Memorandum

TO: [Redacted]
FROM: Tracy Adam-Badr, Cornell Law School, LL.M. Candidate 2011
DATE: January 17, 2010
RE: Exploitation of Child Domestic Workers in Bangladesh

This research Memorandum responds to your request for information regarding the exploitation of child domestic workers in Bangladesh and the ties between child domestic labor and trafficking. Accordingly, this Memorandum is divided into two main parts. The first deals with child domestic labor, including circumstances in which child domestic labor crosses into the zones of unacceptability and unlawfulness and health and safety issues. The second examines more specifically the link between child domestic labor and trafficking.

I. Child Domestic Labor

Before exploring the health and safety issues involved with child domestic labor in Bangladesh, key terminology must first be examined.

A. Examination of Key Terminology

The 1989 United Nations Convention on the Rights of the Child—the “CRC”—and the 1999 International Labour Organization Convention on the Worst Forms of Child Labor define a child as an individual under the age of 18 years unless under the law applicable to the child, majority is attained at an earlier age. Both Conventions were ratified by Bangladesh in 1990 and 2001, respectively. Bangladesh has a total population of roughly 140 million of which 63 million—or 44%—are under the age of 18.

Historically speaking, national Bangladeshi laws\(^2\) have proven inconsistent in their
determination of an age regime as some Acts were promulgated during the British
regime, others during the Pakistan regime and a handful have been promulgated since the
independence of Bangladesh in 1971. For example, the \textit{Child Marriage Restraint Act
1929} imposes a gender distinction by setting the age of majority in order to contract a
valid marriage at 21 years for men and 18 for women. However, the \textit{Children (Pledging
of Labour) Act 1933} and the \textit{Employment of Children Act 1938} determine that the
minimum age for children is 15 and 12, respectively. To further complicate things, the
\textit{Factories Act 1965} states that individuals under 14 years of age are children whereas the
\textit{Children Act 1974} states that a child is an individual under 16 years of age. In addition,
under contract law, a minor cannot enter into agreement until attaining the age of 18.
Muslim personal laws on marriage, however, determine that a child becomes an adult on
attaining the age of puberty.\(^3\)

In response to these varying laws and the lack of a uniform age regime, the highly-
anticipated 2006 Bangladesh \textit{Labour Law}\(^4\) both consolidates and abrogates all of the
existing labor laws and determines that a child is an individual under the age of 14.\(^5\)
However, for simplicity and uniformity, in this Memorandum, a child refers to as an
individual under the age of 18.

\(^2\) See Sumaiya Khair’s development of this question in KHAIR, CHILD MIGRATION FOR WORK, 20

\(^3\) According to Kamal Siddiqui, under traditional Muslim law, a female child ceases to be a child at the age
of 12, whereas a male child ceases to become a child at 15 or 16 years of age. \textit{See KAMAL SIDDQUI,
BETTER DAYS, BETTER LIVES: TOWARDS A STRATEGY FOR IMPLEMENTING THE
Press Limited.}

\(^4\) Prior to the promulgation of the Bangladesh \textit{Labour Law 2006}, the total number of Acts and Ordinances
in this field was 50 of which 15 were enacted during the British regime, 23 were enacted during the
Pakistan regime and 12 were passed after the independence of Bangladesh. Other labor laws have been
abrogated by the promulgation of this new labor code. The new law provides for one single updated code
instead of the previous scattered Acts and Ordinances. In addition to eliminating the ambiguity regarding
the legal age regime to work, the issuance of an appointment letter and the identity card of a worker has
been made mandatory, the retirement age has been set at 57 and the maintenance and preservation of safety
record books have been rendered obligatory. Child labor is now prohibited even in non hazardous regular
work in an establishment and the appointment of adolescent and female workers is prohibited during the
nights and in dangerous occupations without the consent of the female worker in question. Maternity
benefits have also been increased to 16 weeks (8 weeks before birth and 8 weeks after delivery) for the
birth of two living infants if the female worker has worked under the owner for a minimum period of 6
months prior to the notice of the probable due date. Any discrimination or indecent behavior towards
female workers has been prohibited under the new law. Further, occupational health and safety received
special importance and Labor courts were determined to be the only courts competent to adjudicate all
issues under labor law. \textit{See SEBA LIMITED IN COOPERATION WITH THE MINISTRY OF LABOUR
AND EMPLOYMENT, SALIENT FEATURES OF THE BANGLADESH LABOUR LAW 2006
RELATED TO THE RMG SECTOR, WORKING PAPER N. 2 OF THE BANGLADESH-GERMAN
DEVELOPMENT COOPERATION, 1-56, (March 2007).}

\(^5\) The \textit{Labor Law 2006} defines an adolescent as an individual between the ages of 14 and 18. An adolescent
can work in a factory if a certificate of fitness is granted to him or her, if he or she carries a token while at
work which gives reference to the certificate. An exception is provided for: as per Section 44, a child who
is 12 years of age may be employed if the work does not endanger his or her health or interfere with his or
her education. \textit{See Seba Limited in Cooperation with the Ministry of Labour and Employment, supra note 4
at 12.}
In Bangladesh, children of both sexes contribute significantly to the financial welfare of their family through labor. *Child labor* is defined as “work that deprives children of their childhood, their potential and dignity and that is harmful to physical and mental development.”\(^6\) UNICEF, the United Nations Children’s Fund, defines child labor as work that exceeds a minimum number of hours, depending on the age of a child and on the type of work. For children aged 5 to 11, this would include at least one hour of economic work or 28 hours of domestic work per week. For the 12 to 14 age group, this would include at least 14 hours of economic work or 28 hours of domestic work per week and for children aged 15 to 17, child labor occurs when a child works at least 43 hours of economic or domestic work per week.\(^7\)

The International Labour Organization (ILO) asserts that the term *child labor* refers to work that is “mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work.”\(^8\) The CRC speaks of a State’s obligation to protect children from engaging in work that constitutes a threat to their health, education or development by setting a minimum age for employment and regulating conditions of employment. As of 18 September 2010, 172 countries have pledged to commit to taking immediate action to prohibit and eliminate particularly hazardous child work through ratifying the ILO Convention on the Worst Forms of Child Labour. The Convention’s Article 3 defines the *worst forms of child labor* as “all forms of slavery or practices similar to slavery, such as sale and trafficking in children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances; and the use, procuring or offering of a child for illicit activities, particularly for the production and trafficking of drugs.”\(^9\)

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\(^7\) UNICEF’s definition of child labor can be found at [http://www.unicef.org/protection/index_childlabour.html](http://www.unicef.org/protection/index_childlabour.html) (last visited on 18 September 2010).


