

# Protecting the Rights of Domestic Workers

Policy Recommendations &  
Best Practices in South East Asia

Written by: Anita Liu

Contributors: Le Thi Nga, Le Thi Thu, Nguyen Phuong Anh, Nguyen Anh Nguyet

Edited by: Lisa MacDonald

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## List of Acronyms

|               |  |
|---------------|--|
| <b>ILO</b>    | International Labour Organization                            |
| <b>GDP</b>    | Gross Domestic Product                                       |
| <b>GFCD</b>   | Research Center for Gender, Family and Community Development |
| <b>MoLISA</b> | Ministry of Invalids and Social Affairs                      |

## Executive Summary

On June 2012, the Ministry of Labour, Invalids and Social Affairs (MoLISA) in Vietnam revised the Labour Code to include 5 new articles (Section 5, Articles 179-183) that recognize domestic workers' rights by law for the first time. Although this is a great stride towards social prosperity, focused strategies must be developed to implement these new laws in order to achieve intended outcomes. This review intends to guide the implementation of the new labour laws by providing an overview of Vietnam's current situation in regards to domestic workers' needs and identifying best practices from neighboring countries in the region.

In Vietnam, domestic workers enjoy relatively high pay compared to other unskilled workers. A recent survey in 2012 found that domestic workers earn on average 2 800 000 VND/month, which is more than people in suburban areas of Hanoi and college graduates. Half of domestic workers interviewed also reported that it was a high and stable source of income. Given that approximately 50% of domestic workers come from families that live below the poverty line and primarily work in this sector to send money home, implementing the new Articles in the Labour Code is not only a stride towards achieving equal labour rights for domestic workers, it will also facilitate poverty alleviation.

Although the level of pay for domestic workers is not a priority concern, these workers face other challenges that do not allow them to enjoy the same rights as other laborers in the formal sector. Domestic workers, for example, are almost exclusively women (98%) and thus, they face challenges that uniquely or predominantly affect women, such as lack of maternity protection. Other challenges arise due to the nature of the work, which occurs behind closed doors, and the general lack of regulation and respect for domestic workers in Vietnamese society. Due to these factors, they often work long and unregulated hours and experience abuse (verbal, physical, and sexual). To magnify the severity of these problems, both employers and employees are not aware of labour laws and their rights or obligations.

***Thus, overarching recommendations are to educate both employers and employees of current labour laws and standards, register all domestic workers as formal workers, and to implement a system where there is an authority that responds to domestic workers' complaints.***

***Key considerations and recommendations are summarized on the following page (pg. iii).***

Studies predict that the demand for domestic workers will continue to increase due to a steady increase in women (who are traditionally assigned to domestic work) entering the formal work sector and contributing to Vietnam's rapid economic growth. Thus, responding to domestic workers' rights and needs is integral to sustaining Vietnam's economic growth.

# Executive Summary

## Key considerations and recommendations

| Consideration                              | Current Situation  | Best Practice & Recommendations  |
|--|--|--|
| <b>General Challenges</b>                  |  |  |
| <b>Management</b>                          | Are not registered as employees within the government system                                 | <ul style="list-style-type: none"> <li>Designate a local authority (labour inspector/police officer) to monitor any violations to workers' rights and designate a police officer to investigate accusations and enforce the law when needed.</li> </ul>  |
| <b>Debriefing &amp; Training</b>           | Both employer and employee is not aware of relevant legislation                              | <ul style="list-style-type: none"> <li>Publish a guide and offer mandatory information sessions for both the employee and employer to inform of relevant policies and obligations.</li> <li>MoLISA oversee standardized training for all domestic workers.</li> </ul>  |
| <b>Standard Contract</b>                   |  |  |
| <b>Payment Schedule &amp; Wages</b>        | Workers report delayed payment but are paid on average more than other unskilled workers     | <ul style="list-style-type: none"> <li>Payment issued once per month and be provided proof of payment.</li> <li>Minimum salary should be set according to the region or province and should be based on the same salary of other unskilled workers in the region.</li> </ul>   |
| <b>Rest &amp; Work Hours</b>               | Unregulated work hours and often work overtime without pay                                   | <ul style="list-style-type: none"> <li>Contract should clearly outline a) paid holidays and vacation time b) worker is allowed an aggregate rest period of 12hrs/day (e.g. 8PM-8AM), 24hrs/week c) maximum of hours worked per week or month.</li> </ul>   |
| <b>Live-in Workers' Standard of Living</b> | Sometimes salary is deducted in lieu of accommodations or poor standard of living            | <ul style="list-style-type: none"> <li>Outline that it is illegal to deduct wages in lieu of accommodation &amp; food.</li> <li>Standard and acceptable living arrangements agreed on before signing contract; outside communications facilitated (e.g. provide mobile plan).</li> </ul>   |
| <b>Health &amp; Social Insurance</b>       | Almost all workers do not have health or social insurance                                    | <ul style="list-style-type: none"> <li>Employer pays (once/month) a portion of worker's health insurance; proof of health and social insurance must be presented to MoLISA.</li> </ul>   |
| <b>Maternity Protection</b>                | None provided  | <ul style="list-style-type: none"> <li>Domestic workers should be recognized as formal labourers to enjoy the current legislature and social protection.</li> </ul>  |
| <b>Child Labour</b>                        | 17.3% of domestic workers in Hanoi and Ho Chi Minh are under 18 years old                    | <ul style="list-style-type: none"> <li>Raise the minimum working age to 18 with the exception of 15-17 year olds who cannot access education to engage in 'light work' as defined by ILO.</li> </ul>   |
| <b>Sexual Harrassment &amp; Abuse</b>      | 20% report verbal abuse and 16% at risk for sexual abuse                                     | <ul style="list-style-type: none"> <li>Classify domestic workers as a formal job in order to enforce pre-existing law</li> <li>Assign a local authority to respond to complaints and enforce the law.</li> <li>Provide orientation and education for both employee and employer on their rights and the law.</li> <li>Educate employees on the root causes of sexual harassment and abuse, and what actions constitute sexual harassment and abuse.</li> </ul> |
| <b>Elimination of Forced Labour</b>        | Workers report to work irregular hours/overtime without pay and sometimes sexually assaulted | <ul style="list-style-type: none"> <li>Reinforce in the employment contract that it is illegal according to Vietnam's Labour Code, Article 3, section 10.</li> <li>Define working time and responsibilities, leisure time, and extra working hours in the labour contract.</li> </ul>  |
| <b>Right to Organize</b>                   | Currently there are no unions for domestic workers   | <ul style="list-style-type: none"> <li>A representative appointed for collective bargaining and to lobby to the government for policy concerns.</li> </ul>   |

