

Legal Remedies for Child Domestic Workers in the Kingdom of Morocco

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Introduction

The recruitment of young girls from poor rural and suburban areas by urban families wishing to use them as domestic servants (known locally as *petites bonnes*)¹ constitutes one of the many manifestations of human trafficking in Morocco.² While some child domestic labor can in some case be tolerated,³ most girls working in this sector are victims of exploitation such as non-payment, exposure to hazardous products, long hours, limited educational opportunities, isolation from their families, sexual abuse, mistreatment and discrimination. Further, this exploitative phenomenon remains widely accepted by families and employers and, therefore, more difficult to combat.⁴ Nonetheless, Morocco ratified on September 19, 2002, the United Nations Convention

¹ “Petites bonnes” is French for small maids.

² According to Department of State’s 2016 Trafficking in Persons Report “Morocco is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking.” See United States Department of State, *2016 Trafficking in Persons Report - Morocco*, 30 June 2016, p. 276. Available at: <http://www.refworld.org/docid/577f960b15.html>.

³ According to International Programme on the Elimination of Child Labour (IPEC), child domestic labor is only acceptable when (i) the age of the working child is above the minimum age of admission to work; (ii) the working conditions comply with labor standards; (iii) the child’s rights to education, rest and development are respected; (iv) the child is offering a helping hand in his/her own home as part of his/her personal development; and conditions (ii) and (iii) are fulfilled. See IPEC: Guidelines on the design of direct action strategies to combat child domestic labour. ILO, Geneva, 2007, p. 6. Available at: <http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=4045>.

⁴ UN Women – Maghreb, *La traite des femmes et des enfants au Maroc*, 2015, p. 59. [UN Women 2015] Available at: <http://maghreb.unwomen.org/fr/ressources-medias/publications/2015/03/la-traite-des-femmes-et-des-enfants-au-maroc>. See also Joanna Miller, *The Abuse of Child Domestic Workers: Petites Bonnes in Morocco*, Topical Review Digest. Available at: <http://www.du.edu/korbel/hrhw/researchdigest/mena/ChildWorkers.pdf>. As Joanna Miller explains “[d]omestic work is widely accepted and social perceptions of women make domestic work preferable to education.”

against Transnational Organized Crime (hereafter Palermo Convention),⁵ and acceded on April 25, 2011 to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter Palermo Protocol).⁶ Moreover, the Parliament has recently enacted a new law regulating the employment relationship and providing Labor Code protections to domestic workers.⁷ It also adopted a law on combatting human trafficking,⁸ which includes a definition of trafficking in accordance with the provisions of the Palermo Protocol.⁹ These recent legislative initiatives address the prohibition of child domestic labor and criminalization of trafficking in persons, yet their effective implementation and enforcement remain pending.

The causes of trafficking are multiple and have different aspects, such as gender discrimination, economic marginalization, corruption, constraints to regular migration, or unemployment. The remedies should therefore be adapted to each typology of trafficking so as to provide access to justice, proper compensation and restitution for victims. Borrowing from the UN Basic Principles on the Right to an Effective Remedy to Victims of Human Trafficking,¹⁰ this paper focuses on the available remedies for Moroccan child domestic workers. According to these

⁵ UN General Assembly, *United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25. Available at: <http://www.refworld.org/docid/3b00f55b0.html>.

⁶ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000. Available at: <http://www.refworld.org/docid/4720706c0.html>.

⁷ Law 19-12 was adopted by Parliament in July 26, 2016 and published in the official gazette on August 22, 2016. The new law, which will go into effect one year after publication in the official gazette, sets 18 as the minimum age for domestic workers, but establishes a five-year transition period during which it will be permitted to employ minors aged 16-17.

⁸ Law 27-14 was adopted on August 25, 2016 and published in the official gazette on December 15, 2016. See NATLEX Morocco, Elimination of forced labour. Available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103357&p_country=MAR&p_count=673&p_classification=03&p_classcount=3.

⁹ Palermo Protocol, *supra* note 6.

¹⁰ UN Human Rights Council, *Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons: Report of the United Nations High Commissioner for Human Rights*, 2 May 2014, A/HRC/26/18. [UN Basic Principles] Available at: <http://www.refworld.org/docid/539998e94.html>.

guidelines, states have an obligation to provide remedies under international law. Access to justice for children is defined by “the ability to obtain a just and timely remedy for the violation of rights as put forth in the national and international norms and standards, including the Convention on the Rights of the Child.”¹¹ Access to justice should thus translate into the elimination of the child domestic workers’ market, the criminalization of the exploitative practice, but also the provision of public legal awareness. Access to remedy is reflected by providing adequate housing, informing and counseling victims about their rights in a language they can understand, providing medical, psychological and material assistance.¹² The right to remedy for child victims of trafficking must be understood as the criminalization of the practice, the prosecution and punishment of the offender, and the right to receive compensation for the material harm and loss which they have suffered.¹³

This paper argues that despite the recent legislative reforms, problems persist with regards to the implementation of adequate legal remedies in the specific case of child domestic workers. To this end, part I paints in broad strokes the socio-economic and historic factors contributing to the prevalence of the *petites bonnes* phenomenon. This part also discusses the recruitment process, and the working and living conditions of child domestic workers to determine whether these amount to trafficking as defined by article 3 of the Palermo Protocol. Part II examines Morocco’s international obligations pertaining to the right of child domestic workers to a remedy. Part III reviews the remedies that are made available by the state in light of the standards set forth in part II. It does so by first considering the existing offenses in the Criminal Code and measures of

¹¹ UN Human Rights Council, *Access to justice for children*, 16 December 2013, A/HRC/25/35, at 4. Available at: <http://www.refworld.org/docid/52e10f474.html>.

¹² UN Basic Principles, supra note 10, principle 7.

¹³ Palermo Protocol, supra note 6, art. 6; UN Basic Principles, supra note 10, principles 8 and ff.

protection and rehabilitation provided by the state. It then, examine the recent legislative reforms pertaining to the employment conditions of domestic workers and the criminalization of human trafficking. This final part concludes to Morocco's failure to provide adequate and effective remedies to child domestic workers.

Part I. Child Domestic Labor in Morocco, a Social Reality

i. Socio-economic and historic context of the *petites bonnes* phenomenon

The French term *petites bonnes* refers to young girls under the age of 15 years,¹⁴ who perform various household tasks, who live with their employers, and who are remunerated in one way or another.¹⁵ They can have different status within the employer's household, either successively or simultaneously. From the "girl we educate," to "the daughter of the family who helps us," to "*bent nass*" (the daughter of the people), and "*khadema*" (literally the worker), the child domestic worker is designated in Moroccan Arabic as either a member of the family or a worker.¹⁶ They are occasionally also referred to as "*m'taâлма*," which means an apprentice, or a girl who is in the process of learning.¹⁷ According to Human Rights Watch 2012 Report, "[t]he

¹⁴ The age limit of 15 years is given with reference ILO Convention no. 138 on minimum age, which Morocco has ratified January 6, 2000, but also with Moroccan legislation. While education is compulsory until age 15, the Labor Code, which bans since 2002 child labor for children under the age 15 (art. 143). See Government of the Kingdom of Morocco. *Loi n°04-00, Modifiant et complétant le dahir n°1-63-071 du 25 jourmada II 1383 (13 novembre 1963) relatif à l'obligation de l'enseignement fondamental*, enacted May 19, 2000. Available at:

<http://portal.unesco.org/education/en/files/12416/10427980500maroc1.pdf/maroc1.pdf>; Government of the Kingdom of Morocco. *Le Nouveau Code de travail*, enacted May 6, 2004. [2004 Labor Code] Available at: http://adapt.it/adapt-indice-a-z/wp-content/uploads/2015/01/Code_du_travail_2004.pdf. See also International Labour Organization (ILO), Minimum Age Convention, C138, 26 June 1973, C138, art 3. Available at: <http://www.refworld.org/docid/421216a34.html>.

¹⁵ Tone Sommerfelt, ed., *Domestic Child Labor in Morocco: An analysis of the parties involved in relationships to "Petites Bonnes"*, Fafo Institute for Applied Social Science (Oslo: Fafo, 2001), p. 23. [Fafo 2001] Available at: <http://www.fafo.no/index.php/en/publications/fafo-reports/item/domestic-child-labour-in-morocco>.

