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Child Domestic Workers Protected workers or forgotten children?

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Contents

SUMMARY	1
SAMMANFATTNING.....	3
ABBREVIATIONS	5
1 INTRODUCTION.....	6
1.1 BACKGROUND INFORMATION.....	6
1.2 PURPOSE AND RESEARCH QUESTION	7
1.3 DISPOSITION AND DELIMITATIONS	8
1.4 METHODOLOGY AND MATERIAL	8
1.5 DEFINITION OF PHRASES.....	9
2 THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF CHILDREN IN DOMESTIC LABOUR.....	10
2.1 THE INTERNATIONAL BILL OF HUMAN RIGHTS.....	10
2.1.1 <i>The International Covenant on Civil and Political Rights</i>	11
2.1.2 <i>The International Covenant on Economic, Social and Cultural Rights</i>	13
2.2 THE CONVENTION ON THE RIGHTS OF THE CHILD.....	13
2.3 THE INTERNATIONAL LABOUR ORGANIZATION.....	16
2.3.1 <i>ILO Convention 138 – Minimum Age Convention</i>	17
2.3.2 <i>ILO Convention 182 – Worst Forms of Child Labour Convention</i>	18
2.3.3 <i>ILO Convention 189 – Domestic Workers Convention</i>	20
2.3.4 <i>Declaration on Fundamental Principles and Rights at Work</i>	22
3 CHILDREN IN DOMESTIC WORK.....	23
3.1 WHO IS THE DOMESTIC CHILD WORKER?	23
3.2 PROTECTION OR EXPLOITATION?.....	25
4 THE ROLE OF LAWS IN THE FIGHT AGAINST CHILD LABOUR.....	28
5 ANALYSIS OF THE INTERNATIONAL LEGAL FRAMWORK ON DOMESTIC CHILD LABOUR.....	30
5.1 THE PROTECTION IN THE INSTRUMENTS OF THE INTERNATIONAL LABOUR ORGANIZATION	31
5.2 THE PROTECTION IN THE CONVENTION ON THE RIGHTS OF THE CHILD.....	33
5.3 TACKLING THE ISSUE OF CHILDREN TRAPPED IN DOMESTIC CHILD LABOUR.....	34
6 ANALYSIS OF THE IMPLEMENTATION OF NATIONAL LAWS CONCERNING DOMESTIC CHILD LABOUR	39
6.1 IMPLEMENTING APPROPRIATE LAWS.....	39
6.2 ENJOYING THE RIGHTS IN PRACTICE.....	41
7 CASE STUDY	42
7.1 PHILIPPINES	42
7.1.1 <i>Protection of Children in Domestic Work</i>	43
7.1.2 <i>Analysis of the situation</i>	45
7.2 HAITI.....	46
7.2.1 <i>Protection of Children in Domestic Work</i>	47
7.2.2 <i>Analysis of the situation</i>	50
8 CONCLUDING REMARKS	52
8.1 CONCLUSION.....	52
8.2 RECOMENDATION	55
9 BIBLIOGRAPHY	57

Summary

Millions of women around the world perform domestic work, in spite of this the work to a great extent remains undervalued and excluded from labour legislation. Domestic work is further one of the most common occupations for children, in fact it is estimated by the International Labour Organization (ILO) that it is the most common work for girls under 16. The thesis sets out to determine whether international and national legislation is adequate and appropriate for the protection of children in domestic labour and how the legislation can be improved. Moreover, it researches which different approaches are advocated for regarding how to tackle the issue of child domestic labour and which are best used.

The analysis of the instruments shows different approaches regarding how to protect children from child labour. The Convention on the Rights of the Child prohibits work that is exploitative and uses a holistic view on child labour as well as it translates the issue into a human rights issue. ILO Convention No. 138 aims at abolishing child labour through the adoption of strict minimum ages and ILO Convention No. 182 prioritises the combat of the worst forms of child labour as a matter of urgency. Since domestic work on many occasions has been, or can be omitted from both international and national legislation the ILO in 2011 adopted Convention No. 189, which aims for decent work for domestic workers.

It is difficult to protect children performing domestic work due to the hidden nature of the work, the work's place in the informal economy and the fact that the work on many occasions is culturally and socially accepted and perceived to be a safe occupation for girls. The thesis finds that children performing domestic work on many occasions are trapped in child labour.

Scholars perceive the concept of childhood and how to tackle the issue of child domestic labour in varying ways. It is argued that a flaw with the minimum age approach is that it is overly influenced by Western values, not fitting developing countries where children on many occasions need to work for their survival and where child labour is a widespread phenomenon to such a point clear priorities are needed for the combat to be effective. On the other hand, ILO Convention No. 182 and the Convention on the Rights of the Child have been applauded for providing priorities and distinguishing between benign and harmful work respectively, and for portraying more universal aims. Many scholars are also of the opinion that a total ban of the work is not always in *the best interest of the child*. Focus should instead be on improving the conditions of work through laws and strengthening enforcement and inspection mechanisms.

While there is a great number of provisions in international law protecting children in domestic work, protection is still lacking on the national level where many laws do not cover domestic child labour. Further, when laws do

exist they are often not effectively implemented. As a case study, the thesis reviews the national legislation in the Philippines and Haiti, two countries where the issue of domestic child labour is widespread, but in which the situation of enacted laws looks different.

The thesis reaches the conclusion that together the international instruments offer good protection for domestic workers but that there is room for improvements. There is however a problem on the national level where domestic work still often is exempted from national minimum age regulations and child labour laws. Appropriate laws taking the special situation of the workers into consideration, in accordance with ILO Convention No. 189, should be enacted. Effective monitoring and enforcement mechanisms must be implemented, and advocacy to change the perception of child domestic labour must be taken. The thesis finds that the best way to approach the problem is by listening to both those wanting to abolish the practice through strict minimum ages and those wanting to improve conditions at work. The aim is to abolish all child labour but gradually through better conditions at work and by prioritising the combat of the worst forms of child labour as an urgency. Moreover, a legal ban should be complemented by other measures ensuring the child education and economic support.

Sammanfattning

Miljontal kvinnor världen över utför hushållsarbete, trots detta har arbetet till stor del förblivit undervärderat och undantaget från arbetsrättsliga lagar. Hushållsarbete är vidare ett av de vanligaste arbetena som barn utför, den Internationella Arbetsorganisationen (ILO) har uppskattat att det till och med är det vanligaste arbetet för flickor under 16 år. Uppsatsens syfte är att undersöka huruvida den internationella och nationella lagstiftningen är tillräcklig och lämplig för att skydda barn som utför hushållsarbete och hur lagstiftningen kan förbättras. Utöver detta undersöker uppsatsen vilka olika tillvägagångssätt som förespråkas för att angripa problemet och vilka som är mest lämpliga.

Analysen av de internationella instrumenten visar olika tillvägagångssätt för att bekämpa barnarbete. Barnkonventionen förbjuder arbete som är exploaterande samt angriper problemet genom användandet av ett holistiskt tillvägagångssätt. Konventionen transformerar också ämnet till en mänsklig rättighet. ILO konvention nr. 138 använder strikta minimiåldrar för att avskaffa allt barnarbete och ILO konvention nr. 182 prioriterar skyndsamt bekämpning av de värsta formerna av barnarbete. Eftersom hushållsarbete i många fall är undantaget, eller kan undantas från internationell och nationell lagstiftning, uppförde ILO 2011 konvention nr. 189 som behandlar värdigt arbete för hushållsarbetare.

Det är svårt att skydda barn som utför hushållsarbete på grund av arbetets dolda natur och då arbetet utförs i den informella sektorn. Vidare är arbetet i många fall kulturellt och socialt accepterat och uppfattas som ett säkert alternativ för flickor då arbetet utförs i ett hem. Uppsatsen finner att barn som utför arbetet i många fall kan klassas som barnarbetare.

Hur forskare uppfattar konceptet barndom och hur man bör angripa problemet med barnarbete i hushåll varierar. Många akademiker är av den åsikten att applicerandet av strikta minimiåldrar är ett tillvägagångssätt som i för hög grad är influerat av västerländska värderingar. Detta passar inte alla utvecklingsländer eftersom deras uppfattning av barndom inte alltid korrelerar med den västerländska och eftersom barn kan behöva arbeta för sin överlevnad i dessa länder. Vidare när barnarbete är utbrett till en viss grad behövs prioriteringar för att bekämpningen ska vara effektiv. ILO konvention 182 och barnkonventionen är å andra sidan uppskattade för att särskilja skadligt arbete från arbete som är ofarligt och för att framställa mål som är mer universella. En annan uppfattning är att ett totalförbud av barnarbete inte alltid överensstämmer med principen om *barnets bästa*. Av den orsaken bör fokus istället ligga på att förbättra arbetsförhållanden genom lagar samt stärka upprätthållandet av lagar och inspektioner.

Det finns ett antal bestämmelser i internationell rätt som skyddar barn som utför hushållsarbete men trots detta så är skyddet i nationell lagstiftning

fortfarande bristfälligt. Flertalet nationella lagar omfattar inte barnarbete i hushåll och när lagar väl finns så är de ofta dåligt implementerade. Som fallstudie redogör uppsatsen för lagstiftningen i Filippinerna och Haiti, två länder som har ett utbrett problem med barn som utför hushållarbete, men som har vitt skild lagstiftning på området.

Uppsatsen når slutsatsen att det sammantaget finns bra skydd för barn som utför hushållsarbete i internationell rätt, men det finns rum för förbättring. Däremot är det mer problematiskt på den nationella nivån där hushållsarbete fortfarande ofta är utelämnat från lagar som reglerar minimiåldrar och barnarbete. Lämpliga lagar som tar hänsyn till hushållsarbeters specifika situation i enlighet med konvention nr 189 måste uppföras. Övervakning och verkställning måste genomföras samt påverkansarbete för att ändra uppfattningen om hushållsarbete. Det bästa sättet att angripa problemet är genom att lyssna till både dem som vill förbjuda utövandet genom införandet av strikta minimiåldrar och dem som istället vill förbättra arbetsförhållandena för arbetarna. Målet är att förbjuda allt barnarbete men detta bör ske gradvis genom förbättrade arbetsförhållanden och genom att prioritera den brådskande kampen mot de värsta formerna av barnarbete. Ett rättsligt förbud bör även vara ackompanjerat av andra åtgärder som garanterar barnet utbildning och ekonomiskt skydd.

Abbreviations

CEACR	The Committee of Experts on the Application on Conventions and Recommendations
CRC	Convention on the Rights of the Child
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPEC	International Programme on the Elimination of Child Labour
ILC	International Labour Conference
ILO	International Labour Organization
ILO C138	Minimum Age Convention, 1973 (No. 138)
ILO C182	Worst Forms of Child Labour Convention, 1999 (No. 182)
ILO C189	Domestic Workers Convention, 2011 (No. 189)
NGO	Non Governmental Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund

1 Introduction

1.1 Background Information

Millions of women around the world are involved in one of the oldest and most important occupations in the world, namely domestic work. The work, which has roots in the global history of slavery, servitude and colonialism, today is performed by an increasing workforce that is imperative for the functioning of the economy outside of peoples' homes. Despite the importance of the work and the large amount of workers, especially in the developing world, domestic work to a great extent remains undervalued and exempted from labour legislation. The work, which consists of chores that traditionally have been performed unpaid by women in their households, takes place behind closed doors in the homes of the employers. These facts help explain why the work is in the informal sector, undocumented and on many occasions not perceived to fall within a regular employment relationship. The lack of protection makes the workers easy targets for underpayment, bad working conditions and abuse¹. When contemplating the harsh reality of an adult domestic worker, one can only imagine the reality of a *child* domestic worker.

In our days child labour first became acknowledged as a subject of great concern, and treated as a core human rights issue, late in the 20th Century². It was first in the mid 1990s, after the implementation of several reports documenting the problematic situation of child domestic workers, that the perception of domestic work performed by children as benign changed and the issue started to receive attention³.

Child work as such is not prohibited in international law since the realities of some children require that they work for their or their families' survival, and it is further recognized that some work has the potential to benefit the child. Instead of prohibiting all work done by children, international instruments regulate the circumstances under which children are allowed to work and the minimum age for admission to employment and work. Moreover, it is important to remember that children who work still are entitled to all their human rights prescribed by international instruments⁴.

¹ ILO, *Decent work for domestic workers*, Report IV (1), ILC, 99th Session, 2010, ILO Geneva 2010, p. 1.

² Swepston, Lee, *The Contribution of the ILO Declaration on Fundamental Principles and Rights at Work to the Elimination of Child Labour*. In *Child Labour in a Globalized World, A legal Analysis of ILO Action*, Nesi, Giuseppe, Nogler, Luca and Pertile, Marco (ed.), 65-81. England: Ashgate, 2008, p. 68.

³ Bourdillon, Michael, "Children as domestic employees: Problems and promises, *Journal of Children and Poverty*, 15:1 2009, p. 2.

⁴ Human Rights Watch, *Child domestics: The World's Invisible Workers. A Human Rights Watch Backgrounder*, June 10, 2004. Available at: www.hrw.org/legacy/english/docs/2004/06/10/africa8789.htm (accessed May 14 2013 09:34).

Child domestic work is one of the most common forms of child work. The children working as domestics are especially vulnerable since their work takes place in the home of someone else, hidden from the eyes of the world. These children are often exploited and treated badly, and the work performed by them on many occasions falls within the framework of domestic child labour. In spite of this there are several societies in the world in which the harsh realities of the children are not seen as problematic⁵.

On the national level domestic workers are often excluded from labour rights and the control of work conditions in private households are sparse. Few child labour programs address child domestic labour⁶ and many countries do not include domestic child labour in their national minimum age legislation⁷.

1.2 Purpose and Research Question

Child domestic work is as mentioned above a widely spread phenomenon around the world. The children involved are amongst the most vulnerable and exploited group of child labourers; still the practice is common in many places around the world and often exempted from labour legislation. The purpose of the thesis is to examine the specific situation of children working as domestics and the situation of their legal protection. Why children are getting involved in the work, the hidden nature of the work and the line between protection and exploitation in the work will be examined to understand the specific situation of domestic child workers. The thesis will research whether the existing legal provisions are appropriate and adequate for the protection of domestic child workers and how the provisions can be improved to better protect the workers. Which approaches best tackle the issue of child domestic labour will also be analyzed.

The research question is thus what provisions there are in international law for the protection of child domestic workers and whether they appropriately and adequately protect the children. Which approaches are advocated for in the literature regarding how to tackle the issue, and which are best used? The thesis will also research how the international rules are applied at the national level, and how the rules can be improved in law and in practice.

⁵ ILO-IPEC, *Helping hands or shackled lives? Understanding child domestic labour and responses to it*, ILO-IPEC, ILO Geneva 2004, pp. III ff.

⁶ Human Rights Watch, *Child domestics: The World's Invisible Workers. A Human Rights Watch Backgrounder*, June 10, 2004. Available at: www.hrw.org/legacy/english/docs/2004/06/10/africa8789.htm (accessed May 14 2013 09:34).

⁷ ILO-IPEC, 2004, p.8.

