



International
Labour
Office

Jakarta

The Regulation of Domestic Workers in Indonesia



**Current Laws,
International Standards
and Best Practices**

The Regulation of Domestic Workers in Indonesia

Current Laws, International Standards and Best Practice

**ILO Project on Mobilising Action for the Protection of Domestic Workers from
Forced Labour and Trafficking in Southeast Asia**



International Labour Organization

June 2006

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Foreword

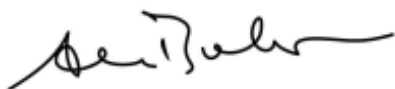
The primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.

In Indonesia, the ILO is working with its tripartite constituents (government, employers' and workers' organisations) to promote decent work opportunities. In particular, the decent work country programme seeks to promote economic and employment growth, to address exploitation at work, and to contribute towards poverty reduction and livelihood recovery. This is in tune with the United Nations Development Assistance Framework for Indonesia.

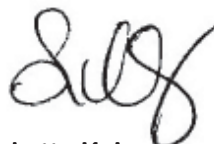
One of the most vulnerable groups in the Indonesian workforce is the women and men, sometimes girls and boys, who are engaged as domestic workers, both within Indonesia and abroad. Their position in the informal economy, usually working in homes and outside the scope of general labour legislation, requires special attention.

This paper has been prepared by the ILO *Project on Mobilising Action for the Protection of Domestic Workers from Forced Labour and Trafficking in Southeast Asia* in 2004, supported by DFID-UK under the Special Action Programme on Forced Labour (SAP-FL), with the purpose of assisting government officials, labour unions, employers, academics and decision-makers in reviewing and strengthening policies and legal frameworks with respect to domestic workers. The examination of existing laws, international standards and best practices, is the starting point in a programme to ensure fair conditions and treatment for this large and vulnerable group of workers.

Jakarta, June 2006



Alan Boulton
Director
ILO Jakarta Office



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Chief Technical Advisor
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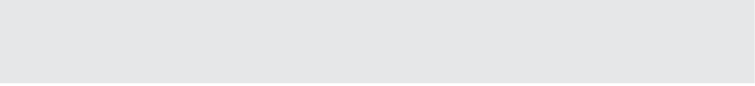


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1

INTRODUCTION

Although an increasing amount of government regulation is being created and administered in relation to Indonesian women and men employed as domestic workers abroad, the estimated 2.6 million Indonesians engaged as domestic workers *within* Indonesia¹ fall largely outside formal regulatory systems. Instead, the employment relationships between these *pekerja rumah tangga* (PRT) and their employers is largely regulated by trust alone. For many – perhaps most – of these workers, trust is enough; they are treated as a member of the family for whom they work, are exposed to new and stimulating experiences, and are able to return to home at a later date with income they would not have otherwise had the opportunity to earn. However, for some of these workers, trust is a poor substitute for formal protection, and the absence of regulation can lead to physical, mental, emotional or sexual abuse and exploitation.

This paper seeks to explore some of the key issues in relation to the regulation of domestic workers in Indonesia. *Firstly*, the paper explains the legal norms that currently exist or are being drafted in Indonesia, both at the national and sub-national levels. This is preceded by an overview of the law enforcement climate and cultural attitudes with regard to domestic workers in Indonesia. *Secondly*, the paper provides an overview of international norms relating to the regulation of domestic workers, including International Labour Organization (ILO) standards. *Thirdly*, best practice from other parts of the world is examined. This is then followed by an exploration of some future options for Indonesia with regard to the regulation of domestic workers.

1 ILO-IPEC, Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak di Indonesia [Flowers on the Rock: the Phenomenon of Child Domestic Workers in Indonesia] (ILO Jakarta, 2004), p21.

2

THE REGULATION OF DOMESTIC WORKERS ACCORDING TO INDONESIAN LAW AND CULTURE

2.1 Law Enforcement and Cultural Attitudes towards Domestic Workers in Indonesia

There is no particular law in Indonesia on domestic workers, but several other laws provide some protection (see National Law section below). Cultural attitudes, however, have meant that Indonesian society has been reluctant to formally regulate domestic work and, where regulations exist, reluctant to resort to the law to settle disputes involving domestic workers. In fact, domestic workers are rarely referred to as *workers* (*pekerja*), but rather as simply *helpers* (*pembantu*).

The practice of referring to domestic workers as helpers reinforces a cultural aversion to formalizing the relationship between domestic workers and their employers, many of whom are from the same extended family or ancestral village. Instead, employers see their role as a paternalistic one, where they protect, feed, house, educate and pay some pocket money to the domestic worker in exchange for the domestic worker's labour. (In Javanese, this practice is called *ngenger*.²) The paternal aspect of these employment relations, combined with the fact that most duties are carried out in family homes and not considered economically productive,³ means that Indonesian culture generally views these relationships as primarily *private* in nature.⁴ While Indonesian society supports a significant degree of government involvement in many aspects of the economy and public life, the household is considered sacrosanct and almost always off-limits with regard to state intervention.

Due to the informal, familial and paternalistic employment relations between many domestic workers and their employers, the settlement of disputes in relation to the content and enforcement of rights and responsibilities is usually also done informally. The nature of the employment relationship means that domestic workers do not have access to mechanisms like the Industrial Court, which is currently being established to settle disputes involving workers in the formal sector (see below). Furthermore, where a potentially criminal act has taken place and the worker has the right to report the case to the police, empirical evidence suggests that reporting rarely occurs.⁵ Instead, domestic workers may seek assistance with resolving disputes from a family member, the *Rukun Tetangga* (Head of the Block), the *Rukun Warga* (Head of the Sub-Village), or the *Kepala Desa/Lurah* (Village Chief, or Lurah Head urban areas). In Jakarta, Women's Legal Aid (LBH APIK) has begun to receive cases involving serious abuse, rape and

2 Human Rights Watch, *Always On Call: Abuse and Exploitation of Child Domestic Workers in Indonesia*, Vol 17.7(C), 2005, p4.

3 Indonesian Women's Legal Aid Foundation (LBH APIK), *Kertas Posisi Usulan Revisi Perda DKI Jakarta No 6 Thn 1993 tentang Pramuwisma* [Position Paper and Recommendations for the Revision of Jakarta City Local Ordinance No 6 of 1993 on Domestic Workers] (LBH APIK Jakarta, 2002), p3.

4 Indonesian Women's Legal Aid Foundation (LBH APIK), *Kertas Posisi Usulan Revisi Perda DKI Jakarta No 6 Thn 1993 tentang Pramuwisma* [Position Paper and Recommendations for the Revision of Jakarta City Local Ordinance No 6 of 1993 on Domestic Workers] (LBH APIK Jakarta, 2002), pp1-2.

5 Discussion with Dr Irma Alamsyah Djaya Putra, Deputy Head of the Women's Protection Section within the Ministry for Women's Empowerment, 3 October 2005.

murder.⁶ Usually, however, domestic workers will simply rely on the benevolence of their employer and attempt to build a relationship regulated by mutual trust.

The cultural factors outlined above diminish the capacity of Indonesian society to both create laws for the protection of domestic workers and to enforce the limited laws that already exist. For example, when complainants approach the police they are often accused of not taking adequate steps to avoid abuse or exploitation, or even of inciting it.⁷

2.2 National Law relating to Domestic Workers in Indonesia

2.2.1 The Labour Law System

The national government's current interpretation of the key national labour law – *Law No. 13 of 2003 on Manpower* – does not incorporate domestic workers into the general regulatory system for employment relations. Although a “worker” is defined in Article 1 as “any person who works for a wage or other form of remuneration”, the problem of interpretation stems from the fact that two terms for *employer* are used in the Law. A “pengusaha” (enterprise) is subject to all the standard obligations of employers under the Law, whereas a “pemberi kerja” (work-giver) only bears a general obligation to provide “protection for [their workers’] welfare, safety and health, both mental and physical” (Article 35).

The government states that while an employer of domestic workers may be a “pemberi kerja”, he or she is not an enterprise and therefore not a “pengusaha” within the meaning of the Law. This is in spite of the significant economic contribution domestic workers provide to their employers by freeing them up to engage in more profitable activities. As domestic workers are not viewed as being employed by “pengusaha”, they are not provided the protection that the Law affords to other workers. In addition, they are denied access to employment dispute resolution mechanisms, such as the Industrial Court established by *Law No. 2 of 2004 on Industrial Dispute Settlement*.

The current interpretation favoured by the government has in part relied upon a ruling by the Central Industrial Dispute Settlement Panel (P4P) in 1959,⁸ which stated that disputes involving domestic workers are outside the jurisdiction of the formal employment dispute resolution system. This decision, however, is *no longer valid jurisprudence* because:

- ♦ The P4P no longer has any legal basis and is in the process of being replaced by the Industrial Court, by operation of *Law No. 2 of 2004 on Industrial Dispute Settlement*
- ♦ The law which the P4P relied upon in reaching the decision (*Law No. 22 of 1957 on the Settlement of Industrial Disputes*) was revoked by *Law No. 13 of 2003 on Manpower* and can therefore no longer form the basis of any binding jurisprudence

6 In 2001, LBH APIK handled 15 cases involving serious abuse of domestic workers, 13 cases involving murders of domestic workers, and 3 cases involving rape of domestic workers: Indonesian Women's Legal Aid Foundation (LBH APIK), *Kertas Posisi Usulan Revisi Perda DKI Jakarta No 6 Thn 1993 tentang Pramuwisma* [Position Paper and Recommendations for the Revision of Jakarta City Local Ordinance No 6 of 1993 on Domestic Workers] (LBH APIK Jakarta, 2002), p4.

7 “Minim, Perlindungan Hukum terhadap PRT”, *Suara Karya Online*, 17 January 2004, <<http://www.suarakarya-online.com/news.html?id=78569>>. This point was confirmed in discussion with Dr Irma Alamsyah Djaya Putra, Deputy Head of the Women's Protection Section within the Ministry for Women's Empowerment, 3 October 2005.

8 Putusan Panitia Penyelesaian Persengketaan Perburuhan Pusat No. 70/59/111/02/C tanggal 19 Desember 1959.

- ◆ The Elucidation to Section 10 of *Law No. 21 of 2000 on Trade Unions* specifically mentions domestic workers as having the right to associate, thus providing persuasive evidence of a Parliamentary intent to include domestic workers within the purvey of labour laws
- ◆ Socio-economic conditions have changed significantly since 1959

In 2005, following a report on child domestic workers by prominent NGO Human Rights Watch,⁹ Minister of Manpower and Transmigration Fahmi Idris stated that his Ministry would propose a law on domestic workers for approval by Parliament. The Ministry itself appears to favour including a reference to domestic workers in upcoming amendments to the *Manpower Law*, but only to state that domestic workers will be regulated by a Ministerial Decree to be formulated at a later date. The NGO community, however, would like to see a separate, national law on domestic workers.¹⁰ Best practice indicates this may be the most effective way of providing protection to domestic workers (see below).

