

Cleaning up the Industry: Improving  
Protections for Precarious and Child Domestic  
Workers

Meredith McBride\*

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NOTE

CLEANING UP THE INDUSTRY:  
IMPROVING PROTECTIONS FOR PRECARIOUS  
AND CHILD DOMESTIC WORKERS

*Meredith McBride\**

*“I have to get up at 4 a.m. and work up to 10 p.m. I wash the laundry, clean the house, do the dishes, buy things at the market, and look after the children. I am told I get GNF 15,000 [about \$2.50] per month, but I have never seen that money. Shortly after I came, I fell sick. The lady accused me of faking it and refusing to work. Since that day, I have often been sick but I never say so. I am beaten. When I take too long here, I may be beaten. Whenever I want to take a rest, the lady says I did not come to rest, but to work, and beats me with an electric cord or a piece of tire and pulls my ears. It happens as soon as I take a break.” –  
Fourteen-year-old Thérèse I.<sup>1</sup>*

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\* J.D., Cum Laude, Fordham University School of Law 2018. The author has worked for the International Domestic Workers Federation in Hong Kong and on a contractual basis as a report writer for the International Labour Organization. In 2015, she co-founded a Hong Kong-registered non-profit calling on the Hong Kong government to end the systematic abuse of migrant domestic workers.

1. Excerpt taken from HUMAN RIGHTS WATCH, BOTTOM OF THE LADDER: EXPLOITATION AND ABUSE OF GIRL DOMESTIC WORKERS IN GUINEA 54 (2012).

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### I. INTRODUCTION

The most abusive forms of child labor are often thought to be trafficking for sexual exploitation or excessive working hours in factories. While these labor abuses do exist, the reality is that some of the most abusive forms of child labor occur in the private homes of wealthy and middle-class families in the form of domestic work. If it is true that criminals are best deterred by the likelihood of apprehension,<sup>2</sup> then governments are complicit in some of the most abusive forms of child labor by their continued failure to appropriately regulate the domestic work industry and criminalize those that exploit child workers, as required by widely-ratified international conventions.<sup>3</sup>

Due to the isolated environment of their job, domestic workers (“DW” or “DWs”) are inherently less able to organize, bargain, and push for improved legal protections. These problems are often compounded due to age, education, gender, socio-economic status, race, and migration status.<sup>4</sup> Abuses are not relegated only to countries

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2. See generally Daniel S. Nagin, *Deterrence in the Twenty-First Century*, in *CRIME AND JUSTICE IN AMERICA: 1975-2025* 42 (Michael Tonry ed., 2013).

3. See *infra* Section II.A.

4. Peggie R. Smith, *Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers*, 15 *EMP. RTS. & EMP. POL’Y J.* 159, 161 (2011); see also Virginia Mantouvalou, *Human Rights for Precarious Workers: The Legislative Precariousness of*

with limited resources or governance: the worst forms of child labor, abusive working conditions, and human trafficking continue to occur in industrialized nations including the United States, France, and the Netherlands.<sup>5</sup> Promulgation of the International Labour Organization's ("ILO") Convention 189 ("C189") was an organizational success for domestic workers and their advocates, and it thrust regulation and oversight of the industry into the realm of State governments, who had long ignored or dismissed it.<sup>6</sup> Despite this, domestic workers like Thérèse remain particularly vulnerable. Because they are still often seen as part of the informal labor force, many countries do not extend labor protections to domestic workers, particularly migrants.<sup>7</sup> Nor do many countries effectively prosecute, investigate or even criminalize abuse of domestic workers.<sup>8</sup> While twenty-four states ratified C189, the majority have not taken action at all.<sup>9</sup> Prevention of the worst forms

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*Domestic Labor*, 34 *COMP. LAB. L. & POL'Y J.* 133, 138 (2012); Ana Virginia et al., *Regulatory Challenges of Domestic Work: The Case of Brazil* 14 (LLDRL Working Paper Series, WP No. 3, 2009).

5. See generally SAMEERA HAVIZ & MICHAEL PAARLBERG, INST. FOR POLICY STUDIES & NAT'L DOMESTIC WORKERS ALL., *THE HUMAN TRAFFICKING OF DOMESTIC WORKERS IN THE UNITED STATES, FINDINGS FROM BEYOND THE SURVIVAL CAMPAIGN 10* (Narbada Chhetri et al., eds., 2017); see also Alexandra Ricard-Guay, *Trafficking in Domestic Work: Looking at the Demand-Side* 12 (*DemandAT*, Working Paper No. 5, Mar. 2016) (noting that child domestic labor has been identified in France and the Netherlands, though very little case law exists).

6. See generally Einat Albin & Virginia Mantouvalou, *The ILO Convention on Domestic Workers: From the Shadows to the Light*, *INDUS. L. J.*, Mar. 2012, at 67; see also Int'l. Labour Org. [ILO], *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* 19 (2013). [hereinafter *Domestic Workers Across the World*].

7. There are many historical (U.S.) and contemporary (Lebanon and Saudi Arabia) examples of domestic workers being excluded from labor protections. Human Rights Watch, [HRW], *Lebanon: Migrant Domestic Workers With Children Deported*, (Apr. 25, 2017, 12:01 AM), <https://www.hrw.org/news/2017/04/25/lebanon-migrant-domestic-workers-children-deported> ("The estimated 250,000 migrant domestic workers in Lebanon are excluded from labor law protections") [<https://perma.cc/ZNL7-57Y7>]; Human Rights Watch, [HRW], *Saudi Arabia: Steps Toward Migrant Workers' Rights* (Nov. 15, 2015, 12:00 AM), <https://www.hrw.org/news/2015/11/15/saudi-arabia-steps-toward-migrant-workers-rights> ("Saudi Arabia's recent labor reforms may help curb rampant abuses, but they exclude domestic workers and institutionalize bias against women.") [<https://perma.cc/4BD9-AQ9Y>]. For a brief discussion of the United States Fair Labor Standards Act and its exclusion of domestic workers, see Eileen Boris, *Decent Work in the Home: Affect and Rights Talk*, 15 *SANTA CLARA J. INT'L L.* 79, 87 (2017).

8. Ricard-Guay, *supra* note 5, at 12 (noting that very little case law on trafficking law exists, and that governments should broaden the scope of trafficking in persons statutes to effectively prosecute).

9. See *infra* Section III.A. on Convention 189.

of abusive labor in domestic work can be complex, and touches human rights, criminal, labor, and immigration laws.

In contrast to the lack of sympathy afforded to adult domestic workers, countries are overwhelmingly sympathetic to issues concerning the eradication of child labor. The UN Convention on the Rights of Child (“UNCRC”) has 196 parties and 140 signatories, and the ILO Convention 182 on the Worst Forms of Child Labour (“C182”) has 180 signatories.<sup>10</sup> Many adult domestic workers share experiences similar to Thérèse’s.<sup>11</sup> However, the extent of legal and social protections at their disposal may vary depending on their age.

Child domestic work is not always the ‘worst form’ of child labor.<sup>12</sup> The worst forms of child labor include compulsory labor or labor that may harm the health, safety, or morals of the child.<sup>13</sup> Therefore, in domestic work, the ‘worst forms’ of child labor are situations in which the child is not able to leave the employment situation because of force or coercion, or is subject to abusive

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10. United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1448, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en) [hereinafter UNCRC] (alternatively referred to as UNCROC) [<https://perma.cc/NWK8-F2LT>]; *Ratifications of C182 - Worst Forms of Child Labour Convention 1999 (No. 182)*, INT’L. LABOUR ORG., [http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312327:NO](http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO) (last visited May 14, 2018) [hereinafter *Ratifications of C182*] [<https://perma.cc/Y82K-2NCG>].

11. Abuse of domestic workers is distressingly common, and well (if sporadically) documented. For a report on the global status of abuse of domestic workers, see generally, *Domestic Workers Across the World*, *supra* note 6, at 19. For an overview of abusive labor conditions in Hong Kong, see JADE ANDERSON & VICTORIA WISNIEWSKI OTERO, JUSTICE CNT., *COMING CLEAN: THE PREVALENCE OF FORCED LABOUR AND HUMAN TRAFFICKING FOR THE PURPOSE OF FORCED LABOUR AMONGST MIGRANT DOMESTIC WORKERS IN HONG KONG* (Aideen McLaughlin, ed., 2016).

12. ILO & Int’l Programme on the Elimination of Child Labour, [IPEC], *Ending Child Labour in Domestic Work and Protecting Young Workers from Abusive Working Conditions 6* (2013) (“Under Convention No. 182, child domestic work was not explicitly defined as a worst form of child labour; however, it was acknowledged that some situations could be considered as worst forms of child labour”) [hereinafter *Ending Child Labour*]. The worst forms of child labor are: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, 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.” ILO, *Worst Forms of Child Labour Convention, 1999 (No. 182)*, art. 3(d), June 17, 1999, 2133 U.N.T.S. 161 [hereinafter C182].

13. C182, *supra* note 12.

conditions that could harm their health and safety.<sup>14</sup> In the worst cases, domestic work can amount to human trafficking.<sup>15</sup> To eradicate these worst practices in child domestic labor, countries must adopt policies and frameworks for doing so – frameworks that would inherently improve protections for adult domestic workers.<sup>16</sup>

Unlike factory work or agricultural work, domestic work takes place in a private home, making its regulation different from, and more challenging than, other industries. The ILO has suggested formalizing the domestic work economy to prevent abuse in the industry, for example by requiring written employment contracts and ensuring access to judicial mechanisms.<sup>17</sup> These protections help to protect domestic workers against harmful and compelled working conditions.<sup>18</sup> Human rights, including labor rights, are understood to be inherent to each individual.<sup>19</sup> Therefore, excluding adult DWs from protective human rights regimes is not in keeping with the understanding that human rights apply equitably to all humans. It would be impractical, if not impossible, to require written employment contracts for children and not recognize the same contract once the worker reaches adult age.<sup>20</sup>

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14. *Ending Child Labour*, *supra* note 12, at 14-24; *see also* C182, *supra* note 12.

15. Depending on the jurisdiction and relevant statute, trafficking can involve transport across international borders, or can involve solely domestic activity. For example, in the United States, the definition of trafficking incorporates fraud and coercion, but not necessarily transport, as a means through which trafficking can be achieved. 22 U.S. § 7102 (9) (2014); HAVIZ & PAARLBERG, *supra* note 5, at 19-21; H el ene Harroff-Tavel & Alix Nasri, ILO, *Tricked and Trapped: Human Trafficking in the Middle East* (2013) 41-43.

16. *See infra* Section VI.A.

17. Agustinus Beo Da Costa, *Without Contracts, Domestic Workers' Rights Unprotected*, ILO, (Aug. 28, 2015), [http://www.ilo.org/jakarta/info/public/fs/WCMS\\_464070/lang-en/index.htm](http://www.ilo.org/jakarta/info/public/fs/WCMS_464070/lang-en/index.htm) [<https://perma.cc/C82D-PX2A>]; *see also* ILO, Resolution Concerning Decent Work and the Informal Economy, 90th Session of the General Conference ¶¶ 28-30 (2002) [hereinafter Resolution Concerning Decent Work].

18. Advocates have routinely requested these mechanisms to help prevent abusive employment practices. *See Child Labour and Domestic Work*, INT'L LABOUR ORG., <http://www.ilo.org/ipecc/areas/Childdomesticlabour/lang-en/index.htm> (last visited May 14, 2018) [<https://perma.cc/Y5T4-JFA4>].

19. G.A. Res. 217 A(III), Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948); Jean-Michel Servais, *Universal Labor Standards and National Cultures*, 26 COMP. LAB. L. & POL'Y J. 35, 36 (2004) (describing ILO activities as a "universal mandate").

20. This can be even more complicated considering that in many countries, particularly in rural areas, identity and birth date documents are not provided at birth. SARAH PAOLETTI ET AL., *MIGRANT WORKERS' ACCESS TO JUSTICE AT HOME: NEPAL* 44 (2014) Even where documents are available, they may be forged. Harroff-Tavel & Nasri, *supra* note 15, at 61.

Thus, preventing the worst forms of child domestic labor requires effective oversight of the industry as a whole. The most effective rights-based advocacy would cement the overlap between child labor and domestic work in the eyes of policy makers and the broader community. This Note argues that domestic worker advocates should utilize international legal frameworks and domestic law pertaining to eradication of the worst forms of child domestic labor to strengthen the rights of all domestic workers.

The first objective of this Note is to solidify the connection between adult and child DWs within a human rights-based framework. The second objective is to argue that states must take steps to regulate the industry as a necessary component of their international legal obligations to eradicate the worst forms of child labor. Part II defines domestic work and domestic workers, and describes their historical role as informal caregivers. Part III introduces C189 and its accompanying Recommendation 201 (“R201”), Convention 182 on the Worst Forms of Child Labour and the UN Convention on the Rights of the Child. Part IV discusses the legislative precariousness of domestic workers and elucidates the particular difficulties in regulating the domestic work industry. Part V highlights the primary legal differences between adult and child DWs. This Part then describes the numerous similarities between the two groups to establish a foundation for the approach advocated in Part VI. Part VI uses the commonalities shared by child and adult DWs to propose that countries should act on their obligations to honor and protect particular human rights. This Part also addresses the hypocrisy of countries who desire ‘on paper’ to protect the most vulnerable child workers, while failing to implement policies and legal mechanisms that would oversee the domestic work industry, in which so many children are kept in abusive forms of child labor. Finally, in Part VII, this Note provides three broad avenues through which advocates can push their governments to protect domestic workers from the worst forms of abusive labor.

## *II. DEFINING THE PROBLEM – CHALLENGES IN DEFINING AND PROTECTING DOMESTIC LABORERS*

Though global trends are moving towards the formalization of domestic work, the lines between domestic work and informal work can be unclear. It is therefore first necessary to define domestic work, domestic workers, child domestic workers, and their advocates. These definitions require a brief review of the social history of the domestic



work industry as informal work, or an economic activity that is insufficiently covered by formal legal or practical arrangements.<sup>21</sup>

### A. *Defining Domestic Work*

Nearly a century passed between the creation of the International Labour Organization in 1919<sup>22</sup> and the formal recognition of domestic workers' rights in 2011 in the form of C189 on Decent Work for Domestic Workers.<sup>23</sup> One of many reasons for the delay is the intimate nature of the domestic work and workplace.<sup>24</sup> C189 defines a domestic worker as someone who performs work in or for a household or households.<sup>25</sup>

Though C189 provides a definition of domestic work, identifying domestic work in practice can be a challenge. In many communities, children perform domestic work such as cooking, cleaning, and child care for younger siblings or others as a necessary and accepted part of life.<sup>26</sup> In impoverished communities, children, often female, are tasked with caring for their families or others, sometimes earning a small wage to assist their parents in providing for their families.<sup>27</sup> Even in wealthy countries, domestic duties are often assigned to women without

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21. Resolution Concerning Decent Work, *supra* note 17, ¶ 3.

22. *Origins and History*, INT'L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm> (last visited March 17, 2018).

23. ILO, Domestic Workers Convention, 2011 (C189), 15A/2, PR No. 15A, (June 16, 2011) [hereinafter *C189*].

24. Manuela Tomei, *Decent Work for Domestic Workers: Reflections on Recent Approaches to Tackle Informality*, 23 CAN. J. WOMEN & L., 185, 207 (2011).

25. *C189*, *supra* note 23, art. (1)(a)-(b).

26. For more on sibling care, see REKHA MEHRA ET AL., CHILD CARE OPTIONS FOR WORKING MOTHERS IN DEVELOPING COUNTRIES (n.d.), 41-42 (noting that women often left children in the care of other daughters).

27. "However, across countries and regions, the tasks undertaken by child domestic workers tend to be divided according to traditional gender roles. This means that girls are usually required to do 'indoor' tasks such as cooking, cleaning and washing, as well as taking on the 'caring' roles, such as looking after young children and the elderly." Jonathan Blagbrough, *Anti-Slavery Int'l, They Respect Their Animals More: Voices of Child Domestic Workers* 17 (2007).

payment.<sup>28</sup> The fight for recognition of domestic work as work<sup>29</sup> has its roots in gendered beliefs that domestic work is done out of love and affection, rather than as a means of sustenance.<sup>30</sup>

Domestic work is still often seen as part of the informal economy, as opposed to the formal labor force. The US National Labor Relations Act, for example, explicitly excludes any individual undertaking work or service in the home.<sup>31</sup> Domestic work is sometimes seen as training for a woman's future role as a mother.<sup>32</sup> This perception leads to a danger of commodification of women's labor.<sup>33</sup> This is particularly true when a domestic worker lives with her employer, as she gives up various freedoms that would come with living on her own.<sup>34</sup>

Even the ILO has historically failed to adequately protect domestic workers on par with other workers through its international conventions. Though some conventions expressly include domestic service within their scope, many permit the exclusion of domestic

28. The United States is one of many examples of this. Hila Shamir, *Between Home and Work: Assessing the Distributive Effects of Employment Law in Markets of Care*, 30 BERKELEY J. EMP. & LAB. L. 404, 455-56 (2009); see Bryce Covert, *Putting a Price Tag on Unpaid Housework*, FORBES (May 30, 2012), <https://www.forbes.com/sites/brycecovert/2012/05/30/putting-a-price-tag-on-unpaid-housework/#1dcea8a835c6> [<https://perma.cc/4C7M-EZHK>]; see also Rebecca M. Horne et al., *Time, Money, or Gender? Predictors of the Division of Household Labour Across Life Stages*, SEX ROLES (2017) (finding that women assume more housework than their male counterparts across all age groups).

29. This phrase describes the conception of domestic work as work like any other formalized industry, as opposed to domestic labor performed outside of a formal employment relationship and in the privacy of the home. Asha D'Souza, Int'l Labour Org., *Moving Towards Decent Work for Domestic Workers: An Overview of the ILO's Work*, 23, 73, 81, (working Paper 2/2010, 2010).

30. Boris, *supra* note 7, at 83; see also Int'l Labour Conference, [ILC], Report IV(1)-Decent Work for Domestic Workers, ¶ 18 (June 16, 2010) (referring to domestic work as a "labour of love") [hereinafter Report IV(1)].

