



Child Domestic Labour 2017

PREAMBLE

SPARC as an organization strives to promote and protect the rights of children and seeks to empower them using international standards as a yardstick through advocacy supported by research, awareness raising, service delivery and human and institutional development. Established in 1992, SPARC has been instrumental in lobbying for the cause of child rights and mainstreaming the concept in national discourse and debate. It has been creating awareness about the UNCRC and working for the implementation of its provisions. Along with action at the macro level SPARC believes holistic change can only be brought about by engaging with stakeholders, particularly children and youth; this has been activated in communities through a combination of advocacy and awareness raising measures. It has given leadership on issues such as education and violence against children, especially corporal punishment, child labor and juvenile justice. It has also focused on the needs of and issues affecting the Girl Child, such as early/forced marriage, harmful traditions, access to education, and discrimination. Given this, the issue of Child Domestic Labour falls pertinently within the domain of its mandate with particular regard to the protection and rehabilitation of these children.

With particular regard to Child Labour, SPARC has continued to ask successive governments to revise laws in order to set a legal age limit for employment in Pakistan. In addition to this, a number of widely disseminated researches focus on the core issue of exploitation of child laborers. Every year, SPARC marks the 'World Day against Child Labor', is a member of Coalition against Child Labor (CACL) and a supporter of Global March against Child Labor.

Time and again, the issue of widely rampant debt bondage in Sindh and Punjab has been addressed by SPARC. Extreme poverty, lack of access to formal credit and alternative means of livelihood, makes working in a kiln the only viable option for many where wives and children are included in the bargain. SPARC has reached out to these marginalized communities through CNIC, vote and birth registrations; education of children in bondage, registration of brick kilns and formation of trade unions. SPARC had established a center for children of liberated peasants in Sikandarabad Hari Camp in Jamshoro Sindh. It continues to operate centers for street children in Rawalpindi, Islamabad, Multan, Hyderabad and Peshawar which provide NFE, skills training and psychosocial support to the most vulnerable groups of children, including those engaged in child labour.

BACKGROUND

INTRODUCTION

Child Labour continues to be a global phenomenon with an estimated 150 million children engaged in paid and unpaid forms of work¹. According to ILO 17.2 million children are in paid or unpaid domestic work in the home of a third party or employer of these, 11.5 million are in child labour, of which 21.4% of all child domestic workers². Predictably girls outnumber boys as domestic workers, as they comprise 67.1% of those employed as domestic help³. It is noted that these sex differentials increase with age. Existing research suggests that, across the globe, more girls under 16 are employed in domestic service than in any other form of work⁴. This feminization of child domestic labour is rooted in social issues like gender and ethnic discrimination, domestic violence, displacement, rural-urban migration and social exclusion.

Media reports reveal that there are an estimated 8.5 million domestic labourers out of which majority are women and young girls. “Hidden Servitude: A Study on Child Domestic Labour in Pakistan”⁵, a study conducted in 2011 reported that a majority of Child Domestic Workers (CDWs) were children between the ages of 10-14 years of whom a majority were girls. Lacking in access to education these girls worked for up to 15 hours a day at low pay scales. The nature of work comprised a range of activities including cooking, washing dishes, cleaning the house, ironing and babysitting. Living on the premises they were deprived of meeting their families, were given leftover food and made to sleep in shared quarters or on the floor or the terrace. In addition, these girls are particularly susceptible to risk of gender based violence and are frequently reported as being sexually and physically abused. These child domestic labourers are often victims of forced and involuntary labour/ bonded labour as they are paid less than the minimum wages of 97 USD per month⁶.

The main cause for this prevalent phenomenon is poverty and lack of employment opportunities for adults. Parents belonging to lower income and socially marginalized groups prefer to send their children to work as domestic labour, rather than going through the burden of providing for their maintenance and education. The additional income is also a welcome prospect. Moreover, these children are considered desirable as domestic help, due to their low wages and submissive silence over long working hours and violation of rights. Often times the brutalities inflicted on these children include injuries, burning, cutting long hair, torture and sexual abuse. This voiceless group of workers often times suffers brutally at the hands of their employers who institute a master-slave relationship to maintain their authority and keep these underage workers “in their place”. Child Domestic Labour in this form thus constitutes the most abused, exploited, isolated and invisible form of work in the country.