2.2.2 Other National Laws on Domestic Work

2.2.2.1 Overview

While the labour law system does not incorporate domestic workers, several other national laws provide protection in certain areas, albeit in a disjointed and limited manner. These laws include:

- ◆ The Constitution of the Republic of Indonesia 1945, or *Undang-Undang Dasar Republik Indonesia 1945* (henceforth the “*Constitution*”)
- ◆ The Criminal Code, or *Kitab Undang-Undang Hukum Pidana* (hencefore the “*Criminal Code*”)
- ◆ Law No. 23 of 2004 on the Elimination of Domestic Violence, or *Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan di Rumah Tangga* (henceforth the “*Anti-Domestic Violence Law*”)
- ◆ Law No. 23 of 2002 on Child Protection, or *Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak* (henceforth the “*Child Protection Law*”)
- ◆ Law No. 20 of 2003 on the National Education System, or *Undang-Undang Nomor 20 Tahun 2002 tentang Sistem Pendidikan Nasional* (henceforth the “*National Education Law*”)
- ◆ Law No. 39 of 1999 on Human Rights, or *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia* (henceforth the “*Human Rights Law*”)

In addition to these laws, Indonesia has also passed legislation to ratify several relevant international legal norms, including:

- ◆ The Universal Declaration of Human Rights
- ◆ The International Covenant on Civil and Political Rights (ICCPR)
- ◆ The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ◆ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ◆ The Convention on the Rights of the Child
- ◆ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

9 Human Rights Watch, *Always On Call: Abuse and Exploitation of Child Domestic Workers in Indonesia*, Vol 17.7(C), 2005.

10 Muryanti, “Upaya Perlindungan PRT” [Efforts to Protect Domestic Workers], *Jurnal Perempuan*, Vol 39, January 2005, p 15. See also “Activists Call for Ruling to Protect Domestic Workers”, *The Jakarta Post*, 10 March 2005.

- ♦ ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87)
- ♦ ILO Right to Organize and Collective Bargaining Convention, 1949 (ILO Convention No. 98)
- ♦ ILO Forced Labour Convention, 1930 (ILO Convention No. 29)
- ♦ ILO Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105)
- ♦ ILO Minimum Age Convention, 1973 (ILO Convention No. 138)
- ♦ ILO Worst Forms of Child Labour Convention, 1999 (ILO Convention No. 182)
- ♦ ILO Equal Remuneration Convention, 1951 (ILO Convention No. 100)
- ♦ ILO Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)

In addition, there is currently an *Elimination of Trafficking Bill* before the National Parliament (DPR). It is expected to be passed before the end of 2005.

2.2.2.2 The Constitution

Chapter XA of the Constitution contains many human rights safeguards, including:

- ♦ Every **child** shall have the right to live, to grow, and to be **protected against violence and discrimination**: Article 28B(2)
- ♦ Every person shall have the right to improve himself/herself through **fulfilment of basic needs...**: Article 28C(1)
- ♦ Every person shall have the **right to recognition, guarantees, protection, and a just legal certainty** as well as equal treatment before the law: Article 28D(1)
- ♦ Every person shall have the right of employment opportunities and **receive a just and reasonable compensation from the employment relationship**: 28D(2)
- ♦ Every person shall be **free to... choose his/her work...**: Article 28E(1)
- ♦ Every person shall have the **right to communicate** and to obtain information to develop his/her personality and social environment: Article 28F
- ♦ Every person shall have the right of self-protection, family, honor, dignity, and property under his/her authority, as well as **entitled to a feeling of safety and protection from threats of fear to do or not to do anything** according to the basic rights: Article 28G(1)
- ♦ Every person shall have the right to be **free from torture** or any derogatory treatment demeaning human dignity and is entitled to political asylum from another nation: Article 28G(2)
- ♦ Every person shall have the right to live in welfare both physically and spiritually, have a place to reside, and receive a **proper and healthy environment, as well as receive medical care**: Article 28H(1)
- ♦ Every person shall have the right of facilities and special treatment for **equal opportunities** and benefits in order to achieve equality and equity: Article 28H(2)
- ♦ Every person shall have the right of **social security** guarantees that enable him/her to develop completely as a dignity human being: Article 28H(3)
- ♦ The protection, advancement, upholding, and fulfillment of human rights shall be the **responsibility of the state**, especially the government: Article 28I(4)

- ◆ To uphold and to protect human rights in accordance with the principles of a legal democratic nation, the practice of **human rights shall be guaranteed, arranged, and embodied in statutory laws**: Article 28I(5)

A Constitutional Court (*Mahkamah Konstitusi*) exists to oversee the enforcement of these rights. Although vaguely termed, the rights in Chapter XA have already formed the basis for several successful law suits. For example, several provisions in the *Manpower Law* were declared invalid on the basis of being inconsistent with equal treatment before the law. It is therefore conceivable that construing the definition of an employer to exclude employers of domestic workers may also be declared unconstitutional.

2.2.2.3 The Criminal Code

The Criminal Code covers domestic workers only to the extent that it covers all people. There are no specific protections for domestic workers *per se*. The provisions of the Criminal Code that most directly affect domestic workers are prohibitions against:

- ◆ Rape and sexual assault: Articles 285-291
- ◆ Trafficking of women and boys: Article 297
- ◆ Slave-trading: Articles 324-327
- ◆ Kidnapping: Articles 328-329
- ◆ Using violence or the threat of violence to forcing somebody to do something against their will: Article 335
- ◆ Murder: Articles 338-350
- ◆ Abuse: Articles 351-358
- ◆ Document forgery: Article 378

These provisions only cover extreme cases of abuse and are applicable only in a limited set of circumstances. Furthermore, as discussed above, domestic workers seeking to enforce their rights under criminal law are faced with many obstacles when reporting incidents to the police and in follow-up action.

2.2.2.4 The Anti-Domestic Violence Law

The Anti-Domestic Violence Law prohibits, within the context of the household, any act that results in suffering of a physical, sexual, or psychological nature or any act of abandonment/neglect (*penelantaran*).

Section 2 of the Anti-Domestic Violence Law covers husbands, wives, children, relatives and an explicit reference to “live-in domestic workers” for the duration of their service with a household. This group of domestic workers is indeed the most vulnerable.

Article 10 states that victims of violence have the right to access:

- ◆ protection by families, police, prosecutors, courts, lawyers, social organizations, and other parties
- ◆ Health care
- ◆ Tailored and confidential handling of their case

- ◆ Support from a social worker and legal aid
- ◆ Spiritual guidance

Article 15 requires all persons who are aware of a situation involving domestic violence to take all possible steps to provide protection and assist with having the case processed by the authorities.

Chapter VI includes several responsibilities of police handling reports of domestic violence. These including the responsibility to provide emergency protection, to follow-up on complaints, and to advise alleged victims of their rights.

Although the Anti-Domestic Violence Law may assist domestic workers caught in violent situations, it includes no concrete steps for:

- ◆ socialising its provisions
- ◆ addressing domestic worker-specific concerns
- ◆ building institutional capacity for its enforcement.
- ◆ dealing with cultural attitudes that hinder effective administration (see above)

2.2.2.5 The Child Protection Law

Article 59 of the Child Protection law states that the “executive government and other governmental bodies” have the responsibility of providing “special protection” to children (all persons under the age of 18) in certain circumstances. Some of these circumstances would cover child domestic workers in some situations, including:

- ◆ children who are economically or sexually exploited
- ◆ children who are being or have been trafficked
- ◆ children who have been kidnapped

Chapter XII of the Law includes jail sentences of up to 15 years for people who traffic or kidnap children, 10 years for people who cause a child to be economically or sexually exploited, and 5 years for those who know of either of these situations but do nothing about it.

2.2.2.6 The National Education Law

The National Education Law states that every person between the ages of 7 and 15 must attend school. The Law makes all citizens (Article 6), parents (Article 7) and the national and sub-national governments (Article 11) responsible for ensuring that education for all people in this age bracket takes place.

The National Education Law does not specify what steps should be taken by citizens and governments to ensure that children are educated. Furthermore, it does not specify penalties for people who employ children in ways that interfere with their access to compulsory education.

2.2.2.7 The Human Rights Law

The Human Rights Law contains a veritable shopping list of human rights to be respected by the state and all citizens. Many of these affect domestic workers, such as:

- ◆ Every person has the right to basic necessities in order to grow and develop in a proper manner (Article 11)
- ◆ Every person has a right to protection for personal development, to access education, to increase his/her knowledge, to improve the quality of his/her life... (Article 12)
- ◆ Every citizen has the right to obtain decent work, in accordance with his/her talent and skills (Article 38(1))
- ◆ Every citizen has the right to freely chose his/her employment and to be employed under fair conditions (Article 38(2))
- ◆ Every person has the right to fair wages, in accordance with the standard of work completed and sufficient to support his/her family (Article 38(4))
- ◆ Every child has a right to receive legal protection from mental, physical and sexual abuse... (Article 58)
- ◆ Every child has a right to education... (Article 60)
- ◆ Every child has a right to protection from economic exploitation and dangerous work that may interrupt that child's education, physical health, morality, social life or mental/spiritual wellbeing (Article 64)
- ◆ Every child has a right to protection from sexual exploitation, kidnapping, trafficking and drugs (Article 65)

The Human Rights Law does not contain any concrete guidance as to how these rights are to be enforced or any penalties for their violation.

2.2.2.8 International Law

As mentioned above, Indonesia now has an impressive record of ratifying international conventions and covenants. Although Indonesia is responsible to the international community for implementing the agreements it ratifies, it is unclear whether the substance of agreements is not binding domestically unless it is incorporated into a specific law. It is not likely, for example, that an individual domestic worker could take legal action against an employer or the government on the basis of suffering harm due to the non-enforcement of an agreement which Indonesia has ratified but not incorporated into separate domestic law.

For more on international standards relating to domestic workers, see the International Standards section (Part 3) below.

2.2.2.9 The Anti-Trafficking Bill

An Anti-Trafficking Bill (*Rancangan Undang-Undang Pemberantasan Tindak Pidana Perdagangan Orang*) has been submitted to Parliament and is waiting for consideration. It is ranked close to the top

of the Legislation Program (Prolegnas) list,¹¹ and may be the subject of discussion before the end of the year. There is also a plan to ratify the *UN Protocol to Prevent, Suppress and Punish Human Trafficking*.

The Anti-Trafficking Bill, as it stands, provides severe penalties for traffickers and mandates protection for victims of trafficking. Although in-country trafficking is covered, the focus of the Bill seems to be cross-border trafficking. It remains to be seen what type of protection the final product will afford to Indonesians who are trafficked within Indonesia for employment as domestic workers.

2.3 Sub-national Law relating to Domestic Workers in Indonesia

Law No. 22 of 1999 on Sub-National Governance granted the power to Provincial and Local (*Kotamadya/Kabupaten*) governments to regulate all sectors apart from security and defence, foreign policy, monetary and fiscal matters, justice, and religious affairs. This means that, provided there is no inconsistency with national laws, sub-national governments can now independently pass laws on issues such as labour relations, trafficking, human rights, gender equality and other issues of concern to domestic workers. Some sub-national governments currently have laws or draft laws that affect domestic workers.

2.3.1 DKI Jakarta Province

Jakarta has had laws regulating its domestic workers since the Colonial Government passed a regulation on domestic work in 1825. Jakarta currently has two laws which relate to domestic workers. The first, passed before the regional autonomy regime (with approval from the central government), is *Local Ordinance No. 6 of 1993 on Improving the Welfare of Domestic Workers*. The second is the more general *Local Ordinance No. 6 of 2004 on Manpower*.

