

**Johannes Norpoth, Lukas Groß, and
Rahima Aktar**

CHILD LABOUR IN BANGLADESH – AN
ANALYSIS OF GAPS AND WEAKNESSES OF THE
EXISTING LEGAL FRAMEWORK



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Abstract

Child labour, particularly in its worst forms, harms the health and general welfare of children. It is considered to be a decisive impediment to the development efforts of developing countries. Working children drop out of school early and the resulting comparative lack of knowledge and skills decreases their chances to find well-paid employment in the future. International legal documents, most prominently in the United Nations Convention on the Rights of the Child (UN CRC) and Conventions by the International Labour Organization (ILO), address the problem of child labour and call for an elimination of its worst forms. Despite efforts made at the international and national level child labour remains a common, and often socially accepted, scenario particularly in some developing countries. Bangladesh is one of the countries that still face the challenge of having a large number of children that are working under conditions considered as child labour. The prime reason is poverty. In recent years Bangladesh has taken various measures, including legal measures, to address the situation. This paper reviews reports on the child labour situation in Bangladesh and the current legal framework for child labour and demonstrates that there remain gaps in the legal and policy framework of Bangladesh.

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1 INTRODUCTION

Child labour, particularly in its worst forms, harms the health and general welfare of children. It is considered to be a decisive impediment to the development efforts of developing countries. Working children drop out of school early and the resulting comparative lack of knowledge and skills decreases their chances to find well-paid employment in the future. International legal documents, most prominently in the United Nations Convention on the Rights of the Child (UN CRC) and Conventions by the International Labour Organization (ILO), address the problem of child labour and call for an elimination of its worst forms. Despite efforts made at the international and national level child labour remains a common, and often socially accepted, scenario particularly in some developing countries. Bangladesh is one of the countries that still face the challenge of having a large number of children that are working under conditions considered as child labour. The prime reason is poverty. In recent years Bangladesh has taken various measures, including legal measures, to address the situation.

This paper reviews reports on the child labour situation in Bangladesh and the current legal framework for child labour and demonstrates that there remain gaps in the legal and policy framework of Bangladesh. The paper is organized as follows: First, the general political and economic situation of Bangladesh is described (2.) before the general problems associated with child labour are outlined (3.). Then, the definition of child labour based on international legal documents is elaborated (4.). This is followed by a review of studies analysing the child labour situation in Bangladesh (5.). The sub-sequent section briefly describes the main causes of child labour in Bangladesh based on a review of different studies (6.). Then, the paper moves on to describe in detail the legal rules addressing child labour in Bangladesh (7.), including the obligations of Bangladesh under international law, its constitution, and the rules included in national legislation. Current policies addressing child labour are also taken into account. Finally, the authors provide legal recommendations based on their analysis (8.).

2 BANGLADESH – POLITICAL AND ECONOMIC SITUATION

The People's Republic of Bangladesh won independence from Pakistan only in 1971. After a period signified by a series of military coups and changing, military-backed, governments the country has developed into a relatively stable parliamentary democracy since 1991. The country's legal system is characterized as a mixture of common law, inherited from the former British colonial regime, and Islamic law. The country is still considered a least developed country (LDC)¹ despite its impressive record of economic growth and human development since the 1990s. According to World Bank statistics the economy of Bangladesh has been growing almost 6% on average per year and there has been remarkable progress on reducing poverty.² However, around 47 million people in Bangladesh still live below the poverty line. Moreover, many people live under a constant risk of falling back into poverty, *inter alia*, due to natural disasters that frequently affect the densely populated, low-lying coastal country. Based on the constant economic growth rate of the recent years, the government of Bangladesh envisions the country to reach the status of a middle-income country in 2021 which according to the World Bank will require the state, *inter alia*, to make growth more inclusive, to develop a more skilled labour force and to improve its governance structures.³ Noticeably, one of the backbones of Bangladesh's economic growth is the export-oriented garment industry, rendering Bangladesh the second largest apparel exporting country in the world.⁴

1 UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, Current List of Least Developed Countries, <http://www.unohrrls.org/en/ldc/25/> (22.10.2013).

2 According to World Bank Statistics Bangladesh has steadily reduced the percentage of the population living under the poverty line from 56,6 % in 1992 to 31.5 % in 2010 which went hand in hand with an increase in important development indicators, such as life expectancy at birth to 70 years in 2011. Cf. The World Bank, Data on Bangladesh, <http://data.worldbank.org/country/bangladesh> (22.10.2013).

3 The presented country information was retrieved from <http://www.worldbank.org/en/country/bangladesh/overview> (22.10.2013) and <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html> (22.10.2013).

4 According to Bangladesh Garment Manufacturers and Exporters Association (BGMEA), <http://www.bgmea.com.bd/home/pages/Strengths#.UmaU-SK8Guo> (22.10.2013).

3 THE PROBLEM OF CHILD LABOUR

Taking a look at the reality of the lives of working children reveals both the dangers for children and the potential negative consequences of child labour to the development process. Working long hours with heavy and dangerous equipment, lack of nutritious food, lack of access to education and recreation, regular verbal and physical abuse and exploitation at their work place and sometimes by their family, and regular injury hinder their physical and psychological growth.⁵ Clearly, such conditions impede a child's development to a human being that is capable of using its potentials for his/her own or the society's well-being. Ultimately, lack of education hampers the opportunities of working children to find well-paid jobs later in life and due to health problems working children often lose their employment capability in a very early age.⁶ Children used in child labour come from already poor families; furthermore these conditions are highly likely to perpetuate poverty for their own families.

Apart from being a severe human rights issue specific to children, child labour impedes the realization of the Millennium Development Goals (MDGs), in particular MDG 2, concerning universal primary education, as working hours decrease the time available for education and ultimately increase the likelihood of early school drop-outs.⁷ Eliminating child labour and ensuring education for children is also associated with significant economic gains for developing countries. According to an ILO study, estimated economic gains of USD 5 trillion over a 20 year period as well as other externalities such as higher rates of innovation, productivity, faster introduction of new technology and economic competitiveness could accrue if countries were to invest in good quality education for all.⁸ Any policy that addresses child labour, however, would need to start with a clear definition of what constitutes child labour.

5 A study on urban districts in Bangladesh confirmed both severe physical and psychological health problems of child labourers, Mohammad Nashir Uddin/Mohammad Hamiduzzaman/Bernhard C. Gunter, *Physical and Psychological Implications of Risky Child Labor: A Study in Sylhet City, Bangladesh*, Bangladesh Development Research Center (BDRC) Working Paper No. 8, July 2009, pp. 10-11.

6 ILO, UNICEF, UNESCO, *Child Labour and Education in Bangladesh – Evidence and Policy Recommendations*, Dhaka 2008, at pp. 10 f.

7 Ibid.

8 International Labour Office, *International Programme on the Elimination of Child Labour (IPEC), Investing in Every Child: An Economic Study on the Costs and Benefits of Eliminating Child Labour*, ILO, Geneva 2004.

4 DEFINITION OF CHILD LABOUR

The issue of child labour is fraught with definitional problems. A first question that comes to mind is whether only work in employment situations, meaning work for pay or profit, should be qualified as child “labour”. Such a narrow conception would disregard other kinds of work performed by children without payment such as support to the family business or farm which may also entail work with dangerous equipment or substances, or may involve extensive hours of work that impede the child’s school education. Clearly, a definition of child labour that departs from the proposition to protect children from harmful effects of work and to ensure education needs to be widened accordingly. Conversely, not every type of work performed by children, paid or unpaid, should be considered “child labour” with the connotation of “child labour for eradication” since up from a certain age some kinds of work can be beneficial to children by promoting their skills and their social development. The question which types of work should then be considered not harmful or beneficial easily triggers divergent answers. However, definitional problems do not only relate to the types of work. To the same degree age limits constitute a challenge for the definition of “child labour”. Should the general age of majority matter for the definition of “child labour”? Apparently, concepts of childhood and adulthood differ widely between different societies in the world. Beyond that, if certain types of work should be permissible for minors, what should be the acceptable age for performing these kinds of work? Differing gender conceptions in different parts of the world raise further complications for presenting a uniform answer to this question.⁹

Despite these obvious definitional difficulties, widely accepted and ratified international legal documents delineate an emerging international consensus on what constitutes “child labour”. Without explicitly defining “child labour”, the UN CRC broadly defines the work-related circumstances that a child shall be protected from. Children shall enjoy protection “... *from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development*”, Art. 32 (1) UN CRC. It is a matter for the contracting parties to the UN CRC to take adequate measures to accord this level of protection to children.

Next to this comparatively vague, human rights based approach of the UN CRC, two ILO core conventions address child labour more specifically: ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No 182) outlaws certain categories of particularly harmful work, whereas the ILO Minimum Age Convention 1973 (ILO Convention No 138) sets minimum age limits for certain types of work. ILO Convention No 182, which applies to all

⁹ For a comprehensive discussion of the issues surrounding a definition of “child labour” see Trevor Buck/Alisdair A. Gillespie/Lynne Ross/Sarah Sargent, *International Child Law*, 2nd edition, Abingdon 2011, at pp. 165-169; Sumaiya Khair, *Globalisation and Children’s Rights – The Case of Child Labour*, pp. 168-188, at pp. 169-172 in: Shawkat Alam/Natalie Klein/Juliette Overland (eds.), *Globalisation and the Quest for Social and Environmental Justice – The relevance of international law in an evolving world order*, Abingdon 2011.

persons under eighteen, Art. 2, lists slavery and practices similar to slavery, prostitution, pornography, illicit activities and an open category of hazardous work as worst forms of child labour, Art. 3 ILO Convention No 182, and requires their prohibition and elimination, Art. 1 ILO Convention No 182.

