The Relationship between Domestic Child Labour and ILO Conventions Nos. 138 and 182

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Child Domestic Labour and C138 & C182

Domestic work or family chores performed by children include an extremely wide range of situations under varying conditions. Some basic principles should be kept in mind, when looking at individual cases and deciding how to address them.

**Is domestic work covered?**

Yes, where it falls within any of the categories covered under Art.3.

It seems that C182 provides for no possibilities of exceptions or exclusions. What about children engaged in household work as a part of normal family obligations?

Some earlier ILO Conventions concerning the minimum age for non-industrial employment explicitly provided that domestic work in the family done by members of the family was excluded from their application.

It would not seem that C182, or any other ILO Convention concerning minimum age, aims at preventing parents from having their children participate in the family chores, making beds, setting the table, helping in the garden and so on.

However, care should be taken so as not to allow an over-extended notion of the term “family” or a disguised “adoption” to camouflage a situation which is tantamount to the worst forms of child labour in domestic work.

Any practice such as debt bondage, offering of a child for illicit activities, and use of a child in hazardous types of work as determined in accordance with Article 4 of C182, even when occurring within a family setting, should be considered as the worst forms of child labour and prohibited as such.

**What is not child domestic labour?**

First of all, domestic work done by children within their own family is in principle outside the scope of ILO standards.

It is usually regarded as part of children’s normal development and learning household skills, therefore something positive, when parents make their children participate in the family chores, e.g. making beds, setting the table, helping in the garden. Teenagers’ baby-sitting or cutting the grass of a neighbour for pocket money outside school hours is not our concern here, either.

The fact that such work is not part of child labour that ILO/IPEC aims to eliminate should not obscure our concern about slavery-like situations or other worst forms of child labour within the context of child domestic labour – which is at the other extreme of the spectrum.

**Is children’s domestic work a worst form of child labour?**

No, not as such*, unlike “child trafficking” which is explicitly defined in C182 as one of the worst forms, but...
Some situations of children engaged in domestic work would obviously fall within one of the categories of worst forms: e.g. the case for trafficked children, or situations of forced labour or practices similar to slavery.

In addition, children may be engaged in hazardous work as domestic employees. The recommended elements for determining hazardous work (Recommendation No190, Para.3) also include those relevant to domestic child labour: e.g. work which exposes children to physical, psychological or sexual abuse, work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

*Note: Concerns over child domestic labour were frequently expressed during the elaboration of C182, e.g. during Conference discussions, as shown in the excerpt from the Child Labour Committee’s report in ANNEX, and also in several other statements during the general discussion which is not reproduced there. However, there is no explicit reference to domestic work by children in the Convention. In 1998, an amendment (regarding definition of WFCL in Article 3) was withdrawn with a clear understanding that the intended types of work were covered already by “practices similar to slavery”. In 1999, a reference to “hidden work situations” in Article 7 (2) did not materialize. These debates may be showing the difficulty of defining what exactly is to be prohibited and eliminated as “child domestic labour”.

In the end, it is R190 that draws special attention to “the problem of hidden work situations, in which girls are at special risk (Para.2 (c)(iii))”. Although this is not an explicit reference to domestic labour, it could be argued that child domestic labour is an example of such situation.

What is the minimum age for domestic work under C138?

There is no internationally defined minimum age (C138 is very flexible); it is to be decided nationally, taking account of C138/182.

While domestic work by children in their own family is explicitly excluded from some earlier ILO Conventions concerning the minimum age (for non-industrial employment), this means, by contrast, domestic work by children in someone else’s household should in principle be regulated like other “employment” including the minimum age.

However, under C138, “domestic service” has been often quoted as an example of flexibility to exclude limited categories from the general minimum age (Article 4 – option open for both developing and developed countries, because of special and substantial problems of application). Committee of Experts’ General Survey on C138 (ILC 1981, Report III, Part 4B, paragraphs 75 and 88) refers to many examples of such exclusion in national legislation. However, dangerous or harmful work should not be excluded in the above manner (C138, Article 4(3)). Denmark is cited as conforming to this in the above Survey.

One example of improvement: Sweden first excluded domestic work from the scope of application of C138 and later, by modifying national law, extended the minimum age to cover also domestic work in employer’s household – this was noted by the Committee of Experts with satisfaction (see observation by the CEACR in 1996 in ANNEX to this note).

