

Child labour in Sri Lanka

Learning from the past

S.W.E. Goonesekere

ILO-Child
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International Labour Office Geneva

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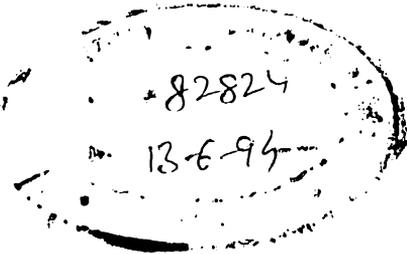
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Gooneskere, S. W. E.
Child labour in Sri Lanka: Learning from the past
Geneva, International Labour Office, 1993

/Child labour/, /Sri Lanka/, /14.02.2
ISBN 92-2-106473-5

 **Library** IAS, Shimla


00082824



331.310 954 93
G 641 C

ILO Cataloguing in Publication Data

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Preface

Historically, legal intervention has been the major means of combating child labour. In many countries, the effective enforcement of legislation has virtually eliminated child employment in the formal sector. However, as child employment in one occupation is brought to an end, so it emerges in another.

This report describes the Sri Lankan experience, focusing especially on dangerous and exploitative child labour, the difficulties faced by the Government and the measures developed to deal with this problem.

In many respects, Sri Lanka conforms to international standards. Sri Lanka's major industrial and agricultural enterprises do not employ children. Sri Lanka's achievements in the provision of education and welfare services are among the most impressive in the developing world. However, child labour continues to present a challenge in the country, and the report underlines the need for continued vigilance and sustained action to combat classical and new forms of child labour.

Most children work in very informal contexts, in small, unregistered concerns, in private homes or sometimes even in illegal enterprises. In this and other respects the characteristics of child labour in Sri Lanka are similar to those of other poor countries. Children are concentrated in occupations unattractive to adults, in which wages are low, working conditions are dangerous, workers' rights are not recognized and labour organization is absent.

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The problem is exacerbated by a serious domestic crisis. The author, Professor Savitri Goonesekere, describes how civil war is threatening the traditional social fabric and severely damaging the process of economic development. Civil war exposes children to new dangers, and therefore to new and more exploitative forms of labour. Destitute refugee children are sometimes drawn into virtual bondage as domestics, and a number of others have been forcibly conscripted.

Child prostitution and the traffic in children for use as camel riders in the Middle East are among more recent forms of child labour in Sri Lanka, and child abuse and suffering may be far more intense in these than in more ancient occupations. The author also suggests that this trend may reflect a decline in traditional values of child nurture and care in the face of the present crisis and argues for new, more innovative approaches to combat this trade in children. Since such activities involve nationals as well as foreigners, abolition can only be achieved by a collaborative effort involving the Government, non-governmental bodies and international agencies.

The main thrust of public policy in Sri Lanka has been to allow a low (12 years) age threshold for admission to employment, while protecting older children by excluding them from certain specified occupations and regulating conditions of work. A distinction is made between prohibited, hazardous employment and permissible, non-hazardous labour which is controlled. But complicated legislation leads to confusion, and Professor Goonesekere makes the important point that absolute prohibition would be easier to implement and would provide a better defence against exploitation and abuse.

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The case of Sri Lanka also illustrates another important issue: the need to complement the establishment of universal free education and the enforcement of labour legislation with a coherent welfare programme. True, labour legislation sets clear goals for government, employers and the community as a whole. Education, too, plays a pivotal role in the reduction of child labour. But these measures alone will not bring an end to the problem. Without proper provision for family welfare, for example, it is not feasible to withdraw children from the labour market; the enforcement of child labour prohibitions could result

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in the poor becoming poorer still. Although efforts are made to provide and decentralize welfare programmes, community outreach is not totally adequate, and the emphasis on custodial care for children at risk rather than preventive measures supportive of the family as a whole remains a serious weakness of Sri Lanka's welfare efforts.

The report shows the role of cultural attitudes and the potential role of adult literacy. Many parents do not perceive labour as being especially harmful to the child. Clearly this makes the elimination of child labour very difficult. However, the author also shows how attitudes begin to change as the poor, and in particular poor women, become literate. Significant numbers of poor families are now willing to take up for their children the welfare and education opportunities created by the Government, thus keeping children out of work.

Professor Goonesekere's study underscores once again the point that the problem of child labour is best tackled by integrating legal intervention with a range of different forms of social action which involves non-governmental and church bodies, the media, trade unions and informal community groups. To date in Sri Lanka, even those non-governmental agencies that work with children have shown little interest in the issue of child labour. This is despite the clear lead for a possible national advocacy campaign provided by a series of recent press reports highlighting the serious abuse of child workers in a variety of occupations. The author laments the loss of the many opportunities such as this. She argues in favour of a far clearer focus on the problem of child labour, for a greater commitment to combating it on the part of both government officials and the non-governmental sector, and for coordinated inter-agency action in a range of areas from legislative reform and legal aid to family income support. Thus, overall, this important case-study provides many pointers for a future national programme to bring an end to exploitation and abuse of children at work in Sri Lanka.

Subsequent to completion of the manuscript, the following information has become available which will necessarily have an important bearing on the subject of child labour in Sri Lanka. The United Nations Convention on the Rights of the Child (1989), the World Summit for

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Children (1990) and initiatives of the South Asian regional organization, SAARC, have motivated countries to produce national plans of action for children and development. Sri Lanka's recently formulated National Plan of Action (1991) recognizes the existence of the phenomenon of child labour in defined sectors, and considers child labour a subject for specific intervention. The objective of the intervention is clearly articulated as the "eradication of child labour in Sri Lanka". This is perhaps the first time in decades that there has been an official recognition of the existence of this phenomenon, and an admission that it poses a risk to child development in low-income families.

Finally, I would like to thank Dr. Jo Boyden of Children in Development, Oxford, for helping us in the editing of this manuscript.

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Introduction: Child labour in Sri Lanka

Sri Lanka is a multi-ethnic, multi-religious society. The population of 15.3 million, as recorded in the census of 1981, belong to three major communities: the Sinhala, Tamil and Muslim. Distinctions in religion and ethnicity tend to introduce a special dimension into the socio-economic realities of certain problems in the country. These distinctions were once significant in determining differences in child labour. For example, at one time, a particularly high percentage of child workers belonged to the Indian Tamil labour force that was brought into Sri Lanka by the British to work on the coffee and tea plantations. Yet today these distinctions have little relevance; child labour, and the problems associated with it, exist in all three communities. There are no precise statistics on the incidence of child labour in Sri Lanka, but estimates based on the 1981 census suggest that between 1 and 2 million children under 19 years of age work. Many of these children work under hazardous conditions, experiencing serious exploitation, abuse or mental or physical danger.

The concept of minority and majority have long been recognized in indigenous customary law in Sri Lanka. Among Muslims, minority traditionally ceases at the age of 15, with the onset of puberty. This age is important for the Sinhala and Tamil communities too, and is considered the point at which childhood ceases and adolescence begins. However, the legal concept of minority and majority were first introduced by

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legislation in 1865 through a colonial statute passed by the British.¹ Under statute law, minority, the upper age limit of which is 18 years, is divided into two stages — childhood, which lasts to 14 years — and youth, which extends from 14 to 18 years.² According to Sri Lankan legislation, then, child labourers are all those minors under 14 years old who work. In this study, though, the concern is with all children under 18 years of age, since this is now accepted as the upper limit of minority and childhood.³

In all three communities poor children are viewed by their parents and others as crucial members of the household workforce and a child's labour is considered essential to family survival. This perception of the child as an economic asset at the disposal of the family, originating in the pre-colonial period, is founded on traditional attitudes concerning parental power and filial obedience. The recorded laws of both the Sinhala and Tamil communities refer to the parental right to sell or surrender children in time of need, as payment against a loan or as a gift to an official made as a mark of respect.⁴ The involvement of children in contemporary Sri Lanka in a wide range of economic activities thus accords with the traditional value system. Working children are found today in small-scale agriculture, domestic service, street trades and home-based production in the informal sector — and occasionally as casual labour, or “family helpers”, in the labour force of registered, formal sector enterprises. Indeed, under the present economic and political conditions in Sri Lanka, there has been an increase in child labour in some of these sectors, especially domestic work, home-based production and agriculture.