# Part I: Introduction

## Background

Domestic work is defined by the International Labour Organization (ILO) as “work performed in or for a household or households”. Worldwide, the invisible contribution of women (including women’s unpaid domestic work and the value of the underpayment of women’s work in the market at prevailing wage) makes up 11 billion USD per year<sup>1</sup>. In Vietnam, a study in 2008 revealed that approximately 157,000 domestic workers contribute to the labour market and it is predicted that this number will reach 246,000 by 2015.<sup>2</sup> Despite that domestic workers constitute a large portion of the global and Vietnamese labour industry, they are among the most vulnerable group of workers because domestic work is not classified as a formal job.

Globally, domestic work is regarded as women’s work due to gender roles and norms that exist in many societies. Worldwide<sup>3</sup>, over 80% of domestic workers are women and in Vietnam, this number reaches 98%.<sup>4</sup> Domestic work also tends to be undervalued as it is perceived as having low economic value, which is reflected through the low compensation of domestic workers globally. As a result, domestic work tends to not be viewed as real work and is often excluded from labour legislature and standards.

Although in many countries domestic workers are remunerated below the national minimum wage for unskilled workers, Vietnam’s situation is quite different; domestic workers are paid more (2.77 million VND/month) than other unskilled workers (1.748 million VND/month).<sup>5</sup> Research suggests that the major challenges domestic workers face in Vietnam are lack of training, lack of autonomy while working, lack of knowledge regarding the law and their rights, and lack of social and health insurance.

Research conducted by ILO in 2011 revealed that only 1.6% of domestic workers in Vietnam had received vocational training on domestic work.<sup>6</sup> Only 19.5% of domestic workers in this study had health insurance, and only 3% had social insurance. In most cases, these insurances were either paid for by themselves, the government, or co-paid with employers. Only 12.5% of domestic workers had health insurance paid in full by employers.

The Research Center for Gender, Family, and Community Development (GFCD) reports that 20% of domestic workers have experienced verbal abuse and 16% experienced sexual abuse.<sup>7</sup> Furthermore, a study of child

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<sup>1</sup> United Nations’ 1995 Human Development Report. (1995). United Nations.

<sup>2</sup> International Labour Organization (ILO). Vietnam Employment Trends. (2010). National Centre for Labour Market Forecast and Information, Bureau of Employment, Ministry of Labour, Invalids and Social Affairs. Published by ILO’s country office in Vietnam.

<sup>3</sup> International Labor Organization: <http://www.ilo.org/global/topics/domestic-workers/lang--en/index.htm>. Accessed on November 13,2013.

<sup>4</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 4.

<sup>5</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 16-17.

<sup>6</sup> ILO (2011). Decent work for Domestic Workers in Vietnam. As cited in: Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), p.7, 18

<sup>7</sup> Research Centre for Gender, Family, and Community Development. (2007). As cited in Thanh Nien News: *Vietnam domestic workers face high risk of ill treatment: study (August 29, 2013)*.

domestic workers in Hanoi showed that girls working in homes to which their families do not have close ties experience loneliness and unhappiness<sup>8</sup>; approximately 17% of domestic workers in Vietnam are children under the age of 17 (MoLISA, 2011). Together, these studies suggest there is a need for professional and peer support and a channel in which domestic workers can file complaints when their rights are violated.

Given the lack of legal protection, domestic workers are at high risk of exploitation and vulnerable to inequities that either uniquely or predominantly affect women, such as wrongful termination due to pregnancy. Along with gender, the fact that domestic work occurs behind closed doors may magnify the risk of sexual harassment, social isolation, and exploitation. Protection for domestic workers, which is a sector dominated by women, is important as women have the power to lift societies out of poverty—women are more likely to spend their earnings on their children than men<sup>9</sup> and tend to come from the poorest segments of society to earn money to send home.<sup>10</sup>

Focused strategies and strong policies, such as registering domestic workers as formal employees, can also be used as tools for social development and poverty alleviation, as this allows them to enjoy the same social benefits and employment standards as workers in other labour sectors. This is particularly important given that half of domestic workers in Vietnam (47%) come from families that live below the poverty line.<sup>11</sup> On June 2012, the Ministry of Labour, Invalids and Social Affairs (MoLISA) in Vietnam revised the Labour Code to include 5 new articles (Section 5, Articles 179-183) that recognize domestic workers' rights for the first time. Although this is a great stride towards social prosperity, a plan on how to implement the new articles is urgently needed to ensure that intended outcomes are achieved. Thus, the purpose of this review paper is to guide and support the implementation of the new articles introduced in the Labour Code on June 2012. In addition, we strongly recommend that Vietnam ratify ILO's Domestic Workers Convention (C189)<sup>12</sup> to reaffirm commitment to protecting domestic worker's rights and help guide policy development that adheres to international labour standards.

**Implementing a focused Decree based on Vietnam's country context and adopting best practices internationally will help protect the rights of domestic workers.**

**Other benefits include:**

- ✓ **Poverty alleviation**
- ✓ **A healthier society, both socially and economically**
- ✓ **Sustainable social and economic development**

<sup>8</sup> Rubenson, B., Nguyen, T.V.A., Hojer, B., & Johansson, E. (2004). Child domestic servants in Hanoi: Who are they and how do they fare? *The International Journal of Children's Rights*, 11, 341-407.