According to C138, the minimum age for light work can be set at 12 or 13 years and non-hazardous work can be performed by children above the national minimum age
for admission into employment, which can be set at 14, 15 or 16 years. Hazardous work (and other worst forms) must not be allowed for anyone under-18.

**So what should be the legal framework for child domestic labour?**

In short, make sure that no worst forms of child labour occur in domestic work, and consider applying minimum age in order to draw a line between acceptable and unacceptable.

First of all, the governments should make sure that national provisions concerning trafficking, forced labour or other worst forms of child labour do not have a loophole regarding domestic work, and ensure they are effectively applied. All girls and boys under-18 must be protected from worst forms. C182 does not allow exception even when the child is engaged in domestic employment. When determining hazardous work under C138/182 nationally after tripartite consultation, domestic work should not be overlooked.

It may perhaps be more fruitful to discuss domestic employment not as a whole but according to certain types – like live-in – or in certain abusive conditions.

**One point for attention!**

As above, “child domestic labour” is usually understood as domestic work done by children in the employer’s household and not in their own family. Care should nevertheless be taken not to allow over-extended “family” or disguised “adoptions” hiding WFCL behind closed doors.

**What is the strategy for direct action by IPEC, based on the legal framework?**

The strategy focuses on, firstly, to design rapid response removal strategies for all children under 18 years of age found in exploitative or hazardous CDL (Children under the minimum working age must be given a priority focus. For adolescents who have reached that age, the following second strategy of improving conditions may be an option instead of removing the child) and, secondly, to develop protection measures around adolescents in CDL, whose conditions can be improved and thus can be changed from hazardous to non-hazardous over a reasonably short time.
"Domestic work.

Further to its previous comments, the Committee notes with satisfaction that as a result of the amendment to the Work Environment Act (1977:1160) by the Act of 30 November 1995 (SFS 1995:1239), work done by employees under the age of 18 in the employer's household is covered, since 1 January 1996, by the Work Environment Act, which fixes among other things the minimum age for admission to employment. It notes that as a consequence the exclusion of domestic work in the employer's household from the application of the Convention, which the Government notified in its first report in accordance with Article 4(2) of the Convention, is no longer necessary."
Discussions at ILC that led to C182 adoption (excerpts)

Conference 1998 (Report of the Committee on Child Labour)
Point 9, Clause (a) [– later became Art 3(a) of C182]

130. The Worker members submitted an amendment to include "all types of work or activities where the child is delivered to and wholly dependent on the employer". The intention was to focus more explicitly on the hidden nature of some of the worst forms of child labour, such as children in domestic service. The Government member of Italy approved the amendment, pointing out that Italy considered it important to pay special attention to activities or work carried out in situations where the child could be mistreated or humiliated, and to keep in mind the effects of domestic work, including on girl children. The Government member of Croatia stated that she would have liked to support the amendment if the definition had related to types of work and not to conditions. The Employer members opposed the amendment, as did the Government members of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. They argued that while domestic service was an important category of child labour to be included, the suggested wording was not specific enough. Moreover, the phrase "practices similar to slavery", covered the forms of child labour that the amendment was intended to cover. With the clear understanding and agreement by the Committee that this was the interpretation, the Worker members withdrew the amendment. Clause (a) was adopted without change.

Conference 1999 (Report of the Committee on Child Labour)
Article 7, paragraph 2(c)

221. The Worker members withdrew an amendment to insert the words "including those in hidden work situations" after the words "special risk". The Employer members also withdrew an amendment to delete the words "and reach out to", as did the Government member of Ethiopia on behalf of the members of the African Group on the Committee, to replace the words "reach out to" with the words "have a direct contact with".

222. The Government member of the Netherlands was disappointed that the Worker members had withdrawn the amendment to include a reference to children in "hidden work situations" as she was about to support it. There was a particular concern for children in these situations, such as child domestic workers. The Government member of Norway agreed. The Government members of Austria, Germany and Sweden also expressed their support.

