitoring, and evaluating child labour programs; and encourage efforts to eliminate child labour. The Ministry of Gender, labour and social development(hereinafter MoGLSD) also

¹⁴³ . Ibid, p. 56.

¹⁴⁴ . Kampala, ILO-IPEC, *supra* note 18, p.5.

¹⁴⁵ . Government of Uganda, “*National Child Labour Policy*” (Ministry of Gender labour and Social Development, November 2006), p.23.

coordinates the orphans and vulnerable children policy, which extends social services to groups that include children who participate in the worst forms of child labour.

At the international level, ILO through its international programme on the elimination of child labour has with the help of the US government funded several projects. The project allows the International funders to intervene focussing mainly on withdrawal and rehabilitation. However, little has been done on the contributory factors of why children are trafficked into exploitative labour. Various interventions supported by ILO-IPEC in 2004-5 have focussed on advocacy, prevention, withdrawal and rehabilitation of children: reintegration and resettlement of affected children by child domestic labour among others.¹⁴⁶

In addition to the above, the government of Uganda through the MoGLSD and in collaboration with ILO-IPEC has been spearheading various interventions in combating the problem of child labour. It has collaborated with various actors to mobilise for implementation of specific projects targeting different categories of working children. A multi- sectoral and national steering committee on Child Labour comprising line ministries such as (MoGLSD); Ministry of Education and sports, Local government, social partners, NGO's, the media and academia was established in 1999. The committee brings together key stakeholders to monitor the child labour activities in the country and take decisions on policies and programmes regarding child labour.¹⁴⁷

Overall, implementation at the national level remains wanting. A lot remains to be done via putting in practice what the National Child Labour Policy has on paper by setting up regulations to try to reduce the incidence of child labour.

3.6 Conclusion

The fact that trafficking and child domestic work are considered as worst forms of child labour both internationally and nationally, measures to combat the same should be seen through strong implementation mechanisms. This, by Uganda stepping up to its obligations by prioritising elimination as a matter of urgency.

¹⁴⁶ . Kampala, ILO-IPEC, *supra* note 18, p.14.

¹⁴⁷ . *Ibid.*

4 National Legal Regime for the protection of children against trafficking and child domestic work

4.1 The National Constitution

The Constitution of Uganda under its chapter 4, article 34 provides for the rights of children.¹⁴⁸

Article 34(4) provides that:

“Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.”¹⁴⁹

The Constitution goes on to define a child as a person below the age of 16years.¹⁵⁰ It also gives particular emphasis to the protection of orphans and other vulnerable children¹⁵¹.

It should be noted that, much as the government protects children constitutionally, in reality very many children are involved in different forms of labour. The constitution does not specify an absolute minimum age for admission to employment though it outlaws the economic exploitation of children.¹⁵²

Furthermore, the constitution states that a child is entitled to basic education, which is the responsibility of the state and the child’s parents.¹⁵³ However, education is not compulsory that is attendance in primary school is not a requirement under the law .The absence of such a requirement results in children entering work illegally.

In addition to the above, though the Constitution prohibits forced labour and holding anyone in slavery,¹⁵⁴ trafficking in persons is not a

¹⁴⁸ . The Constitution of the Republic of Uganda 1995 (as amended), Article 34.

¹⁴⁹ . *Ibid*, article 34(4).

¹⁵⁰ . *Ibid*, article 34(5).

¹⁵¹ . *Ibid*, article 34(7).

¹⁵² . M. Mwamadzingo, O. Mugeni and H.Mugambwa, *Trade Unions and Child Labour in Uganda, A Workers’ Education Handbook* (Bureau for Workers’ Activities of the ILO in co-operation with National Organisation of Trade Unions), ILO, 2002, p.16.

¹⁵³ . Constitution of Uganda, *supra note 148*, article 34(2).

¹⁵⁴ . *Ibid*, article 25(1-2).

specific violation under Ugandan law. There is therefore a need to enact a law that provides for the offence of trafficking children for domestic work.

4.2 National Labour Legislation

Child labour legislation falls directly under the administration of the Ministry of Gender, Labour, and Social Development. The Major Labour Laws are the Employment Act 2006, No.6 and Occupational Safety and Health Act No.9, 2009.

4.2.1 Employment Act of 2006

The Employment Act, an Act put in place to revise and consolidate the laws governing individual employment relationships¹⁵⁵, sets the minimum age of employment at 14 years.