¹⁶ Nasima Moujoud and Dolorès Pourette (2005). "Traite" de femmes migrantes, domesticité et prostitution: A propos de migration interne et externe [Trafficking of migrant women, domesticity and prostitution: About internal and external migration]. *Cahiers d'Etudes Africaines*, 179/180, 1093-1121, at p. 1104. [Moujoud and Pourette]

¹⁷ Fafo 2001, supra note 15, at p. 23.

vast majority of child domestic workers in Morocco come from poor rural areas to work in larger cities such as Casablanca, Rabat, Marrakech, Tangiers, Agadir, or Fes. Some of these girls begin working at ages as young as eight or nine.”¹⁸

While comprehensive information on the number of child domestic workers in Morocco is unavailable, a 2001 study conducted by the Fafo Institute for Applied Social Science estimated that between 66,000 and 86,000 girls under the age of 15 – of whom 70% are under 12 – were working as domestic workers in Morocco.¹⁹ For its part, the state claims that among the 83 025 domestic workers accounted for in 2013, less than 0.1% were aged 15 and under.²⁰ The lack of precise data can be explained by the invisible nature of this sector of employment.²¹ On the one hand, domestic work is carried out in the privacy of the employer’s household. On the other, it is viewed as a “traditionally” female activity assumed to require no professionalization nor produce economic wealth.²² As such child domestic labor is a highly gendered sector of employment.²³ Since the 1980s, child domestic labor in Morocco has been essentially an urban phenomenon.²⁴ For rural families, placing daughters as child domestic workers is a response to desperate economic

¹⁸ Human Rights Watch, *Lonely Servitude: Child Domestic Labor in Morocco*, 2012, page 15. [HRW 2012 Report] Available at: http://www.hrw.org/sites/default/files/reports/morocco1012ForUpload_2_0.pdf.

¹⁹ Fafo 2001, supra note 15, at pp. 15-17. According to the 2010 study commissioned by the Collectif Associatif pour l’Éradication du Travail des “Petites Bonnes,” between 60 000 and 80 000 girls under 15 years of age were exploited as “petites bonnes,” bearing degrading working and living conditions, not corresponding to their age or their physical and psychic abilities. See also Collectif Associatif pour l’Éradication du Travail des “Petites Bonnes,” *Pour un Maroc sans “petites bonnes,”* February 2010, p. 7.

²⁰ CRC/C/MAR/Q/3-4/Add.1, Liste de points concernant les troisième et quatrième rapports périodiques du Maroc, présentés en un seul document, Réponses du Maroc à la liste de points, 13 juin 2014 Available only in French at : http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMAR%2fQ%2f3-4%2fAdd.1&Lang=en.

²¹ Peace Tetteh, “Child domestic labour in (Accra) Ghana: A child and gender rights issue?” *The International Journal of Children's Rights*, 2011, 19(2), at p. 218.

²² Moujoud and Pourette, supra note 16, at p. 1096.

²³ HRW 2012 Report, supra note 18, at p. 13. According to the ILO, domestic workers are overwhelmingly female: 83% worldwide. See ILO, *Global and Regional Estimates on Domestic Workers: Domestic Work Policy Brief 4* (Geneva, ILO, 2011), p 7.

²⁴ Moujoud and Pourette, supra note 16, at p. 1100.

situation.²⁵ The Fafo study revealed that the drought in the mid 1990s was a much cited reason for parents sending girls into domestic service to sustain the family, as male members of the household lost their jobs in agriculture or had to work reduced hours, and family plots dried up.²⁶ Gender structures in this response to poverty are clear. While Moroccan middle class grow and women of that strata can access remunerated employment, young girls from rural and semi-urban areas migrate to work as maids in the cities in order to support their family.²⁷ As the gendered division of labor persists and the task are delegated to other women, of lower class, the need for domestic “substitute” increases. This socially constructed alterity result in young girls in inferiorized social position being removed from their families, schools and community.²⁸ Authors Moujoud and Pourette believe that the breakdown of the traditional system of servitude and “adoption” has led to the emergence and development of domesticity among this population of young girls.²⁹ They argue that the strong mutations of the village model, as well as the urbanization and transformations of Moroccan society, far from limiting the “traditional” forms of circulation of children, or domestic servitude, have remodeled them and propagated them at the national level.³⁰

The reasons for the extent of the phenomenon are certainly multiple. Sociologist Bernard Schlemmer pinpoints three “highly discriminating and mutually reinforcing factors: gender, the rural divide, and education.”³¹ The Institut National de Solidarité avec les Femmes en Détresse

²⁵ Tone Sommerfelt, “Small Maids in Morocco” in Hugh D. Hindman, *The World of Child Labor: An Historical and Regional Survey*. Armonk (New York); London: M.E. Sharpe, 2009. Print, p. 702. [Sommerfelt, 2009]

²⁶ Fafo 2001, supra note 15.

²⁷ Sommerfelt, 2009, supra note 25; Fafo 2001, supra note 15, at p. 7.

²⁸ Collectif Associatif pour l’Éradication du Travail des “Petites Bonnes,” “Contre le Travail Domestique des Filles Agées de Moins de 15 ans: Mémoire,” November 2010, p. 4.

²⁹ Moujoud and Pourette, supra note 16, at p. 1103.

³⁰ Ibid at p. 1104.

³¹ Bernard Schlemmer, Morocco: why children go to work instead of school. In: Hindman H.D. (ed.) *The world of child labour: an historical regional survey*. New-York: Sharpe, 2009, at p. 693.

(INSAF), a Casablanca-based NGO working to prevent child domestic labor and to assist former child domestic workers, identifies five determinants: (i) poverty and exclusion, (ii) illiteracy and ignorance of the families which make them consider the work of a minor girl as a normal situation and a legitimate source of supplementary income for the parents, (iii) inferior social status of young girls, (iv) lack or remoteness of local educational and training facilities, and (v) failure to apply the compulsory primary schooling and the lack of specific legislation on the protection of children from domestic labor, which encourages their early and illegal work.³² These factors are compounded by a high and sustained demand.³³ According to authors Moujoud and Pourette, child domestic work is inseparable from the older structures of domination based on social relations of sex, class and origin.³⁴

ii. Recruitment of child domestic workers

The ways in which the young girls are recruited as maids can be grouped into two main forms, namely through professional intermediaries (*samsars*), or through informal intermediaries, and even children.³⁵ As the 2012 Human Rights Watch report points out, the *samsars* act as brokers, “arranging for girls from poor rural areas to work in the cities as domestic workers, and receiving fees from the employers for finding domestic workers to work in their homes.”³⁶ The involvement of *samsars* in the transaction can take on different forms, blurring the distinction between intermediaries and traffickers. Sometimes the *samsar* is asked by a person looking for a maid if he or she can find a maid. The parents can also approach the *samsar* and inquire about the

³² INSAF, Pour l'éradication du travail des “petites bonnes” au Maroc, Éléments de plaidoyer, June 15, 2014.

³³ Ibid.

³⁴ Moujoud and Pourette, *supra* note 16, at p. 1103.

³⁵ Fafo 2001, *supra* note 15, at p. 60.

³⁶ HRW 2012 Report, *supra* note 18, at p. 17.

possibilities for an appointment for their daughter. Finally, the *samsar* may approach a girl who is already working as a maid, and offer her a better-paid job.³⁷ As the 2001 Fafo study reveals, the relationship between the *samsar* and the child domestic worker often continues beyond the initial transaction. While the girl may want a job with better pay or conditions, the economic interest of the *samsar* dictate that they encourage the girl to change employer so they can earn money for their work as a broker.³⁸ This dynamic “prevent[s] enduring relationships between [the] employer, [the] girl, and her parents.”³⁹ As the *samsar* becomes the core in the relationship, both the girls’ and the parents’ possibilities for control of the conditions under which the child domestic workers live and work further diminish.⁴⁰ Moreover, employers often curtail the social network of the child domestic workers for fear of losing them to new employers.⁴¹ As for the intermediary’s fee, the 2012 Human Rights Watch report indicates that in some cases, not only the employer is required to pay a commission, but the families of child domestic workers are also expected to pay the *samsar*: since the monthly salary is paid directly to parents of the child, “[if] the family does not have the money in advance, the girl is expected to work without salary for one to three months in order to cover the fee.”⁴²

Authors Moujoud and Pourette, who conducted a fieldwork in the high valleys of the Atlas of southern Morocco in 1999, observed the professionalization of domesticity and its intermediaries in the Berber village. They further explain that the *samsar* go back and forth

³⁷ Fafo 2001, *supra* note 15, at pp. 60-61.