ILO Convention No 138 distinguishes a general minimum age of fifteen years for employment or work, a special age limit of thirteen years for the exceptional category of “*light work*” and a special age limit of eighteen years for hazardous work (Artt. 2 (3), 7 (1) and 3 (1) ILO Convention No 138 respectively).¹⁰ However, developing countries may lower their age limits to fourteen years as the general minimum age and to twelve years for the exceptional category of “*light work*”, Artt. 2 (4) and 7 (4) ILO Convention No 138. Characteristics of the open category of “*light work*” are that it is not likely to be harmful to a child’s health or development and does not prejudice their schooling, for instance through the hours spent at work, Art. 7 (1) ILO Convention No 138. Although some authors argue that ILO Convention No 182 marks a shift away from the approach of setting age limits as followed in ILO Convention No 138,¹¹ age limits and ILO Convention No 138 remain a key reference in recent international policy documents on child labour.¹²

In sum, a definition of “child labour” that is derived from the relevant international legal documents is two-fold: the UN CRC provides for a general level of protection for children that shall be achieved. The two ILO Conventions can be regarded as the relevant (minimum) standards to attain this level of protection.¹³ Therefore, at least the types of work performed by children that do not conform with the conditions for acceptable work promulgated in the ILO Conventions will be considered “child labour”. The definition of child labour proposed in this paper based on the relevant international conventions is summarized in table 1 below.

¹⁰ The latter category is only broadly defined in ILO Convention 138, but is considered identical to the respective category of ILO Convention No 182.

¹¹ Cf. Sumaiya Khair, 2011, (see footnote 9), pp. 168-188, at pp. 178 f.

¹² Cf. preamble of The Brasilia Declaration on Child Labour, III. Global Conference on Child Labour, 8-10 October 2013, Brasilia, Brazil; Resolution II 2008 of the 18th International Conference of Child Labour Statisticians, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_112458.pdf (29.10.2013).

¹³ This relationship between the UN CRC and the ILO Conventions is implied already by Art. 32 (2) UN CRC that directs states to have “regard to the relevant provisions of other international instruments” when adopting measures for the implementation of Art. 32 UN CRC. The Committee on the Rights of the Child also follows this line of argumentation in its Concluding Observations on the regular state reports of the Contracting Parties to the UN CRC. For a detailed discussion of Art. 32 UN CRC and its relation with the ILO Conventions, see Lee Swepston, Article 32 – Protection from Economic Exploitation, in: André Alen/Johan Vande Lanotte/Eugeen Verhellen/Fiona Ang/Eva Berghmans/Mieke Verheyde/Bruce Abramson (eds.), *A Commentary on the United Nations Convention on the Rights of the Child*, Leiden 2012; Alessandro Fodella, Freedom from Child Labour as a Human Right: The Role of the UN System in Implementing ILO Child Labour Standards, pp. 203-227, at pp. 210 ff., in: Giuseppe Nesi/Luca Nogler/Marco Pertile (eds.), *Child Labour in a Globalized World – A Legal Analysis of ILO Action*, Aldershot, Burlington 2008.

Table 1: Definition of Child Labour

Type of work/employment	Light Work, (not likely to be harmful to health or child development or prejudicing education, Art. 7 ILO 138)	General employment, (Art. 2 ILO 138)	Hazardous work and other worst forms of child labour, (Art. 3 ILO 138, Art. 2 and 3 ILO 182)
Age limit	12/13	14/15	18
General standard of protection that shall be achieved	Protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (Art. 32 UN CRC)		

(Authors 2013)

5 CHILD LABOUR SITUATION IN BANGLADESH

Statistical surveys confirm that it is a common scenario in Bangladesh for a child to work for pay, or profit, or to support a family farm or business. The country's most comprehensive statistical study conducted on this issue so far¹⁴ revealed that in 2002/2003 7.4 million children aged 5-17 were working children¹⁵ out of which 3.2 million were working under circumstances defined as child labour.¹⁶ The survey also found 1.3 million children engaged in hazardous work.¹⁷

A more recent study confirmed that child labour remains widespread in Bangladesh.¹⁸ The study estimates that 3.55 million children aged 7-14 years and 2.8 million children aged 15-17 years were "*in employment*" – a term that covered both employment for pay or profit and work in the family business or farm.¹⁹ The study estimates a total of 5.1 million children in child labour.²⁰ This included more than 1.3 million of 5-11 year olds engaged in any kind of work. Moreover it comprised 1.7 million of 12-14 year-olds working regularly for more than 14 hours per week, thus, working for more hours than what could still be considered "*light work*". Finally, it included 2 million of 15-17 year olds performing hazardous work.²¹ It should be noted, however, that the worst forms of child labour other

14 Bangladesh Bureau of Statistics National Child Labor Survey (NCLS) 2002-2003, retrieved from <http://www.ilo.org/ipeceinfo/product/viewProduct.do?productId=746> (16.08.2013).

15 Ibid. p. 118. The survey uses the terms "working children", "economically active children" and "employed children" as synonyms. These terms are meant to include "children who were working one or more hours for pay or profit or working without pay in a family farm or enterprise or organization during the reference period or found not working but had a job or business from which he/she was temporarily absent during the reference period (last 7 days)...", cf. *ibid.* p. 17.

16 Ibid. p. 118. The NCLS used the following definition of child labour: "all children under 18 years of age who are economically active except (i) those who are under five years old and (ii) those between 12-14 years old who spend less than 14 hours a week on their jobs, unless their activities or occupations are hazardous by nature or circumstance. Added to this are 15-17 year old children in WFCL [worst forms of child labor] (including hazardous work and work of 43 hours and more a week)", cf. *ibid.* p. 17. With the exception of children younger than 5 years are excluded by the NCLS this definition combines the requirements of ILO Convention No 138 and ILO Convention No 182.

17 Ibid. p. 62. In accordance with the respective ILO Conventions the NCLS defined hazardous work as "... any activity or occupation which by its nature or type has, or leads to, adverse effects on the child's safety, health (physical or mental health), and moral development." For the purpose of the survey this definition was considered to be met, if a child was working in mining or construction, or other potentially dangerous working environments that include work with heavy machinery or exposure to chemicals or if a child was working 43 hours or more a week, *ibid.* p. 19.

18 Understanding Children Working (UCW) Programme Country Report on Bangladesh, July 2011, UWC Programme, Rome 2011.

19 UCW Programme calculations based on Bangladesh Annual Labour Force Survey 2005-2006, *ibid.* p. 10. The numbers can be read as a sign of progress. The percentage of children from age 7-14 found working fell from 17% in 2002/2003 to about 12% in 2005/2006, *ibid.* p. 10. The report, however, cautions that estimates based on micro-data from other surveys would yield estimates of 16% of the 7-14 year old in employment in 2006, p. 18. Moreover, the report warns that this decrease in employment did not lead to an increase in school attendance, p. 19.

20 Ibid. p. 28.

21 Ibid. p. 28.

than hazardous work, such as slavery, work in prostitution or illicit activities, could not be considered by the survey due to data limitations.²²

According to the study the likelihood of children to be working is similar in rural and urban areas of Bangladesh. Given that most of the population lives in rural areas, it is not surprising that by total numbers the majority of the working children live in rural areas. However, the percentage of working children is similar in rural and urban areas.²³ The study confirmed that the rate of children working rises with age, reaching 20% of fourteen year old children.²⁴ Similarly, the hours spent working increases with age.²⁵ In general, the study found a higher percentage of boys working than girls.²⁶

Some findings of the study on the situation of those children not attending school deserve particular attention. Compared to other developing countries, Bangladesh has a strikingly high percentage of children working outside of their family as paid employees, domestic workers, apprentices or as self-employed persons among these children.²⁷ For paid employees or domestic workers aged 7-14 the average weekly working time exceeds 45 hours.²⁸ In general, within the group of children not attending school, working long hours is particularly common in the manufacturing and services sectors where children have an average working time exceeding 43 hours a week. Compared to this, work in the agricultural sector appears less time intensive.²⁹

A number of sector-based baseline surveys and rapid assessments, by the Bangladesh Bureau for Statistics, the ILO and non-governmental organizations (NGOs), which were conducted between 2002 and 2008, point to particularly harsh working conditions for children in certain economic sectors. In establishments for battery recharging and recycling, establishments for welding, garages for repairing automobiles, the road transport sector, the dry fish industry or the ship recycling industry these studies revealed that children often work without protective gear, suffer from work-related illnesses or injuries and are subject to verbal and physical abuse.³⁰ Clearly, work in the transport sector, such as

22 Ibid. pp. 29 ff.

23 Ibid., p. 12. In absolute numbers, there are 2.9 million children were found working in rural areas compared to 600.000 in urban areas. The percentage of children found working, however, is 12 % to 9 % respectively. K. M. Mustafazir Rahman/Towfiqia Mahfuza Islam/Md. Ismail Tareque, Socio-Economic Correlates of Child Labour in Agricultural Sector of Rural Rajshani District, Bangladesh, in: International Journal of Sociology and Anthropology Vol. 2 (6), pp. 109-117, June 2010 find that in rural districts child labourers are predominantly young boys (90,2%) engaged mainly in agricultural work (80,3%).

24 Ibid. p. 15.

25 Ibid. pp. 22 f.

26 Ibid. pp. 13 f; Girls, however, are more likely to be found helping intensively in household responsibilities which considerably reduces the time available for education, Ibid., p. 16.

27 Ibid. p. 22.

28 Ibid. p. 23.

29 Ibid.

30 Cf. review of studies, *ibid.* pp. 30-33.

rickshaw pulling, or work in garages entail work with heavy loads and dangerous equipment which are characteristics of hazardous work. Moreover, the ILO study “*Working Children in Dry Fish Industry in Bangladesh*”³¹ revealed a high number of cases of forced labour for children in this sector in some areas of the country.³² Thus, apart from hazardous work³³ also unconditional worst forms of child labour are observable in this sector.