According to national and international conventions guiding employment of children in Pakistan, children between the ages of 14 to 18 are allowed to work in both formal and informal sectors, provided the conditions are not hazardous. Due to the circumstances and conditions of the adolescent employed in the domestic labour market, this Position Paper seeks protection of the legal child and adolescent employable girl / boy.

1. <https://data.unicef.org/topic/child-protection/child-labour/#>

2. <http://ilo.org/ipecc/areas/Childdomesticlabour/lang--en/index.htm>

3. Ibid.

4. https://www.unicef.org/violencestudy/pdf/2004_domestic_Helpinghands_en.pdf

5. <http://www.isj.org.pk/wp-content/uploads/2013/06/The-unending-plight-of-child-domestic-workers-in-Pakistan.pdf>

6. http://www.globalmarch.org/sites/default/files/NeedGapAnalysis-PAKISTAN_0.pdf

THE NARRATIVE

The prominent “Tayyaba Case”, of a 10 year old abused maid is a recent and vivid depiction of this systemic problem. After being recovered and medically examined the reports revealed injuries included burn marks. Tayyaba reportedly said that she was often physically abused by her employer's wife especially if things were not found in their place and her swollen face and bruises were the result of falling down the stairs. Moreover she was unaware of her salary and any that was earned was sent to her parents⁷.

Another recent case that surfaced involved more of the same as an 11 year old girl was recovered from a house in E-11, Islamabad. Her employers were reported to have subjected her to illegal confinement and torture. The victim said that the family burnt both her shoulders and left arm with a heated knife, allegedly for improper cleaning. She was beaten with a belt, slapped and caned while being strangled⁸.

In June 2016 it was reported that twelve-year-old Tehmina was pushed off a balcony by her employer for demanding her salary after not being paid for several months. She suffered spinal cord injuries and was paralyzed. Her father was given some compensation but in return was asked to drop all charges against the employers. Within 3-4 months, neglect, poverty and her injuries claimed Tehmina's life⁹.

In 2010, 15 year old Yasmin, who had been working as maid at a house in Okara, for five years was allegedly subjected to severe torture over petty issues and was later set on fire by the couple she worked for. Transferred to the hospital she succumbed to her burns and passed away¹⁰.

Cases of similar torture are recorded for boys employed in domestic service. In August, Taqi Usman, a 12-year-old domestic servant from Chiniot was allegedly clubbed to death in Lahore by his employer for not feeding the house pet while fourteen-year-old Ahsan Haider was killed on suspicion of stealing the sound system from the music academy where he was employed¹¹.

In Multan in June 2013, 10 year-old Jameel was allegedly beaten by a piece of broken jug for having lost his grip and breaking it. The beating allegedly caused critical injuries to Jameel who soon perished as a result¹².

In Karachi, 14 year old Zafar was found chained, beaten and starved in his employer's flat. He had been subjected to this torture for having stolen jewelry, a crime he admitted to and while claiming that he had returned it. He was not kept from seeing his parents and had his salary withheld for the first five months of employment¹³.

These among countless other reported and unreported instances highlight the endemic nature of this trade, whereby these socially and economically marginalized children are exploited.

7. <https://www.thenews.com.pk/print/175677-Abused-child-domestic-worker-recovered-from-her-employers-residence>

8. <https://tribune.com.pk/story/1359332/police-recover-another-tortured-child-maid/>

9. <https://www.dawn.com/news/1263723>

10. <https://www.dawn.com/news/948296/employer-in-okara-lockup-protest-follows-death-of-burnt-maid-at-mayo>

11. <https://tribune.com.pk/story/279143/domestic-labour-punjab-has-most-violence-against-child-workers-cases/>

12. <https://tribune.com.pk/story/570098/adolescent-domestic-helper-killed-by-house-wife-in-multan/>

13. <https://tribune.com.pk/story/87304/14-year-old-domestic-worker-rescued-after-being-beaten-starved-and-chained/>

The Domestic Workers (Employment Rights) Bill is yet to materialize into a proper law like Sindh Prohibition of Employment of Children Bill 2017, whereas, existing laws such as:

The Employment of Children Act, 1991 (ECA), Punjab Restriction on Employment of Children Ordinance, 2016 and Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 do not specifically address 'Child Domestic Labour' nor do they state the child's age in the formal sector in line with Article 25A of the constitution, thus creating several gaps and lacunas in the laws and their implementations.