<sup>9</sup> Food and Agriculture Organization of the United Nations. "Key Facts" [www.fao.org/sofa/gender/key-facts/en/](http://www.fao.org/sofa/gender/key-facts/en/) Accessed on September 11, 2013.

<sup>10</sup> International Labour Organization. Domestic Work Policy Brief 1. Written by Martin Oelz. Accessed online on September 4, 2013.

<sup>11</sup> Brief Report: Overview on the situation of domestic workers in Vietnam from 2007 to Present. (2013), pg. 7.

<sup>12</sup> International Labour Organization. (2011). Domestic Workers Convention No.189. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189)

### Purpose

The purpose of this report is to support the development and implementation of sub-Law policies (Decree and Circular) on domestic work in Vietnam. The report provides recommendations for policy implementation based on best practices identified internationally, with a particular focus on countries in Asia.

### Methodology

The review process focused primarily on legislature in Asia due to the similar situational context, however, international best practices were included as appropriate based on pre-existing research conducted by ILO and Human Rights Watch. The following methodology was employed to review legislation on domestic work:



Legislature regarding domestic work was reviewed in 11 countries in Asia (see below); however, because many countries in Asia are senders of domestic workers, rather than recipients (e.g. Indonesia), only bilateral agreements exist between the sending and receiving countries and are therefore not relevant to our review and analysis.

Countries reviewed include:

- Cambodia
- **Hong Kong**
- India
- Malaysia
- Lao PDR
- **Philippines\***
- **Singapore**
- Sri Lanka
- South Korea
- Taiwan
- Thailand

Bolded countries protects the rights of domestic workers under their Labor Code

\* Indicates that the country has ratified ILO's C189 on Domestic Work

## Part II: Best Practices

### General Challenges

#### Management of Domestic Workers

In Vietnam, the Ministry of Labour, Invalids and Social Affairs (MoLISA) is responsible for labour management in the nation. However, there is currently no formal labour management procedure for domestic workers. Only the police sector manages the temporary residence registration of domestic workers according to the Law on Residence issued by the National Assembly in 2006. While job centers exist for recruiting domestic workers and connecting them with employers, there is no external system in place to monitor their operations. There is therefore an urgent need to have a system in place to manage the needs of domestic workers and monitor any violations of the new articles outlined in the Labour Code.

**International standard:** ILO's C189, Article 17, Sections 1-3 states that:

- 1) an effective and accessible complaint mechanism to ensure compliance with national laws and regulation should be in place,
- 2) the state “shall develop and implement measure for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national law and regulations” and
- 3) in so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

**Vietnam context:** The Law on Residence (81/2006/QH 11) requires persons who are living, working, laboring or studying at a place in a commune, ward or township, but are not entitled for permanent residence in that locality, to register their temporary residence at the commune/ward/township police offices within thirty days of their arrival. Domestic workers are subject to this law, however, very few follow this regulation.

Half of domestic workers who participated in a survey by the Research Centre for Gender Family and Community Development (GFCD) expressed that they do not feel a need to sign a labour contract because there is no management system to enforce compliance of the contract.<sup>13</sup> Most domestic workers find work through a friend or relative while private job/recruitment centers are rarely used.<sup>14</sup> When job centers are used, management and service is of poor quality—wages and labour terms are agreed between the worker and employer, whom may both lack knowledge of labour standards, regulations, and legislation. In some cases, the

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<sup>13</sup> Brief report: Overview on the situation of domestic workers in Vietnam from 2007-Present. (2013), pg.14.

<sup>14</sup> Brief report: Overview on the situation of domestic workers in Vietnam from 2007-Present. (2013), pg.14.

employer pays a promotion/introduction fee for the job center to recruit, and sometimes train, a domestic worker to meet their needs. The employer may also pay the domestic worker's salary through the job center, however, in most cases the job center only plays an intermediary role in connecting domestic workers with prospective employers.

**Best Practice(s):** In Hong Kong, Philippines, Singapore, and South Africa, the governments' labour ministries are responsible for registering and managing domestic workers, including complaints and law enforcement; a designated government officer then processes and responds to complaints from the domestic worker.

In the Philippines, the domestic worker is registered in the barangay, the smallest unit of local government, and a written contract is required to be registered here in a dialect understood by both the employer and domestic worker. Domestic workers deployed to other countries are managed by the Embassy of Philippines where emergency shelters are available for temporary stay.

In Malaysia and Thailand, labour inspectors have the right to inquire about complaints by inspecting homes to investigate any violations to the worker's rights; if the employer is found to be guilty, s/he is subjected to pay fines or penalties under the law.

Singapore has publicized cases where employers have been prosecuted for violating the worker's rights as a means to deter current and prospective employers from repeating the same offence.

In Brazil, within 48hrs of hiring, the employer must apply for a labour and social security card (i.e. Carteira de Trabalho e Previdencia Social) on behalf of the domestic worker. Thus, the trend in managing and monitoring violations of labour standards for domestic workers is to register the workers with the Ministry of Labour.

**Recommendation:** According to a recent study by GFCD (2013), out of 600 surveyed domestic workers, half of them live with their employer. This number may increase as the study also showed that a large majority of prospective employers prefer to hire a live-in worker. This puts domestic workers at a higher risk of exploitation and abuse.

It is important to establish an authority at the commune/ward level where domestic workers are registered and can be easily monitored and have access to services provided by the local authority. We recommend designating an inter-sectoral committee comprising representatives of the women's union, police sector, leaders of the commune/ward People's Committee and leaders of the citizen's group (smaller unit of local government) to monitor any violations to domestic workers' rights, investigate accusations and enforce the law when needed. The benefits of this include less strain on civil services, since only serious cases can be brought forth to the police officer, and increased protection, as domestic workers may be more comfortable approaching the women's union.

### Debriefing & Training

Globally, domestic workers tend to have low educational attainment, lack training for domestic work (e.g. cooking and operating new household appliances), and lack knowledge of their rights and freedom. This places domestic workers at high risk for labour exploitation and violation of their human rights and freedom.