Changes in the Sri Lankan economy and society in recent decades have also resulted in the growth of child labour in a range of new activities. As we shall see, some of these are both exploitative and dangerous. Of the more modern occupations, advertising is definitely the least harmful. The growth in the market for television and video has brought about an expansion in the local film industry and this has in turn resulted in the frequent employment of small children from wealthy homes in advertising. The fees are paid to parents and may or may not be passed on to the child. Although a certificate is obtained

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from the Commissioner of Labour in situations where there is some risk of physical injury, the possible adverse psychological impact of this work is not considered important.

A large number of children in Sri Lanka live and work in small unlicensed or unregistered concerns such as hotels and tea kiosks (or “boutiques”) and in food, textile and grocery shops and other service sector enterprises. Some are employed as live-in apprentices in workshops that provide motor mechanical and related services to the public. Child workers in hotels, small commercial enterprises, workshops and other such establishments enjoy more independence than groups such as young domestics. The overwhelming majority of children employed by service establishments or small workshops are young boys. This is partially because very young girls are thought to require the protection of the home, whether their own or that of their employer, and are largely excluded from work in public places.

Overall, even though child labour persists throughout Sri Lanka, legal prohibitions on the employment of children under the age of 14 years in hazardous activities or in activities that prejudice their education have been effective in excluding them from formal employment in the public sector and severely limiting their involvement in formal employment in the private sector in commerce, plantation agriculture and industry. They are also excluded from the workforce in mining, quarrying and construction.⁵ Reports from labour officials that plantations, registered factories and other such concerns rarely employ children under 14 years as part of the formal workforce are corroborated by research undertaken on major industries such as garment production and plantations.⁶ Surveys conducted by the Division of Women and Children’s Affairs of the Ministry of Labour in Colombo indicated that workers in formal employment in registered enterprises were all over 15 years of age.

However, children under 14 years of age occasionally work unofficially in formal sector concerns in the capacity of “helpers”, at the request of adult relatives in the workforce. For example, they assist plantation workers hired on contract in weeding and other light tasks. Both management and labour officials see this form of work as benefi-

cial to the children in that it enables them to contribute to family income. Girls especially undertake supplementary tasks such as caring for their siblings and carrying food to their parents whilst they work in the fields. In practice, children who undertake such services are fulfilling functions that should be the responsibility of management. Regulations obliging private sector employers to provide crèches on plantations for the under-5s exist but have yet to become law. Some child-care facilities have been created on plantations in recent years by aid agencies such as UNICEF.⁷

Children over the age of 14 years may be incorporated legally into the official labour force. Plantation children in the younger range of this age group usually undertake the less strenuous tasks, such as weeding, rather than more arduous ones, such as tea-plucking or pruning or the splitting of firewood. Children between the ages of 13 and 15 years also occasionally assist adult relatives in manual work, such as the cutting of rock in quarries and on construction sites. Some children in this age group are employed by contractors as casual labour. Employers can use this strategy to avoid payment of legal minimum wages and bypass protection provided by labour laws. If manual work is not covered by Wages Board decisions, the child's work is unregulated by any laws on matters such as wages and leave. Because their work involves a number of strenuous tasks, children in these occupations are liable to be injured. It will be observed later that their right to compensation for occupational injury is very limited.

Children who work as part of the unofficial labour force in the informal sector may receive some benefits from their labour. For those who work with parents or other relatives, personal relationships within the family may be strengthened by the shared work experience. But it should be borne in mind that parents who use their children as family labour are effectively exploiting them as an economic asset. Health and safety are largely ignored in these occupations, and generally there is no balance between the children's developmental needs and the economic needs of the family, the latter taking priority whenever necessary. In informal sector occupations, for example, children are required to work extremely long hours — often at night — outside school hours, in a

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desperate effort to combine education and employment. Under these circumstances they find it increasingly difficult to meet the demands of schooling and are liable to become drop-outs from formal education (Jayaweera and Dias, 1989).

NOTES

¹ Age of Majority Ordinance (1865).

² Children and Young Persons Ordinance (1939); Factories Ordinance (1942); Employment of Women, Young Persons and Children Act (1956); Age of Majority Ordinance, as amended (1989).

³ Age of Majority Ordinance (1865), as amended (1989).

⁴ Tesawalamai Code (1806), Part VII. This aspect is discussed further in Goonesekere and Abeyratne (1987), p. 127.

⁵ Employment of Women, Young Persons and Children Act (1956); Factories Ordinance (1942); Employment of Females in Mines Ordinance (1937); Employment of Children Regulations (1957); *Ceylon Government Gazette*, No. 11302, 25 Apr. 1958.

⁶ Personal communications, officials of the Women and Children's Division, Ministry of Labour, Colombo, Dec. 1985, Apr.-May 1989; Fernando (1985, 1986, 1989); Business Names Ordinance (1918); and Factories Ordinance (1942) provide for registration of these enterprises.

⁷ Seneviratna (1987), p. 222; Personal communications, officials of the Women and Children's Division, Apr.-May 1989; Gnanamuttu (1979); Maternity Benefits Ordinance (1939), as amended (1978) and (1985).

1. Children in hazardous occupations

Agriculture and manufacturing

There are a number of serious health and safety risks associated with child labour in many occupations in Sri Lanka. For example, even though there have been attempts by both the Government and UNICEF to improve the living conditions of plantation workers, living quarters remain congested and food shortages are common. Studies reveal that both children and adults in this sector face a range of major environmental and occupational hazards (Goonatilake and Goonesekere, 1988, p. 184). This also applies to children over 14 years who work as part of the official labour force in industry. In both industry and plantation agriculture, production targets are stringent and this places severe strains on the workforce. Conditions at the workplace are often poor and in many instances child labourers inhale pollutants such as tea dust and industrial wastes. The nutrition and health status of child plantation workers has been a subject of particular concern for decades. Many of these children are malnourished and exposed to toxic substances such as pesticides which are used freely, often without protection. Children working long hours in tedious activities in the fields are also vulnerable to the heat and to exhaustion. In addition, their role as supplementary labour not only increases adult dependence on them, but also seriously undermines their schooling.

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Children are permitted to work only exceptionally up to 11 p.m., and night work in industry is prohibited in the case of all children, including those within the official labour force.¹ However, the removal of the prohibition against employing women at night makes it difficult to ensure that child workers over 14 years are not employed in industry at night. This is a particular problem in the free trade zone, for example. The zone is an investment promotion area near Colombo which was established in the last decade and is controlled by a statutory authority known as the Greater Colombo Economic Commission. Multinationals and major local industrialists have established factories in the area producing articles such as garments for export. These firms employ a large number of young women workers who are often required to work late into the night in order to meet production targets.

Young children are also engaged in a range of production and service activities in the informal sector of agriculture, on subsistence farms, small estates and outwork in industry. Studies of subsistence farming and small-scale estates indicate that younger children are not normally directly involved in production because rural women attach some importance to their care within the home (Karunatissa and Rupasinghe, 1982). On the other hand, children over 12 years perform a high percentage of the work, assisting their parents in a wide range of tasks. The burden of their labour is such that there is little time for rest or recreation and many drop out of school. Thus, in the Mahaweli River settlement areas, for example, where land has been allocated to peasant farmer settlers, there appears to have been an overall increase in dependence by family enterprises on child labour. These children work long hours picking chilli and face many of the serious dangers, such as the risk of poisoning from pesticides, experienced by under-age plantation workers.