In addition, the situation of children engaged as domestic workers has attracted particular attention. According to an ILO study more than 270,000 children aged 6-17 are employed in mainly urban households of Bangladesh.³⁴ 78% of them are female.³⁵ Based on the average working hours almost all child domestic workers perform hazardous work since 99% of child domestic workers work 7 days per week with an average of 9 hours per day.³⁶ Another major problem is severe exploitation, physical and sometimes sexual abuse by the employers.³⁷ Child domestic work is invisible as the children work inside the house. Often confined to their employers’ premises, it is difficult to know their daily situation, even by close neighbours. It is particularly worrisome that sometimes children are engaged through a middle man or recruiting agent – a practice that can be considered child trafficking³⁸ – with the effect that some parents do not know about the final working place and the living situation of their children. Lack of a full-scale registration system makes child domestic workers untraceable for public authorities.³⁹ Ultimately, employers that committed harsh abuses are often not prosecuted since cases are dismissed or not fully investigated out of respect for the social reputation of the employer.⁴⁰

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- 31 ILO & Bangladesh Bureau of Statistics, *Working Children in Dry Fish Industry of Bangladesh*, Pilot Survey, December 2011, Geneva, Dhaka.
- 32 Ibid. pp. 44 ff. The respective indicators for forced labour used in this study included unfree recruitment, work imposed, limited freedom, dependency, debt bondage and threats and coercion, cf. ibid. p. 8.
- 33 Work in the dry fish industry is associated with severe health hazards because of long working hours of 9.8 hours per day in average, frequent injury with fish bones while catching fish and physical violence and abuse by the employers, ibid. p. 24, pp. 63 f., p. 73.
- 34 International Labour Office, *ILO Baseline Survey on Child Domestic Labour in Bangladesh*, Dhaka 2006, pp. 9-11.
- 35 Ibid.; Tracy Adam-Badr, *Exploitation of Child Domestic Workers in Bangladesh*, Global Centre for Women and Justice at Cornell Law School, January 2010, p. 6 highlights issues of discrimination against girls, like female seclusion as a preparation for early marriage, that are associated with the work as child domestic workers.
- 36 Ibid. pp. 29-30. A study conducted by Save the Children revealed that 16% of the child domestic workers even work 16-18 hours a day, Save the Children Sweden Denmark, *Living Inside Room and Outside Law: A Study on Child Domestic Workers and the Role of Government and Civil Society*, Dhaka 2009, p. 37.
- 37 Tracy Adam-Badr, 2010, (see footnote 35), pp. 8 ff.; International Research on Working Children, *The Worst Forms of Child Labour in Asia – Main Findings from Bangladesh and Nepal*, Leiden 2010, pp. 59 ff. Cf. also the judgement of the Supreme Court of Bangladesh, WRIT Petition No. 3598 of 2010.
- 38 Tracy Adam-Badr, 2010, (see footnote 35), pp. 13 ff.
- 39 Cf. Supreme Court of Bangladesh, 2010, (see footnote 37).
- 40 Cf. incidences cited in the judgement of the Supreme Court of Bangladesh, 2010, (see footnote 37).

It is essential for understanding the extent and depth of the issue of child labour in Bangladesh that the informal sector plays an important role in its economy.⁴¹ To a large degree economic activities, both in the urban and rural areas of Bangladesh, are conducted without formal registration with the state agencies, leaving these activities outside of the application of most national laws and monitoring from state agencies.⁴² 93% of the working children are engaged in the informal sector⁴³ - both in urban and rural areas. Work in the informal sector is particularly associated with the risk of working long hours, not getting proper wages, lack of opportunity for proper schooling or recreational activities.⁴⁴ It is common for informal sector businesses to complement the formal sector by becoming part of their supply chain.⁴⁵ Children working in the informal sector are thus engaged in the sub-supply chain of many formal sectors. A typical example would be the informal garment industry. Businesses in the informal garment industry regularly employ children.⁴⁶ Linkages with the formal garment industry exist to take over certain work processes, at least temporarily when there is a surge of workload for formal enterprises or when detailed work by hand is required.⁴⁷

The relevance of the informal sector in Bangladesh is one of the reasons why coercive trade measures addressing only formal, export-oriented sectors like the garment sector proved not to be an effective means to address the issue of child labour. In the early 1990s garment industry of Bangladesh became the target of boycott threats due to child

41 According to the Asian Development Bank, 89% of the total number of jobs in Bangladesh are informal jobs and the informal sector contributes 57% to the Gross Domestic Product of Bangladesh, Asian Development Bank, *The Informal Sector and Informal Employment in Bangladesh*, Country Report 2010, Mandaluyong City, Philippines 2012, p. 10 and 28. One reason for the continuing importance of employment in the informal sector is that job creation in the formal sector cannot keep pace with the growth of the labour force in the country, cf. ILO (International Institute for Labour Studies), Bangladesh, *Seeking Better Employment Conditions for Better Socio-Economic Outcomes*, Geneva 2013, pp. 36 ff.

42 According to the ILO, "informal sector" is characterised by enterprises that fulfil one or more of the following criteria: (i) non-registration of the enterprise; (ii) small size in terms of employment; and (iii) non-registration of the employees of the enterprise, cf. Ralf Hussmanns/Farhad Mehran, *Statistical Definition of the Informal Sector – International Standards and National Practices*, ILO, Geneva, <http://www.gdrc.org/informal/husso772.pdf> (22.12.2013).

43 Bangladesh Bureau of Statistics National Child Labor Survey (NCLS) 2002-2003, (see footnote 14), at p. 70.

44 A study from the Asian Development Bank confirmed that in general wages are lower and social protection coverage is rare in the informal sector, Asian Development Bank, 2012, (see footnote 41), pp. 22 ff.

45 Cf. for an in-depth study with regard to the informal garment sector ICF International, *Child Labor in the Informal Garment Production in Bangladesh*, Task Order II, Task VI, In-Country Mixed Methods Research and Data Collection, Report submitted to United States Department of Labor, Office of Child Labor, Forced Labor, and Human Trafficking, Washington, DC 2012, pp. 29 ff.

46 Ibid. pp. 33 f.

47 Ibid. pp. 29 ff.

labour employment.⁴⁸ In reaction to demands from trade unions, human rights groups, consumer and religious groups under the umbrella of Child Labour Coalition, the so-called Harkin Bill was proposed to the United States senate. According to the bill the importation into the United States of manufactured or mined goods that were produced by children under the age of fifteen was to be prohibited.⁴⁹ Although the Harkin Bill was never passed, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) responded by urging its members to remove child labourers from their workplaces. It was reported that 40,000 to 50,000 child labourers were removed from the industry.⁵⁰ Having lost their work, but with their families still depending on additional income and without being given an alternative through education programmes, many of these children changed to more hazardous jobs in the informal economy, including prostitution.⁵¹

48 Sharmin Aktar/Abu Syead Muhammed Abdullah, Protecting Child Labour in Bangladesh: Domestic Laws versus International Instruments, *Bangladesh E-Journal of Sociology*, Vol. 10, No. 1, January 2013, pp. 153-172, mention official statistics from 1992 according to which 30% of the workers in Bangladesh's garment factories were children, at p. 159.

49 Cf. for details on the bill and the ensuing process Michael E. Nielson, *The Politics of Corporate Social Responsibility and Child Labour in the Bangladeshi Garment Industry*, *International Affairs*, Vol. 81, No. 3 (2005), pp. 559-580.

50 Cf. UNICEF/ILO, *Addressing Child Labour in the Bangladeshi Garment Industry 1995-2001 – A Synthesis of UNICEF and ILO Evaluation Studies of the Bangladesh Garment Sector Projects*, New York, Geneva 2004, p. 6.

51 Cf. Franziska Humbert, *The Challenge of Child Labour in International Law*, Cambridge 2009, p. 369. Cf. for a critical review of the effects of the Harkin Bill Sumaiya Khair, 2011, (see footnote 9), pp. 181 f. With a view to ameliorate the situation of the mostly female child labourers that were removed from the formal garment industry the BGMEA, the ILO and the United Nations Children's Fund (UNICEF) signed a Memorandum of Understanding (MoU) to provide education for those children and offer them income compensation, cf. Franziska Humbert, 2009, pp. 179 f.

6 CAUSES OF CHILD LABOUR

From a socio-economic perspective push and pull factors can be distinguished. Such factors often interact and thereby increase the likelihood of turning a child into a child worker.⁵² Poverty is the main factor pushing children to work.⁵³ Unemployment or low income of parents, debts, death or severe sickness of a working family member and landlessness all significantly increase the likelihood of children being sent to work to contribute to the family income – such factors are often reinforced by extended family size and are often caused by natural calamities such as cyclones, floods, storms, draughts, and river erosion. The lack of social security mechanisms makes these families dependant on additional income from their children.⁵⁴ In light of economic distress, education becomes a cost to poor families because, first, although primary education is free, education involves costs for materials, exam fees, tuition fees, and transportation, secondly, education reduces the time available for work which can contribute to the family income.⁵⁵ In addition to the direct and indirect costs of education, the low quality of education is an additional push factor. The learning environment and facilities of public schools are inadequate in delivering high quality education.⁵⁶ When, according to surveys, after finishing primary education a high percentage of children remains illiterate or semi-literate,⁵⁷ it is unsurprising that parents do not see benefits for their children and the family as a whole from schooling compared to sending them to work.⁵⁸ Such effects are compounded by low education levels of the parents⁵⁹ and a general cultural expectation in some parts of society that work is more conducive to a child's development than education.⁶⁰

Tangential to these push factors the following pull factors attract children to the job market: Especially in urban areas labour intensive private industries have a constant demand for cheap labour. In particular, small-scale, informal establishments often prefer children as employees since they are cheap and considered easy to exploit as they do not dare to

52 Cf. among others Jesmul Hasan, *An Assessment of Child Labour Laws, Prevention Strategies and Their Effectiveness in Bangladesh*, in: Gamini Herath/Kishor Sharma (eds.), *Child Labour in South Asia*, Farnham 2007, pp. 81-98, at pp. 84 f.