31. United States National Labor Relations Act, 29 U.S.C. §152(3) (1935).

32. ILO & IPEC, *Ending Child Labor*, *supra* note 12, at 2.

33. Mantouvalou, *supra* note 4, at 164; Shamir, *supra* note 28, at 434-43.

34. For example, some employers with live-in domestic workers restrict their freedom to come and go as they please by setting curfews, restricting the time and ability of the worker to entertain friends at the home or use resources at the home such as the internet or air conditioning, and restricting private space by requiring the domestic worker to share a room or sleep in a space used during the day. See Tom Grundy, *Hong Kong Domestic Workers Made to Live in Bathrooms, Closets, on Balconies and Roofs*, HONG KONG FREE PRESS (May 10, 2017, 19:45), <https://www.hongkongfp.com/2017/05/10/hong-kong-domestic-workers-made-to-live-in-bathrooms-closets-on-balconies-and-roofs/> [<https://perma.cc/4ZLM-7HKP>]; see also Jun Pang, HONG KONG FREE PRESS Aug. 14, 2017, 10:53), <https://www.hongkongfp.com/2017/08/14/employer-who-prevented-domestic-worker-from-using-air-con-cyberbullied-says-rights-group/> [<https://perma.cc/NK6B-7TK2>].

workers through ‘flexibility clauses.’<sup>35</sup> The Dominican Republic refused to extend the 1990 Night Work Convention no. 171 to DWs. Likewise, the Netherlands refused to extend the 1994 Part-time Work Convention no. 175 to DWs.<sup>36</sup> States including Bolivia, Chile, Egypt, France, Guyana, Uruguay, Yemen and Zambia refused to extend the 1970 Minimum Wage Fixing Convention No. 131 to DWs.<sup>37</sup> The language of minimum wage statutes in countries including Guatemala, the Republic of Korea, Lebanon, the Netherlands, and Sri Lanka also seem to implicitly exclude domestic workers from the minimum wage in breach of Convention 131’s procedural requirements.<sup>38</sup>

### *B. A Background on Adult & Child Domestic Workers*

Understanding DWs requires understanding the social underpinnings of how communities value their work. Women account for eighty-three percent of all domestic workers,<sup>39</sup> and globally one in every thirteen female wage workers is a domestic worker, a 7.5 percent total.<sup>40</sup> A domestic worker is defined as a person who performs work in or for a household or households, while a child domestic worker is someone who does this work and is between the ages of 5 and 17.<sup>41</sup> This Note uses the term “domestic worker” to refer to all those who perform work in or for a household(s), regardless of age. Children who perform chores or unpaid work in their own household are not included in this definition.<sup>42</sup>

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35. Flexibility clauses typically require notice of exclusion at the time of ratification. ILC, Report IV(1), *supra* note 30; *see also* Smith, *supra* note 4, at 169.

36. ILC, Report IV(1), *supra* note 30, at 20.

37. *Id.* at 22.

38. *Id.* (“Guatemala, Republic of Korea, Lebanon, the Netherlands and Sri Lanka seem to exclude domestic workers from the scope of the minimum wage legislation without a clear indication of fulfilment of procedural requirements under Art. 1, para. 3, of Convention No. 131.”).

39. For this reason and the sake of simplicity, I use feminine pronouns when discussing domestic workers, while still recognizing that male domestic workers are included in these figures.

40. *Domestic Workers Across the World*, *supra* note 6, at 19.

41. *C189*, *supra* note 23, art. (1)(a-b); ‘Child labor’ can have different definitions based on the type of work and age of the child. *See What is Child Labor*, INT’L LABOUR ORG., <http://www.ilo.org/ipecc/facts/lang--en/index.htm> (last visited May 14, 2018) [<https://perma.cc/P6PA-WNKN>]. Here I use the term ‘child domestic worker’ to refer to anyone below the age of 18 undertaking domestic work.

42. *C189*, *supra* note 23 art. (1)(c).

Though domestic work can provide a valuable entry point into the gainful labor market, poor working conditions and inadequate legal protections disproportionately affect women and help to perpetuate gender and wage disparities.<sup>43</sup> During the 1970s, feminists in the United States led the charge against discrimination in the employment of women.<sup>44</sup> Following the Civil Rights Movement of the 1970s the devaluing of particular types of work was also framed around race.<sup>45</sup> A US Senator on the Labor and Education Committee in the 1970s noted that “the lack of respect accorded domestics is in many ways an unfortunate reflection of the value we place on the traditional role of women in our society.”<sup>46</sup>

It is important to briefly note here the role that lack of workable and affordable child and elderly care options plays in the continued reliance on domestic workers for care work.<sup>47</sup> The US labor market for example, makes it difficult for unskilled women to find jobs with salaries sufficient to cover childcare.<sup>48</sup> Lack of child care alternatives

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43. Smith, *supra* note 4, at 161; *see also* ILC, Report IV(1), *supra* note 30, ¶ 63. For more on wage disparities see Bangladesh Shishu Adhikar Forum, [BASF], *Hidden Slavery: Child Domestic Work*, 47 (Mar. 2016) (noting that in a study conducted in Bangladesh, for all ages ranges, male child domestic workers made more than their female counterparts).

44. EILEEN BORIS & JENNIFER KLEIN, *CARING FOR AMERICA: HOME HEALTH WORKERS IN THE SHADOW OF THE WELFARE STATE* 130 (2012).

45. *Id.*

46. *Id.* (quoting Senator Harrison Arlington Williams Jr. (D-NJ)).

47. *See* DANIEL A. BELL, *CHINA’S NEW CONFUCIANISM: POLITICS AND EVERYDAY LIFE IN A CHANGING SOCIETY* 72 (2008) (noting that in Hong Kong, preference for foreign domestic workers may be explained by lack of quality daycare); Arijit Nandi et al., *The Effect of an Affordable Daycare Program on Health and Economic Well-being in Rajasthan, India: Protocol for a Cluster-Randomized Impact Evaluation Study*, 16 *BMC PUBLIC HEALTH*, no. 460, 2016, at 1, 2 (noting that the provision of affordable daycare has the potential to reduce gender inequality by allowing poor women to join the labor force); ABIGAIL BESS BAKAN & DAIVA K. STASIULIS, *NOT ONE OF THE FAMILY: FOREIGN DOMESTIC WORKERS IN CANADA* 107 (1997) (arguing that the Canadian government should recognize the lack of affordable child care and allow tax deductions for the employment of domestic workers); Rachel Moussié, *WIEGO, UN Secretary-General’s High-Level Panel on Women’s Economic Development, Child Care from the Perspective of Women in the Informal Economy* 1 (Sep. 2016) (noting that childcare is inaccessible to and unaffordable for low paid workers, contributing to the cycle of poverty); NAT’L WOMEN’S L. CTR., *LISTENING TO WORKERS: CHILD CARE CHALLENGES IN LOW WAGE JOBS* 5 (June 2014) (noting that women in the United States tend to rely on informal care by friends, family, or neighbors due to the lack of affordable care options).

48. Shamir, *supra* note 28, at 440-41; *see also* Daniela Del Boca, *The Impact of Child Care Costs and Availability on Mothers’ Labor Supply* 15 (ImPRovE Working Paper No. 15/04, 2015) (“In the U.S. . . . mothers’ labor supply is quite sensitive to costs variations.”).

may cause an employer to call for domestic workers to work long hours.

Domestic workers tend to migrate from poorer areas to wealthier ones.<sup>49</sup> In addition to the type of work they undertake, domestic workers are rendered uniquely vulnerable because of an intersection of migration, education, race, socio-economic status and often gender.<sup>50</sup> Employers of domestic workers are often women, “characterized by a difference of status that the latter is often keen to maintain.”<sup>51</sup> This further reflects the perception that home and care work is the responsibility of women.<sup>52</sup>

The origins of labor law conceptualized work or labor as industrialized labor,<sup>53</sup> rather than caring work, which was a historically female role and one that continues to be undertaken by women.<sup>54</sup> Emotional, physical, and sexual abuse are commonly committed against domestic workers, particularly those that live with employers.<sup>55</sup> In Brazil, domestic workers are second largest group of female domestic violence victims after housewives.<sup>56</sup>

Without effective support to help break workers out of poverty, domestic work becomes cyclical, as women pass the role onto their

49. *Ending Child Labour*, *supra* note 12, at 2 (“For the majority, a common cross-cutting factor influencing their engagement in child domestic work – for both girls and boys – is the extent of the social exclusion and relative poverty of their families and communities.”); *see also Domestic Workers Across the World*, *supra* note 6, at 29 (“In general, local domestic workers are younger, come from poorer areas.”); *id.* at 21 (“Domestic workers generally migrate within the region, generally from poorer to more prosperous countries.”).

50. Smith, *supra* note 4, at 165 (“Likewise when women enter receiving countries to work as domestics, they are commonly relegated to an unequal position in society based on their gender, race, and class identity.”).

51. Albin & Mantouvalou, *supra* note 6, at 138.

52. ILC, Report IV(1), *supra* note 30, ¶ 25.

53. For example, the US Department of Labor was created in 1913 as a response to poor conditions in factories. A women’s bureau within the Department was created in 1920, indicating that the original conception of labor did not necessarily include women’s work. Public Law No. 259 of June 5, 1920, [https://www.dol.gov/wb/info\\_about\\_wb/interwb.htm](https://www.dol.gov/wb/info_about_wb/interwb.htm) [<https://perma.cc/8V97-PEW5>].

54. *See supra* note 28 and accompanying text.

55. *See infra* Part V.B.5. on ‘emotional, physical and sexual abuse.’

56. Virginia et al., *supra* note 4, at 15. For more on violence against domestic workers in Brazil, see *Creuz Oliveira, A Domestic Worker in Brazil, Real Life Stories*, UN, <http://www.un.org/en/letsfightracism/oliveira.shtml> [<https://perma.cc/8BZL-BBC9>]; (last visited May 14, 2018). *See also* Virginia Mantouvalou, *What Is to Be Done for Migrant Domestic Workers?*, in *LABOUR MIGRATION IN HARD TIMES: REFORMING LABOUR MARKET REGULATION?* 141 (Bernard Ryan ed., 2013) (noting that abuse is distressingly common among migrant workers).

children. Many Sri Lankan women undertake domestic work in Middle Eastern countries and leave their children with extended family members, for whom the children work.<sup>57</sup> Other contributing factors that lead children into domestic work include lack of educational opportunities, fleeing a forced marriage, domestic violence, displacement, or the loss of a family member from conflict or disease.<sup>58</sup>

In addition to explicit exclusions from a number of ILO Conventions, domestic workers are often excluded from labor laws that would protect an industrial worker.<sup>59</sup> The home countries from which migrant workers come are called ‘origin countries’, and the countries they migrate to are ‘destination countries’. Migrant Domestic Workers (“MDWs”) may even be subject to different labor standards than other migrants.<sup>60</sup> DWs may be less likely to expose abuse, pursue a legal case against employers, or leave an abusive employer if they could be exposed to deportation, a countersuit or criminal proceedings.<sup>61</sup> This fear effectively limits their access to the justice system.<sup>62</sup>

Some jurisdictions have restrictive visa regimes for domestic workers. For example, countries of the Gulf Cooperation Council<sup>63</sup> utilize the Kafala<sup>64</sup> sponsorship system, which links immigration status

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57. ILO-IPEC INTERREGIONAL WORKSHOP ON CHILD DOMESTIC LABOUR AND TRADE UNIONS: REPORT 38 (Feb. 2006) [hereinafter ILO-IPEC INTERREGIONAL WORKSHOP].

58. *Ending Child Labour*, *supra* note 12, at 9.

59. *See supra* note 35 and accompanying text. 60. For more on statutory exclusions see *supra* note 7 and accompanying text.

60. For more on statutory exclusions see *supra* note 7 and accompanying text.

61. *See* HAVIZ & PAARLBERG, *supra* note 5, at 6, 30 (noting that 78% of interviewees reported that their employers threatened them with deportation if they complained about work conditions, but that law HB493/SB178 in Maryland expanded the definition of extortion to include employers who threaten to report a worker’s immigration status); *see also infra* note 65 on the Kafala system.

62. *See generally* Human Rights Watch, *Hidden Away: Abuses against Migrant Domestic Workers in the UK* 38-48 (Mar. 30, 2014) (“The fear of deportation is a strong deterrent for them to report abuse by their employer.”). For a discussion of non-authorized migration see THE RIGHT TO WORK: LEGAL AND PHILOSOPHICAL PERSPECTIVES 51 (Virginia Mantouvalou ed., 2015) [hereinafter THE RIGHT TO WORK].

63. The Gulf Cooperation Council (“GCC”) consists of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (“UAE”). Charter of the Co-operation Council for the Arab States of the Gulf (with Rules of Procedures of the Supreme Council, of the Ministerial Council and of the Commission for Settlement of Disputes), Bahr.-Kuwait-Oman-Qatar-Saudi Arabia-U.A.E., May 25, 1981, 1288 U.N.T.S. 151.

64. Also spelled Kefala or nizām al-kafāla.

to a particular employer.<sup>65</sup> This gives the employer complete control over the employee's ability to change employment or leave the country.<sup>66</sup>

Finally, non-legal problems such as political and cultural barriers prevent domestic workers from reporting abuse.<sup>67</sup> Where abuse is reported, legal mechanisms that fail to account for differences in education, language skills, and financial circumstances can be ineffective.<sup>68</sup> The culmination of these various identities and lack of accommodating policies creates social and legal hurdles that can be nearly impossible for domestic workers to overcome.

This Note uses the terms 'advocacy' and 'advocates' broadly to incorporate all those working towards improved conditions in the domestic work industry. Primarily, advocates are trade unions, civil society organizations, international human rights organizations and domestic workers themselves. Secondly, advocates include government bodies, think tanks, and academics. Advocacy, as used in this Note, involves a wide variety of methods, including campaigns, awareness raising, research, academic studies and impact litigation, among others. These terms are used to give context and color to the groups and individuals whom have been responsible for DWs' past international and domestic legislative successes.

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65. The Kafala System is a method of strictly controlling the foreign labor force. In Kafala, an employer applies for, dictates and controls the terms of stay for a domestic employee, creating a large power differential. The system was introduced to restrict migration from less wealthy Arab countries to the UAE, and workers of African or Asian origin were considered "more docile" and thus preferred. Asia Pacific Mission for Migrants, *The Kafala: Research on the Impact and Relation of the Sponsorship System to Migrant Labor Bondage in GCC Countries* 24-26 (Sept. 2014).

66. *Id.* at 24; see also Migrant Forum Asia, Policy Brief No. 2: Reform of the Kafala System 1.

67. Int'l Labour Office, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments*, ¶ 489, 105th Session (2016) ("[I]nformation provided by a number of trade unions stating that it is unreasonable to expect migrant workers to enforce their rights through the court system without provision of specific assistance . . . the [International Trade Union Confederation] referred to practical challenges migrant workers may face, such as limited language skills, inability to meet legal fees and lack of understanding of the country's legal system.").

68. *Id.* (noting that granting access to justice is the duty of a State, and it is unreasonable to expect domestic workers who may lack language and financial resources to access it without assistance).

69. *C189*, *supra* note 23, preamble.

### III. INTERNATIONAL CONVENTIONS

Part III covers international law and its provisions that are most relevant to domestic workers. C189, promulgated in 2011, serves as the primary source of international law regarding labor standards for domestic workers. C189 is accompanied by R201, which elaborates on C189's underlying rights. Two conventions are of particular relevance to the eradication of domestic child labor: The UN Convention on the Rights of the Child and the ILO Convention 182 on the Eradication of the Worst Forms of Child Labour.

#### A. Convention 189

C189 was promulgated to recognize the undervalued and invisible domestic work undertaken primarily by women and girls.<sup>69</sup> Though domestic work was long considered to be the domain of the private home, as more women enter the labor force,<sup>70</sup> demand for domestic work has grown, reaching 52.6 million workers in 2010.<sup>71</sup> The improved ease of migration and improvement of technology facilitating the sending of remittances makes migrating for domestic work easier than ever before. Since the early 2000s, high profile cases helped to shine a light on abuse of domestic workers, particularly where they were brought to developed countries by foreign diplomats.<sup>72</sup> Technology has also helped push domestic workers' rights to the fore by enabling DWs to document abuses on cellphones.<sup>73</sup>

The ILO first considered legislating on domestic workers in 1948, and again in 1965, however this never came to fruition.<sup>74</sup> Instead, during sessions in 1948 and 1965 the Committees settled on passing resolutions related to the employment of domestic work.<sup>75</sup> In 2007, a

69. C189, *supra* note 23, preamble.

70. Smith, *supra* note 4, at 163.

71. *Domestic Workers Across the World*, *supra* note 6, at 24.

72. See Frank Langfitt, *Servants: Diplomat Held Us as Suburban 'Slaves'* NPR, Mar. 1, 2007; see also Jo Becker, *Strip Search Uproar: What about the Nanny*, CNN, Dec. 19, 2013. See also Steve George, *Bangladeshi Diplomat in US Accused of Forcing Servant to Work Without Pay*, CNN, June 4, 2017.

73. See, e.g., Meredith McBride, *Hong Kong: Abused Maid Erwiana Says Employer Should Get Life in Prison*, ASIAN CORRESPONDENT, Feb. 11, 2015.

74. Leila Kavar, *Making the Machine Work: Technocratic Engineering of Rights for Domestic Workers at the International Labour Organization*, 21 IND. J. GLOBAL LEGAL STUD. 483, 495 (2014).

75. ILC, Report IV (1), *supra* note 30, ¶ 5.



brief to the ILO Governing Body highlighted the link between domestic work and its ‘decent work agenda’, which prioritized the elimination of discrimination in employment, the elimination of forced labor, and the abolition of child labor.<sup>76</sup> The brief noted that the incidence of child labor in domestic work was widespread and that “girls dominate in domestic work.”<sup>77</sup> The brief specifically contemplates an additional Convention protecting the nearly 100 million global workers under the age of 18 which would complement C182 and C138, the Minimum Age Convention.<sup>78</sup> C189 recognizes that child domestic workers, migrant workers, and live-in workers are at particular risk of exploitation.<sup>79</sup> These early movements of C189 show its inherent links to the ILO’s goal of eradicating child labor.

Some employer groups,<sup>80</sup> where they existed, were opposed to the creation of a Convention, and disliked standard-setting in the area, particularly around the provision of social security and labor inspections.<sup>81</sup> An ILO delegate from Bangladesh doubted whether employers of domestic workers were sophisticated enough in their legal knowledge to comply with international labor standards.<sup>82</sup> Further, traditionalists at the ILO found the suggestion of setting domestic work standards as “unexpected and puzzling.”<sup>83</sup>

Despite these hesitations, in the first five years after C189 was promulgated, over seventy ILO member states have taken steps to improve the situation of domestic workers within their borders.<sup>84</sup>

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76. Kavar, *supra* note 74, at 495.

77. ILO, Agenda of the International Labour Conference: Proposals for the Agenda of the 99th Session (2010) of the Conference, ¶ 54, GB.300/2/2 (Nov. 2007).

78. *Id.* ¶ 63.

79. C189, *supra* note 23, preamble.

80. Little information is available about exactly who makes up these employer groups. See Kavar, *supra* note 74, at 496.