³⁸ *Ibid* at p. 61.

³⁹ *Ibid*.

⁴⁰ *Ibid* at pp. 62-64.

⁴¹ Sommerfelt, 2009, *supra* note 25, at p. 703.

⁴² HRW 2012 Report, *supra* note 18, at p. 18. Human Rights Watch interview with Amal Mouhssine, social assistant, INSAF, Imintanoute, Morocco, July 10, 2012.

between the village and the city, bringing girls and placing them.⁴³ The transit (*tatransit* in “berberized” French), or traffic, designated both their means of transport and their journey.⁴⁴ Young girls are delivered through informal contract between their parents and the employer and the arrangement are often part of a strategy of conflict resolution – following widowhood and remarriage – or of long term social promotion.⁴⁵ While the terms of work are vague and often not discussed between parents and employer, monthly salary is determined upon the girl’s appointment.⁴⁶ In fact, the asymmetrical relationship between the employer and parents of child domestic workers⁴⁷ leads parents to feel that they are not in a position to pose conditions (hours, salary, parental contact). As Sommerfelt explains, for the parents, “the ideal employer [is] one that ensures their daughter’s welfare, providing with food and clothes, and refrains from beating.”⁴⁸ They entrust the employer with supervising the girl to prevent premarital sex.⁴⁹ “For the girl, however, this may imply that she is trapped in the house, not being allowed to go out at all.”⁵⁰ The ambiguous nature of domestic labor⁵¹ gives rise to forms of exploitation and violence which the children are bound to accept because of their subordinated position.⁵²

iii. Working and Living Conditions of Child Domestic Workers

⁴³ Moujoud and Pourette, *supra* note 16, at p. 1102.

⁴⁴ Moujoud and Pourette, *supra* note 16, at p. 1102.

⁴⁵ *Ibid.*, at p. 1100.

⁴⁶ Sommerfelt, 2009, *supra* note 25, at p. 702.

⁴⁷ Faf0 2001, *supra* note 15, at p. 39. “Parents of a *bonne* are perceived as poor, and the employer as a person of assets, or at least of more assets than the parents.”

⁴⁸ Sommerfelt, 2009, *supra* note 25, at p. 702.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ While Sommerfelt mentions a “blurred distinction between commercialisation of children’s work and home duties,” Moujoud and Pourette refer to the double meaning (family and employment) given to the presence of a child domestic worker in the employer’s household. See Faf0 2001, *supra* note 15, at p. 26; and Moujoud and Pourette, *supra* note 16, at p. 1108.

⁵² *Ibid.*

As the 2012 Human Rights Watch report shows, the life of child domestic workers is characterized by deception, long hours and lack of rest, wage exploitation, verbal and physical violence, sexual violence and harassment, food deprivation, harsh living conditions, isolation, lack of access to education, lack of protection and pressure to keep working.⁵³ Girls, often under the age of ten,⁵⁴ who are recruited as child domestic workers are predominantly without education.⁵⁵ The 2001 Fafo study reveals that working as a child domestic worker is viewed as “an alternative to going to school, not as an additional activity.”⁵⁶ Schooling of the girl is not important to the family, who considered that the reproductive role assigned to them in life does not require her to receive instruction.⁵⁷

The tasks performed by the child domestic workers, which depend upon their age, include “[...] running errands, going to the market or shopping, taking care of children (and bringing children to and from school), and various household tasks, like washing clothes [...], and keeping the house clean, [...] and scrubbing floors.”⁵⁸ As Human Rights Watch indicates, the child domestic workers are generally “expected to be the first one up in the morning and the last person to bed at night.”⁵⁹ While they often work hours far exceeding the 44 hours per week set by the Labor Code

⁵³ HRW 2012 Report, supra note 18, at pp. 20 and ff.

⁵⁴ Fafo 2001, supra note 15, at p. 27.

⁵⁵ Fafo 2001 supra note 15, at p. 18.

⁵⁶ Fafo 2001 supra note 15, at p. 28

⁵⁷ UN Women 2015, supra note 4, at p. 59.

⁵⁸ Fafo 2001 supra note 15, at p. 28. See also HRW 2012 Report, supra note 18, at p. 20.

⁵⁹ HRW 2012 Report, supra note 18, at p. 21. See also Alaoui, Mohamed Tahar 1996. “Resultats de l’Enquete sur les Petites Filles ‘Bonnes’ Travaillant dans les Familles” in Ligue Marocaine pour la Protection de l’Enfance & UNICEF: *Journee d’Etude et de Reflexion sur les Petites Filles “Bonnes” Travaillant dans les Familles*, p. 49. Rabat: Ligue Marocaine pour la Protection de l’Enfance & UNICEF. According to Mohamed Tahar Alaoui, the workday of the petite bonne is very long: “elle se réveille la première et dort la dernière” 72% of the interviewed girls get up before 7 a.m., and 65% go to bed after 11 p.m.. 81% say that they have no days off.

for industrial workers,⁶⁰ their monthly salary barely equates one-quarter of the minimum wage.⁶¹ Although they are provided with room and board, “their value does not come close to making up the gap between a typical domestic worker’s cash salary and the prevailing minimum wage.”⁶² Their salary is generally given directly to the parents.⁶³ As Sommerfelt points out, “[a]rguments over remuneration occur, as expenses for medical and dental care (and occasionally gifts) are regularly deducted from salaries.”⁶⁴

Regarding parental contact, both the 2001 Fafo study and the 2012 Human Rights Watch Report reveal that most girls are not allowed outside their employer’s home and have limited or no contact with their families while employed.⁶⁵ While some girls can call their families, their employer monitor their conversations by staying near the phone during the call.⁶⁶ Human Rights Watch indicates that none of the twenty child domestic workers interviewed were allowed by their employers to attend school.⁶⁷ For many, parent’s monthly visits to collect their daughters’ salaries are the only occasions for parental contact.⁶⁸ As for verbal and physical abuse, the child domestic workers are often beaten, punished or otherwise verbally abused by the wife in their employing house hold⁶⁹ if tasks are not accomplished to their satisfaction or if the child domestic worker

⁶⁰ Labor Code 2004, *supra* note 14, art. 184. There is no maximum set by law for the hours worked by domestic workers, as domestic workers are excluded from the protection awarded by the Labor Code. However, Law 19-12, which will go into effect one year after publication in the official gazette of the relevant decrees, sets 48 hours per week as the limit for domestic workers aged 18 and up, and 40 hours for those aged 16-18 years old.

⁶¹ HRW 2012 Report, *supra* note 18, at p. 22.

⁶² *Ibid.* The report refers to the ILO Convention 189 concerning Decent Work for Domestic Workers, art. 12(2) and the ILO Recommendation 201 concerning Decent Work for Domestic Workers, art. 14 (a).

⁶³ Sommerfelt, 2009, *supra* note 46, at p. 702.

⁶⁴ *Ibid.*

⁶⁵ Fafo 2001, *supra* note 15, at p. 30; and HRW 2012 Report, *supra* note 18, at p. 27.

⁶⁶ HRW 2012 Report, *supra* note 18, at p. 27.

⁶⁷ HRW 2012 Report, *supra* note 18, at p. 28.

⁶⁸ Sommerfelt, 2009, *supra* note 25, at p. 702.

⁶⁹ Fafo 2001, *supra* note 15, at pp. 39-40.

break something.⁷⁰ “As a *bonne* [sic] performs the tasks of the wife of the house, it is the wife she answers to.”⁷¹ Because of the isolation, child domestic workers are especially vulnerable to sexual abuse by male members of the household in which they work.⁷² While the living and working conditions of child domestic workers in their employers’ households may vary, several girls are not given enough food, have to eat separately, often eating what is left over from the employers’ meal and sleep on the couch in the living room, in a closet, or on the floor.⁷³ UN Women – Maghreb division, in its 2015 study on trafficking of women and children in Morocco explains that exploitation from an early age can be the beginning of a cycle of violence and exploitation that will last a lifetime.⁷⁴ INSAF views the phenomenon as a type of early migration which may, depending on the employer, consist of a certain “benevolence” or an accumulation of deficiencies and maltreatments that may be the cause for her fate as a single mother.⁷⁵ Moreover, as adult women performing household chores in another man’s household is understood to fill the role of the wife in the house, employment is often ended when the domestic workers grow older. As Sommerfelt explains, “the presence of young, unmarried women in the employer’s home is seen as morally problematic, or indecent in relations to sons of the house.”⁷⁶

iv. Conditions Under Which the *Petites Bonnes* Phenomenon Could Amount to Trafficking for Forced Labor

Considering the definition provided at article 3 of the Palermo Protocol, trafficking in children contains two elements: an act and an exploitative purpose. The use of the coercive means

⁷⁰ HRW 2012 Report, supra note 18, at p. 24.