The 1993 Ordinance, and the guidelines for its implementation as specified in *Gubernatorial Decree No. 1099 of 1994*, is a positive step for domestic workers in that it provides a specific legal reference point on domestic work. Its strengths are that:

- ♦ It requires recruitment and placement agencies to ensure that their domestic worker clients are provided with accommodation, training, health care, at least 6 months employment, a choice of employment, a written contract, and no fees charged by the agent
- ♦ It requires employers to provide domestic workers with pay, food, drink, annual leave, a new set of clothes per year, a decent place to sleep, humane treatment, an opportunity to worship, basic health care, registration with the *Lurah* (urban district) Head, and registration with the Jakarta Manpower Office (if an agent is not used)
- ♦ It requires the Office of the Governor of Jakarta to appoints a Domestic Worker Dispute Resolution Team
- ♦ It contains penalties of up to three months imprisonment for violations

11 In 2005, the Trafficking Bill was ranked seventh on the list of Welfare (Kesra) draft laws to be discussed. The latest to pass was the fifth-ranked Bill. See <<http://www.bphn.go.id/index.php?modName=kegiatan&cfg=penelusuran&mode=prolegnas>>.

The 1993 Ordinance also has limitations due to the fact that:

- ◆ It has not been socialised well, and is therefore not well enforced
- ◆ Its status is unclear given that it predates the national *Manpower Law*
- ◆ It contains a semantic weakness in that domestic workers are referred to by the Sanskrit term *pramuwisma* (“house attendant”) rather than with language that expressly emphasises their role as workers, ie *pekerja rumah tangga*¹²
- ◆ It contains several substantive weaknesses, such as:¹³
 - No regulation of rest days, rest time or overtime (only annual leave is specified)
 - No minimum wage
 - No express right to contact parents or relatives
 - No express right to be provided with emergency contact details
 - No express right of domestic workers to associate, organize themselves, and freely express their opinions for the purposes of improving their working conditions
 - No reiteration of the national prohibition on child domestic workers
 - No labour inspection provisions

Chapter 11 of the 2004 Ordinance specifically relates to domestic workers. The Chapter is drafted very broadly, simply stating that recruitment/placement agencies must provide domestic workers with accommodation and “welfare facilities”, and that employers must make written contracts and register them with the Governor’s Office. The rest of the Chapter concerns licence payments to be made by agencies to the Jakarta Provincial Government.

2.3.2 Sub-national Draft Laws on Domestic Work

In March 2001, a Yogyakarta-based NGO, *Rumpun Tjoet Njak Dien* (RTND), submitted a draft Local Ordinance to the Yogyakarta Provincial Parliament. Despite the Governor releasing a circular calling for concrete action for the protection of domestic workers, the draft was largely ignored, perhaps due to cultural attitudes about regulating domestic work (see above). RTND is now focussing on the next level of government down from the provincial one, in an attempt to get municipal (*kotamadya*) and regency (*kabupaten*) governments to pass laws on domestic workers. There has apparently been some positive signs from the Yogyakarta City Government and the Sleman Regency Government (both within the Special Province of Yogyakarta).

In Semarang, Central Java, the Women and Children’s Care Network (JPPA) has also submitted draft laws to the Provincial Parliament on domestic workers. As yet there has been no luck.

The Anti-Violence Against Women and Children Network (JAKPA) in North Sulawesi has submitted a draft law to the Manado City Government and is currently awaiting a response.

12 Indonesian Women’s Legal Aid Foundation (LBH APIK), Kertas Posisi Usulan Revisi Perda DKI Jakarta No 6 Thn 1993 tentang Pramuwisma [Position Paper and Recommendations for the Revision of Jakarta City Local Ordinance No 6 of 1993 on Domestic Workers] (LBH APIK Jakarta, 2002), p10.

13 Indonesian Women’s Legal Aid Foundation (LBH APIK), Kertas Posisi Usulan Revisi Perda DKI Jakarta No 6 Thn 1993 tentang Pramuwisma [Position Paper and Recommendations for the Revision of Jakarta City Local Ordinance No 6 of 1993 on Domestic Workers] (LBH APIK Jakarta, 2002), p10-12.

2.3.3 Sub-national Trafficking Laws

The Provincial Governments in both North Sumatra, which is an origin country for trafficking to Singapore and Malaysia, and North Sulawesi, which is both a destination and an origin for trafficking between Indonesia and the Philippines, have passed anti-trafficking laws. Both are largely framework laws, requiring the establishment task forces.

These laws also attempt to control trafficking by requiring all women who wish to work outside of their village to obtain a “work permit” from the Head of their Sub-regency (*Camat*). This does not prevent trafficking to or from other provinces, and it is unlikely to be enforced within the province where the law exists anyway. In addition, it imposes an obligation on women jobseekers rather than on other stakeholders, such as the police, prosecutors, employers, agents, etc.

3

INTERNATIONAL STANDARDS AND THE REGULATION OF DOMESTIC WORKERS

There is currently no specific international instrument solely dedicated to the protection of domestic workers.¹⁴ There exists, however, a wide range of international legal instruments that both directly and indirectly relate to domestic work. Some of these are international labour standards promulgated by the ILO, while others are international instruments relating to human rights, women's rights, children's rights, anti-trafficking or anti-slavery. The following section examines these international standards in the context of domestic work in Indonesia. The section is broken up into international standards that:

- ♦ have been formally recognized by Indonesia through Indonesian national processes for recognizing international law
- ♦ have not yet been formally recognized by Indonesia, but are nevertheless established international legal instruments

3.1 International Standards Formally Recognized by Indonesia

Despite the fact that there is no specific ILO Convention on domestic workers, "ILO Member States are already obliged, under the Conventions that they have ratified, to extend a gamut of labour standards to this category of workers."¹⁵ As mentioned, Indonesia has already ratified all eight fundamental ILO Conventions – all of which apply to domestic workers to some extent. Indonesia also has obligations to its domestic workers under other ILO standards, as well as several non-ILO international instruments.

3.1.1 Fundamental ILO Conventions

Indonesia was the first Asian country to ratify all eight Fundamental ILO Conventions:

- ♦ ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention No. 87)
- ♦ ILO Right to Organize and Collective Bargaining Convention, 1949 (ILO Convention No. 98)
- ♦ ILO Forced Labour Convention, 1930 (ILO Convention No. 29)
- ♦ ILO Abolition of Forced Labour Convention, 1957 (ILO Convention No. 105)
- ♦ ILO Minimum Age Convention, 1973 (ILO Convention No. 138)
- ♦ ILO Worst Forms of Child Labour Convention, 1999 (ILO Convention No. 182)
- ♦ ILO Equal Remuneration Convention, 1951 (ILO Convention No. 100)
- ♦ ILO Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111)

¹⁴ Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part III: International Labour Standards.

¹⁵ Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part III: International Labour Standards.

The two ILO “Freedom of Association Conventions” (C87 and C98) require governments to protect the rights of domestic workers to form and join unions, and the rights of these unions to bargain collectively with employers on behalf of their members. Forming associations of domestic workers is an major way for domestic workers to improve their conditions within the current legislative framework and also to advocate legislative change. The importance of this right to the predicament of domestic workers has exposed Ethiopia, Jordan and South Africa to criticism from the ILO Committee of Experts for the Application of Conventions and Recommendations (CEACR) over not protecting the rights of domestic workers to form and join unions. In the case of South Africa, there was not even a formal prohibition on domestic workers associating – the Committee of Experts held that governments had to take positive action to protect this right, rather than simply not prohibiting its exercise.¹⁶ As discussed in Part 4 below, much progress has been made on this issue in South Africa.

The two “Forced Labour Conventions” (C29 and C105) call on governments to mobilize support for the elimination of “forced or compulsory labour”, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (C29, Article 2).¹⁷ The ILO has stated that workers in economically vulnerable positions who are “recruited on the basis of false promises”, such as “good wages and good working conditions”, cannot be automatically considered as having voluntarily offered their work or service.¹⁸ This potentially applies to many domestic workers in Indonesia, who are almost always from poor, rural areas and who lack the necessary information to see through false promises and commit voluntarily to an employment relationship.

The two “Child Labour Conventions” (C138 and C182) attempt to introduce minimum age limits for employment. Taken together, the Child Labour Conventions prohibit virtually all forms of employment for children aged under 15 years, and prohibit the employment of children aged under 18 years in the “worst forms of child labour”. The worst forms of child labour include “work which, by its nature of the circumstances in which it is carried, is likely to harm the health, safety or morals of children” (C182, Article 3(d)). The precise types of work falling within this definition are to be specified by ratifying states in consultations with relevant employers’ associations and workers’ organizations and in consideration of international standards.

There are no clear international standards on whether domestic work constitutes a worst form of child labour. On one hand, domestic work rarely involves the use of dangerous equipment and is not carried out in mines, ships or other locations that are hazardous per se. On the other hand, domestic work is carried out away from the public eye and, as discussed in this paper, often without legal protection. Children are therefore often exposed to sexual abuse, physical abuse and/or economic exploitation that hinders their development. In Indonesia, the designation of domestic work as a worst form of child labour remains ambiguous. In the National Action Plan on the Elimination of the Worst Forms of Child Labour (2002), domestic work is explicitly mentioned as a worst form of child labour. In the subsequent

16 See Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part III: International Labour Standards.

17 C105 specifies several common situations in which forced or compulsory labour is used and which must be immediately suppressed. None of these are directly relevant to domestic work practices in Indonesia, although one of the situations specified is the use of forced or compulsory labour “as a method of mobilising and using labour for purposes of economic development” (Article 1(b)). As domestic work frees up certain sections of the workforce for engagement in more “productive” work, the lack of protection afforded to domestic workers could potentially be construed as part of a strategy to further Indonesia’s economic development through, in some circumstances, the extraction of involuntary services.

18 ILO, Report of the Committee set up to Examine the Representation made by the Latin American Central of Workers (CLAT) under Article 24 of the ILO Constitution alleging Non-Observance by Brazil of the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), GB.264/16/7, 1995, paras 9, 22, 25, 61.

Decree of the Minister of Manpower and Transmigration concerning Jobs that Jeopardize the Health, Safety or Morals of Children (KEP.235/MEN/2003), domestic work does not appear.

The two “Discrimination Conventions” (C100 and C111) are relevant to domestic workers in Indonesia because the vast majority of them are female. C100 requires women and men to be provided equal remuneration for work of equal value. C111 requires governments to promote equal employment opportunities for women and men. Since domestic work is carried out primarily by women, and is also a generally low-paid, unprotected form of employment, it serves as a constant reminder that the employment opportunities available to women in Indonesia are not equal to those available to men. The Discrimination Conventions require positive action on the part of the government to address this disparity by providing either greater legal protection to domestic workers or more employment choices to vulnerable Indonesian women.

3.1.2 Other ILO Standards

Indonesia has ratified the Employment Services Convention, 1948 (ILO Convention No. 88). The ILO Employment Services Recommendation, 1948 (ILO Recommendation No. 83), which provides guidance on the implementation of the Convention, states that governments should create special employment placement offices for categories of work where “special factors justify the maintenance of such separate offices” (Article 4(a)). Given the sheer number of domestic workers in Indonesia, and their importance in enabling middle- and upper-class families to engage in more lucrative employment, there is a case to be made that special factors exist to justify the maintenance of a separate employment placement office for domestic workers. The office should ensure that domestic workers are not placed in “employment in respect of which the wages or conditions of work fall below the standard defined by law or prevailing practice” (Article 12(b)).