In many cases, the employer may not know her/himself of new legislation that protects domestic workers of their rights. It is therefore necessary to devise a strategy to educate both the employee and employer of pre-existing legislature and penalties for breaking the law. Conflict resolution can take a long time, may not satisfy one of the parties involved, or may not be possible. Conflict prevention—especially by providing effective education—is therefore important.

**International Standard:** Article 7 of ILO’s C189 states “Each Member shall take measures to ensure that domestic workers are informed of the terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements”.

**Vietnam context:** Vietnam shares the same global trends—70% of domestic workers are reported to be unaware of any regulations and legislature concerning domestic work and 81% of potential domestic workers said that domestic training is needed.<sup>15</sup> Eighty seven percent of prospective employers intend to hire skilled and trained domestic workers and are willing to pay higher wages to obtain one. Half of prospective employers have reported a need for domestic workers to care for elderly or disabled people, 70% require them to possess knowledge of childcare, and over 70% require workers to cook and clean.<sup>16</sup>

Domestic work is not listed in the government job list and, consequently, there is no training provided for this job from the government job training system. Training for domestic workers is only provided by some private job centers for the purposes of job introduction or to meet the needs of the employers. However, the training is usually only conducted for approximately 2-7 days and focuses on basic skills, such as cooking and taking care of the elderly and children.

Within the government system, the Center for Employment Introduction is responsible for managing unemployment insurance, job introduction, providing job counseling and training, and managing policies related to labor relations for employees. However, employers are only required to register employees when they hire more than 10, and currently, there is no policy about unemployment insurance for domestic workers. Thus, domestic workers are not typically registered with the Center for Employment Introduction and therefore, cannot receive help from the Center.

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<sup>15</sup> Brief report: Overview on the situation of domestic workers in Vietnam from 2007-Present. (2013), pg. 9 & 21.

<sup>16</sup> Brief report: Overview on the situation of domestic workers in Vietnam from 2007-Present. (2013), pg. 9 & 22.

**Best Practice(s):** Several states such as Hong Kong, Singapore, and South Africa have published a guidebook to educate both domestic workers and employers on their rights and obligations. Such publications cover a wide range of topics concerning wage and pay schedule, rest/maximum hours worked per week, maternity protection, etc. (very similar to sections that should be outlined in the employment contract; see Annex 1).

Hong Kong also has a 24-hour helpline specifically for domestic workers to call and Singapore has made it mandatory for domestic workers to attend a pre-departure “Settling-In Programme” (as most of their domestic workers are from overseas) and first time employers are required to attend a mandatory 3-hr training program (“Employer Orientation Programme”; offered in a class or online) aimed to help them understand the responsibilities of employing a domestic worker. Proof of completion of the Employer Orientation Programme is needed before an application for a domestic worker is accepted by the Ministry of Manpower. Newsletters are also sent out in various languages to update domestic workers and employers in Singapore of any new policies that may affect the employment relationship or their rights.

In Singapore, the Ministry of Social and Family Development also provides domestic workers with a monthly grant of \$120 to enroll in training courses for those whose responsibility is to care for an elderly or disabled person (medical certification is required). Brazil and South Africa have enforced programs, funded by the government, that systematically train domestic workers for both professional and social skills. For example, the program in South Africa, launched in 2008, aims to train all 27,000 domestic workers nationwide, is financed by the Department of Labour’s National Skills Fund and overseen by the Services Sector Education and Training Authority. In Brazil, this program (Trabalho doméstico cidadão) consists of the following sub-components and is issued by the Immigration Center:

- A) Education and professional qualifications to become a skilled domestic worker (increases the value of domestic work),
- B) Tips for organizing unions and “public policies intervention” (Intervenção em políticas públicas) which consists of public campaigns on issues such as human rights, violence against women, right to housing, health, work and social security and eradication of domestic child labour.

**Recommendation:** In Vietnam, many domestic workers have low educational attainment and some are illiterate. Given that the introduction of the new articles in the Labour Code on domestic work is quite new, it is important to properly educate domestic workers and employers through: a) publishing a guide for both the employee and employer, b) offering mandatory information sessions for those who are illiterate, c) providing a specified service (e.g. women's union) that domestic workers can contact for more information, and d) offering a mandatory information session for employers to learn about their responsibilities and legislation regarding unacceptable conduct.

Domestic workers should be trained on skills for domestic work to be able to work effectively at certain standards. Research shows that Vietnamese domestic workers believe that domestic training courses (cooking, operating household equipment, etc.) should be given by professional trainers or the employer.<sup>17</sup> Like Brazil, MoLISA may organize and oversee standardized domestic training by a professional prior to employment.

### Standard Contract

A labour contract is essential for protecting the rights of domestic workers as it establishes an industrial relationship and clarifies the rights and obligations to both the employee and employer. It is also a tool used to ensure protection for domestic workers, is recommended in Article 7 of ILO C189, and introduced in Vietnam's Labour Code in 2012 (Article 180 & 181). Common topics outlined in a standard contract should include:

- Address of place of Employment
- Duration of employment & type of work to be done
- Payment & Wages: minimum wage, payment method & schedule
- Working hours & rest, Holidays, & Sick Leave
- Food & Accommodation (if live-in worker)
- Maternity Protection
- Health & Social Insurance
- Terms for Termination of Employment
- Severance Payment and Long Service Payment

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<sup>17</sup> Brief report: Overview on the situation of domestic workers in Vietnam from 2007-Present. (2013), pg. 22.