53 Studies for different sectors confirm that poverty is the prime reason for children to go to work. Cf. ILO Baseline Study on Child Domestic Labour in Bangladesh, 2006, (see footnote 34), pp. 18 ff., K. M. Mustafazir Rahman/Towfiqua Mahfuza Islam/Md. Ismail Tareque, 2010, (see footnote 23), pp. 109-117.

54 Cf. for a good and brief overview of poverty-related push factors see Jesmul Hasan, 2007, (see footnote 52), pp. 84 f.

55 Cf. ILO, UNICEF, UNESCO, 2008, (see footnote 6), at pp. 25 ff.

56 Evidence for this is a student/teacher ratio of 49:1 on average for all schooling types and an even 63 students per class in the government primary school. *Ibid.* at p. 28.

57 Cf. studies cited in *ibid.* at p. 23.

58 *Ibid.* p. 30.

59 Cf. studies cited by Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), pp. 162 f.

60 Cf. Trevor Buck/Alisdair A. Gillespie/Lynne Ross/Sarah Sargent, 2011, (see footnote 9), p. 174; Kristoffel Lieten, *Child Labour in Bangladesh*, in: Kristoffel Lieten (ed.), *Working Boys and Girls at Risk – Child Labour in Urban Bangladesh*, Dhaka 2011, pp. 3-23, at pp. 15 f.

protest or organize and easily accept long working hours and poor working conditions. Similarly, child domestic workers are considered cheaper and easier to manage.⁶¹ As will be shown in the subsequent sections, gaps in the coverage of existing rules and lack of effective monitoring and enforcement of existing rules allow employers to offer job opportunities to children of poor families.

Push and pull factors interact, for instance, when work to a certain degree appears to offer opportunities for learning of practical skills⁶² which corresponds to perceptions that school education has low quality and is costly. Moreover, an overall lack of awareness of the problems of child labour in Bangladesh's society appears as a major contributing factor.⁶³ Clearly, the mix of economic and social (demand for cheap labour, low income levels, vulnerability), socio-cultural (perception of education, social acceptance of child labour by parents, children and employers) and political factors (lack of quality education, legal gaps, lack of monitoring and enforcement) behind child labour in Bangladesh has to be taken into account when designing appropriate responses.

61 ILO Baseline Survey on Child Domestic Labour in Bangladesh, 2006, (see footnote 34), p. 55.

62 Jesmul Hasan, 2007, (see footnote 52), p. 85.

63 ILO, A Report on Trend and Country Responses to the Child Labour: Reflections on Achievements, Challenges, Gaps & Way Forward, Dhaka 2009, p. 11.

7 LEGAL FRAMEWORK FOR CHILD LABOUR IN BANGLADESH

The Brasilia Declaration, the most recent formal international policy document on child labour, emphasizes that governments have the “*leading role and the primary responsibility, in cooperation with employers’ and workers’ organizations, as well as NGOs and other civil society actors, in implementing measures to prevent and eliminate child labour, in particular its worst forms, and rescue children from it.*”⁶⁴ The government of Bangladesh has indeed taken several measures to combat child labour. The country signed and ratified relevant international conventions and addressed the problem through national laws and policies. However, a closer look reveals that there remain gaps in the legal framework for child labour. The following sub-sections will summarize Bangladesh’s commitments with regard to child labour under international law and the relevant provisions on child labour on the national level.

7.1 State Obligations with regard to Child Labour under International Law

Through signing and ratifying international conventions and treaties, the Bangladeshi state is obliged to implement the relevant provisions in its national legal systems. Thus, the state is required to adopt national laws giving effect to these provisions and to take the necessary action, through policies and programs to enforce and implement these laws. Any failure in this respect leads to international responsibility of Bangladesh under international law.

Narrowing the view on the relevant international conventions it appears that Bangladesh has made significant progress over the last decades in the fight against child labour. After signing and ratifying the UN CRC in 1990 and the ILO Convention No 182 in 2001, the government has announced that it currently prepares for the ratification of the ILO Convention No 138.⁶⁵ With this step Bangladesh would have signed all key conventions concerning child labour at the international level.

7.1.1 ILO Core Conventions

With its focus on labour conditions more generally the International Labour Organization is one of the main actors in the field of international child labour law. Already in 1919, the year the International Labour Organization (ILO) was founded, the abatement of child

64 Section 3, The Brasilia Declaration on Child Labour (see footnote 12).

65 Fifth State Party Periodic Report under the Convention of the Rights of the Child, Submitted by the People’s Republic of Bangladesh, October 2012, p. 56.

labour was part of its agenda.⁶⁶ Bangladesh has ratified 33 of the 189 conventions initiated by the ILO, including seven of the eight so-called core conventions on labour rights.

ILO Convention No 182 (Worst Forms of Child Labour Convention, 1999)

The ILO Convention No 182 is the most recent ILO convention regarding the elimination of child labour and generally considered the most important one.⁶⁷ The convention builds on international consensus on which forms of child labour are intolerable, regardless of the social, economic and cultural circumstances in different countries.⁶⁸ Bangladesh has ratified the ILO Convention No 182 in March 2001. The Convention requires every member state to take *'immediate and effective action to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency'*.⁶⁹ The term child shall apply to all persons under the age of eighteen.⁷⁰

At the heart of the convention lies Art. 3 that defines the worst forms of child labour as:

- a) "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, the production of pornography or for pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

The work covered by Art. 3 (d) is referred to as *"hazardous work"*. In contrast to the categories of Art. 3 (a) – (c), *"hazardous work"* is an open category. According to Art. 4 (1) it is a matter for each national legislator to determine the concrete coverage of *"hazardous work"* by compiling a detailed list of such types of work. Drafters of such a list shall take ILO

66 Already at the first session of the International Labour Conference the ILO Convention No 5, the Minimum Age (Industry) Convention, was adopted. International Programme on the Elimination of Child Labour, International Labour Office, IPEC Action Against Child Labour Highlights 2012, April 2013, p. x; For detailed description of the development of child labour law at the ILO see Trevor Buck/Alisdair A. Gillespie/Lynne Ross/Sarah Sargent, 2011, (see footnote 9), pp. 177 ff.

67 Markus Kaltenborn / Lukas Groß, Die Bekämpfung ausbeuterischer Kinderarbeit – Völkerrechtlicher Rahmen und nationale Regulierungsansätze in Süd- und Südostasien, in: Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS), 2014 (forthcoming). Cf. for details on ILO Convention No 182 and in particular modes for its implementation Deepa Rishikesh, The Worst Forms of Child Labour: A Guide to ILO Convention No 182 and Recommendation No 190, in: Giuseppe Nesi/Luca Nogler/Marco Pertile (eds.), 2008, (see footnote 13), pp. 83-99.

68 Cf. Trevor Buck/Alisdair A. Gillespie/Lynne Ross/Sarah Sargent, 2011, (see footnote 9), pp. 187 ff. for further information on the negotiation history.

69 Art. 1 ILO Convention No 182. Clearly, this basic obligation requires immediate measures, but not immediate results.

70 Art. 2 ILO Convention No 182.

Recommendation No 190 into consideration.⁷¹ The Convention also requires a revision of the list of hazardous works at regular intervals, Art. 4 (3). Moreover, the contracting state parties shall take measures to monitor the implementation of the convention, Art. 5, and shall implement programmes of action to eliminate child labour, Art. 6. Art. 7 (1) requires states to take all necessary measures to guarantee the effective implementation of the Convention, which shall include criminal sanctions. The Convention emphasizes the importance of education in the fight against child labour and recognizes that removing children from worst forms of child labour needs to be accompanied by measures facilitating their social integration and addressing the needs of their families.⁷² Therefore the Convention calls, *inter alia*, for “*necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration*” and for free basic education and vocational training for these children, Art. 7 (2) (b) and (c). The *chapeau* of Art. 7 (2) requires that such measures taken by the member states shall be “*effective and time-bound*”. Finally, in Art. 8 the Convention also demands enhanced international cooperation for social and economic development, poverty alleviation and universal education as forms of international assistance for giving effect to the convention. Like other ILO Conventions, it is emphasized throughout the Convention that implementing measures shall be taken after a consultative process involving employers’ and workers’ organizations. In sum, the Convention is remarkable in the way it goes beyond a mere prohibition of worst forms of child labour, but establishes a comprehensive framework to address the complex issue of child labour.⁷³

The international community honoured the Convention in an outstanding way with a large number of countries, including Bangladesh, ratifying it within a few years after its adoption. In particular, its managerial approach to child labour has been praised.⁷⁴ Interestingly, this also led to a considerable increase of ratifications of the older ILO Convention No 138, the second important ILO convention on child labour.⁷⁵

71 ILO Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour, 17 June 1999, Recommendation 190. The recommendation which is by itself not legally binding on the contracting parties of ILO Convention No 182 mentions the following forms of hazardous work:

- “ (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) 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” (para. 3).

72 ILO Convention No 182, preamble recital 3.

73 Cf. for more details Yoshie Noguchi, *The International Journal of Children’s Rights*, Vol. 10 (2002), pp. 355-369, at pp. 360 ff.

74 Cf. Sumaiya Khair, 2011, (see footnote 9), pp. 168-188, at pp. 177 f.

75 Trevor Buck/Alisdair A. Gillespie/Lynne Ross/Sarah Sargent, 2011, (see footnote 9), at p. 185; International Programme on the Elimination of Child Labour, International Labour Office, 2013, (see footnote 66), p. xii.