In recent decades government-sponsored schemes to generate income and promote self-employment have encouraged subcontracting and home-based outwork in industry in Sri Lanka, thereby increasing informal sector activity overall. Children are incorporated in this sector as family labour and as such face many risks associated both with their impoverished family circumstances and their work. Just as with adults in

these occupations, they are denied the protection of labour laws and are exposed to a series of occupational hazards. But as children they experience a number of additional risks: working in family concerns, they receive no wage and because of their immaturity they are more vulnerable than adults to accidents and other health hazards. Research shows, though, that at least these children benefit from a generally stable home environment and supportive family relations, a situation contrasting dramatically with that of child domestics, child combatants and certain other groups of under-age workers in Sri Lanka. Because affective ties within the family are strong, they are less exposed than wage-earning child labourers to abuse.

Fishing

One of the most pernicious forms of child labour in Sri Lanka is that reported to have prevailed until very recently in the fishing industry. Children were recruited by job placement agents to clean, salt and dry fish in fishing camps, or *vaadiyas*, situated in villages or on islands along the north, west and eastern coasts. The camps tend to be very remote and police sources indicate that these children were kept in conditions of virtual slavery. Ill-nourished, harassed and physically abused by both their employers and other workers in the camps, they would toil long hours in the open, exposed to extreme heat, receiving no wages. It has even been suggested that children were occasionally kidnapped for this work.

In general, the Government has shown little concern for these children. However, on one occasion a former Minister of Fisheries accompanied officials on a raid of a *vaadiya* in Trincomalee, on the east coast, and released a group of boys who had apparently been held in appalling circumstances. The camp owner received a warning not to employ children in the future.

More recent evidence indicates that children are perhaps no longer employed in the fishing camps. The Tamil militants engaged in the political struggle in the north and east of Sri Lanka have used extreme

sanctions against a number of such corrupt practices. Although the present conflict makes it impossible to verify the exact situation in these areas, it has been suggested that the militants may have used their own methods to destroy the fishing camps and eliminate child exploitation in this occupation.

Domestic service

Child labour in domestic service is becoming increasingly common in urban areas of Sri Lanka. Child domestic labour entails the employment of children by adults other than their parents, who often also house them. Children constitute a cheap and docile source of labour, working long hours (sometimes up to 20 hours a day, seven days a week) at a range of domestic tasks for little or no pay and minimum benefits such as food, accommodation and clothing (Weeramunde, 1982). Domestic work is the traditional domain of children in Sri Lanka; but while in the past very young children among the poor were engaged mainly in the care of their siblings and to a lesser extent acted as playmates for the children of the affluent, they are often employed today as domestic helpers and baby-minders by middle-class women who work. In fact, in contemporary Sri Lankan society children work as domestics in all types of household, not just in the homes of the wealthy, and under a wide range of conditions.

Convention holds that this type of work is founded on benign patronage, and offers the poor child an improved quality of life away from the impoverished home environment. Many parents are convinced by employers that their children will be better off materially and receive a better chance in life generally through such work than they themselves can provide. Parents also expect to receive financial or other benefits from the employer's patronage. This can make even a caring parent insensitive to their children's problems at work. Even though in contemporary Sri Lankan society monetary exchange has long since replaced barter, the general belief is that child domestic labourers are not entitled to a wage. Parents may receive a small payment on their

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occasional visits to the child, and money may be paid into a post office account in the child's name. Rather than pay a wage, many employers merely give the child leftover food and discarded clothing.

Since, in the case of domestic service, the place of work is not registered, the labour inspectorate is unable to monitor work conditions, even though inspection is authorized by law. Child domestic workers live with their employers and are extremely vulnerable to the latter's whims. Children under 14 years of age are especially vulnerable to abuse or ill-treatment because they work in the seclusion of the home, are less visible than other categories of worker and are more under the control and authority of the employer. Indeed, a number of professionals — among them journalists, magistrates of the Juvenile Court and a retired head of the Colombo City Police Bureau for Women and Children — have expressed their shock at the extent of child abuse in this occupation. Moreover, medical findings prove a powerful link between child abuse and domestic service. It has also emerged that a number of children found wandering the streets of Colombo and other Sri Lankan towns are domestics who have run away from cruel employers. In fact, evidence from the courts and newspaper reports indicate that domestic service is the occupation that entails the highest risk of child abuse nationally. Since it is more usual to employ girls as domestics, they are reported more commonly than boys as the victims of abuse.

Newspaper reports and a file of cuttings found at one time in the Ministry of Labour testify to the many forms and extreme viciousness of abuse committed against young domestic workers. Some children have been starved, and some battered, burnt or tortured to death. For example, recent reports indicated that a child died after being forced to consume excessive quantities of salt. Another incident received a great deal of press coverage and was monitored by a non-governmental organisation and a number of concerned individuals. In this case, a 12 year-old girl alleged on her deathbed that her employers had set her alight by pouring kerosene on her dress and igniting it. Although the offender is usually an adult, reports suggest that sometimes the employer's children also attack these young workers.

Occasionally child domestic workers are given the opportunity by their employers to learn a trade or receive an education. Alternatively,

they may be helped to obtain lucrative employment when they grow older and become capable of economic independence. Nevertheless, the conditions of employment of most children in domestic service resemble those normally associated with feudalism or slavery and closely parallel systems of bonded labour found elsewhere in South Asia (Weeramunde, 1982; Obeysekere, 1967). Yet, while the feudal lord of the past may have treated his vassals as part of the household and cared for them, in modern Sri Lanka, with the expansion of the materialist ethic, the benevolent element is minimized and the potential for exploitation maximized. The fact that child domestic labour is generally perceived as a legitimate activity for children enables employers to feel sanctimonious about what they know to be an exploitative labour practice.

Moreover, the psychological trauma suffered by children forced to work in a situation where the employer's children enjoy all the privileges they are denied cannot be underestimated. A recent case in which a young baby-minder killed her charge and the presence on the streets of runaway child domestics demonstrate the sense of helplessness many youngsters in this occupation feel. However, a few of these young runaways seek to obtain their freedom through the intervention of a kindly adult or by lodging a complaint against their employer with the police.

The demand for cheap labour in domestic work, at a time when adult domestic labour has become both scarce and expensive, has also provided a lucrative income for unscrupulous intermediaries, or job placement agents, who charge employers for recruiting child workers. For many years agents have been persuading parents in poor rural communities to part with their children with the promise of gainful employment in the city. Domestic service is preferred by poor parents to employment on the streets and in public places. The popular perception that working in a home is safe and secluded employment, more appropriate for girls, encourages their exploitation in domestic service. The present ethnic conflict has resulted in an increase in the number of displaced and abandoned children in the countryside, further encouraging this exploitative practice. Job placement agents pick children up from the

streets, from villages or even from refugee camps and practically sell them into employment. Some of these children are very young, as one Colombo resident has said, “not even old enough to have lost their first [milk] teeth”.

Street work

As in a large number of Third World countries, many children live and work on the streets in Sri Lanka. However, a generally protective attitude towards female children ensures that very young girls rarely participate in street work, transport services or door-to-door vending. It therefore follows that the great majority of street workers are boys. Thus, while girls are profoundly exploited in domestic service, they are generally better protected than boys from the dangers arising from labour on the streets. Older girls do, however, assist their families in street vending and marketing.