\(^9\) Bangladesh Bureau of Statistics, Planning Division, Government of the People’s Republic of Bangladesh, *supra* note 6 at 20. This definition is based on Article 3 of the 1999 International Labour Organization’s Convention on the Worst Forms of Child Labour (Convention n. 182) whose official title is “Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.”
and to expedite our program and project implementation which can effectively and successfully address the worst forms of child labour in the country by 2016.”

When the Government of Bangladesh does prepare its list of hazardous occupations for children, it remains to be seen whether child domestic labor will be included. Child labor as domestic help can indeed be an example of exploitative employment according to the ILO. Child domestic labor (CDL) refers to “[d]omestic work undertaken by children under the legal minimum working age, as well as by children above the legal minimum age but under the age of 18 under slavery-like, hazardous or other exploitative conditions – a form of ‘child labour to be eliminated’ as defined in international treaties.”

One of the most common and traditional forms of child labor, the term child domestic labor alludes to “situations where children perform domestic tasks in the home of a third party or ‘employer’ under exploitative conditions (long working hours, with no or little wages, for example, or below the minimum working age).” In referring to the definition provided for in the Convention’s Article 3, the ILO recognizes that “[a]lthough domestic labour by children has often been excluded from national minimum age for work legislation – usually because of the difficulty of implementing it in private households – the reality is that the vast majority of children in domestic labour would find a place in one or more of these categories, either because of the nature of the work they are required to perform, the treatment they receive or the means by which they entered into the situation in which they find themselves.”

The ILO thus concludes: “[w]here a child under the age of 18 is engaged in domestic labour and works under conditions that are hazardous, then this constitutes a ‘worst form of child labour’ and must be eliminated as a matter of urgency.” The more specific expression worst form of child domestic labour refers to “child domestic labour that is extremely hazardous to the child because of the tasks given, conditions of work or physical, emotional and sexual abuse; practices similar to slavery such as debt bondage or forced labour, and child domestic labour into which a child has been trafficked.”

Traditional and standard definitions of child labor tend to exclude the phenomenon of child domestic labor. As a result, the work of girl domestic laborers in particular is largely underestimated. Further, Bangladesh lacks a formal mechanism to regulate the substantive rights of child domestic laborers.

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11 See INTERNATIONAL LABOUR ORGANIZATION, HELPING HANDS OR SHACKLED LIVES? UNDERSTANDING CHILD DOMESTIC LABOUR AND RESPONSES TO IT, 1 (2004).
12 See id. at III.
13 See id. at VII.
1. The Exclusion of CDL from Traditional Definitions of Child Labor

In Bangladesh and internationally, scholars typically include only “economic” activities in their definition of child labor, thus excluding domestic work. For example, the authors of an article on child labor in Bangladesh chose to “purposely omit children who were not paid for doing household chores” from their study “because the definition of ‘labor’ in the term ‘child labor’ generally means that a child works on a regular basis for pay or is unpaid but produces output that will be sold in the market.” As early as 1991, however, others argued that in the context of Bangladesh, domestic work may be harmful to a child’s normal activities and should thus be included in the definition of child labor.

UNICEF’s approach demonstrates sensibility to nuance. The Children’s Fund initiated an inter-agency research cooperation project entitled “Measuring Child Labour: Discussion Note for Country Consultation in Bangladesh” which distinguishes between two broad categories of productive activity: economic activity and non-economic activity. Economic activity derives from the System of National Accounts (SNA) which is the conceptual framework that sets the international statistics standards for the measurement of the market economy, whereas non-economic activity is defined as any productive activity falling outside of the SNA production boundary. This includes work activities performed by household members in service to the household and its members. However, a further distinction is made between family and non-family productive activity. The former refers to “all forms of productive activity that takes place within a family setting, independent of whether it is economic or non-economic in nature” and the latter refers to “productive activity located outside the family,” which is economic in nature. By such, “the most relevant distinction is not between family and non-family work, but rather between economic (regardless of its setting) and non-economic work.” This distinction has the merit of including a large number of child domestic workers, but fails to include those who are particularly exploited as they are not paid by their employers with money, but instead with shelter and food. When the traditional and standard definition of child labor predominates, the work of girl domestic workers is underestimated.

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18 UNICEF, Measuring Child Labour: Discussion Note, supra note 17.
2. The Underestimation of Girl Domestic Labor

In Bangladesh, although children of both sexes play an essential role in complementing family finances, girls more often than boys are employed in domestic service. Parents often reproduce gender-biased divisions of labor when raising their children and in the context of Bangladesh, this requires the father and male children to work outside of the home, relegating women and girls to domestic duties. This early sexual division of child labor permeates Bangladesh society and is further reinforced by the concept of purdah or female seclusion. The position and role of women and girls remains largely shaped by this tradition which serves to restrict a girl’s participation in non domestic activities. Girls’ domestic work is often underestimated given its hidden and invisible nature and the fact that it is confined to the domestic sphere which is not perceived as producing high economic value.  

One study revealed that the starting age for girl domestic labor can be as young as five.  

Girl domestic workers are often given the negative label kajer meye, Bengali for “working girl,” but not unlike the word “slave.”  

Gender roles and socio-cultural patterns in Bangladesh have thus engendered a short adolescence for girls who must quickly learn the tasks asked of them in the confinement and restriction of their employer’s four walls.

3. The Need for Substantive Rights for Child Domestic Laborers

Of the employers surveyed in the 2006 Baseline Survey on Child Domestic Labor in Bangladesh, 88 percent had responded that they were aware of the fact that employing a child for work is legally forbidden. Thirty-four percent of the employers asked were unaware of the existence of a minimum work age for children. Those who employ a child for domestic work in disregard of the minimum age do so with virtual impunity. 

With the exception of the 1961 Domestic Servants’ Registration Ordinance—which currently is not effectively enforced—Bangladesh lacks a formal mechanism to regulate child domestic labor. The Ordinance requires that individuals who take up employment as domestic servants “report for registration to the Officer-in-Charge of the police station of the area or any other police officer not below the rank of Assistant Sub-Inspector authorized by the Officer-in-Charge in this regard within fifteen days of taking up such employment.” 