ILO Convention No 138 (Minimum Age Convention, 1973)

ILO Convention No 138 has not been ratified by the government of Bangladesh up to the present. However, according to the government, efforts have been made to ensure compliance with the Convention before acceding to it through formal ratification.⁷⁶

The Convention addresses child labour by setting a minimum age for employment or work. Since its inception the ILO had adopted a number of different conventions that stipulated minimum ages of child workers for different economic sectors.⁷⁷ ILO Convention No 138 consolidated these fragmented conventions by requiring that the minimum age for any employment or work shall not be less than the age for completion of compulsory schooling and, in any case shall not be less than fifteen years, Art. 2 (3).⁷⁸ For hazardous work the Convention specifies a higher minimum age of eighteen years, Art. 3 (1).⁷⁹ The Convention contains a number of provisions allowing flexibility for developing countries. First, developing countries⁸⁰ may lower the general minimum age for employment or work to the age of fourteen.⁸¹ Moreover, all member states may decide to permit in their national legislation children aged between thirteen and fifteen to do “light work” which may include any work that is “a) not likely to harmful to their health or development, or b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes”, Art. 7 (1). Developing countries that have set an age limit of fourteen for general work or employment may permit light work for children from twelve to fourteen years, Art. 7 (4).⁸²

76 Fifth State Party Periodic Report under the Convention of the Rights of the Child, 2012, (see footnote 65), p. 56.

77 For detailed information: Lee Swepston, 2012, (see footnote 13), p. 7.

78 Cf. Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), p. 167.

79 Also under ILO Convention No 138 it is a matter for the member states to determine exactly which types of work shall be considered hazardous, Art. 3 (2).

80 The text of the convention does not use the term “developing countries”. Instead it refers to members “whose economy or educational facilities are insufficiently developed”, Art. 2 (4) ILO Convention No 138.

81 Art. 2 (4) ILO Convention No 138.

82 Apart from deviations from general minimum age rules the convention also allows developing countries to limit “initially” the scope of application of the convention economic sectors. Art. 5 (1) ILO Convention No 138. Certain economic sectors, however, are excluded from such a limitation. Strikingly, Art. 5 (3) explicitly allows developing countries to exclude “family and small-scale holdings producing for local consumption and not regularly employing hired workers”. This could lead to an exclusion of domestic workers. ILO Convention No 189 (Domestic Workers Convention, 2011) addresses this gap by requiring that the minimum age of domestic workers shall be consistent with ILO Conventions No 138, 182, and not lower than that established by national laws and regulations for workers generally, Art. 4 ILO Convention No 189. ILO Convention No 189, however, has not been ratified by Bangladesh.

7.1.2 UN CRC

The Convention has attracted more ratifications than any other human rights treaty.⁸³ It entered into force in 1990 with Bangladesh being one of the first signatories that had ratified the Convention already in the first year since the opening for ratification. The UN CRC aims for the comprehensive protection of children by stipulating human rights pertaining to the child. The Convention defines a child as “*every human being below the age of eighteen years*”, unless national laws of a member state set a lower age of majority, Art. 1 UN CRC. All member states shall respect and ensure the rights of the child as set forth in the Convention, Art. 2 UN CRC. The best interest of the child shall be the primary consideration in all state actions concerning a child, Art. 3 (1) UN CRC.

The central norm concerning child labour is Art. 32 UN CRC. It stipulates that children shall enjoy protection “... *from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development*”. The States Parties are obliged to take the necessary measures to ensure this level of protection, Art. 32 (2) UN CRC. The convention mentions legislative and administrative as well as social and educational measures. Pursuant Art. 32 (2) UN CRC the states are specifically required to regulate minimum ages for employment, appropriate hours and conditions of employment and to provide for penalties or other sanctions for an effective enforcement of the rules. Apparently, the Committee on the Rights of the Child that reviews state reports on the implementation of the Convention has read the soft obligation of states to have regard to relevant international standards when drafting such rules as a reference to the ILO Conventions No 138 and 182.⁸⁴

Ancillary norms of the UN CRC on child labour are Art. 28 setting forth a right to free and compulsory, primary education,⁸⁵ and Art. 31 providing for a right to play, leisure and rest. The Committee on the Rights of the Child expressed its concerns regarding to the fact that due to child labour there is not enough time and space for the enjoyment of these rights.⁸⁶ Worst forms of child labour apart from hazardous work are addressed in Art. 33 UN CRC on preventing the use of children in the illicit production and trafficking of drugs, in Art. 34 (b) and (c) UN CRC on preventing child prostitution or pornography, and in Art. 35 UN CRC on the preventing the trafficking of children. More specific obliga-

83 The list of ratification includes almost all states of the UN system, see http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (21.12.2013).

84 For detailed information on the practice of the Committee see Lee Swepston, 2012, (see footnote 13), p. 21 f.; for a detailed analysis of the contribution of the UN Human Rights System to the Implementation of ILO Child Labour Standards see Alessandro Fodella, 2008, (see footnote 13), pp. 203-227.

85 As mentioned before: the provision of free and compulsory education is one of the main mechanisms to fight against child labour; cf. Art. 7 ILO Convention No 182.

86 General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31); United Nations, Convention on the Rights of the Child, 17. April 2013; CRC/C/GC/17, p.3.

tions on some of the worst forms of child labour are set out in the first Optional Protocol on the involvement of children in armed conflict and the second Optional Protocol on the sale of children, child prostitution and child pornography which were both signed and ratified by Bangladesh.⁸⁷ However, Bangladesh did not sign the third Optional Protocol which allows for an individual complaint procedure for an alleged violation of the rights enshrined in the Convention.⁸⁸

Pursuant to Art. 44 UN CRC Bangladesh has to submit a state report to the Committee on the Rights of the Child in intervals of five years.⁸⁹ The committee is tasked with examining the progress made by the States parties in fulfilling their obligations under the Convention and the Optional Protocols. In 2009, when reviewing the most recent state report from Bangladesh, the Committee on the Rights of the Child expressed concerns with regard to “*the lack of enforcement mechanisms of specific laws to protect child workers, absence of mechanisms to monitor child workers’ working conditions*” and with regard to the “*high incidence of child workers in five selected worst forms of child labour – namely, welding, auto workshops, road transport, battery recharging and recycling, and work in tobacco factories*”⁹⁰.

7.2 The National Legal Framework

All ratifications mentioned above underline that Bangladesh generally vows to address the problem. However, beyond the ratification of international conventions, it is important for a country to indeed establish a coherent legal framework at the national level and to enforce the respective laws and regulations in a systematic way. The following sections summarize the current national legal framework with regard to child labour, including references to its evolution over time. After a brief discussion of relevant sections of the Constitution of Bangladesh, the focus is laid on a description of the relevant under-constitutional laws and an analysis of remaining gaps in a gradually improving legal framework.

87 First Optional Protocol: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000; Second Optional Protocol: Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, New York, 25 May 2000.

88 Optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19 December 2011.

89 Two years after the entry into the Convention the first report has to be submitted, Art. 44 (1) (b) UNCR.

90 Committee on the Rights of the Child, Fifty First Session, Consideration of Reports submitted by States Parties Under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Bangladesh, CRC/C/BGD/CO/4, p. 20.

7.2.1 Constitutional Law

The Constitution of Bangladesh is the supreme law and stipulates human rights as a fundamental principle of state policy.⁹¹ Although the Constitution does not prohibit child labour specifically, there are several norms which inform the regulation of child labour.⁹²

Part II of the Constitution describes the fundamental principles of state policy.⁹³ The state is obliged to apply these principles in the making of law and they “*shall be the guide to the interpretation of the constitution and of the other laws of Bangladesh*”.⁹⁴ Art. 15 and 17 have the strongest relation to child labour policy. Art. 15 guarantees the basic necessities which include the right to education and medical care and the right to reasonable rest, recreation and leisure.⁹⁵ According to Art. 17 education has to be free and compulsory to all children until such stage as may be determined by law.

A bill of fundamental rights is incorporated in Part III of the Constitution.⁹⁶ These rights are conceptualized as a strict yardstick for all existing laws of the country since any law that is not in conformity with or violates these rights shall be void.⁹⁷ A direct connection to the field of work is found in Art. 34 according to which all forms of forced labour are prohibited and any violation of this provision shall be an offence punishable by law. Moreover, the Constitution explicitly allows favourable regulation for women and children since Art. 28 (4) rules out any interpretation of the fundamental right to non-discrimination that could prevent the State from making special provision in favour of women or children or for the advancement of any other disadvantaged group of society. These constitutional provisions clearly envision a modern, socially minded state. For addressing the issue of child labour they may be considered as a favourable, however, quite general and open legal framework.

91 Art. 8 (1), 11 Constitution of Bangladesh.

92 Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), pp. 164 f.

93 Art. 8 (1) Constitution of Bangladesh; Part II: Art. 8 - Art. 25 of the Constitution.

94 Art. 8 (2) Constitution of Bangladesh.

95 By Art. 15 of the Constitution the state is obliged to secure to its citizens:

‘ (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;

(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;

(c) the right to reasonable rest, recreation and leisure; and

(d) the right to social security, that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.’