223. The Employer members and the Government member of India were glad that the amendment had been withdrawn; the Government member of India added that, whilst they appreciated that there was a great deal of concern regarding domestic work, there was insufficient clarity or information regarding what was meant by "hidden work" to be able to address it. Moreover, this type of work was to be addressed in Paragraph 3(e) of the Recommendation, so it was unnecessary to mention it here given that it was unclear where hidden work situations started and ended.
224. The Government member of the Netherlands refuted the claim that little was known about the nature of hidden work, and cited some examples of publications on domestic work.

225. The Government member of Hungary reintroduced the Worker members' amendment to add the words "including those in hidden work situations" after the words "special risk" with support from the Government member of the Netherlands. The Employer members argued that the situation with the amendment was problematic because "hidden work" was not clearly defined and they believed that it was covered by Article 7, paragraphs 2(c) and (d). Furthermore, it could lead to a longer list to include other difficult situations. The Government member of Guatemala, supported by the Government member of Cuba, stressed the importance of addressing hidden work situations but felt that the issue was adequately addressed in Paragraph 3 of the proposed Recommendation. The Government member of Lebanon opposed the amendment because she believed it was difficult to identify hidden work situations and a long list might be needed to identify groups of children "at special risk". She also questioned who the authority would be to reach out to these hidden work situations. The Government member of Ethiopia, speaking on behalf of the members of the African Group on the Committee, stated that despite his strong feeling about the problem of hidden work, which referred mainly to domestic work, this amendment added ambiguity to the text and therefore the members of the African Group on the Committee opposed it.

226. The Government member of Pakistan, while recognizing the concern expressed by some in the Committee, felt however that "hidden work" could not be included in a legal document without a clear definition. The Government member of Egypt also opposed the amendment.

227. The Government member of the Netherlands asked for confirmation that the Committee agreed that hidden work situations were covered by Article 7, paragraphs 2(c) and (d). The Government member of India did not agree with this statement. The Government member of Hungary stated that hidden work situations, including domestic work, were covered by Article 7, paragraphs 2(c) and (d) and he therefore withdrew the amendment. The Government member of Egypt disagreed with his statement.

228. The Government member of the Netherlands, speaking on behalf of the Government members of Austria, Canada, Hungary, Sweden, Turkey, United Kingdom and United States withdrew an amendment to add the words "and children from vulnerable groups" after the words "special risk", because it was adequately covered by Article 7, paragraph 2(c). The Government member of Cuba stated that "children at special risk" included street children, minority children, children with disabilities and children deprived of their liberty. In addition, the Government member of Ethiopia, speaking on behalf of the members of the African Group on the Committee, withdrew an amendment to add the words "and their families" after the words "special risk".

229. Article 7, paragraph 2(c), was adopted without change.
Some governments’ statements during the adoption of the report

394. (Indian Government’s statement– excerpt) We have heard with attention issues which have been raised by some delegations related to “hidden work” or “domestic work”. These are relatively new concepts which are yet to be clearly understood and defined within the tripartite structures of the ILO. They should not be confused with the worst forms of child labour. We also believe that the situations of “special risk” referred to in the draft Convention and Recommendation should not be seen as incorporating the undefined concepts of “hidden” or “domestic work”…

402. The Government member of the United Kingdom also expressed concern about the issue of child domestic workers but she recognized that there were enormous difficulties in defining what was meant by "hidden work". She believed that there were now provisions within the text of the Convention which would offer protection to children exploited in domestic work, and believed that implementation of the Convention would improve the possibilities for all countries to bring "hidden work" into the light and to fight against it in its worst forms. She also welcomed the strengthened references in the text to the crucial importance of education in the elimination of harmful child labour…

419. The Government member of Egypt referred to his previous concluding intervention and the need for efforts at all levels aimed at the elimination of all forms of child labour through the eradication of poverty. He stated that this Convention did not include domestic work, nor did it cover the issue of denial of access to education. He strongly supported the new Convention and believed that it complemented Convention No. 138. Its ratification should not weaken the resolve of member States to ratify the minimum age Convention. He reaffirmed Egypt’s commitment to ban the worst forms of child labour.

[The full reports of the Committee on Child Labour in 1998 and 1999 can be found on the ILO Internet page > International Labour Conference > 86th/87th sessions (June 1998 and 1999, respectively) > Reports of Conference Committees]