Other general points to consider when drafting a standardized contract are:

1. **Knowledge Dissemination:** In Vietnam, the majority of domestic workers have low educational attainment. The written contract should therefore be presented in a way that the domestic worker understands (e.g. in their dialect and simple terms, free of legal jargon, and for illiterate workers it should be read to them orally by a reliable third party official).
2. **Gender-neutral & Precise Language:** Although ~98% of domestic workers are women, the contract and legislation should use gender-neutral language to avoid gender discrimination. The demographics of domestic workers can change quite quickly. For example, in 2011 the majority of domestic workers (61.5%) were between ages 18-35 but in 2012, the majority of workers (68.8%) were between ages 36-55.<sup>18</sup> Domestic workers should also be referred to as ‘workers’ and not ‘helpers’ to reinforce the industrial relationship between the domestic employee and employer
3. **Standard contract should be accessible:** The standard contract should be made available, accessible, and free of charge to domestic workers, employers, representative organizations and the general public. It should also be posted in MoLISA’s website and be available in the local communes’ office.

## Payment & Wages

### Minimum Wage

A mandatory minimum wage, equivalent to the minimum wage set forth for unskilled workers in Vietnam, should be enforced in order to acknowledge the principal of “equal pay for equal work”. This in turn will increase the value of domestic work and facilitate poverty reduction, as half of domestic workers in Vietnam tend to come from the poorest segments of society.<sup>19</sup>

**International Standard:** Article 11 of ILO’s C189 recommends to ensure that domestic workers enjoy minimum wage coverage without discrimination based on the sex of the domestic worker. Globally, many countries have adopted this recommendation by either applying the general national minimum wage to domestic workers, created a minimum wage specifically for the domestic work sector, or created various minimum rates based on occupational sub-groups.

**Vietnam context:** Globally, domestic workers tend to earn half of average wages—much below minimum wage; however, this is not the case in Vietnam. Vietnamese domestic workers are paid more than college graduates

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<sup>18</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 7.

<sup>19</sup> ILO (2011). Decent work for Domestic Workers in Vietnam. As cited in: Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013).

(2.77 million VND/month) and on average, according to a study by GFCD and Oxfam, are also paid more than unskilled workers (1.748 million VND/month).<sup>20</sup>

Nonetheless, policies should be put in place for future protection as this sector of work can change over time and domestic workers are more vulnerable to exploitation since it is not yet classified as formal work.

**Best practice(s):** Few countries in this region have enforced a minimum wage for domestic work and of those countries that have (e.g. Hong Kong, Philippines), it is below that of minimum wage for unskilled workers and is based on a monthly salary. This is problematic because domestic workers tend to work more than the standard 35-40hr work week and thus, should be remunerated per hour or there should be specifications in the contract for maximum hours worked per day/week.

In South Africa and Austria, the government has set minimum hourly, weekly, and monthly wages for domestic workers based on the region of employment with specifications as to how many maximum hours can be worked per week or month, if the employer were to adopt this scheme of remuneration. For example, depending on the region in South Africa, the minimum wage ranges from \$7.65-\$10.48(R)/hr with maximum working hours of 45 hr/week, 9hr/day.

**Recommendation:** A minimum salary should be set according to the region or province, since over half of domestic workers (58.8%) in Vietnam intend to work near their residence in rural areas, and should be based on the same salary of other unskilled workers in the region.<sup>21</sup> According to Decree No. 182/2013/ND-CP dated November 14, 2013 about region-based minimum wages, the domestic helper must be paid at least:

- a) VND 2,700,000/month applies to enterprises operating in localities of region I.
- b) VND 2,400,000/month applies to enterprises operating in localities of region II.
- c) VND 2,100,000/month applies to enterprises operating in localities of region III.
- d) VND 1,900,000/month applies to enterprises operating in localities of region IV.

The wages may be negotiated between the employer and domestic worker but must be equal to or above the region-based minimum wage.

The standard contract should also outline maximum hours worked per week if the domestic worker is a full-time worker and the salary is based on a monthly or weekly salary. If food and accommodation are provided for live-in domestic workers, they should not be deducted from the monthly salary. Lastly, it is important also to allow for the calculation of rates on an hourly basis. This facilitates compliance with minimum wage for employers that hire domestic workers for a few hours per day or week, which is usually the case in Vietnam.

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<sup>20</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 17

<sup>21</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 20.

### Payment Method & Schedule

A common issue domestic workers' encounter is a delay in payment, which they and their families are reliant on for a decent standard of living. Many countries that enforce a minimum wage also outline through which channel and how often employers should remunerate their domestic worker.

**International Standard:** Article 12 of ILO's C189 states that domestic workers "shall be paid directly in cash at regular intervals at least once a month...payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned". In kind payments (for meals and accommodation) should be strictly prohibited, a fixed pay schedule should be used and the employer and employee should track proof of payment.

**Vietnam context:** Currently, domestic workers in Vietnam have oral contract agreements and have been reported to experience payment delays.<sup>22</sup>

**Best practice(s):** Many countries have a monthly pay schedule (e.g. Hong Kong, Philippines, Singapore) and have in place both a timeframe (e.g. 1 week) for employers to remunerate the worker and penalties in the event of delayed payment. In Hong Kong, the employer is required to pay within 7 days at the end of the month; otherwise he or she must pay interest and can be fined up to \$350,000 HKD or be imprisoned up to 3 years. In both Hong Kong and Singapore, there is a designated government official that can resolve disputes specifically related to domestic work.

**Recommendation:** Domestic workers should be paid once a month, as recommended by ILO, and with proof of payment. In the event of delayed payment, interest can be charged after a grace period of ~7 days.

### Rest days, Hours of work & Overtime Pay, Holidays, & Sick Leave

Live-in domestic workers tend to work more than the typical 8hr workday without overtime pay due to the multi-faceted nature of the work (i.e. cook, clean, and care for children or elderly). As recommended by ILO, it is important to outline the expected working hours per week and hours and days of rest that other employees enjoy under the Labour Code. Equally important, the standard contract should outline the number of paid sick days allocated per year as well as which holidays domestic workers can take off with remuneration.

**International Standard:** ILO C189 Article 10, section 1-2 states "weekly rest shall be at least 24 consecutive hours" and that normal working hours, daily and weekly rest, and paid annual leave should be in accordance with national laws in line with other workers.