However, since most working children are confined in the informal sector, the Act creates a regulation gap since it is restricted to industrial undertakings within the formal sector.

Section 32 of the Act provides that:

- 1) A child under the age of 12years shall not be employed in any business, undertaking or workplace.
- 2) A child under the age of 14years shall not be employed in any business, undertaking or workplace, except for light work carried out under the supervision of an adult aged over 18years, and which does not affect the child's education.
- 3) A person shall not continue to employ any child under the age of 14years after being notified in writing by a labour officer that the employment or work is not light work meeting the criteria in subsection (2).

Section 32(4) of the employment Act prohibits employment of children in any work that is dangerous or injurious to the child's health. It states that:

“A child shall not be employed in any employment or work which is injurious to his or her health, dangerous or hazardous or otherwise unsuitable and an employer shall not continue to employ a child after being notified in writing by a labour officer that the employment or work is injurious to health, dangerous or otherwise unsuitable for that child”

Section 32(5) prohibits the employment of children at night that is between the hours of 7pm and 7a.m.

¹⁵⁵ . Employment Act of Uganda, Act 6 of 2006 Supplement No.5, 8th June 2006.

From the above, it is clear that Children between the ages of 12 and 14 may engage in light work that does not hinder their education and is supervised by an adult over 18. Children under 12 are prohibited from working in any business or workplace.

Overall, the Act has its shortcomings since it's confined to industrial undertakings within the formal sector, yet the bulk of children working are found in the rural and informal sectors.

4.2.2 Occupational Safety and Health Act of 2006

The Occupational Safety and Health Act¹⁵⁶, among others, provides for the inspection of work places, identification of hazards at the work place and other connected matters. In 1963, Uganda ratified ILO Convention No. 81 of 1947 on Labour inspection and upon this background, incorporated provisions relating to labour inspection in the aforementioned Act of 2006, laws of Uganda.

Section 6(a) stipulates the powers of inspectors and provides that an inspector shall, for the purpose of the execution of the Act, have power to enter, inspect, and examine, during the day or at night any workplace and every part of it, where he or she has reasonable cause to believe that any person is employed in it.

The above Act covers all working environments and workplaces in the industrial settings; presumably, the Act therefore regulates the safety and health of all workers including children. The Act provides for the inspection of work places, identification of hazards at the work place and other related matters, however like, the Employment Act mentioned above, it does not cover the informal sector.

Overall, the National Child labour Policy 2006 indicates that the above new laws, which are both of 2006, serve as a deterrent to child labour and will provide a framework for developing regulations, listing of the hazardous forms of child labour and improved inspection and enforcement to stop the WFCL.¹⁵⁷ However, no regulations have been adopted yet.

4.3 The Childrens Act Cap 59

The Children's Act¹⁵⁸ adopts the principles of the international and regional instruments on the rights of the child that Uganda ratified. It provides an overreaching legal framework for child protection in Uganda. The Act contains a clear statement banning harmful employment of children.

¹⁵⁶ . The Occupational Safety and Health Act, Act 9 of 2006, Supplement No.5 of 8th June 2006.

¹⁵⁷ . National Child labour Policy 2006, *supra note* 145, p.20.

¹⁵⁸ . Children's Act Cap 59 Laws of Uganda.

Regarding the employment of children, the Act specifically provides under section 8 of the Act that no child shall be employed or engaged in any activity that may be harmful to his or her health, education, and mental, physical and or moral development.

The above statement re-emphasizes Uganda's constitutional commitment to protect children from exploitative labour.

In the concluding observations of 2005, the Committee on the rights of the child while commenting on Uganda's report in respect to the provision of economic exploitation including child labour under the CRC it was noted under paragraph 73 and 74 respectively that:

“The Committee is deeply concerned at the fact that according to the information provided in the written replies half of the 2.7million working children are aged 10-14 years and 1/3 are in the age of 10, that the state party has not taken comprehensive measures to prevent and combat this large scale economic exploitation of children.

The Committee urges the state party to develop and implement, with the support of the ILO, UNICEF, and the national and international NGO's, that comprehensive programmes to prevent and combat child labour, in full compliance with ILO conventions No. 138 and No. 182 which the state party has ratified.”