1.3 Disposition and Delimitations

The thesis commences with a review of the international legal framework concerning domestic child labour, presenting the different instruments in order to determine what protection exists for children in domestic child labour. The International Bill of Rights, the Convention on the Rights of the Child and finally the relevant standards of the International Labour Organization (ILO) will be covered. The third chapter concerns the situation of children in domestic child work. The research will cover who the domestic worker is and the nature of the work. In the fourth chapter the use of laws in the struggle against child labour will be briefly covered. The fifth chapter will present an analysis of the existing legal framework and different approaches on how to tackle the issue will be examined, the focus will be on the ILO Conventions and the Convention on the Rights of the Child. The sixth chapter will examine the implementation of national laws concerning child domestic labour. The seventh chapter will portray a case study of the Philippines and Haiti, two countries where the issue of domestic child labour is extensive. The situation of child domestic workers and enacted laws in the States will be examined, good practices will be indicated and recommendations for improvements will be given. Finally, in the concluding remarks the gathered information will be analyzed in order to answer the research question and give a number of recommendations.

The thesis focus on the protection of domestic child labourers that derives from labour laws and on how the laws can be improved to better protect the children, therefore other measures that can improve the lives of children in domestic labour, such as poverty reduction and access to education, have been delimited from the main focus since it is outside the core of the thesis. Omitted from the focus of the thesis are further the subjects of girls being trafficked into domestic work and migrant domestic workers since the complexity of these children's situations cannot be evaluated properly in the thesis due to time and space restraints.

1.4 Methodology and Material

I have used a traditional legal method for the thesis, which means I have studied legal sources such as the relevant international laws and instruments, preparatory work and legal commentaries, in order to determine the existing legal protection for children in domestic child labour, *de lege lata*. I have also studied various reports and academic texts on the subject. After gathering the information I have interpreted the result in regard of my research question and reached a conclusion. A number of recommendations have also been given regarding future improvements of the legal situation, *de lege ferenda*.

As a starting point for the thesis I have studied international instruments in form of international labour standards and human rights conventions. For the research of children in domestic work I have studied reports from

various international bodies and committees, as well as from Non-governmental organizations (NGOs) involved with child labour. Regarding the situation of the children and the analysis of the legal framework, I have used academic articles and books written by different scholars. For the case study chapter of the thesis I have studied the relevant national laws and reports from human rights bodies and other organizations.

1.5 Definition of phrases

A *Child* is, according to the Convention on the Rights of the Child Article 1, a person below the age of 18 years.

Child labour is intolerable work that interferes with children's right to education and the opportunity to reach its full physical and psychological development⁸.

Worst forms of child labour consist of slavery or practices similar to slavery, forced or compulsory work, activities regarding prostitution and pornography, illicit activities and hazardous work⁹.

Hazardous child labour is work that is "likely to harm the health, safety or moral of children"¹⁰.

Domestic work is all kinds of households tasks performed as an economic activity in a household of a third person and that can be regarded as employment. Often domestic chores performed by family members are excluded from the definition¹¹.

Domestic child labour is domestic work performed by children under the legal minimum ages. Work done by children above the legal minimum ages but under the age of 18 that is exploitative or falls within the category of "worst forms of child labour" is also domestic child labour¹².

⁸ ILO, *Child Labour: Targeting the Intolerable*, Report VI (1) ILC 86th Session, Geneva ILO 1998, p. 8.

⁹ ILO C182 – Worst Forms of Child Labour Convention, 1999 (No. 182) *Convention concerning prohibition and immediate action for the elimination of the worst forms of child labour* (Entry into force: 19 Nov 2000), Article 3.

¹⁰ ILO C182 Article 3 (d).

¹¹ ILO-IPEC, 2004, p. VII.

¹² ILO-IPEC, 2004, p. VII.

2 The International Legal Framework for the Protection of Children in Domestic Labour

This chapter will describe the existing international legal framework concerning child labour and specifically domestic child labour. I will explore the scope and content of the legal framework in order to determine what protection there is for domestic child workers.

2.1 The International Bill of Human Rights

The United Nations (UN) plays an important role in the fight against child labour and has been a great inspiration source for other initiatives and normative development in the area. The UN has gone beyond dealing with child labour through implementation of labour standards and addresses the issue through fundamental rights of the individual. This approach has affected the normative framework encompassing child labour and transformed the issue into a human rights issue¹³. The International Bill of Human Rights is the umbrella term used for the main international human rights instruments by the UN¹⁴. The instruments are the Universal Declaration of Human Rights (UDHR)¹⁵, the International Covenant on Civil and Political Rights (ICCPR)¹⁶ and its two Optional Protocols¹⁷, and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸. The presentation will focus on the two Covenants since the

¹³ Fodella, Alessandro, *Freedom from Child Labour as a Human Rights: The role of the UN System in Implementing ILO Child Labour Standards*. In *Child Labour in a Globalized World, A legal Analysis of ILO Action*, Nesi, Giuseppe, Nogler, Luca and Pertile, Marco (ed.), p. 203-227. England: Ashgate, 2008, pp. 203 f.

¹⁴ www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx (accessed May 14 2013 09:35).

¹⁵ *Universal Declaration on Human Rights*, adopted December 10, 1948, General Assembly Resolution 217A (111), UN Doc. A/810 at 71 (1948).

¹⁶ *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966.

¹⁷ *Optional Protocol to the International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976 and *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976.

¹⁸ *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966.

UDHR, even though it is of interpretative value, is a non-binding Declaration¹⁹.

2.1.1 The International Covenant on Civil and Political Rights

All rights in the International Covenant on Civil and Political Rights are applicable to children but Article 24 explicitly refers to the rights of children²⁰. It states that all children shall have, without discrimination, “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”²¹. The provision does not list specific rights of children but it requires that the States take the necessary positive measures for the child’s protection²². The Human Rights Committee stated in its General Comment No. 17 that children need special measures of protection and that these measures could also be economic, social and cultural²³. Every possible measure shall accordingly be taken to prevent children “from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means”²⁴. The Covenant does not state at which age the child attains its majority, instead it leaves the matter for the States themselves to decide and as well to indicate at which age a child is legally entitled to work²⁵. The Human Rights Committee has however noted that the age may not be unreasonably low and that “in any case a State party cannot absolve itself from its obligation under the Covenant regarding persons under the age of 18, notwithstanding that they have reached the age of majority under domestic law”²⁶.

Article 8 of the Covenant states that no one shall be held in slavery, slavery and the slave trade shall be prohibited²⁷, and that no one shall be held in servitude²⁸ or be required to perform forced or compulsory labour²⁹. Nowak writes that *slavery* may be defined in the sense of the Slavery Convention of

¹⁹ See for example Boyle, Alan, *Soft Law in International Law-Making*. In *International Law* 3rd Edition, Evans, Malcolm D. (ed.), p. 122-140, Oxford: Oxford University Press, 2010, pp. 122 ff.

²⁰ Humbert, Franziska, *The Challenge of Child Labour in International Law*. Cambridge: Cambridge University Press, 2009, p. 61.

²¹ ICCPR Article 24 (1).

²² Humbert, Franziska, 2009, p. 61.

²³ UN Human Rights Committee, General Comment No. 17, Rights of the Child (Art 24), 1989-04-07, para 1.

²⁴ UN Human Rights Committee, General Comment No. 17, Rights of the Child (Art 24), 1989-04-07, para 3.

²⁵ UN Human Rights Committee, General Comment No. 17, Rights of the Child (Art 24), 1989-04-07, para 3

²⁶ UN Human Rights Committee, General Comment No. 17, Rights of the Child (Art 24), 1989-04-07, para 4.

²⁷ ICCPR Article 8 (1).

²⁸ ICCPR Article 8 (2).

²⁹ ICCPR Article 8 (3).

1926³⁰ where slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”³¹. In the preparatory work to the ICCPR it can be read that the definition refers to the deprivation of a person’s juridical personality, which includes the narrow traditional forms of slavery³², but not the contemporary forms of slavery such as child labour³³.

Whilst the preparatory work shows the intention to limit the definition of slavery, *servitude* on the contrary is applicable to all forms of dominance and degradation of human beings by human beings³⁴. Nowak writes that it seems reasonable to include servitude in “practices similar to slavery”³⁵ which is defined in the Supplementary Convention of 1956³⁶. Besides serfdom³⁷ and debt bondage³⁸, Article 1 of the Supplementary Convention specifically mentions, as practices similar to slavery, when a person under the age of 18 years “is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”³⁹. Nowak further writes that included in the definition of servitude should also be trafficking of women and children, and child labour or prostitution. In common for the victims of these slavery like practices, besides being economically exploited, is that they may be completely dependent on other individuals⁴⁰.

When interpreting the phrase *forced or compulsory labour* the definition in ILO’s Forced Labour Convention⁴¹ can be used⁴², which includes “all work or services which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”⁴³.

³⁰ Nowak, Manfred, *UN Covenant on Civil and Political Rights, CCPR Commentary*, 2nd revised edition, Kehl: N. P. Engel, 2005, p. 199.

³¹ *Slavery Convention*, Signed at Geneva on 25 September 1926, Article 1 (1).

³² Bossuyt, M. J., *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights*, Dordrecht: Martinus Nijhoff Publishers, 1987, p. 167.

³³ Humbert, Franziska, 2009, p. 54.

³⁴ Bossuyt, M. J., 1987, p. 167.

³⁵ Nowak, Manfred, 2005, p. 200.

³⁶ *Supplementary Convention on the abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* of 7 September 1956.

³⁷ Serfdom is defined in Article 1 (b) of the Supplementary Convention as “the condition or status of a tenant who by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status”.

³⁸ Debt bondage is defined in Article 1 (b) of the Supplementary Convention as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.

³⁹ Supplementary Convention 1956 Article 1 (d).

⁴⁰ Nowak, Manfred, 2005, p. 200.

⁴¹ ILO C29 – Forced Labour Convention, 1930 (No. 29) *Convention concerning forced or compulsory labour* (Entry into force: 01 May 1932).

⁴² Nowak, Manfred, 2005, p. 201.

⁴³ ILO C29 Article 2.

The ILO has further clarified the meaning stating that a penalty can besides penal sanctions be a loss of rights and privileges. The menace can take different forms, for example physical violence or restraint, or different kinds of threats, or it can take subtler forms of for example psychological nature⁴⁴. Regarding child labour, it is found that slavery like practices consists of the elements of forced labour and thus child labour can be said to fall also within the meaning of forced labour⁴⁵.

2.1.2 The International Covenant on Economic, Social and Cultural Rights

Article 10 (3) of the Covenant on Economic, Social and Cultural Rights states that “[c]hildren and young persons should be protected from economic and social exploitation”. The provision continues to state that children’s “employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law”⁴⁶; this may be seen as the definition of economic exploitation within the article according to Humbert⁴⁷.

The provision differentiates between exploitative child labour and tolerable child work⁴⁸. Since the definition of exploitative child labour is rather general it is up to the member States to further define the phrase⁴⁹. The Covenant further states that a minimum age below which the paid employment of child labour should be prohibited by law should be set, but it does not give any further guidelines for this age⁵⁰. Moreover, the Covenant refers only to paid employment which leaves out unpaid employment and work from the scope of the Covenant. The Covenant establishes a general prohibition of exploitation and of harmful work that complements and is in some ways broader than the ILO standards⁵¹, see further below regarding the possibilities of exceptions in ILO Convention 138.

2.2 The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), which is almost universally ratified⁵², contains a wide range of human rights, both

⁴⁴ ILO, *A Global Alliance against Forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005*, ILO Geneva 2005, p. 5.

⁴⁵ Humbert, Franziska, 2009, p. 59.

⁴⁶ ICESCR Article 10 (3).

⁴⁷ Humbert, Franziska, 2009, p. 63.

⁴⁸ Humbert, Franziska, 2009, p. 63.

⁴⁹ Humbert, Franziska, 2009, p. 66.

⁵⁰ ICESCR Article 10 (3).

⁵¹ Fodella, Alessandro, 2008, p. 207.

⁵² With the exception of USA and Somali. See list of ratifications:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed May 14 2013 09:36).

participatory and protective⁵³, that all children are entitled to. According to Article 1 a child means every person under the age of 18, if majority is not attained earlier under the law applicable to the child⁵⁴.

When a child is harmed by child labour there are often more than one fundamental right violated, most commonly are the rights to family life, education, health and leisure violated⁵⁵. The main provision regarding work is however Article 32 that states that:

“States Parties recognize 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”⁵⁶.

The States shall take legislative, administrative, social and educational measures to ensure the implementation of the provision. They shall especially provide a minimum age for admission to employment and regulate hours and conditions of employment. When doing this they shall regard the relevant provisions of other international instruments⁵⁷, especially the ILO instruments⁵⁸. The Convention does not explicitly set a standard for the minimum age but obliges the States to provide one⁵⁹. Moreover, it does not prohibit child work under a certain age per se since it refers to “a minimum age [...] for admission to employment”⁶⁰, and not work⁶¹. The Committee on the Rights of the Child in its general guidelines for periodic reports regarding Article 32, states that States shall report on action taken regarding work by children in the formal economy as well as work in the informal economy, including domestic servants⁶².

Van Bueren writes that the aim of the provision “is to prevent children in specific circumstances from working, and to protect them where they are eligible for work”⁶³. The Convention does not focus on the prohibition of work, rather on situations that are harmful. The use of the word “and” in Article 32 (1) corroborates that economic exploitation and work are not the

⁵³ Mansoor, Farkhanda Zia, “Exploitation of Child Domestic Labourers: The limits of the current law”, *International Journal of Discrimination and the Law*, 2006, Vol. 8, p. 175.

⁵⁴ CRC Article 1.

⁵⁵ Van Bueren, Geraldine, *The International Law on the Rights of the Child*, The Hague: Martinus Nijhoff Publishers, 1998, p. 262.

⁵⁶ CRC Article 32 (1).

⁵⁷ CRC Article 32 (2).

⁵⁸ UNICEF, *Implementation Handbook for the Convention of the Rights of the Child*, Fully revised edition, prepared for the UNICEF by Rachel Hodgkin and Peter Newell, UNICEF, 2002, p. 475.

⁵⁹ CRC Article 32 (2).

⁶⁰ CRC Article 32 (2).

⁶¹ Fodella, Alessandro, 2008, p. 210.

⁶² CRC/C/58, 20th November 1996, Report adopted by the Committee at its 343rd meeting, on 11th November 1996, Committee on the Rights of the Child, Report of the 13th Session, para 152.

⁶³ Van Bueren, Geraldine, 1998, p. 263.

same⁶⁴. There is however no legal definition of the phrase *exploitation* in the Convention. The Committee on the Rights of the Child has interpreted the two elements in the phrase, economic and exploitation, as follows:

“Economic implies the idea of a certain gain or profit through the production, distribution and consumption of goods and services. This material interest has an impact on the economy of a certain unit, be it the State, the community or the family. For its part, exploitation means taking unjust advantage of another for one’s own advantage or benefit. It covers situations of manipulation, misuse, abuse, victimization, oppression or ill-treatment. If we take the Convention as the framework for our approach, we will recognize the existence of a material interest in activities such as child labour, child pornography or the use of children for criminal activities, as in the case of drug trafficking. On the other hand, we are confronted with a situation of exploitation essentially when the human dignity of the child or the harmonious development of the child’s personality is not respected – situations such as the sale of children, child bondage or child prostitution”⁶⁵.