81. *Id.*

82. Boris, *supra* note 7, at 97-98.

83. Kavar, *supra* note 74, at 497.

84. ILO, Implementation of International Labour Standards for Domestic Workers, Aug. 2017, 1 [hereinafter Implementation of International Labour Standards]; see also *Decent Work for Domestic Workers*, [http://www.ilo.org/wcmsp5/groups/public/—ed\\_protect/—protrav/—travail/documents/genericdocument/wcms\\_313678.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—travail/documents/genericdocument/wcms_313678.pdf) (listing the countries that have taken action on C189 as of 2013); ILO, *Labour Inspection and Other Compliance Mechanisms in the Domestic Work Sector Introductory Guide* (2016) at 19 (noting that 70 states have taken steps to improve protections for domestic workers, thanks to a campaign by the International Trade Union Confederation to push for countries to ratify C189) [hereinafter Labour Inspection and

Thirty states successfully adopted reforms to extend labor and legal protections to domestic workers and eighteen are considering extending protections.<sup>85</sup> The remaining twenty-four countries have signed and ratified C189.<sup>86</sup> Since ratification, the ILO has provided assistance to at least sixty countries on the formation of bilateral treaties covering domestic labor, child labor, and forced labor.<sup>87</sup> Noticeably absent from the signatories list are many destination countries for migrant domestic labor: primarily developed economies in Asia and the Middle East.<sup>88</sup> None of the ‘Kafala’ countries have ratified C189.<sup>89</sup>

### 1. Successes of C189

C189 formally recognizes the rights of domestic workers for the first time. It includes comprehensive obligations spanning economic, social and cultural rights as well as civil and political rights.<sup>90</sup> Bringing domestic workers into the ILO’s tripartite system benefits domestic workers, who lack a voice in policy-making because of inequalities in bargaining power.<sup>91</sup> C189 also brings domestic work within the ILO’s Decent Work Agenda, an initiative to secure the right to decent work

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Other Compliance Mechanisms]. For more on the ITUC’s 12 by 12 Campaign, see *Ending Child Labour*, *supra* note 12, at 54.

85. See Implementation of International Labour Standards, *supra* note 84, at 1.

86. See *Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189)*, ILO, [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:2551460](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460) (last visited Apr. 12, 2018) (noting that the following countries have ratified C189: Argentina, Belgium, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Finland, Germany, Guinea, Guyana, Ireland, Italy, Jamaica, Mauritius, Nicaragua, Panama, Paraguay, Philippines, Portugal, South Africa, Switzerland, and Uruguay) [<https://perma.cc/4FDN-GSNF>].

87. *Decent Work for Domestic Workers: Achievements since the adoption of C189 2* (June 14, 2016). It is difficult to hypothesize as to the low, or slow, rate of C189 ratification as little literature exists on the topic. It is possible that some countries lack unions or mass movements to encourage ratification. One possibility is that ILO ratification tends to be lower in Africa and parts of Asia, where greater portions of the economy are informal. Evance Kalula, Juliana Masabo & Marius Oliver, *Informality, Employment and Social Protection: Some Critical Perspectives for/from Developing Countries*, July 2012.

88. Including countries with large numbers of migrant domestic workers, such as the UAE with over 750,000 migrant domestic workers and Kuwait with 620,000. See *Migrant Rights Statistics – Domestic Workers in the Gulf*, Migrant Rights Org. (2018), <https://www.migrant-rights.org/statistic/domesticworkers/> [<https://perma.cc/E2MK-RCUA>].

89. The Countries using the Kafala system of migration are the UAE, Oman, Bahrain, Kuwait, Saudi Arabia, Jordan, Iraq and Lebanon. See *Migrant Forum Asia*, *supra* note 66.

90. See *generally C189*, *supra* note 23.

91. See *Labour Inspection and Other Compliance Mechanisms*, *supra* note, at 40.

for all workers.<sup>92</sup> The Decent Work Agenda involves ILO monitoring and assessment, data collection, policy analysis, and country profiling for compliance.<sup>93</sup> Article 7 of C189 requires that DWs be informed of their work terms and conditions, preferably through written contracts.<sup>94</sup> Thus, the Convention could move workers from the informal sector into a formal work situation.<sup>95</sup> Additionally, these rights have begun to be incorporated in other ILO instruments.<sup>96</sup>

## 2. Shortcomings of C189

The definition of domestic work “within an employment relationship” has been criticized due to the occasionally ambiguous nature of an employment relationship.<sup>97</sup> The ILO defines employment as “performing some work for wage or salary in cash or in kind.”<sup>98</sup> This can be problematic in the domestic work industry where benefits are given, but not explicitly exchanged for work. For example, a young woman working in her aunt’s home may receive lodging or food. Though this could be considered an ‘in kind’ benefit, her aunt could argue that such benefits are not conditional on the working relationship, and therefore the situation would fall outside the legal definition of an employment relationship. Employers could thus abuse this definition

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92. Tomei, *supra* note 24, at 186-87.

93. See generally INT’L LABOUR ORG - MEASURING DECENT WORK, <http://www.ilo.org/integration/themes/mdw/lang—en/index.htm> (last visited Mar. 20, 2018).

94. C189, *supra* note 23, art. 23 VII (“Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements.”).

95. Sandra Fredman, *Home from Home: Migrant Domestic Workers and the International Labour Organization Convention on Domestic Workers*, in *MIGRANTS AT WORK: IMMIGRATION AND VULNERABILITY IN LABOUR LAW* 408 (Cathryn Costello & Mark Freedland eds., 2014) (“the Convention might facilitate some movement of workers from informal and uncertain work arrangements to a more formal situation. However, as is well known, employers are adept at producing documents which disguise relationships to avoid regulation”).

96. For example, ILO Recommendation 204 on the Transition from the Informal to the Informal Economy in Section 4(c) includes “paid domestic workers employed by households.” ILO, *Recommendation 204 – Recommendation Concerning the Transition from the Informal to the Formal Economy* §4(c), June 12, 2015.

97. Mantouvalou, *supra* note 4, at 145 (noting that the definition “within an employment relationship” excludes those employed on a casual basis).

98. *Glossary of Statistical Terms*, Organisation for Economic Co-operation and Development (2018), <https://stats.oecd.org/glossary/detail.asp?ID=778> [<https://perma.cc/3K28-9ZEU>].

to conceal employment relationships.<sup>99</sup> Additionally, C189's definition excludes those not in an employment relationship,<sup>100</sup> which effectively excludes DWs working for agencies, who are self-employed, or work on a casual basis.<sup>101</sup>

C189 uses primarily non-binding language. For example, Article 9 states that domestic workers are 'free to reach an agreement' with their employers on whether to reside in the home.<sup>102</sup> This falls short of asserting that a DW has the right to live away from the place of employment. Employers cannot be held directly accountable under C189. While C189 requires that States shall provide enforcement mechanisms against abusive employment agencies, it makes no mention of what these may look like.<sup>103</sup> Agencies commit a variety of abuses against migrant domestic workers, including confiscation of travel documents and wages.<sup>104</sup> C189 requires simply that States provide penalties for abusive agencies.<sup>105</sup> It does not demand that signatories make changes to how employers or agencies are held accountable.<sup>106</sup>

### 3. Recommendation 201

While C189 is a binding document, R201 is an accompanying and non-binding recommendation that further clarifies the nature of the

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99. Maggie Black, *Child Domestic Workers: a handbook on good practice in programme interventions*, Anti-Slavery International, 59 (2005). Anti-Slavery International points out that distinctions must be drawn between 'fostering' children and 'adopting' them, the latter of which would require equal treatment with the household's other children. The lack of a legal distinction could amount to a family member being treated as labor, without payment.

100. *See C189, supra note 23, art. 3(3)*.

101. Mantouvalou, *supra note 4*, at 145.

102. *See C189, supra note 23, art 9*.

103. *See C189, supra note 23*.

104. *See Elizabeth Frantz, Breaking the Isolation: Access to Information and Media Among Migrant Domestic Workers in Jordan and Lebanon 4*, Open Society Foundations, (Feb. 23, 2014) ("Recruitment agencies and employers routinely confiscate the passports of migrants"); *see also* Peggy W.Y. Lee & Carole J. Petersen, *Forced Labour and Debt Bondage in Hong Kong: A Study of Indonesian and Filipina Migrant Domestic Workers*, at 15, 27 ("Agencies routinely charge six months wages, arranging with the employer to divert to them the helper's wages . . . . When an employment agent or employer confiscates the passport of a MDW, it gains an element of control and ownership that can turn an abusive employment situation into a form of slavery.").

105. *See C189, supra note 23, art. 15(1)(c)*.

106. *See C189, art. 15* (requiring only that governments oversee agencies by providing complaint mechanisms, criminalize abuse of domestic workers by agencies, and ensure that agency fees are not directly deducted from a DW's remuneration).

rights detailed in C189.<sup>107</sup> C189 and R201 are designed to be read together, as the latter expands upon the provisions of the Convention.<sup>108</sup> R201 requires states to identify the worst forms of child domestic labor and pay special attention to the needs of domestic workers under the age of 18.<sup>109</sup>

### B. *The Eradication of Child Labor*

The application of human rights to children is a relatively recent concept.<sup>110</sup> The eradication of the worst forms of child labor has been addressed in international conventions and declarations, particularly ILO Convention 182 on the Worst Forms of Child Labour, and the UN Declaration on the Rights of the Child.<sup>111</sup> Domestic work has been linked with widely-disparaged labor practices including human trafficking and the worst forms of child labor.<sup>112</sup> The nearly universal ratification of these treaties provides a strong base for greater legislative protection of domestic workers, as opposed to other prominent human rights conventions.

#### 1. Convention 182

C182 on the Worst Forms of Child Labour is one of the most widely-ratified ILO conventions, with 180 ratifications.<sup>113</sup> C182 uses binding language requiring that State parties “shall take immediate and effective measures” to fulfill its mandate.<sup>114</sup> Given the high ratification rate of C182, countries have affirmative obligations to protect child workers that fall under its mandate. C182 calls on governments to

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107. ILO, *Decent Work for Domestic Workers: Convention 189 & Recommendation 201 at a Glance*, Int’l Labour Office of Geneva 7 (2011) [hereinafter *R201*].

108. *Id.*

109. ILO, *Recommendation Concerning Decent Work for Domestic Workers*, Art 5(1)-(2), 15B/2, PR No. 15B (June 16, 2011).

110. ILO, *Tackling Child Labour in Domestic Work: A Handbook for Action*, Int’l Labour Org. & Int’l Domestic Workers Fed’n., 68 (2017) [hereinafter *Tackling Child Labour*].

111. See C182, *supra* note 12; UNCRC, *supra* note 10.

112. See Paul Vitello, *From Stand in Long Island Slavery Case, a Snapshot of a Hidden U.S. Problem*, N.Y. TIMES (Dec. 3, 2007); see also Human Rights Watch, *Protect 15 Million Child Domestic Workers* (Feb. 25, 2013).

113. *Ratifications of C182*, *supra* note 12.

114. C182, *supra* note 12, art. I.

prioritize the abolition of the worst forms of child labor in their attempts to eradicate child labor completely.<sup>115</sup>

Domestic legislation regulating the employment of children often exists on the books, but domestic work may be excluded.<sup>116</sup> In the mid-2000s a number of major human rights organizations published studies on the intersection between the worst forms of child labor and domestic work. Human Rights Watch produced a report in 2006 titled “Swept under the Rug: Abuses against Domestic Workers Around the World,” which found that laws prohibiting abusive child domestic labor were poorly enforced.<sup>117</sup> Anti-Slavery International also conducted research on domestic workers in the Middle East in the same year and found that girls as young as five were doing domestic work.<sup>118</sup> In 2005, Anti-Slavery International listed practices through which domestic work could contribute to the worst forms of child labor, in contravention of C182 and its accompanying Recommendation 190.<sup>119</sup> These include circumstances in which a child is helping pay off a parent’s debt, when a child is under fourteen-years-old, or when a child is forced to work excessive hours.<sup>120</sup>

Article 3 of C189 clearly lists one of its goals as the effective abolition of child labor.<sup>121</sup> C189 complements some provisions in C138 on Minimum Age and C182, for example Article 4 of C189 requires a minimum age be set for domestic work consistent with those Conventions.<sup>122</sup> R201 also requires the identification, prohibition and elimination of hazardous domestic work by children, and implementation of monitoring systems to prevent this.<sup>123</sup>

Article 7 (2) of C182 requires a ratifying state to take effective measures to prevent child labor by providing direct assistance for removal of children from the worst forms of child labor, ensuring

115. The complete eradication of child labor is called for in Convention 138. ILO, *Convention concerning Minimum Age for Admission to Employment*, preamble (June 19, 1976).

116. Black, *supra* note 99, at 59.

117. Human Rights Watch, *Swept Under the Rug*, Vol. 18, Number 7(C) (2006).

118. Anti-Slavery International, *Trafficking in Women Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*, at 18-19 (2006); *see also* Celia Mather, *Women in Informal Employment: Globalizing and Organizing*, [WIEGO] “Yes, We Did It!” *How the World’s Domestic Workers Won Their International Rights and Recognition* (2000).

119. Black, *supra* note 99, at 6.

120. *Id.*

121. C189, *supra* note 23, art. 3(2)(c).

122. *Id.* art. 4.

123. R201, *supra* note 107, art. 5(2).

access to basic education, identifying and reaching out to children at special risk and taking “into account the special situation of girls”.<sup>124</sup> Therefore, where children are found at particular risk in domestic work, C182 requires states to take effective measures to identify and reach out to them.<sup>125</sup> Because of the high prevalence of girls in the industry, states are further required to take into account the role of females in domestic work.<sup>126</sup>

## 2. United Nations Convention on the Rights of the Child

The UN Convention on the Rights of Child is a binding document with 196 parties.<sup>127</sup> Only the United States has not ratified the agreement, though it has signed it.<sup>128</sup> Though many provisions of UNCRC are applicable to child domestic workers (“CDWs”),<sup>129</sup> UNCRC Article 32 in particular prohibits work that is hazardous, interferes with education or is otherwise harmful to the child’s health or mental, moral or social development.<sup>130</sup> Article 32 also requires governments to undertake administrative, legislative and social measures to ensure appropriate hours and conditions for employment.<sup>131</sup> This includes penalties or sanctions for those found to

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124. C182, *supra* note 12, art. 7(2)(a)-(e).

125. *Id.* art. (7)(d).

126. *Id.* art. (7)(e).

127. UNCRC, *supra* note 10.

128. *Id.* at 3.

129. Rights relevant to child domestic workers in the UNCRC include: The right to non-discrimination, on grounds of ethnic or social origin, birth or other status (Article 2); The right to be cared for by his or her parents (Article 7); The right to preserve identity, nationality, name and family relations (Article 8); The right to maintain regular contact with parents if separated from them (Article 9); The right not to be illicitly transferred abroad (Article 11); The right to express views in all matters affecting her/himself (Article 12); The right to freedom of association (Article 15); The right to be brought up by parents or guardians whose basic concern is his or her best interests (Article 18); The right to protection from physical or mental ill-treatment, neglect or exploitation (Article 19); The right to benefit from the highest attainable standard of health and access to health care services (Article 24); The right to social security, including social insurance in accordance with national law (Article 26); The right to conditions of living necessary for his or her development (Article 27); The right to education (Article 28); The right to rest, leisure, play and recreation (Article 31); The right to protection from all forms of sexual exploitation and sexual abuse (Article 34); The right to protection from abduction, sale or trafficking (Article 35); and The right to protection from cruel or degrading treatment, and arbitrary deprivation of liberty (Article 37). ILO-IPEC INTERREGIONAL WORKSHOP, *supra* note 57, at 26.

130. UNCRC, *supra* note 10, art. 32(1).

131. *Id.* art. 32(2).

violate the article.<sup>132</sup> A possible penalty could be the criminalization of private conduct that breaches this Article. UNCRC further prohibits prejudicial exploitation of any sort.<sup>133</sup>

*IV. 'LEGISLATIVE PRECARIOUSNESS' - HISTORICAL  
SHORTCOMINGS OF DESTINATION COUNTRY LEGISLATION*

The nature of domestic work as described in Part II creates 'legislative precariousness', or the particular vulnerability created by explicit exclusion or a lesser degree of protection in protective labor laws.<sup>134</sup> Part IV highlights a number of areas in which domestic work legislation has been difficult to implement. This Part then addresses the challenges jurisdictions face when balancing the rights of domestic workers versus those of their employers to create a foundation for using a rights-based framework to analyze the balance of rights.

Domestic work has been described as work 'like no other' that should be treated as any other.<sup>135</sup> However, legislators often see domestic work as deserving of different treatment.<sup>136</sup> This leads to legislative precariousness created either by explicit exclusions of domestic workers from legislation, or through lower standards of protection.<sup>137</sup> The most precarious group of domestic workers are undocumented migrants who, due to their irregular immigration status, are less likely than workers with immigration documents to challenge abusive employment practices.<sup>138</sup>

Exemptions from minimum wage and maximum working hour legislation render domestic workers without a grounds for complaint when employers increase working hours or withhold wages.<sup>139</sup> Nearly half of the countries surveyed by the ILO exclude domestic workers from working time legislation, and eighty-three percent of these countries did not impose any limit on night time work.<sup>140</sup> Even

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132. *Id.* art. 32(2)(c).

133. *Id.* art. 36.

134. Mantouvalou, *supra* note 4, at 133.

135. Smith, *supra* note 4.

136. Mantouvalou, *supra* note 4, at 133.

137. *See id.* at 136; *see also* *Ratifications of C182*, *supra* note 10 (discussing disparate application of legislation to domestic workers).

138. *See* THE RIGHT TO WORK, *supra* note 62, at 51.

139. *See* Labour Inspection and Other Compliance Mechanisms, *supra* 84, at 55 (noting that complaint mechanisms help domestic workers enforce their rights).

140. ILC, Report IV(1), *supra* note 30, at 11.



developed economies, including the United Kingdom, United States, Canada, Finland, Japan, Greece, and Switzerland, exclude domestic workers from minimum wage legislation.<sup>141</sup> Additional variables that cause the employment relationship to be precarious include labor market security, degree of legal protection, income, social factors such as gender or race, and relative control over employment contract terms such as duration and working conditions.<sup>142</sup> Where standards exist, lack of government oversight causes legislative precariousness.<sup>143</sup>

#### A. *Challenges in Legislation*

Exclusion of domestic workers from legal protection under domestic law is widespread. This exclusion systematically limits DWs' rights and labor protections and denies them effective access to justice.<sup>144</sup> In 2013, the ILO estimated that 29.9 percent of all domestic workers are completely excluded from the scope of national labor legislation.<sup>145</sup> Only ten percent have full coverage.<sup>146</sup> Associations of domestic workers often lack the necessary political or social clout to effect change. This can be exacerbated by continued supply of domestic workers from poor, rural communities as rights-asserting workers are pushed out for ignorant ones.<sup>147</sup> This Part highlights the particular challenges in regulating the domestic work industry: abolishing the practices that lead to forced labor, promoting occupational health and

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141. Mantouvalou, *supra* note 56, at 5.

142. Legislative Precariousness of Domestic Labor, *supra* note 4, at 135.

143. For example in the areas of labor inspections or health and safety regulations see *supra* note 28 and accompanying text; see also Legislative Precariousness of Domestic Labor, *supra* note 4, at 140.

144. *Ending Child Labour*, *supra* note 12, at 11; see also ILO, *Giving Globalization a Human Face – General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for Fair Globalization*, 101<sup>st</sup> Session, 2012.