⁷¹ Fafo 2001, supra note 15, at p. 39.

⁷² Fafo 2001, supra note 15, at p. 42; and HRW 2012 Report, supra note 18, at p. 25.

⁷³ HRW 2012 Report, supra note 18, at pp. 26-27.

⁷⁴ UN Women 2015, supra note 4, at p. 58.

⁷⁵ Ibid.

⁷⁶ Sommerfelt, 2009, supra note 25, at p. 703.

enumerated in the Protocol is not considered a constituent element of trafficking in children.⁷⁷ However, the question remains as to whether all girls entering domestic work should be treated as trafficked children and therefore should be prohibited. Acknowledging that where the *intention* of the adult taking the child is to exploit the child it amounts to trafficking as defined in article 3,⁷⁸ author Dianne Scullion contends that some children become domestic workers out of their own volition and therefore should not be considered victims of trafficking. She explains that the trafficking legal framework encompasses situations that are not actually trafficking.⁷⁹ Although her article concerns child discovered in domestic work within a private household in the UK, the broader discussion on cultural attitudes towards children, migration and work is worthy of consideration. Scullion highlights the cultural implications of the fight against child domestic labor. Recognizing the westernized perspective of the Convention on the Rights of the Child and the International Labour Organization Conventions, she maintains that “[d]efining which work is bad for children and which should be classified as one of the worst forms of child labour involves issues of cultural relativism.”⁸⁰ Her child-focused approach, which recognizes a child's autonomy, aims attention on the exploitative nature of the employment arrangement. Thus, the determination should be context specific: “[it] is not the fact of employment *per se* that is problematic but the conditions under which the work is carried out and the potential for abuse and exploitation.”⁸¹

Hence, the description of the process of recruitment and movement of child domestic workers and their living and working conditions in the previous sub-sections should inform the determination of whether their situation amounts to trafficking as a conceptual matter. In this

⁷⁷ Palermo Protocol, *supra* note 6, art. 3(c).

⁷⁸ Scullion, D. 2013. “Passive Victims or Empowered Actors: Accommodating the Needs of Child Domestic Workers.” *The International Journal of Children’s Rights* 21 (1): 97–126, at p. 98. [Scullion]

⁷⁹ Scullion, *supra* note 78, at p. 118

⁸⁰ *Ibid* at p. 103.

⁸¹ *Ibid* at p. 102.

regard, reference is made to the classification of general indicators by the United Nations Office on Drugs and Crime. This non-exhaustive list, which includes indications specific to children and types of exploitation, were designed to detect cases of trafficking.⁸² The fact that most child domestic workers live apart from other children and in substandard accommodations, never or rarely leave the house for social reasons, have little to no access to their parents, have no access to education, eat apart from other members of the “family,” be given only leftovers to eat, sleep in a shared or inappropriate space, be engaged in work not suitable for their age, be subjected to insults, abuse, threats or violence, are all indicators pointing to the presence of trafficking for purposes of domestic labor.⁸³ As child domestic labor is a multidimensional issue, its reduction or elimination must be addressed through comprehensive laws and policies that encompass trafficking of children, exploitation, abuse, labor, health and education. A legal and ethical dilemma remain as to whether child domestic labor should be supported and monitored for the sake of economic sustenance or prohibited because in many cases the practice goes against children’s rights. To that, it could be legitimately contended that in as much as child domestic labor has a tremendous impact on the mental and physical health of children and negative effect on the education, even if it ensures survival, it should be prohibited. Having established that the practice constitutes trafficking in children and, because of its exploitative nature, should be prohibited, a presentation of the legal framework and remedies available for victims is in order.

⁸² United Nations Office on Drug and Crime, Human Trafficking Indicators. Available at: https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf.

⁸³ This assertion is made on the basis of the 2001 FAFO report, 2012 HWR report, 2015 UN Women report, and 2014 INSAF advocacy paper, above mentioned.

Part II. International Legal Framework

Morocco has ratified several international human rights instruments that provide a remedy for human rights.⁸⁴ When it fails to exercise due diligence to prevent the *petites bonnes* phenomenon, to investigate and prosecute offenders, and to assist and protect victims, it incurs its international responsibility.⁸⁵ Further, the state's failure to provide effective and adequate remedies, contributes to its failure to exercise due diligence. The present section sets Morocco's international obligation to prevent and punish child domestic labor and to provide remedies for child domestic workers.

The Kingdom of Morocco has ratified the Convention on the Rights of the Child (CRC) on June 21, 1993.⁸⁶ The Convention recognizes the right of minors to protection by the State against economic exploitation and against the performance of any job that could be dangerous or hinder their education, or could be harmful for their health or physical, mental, spiritual, moral or social development.⁸⁷ The CRC requires governments to take appropriate legislative, administrative, social, and educational measures in this regard, and especially to provide for a minimum age of employment, appropriate regulation of work hours and conditions of employment, and appropriate

⁸⁴ Status of Ratification Interactive Dashboard, Morocco: 10-14. Available at: <http://indicators.ohchr.org/>.

⁸⁵ UN Basic Principles, *supra* note 10, principle 2.

⁸⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>. See ratification status at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=en.

⁸⁷ *Ibid* at art. 32(1).

sanctions to ensure enforcement.⁸⁸ The Convention strongly advocates the right to free education, and the right to have a family.⁸⁹ The CRC recognizes the duty of the state to take measures against trafficking, sale of children, abuse of children, and to rehabilitate and reintegrate all abused and exploited children into society and family.⁹⁰ The CRC provides for the rehabilitation of victims:⁹¹

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Furthermore, Morocco has ratified the Optional Protocol of the CRC on the Sale of Children, Child Prostitution and Child Pornography, which requires the state to promote the best interest of the child, to criminalize and to punish the sale of children, to guarantee adequate compensation without discrimination for wrongs inflicted to the child.⁹² The Optional Protocol defines sale of children as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any consideration.” Consequently, the traffic of a young girl to work as a child domestic worker to create additional income for the family could constitute a sale of a child.

On January 6, 2000 Morocco ratified the International Labor Organization (ILO) Convention on Minimum Age for Admission to Employment, No. 138.⁹³ The Convention, which

⁸⁸ Ibid at art. 32(2).

⁸⁹ Ibid at art. 28, 37.

⁹⁰ Ibid at art. 35.

⁹¹ Ibid at art. 39.

⁹² UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263, art. 3, 8 and 9. Available at: <http://www.refworld.org/docid/3ae6b38bc.html>.

⁹³ International Labour Organization (ILO), *Minimum Age Convention, C138*, 26 June 1973, C138. Available at: <http://www.refworld.org/docid/421216a34.html>. For ratification status see: http://www.ilo.org/ipec/Regionsandcountries/Africa/Morocco/WCMS_203270/lang--en/index.htm.

sets the minimum working age at 15 for Morocco,⁹⁴ defines what should be understood as “dangerous work:” any type of employment or work which by its nature or the circumstances in which it is carried out is likely to “jeopardise the health, safety or morals of young persons.”⁹⁵ It also establishes that for incorporation into this type of dangerous work, the applicants must not be less than 18 years of age.⁹⁶

On January 26, 2001, Morocco ratified ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.⁹⁷ Following article 7(2), Morocco has the duty to (a) prevent the engagement of children in the worst forms of child labor; (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration; (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls. While the Convention does not contain any specific disposition on child domestic labor, the International Programme on the Elimination of Child Labour (IPEC) considers that “the conditions under which this work is carried out configure a space and relations that are particularly propitious for child and adolescent exploitation.”⁹⁸ It

⁹⁴ The Convention defines child labor by using an age criterion, establishing that the age for admission to employment must not be lower than the age at which compulsory education is completed, which is to say, 15 years (see art. 1,2). According to the Law no. 04.00, implemented by Dahir no. 1.00.200 issued on May 9, 2000, education is compulsory until age 15.

⁹⁵ C138, art. 3.

⁹⁶ Ibid.