The ILO Workers Housing Recommendation, 1961 (ILO Recommendation No. 115) recommends that all ILO Members ensure, “within the framework of their general social and economic policy”, and in “such manner as may be appropriate under national conditions”, that “adequate and decent housing accommodation and a suitable living environment are made available to *all workers and their families*”. At it applies to “all workers”, domestic workers are clearly covered.

3.1.3 Non-ILO International Instruments

In addition to ILO standards, Indonesia recognizes several other international legal norms relating to domestic workers, including:

- ◆ The Universal Declaration of Human Rights
- ◆ The International Covenant on Civil and Political Rights (ICCPR)
- ◆ The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ◆ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ◆ The Convention on the Rights of the Child
- ◆ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

The Universal Declaration of Human Rights states that all human beings are to enjoy freedom and equality (Article 1), and that no one shall be held in slavery or servitude (Article 4). The International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia in 2005, similarly prohibits slavery, servitude, forced labour and compulsory labour (Article 8). For the purposes of international law, “slavery” is defined in the Slavery Convention (1926) as a “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. “Servitude” has been given no decisive definition in international law, but it has been interpreted over time to involve the following two elements: “a dependent, economically abusive labor relationship” and “no reasonable possibility of escape.”¹⁹ Forced and compulsory labour are defined in the ILO “Forced Labour Conventions” (see above), and for the purposes of standard-setting within the ILO are treated as essentially the same practice as slavery or servitude. Although the majority of domestic workers in Indonesia are not working under conditions that constitute a breach of these international standards on slavery/servitude and forced/compulsory labour, Indonesia has a continuing obligation to do all it can to ensure such practices never occur.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which Indonesia ratified in 2005 along with the ICCPR, contains a virtual shopping list of rights that affect domestic workers. These rights include:

- ◆ Right to “fair wages” and “a decent living” (ICESCR art 7)
- ◆ Right to “safe and healthy working conditions” (ICESCR art 7)
- ◆ “Periodic holidays with pay” and “remuneration for public holidays” (ICESCR art 7)
- ◆ Right to social security (ICESCR art 9)
- ◆ “Equal remuneration for work of equal value” (ICESCR art 7)
- ◆ Maternity protection (ICESCR art 10)
- ◆ Children and young persons to be protected from economic and social exploitation, including harmful work (ICESCR art 10)
- ◆ Sanctions should be enforced on those employ children under the minimum age specified by national law (ICESCR art 10)
- ◆ “Right to work”, which includes the right to gain a living by work freely chosen or accepted (ICESCR art 6)
- ◆ Right to strike (ICESCR art 8)
- ◆ “Right of everyone to form trade unions and join the trade union of his choice” (ICESCR art 8)

Under the ICESCR, ratifying countries are obliged to submit period reports on measures they have undertaken to give effect to these rights. The Committee on Economic, Social and Cultural Rights, established under the ICESCR, may make specific recommendations to countries on the basis of these reports. The Committee acknowledges that countries are at different stages of development in relation to the achievement of these rights, and essentially expects countries to do what is reasonable in their circumstances for the fulfilment of socio-economic and cultural rights. In Indonesia’s case, the fact that domestic workers are entirely excluded from the labour law system may attract a recommendation by the Committee.

¹⁹ See, eg, Human Rights Watch, *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, Vol. 13.2(G), 2001, Appendix III: Legal Issues Relevant to Migrant Domestic Workers.

The United Nations Convention on the Rights of the Child essentially reinforces the ILO “Child Labour Conventions” by prohibiting the economic exploitation of children (Article 32); the engagement of children in work which would be harmful to their physical, mental, spiritual, moral or social development (Article 32); and the abduction, sale or trafficking of children (Article 35). In addition, the Convention taken as a whole is an attempt to create a children’s rights paradigm, such that a children’s rights-based approach is taken in the formulation of government policies which have a bearing on the welfare of children. Having ratified this Convention, Indonesia needs to continue its work on the promotion of the rights of children.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) urges governments to develop a national policy of eliminating discrimination against women (Article 2), to take steps against the exploitation of women (Article 6) and to provide equal rights to women in respect of work (Article 11). As with the Convention on the Rights of the Child, CEDAW is particularly valuable insofar as it attempts to introduce a new paradigm in policy-making by urging governments to adopt a women’s rights-based approach when creating and administering legislation. As discussed above in relation to the ILO “Anti-Discrimination Conventions”, the rights of women are inextricably linked to domestic work.

3.2 International Standards Not Yet Formally Recognized by Indonesia

3.2.1 ILO Standards

The ILO Workers with Family Responsibilities Convention, 1981 (ILO Convention No. 156) requires ratifying states to “make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities” (Article 3). The common practice in Indonesia of undefined working hours for domestic workers and the requirement that domestic workers live on the premises of their employer, even where they have alternative accommodation nearby, would likely be in breach of this Convention.

The ILO Employment Policy Convention, 1964 (ILO Convention No. 122) requires governments to produce and implement a policy for the purposes of achieving full, productive and *freely chosen* employment. Free choices require informed decisions, so such a policy may entail the Indonesian authorities running public awareness courses on the rights, responsibilities, risks and benefits associated with domestic work, to ensure that Indonesian citizens who choose to engage in domestic work have made an informed decision.

The ILO Fee-Charging Employment Agencies Convention (Revised), 1949 (ILO Convention No. 96) requires governments to either regulate or progressively abolish free-charging employment agencies. Regulation must be for the purpose of protecting the users of employment agency services. This is a key to reducing the exploitation of domestic workers in Indonesia, as many are recruited and placed through unscrupulous agents – both formal and informal.

The ILO Human Resources Development Convention, 1975 (ILO Convention No. 142) requires governments to establish policies to promote vocational training and career guidance. Such training may provide domestic workers with greater employment choices, and guidance may see that potential domestic workers are more aware of the opportunities open to them and the risks associated with domestic work.

ILO Sickness Insurance (Industry) Convention, 1927 (ILO Convention No. 24) specifically requires ratifying states to establish sickness insurance schemes that include domestic workers.

ILO Night Work Convention, 1990 (ILO Convention No. 171) applies to domestic workers unless a ratifying state expressly excludes this. Exclusions are only allowed in order to avoid “special problems of a substantial nature” (Article 2). The Night Work Convention requires governments to designate a period of at least seven night hours (which must include the five hours from 12am-5am), during which workers are to receive special treatment in order to “protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately” (Article 3). This special treatment includes, for example, establishing overtime systems, providing first-aid facilities and allowing pregnant women to choose alternatives to night work. This is of particular relevance to domestic workers, because many are required to live at their workplace and work unspecified hours.

The ILO Holidays with Pay Convention (Revised), 1970 (ILO Convention No. 132) applies to domestic workers, requiring them to be given three weeks paid leave for every year of employment. Employers are also obliged to consult workers about when leave is to be taken, with an aim to facilitating “opportunities for rest and relaxation available to the employed person” (Article 10(b)).

The ILO Maternity Protection Convention (Revised), 1952 (ILO Convention No. 103) expressly applies to those engaged in “domestic work for wages in private households” (Article 1(3)(h)). This Convention requires governments to ensure, among other things, that women do not suffer termination of employment due to pregnancy and are provided with adequate pre- and post-natal leave.

The ILO Minimum Wage Fixing Convention, 1970 (ILO Convention No. 131) requires ratifying states to “establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate” (Article 1.1). Although ratifying states can determine which wage earners are covered, the Convention requires them to submit a list of categories that are not covered together with reasons why they are not covered. In subsequent reports to the ILO, the ratifying state must then state the “positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups” (Article 1.3). Indonesia currently has a minimum wage fixing system in place that does not cover domestic workers, so would be required under this Convention to justify why this is the case.

The ILO Protection of Wages Convention, 1949 (ILO Convention No. 95) requires governments to ensure that workers are paid their wages in legal tender and on time. The Convention prohibits deductions by the employer except when in accordance with national laws or written agreements between the worker and the employer. The Convention applies to domestic workers, but includes a provision that allows governments to exclude them from the application of the Convention (Article 2.2).

Indonesia has ratified the ILO Labour Inspection Convention, 1947 (ILO Convention No. 81). The Convention itself applies to industrial and commercial workplaces only, and does therefore not cover domestic workers. However, a 1995 Protocol to C81 requires governments to incorporate workplaces not considered industrial or commercial, such as premises where domestic workers are employed, into the national system of labour inspection.

Several other ILO standards which relate closely to domestic work in Indonesia and apply to domestic workers in normal circumstances²⁰ include:

- ◆ ILO Termination of Employment Convention, 1982 (ILO Convention No. 158)
- ◆ ILO Medical Care and Sickness Benefits Convention, 1969 (ILO Convention No. 130)
- ◆ ILO Employment Injury Benefits Convention, 1964 (ILO Convention No. 121)
- ◆ ILO Social Security (Minimum Standards) Convention, 1952 (ILO Convention No. 102)
- ◆ ILO Forty-Hour Week Convention, 1935 (ILO Convention No. 47)

3.2.2 Other International Standards

The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) requires governments to eliminate practices such as:

- ◆ debt bondage
- ◆ delivery of children for exploitation
- ◆ serfdom
- ◆ exploitative marriage arrangements

Under the Supplementary Convention, debt bondage is where personal services are used as security for a debt but where the services are not limited or directly applied to the liquidation of the debt (Article 1(a)). Serfdom is where a tenant is required by law, custom or agreement to live and work on the land of another without the freedom to change her or his status (Article 1(b)). The delivery of children for exploitation touches on issues raised under the ILO “Child Labour Conventions” discussed above. The prohibition on exploitative marriage arrangements refers to practices whereby women and their labour are treated by their husbands (or the families of their husbands) as property to be bought, sold and inherited.

The international laws on slavery are increasingly being subsumed by the emerging international law discourse on human trafficking. Trafficking takes place both within and across national borders, and as such can involve in-country domestic workers. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (with supplements the Convention against Transnational Organised Crime) defines human trafficking as:

- ◆ “the recruitment, transportation, transfer, harbouring or receipt of persons”, *by means of*
- ◆ “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits”, *in order to*
- ◆ “achieve the consent of a person having control over another person, for the purpose of exploitation”.

²⁰ States can usually exclude categories of workers for special reasons.

- ◆ Exploitation, in turn, includes prostitution and other forms of sexual exploitation, forced labour or services, slavery and servitude.

The Trafficking Protocol prohibits trafficking and sets out mechanisms for the legal, physical and emotional protection of victims. It also requires governments to provide proportional criminal penalties to perpetrators. Although Indonesia has not yet ratified the Protocol, the international community is increasingly linking international human trafficking laws to the enforcement of other international standards, such as those on forced and compulsory labour.²¹

In Indonesia, many domestic workers may have been trafficked from rural areas into cities for labour exploitation, sexual exploitation, or both. In order to comply with international trafficking standards for the protection of domestic workers, it is recommended that all countries have legislation including:²²

- ◆ Definitions of exploitative labour brokerage, trafficking, forced labour and slavery-like practices
- ◆ The prohibition of trafficking both within and across national borders
- ◆ Human rights protections and measures for assistance for victims and witnesses of trafficking
- ◆ Anti-corruption provisions, targeting the link between trafficking and organized crime where possible
- ◆ Provisions for the confiscation of assets of traffickers, and provisions for the use of these assets to compensate trafficking victims where the assets were acquired through human trafficking

21 See, eg, Anti-Slavery International, Discussion Paper: Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking, 2003, pp16, 25-36.