Begging is the street occupation that places children at most risk in Sri Lanka today. Among child beggars, the disabled are particularly vulnerable. Children may work for unrelated adults (sometimes having been “auctioned” to their employer on a daily basis) or with their parents. They beg either on the streets or in residential areas from door to door. These children have no opportunity for schooling or play and are exposed not only to poverty and exploitation, but also to the risk of alcoholism and sexual abuse.

Children are involved in a number of other street occupations, such as fetching and carrying in markets and bus and railway stations, and pavement or door-to-door vending. These activities are generally less harmful than begging because, among other things, the work may be enjoyable and the children are, in the main, self-employed. But, even though street work can offer some advantages over other forms of employment, it is poorly remunerated, providing only small, irregular income. In certain street occupations children are also expected to undertake tasks, such as carrying jute sacks filled with heavy goods, which jeopardize their health.

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A recent survey in Colombo revealed that one of the more risky street occupations that involves a growing number of boys is touting for customers on privately owned buses (Fernando, 1985, 1986, 1989). These boys, who are known as “bus criers”, work long hours, extending to late evening and are exposed to the aggressive behaviour of passengers, many of whom may be drunk. More significantly still, they are required to stand whilst the vehicle is in motion, holding on precariously by a strap. Most of these buses are driven too fast and many are involved in serious traffic accidents. Yet, even with such dangers, when the Labour Department first decided to implement regulations prohibiting the use of children under 14 years on private transport, the young criers stormed its offices, complaining that they were being deprived of their livelihood. Subsequent public criticism, combined with action against private companies by the transport authorities, has succeeded in reducing the incidence of child labour in this occupation. While at one time very young children were frequently to be found working on buses, now there are very few under 12 years of age, the majority being between 17 and 18.

Illegal occupations

A growing number of Sri Lankan children are involved in illegal activities. One particularly hazardous occupation is prostitution. Despite official and public reluctance to concede the point, both female and male child prostitution is widespread in Sri Lanka and the former at least has probably existed for many years. The issue rarely receives public attention and this only when one of Sri Lanka’s major investigative newspapers publishes the occasional article on the subject. While some parents are unaware of their children’s activities, others actively encourage their involvement. Young prostitutes experience many dangers. They are not only abused sexually by clients, but also by others involved in the trade. They earn very little and are exposed to sexually transmitted diseases.² Prostitution has also been linked with illegitimate births and child abandonment.

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The involvement of children in prostitution on a large scale is a recent phenomenon and research shows that it is particularly associated with the rise of tourism — which is promoted by government policy — in the last decade.³ Tourism has been linked especially with a growth in male child prostitution. A committee appointed by the Government in 1983 to study official tourist policy found that hotels, guest houses and private homes were all being used in organized prostitution. The committee also noted the well-publicized fact that Sri Lanka is advertised as a centre for male child prostitution in magazines with a homosexual readership in Western Europe and the United States.

Most of the female prostitutes who cater for tourists are post-pubertal and a large percentage are from poor rural areas. Typically they are attracted to the city by the prospect of obtaining lucrative legal employment and become involved in prostitution only when alternatives are lacking. A recent case that was covered by the media revealed that girls as young as 12 years are engaged in the trade. In this instance a complaint made to the police showed that a private house in a popular residential area of Colombo had for some time been used both as a brothel and studio for the production of pornographic films. The young girl at the centre of the case had contracted venereal disease after being raped and made to prostitute herself.

Research suggests that boy prostitutes, unlike girls, are generally self-employed. Recently, “rent boys” operating on the streets of Colombo have begun to offer their services not only to tourists, but also to locals. In addition, both boys and girls — sometimes very young — are used in the pornography trade, the proliferation of video machines in recent years having increased the local market for pornographic films. In the case mentioned above, the proprietor of the establishment and his mistress were found to be using young girls to pose for pornographic photographs.

The increasing use of children in alcohol- and drug-trafficking is clearly an extremely serious problem. Research in a Colombo slum showed that both alcohol and marijuana consumption among adults was widespread and that parents were using their children, sometimes as young as 4 years, to fetch and carry illicit alcohol.⁴ Older children

were being used to exchange drugs and money through a device developed as a ball game and were also charged with looking out for the police. While younger children were continually exposed to the drug culture, teenagers were found to be directly involved in consumption. In a street theatre workshop in which children under 14 years old dramatized events familiar to them, practically every episode featured drug taking. Some of the children simulated vividly the process of obtaining and consuming drugs, and one 8 year-old boy sang a song he had composed about drug addiction. This research on drugs shows how children can be placed at risk by their families. As in other activities, child labour in drug trafficking is integral to family labour, although in this case the child is used to performing dangerous and illicit adult tasks. Children fetch and carry drugs in just the way that they fetch and carry meals for their working parents or care for their younger siblings. Apparently parents do not perceive that they are placing their children at risk by involving them in the trade.

Child trafficking

Another sinister practice, the recruitment and trafficking of Sri Lankan children for camel riding in the Middle East, was recently exposed when an employment agency which recruited small boys for this purpose was discovered. The children are sent to Abu Dhabi and the Gulf Emirates, accompanied by escorts bearing forged documents stating that they are their parents. It has been alleged that this practice occurs with the complicity of immigration officials. Immigration controls on the issue of passports to minors have been tightened recently, in an effort to prevent couriers taking children out of the country.

The reputation of Middle Eastern countries for offering high salaries is sufficient incentive for parents to approve this situation. In the case that was investigated, parents were told by the agency that their children would be employed either as companions for children in wealthy Arab homes or to take part in processions. However, few parents, on discovering the truth of their offspring's circumstances, complained to the

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police. The profits attached to camel riding are such that the occupation threatens to erode traditional Sri Lankan values concerning child care and nurture, and adds a new and particularly worrying dimension to the perception of children as an economic resource for use by the family. Parents may now receive high returns for their children's labour and this is a powerful incentive for them to condone this exploitative practice.

Recruitment of children for camel riding has become a problem for several countries in the subcontinent, and only through concerted international action can something be done to stop the practice. Attempts have been made in some countries to resolve the problem at the national level, but without wider support in diplomatic circles these will inevitably fail. Some of the boys involved have been traced and returned to their families. They talk of having been deprived of food, beaten and bullied at work. The occupation itself entails considerable risk. Indeed, the young are preferred as riders, not just because they are light but more because their shrill cries of fear stimulate the animal to run faster. The young riders are strapped or glued to the camel's back. One journalist reports that over 200 Sri Lankan boys remain trapped in the camps because their employers refuse to release them from contracts made with employment agencies.

Child combatants

The use of children in armed combat by militant groups has become a cause for particular concern in Sri Lanka. Hostilities between militant groups had at one time serious implications for many Tamil boys living in the north and east of Sri Lanka. Reports from both the general public and from newspapers describe the abduction and forced conscription of these young boys.⁵ Forced conscription of juveniles is the result of a total breakdown in law and order in many parts of the country. To avoid their identification, the boys' hair and eyebrows were shaved off. There is evidence that some boys have fled to the south or even to Europe to avoid conscription. But despite the plight of

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children in the combat zone, there was no reaction from either the Government or the public at large on this issue. Tamil boys as young as 12 years now form part of what is popularly described as “the Baby Brigade”, and are used both to patrol the streets and as armed combatants in the separatist war being waged in the north of the country.

NOTES

¹ The prohibition was contained originally in the Employment of Women, Young Persons and Children Ordinance (1923) and the Children and Young Persons Ordinance (1939), and is now found in the Employment and Women, Young Persons and Children Act (1956), ss.2 and 3(6), as amended (1984); Shop and Office Employees Act (1954), as amended (1984); and Factories Ordinance (1942), as amended (1984).