145. *Domestic Workers Across the World*, *supra* note 6, at 51.

146. *Id.*

147. BSAF, *supra* note 43, at 23 (finding that the preferred age of a domestic worker in Bangladesh is eight to fifteen years old because such a worker complains less, and is controlled and trained more easily than older workers). See also Bede Sheppard, Human Rights Watch, *Workers in the Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia* 39 (Feb. 2009) (noting that the motivation of someone recruiting a child rather than an adult for domestic worker is that the former complains less, is easier to control, and has few social connections upon which to rely for help); *Tackling Child Labour*, *supra* note 110, at 53 (“employers hire children because they are ‘cheaper’ than their adult counterparts. They can be dismissed easily if labour demands fluctuate. They also form a docile, obedient workforce that is easier to exploit and will not seek to organize itself for protection and support.”).

safety, ensuring trade union participation, and ensuring access to justice.

### 1. Forced Labor

Forced labor occurs when an individual is coerced to work through menace of penalty.<sup>148</sup> Forced labor can also incorporate more subtle means such as abuses of debt, retention of identity documents or threats by employers of denunciation to immigration authorities.<sup>149</sup> Forced labor in domestic work can occur due to poor labor standards, including lack of formal work contracts, undefined working hours, poor living accommodations and limits on social freedom during periods of rest.<sup>150</sup> One remedy is to count work and on-call hours for the purposes of minimum wage and maximum working hour legislation.<sup>151</sup> Article 10 of C189 requires that on-call working hours be regarded as hours of work, but only to the extent determined by national laws.<sup>152</sup> R201 adopts more explicit protection, and suggests that members regulate the maximum number of hours in a given period that a DW may be required to be on standby.<sup>153</sup> However, these actions require employers be willing and able to document working hours.

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148. ILO, *Forced Labour Convention, 1930 (No. 29)*, art. 2(1) (May 1, 1932).

149. ILO, *Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)*, (June 11, 2014) (noting that forced labour can be addressed by preventing debt bondage, working with employers and immigration authorities).

150. PAOLETTI ET AL., *supra* note 20, at 18, (“Vulnerability to exploitation abroad is often heightened by routine violations committed in Nepal during the pre-departure phase by individual agents, recruitment agencies, and other private actors. These include misrepresenting the nature and terms of work available, overcharging on recruitment fees, delaying or cancelling departures, and failing to provide workers with correct pre-departure documents, including receipts and contracts of employment and recruitment. These abuses persist due to a lack of transparency, government oversight, and accountability in the private recruitment and placement of migrant workers—which also undermine workers’ ability to access justice for these harms.”); *see also* Harroff-Tavel & Nasri, *supra* note 15, at 155 (“Prevention measures could include actions to reduce the vulnerability of groups at particular risk of forced labour. In the case of migrant workers, these measures could include improving recruitment systems, monitoring recruitment agencies, strengthening the legislative framework and providing more training.”).

151. *Ending Child Labour*, *supra* note 12, at 61 (“These require, among other things, the adoption of strict limits to their working hours, prohibition of night work, and the need to establish mechanisms to monitor their working and living conditions.”).

152. *C189*, *supra* note 23, art. 10.

153. *R201*, *supra* note 107, art. 9(1)(a).

## 2. Occupational Safety and Health

Domestic workers are vulnerable to particular occupational health and safety standards including limited rest, exposure to chemicals, physical pains due to heavy lifting, and increased risk of sexual and physical violence.<sup>154</sup> Long working hours, repetitive motions, and monotonous or repetitive task can cause physical strain on workers' bodies.<sup>155</sup> Despite this, the ILO estimates that around ninety percent of domestic workers do not have social security coverage that would facilitate equal access to programs that would ensure an accident does not render them without protection, a fundamental human right.<sup>156</sup>

Concerns with health and access to social security are addressed in Article 13 of C189 on the right to a safe and healthy working environment, with a caveat for progressive realization of this right.<sup>157</sup> However, conducting on-site workplace visits to employers' homes for health and safety continues to be a problematic area in domestic work.<sup>158</sup> Further, C189 suggests only that DWs negotiate with their employer whether or not to reside in the employer's home.<sup>159</sup> Requiring that domestic workers live with their employers has been affirmatively linked with abusive labor practices.<sup>160</sup> However, many jurisdictions are

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154. ILO, *Migrant Domestic Workers: Promoting Occupational Safety and Health*, 1 (2016) ("The ILO recognizes that domestic workers can be particularly vulnerable to certain Occupational Safety and Health (OSH) risks including working long hours, limited rest, exposure to chemicals, lifting heavy weights, specific psychosocial risks and violence").

155. ILO-IPEC INTERREGIONAL WORKSHOP, *supra* note 57, at 26; *Ending Child Labour*, *supra* note 12, at 33.

156. ILO, *Social Protection for Domestic Workers: Key policy trends and statistics*, ix ("Due to the atypical characteristics of domestic work, workers are considered a "difficult-to-cover" group by social security; it is estimated that globally 90 per cent of domestic workers are legally excluded from social security systems"). Access to social security is a fundamental human right, enumerated in Article 22 of the Universal Declaration of Human Rights.

157. *C189*, *supra* note 23, art. 13.

158. See *infra* IV.B(1) on employer's privacy.

159. *C189*, *supra* note 23, art. 9; see *infra* IV.B(2) on employee's privacy rights.

160. Anderson & Wisniewski Otero, *Coming Clean*, *supra* note 11, at 22-23 (listing the international bodies that have expressed concern over Hong Kong's live-in requirement, and noting: "MDWs are particularly vulnerable to excessive working hours given the nature of the work and "live-in" arrangements, where work and rest boundaries may be blurred"); see also U.N. Comm. Against Torture, *Concluding observations on the fifth periodic report of China with respect to the Hong Kong Special Administrative Region*, ¶ 20, Advance Unedited Version, Un Doc.: CAT/C/CHN-HKG/CO/5 (Dec. 2015) (noting that Hong Kong should allow workers to 'live-out' to prevent torture and ill-treatment).

resistant to even permit migrant domestic workers the option of ‘living-out.’<sup>161</sup>

C189 places an affirmative obligation on countries to develop and implement measures for labor inspection, including specifications under which access to household premises may be granted.<sup>162</sup> R201 further states that members should take steps to provide an adequate system of household inspection, and should consider implementing a system of household visits where labor inspectors are allowed to enter the premises.<sup>163</sup>

### 3. Trade Union Participation

Trade union representation and participation of domestic workers is notoriously difficult.<sup>164</sup> It is particularly challenging to disseminate information to individuals working in private homes – particularly where domestic workers do not have days off from work.<sup>165</sup> In some cases, domestic workers are legislatively excluded altogether from union activity, which can limit their interactions and informational exchange with similarly situated domestic workers.<sup>166</sup>

Workers in any industry can be vulnerable to dismissal or other poor treatment for union participation, particularly migrants.<sup>167</sup> R201 encourages governments to consult “with the most representative organizations of employers and workers, and where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.”<sup>168</sup> R201 thus

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161. For example, in Hong Kong there is some speculation that the government is concerned that loosened restrictions on migrant workers living conditions will allow them to claim abode, and thus obtain the right to vote. For a case challenging Hong Kong’s right to abode laws, see *Vallejos Evangelina Banao v. Comm’r of Registration & Another*, [2012] 2 H.K.C. 185 (H.K.C.F.A.R.); For commentary on the same, *See generally* Two Pinoys in Hong Kong abode cases ordered to pay court costs, GMA NEWS NETWORK, July 16, 2013; *see also* HK High Court Overturns Immigration’s Decision On OFW, PHILIPPINE DAILY MIRROR, Oct 4, 2011.

162. *C189*, *supra* note 23, art. 17.

163. *R201*, *supra* note 107, art. 19(b).

164. Fredman, *supra* note 94, at 410.

165. Asha D’Souza, Int’l Labour Org., *Moving Towards Decent Work for Domestic Workers: An Overview of the ILO’s Work*, 23, 73, 81, (working Paper 2/2010 2010), *supra* note 29.

166. Mantouvalou, *supra* note 56, at 6; *see also* *The Kafala*, *supra* note 65, at 52 (noting that Oman and Qatar prohibit MDWs from joining trade unions).

167. *Id.* at 50 (noting that migrant workers in Bahrain fear deportation if they join unions).

168. *R201*, *supra* note 107, art. 13(2).

distinguishes between general unions and those representing domestic workers in particular. This distinction highlights a particular challenge: some general trade unions may have a conflict of interest between domestic workers and their members, who may employ domestic workers.<sup>169</sup> Permitting workers to form their own unions must be accompanied by requirements that they be legislatively granted mandatory leave in order to have time to undertake union activities. This means that domestic workers must not be excluded from mandatory leave legislation. The formation of unions also relies on a democratic government that is receptive to union activity.

#### 4. Access to Justice

Due to low levels of education or language skills among domestic workers and lack of knowledge about their rights, DWs often have difficulties accessing justice for labor and other violations committed against them. The previously enumerated difficulties in protecting domestic workers from forced labor, health hazards and dismissal also culminate to create difficulties in accessing justice.<sup>170</sup> Article 15(b) of C189 calls for governments to ensure adequate procedures exist for investigating complaints and encourages bilateral, regional, or multilateral agreements to prevent abuses of MDWs and fraudulent practices.<sup>171</sup> Solutions suggested by R201 include a national hotline with interpretation services and emergency housing.<sup>172</sup> However, even the government employees of origin countries may not be well-trained or sympathetic to the particular needs of migrant domestic workers.<sup>173</sup> C189 suggests that origin countries inform migrant workers of their rights before departure, establish legal assistance funds, and supply social services and specialized consular services.<sup>174</sup>

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169. D'Souza, *supra* note 29, at 23.

170. *Trafficking in the Middle East*, *supra* note 15, at 155. (listing threat of deportation, limited mobility, and financial and communication barriers as hindrances to accessing legal justice); PAOLETTI ET AL., *supra* note 20, at 145-55 (noting that MDWs do not access justice due to lack of awareness about rights, lack of evidence to support claims, fear of retaliation, perceptions of corruption, lack of regulation, and socio-political, economic or gender related obstacles).

171. C189, *supra* note 23, art. 15(b).

172. R201, *supra* note 107, art. 21(1)(a)-(c).

173. Sarah Paoletti, *Migrant Workers' Access to Justice at Home: Nepal*, Open Soc. Foun. 1, 152 (2014).

174. R201, *supra* note 107, art. 21(2).

*B. Favoring the Powerful: Balancing Rights*

Consideration must be given as to which rights are implicated in the oversight of the DW industry to draw a proper balance between the rights of employers and domestic workers. Human rights documents such as UNCRC, the Universal Declaration of Human Rights, and the International Convention on Civil and Political Rights require that States grant equal human rights to individuals without discrimination.<sup>175</sup> Respecting the privacy rights of employers while failing to respect those of domestic workers would constitute a breach of this equal protection.<sup>176</sup> It is an outdated idea that only certain types of people are deserving of rights. In the United States, a historical understanding of a man's possessions extended to his family, his effects, and those who labored for him.<sup>177</sup> This led care workers to be conflated with servants, who were part of an 'estate', and therefore confined to private life.<sup>178</sup> The focus of legislators was primarily on the recipient of the care, rather than the giver, therefore "care as a labor of love . . . became a rationale to ignore the conditions of care as employment."<sup>179</sup>

The perception that domestic work should remain in the private domain persists today.<sup>180</sup> Destination countries often tacitly (or even explicitly) refuse to acknowledge DWs as part of the formal labor force.<sup>181</sup> In drafting exclusion statutes, states have occasionally used demeaning or outdated language, such as references to domestic workers as 'menial or domestic servants'<sup>182</sup> or as domestic 'helpers'.<sup>183</sup>

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175. Convention on the Rights of the Child, *opened for signature Nov. 20, 1989*, 1 U.N.T.S. 4.

176. *Id.* at 6.

177. Boris, *supra* note 7, at 3.

178. *Id.*

179. *Id.* at 9.

180. The Editors, *Will Labor Reforms in the UAE Improve Life for Migrant Domestic Workers?*, WORLD POLITICS REVIEW (Apr. 26, 2017), <https://www.worldpoliticsreview.com/trend-lines/21968/will-labor-reforms-in-the-uae-improve-life-for-migrant-domestic-workers> [<https://perma.cc/BY4F-UM75>].

181. *Survey Results of 2016 Annual Earnings and Hours Survey release*, GOVERNMENT OF HONG KONG CENSUS AND STATISTICS DEPARTMENT (Mar. 17, 2017), [http://www.censtatd.gov.hk/press\\_release/pressReleaseDetail.jsp?pressRID=4165&charsetID=1](http://www.censtatd.gov.hk/press_release/pressReleaseDetail.jsp?pressRID=4165&charsetID=1) [<https://perma.cc/AN5X-9PF6>].

182. Albin & Mantouvalou, *supra* note 6, at 70.

183. *Hong Kong Monthly Digest of Statistics*, H. K. Special Admin. Region, Oct. 2015, <http://www.statistics.gov.hk/pub/B71510FA2015XXXXB0100.pdf>.

The United States' exclusion of in-home care workers from the Fair Labor Standards Act left them un-eligible for old age insurance, unemployment, collective bargaining, minimum wage, maximum hour legislation, and other labor laws.<sup>184</sup>

### 1. Employer's Privacy

Both C189 and R201 recognize the importance of employers' privacy rights.<sup>185</sup> At the same time, both documents require labor inspections to ensure occupational health and safety.<sup>186</sup> The ILO's Committee of Experts has observed that by choosing to make the household a workplace, employers have implicitly consented to giving up some privacy rights.<sup>187</sup> Many countries have begun to adapt to the requirement of workplace inspections for domestic workers.<sup>188</sup>

The private nature of the home means governments face more hurdles than in other industries to ensure that a DWs' working conditions meet legal standards.<sup>189</sup> Domestic workers have little political leverage to encourage government inspections.<sup>190</sup> It is also next to impossible to observe a domestic worker at work in the same way one would observe a factory worker, as it would be quite easy for an employer to ensure that the domestic worker says the right things and behaves the right way during an inspection, even where that does not accurately reflect her lived experience. The fact that inspections of private homes must be announced adds another layer of possible obscurity as employers would have time to adjust any shortcomings in living or working conditions.<sup>191</sup>

However, a functioning labor inspection system is required to ensure rule of law.<sup>192</sup> The European Committee on Social Rights ("ECSR") recognized the value of labor inspections in private homes,

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184. For discussion of the Fair Labor Standards Act in the context of exclusion of domestic workers, see Boris, *supra* note 7, at 5.

185. *C189*, *supra* note 23, art. 17(32) (noting that States shall specify the conditions under which access to the home can be granted, having due respect for privacy); *R201*, *supra* note 109, art. 24 (allowing labor inspectors considering respect for privacy).

186. *C189*, *supra* note 23, art. 13.

187. Kavar, *supra* note 74, at 8. *See also* ILC, Report IV(1), *supra* note 30, at 18.

188. Labour Inspection and Other Compliance Mechanisms, *supra* note 84, at 18.

189. *Id.* at 20-21.

190. *Id.* at 18-19.

191. *Id.* at 20, 32.

192. *Id.* at 28.

reading Article 3, Section 2 of the European Social Charter as authorizing inspectors to check all workplaces, including residential premises.<sup>193</sup> The Social Charter noted that labor inspections are particularly important to protect the health and safety rights of domestic and home care workers.<sup>194</sup> Many EU countries recognized that the privacy interests of the employer do not necessarily outweigh domestic workers' labor rights and authorize home visits.<sup>195</sup>

An ILO Report from 2010 suggests that inspectors can obtain prior authorization from a judicial authority or through the consent of the employer.<sup>196</sup> Alternatively in Uruguay, workers from the Ministry of Labour and Social Security are able to visit the domestic worker and interview her at the front door of the home, thereby alleviating any concerns about unannounced visits into the home.<sup>197</sup> Meanwhile, Some labor unions are taking on the role of conducting home visits. In Kenya, the Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers has conducted thousands of such visits in five cities.<sup>198</sup>

## 2. Domestic Worker's Rights

Some associations of employers of domestic workers did not support the development of a convention for standard setting for domestic workers,<sup>199</sup> and in some jurisdictions employers remain hostile to improved legal protection for domestic workers.<sup>200</sup>

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193. Eur Soc. Charter, Conclusions XCI-2, Czech Republic, art. 3 (“[F]or the purposes of Article 3 § 2, inspectors must be authorized to check all workplaces. It takes workplaces to equally include residential premises.”).

194. *Id.*

195. See *Labour Inspection and Other Compliance Mechanisms*, *supra* note 84, at 17, 32 (noting that in many EU countries, most labor inspectorates cover the domestic work sector).

196. ILC, Report IV(1), *supra* note 30, ¶ 249.

197. *Social Protection for Domestic Workers*, *supra* note 156, at 14.

198. See *Labour Inspection and Other Compliance Mechanisms*, *supra* note 84, at 19.

199. Kavar, *supra* note 74, at 496 (“employer delegates remained adamantly opposed to any additional exercises in standard-setting”). For opposition in the United States, see Boris & Klein, CARING FOR AMERICA, *supra* note 44, at 132 (stating that well-organized trade associations and business interest groups had long opposed minimum wage and New Deal programs).

200. D’Souza, *supra* note 29, at 18 (noting that 48% of employers in India, Thailand, Italy and Sweden do not think that a domestic worker is entitled to a contract, 70% said they should not have the right to join a trade union, 52% were opposed to a minimum wage and 45% said that fixed working hours should not apply); In Hong Kong, ‘employer’s groups’ have petitioned the government to give them greater control over the migrant domestic worker’s rights, including withholding of passports, see Tom Grundy & Meredith McBride, *Top 10 Most*



Destination countries of domestic migrant labor have little incentive to improve protections for workers who hold little social or political clout – particularly where supply of domestic work is greater than demand.<sup>201</sup> Further, some employers act as though food and accommodation are benefits, when in reality “living-in” is a price being paid by domestic workers in terms of isolation and lack of companionship.<sup>202</sup> Where DWs reside with their employers, their ability to leave the premises, host guests, or enjoy leisure time may be severely limited.<sup>203</sup> C189 requires that DWs be given at least twenty-four hours of leave per week.<sup>204</sup> There are concerns that standard setting in domestic work would require elderly employers who require around the clock care to comply with the same labor standards as corporations, though this concern appears inflated.<sup>205</sup>

On living conditions, C189 requires only decent living conditions that respect privacy.<sup>206</sup> Neither C189 nor R201 define privacy. While some countries fail to define adequate privacy in domestic legislation, South Africa does regulate basic privacy for live-in domestic workers. There, DWs can agree to live-in in exchange for a fee of no more than ten percent of their wages.<sup>207</sup> DWs are legislatively required to be given a separate room with one window and a door that locks.<sup>208</sup> This is a vast improvement over the reality of many domestic workers.<sup>209</sup>

DWs are sometimes exempt from protective legislation even where labor laws may protect their employers. The need to present labor rights as human rights comes not just from a desire for greater dignity, but also “from the perceived need to respond to employers’

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*Outrageous Claims, Myths & Demands Heard at Last Week’s Gov’t Meeting*, HONG KONG HELPERS CAMPAIGN (Mar. 4, 2014); *see also* Stanley Leung, ‘Heartbroken’: Domestic worker employer group decries window cleaning ban, HONG KONG FREE PRESS (Oct. 20, 2016).