**Vietnam context:** In Vietnam, over half of domestic workers (61%) reported to work more than 8hrs/day and over a third (35%) report working more than 10hrs/day.<sup>23</sup> A fifth of domestic workers in Vietnam have reported

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<sup>22</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 14 & 16.

to work day and night;<sup>24</sup> however, it is hard to regulate working hours as domestic workers may be more busy during certain times of the day and less busy during other times. Currently, the Labour Code (Article 97) outlines overtime pay for general employees:

- On weekdays, at least 150%;
- On weekly days-off, at least 200%;
- On days-off with pay, at least 300% not including the salary of holiday and days-off for employee enjoying daily salary;
- Employees working at night shall be additionally paid at least 30% of the salary calculated by the salary unit price or the work salary under a normal working day;
- The employee working overtime at night, in addition to the salary as prescribed in Clause 1 and Clause 2 of this Article, shall also be paid an additional 20% of salary calculated by the salary unit price or the salary of work done in the day time.

In regards to annual leave, Article 11 of Vietnam's Labour Code allocates 12 paid holidays to employees who have been working for 12 months under normal working conditions and is entitled to pay if the holiday is not taken. Articles 112-116 also outline details of when unpaid leave is allowed (e.g. marriage) for general employees. However, Articles 112-116 do not specifically state if they apply to domestic workers since they are not recognized as a formal occupation.

**Best Practice(s):** Many countries such as Hong Kong, Philippines, Singapore, Brazil and South Africa have specific regulations on hours worked, rest, etc.

Eight hours/day is the standard for these countries, unless agreed upon with the worker and compensated with overtime, with no more than 12hrs/day (e.g. South Africa) or average hours within a 4 month period of no more than 45hrs/week and 5hrs/week of overtime; an aggregate rest period everyday should be outlined in the contract (i.e. time intervals of aggregate rest; for example 8PM-8AM). One rest day/week (24-36 consecutive hours) is allowed and in Brazil, this day is preferably a Sunday. Workers who agreed to work overtime or night shifts are required to be paid overtime (1.3x to 1.5x more than their regular wages in Brazil and South Africa, respectively); in South Africa, if night shifts are worked (between 6AM-6PM), overall working hours must be reduced and transport to their home must be available. In South Africa, for every 5+ hour workday, a 30-60min meal time is required.

Public holidays are paid (~12 days/year; pay is based on regular working wage) in South Africa or it can be switched in lieu of another day. In Hong Kong, if a holiday falls on a rest day, another day must be taken off which can be negotiated with the employer but must be within 60 days of the statutory holiday. Hong Kong and

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<sup>23</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-2013. (2013), pg. 16.

<sup>24</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-2013. (2013), pg. 15.

Thailand also allocate paid sick days to employees (2 sick days/month and 30 days/year, respectively; based on regular wages).

Many of the countries mentioned also allocate paid annual leave to employees that have worked 12 months with the employer or have their leave calculated based on the duration of the contract completed. For example, in South Africa, each employee who has worked 12 months are entitled to 3 weeks paid leave or 1 day leave per every 17 days worked or 1hr leave per 17 hours worked, which is the same for non-domestic workers.

**Recommendation:** As per ILO's recommendations outlined in Article 10 (C189), regulations concerning hours worked, rest, and holidays for domestic workers should be in accordance with national laws. In Vietnam, the relevant laws are in Chapter VII, Articles 104-106 and 108-114 of the Labour Code; these regulations are similar to international best practices identified for domestic workers and mentioned in the previous section "Vietnam Context". These pre-existing national laws should be applied to domestic workers and revised according to the special nature of domestic work.

For example, because it is hard to regulate the exact work schedule every day, we recommend to clearly outline in the labour contract that domestic workers work a maximum 8hr (non-consecutive) workday before overtime pay is charged, with 24 hrs of consecutive rest every week, and overtime regulations should be in accordance to the national labour code (Articles 106, 107, 155, 163, & 178) with a maximum number of overtime hours per week (or average hours over a month's time) described in the contract. Maximum overtime hours can be determined in consultation with women's unions and domestic workers, as the Labour Code does not currently address this issue.

Public holidays should be paid time off, taken in lieu for another day (within 60 days to avoid exhaustion), or with the agreement from the worker, be paid 1.5 times the regular wage, as outlined in Article 97 of the Labour Code. An aggregate rest period (e.g. between 8PM-8AM) should be enforced unless it is a weekly rest day (24hr consecutive hours). Sick leave should be covered by the employer on average, one day per month, which totals 12 days a year.

### Live-in Workers' Standard of Living: Food, Accommodation, & Outside Communications

Quite often, employers deduct pay from the domestic worker for accommodation and food, which perpetuates the poor economic state of domestic workers. Also, privacy issues exist along with low standards of living—some domestic workers are required to share a room (or bed) with a family member of the employer and in extreme cases, forced to sleep in places that are not meant for rest.

Domestic workers who are far from their home, especially children<sup>25</sup>, tend to feel socially isolated, lonely, and unhappy. This contributes to poor mental health and overall well-being; globally, many employers prevent outside communications, which exacerbates this problem.

**International Standard:** ILO C189 Article 7 recommends that the standard contract should clearly outline the provision of food and accommodation, if applicable.

**Vietnam context:** Articles 180 & 181 of Labour Code states that employers must arrange clean and hygienic accommodation for live-in domestic workers. In a study conducted by ILO in 2011<sup>26</sup>, approximately half of domestic workers live with their employer and only 37.4% reported to have bedrooms with doors and locks. Many live-in workers live in a small dwelling (41.7%) and thus, sleep in the same room or share a bed with a family member of the employer, and the majority (77%) have outside communications and recreational activities (65.6%). However, one fifth of domestic workers (20.6%) reported having limited communication and thus, it is important to enforce policies that prohibit any infringement in the freedom to communicate with others outside the household.