In addition to the above, under section 10 of the Act, the local councils have a duty to safeguard children and promote reconciliation between parents and children. It states that:

“It is the general duty of every local government council from the village to the district level to safeguard and promote the welfare of children within its area; and to designate one of its members to be a person responsible for the welfare of children; and this person shall be referred to as the secretary of children's affairs.¹⁵⁹

Lastly, the Act provides under Section 11(1) for a duty to report infringement of children's rights and specifically states that:

“Any member of the community who has evidence that a child's rights are being infringed or that a parent, a guardian or any person having custody of a child is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education shall report the matter to the local government council of the area”.

In Conclusion, though the Children's Act has provisions similar to those in the CRC, there is still a need to strengthen the implementation tools and this depends on the commitment on the side of the government by prioritising the elimination of child labour as a matter of urgency.

¹⁵⁹ *Ibid*, section 10(1) a, b.

4.4 Government Efforts to combat the problem of child labour

4.4.1 Institutional Framework

The Ministry of Gender, Labour, and Social Development, charged with enforcing child labour laws, investigate child labour complaints through district labour officers and houses a child labour unit.

With the technical co-operation of the ILO's International programme on the Elimination of child labour, launched in 1998, it is noticeable that government's intervention measures have received greater impetus.

Ministry of Gender, Labour and Social development with funds provided by ILO-IPEC, has initiated some programmes aimed at combating child labour. A wide partnership with various actors like NGO's has been mobilised to implement specific projects targeting different categories of working children in Uganda.¹⁶⁰

In addition to the above, a multi-sectoral and National steering committee on child labour composed of government line ministries such as (MOGLSD); Ministry of Education and sports, Local Government, social partners, the media, NGOs and academia among others was established in 1999. The Committee brings together key stakeholders to monitor the child labour activities in the country and take decisions on policies and programmes regarding child labour.¹⁶¹

A Child Labour Unit was also created in the Ministry of Gender, labour and social development to become Governments focal point on the issue of child labour and to co-ordinate Child Labour activities in the country, it also serves as the secretariat to the National Steering Committee on Child labour. The Police Department, Family and Child Protection Unit as a special partner to the MoGLSD has created a cadre of officials specifically trained to protect children and women against abuse, violence and those children who come in conflict with the law. To this end, in the police Department a unit therein deals specifically with children issues.¹⁶²

Local governments are also empowered to investigate child labour complaints.

¹⁶⁰ . Kampala ILO-IPEC, *supra note* 18, p.14.

¹⁶¹ . *Ibid.*

¹⁶² . *Ibid.*

4.4.2 Plans for Action/Strategies for Implementation.

The Universal Primary Education (UPE) program was launched in 1997 to improve access to education, improve the quality of education, and ensure that it is affordable, particularly for children in nomadic areas. The Complementary opportunities for primary education initiative is for children ages 10 to 16 years that never attended school or dropped out before acquiring basic literacy and numerical skills.

Study conducted as part of the IPEC TBP preparatory activities in Uganda discovered that:

“Efforts to expand education facilities under Universal Primary Education (UPE) by government have provided some preventive measures against child labour especially to the vulnerable children. Enrolments in primary education have grown from 2.9 million in 1997 to 5.7 million children in 1999. By 2000, UNICEF estimated the figure to have specifically risen to 7.2 million. This has been beneficial to the girl child especially those from poorer households. However, retention of children in schools is challenged by poor proximity to schools, gender factors, and poverty in homes, HIV/AIDS pandemic and conflicts”.¹⁶³

Policies to improve the quality of education have been launched as part of the Education Strategic Investment Plan. They include, classroom construction programmes, curriculum development and the Plan of Action for the Girls’ Education.

In education sector, NGOs have strongly complemented government efforts by providing scholastic materials, uniforms and school fees. Some donors and NGO’s sponsor children and others conduct spiritual guidance and sensitise children on their rights, child labour, life skills and HIV/AIDS.¹⁶⁴

The World Food Programme (WFP) provides assistance by giving out food (lunch at school), assist in school quality improvement support to vocational skills training, literacy classes, hygiene and sanitation, provision of water and resettlement kits.