201. PAOLETTI ET AL., *supra* note 20, at 26.

202. R201, *supra* note 107, art. 14. *See* Albin & Mantouvalou, *supra* note 6, at 77.

203. For more on examples of restrictions placed on domestic workers by their employers, *see* Grundy *supra* note 34.

204. C189, *supra* note 23, art. 10(2).

205. Albin & Mantouvalou, *supra* note 6, at 77 (highlighting comments from a Ms. Warwick in the International Labour Conference Record of Proceedings on June 5, 2011).

206. C189, *supra* note 23, art. VI.

207. Basic Conditions of Employment Act 75 of 1997 §8(a)-(b) (S. Afr.); *see also* LABOUR DEP’T OF S. AFRICA, *Domestic Workers What You Should Know*, at 13 (2012).

208. In addition, the room must be weatherproof and in good condition, and have access to a bathroom. *What You Should Know*, *supra* note 207, at 13.

209. Gabby Bess, *Hong Kong Domestic Workers are Forced to Sleep in Cabinets: Report*, VICE (May 24, 2017).

willingness to use these arguments and tools themselves.”<sup>210</sup> Because human rights apply to individuals without discrimination, both employers and domestic workers should enjoy the right to privacy in their living space. It is not in keeping with equality to grant the right of privacy to the employer, while failing to ensure that a live-in domestic worker has adequate privacy through labor inspections.<sup>211</sup> It is ironic that some DWs, with few legal protections and low wages, facilitate the ability of their employers to enter the labor force, where the employers may already have adequate legal protections. Yet, some employers would deny DWs these same rights.

#### V. CONNECTING DOMESTIC WORK AND CHILD LABOR

This Part first considers the differences between child and adult DWs, particularly in regard to their legal ability to consent to potentially hazardous work. Despite these difference, adult and child DWs exhibit similar indicators of labor trafficking.<sup>212</sup> This suggests that the nature of the industry creates opportunities for abuse. A 2006 joint ILO and International Programme on the Elimination of Child Labour (“IPEC”) report on trade unions and child labor indicates that child labor could be eradicated by improving labor conditions and economic opportunities for adults, who often send their own children to work due to the cycle of poverty.<sup>213</sup> This Note posits that the opposite is true as well: improving working conditions for children engaged in domestic work would not only empower them when they become adults in the industry, but would also improve working conditions for adult domestic workers. Workers and advocates could thus prevent a

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210. Virginia Mantouvalou, *Are Labour Rights Human Rights?*, citing C. Fenwick and T. Novitz, *Conclusion: Regulating to Protect Workers’ Human Rights*, in HUMAN RIGHTS AT WORK: PERSPECTIVES ON LAW AND REGULATION 587-88 (C. Fenwick and T. Novitz eds. 2010).

211. *Legislative Precariousness of Domestic Labor*, *supra* note 4, at 160.

212. ILO, *Operational Indicators of Trafficking in Human Beings. Results from Delphi Survey Implemented by the ILO and the European Commission* (2009) [hereinafter *Delphi indicators*].

213. Markie M., *Production, Reproduction, and Feminism*, J. MEDIA, 2017, <https://journal.media/production-reproduction-and-feminism> [<https://perma.cc/WA6H-5HCM>]. See also *Ending Child Labour*, *supra* note 12, at 59 (“Bringing about improved working conditions for adults should result in a corresponding decline in the incidence of child labour and growth in the number of children enrolling and remaining in school.”).

‘race-to-the-bottom’ where employers favor younger, less expensive (and less assertive) workers.<sup>214</sup>

Though the public and media are generally responsive to, and often outraged by<sup>215</sup> reports of child labor and abuse, including in the area of domestic work, the outcry has not always been the same for adult DWs. Of those domestic worker abuse stories that have received international public attention in English media, many are young and female.<sup>216</sup> The ILO estimates that 17.2 million children worldwide are engaged in paid or unpaid domestic work in the home of another person.<sup>217</sup> Of these 17.2 million children, 11.5 million are female.<sup>218</sup> Further, domestic work can often be a precursor to sexual exploitation.<sup>219</sup>

While governments are willing to take steps to protect children from abusive labor, it is not clear they are equally interested in

214. *Hidden Slavery*, *supra* note 43, at 23 (finding that the preferred age of a domestic worker in Bangladesh is eight to fifteen years old and, further, that such a worker who complains less, is controlled and trained more easily than an older worker); *see also* Sheppard, *Workers in the Shadows*, *supra* note 147, at 39 (noting that the motivation of someone recruiting a child rather than an adult for domestic work is that the former complains less, is easier to control, and has few social connections upon which to rely for help).

215. *See* John H. Cushman Jr., *Nike Pledges to End Child Labor and Apply U.S. Rules Abroad*, N.Y. TIMES, May 13, 1998, <https://www.nytimes.com/1998/05/13/business/international-business-nike-pledges-to-end-child-labor-and-apply-us-rules-abroad.html> [<https://perma.cc/8BAW-FUJB>]; *see also* Stephanie Strom, *A Sweetheart Becomes Suspect; Looking Behind Those Kathie Lee Labels*, N.Y. TIMES, June 27, 1996, <https://www.nytimes.com/1996/06/27/business/a-sweetheart-becomes-suspect-looking-behind-those-kathie-lee-labels.html> [<https://perma.cc/35D4-Y63U>]; Tim Worstall, *The Outrage Of Child Labor In Bangladesh's Sweatshops*, FORBES, Dec. 19, 2016, <https://www.forbes.com/sites/timworstall/2016/12/19/the-outrage-of-child-labour-in-bangladeshs-sweatshops/> [<https://perma.cc/U82S-8TPF>].

216. *See generally* Michael Forsythe, *Hong Kong Worker Wins Abuse Case*, N.Y. TIMES, Feb. 10, 2015, <https://www.nytimes.com/2015/02/11/world/asia/hong-kong-court-convicts-employer-in-abuse-of-domestic-worker.html> [<https://perma.cc/AD6P-D3P4>]; *Couple Jailed for Starving Maid: Previous Maid Abuse Cases in Singapore*, STRAITS TIMES, Mar. 28, 2017, <https://www.straitstimes.com/singapore/courts-crime/couple-jailed-for-starving-maid-previous-maid-abuse-cases-in-singapore> [<https://perma.cc/7KY9-63NC>]; Annie Kelly & Hazel Thompson, *The vanished: the Filipino domestic workers who disappear behind closed doors*, THE GUARDIAN, Oct 24, 2015, <https://www.theguardian.com/global-development/2015/oct/24/the-vanished-filipino-domestic-workers-working-abroad> [<https://perma.cc/A5WQ-K9AA>].

217. ILO, *Child Domestic Work: Global Estimates 2012*, 2 (Oct. 4, 2013), [http://www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_23235/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_23235/lang--en/index.htm) [<https://perma.cc/GC4W-UDAG>].

218. *Id.*

219. *Ending Child Labour*, *supra* note 12, at 36.

protecting adult domestic workers.<sup>220</sup> The age of majority in most countries is eighteen, though many countries permit domestic labor to be undertaken by individuals over the age of fifteen or sixteen.<sup>221</sup> In many jurisdictions, eighteen is the age at which individuals are held responsible for their decisions to undertake work or migrate for labor, and therefore are accepting the risks inherent in that role.<sup>222</sup>

While recognizing that line-drawing legislation around age is necessary given children's unique protections under ILO and UN mechanisms, to give effect to these international agreements requires countries to affirmatively adopt protections and mechanisms to aid CDWs to leave abusive situations.<sup>223</sup> These international conventions do not ban all forms of child labor.<sup>224</sup> Rather, they focus on the most exploitative types.<sup>225</sup> It follows then that these conventions and their signatories find appalling not simply that children work, but that they are subject to coercive and abusive forms of labor. Age is just one of many factors that would be considered in determining whether a worker is in a coercive form of labor.<sup>226</sup> The age of a DW is not the ultimate factor for determining whether abuse has occurred. Rather, states look at whether specific coercive factors have deprived a DW of a means of changing their situation.<sup>227</sup> These coercive factors include the worker's dependency on the employer, social isolation, lack of alternative living or working arrangements, abusive working hours, high risk of abuse, and lack of support mechanisms such as social security or legal aid.<sup>228</sup> A compilation of these factors ultimately

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220. See *supra* Part III.A.

221. *Domestic Workers Across the World*, *supra* note 6, at 19.

222. *R201*, *supra* note 107, art. 5(2) (noting that special attention should be given to domestic workers under the age of 18); see also *Determining the Legal Age to Consent to Research*, University of Washington St. Louis, <https://hrpo.wustl.edu/wp-content/uploads/2015/01/5-Determining-Legal-Age-to-Consent.pdf>.

223. See *supra* Part III.B.

224. *Ending Child Labour*, *supra* note 12, at 14-24.

225. *Id.* at 14-25.

226. See *Delphi Indicators*, *supra* note 212; see also *infra* Part IV.B.

227. The eight Delphi Indicators of trafficking of children for labour exploitation are the same eight factors for trafficking of adults for labour exploitation, with the exception that 'no access to education' is given less weight for adults than it is for children. Similarly, adult and child workers share the same seven indicators of abuse of vulnerability at destination, with the exception that two are considered 'weak indicators' for adults and 'medium indicators' for children. See *Delphi Indicators*, *supra* note 212.

228. See *infra* Part V.B.

deprives a DW of the ability to choose to leave an abusive situation, rendering them in a form of exploitative labor.

Ascertaining the age of workers can be difficult. Many of the rural communities in developing economies from which domestic workers come do not provide ID documents at birth, making it difficult to confirm an individual's age.<sup>229</sup> Some employment agencies will lie about a worker's age to secure her placement abroad.<sup>230</sup> Anti-Slavery International noted a 'step-migration' where children in Peru and the Philippines work outside major cities, closer to their rural homes, and then migrate towards larger urban areas as they became older. Therefore never require this paperwork until they go abroad.<sup>231</sup>

Some NGOs have begun to use the overlap between exploitative child labor and domestic work in their rights advocacy. In February 2013, Human Rights Watch called on governments to ratify C189 to end child labor.<sup>232</sup> UNICEF, in 2013, used its World Day against Child Labor to call for the ratification of C189.<sup>233</sup> The ILO also called for ratification of C189 to help end child labor<sup>234</sup> noting that child labor in domestic work abuses children's rights and remains a serious hurdle in ensuring decent work for adults.<sup>235</sup> The ILO with the International Domestic Workers Federation published a 2017 Best Practice Report advocating approaches to reduce the worst forms of child labor in domestic work in India and Nepal.<sup>236</sup> The ILO-IPEC report also notes

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229. See *Trafficking in the Middle East*, *supra* note 15, at 47; *Voices of Child Domestic Workers*, *supra* note 27, at 8.

230. See *Trafficking in the Middle East*, *supra* note 15, at 47; see also Jalelah Abu Baker, *When a Maid Lies about Her Age*, ASIA ONE, (June 3, 2014), <http://www.asiaone.com/singapore/when-maid-lies-about-her-age> [<https://perma.cc/L2LH-LF2C>]; Syliva Yu, *The Indonesian Child Maids of Hong Kong, Singapore: Why they're Suffering in Silence*, SOUTH CHINA MORNING POST (Mar. 25, 2017), <http://www.scmp.com/week-asia/society/article/2081823/indonesian-child-maids-hong-kong-singapore-why-theyre-suffering> [<https://perma.cc/2JER-3NJJ>].

231. *Voices of Child Domestic Workers*, *supra* note 27, at 33.

232. Human Rights Watch, *Protect 15 Million Child Domestic Workers* HUMAN RIGHTS WATCH (Feb. 25, 2013), <https://www.hrw.org/news/2013/02/25/protect-15-million-child-domestic-workers> [<https://perma.cc/99UX-F75D>].

233. U.N.I.C.E.F., *World Day Against Child Labour: Plight of child domestic workers*, YOUTUBE (Jun. 12, 2013), <https://www.youtube.com/watch?v=VbkAoppuUwc> (last visited Mar. 21, 2018) [<https://perma.cc/K2GF-JZLA>].

234. *Ending Child Labour*, *supra* note 12, at 53.

235. *Id.* See also U.S. DEP'T OF LABOR, INT'L LABOR AFFAIRS BUREAU, *PROMOTE: DECENT WORK FOR DOMESTIC WORKERS TO END CHILD DOMESTIC WORK* (2012).

236. ILO, INT'L DOMESTIC WORKERS FED'N., *DECENT WORK FOR DOMESTIC WORKERS: EIGHT GOOD PRACTICES FROM ASIA* (2017).

that adult unions have played a role as a public watchdog, monitoring and intervening in extreme cases of child labor abuse, and that civil society plays a crucial role in training and providing social services to victims of abusive labor practices.<sup>237</sup>

#### A. Differences between Adult and Child DWs

Before highlighting the similar vulnerabilities between the two groups, it is important to address the primary differences between adult DWs and CDWs. First, one of the primary concerns with child labor is that work will interfere in children's ability to obtain an education – a fundamental right of a child, and one that is not given equivalent importance for adult workers.<sup>238</sup> Secondly, adult domestic workers are legally able to give consent to undertake work that may be considered hazardous, whereas children cannot. Finally, the employers of these workers may be different as many children are employed by extended family members, whereas adults may work for non-family domestically or abroad.

The noted similarities between adult and child DWs is not meant to conflate the two groups or in any way undermine the sophistication or autonomy of adult domestic workers. Domestic workers are increasingly sophisticated and organized.<sup>239</sup> Some child DWs have argued for greater respect for their decisions and autonomy.<sup>240</sup> Rather, this approach addresses the systemic shortcomings in industry regulation. It is not clear that adult domestic workers, particularly migrants, automatically consent to any working conditions simply by virtue of their adulthood. This is particularly true when they face unexpected and illegal abuse.

The relevant inquiry regarding abuse of DWs is thus not the age of the domestic worker or their choice to work, but rather the deprivation of autonomy.<sup>241</sup> The inability to decide when to leave a work situation can occur where domestic workers of any age migrate

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237. *Ending Child Labour*, *supra* note 12, at 46.

238. UNCRRC, *supra* note 10, § 28.

239. See Mather *supra* note 118, at 3-9.240. *Voices of Child Domestic Workers*, *supra* note 27, at 3.

240. *Voices of Child Domestic Workers*, *supra* note 27, at 3.

241. Jonathan Blagbrough, *Child Domestic Labour: A Modern Form of Slavery*, 22 *CHILD. & SOC'Y* 179, 185 (Apr. 7, 2008) (“[I]t is not merely about the age of the child being too young to work, or to choose to work; it is about being deprived of the opportunity to choose.”).

for work. Migration, even internal, can enhance dependency on employers. Dependency due to migration status can lead to an employers' failure to adhere to contract terms such as fair pay and working hours, where they exist, which may render the workers in a form of forced labor.<sup>242</sup>

### 1. Education

Many children in domestic labor have had limited opportunities to obtain an education. In some cases, children migrate from rural areas to urban ones to obtain an education, earning in-kind benefits by working in someone else's home.<sup>243</sup> C189 requires that domestic workers under eighteen not be deprived of compulsory education or other opportunities to participate in education or vocational training.<sup>244</sup> C182 also highlights the importance of education for children.<sup>245</sup> In practice, educational opportunities may not cater to the realities of working children. Children who migrate for work in particular, are at high risk of exploitation, and prone to long working hours.<sup>246</sup> Long working hours may prevent children from accessing their right to education, or render them too exhausted to study.<sup>247</sup> The importance given to the right of a child to obtain an education distinguishes CDWs from their adult counterparts.

Though the lack of access to education is not as acute as for children, adult DWs, particularly those that live with employers, may be required to forego opportunities for additional education or skills

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242. See *Promoting Fair Migration*, *supra* note 67, at ¶ 364 (“[D]rew specific attention to increased vulnerability and lack of protection of migrant workers’ rights due to the high dependency of the worker on the employer, live in requirements and employer-tied visas, including in temporary and seasonal migration programmes.”). This is particularly true in Middle East jurisdictions that utilize a Kafala system of sponsorship, which requires employer approval before leaving a job, preventing migrant workers from leaving abusive employment situations. See *supra* note 65 and accompanying text. Alternatively, in Hong Kong, a local NGO found that migrant workers on their first contract were 2.7 times more likely to experience conditions of forced labor than experienced workers. Anderson & Wisniewski Otero, *supra* note 11, at 7.

243. See *Voices of Child Domestic Workers*, *supra* note 27 at 16-17; see also *Ending Child Labour*, *supra* note 12, at 37.

244. C189, *supra* note 23, art. 4(2).

245. C182, *supra* note 114, art. 3.

246. ILO, MIGRATION AND CHILD LABOUR, [http://ilo.org/ipecc/areas/Migration\\_and\\_CL/lang—en/index.htm](http://ilo.org/ipecc/areas/Migration_and_CL/lang—en/index.htm) (last visited Mar. 21, 2018).

247. *Ending Child Labour*, *supra* note 12, at 37-38.

training.<sup>248</sup> While C189 provides an entitlement to vocational training or education specifically for children, R201 emphasizes continuing education for adults.<sup>249</sup> Preventing workers from accessing education denies them the ability to develop the necessary skills to move out of domestic work, if they so choose.<sup>250</sup>

## 2. Consent

Perhaps the most salient difference between CDWs and adult DWs is the notion that the latter, as adults, are assumed to understand and consent to the risks inherent in undertaking domestic work. Adult DWs are presumed to accept certain risks, such as the use of hazardous household chemicals or the use of potentially dangerous household appliances and tools such as knives, irons or propane gas tanks.<sup>251</sup> Adult domestic workers are more equipped to handle these types of potential household dangers than children. Adult DWs are also able to migrate for work, and can therefore consent to debt-financed migration, whereas children typically cannot.<sup>252</sup>

## 3. Employers

A final difference between adult DWs and CDWs is that the former are more likely to work for strangers. In some cultures, the employer of a CDW is seen as ‘fostering’ or ‘adopting’ the child in order to facilitate the child’s access to education or provide food and accommodation that the child’s family cannot.<sup>253</sup> The relationship between the ‘substitute parent’ and the CDW can blur the lines of the employment relationship, and may impact their ability to obtain a

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248. This is in contravention of their Article 4 rights in C189. *C189*, *supra* note 23, art. 4(2).

249. *Id.* See *R201*, *supra* note 107, art. 5(2)(a) (“strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts”).

250. *Resolution Concerning Decent Work*, *supra* note 17, ¶ 19.