Van Buren writes that economic exploitation is labouring when it threatens the physical, mental, emotional or social development of the child. Further she mentions work for which the financial remunerations are less than which adults would receive and work and employment that is performed at a too young age, which affect the child’s well-being and education⁶⁶. The United Nations International Children’s Emergency Fund (UNICEF) has also identified the main elements of exploitation and includes in their list:

“full-time work at too early an age; too many hours spent working; work that exerts undue physical, social or psychological stress; work and life on the streets in bad conditions; inadequate pay; too much responsibility; work that hampers access to education, work that undermines children’s dignity and self-esteem, such as slavery or bonded labour and sexual exploitation; work that is determinable to full social psychological development”⁶⁷.

It should be mentioned that the CRC also includes rights regarding the protection from sexual exploitation and sexual abuse⁶⁸, abduction, sale and trafficking of children for any purpose or in any form⁶⁹ and “all other forms of exploitation prejudicial to any aspects of the child’s welfare”⁷⁰. Moreover, it states that the *best interest of the child* should be a primary concern in all actions concerning children⁷¹.

⁶⁴ Van Bueren, Geraldine, 1998, p. 264.

⁶⁵ CRC/C/20, 25th October 1993, Report adopted by the Committee at its 104th meeting, on 8 October 1993, Committee on the Rights of the Child, Report of the 4th Session, p. 51.

⁶⁶ Van Bueren, Geraldine, 1998, p. 264.

⁶⁷ Bellamy, Carol (red.), *State of the World’s Children 1997*, Oxford Univ. Press for UNICEF, New York, 1996, p. 24.

⁶⁸ CRC Article 34.

⁶⁹ CRC Article 35.

⁷⁰ CRC Article 36.

⁷¹ CRC Article 3 (1).

2.3 The International Labour Organization

The ILO has worked for the abolition of child labour through implementation of labour standards since its creation in 1919. The ILO Constitution refers to the protection of children as one of its aims⁷² and it can further be noted that in the first International Labour Conference held by the Organization in 1919, one of the Conventions adopted concerned minimum ages⁷³.

The ILO perceives not all work done by persons under the age of 18 as child labour. The Organization makes the definition between legitimate work done by children and work that is child labour and thus must be abolished. Work that is appropriate for the child's age and maturity can be beneficial for the child; it gets the opportunity to learn skills and about responsibility, as well as the opportunity to contribute to its family's income and well-being. Activities such as helping out with household or childcare chores or other light work that do not interfere with the child's education are thus not labelled as child labour⁷⁴. The ILO states that "[t]o claim otherwise only trivializes the genuine deprivation of childhood faced by millions of children involved in the child labour that must be effectively abolished"⁷⁵. The ILO divides child labour that must be abolished into the following categories:

- (1) "Labour that is 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 thus likely to impede the child's education and full development.
- (2) Labour that jeopardizes 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.
- (3) 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"⁷⁶.

Convention 138, the Minimum Age Convention from 1973 (ILO C138)⁷⁷ and Convention 182, the Worst Forms of Child Labour Convention from 1999 (ILO C182)⁷⁸ are the main standards regarding child labour. Neither of

⁷² See the preamble of the ILO Constitution from 1919.

⁷³ See ILO C005 – Minimum Age (Industry) Convention, 1919 (No. 5).

⁷⁴ ILO, *A future without child labour*, Global Report under the follow-up on the ILO Declaration on Fundamental Principles and Rights at Work, ILC 90th Session 2002, ILO Geneva 2002, p. 9.

⁷⁵ ILO, 2002, p. 9.

⁷⁶ ILO, 2002, p. 9.

⁷⁷ ILO C138 – Minimum Age Convention, 1973 (No. 138), *Convention concerning minimum age for admission to employment* (Entry into force: 19 Jun 1976).

⁷⁸ ILO C182 – Worst Forms of Child Labour Convention, 1999 (No. 182), *Convention concerning prohibition and immediate action for the elimination of the worst forms of child labour* (Entry into force: 19 Nov 2000).

them specifically mentions domestic child labour but instead set general standards to be followed. Moreover, as recent as in 2011 the ILO adopted a standard specifically regarding domestic work, Convention 189, the Domestic Workers Convention (ILO C189)⁷⁹.

2.3.1 ILO Convention 138 – Minimum Age Convention

The Minimum Age Convention was created with the purpose of establishing a general Convention on the subject of minimum ages and in that replace and update earlier Conventions regarding minimum ages⁸⁰. The Convention, which as of May 14 2013 has been ratified by 165 States⁸¹, establishes at what age children may legally be employed and work. Article 1 states that the parties shall pursue a national policy for the effective abolition of child labour and that they progressively shall raise the minimum age for admission to employment or work⁸². Domestic work is thus theoretically covered by the general scope of the instrument.

The basic minimum age should not be below the age for finishing compulsory schooling, or at least not less than 15 years⁸³. Developing countries may however initially use 14 years as the minimum age⁸⁴. For employment and work that by its nature or circumstance is likely to jeopardise the health, safety or morals of children, the minimum age is set at 18 years for both developed and developing countries⁸⁵. The Convention does not list which employment or work this may be, instead the member States are required to determine themselves which work and employment that shall be included in this provision. This shall be done through national laws or regulations or by the competent authority, but only after the concerned organisations of employers and workers have been consulted⁸⁶. It shall be noted that the Convention allows children between 13 and 15 years to do light work, which is defined as work that is not likely to harm the health or development of the child or interfere with the child's attendance at school⁸⁷. The Convention further states that all necessary measures, including penalties shall be taken to ensure the effective enforcement of the provisions in the Convention⁸⁸.

There are however exceptions from the general provisions in the Convention. Art 5 allows developing countries to initially limit the scope of

⁷⁹ ILO C189 – Domestic Workers Convention, 2011 (No. 189), *Convention concerning decent work for domestic workers* (Entry into force 05 Sep 2013).

⁸⁰ See the Preamble of ILO C138.

⁸¹ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283 (accessed May 14 2013 09:37).

⁸² ILO C138 Article 1.

⁸³ ILO C138 Article 2 (3).

⁸⁴ ILO C138 Article 2 (4).

⁸⁵ ILO C138 Article 3 (1).

⁸⁶ ILO C138 Article 3 (2).

⁸⁷ ILO C138 Article 7 (1).

⁸⁸ ILO C138 Article 9.

the application by excluding limited sectors. The Convention provides a list of sectors that the provisions as a minimum must be applied to⁸⁹. Article 4 of the Convention further allows the exclusion of limited categories of work and employment from the application of the Convention if special and substantial problems of application arise in connection to these categories⁹⁰, employment and work that is deemed to be hazardous may however not be excluded from the application⁹¹. The members shall submit a list of the categories they decide to exclude in their first report of the implementation of the Convention⁹². During the creation of the Convention the drafters mentioned domestic service in private households as a possible category of exclusion, not because exploitation and abuse are exempted from this type of activities, but because of the practical difficulties of enforcing laws in this area⁹³.

The Convention and the CRC are complementary to each other, when comparing them the CRC does not include any of the exceptions mentioned here, it refers to “any work” and protects children from economic exploitation in any economic sector, and is thus in this aspect broader⁹⁴.

2.3.2 ILO Convention 182 – Worst Forms of Child Labour Convention

Child labour exists in many different forms but it has become a priority for the ILO to combat the worst forms of child labour. Convention 182 was adopted after Convention 138 had been critiqued for being too Western-centric - the values of the West are based on the idea that childhood should be separated from adulthood and that children have the right *not* to work. The values in the South are instead based on family unity and solidarity and their view of childhood differs, the children will reach maturity in their early adolescence and it is expected of them to help support the family⁹⁵. Convention 138 has also been critiqued for being ineffective, lacking flexibility and priorities for national policy, as well as being difficult to apply in developing countries. Through the CRC and Convention 182 a new approach against child labour was introduced, focusing on progressive implementation of provisions and prioritising the elimination of the worst

⁸⁹ ILO C138 Article 5.

⁹⁰ ILO C138 Article 4 (1).

⁹¹ ILO C138 Article 4 (3).

⁹² See ILO C138 Article 4 (2) and ILO Constitution Article 22.

⁹³ ILO, 1998, pp. 20 f.

⁹⁴ Van Bueren, Geraldine, 1998, p. 269.

⁹⁵ Borzaga, Matteo, *Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour*. In *Child Labour in a Globalized World, A legal Analysis of ILO Action*, Nesi, Giuseppe, Nogler, Luca and Pertile, Marco (ed.), 39-64. England: Ashgate, 2008, p. 61, 64, and Meyers, William E., “The Right Rights? Child Labour in a Globalizing World”, *The ANNALS of the American Academy of Political and Social Science*, 2001 575:38, p. 38-55, p. 40.

forms of child labour, offering standards that could be both legally and socially recognised by all the Organizations' members⁹⁶.

The Convention, which as of May 14 2013 has been ratified by 177 countries⁹⁷, applies to all persons under 18 years⁹⁸ and calls for “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”⁹⁹. The worst forms of child labour are defined in Article 3 as:

- “(a) all forms of slavery or practises similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”¹⁰⁰.

The first three categories are called unconditional since they deeply violate the basic human rights of children and are at all times absolutely prohibited for children under the age of 18¹⁰¹. For the fourth and last category the members are required to determine the types of work that should be included and banned through their national laws or regulations, after consultation with the concerned organizations of employers and workers and after taking into account relevant international standards¹⁰². The ILO gives guidance on what to ban particularly through adjoining Recommendation No. 190¹⁰³. Mentioned in the Recommendation, and relevant for the issue of domestic child labour, are amongst other work which exposes children to physical, psychological or sexual abuse, work in unhealthy environment which may expose the child to hazardous substances and work with particularly difficult conditions such as long hours of work, work during the night or work where the child is unreasonably confined to the premises of the employer¹⁰⁴. In reaching the goal of the Convention the States shall implement programs of action¹⁰⁵, take effective and time-bound

⁹⁶ Borzaga, Matteo, 2008, pp. 61, 64.

⁹⁷ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 (accessed May 14 2013 09:38).

⁹⁸ ILO C182 Article 2.

⁹⁹ ILO C182 Article 1.

¹⁰⁰ ILO C182 Article 3.

¹⁰¹ ILO, 2002, p. 31.

¹⁰² ILO C182 Article 4 (1).

¹⁰³ ILO R190 – Worst Forms of Child Labour Recommendation, 1999 (No.190)

Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of labour, Adoption Geneva, 87^h ILC session (17 Jun 1999).

¹⁰⁴ ILO R190 Paragraph 3.

¹⁰⁵ ILO C182 Article 6.

measures¹⁰⁶, establish monitoring mechanisms¹⁰⁷, enhance international cooperation¹⁰⁸ and take all necessary measures to ensure the effective implementation and enforcement of the Convention, including the application of penal or other sanctions¹⁰⁹.

2.3.3 ILO Convention 189 – Domestic Workers Convention

Convention 189 on Decent Work for Domestic Workers and the accompanying Recommendation No. 201¹¹⁰ were adopted in 2011, as the first international legal instruments to focus exclusively on domestic workers¹¹¹. In the preamble to this new Convention, the ILO Conference has considered the fact that “domestic workers continue to be undervalued and invisible” and that domestic work is mainly carried out by women and girls who are particularly vulnerable to human rights abuses. Domestic workers are a substantial part of the workforce in developing countries where access to formal employment is limited and the group is thus among the most marginalized. It is further recognized in the preamble that domestic work is carried out under special circumstances resulting in a need for a specific standard on the issue. The aim of the Convention is to give domestic workers the same protection that is available to other workers¹¹². Other ILO Conventions cover domestic workers but there are also Conventions allowing domestic work to be excluded from the scope of protection or focusing on other areas, this Convention seeks to close this gap¹¹³. At the present, May 14 2013, six countries have ratified the Convention that will come into force in September 2013¹¹⁴.

The Convention defines domestic work as “work performed in or for a household or households”¹¹⁵ and domestic worker as “any person engaged in domestic work within an employment relationship”¹¹⁶. Regarding child labour, it refers to the earlier ILO Conventions on child labour and states that:

“Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention,

¹⁰⁶ ILO C182 Article 7 (2).

¹⁰⁷ ILO C182 Article 5.

¹⁰⁸ ILO C182 Article 8.

¹⁰⁹ ILO C182 Article 7 (1).

¹¹⁰ ILO R201 – Domestic Workers Recommendation, 2011 (No. 201), *Recommendation concerning Decent Work for Domestic Workers*, Adoption Geneva, 100th ILC session (16 Jun 2011).

¹¹¹ ILO, *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, ILO Geneva 2013, p.1.

¹¹² See the Preamble to ILO C189.

¹¹³ ILO, 2013, p. 2.

¹¹⁴ ILO C189 Article 21 (2). See also list of ratification:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (accessed May 14 2013, 09:38).

¹¹⁵ ILO C189 Article 1 (a).

¹¹⁶ ILO C189 Article 1 (b).

1999 (No. 182), and not lower than that established by national laws and regulations for workers generally”¹¹⁷.

Besides protecting young children from domestic work, the members shall ensure for workers above the minimum age but under the age of 18, that their work does not deprive them of compulsory schooling or interfere with further education or vocational training¹¹⁸. The accompanying Recommendation urges for identification of the types of domestic work that may be hazardous for children and to prohibit and eliminate such child labour¹¹⁹. The Convention states in general that domestic workers are entitled to labour rights and work conditions that workers generally are entitled to; these provisions cover of course adolescent workers as well. Included are provisions regarding working hours, daily and weekly rest, paid annual leave, minimum wage coverage and social security protection¹²⁰. Domestic workers shall further be able to enjoy effective protection against abuse, harassment and violence¹²¹. According to the Recommendation, special attention should be given to the needs of workers between 15 and 18 regarding the regulation of working and living conditions. Protection should be given through strict regulation of hours of work as well as time for rest, leisure, education and family contact. Night work should be prohibited as well as work that is too physically or physiologically burdensome for the child. Focus should also include monitoring of their working and living conditions¹²².

The Convention also provides protection for domestic workers that take their special situation into consideration. Accordingly the States must take measures that ensure that the workers obtain information regarding their terms and conditions of employment in a proper manner, if possible this shall be done through a written contract¹²³. A worker shall be able to reach an agreement with its employer regarding whether the employee wants to reside with the employer or not. Moreover, if the worker lives in the household of the employer, he or she is not obliged to stay with the employer during periods of rest or leave¹²⁴.

Regarding implementation of the provisions the Convention states that the members must establish “complaint mechanisms and means of ensuring compliance with national laws and regulations”¹²⁵. They must further implement measures for labour inspection, enforcement and penalties that are adapted to the specific features of domestic work. When adopting these measures it must be specified when access to household premises is allowed in order for the employers’ privacy to be respected, the Convention is thus

¹¹⁷ ILO C189 Article 4 (1).