The Poverty Eradication Action Plan (PEAP) focuses on the rural poor with the aim of increasing income generating activities and lifting the standards of living of the poor especially in the rural areas. It should however be noted that the plan does not specifically address the WFCL.¹⁶⁵

Lastly, the national Orphans and Vulnerable Children policy is an integral part of the PEAP mentioned above. The goal of the policy is to mitigate the impact of orphan hood and other causes of the vulnerability of

¹⁶³ . Kampala ILO-IPEC, *supra note* 18, p.17

¹⁶⁴ . *Ibid.*

¹⁶⁵ . *Ibid.*

children in Uganda and improve the fulfilment of their rights. The policy priority areas are child protection, care and support, social-economic security psychological support, food security and nutrition, conflict resolution and peace building, legal support and capacity enhancement.¹⁶⁶

4.4.3 The Role of Labour Inspectors and the National labour Courts.

Uganda is faced with a challenge of enforcing child labour legislation, as is the case with many developing countries. Enforcement is further constrained by the lack and or inadequate staff, limited logistical support for labour officers to undertake regular inspections. Special problems also exist in the informal sector and domestic service where most working children are found, traditionally, these sectors are outside the purview of the law, and thus not easily accessible by the labour inspectors hindering enforcement of regulations aimed at protecting victims.¹⁶⁷

Inadequate expertise in the area of child labour inspection and weaknesses in the verification of the age of working children have been a hindrance to effective enforcement. The lack of registers showing the ages of children has had a big impact as well. In addition, though not directly under the labour inspectorate, poorly implemented education policies make it difficult to synchronise the age of completion of primary education with that of admission to employment.¹⁶⁸

Section 10(2) of the Employment Act¹⁶⁹ provides for labour inspection and it states that a labour officer is empowered to engage in labour inspection, which shall include:

- a) Securing the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work.
- b) The supply of technical information and advice to employers, employees and their organisations concerning the most effective means of complying with the legal provisions; and
- c) Bringing to the notice of the minister defects or abuses not specifically covered by existing legal provisions.

Article 10(1) of the aforementioned Employment Act provides that the provisions of Section 10 are in addition to and not in derogation of any other powers or duties conferred or imposed on any person by the present or any other Act.

In addition to the above, the labour officer is empowered under section 11(1)¹⁷⁰ to do the following:

¹⁶⁶ . *Ibid.*

¹⁶⁷ . ILO, *supra note* 152, p.32.

¹⁶⁸ . *Ibid.*

¹⁶⁹ . Employment Act, *supra note* 154.

¹⁷⁰ . *Ibid*

- a) To enter freely and without previous notice at any hour of the day or night, any work place for inspection.
- b) To enter by day, any premises which he or she may have reasonable cause to believe to be liable to inspection.

Lastly, the Act gives powers to the labour officer to prosecute.¹⁷¹ It provides:

“A labour officer may institute civil or criminal proceedings before the industrial court in respect of a contravention or alleged contravention of this Act, and may prosecute and appear in his or her own name in respect of the proceedings.”

Note that the national labour courts in Uganda are not active at all. However, in place, the institution (that is Kampala city council) is not well catered for via logistics and personnel. The cases handles are mainly on employment issues and the few child labour cases handled are not even registered hence no reference in that respect.

In sum, the CEACR in its 2007 individual Observation concerning the process of dismantling the labour inspection system in Uganda urged the Government; to adopt as soon as possible all measures that are essential for the establishment and functioning of an inspection system which conforms to the requirements of the Convention, including in particular seeking the necessary funds and technical assistance, keeping the ILO informed and sending the relevant legislative, regulatory and administrative texts.

4.5 Role of Trade Unions and NGO's.

The role of Trade unions and NGO's in the fight against child Labour in Uganda should not be underestimated. The role ranges from identification, planning, resource mobilisation, and prevention. It is because of the partnership between the Federation of Uganda Employers, the National Union of plantation and Agricultural Workers and Several NGO's like Plat form for labour Action that pilot strategies have been formulated to reach out to specific children in the worst forms of child labour and their communities.¹⁷²

Furthermore, some intergovernmental organisations and NGOs are implementing preventive and rehabilitative programmes related to child labour, though in an isolated manner.¹⁷³

¹⁷¹ . *Ibid*, Section 14(1).

¹⁷² . ILO, *supra note* 152, p.14 .