² Administrative report, Sexually Transmitted Diseases Control Programme, Sri Lanka (1982); *Ceylon Daily News*, 24 Nov. 1985, reporting on the incidence of venereal disease among young girls by Dr. R.A.D.W. Bernard, Superintendent of Health Services, Kalutara, Beruwela and townships on the western coast.

³ Goonesekere, 1987.

⁴ K. Wijethileke, project, Narahenpituya community, May 1989; Centre for Women's Research (1989).

⁵ *Ceylon Daily News*, 18 Aug. 1989, 10 July 1989; Reuter report in *Ceylon Daily News*, 15 July 1989.

2. National welfare policy and its impact on child labour

Social welfare provision and child labour

In contrast to labour policy, social welfare provision in Sri Lanka generally emphasizes that children have a right not to work. State policies on education, health and child care have in the main helped to reduce child employment and counteract traditional perceptions of the child as an economic asset belonging to the family. The State has introduced a number of measures to protect the child and encourage child growth and development. Incentives given by the State to poor parents encourage them to utilize state facilities for children. Very young children have also been largely excluded, by the use of legislative controls, from formal employment in plantations and factories. Moreover, early government support for the use of child labour in the plantation sector was balanced to some degree by a focus on child welfare. The powerful tradition of learning in Sri Lanka encouraged early legislators to give priority to the educational needs of children. Significantly, schooling eventually came to be seen as an effective strategy in reducing child employment in the formal sectors of the economy.

The interest of child welfare can be traced in part to the cultural ethos which holds that children are a source of adult fulfilment, to be loved and indulged. Recent research has demonstrated the importance attached to the nurture and care of children in Sri Lanka. These values

were even noted by the first Europeans to visit and write about the island. For example, in 1821, an English doctor, John Davy, commented that "amongst few people, I believe, are family attachments so strong and sincere; there is little to divert or weaken them". Several decades later, another English writer remarked that: "As regards the general conduct of the Cingalese to their children, I have invariably seen that they treat them with utmost kindness and too often spoil them by overindulgence." Commenting on the local practice of infanticide, he pointed out that rather than being a common occurrence, it was a response to very extreme hardship.

Recent trends in child abandonment and exploitation perhaps belie the apparently caring attitudes of the past. But the widespread response to child health and immunization programmes, and the manner in which even poor Sri Lankans encourage their children to use state facilities for free education, indicate a continued commitment to child welfare nationally. Impressive successes have been recorded in government-sponsored birth control and primary health-care schemes for the poor.¹ Statistics for the period 1979 to 1983 show a dramatic increase in the use of modern methods of birth control, and awareness is said to be especially high in the Sinhala and Tamil communities. Birth and marital fertility rates have declined. Infant mortality rates (24 per 1,000 live births) indicate the success of child survival strategies that have been adopted in recent decades with the assistance of UNICEF. However, chronic and acute malnutrition of young children remains a serious problem today. For example, a study conducted in the early 1980s indicated that 36 per cent of pre-school children suffered from acute malnutrition.

The attitudes, policies and circumstances concerning the education and employment of women also have an indirect but important bearing on child labour in Sri Lanka. With the exception of the Muslim community, and unlike other parts of South Asia, literacy rates for women are high (82 per cent) and adult women neither live in seclusion nor are confined to domestic work.² The availability of adult female labour restricts demand for child workers in the formal sector since employers prefer to employ adults. The participation of women in traditional peasant agriculture and related activities has been noted in research and

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women have also been highly visible in industries such as garment manufacture.³ Economically disadvantaged women in general also appear to have high educational aspirations for their children, and want them to acquire better career prospects through education.

Education policy and child labour

Sri Lanka has an ancient history of learning, the scholastic tradition having been established and subsequently developed over many centuries by Buddhist monks. The monks' cloisters, or *parivenas*, became seats of learning that were eventually to function as schools and to remain in operation until the fourteenth century. This was a period of social and economic decline which culminated in colonization of the country by three successive Western powers. *Parivenas* focused mainly on the teaching of Buddhist philosophy and Pali and Sanskrit, the classical languages of Buddhist scholarship. Importantly, Buddhist teaching was not confined to the élite, and by the seventh century education had spread among all classes in the population.

The Buddhist clergy retained its interest in education throughout the colonial period, running both scholarly *parivena* schools and small-temple, or *pansala*, schools in rural communities. Although far more pupils were able to benefit from the *pansala* schools than from the *parivenas*, the quality of education offered in them was poor. A member of a British Commission of Inquiry appointed to recommend educational reforms in 1930 said that "the education afforded by the native priesthood in their temples and colleges scarcely merits notice". Yet, it is now recognized that, meagre though it was, this system generated and sustained an interest in learning among the rural poor. The popular tradition of learning was maintained in the colonial period in the temples, though Christian missionary schools established by the Portuguese, Dutch and British administrators also contributed to making education available. The Catholics were particularly concerned to provide schooling for the poor. Secular state schools were also created by the British in the late nineteenth century, but these catered more to a wealthy and powerful local élite.

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The first welfare policy in Sri Lanka to affect child labour was the system of vernacular state education developed at the beginning of this century by the British for children from rural communities and the plantation sector. Plantation employers resisted the introduction of welfare measures for the immigrant Tamil estate workers, however, and the Government had to put powerful pressure on them to conform to Labour Codes and other provisions (Bandarage, 1983; Wright, 1951; Wickremeratna, 1973). A British official who was charged with evaluating education conditions on the plantations at the turn of the century suggested that "it would be unreasonable to maintain that the ordinary Tamil coolie has any present need for a higher class of education . . . to deprive the parents of this natural aid by a drastic measure of education would be a serious blow to the labour supply on which the prosperity of the island so largely depends". The Planters' Association of Ceylon was at that time also "strongly opposed to special legislation for the education of immigrant Tamils". Despite the objections of employers, the Government made an effort to introduce vernacular education for plantation and rural children generally in 1907. Regulations were established making school attendance compulsory between the ages of 6 and 12 years in institutions teaching in local languages.⁴ Combined responsibility for the administration of these schools was given to local government and plantation owners. But facilities were generally very poor, especially in the plantation schools.

Pressure from some parents in rural communities to provide better-quality education in English, mastery of which was seen as a means of securing upward social and economic mobility, soon led to the creation of semi-vernacular schooling. However, the expatriate community, colonial administrators and some local élites were critical of this development, taking the view that poor children from local families "should be trained to acquire a taste in agriculture".⁵

Early obstacles in the development of enlightened education policy and disincentives to allowing plantation children to benefit from schooling were eventually eliminated by a surplus of adult labour. The availability of women, particularly as a cheap source of labour, meant that children were gradually moved out of the official labour force in the

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plantation sector (Kurien, 1982). The Children and Young Persons Ordinance of 1939, which was modelled on British legislation of that period, was the first intervention focusing specifically on children and made explicit the link between child labour and education, stating that no child under 14 years could be employed in such a way as to prejudice schooling. The Education Ordinance, which was introduced in the same year, was an improvement on earlier education statutes in that it increased the period of compulsory schooling to a total of 11 years, spanning the ages of 5 to 16 years. Previous legislation had introduced penalties for non-compliance not only on parents and occupiers of premises, but also on children. Officials monitored school attendance and prosecutions were filed for violations. A boy could be whipped or sent to a certified school for non-attendance.

The concept of universal free education from primary to tertiary level was introduced in 1945 in an educational policy that was to have profound social impact. Education became a channel of upward social mobility and many children, especially from the Sinhala and Tamil communities, were encouraged to take up schooling for the first time. But the threat posed by education to the labour supply meant that there was still strong opposition to such liberal measures among employers.