¹¹⁸ ILO C189 Article 4 (2).

¹¹⁹ ILO R201 Paragraph 5 (1).

¹²⁰ See ILO C189 Articles 6, 10, 11 and 14.

¹²¹ ILO C189 Article 5.

¹²² ILO R201 Paragraph 5 (2).

¹²³ ILO C189 Article 7.

¹²⁴ ILO C189 Article 9.

¹²⁵ ILO C189 Article 17 (1).

acknowledging the different interest involved in the situation¹²⁶. The States must also provide effective access to dispute resolution mechanisms for the workers or their representative¹²⁷.

2.3.4 Declaration on Fundamental Principles and Rights at Work

During the World Summit on Social Development in Copenhagen 1995 the role of social rights was reinforced and States were called on to ratify and apply the relevant ILO standards including those on the subjects of freedom of association and collective bargaining, the elimination of forced and child labour, and the principle of non-discrimination¹²⁸. After this course of events the ILO began identifying itself more and more as a rights-based organization, it identified the core or fundamental Conventions, launched a ratifying campaign for them and then created the Declaration on Fundamental Principles and Rights at Work¹²⁹ as a complement to its labour standards¹³⁰.

The Declaration recognises four fundamental rights that all members to the ILO shall respect, promote and realize, irrespective of they have ratified the relevant Conventions. One of these principles is the effective abolition of child labour¹³¹. The Declaration is unique since it focuses on promotion rather than supervision. Connected to the Declaration are two follow-up mechanisms, the first consist of annual reports from States that have not ratified all relevant Conventions, with focus on the underlying principles. The second mechanism consist of Global Reports published by the ILO each year with the purpose of providing a dynamic global picture of the fundamental principles and propose an action plan for the ILO to combat the problems and for later evaluation¹³².

¹²⁶ See ILO C189 Article 17 (2) and (3).

¹²⁷ ILO C189 Article 16.

¹²⁸ Copenhagen Declaration on Social Development, 1995, Commitment 3 (i).

¹²⁹ In this Chapter referred to as the Declaration.

¹³⁰ Swepston, Lee, 2008, p. 67.

¹³¹ Article 2 (c) of the Declaration. The other three principles included in the Article are freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, and the elimination of discrimination in respect of employment and occupation.

¹³² Swepston, Lee, 2008, pp. 74 ff.

3 Children in Domestic Work

Children have traditionally been part of domestic work, which is one of the oldest forms of occupations in the world¹³³. Child domestic labour is not only one of the most traditional forms of child labour but also one of the most common. Studies show that employment in domestic service is the most common form of work for girls all over the world under the age of 16¹³⁴. From originally being part of the child's upbringing in its own home or in a house of a relative, children's involvement in domestic work has undergone a dramatic change. Today the work is embedded in a more commercialized arrangement, and therefore potentially more exploitative¹³⁵.

3.1 Who is the Domestic Child Worker?

There are as mentioned numerous children involved in domestic work, but since it not always is recognised as a form of economic activity it becomes to a large extent work that is socially, economically and statistically invisible¹³⁶. In spite of the informal and undeclared working relationship that leads to limited material for statistics, the ILO has estimated that there are 15.5 million children in domestic work and that approximately 8.1 million of these are involved in hazardous work¹³⁷. Most child domestic workers are between 12 and 17 years, but workers as young as 5 or 6 can be found. Whilst the majority of these children are girls, boys are also engaged in domestic work¹³⁸.

It is important to note that the employment of child domestics varies widely from country to country¹³⁹ and that no situation of a child domestic worker is the other like. The work may be done in homes of relatives or family friends, of caring employers, or of employers wanting only cheap labour¹⁴⁰. The most common scenario is that the child lives together with the employer, but in some cases the child still lives at home with its own family¹⁴¹.

¹³³ UNICEF, "Child domestic Work", *Innocenti Digest*, 5, UNICEF, Italy 1999, p. 2.

¹³⁴ ILO-IPEC, 2004, p. 1.

¹³⁵ UNICEF, 1999, p. 2 and Black, Maggie, *Child domestic workers; slaves, foster children or under-age employees?*. In *Revisiting Children's Rights, 10 years of the UN Convention on the Rights of the Child*, Fottrell, Deirdre (ed.), p. 157-168, The Hague: Kluwer Law International, 2000, p. 163.

¹³⁶ ILO-IPEC, *Children in hazardous work: What we know, What we need to do*, ILO-IPEC, ILO Geneva 2011, p. 28.

¹³⁷ ILO-IPEC, 2011, p. 28. These figures however do not include workers in slavery like conditions or in bonded labour.

¹³⁸ ILO, 2002, p. 29.

¹³⁹ Black, Maggie, *Child domestic workers: a handbook for research and action*, London, Anti-Slavery International, 1997, p. 19.

¹⁴⁰ Bourdillon, Michael, 2009, 1-18, pp. 2 f.

¹⁴¹ ILO-IPEC, 2004, p. 6.

The terms on which children are employed also varies greatly. Black writes that these terms are important for indicating the risk of children being exploited, or even worse ending up in a situation that amounts to servitude, bondage or slavery. Written contracts between domestic child workers and employers are extremely rare, which makes the child dependant on the employer's goodwill, it shall be noted that even when contracts about remuneration exist the wages may be paid to the parents or withheld from the child altogether on a number of different pretexts¹⁴².

Children may thus work for a third person with or without a contract, and it may live in the household entirely or only reside in it during the workday. But children may also work as domestics because they have ended up in a household for fostering, but where the child in reality often becomes an unpaid servant. Other terms used for this practice are "false adoption"¹⁴³ or, as in Haiti, "restavèc", which means that children are "staying with" a wealthier family but in reality serve as domestic slaves¹⁴⁴. Some children further end up in domestic work through trafficking and slavery like practices, or work as domestics in order to repay a debt of the family, a practice known as debt bondage¹⁴⁵.

The working conditions and the chores the children are supposed to perform are also greatly varying. The work consists of, but not only, "doing domestic chores, caring for children, tending gardens, running errands"¹⁴⁶. There are however conditions that are common for the work. One example is the 24-hour nature of the work. Children who live in the house of the employer are often on-call day and night since there is no division between the place of work and the place of rest¹⁴⁷. Further are the children spending most of their time inside the employer's household with little time off to see friends and family that might live far away¹⁴⁸. Many of the chores the children perform are hazardous. Verbal, physical and sexual violence and abuse is also common. The work has a great impact on the children's physical health and the discrimination and isolation experienced by the children negatively affect their psychosocial health and development. Another consequence for working children is that their education often gets neglected, which greatly affects the children's future opportunities¹⁴⁹.

Blagbrough writes that it is important to recognise the relationships and perceptions that push and pull children into the work in order to understand their vulnerability to exploitation and abuse by employers. There are many

¹⁴² Black, Maggie, 1997, p. 8.

¹⁴³ Black, Maggie, 1997, p. 9.

¹⁴⁴ Janak, Timothy C., "Haiti's "Restavec" slave children: Difficult choices, difficult lives...yet...Lespwa fe Viv", *The International Journal of Children's Rights* 8, 2000, p. 321-331, p. 321.

¹⁴⁵ ILO-IPEC, 2004, p. 13.

¹⁴⁶ Blagbrough, Jonathan, "Child Domestic Workers: Protected Persons or Modern-Day Slaves?", *Global Dialogue*, 2012, Vol. 14 Issue 2, p. 82-92, p. 82.

¹⁴⁷ Black, Maggie, 1997, p. 10.

¹⁴⁸ UNICEF, 1999, p. 2.

¹⁴⁹ Black, Maggie, 1997, pp. 11 ff.

different factors that bring children into domestic work, when asked themselves children have mentioned the following reasons: poverty, to repay loans, loss of family care or because problems within the family¹⁵⁰. Other factors that push children into domestic work are the status of girls, in some societies are girls seen as inferior to male family members with certain responsibilities towards the family, this role is maintained by her role in domestic work; the perception that domestic work is a women's work, in some societies is domestic work the only work available for girls since it is perceived to be light and appropriate; ignorance of the inherent risks in the work by the child's caretaker, since many parents perceive the work as protective they do not question the intentions on the employer; lack of good equality education; hierarchies in society, in some societies it is a tradition that people low in the hierarchy should work for those above, ethnicity or geographic origin may decide one's place in the hierarchy¹⁵¹.

3.2 Protection or exploitation?

The fight against child domestic labour is obstructed by the practice being socially accepted in many cultures. Since the work is performed in a home it is perceived to be safe and protective for girls. It is natural for girls to do domestic chores, and therefore is domestic work in another person's home a natural next step and part of the girl's training for adulthood and marriage¹⁵². Since the girl will learn skills she will need for her marriage domestic service is perceived, as opposed to other types of child labour, as advantageous for the girl and as a good substitute for education¹⁵³. Blagbrough writes that sending a child away for fostering is perceived as benign by some societies and a "cultural blind-spot" of the child's reality thus emerges¹⁵⁴. Since the work is perceived to be safe by parents the child can for example become an easy target for trafficking¹⁵⁵. The "sending" family believes the child will be protected and get better opportunities in life, and that the work it performs is a reasonable counter performance. Respectively, the "receiver" family often perceive itself as a benefactor¹⁵⁶. Blagbrough concludes by stating that "[t]he practice of informal fostering evokes notions of benign kinship relations and community support for

¹⁵⁰ Blagbrough, Jonathan, 2012, p. 83 and Blagbrough, Jonathan, '*They Respect Their Animals More': Voices of Child Domestic Workers*, London Anti-Slavery International/WISE, 2008, pp. 2 f.

¹⁵¹ ILO-IPEC, 2004, pp. 19 ff.

¹⁵² ILO-IPEC, 2011, p. 28.

¹⁵³ ILO-IPEC, 2004, p. 29.

¹⁵⁴ Blagbrough, Jonathan, 2012, p. 87.

¹⁵⁵ Flores-Oebanda, Cecilia, *Addressing vulnerability and exploitation of child domestic workers: An open challenge to end an open shame*, Expert Group Meeting organised by the UN Department of Economic and Social Affairs, Division for advancement of Women, in collaboration with UNICEF and the UNICEF Innocenti research Centre, Florence, 25-28 September 2006, p. 6.

¹⁵⁶ Blagbrough, Jonathan, 2012, p. 87.

raising children, but in reality conceals the exploitation and abuse of children on a grand scale”¹⁵⁷.

Black argues in a similar way that “when a child is placed in a household not closely related to his or her family for the purpose of giving that household the benefit of her or his domestic labour, this is no longer ‘upbringing’ but ‘employment’”¹⁵⁸. Since the line between employer and benefactor may be unclear this may lead to ambiguity regarding the relationship of the child and the household. The work may be perceived partly positive by society but the real situation of the child is not acknowledged due to the work’s specific “hidden” nature, which stems from the work being performed in the confinement of someone else’s home. The children in domestic work are further invisible due to the informal nature of the work, the ambiguity of the child’s position in the household, and the child’s status as a worker or employee not being properly recognised. It is hard to get a grasp of domestic workers since their work is not registered and they are employed in separate households, as a contrast to a group of children being employed at a factory or a plantation. Moreover, due to their placement in private homes, they are inaccessible to the public and labour officials. All these factors lead to a great risk of the work becoming exploitative or abusive¹⁵⁹. Black notes that while slavery, servitude and gross abuses exist, it cannot be said that these conditions are inevitable for all children in domestic work¹⁶⁰.

ILO and the International Programme on the Elimination of Child Labour (IPEC) describe domestic child labour as:

“situations where children are engaged to perform domestic tasks in the home of a third party or employer that are exploitative. Where such exploitation is extreme and includes trafficking, slavery or practises similar to slavery, or work which by its nature or circumstances in which it is carried out is hazardous and likely to harm the health, safety or morals of children, then this constitutes a worst form of domestic child labour”¹⁶¹.

According to ILO and IPEC the situation of children in domestic work can be found to be domestic child labour for a number of different reasons, it can depend on their age or the conditions and the nature of the work they do. Studies show that many of the children in domestics start working when they are under the minimum age, they do not get an opportunity to attend school, they are denied many of their rights as children and that they are in exploitative situations. Some of the children also perform work that falls within the category of the worst forms of child labour, either through the unconditional types of work or because they perform hazardous types of

¹⁵⁷ Blagbrough, Jonathan, 2012, p. 87.

¹⁵⁸ Black, Maggie, *A handbook on advocacy. Child domestic workers: Finding a voice*, London, Anti-Slavery International, 2002, p. 1.

¹⁵⁹ Black, Maggie, 2002, pp. 1 ff and Black, Maggie, 2000, p. 161.

¹⁶⁰ Black, Maggie, 2000, p. 163.

¹⁶¹ ILO-IPEC, 2004, p. 5.

work, and it is evident that children in domestic work face many of the hazards mentioned by the ILO¹⁶².

According to the ILO the most common hazards for children in domestic work are long working hours, heavy carrying, exposure to hot stoves, fires and chemicals, using sharp knives, deprivation of education, isolation which might affect the child's development, and detachment from public investigation which increases the risk of sexual exploitation¹⁶³. There are of course children who are involved in legitimate domestic work with good conditions, or perform light work, but due the hidden nature of domestic work, labour standards are hard to enforce and the risk of the work becoming exploitative or abusive is high, and unfortunately only a small part of the children perform work that do not amount to child labour according to ILO and IPEC¹⁶⁴.

¹⁶² ILO-IPEC, 2004, pp. 8 ff.

¹⁶³ ILO-IPEC, 2011, p. 28.

¹⁶⁴ ILO-IPEC, 2004, pp. 8 ff.

4 The Role of Laws in the Fight against Child Labour

It is not the intention for this thesis chapter to portray a deeper discussion on the significance of laws in the issue of child labour, but before continuing in the next chapter with an analysis of the existing international legal framework regarding domestic child labour, mention that while laws play a fundamental role, they are only part of the measures that are being taken to fight the issue.

Pertile argues regarding the issue of child labour in general, that

“[i]t is quite clear that a prohibition on child labour will never be sufficient in itself to eliminate a problem rooted in economic and cultural factors and that the aim of legal measures cannot be to transform a child worker into a starving child. A blanket prohibition, when not combined with measures aimed at addressing the very roots of the problem and assisting children who leave child labour, is frequently useless”¹⁶⁵.

He means that in many circumstances it is more important with concrete measures such as raising the age for compulsory education, free education with good quality and free meals in school, than adopting a new legal instrument¹⁶⁶. Van Bueren writes that the intention of international law protecting children from economic exploitation was not to replace economic and social structural reforms, instead they were intended to complement and strengthen them. She means that laws on economic exploitation are valuable but that international law will only be useful if it provides a framework that regards economic, social and cultural factors that affect the child¹⁶⁷.