⁹⁷ International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, C182, 17 June 1999, C182, available at: <http://www.refworld.org/docid/3ddb6e0c4.html>.

⁹⁸ IPEC: Guidelines for the construction of a holistic care model for children and adolescents in domestic labour. ILO, San Jose, 2005, p. 15. Available at: <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=3028>.

should be noted that Recommendation 190, which accompanies Convention No. 182, in paragraph 3, defines “hazardous work” as:⁹⁹

- (a) work which exposes children to physical, psychological or sexual abuse; [...]
- (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 particular difficult conditions such as work for long hours or during the night or work where the child is unreasonable confined to the premises of the employer.

Because of the nature of the work performed by child domestic workers, the treatment they receive or the means by which they entered into the situation, it is conceivable that some children in domestic labor would find themselves in one or more of these categories.¹⁰⁰ While both conventions do not explicitly provide for a right to remedy, it may be argued that the obligation either stems implicitly from the required national implementation, or “because the obligation to provide remedies for such violations is itself a norm of customary international law.”¹⁰¹

Morocco has also ratified the Palermo Convention and acceded to the Palermo Protocol,¹⁰² which provisions must be interpreted together.¹⁰³ While articles 1, 2, and 3 of the Convention require Morocco to combat, prevent, protect, promote cooperation and criminalize the trafficking of children,¹⁰⁴ article 25 obligates it to “establish the appropriate procedures to provide access to

⁹⁹ International Labour Organization (ILO), *Worst Forms of Child Labour Recommendation*, R190, 17 June 1999, R190, available at: <http://www.refworld.org/docid/3ddb6ef34.html>.

¹⁰⁰ IPEC, “Helping Hands or Shackled Lives? Understanding child domestic labour and responses to it.” ILO, Geneva, 2004, p. III. Available at: <http://www.ilo.org/ipec/Informationresources/all-publications/KD00098/lang--en/index.htm>.

¹⁰¹ Anne T. Gallagher, “The right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy,” 2010, page 5. [Gallagher]

¹⁰² Respectively on September 19, 2002 and on April 25, 2011. See the ratification status at: <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.

¹⁰³ Palermo Convention supra note 5, art. 37(4), Palermo Protocol, supra note 6, art. 1(1), 1(2). See Gallagher, supra note 101, at p. 7.

¹⁰⁴ Palermo Convention supra note 5.

compensation and restitution for victims.”¹⁰⁵ It also follows from the Palermo Protocol, that Morocco has the obligation to adopt legislative and other measures to criminalize the trafficking in persons, to prevent, investigate and prosecute trafficking in persons crimes and to provide assistance and protection to victims.¹⁰⁶

As provided for in the Protocol, Morocco must implement measures to ensure the physical, psychological and social recovery of the victim. To this end, collaboration with other relevant institutions, such as civil society organizations, is recommended.¹⁰⁷ The assistance provided to victims must be anchored in inter-institutional and multi-sectoral management, through partnership and coordination actions.¹⁰⁸ More specifically, Morocco must provide adequate housing, inform and advise victims about their rights in a language they can understand, provide medical, psychological and material assistance, as well as employment, education and training opportunities.¹⁰⁹ UN Women – Maghreb division, in its 2015 report, explains that the victim protection cycle begins with the detection of the case. In order to properly identify the alleged victim and to initiate the identification process, emergency assistance and referral to essential services, detection of risk factors is fundamental.¹¹⁰ UN Women groups those services into four categories: (i) social assistance for basic needs such as food, clothing and long-term accommodation, (ii) health care provision, (iii) psychological care to help and accompany the victim in the process of awareness-building and healing, and (iv) legal support, which includes accompanying the victim of trafficking during the judicial process.¹¹¹ Protective measures must

¹⁰⁵ Palermo Convention supra note 5, art. 25(2).

¹⁰⁶ Palermo Protocol, supra note 6, art. 5, 6.

¹⁰⁷ Palermo Protocol, supra note 6, art. 6.

¹⁰⁸ UN Women 2015, supra note 4, at p.69.

¹⁰⁹ Palermo Protocol, supra note 6, art. 6.

¹¹⁰ UN Women 2015, supra note 4, at p. 69.

¹¹¹ Ibid, at p. 70.

continue beyond the victim's recovery and criminal procedure and include reintegration of the victim either in her place of origin or in a different environment, respecting her right to compensation for the harm suffered, and the monitoring of reintegration.¹¹² Resolution A/HRC/26/18 issued by the United Nations High Commissioner for Human Rights, in cooperation with the Special Rapporteur on trafficking in persons, especially women and children, establish the guidelines for the right to an effective remedy for victims of trafficking.¹¹³ Although such principles are not binding on Morocco, they expand on the types of remedies to be provided to victims of trafficking and should therefore be used as a source of interpretation when evaluating Morocco's strategy to eliminate the *petites bonnes* phenomenon.

In respect of the domestic implementation of the abovementioned standards, the 2011 Constitution provides for the primacy of the international standard on domestic law, and the equal enjoyment of the rights and freedoms enshrined in the Constitution as well as in the international conventions duly ratified by Morocco.¹¹⁴ It establishes that the state must mobilize all the means to guarantee equal access of the citizens to conditions that permit their enjoyment of the right to health care, social protection, and education.¹¹⁵ It also provides that the state must work to guarantee the protection of the family under the juridical, social and economic plans and "equal juridical protection and one equal social and moral consideration to all children, [being the] abstraction made from their familial situation."¹¹⁶ The Constitution also demands that the state implement policies designed to respond to and prevent the vulnerability of certain categories of

¹¹² Ibid.

¹¹³ UN Basic Principles, *supra* note 10.

¹¹⁴ 2011 Constitution of Morocco, preamble and art. 19 / *Constitute Project*. [online] Available at: https://www.constituteproject.org/constitution/Morocco_2011?lang=en

¹¹⁵ Ibid, at art. 31.

¹¹⁶ Ibid, at art. 32.

women and mothers, children, and elderly persons.¹¹⁷ As the following section reveals, the existing legislation as well as the newly enacted one are far from responding adequately to Morocco's treaty commitments regarding the implementation of the Palermo Convention and Protocol, the CRC and ILO Conventions No. 138 and 182.

Part III. Morocco's Failure to Provide Effective Remedies to Victims of Child Domestic Labor

This section focuses on how the national legal framework addresses the criminalization of child domestic labor and the provision of effective remedies to victims. In order to evaluate Morocco's compliance with the Palermo Protocol's standards, but also with its obligation to provide or facilitate access to remedy under the CRC and ILO Conventions No. 138 and 182, this section first considers the existing legislation that could potentially penalize the conduct of all actors involved in the practice of child domestic labor and the protection and rehabilitation measures in place to support child domestic workers. It further examines the yet to be implemented and enforced Law 19.12 on Domestic Workers Employment Conditions and Law 27.14 on Combating Trafficking in Persons.

i. Ancillary Offenses to trafficking of children for purposes of forced labor

As implementation and enforcement of Law 19.12 on Domestic Workers Employment Conditions and Law 27.14 on Combating Trafficking in Persons is seemingly lagging, an appraisal of the existing provisions of the Criminal Code might be useful. As discussed in the following

¹¹⁷ Ibid, at art. 34.

subsection, some of the elements of the offenses covered by the Palermo Protocol could be provided for by the existing Moroccan law through those ancillary offences.

Criminalization of certain acts committed during the recruitment phase

The Criminal Code contains provision against the sale of children. Article 467-1, added in 2004, punishes the sale and acquisition of a child under the age of 18, which is defined as any act or transaction involving the transfer of a child from one or more to another for consideration of any kind.¹¹⁸ This definition is perfectly in line with the one set forth in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.¹¹⁹ The sanction is imprisonment of two to ten years and a fine of five thousand to two millions dirhams. The same penalty applies to anyone who: causes the parents, the guardian, the person having authority over him or the person in charge of his protection to sell a child under the age of eighteen years, assists or facilitates such sale, acts as an intermediary, facilitates or assists in the sale or purchase, by any means whatsoever. The attempt to do so is punishable by the same sentence as that provided for the offense. The judgment may impose on the convicted person deprivation of one or more civil, civic or family rights for one to ten years.¹²⁰

As previously discussed, the process begins with the transfer of a young girl from a poor rural family to an urban middle-class or rich family. This transfer often involves an intermediary (*samsar*) that is paid by the host family and in some case by the family of the child domestic

¹¹⁸ *Maroc: Code Pénal* [Morocco], 26 November 1962, 15 September 2011 consolidated version. [Criminal Code] Available at: <http://www.refworld.org/docid/54294d164.html>.