In the 1950s national languages became the main medium of instruction in secondary schools and universities. This, combined with universal free schooling, brought education to the wider population. Schemes such as scholarships, free school meals and textbooks for school pupils have also been introduced periodically. But despite these moves, the initial impetus given to education in Sri Lanka has not been followed through in a creative manner and many problems have emerged more recently in the education system. There has been little subsequent improvement in school facilities in poor areas, for example, and no provision has been made for free pre-school education. Nor has vocational training received adequate attention. Compulsory education regulations passed under the 1939 legislation have neither been revised nor enforced and the earlier regulations of 1920 are all but forgotten. The lack of adequate and accessible facilities for vocational education deprives children from poor families, particularly of the chance to acquire

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skills relevant to employment. Overall, education policy has shifted away from its early priority of benefiting the children of especially disadvantaged groups to a more generalized approach. The policy on language has had a particularly unfortunate outcome, acting as a catalyst for inter-ethnic conflict.

NOTES

¹ Government of Sri Lanka, Ministry of Plan Implementation.

² Jayaweera (1969), p. 533; Rajapakse (1988b); Goonesekere (1990).

³ Rajapakse, *op. cit.*; Goonetilake and Goonesekere, *op. cit.*

⁴ Rural Schools Ordinance (1907); Town Schools Ordinance (1906); a lower age of 10 years was prescribed for Muslim and Tamil girls; Wickremeratna (1973), p. 476.

⁵ Wickremeratna (1973), p. 182.

3. Labour policy

The evolving status of child workers

The 1978 Republican Constitution contains provisions safeguarding equal rights for children with adults on matters such as personal liberty and gender. It also gives the State the power to introduce laws for the benefit of children, even when these conflict with the fundamental rights of other citizens to equality before the law. In keeping with this approach, the Directive Principles of State Policy, which cannot be enforced but may be used to interpret legislation, declare that the State “shall promote with special care the interest of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination” (articles 12.4 and 27.13).

Provisions under the Constitution therefore facilitate the introduction of measures to prevent the exploitation of child labour. The focus on children in the Directive Principles of State Policy also encourages courts to interpret legislation positively to protect children’s rights. Thus, the Constitution could be used to implement radical reform in law and policy on child labour and remove certain existing anomalies in labour legislation. However, while administrative policies in the form of welfare and health measures have received priority in government circles, legislative reform on child labour has generally been of less concern.

The Constitution also guarantees the right to engage in a lawful occupation, to freedom of association and to form a trade union. The right to pursue a lawful occupation presupposes that labour can be controlled by a regulatory framework established by the State. Young people between the ages of 14 and 18 years who are lawfully employed are described in Sri Lankan legislation in the same way as other categories of labour by the terms “worker” or “employee”. This means that those young people who are employed legally in the formal sector receive the same rights and privileges as adults, benefiting from enlightened legislation on job stability, holidays, leave, provident funds, social security and maternity leave. However, many young labourers in Sri Lanka today, especially those under 18 years of age who work in the informal sector or in illegal occupations, receive neither protection nor benefits in law.

Labour legislation affecting children has developed gradually over the centuries. The legal concept of “child worker” was first introduced in the early nineteenth century, when manual labour from the poorest Tamil communities in southern India was imported by the British to work on the plantations. Immigrant children were initially perceived as dependants, but were fast absorbed into the labour force. Early legislation regulating labour conditions on the plantations referred to the “able-bodied child worker” and a differential wage structure was devised for adult males, adult females and child workers.

From the beginning of the twentieth century, Sri Lanka has accepted international commitments with regard to child labour and made efforts to introduce legislation conforming to these. For example, a number of international Conventions on slavery (which was prohibited by law in 1844) have been ratified.¹ The first legislation on child labour was passed in Sri Lanka in 1923 in line with the Minimum Age (Industry) Convention, 1919 (No. 5), restricting child employment in industry. Later statutes enacted during the welfare period in the 1930s reflected a special concern with preventing the exploitation of child workers. The existing legislation on child labour was revised in 1956 and included in the Employment of Women, Young Persons and Children Act. This Act was intended to reflect in a single statute Sri Lanka’s commitments to international labour Conventions on adult female and child labour. Sri Lankan legislation in this

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century has also made an important distinction in relation to child labour between prohibited hazardous work and permitted activities, a distinction that originated with International Labour Office policy. Below a certain age all work is deemed hazardous, whereas above that age employment in occupations that are not thought to be intrinsically damaging is permitted.

More recently Sri Lanka has ratified the United Nations Convention on the Rights of the Child (1989). Commitments under international Covenants on Civil and Political Rights and Economic, Social and Cultural Rights have also been accepted.

Overall, though, the approach to child labour in Sri Lanka has not been consistent. Thus, while some international instruments relating to child employment have been adopted and have profoundly influenced policy, others have not.² Significantly, for example, the Minimum Age Convention, 1973 (No. 138), has not been ratified. Equally, international labour Recommendations on limiting the use of children in family enterprises have not been adopted.³ Employment of child workers in industry at night was at one time prohibited altogether and later subject to significant limitations. However, the removal of protective legislation prohibiting the employment of women in night work resulted in a departure from international labour standards.

In effect, the issue of child labour remains largely hidden in Sri Lanka, despite moves to improve child welfare generally in the country and to legislate for the protection of child workers in certain categories. Indeed, one government minister actually endorsed the employment of indigent children as domestic labour at a national conference organized in connection with the 1979 International Year of the Child. Moreover, a government report produced in 1986, entitled *Early childhood care and education in Sri Lanka*, which was supposed to assess the needs of young children, makes no reference to the problem of child labour.

Minimum age legislation

A minimum age for employment — 10 years — was first introduced in 1927 in respect of plantation workers. But it was not until 1939 that legislation focused specifically on child workers and an absolute

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prohibition against the labour of those under 12 years was established on the grounds that it is intrinsically damaging to their health and development and infringes their right to childhood. Having set 12 years rather than 14 years as the minimum age for employment, much subsequent labour policy in Sri Lanka has reflected on the need to control and protect child workers under 14 years of age engaged in permitted activities rather than enforce any prohibition. The argument was that children should be allowed to work in intrinsically safe occupations under protective controls. Thus, the Government opposed a total ban on child labour under 14 years of age in the Employment of Women, Young Persons and Children Act (1956), in the belief that a flexible policy was needed to accommodate the necessity of child labour among the poor. The Act therefore removed earlier prohibitions against the employment of children under 12 years of age. It ruled that all children were to be excluded from night work and contained a general prohibition against the employment of children under 14 years in industry and at sea.⁴ Two years later, regulations under the Act introduced by the same minister distinguished between “permitted” employment, either with an employer who is a family member or with an unrelated adult, and “hazardous employment” of children under 12 years of age. Hazardous employment was also defined in these regulations as employment in specified occupations that were considered damaging to the physical and mental well-being of children under 14 years. Certain key national figures disagreed with this approach. Dr. Perera, the leader of the opposition Socialist Party at the time, argued that as childhood was to be defined under the Act as extending to 14 years of age, all those under that age should be excluded from the labour market. He maintained that child labour was “dangerous from the point of view of the community and society as a whole” and recommended a mandatory prison sentence for employers who violated the legal controls.

The present situation in Sri Lanka is that a minimum age for employment has been re-enacted in the form of a regulation prohibiting the employment of children under 12 years of age. In the legal context of today, then, all work involving children under 12 years is considered hazardous, since young children are believed to have a right to be cared

for and protected; labour of any sort is thought to jeopardize this situation. Indigenous values concerning older children, though, hold that they are an important economic asset, crucial to family survival in poor communities. These values have been reinforced over the years, first by the plantation economy, which depended on the labour of the whole family, and then by labour policy and law. Thus, children between the ages of 12 and 14 years, and young persons between 14 and 18 years, have been awarded various legal capacities to engage in lawful occupations. Children in the former age group in legal employment can be termed “child workers” and those in the latter may be described as “young workers”.⁵

One of the more crucial clauses facilitating child labour between the ages of 12 and 14 is that permitting employment by related adults. Thus, under the Employment Act children under 14 years of age who work with their family are exempted from the general prohibitions applying to industrial occupations and at sea. The range of activities included in this exemption is wide, extending from the manufacture of a defined list of goods to weaving and twine making — the aim being to exclude only that work deemed to be intrinsically “harmful, prejudicial or dangerous” to children. Young workers are also permitted, by Regulations passed under the Employment Act, to work at night in “family undertakings”.