This legal instrument, however, does not provide for any rights and

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19 Khair, supra note 2 at 31-33.
20 Khair cites Barkat Khuda, Child Labour in Rural Bangladesh: Some Findings from a Relatively Developed Village in Kanbargi, Ramesh (editor), CHILD LABOUR IN THE INDIAN SUBCONTINENT: DIMENSIONS AND IMPLICATIONS, New Delhi, Sage Publications, 1991, 53-54. See Khair, supra note 2 at 32.
22 BASELINE SURVEY ON CHILD DOMESTIC LABOUR IN BANGLADESH, 57 (2006), Dhaka, International Labour Office.
privileges for domestic workers, nor does it determine the legal obligations and code of conduct of employers of domestic laborers. Further, in the case of child domestic workers, the child is burdened to know of this registration ordinance, the importance of adhering to it and to personally report for registration during the allotted 15 days. This is impractical given the fact that a majority of child domestic laborers in Bangladesh are confined to their employer’s home and work 7 days a week. This ordinance thus prescribes a particularly tall order in most cases which is further compounded by the young age of the children in question. Yet, without completing registration, child domestic workers are devoid of any formal mechanism to enforce their rights.\(^{24}\) In addition to the need for substantive rights for child domestics, a valid and enforceable registration system of domestic workers may serve to better trace and protect the children in question.\(^{25}\) One could argue that since there are no legal consequences for the employer of a child domestic worker a registration system should place the burden on more than just the child in question to include the employer and, or, the child’s legal guardians. The creation of such a system would recall the *Children (Pledging of Labour) Act 1933* which penalizes the parent or guardian in the event of their entering into an agreement to pledge the labor of a child or employing a child whose labor has been pledged.

Beyond the need for legal recognition and protection, child domestic laborers often face a myriad of health and safety concerns.

**B. Health and Safety Implications of Child Domestic Labor**

*Hazardous work by children* is an activity which, “by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”\(^{26}\) As per the 2005 *Baseline Survey for Determining Hazardous Child Labour Sectors in Bangladesh*, this can include work which exposes children to physical, psychological or sexual abuse; work with dangerous machinery, equipment and tools, which involves manual handling or transport of heavy loads; work in an unhealthy environment which may expose children to hazardous substances, agents or processes or to temperatures, noise levels or vibrations damaging to their health, or work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

In the domestic sphere, child domestic laborers are less exposed to dangerous machinery and hazardous substances but domestic work still has at its foundation a harsh reality: the work asked of child domestic laborers—who often engage in the activity clandestinely—is not generally tailored to their age. For this reason alone child domestic labor exceeds the limits of what is acceptable. Indeed, “health problems can be said to arise either when there are activities in which children are expected to perform tasks for which

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\(^{24}\) See Sumaiya Khair’s development of this in Khair, *supra* note 23 at 4.

\(^{25}\) For a discussion of this subject, see Khair, *supra* note 23 at 54.

standards and roles are basically at an adult level, or where occupations are inherently
dangerous, unhealthy or insanitary.”

Performed by young children, child domestic labor is impossible to dissociate from the critical age period in which it is performed, that is to say adolescence and pre-adolescence, a complex time of physical and psycho-social development.

Although not automatic, the link between child domestic labor and exploitative employment inscribes itself in the precarious health and safety prospects of those involved. In 1997, UNICEF determined that child labor is exploitative when it involves children working at an early age and when it exerts excessive physical, social or psychological stress.”

The same can be said of child domestic labor. The forms of maltreatment of child domestic workers can thus range from physical exploitation to sexual exploitation and psychological and emotional exploitation, all of which will be independently considered.

1. Physical Exploitation of Child Domestic Workers

More than 99 percent of the child domestic workers surveyed in the 2006 Baseline Survey on Child Domestic Labour conducted by Dhaka’s International Labour Office worked seven days a week.

Day in and day out, the domestic service required of these children consisted of physically tedious and repetitive work with little time for leisure. To make matters worse, those who willingly or unwillingly enter into domestic labor typically come from poor rural backgrounds with health concerns ranging from malnutrition to a lack of exposure to basic health vaccinations. On the topic of vaccinations, as per one survey, while working domestically only 25.45 percent of the children questioned had received a vaccination while 43.24 percent had no knowledge of whether they had been vaccinated or not.

In terms of care during illness, arguably, employers of child domestic workers are morally obliged to allow for rest and provide for medical attention. The child domestic workers in the 2006 Baseline Survey were asked whether they had ever fallen sick at work. Roughly 68 percent of those asked answered in the affirmative, citing fever, cough, cold, headache, injury or pain and water born diseases. The Survey found that about 34 percent of the child domestic workers surveyed reported to have continued working during illness.

In the 2006 Baseline Survey, the most common forms of abuse were found to be scolding and beating. When the child domestic workers were asked if they have ever experienced

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29 Baseline Survey on Child Domestic Labour in Bangladesh, supra note 22 at 59.
30 Khair, supra note 23 at 57.
sexual violence or any other physical abuse in their employer’s house, 60 percent of those surveyed admitted to having been abused. The forms of child maltreatment indicated are vast; beatings on the slightest pretext and the scalding of child domestic workers with boiling water or brandings with hot iron appear commonplace. Child domestic workers are typically not given a proper place to sleep and must generally make themselves available to their employer at all times. Deprived of educational opportunities at such a formative age, their chances of securing a well-paying job is put into question. The exploitation of child servants crosses into the zone of unacceptability due to this maltreatment. In a more recent survey conducted in 2008, child domestic workers interviewed recounted cases of beating by their employers. However, one study noted that in regards to the children, “their attitude conveyed that they regarded this suffering as a natural outcome of migration that simply had to be endured in order to realize the perceived financial benefits” of their labor.

Girls in particular are victims of sexual exploitation.

2. Sexual Exploitation of Child Domestic Workers

Girls are the principal victims of violence against child domestic workers. Textually speaking, the Women and Children Repression Act 1995 and the Children Act 1974 have provisions against the abuse and sexual exploitation of children. Still, girls are increasingly victims of such abuse, including prostitution and rape. Sexual exploitation is predominant in the lives of girls forcefully employed into domestic servitude. Research conducted in one study highlights the pattern of sexual harassment and exploitation in households where girl domestic laborers are employed:

“[t]he perpetrator may be the male head of the house or his son or perhaps even a visiting male relative or friend. Sometimes [girl domestic laborers] also fall prey to unwanted attentions from other male servants or employees in the house. Left without much choice the children either suffer in silence or run away where possible. These violations may result in pregnancy followed by dismissal. Some face severe punishment and consequent dismissal when, and if, the sexual relationships become public. In such cases, it is not feasible for the violated child to return to her family because of the apparent disgrace she has brought on the employer, her family and herself. She has little choice but to end up in some city slum

31 A study conducted by Save the Children Sweden Denmark found that although the World Health Organization recommends at least 8 hours of sleep a day for adults and more for children, 66% of the surveyed child domestic workers only received 5-6 hours of sleep each day. Furthermore, the study found that the majority of child domestic workers worked extremely long hours each day: 36% of child domestic workers surveyed for the study worked an average of 9-12 hours a day, 30% worked 13-15 hours a day and 16% worked 16-18 hours a day. See SAVE THE CHILDREN SWEDEN DENMARK (SCSD), CHILD DOMESTIC WORKERS – LIVING INSIDE ROOM AND OUTSIDE LAW AND ROLE OF GOVT. AND CIVIL SOCIETIES IN BANGLADESH, 36-37 (2009) [hereinafter SCSD REPORT ON CHILD DOMESTIC WORKERS].