¹¹⁹ See art. 2 of this protocol.

¹²⁰ Criminal Code, supra note 118, art. 40.

worker to facilitate the transaction. As the term “consideration of any kind” is very general and the law does not specify the reasons for the sale, any sale of a child for consideration, even for reasons other than those enumerated at article 3 of the Optional Protocol, falls within the scope of the law.¹²¹ Because the focus of the provision seems to be on the transaction and not on the reason for the sale, the transaction brokered by the *samsar* could well fall into the category of sale of children which is prohibited under Moroccan law.

In the case of the *petites bonnes* phenomenon, it is the children’s work that is being commodified and the power relationship between the involved actors seems to be shaped by the conditions involved in the trade.¹²² Following the text of article 467-1, the authors of the offense are those who give (parents) or receive the child (employers), but also those who act as intermediaries for the sale (*samsars*). The legal situation does not seem to fit the particularities of the child domestic labor reality. If the aim is to eradicate the exploitative practice of child domestic work, it would be inappropriate to penalize the sending family, as poverty is almost always the causal factor for parents sending daughters into domestic labor. The effective elimination of the practice begins with ensuring that families have sufficient income to be able to deal with poverty. Therefore, this provision does not seem to achieve effective deterrence of the harmful practice.

Criminalization of certain acts committed during the exploitation phase

¹²¹ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263, art. 3. Available at: <http://www.refworld.org/docid/3ae6b38bc.html>.

¹²² Fafo 2001, supra note 15, at p. 7.

The Criminal Code also prohibits forced labor, but only in the case of children.¹²³ Article 467-2, introduced in 2004, provides for this offense which is sanctioned by one to three years' imprisonment and a fine of five thousand to twenty thousand dirhams.¹²⁴ Forced labor in this case consist of the exploitation of a child under 15,¹²⁵ the fact of acting as an intermediary for this exploitation or the fact of provoking this exploitation. In the case of child domestic work, the provision would then target the employer and the *samsar* who brokered the transaction. Moreover, forced labor is defined as coercing a child to perform work prohibited by law or as to perform of work that is prejudicial to his or her health, safety, morals or its formation.¹²⁶

A few observations on the definition of forced labor are worth making. First, under article 3 of the Palermo Protocol, consent is irrelevant in the case of children. Even in the absence of coercion, the child cannot consent to an act of trafficking for the purposes of exploitation. Second, the first possibility refers to work that is prohibited by law, i.e. the Labor Code. However, until Law 19.12 on “Domestic Workers Employment Conditions” is duly implemented into the Labor Code, domestic workers will remain excluded from the protection awarded by Moroccan labor law. It could be argued that the work to which these children are subject is prohibited by the Labor Code, because it prohibits the employment of children under the age of 15 years¹²⁷ and “hazardous

¹²³ It is not clear whether the definition of trafficking provided in Law 27.14 would encompasses forced labor. The last paragraph of Art. 448-1 reads as follow: “For the purpose of the law herein, peonage shall mean all works or services forcibly imposed upon a person by means of threat, and not voluntarily choosing to do them. Peonage shall not mean works imposed by compulsory military service or due to a penal condemnation, or works or services imposed in a situation of emergency.”

¹²⁴ Ibid.

¹²⁵ It should be noted that the age limit is 15, not 18, probably in order to harmonize with the Labor Code, which provides in its article 143 that minors may not be employed or admitted to companies or among employers before the age of 15.

¹²⁶ The term “training” is not very clear in this context. It should be regarded as any form of learning: schooling, vocational training or technical training. See UN Women 2015, *supra* note 4, at p. 25.

¹²⁷ Labor Code 2004, *supra* note 14, art. 143, 151.

work” for children under the age of 18.¹²⁸ However, as mentioned previously, article 4 of the Labor Code expressly excludes domestic workers from the protection awarded by it. The wording of the second possibility (“performance of work that is prejudicial to his or her health, safety, morals or its formation”) seems to have been inspired by article 3 of ILO Convention No. 182. Accordingly, this second definition refers to the harmful nature of the work. The issue is then who decides what type of work is likely to harm the health, safety or morals of the child. The wording of article 467-2 suffers from vagueness and ambiguity, which is detrimental to the rights of child domestic workers.

ii. Measures of Protection and Mechanisms of Rehabilitation and Reintegration

Regarding the issue of accommodation, the lack of specialization of the shelters, the simultaneous presence of minors in conflict with the law and minor victims, the age diversity of the hosted minors, and the lack of resources and specialized programs according to the needs of the victims are weaknesses found in all shelters that could potentially accommodate child domestic workers who have been removed from the employer’s household.¹²⁹ As for psychological care, and despite its importance in helping the victim to recover at the mental and emotional level, support services are very limited. The public health-care facilities and the civil society associations are overburdened and insufficient to meet existing needs.¹³⁰

¹²⁸ Labor Code 2004, *supra* note 14, art. 147.

¹²⁹ UN Women 2015, *supra* note 4, at pp. 78-80.

¹³⁰ UN Women 2015, *supra* note 4, at p. 80.

As for the rehabilitation and reintegration mechanisms for child domestic workers,¹³¹ they follow the mechanisms used in other cases of violence against women and children and vary according to the age of the victim and her academic level. Reintegration includes actions at the level of education or training and within the family. In the case of children housed in centers, it also includes preparation for life outside the center. When the person is over 18 years of age, the measures must provide for the economic resources necessary for the victim to assist in the search for employment or the creation of income-generating activities. Morocco, in its Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review, it asserted that “the Government created a national committee for the fight against child labor. It also allocates an annual budget under the Finance Law to combat child, granted to support associations working in this area.”¹³² However, as UN-Women study reveals, the capacities of the civil society organizations remain very limited.¹³³ In light of this, a review of the newly adopted laws is in order.

ii. Limited Legislative Development

This sub-section aims at reviewing the legislative developments in light of Morocco’s obligation to provide clear sanctions and penalties against the offenders and provide for adequate and effective remedies to the victims. As part II revealed, child domestic labor encompasses different legal frameworks – childrens’ rights, labor rights and human trafficking law – that must

¹³¹ UN Basic Principles, *supra* note 10, principles 13-14 and 18.

¹³² UN Human Rights Council, Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review: Morocco, Recommendation # 66 (Slovakia): Intensify efforts to prevent minors from being subjected to forced or hazardous domestic labor, p. 47. Available at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session13/MA/MoroccoImplementation2ndCycle.pdf>.

¹³³ UN Women 2015, *supra* note 4, at p. 82.

be juxtaposed upon addressing the *petites bonnes* phenomenon. Yet, the legislative efforts discussed below do not respond to the entirety of the problem, rather they offer piecemeal solution.

*Law on Domestic Workers Employment Conditions*¹³⁴

In 2011, after several years of hesitation in drafting texts dealing specifically with domestic child labor, the government proposed integrating its ban – without any other provisions – into Bill 19.12 on Domestic Workers Employment Conditions. The original purpose of this text was to supplement the 2004 Labor Code, which stipulates in article 4 that:¹³⁵

The conditions of employment and work of domestic workers who are bound to the master of the house by an employment relationship are determined by a special law. A special law determines the relations between employers and employees and working conditions in sectors of a purely traditional character.

As domestic workers were excluded from Morocco's labor law, the first version of the bill was intended to respond to civil society's demand for a much larger and more elaborated specific law on child domestic labor,¹³⁶ and to put an end to this legal vacuum. Law 19.12 was ultimately adopted by Parliament in July 26, 2016 and published in the official gazette on August 22, 2016.

The Law, which will come into force only one year after the publication of the three decrees necessary for its application, merely addresses the issue of child domestic workers. Rather it serves as a general framework, laying down the extent of the hiring and working conditions of domestic workers. Article 6 fixes at 18 the minimum age for the admission to domestic employment. While

¹³⁴ The analysis in the present sub-section is based on certain articles of Law 19.12, as the latter has yet to be translated to French. The author recognizes the limits of this partial analysis.

¹³⁵ My translation. Labor Code 2004, *supra* note 14, art. 4.