When the Employment Act was debated in Parliament, Dr. Perera criticized the exemptions in favour of family employment. He wanted constraints to be placed on the use of child labour by parents, arguing that, given the traditional values of the extended family system, family labour should also be controlled since it was potentially the greatest source of child labour abuse in Sri Lanka. In addition, he pointed out that if the rationale for the abolition of child labour was that it undermined the child’s growth and development, it made no difference whether children were employed by strangers or parents. Such criticisms had no impact on the legislators of that time, who, as we have seen, emphasized the need for minimizing hardship to working children, educating employers and gradually reducing, rather than abolishing, child employment. Indeed, there are sound practical reasons for

adopting legislation excluding all children under 14 years of age from employment. At present there is considerable confusion over the minimum legal age for employment, and in the informal sector particularly, employers are largely unaware of the regulations. Enforcement is made extremely difficult by the specificity and complexity of child labour legislation that relies on piecemeal prohibitions and controls by occupation. Education law makes it clear that parents are obliged to provide children between the ages of 5 and 16 years with schooling. Labour legislation complements education law by prohibiting employment during school hours, other than when it is linked to technical training, or any work that impedes schooling.⁶ But labour law and education law would be far more consistent, one with the other, if children under 14 years were prohibited from employment altogether.

Another factor favouring total abolition is that despite the many controls on the employment of children between the ages of 12 and 14, there remain certain crucial gaps in protective legislation. These expose children to exploitation and hazard. Laws regulating the conditions of work for children, for example, refer only to child workers over 14 years who are engaged in formal sector employment. This means that children between 12 and 14 years who work in permitted occupations do not generally enjoy the benefits extended to older age groups. Moreover, the fact that employment of this age group is, in certain circumstances, legal, tends to legitimate all forms of labour for children under 14 years, including those forms that are harmful to health and development. This results in a general apathy towards enforcement among public sector employees.

Raising the minimum age for employment to 14 years, in line with plantation and industrial labour, would perhaps control the overall incidence of child labour. Once the principle of prohibiting employment under 14 years is accepted, it becomes hard to justify the need for a range of complex, specifically drafted, controls that are too cumbersome to implement. The anomalies in legislation need to be resolved, and a more consistent policy, based on a total ban on child labour under 14 years of age, introduced.

General provisions affecting the welfare of child workers

Many of the general labour provisions in Sri Lanka in operation today were introduced in the late 1930s and early 1940s. Regulations concerning the health and safety of workers in industry were brought in by legislation at this time. A system of workers' compensation, based on early English legislation, was also introduced.⁷ As in England, this legislation was to be enforced by inspection at the workplace and prosecution for infringement. It was at this time that the status of working children in permitted occupations began to improve, as an indirect result of general improvements in employment terms for adults. Organized union activity was introduced in 1935 and a number of labour problems that had existed for many years began to receive attention.⁸ It is mainly through the influence of trade unions, for example, that employers introduced social security benefits and collective bargaining. The trade union movement was a major force also in the improvement of labour practices in the plantation economy, and young workers in the official labour force benefited considerably from this enlightened policy.

But, even though these developments have had some impact on child labour, the unions in Sri Lanka have always been dominated by men and have not until very recently focused specifically on the needs of women or children. Minimum wages were calculated differently for men and women up to 1984.⁹ Wage discrimination against child workers has become institutionalized as a result of labour practices based on nineteenth-century legislation. Another issue largely ignored by legislators and policy-makers, and still neglected by trade unions, is the fact that children's physical and mental immaturity makes them more vulnerable at work than adults, particularly to health hazards. This places many of the children aged between 12 and 14 years who are engaged in lawful occupations at serious risk.

Special labour courts were established in 1950 to help enforce labour legislation and grant the benefits conferred by law on Sri Lankan

workers. Child workers have access to these Labour Tribunals in disputes over the termination of employment. However, the fact that the courts have yet to deal with a case involving child labour suggests that child workers lack the resources and power to take advantage of this forum. They benefit only indirectly from the proceedings, such as when unions take up disputes that affect the terms or conditions of employment of young workers. In general, the system of enforcement, based on inspection and prosecution that was imported into Sri Lanka from England, has proved largely unworkable.

While labour officials have on the whole neglected the problems of child workers, certain developments in the welfare field since the 1930s have had a bearing on their circumstances, although in some cases the impact is only marginal. The Children and Young Persons Ordinance (1939) and the Adoption Ordinance (1941), for example, arose out of a concern to end the exploitation of children at work by regulating their employment and curbing cruelty towards them both by parents and other adults.

The Adoption Ordinance was based on the idea that legally controlled adoption and fostering would help prevent the exploitation of children in domestic service especially. The law was intended primarily to bring an end to the custom of "quasi-adoption", in which children from poor homes are taken in by wealthier families, ostensibly out of concern for the child's welfare, but in practice to gain access to unpaid domestic labour. Under the law, adults wishing to house a child who was not their own were permitted to do so only through either legal adoption or registration of custody. The former process would guarantee the adopted child equal rights within the adoptive family and the latter would enable the State to monitor the child's circumstances. In this case, then, the law on fostering, adoption and registration of custody were perceived as strategies to prevent the exploitation of poor children in custodial situations.

A number of specialist institutions that touch on the problem of child labour have been created in Sri Lanka. A Department of Probation and Child Care has existed for many years, and special bureaux to deal with child abuse and child employment were established in various minis-

tries during the last decade, notably the Women and Children's Affairs Division at the Ministry of Labour, and the Women and Children Bureau of the City Police Department in Colombo. A special Juvenile Court was also created by the Children and Young Persons Ordinance (1939) to deal with children in trouble or in need of care and protection. While this Court can handle cases involving child workers, it is geared more to providing for children in need of care than labour matters. This explains the tendency to "settle" cases with the employer and focus on the placement of the child in a suitable home or institution.

The Sri Lankan courts have for a long time enjoyed the status of "Upper Guardian of Children", a concept of Roman-Dutch law (the source of non-statutory law in Sri Lanka). Yet they have not adopted a protective approach towards working children. Child abuse in employment is rarely prosecuted in these courts and legal proceedings take years to conclude. The Juvenile Court has no jurisdiction to impose penalties for child abuse. Judicial apathy is further encouraged by the lack of coordination between the different law enforcement agencies on matters concerning children. Nor was the issue of child labour taken up in the many years that the Children's Secretariat, which was established in 1979, functioned within the key Ministry of Plan Implementation.

The Constitution (1978) recognizes a fundamental right to personal liberty, equality in employment, freedom from gender and other discrimination or inhuman and degrading treatment. Child workers are also entitled to freedom of association and have the right to form or join a trade union. Yet while the Constitution guarantees the right to challenge the conduct of state industries and state plantations or organizations employing children over 14 years of age in the Supreme Court, private sector employees do not enjoy this right when violations occur. Private sector employers may therefore violate workers' rights guaranteed in the Constitution without risk of facing legal sanction in the Supreme Court. When child workers are employed by private enterprises, trade union law is more relevant for their protection than constitutional law. But there are also other limitations to the relief available to workers under the Constitution. It states, for example, that existing laws

cannot be challenged where they conflict with constitutional provisions. Thus, fundamental rights with regard to work, such as equality before the law and gender equality, cannot be used to challenge existing discriminatory minimum wage legislation. Moreover, fundamental rights guaranteed by the Constitution are qualified by the right of the State to introduce restrictions in the interests of national security or the national economy.