32 Khair, supra note 23 at 95-96.

33 Siddiqui, supra note 3 at 26-27.
where she has limited prospects of making a living outside of prostitution.\textsuperscript{34}

The cyclic description of sexual violence from harassment and unwanted attention to sexual abuse and dismissal when forced sexual relations lead to pregnancy underscores the shame that girl victims of sexual exploitation live with in the cultural context of Bangladesh. Further, in addition to this shame imposed on victims, research on the reality of sexual abuse in the context of child domestic labor is difficult to ascertain as evidence of such maltreatment is rarely disclosed by domestic workers interviewed who have reason to fear that disclosing such sensitive information will lead to them lose their job or face more severe sexual abuse encounters with their employers. Child domestic laborers surveyed more readily describe the psychological and emotional exploitation to which they are subjected.

3. Psychological and Emotional Exploitation of Child Domestic Workers

From employer to employer the status of child domestic workers vacillates from quasi-family member to bonded laborer. Coming from an impoverished rural background and finding themselves engaging in domestic service in a middle or upper class urban household, child domestic laborers often strive for full participation in their employer’s home. One recent study indicates that many domestic workers feel betrayed or mitthé (victims of a strong lie) when they discover their work load and their employer’s poor treatment of them amid the backdrop of sometimes total isolation from their parents and guardians.\textsuperscript{35} The study found their “degree of satisfaction” with domestic labor to be most influenced by the “quality of status and interaction with the members of the household, rather than by the type or difficulty of the work itself;” the greater the amount of humiliation experienced, the greater the sense of psychological exploitation and exclusion.\textsuperscript{36}

Given reports of psychological and emotional abuse suffered by child domestic workers, the mental disposition and emotional state of child domestic laborers is frequently assessed by surveyors. Perhaps surprisingly so, in the ILO’s 2004 assessment of child domestic workers in Bangladesh, 74.9 percent of the child domestic workers surveyed answered that they were happy. Nearly 43 percent stated that their happiness stemmed from the fact that they were well cared for, while 21.2 percent spoke of the good food they received.\textsuperscript{37} In interpreting these rather positive results it is recalled that such an

\textsuperscript{35} See Nanna Baum, supra note 21 at 60.
\textsuperscript{36} Id. at 60. See also SCSD REPORT ON CHILD DOMESTIC WORKERS supra note 31, at 91 (noting that child domestic workers feel isolated and uncomfortable when not treated as a member of the family and when employers scold or physically punish them). Child domestic workers also expressed a desire to be treated the same as their employers’ children and as a part of the family. Id. at 61.
\textsuperscript{37} Khair, supra note 23 at 57.
outcome is perhaps due to the fact that “happiness’ is perceived by these poor children as confined to two meals a day, clothes to put on and a shelter to live under.” Such a definition is not necessarily universal and should be contextualized in the larger picture of emotional abandonment and isolation of child domestic workers in Bangladesh society.

A key impediment to a more universal concept of happiness is alienation from friends and guardians, which constitutes a source of suffering and abandonment among child domestic workers. Indeed, long work hours coupled with minimal social interaction runs the risk of stunting the emotional development of the children involved. The ILO’s 2004 research indicates that 37.8 percent of the child domestic workers surveyed visited their guardians only once a year, 27.5 percent visited twice a year on Eid and 13.9 percent could never visit their guardians. Further, 72.5 percent of the child domestic workers had no friends in the vicinity of their work place. Of those who did (27.5 percent), 84.8 percent were not able to meet them as they wished. Child domestic laborers are thus often alienated from their family and quality age-appropriate social interaction. Insecurity and marginalization are commonplace. One study suggests that this absence of immediate family and of a support network “reinforces the vulnerability of migrant children to abuse.” The study found that domestic workers asserted that if they had a family member or someone they could trust at their place of employment, their level of security would have been higher, which would allow them to “withstand and overcome the resultant distress and trauma.”

Another researcher thus argued that although child domestic workers receive food, clothes and shelter, in most cases, they receive little more and, whereas policy makers take great interest in the question of economic exploitation and seek to ensure improved living and working conditions for child domestic laborers, “even if better conditions could be achieved, a system of abused childhood would remain intact.”

Ultimately, domestic service reinforces a child’s subordination within the social hierarchy and stifles his or her prospects of maturing into a healthy adult. Exploitation also impairs self-esteem. Low status within the employer’s household “explains [a child domestic worker’s] desperate desire to be loved by the employer” despite the fact that the employer is potentially the child’s source of humiliation, torture, harassment and rape. In one study, child domestic laborers often complained that no one understands them and their needs, “indicating that their sorrows go unnoticed and their joys not shared.” Harmful consequences of this are “reinforced by the lack of time-off from work and free time with others and thus time to forget.” The study highlighted the high risk of long-term mental health problems among a population of girl domestic workers and argued that the mental impact of child domestic work on the laborer is “at least as nefarious as the physical impact and the exploitative relationship.” Indeed, victims who have been trafficked

38 Id. at 39.
39 Id. at 57.
40 Id. at 96.
41 Nanna Baum, supra note 21 at 63.
42 Baseline Survey on Child Domestic Labour in Bangladesh, supra note 22 at 53.
43 Nanna Baum, supra note 21 at 63.
44 Id. at 65.
into forced domestic servitude “may display highly sexualized or highly aggressive behavior, depression or disassociation to relieve anxiety” as the exploitation experienced “destroys a girl’s trust in others and makes her vulnerable to further exploitation or becoming an exploiter herself.” Among the girl domestics in the study’s sample, three children ran away from their employer, two girls developed “abnormal” behavior and were scared of being alone, refused to talk, or failed to recognize their parents after their withdrawal from their employer’s household.

Gender difference also means a difference in the consequence and toll of labor. Girls in Bangladesh between the ages of 14 and 17 are more likely to commit and attempt suicide than boys. The 2005 Bangladesh Health and Injury Survey Report on Children reported that more than 2,200 children committed suicide in one year, roughly six per day, of which four were committed by girls. Suicide is thus the biggest killer among this age group and in girls in particular. Although this statistic does not infer that girls in this age group who committed suicide were girl domestic laborers, one can prudently assume that a portion of the females in question intimately knew at one point the exploitative situation of domestic labor. Child domestic labor thus crosses into the zones of unacceptability when child domestic workers are exposed to significant physical, sexual and emotional abuse.