96 Part III: Art. 26 - Art. 47A Constitution of Bangladesh.

97 Art. 26 (1) Constitution of Bangladesh.

7.2.2 History of legislation on Child Labour

The legislation on child labour has been evolving and continues to evolve considerably in Bangladesh. Already in colonial times special laws provided age limits for admission to employment in specific economic sectors or work areas. One of the first laws with references to child labour was *The Mines Act 1923*.⁹⁸ The *Mines Act* defined a child as a person under the age of fifteen,⁹⁹ and prohibited the employment of children in any part of a mine which is below the ground. In 2005 the *Mines (Amendment) Act 2005*¹⁰⁰ set instead an age-limit of eighteen years. *The Children (Pledging of Labour) Act 1933*¹⁰¹ prohibited the pledge of the labour of a child which was defined as a person under the age of fifteen. *The Employment of Children Act 1938*¹⁰² also set an age limit of fifteen years. However, the prohibition of work for children under the age of fifteen only applied to “any form of transport of passengers, goods or mails by railway; or involving the handling of goods within the limits of any port”¹⁰³. In 1962 the *Tea Plantation Labour Ordinance*¹⁰⁴ was introduced. It regulated the special conditions under which children of different age limits above the age of twelve years were allowed to work at tea plantations.¹⁰⁵

The current legal framework is less fragmented. The relevant legal provisions that are applicable today are included in two recently adopted and amended acts: the *Bangladesh Labour Act 2006* and the new *Children Act 2013*.

7.2.3 Bangladesh Labour Act

The *Bangladesh Labour Act 2006*¹⁰⁶ replaced and consolidated 25 labour laws¹⁰⁷ and has incorporated many important labour rights aspects. It can be considered as the most remarkable national law with regard to child labour.¹⁰⁸ In 2013 the *Labour Act 2006* was amended as a response to the collapse of the Rana Plaza factory building which caused more than 1,100 deaths of mostly female textile workers. While focusing on other aspects of labour law, this amendment also introduced some new provisions on child labour.¹⁰⁹

98 The Mines Act 1923 (Act No IV of 1923).

99 Art. 3 lit. (c) Mines Act 1923; Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), p. 166.

100 The Mines (Amendment) Act 2005 (Act No IV of 2005).

101 The Children (Pledging of Labour) Act 1933 (Act No II of 1933).

102 The Employment of Children Act 1938 (Act No XXVI of 1938).

103 Art. 3 (1) The Employment of Children Act 1938.

104 Tea Plantation Labour Ordinance 1962 (Act No 39 of 1962).

105 Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), p. 165.

106 Bangladesh Labour Act 2006 (Act No. 42 of 2006).

107 Bangladesh Employers Federation, A Handbook on the Bangladesh Labour Act 2006, Dhaka, August 2009, p. 1; Before the implementation of the Labour Act 2006 there were more than 50 different Labour Laws applicable, cf. *Ibid.*, p. 141.

108 Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), p. 164.

109 Bangladesh Gazette Act No. 30 of 2013; An Act adopted to amend further the Bangladesh Labour Act, 2006 (Act No. 42 of 2006).

Pursuant to Section 2 (63) of the *Labour Act* a child is defined as a person who has not completed his fourteenth year of age. For young persons between fifteen and eighteen years of age the Act introduces the category of an 'adolescent'.¹¹⁰

The core provision on child labour is Section 34. Section 34 (1) prohibits the employment of children in any occupation or establishment. The prohibition is reinforced by Section 35 which prohibits parents or other guardians of a child to make any agreement on the use of the services of a child in any employment. However, Section 44 provides an exception for light work conducted by children aged twelve or older, provided their physical and mental development or their education, in particular their school attendance, is not impaired by such work.

Section 34 (2) details the conditions for the employment of adolescents. While at work every adolescent has to carry a reference to a certificate of fitness for the work he or she is employed for. The certificate has to be issued by a registered medical practitioner and shall remain valid for a period of twelve months. Any fee for the certificate has to be paid by the employer (Section 37). Moreover, the *Labour Act* itself specifies certain forms of hazardous work for which adolescents may not be employed. Strictly prohibited are cleaning, lubricating or adjusting any part of machinery which is in motion, Section 39 (3). In general, work on hazardous machines is only permitted if the adolescent has received adequate training or is adequately supervised, Section 40. In addition, employment of adolescents for work under ground and under water is prohibited, Section 42. Section 41 details the permissible working hours for adolescents which affords protection against hazards from extensive work.¹¹¹ In line with its obligation under Section 39 (1) the government has specified a list of other types of hazardous work which, according to Section 39 (2),¹¹² no adolescent shall be assigned to perform.¹¹³ The list comprises 38 economic

110 Section 2 (8) Labour Act 2006.

111 Night shifts are prohibited, Section 41 (3), maximum working hours are 7 hours a day and 42 hours a week in regular establishments and 5 hours a day and 30 hours a week in mines or factories, Section 41 (1), (2), and working overtime must be limited to 48 hours a week in regular establishments and 36 hours a week in mines or factories, Section 41 (4).

112 In particular Section 39 has been clarified with the 2013 amendment of the Bangladesh Labour Act 2006.

113 List on the Worst Forms of Labour, http://www.mole.gov.bd/index.php?option=com_docman&task=cat_view&gid=217&Itemid=236 (19.12.2013).

sectors in which working conditions that are hazardous to children are prevalent.¹¹⁴ Admittedly, states enjoy a margin of appreciation under the ILO Convention No 182 in determining which types of work they consider hazardous. Nevertheless, some types of work with regular working conditions that are beyond doubt hazardous to children have not been included in the list. For instance, agricultural activities and domestic work can be hazardous child labour that still remain unregulated.¹¹⁵

In general, the main deficit of the *Labour Act 2006* is its limited scope of application. The territorial scope of application of the *Labour Act* extends to the whole territory of Bangladesh,¹¹⁶ which implies that this includes export processing zones. However, several economic sectors are excluded from its application. Workers on agricultural farms with less than 10 workers, domestic servants and workers in “*establishments run by the owner with the aid of members of his family and without employing any hired labour*” are not protected by the rules of the *Bangladesh Labour Act*.¹¹⁷ Clearly, some of the economic sectors in which child labour is most prominent in Bangladesh remain outside the legal framework provided by the *Labour Act*. Work on agricultural farms may entail exposure to pesticides and other hazardous substances or work with dangerous equipment. Child domestic servants often work for more than 43 hours a week, are often confined to house of the employer, and often victims of verbal, physical and sexual abuse. Thus, work under conditions that are commonly considered as hazardous¹¹⁸ is a normal scenario in the sectors excluded by the *Labour Act*. The issue of lack of protection of child domestic workers has already been brought before the Supreme Court of Bangladesh. In response to a petition filed by the Bangladesh National Women Lawyers Association, the Supreme Court harshly criticized the government for not taking action supporting child domestic workers. Explicitly considering the protection of child domestic workers to be required by the fundamental rights pertaining to children under the Bangladeshi Constitution, the Supreme Court directed the government to take binding measures for their protection which shall include

114 The List of the Worst Forms of Labour includes the following types of work: Manufacturing of aluminium products; Automobile Workshop; Battery recharging; Manufacturing of Bidi and Cigarette; Brick or Stone breaking; Engineering Workshop including lathe-machine; Manufacturing of glass and glass products; Manufacturing of matches; Manufacturing of plastic or rubber products; Salt refining, Manufacturing of soap or detergent; Steel furniture or car or metal furniture painting; Tanning and dressing of leather; Welding works or gas burner mechanic; Dyeing or bleaching of textiles; Ship breaking; Manufacturing of leather footwear; Vulcanizing; Metal works; Manufacturing of GI sheet products or limestone or chalk products; Rectifying or blending of spirit and alcohol; Manufacturing of Jarda and quivam, Manufacturing of pesticides; Iron and steel foundry or casting of iron and steel; Fireworks; Manufacturing of Jewellery and imitation ornaments or bangles factory or goldsmith; Truck or tempo or bus helper; Stainless steel mill, cutlery; Bobbin factory; Weaving worker; Electric mechanic; Biscuit factory or bakery; Ceramic factory; Construction; Chemical factory; Butcher; Blacksmith; Handling of goods in the ports and ships.

115 Although agricultural and domestic work are not hazardous in all cases, there are typical risks associated with these types of work due to which the working situation is considered hazardous.

116 Section 1 (3) Labour Act 2006.

117 Section 1 (4) (n), (o), (p) Labour Act 2006.

118 Cf. ILO Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour, 1999, (see footnote 71), Section 3.

a widening of the scope of application of the *Labour Act* to cover all domestic workers.¹¹⁹ However, the revision of the *Labour Act* in 2013 did not modify the respective provision. Apparently, the government of Bangladesh failed to use the revision process to follow the ruling of the Supreme Court and to close the gap accordingly. Moreover, the *Labour Act* does not address the problem of child labour in the informal sector in a systematic way. In fact, the exclusion of small agricultural farms, domestic work and small-scale family businesses means that those sectors with significant portions of informal work are kept outside the legal framework.

Furthermore the *Labour Act* does not include extensive enforcement mechanisms.¹²⁰ Under the head of the Ministry of Labour and Employment (MoLE) the Office of the Chief Inspector of the Department of Inspection for Factories and Establishments is equipped with 183 labour inspectors tasked with the enforcement of the rules of the *Labour Act* and other labour laws. Apparently, this limited number of inspectors is insufficient to monitor the enforcement of all labour laws throughout all Bangladesh, let alone the relevant provisions on child labour.¹²¹ Since child labour is far from being the only labour law issue in the country it is questionable whether official monitoring through state inspectors is a viable enforcement mechanism. New approaches in this regard have been followed in the city of Dhaka where 42 community-based workplace surveillance groups comprised of community volunteers are empowered to refer cases of violations against child labour laws in the formal and informal sector to responsible government authorities.¹²² An important step to enable the enforcement of core provisions of child labour law, such as age limits, is the enactment of the *Births and Deaths Registration Act 2004*¹²³ which allows a clear determination of age of new born persons.