251. For a list of dangerous tasks that children are asked to undertake in domestic work see *Tackling Child Labour*, *supra* note 110, at 63.

252. *DemandAT*, *supra* note 5, at 12 (noting that a common dimension of migrant workers is debt-financed migration).

253. In many cultures, having a young female in the home to do chores is culturally acceptable. Anti-Slavery International *supra* note 99, at 4. See *Swept Under the Rug*, *supra* note 117, at 54 (noting that children often find employment with parental help).



formal employment contract.<sup>254</sup> These relationships can also mask exploitation and abuse.<sup>255</sup>

#### 4. Limitations of this Approach

There are limitations in utilizing a rights-based framework to advocate for industry-wide regulation. This approach assumes that countries have a genuine interest in eradicating child labor within their borders. Though the UNCRC has near universal ratification, not all countries are actively working to achieve its mandate. This may be particularly true of small, wealthy labor destination countries.<sup>256</sup> Some jurisdictions believe that child labor is almost completely eradicated within their borders and may have little incentive to patrol the domestic work industry for indicators of it.<sup>257</sup> Finally, many communities may believe that children do not have independent rights of their own and therefore may be socially resistant to a rights-based framework.<sup>258</sup>

##### *B. Similar Risk Factors: Adult and Child DWs*

Adult DWs and CDWs share many similarities aside from their job title and demographics which make them ripe for comparison under protective legal frameworks. These commonalities include dependency on their employer, power inequality, social isolation, risk of low or no pay, risk of abusive working hours, and finally the risk of emotional, physical and sexual abuse.<sup>259</sup> These commonalities are not exhaustive,

254. ILO-IPEC INTERREGIONAL WORKSHOP, *supra* note 57, at 27.

255. *Id.* at 28.

256. In 2016 Hong Kong was downgraded to a Tier-2 Watch List on the U.S. State Department Trafficking in Persons Report. Despite labor trafficking being well-documented in the territory, including children trafficked for sexual and domestic labor, the Hong Kong government has expressed little interest in regulating it. Karen Cheung, *Hong Kong Downgraded to Join Ranks of Uzbekistan, Niger, Afghanistan in Annual Trafficking Report*, H. K. FREE PRESS, <https://www.hongkongfp.com/2016/07/01/hong-kong-downgraded-to-join-ranks-of-uzbekistan-niger-afghanistan-in-annual-trafficking-report/> [https://perma.cc/GX5N-BGYT].

257. Singapore has noted that child labour is not a ‘significant’ issue, even though some children are reported to be working in sex work in the territory. *See* U.S. DEP’T OF STATE, *2016 Country Reports on Human Rights Practices – SINGAPORE*, §7(c); *see also DemandAT*, *supra* note 5, at 12 (noting that “child trafficking in DW has received little attention within the European context, and there is no available data regarding the scope, even if limited, of the issue”).

258. *Tackling Child Labour*, *supra* note 110, at 54.

259. *See supra* Part II.B.

but commonly appear in abusive domestic labor situations, and are indicators of labor exploitation.<sup>260</sup> Abuses of these vulnerabilities and exploitative conditions of work have been positively linked with trafficking.<sup>261</sup> Push factors, including poverty, that cause individuals to seek domestic work remain similar for different age groups.<sup>262</sup>

### 1. Dependency on Employer & Power Inequality

Domestic workers are often dependent on their employer for housing, food, and wages, thereby creating a significant power inequality.<sup>263</sup> This power imbalance may prevent them from feeling able to enforce their rights and leave them vulnerable to exploitation.<sup>264</sup> In many communities, this power inequality is exacerbated by many of the discrimination factors already noted: age, gender, class, race, and migration status.<sup>265</sup> These vulnerabilities, and cultural acceptance of inequality, can make workers more likely to put up with abusive conditions, particularly where they and their families are dependent on remittances.<sup>266</sup>

Where DWs live with their employers, they are dependent on their employer to provide adequate living facilities, health, food, and other daily necessities.<sup>267</sup> CDWs may be dependent on the living arrangement provided by an employer living in an urban area so that they continue to access education that is not available in their home towns.<sup>268</sup> Similarly, MDWs may be reliant on employers for their visa if their immigration status is linked with employment.<sup>269</sup> To speak up

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260. See *Delphi Indicators*, *supra* note 212.

261. *Id.*

262. For push factors for adult migrant workers, see *Trafficking in the Middle East*, *supra* note 15, at 45-6. For push factors for children, see *Voices of Child Domestic Workers*, *supra* note 27, at 40; see also *ILO-IPEC Interregional Workshop*, *supra* note 57, at 38.

263. *DemandAT*, *supra* note 5, at 9.

264. See *Promoting Fair Migration*, *supra* note 67, at ¶ 364.

265. See Smith, *supra* note 4.

266. *Trafficking in the Middle East*, *supra* note 15, at 104 (“knowing that they will accept these terms because they are under pressure from their families to remit badly needed money home”); for more on remittances, see Anderson & Wisniewski Otero, *Coming Clean*, *supra* note 11, at 50.

267. *Id.* at 64 (“these range from the hours that MDWs work, to where they sleep and at what times, what food they may eat, what to wear and many other aspects that blur the boundaries of work/home life.”).

268. See *supra* Part V.A.

269. See *supra* note 65 and accompanying text.

about poor working conditions is to risk losing gainful employment and the living arrangements upon which they rely. This dependency can create or exacerbate other factors: social isolation and poor living conditions, risk of low wages, abusive working hours, and emotional, physical or sexual abuse.

## 2. Social Isolation and Poor Living Conditions

Many DWs migrate long distances from a rural to urban households.<sup>270</sup> Migration status, even when moving within one's own country, can cause vulnerabilities because migrants may lack knowledge about local languages, resources, or laws.<sup>271</sup> Individuals who live with an employer are more isolated, and therefore have limited access to social services or resources that could help them in an abusive situation.<sup>272</sup> Employers often use threats of denunciation or reporting to authorities as common tactics to control DWs.<sup>273</sup> Poor family ties, poor working conditions, lack of social support, and poor self-reported health have been affirmatively linked with poor psychosocial outcomes in child DWs.<sup>274</sup> Beyond simply emotional isolation and lack of support networks, both adults and children may struggle to understand occupational health and safety related information such as labels on cleaning products that may be in another language, heightening the risk of accidents and injuries.<sup>275</sup>

Anti-Slavery International recommends reducing isolation and limiting social discrimination against domestic workers.<sup>276</sup> Support

270. *Ending Child Labour*, *supra* note 12, at 30.

271. *Domestic Workers Across the World*, *supra* note 6, at 44.

272. *See id.*; *see also Labour Inspection and Other Compliance Mechanisms*, *supra* note 84, at 7, (“In some countries migrant domestic workers require their employers’ permission in order to leave the household thereby restricting their potential to contact protection mechanisms.”).

273. *See Delphi Indicators*, *supra* note 212; *see also* Case of C.N. v. The United Kingdom, App. No. 4239/08 (2013) (C.N.’s trafficker “constantly warned her that she should not talk to people and that she could easily be arrested or otherwise come to harm.”).

274. Jennie Gamlin et al., *Is Domestic Work [the] Worst Form of Child Labour? The Findings of a Six-Country Study of the Psychosocial Effects of Child Work*, Vol. 13/2 *Children’s Geographies* 212, 222 (2015) (the study did not find migration itself to be a risk factor for poor psychosocial outcomes in children, but it did note that children living at home indicated better outcomes than those living with employers).

275. Occupational health and safety risks for the most vulnerable workers, EUR. PARL., 84 (Aug. 2011) (“This suggests that, for migrant workers, learning the language and getting acquainted with the culture of the host society diminishes the risk of occupational incidents.”).

276. Blagbrough, *supra* note 241, at 187.

groups such as unions are crucial for empowering DWs to advocate collectively for improved working conditions. Critically, domestic workers must have time off from work and away from employers to be able to access such groups.<sup>277</sup>

### 3. Risk of No or Little Pay

Because they often operate within the informal economy, DWs are at risk of being paid inadequate wages below the minimum required level or non-payment of wages.<sup>278</sup> The boundaries between free time, work time, and on-call time become blurred.<sup>279</sup> DWs also risk being subject to deprivations of liberty and freedom of movement, such as limitations on when they are able to take free time or excessive or exploitative working hours.<sup>280</sup> The lack of a formal contract exacerbates these risks as domestic workers may have difficulty proving the existence of an employment relationship and may therefore be unable to force payment through the justice system.<sup>281</sup> Though lack of a contract is less likely to be an issue for migrant domestic workers<sup>282</sup>, they may face similar barriers in accessing the legal system, may fall victim to fraud, or may be denied a copy of the contract.<sup>283</sup>

Intermediaries play a crucial role in recruiting and placing domestic workers in a home.<sup>284</sup> The intermediary could be a family member or a formal agency or recruiter who will receive a fee or percentage of a DW's salary for recruiting the individual into domestic work.<sup>285</sup> These individuals and agents can, and often do, misrepresent

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277. C189 requires a day of rest, though not all countries require this. *C189*, *supra* note 23, art. 10.

278. See *Labour Inspection and Other Compliance Mechanisms*, *supra* note 84, at 40, (noting that “domestic workers in many countries find it difficult to negotiate wages above the legal minimum, even where a minimum wage for domestic workers exists”).

279. *DemandAT*, *supra* note 5, at 9.

280. See Human Rights Watch, “*I Was Sold*”: *Abuse and Exploitation of Migrant Domestic Workers in Oman*, (June 13, 2016); see also *Occupational Health and Safety Risk for the Most Vulnerable Workers*, at 87-88.

281. See ILC, Report IV(1), *supra* note 30, ¶ 123.

282. This is because, by virtue of being international migrants, they will likely have one as justification for a working visa. ILC, Report IV(1), *supra* note 30, at ¶ 129.

283. See ILC, Report IV(1), *supra* note 30, at ¶¶ 131, 253.

284. See ENRICH HONG KONG ‘EMPLOYMENT AGENCY FEES UNCOVERED’ <http://www.enrichhk.org/2016/06/partner-blog-employment-agency-fees-uncovered/> (last visited Mar. 21, 2018) [<https://perma.cc/C2ZD-X9SD>].

285. *Promoting Fair Migration*, *supra* note 67, at ¶ 197.

crucial components of working conditions such as wage, education opportunities, and living conditions such as privacy.<sup>286</sup> Occasionally, agencies or employers will confiscate passports and other crucial identity documents, a medium indicator of forced labor.<sup>287</sup>

#### 4. Abusive Working Hours

Domestic workers who live with their employers are exposed to the risk of abusive working hours. Ninety-one percent of CDWs in India and seventy-two percent of those in Togo reported that they had no days off in a week.<sup>288</sup> It was also common for these workers to report that they worked all day without breaks.<sup>289</sup> Research by Anti-Slavery International indicates that some CDWs in Lima reported that employers sometimes tried to isolate them from their families, and in Tanzania one-third of CDWs reported that they were not able to host visitors.<sup>290</sup>

Forced labor occurs when coercion is imposed on a domestic worker to prevent them from leaving an employment situation.<sup>291</sup> This can result from a variety of factors, including financial and familial pressure to retain employment and send remittances.<sup>292</sup> Excessive working hours is a strong indicator of exploitation that can impact physical and psychosocial well-being.<sup>293</sup> Disturbingly, the vulnerabilities of CDWs and MDWs in particular can be desirable to employers because the workers are willing to accept low salaries and are more likely to consent to the employer's demands.<sup>294</sup>

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286. *Underpayment 2: The Continuing Systematic Extortion of Indonesian Migrant Workers in Hong Kong: An In-Depth Study*, 30 (Sep. 2007); see also "I Was Sold," *supra* note 280.

287. For an example of passport confiscation, see "I Was Sold," *supra* note 280, at 1. For confiscation of passports and crucial identity documents, see *Delphi Indicators*, *supra* note 212 (noting that confiscation of documents is a medium risk factor for both children and adults).

288. Gamlin et al., *supra* note 274, at 218.

289. *Id.*

290. *Voices of Child Domestic Workers*, *supra* note 27, at 15.

291. See D'Souza, *supra* note 29, at 28-32; see also *Swept Under the Rug*, *supra* note 117, at 23.

292. See *Trafficking in the Middle East*, *supra* note 15, at 104; see generally Anderson & Wisniewski Otero, *Coming Clean*, *supra* note 11.

293. Gamlin et al., *supra* note 274, at 222. For forced labor as an indicator of exploitation, see *Delphi Indicators*, *supra* note 212.

294. *Ending Child Labour*, *supra* note 12, at 11. See also *Hidden Slavery*, *supra* note 43, at 11.

### 5. Emotional, Physical and Sexual Abuse

A system that places disproportionate power in the hands of employers and isolates workers can, in the worst cases, lead to abuse and torture.<sup>295</sup> Qualitative studies indicate that young domestic workers face heightened risk of physical, psychosocial, emotional and sexual abuse.<sup>296</sup> In a survey of child domestic workers in six countries, many stated that their employers used physical punishment.<sup>297</sup> Physical violence consisted of beating, pinching, kicking, whipping, scalding with hot water, overworking, and denying food.<sup>298</sup> The same survey found that CDWs often showed signs of emotional stress when compared with a control group, including drops in their sense of personal pride and their perceived ability to rely on adults or friends.<sup>299</sup>

Lack of support networks can also leave DWs prone to emotional abuse, particularly where employers use ethnicity- or race-based insults.<sup>300</sup> Though adult domestic workers may be able to assume risks such as social isolation or long working hours, they cannot unknowingly assume the risk of illegal physical, emotional or sexual abuse at the hands of their employers. Further, anecdotal evidence shows that cultural and social acceptance of violence as an occupational hazard may render DWs less likely to report it, even where they are familiar with the avenues for doing so.<sup>301</sup>

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295. See Ayaz Akbar Yousufzai, *Judge Probed Over Alleged Torture of 10-year-old Maid*, GEO.TV (Dec. 13, 2016), <https://www.geo.tv/latest/125508-Local-courts-judge-probed-for-violence-on-10-year-old-domestic-worker> [<https://perma.cc/5VDA-J9EM>]; see also Diana Alghoul, *Hundreds of 'Tortured' Bangladeshi Women Flee Saudi Arabia*, THE NEW ARAB (May 2, 2017), <https://www.alaraby.co.uk/english/society/2017/5/2/Hundreds-of-tortured-Bangladeshi-women-flee-Saudi-Arabia>.

296. Gamlin et al., *supra* note 274, at 213. See also *Hidden Slavery*, *supra* note 43, at 59 (noting that female child domestic workers in Bangladesh suffered a much higher rate of inappropriate touching (19.6%) than male children (3.3%)).

297. Gamlin et al., *supra* note 274, at 218.

298. Blagbrough, *supra* note 241, at 186.

299. *Id.* at 219 (noting, however, that this wasn't universally true – Peruvian, Philippine and Tanzanian child domestic workers showed high levels of psychosocial satisfaction).

300. See D'Souza, *supra* note 29, at 24; see also *Decent Work for Domestic Workers* at ¶ 231 (noting that temporary accommodation and a support network are crucial to help domestic workers escape abuse).

301. D'Souza, *supra* note 29, at 25 (noting that “Anecdotal evidence seems to suggest that most incidents of verbal and physical abuse are not treated as violence which necessitates action, but only as an occupational hazard”).

Discrimination based on age, religion, gender, class, and national origin can contribute to societal attitudes toward domestic workers. These biases affect the value of the work done and the treatment of DWs.<sup>302</sup> “Humiliation”, “treated worse than dogs”<sup>303</sup> and “they respect their animals more”<sup>304</sup> have been used to describe the emotional abuse domestic workers of different age groups have faced in their work.

#### VI. USING SIMILARITIES TO ENHANCE RIGHTS PROTECTION

The similarities above indicate that there are systemic problems in the domestic work industry. However, governments, including developed economies, still often fail to appropriately monitor the industry, prevent abuse, and even punish those responsible for the worst forms of domestic labor.<sup>305</sup> Evidence shows that workers can become victims of the above abuses, regardless of their age.<sup>306</sup> Industry wide protection should therefore be adopted that would respect the rights of both children and adults engaging in domestic work. These protections should target the elimination of illegal and exploitative domestic work.

Basic labor protections must be implemented by governments to eradicate the worst forms of child labor in domestic work.<sup>307</sup> Unions and NGOs, though playing a pivotal role, should not be solely responsible for the eradication of these labor abuses. Advocates can use the connection between CDWs and DWs to encourage governments to comply with industry-wide basic labor standards they have already agreed to abide by under the international frameworks.<sup>308</sup>

This Note divides relevant labor rights from ILO Conventions 189 and 182 into two categories. The first are basic rights, which this Note

302. See *Voices of Child Domestic Workers*, *supra* note 27, at 19 (CDWs stated that the most difficult part of their burden is discrimination and isolation); see also Tomei, *supra* note 24, at 186 (arguing that classifying domestic work as ‘women’s work’ devalues the work); Anderson & Wisniewski Otero, *Coming Clean*, *supra* note 11, at 46 (migrant domestic workers are undervalued and receive less than half of Hong Kong’s minimum wage).

303. Zigor Aldama, *Hong Kong’s Domestic Workers ‘Treated Worse Than the Dogs’*, DW.COM (Sept. 3, 2015), <http://www.dw.com/en/hong-kongs-domestic-workers-treated-worse-than-the-dogs/a-18302005> [<https://perma.cc/N48Q-WL3S>].

304. See *Voices of Child Domestic Workers*, *supra* note 27.

305. For an analysis of the U.K.’s failure to recognize, investigate, and prosecute a form of child labor, see generally Case of C.N., *supra* note 273.

306. Smith, *supra* note 4, at 171.

307. See *supra* Part III.B.

308. *Id.* 309. C182, *supra* note 114, preamble.

argues have equal application to both children and adult DWs. These rights are not intended to be exhaustive, but have been chosen as the most pressing rights affecting both groups. These rights include the right to be free from forced labor, the right to occupational health, the right to social security, the right to remuneration, trade union rights and the freedom of association, the right to gender equality and non-discrimination, and equal treatment under the law. In the second category, this Note places rights that are not generally applicable to or appropriate in regard to child labor, including the rights to abode and resident, and maternity rights. It is unlikely that domestic workers can demand these rights in conjunction with the eradication of child labor.

By dividing rights into basic rights and rights that are not applicable, this Note highlights which rights violations can be affirmatively linked to child labor abuses. Achieving C182's goal of eradicating the most abusive forms of child labor<sup>309</sup> would have industry-wide impacts that would also prevent adult DWs from falling into conditions of labor exploitation.

Here, there are two points of note. First, it is crucial that any government regulation not be so stringent as to push the industry underground. For example, if registering a CDW with a government entity necessitated that a labor inspector be able to enter the home without notice at any time, employers would be unlikely to comply with the registration regulations, and the practice would go unchecked. Policies must not demonize employers, who are a crucial component in protecting DW's rights. Some employers, rather than seeing themselves as exploiters of cheap child or migrant labor, may consider themselves to be helping workers by providing them with a job and place to live.<sup>310</sup> Their narrative is a crucial one to consider in suggesting and implementing policy change.