22 Based on recommendations contained in Anti-Slavery International, Discussion Paper: Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking, 2003, p36.

4

INTERNATIONAL BEST PRACTICE AND THE REGULATION OF DOMESTIC WORKERS

Ramirez-Machado, in a 2003 survey of approximately 60 countries, found that 19 had specific laws or regulations on domestic work and 19 more had specific provisions on domestic work within their general labour laws.²³ As Ramirez-Machado explains, however, the specific treatment granted to domestic workers is often a pretext to their exclusion from the general labour law system that applies to the majority of workers. Nevertheless, several countries are emerging as leaders in providing special protection to domestic workers. Worldwide, South Africa has developed several positive mechanisms to enhance the welfare of domestic workers within its boundaries. Amongst Indonesia's nearest neighbours, the Philippines is currently developing a progressive model for the protection of domestic workers. Like Indonesia, the majority of domestic workers within both these countries are citizens of the country concerned (ie non-migrant domestic workers).

This Section will briefly examine the South African and Philippine systems for protection of domestic workers. This will be followed by an examination of best practices from around the world on specific issues relating to domestic work, and a list of model provisions to be included in national domestic worker legislation.

4.1 Best Practice Countries

4.1.1 South Africa

As a country in which the vast majority of domestic workers are “home grown”, South Africa is emerging as the world leader in protecting the welfare of those who undertake domestic work. For South Africa, the issue of domestic work is linked closely to racial issues – almost all domestic workers are black South Africans, and many employers are white South Africans. During Apartheid – the formal racial segregation regime that existed in South Africa for 46 years until 1994 – domestic workers were excluded from labour laws and had little means of redress even for criminal offences committed against them. Since the collapse of Apartheid, South Africa has embarked on a campaign to improve employment conditions for domestic workers. Domestic work accounts for up to ten percent of all jobs in South Africa,²⁴ so the changes have begun to make a positive impact on a great number of lives.

In South Africa, domestic work is mostly regulated by a specific “Sectoral Determination”, made under the Basic Conditions of Employment Act. The Sectoral Determination applies to all domestic workers, and provides minimum standards across a whole range of areas. Domestic workers and employers are free to contract above and beyond the conditions specified in the Sectoral Determination. All Sectoral Determinations are made by Minister of Labour upon recommendations by the Employment

²³ Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p8.

²⁴ ILO, *Organizing for Social Justice: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2004), p103. Domestic work is also thought to be the main form of employment for black South African women.

Conditions Commission (ECC). The ECC is a Commission comprising of a union representative, an employers representative and three experts on labour markets and employment conditions. Section 60 of the Basic Conditions of Employment Act states that the experts must have knowledge of “the conditions of employment of vulnerable and unorganised workers”, which clearly includes domestic workers.

The Sectoral Determination includes:

- ◆ The provision of a minimum wage for all domestic workers, which differs according to whether they are employed in an urban or a non-urban area, and whether the domestic worker undertakes more than 27 hours of work per week or not
- ◆ Clear guidelines on what deductions may be made from the domestic worker’s salary
- ◆ The right of all live-in domestic workers to a room that “is weatherproof and generally kept in good condition”, “has at least one window and door, which can be locked”, and access to “a toilet and bath or shower”
- ◆ The right of all domestic workers to “written particulars” of their wage and duties (see Annex Section of this paper)
- ◆ A 45-hour work week
- ◆ A limit of 15 hours overtime per week, at 1.5 times average hourly wage
- ◆ Special conditions for domestic workers required to undertake night work (allowance, transport, etc)
- ◆ A time limit and minimum wage for domestic workers when they are on “standby” (allowed to rest, but may be asked to undertake work immediately)
- ◆ Meal breaks every five hours
- ◆ Daily rest period of at least 12 consecutive hours
- ◆ Weekly rest period of at least 36 consecutive hours
- ◆ Sunday and public holiday overtime rates
- ◆ Three weeks annual leave per year worked, or one day leave per 17 days worked
- ◆ Sick leave, calculated according to how long the domestic worker has been employed
- ◆ Family responsibilities leave for births, deaths and sickness (maximum five days per year)
- ◆ Four months maternity leave
- ◆ A prohibition on child labour, defined as under 15 years of age
- ◆ A prohibition on forced labour
- ◆ Notice periods, for both the domestic worker and the employer, of one week (for employment of six months or less) or four weeks (for employment of more than six months)
- ◆ A guarantee of payment to the domestic worker of accrued leave and unpaid wages

In South Africa, domestic workers who complete more than 24 hours of work per month are also covered by the Unemployment Insurance Act. Under this Act, employers of domestic workers must deduct 1% from the worker’s salary and pay a further 1% themselves to the national Unemployment Insurance Fund (UIF). The UIF is similar to Indonesia’s *Jamsostek* social security system, providing benefits to job searchers and the sick and injured. UIF also provides maternity benefits.

One of the key features of the South African system for regulating domestic work is that all employers who employ a domestic worker for longer than 24 hours per month must register that worker with the

Department of Labour. This can be done through the internet (www.labour.gov.za) or at a local Labour Centre, and assists with the enforcement of the Sectoral Determination. Enforcement is also assisted by the fact that domestic workers can bring cases of alleged breach of the Sectoral Determination to an industrial court called the Commission for Conciliation, Mediation and Arbitration.

Another key aspect of the South African model is that it has been accompanied by a comprehensive information campaign. The Department of Labour has made guidebooks, model contracts, copies of the laws and other sources of information freely and widely available through the internet and in hard copy.

Once criticized by the ILO for not doing enough to ensure freedom of association, South Africa was hailed in the 2004 ILO Global Report on Freedom of Association for being home to a dynamic and well-organized domestic workers union.²⁵ This union, called the South African Domestic Service and Allied Workers Union (SADSAWU) is affiliated to the Congress of South African Trade Unions (COSATU) represents and increasing number of domestic workers and addresses problems in individual streets. Many of the protections now extended to domestic workers are a direct result of advocacy on the part of SADSAWU and the receptiveness of the South African Department of Labour to civil society groups such as this one.

4.1.2 The Philippines

In the Southeast Asia region, the Philippines looks set to become an example of best practice with regard to the treatment of domestic workers. A large-scale campaign is currently underway to raise public awareness of the plight of domestic workers and to lobby for enhanced legal protection for them. NGOs, religion-based organizations and unions have led the campaign, which has as its main priority the passing of a Domestic Workers Law. The proposed law, called *Batas Kasambahay* or the *Magna Carta for Household Helpers*, has been passed by the national House of Representatives and is currently awaiting approval by the Senate. Despite the Senate not approving drafts of the law in the past, but on 7 November 2005 the Chair of the Senate Labor Committee and the Senate President expressed confidence that the *Batas Kasambahay* will be passed into law in early 2006.

Like Indonesia and South Africa, the overwhelming majority of domestic workers in the Philippines are women and citizens of the country in which they are employed. Estimates of the total number of domestic workers in the Philippines range from 600,000 – 2.5 million. The *Batas Kasambahay* applies to full-time domestic workers, and affords the following rights:

- ◆ Increased minimum wages, broken into three categories based on location: the capital city, other urban areas, non-urban areas
- ◆ A bonus month's pay at the end of the year ("Thirteenth Month Pay"), as is common practice in Southeast Asia
- ◆ Inclusion in the national Social Security System (SSS) and the Philippines Health Insurance Corporation (Philhealth)
- ◆ Rest periods, rest days and standardized work hours

²⁵ ILO, *Organizing for Social Justice: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2004), p103.

- ◆ Paid leave
- ◆ Maternity benefits
- ◆ A prohibition on the employer subcontracting the services of the domestic worker to another household
- ◆ Right to privacy
- ◆ Right to communicate by letter with people outside the household (expense to be borne by the domestic worker)
- ◆ Right to use the household telephone at least once a week (expense to be borne by the domestic worker)
- ◆ Right to provision by the employer of the contact details of the Department of Labor and Employment, the local (Barangay) government office, and NGOs accredited to mediate in disputes involving domestic workers and employers
- ◆ Right to food, shelter and medical assistance “in a manner befitting the means of a responsible head of the family”
- ◆ Protection from arbitrary termination
- ◆ Prohibition on bonded labour
- ◆ Prohibition on employment of children under 15 years of age as domestic workers
- ◆ Special protection for children aged 15-17, such as reduced working hours, light work, prohibition on night work, access to the equal wages
- ◆ The right to attend primary or secondary school, and to have less than 50 percent of wages deducted if the employer pays for this
- ◆ The right to flexible working hours if the domestic worker is 18 years or older and pursuing his/her education at his/her own expense

In addition to the substantive rights it grants, *Batas Kasambahay* also contains an important semantic development. Like Bahasa Indonesia, Tagalog – the most widely-spoken language of the Philippines – has several ways of referring to domestic workers. Perhaps the most common word for domestic workers, *katulong*, literally means “servant” and implies a lower status than the employer. The term *kasambahay*, from which the proposed law gets its title and which is the term used throughout the law itself, can be translated as “household helper”. Although the word does not expressly indicate worker status, it has strong connotations of equality with the employer – *kasambahay* are household constituents and are to be afforded the same treatment as immediate family members.

As in South Africa, moves to protect domestic workers in the Philippines have been accompanied by both a broad-based civil society movement and a willingness on the part of the government to engage with NGOs and other groups advocating the welfare of domestic workers. In fact, the campaign around *Batas Kasambahay* encouraged the Government of Quezon City, one of the municipalities of Metro Manila (the National Capital Region), to pass a local ordinance to encourage the registration of domestic workers and the provision of municipal services to them.²⁶

26 See Visayan Forum Foundation, Pass the Domestic Workers' Bill Campaign 2005, <http://www.visayanforum.org/article.php?mode_id=630>.

4.2 Best Practice on Key Domestic Worker Issues

4.2.1 Specific Legislation

Blackett states that specific regulations for domestic workers is a key to protecting their rights.²⁷ The three main reasons for this are:

1. Specific regulations provides *recognition* that domestic workers are engaged in an employment relationship and make a contribution to the economy
2. Specific regulation can address *special issues* faced by domestic workers (eg how to calculate wages when food and board are paid)
3. Even where a general law applies to domestic workers, they are often not covered by *enforcement* attempts because without a specific mention their work may remain “invisible”

As such, in countries where a real commitment to the protection of domestic workers is emerging, it is common for specific regulations to either exist (as in South Africa) or are being formulated (as in the Philippines).

4.2.2 Contracts and Collective Agreements

The common absence of employment contracts for domestic work is often a source of exploitation for domestic workers. Having no contract means that domestic workers may be always on call, unaware of their rights and responsibilities and perceived as engaged in an informal rather than a working relationship.²⁸ While legislation should therefore encourage the use of written contracts, it also needs to be in touch with reality and acknowledge that the majority of workers in developing countries are engaged in employment without written contracts – and will be for a time in spite of any legislation to the contrary. As such, legislation needs to ensure that domestic workers without written contracts are not left out of the regulatory system by virtue not being recognized as domestic workers in the first place. One way this can be is for legislation to state, as in Sweden, that the “contract for employment on domestic work shall be made in writing if either of the parties so requests”.²⁹

In South Africa, the law explicitly states that a written contract is *not* required, although can of course exist if both parties desire one. However, under the Domestic Worker Sectoral Determination, all domestic workers must be agree to and sign a set of “written particulars” of employment. Section 9 of the current Domestic Worker Sectoral Determination states that such particulars must include the following:³⁰

- (a) the full name and address of the employer;
- (b) the name and occupation of the domestic worker, or a brief description of the work for which the domestic worker is employed;
- (c) the place of work, and where the domestic worker is required or permitted to work at various places, an indication of this;

27 Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part V: Conclusion: The Case for Specific Regulation.