¹⁷³ . *Ibid*

The principles of solidarity and social justice were the main inspiration for forming Trade Unions. Through their collective strength, trade unions fight injustice, resist exploitation and demand fair employment conditions among others. It is upon this background that the responsibility of creating a better society free of injustices emanating from child labour lies not only with government but with Trade Unions as well as other stakeholders as contributors to the fight.¹⁷⁴

The Trade Union Decree defines a “minor” as a person who is under the apparent age of 16. A minor can be a member of the union and shall enjoy rights as a member except that he or she shall not be a member of the executive or a trustee of National Organisation of Trade Union or a registered trade union.¹⁷⁵

One of the reasons why child labour is among the issues tackled by trade unions is because some of the actions against child labour are linked to trade union capacity building and education. Therefore, eradicating child labour and ensuring education for all has become part of the goals of trade unions. The strength and vitality of the trade union movement depends upon workers and how larger forces at work in the society influence them. The struggle to eliminate child labour goes hand in hand with the fight for education, including the setting up of reintegration mechanisms.¹⁷⁶

The trade unions have been mobilising their members to take part in activities ranging from lobbying, petitions and surveys to information and awareness raising and action plans. This in turn, is linked with the right of adult workers to decent jobs and their traditional right to organise, including in the informal economy. For trade unions, respecting childhood (through child-labour free communities) means giving the world the chance of a better future.¹⁷⁷

The National Organisation of Trade Union (NOTU), established in 1973 as the only principal organisation of workers in Uganda to which all registered trade unions must affiliate has been involved in child labour related activities geared towards informing members about the hazards of WFCL. Some of these include, working closely with other key stakeholders to push for the repeal of the Labour Act, which recognise that children must not be employed. It has also been actively involved in the passing of the Child Labour Policy in 2006 and with the support of ILO-IPEC, NOTU has been running several awareness raising activities on child labour especially among its members, developed educational materials including those related to child labour policy and guidelines for trade unions in Uganda and an awareness video on child labour.¹⁷⁸

¹⁷⁴ . *Ibid*, p.22.

¹⁷⁵ . Uganda Trade Unions Act (Amendment) Decree (No. 29 of 1973).

¹⁷⁶ . ILO, *supra note* 152, p.14

¹⁷⁷ . *Ibid*.

¹⁷⁸ . Kampala, ILO-IPEC, *supra note* 18, p.39.

With support from ILO-IPEC, NGO's and civil society organisations have undertaken projects and programmes to raise awareness about child labour to prevent and withdrawal children many of whom are products of child labour. However, an analysis of these programmes indicates that these were mainly generic programmes aimed at destination points and had been supported among several NGO's to address issues of child domestic labour among others.¹⁷⁹

For a problem as complex as child labour more collaboration and cooperation is required among government ministries, district authorities, employers and workers organisations, intergovernmental organisations and NGOs in order to bring about better coordination and eliminate duplication.

4.6 Conclusion

From the above analysis, it may be concluded that there are some good intentions by the government to provide protection to children against child labour in Uganda. However, most of what is stipulated in legislation and policy guidelines has not been translated into action. Even the legislation in place has partial coverage like the Employment Act that is confined to industrial settings. It is hoped that the dramatic step taken by government to introduce Universal primary education and action against poverty will confirm its commitment towards protecting children's rights.

¹⁷⁹ . *Ibid.*

5 A comparative analysis of the legal regimes against Child trafficking and Child Domestic Work

Focus will be on good practices used by these countries to combat child labour, a lesson for Uganda to learn from, will look at national child domestic workers in these countries and what steps have been taken to combat the problem.

5.1 Thailand

Rapid Assessment research¹⁸⁰ shows that the problem of child domestic service in Thailand like Uganda is still in a transitional stage. Action taken on a number of fronts over the past few years has been a reduction in the numbers of Thai children entering both domestic work and other forms of child labour. However, concerns grew that, to some extent, extremely vulnerable children from neighbouring countries such as Myanmar (Burma), Laos and Cambodia are replacing Thai children in exploitation, sometimes after voluntary migration into Thailand but also as trafficking victims subject to coercion or deception. This has led to problems because as the number of Thai children in domestic service reduces exploiters look to migrating children from the aforementioned countries.¹⁸¹

Research further notes that the 1998 Labour Protection Act of Thailand, which prohibits employment of children under the age of 15 and imposes conditions on employment of children between the ages of 15 and 18, in particular relating to the hours of rest, night work, inappropriate work, remuneration directly to the minor has played a major role in reducing the exploitation rates. In addition to the labour legislation is the introduction of a 12- year compulsory education system that has seen a number of children stay in school.¹⁸²

Lesson to learn from the above is the compulsory education policy because though Uganda has in place the universal primary Education plan, there is no provision that makes it compulsory for children to take advantage of the opportunity.

¹⁸⁰ . N. Phlainoi: *Thailand-Child domestic workers: a rapid assessment*, (Geneva, ILO-IPEC, 2002).