NEED FOR A HUMAN RIGHTS AND GENDER BASED APPROACH IN LAWMAKING

It is also imperative to assert that any actions to end child domestic labour be guided by human rights based and gendered approaches, both of which can provide a normative framework for practical action. Legislation on child domestic labour, guided by human rights based approach identifies the rights-holders (the children) and their entitlements along with the corresponding duty-bearers (the state) and their obligations. It further works towards strengthening the capacities of these rights-holders by empowering them to make their claims and obliges the duty-bearers to fulfill them.

A rights-based approach to domestic child labour thus elevates the “needs” and “interests” of these children from being social goods and ties them up with claims of legal and social legitimacy. In addition to alleviation of child abuse and exploitation, a rights based approach can also encompass ideas of nondiscrimination, justice and dignity in the child's life all the while including provisions for more tangible rights like education, health and social development.

In addition, it is equally important to take into account a gendered perspective particularly in Pakistan's context, considering the disproportionate presence of girls in the Domestic Child Labour market. A gendered analysis can have twofold implications. Firstly, it can look critically at prevalent laws and practices and highlight how they can fail to address women's concerns or their everyday realities. It can also adequately address issues of higher prevalence of poverty and malnutrition within girls which in turn, pushes a greater proportion into domestic labour. Secondly, it can further point to issues of denial of equal opportunity in education and employment and to prevalent cultural and social norms that have contributed to the feminization of poverty and subordination of women.

OBJECTIVE

The primary objectives of this Position Paper are as follows:

- i) To provide critical information for formulation of a National Policy on Domestic Child and Adolescent Workers.
- ii) To facilitate administrative action in provinces through budgetary and programmatic provisions.
- iii) To highlight the plight of children hired or forced into working as domestic labour.
- iv) To identify lacunas and laws that enable exploitation of children hired for domestic labour.
- v) To propose improvements in systems, existing laws and propose enactment of new laws that can safeguard the rights of children involved in child domestic labour.
- vi) To provide an action plan for advocating ban on child domestic labour and engaging key stakeholders for achieving meaningful results at the national and provincial level.

CHILD LABOUR LAWS AND CONVENTIONS

INTERNATIONAL CONVENTIONS

Pakistan ratified the United Nations Convention on the Rights of the Child (UNCRC) on 12th, November, 1990. The absence of protection of children from exploitation as domestic workers in federal and provincial legislation is a violation of various provisions of UNCRC, including; Article 6, Article 32 and Article 37.

Pakistan has also ratified numerous ILO Conventions in the light of which child domestic labour needs to be completely banned in Pakistan. These include; C138 - Minimum Age Convention, and C182- Worst Forms of Child Labour Convention.

Keeping in view of C138, the Government of Pakistan is obligated to bar children below the age of 14 from being hired for work. Moreover, since child domestic workers are often victims of physical, sexual abuse, and exploitation, banning child domestic labour will be in line with C182. Unfortunately, Pakistan is yet to ratify ILO Convention 189, Domestic Workers Convention.

LAWS IN PAKISTAN

Currently, there is no specific law in Pakistan that comprehensively deals with domestic labour, let alone child domestic labour. Of the Labour Code, there are barely two pieces of legislation that address domestic workers, namely:

The Provincial Employees Social Security Ordinance 1965, under Section 55-A covers "Medical treatment of domestic servants' and requires that 'every employer of a domestic servant shall be liable to provide [medical treatment] at his own cost".

The Minimum Wages Act 1961 includes "domestic work" in its definition of "worker". But the government has not notified the minimum wages applicable to domestic workers under this law for more than 50 years.

PROPOSALS

Given the dismal condition of children and adolescents being abused and exploited as domestic labour in Pakistan, SPARC calls upon the government to take the following measures to ensure an end to the abhorrent abuse and exploitation of child and adolescent domestic workers in the country.

POLICY AND LAWS

SPARC shall lobby with lawmakers, civil society organizations and individual activists to present this position paper as a document to advocate a legal ban on child domestic labour and bring about meaningful change in the working condition of adolescent girls and boys through protection laws.