#### A. Basic Rights

Three main factors contribute to the exploitation of domestic workers. First, a lack of regulation in the labor market.<sup>311</sup> Second, an

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309. C182, *supra* note 114, preamble.

310. IDWF, *Eight Good Practices*, *supra* 236, at 56 (“[E]mployers believed that providing CDWs with food, clothing and shelter was a social service.”).

311. *DemandAT*, *supra* note 5, at 25. See also Bridget Anderson & Julie O’Connell-Davidson, Int’l Org. for Migration [IOM], *Is Trafficking in Human Beings Demand Driven?: A Multi-Country Pilot Study*, 5 (2003).



abundance of vulnerable workers.<sup>312</sup> Finally, social norms allowing abusive employer behavior.<sup>313</sup> Through international obligations including ILO Conventions, governments are required both to respect rights and to take affirmative obligations to protect DWs from abuses by private parties. This affirmative commitment to labor and human rights can inform a similar requirement for states to do more to protect the fundamental rights of domestic workers in particular. This Part provides descriptions of how rights have been interpreted in the past by various judicial bodies, and how their application to the context of child labor can inform stronger advocacy approaches. These descriptions primarily address the first factor contributing to exploitation of domestic workers: a lack of regulation in the domestic work industry, though they also touch on the second and third.

#### 1. Forced Labor & Freedom from Economic Exploitation

Some domestic work can rise to the level of forced labor or economic exploitation.<sup>314</sup> Where migrant workers live under a sponsorship system, they are at increased likelihood of suffering abusive employment practices and working conditions that could amount to forced labor.<sup>315</sup> The system of abuse often starts before a domestic worker leaves their home to pursue work: “Fraud, misinformation about the nature and terms of work, overcharging or theft of recruitment fees, delays in departure or failure to depart altogether all make migrant workers more vulnerable to abuse abroad and less able to change their situations.”<sup>316</sup> These factors are exacerbated by the perception of impunity for the actors who violate human rights and labor laws. Criminal legal cases concerning exploitation in domestic work are scarce.<sup>317</sup>

In *Siliadin v. France*, a case that influenced the adoption of C189, the European Court of Human Rights found that a woman was held in servitude, in contravention of Article 4 of the European Convention of Human Rights (“ECHR”) against servitude, forced, and compulsory

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312. Anderson & O’Connell-Davidson, *supra* note 311.

313. *Id.*

314. *See infra* Part IV.A(1).

315. *The Kafala*, *see supra* note 65, at 24-31.

316. PAOLETTI ET AL., *supra* note 20, at 26.

317. *DemandAT*, *supra* note 5, at 26.

labor.<sup>318</sup> A finding of servitude required ascertaining that there was an obligation to perform services for others and an obligation to live on another person's property without the possibility of altering that condition.<sup>319</sup> Siliadin migrated to France at age fifteen, and was forced to work fifteen hours a day, seven days a week.<sup>320</sup> She entered France to obtain an education, but was forced by her employer/trafficker into domestic labor.<sup>321</sup> She had no money or resources, and was at the mercy of her employers as her identity documents had been confiscated.<sup>322</sup> The Court found that Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedom<sup>323</sup> imposed an affirmative obligation on states to criminalize private conduct that would violate the article.<sup>324</sup>

Siliadin's case may be distinguished from the typical migrant workers' as she did not choose to work for her employers, which led to the condition of servitude.<sup>325</sup> Her case is also distinct because Europe has more robust human rights mechanisms than its Asian, African, and Middle Eastern counterparts where many DWs work.<sup>326</sup> However, the approach in *Siliadin* can inform progress for realization of domestic workers rights in other jurisdictions. Though no international human rights court exists in either the Middle East or Asia, the UNCRC and C182 require action in the domestic context. Because almost all countries have agreed to prohibit forced labor and servitude, particularly for children, *Siliadin* can be used as a model for requiring that countries criminalize private conduct that would lead to exploitation like Siliadin's. While criminalization itself will not solve economic exploitation, it serves a social function by rejecting the outdated social practices of forced labor in domestic work and by

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318. *Siliadin v. France*, Case 73316/01 [2005].

319. *Id.* at ¶ 123. (providing that a mandatory 'live-in' requirement is common among many countries which host MDWs).

320. *Id.* at ¶¶ 10-14.

321. *Id.* at ¶ 11.

322. *See id.* at ¶¶ 11-15.

323. Now included in the European Human Rights Charter.

324. *Siliadin*, *supra* note 318, at ¶¶ 84-89 ("It necessarily follows from this provision that States have positive obligations to adopt criminal law provisions which penalize the practices referred to in Article 4 and to apply them in practice.").

325. *Id.* at ¶ 126.

326. Europe has a Human Rights Convention and Court. Similar bodies include the Inter-American Commission on Human Rights and its associated court, and the African People's Court of Human and Peoples' Rights. Neither Asia nor the Middle East has a similar regional human rights body or court.

setting standards of progressive rights realization in domestic work. Even in jurisdictions where *Siliadin* is not binding, it makes a compelling argument that countries that fail to take affirmative obligations to eradicate slavery in domestic work will be subject to international scrutiny.

Not all cases will be as severe as *Siliadin*'s, rising to the level of forced servitude. However, a court in a country with a law criminalizing forced servitude could similarly find that the right is meaningless without government action to enforce the right, and therefore encourage countries to act upon their positive obligations to prevent servitude and compulsory labor in their territories. Highlighting abuse cases of minors such as *Siliadin*, and linking these stories with the prevention of human trafficking can encourage governments to work to protect victims, and investigate possible situations of trafficking or servitude in domestic work, regardless of the age of the victim. This of course, assumes that law enforcement is capable of recognizing and investigating coercive and forced labor.<sup>327</sup>

A key to addressing the risk of forced labor is by formalizing the employment relationship.<sup>328</sup> To address concerns of forced labor, the ILO and other activists have advocated for written contracts as to employment terms, which can lay out clearly the work schedule including rest and payment periods.<sup>329</sup> Domestic Worker's unions have specifically requested formal work contracts with working conditions clearly listed.<sup>330</sup> Contracts are equally important for child workers, even where employment is short-term or part-time.<sup>331</sup> A written contract, signed by both parties prior to the commencement of work, allows DWs to have proof of the details of their work relationships and understand the expectations of the job.<sup>332</sup> In the event of a conflict, it can serve to elucidate any agency fee arrangements or obligations, particularly where the DW was recruited by a chain of agencies or

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327. See Case of C.N., *supra* note 273 (the British police were alerted to the circumstances of labor trafficking on a number of occasions, but each time either failed to uncover evidence of forced labor or otherwise found that no statute existed that would allow prosecutors to hold CN's trafficker accountable under criminal law).

328. *Social Protection for Domestic Workers*, *supra* note 156, at 24.

329. *C189*, *supra* note 23, art. 7 (providing that Convention 189 calls for written contracts, where possible).

330. *Id.*

331. *Ending Child Labour*, *supra* note 12, at 78.

332. *Promoting Fair Migration*, *supra* note 67, at ¶ 216.

subcontractors.<sup>333</sup> South Africa requires holistic ‘written particulars of the work’, including a brief description of the work, ordinary hours, rate of wages and payment method, rate for overtime, any payment in kind, leave entitlement, period of notice upon termination, and possible wage deductions.<sup>334</sup>

In Malawi, CDWs of legal working age have been given formal work contracts under an ILO program titled SNAP - ‘Support for the National Action Plan’<sup>335</sup> - undertaken as part of Malawi’s national action plan to combat child labor.<sup>336</sup> The Program requires that a young domestic worker be presented a formal contract listing working hours and conditions, which is signed by the worker, the village chief, a representative of child labor monitoring committee and the employer.<sup>337</sup> The existence of a contract has been reported to help both the employees understand their rights and for employers to understand what the laws required of them.<sup>338</sup> Malawi’s model, designed specifically for young workers, could inform a broader approach calling for clear contracts for all domestic workers – the contracts don’t expire when the workers reach the age of majority. Further, these young workers will be empowered to ask for formal work contracts as they become adults.

An additional solution to eradicating forced labor is to legislate, implement, and enforce working standards, including minimum wage and maximum working hours legislation. To enforce these standards, governments must provide a means for detecting abusive employment relationships, enabling submission of complaints and mandating punishments for those in breach. C189 requires decent living conditions and privacy, which should naturally be extended to children workers.<sup>339</sup> Details about the nature of the living conditions should be formalized in the contracts. Ensuring adequate living conditions may

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333. *Id.* at ¶ 493.

334. Labour Dep’t of S. Africa, *What you Should Know*, *supra* note 207.

335. SNAP is a program funded by the US Department of Labor beginning in 2009.

336. ILO, *Malawi: From Child Labour to Decent Work* (June 12, 2013), [http://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS\\_215821/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS_215821/lang-en/index.htm) (last visited Mar. 21, 2018).

337. *Id.*

338. *Id.*

339. C189, *supra* note 23, art. 4, at 7.

require labor inspections, as noted above, to ensure that the facilities are as described in the contract.<sup>340</sup>

Finally, workers must have a say in determining their living situation – a key component of the Court’s finding of compulsive labor in *Siliadin*.<sup>341</sup> Live-in employees’ movement and ability to enjoy leisure time can be restricted. Lack of social and financial resources compound this problem when abuse arises, and the worker has little means of escape. Though not all children will be in a position to determine their own living situation, they should be made aware of alternatives to living and employment arrangements. Therefore, it is important that DWs be given options about their living conditions, be informed about their rights and options, and be empowered to know that they can negotiate with their employers.

## 2. Right to Occupational Health

Domestic workers are prone to a variety of occupational hazards, because of both the tasks undertaken and the conditions of work.<sup>342</sup> These are particularly acute for children, who may lack the proper education and training necessary to assess these risks and mitigate them.<sup>343</sup> Under Recommendation 190, which accompanied and elaborated on C189, hazardous work includes that which exposes children to physical, psychological, or sexual abuse, “hazardous substances, agents or processes” and “work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.”<sup>344</sup> The last condition directly calls for protections for CDWs residing with their employers. R201 also highlights that special attention must be given to workers under the age of eighteen by limiting their hours of work, including in night work, restricting excessively demanding work, and strengthening mechanisms to monitor working and living conditions.<sup>345</sup>

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340. See *supra* Part IV.B(1) on employer privacy & labor inspections.

341. Cf. *Siliadin*, *supra* note 318, ¶¶ 123-29.

342. See *Labour Inspection and Other Compliance Mechanisms*, *supra* note 84, at 9.

343. For more on children in domestic work, see *Ending Child Labour*, *supra* note 12, at 32.

344. ILO, *Recommendation 190 – Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, II(a)-(e) (June 17, 1999).

345. R201, *supra* note 107, art. V.2.(a)-(d).

Domestic workers often use house cleaning chemicals that can burn the skin and cause respiratory disorders.<sup>346</sup> Tasks such as carrying heavy loads, gardening and farming with heavy equipment, cooking with hot pans and using irons can be exhausting and dangerous, particularly for children or those whom are not getting enough rest time.<sup>347</sup> Working conditions in domestic work remain sub-standard compared to other labor sectors.<sup>348</sup> A study in Vietnam reported that common illnesses of CDWs included coughs and respiratory problems, headaches, back pain and wounds.<sup>349</sup> The study found that thirty-six percent of children had been wounded or sick during their service.<sup>350</sup> Children in Brazil have reported chronic sleep deprivation, and psychosocial disorders such as phobia and separation anxiety, while CDWs in Kenya reported bedwetting, insomnia, nightmares, frequent headaches, withdrawal and depression.<sup>351</sup>

The ILO has called for special protection for young domestic workers by limiting their working hours, banning night work, and implementing restrictions on work that is excessively demanding.<sup>352</sup> While those three protections are specifically tailored to child workers, standard setting in this area can help legislators to view domestic work as a human rights and gender concern, informing laws that respect domestic workers of all ages.<sup>353</sup> To prevent occupational health and safety abuses, governments should require basic safety training for all individuals entering into domestic work, provided in multiple languages. This can be framed in terms of benefits to employers by highlighting that trained workers are more efficient and better able to contribute to chores.<sup>354</sup> Governments could also provide a complaint hotline for DWs to call, for example if their employer is refusing to provide protective equipment such as gloves for handling toxic chemicals. Governments could even go a step further, encouraging or

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346. For more on risk factors see *See Labour Inspection and Other Compliance Mechanisms*, *supra* note 84, at 10; see also *Ending Child Labour*, *supra* note 12, at 33-34.

347. *Id.* at 34.

348. Maria Gallotti & Jesse Mertens, *Promoting integration for migrant domestic workers in Europe: a synthesis of Belgium, France, Italy and Spain*, (International Migration Papers no. 118) (2013).

349. ILO, *Survey report: Child domestic workers in Ho Chi Minh City* 13 (2006).

350. *Id.* at 49.

351. *Ending Child Labour*, *supra* note 12, at 34.

352. *Id.* at 3.

353. *Id.*

354. IDWF, *Eight Good Practices*, *supra* note 236, at 60.

requiring domestic workers to obtain a certification before being able to work. A model rolled out in some provinces of China offers different levels of certifications based upon the number of training courses completed.<sup>355</sup>

Finally, labor inspections of work places could also prove to be beneficial for occupational safety and health.<sup>356</sup> In 2011, a report from the EU Fundamental Rights Agency examined working conditions of irregular migrant domestic workers, and concluded that fair working conditions should provide for labor inspections.<sup>357</sup> Sri Lanka has granted authority to its National Child Protection Authority to enter and search any premises, including homes, where it believes child abuse is occurring.<sup>358</sup>

### 3. Right to Social Security

Where workers do become sick, it is important that they have access to social security benefits, including healthcare, particularly where other migrant workers have such benefits.<sup>359</sup> As of 2013, the ILO estimated that only ten percent of domestic workers worldwide have equivalent protections to workers in other industries,<sup>360</sup> and many countries specifically exclude domestic workers from otherwise mandatory social security schemes.<sup>361</sup> Voluntary schemes are often ineffective. Even where the domestic worker is aware of the scheme, they face regulatory hurdles to join it, and may struggle to convince their employers to enroll them.<sup>362</sup> The ILO reports that when young domestic workers fall ill, they risk receiving little or no medical

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355. See REPORT – THE STATUS OF DOMESTIC WORKERS AND DECENT WORK CHALLENGES IN CHINA 4 (“Along with training and certification systems, the Chinese government also urges the industry to make distinctions between different service types, publish industry standards, and check workers certificates when recruiting new employees. In 2003, Shenzhen published the first industry service standards for domestic workers, including a classification of different skill levels and the requirements for attaining each classification. Salaries can be increased commiserate with experience”).

356. See generally, *supra* Section II.B(1) (discussing employer privacy & labor inspections).

357. *Legislative Precariousness of Domestic Labor*, *supra* note 4, at 157.

358. *Tackling Child Labour in Domestic Work*, *supra* note 110, at 78.

359. Other ILO Conventions list healthcare as a right for migrant workers. See e.g. Int’l Labour Org. Convention 97, art. 5.

360. *Social Protection for Domestic Workers*, *supra* note 156, at 10.

361. *Id.* at 20.

362. *Id.*

treatment, as employers prefer to treat them at home to avoid medical costs.<sup>363</sup>

Refusing to grant social security and health benefits to domestic workers may serve to keep financial costs low for employers, but has severe long term costs for workers. The ILO has sought to address lack of social security in certain industries by recommending basic income security for children, a nationally-defined minimum wage, and access to nutrition, education, and care.<sup>364</sup> Where possible, domestic workers should have equal protections to other workers including coverage by social security, pensions and maternity benefits.<sup>365</sup> Comparing domestic work to a business, an academic noted that “if cost does not fall on the employer, it rests with the worker. It is hard to see why domestic workers should be subjected to health hazards as part of their jobs.”<sup>366</sup>

Extending social security benefits to children may be a challenge where children workers are considered casual workers or part-time ones.<sup>367</sup> However, the narrative should be framed in a way that employers can see the benefits of such a program. For example, if a DW falls ill, under a social security scheme her healthcare costs would be more affordable for the employer. This requires educating both DWs and their employers as to the benefits of these schemes. Argentina has a model of employer contributions that is split into three segments: workers over sixteen and under eighteen, those eighteen and over, and retired workers.<sup>368</sup> The employers of domestic workers between the ages of sixteen and eighteen are required to pay into the health insurance scheme, but not the pension scheme, limiting their costs.<sup>369</sup> Uruguay’s National Health Insurance System is designed to formalize young adult workers.<sup>370</sup> The system requires higher contributions for

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363. *Ending Child Labour*, *supra* note 12, at 29. See also *Swept Under the Rug*, *supra* note 117, at 42.

364. THE STRATEGY OF THE INTERNATIONAL LABOUR ORGANIZATION, SOCIAL SECURITY FOR ALL: BUILDING SOCIAL PROTECTION FLOORS AND COMPREHENSIVE SOCIAL SECURITY SYSTEM 53 (2012).

365. *C189*, *supra* note 23, art. 14.

366. Fredman, *supra* note 95, at 419.

367. See generally *Social Protection for Domestic Workers*, *supra* note 154, at 21-22 (discussing social security exclusions).

368. *Id.* at 29-30.

369. *Id.*

370. *Id.* at 30.



domestic workers with a spouse or children, allowing costs to remain low for young single workers.<sup>371</sup>

This is a challenge, however, where DWs are contract workers and do not work in a single household. In South Africa, DWs may claim unemployment benefits for a fixed period on dismissal if they contribute to the Unemployment Insurance Fund, though many employers have failed to register their DWs.<sup>372</sup> Brazil's innovative solution provides financial incentives to employers who register their DWs with National Social Security Institute.<sup>373</sup> Brazil's scheme allows social security payments made on behalf of a DW to be deducted from the employer's income tax liability.<sup>374</sup> Because many governments already have social security schemes for other industries, extending such schemes to domestic workers is a reasonable and natural progression. Allowing employers to register young workers in progressive, and cheaper schemes would encourage compliance.

#### 4. Right to Remuneration

Domestic workers have the right to a minimum wage. Low pay or no pay is common, particularly among the youngest domestic workers.<sup>375</sup> Given the difficulty of researching domestic work, many studies on child labor are unable to consider it.<sup>376</sup> Some domestic workers, particularly low-skilled children, are remunerated in-kind with accommodation, food or education costs.<sup>377</sup> Some employers also

371. *Id.*

372. *See generally* Unemployment Insurance Contributions Act, No. 4 of 2002 (S.Afr.) (discussing details of South Africa's insurance fund legislation). For a mention of South Africa's Unemployment Insurance Fund and its extension to domestic workers, see *Domestic Workers Across the World*, *supra* note 6, at 88; *see also* *Social Protection for Domestic Workers*, *supra* note 154, at 16.