¹⁸¹ . ILO-IPEC *supra note* 13, p. 76

¹⁸² . *Ibid*

5.2 Philippines

Lessons learned from experience in the Philippines in the area of child domestic labour are relevant to Uganda and other countries. The experience of a number of organisations who have worked with young adult domestic workers has produced lessons on priority areas for action to support minors who are working legitimately as domestics, particularly in the provision of education and health services, and in support for the creation of collectives and self-help groups.

The 2004 ILO/IPEC report points out that:

“...The Government of Philippines has enacted a number of laws that provide protection to children, and revised the Penal Code to this effect. The government has recognised the need for multi-agency co-operation in this area and the department of Labour and Employment, Social Welfare and Development, Education, Interior and local Government, and Justice all have key roles to play in combating the exploitation of children in labour.”¹⁸³

“A rolling National Programme Against Child Labour (NPACL), reviewed and redirected for the period 2001-2004, provided a framework for this multi-agency effort. In conjunction with this, the Philippine medium-Term Development Plan for 2001-2004 targeted the elimination of poverty as its primary goal, subsuming concern for working children and child labourers in chapters promoting full, decent and productive employment, enhancing capacities through health, education and housing, and the protection of vulnerable groups. A companion plan relating to young people specifically targets areas relating to children at work and in child labour, and specifically those in hazardous work, the abused and exploited. Government commitment to eliminating child labour in the Philippines has been given a high profile, with leadership from the President herself, and results of public awareness surveys suggest that there is increased public awareness of the issue as a result.”¹⁸⁴

The Law puts an obligation on employers of children in domestic service to give the latter an opportunity for elementary education. This requirement is found in article 1691 of the civil code. This is the only provision relating to child domestic workers though the general laws govern other terms and conditions of employment of children in domestic work (also referred to as house helpers) contained in the labour code and civil code.

Lastly, the *Sagip Batang Manggagawa* (SBM) is an inter-agency quick action team developed under the NPACL, which is responsible in responding to cases of child labourers in hazardous or exploitative

¹⁸³ . ILO-IPEC, *Supra note* 13, p.79.

¹⁸⁴ . *Ibid.*

conditions warranting rescue. It detects monitors and responds to cases of hazardous forms of child labour.¹⁸⁵

The SBM mentioned above operates within several objectives. First, it aims to establish community-based mechanisms for detecting, monitoring and reporting most hazardous forms of child labour to the proper authorities, who can either refer cases to appropriate institutions or provide direct assistance. Second, it seeks to effect immediate relief for child labourers in hazardous or exploitative conditions through the conduct of search and rescue operations and other appropriate interventions. Third, it hopes to establish 24- hour Quick Action team Network Centres to respond to immediate/serious child labour cases among others.¹⁸⁶

The team also works towards the provision of appropriate physical, medical, psycho-social and other needed services for child labour victims; provision of technical assistance for the prosecution of civil and/or criminal cases filed against employers and employment agencies violating laws and standards relative to child labour; and the facilitation of the return of child labourers to parents/guardians or appropriate custodian.¹⁸⁷

Lesson to learn here is for Uganda to include domestic workers, whether children or adults in their national labour code. That is to say that there is need to have a specific provision relating to such workers in order to ease the elimination process of exploitation. In addition, the ideas behind the SBM project should be a lesson for Uganda as well. These range from having a quick action team to respond to cases of child labour and the objectives that come along with the project.

5.3 South Africa

Provisions prohibiting work by children in South Africa were initially applicable only to white children. In 1981, the Basic Conditions of Employment Act extended the prohibition on employing children under 15 to all population groups. However, this Act excluded farm and domestic workers until the early 1990's.

In 1991 a prohibition on employment of children under 15 was inserted in the Child Care Act, administered by the then Department of Welfare. Because this Act applies to all children, those in the agricultural and domestic sectors were now included in the prohibition. In March 1998,

¹⁸⁵ . Girl Child Labour in agriculture, domestic work and sexual exploitation, *Rapid assessment on the cases of the Philippines, Ghana and Ecuador*, ILO 2004, Vol 1, p.32

¹⁸⁶ . *Ibid*

¹⁸⁷ . *Ibid*, p.33.

the child labour provisions of the new Basic Conditions of Employment Act of 1997 took effect.