28 For further discussion on the problems associated with informalizing domestic employment relationships, see above Part 2.1.

29 Act No. 943 concerning the Hours of Work and Other Conditions of Work of Domestic Workers (1970, with subsequent amendments), Section 11.

30 The pro forma written particulars for domestic workers in South Africa is attached to the Annex section of this paper.

- (d) the date on which the employment began;
- (e) the domestic worker's ordinary hours of work and days of work;
- (f) the domestic worker's wage or the rate and method of payment;
- (g) the rate of pay for overtime work;
- (h) any other cash payments that the domestic worker is entitled to;
- (i) any payment in kind that the domestic worker is entitled to and the value of the payment in kind;
- (j) how frequently wages will be paid;
- (k) any deductions to be made from the domestic worker's wages;
- (l) the leave to which the domestic worker is entitled to; and
- (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.

Several countries, such as South Africa, provide model employment domestic worker contracts to the public and use this as a basis to promote better defined rights and responsibilities in domestic work.

In addition to statutory law and contracts, collective agreements can also be used to regulate the relationship between employers and domestic workers. In France, for example, a National Collective Agreement (CCN, or *Convention Collective Nationale*) applies to domestic workers. This supplements the rights and obligations of domestic workers and their employers as regulated by France's Labour Code and individual contracts. CCNs are negotiated by a tripartite council of stakeholders, overseen by a representative from the Ministry of Labour.³¹

4.2.3 Access to Information

Proving access to information on their rights and responsibilities is a key to empowering domestic workers. In South Africa, a copy of the Sectoral Determination must be kept somewhere in the workplace so that the domestic worker has ready access to it. In Argentina, all domestic workers are to be provided with a "work book" compiled by the Department of Labour that includes a copy of the law on domestic work and a specification of the wages agreed upon by the particular domestic worker and his/her employer.³²

4.2.4 Minimum Wages

In Colombia and Spain, domestic workers are covered by the minimum wage set for all workers.³³ While this approach is to be commended, it may not be politically or administratively possible for Indonesia to make the transition directly from domestic workers receiving no minimum wage coverage to being covered by general minimum wage levels. An alternative approach is to create a "sectoral" minimum wage to apply to domestic workers. Such a system is already being utilized in several other jurisdictions, including France, Ontario (Canada), Malta, Tanzania, the Philippines and South Africa.³⁴

31 Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part IV: National Regulation.

32 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p19.

33 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p53.

34 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p52.

Countries that have ratified the ILO Minimum Wage Fixing Convention, 1970 (ILO Convention No. 131) have additional responsibilities in protecting the wages of domestic workers (see Part 3 above). For example, Uruguay passed a Governmental Decree in 1990 which explicitly ensures that domestic workers have access to a system for establishing minimum wages.³⁵ The Decree was made in response to rulings by the ILO Committee of Experts for the Application of Conventions and Recommendations and now means that Uruguay complies with the ILO Minimum Wage Fixing Convention.

4.2.5 Benefits in Kind

One issue that complicates the entitlements of domestic workers is the provision of food and board, particularly given that many domestic workers “live-in”. Many employers use the provision of food and board to domestic workers as a pretext for paying substandard wages or for making unexpected wage deductions. As such, it is important for legislation to clarify what role the provision of food and board should play in calculating a domestic worker’s salary. One practice currently being employed by a number of countries is that of specifying a *maximum percentage* of the total salary that benefits in kind can represent.³⁶ The maximum percentage in countries that use this system varies greatly, from 20 percent in Panama to 50 percent in Mexico. The important point is that all parties clearly understand the role of benefits in kind in the calculation of wages, and that some upper limit exists to prevent domestic workers from being denied altogether a right to wages in cash.

4.2.6 Rest Time and Rest Days

It is important for domestic workers, particularly live-in domestic workers, to be allowed to delineate work time from rest time. Most countries with specific regulations applying to domestic workers therefore seek to either limit the number of hours a domestic worker can be required to work within a given period or to specify a minimum amount of rest to be afforded to the domestic worker within a particular period. Many countries specify that a standard work week consists of between 40-50 hours, and any more need to be rewarded with overtime rates and/or limited by law or contract. Best practice is to provide domestic workers a weekly rest day. In South Africa, domestic workers must be provided with a minimum period of rest per week of at least 36 consecutive hours (see Part 4.1.1 above).

Some countries stipulate a minimum period of rest between shifts, such as 8 (Spain) or 12 (South Africa) consecutive hours. In order to ensure that domestic workers are provided with rest period during shifts, legislation usually specifies that a rest period or meal break of one hour is to be provided for at least every five hours of work completed.

Some countries, such as Denmark, Finland and South Africa, provide protection to domestic workers who are required to undertake night work. Night work is usually defined as between 11pm and either 5am or 6am, and protection is given by one or a combination of:

- ◆ Expressly limiting the hours which a domestic worker can be requested to work at night
- ◆ Specifying overtime rates for night work

35 See Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part III: International Labour Standards.

36 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p54.

- ◆ Providing extra leave for every night shift worked
- ◆ Providing extra facilities, such as meals/security/transport

A related issue is that of “standby” work. For many domestic workers, in particular caregivers, periods of rest may be interrupted with sudden requests to work. These “on call” periods can prevent domestic workers from gaining adequate and relaxing rest time. Some countries, such as France and South Africa, have therefore sought to regulate “standby” hours by limiting the total number workable within a specified period or by counting them as hours worked. In France, for example, 25 percent of standby hours worked are to be paid at the normal rate, with the remaining hours to be paid at no less than two-thirds of the domestic worker’s average hourly rate.³⁷

4.2.7 Leave

Laws in many countries give domestic workers an entitlement to annual leave. The entitlement is often available after service of one year, although in some cases it accrues per month. In France, for example, domestic workers become entitled to 2.5 days leave for every month worked. The length of leave differs significantly between counties, with the minimum being 10 days and the maximum 30. The ILO minimum standard is roughly in the middle, at three weeks (see above Part 3.2.1). Annual leave is usually in addition to public holidays, which usually may be taken as a holiday or counted as overtime.

Regarding the timing of the leave, the standard practice is to leave this to agreement between the parties. Best practice would be to require good faith consultations between the parties, in line with the ILO Holidays with Pay Convention (see above Part 3.2.1).

Sick leave is of important both to the domestic worker and the employer, given the close contact many domestic workers have with their employer’s house and family. It is therefore usually in the interests of both parties that the employer give the domestic work adequate time to recover from any illness. The amount of sick leave granted to domestic workers differs significantly between jurisdictions, from several days to several months, and may depend on the seriousness of the illness, whether the illness was in any way brought about by the domestic worker’s negligence, and whether credible medical evidence can support claims of illness by the domestic worke.

In some countries, such as Italy, Panama, Paraguay, Peru, Portugal, Spain, South Africa, Vietnam and Zimbabwe, laws specifically entitle domestic workers to maternity leave and/or protection from termination.³⁸ This is an important issue, given that most domestic workers are women and many risk losing their jobs upon pregnancy. The precise entitlements granted differ greatly from country to country, but often involve a period of paid leave and the right to extend it for a period at lower or no pay. The ILO Maternity Protection Convention (Revised), 1952 (ILO Convention No. 103) stipulates that women should be entitled to two weeks pre-natal leave and twelve weeks post-natal leave, at a minimum of two-thirds standard pay.

37 See Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation* (ILO Geneva, 1998), <<http://www.ilo.org/public/english/dialogue/govlab/legrel/papers/domestic/>>, Part IV: National Regulations.

38 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p44.

4.2.8 Termination

Given the private and personal nature of domestic work, most legislation on the termination of employment with domestic workers does not envisage reinstatement as a remedy for unjustified dismissal of a domestic worker.³⁹ Once an employer has lost trust in a domestic worker to the extent that the employment relationship has been terminated, it will usually only lead to further anguish for both parties if the employer is ordered to re-employ the domestic worker – even where the employer was at fault. However, to avoid unfairness to domestic workers, many countries require notice periods or financial compensation in lieu of notice to be given by employers to domestic workers whose termination they wish to terminate without reason. In South Africa, the employer and domestic worker may agree, in the employment contract, on a notice period longer than that specified in law, however such a notice period may only apply to the notice period that the employer must give the domestic worker (the notice period that the domestic worker must give the employer cannot be extended). Notice periods in many countries, such as Argentina, Belgium, Finland, France, Honduras, Italy, Portugal and Spain, are based on time served.⁴⁰ As such a rule already exists in Indonesia as part of its general labour law system, this practice could be applied to some extent to domestic workers.

Given that there are rarely any formal certification systems for domestic work, upon termination of employment by either party it is desirable for the domestic worker to be provided some sort of certificate of service to assist the domestic worker in finding further employment. In South Africa, for example, employers are obliged to give domestic workers a certificate of service outlining the names of the parties, the address of the employer, the duration of employment, a brief job description, any relevant training received by the domestic worker and the domestic worker's pay at the date of termination. If the domestic worker requests, the certificate must also contain the reason for termination.

4.2.9 Social Security

There is an increasing push around the world to extend social security coverage to workers in traditionally informal forms of employment, such as domestic work.⁴¹ Benefits should include health insurance as a minimum, and often extend, to unemployment insurance, old-age pensions, accident insurance, life insurance and maternity benefits.

Domestic workers can receive social security a number of ways. The first is by being incorporated into formal sector social security schemes, such as in Fiji or the Philippines. The second is by the creation of special social schemes for informal sector workers, such as the Unorganized Sector Workers' Social Security Scheme currently being piloted in several districts throughout India. A third way is through civil society groups providing micro-insurance coverage. This relatively new practice, pioneered by groups such as the Public Health Concern Trust in Nepal,⁴² involves establishing low-cost mechanisms for the collection of low-value (but potentially high-volume) insurance premiums and the provision of related benefits. Such schemes may be assisted by government technical assistance and financial support.

39 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p66.

40 See Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p66.

41 See, eg, ILO, *Social Security: Issues, Challenges and Prospects* (Report of the 89th Session of the International Labour Conference, Geneva, 2001).

42 See, eg, ILO, *In Nepal, Micro-Insurance Helps the Poor Cope with Health Needs* (ILO Feature Service Article), <<http://www.ilo.org/public/english/bureau/inf/features/03/nepal.htm>>. See also ILO, *Social Security: Issues, Challenges and Prospects* (Report of the 89th Session of the International Labour Conference, Geneva, 2001), Chapter III: Extending the Personal Coverage of Social Protection.

Where domestic workers have access to social security schemes, it may be optional (as in Fiji), or compulsory (as in South Africa). Best practice is for the employer to be permitted to make specified deductions from the domestic worker's salary, and to supplement these with equal or greater contributions from the employer. There are several methods of transmitting premiums, such as via direct debit (as in the Philippines) or stamp cards (as in Fiji). Depending on the socio-political structure of the country or area providing social security, it may be prudent to make local rather than provincial or national authorities the designated collection point. Provided local authorities have adequate record-keeping and law enforcement capacity, and anti-corruption mechanisms are put in place, premiums may be levied on employers as part of council rate payments.