Even though the authors have some restrictions regarding the role of laws in the fight against child labour, they also see value in them. Pertile is of the opinion that

“carefully drafted legal provisions, when part of a wider plan of action, are an essential component of that wide array of measures that might contribute to the elimination of child labour. Legal regulation can perform different functions in the fight against child labour. Some legal measures solemnly declare priorities and objectives, others sanction unacceptable behaviours, and yet others channel resources into some typologies of endeavours”¹⁶⁸.

¹⁶⁵ Pertile, Marco, *Introduction: The Fight Against Child Labour in a Globalized World*. In *Child Labour in a Globalized World, A legal Analysis of ILO Action*, Nesi, Giuseppe, Nogler, Luca and Pertile, Marco (ed.), 1-14. England: Ashgate, 2008, p. 7.

¹⁶⁶ Pertile, Marco, 2008, p.7.

¹⁶⁷ Van Bueren, Geraldine, 1998, p. 263.

¹⁶⁸ Pertile, Marco, 2008, p.7.

UNICEF states that the ratification of international instruments and the creation of legislation is an important first step towards the creation of better lives for working children, but that sufficient changes will not be made if the commitment is not followed up with action¹⁶⁹. ILO and IPEC write that legal protection is an important part of framework action against child labour. They mean that legal provisions are helpful in disseminating and clarifying which practices amount to child labour and must be eliminated, they can further provide a basis for which measures that must be implemented¹⁷⁰. Even when laws exist they are only of value when effectively implemented and applied through penalties and effective monitoring institutions and mechanisms¹⁷¹, and together with training of law enforcement and labour officials and accessible complaints mechanisms¹⁷².

It is further important that the citizens are informed and aware of the laws in order for the laws to be of use to them, therefore public awareness campaigns are an important complement to legislation¹⁷³. Blagbrough stresses, as a complement to law, the importance of changing the attitude of the involved parties. One effective way is to give the children themselves a platform for advocacy and to aim for employers to cooperate instead of alienate them¹⁷⁴. To overcome the situation of acceptance that makes the children invisible, Black stresses that the change in attitude must come from within the society. Awareness rising must be created with the particular society as a base and it should be lead by local organisations and based on local research¹⁷⁵. Black promotes awareness rising and advocacy when the actions focus on the local community. She means that in societies where the practice is socially accepted, advocacy should be carefully implemented because “outrage may come across as simplistic and neo-colonial condemnation of the entire society”¹⁷⁶.

¹⁶⁹ UNICEF, 1997, p. 46.

¹⁷⁰ ILO-IPEC, 2004, p. 69.

¹⁷¹ ILO, 2012, p. 19.

¹⁷² Human Rights Watch, *Swept Under the Rug, Abuse against Domestic Workers Around the World*, New York, 2006, p. 4.

¹⁷³ ILO, 2002, p. 12 and Human Rights Watch, 2006, pp. 4 f.

¹⁷⁴ Blagbrough, Jonathan, “Child Domestic Labour: A Modern Form of Slavery”, *Children & Society*, May 2008, Vol. 22 Issue 3, p. 179-190, pp. 187 f.

¹⁷⁵ Black, Maggie, 2000, pp. 166 f.

¹⁷⁶ Black, Maggie, 2000, p. 166.

5 Analysis of the International Legal Framework on Domestic Child Labour

The views in legal academic writing are varying regarding whether the existing legal framework is sufficient and appropriate for the protection of child labourers, and for children in domestic labour specifically, and which approach should be used to best tackle the issue. The chapter mainly focuses on the CRC and the ILO standards concerning child labour, which are the main international instruments dealing with the issue of child labour and which are ratified by a large number of the world's States.

There are several views on which legal approaches are best used to tackle the problem of child labour, as shall be portrayed in this chapter. The concept of childhood is also varying and affects the way the authors perceive the different alternatives. There are some authors that argue for a dualistic view on childhood, childhood is thus perceived as something entirely different from adulthood¹⁷⁷, while others criticise this view, arguing that depending on age and situation the issue becomes more complex and does not fit into such narrow division¹⁷⁸. As mentioned above there have historically been two different perceptions of childhood, a Western or Northern view where childhood consist of development, protection and play and where work has no place, and a Southern view where children mature earlier, participate more in the adult world and have more responsibilities¹⁷⁹. Some authors argue that the Western approach does not fit all developing countries, meaning “[d]ivers social, economic and physical environments result in different childhoods”¹⁸⁰. But then there are authors who argue that childhood is a universal normative concept, it is not socially constructed and different cultures should not be taken into consideration¹⁸¹.

As mentioned there are also different approaches advocated for regarding how to combat child labour. Some argue that child labour must be abolished without compromise while others believe the imminent focus must be to protect children at work rather than removing them from work and possibly

¹⁷⁷ See Stegeman, I, 2004, “Child Labour in the Context of Globalisation”, in G. K. Lieten (ed.) *Working Children Around the World: Child Rights and Child Reality*, pp. 47.62. Amsterdam and New Delhi, IREWOC Foundation and Institute for Human Development. The author was referred to in: Bourdillon, Michael, “Children and Work: A review of current literature and debates”, *Development and Change*, Nov 2006, Vol. 37, Issue 6, p. 1201-1226, p. 1205.

¹⁷⁸ See O’Connell Davidson, J. (2005) *Children in the Global Sex Trade*. Cambridge: Polity Press. The author was referred to in: Bourdillon, Michael, 2006, p. 1204.

¹⁷⁹ See Borzaga, Matteo, 2008, p. 40.

¹⁸⁰ Bourdillon, Michael, 2006, p. 1205.

¹⁸¹ See Lieten, G. K., Karan, A. K., Satpathy, *Children, School and Work: Glimpses from India*. Amsterdam and New Delhi: IREWOC and Institute for Human Develop, 2005, p. 23. The author was referred to in: Bourdillon, Michael, 2006, p. 1205.

create another difficult situation for them¹⁸². Some believe the “rights approach” found in the CRC is good since it uses a holistic approach while others do not believe it can be applied on social issues and that it does not take the realities of children into account¹⁸³. These different arguments can be found also when speaking particularly of domestic child labour.

5.1 The Protection in the Instruments of the International Labour Organization

Cullen writes that the idea of adopting ILO Convention 138 was to solve the problem of child labour through laws establishing minimum ages for work and employment. The focus was not on human rights but instead on child welfare through labour regulation aiming at abolishing all child labour¹⁸⁴.

The appropriateness of Convention 138, for the protection of children from child labour in general, has been questioned in the literature. Van Bueren writes that even though Convention 138 in theory is applicable on all types of employment and work, in reality it focuses on waged employment, and thus leaves family work, domestic service and self-employment behind, which coincidentally are the types of work that often are unregulated and tend to be exploitative¹⁸⁵. The flexibility clauses in the Convention were introduced in an attempt to make the Convention surmountable for less-developed countries. Despite this effort a large part of the members thought the measures in the Convention to be unbalanced and to reflect the values and cultural traditions of the Western world instead of the realities in their own countries. The ratification process of the Convention was thus slow until the late 90s when the issue of child labour became a high priority on the world’s agenda¹⁸⁶. Borzaga writes that the flexibility clause in Article 4 has actually not been used much, one reason for this is that the members must list all their exceptions in their first report of implementation to the ILO¹⁸⁷, a procedure that creates rigidity and has had a discouraging effect on the number of ratifications¹⁸⁸. It should be mentioned however that after the adoption of the Declaration on Fundamental Principles and Rights at Work the number of ratifying States increased rapidly¹⁸⁹. Also the speedy ratification process of ILO Convention 182 created renewed interest in

¹⁸² Bellamy, Carol (red.), 1996, p. 47.

¹⁸³ See for example Weston, Burns H, Teerink, Mark B, *Rethinking Child labour: A Multidimensional Human Rights Problem*, In *Child Labour and Human Rights: Making Children Matter*, Weston, Burns H (Ed), 3-26. United Kingdom: Lynne Rienner Publishers, 2005, p. 6.

¹⁸⁴ Cullen, Holly, *Child Labour Standards: From Treaties to Labels*. In *Child Labour and Human Rights: making children matter*, Weston, Burns H (Ed), p. 87-116. United Kingdom: Lynne Rienner Publishers, 2005, pp. 88 f.

¹⁸⁵ Van Bueren, Geraldine, 1998, p. 266.

¹⁸⁶ Borzaga, Matteo, 2008, pp. 40 f.

¹⁸⁷ See Article 4 ILO C138 and Article 22 of the ILO Constitution.

¹⁸⁸ Borzaga, Matteo, 2008, p. 56.

¹⁸⁹ Borzaga, Matteo, 2008, p. 62.

Convention 138¹⁹⁰, and as of today May 14 2013 the number of member States is 165¹⁹¹.

Borzaga continues to argue that another reason for the initially low interest in the Convention is the fact that the Convention aims at abolishing all kinds of child work under a certain age, thus not distinguishing benign work. Such aim was not compatible with the perception of child labour in all countries. The compliance problem of the Convention is cultural and economic but also legal since many countries lack an adequate legal infrastructure to correctly implement the international provisions. Since many developing countries are tormented by widespread problems of child labour the problem must be tackled through a list of priorities. According to Borzaga these were factors that lead the ILO to include also in its main focus the urgent elimination of the worst forms of child labour¹⁹².

Regarding ILO Convention 182 Rishikesh writes that throughout the creation process discussions were “guided by a desire for consensus and by the objective of universal applicability”. She notes that all work that preceded the convention, tripartite discussions, examinations and consultations, is a “guarantee” of the Convention’s relevance¹⁹³. The global consensus is also portrayed by the fact that the Convention was the first ILO standard to be adopted by unanimous vote. Myers notes that the focus of the Convention is forms of work that cannot credibly be defend by any country in the world. The aim to prohibit and eliminate these forms can be found in practically all societies’ values and believes, thus portraying a more global consensus on child labour than previous instruments¹⁹⁴.

The objectives and obligations of Convention 182 are general, but also balanced in a way that allows the implementation to be effectively monitored. This flexibility also results in States being able to implement the provisions in a way suitable to their own perceptions of childhood and child raising¹⁹⁵. According to Rishikesh the Convention with its accompanying technical cooperation programme has had a greatly notable impact on child labour. The members in their struggle have taken legislative measures as well as other concrete measures of action portrayed in the Convention and positive results after the adoption of the Convention clearly can be seen¹⁹⁶.

¹⁹⁰ Pertile, Marco, 2008, p. 3.

¹⁹¹ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283 (accessed May 14 2013 09:39).

¹⁹² Borzaga, Matteo, 2008, pp. 57 f.

¹⁹³ Rishikesh, Deepa, *The Worst Forms of Child Labour: A Guide to ILO Convention 182 an Recommendation 190*, In *Child Labour in a Globalized World, A legal Analysis of ILO Action*, Nesi, Giuseppe, Nogler, Luca and Pertile, Marco (ed.), 84-99. England: Ashgate, 2008, p. 84.

¹⁹⁴ Meyers, William E., 2001, pp. 51 f.

¹⁹⁵ Meyers, William E., 2001, pp. 51 f.

¹⁹⁶ Rishikesh, Deepa, 2008, p. 98.

5.2 The Protection in the Convention on the Rights of the Child

Fodella writes that the CRC is one of the most important international instruments concerning child labour. It contains both general principles on child work, Article 32, and articles focusing on the worst forms of child labour, Articles 33-36 and 38¹⁹⁷. She stresses the impact of the UN system, and the CRC in particular, on implementation measures and monitoring and compliance mechanisms concerning child labour, and the importance of the systems of the UN and the ILO complementing each other in a way that extends the protection of children in child labour¹⁹⁸. Moreover, the CRC not only addresses economic exploitation but also other human rights that are affected by child labour and that all children are entitled to¹⁹⁹. By including child labour in a UN human rights instrument the issue has developed into a human rights issue, “freedom from child labour”²⁰⁰.

The CRC has been critiqued for having the same weaknesses as the earlier UN instruments, namely that it is general and does not elaborate on what minimum age should be set, and that the minimum age not refers to work in general but to admission to *employment* only²⁰¹. Borzaga on the other hand notes that by leaving the determination of minimum ages to the States, the Convention concentrates on eliminating particularly intolerable forms of child labour and takes a step away from the original Western idea that children have a right *not* to work²⁰².

Myers notes regarding the first part of Article 32, which prohibits economic exploitation and harmful work and thus permits benign work, that the Convention consequently is more suitable for poor States than a blanket prohibition since children in these countries often need to contribute to the families’ livelihood by working. He writes that the CRC is heavily influenced by Western values and ideas regarding childhood but compared to ILO Convention 138 it contains more room for diversity, which results in States being able to implement the provisions in ways that are appropriate for their specific situation. The flexibility stems partly from the fact that the Convention is based on objectives and principles, instead of prescribing details²⁰³.

Weston and Teerink write that while it has been argued that “rights-approaches” are unsuitable for solving social problems such as child labour, because they focus on unrealistic and aspirational norms that are not connected to the realities of the world, a rights-based approach “when

¹⁹⁷ Fodella, Alessandro, 2008, p. 209

¹⁹⁸ Fodella, Alessandro, 2008, pp. 226 f.

¹⁹⁹ Fodella, Alessandro, 2008, pp. 204 f.

²⁰⁰ Fodella, Alessandro, 2008, p. 204

²⁰¹ Swepston, Lee, 2008, p. 69.

²⁰² Borzaga, Matteo, 2008, p. 61.

²⁰³ Meyers, William E., 2001, p. 48.

conceived and executed from a multidimensional, holistic perspective, has strong pragmatic underpinnings and thus can have substantial beneficial results²⁰⁴.

5.3 Tackling the issue of Children trapped in Domestic Child Labour

Mansoor writes that even though there are a number of international laws that protect children's rights and aim for the elimination of child labour, international law is lacking when it comes to the protection of child domestic labourers in specific. According to her laws must be extended and a comprehensive legal framework for enforcement is further a necessity²⁰⁵. It must however be noted that since her article was published the ILO has adopted Convention 189 that explicitly concerns domestic work, including domestic child workers. It is however still too early for countries to have taken effective measures to implement the Convention, even if they have already ratified it. According to Mansoor domestic work, due to its extreme exploitation and abuse, falls into the category of hazardous work²⁰⁶. The protection of child domestic workers, as well as the prohibition and elimination of the work, shall consequently be a priority according to the aim of ILO Convention 182²⁰⁷.

The ILO aims for no child under the age of 15 to work (or 14 regarding developing countries) except if the work is light, and for the worst forms of child labour to be abolished immediately. While ILO and IPEC have stated that the vast majority of children in domestic work fall under the definition of child labour in one way or another²⁰⁸, many scholars are of the opinion that a ban on domestic child labour is not the best solution to the problem. Bourdillon, White and Myers argue that combating the problems of child labour through the approach of universal minimum ages is unjustified since their impact on children is insufficiently explored. Introducing a blanket ban, which affects also legitimate work, interferes with the urgent need to combat situations where children demonstrably are harmed. The authors have however accepted that targeted bans against particularly dangerous form of work may be justified²⁰⁹.

Although it has been argued that domestic work should be labelled as a worst form of child labour, Bourdillon states that it should be considered whether implementing a total ban would be appropriate action in relation to child domestic workers or if there is another way to extinguish the hazards

²⁰⁴ Weston, Burns H, Teerink, Mark B, 2005, p. 6.