The clandestine nature of child domestic labor in Bangladesh complicates the process of addressing the substantive rights of those involved. An understanding of the larger context of trafficking in children and child migration exposes the phenomenon of child domestic labor in Bangladesh. Historically speaking, most migrants from rural areas in Bangladesh consisted of men and boys. Increasingly, women with children, entire families and girls alone migrate to urban centers in order to find work.

A distinction between trafficking and migration illustrates both their plight and the link between trafficking in children and child domestic labor.

46 Nanna Baum, supra note 21 at 64.
II. The Link Between Trafficking in Children and Child Domestic Labor

*Trafficking* involves the “movement of a person from one location to another for the purpose of slavery, slavery-like practices or exploitation.”\(^{49}\) The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children—which Bangladesh has not ratified—defines *trafficking in persons* 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 to achieve the consent of a person having control over another person, for the purpose of exploitation.”\(^{50}\) The definition in the UN Trafficking Protocol fails to reflect the complex reality which follows the initial process of transfer, namely the initiation, consequences and resulting exploitative conditions.\(^{51}\) Still, to constitute human trafficking, three elements must exist, all of which are present in the definition: the *action* of trafficking (“the recruitment, transportation, transfer, harboring or receipt of persons”), the *means* of trafficking (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”) and the *purpose* of trafficking: exploitation.

As far as child trafficking is concerned, the presence or absence of a child’s consent are irrelevant as a child cannot be deemed to have given his or her consent to trafficking even if one of the aforementioned means are involved. *Child trafficking* occurs when a child has been moved within a country, or across borders, whether by force or not, with the purpose of exploiting the child. The taking of children across borders for the purpose of slavery, slavery-like practices or exploitation is an international crime; the UN Trafficking Protocol requires ratifying States to criminalize such practices.\(^{52}\) International human rights law requires States to exercise due diligence by preventing, prosecuting and punishing traffickers.\(^{53}\) In an extreme form of child domestic labor, children are traded or trafficked into someone else’s home to work in conditions that put their physical and psychological well-being in danger. In such a scenario, the exploitation


\(^{51}\) The inadequacy of the definition of trafficking is discussed in the RAPID ASSESSMENT ON TRAFFICKING IN CHILDREN FOR EXPLOITATIVE EMPLOYMENT IN BANGLADESH, xviii (2002), International Labour Organization.

\(^{52}\) See the “Trafficking Protocol”—the only international legal instrument addressing human trafficking as a crime—formally termed the PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, UN Doc A/45/49 (Vol. 1), 2001, *entered into force* 9 September 2003.

amounts to a worst form of child domestic labor as defined by the ILO that requires total eradication.\(^54\)

An individual does not necessarily have to cross an international border to have been trafficked. As per the UN Trafficking Protocol’s definition, any movement of a person from one location to another for the purpose of exploitation constitutes trafficking. In Bangladesh, trafficking in children within Bangladesh is a larger problem than cross-border trafficking in children.\(^55\) However, Bangla vocabulary does not include the term “trafficking.” The Bangla term chele dhora, or child snatcher, corresponds to the term pachar kari which is used by the development sector to refer to the trafficker.\(^56\) Most people understand the phenomenon of trafficking in children with the concept of missing or “lost” children.

By definition, trafficking in children involves the unacceptable exploitation of children; under international law, child trafficking is a crime involving the movement of children for the purpose of their exploitation. International texts aim to shield children from exploitative situations. In particular, a child’s right to be protected from exploitation is covered in the CRC’s Article 19.\(^57\) The UN Trafficking Protocol affirms that exploitation shall include “the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”\(^58\) Generally speaking, exploitation occurs when an individual is victimized, manipulated, abused and oppressed. The phenomenon can be manifested in several forms, from exploitative employment to sexual exploitation, the prostitution of others, forced labor, the removal of organs or slavery. Labor exploitation includes all types of work that exploits a child, a definition which overlaps with the aforementioned Article 3 of the Convention on the Worst Forms of Child Labor.\(^59\) Because of its hidden nature and the subservient relationships inherent in it, domestic labor has great potential to become exploitative. Indeed, more than twenty years ago, the ILO argued that “youngsters working as household domestic servants may be the most vulnerable and exploited children of all, and the most difficult to protect.”\(^60\)

\(^{54}\) See International Labour Organization, Helping Hands or Shackled Lives? supra note 11 at 1.

\(^{55}\) Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, supra note 51 at xviii.

\(^{56}\) Id. at xviii.

\(^{57}\) This Article states in its first paragraph: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians or any other person who has the care of the child.”


\(^{60}\) This is cited in International Labour Organization, Helping Hands or Shackled Lives? supra note 11 at 6. The reference comes from STILL SO FAR TO GO: CHILD WORKERS IN THE WORLD TODAY, 39 (1989), Geneva, International Labour Organization.
As opposed to trafficking, where the presence or absence of a child’s consent is irrelevant, migration happens at the will of the migrants. The study of child migration in Bangladesh requires one to examine “the position of children who have voluntarily moved either by themselves (typically run away cases) or in the company of friends, neighbors and relatives” most often to flee from acute poverty or natural calamities, and with a disinterest in and perceived disincentive of school attendance. The independent migration of children is thus understood to mean the voluntary migration to urban centers of children who are not accompanied by their parents or guardians. This does not preclude the movement of children in the company of relatives, neighbors or community members outside of the immediate family, as the role of interpersonal networks in the migration process cannot be overemphasized. Sadly, child migrants are exposed to a risk of being trafficked by their family and community members, as relatives, trusted friends and neighbors have been found to be “active recruiting agents” for traffickers of children who prey on those who are most vulnerable. Migration thus turns into trafficking when in the process of migrating for work, child migrants fall prey to recruiting agents who see that they are alone—and thus vulnerable—and, in turn, seek to exploit them. A child’s impulse to migrate contributes to the expansion of trafficking in children.

Separating the two phenomena, one study argued that trafficking opposes development whereas migration is the prerequisite of development. Such an argument must nonetheless establish the fact that given their young age and lack of technical skills, child migrants in Bangladesh are often only able to procure work in the informal labor sector, a fragile reality which renders migrants vulnerable to the risk of abuse as they are unprotected by Bangladeshi labor law in such sectors. Although child migrants are not unaware of the danger of their choice before migrating, “material aspirations frequently override children’s inhibitions and fear of potential risks during migration.” In addition, it has been argued that the failure of government rural policy and the lack of urban management in Bangladesh create and perpetuate the high-risk reality of child migration. This leads to the conclusion that “[u]nless measures are taken to provide child labor migrants with some degree of bargaining power, their rights will forever remain unarticulated, particularly for children engaged in low skilled, marginal, inadequately controlled sectors of the economy.”