4.2.10 Child Domestic Workers

The minimum wage for employment as a domestic worker varies from country to country. As countries adopt the ILO Worst Forms of Child Labour Convention (see Part 3 above), this may become more standardized. A sensible measure taken by many countries is to create three age categories for domestic work: a prohibited age category (eg under 15), an age category in which all legal forms of domestic work may be undertaken (eg over 18), and a "conditional category" applying to children aged between the two. Children in the "conditional category" may be engaged in domestic work provided certain specified conditions are met. Some examples of conditions found in national legislation include:⁴³

- ◆ The child works no longer than X hours per week (where X is a significant amount less than the regular work week)
- ◆ The child has completed a certain level of school education
- ◆ The child undertakes light domestic work only
- ◆ The child needs to work for a living or to maintain parents or younger siblings
- ◆ A special permit is obtained from the Department of Labour or related institution
- ◆ The child only works on school holidays
- ◆ The child is given a written contract, with a copy sent to the child's parents/guardians

4.2.11 Inspections and Enforcement

Ramirez-Machado states that "only a few" of the 60 countries as part of his study "consider the inviolability of the private household as a principle superior to the domestic worker's protection" and as such prohibit labour inspections.⁴⁴ Rather, most laws that apply to domestic workers allow labour inspections to be carried out in households where domestic workers are employed, just as inspections can take place in other workplaces. In practice, however, labour inspectors in many countries often only respond to complaints made to them. While not an ideal method of law enforcement, this is still an improvement over not conducting inspections at all.

43 See, eg, Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), pp18,47,48.

44 Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003), p67.

4.3 Model Legislation on the Protection of Domestic Workers

Annemarie Reerink⁴⁵ has developed a matrix of model provisions to be included in legislation for the protection of domestic workers in Indonesia, based on a model code for domestic workers developed by the domestic worker advocacy organization Tjoet Njak Dien and other NGOs in Indonesia, the proposed *Batas Kabambahay* legislation in the Philippines,⁴⁶ various existing contracts for Filipino overseas domestic workers, and findings from Ramirez-Machado’s study.⁴⁷ As the provisions contained in the matrix are aspirational, it may be necessary for Indonesian policy-makers to consider their “workability”. For example, it may be more appropriate in some cases to initially reduce the number of standards included in a domestic workers regulation, so as to focus on enforcing the standards specified.

The Matrix of Model Provisions

| Issue | Minimum contents |
|---------------------------------|--|
| Definition of “Domestic Worker” | Determines job categories of DWDistinguishes between permanent or self-employedDefines household, working hours, hazardous work, minimum age etc. |
| Employment contract | Must be include description of duties and conditions of work Must be entered into freely, in written form, in language understandable to both parties, signed by both parties and a copy be given to each party |
| Minimum wage | DW to be included under provincial minimum wage or new minimum wage to be set for DW as a specific sector |
| Deductions | No deductions to be made except those allowed by law and with prior written consent of the DW |
| Benefits | Determines rate of overtime payment, annual bonus At least three adequate meals at proper times of the day |
| Working hours | Shall not exceed eight hours a day for six days a week Determines minimum period for continuous rest and minimum length of meal breaks |
| Leave | Determines length of paid annual leave and official paid holidays Determines rights to paid maternity and paternity leave after minimum length of service, in accordance with labour law |

⁴⁶ See above Part 4.1.2.

⁴⁷ Op. cit.

| Issue | Minimum contents |
|-----------------------|---|
| Facilities | Specifies minimum facilities for live-in DW (room, furniture and utilities) |
| Probation | Prohibits the practice of probation period with lesser/no pay |
| Termination | Prohibits unilateral termination without just cause Specifies meaning and extent of just cause for termination by employer, DW or recruitment agency (ill health, illegal acts, inhumane treatment, bad conduct, neglect of duties, etc) Clarifies obligations of each party in case of termination with just cause, especially payment of compensation, arrears of wages, and right to press charges |
| Standard of treatment | Determines minimum standard of treatment, explicitly prohibiting use of any form of violence or acts that violate the DW's dignity Right to privacy and access to outside communication, freedom to carry out religious practices, freedom of movement, freedom to organise |
| Responsibilities | Sets minimum responsibilities of both employer and DW |
| Recruitment | Clarifies that DW is not responsible for paying any recruitment fees |
| Sub-contracting | Prohibited, DW shall only work for employer at his/her one residence |
| Medical costs | Determines access to minimum medical treatment Requires enrolment in social security, health and accident insurance at employer's cost |
| Bonded labour | Prohibits bonded labour |
| Dispute settlement | Determines access to lawful third-party mediation Specifies the right of the DW to access the legal system |
| Right to information | Clarifies the DW's right to receive complete and accurate information about employer and working conditions from recruitment agency Clarifies the employer's right to receive complete and accurate information about DW and his/her skills from the recruitment agency |
| Night work | Prohibits night work by DWs under age of 18 |
| Sanctions | Sets minimum fines and imprisonment for violation of clauses |

5

CONCLUDING REMARKS: TOWARDS PROTECTION FOR DOMESTIC WORKERS IN INDONESIA

This paper has outlined standards relating to the treatment of domestic workers in Indonesia under current Indonesian law, under international standards and according to best practice. There is no doubt that there is a gap between current Indonesian law on one hand, and international standards and best practice on the other. This means that domestic work in Indonesia, which has the potential to provide decent employment opportunities to millions of Indonesians, is often an unprotected form and exploitative form of employment. The past few years have seen growing support in Indonesia – from both government and civil society – for the protection of Indonesian migrant domestic workers; this now needs to be matched by an equally strong commitment to protecting domestic workers at home. This in turn requires the humility to admit that Indonesian employers of Indonesian domestic workers often engage in the same practices as foreign employers of Indonesian domestic workers. Fortunately, if this issue can be addressed through legislative changes and changes in cultural attitudes towards domestic work, the situation in Indonesia can be gradually improved.

The starting point for government action on the protection of domestic workers should be the formation of an Inter-Departmental Taskforce on Domestic Worker Protection, comprising of representatives from the Coordinating Ministry of People's Welfare (*Menkokesra*), the Ministry of Manpower and Transmigration (*Depnakertrans*), the State Ministry of Women's Empowerment (*Kantor Meneg PP*), the Ministry of Law and Human Rights (*Dephukham*), the Ministry of National Education (*Depdiknas*), the National Development Board (*Bappenas*), Ministry of Social Affairs (*Depsos*), the Ministry of Health (*Depkes*), the State Ministry of Youth and Sport (*Kantor Menpora*), the State Secretariat (*Sekneg*) and other relevant agencies. The Taskforce should liaise closely with representatives from Parliamentary Commissions III (Law and Human Rights), VIII (Women, Children and Social Affairs) and IX (Population, Health and Labour).

It is important that government action incorporates civil society. As seen in countries like South Africa and the Philippines, constructive links between government and civil society can go a great deal towards furthering the protection of domestic workers. The Indonesian Government, at both national and sub-national levels, can support civil society by conducting public consultations and taking seriously technical input on draft Laws, Local Ordinances and other forms of regulation.⁴⁸

Another key area for engagement between government and civil society is on the provision of legal information. Government agencies could cooperate with NGOs, broad based religious organizations, unions and other elements of civil society to establish “legal hotlines” and disseminate guidebooks for

⁴⁸ Such as the inputs by the domestic workers advocacy network, Jaringan Nasional Advokasi PRT (Jala-PRT), and individual NGOs such as Rumpun Tjoet Nyak Dien.

domestic workers and employers on their rights and responsibilities. Other means of working together with civil society include establishing a system of accredited employer-domestic worker mediators from civil society;⁴⁹ developing a National Action Plan on International Law in Indonesia to examine ways Indonesia can implement existing international law obligations and extend its commitments through further ratifications; examining ways in which domestic workers can receive further skills development and competency recognition; mapping recruitment patterns with an aim to minimizing mistreatment at this phase in the domestic worker experience; and running public awareness campaigns on the value of domestic work.

It is clear that Indonesia requires a specific National Law (*Undang-Undang*) on the protection of domestic workers. As discussed above,⁵⁰ this would allow domestic workers to be *recognized* as workers; provide an opportunity to legislatively address *special issues* faced by domestic workers; and focus attention of relevant parties on *enforcement* of standards relating to domestic work – including “collating” standards from the handful of existing national laws that already apply in some way to domestic workers. The law would be useful in terms of setting norms as well as establishing a socialization process. The precise contents of such a law will inevitably be a product of the political process. It is hoped, however, that this process takes into account the current vulnerable position of domestic workers, Indonesia’s obligations under international law, international standards, best practice and cultural attitudes and associated problems of enforcement. By outlining these matters, this paper has attempted to provide a starting point for this process.

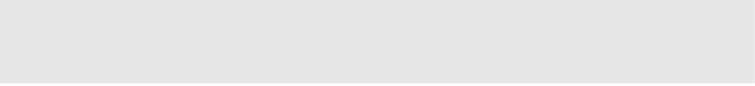
49 As is envisaged in the proposed Philippine law on domestic workers: see Part 4.1.2.

50 See above Part 4.2.1.

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- ◆ Jose Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO Geneva, 2003).
- ◆ South African Department of Labour, *All About Domestic Workers*, <http://www.labour.gov.za/industry-sector/industry_display.jsp?parCat_id=6643&industry_id=6820>.
- ◆ Visayan Forum Foundation, *Pass the Domestic Workers’ Bill Campaign 2005*, <http://www.visayanforum.org/article.php?mode_id=630>.



7

ANNEXES

Annex 1: Model contract for Indonesian In-Country Domestic Workers⁵¹

A. Personal information

Employer: _____

Address: _____

ID No.: _____ Tel (Res): _____ Tel (Off): _____

Employee: _____

Address: _____

Place of origin (for contract purposes): _____

ID No.: _____ Marital Status: _____ Date of Birth: _____

Employment Agency: _____

Address: _____

Tel (off): _____ Fax: _____ License No: _____

B. Terms and Conditions

The employer and employee hereby agree as follows:

- 1) Duration and effectivity: This Contract shall be valid for _____ years/months.
- 2) Scope of Domestic Work: The Employee undertakes to perform diligently all duties listed below:
 1. Household chores
 2. Cooking
 3. Looking after aged persons in the household (constant care or attention is required/not required*)
 4. Baby-sitting

5. Child-minding

6. Others (please specify): _____

Car washing is not part of domestic work, but is allowable provided there is additional corresponding compensation to the Employee. Specialised care for the elderly is also excluded from the definition of domestic work unless the Employee was hired mainly for that purpose.

The number of persons in the household to be served on a regular basis comprises of: ____ adults; ____ minors (aged between 5 and 18); ____ minors (aged below 5); ____ expecting babies.

____ persons in the household require constant care or attention (excluding infants).

3) Site of Work: The Employee shall work solely for the Employer and his/her immediate household. The Employer shall in no case require the Employee to work in another residence or be assigned in any commercial, industrial, or agricultural enterprise.

4) Transportation costs: If the Employee is forced to live outside the residence of the Employer, the Employer shall pay an allowance for the daily cost of transportation from the Employee's place of residence to the place of employment.