The Basic Conditions Act is the most important Act dealing explicitly with child work. It provides under section 43 that:

- 1) No person may employ a child
 - a) Who is under 15 years of age; or
 - b) Who is under the minimum school-leaving age in terms of any law, if this is 15 or older.”
- 2) No person may employ a child in employment-
 - a) That is inappropriate for a person of that age;
 - b) That places at risk the child’s well being, education, physical or mental health or spiritual, moral or social development.
- 3) A person who employs a child in contravention of subsection (1) or (2) commits an offence.

Section 284 of the Children Act provides that:

- 1) No person, natural or juristic, or a partnership may traffic a child or allow a child to be trafficked.
- 2) It is no defence to a charge of contravening subsection(1) that-
 - a) A child who is a victim of trafficking or a person having control over that child has consented to-
 - i. The intended exploitation; or
 - ii. The adoption of the child facilitated or secured through illegal means; or
 - b) The intended exploitation or adoption of a child referred to in paragraph (a) did not occur.

Lastly, section 287 goes on to state that:

“If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may-

- a) Suspend all parental responsibilities and rights of that parent, guardian, or other person; and
- b) Place that child in temporary safe care, pending an inquiry by a children’s court.

The lesson to learn here is the law on trafficking because as already noted; Uganda has no concrete law on Trafficking apart from a punishment under the penal code in cases of trafficking for sexual offences. Uganda has signed but not ratified the Palermo Protocol that provides among others a precise definition on trafficking in respect to children.

5.4 Conclusion

The above examples being from developing countries which is also the case with Uganda, there should be no excuse of not trying out these practices because the tendency is always that Governments always claim that they lack finances to undertake certain projects yet this is not usually the case. The commitment starts with showing good political will and allocating the national budget to areas that need more attention, in this case, elimination of child labour.

6 Recommendations and General Conclusion

6.1 Legal and policy reforms

Internationally, there is need to have a Convention specifically providing for child domestic workers. As earlier mentioned in chapter 2.4.3, unlike trafficking and other worst forms of child labour being specifically provided for under Convention No. 182, member states are left with the liberty to categorise domestic work as they wish. Having domestic work specifically spelt out, is likely to lead to push for its elimination as a matter of priority.

At its 301st Session (March 2008) and 303rd Session (November 2008), the Governing Body selected as an item for discussion at the 99th session of the International labour conference to be held in 2010, decent work for domestic workers (Standard setting- 1st discussion).¹⁸⁸ This will lead to the birth of a convention and possibly a Recommendation specifically for domestic workers and upon ratification, legal protection at the national level will be strengthened.

As concluded in chapter 2.6 above, it is recommended that the Government of Uganda ratify the Palermo protocol that provides for the most accepted definition on child trafficking. Ratifying the protocol would mean incorporating the provisions therein into the national legal system hence a step towards the total elimination of child trafficking as a WFCL.

In addition to the above, because of its hidden nature and the fact that there are no specific regulations in the Uganda labour code in this regard, enactment of laws that protect children in this area should be encouraged. There is need to ensure that conditions of work are monitored regardless of whether they are in the informal sector and conditions of work improved since as long as education is not made compulsory, children will be forced to work.

ILO research argues, “...there is a clear need for countries to consider applying a general minimum age for the employment of children in domestic service and, as an immediate step, to adopt measures to prevent the employment of children under the minimum age and begin to gradually withdraw young children from domestic labour.”¹⁸⁹ This implies that Uganda should apply a general minimum age as argued above for this will

¹⁸⁸ . ILO, Governing Body, Second item on the Agenda date, place and agenda of the International Labour Conference, *the Agenda of the 99th Session (2010) of the Conference*, Geneva, march 2009.

¹⁸⁹ . ILO-IPEC, *supra note* 13, p.1-2

create a starting point for those children who are in the service and need to be withdrawn as this would be illegal.

In addition to the above, labour legislation must be complemented by criminal laws allowing for successful prosecution of offenses such as physical, psychological and sexual abuse, forced labour, forced confinement, and trafficking in persons¹⁹⁰. As earlier noted, Uganda's penal code only provides for sanctions for trafficking for sexual offences and not domestic work among others, therefore there is need to encourage legislators to enact laws to this effect.