Child domestic labor is a high-risk, low-profit situation for children. Trafficking in children, on the other hand, is a low-risk, high-profit venture for traffickers. Is child domestic labor the result of trafficking, or are child domestic laborers at greater risk for

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61 Khair, supra note 2 at 39.
62 The “social insecurity of the children becomes clear when the family and community level risk elements are taken into consideration.” See Table 3.4, “Recruiting Agents,” on p. 26 of the Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, supra note 51 at xviii.
64 Khair, supra note 2 at 100.
65 Id. at 115.
66 Id. at 115.
being trafficked? That is to say, is child domestic labor a “gateway” situation or is it the consequence of trafficking?

Child domestic labor can initially be the outcome of voluntary migration; however, when migrating, child migrants are susceptible to traffickers who exploit their vulnerability by using the same migration routes towards urban centers to prey on children traveling alone and by promising employment, food or shelter. However, voluntary movement along these routes cannot be deemed trafficking unless the child finds his- or herself trapped in an exploitative relationship as a direct consequence of movement through these susceptible routes. Knowing who is migrating voluntarily and who is being taken by force proves difficult. Trafficking in child domestic laborers similarly occurs when children entering into domestic labor through voluntary migration are taken away, not by strangers, but by recruiters who take the form of “trustworthy” community individuals who misuse their authority by inventing opportunities to traffic children for personal gain. Further, child domestic laborers who run away from their employers to flee an extreme exploitative situation or unwanted sexual touch that has resulted in pregnancy are at great risk for being trafficked, the consequences of which can be an even more harsh form of exploitation such as street prostitution or the risk of death from abuse or the sale of body organs. By such, depending on the circumstances, child domestic labor can be both a “gateway” situation and a direct result of trafficking.

To better understand the trafficking process and its link to child domestic labor in Bangladesh, the challenges of measuring trafficking in child domestic workers in Bangladesh is examined, followed by the false incentives and recruitment of child domestics and an assessment of the country’s legal framework of anti-trafficking instruments.

A. The Challenges of Measuring Trafficking in Child Domestic Workers

Given the secretive and clandestine nature of trafficking in children, statistics regarding the trafficking in children in Bangladesh and, more precisely, the direct link between trafficking and child domestic labor are difficult to establish. Research carried out by the ILO demonstrates that the degree of trafficking in children in Bangladesh has increased over the past few decades but “neither the extent nor the real expansion can be verified.”67 Although “authentic statistics about the magnitude of the problem are not available,”68 this does not mean that the problem is not undergoing assessment and examination. Even though trafficking in child domestic workers is a crime, victims do not generally report its occurrence. In addition, a survivor of trafficking who was trafficked at an early age may forget his or her real identity years later. Further, figures released by official government sources, media reports and non governmental

67 Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, supra note 51 at xvii.
68 Id. at 18.
organizations (NGOs) differ. Validations and updates are also challenging as studies do not rigorously cite their sources and a plethora of methodologies are used. Media reports focus solely on reported cases, rarely follow-up on previously-cited cases and are challenging to verify. Local studies which examine small geographic pockets present unverified data through different methodologies, the result of which cannot be generalized at the national Bangladeshi level.

Some statistics are nonetheless available. A study carried out by the Bangladesh Ministries of Home, Social Welfare and Women and Children Affairs on smuggling—referred by a publication of the ILO to as “one of the most frequently cited reports about the magnitude of the child trafficking problem in Bangladesh”—reports that at least 13,220 children have been smuggled out of Bangladesh of which only 4,700 have been rescued. The ILO publication does not cite the year in which the smuggling study was prepared or the years during which the data were collected and seemingly fails to differentiate between smuggling and trafficking. Human trafficking can, nonetheless, be distinguished from the smuggling of migrants. Smuggling is always transnational whereas trafficking may not be. The smuggling of migrants involves their consent whereas trafficking victims either have never consented to being trafficked or, if they have, rendered their consent following the coercive, abusive or deceptive means of the traffickers. Smuggling ends when the migrants have arrived at their destination whereas trafficking includes the ongoing exploitation of the victim. Finally, in smuggling, profits are made from the transportation of the migrant whereas in trafficking, profits stem from the exploitation of the victim.

Statistics provided from the American Center and Action Against Trafficking and Sexual Exploitation of Children (ATSEC) focus instead on the question of trafficking. The Center estimated in 2003 that 20,000 Bangladeshi women and children are trafficked out of the country to major cities in India, Pakistan and the Middle East every year. The Center further suggested that in the last thirty years over one million women and children were trafficked out of Bangladesh and forced to become prostitutes, camel jockeys, beggars and domestic helpers. These statistics provide a general framework from which to understand the question of cross-border trafficking of Bangladeshi women and children but do not shed light on the specific question of trafficking in child domestic workers within Bangladesh’s borders.

The problem of understanding the link between child domestic labor in Bangladesh and trafficking in children is compounded by the low rate of birth registration, as children

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69 The Rapid Assessment makes this unsupported claim. See Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, supra note 51 at 18.
70 Our emphasis. See Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, supra note 51 at 18.
71 See, for example, “Human Trafficking: Questions and Answers” published by the UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING at http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_BACKGROUND_BRIEFING_NOTE_-_final.pdf (last visited on 3 December 2010).
72 It is not known how ATSEC determined this estimation. These statistics are cited in Rahman, supra note 45 at 10.
without legal birth documents have no proof that they are underage. This is crucial in legal proceedings as the Children’s Act 1974 and Children’s Rules 1976 require a court to have regard for the age and character of a child and other related factors before passing any order under the Act. However, according to UNICEF, as of 2007, “[a]lthough more than 5 million children under the age of five have had their birth registered, this accounts for only 7.5 percent of this age group.” The Government of Bangladesh has responded and recently made birth registration mandatory through the 2004 Birth and Death Registration Act to access certain public services such as education, health care, immunization, passport services and to exercise the right to vote. Still, the government and NGOs must continue to endeavor to create awareness of this requirement, particularly in rural areas. One could argue that given the statistics provided by UNICEF in 2007—three years after the entry into force of the Act—much work remains to be done.

B. False Incentives and Recruitment of Child Domestic Workers

Child domestic labor in Bangladesh has become a complex reality due to the various recruitment mechanisms used. There are differing views on how the employer-child domestic relationship plays out. Some studies place emphasis on the recruitment of a child domestic following the child’s voluntary migration to an urban center. In such a scenario, the child migrant either seeks domestic employment in a third party urban home or, while migrating, falls prey to scrupulous traffickers and is exploited through forced domestic labor. Other studies highlight a more “semi-feudal” arrangement whereby an urban employer and member of a rich rural family returns to his or her home village in search of laborers. In such a scenario, parents in poor rural areas offer their daughter(s) to establish a close relationship with a rich family in anticipation that “[w]ith the child used as a bargaining chip, the rich and powerful family can be approached in times of crisis for financial or material support.”