5) Monthly Salary/Wages: In accordance with the minimum wage for the province in which the Employee works, the Employee shall receive a minimum basic salary of (currency)_____ per month from the effective commencement date of this contract, receipt of which shall be acknowledged in writing by the Employee. An Employer who fails to pay the wages due under this employment contract shall be liable to criminal prosecution. The Employer and Employee will mutually agree to payment in cash at the end of the month or direct payment into a bank account, to which the Employee will at all times hold the passbook.

6) Accommodation, Meals and Facilities: If it is mutually agreed that the Employee will live in the residence of the Employer, the Employer shall provide the Employee with suitable and furnished accommodation and at least three adequate meals at the proper times every day free-of-charge. Accommodation should comprise of a room or partitioned area with privacy, which may not be shared with an adult/teenager of the opposite sex. Facilities to be provided include at a minimum: light and water supply, toilet and bathing facilities, bed, blankets or quilt, pillows and a wardrobe.

7) Medical Care/Hospitalisation: The Employer shall bear the cost of medical services, including consultation, medicine, hospitalisation, and dental care. The Employee shall accept medical treatment provided by any registered medical practitioner.

In case of an illness or injury arising out of or in the course of employment, the Employer shall provide full wages for the first thirty (30) days of illness. In the event of a medical practitioner certifying that the Employee is unfit for further service, or that continued employment is prohibited by law or is prejudicial to the Employee's health, either party may, subject to the provisions of Clause 17 of this contract, terminate the employment.

8) Working Hours and Rest Periods: The Employee shall not work more than eight (8) hours per day and shall be given at least a continuous period of eight (8) hours of rest daily. For any extra working

hours incurred, the Employee will be paid over-time at a rate to be set after consultation between the Employer and Employee.

- 9) Leave Days: The Employee shall be given one (1) day-off per week, on a day to be mutually agreed upon by the Employee and Employer, without deduction from the regular salary. If the Employee consents to working on his/her day off, he/she shall be paid (currency)_____ per day as additional compensation. The Employee shall also be entitled to ___ working days annual leave with full pay, and to the following nine (9) official holidays with full pay:
-

- 10) Working Conditions and Conduct: The Employee is expected at all times to observe proper decorum and shall be courteous, polite and respectful to his/her Employer and members of the Employer's family. He/She shall also abide by all laws.

The Employer shall at all times treat the Employee in a just and humane manner. Under no circumstances shall physical violence be used by the Employer or any member of his/her household on the Employee. The Employer shall provide reasonable, secure and satisfactory working conditions conducive to a good employer-employee relationship and not subject the employee to ill-treatment or abuse such as non-payment of salary, sexual molestation, use of force or threat of violence by any member of the household.

- 13) Contract Renewal/Extension: The Employee and the Employer may, by mutual consent, renew or extend this contract for a period of ___ years, in which event the Employee shall be given a salary increment of at least ten (10) per cent of the preceding salary rate.

- 14) Monitoring and Dispute Resolution: Any dispute – except those of a criminal nature – between the Employee and the Employer shall in the first instance be resolved by mediation by a neutral third party. If, for any reason whatsoever, the dispute is not resolved to the satisfaction of both parties, the matter shall be referred to the appropriate labour court at local level.

- 16) Deductions: It shall be unlawful for the Employer to deduct any amount from the regular salary of the Employee other than the compulsory contributions prescribed by national law. Such deductions must be issued a corresponding receipt. No deductions may be made for fees to the employment agency.

- 17) Termination of Contract: Either party may terminate this Contract in the event of any breach of its Terms and Conditions by the other party. If the Employer breaches this Contract, he/she shall be liable for the payment of severance pay according to the national labour law, after payment by the Employer of any arrears of wages/salary.

Either party may cancel this contract, giving at least one month's notice to the other party. In such case, the Employer shall pay to the Employee all arrears of wages/salary and the Employee shall accept the same in full discharge of all claims whatsoever. If any of the parties to this contract violates any of its Terms and Conditions, the other party has the right to claim damages.

- 18) Other provisions:

(a) The Employer shall enroll the Employee in the National Social Security System for the duration of the Contract of Employment in accordance with the national law on Social Security.

(b) The Employer shall provide the Employee a copy of this employment contract.

19) Non-Alteration of Contract: No provisions of this contract shall be altered, amended or substituted without the written approval of both parties.

In witness whereof, the contracting parties having read carefully and fully understood the Terms and Conditions of this Contract, hereunto set their signatures below, this ____ day of _____, 20__ in _____

Employee

Employer

Agency

Position:

Annex 2: Model South African “Written Particulars” (Quasi-Contract)

WRITTEN PARTICULARS (DOMESTIC WORKER)

Given by:

(herein after referred to as “the employer”)

Address of employer:

to

(herein after referred to as “the employee”)

1. Commencement

Employment will begin on _____ and continue until terminated as set out in clause 6 of the guidelines.

2. Place of work _____

3. Job description

Job Title _____

(e.g.. Domestic worker, child minder, gardener, etc)

Duties: See attached job description

4. Hour of work (See Guideline 5)

4.1 Normal working hours will be _____ hours per week, made up as follows:

Monday / Tuesday / Wednesday / Thursday / Friday: _____ am to _____ pm

Meal intervals will be from: _____ to _____

Other breaks: _____

Saturdays: _____ am to _____ pm

Meal intervals will be from: _____ to _____
 Other breaks: _____
 Sundays: _____ am to _____ pm
 Meal intervals will be from: _____ to _____
 Other breaks: _____

4.2 Overtime will only be worked as agreed from time to time and will be paid at the rate of one and a half times of the total wage as set out in clause 5.2.

4.3 Standby will only be done if agreed from time to time whereby an allowance will be paid of at least R20,00 per standby shift.

5. Wage (See Guidelines 4 and 5)

| | |
|---|-------------------------------|
| 5.1 The employees wage shall be paid in cash on the last working day of every week/month and shall be: | R _____ |
| 5.2 The employee shall be entitled to the following allowances/ other cash payments/payment in kind: 5.2.1 A weekly/monthly transport allowance of 5.2.2 | R _____ |
| 5.3 Accommodation per week/month to the value ofThe following deductions are agreed upon: _____ _____ _____ | R _____ R _____ R _____ |
| 5.4 The total value of the above remuneration shall be (The total of clauses 5.1 to 5.2.2) (Modify or delete clauses 5.2.1 to 5.2.2 as needed) | R _____ |
| 5.5 The employer shall review the employee's salary/wage on or before 1 November of every year. | |

6. Termination of employment

Either party can terminate this agreement with one weeks notice during the first six months of employment and with four weeks notice there after. Notice must be given in writing except when it is given by an illiterate domestic worker. In the case where the domestic worker is illiterate notice must be explained orally by or on behalf of the employer.

7. Sunday work

Any work on Sundays will be by agreement between parties and will be paid according to clause 7 of the guidelines.

8. Public Holidays

Any work on holidays will be by agreement and will be paid according to clause 8 of the guidelines.

9. Annual Leave

The employee is entitled to three weeks paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

10. Sick leave

10.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

10.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.

10.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

10.4 A medical certificate may be required if absent for more than 2 consecutive days or has been absent on more than two occasions during an eight-week period.

11. Maternity leave

(Tick the applicable clauses in the space provided).

| | | |
|------|--|--------------------------|
| 11.1 | The employee will be entitled to ____ months maternity leave without pay; or | <input type="checkbox"/> |
| 11.2 | The employee will be entitled to ____ months maternity leave on ____ pay | <input type="checkbox"/> |

13. Family responsibility leave

The employee will be entitled to five days family responsibility leave during each leave cycle if he or she works on at least four days a week.

14. Accommodation

(Tick the applicable boxes).

| | | |
|------|--|--------------------------|
| 14.1 | The employee will be provided with accommodation for as long as the employee is in the service of the employer, which shall form part of his/her remuneration package. | <input type="checkbox"/> |
| 14.2 | The accommodation may only be occupied by the worker, unless prior arrangement with the employer. | <input type="checkbox"/> |
| 14.3 | Prior permission should be obtained for visitors who wish to stay the night. However where members of the employees direct family are visiting, such permission will not be necessary. | <input type="checkbox"/> |

15. Clothing (Delete this clause if not applicable)

_____ sets of uniforms will be supplied to the employee free of charge by the employer and will remain the property of the employer.

16. Other conditions of employment or benefits

18. General

Any changes to the written particulars will only be valid if agreed to by both parties.

EMPLOYER

Acknowledgement of receipt by employee:

Date: _____

Annex 3: Job Description Checklist to be completed by all South African Employers of Domestic Workers

JOB DESCRIPTION

Indicate functions required by domestic worker in the appropriate block

| | | | |
|--|--------------------------|--|--------------------------|
| Child minding / baby sitting | <input type="checkbox"/> | Laundry – machine wash | <input type="checkbox"/> |
| Minding old/sick employer or relative | <input type="checkbox"/> | Laundry – hand wash | <input type="checkbox"/> |
| General tidying of house | <input type="checkbox"/> | Hanging out of laundry | <input type="checkbox"/> |
| Making of beds | <input type="checkbox"/> | Washing of curtains | <input type="checkbox"/> |
| Vacuuming of carpets | <input type="checkbox"/> | Ironing | <input type="checkbox"/> |
| Vacuuming of upholstery | <input type="checkbox"/> | Small mending job, e.g. replacing buttons, hems, etc | <input type="checkbox"/> |
| Dusting | <input type="checkbox"/> | Defrosting and cleaning fridge & freezer | <input type="checkbox"/> |
| Wiping down of all appliances e.g. T.V etc | <input type="checkbox"/> | Cleaning of windows and glass doors inside and out | <input type="checkbox"/> |
| Cleaning of walls, light switches, doors etc | <input type="checkbox"/> | Cleaning of all used equipment e.g. vacuum cleaner | <input type="checkbox"/> |
| Cleaning of ornaments | <input type="checkbox"/> | Packing away of groceries | <input type="checkbox"/> |
| Cleaning of toilets, basins, baths, showers, taps etc. | <input type="checkbox"/> | Removal of refuse for collection | <input type="checkbox"/> |
| Mopping of tiled/vinyl floors | <input type="checkbox"/> | Sweeping of outside patios, steps, etc | <input type="checkbox"/> |
| Cleaning of inside of cupboards | <input type="checkbox"/> | Wiping down of outside lights | <input type="checkbox"/> |
| Cleaning of stove and oven | <input type="checkbox"/> | Cleaning of outside room's and cloakroom | <input type="checkbox"/> |
| Preparation/cooking of breakfast | <input type="checkbox"/> | General driving duties and errands | <input type="checkbox"/> |
| Preparation/cooking of lunch | <input type="checkbox"/> | Wash cars | <input type="checkbox"/> |
| Preparation/cooking of supper | <input type="checkbox"/> | Maintain garden in clean and tidy condition | <input type="checkbox"/> |
| Setting of table | <input type="checkbox"/> | Caring for pool | <input type="checkbox"/> |
| Cleaning away after breakfast/lunch/supper | <input type="checkbox"/> | Mow lawns | <input type="checkbox"/> |
| Polishing of floors and verandas | <input type="checkbox"/> | Weeding | <input type="checkbox"/> |
| Cleaning brass and silver | <input type="checkbox"/> | Trimming and pruning | <input type="checkbox"/> |
| Washing of Walls | <input type="checkbox"/> | Washing and grooming of dogs | <input type="checkbox"/> |
| Other..... | <input type="checkbox"/> | Painting of walls | <input type="checkbox"/> |
| | <input type="checkbox"/> | | <input type="checkbox"/> |