²⁰⁵ Mansoor, Farkhanda Zia, 2006, p. 180.

²⁰⁶ See ILO C182 Article 3 (d).

²⁰⁷ Mansoor, Farkhanda Zia, 2006, p. 185.

²⁰⁸ ILO-IPEC, 2004, p. III.

²⁰⁹ Bourdillon, Michael F. C, White, Ben, Meyers, William E., "Re-assessing minimum-age standards for children's work", *International Journal of Sociology and Social Policy*, 2009, Vol. 29 Issue 3, p. 106-117, pp. 106 f.

of domestic work. He writes that it is evident that a great number of children in domestic work suffer, but since also many children voluntarily work as domestics their views should at least be heard, and it must be investigated whether the hazards possibly can be outweighed by benefits²¹⁰. Economic benefits that improve the situation of poor families is one of the benefits he mentions that might compensate for the risks of the work. These can be immediate but also long-term for those children who establish a good relationship with their employer, and for example are able to pursue an education. Gaining experiences away from home, receiving a new home for those in need, nice treatment as well as freedom of occupation are other examples of benefits. According to Bourdillon a ban would protect children from harmful and exploitative situations, but a ban alone does not promise the child better placement or prevent degradation of the child's life situation²¹¹. He mentions for example the situation of India, which introduced a ban for children under 14 to perform domestic work, but where after six months no major program to support the children out of work had been implemented²¹².

Bourdillon continues by arguing that the outcome of a ban will be dependent on the social, cultural and economic situation of an area, and on how the ban is defined. It must be considered what age the ban should apply to, no age-based rule can correspond exactly to the line between when a child benefits and when it suffers from a ban, this can on the other hand be done in a given situation. Next question is what exactly should be banned. Bourdillon notes that domestic work is not inherently hazardous for children and that much of the abuse children are subjected to takes place outside the home. However, banning employment outside the home omits children who are exploited by kin and extended families. Informal fostering of unrelated children is another situation of hidden employment where abuse occurs. To have a ban for work outside the physical limits of a child's own home is also problematic since the extended family is an important part of children's lives in many parts of the world, and to prohibit household work done in foster homes would complicate further the fostering of homeless children. Moreover, banning employment alone is not sufficient since the dangers often derive from the work itself, and these dangers can occur in work done by children in their home as well as elsewhere. In fact, he concludes, it is not where the work takes place that decide whether the work is harmful or not, but what is demanded from the children and the amount of respect they get, which is hard to decide with a legal definition²¹³.

Other authors who believe in other solutions than introducing a total ban on domestic work are Blagbrough and Glynn. They write that it is the terms under which children are employed and their working conditions that are abusive and hazardous, not the work itself. It is therefore a better solution to introduce reforms that oblige the employers to let the children attend school,

²¹⁰ Bourdillon, Michael, 2009, pp. 5 f.

²¹¹ Bourdillon, Michael, 2009, pp. 7 ff.

²¹² Bourdillon, Michael, 2009, p. 2.

²¹³ Bourdillon, Michael, 2009, pp. 7 ff.

restrict working hours and guarantee holidays²¹⁴. Jacquemin who has studied “little maids” in Abidjan, Côte D’Ivoire, argues after observing the diversity of girls’ situations in domestic work, that more appropriate than prohibition is to discuss how to regulate working conditions and provide educational training and in that enhance the children’s chance for a brighter future²¹⁵.

According to Bourdillon a total ban can be beneficial only together with a program that guarantees children better options; the ban would thus work as a supplementary reinforcement eliminating cultural prejudice regarding the low status of children in domestic work. However, the ban should only be reinforced after an assessment of the cost and benefits for the children in question and it should target a specific situation, time, and place²¹⁶. Bourdillon wishes for a world without full-time child domestic workers but

“only for such a time when it is no longer in the interests of any child to perform this work. To ban work by children before such a transformation has occurred prevents the opportunity to first improve the wellbeing of the children. My fear is that disadvantaged children are losing sparse opportunities to improve their lives as a result of a general campaign to abolish child labor, which is often pursued in ignorance of the harsh realities facing the children. Since it is not possible to create a new utopian world, intervention has to start with the world as it is and the place of children in it. It should aim to provide better opportunities for the children, rather than to limit what is currently available”²¹⁷.

Klocker has interviewed present and former child domestic workers and their employers in Iringa, Tanzania, on how the problems of child domestic workers could be overcome. The answers were categorised as abolition-oriented or change-oriented, and across all interview groups the change-oriented approach clearly was the most attractive choice²¹⁸. She means that there are valid arguments against the abolition approach. Abolition does not improve the children’s wellbeing since it has negative economic implications, the Western idea of childhood is not applicable on all children’s realities and a ban does not correspond to the views of all children. Another argument is that when other groups of workers are exploited the solution to the problem will be to enhance the protection at work for the afflicted and not to entirely ban the work. The children involved in Klocker’s study suggested, instead of abolition, changes such as education and skills training, dissemination of children’s rights, changed

²¹⁴ Blagbrough, Jonathan, Glynn, Edmund, “Child Domestic Workers: Characteristics of the modern Slave and Approaches to Ending Such Exploitation”, *Childhood* 1999 6:51, p 51-56, p. 55.

²¹⁵ Jacquemin, Mélanie Y, “Children’s Domestic Work in Abidjan, Côte D’Ivoire: The Petites Bonnes have the floor”, *Childhood* 2004 11:383, p 383-397, pp. 395 f.

²¹⁶ Bourdillon, Michael, 2009, pp. 11 ff.

²¹⁷ Bourdillon, Michael, 2009, p. 15.

²¹⁸ Klocker, Natascha, “Negotiation change: working with children and their employers to transform child domestic work in Iringa, Tanzania”, *Children’s Geographies*, Vol. 9, No.2, May 2011, p. 205-220, pp. 209 ff.

behaviour from employers and employees, and wider regulation and monitoring through legal mechanisms. It was further suggested to develop a regulatory instrument as a draft contract or by-law, which, according to Klocker, is essential for altering the damaging perception that child domestic workers are a part of the family when they in reality are employees²¹⁹.

Tetteh writes that child domestic labour is one of the worst forms of child labour and requires immediate action in order to be eliminated²²⁰. She notes that from a rights perspective children are supposed to be protected against all types of abuse, including from their own culture. Culture shall not be used as an excuse for allowing wrongful behaviour and interference with the culture may thus be needed. With this in mind, Tetteh argues that the rights approach unfortunately has backfired on many occasions²²¹ and continues by saying that

“cultural relativists argue that tackling child domestic labour requires recognition of the societal perceptions of the problem. Thus, whilst on a broader scope some of these excesses are abusive in nature, they are perceived of in the communities in which they happen as ‘training and discipline’ of children. Thus, the approach to tackling child domestic labour must, instead of banning it (as seems to be the notion in the CRC) seek to set practical and achievable targets within the confines of a particular context²²².

She means in order to tackle the problem we must use methods that are created for a specific context and take into account the cultural politics of child domestic labour in a specific place. The proper enforcement of labour laws as well as cultural re-orientation regarding the hazards of child domestic labour for all parties involved is crucial²²³.

UNICEF means on the other hand that approaching child labour through children’s rights and the CRC “offers not only new ways of understanding the problem of child labour but also provides new impetus and direction to the movement against it²²⁴. UNICEF further writes that when combating hazardous and exploitative child labour we must listen to both those wanting to abolish all child work and those wanting to improve the situation of children at work. They mean that it must be clear to the whole world that the intolerable forms of child labour are unjustifiable under all circumstances. But also that programmes concerned with elimination must provide a suitable alternative for children to avoid negative consequences. Several things must be focused on simultaneously; immediate removal of children from the most dangerous situations, rehabilitation, protection of children

²¹⁹ Klocker, Natascha, 2011, pp. 211 ff.

²²⁰ Tetteh, Peace, “Child Domestic Labour in (Accra) Ghana: A Child and Gender Rights Issue?”, *International Journal of Children’s Rights*, 19 (2011), p. 217-232, p. 231.

²²¹ Tetteh, Peace, 2011, p. 227.

²²² Tetteh, Peace, 2011, p. 227.

²²³ Tetteh, Peace, 2011, pp. 229 f.

²²⁴ Bellamy, Carol (red.), 1996, p. 18.

who cannot be immediately released by improving their work conditions, and prevention²²⁵. ILO and IPEC states regarding the issue of children in domestic child labour that “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”²²⁶.

²²⁵ Bellamy, Carol (red.), 1996, p. 47.

²²⁶ ILO-IPEC, 2004, p. 63.

6 Analysis of the Implementation of National Laws concerning Domestic Child Labour

Domestic workers in general is one of the most ignored groups of workers when it comes to protection under national labour laws²²⁷. The work done by children is as mentioned sometimes not perceived as an economic activity and the tasks performed therefore in several countries fall outside of the labour legislation²²⁸.

Even though progress has been made in recent years, the ILO writes for example in a recent report that development and human rights concerns have motivated some States to adopt provisions improving the protection for domestic workers, many States' labour laws still do not cover domestic workers in general, only cover them partially, or protect them in a lesser way than other workers²²⁹. Even though international law contains several provisions regarding the protection of children from child labour there seems to exist a discrepancy between the standards set at the international level and the protection made at the national level for children in domestic labour.

6.1 Implementing Appropriate Laws

Of the 185 member States of the ILO, a very large majority have ratified the Conventions concerning child labour. As of May 14 2013 177 States have ratified Convention 182 and 165 States have ratified Convention 138, and additionally the CRC is almost universally ratified²³⁰. This portrays a good measure of commitment in the struggle against child labour by the world's nations. While this step is of great importance, the focus now is past commitment and on to the more challenging part of implementing the provisions at the national level²³¹.

While many laws regarding child labour are enacted today, domestic child labour sadly often is outside of the scope of protection. The ILO writes in a report from 1998 that most countries have enacted legislation prohibiting employment under a certain age and determining where and under which circumstances children are allowed to work. While this is a good development, there are still weaknesses in many laws regarding their

²²⁷ ILO, 2013, p. 46.

²²⁸ Bourdillon, Michael, 2009, p. 2.

²²⁹ ILO, 2013, pp. 46 f.

²³⁰ See supra note 48, 72, 85.

²³¹ ILO, *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at work, ILC 99th Session 2010 Report I (B), ILO Geneva 2010, p. 14.

coverage and their application in practice. When reviewing the legislation they also found that whilst minimum ages most often are provided, many States have limited the scope or excluded specific sectors or occupations from their laws. Domestic work is one of the most common categories to be excluded from the scope of national minimum age provisions²³². The fact that domestic work is excluded from national minimum age legislation recognises the difficulty of enforcing laws in private households²³³.

The ILO writes that while most countries have enacted a list containing hazardous work, some of these lists are defective. Relevant for this thesis is the fact that some lists leave out areas where regulation is difficult and where the practice is perceived as normal, such as domestic work²³⁴.

Another shortcoming of enacted national laws is that they in many countries are only applying to formal labour relationships between an employer and an employee, thus excluding children performing domestic work in the informal economy or those working without remuneration²³⁵.

It is not only laws concerning protection of children in domestic labour that are lacking but also as mentioned laws for domestic workers in general. Since the work often is informal States do not identify the work inside the realm of regulation and control. The NGO Human Rights Watch (HRW) writes that it is common that States exclude domestic workers from their labour laws altogether or include them only in weaker laws that are poorly enforced²³⁶. The ILO states that the protection is often lacking in regard to minimum wages, limitation of working hours, social security and measures to ensure occupational safety and health²³⁷. When domestic workers are excluded from labour rights that are provided to almost all other workers, they are denied the right of equal protection under the law. The exclusion also affects women and girls in a discriminatory way since they make up the largest part of domestic workers²³⁸.

In 2011 the ILO created a new Convention concerning domestic work that explicitly requires States to provide a minimum age limit including domestic workers and to regulate the conditions for children over 15 years working as domestics. The Convention will come into force in September 2013 and currently, May 14 2013, six Countries have ratified it, which means its significance in this area is yet to be seen²³⁹. Already it has however been found by the ILO that the Convention has encouraged several

²³² ILO, 1998, p. 24.

²³³ ILO-IPEC, 2004, p. 8.

²³⁴ ILO-IPEC, 2011, p. 42.

²³⁵ ILO-IPEC, *Tackling Child Labour: From commitment to action*, ILO Geneva 2012, p. 10.

²³⁶ Human Rights Watch, 2006, p. 2.

²³⁷ ILO, 2013, p. 46.

²³⁸ Human Rights Watch, 2006, p. 34.

²³⁹ ILO C189 Article 21 (2). See also list of ratification:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (accessed May 14 2013, 09:39).

States to review their labour legislation and regulations with the aim of widening the scope to cover also domestic workers in more areas²⁴⁰.

6.2 Enjoying the Rights in Practice

After ratifying the relevant international instruments it is thus crucial that States enact laws that explicitly cover domestic workers for the protection in the instruments to be effective. This is however only the first step States must take towards fulfilling their obligations under ratified international instruments. Besides recognising the rights legally and mainstreaming them in economic and social policies, it is crucial that the appropriate measures are taken for the rights to be enjoyed in practice by domestic workers. It is important to have monitoring institutions and mechanisms in force for the realization of the rights; many countries are however struggling with the effectiveness of these institutions and mechanism²⁴¹.

The ILO writes that reasons for the weaknesses in national laws are lacking resources for effective monitoring and enforcement as well as lacking political will, but that weaknesses also exist

“simply because the authorities do not know how to tackle the problem of eliminating child labour given the invisibility of so many child workers and the fact that the poverty, discrimination and cultural attitudes that foster it are so deeply entrenched in society”²⁴².

HRW writes that the most important step towards the elimination of the worst forms of child labour is to acknowledge the exploitative situation many domestic workers find themselves in, in reality however many Governments are denying the issue²⁴³. UNICEF is of the same opinion and argues that some countries’ labour laws in this area are not reaching up to the international standard due to the fact that the work is culturally accepted and the political will to implement the laws thus is weak²⁴⁴.

Another reason why it is so hard to have a functioning system regulating domestic work is due to the difficulties of reaching the places where the violations occur. The work is in the informal economy, and the fact that the work takes place in a home further enhances the difficulties. There is also a problem with institutional reluctance to address issues that are perceived to fall within the rights of the family. The hidden nature of the work and the fact that it not always is recognised as an economic activity result in regular labour mechanisms, such as labour inspections, not being systematically applied to domestic work²⁴⁵.

²⁴⁰ ILO, 2013, p. 97.

²⁴¹ ILO-IPEC, 2012, p.5.

²⁴² ILO, 1998, p. 24.

²⁴³ Human Rights Watch, 2006, p. 63.

²⁴⁴ UNICEF, 1999, p.12.

²⁴⁵ UNICEF, 1999, p.12, ILO, 2012, p. 5 and ILO-IPEC, 2004, p. 64.