6.2 General recommendations

In a paper discussing findings of a study conducted in 2004/2005 on the prevalence and impact of domestic labour migration in Nairobi, a city whose conditions (in relation to using children as domestic workers) are similar to those of Kampala, Ondimu recommended that in order to reduce child labour migration to urban centres,

“... Strategies must target both the supply and demand sides. On the supply side, the push factor that is conditions that induce child labour migration must be addressed through programmes that sensitise communities on the dangers of child labour migration, improve and expand educational opportunities to vulnerable groups, promote equal access to education, improve household food security, reduce disease prevalence and create broader life opportunities. At the same time, law enforcement organs must vigorously prosecute parents and any other persons who abet child labour migration.”¹⁹¹

On the demand side, persons who employ child domestic labourers must be identified and brought to justice. Victims must be rescued, rehabilitated, and reintegrated into their families and communities. All these need coordinated and collaborative efforts from community leaders, religious institutions, schools, NGO's and the government.¹⁹²

It is also vital to educate the community on the rights of children; importance of education to their future in order to change the old perceptions society still has for this will help reduce school dropouts in the guise of joining employment at early stages of childhood. The children too need to be sensitised about their rights, importance education will have on their future together with the repercussions they will face in case they join work at an early age. Further, there is a need to initiate programmes aimed at reducing demand for young children as domestic workers in urban households. For instance, campaigns discouraging people in the urban centres from employing young children should be encouraged in addition to

¹⁹⁰ . HRW, *supra note* 20, p.4.

¹⁹¹ . K. N. Ondimu, 'Workplace violence among domestic workers in urban households in Kenya: A case study of Nairobi city', EASSRR, Vol.XXIII, no.1 (January 2007), Project Muse, Scholarly journals Online, p.59.

¹⁹² . *Ibid.*

initiating policy actions in form of criminal sanctions imposed upon those who exploit children.¹⁹³

Furthermore, priority should be given to children in the most difficult situations by rescuing and rehabilitating them. That is to say that, it is not enough to rescue, but this should be followed with rehabilitation programmes aimed at reintegrating victims back in society especially those who have been abused in different ways. NGO's can work alongside law enforcement officers to ensure that such children are supported and protected. Services like medical intervention and counselling, psychological support and rehabilitation may come in handy. Programmes should provide help to communities to enable them support families that are more vulnerable like single parents.¹⁹⁴

Lastly, research conducted in 2007, it was suggested that "Labour and probation officers as the lead persons in child protection issues in the country, should be facilitated with transport and funding to establish Child Protection Committees (CPC) in villages to help the formulation of bi-laws, monitoring, disseminate information and follow up issues of trafficking and other WFCL". In chapter 4.4.3, it was noted that labour inspectors lack facilitation among others, therefore through working with CPC, probation and labour officers should increase awareness on trafficking through radios, community workshops and literature. Dialogue should also be promoted between CPC and communities affected to increase alertness to trafficking and WFCL and report to local authorities.¹⁹⁵

6.3 General Conclusion

The above has revealed that though Domestic work has recently been categorised by the government of Uganda as one of the worst forms of child labour, in addition to trafficking, there is a general lack of sufficient protection with the excuse that it is hidden in private homes where law enforcers cannot interfere. Uganda having ratified ILO Conventions No's 138 and 182 has committed itself to eliminating child labour but more urgently worst forms of child labour.

Furthermore, child trafficking is one of the heinous human crimes, taking many forms and leading children into WFCL in Uganda. It introduces children to modern slavery several forms of abuse among others. It targets mainly children who have lost their parents and relatives, those out of school, at the brink of poverty, abusive family environment in addition to

¹⁹³ . *Ibid.*

¹⁹⁴ . *Ibid.*

¹⁹⁵ . Kampala, ILO-IPEC, *supra* note 18, p.36.

other reasons. However, there are no statistics on child trafficking in Uganda due to the hidden nature of the problem¹⁹⁶ There is therefore a need to have a data base on the number of children affected so that measures can be taken depending on the figures.

The trafficked children are subjected to intolerable inhuman and degrading slave like activities. Children engaged in domestic work are the majority and quite often invisible therefore the need to rescue and rehabilitate them being more urgent. Uganda lacks a trafficking law in spite of the fact that it signed the trafficking protocol in 2000.

Lastly, in answer to the three questions raised in the introduction (chapter 1), it is clear from the discussion in chapter 2.4.3 that WFCL at both the international and national levels includes trafficking among others and as for domestic labour, it is up to the member state to decide whether to categorise it as a WFCL as is the case with Uganda. Though there are measures in place aimed at combating the WFCL, there is still need to strengthen the mechanisms in place in addition to applying the proposed recommendations.

¹⁹⁶ . *Ibid*, p.54.

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