There is considerable social pressure on girls and their families to pay dowry. This pressure increases girls’ vulnerability to both child domestic labor and trafficking as traffickers (including employers of domestic help) recruit girls with the promise of marriage. Further, parents fear that dowry demands will increase if their daughter is deemed too old. Dowry and dowry-related violence such as acid attacks are prevalent even though dowry is officially prohibited by law. Special, speedier courts have recently been introduced to sanction acid attacks which currently carry the death penalty. See “Women and Girls in Bangladesh” prepared by UNICEF at http://www.unicef.org/bangladesh/Women_Girls.pdf accessed on 30 September 2010.

73 See BANGLADESH SHISHU ADHIKAR FORUM, STATE OF CHILD RIGHTS IN BANGLADESH 2007 (2008), 33, Dhaka, Bersh.
74 See id. at 12. The lack of birth registration indirectly encourages early marriage through the overreporting of a girl’s age. Indeed, due to social pressure and the price of dowries, parents seek a groom for their girl as soon as she turns fourteen and a girl’s age is often manipulated so she appears older. Early marriage inevitably leads to early pregnancy which, given malnutrition and lack of effective hygiene, presents the danger of high-risk pregnancies and low birth weight of future generations. The nature of this violence is thus cyclic. See id. at 18.
75 Nanna Baum, The Supply of Girl Domestic: a Matter of Semi-Feudal Relations, in THE WORST FORMS OF CHILD LABOR IN ASIA: MAIN FINDINGS FROM BANGLADESH AND NEPAL, International Research on Working Children 69 (2010). Such support might include a parcel of land for cultivation or authorization to hold on to a larger amount of grain during harvest or even a marriage dowry. There is considerable social pressure on girls and their families to pay dowry. This pressure increases girls’ vulnerability to both child domestic labor and trafficking as traffickers (including employers of domestic help) recruit girls with the promise of marriage. Further, parents fear that dowry demands will increase if their daughter is deemed too old. Dowry and dowry-related violence such as acid attacks are prevalent even though dowry is officially prohibited by law. Special, speedier courts have recently been introduced to sanction acid attacks which currently carry the death penalty. See “Women and Girls in Bangladesh” prepared by UNICEF at http://www.unicef.org/bangladesh/Women_Girls.pdf accessed on 30 September 2010.
worthy of trust, however, in some cases, the employer fraudulently represents his or her intentions. In such a recruitment process, “capitalist labour exploitation is hidden behind the mask of lingering semi-feudal relations.” The child’s future employer feigns a desire to provide a protective parental relationship to the girl in question in order to appeal to her parents, but will exercise exploitative power over her once she is found within the four walls of the urban home. In the eyes of the unwitting parents, this arrangement, a veritable trap, is deemed a valuable insurance policy taken out proactively to ward off future crises, yet another illusion. Indeed, some parents with little or no income may believe that their child may have more opportunities as a child domestic worker and that a rich family will better provide for their child. Often a small amount of money is given to the parents out of empathy by the employer and the child’s work is regarded as a “favour returned, rather than labour that has to be reimbursed.”

In some cases, child domestic labor can and does help meet the basic needs of the child domestic worker, in terms of food and shelter, or the financial needs of the child domestic worker’s family. However, even if voluntary and with the consent of the child domestic worker’s parents, these child domestics can fall prey to sinister actors in a complex trafficking chain.

Bangladesh’s criminal trafficking network is in reality a complex chain of actors many of which are, ironically, in a position to protect and rescue trafficked children. Traditionally, the trafficking chain is described as a four tier structure composed of trafficking organizers, recruiting agents, transporters and final abusers. When a child migrant leaves home to seek domestic employment in an urban center, he or she can fall prey to a trafficker and enter into forced domestic labor. In such a case, transportation workers, travel agencies, passport agencies, hotel management and corrupt police typically deliver the trafficked child victim to the final destination for exploitative employment. In the semi-feudal arrangement whereby an urban employer returns to his or her village in search of laborers, the employer acts as the organizer, recruiter, transporter and final abuser. In addition, a child can be trafficked from the initial place of employment, such as a household, to another destination for the purpose of exploitation. In the girl trafficking sector, for example, final abusers seek to earn high profit from exploitation by engaging girls as household workers, low paid workers or prostitutes.

The complex chain of actors engage in highly profitable behavior but the risks of criminal prosecution or punishment are minimized due to high levels of corruption among law

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76 Id. at 70. The study argues that contrary to popular belief, “poverty-stricken families do not send their daughters to Dhaka to reduce their expenditures or earn an income, neither for the food and shelter provided” as parents “generally do not want to maintain a formal labour relationship based on a tough economic deal with the employer.” With an understanding of their “weak bargaining power,” they instead are motivated by the desire to create a cordial relationship that is not based on hard-to-meet demands regarding salaries and quality of life issues.

77 Id. at 70.

78 Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, supra note 51 at 24.

79 Id. at 41.
enforcement agents who turn their backs to trafficking.\textsuperscript{80} In addition, traffickers often convince their victims that anti-trafficking actors such as NGOs are not on their side and will “destroy their scope of migration.”\textsuperscript{81} This recalls the paradoxical psychological phenomenon known as the \textit{Stockholm syndrome}. Despite a victim’s perception that traffickers are on his or her side, it still must be highlighted that at the core of any definition of child trafficking is the recognition that trafficking in children is never consensual. This allows trafficking in children to be distinguished from child migration which is voluntary.

\textbf{C. Anti-Trafficking Instruments}

Bangladesh’s 2000 \textit{Suppression of Violence Against Women and Children Act}\textsuperscript{82} addresses trafficking in women and children in its Sections V and VI. Section V solely focuses on trafficking in women, whereas Section VI deals with trafficking in children. Pursuant to Section VI, Paragraph 1 of its unofficial English translation,

[w]hoever brings from abroad, sends or traffics abroad or sells or otherwise keeps a child in his or her possession, care or custody with the intention of using the child for any unlawful or immoral purpose shall be punishable with death sentence or life imprisonment and shall also be liable for fine.\textsuperscript{83}

The Act provides for harsh punitive measures against individuals found to be involved in trafficking children. The law further provides for special Women and Children Anti-Repression Tribunals to try cases in an expeditious manner. However, during the 2001 Strategic Planning Workshop of the Bangladesh National Women Lawyers Association (BNWLA), some attendees suggested that the punishment provided for in the Act was too harsh, the risk being that a judge would not feel comfortable punishing a suspect with such a sentence.\textsuperscript{84} Indeed, at that point, just one year after the passing of the Act, not one person had been found guilty of this crime.