7 Case study

This chapter will portray a case study of the child labour legislation in two different countries where the practice of child domestic labour is widespread. It will look into the situation of child domestic workers in the specific countries and research which international instruments the States have ratified and which national laws have been enacted in relation to the protection of child domestic workers. The national laws will be analyzed in order to see how the situation can be improved.

7.1 Philippines

Regarding domestic work in general, Asia and the Pacific is the region with the largest number of domestic workers. The Philippines is one of the major sending countries in the world of domestic workers with an increasing number of Philippine women migrating to work abroad as domestics. There is also a considerable number of domestic workers working within the country²⁴⁶. The employment of a domestic worker is a part of the normal life in the Philippines and to employ a worker who is yet a child is further something that is both culturally and socially accepted by the society²⁴⁷.

The Committee on the Rights of the Child noted in its Concluding observation from 2009 its deep concern of the high number of children between the age of 5 and 14 working in the Philippines, and it was especially concerned by the fact that many of these children work in hazardous or dangerous conditions, exposed to different forms of exploitation²⁴⁸.

Children in domestic work is one of the largest groups of working children in the Philippines and the ILO and IPEC estimated in its rapport from 2004 that 29,000 children between 10 and 14 years and 273,000 children between 15 and 19 years work as domestics²⁴⁹. Moreover, the NGO Visayan Forum has estimated that there are approximately one million children performing the work²⁵⁰.

²⁴⁶ ILO, 2013, p. 29.

²⁴⁷ ILO-IPEC, 2004, p. 15.

²⁴⁸ CRC/C/PHL/CO/3-4, 22 October 2009, Committee on the Rights of the Child, Report of the 52nd Session, para 72.

²⁴⁹ ILO-IPEC, 2004, p. 15. The report quotes UNICEF for their first figure.

²⁵⁰ Flores Oebanda, Cecilia, Pacis, Roland R., Alcantara Jerome A., *Reaching Out Beyond Closed Doors, A Primer on Child Domestic Labor in the Philippines* Manila, Visayan Forum Foundation, Inc. 2004, p. 13 ff.

7.1.1 Protection of Children in Domestic Work

The Philippines has ratified the major international instruments concerning child labour, as the CRC²⁵¹ and ILO Conventions 138 and 182²⁵². Moreover, the Philippines is one of the six countries that as of May 14 2013 have ratified the new ILO Convention on Domestic Work, C189²⁵³.

The Labour Code of the Philippines²⁵⁴ establishes 15 years as the minimum age for employment²⁵⁵ and 18 years for employment in hazardous occupations²⁵⁶. The accompanying list of hazardous occupations has been critiqued for only including specific occupations and thus leaving out hazardous situations that for example domestic workers can find themselves in²⁵⁷. However, in 2004 Republic Act 9231, an Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child²⁵⁸ was enacted as an amendment to Republic Act 7610, the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act²⁵⁹. The Act prohibits children below 18 years to participate in occupations considered as worst forms of child labour. This provision goes beyond the aforementioned list since it prohibits also the employment of children in situations or conditions that can jeopardize their physical, mental, or emotional wellbeing²⁶⁰.

On January 18 2013 a new law concerning domestic workers was enacted, the Republic Act 10361, an Act Instituting Policies for the Protection and Welfare of Domestic Workers, also called “the Domestic Workers Act” or the “Batas Kasambahay”²⁶¹. The Domestic Workers Act have been developed and advocated for by NGOs and social partners and after 18 years

²⁵¹ See list of ratifications:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed May 14 2013, 09:40).

²⁵² See list of ratification for the Philippines:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970 (accessed May 14 2013, 09:41)

²⁵³ The other countries are Bolivia, Italy, Mauritius, Nicaragua and Uruguay. See list of ratifications:

http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460 (accessed May 14 2013, 09:42).

²⁵⁴ Labour Code of the Philippines, Presidential Decree No. 442, as amended.

²⁵⁵ Section 139 (a) of the Labour Code.

²⁵⁶ Section 139 (c) of the Labour Code.

²⁵⁷ Flores Oebanda, Cecilia, Pacis, Roland R., Alcantara Jerome A., 2004, p. 32.

²⁵⁸ Republic Act 9231, An Act providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger protection for the Working Child, Amending for this purpose Republic Act No 7610.

²⁵⁹ Republic Act 7610, as amended by Republic Act 9231, An Act Providing for Stronger Deterrence and Special Protection of Children Against Child Abuse, Exploitation and Discrimination, Providing penalties for its violation, and for other purposes.

²⁶⁰ Section 3 Republic Act 9231.

²⁶¹ Section 1 Republic Act 10361, An Act Instituting Policies for the Protection and Welfare of Domestic Workers.

of work and campaigns the vision finally became reality this year, 2013²⁶².

The first Article of the Act contains general provisions and states that the Act applies to all domestic workers employed and working in the country²⁶³. A domestic worker is defined as:

“any person engaged in domestic work within an employment relationship such as, but not limited to, the following: general househelp, nursemaid or “yaya”, cook, gardener, or laundry person, but shall exclude any person who performs domestic work only occasionally or sporadically and not on an occupational basis”²⁶⁴.

The definition excludes children who are in a “foster family arrangement, and are provided access to education and given an allowance incidental to education, i.e. “baon”, transportation, school projects and school activities”²⁶⁵. Working children are defined as children between 15 and 18 years old²⁶⁶.

Article 2 contains rights and privileges for domestic workers. The workers are amongst others protected from abuse, physical violence, harassments and degrading treatment²⁶⁷. The employer shall provide basic necessities, including three adequate meals a day and humane sleeping arrangements. Provided shall also be appropriate rest and assistance in case of illness or injury²⁶⁸, as well as access to outside communication²⁶⁹.

Article 3 concerns pre-employment measures. Before a worker commences the work an employment contract must be executed by and between the employee and the employer. It shall be conducted in a language or dialect understood by both parties and the employee shall be provided with a signed copy of the contract. Included in the contract shall be the following: duties and responsibilities of the domestic worker; period of employment; compensation; authorized deductions; hours of work and proportionate additional payment; rest days and allowable leaves; board, lodging and medical attention; agreements on deployment expenses, if any; load agreement; termination of employment; and any other lawful condition agreed upon by both parties. The Government shall provide the contract for free to all domestic workers and employers²⁷⁰. The Act further obliges the employer to register the domestic worker in the villages’ Registry of Domestic Workers²⁷¹.

²⁶² <http://www.visayanforum.org/portal/index.php?option=cms&id=64> (accessed May 14 2013, 11:02), Flores Oebanda, Cecilia, Pacis, Roland R., Alcantara Jerome A., 2004, p. 34.

²⁶³ Article I Section 3 Republic Act 10361.

²⁶⁴ Article I Section 4 (d) Republic Act 10361.

²⁶⁵ Article I Section 4 (d) Republic Act 10361.

²⁶⁶ Article I Section 4 (h) Republic Act 10361.

²⁶⁷ Article II Section 5 Republic Act 10361.

²⁶⁸ Article II Section 6 Republic Act 10361.

²⁶⁹ Article II Section 8 Republic Act 10361.

²⁷⁰ Article III Section 11 Republic Act 10361.

²⁷¹ Article III Section 17 Republic Act 10361.

Moreover, the Act regulates terms and conditions such as health and safety, rest periods, minimum wages and payment of wages, social and leave benefits²⁷². The Act also provides abused or exploited workers the right to be rescued and rehabilitated²⁷³.

The Act explicitly prohibits debt bondage²⁷⁴ and the employment of workers under the age of 15 years as domestic workers. Regarding the employment of working children the act refers²⁷⁵ to provisions in Republic Act 7610 covering hours of work, the worst forms of child labour and primary and secondary education²⁷⁶. Working children are further entitled to minimum wages and other benefits provided for in the Act²⁷⁷. Regarding education, the workers shall have the opportunity to finish basic education and if practicable also higher education²⁷⁸.

7.1.2 Analysis of the situation

The Domestic Workers Act can serve as a role model for other countries where the issue of child domestic labour exists, and will hopefully change the perception of the practice in the Philippines. As mentioned above domestic child labourers often are excluded from national minimum age laws and this Act is therefore a good example of a law fulfilling international standards and clearly stating that the practice of employing children under the minimum ages is intolerable.

Besides explicitly including domestic child workers in minimum age legislation, the Act regulates the working conditions of legally working children, thus decreasing the risk for the work becoming hazardous or exploitative. The inclusion of provisions requiring contracts and registration of the worker are crucial for improving the lives of domestic workers and takes the special situation of these workers into consideration. An innovative feature is further the fact that a person violating a provision regarding working children will not be able to hire a child as a worker again²⁷⁹.

The Act could be improved, in my opinion, by including also provisions regarding inspections and when officials have the right to enter a private home. Further acknowledgment of the vulnerable situation of girls could also be included in the provision since girls make up the largest part of domestic workers. The fact that the law refers to foster family arrangement is very important, I believe however that the provision should include further reference to the difference between fostering and employment in order for the provision not to be abused. An explicit identification of

²⁷² Article IV See section 19-30 Republic Act 10361.

²⁷³ Article IV Section 30 Republic Act 10361.

²⁷⁴ Article III Section 15 Republic Act 10361.

²⁷⁵ Article III Section 16 Republic Act 10361.

²⁷⁶ See section 12 and 13 Republic Act 7610, as amended by Republic Act 9231.

²⁷⁷ Article III Section 16 Republic Act 10361.

²⁷⁸ Article II Section 9 Republic Act 10361.

²⁷⁹ Article III Section 16 Republic Act 10361.

hazardous types of domestic work should also be included for the State to fulfil its international obligations and improve the protection of working children.

7.2 Haiti

The history and culture of Haiti has been marked by poverty and slavery or oppression²⁸⁰. For many generations in Haiti it has been a common practice for poor and desperate parents to send their children away to work in richer families in a hope that they will get better lives. The child is called a “restavèc”, which is Creole and means “to stay with”²⁸¹. The average restavèc child is a girl, about nine years old, raised in a poor family, black or dark skinned and have no voice of its own²⁸². In 2009 it was estimated that the number of restavèc children in Haiti is between 150,00 and 500,000²⁸³.

The ILO and the UN Special Rapporteur on contemporary forms of slavery have both noted that the system, in which originally children were placed with wealthier relatives in the city to receive a better life and education, has deteriorated in recent years, especially after the devastating earthquake in 2010²⁸⁴. The UN Special Rapporteur noted two new tendencies in her report regarding the issue of restavèc children, which contribute to the exploitative nature of the system. Earlier it was the families who placed the child in a family but now also recruiters recruit children for financial gain, leaving them to a greater extent in the hands of a stranger. This has also resulted in many observers qualifying the phenomenon as trafficking. Second, because of demographic changes in the country the demand for restavèc children has shifted from wealthy to poor families. Rich families no longer need the services of restavèc children since they can afford to hire paid workers to perform the services instead, but poorer families on the other hand now need restavèc children to look after their homes and children while they are working²⁸⁵.

²⁸⁰ Janak, Timothy C., 2000, p. 323.

²⁸¹ *Hope for Haiti's restavècs: South-South cooperation against child labour*, 1 February 2008. Available at: http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_090197/lang--en/index.htm?C=N%3bO=D (accessed May 14 2013, 09:45).

²⁸² Janak, Timothy C., 2000, p. 321.

²⁸³ A/HRC/12/21/Add.1, 4 September 2009, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, p. 2.

²⁸⁴ Rhoades, Amy, *Slavery in a free land*, 29 August 2012. Available at: www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_187879/lang--en/index.htm (accessed May 14 09:47)

²⁸⁵ A/HRC/12/21/Add.1, 4 September 2009, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, p. 7.

7.2.1 Protection of Children in Domestic Work

Haiti has been a party to the CRC since 1995²⁸⁶. In 2007 it ratified ILO C182 and in 2009 ILO C138, and at the same time specified the age of 14 years as the minimum age for admission to employment and work²⁸⁷.

The Haitian Labour Code²⁸⁸ states in Article 335 “that the minimum age for admission to work in agricultural, industrial and commercial enterprises is 15 years”²⁸⁹ and in Article 337 states that “minors between 15 and 18 years must obtain a certificate or work permit from the Directorate of Labour before beginning to work in an agricultural, industrial or commercial establishment”²⁹⁰. Article 2 further establishes that “the term ‘work’ applies only to activity performed pursuant to an employment contract”²⁹¹. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) observed in its 2012 Direct Request concerning C138, that the provisions in the Labour Code concerning the minimum age do not seem to apply to work such as self-employment or work in the informal sector²⁹².

In 2003 the Committee on the Rights of the Child expressed its great concern regarding the situation of *restavèc* children in its Concluding observations on Haiti²⁹³. The Committee recommended that measures such as awareness campaigns and addressing the root causes of the problem must be taken to prevent and end the practice of under age employment. They further stressed the importance of investigating cases of violence and applying sanctions on perpetrators. On the issue of child labour in general

²⁸⁶ See list of ratifications:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed May 14 2013, 09:47).

²⁸⁷ http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102671 (accessed May 14 2013, 09:48).

²⁸⁸ Code du travail, Décret du 24 février 1984 et Loi du jeudi 5 juin 2003 actualisant le Code du travail du 12 septembre 1961.

²⁸⁹ See Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009) and Article 335 Code du travail.

²⁹⁰ See Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009) and Article 337 Code du travail.

²⁹¹ See Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009) and Article 2 Code du travail.

²⁹² Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009).

²⁹³ CRC/C/15 Add.202, 18 March 2003, Report adopted by the Committee at its 862nd meeting, on 31 January 2003, Committee on the Rights of the Child, Report of the 32nd Session, para 56.

they recommended strengthening the implementation of labour laws and increasing the number of labour inspectors²⁹⁴.

The Committee on the Rights of the Child was particularly concerned with a provision in the Haitian Labour Code allowing children at the age of 12 to be placed with families for domestic service, in practise even younger children were placed for work and they often had to work under bad conditions²⁹⁵. Later in 2003, following the recommendation of the Committee and responding to a large campaign by national and international organisations, Haiti adopted a law called *Loi relative à l'interdiction et à l'élimination de toutes les formes d'abus, de violence, de mauvais traitements ou traitements inhumains contre les enfants*²⁹⁶, a law on “the prohibition and elimination of all forms of abuse, discrimination, maltreatment or inhuman treatment of children”²⁹⁷. The first article of the law annulled the previous provisions in the Labour Code allowing children to be placed in a family for domestic service, including the aforementioned provision²⁹⁸.

Article 2 of the law from 2003 prohibits abuse and violence against children and their exploitation and lists examples of prohibited practises. Listed is for example servitude, forced or compulsory labour and forced services. Prohibited is also offering, procuring, transfer, accommodation, reception or use of children for sexual exploitation, prostitution and pornography, or illicit activities²⁹⁹. The fifth item on the list prohibits “exploitation of children such as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”³⁰⁰. In relation, Article 333 of the Labour Code states that “minors may not be employed in work which is insalubrious, arduous or hazardous in physical or moral terms, or offer their services in places selling alcoholic beverages”³⁰¹ and Article 334 “prohibits night work for minors under 18 years of age in public or private industrial enterprises or their

²⁹⁴ CRC/C/15 Add.202, 18 March 2003, Report adopted by the Committee at its 862nd meeting, on 31 January 2003, Committee on the Rights of the Child, Report of the 32nd Session, paras 54-57.