<p>1.</p>	<p>Employing children, girls and boys under the age of sixteen is against international standards, further the severity of domestic child labour conditions in Pakistan warrants an immediate ban and criminalization of Child Domestic Labour through legislation.</p> <p>C138 - Minimum Age Convention, 1973 (No. 138) that Pakistan has ratified states:</p> <p>“The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.</p>
<p>2.</p>	<p>Since domestic workers are not covered by a comprehensive legislation and child domestic work is excluded from major pieces of legislation in the country; it is imperative that Domestic Workers (Employment Rights) Bill should be enacted without any further delay; as it also addresses child domestic labour.</p>
<p>3.</p>	<p>Employment contract for adolescent workers should be made mandatory for all forms of domestic work by adolescents in the Domestic Workers (Employment) Bill.</p>
<p>4.</p>	<p>The age bar in all the bills and existing laws should be raised to 16 years from 14 years, in line with Article 25-A of the Constitution of Pakistan, to ensure children below 16 years of age are able to acquire education and not be left for labour and exploitation by domestic employers.</p>
<p>5.</p>	<p>Under the Federal law of ECA 1991, Child Domestic Labour should be listed in the Schedule of the Worst Forms of Labour as one of the hazardous establishments.</p>
<p>6.</p>	<p>Existing child labour prohibition laws must be amended to specifically mention child domestic labour as prohibited to ensure that the exploitation of child domestic workers can be prevented.</p>
<p>7.</p>	<p>The amendments in the existing or introduction of the new laws should include clauses tied to the concept of “<i>parens patriae</i>”, to ensure that children can be protected from violence, abuse and criminal negligence on behalf of parents.</p>

8.	Balochistan Assembly must enact a law banning child labour, including child domestic labour.
9.	The Sindh Prohibition of Employment of Children Bill, 2017 , The Punjab Restriction on Employment of Children Act 2016 and The Khyber Pakhtunkhwa Prohibition of Employment of Children act, 2015 should be amended to enhance its scope to protect children from exploitation and trafficking on behalf of their family members.
10.	The Government of Pakistan must ratify ILO Conventions 189 (Domestic Workers Convention, 2011) and 139 (Occupational Cancer Convention, 1974).
11.	The agriculture and the informal sector (in general) must be incorporated in existing child protection laws to clamp down on child labour and provide legal cover to children who may be at risk of being engaged in child labour in the informal sector, including domestic child labour.
12.	The matter of child domestic labour, as outlined in this Position Paper has surfaced as an issue of severe human rights violations and assumed the markings of abuse (physical & mental), exploitation and vulnerability. These circumstances make it binding on government to formulate a National Policy on Child Domestic Labour from which provincial policies are derived.

SOCIO-CULTURAL PROTECTION

A change in customary practices and traditional behavior is as necessary as laws. Hence, the necessity for change in the existing individual and collective mindset is imperative. Therefore, SPARC is engage with local communities, like minded CSOs, elected representatives, government and private organizations to work on the following key areas to seek solutions outside the legal paradigm.

1. Child Protection Centers

SPARC shall lobby for the improvement of existing child protection centers/units/bureaus. As of now, the performance of existing child protection centers/units/bureaus is less than satisfactory and in some cases, virtually inert.

2. Awareness Raising & Advocacy

SPARC shall launch nationwide advocacy campaigns to ban child domestic labour and raise awareness regarding the repercussions for children engaged in CDL. A Domestic Child Labour Network will be setup by SPARC to raise awareness and highlight issues related to Child Domestic Labour.

SPARC shall launch initiatives where community ownership is incorporated, in order to have a lasting effect in behavioral change and reporting of cases of abuse against children, including children engaged in CDL.

3. Formation of Database of Cases of Abuse, & Exploitation of Children

SPARC shall lobby for the development of a child protection database at the National and Provincial level in order to keep a detailed record of children who are victims of abuse, exploitation and criminal negligence. SPARC already publishes an annual report consisting of such data collected annually (State of Pakistan's Children Report). However, a National and Provincial database maintained by the government would provide a better measure to keep track of the ratio of cases of child rights violations and enable civil society organizations to act as a pressure group to help identify improvements in the government's existing child protection mechanism.