373. Fredman, *supra* note 95, at 408.

374. *Id.*

375. *Voices of Child Domestic Workers*, *supra* note 27, at 16. *See also* Pyae Thet Phy, *Domestic Migrant Workers in Thailand, Malaysia 'Underpaid'*, MYANMAR TIMES, Sep. 29, 2017, <https://www.mmtimes.com/news/domestic-migrant-workers-thailand-malaysia-underpaid.html> [<https://perma.cc/7NH3-PNK4>].

376. *See e.g.*, IPEC-ILO, CHILD LABOUR, CAUSE AND EFFECT OF THE PERPETUATION OF POVERTY 11 (Dec. 2007) (domestic work was not considered); *see also* Scott Lyon & Cristina Valdivia, *Towards the Effective Measurement of Child Domestic Workers: Building Estimates Using Standard Household Survey Instruments* (Understanding Children's Work (UCW) Programme, Working Paper Sept. 2010) (suggesting household surveys as a way to overcome the information gap).

377. ILC, Report IV(1), *supra* note 30, at ¶ 23.

are reported to implement a non-transparent system of salary deductions for healthcare needs, or broken or lost household items.<sup>378</sup> Without a contract, the terms of payment, including when and how workers will be paid, can be unclear.

In *Hounga v. Allen*, a U.K. Court of Appeals (later overturned) determined that Ms. Hounga, who was physically abused and dismissed by her employer at age fourteen, was not entitled to salary in arrears, because at the relevant time she did not have the right to work in the United Kingdom.<sup>379</sup> The employment tribunal had earlier found that she “knew the difference between right and wrong.”<sup>380</sup> This, despite that Ms. Hounga was brought to the United Kingdom at the age of fourteen by her employer who falsified her documents under the pretenses of securing her education, and was never paid her the promised wages.<sup>381</sup> The case was more troubling as Ms. Hounga had low cognitive functioning and emotional difficulties.<sup>382</sup> Though Ms. Hounga had made misrepresentations on immigration documents, The Supreme Court overturned the lower court, finding that Ms. Hounga was a trafficking victim and thus was able to pursue her claims against the employer who trafficked her into the country.<sup>383</sup>

South Africa could inform a workable solution. National law requires a maximum of forty-five hours per week, fifteen over time, and daily maximum of nine hours per day, governed by a contract.<sup>384</sup> Weekly rest must be thirty-six consecutive hours, and they receive twenty-one consecutive days paid annual leave per year, and unpaid maternity leave.<sup>385</sup> In addition, South Africa, among other countries, has prescribed a payment rate for on-call working hours.<sup>386</sup> The government provides a fill-in contract that includes daily working

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378. *Id.* at ¶ 24. See also *As If I Am Not Human*, HUMAN RIGHTS WATCH (July 14, 2018), <https://www.hrw.org/report/2008/07/14/if-i-am-not-human> (“[S]ome employers make arbitrary and illegal deductions from salaries as a disciplinary tool, to pay for a worker’s medical expenses, or to recoup recruitment fees.”) [<https://perma.cc/S6SL-3AQF>].

379. *Hounga v. Allen* [2014] UKSC 47 (Eng.).

380. *Id.* at ¶ 11.

381. *Id.* at ¶ 2, 9.

382. *Id.* at ¶ 8.

383. *Id.* at ¶ 54.

384. *Basic Conditions of Employment Act 75 of 1997 Sectorial Determination 7: Domestic Worker Section*, S. Afr., 446 GOV’T GAZETTE, No. 23732, §10(a)-(b), 16(1)(b), Aug. 15, 2002 (covering hours of work and rest periods).

385. *Id.* at 17(1)(b).

386. ILO, *Working Hours in Domestic Work* 2 (2010).

hours with rest time.<sup>387</sup> Because the South African Department of Labour lacks the capacity to conduct thorough labor inspections, it conducts ‘blitzes’ in the domestic work industry.<sup>388</sup> Inspectors identify households with domestic workers through registers at the Unemployment Insurance Fund, and through door-to-door checks.<sup>389</sup> Studies conducted in the country have noted that the introduction of a minimum wage has increased domestic worker’s wages, though non-compliance still exists.<sup>390</sup>

Though there are examples of multinational corporations settling cases against them for abuses of child labor, there appears to be little case law involving back pay of child domestic labor. This is certainly not because child labor is not abused, but rather due to the practical hurdles child workers face in accessing justice. This is a serious area where advocacy can be enhanced. To not pay a salary to a worker is to possibly render them in a position of forced labor. Where remuneration is in-kind, it should be explicitly included in a contract. UNICEF was successful in uncovering child domestic workers through a household survey, which indicated that some less-wealthy households did not report the presence of a CDW.<sup>391</sup> Thus, advocacy for a basic wage can be targeted at employers, who may not understand that their situation amounts to an employment relationship, or who may have little incentive to report the employment relationship to authorities.

##### 5. Trade Union Rights & Right to Freedom of Association

Child workers in any field lack the organizational capacity to bargain collectively with employers, who have much greater bargaining power.<sup>392</sup> Though there is often an age limit for union participation, there have been calls by domestic workers unions to allow for the participation of child domestic workers.<sup>393</sup> Latin America has a strong movement for allowing children domestic workers to

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387. LAB. DEP’T OF S. AFR., *supra* note 207, at 13-14.

388. DEBBIE BUDLENDERT, *THE INTRODUCTION OF A MINIMUM WAGE FOR DOMESTIC WORKERS IN SOUTH AFRICA* 20 (2016).

389. *Id.* at 20.

390. *Id.* at 21.

391. Households hosting CDWs in arrangements disguised as fostering are better off than households of children in other forms work, but are much less wealthy than reported employer households. Lyon & C. Valdivia, UNICEF, *supra* note 376, at 13.

392. *See supra* Part IV.A.3.

393. ILO-IPEC INTERREGIONAL WORKSHOP, *supra* note 57, at 75.

organize themselves.<sup>394</sup> Ideally, governments would allow domestic workers to form their own unions, as opposed to permitting membership in generalized unions.

As noted by the ILO, “[i]t is a growing feature of trade union activities that they focus on a wider range of socio-economic issues that concern their members and their families, including child labour.”<sup>395</sup> This is partly because of globalization, but also because of changing work environments and the roles and objectives of trade unions. Incorporating the goals of CDWs into wider union strategy, and using union resources to empower CDWs to represent themselves can strengthen the connection between child labor and domestic work. This approach could also increase cooperation and coordination between the two groups and their advocates.

Here, recruitment agencies also play an important role, as they are often the first point of contact for a domestic worker seeking employment. Formal agents can be required to distribute union information to workers before they take up employment. For workers to have time to engage in union activities, employers must be made aware of mandatory rest time, and a mechanism for sanctioning those not in compliance must exist. This must be more effective and simple than access to a labor tribunal – for example a complaint hotline in relevant languages.

## 6. Non-discrimination: Right to Gender & Racial Equality

Changing societal expectations and perceptions of women, the poor, and minority communities is crucial to expanding and protecting the inherent dignity of DWs. Without access to affordable childcare options, greater involvement of men, and/or secure and flexible work, women will continue to depend on domestic workers for childcare.<sup>396</sup> That 67.1 percent of the 17.2 million children in paid or unpaid domestic work are female frames this squarely as a gender issue.<sup>397</sup>

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394. *Id.* at 59. *See also Tackling Child Labour*, *supra* note 110, at 70 (Manthoc in Peru and The Bhirma Sanga Association and SUMAPI in the Philippines have successfully developed organizations for working children).

395. ILO-IPEC INTERREGIONAL WORKSHOP, *supra* note 57, at 43.

396. *See* Fredman, *supra* note 95.

397. ILO, CHILD DOMESTIC WORK: GLOBAL ESTIMATES 2012, 2 (2013). *See also DemandAT*, *supra* note 5, at 26 (describing demand for domestic work as gendered, racialized and ethicized); *Tackling Child Labour*, *supra* note 107, at 58-9 (“Gender discrimination is a

Further, social attitudes toward domestic workers from lower castes or different races can play a role in treatment of domestic workers from outside a community. An Inter-American Court of Human Rights report on undocumented migrants stated that exclusion of undocumented migrants from labor rights breached international principles of equality before the law and non-discrimination, both of which it recognized as *jus cogens* norms.<sup>398</sup> The status of non-discrimination as a *jus cogens* norm highlights the importance of working against stereotypes that contribute to discrimination and can lead to abuse against migrant workers. These *jus cogens* labor norms of equality and non-discrimination are applicable to vulnerable DWs including migrants and children.<sup>399</sup>

Domestic workers are prone to gender-based violence, including sexual assault and harassment, and multiple layers of discrimination in the labor market including exclusion from social protections such as reproductive healthcare.<sup>400</sup> A study of child domestic work in Bangladesh found that for age groups twelve to eighteen, female domestic workers suffered ‘bad behavior’ at the hands of employers at a higher rate than males.<sup>401</sup> A solution to the ‘feminization of poverty’ is the economic empowerment of women. Because poverty is a commonality among domestic workers, DWs are likely to be struggling financially and more likely to send their own children into the labor force as DWs.<sup>402</sup> However, only by influencing social change and attitudes toward women and minorities can advocates limit discrimination in the domestic work industry. Reframing the struggle for better rights protection under gender equality and equal protection could draw more attention to the abuses in the domestic work industry.

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major cause of child domestic labour” and “a significant number of child domestic workers come from tribal and ethnic minorities or the lower castes or classes.”).

398. Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18 (Sept. 17, 2003).

399. Mantouvalou, *supra* note 4, at 155.

400. For more on gender-based violence, see *supra* Part II.V. See also U.N. Human Rights Committee’s General Comments, 37th Sess., *supra* note 175, at 79 (interpreting the right to health as including reproductive freedom).

401. *Hidden Slavery*, *supra* note 43, at 57.

402. See MARKIE, *supra* note 213; *Tackling Child Labour*, *supra* note 110, at 28, 53 (“Poverty is the main reason why children work.”).

### 7. Right to Equal Treatment under the Law and Equality with Locals in Legal Proceedings

Access to equal justice under the law is necessary for DWs to assert their labor, contractual, treaty and international rights.<sup>403</sup> However, in some systems, migrant workers are explicitly excluded from accessing public or legal aid available to locals.<sup>404</sup> In some cases, migrants are categorized and some denied access to rights that other migrant workers have.<sup>405</sup> More commonly, structural hurdles create *de facto* inequality.<sup>406</sup> Challenges in accessing justice for both migrants and children may include language skills, inability to pay fees or living expenses while pursuing a case, and lack of understanding of the legal system.<sup>407</sup>

Where migrant workers are living in a foreign country under a sponsorship system, they may resist bringing legal complaints due to realistic fears of retaliation, deportation, or an employer withholding their permission for a worker to leave the country.<sup>408</sup> This risk is heightened when a workers' travel documents are confiscated.<sup>409</sup>

Though children who migrate internally for work do not always fear the same types of abuses due to language or their immigration status, they face similar, if not greater, structural difficulties accessing justice. CDW consulting groups have specifically requested greater assistance in times of crisis, including seeking redress from abusive or exploitative working conditions.<sup>410</sup> Migrants and children should have both *de jure* and *de facto* equal access to the justice system, and fees

403. ILO, *Migration for Employment Convention (Revised), 1949 (No. 97)*, art. 6(1)(d) (Jan. 22, 1952); PAOLETTI ET AL., *supra* note 20, at 24 (discussing access to justice).

404. For example, in the United States, some documented migrant workers under particular visa schemes are excluded from accessing legal aid. Laura K. Abel & Risa E. Kaufman, *Preserving Aliens' and Migrant Workers' Access to Civil Legal Services: Constitutional and Policy Considerations*, 5 U. PA. J. CONST. L. 491 (2003).

405. *Promoting Fair Migration*, *supra* note 67, at 154.

406. For example, in Hong Kong, a 'two-week rule' requires domestic workers to leave the territory within two weeks after being terminated, which creates a temporal barrier to rights assertion. New Condition of Stay (NCS) (1987) (H.K.).

407. See *Promoting Fair Migration*, *supra* note 67.

408. See *The Kafala*, *supra* note 65, at 36; Ricard-Guay, *supra* note 5, at 11 (noting that "tied-visa system reinforced vulnerability to abuses").

409. See *Delphi Indicators*, *supra* note 212 (confiscation of documents is a medium indicator of forced labour).

410. *Voices of Child Domestic Workers*, *supra* note 27, at 4.

should not be so high as to discourage complaints.<sup>411</sup> Where appropriate, DWs should also have access to conciliation or mediation. It is unreasonable to expect migrant workers to enforce their rights by using the court system without providing them with specific assistance.<sup>412</sup> Governments can improve access by providing translated or simplified court documents, in-court translators, and public aid for civil suits. Pro-active governments could provide rights training as part of a qualification for undertaking domestic work. Such training need not be equivalent for children and adults, but could take very basic forms for child workers, and enhanced work training could be made available for adult workers or those seeking to work abroad.

### *B. Rights not Applicable*

While the overlap between child and adult DWs within a rights-based framework is overwhelming, there are a few areas in which the groups are distinct. These include the right to abode, the right to residence in case of loss of employment, and maternity rights. Though minors may qualify for a temporary residency visa where they have been trafficked across international borders, it is unlikely that such protections would be extended to migrant workers who are willingly, and temporarily, taking up work in another country. In some countries, fear of migrant workers permanently settling in their host country has been used as a justification for denial of rights.<sup>413</sup> Similarly, because of complex implications for immigration policy, it is unlikely that States would be eager to grant migrant workers rights to temporary or permanent residence for the purposes of finding a new employer.

There will certainly be instances of women under the age of eighteen becoming pregnant while undertaking domestic work. However, stereotypes of and attitudes toward women who become pregnant at a young age will likely make advocating for maternity rights for children a controversial advocacy point. Maternity rights are

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411. ILO, *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143), art. 9(2) (Dec. 9, 1978); ILO, *Migration for Employment Convention (Revised)*, 1949 (No. 97), art. 6(1)(d) (Jan. 22, 1952).

412. Labour Inspection and Other Compliance Mechanisms in the Domestic Work Sector Introductory Guide, at 17 (2016).

413. *Will Labor Reforms in the UAE Improve Life For Migrant Domestic Workers?*, WORLD POL. REV., Apr. 26, 2017.

thus best advocated for in conjunction with improved social protection for adult DWs.

### C. Using a Rights-Based Advocacy Framework

Though social attitudes toward domestic workers and the abundance of easily exploitable workers are difficult to change in practice, policy-makers do have the ability to limit the exploitation of domestic workers by improving industry oversight.<sup>414</sup> While activities occurring within the home were once outside the sphere of regulation, states are increasingly willing to oversee them, for example, in the case of domestic violence. Despite the complexities of oversight, governments are recognizing that they have affirmative legal obligations to protect workers within their territory, even where those obligations regulate and criminalize private conduct.<sup>415</sup>

Advocates for domestic workers need to solidify the ties between better work standards for DWs and the eradication of the worst forms of child labor. Focusing on the human rights overlap between child labor and domestic work can help to achieve three broad goals: ratifying C189, holding states to account for failures under C182 and the UNCRC to protect rights that they have agreed to abide by, and developing domestic legislation to protect the rights of domestic workers.

First, advocates across the domestic work industry must work together to continue to push for ratification of C189. As opposed to the concrete requirements in R201, C189 uses aspirational language, which means that states have few reporting obligations or binding targets. C189 is thus left to be interpreted in light of the local context.<sup>416</sup> Drawing upon the human rights overlap between domestic work and the worst forms of child labor can aid in this push by allowing states to address the most pressing needs first. Origin countries of MDWs that are already signatories to C189 can encourage destination countries

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414. The unregulated nature of the domestic labor industry is one of three factors creating exploitative conditions pinpointed by studies on domestic worker and sex work industries, both of which are rife with instances of human trafficking. The other two are abundant supply of exploitable labor and the malleability of social norms between the employers and employees. Anderson & O'Connell-Davidson, *supra* note 311, at 5.

415. See *Legislative Precariousness of Domestic Labor*, *supra* note 4, at 158. An additional example of this is the increasing recognition that domestic violence falls within the purview of the criminal law.

416. Sharon L. Fawcett, *Child Labor in Domestic Work*, STOP CHILD LABOR (Sep. 10, 2013), <http://stopchildlabor.org/?p=3643> [<https://perma.cc/UQ8L-WYMW>].



with whom they have a labor exchange relationship to ratify. The emotive appeal of ending child labor in domestic work and the desire for strong labor exchange relationships can help in this regard.

Second, states are obligated to meet certain basic standards under the UNCRC and C182. Advocates can utilize the binding frameworks provided for in these agreements to attack lackluster regulation of the domestic work industry. As the European Court of Human Rights found in *Siliadin* and *N.C.*, States have an affirmative duty to criminalize exploitative labor in their territories.<sup>417</sup> Domestic worker unions and civil society groups can strengthen submissions to the ILO under C182's biennial reporting requirement where they can link a country's failure to protect domestic workers with child labor abuses.

Finally, this approach can inform a basis for encouraging legislation at a domestic level, even in countries that have not ratified C189. This can be accomplished through advocacy, lobbying, media campaigns and public shaming of countries with poor records of protecting children from the worst forms of domestic work. When legislators understand the inherent link between abusive child labor and domestic work, they may be more open to passing protective legislation covering the domestic work industry. In addition to encouraging legislation, advocacy groups could ask for non-binding measures, such as a Code of Conduct for government agencies and employers to utilize in hiring and employing domestic workers, to be distributed to community centers in urban communities where DWs may work. Such a document could draw on the principles of C182 and C189 without becoming binding law, paving the way for more binding instruments in the future.

## VII. CONCLUSION

Despite growing awareness of the necessity to regulate the industry, DWs remain legislatively and socially vulnerable. This Note has strengthened the connection between abusive child labor practices and domestic work using a human rights-based framework. Part II defined domestic work within its historical context as informal, feminine care work. Part III discussed the international conventions and laws most relevant to DWs, including children involved in domestic work. Part IV highlighted why the industry remains

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<sup>417</sup> See *supra* Part VI.A.1.

challenging to regulate and thus why domestic workers remain socially and legislatively vulnerable. Part V discussed the factors shared by child and adult DWs that increase a worker's risk of labor exploitation. Part VI elaborated on the human rights applicable to all domestic workers, and advocated a rights-based framework for regulating the domestic work industry. This Part argued that rights-based advocacy is an appropriate method to strengthen legislative protection for domestic workers.

Within a rights-based framework, it is clear that states continue to fall severely short in their duty to protect the human rights of domestic workers. Because the domestic work industry contains some of the most abusive child labor practices, states must regulate it to comply with their international legal obligations. Pulling women and their children out of poverty provides a compelling economic reason to do so. Further, and more simply, states must adopt a more compassionate approach to labor policies for domestic workers. It is my hope that by doing this, states can better recognize the important contributions that domestic workers make to our communities and economies, and respect that contribution in both rhetoric and action.