**Best Practice(s):** In South Africa, wages cannot be deducted by more than 10% for accommodation; accommodation also must be weatherproof, have at least 1 window and door that can be locked, and have access to a bathroom. Similarly, Singapore requires the accommodation to have proper amenities such as a blanket, pillow, and sufficient ventilation. It is interesting to note that in Singapore, in addition to the obligation of the employer to ensure privacy and safety of accommodation for the domestic worker, employers must also protect the worker's modesty (i.e. the room must not be shared with an adult or teenage boy).

In Hong Kong, food must be provided free of charge or alternatively, a monthly allowance of \$875 HKD must be given to the worker; accommodation must be provided free of charge.

Singapore does not have laws prohibiting employers from limiting outside communications; however, the Ministry of Manpower publishes and disseminates educational material for employers to promote the encouragement of outside communications for domestic workers.

**Recommendation:** In Vietnam, many domestic workers lack privacy, outside communications, and experience loneliness and unhappiness. It is therefore important to integrate a segment in the pre-hiring employer training/debriefing that addresses such issues and how the employer can encourage outside activities/communications for the employee. For example, the employer can encourage the domestic worker to use mobile phones or provide a long distance plan for the home phone, with a usage quota agreed upon by both parties. Surveillance of the workplace by the employer, including searches of the employee's personal

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<sup>25</sup> Rubenson, B., Nguyen, T.V.A., Hojer, B., & Johnson, E. (2004). Child domestic servants in Hanoi: Who are they and how do they fare? *The International Journal of Children's Rights*, 11, 341-407.

<sup>26</sup> ILO. Study on decent work for domestic workers in Hanoi and Ho Chi Minh City. (2011).

belongings or videotaping the domestic worker, should be prohibited unless prior permission is provided in the written contract. Such searches shall be exceptional and conducted in the employee's presence after the employee has given consent. For accommodation, the specific accepted standards of the room should be outlined (i.e. a non-shared mattress, sufficient ventilation) in the standard contract and fees should not be deducted from the worker's salary. Similarly, what is considered acceptable food/meals should be outlined in the contract and a choice should be given to either accept food free of charge or accept a monthly allowance for food.

### Health & Social Insurance

Health and social protection is important to allow domestic workers to enjoy the same access to healthcare as other workers under the Labour Code, which realizes health as a human right. Furthermore, because a large proportion of domestic workers come from the poorest segments of society, they are more likely to need health and social insurance and it is therefore important to ensure there are policies in place to enforce partial contribution from the employer.

**International Standard:** ILO C189 states that domestic workers should enjoy conditions not less than those applicable to general workers in respect to social security.

**Vietnam context:** Approximately 10-15% of domestic workers in Vietnam have health and social insurance and those who do not have reported that they wish to purchase it if it were partially paid for by the employer. Vietnam's revised Labour Code, Article 181, indicates that the employer is obligated to "pay an amount as regulated by legal documents for domestic workers to participate in health and social insurance".

**Best Practice(s):** Some countries require the employer to pay for the entirety of the health insurance of a certain coverage amount (e.g. in Singapore, must insure worker for \$15,000 SG/yr) whereas others are enrolled into the national health and social insurance program after serving a certain duration of their contract and the portion or the entirety of the insurance will be paid depending on the worker's wage (e.g. Philippines). This is done through their Ministries of Health and Social Affairs.

**Recommendation:** The standard contract should outline an exact amount (a stipend) to cover a portion of basic health and social insurance. This should be paid monthly or as a lump sum with agreement from both employer and employee. When domestic workers are registered with MoLISA, a proof of health and social insurance should be presented as well to ensure compliance and protection. Future efforts should be made to classify domestic work as a formal occupation to allow domestic workers to enjoy equal health and social insurance benefits, as outlined in the Labor Code.

### Maternity Protection

Domestic work is predominantly carried out by women (~98% are women in Vietnam) and thus, it is important to consider the challenges women face. Wrongful termination due to pregnancy, denying female domestic workers of outside freedom in fear they will become pregnant, and no regulations on maternity leave (paid or unpaid) are common issues domestic workers face globally as employers prefer a domestic worker who can work flexible and long hours.

**International Standard:** ILO C189 Article 7 states “Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favorable than those applicable to workers generally in respect of social security protection, including with respect to maternity”.

**Vietnam context:** Currently, there are no laws protecting domestic workers from the aforementioned issues. However, the Labour Code (Article 155) does protect regular workers from wrongful termination due to pregnancy, allows the pregnant employee to terminate the contract if it threatens her baby’s health (Article 156), entitles her to paid leave (6 months; Article 157), and the employer must guarantee the worker can resume her job or provide a job that is of equal pay of her previous job (Article 158).

**Best Practice(s):** France, South Africa, and Zimbabwe have regulations on the maternity leave for female domestic workers. South Africa, for example, has a policy that a domestic worker is entitled to at least four consecutive months for maternity leave. Notably, South Africa states that the dismissal of an employee on account of her pregnancy, intended pregnancy or any reason related to her pregnancy, as well as the refusal to permit an employee returning from maternity leave to resume work, is unfair, under the Labour Relations Act (1995). Convention No.158, Article 5(e), states that absence from work during maternity leave does not constitute a valid reason for termination of employment. This policy is also adopted in the labour laws of many countries in the world.

**Recommendation:** The current legislature and social protection in place for regular employees are strong. However, because domestic work is still not recognized as a formal occupation, domestic workers do not enjoy equal protection. It is recommended that domestic workers be protected by the same regulations other employees enjoy by recognizing domestic work as a formal occupation. Pre-existing governing bodies can monitor any violation to the Labour Code.

### Child Labour

In many parts of the world, children—particularly girls—perform domestic work. The girls tend to come from poor rural families and are live-in workers. This magnifies the pre-existing vulnerabilities of domestic workers—in addition to lack of knowledge of the law from adult domestic workers, children are less able to defend

themselves due to less general knowledge about the world. Child labour can also cause intergenerational poverty as it denies them of attending school, which is one of the highest indicators of general life prospects.