7.2.4 Children Act

The national legal framework for child labour is complemented by the new *Children Act* which was enacted in 2013. It replaces the old *Children Act 1974*¹²⁴. Under the *Children Act 1974* a child was defined as a person under the age of sixteen years.¹²⁵ It sought for protec-

119 Supreme Court of Bangladesh, 2010, (see footnote 37), p. 32.

120 ICF International, 2012, (see footnote 45), p. 15.

121 United States Department of Labor, Bureau of International Labor Affairs, 2012 Findings on the Worst Forms of Child Labor, 2013, p. 49. However, it should be noted that the number of inspectors has considerably increased since 2010, cf. United States Department of Labor, Bureau of International Labor Affairs, 2011 Findings on the Worst Forms of Child Labor, 2012, p. 46. Cf. for details on enforcement deficits before the employment of additional labour inspectors, ILO, 2009, (see footnote 63), pp. 23 ff.

122 United States Department of Labor, Bureau of International Labor Affairs, 2012, (see footnote 121), p. 46.

123 The Births and Deaths Registration Act 2004, Act No. 29 of 2004. Coupled with a Universal Birth Registration Strategy which was adopted with the aim to register everyone by 2010 the registration rates have considerably increased; cf. Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), p. 157.

124 The Children Act 1974 (Act XXXIX of 1974).

125 Section 2 (f) Children Act 1974.

tion of children from economic exploitation by setting forth different forms of sanctions, imprisonment or fines, inter alia for employing children for the purpose of begging¹²⁶ or putting children to the risk of seduction, sodomy, prostitution or other immoral conditions.¹²⁷

Compared to its predecessor the new *Children Act 2013* provides for a more comprehensive protection of children.¹²⁸ The new law is based on the norms of the UN CRC¹²⁹ and has been designated as a “milestone for children in Bangladesh”.¹³⁰ The *Children Act 2013* is the first national law providing the opportunity for children to use legal instruments for their protection. A child is now defined as a person below the age of eighteen according to Section 4. A key element of the law is the penalisation of certain action with strong sanctions, such as possible imprisonment for forcing children into begging or supplying drugs or arms to children¹³¹ and criminalization of maltreatment at any kind of work.¹³² Other progressive steps towards monitoring and enforcement of the act are the requirement to establish a “Child Welfare Board” at the national level and to make a “Child Desk” available at every police station in the country. The “Child Welfare Board” shall concentrate on monitoring the compliance with the rights of the child. Monitoring the child labour situation in Bangladesh is therefore one of its main tasks.

In sum, the adoption of the new *Children Act* is a significant progress. Especially the introduction of mechanisms like the “Child Welfare Board” and the “Child Desk” has the potential to improve the situation of children in Bangladesh and could have a positive impact on the child labour situation in the country. However, this impact can only be achieved if the government indeed implements these mechanisms and if the respective institutions can and do carry out their assigned tasks effectively.

7.2.5 Human Trafficking Deterrence and Suppression Act 2012

The government of Bangladesh made an important progress in the abatement of the worst forms of child labour with introducing the *Human Trafficking and Deterrence and*

126 Section 35 Children Act 1974.

127 Section 44 (2) Children Act 1974.

128 Up to the present there is no English translation of the Children Act 2013 available and therefore a profound analysis is not possible.

129 Nahid Ferdousi, *The Children Act 2013: A milestone of child protection*; <http://www.thedailystar.net/beta2/news/the-children-act-2013-a-milestone-of-child-protection/> (20.12.2013).

130 Cf. statement by the UNICEF representative Pascal Villeneuve http://www.unicef.org/media/media_69648.html (02.10.2013).

131 *The Independent Bangladesh*, Child Bill 2013 Passed in Parliament, http://www.theindependentbd.com/index.php?option=com_content&view=article&id=174221:child-bill-2013-passed-in-parliament&catid=95:national&Itemid=141 (08.10.2013).

132 United States Department of Labor, Bureau of International Labor Affairs, 2013, (see footnote 121), p. 48.

*Suppression Act in 2012.*¹³³ This act shall prevent and suppress human trafficking, including labour trafficking, and focuses on the internal and transitional human trafficking.¹³⁴ The decision to enact this law is another step to implement international guidelines as child trafficking is one of the worst forms of child labour.¹³⁵ The Act provides massive penalties which reach from fines over imprisonment to the death penalty.¹³⁶ In 2012 the government agreed also on a National Plan of Action which shall implement the Act.¹³⁷

7.2.6 Relevant National Policies

The Government of Bangladesh has taken several measures to combat the problems concerning child labour. The National Policies cannot be classified as binding acts. In reality the policies are guidelines for future actions.

National Child Labour Elimination Policy 2010

After a long process involving also international development partners the government of Bangladesh has approved the “National Child Labour Elimination Policy 2010”(NCLEP) in March 2010. Quite ambitiously, this policy, created under the auspices of the MoLE, states the aim to eradicate various forms of child labour by 2015.¹³⁸ To achieve this end, ten strategies have been identified. For each strategy the policy specifies clear objectives, relevant activities and implementing bodies. These strategic arenas include: policy implementation and institutional development; education; health and nutrition; social awareness raising and motivation; legislation enforcement; employment / labour market; prevention of child labour and safety of children engaged in labour; social and family re-integration; research and training as well as monitoring and evaluation. One of the major objectives of the policy is to withdraw working children “from all forms of child labour including the hazardous work and worst forms of child labour”.¹³⁹ For this purpose different types of action were developed, such as stipends and grants to let working children return to school. The policy recognizes the need for a special emphasis on indigenous and physically challenged children to bring them back to a “congenial environment”. With respect to the legal and institutional framework the policy mentions the aim to enact

133 United States Department of Labor, Bureau of International Labor Affairs, 2013, (see footnote 121), p. 48; Up to the present there is no English translation of the Children Act 2013 available and therefore a profound analysis is not possible.

134 Fifth State Party Periodic Report under the Convention of the Rights of the Child, 2012, (see footnote 65), p. 59.

135 Cf. Art. 3 lit. a) ILO Convention No 182.

136 United States Department of Labor, Bureau of International Labor Affairs, 2013, (see footnote 121), p. 48; Fifth State Party Periodic Report under the Convention of the Rights of the Child, 2012, (see footnote 65), p. 59.

137 Fifth State Party Periodic Report under the Convention of the Rights of the Child, 2012, (see footnote 65), p. 15.

138 Sharmin Aktar/ Abu Syead Muhammed Abdullah, 2013, (see footnote 48), p. 156.

139 National Child Labour Elimination Policy 2010, Official Translation, March 2010, pp. 4 f.

“pragmatic laws” and to strengthen the country’s institutional capacity for the enforcement of these laws.¹⁴⁰

Later the National Plan of Action (NPA) was introduced to implement the key issues of the NCLEP 2010.¹⁴¹ The aim of NPA is to eradicate hazardous and other worst forms of child labour by 2016.¹⁴² Furthermore it was recognised that child labour is a massive problem, especially in the informal sector and that this gap has to be closed. Therefore the NPA contains 65 specific interventions,¹⁴³ some of which are worth highlighting: In Section 15 the NPA foresees the formation of a National Child Labour Welfare Council comprising representatives from government, NGOs, employers and experts to act as a think tank to analyse and observe the national and international child labour context and situation. It shall make recommendations to the government on which steps have to be taken to implement the NCLEP and the NPA.¹⁴⁴ Moreover, the NPA draws on the “Child Labour Unit” which was already established in 2009. This unit, which is located at the MoLE, shall coordinate all implemented programmes and projects.¹⁴⁵ Moreover, the NPA has detailed clear responsibilities from the national level, the divisional level, the district level down to the upazila level for monitoring and evaluation of the implementation of the NCLEP. Remarkably, the respective bodies entrusted with monitoring and enforcement are composed of both government representatives and state officials and representatives from civil society and workers’ organizations.¹⁴⁶

National Education Policy 2010

Since quality education is the most important alternative to a too early work life, it is worth looking at Bangladesh’s Education Policy. The “National Education Policy 2010” committed to ensure that “[p]rimary education will be universal, compulsory, free and of uniform quality for all”¹⁴⁷. It also emphasized the situation of street children and “ultra deprived children”. The National Education Policy 2010 also deals with the massive problem of school leavers.¹⁴⁸ The government confirms to take measures to make sure that all students have the opportunity to complete Class VIII by 2018.¹⁴⁹ As poverty is one of the

140 National Child Labour Elimination Policy 2010, 2010, (see footnote 139), p. 5.

141 National Plan of Action for Implementing the National Child Labour Elimination Policy, Ministry of Labour and Employment, Government of the People’s Republic of Bangladesh, p. 1.

142 Ibid. p. 13.

143 Ibid. p. 2.

144 Ibid. p. 36.

145 For details on the National Child Labour Welfare Board and the Child Labour Unit see ILO, 2009, (see footnote 63), pp. 27 f.

146 National Plan of Action for Implementing the National Child Labour Elimination Policy, (see footnote 141), pp. 36 ff.

147 National Education Policy 2010, Ministry of Education, Government of the People’s Republic of Bangladesh, p. 12.

148 The “drop-out rate until or before the completion of Class V is about 50% and of the rest, about 40% leave the school before completing Class X.”; *ibid.*, p. 15.

149 *Ibid.*

main aspects for children not to visit school, the government wants to take special measures for financing everyday school life. This includes free admission, free education materials, free lunch at schools and stipends.¹⁵⁰ Compulsory schooling until Class VIII is an important step to ensure that there is no gap between the age of compulsory schooling and the general minimum age for employment as required by ILO Convention No 138. Ideally, to enable enforcement of compulsory schooling, the age of compulsory schooling should also be stipulated by law.¹⁵¹ Apparently, the draft new *Education Act 2013* which was released by the Ministry of Education in August 2013 for public comments includes a section to that effect.¹⁵² Art. 5 (1) of the draft act determines that “primary education will be recognised as a child’s right”.¹⁵³ However, NGOs have criticized that the draft act is not formulated as an entitlement of children to free primary education.¹⁵⁴

Programmes

In addition there exist a number of programmes as practical approaches to eliminate child labour in Bangladesh. Through these programmes the government interacts with different actors and tries to support children and families immediately.¹⁵⁵ The Ministry of Women and Children’s Affairs and the Ministry of Welfare introduced with the help of United Nations International Children’s Emergency Fund (UNICEF) a programme which will reach 500,000 children and 30,000 adolescents until 2016 and shall eliminate child labour in rural areas and urban slums.¹⁵⁶ The programme focuses on the social protection services. Another flagship programme of the government is implemented by the MOLE since 2002. In the first and second phase of that project 40,000 child labourers received non formal education and skill development training. In continuation, the third phase of the project targeted 50,000 child labourers who started receiving non formal education for eighteen months in 2012 which will be followed by a skill development training for six months.¹⁵⁷ Other programmes concentrate on ensuring schooling, while letting them still support their families. For instance, in a programme introduced by the government of Bangladesh in cooperation with UNICEF¹⁵⁸, the students have classes for

¹⁵⁰ Ibid.