¹³⁶ Association Marocaine de Protection de l'Enfance, *CRC Shadow Report Morocco*, June 2014. Available at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MAR/INT_CRC_NGO_MAR_17902_F.pdf.

this could represent a major legislative development for the protection of the child,¹³⁷ the phase-in period of five years during which girls between 16 and 18 will still be allowed to work shows the legislator's failure to consider child protection and development in accordance with the international standards¹³⁸ but also with the national plans and guidelines on child protection.¹³⁹ In the meantime, it limits working hours for 16 and 17-year-olds to 40 hours a week, and for adults to 48 hours a week. The Law guarantees 24 continuous hours of weekly rest, and a monthly minimum wage of 1542 dirhams,¹⁴⁰ which represents 60 percent of the minimum wage for jobs covered under the Labor Code.¹⁴¹

The method and procedure of supervision established by Law 19.12¹⁴² are a mere reproduction of those set out in the Labor Code, which apply to open working environment accessible to the labor inspectorate without any special formalities. The hidden nature of domestic labor requires special legal procedures to guarantee access and intervention of regional and local labor inspection services and police forces. The state of isolation in which many child domestic workers find themselves commands that labor inspectors and child protection units have access to private households to identify child domestic workers. If labor inspectors are unable to go inside

¹³⁷ For instance, article 3 of the ILO Convention no. 189 recommends fixing the minimum age for admission to domestic employment at 18.

¹³⁸ Law 19.12, art. 6 and 27.

¹³⁹ Le Plan d'Action National Pour l'Enfance 2006-2015 – *Morocco Worthy of its Children*. Available at: http://www.ondh.ma/sites/default/files/rapport_unicef_ok.pdf; "Politique Publique Intégrée De Protection De L'enfance Au Maroc." *Ministère De La Famille, De La Solidarité, De L'Égalité Et Du Développement Social*. Available at: <http://www.social.gov.ma/fr/rubrique/consolidation-de-la-protection-de-1%E2%80%99enfance-0>.

¹⁴⁰ 1 Moroccan Dirham equals roughly 0.100 US Dollar.

¹⁴¹ HRW, Morocco: New Law Advances Domestic Workers' Rights, Key Protections, but Significant Gaps Remain, August 1, 2016. Available at: <https://www.hrw.org/news/2016/08/01/morocco-new-law-advances-domestic-workers-rights>.

¹⁴² Law 19.12, art. 22.

houses, and are thus unable to identify the child domestic worker, the latter cannot be considered as having access to redress mechanisms.

In terms of restitution and guarantees of non-repetition, it must be stressed that the care of minors requires specific skills (specialized social workers) and appropriate structures which cannot be attained without legislatively changing the nature and content of the mission of inspectors and protection units. Defining the responsibilities of the various state departments in the process of eradicating the practice, including withdrawal from the employer's household, operationalizing the coordination between the various institutional and associative actors in the field to ensure adequate accompaniment of the victims are essential. However, the Law remains silent on these points. The Law does nothing for girls already employed as domestic workers at the time of entry into force or afterwards, as no provision is made to remove them and to provide them with rehabilitative services.

Further, the provisions dealing with the dissuasion and punishment of offenders do not distinguish the case of minors.¹⁴³ Their deterrent and protective role against exploitation of the law is consequently reduced. While these provisions authorize the Government to prosecute *samsars*, who traffic children for labor exploitation, they do not deal with the case of legal entities acting as intermediaries (such as informal placement agencies), whose practices could play a major role in the elimination of the *petites bonnes* phenomenon, according to the Collectif Associatif pour l'Éradication du Travail des "Petites Bonnes" (hereafter Collectif).¹⁴⁴ The amounts of penalties

¹⁴³ Law 19.12, art. 23.

¹⁴⁴ Collectif Associatif pour l'Éradication du Travail des "Petites Bonnes," Press Release, Exploitation des "petites bonnes" au Maroc deux premiers décrets qui confirment l'inadéquation de la loi 19.12. September 9, 2016. [Collectif Press Release, September 9, 2016]

and imprisonment periods are insufficient in light of the gravity of the crime of trafficking in children and their exploitation in domestic work.¹⁴⁵ No distinction seems to be made between the employer, the intermediary and the sending family. Thus, this first official response to child domestic work remains lacking in substance, coherence and urgency. Not only the Law is far from offering satisfactory remedies, as it merely bans the practice and penalize the profiteers, but its implementation may take considerable time, let alone the regulatory texts listing prohibited work.¹⁴⁶

On September 9, 2016, Parliament adopted the first two of the three decrees needed to implement Law 19.12. They relate respectively to the “standard contract” of employment and the list of “hazardous work prohibited to minors aged 16-18 years,” the employment of which is authorized for a further period of five years, in application of articles 6 and 27 of the said Law. The decree on the “standard contract” affects child domestic workers in as much as this decree provides for the signing of contracts by minors aged 16-18 on the basis of the written and legalized authorization of the “guardian.” In the Collectif’s view, bestowing this power to the guardian, not only breaches Morocco’s international obligations, but ultimately encourages and facilitates the activities of speculators and protects unscrupulous employers and their accomplices in trafficking in children.¹⁴⁷

As for the second decree, the list of hazardous work prohibited to minors aged 16-18 covers

¹⁴⁵ Collectif Press Release, September 9, 2016.

¹⁴⁶ UN Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, [Universal Periodic Review]: Morocco, 20 February 2017, A/HRC/WG.6/27/MAR/1, para 102. [National Report UPR]

¹⁴⁷ Ibid.

virtually all domestic tasks with the formula “for health and safety.” Thus, instead of clearly and definitively prohibiting the exploitation of child domestic worker, the new Law creates more problems than it solves.¹⁴⁸ First, the appreciation of the dangerousness of a task is left to the employer, leaving no real possibility for the child to face the employer on this issue.¹⁴⁹ Second, the issue of control and monitoring remains greatly problematic, making the list of hazardous work virtually ineffective.¹⁵⁰ It should be reiterated that the transitional period of five years will only begin one year after the publication of the third decree implementing Law 19.12 pertaining to the social security system, which directly depends on the collaboration of the Ministry of Employment and Social Affairs and the National Social Security Fund. According to the Collectif this may take some years, causing the child domestic workers market to proliferate in the interim.¹⁵¹

Law on Combating Trafficking in Persons

Considering the failure of the Law on Domestic Workers Employment Conditions to respond adequately to the complex and multilayered phenomenon and the delays in the implementation in the Labor Code of the prohibition of child domestic labor for children under 18, it is necessary to turn to the Law 27.14 on Combating Trafficking in Persons. The latter, which was adopted by Parliament in August 2016, introduced for the first time in Moroccan criminal law the concept of “trafficking.”¹⁵² Article I of Law 27.14 adds a subsection on trafficking in persons to the Criminal

¹⁴⁸ Ibid. See International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, C182, 17 June 1999, C182, available at: <http://www.refworld.org/docid/3ddb6e0c4.html>.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² MRA, Mobilising for Rights Associates. *Moroccan Law on combating trafficking in persons: An unofficial English translation of the original 2016 Arabic text*. [Law 27.14] Available at: <http://mrawomen.ma/wp-content/uploads/doc/Moroccan%20Law%20on%20combating%20trafficking%20in%20persons%20September%202016%20English%20translation.pdf>.

Code. The definition provided in the new article 448-1 is in line with the one emanating from article 3 of the Palermo Protocol:¹⁵³

The term “trafficking in persons” shall mean the recruitment, enticement, transportation, transfer, harbouring, or receipt of a person, or being a mediator thereto, by means of use of force, threat of use of force, or all other forms of coercion, abduction, fraud, deception; or abuse of power, office or authority; or taking advantage of a position of vulnerability or poverty; or giving or receiving of payments, benefits, or advantages to obtain consent of a person having control over another person for the purpose of the exploitation of the latter.

However, if the intended exploitation is well established, it shall be considered as trafficking in persons even if it does not involve any of the means provided for in the first paragraph herein if the person subject of such exploitation is a child who has not yet attained 18 years of age.

The term “exploitation” includes all forms of sexual exploitation, especially exploitation of the prostitution of others, and exploitation through pornographic materials including via communication means and technological communication. It shall also include exploitation in the form of forced labour, peonage, beggary, slavery, slavery-like practices, removal and sale of organs and tissues of human origin, or exploitation by means of conducting experiments of medical research on the living, or using a person in crime or armed conflicts.

In furtherance to the above, robbing persons from their free will, their human dignity and depriving them from changing their situation by any means possible shall be considered as exploitation even if they receive payment therefore. [...]

[Underlining added.]