²⁹⁵ See former content in Chapter IX of the Haiti Labour Code.

²⁹⁶ Adopted June 5 2003.

²⁹⁷ Hereinafter called “the law from 2003”.

²⁹⁸ Article 1 *Loi relative à l'interdiction et à l'élimination de toutes les formes d'abus, de violence, de mauvais traitements ou traitements inhumains contre les enfants*” of 5 June 2003, see also A/HRC/12/21/Add.1, 4 Septembre 2009, p. 12.

²⁹⁹ Article 2 *Loi relative à l'interdiction et à l'élimination de toutes les formes d'abus, de violence, de mauvais traitements ou traitements inhumains contre les enfants*” of 5 June 2003.

³⁰⁰ Article 2 *Loi relative à l'interdiction et à l'élimination de toutes les formes d'abus, de violence, de mauvais traitements ou traitements inhumains contre les enfants*” of 5 June 2003, see also Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009).

³⁰¹ Article 333 Code du travail, see also Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009).

outbuildings”³⁰². It shall also be noted that Article 10 of the Labour Code states that “minors who have reached the minimum age for admission to work in industrial, agricultural and commercial establishments are subject to special protection”³⁰³. The CEACR in its report noted however the absence of a list of hazardous work and employment prohibited for those under 18 years of age. The CEACR also requested that the Government defines in the law from 2003 the term “child”, in relation to whether it refers to all children under the age of 18, as well as the term “minor” in the Labour Code³⁰⁴.

When the UN Special Rapporteur on contemporary forms of slavery visited Haiti in 2009 she was informed by the Government that the purpose of the law from 2003 was to end the legitimate use of child domestic workers and the *restavèc* system³⁰⁵. The Special Rapporteur however noted that she “shares the concerns raised by many stakeholders to the effect that this amendment created a gap in the law as it did not create mechanisms to address the phenomenon of *restavèc* children or provide for sanctions for offenders”³⁰⁶. The law from 2003 states that “a child may be entrusted to a host family within the context of a relationship based on aid or solidarity” and that the “the child must enjoy the same privileges and rights as the family’s other children and be treated as a member of the family”³⁰⁷. While domestic labour by *restavèc* children is illegal, the UN Special Rapporteur, in her report, was worried that the provision, which is an attempt to protect the cultural sides of the issue, does not define the relationship of “aid and solidarity” in a fulfilling way. The article consequently allows the *restavèc* practice to be preserved³⁰⁸.

³⁰² Article 334 Code du travail, see also Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009).

³⁰³ Article 10 Code du travail, see also Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009).

³⁰⁴ Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013) Worst Forms of Child Labour Convention, 1999 (No. 182) - C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) Haiti (Ratification: 2007) and Direct Request (CEACR) - adopted 2012, published 102nd ILC session (2013). Minimum Age Convention, 1973 (No. 138) - C138 - Minimum Age Convention, 1973 (No. 138) Haiti (Ratification: 2009).

³⁰⁵ A/HRC/12/21/Add.1, 4 September 2009, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, p. 12.

³⁰⁶ A/HRC/12/21/Add.1, 4 September 2009, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, p. 12.

³⁰⁷ Article 3 Loi relative à l’interdiction et à l’élimination de toutes les formes d’abus, de violence, de mauvais traitements ou traitements inhumains contre les enfants” of 5 June 2003, see also A/HRC/12/21/Add.1, 4 September 2009, p. 12.

³⁰⁸ A/HRC/12/21/Add.1, 4 September 2009, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, p. 12.

The UN Special Rapporteur recommended in the conclusion of her report, among other things, that Haiti should take urgent measures to ensure that national legislation and practices will be consistent with the international instruments Haiti has ratified. Haiti must further address the lack of comprehensive legislation and implementation mechanisms protecting the rights of the child, in particular vulnerable groups of children such as *restavècs*. Additionally she recommends the adoption of a law concerning trafficking and the adoption of strong mechanisms concerning child adoption³⁰⁹.

7.2.2 Analysis of the situation

The system of *restavèc* children is widely accepted in the Haitian society, and in order to improve the situation of the children laws must be implemented as a first step to show that the practice is unacceptable and to penalize the use of child labourers.

The protection of domestic workers in Haiti is alarmingly low. That the Labour Code was changed to remove the provision allowing children of only 12 years to be placed within a family where they could be treated in any way is an improvement, but Article three of the law from 2003 still opens up for the prevalence of the *restavèc* system. There should hence be a much clearer division between fostering and domestic work.

Further is the Labour Code's provision concerning minors excluding protection of domestic workers when including only work in "agricultural, industrial or commercial establishments". Domestic workers should explicitly be included in provisions concerning minimum ages. As well as in provisions offering special protection for those old enough to work, in order to prevent that the work becomes exploitative. The Code further refers to "work" as activities performed according to an employment contract, which is problematic since the work performed by domestics often is found in the informal sector and performed without a contract of any sort. Haiti should therefore amend the provision in the Labour Code defining work, to refer to employment *and* work, in order to provide better protection for children in domestic work.

Haiti should further establish whether the law from 2003 includes all children under 18, which it should in order to be in conformity with ILO C182 on the worst forms of child labour. It is also of great importance that a list determining "hazardous" practices is created; including situations domestic workers may find themselves in.

Another shortcoming of the law is the fact that it does not include sanctions or penalties for those violating it. This should be changed in order for the law to have a deterring effect. As a future step Haiti should also ratify C 189

³⁰⁹ A/HRC/12/21/Add.1, 4 September 2009, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, pp. 15 ff.

on decent work for domestic workers. The improvement of conditions and rights of domestic workers, as well as the enactment of provisions taking into account the vulnerable situation of domestic workers in general, help the situation of working children both under and over the minimum ages.

8 Concluding Remarks

The purpose of the thesis was to look into the specific situation of children in domestic work and research what legal measures exist for their protection. The first question was to research what provisions there are in international law and analyze whether they appropriately and adequately protect the children. In connection to this the thesis set out to find what different approaches to tackle the issue are advocated for, and which are best used. The thesis also examined whether the international rules are applied at the national level in a way that gives the children the protection they are entitled to, and how the rules can be improved in law and in practice.

8.1 Conclusion

Laws are extremely important in the struggle against child labour, both international laws, which work as a guide and demonstrate what is unacceptable behaviour, and national laws which regulate the behaviour on the domestic arena. One of the main challenges is that domestic child labour to such a great extent is found in the informal sector. Therefore more research is needed in order to come up with measures to better reach the workers through the application of appropriate laws, which further should be complemented by effective enforcement mechanisms.

Regarding the existing protection in international instruments the thesis finds that the instruments *together* offer good means of protection, but that there are room for improvements.

ILO Convention 138 on minimum ages takes a clear standpoint when prohibiting admission to both employment and work under the minimum ages. The Convention however does not distinguish between benign and harmful work and has therefore been critiqued for not being compatible with the perception of childhood and child labour in all countries. The main issue with the Convention, relevant for this thesis, is that domestic work can be excluded from the scope of the Convention. Exclusion is however not possible when the work is carried out in dangerous conditions, which limit the scope of this potential exception. While the exception has been sparsely used, it sends the wrong signal regarding the need for protection of domestic child labourers.

ILO Convention 182 on the worst forms of child labour takes another approach and focuses on the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Convention focuses on forms of work that can be said to be unacceptable in all societies, and in that provides priorities in the fight against child labour, which is important for countries

where the practice of child labour is widespread. The Convention is created with universality in mind and allows for a flexible implementation. For better protection there should be better guidelines clarifying what type of domestic work is a worst form of child labour, for example a more detailed list of hazardous work including examples connected to domestic work.

The Convention on the Rights of the Child uses a holistic view on child labour and translates the issue into a human rights issue, thus including also other children's rights violated in connection to child labour. The rules in the CRC are built on universal aims, but the Convention is also flexible enough to leave room for cultural adaptations. The CRC additionally makes a distinction between benign and exploitative work. What could be improved is the fact that regarding minimum age regulation, the Convention refers only to employment and not to *work*, which is problematic since children in domestic work often are not perceived to fit within a regular employment relationship.

Crucial for the protection of child domestic workers is the adoption of ILO Convention 189, which explicitly refers to child domestic work. The Convention includes domestic work in minimum age legislation and regulates the conditions and rights at work. C189 has been very much needed since domestic workers often are or can be left out of minimum age regulations, but also since there is a great need for more regulation regarding conditions and rights at work. The special needs of the workers due to their vulnerable situation are also taken into account in the Convention.

More problematic is the implementation of international obligations by States and the status of laws on the national arena. National laws are lacking when it comes to including domestic workers in minimum age legislation and providing rights and conditions at work. Since these children are "invisible", working in private homes in the informal economy, it is even more important that there are meaningful laws protecting them. C189, which explicitly refers to domestic workers, clearly shows that the international community takes the situation of child domestic workers seriously, and states that the practice should be treated as any other type of work. Hopefully this will lead to more countries including the work in its labour laws. Governments must see the specific situation of domestic workers and adopt laws with this in mind. Moreover, while appropriate laws are important, they are not effective without sufficient monitoring and enforcement.

Domestic child labour is often accepted and perceived as a normal and sometimes also safe practice, which affects the creation and implementation of laws and their enforcement. Therefore it is crucial to change also the way the work is perceived by societies. It must be recognized that the issue concerns work within an employment relationship that thus should be covered by law, and that the disguised forms of labour must be seen for what they are.

How to best tackle the problem of child domestic labour and how to best help the children is a difficult question to answer, and there is probably not one single right answer. Childhood, which is a time for development, education, leisure and play, can it also contain room for work? In the literature there are different perceptions regarding childhood and whether a child has a right to work, or a right not to work. Human rights should be universally applied, but it is challenge when the conditions look so different depending on where in the world a child lives. Another question is when and to what extent it is suitable for children to work and take on more responsibility. Would children still choose to work if the same pressing economic need did not exist? We should remember that even in societies where children are supposed to take on more responsibility and have to work to some extent to support themselves, the children are still young and vulnerable and the best interest of the child must always be in the centre of the discussion.

Not all work by children is child labour in international law, banned is work that is exploitative, categorised as one of the worst forms of child labour, or performed by children under the minimum ages. Since not all domestic work falls into these categories, not all domestic work by children under 18 is, or should be, banned, since such a ban would affect also legitimate work. There is however a need for a better distinction between work which is harmful, exploitative and hazardous and work which is benign, so that when it is necessary that children work it is clear for all what work is acceptable and what is not. For the worst forms of domestic child labour to be eliminated and prohibited, better guidelines should be enforced, especially concerning the hazardous types of work, clearly stating what practises never are allowed for children to participate in. Since the risk of domestic work becoming harmful or exploitative is high due to the vulnerable situation of the workers, there should also be better regulation of rights and conditions at work to prevent this from happening.

While not all domestic work is banned for children under 18, international law bans and aims at abolishing work performed by domestic workers under the minimum ages. As found in the thesis there are many scholars arguing that a ban on domestic child labour is not the best solution to the problem, they argue that it interferes with combating the worst forms of domestic child labour, that a ban alone does not promise the child a better life situation and that the outcome of a ban will be dependent on the specific social, cultural and economic situation. Moreover, it is argued that the benefits from the work should be taken into account as well, and that it is the terms under which children are employed and their working conditions that are abusive and hazardous, and not the work itself. Therefore it is argued that focus should be on improving the rights and conditions at work instead of banning the work.

I believe that childhood is a time for development, education and play, and that children's rights should be universally applicable and available for all. But because of how the world is in reality it might not be possible for all

children to have a right *not* to work immediately. As said by the UNICEF above, we must listen to both abolitionists and those wanting to create better conditions at work to improve the lives of these children. The goal of abolishing all child labour must be reached gradually. The priority should be to combat the worst forms of child labour, which there is universal consensus about, and to improve conditions and rights at work while preparing the way for its complete elimination. We must provide better conditions as a protection while the exploitative situation is being dismantled. That domestic work is work like any other work, and that those performing the chores are workers with the same rights as other workers, should be disseminated. The main focus should initially be on the worst forms of child labour, since it is hard to combat all child labour without priorities in a country where the phenomenon is widespread. Moreover, it is hard to determine the exact age when children benefit from work, and what work is light or benign, and when work interferes with other rights of children, and when it does not.

A ban on child domestic work under the minimum age is however important since, as we have seen above, many of the children working as domestics are very young, much younger than the minimum ages. Thus by explicitly include a ban of the practice under a certain age in national laws, the perception of the practice as something accepted and normal will hopefully gradually be changed. However, for a legal ban under a minimum age to be meaningful the Governments should provide complementary measures, ensuring the child education and economic support, in order for the child not to end up in an even worse economic situation. Such a ban should include somewhat flexible regulations, respecting the countries' different states and perceptions of childhood. To avoid abuse of the human rights the principle of "the best interest of the child" should always be first in mind of legislators, government officials and the entire society.

8.2 Recommendation

The States that have not yet ratified the international instruments on child labour should do so urgently. The instruments provide good guidelines for national legislation. Appropriate national laws including domestic workers must further be implemented to show a clear standpoint that domestic work is work that should be respected like any other work, and that domestic child labour is not tolerated and its abuse will be penalized. It is important that domestic workers are explicitly included in labour laws in societies where the practice is not perceived as work, or potentially harmful work.

The perception of the work must be changed. Children are on many occasions treated as slaves instead of working in a protected environment. A child performing work for an employer must be seen for whom it is, not a family member or a person without rights, but an employee. Their actual situation and in some cases exploitation must be acknowledged. As Black argued, advocacy that is based on the particular society, to prevent the

changes feeling as a foreign imposition, should be used in order for the rules to become socially accepted.

All countries should ratify C189 and ensure that their minimum age legislation includes domestic workers, and that the laws include admission to employment as well as work due to characteristics of domestic work. Clear guidelines should be created for which types of domestic work at what ages are permitted and which should be prohibited as worst forms of child labour. States should identify hazardous types of domestic work in accordance with ILO Recommendations 190 and 201. This is important since measures against child labour should as a priority focus on the worst forms of child labour.

States should also strive towards including domestic workers in their general labour legislation and give them the rights and working conditions that other workers are entitled. In accordance with the international instruments special protection should be provided for children between 15 and 18 years and in that decrease the risk of the work becoming exploitative or harmful. The laws should further contain measures aimed at the specific situation of domestic workers, regulating such things as hours of work, living conditions and the openness of private homes. A system for registration of the workers for better monitoring as well as a model contract must be established. To create a law specifically concerning domestic workers, as has been done in the Philippines, is further to recommend since the workers need customized protection due to their hidden nature and the ambiguity of the employment relationship.

For the laws to have effect and the children to enjoy their rights in practice it is crucial that there is effective monitoring and enforcement. Penalties and accessible complaints mechanisms are further a must. Since the work takes place in homes of private persons the laws must allow labour inspectorates access to these homes when necessary. And for the inspections to be effective there is a need for appropriate training and adequate funding.

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