**International Standard:** ILO C189 Article 4, Section 1, states that member states should set a minimum age for domestic work “not lower than that established by national laws and regulations for workers generally”. Section 2 states that work performed by domestic workers who are under the age of 18 and above the minimum age of employment should not be deprived of compulsory education, or interfere with opportunities to participate in further education or vocational training.

**Vietnam context:** A study conducted by MoLISA and ILO in 2011 revealed that 17% of domestic workers in Hanoi and Ho Chi Minh are under 18 years old. A study in Hanoi found that the main challenge girls experience, especially for those who were recruited by an employer her family did not have ties with, is that they experience homesickness, social isolation/loneliness, and unhappiness. Currently, the minimum age to perform domestic work is 15 years old, but written agreement from their guardian is required for children under 18 years of age.

**Best Practice(s):** Many countries have set a high minimum wage to protect its citizens or foreign citizens from child labour. One notable example is Singapore; here, domestic workers must be between ages 23-50 years old and possess a minimum of 8 years of education. This prevents exploitation of both children and the elderly; the minimum educational requirement makes it more likely that workers are literate and able to understand and protect their rights.

**Recommendation:** With exception to areas where education is not accessible and available, it is recommended that the minimum age be raised to 18 years old and light work can be carried out by children aged 15-17 (with written agreement from their guardian). Light work, is defined by ILO’s Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182, Article 7) as: a) work that is not likely to be harmful to the child’s health or development; and b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Employers should also be provided the “Employer’s Orientation Program” about how they can better integrate children aged 15-17 into the household to prevent them from feeling socially isolated, lonely, and unhappy. Children should also be given information as to who they can contact (e.g. women’s union, peer support group) for complaints and support. Children should also be protected from hazardous work, which is defined as “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” (Convention No.182, Article 3(d)).

### Sexual Harassment & Abuse

Due to the special nature of the work for live-in domestic workers, research has shown that domestic workers are more likely to experience sexual abuse. It is important to put in place and inform workers of a complaint system as domestic workers do not have a “Human Resources” department to deal with such issues.

**International Standard:** ILO C189 Article 5 states “Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.”

**Vietnam context:** A study conducted by GFCD and MoLISA showed that live-in domestic workers are 16% more likely to experience sexual harassment.<sup>27</sup> Currently, there is no system in place for domestic workers to report sexual abuse or harassment.

**Best Practice(s):** Singapore has developed and enforced strong policies to protect domestic workers from any physical, emotional, and sexual abuse. There is a designated government officer that domestic workers can make a complaint to after investigation, and if the employer is found guilty, s/he can be fined, prosecuted and imprisoned, or caned. Singapore has also made a good effort to publicize cases where employers were punished by law for violating domestic workers’ rights.

**Recommendation:** Domestic workers, particularly those under 18, should be informed of their rights, where they can make a complaint, support networks, and the procedures that follow if their employer is found guilty. Currently, domestic workers are not registered as formal workers; we recommend that MoLISA register all domestic workers and designate a police officer at the commune level to file and respond to complaints. Both employers and domestic workers should be provided key messages about sexual harassment and its forms as well as laws against it. Self-protection from sexual harassment and abuse should be included in training/orientation and information materials for domestic workers.

### Elimination of forced labour

Enacting appropriate legislation is crucial in protecting domestic workers from forced or compulsory labour practices, to which they are particularly vulnerable because of their isolated circumstances within private homes and as consequence of abusive or fraudulent recruitment practices.

**International standards:** Convention No.29 defines forced or compulsory labour as work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered herself or himself voluntarily. “The exaction of forced or compulsory labour must be punishable as a penal offence”.

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<sup>27</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-2013. (2013), pg. 18.

**Vietnam Context:** In Vietnam's Labour Code Article 3, Section 10, coercive labour is defined as "the use of force, the threat to use force or other tricks to coerce other people to work involuntarily". Article 8, section 3 of the Labour Code prohibits any acts of coercive labour and the employee has to right to unilaterally terminate the contract in the event of coerced labour (article 37, section 1c).

**Best practice(s):** In Cambodia, the Labour code includes a general prohibition of forced and compulsory labour in article 15, which explicitly states that the prohibition applies to everyone, including domestic workers. The United Republic of Tanzania's Employment and Labour Relations Act (2004), which also applies to domestic workers, treats forced labour as an offence, in sub-part B(6). The provisions are modeled from ILO's Forced Labour Conventions. South Africa reiterates the prohibition of forced labour set in the Constitution and the Basic Conditions of Employment Act.

**Recommendations:** Employees should be provided with information on terms and conditions of employment, protection of wages, freedom of movement, their right to keep in their possession their travel and identity documents.

### Right to Organize

An effective way to influence civil society is to contribute to a collective group and have a representative to voice domestic workers' changing needs and interests.

**International Standard:** ILO C189 Article 3 recommends each member state to "take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining."

**Country context:** Currently, no unions for domestic workers exist.

**Best Practice(s):** Domestic workers in Hong Kong and Indonesia have assembled formally registered trade unions<sup>28</sup>, where the unions help, on behalf of the domestic worker, negotiate contract agreements. Hong Kong also has a 24 hour helpline for domestic workers to contact.

**Recommendation:** Given that the vast majority of domestic workers in Vietnam are women, the womens' union is a potential platform within which domestic workers' issues could be discussed and addressed. A representative can be appointed for collective bargaining and to lobby to the government for policy concerns. It is also important that legislation guaranteeing freedom of association includes domestic workers and their employers in its coverage.

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<sup>28</sup> Brief Report: Overview on the Situation of Domestic Workers in Vietnam from 2007-Present. (2013), pg. 30  
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### Limitations of Results

Our results are based on three levels of analysis--we have consulted international peer-reviewed research papers, local research studies conducted by GFCD and ILO, and primary policy documents in this region. However, only labour codes in Asia were reviewed—results from other regions (Latin America, Europe, Africa) are based on a secondary source due to linguistic barriers and thus, validity and reliability of these legislature is based on a secondary source. Despite this limitation, we believe the secondary sources to be reliable and valid as they are mostly from ILO, which is internationally regarded as a credible source of information.

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