On the delicate subject of the implementation of this legal provision, one potential loophole can be found in the corruption of law enforcement officials in the country. BNWLA conducted a “Survey in the Area of Child and Women Trafficking” in 1997 and found that law enforcement officials—who are supposed to enforce anti-trafficking laws—are in fact actors in Bangladesh’s criminal trafficking network through the acceptance of bribes and by deliberately ignoring such activities. In addition, in many cases, law enforcement officials transformed trafficking charges into passport violation charges and purposely misplaced important evidence. BNWLA further claims that police

\textsuperscript{80} \textit{Id.} at xx.
\textsuperscript{81} \textit{Id.} at 87.
\textsuperscript{82} This is also sometimes translated in English as the \textit{Women and Child Repression Prevention Act 2000}.
\textsuperscript{83} Unofficial English translation published in \textit{Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh}, \textit{supra} note 51, at 94.
\textsuperscript{84} See \textit{id.} at 93.
officers assist in the escape of individuals from the prisons in which they are held and, more generally, refuse to pursue investigations with the vigor their function grants them.\textsuperscript{85} Yet another stumbling block in the implementation of this legal provision is the fact that the legal prosecution of accused traffickers is made difficult because witnesses are hard to find and families of trafficked children often withdraw their complaint under pressure from these criminal networks.

Finally, as far as regional anti-trafficking instruments are concerned, the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution was signed by SAARC Member States, including Bangladesh, in 2002. As its title suggests, the Convention’s scope is restricted to trafficking as it relates to prostitution, which has led NGOs to propose amending the text. NGOs seek to facilitate dialogue with the Government of Bangladesh to further the formal recognition of the problem of child trafficking. They argue for the Government to play a more proactive role and claim that Bangladesh’s legal framework fails to protect child trafficking victims and instead “victimizes them and makes them criminals”\textsuperscript{86} even while failing to protect them. This is suggested as victims are sometimes charged with prostitution or immoral behavior and incarcerated. Once in jail, a large number of trafficked children do not have access to legal assistance and struggle with paying bail. Shame leads many girls to remain silent about their exploitative experience, which, in turn, means that they fail to warn others. NGOs argue that Bangladesh’s legal framework hampers the process of rescue, repatriation, rehabilitation and reintegration.

\section*{III. Areas Warranting Further Attention}

Bangladesh has recently made strides to address the question of child labor. Through a public interest litigation writ petition on children’s rights and health hazards, a 6 September 2010 ruling of the Bangladesh Supreme Court High Court Division asked the Labour and Employment Ministry to stop within one year the engagement of children in Bidi factories.\textsuperscript{87} Work, however, remains to be done to protect children from violence and exploitation particularly in the less visible and more informal sector that is child

\textsuperscript{85} See id. at 93-94. It appears that the Survey has been incorporated into a book published by the Bangladesh National Women Lawyers Association in 2002 entitled \textit{Nari O Shishu Nirjaton Domom Ain, 2000 O Er Proyog O Mullayon} which discusses the implementation and evolution of the \textit{Women and Child Repression Prevention Act}.

\textsuperscript{86} Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, \textit{supra} note 51 at 100.

domestic labor. Despite being a major social issue, the various implications of the phenomenon of child domestic labor in Bangladesh warrant further attention.88

Beyond anti-corruption measures, legal reform and the advancement of the rule of law are possible starting points to address the question of child domestic labor. Indeed, the rights of child domestic workers in Bangladesh are not legally protected and are far from complying with international legal standards. Most child domestic workers are deprived of basic human rights. They cannot claim minimum standard wages, a weekly day off or other prescribed holidays or other rights as formal workers can. In addition, they suffer from the exploitative situation in which they work and are at risk of falling victim to the numerous unscrupulous individuals in Bangladesh’s criminal trafficking network. A legal regulation of child domestic labor, should one be enacted, could approach the largely unaddressed mental health issues of child domestic workers by tackling in particular the psychological exploitation of child domestic workers by recruiters and employers. The recruiters who expose child domestic workers to this multi-faceted exploitation do so with much ease. For this reason, it begs to question whether campaigns to warn parents about trafficking are ineffective and could instead include “warnings against the misuse of social hierarchies and abuse of power, despite this being a tall order, since it implies a direct confrontation with embedded class relations” in rural areas.89 As per the employer-employee relationship, whereas existing policies focus on more economic questions than quality of life issues, it has been argued that “[i]mplementing a minimum working age and a standard for working conditions, which may be effective in other fields of child labour, are insufficient to ensure enhanced well-being of (child) domestics in Bangladesh.”90

IV. Conclusion

Child domestic labor—domestic work carried out in an employer’s home by children below the legal working age—is often excluded from traditional definitions of child labor. This, in turn, serves to underestimate the magnitude of girl domestic labor, which in Bangladesh is further reinforced by the concept of purdah. Girls’ domestic work, given its hidden and invisible nature, is perceived as producing low economic value. This further complicates the process of addressing the substantive rights of those involved. In addition, trafficking in child domestic workers exposes young children to

88 One study questioned which strategy should be adopted and surveyed the range of options one could propose, including: whether one should concentrate more on advocacy for new legislation and wide dissemination of the existing pro-children laws; whether there should be a focus on identifying and scrapping anti-children laws, particularly as these are presently interpreted and implemented; whether progressive interpretation of existing laws and constitutional provisions through judicial activism and public interest litigation should take precedence over new litigation; whether the priority should be to change procedural laws first, so that delay and costs of litigation may be minimized; and whether instead of enacting “special laws” (such as the Suppression of the Violence Against Women and Children Act 2000), emphasis should be placed on amending the “general laws” (i.e. the Penal Code, the Evidence Act, the Criminal Procedure Code, etc.). See Siddiqui, supra note 3 at 30.

89 Nanna Baum, supra note 75 at 67.

90 Nanna Baum, supra note 21 at 64.
great risk and should be distinguished from voluntary migration. Still, child migrants are susceptible to being trafficked by a ruthless network of individuals who receive protection from law enforcement personnel and others who are, ironically, well placed to protect victims. Depending on the circumstances, child domestic labor can thus be both a “gateway” situation and a consequence of trafficking. Authentic statistics which link child domestic labor and trafficking in children cannot, however, be verified. As per the health and safety implications of child domestic labor, current research suggests that in addition to the physical and sexual exploitation of child domestic workers, the psychological and emotional exploitation of child domestic workers remains largely unaddressed, resulting in an abused childhood. Areas warranting further attention in addressing the question of the exploitation of child domestic labor in Bangladesh include the promulgation of a law which exclusively addresses the egregious harms faced by child domestic laborers, particularly from a quality of life viewpoint, as opposed to a purely economic perspective.