¹⁵¹ United States Department of Labor, Bureau of International Labor Affairs, 2013, (see footnote 121), p. 49.

¹⁵² Mohiuddin Alamgir, Education Act, http://www.newagebd.com/detail.php?date=2013-08-09&nid=60421#.UrvWo_tRySo (26.12.2013). Until the time of finalisation of this paper an English translation of the draft was not available.

¹⁵³ The Dhaka Tribune, Right to Education vs Draft Education Law, <http://www.dhakatribune.com/oped/2013/oct/06/right-education-vs-draft-education-law-2013> (20.12.2013).

¹⁵⁴ Cf. Action Aid Bangladesh, How far the Draft Education Law 2013 is inclined to protect citizen’s right to education, <http://www.actionaid.org/sites/files/actionaid/article.pdf> (22.12.2013).

¹⁵⁵ Cf. for a comprehensive overview of programmes, especially those that were in 2009 part of the Bangladesh National Time Bound Programme, ILO, 2009, (see footnote 63), pp. 32-35.

¹⁵⁶ United States Department of Labor, Bureau of International Labor Affairs, 2013, (see footnote 121), pp. 49 f.

¹⁵⁷ Ministry of Labour and Employment, Annual Report 2012-13, p. 12, available at: http://mole.gov.bd/index.php?option=com_content&task=view&id=462&Itemid=540

¹⁵⁸ UNICEF, Basic Education for Hard to Reach Urban Working Children (BEHTRUWC): Child Labour in Bangladesh, http://www.unicef.org/bangladesh/Child_labour.pdf, p. 4 (20.12.2013).

2 1/2 hours a day for six days a week. The course for the children runs for 40 months. Apart from programmes enacted in collaboration with the government there exists a variety of different programmes introduced by NGOs and also by companies in cooperation with NGOs as part of their corporate social responsibility strategies.

8 CONCLUSION

Over the last decades Bangladesh has taken a number of important steps to address the issue of child labour through legal measures. Signs of improvement were the ratification of the UN CRC and ILO Convention No 182 and the enactment of the *Labour Act 2006*, the *Human Trafficking Deterrence and Suppression Act 2012* and the *Children Act 2013*. However, decisive gaps remain in the overall legal framework on child labour, also with regard to the effective implementation of the said conventions. Moreover, implementation of these acts remains a major challenge. Other signs of progress, especially in the recent years, can be seen in the adoption of the National Child Labour Elimination Policy 2010 and the respective National Plan of Action and the National Education Policy 2010. In light of the fact that the last comprehensive official study on the child labour situation was conducted in 2002-2003 it is also promising that Bangladesh is apparently updating its data on child labour by conducting a new child labour census.¹⁵⁹ However, also on the political field further measures should be taken to address the issue of child labour effectively. Moreover, long periods for drafting and adopting the respective measures call into question whether there is a sense of urgency at all government levels. In sum, despite the progress made, there are a number of issues that still need to be taken up. Specific gaps and shortcomings are summarized and recommendations on how to address them are proffered in the following paragraphs.

International Conventions: The government of Bangladesh ratified with the UN CRC and the ILO Convention No 182 two of the three most important international treaties concerning child labour. In light of the fact that current legislation in Bangladesh is clearly oriented at the age limits promulgated in the ILO Convention No 138 and that the convention includes flexibilities for developing countries, it is striking that Bangladesh has not ratified the Convention yet. Furthermore, the legal status of children would be significantly improved, if the government signed and ratified the third Optional Protocol of UN CRC, which introduces a new complaint mechanism for children, groups of children or their representatives in the case of a violation of UN CRC. The ratification would also send out a clear message to the international community and would substantiate the efforts to eliminate child labour.

The government should ensure that all necessary steps remaining for full compliance with ILO Convention No 138 are taken and ratify the convention within a fixed timeframe. Moreover, ratification of the third Optional Protocol of the UN CRC would add to the legal protection mechanisms available to children.

Gaps in the sectoral coverage of legal rules: The major deficit of *Bangladesh Labour Act 2006* remains its limited scope of sectoral application since agriculture, domestic work, and small-scale family businesses are excluded. These fields of work are typical for the huge informal sector of Bangladesh where the majority of child labourers is found. There-

159 The Dhaka Tribune, Children Continue to Man Hazardous Jobs, <http://www.dhakatribune.com/labour/2013/jun/12/children-continue-man-hazardous-jobs> (26.12.2013).

fore, the limited scope of application results in a lack of legal protection for children and must be considered the most decisive remaining gap in the legal framework on child labour. As regards the case of child domestic work, the Supreme Court of Bangladesh has already highlighted the need to close this gap through further regulation. The adaption of the list of the Worst Forms of Child Labour did not close this legal gap. Typical areas of hazardous work like domestic and agriculture work are still not prohibited under the current legislation in Bangladesh. In fact, legislators - both in Bangladesh and its export markets - should draw lessons from the reactions to the Harkin Bill. Apparently, measures that only address formal sector businesses, or even solely export-oriented formal sectors, are not an effective means to improve the child labour situation, in particular when these measures are not backed up by schemes that provide working children with an alternative. Clearly, any policy measure that aims to remedy child labour must take into account that the huge informal sector creates a steady demand for children that depend on earning income for their own and their families' livelihoods.

Hence, the government should adopt child labour regulation for those sectors that are excluded from the *Labour Act 2006*¹⁶⁰ and make the List of Worst Forms of Labour more comprehensive. Measures aimed at removing child labourers from a certain sector should provide these children and their families with viable alternatives to prevent a shift to the informal sector.

Lack of enforcement of existing legal rules: Currently the gap persists between existing laws and their enforcement. Resource limitation is a key hindrance for enforcement. The government bodies tasked with monitoring and enforcing Bangladesh's labour regulations are severely under-staffed to secure the application of the rules on child labour throughout the country. Alternative monitoring mechanisms, such as community-based surveillance groups comprised of trained volunteers, have so far only been explored in parts of Dhaka. Apart from monitoring mechanisms it is alarming that cases brought to the attention of public prosecutors or other official bodies have not been sufficiently investigated or followed as was indicated in the recent judgement of the Supreme Court of Bangladesh. Such neglect of the rule of law leaves victims of child labour without effective remedies. A positive development can be seen in the implementation of the new *Children Act 2013*. The introduction of the "Children Welfare Board" and the "Child Desk" can be seen as steps in the right direction since these measures are designed to ensure the implementation of child protection laws, including through complaint mechanisms.

Thus, the government should strengthen the monitoring and enforcement mechanisms for child labour regulations, *inter alia*, through a further increase in human resources and training. Taking into account limited monetary resources and the scattered informal sector businesses, alternative monitoring mechanisms are worth to be explored further.

¹⁶⁰ Special focus should be laid on the exceptions of Section 1 (4) (n), (o), (p) Bangladesh Labour Act 2006.

Social Security: The international community declared that child labour shall be eliminated until 2016. However, child labour is not eliminated by the mere prohibition of engaging children at work. Since the main cause for child labour is poverty, it is decisive that social security measures safeguard families from falling into deeper poverty. ILO Convention No 182 already recognizes the link between child labour and poverty and supports cooperation on social development and poverty reduction policies. The Employment Generation Programme for the Poorest and the Vulnerable Group Development Programme are important first steps of the government of Bangladesh to establish social safety nets through short-term employment, food assistance and training in generating alternative incomes.¹⁶¹ However, overall the coverage of social security programmes in Bangladesh remains low.¹⁶²

Therefore, the government should widen its social security measures to ensure that children and their families are going to be protected from deeper poverty.¹⁶³ Partnerships with the private sector, NGOs and other actors may be viable paths to implement such policies.

Implementation of Education Policy: Ensuring universal, free, compulsory primary schooling until Grade VIII combined with urgently needed improvements in the quality of education are stated aims of Bangladesh's Education Policy. Compulsory schooling until Class VIII is an important step to ensure that there is no gap between the age of compulsory schooling and the general minimum age for employment as required by ILO Convention No 138. Effective implementation of the policy is imperative, both from a general development and a specific child labour point of view. The strong relation between education and child labour calls specifically for an effective coordination between the NCLEP and the Education Policy in order to prevent early school drop-outs of children.

A new *Education Act* is an important aspect of the implementation process and should ensure that school drop-outs before grade VIII are monitored and addressed on the basis of a well-informed monitoring and evaluation system. Effective coordination between child labour and education policy should be ensured. Moreover, the new *Education Act* should provide for mechanisms to address early school drop-outs.

¹⁶¹ United States Department of Labor, 2012 Findings on Worst Forms of Child Labor, p. 50; http://www.heed-bangladesh.com/index.php?option=com_content&view=article&id=74&Itemid=104 (22.12.2013).

¹⁶² Cf. also for details on existing social security programmes ILO (International Institute for Labour Studies), 2013, (see footnote 41), pp. 115 ff.

¹⁶³ Cf. also Markus Kaltenborn / Lukas Groß, 2014, (see footnote 67).

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