The offense of trafficking in person is punishable with imprisonment of five to ten years and a fine of 10,000 to 500,000 dirhams.¹⁵⁴ As the National Council for Human Rights (CNDH) noted in its opinion on Law No. 27.14, the wording of article 448-2 raises the “problem of non-implementation of the principle of individualization of sentences conditional to the nature of the offender (expert or ordinary person and according to the seriousness of the offense and the social

¹⁵³ Law 27.14, supra note 152, at art. I, subsection 6 on trafficking in persons, Criminal Code, art. 448-1.

¹⁵⁴ Law 27.14, supra note 152, at art. I, subsection on trafficking in persons, art. 448-2.

unrest it can cause).”¹⁵⁵ While this principle is provided by the Criminal Code with articles 141 to 151, the final text of Law No. 27.14 makes no reference to the personality of the offender and the consequences of the seriousness of the offense. Considering the varying severity of the offenses relating to trafficking in persons, the non-distinction between the various forms of offenses “could result in the risk that some seemingly heavy penalties are not applied.”¹⁵⁶ In the particular case of the *petites bonnes* phenomenon, it is essential that the various modes of participation and financial incentive to maintain the practice are taken into account when establishing the means of deterrence and repression. For instance, the employers and the *samsars* are the primary profiteers of the practice, while for the sending family it is a matter of economic sustenance.

With regard to the provision of effective remedies to victims of trafficking, the Law adds nothing to the existing provisions of the Code of Criminal Procedure. The legislator had introduced some measures in the Criminal Procedure Code in 2011.¹⁵⁷ These measures provide protection against the risk of physical violence suffered by victims, witnesses, experts and whistleblowers, as well as their families. Articles 82-4 and 82-5 specify that the victim of an offense must be informed of the possibility of protection when they present themselves to judicial police, to the public prosecutor’s office, to the investigating judge or to the trial court.¹⁵⁸ The victim, their family members and relatives, and the victim's property are eligible for protection. Following articles 82-6 and 82-7, the victim-witness may request protection from the prosecutor or the investigating judge based on serious reasons they fear for their life, physical integrity if they testify. Law 27.14

¹⁵⁵ National Council for Human Rights, Memorandum on Bill No. 27.14: On the Fight against Human Trafficking, 2016, p. 10. [CNDH 2016] Available at:

http://www.cndh.org.ma/sites/default/files/the_fight_against_human_trafficking_memorandum_on_bill_no._27-14.pdf.

¹⁵⁶ Ibid.

¹⁵⁷ The author used the French version of the provisions of Criminal Procedure Code provided by UN Women in its 2015 report.

¹⁵⁸ UN Women 2015, supra note 4, at p. 29.

added article 82-5-1:¹⁵⁹

In case of offense of trafficking in persons, the victim and victim's identity, nationality and age shall immediately be identified throughout all phases of investigation, questioning and trial.

The appropriate authorities may order the suspect or the accused not to contact or approach the victim of trafficking in persons.

The appropriate authorities may also authorize the foreign victim to remain within the territory of the kingdom until the trial has come to an end.

The provisions provided for in the second and third paragraphs herein shall also be applicable to witnesses, experts and whistleblowers of the offense of trafficking in persons.

The new provision fails to address issues of identification and referral to appropriate assistance agencies.¹⁶⁰ Furthermore, the article states the possibility of issuing a protection order, instead of granting it automatically. It follows that the measures put in place by Morocco do not fully apprehend the vulnerability of trafficked persons, much less child domestic workers.

Article IV of Law 27.14 provides that the state, up to the recourses available, must provide protection, health care and social and psychological support to victims of trafficking in persons. It also provides that the state must “guarantee them with temporary place of shelter and the necessary legal aid; and facilitate not only their reintegration in the social life or their voluntary return to their country of origin or residence if they are foreigners.”¹⁶¹ This provision does little to clarify the scope of the government involvement in assisting the victims. The responsibility of the public authority regarding the costs of protection and support of victims also remains unclear. In this regard, the CNDH recommended that specific budget be mobilized and partnerships with civil society organization be considered and that all victims benefit from free health care including the

¹⁵⁹ Law 27.14, supra note 152.

¹⁶⁰ UN Basic Principles, supra note 10, principle 7.

¹⁶¹ Law 27.14, supra note 152, at art. IV.

medical assistance system.¹⁶² In its national report to the third cycle of the Universal Periodic Review, Morocco contended that the draft Code of Criminal Procedure will strengthen protection of victims of violence and trafficking, by introducing the obligation to provide accommodation for victims in care centers for women and children attached to the courts and to inform victims of their rights.¹⁶³ It remains unclear if the changes referred to by the state are those introduced by Article IV. In any event, the new draft version of the code has yet to be adopted.

Article V of the Law stipulates that “victims of trafficking in persons shall be exempted from the payment of legal fees required when filing any civil action for compensation regarding the damage they might have incurred as a result of the offense.”¹⁶⁴ This provision also supports the effective access to justice of the victims by stating that victims shall benefit from legal aid in each action, including action of appeal and extending to cover all procedures regarding the execution of court’s orders. It stems from the above that the criminal trials would leave the victims’ right to restitution and compensation unresolved.¹⁶⁵ Thus, civil legal proceedings appear to be the only way to make a claim against the offenders for the multiple forms of abuse suffered, including economic exploitation, corporal punishment, psychological trauma and sexual abuse. Moreover, the provision does not include the right to information regarding relevant court,¹⁶⁶ nor does it

¹⁶² CNDH 2016, *supra* note 155, at p. 14.

¹⁶³ National Report UPR, *supra* note 146, at para 93.

¹⁶⁴ Law 27.14, *supra* note 152, at art. V.

¹⁶⁵ UN Basic Principles, *supra* note 10, principles 8-12.

¹⁶⁶ Palermo Protocol, *supra* note 6, art. 6(2)(a).

integrates the automatic granting of assistance to children who wish to initiate civil proceedings.¹⁶⁷

While implementation of Law 27.14 is lagging, the Minister of Justice and Freedoms urged, in a circular, the Attorneys General of the King before the Courts of Appeal and the prosecutors of the King before the courts of first instance to speed up the process. The Minister gave them a until the end of February to draw up detailed reports on the decisions taken following the application of Law 27.14 on combating trafficking in persons. The document encourages prosecutors to schedule meetings with their substitutes on the content of the document and on the provisions of the law on combating trafficking, and to discuss the issues related to the application of this Law. The circular also calls on prosecutors to refer to the provisions of the new Law for the facts and the investigations submitted to them and to establish meetings with the judicial police with the same objectives.¹⁶⁸ It remains to be seen whether this has resulted in the effective implementation and enforcement of the Law. Interestingly, in its national report, Morocco asserted that in 2015, one year before the adoption of Law 27.14, 157 individuals had been prosecuted for the offence of trafficking in persons, with no further indication as to what specific disposition of the Criminal Code were invoked.¹⁶⁹ It follows that not only the criminalization of the practice of child domestic labor remains ambiguous – at least until the actual implementation of the new laws, but the protection and rehabilitation measures are far from taking into account the individual

¹⁶⁷ UN Economic and Social Council (ECOSOC), *UN Economic and Social Council Resolution 1997/30: UN Guidelines for Action on Children in the Criminal Justice System*, 21 July 1997. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>.

¹⁶⁸ Alm. “Traite Des êtres Humains : La Loi Entrée En Vigueur Depuis Septembre 2016.” *Aujourd'hui Le Maroc*. 10 Feb. 2017. Available at: <http://aujourd'hui.ma/actualite/traite-des-etres-humains-la-loi-entree-en-vigueur-depuis-septembre-2016>.

¹⁶⁹ National Report UPR, *supra* note 146, at para 111.

circumstances of children and vulnerable persons.

Conclusion

Because of the distinctive circumstances of child domestic labor, the young girls performing it constitute one of the most vulnerable and hidden groups of child workers. Eradication of the harmful practice goes far beyond criminalization. The strategies put in place by the state must consider the various factors pushing girls into domestic labor. The Kingdom of Morocco has recognized the problem and has made some efforts towards compliance with its international obligations, yet many girls from poor rural areas continue to enter domestic work, and experience violence and mistreatment. As this paper revealed, the available remedies do not respond adequately to the specific experience of those girls. Although it has recently enacted laws addressing the prohibition of child domestic labor and criminalization of trafficking in persons, Morocco has yet to respond adequately to the challenges posed by peculiarities of this “hidden” phenomenon.