4. Complaints Procedure with Access

SPARC shall lobby for the development of a robust complaints procedure to highlight inefficiencies and criminal negligence on behalf of government officials. Moreover, SPARC shall work to facilitate relevant stakeholders for improving such mechanisms. For example, SPARC in collaboration with Sindh Police has already setup Child Rights Desks across all districts of Sindh. Similarly, SPARC has formed Anti-Bonded Labour Cells across Sindh to fight bonded labour. Additional measures of this kind shall be taken across Pakistan.

5. Child Trafficking

The government should take stern action against internal child trafficking as there are no structured laws in this regard.

6. Robust Child Protection Units/Bureaus

Child Protection Units/ Bureaus must be established in all provinces of Pakistan to provide adequate care for victims of violence, abuse and exploitation.

7. Sensitization of Officials

Law enforcement officials should be comprehensively sensitized through training to avoid any possible child rights violations.

8. Follow Up

The outlined Action Plan will be quarterly reviewed by SPARC and progress of set goals shall be measured to see if desired results are being achieved.

IMPLEMENTATION PARTNERS

In order to implement the aforementioned there is a need for governments, social partners, international agencies and civil society to rally around the cause of child domestic labour as piecemeal responses will not suffice in tackling it. SPARC as an outcome of the consultation process will establish a two-tier network of CSOs and of all identified stakeholders.

Child domestic work is not simply a labour, children's rights or gender issue. It encompasses a range of policy areas such as legislative action and enforcement, social protection, education, vocational training, labour markets, health, and social norms. These issues can be provided for more effectively following a strategy of Public Private Partnerships (PPP) to promote just, equitable and sustainable policies for prevention and rehabilitation of child domestic workers. These will include working with CSR departments of private corporations and government bodies.

It is imperative to engage with the government at the federal level because under the 18th Amendment human rights issues are under its jurisdiction. For this SPARC will continue engaging with its current liaison partner National Council of Social Welfare (NCSW) and other autonomous bodies such as the Human Rights Commission of Pakistan and organizations working on child rights. In addition, it is important work with provincial governments. SPARC's work on child labour with Social Welfare Department and Women Development Department and Labor Development in Sindh gives an effective model to build future provincial partnerships on. SPARC aims to increase engagement along similar lines in areas of AJK, FATA and Gilgit-Baltistan.

Child domestic work cannot be seen in isolation from the social and cultural milieu in which it exists, as it is the product of many inter-connected factors prevailing in the country. These need to be addressed at the legislative and policy making (macro) levels and through awareness raising and advocacy campaigns at the grassroots or micro level along with inputs from the private sector. It is only with collaborative efforts on part of various stakeholders that substantial progress can be made towards the achievement of many national and international development objectives including the SDGs, the achievement of which includes but is not limited to ending child domestic labour, which has a deleterious effect on the well-being of the child.

PROCESS

SPARC started the process with a Desk Review of literature and reports, held Focus Groups in Communities on the subject and engaged with child domestic workers to get an in-depth view of the situation regarding Child Domestic Labour in Pakistan. On February, 9th, 2017, a Consultative Meeting in Islamabad was held, which was attended by a wide range of NGOs concerned with human wellbeing, child rights activists, UN Agencies, government functionaries and media representatives where a position paper was drafted. The main outcomes of the session were as follows:

- The twelve points given in the Position Paper were adopted.
- The need to include the informal sector, especially agriculture was highlighted by panelists and participants, it being indicated that the nature of work was invisible & exploitative, often verging into Bonded Labour.
- The need for a Domestic Child Labour Network was recognized. SPARC was requested to serve as organizer and draft the TORs for the proposed Network.
- It was strongly recommended that the concerned authority in the Federal government be moved by the Domestic Child Labour Network for a notification in respect of Employment of Child Act 1991.
- ILO Conventions 189 and 139 not ratified by Pakistan should be ratified.
- A lot was said about the role of media, electronic and social. The need for ownership by people / communities also came under repeated comment. Since it is equally imperative to change peoples' perceptions regarding this issue; it was decided to push the need for advocacy measures at the governmental and civil society level to inculcate in people the violations of the rights of children involved in domestic labour.

Following the Consultation Meeting the draft was revised and sent for peer review, after which it was finalized by the SPARC Board for approval.



Position Paper
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2017