Specific limitations on conditions of employment

Twelve to 14 year-olds

Sri Lanka has developed a policy of protecting children aged 12 to 14 years who work, and places many restrictions on their employment to ensure that they are neither abused nor exploited. Thus, the term “hazardous employment” is applied more strictly with respect to these children than older groups in the labour force.

Regulations on conditions of employment affecting this age group have been passed under the Employment Act and a number of other controls have been introduced under the prohibitions on night work and employment of school-age children. The Employment Act specifies that no child aged between 12 and 14 years can be employed to lift, carry or move anything so heavy as to be likely to cause injury. Nor can children be employed in occupations likely to be injurious to life, limb, health or education, taking into account the child’s physical condition. Thus, the Act authorizes the Commissioner of Labour and his officers to prohibit or restrict the employment of children in situations where a medical report or other evidence demonstrates that labour is prejudicial to the child.

These provisions appear to be wide enough in scope to prevent children in this age group from being employed in domestic service or in hazardous occupations. Any regulation promulgated under the Act must conform to these principles. Yet the reference to the physical

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condition of the child and use of the caveat, the “likelihood” of the occupation causing injury, provide sufficient ambiguity to allow wide variations in the interpretation of the law. It is hard, for example, to establish employers’ liability on issues such as the likelihood of an activity causing injury or the child’s physical condition for employment. In this respect, employers seem to enjoy greater protection than their child employees. Significantly, the Act leaves out entirely the question of psychological stress to young workers.

Since 1923 all children between 12 and 14 years — with the exception of those working in family concerns, as already mentioned — have been prohibited from employment in industry, whether during the day or night. They are also excluded from labour at sea and involvement in street trading.¹⁰ Under legislation concerning female labour in general, girls may not be employed in underground work in mines.¹¹ Regulations introduced under the Employment Act have extended prohibitions on child labour to include activities such as scavenging, aviation, fishing and diving, work with earth-moving equipment, explosives, lead and chemicals and work in the plantation sector.¹² Work by children in places such as laboratories, hospitals, night clubs and theatres was also made illegal. The Shop and Office Employees Act (1954) states that labour in shops, offices and hotels is forbidden, even during the day.

Despite these extensive provisions on prohibited occupations, there remain certain obvious gaps in legislation. Employment of boys in mines is only indirectly prohibited, while employment of children between 12 and 14 years in quarries and transport does not appear to be covered at all. Regulations introduced under the Employment Act indicate that a child in this age group can be employed in domestic service, even though this type of work places the child in the employer’s custody and can prejudice both physical and mental well-being. The law seeks to regulate rather than prohibit child domestic labour by specifying that the child must have a certain number of hours of leisure each day and ten hours of sleep. The Act also states that no child under 14 years may be employed during school hours. Yet these young domestics are entirely under the control of their employers and such provisions cannot be enforced due to the absence of compulsory educa-

tion regulations. Future reforms should give priority to prohibiting rather than regulating child domestic labour.

There are other weaknesses in the legislation, specifically with regard to employment in commercial entertainment. The Employment Act mentions certain constraints on the use of children under 14 years in such activities. Thus, children are prohibited from training for or taking part in public performances which threaten their life, limb, health or morals. However, use of the term "entertainment" prevents these controls from being applied to advertising. Regulations made under the Employment Act state that a child can act in a film only with the written consent of the Commissioner of Labour. This is not a constraint against use of children in advertising since the Commissioner can refuse permission only if "acting" in a film is prejudicial to a child's "life, limbs, health and morals". Parents who allow their children to be employed in dangerous activities are subject to sanctions. These restrictions provide a general framework of controls and could be used to bring an end to child employment in activities such as camel riding.

Above all, the endorsement in law of child labour in family enterprises is a problem that needs closer examination because it effectively undermines any protections awarded by the Employment Act. For example, a recent study showed that children in the older age group involved in production in the home, in the shoe, cigarette and flower industries worked at extremely arduous tasks for very long hours, often at night (Jayaweera and Dias, 1989). These workers enjoy no protection under the law. The endorsement of child labour in family undertakings can expose children even in the 12 to 14 year-old age group to this type of exploitation. We have noted that when the Employment Act was debated in the legislature, it was pointed out that parents could be as exploitative as strangers. Indeed, the potential for exploitation by parents has expanded in recent years with the emergence of new sources of income for children in occupations such as home-based industrial production, camel riding and prostitution.

There exist some protectionary measures in respect of parental exploitation, particularly with regard to prostitution. The legal controls on prostitution have been derived from nineteenth-century English law

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and are contained in the colonial Vagrants Ordinance (1841), dealing with street prostitution and vagrancy. It imposes sanctions on parents who exploit female children for prostitution, although the sanctions are only minimal. The Ordinance articulates the policy that parental exploitation of female children is harmful and must be stopped, and gives magistrates a range of powers to control the activities of parents who consent to or encourage the sexual exploitation of their daughters. It also provides for the removal of the child from the home and placement in care. However, a parent or guardian who “consents to a girl living with any man as his wife” is exempted from sanction. While the question of parental exploitation of boys in prostitution is not covered, even those prosecutions contemplated in the Ordinance require the prior approval of the Attorney General. Nevertheless, this early Ordinance lays the foundations for an enlightened policy on child abuse and should be developed into a system of effective controls.

Fourteen to 18 year-olds

There are few constraints on the employment of young persons over 14 years in Sri Lanka, as they are generally perceived as fully-fledged workers with a right to participate in the formal labour force. However, this age group is subject to certain important controls: girls, for example, are prohibited from underground work in mines. Boys under the age of 16 are also excluded from this type of work. Neither boys nor girls can in general be employed in industry at night.

As with younger children, the working conditions of 14 to 18 year-olds are also regulated by the Employment Act. For example, workers between 14 and 16 years cannot take part in public performances that risk life or limb, and a licence is required to train them to take part in performances that are dangerous. Documents such as health certificates and police reports are required for the issue of such a licence. The Act also limits the hours that 14 to 16 year-olds may work, although at nine hours a day (including overtime and rest) and 50-and-a-half hours a week, these restrictions are hardly conducive to safeguarding their health. Young people above 16 years of age may work for ten hours a

day, or an extra five-and-a-half hours a week. These restrictions do not apply to workers between 14 and 18 years employed in agriculture, transport, the exhibition of films or domestic service. The exceptions legitimate extremely long hours of work among certain groups, especially girls on plantations and in domestic service and boys employed as bus criers. However, there are restrictions on living in the place of work that affect young workers who are lawfully employed during the day in shops, offices and hotels.

According to a special provision, young people between the ages of 14 and 15 years may not be employed in work at sea except with the written permission of the Commissioner of Labour. This, in turn, is granted on receipt of a certificate from a government medical officer testifying to the individual's fitness for such employment and to the fact that it will be beneficial to them.

Young people between the ages of 14 and 18 years are allowed to work during the day in industry. Employment in this sector is covered by a range of regulations on overtime and leave, in addition to the general prohibition on the involvement of young people in night work. Only boys between the ages of 16 and 18 years employed as apprentices or in vocational training in industrial enterprises may work at night, and they must be given a minimum rest period of 13 hours. Certain provisions in the 1942 Factories Ordinance apply specifically to young factory workers over 14 years of age, although in most cases this age group is defined as "persons employed in a factory" and not referred to specifically. Factories can be established and become operational only when registered and licensed by the Commissioner of Labour. When the Factories Ordinance was first enacted the procedures were fairly stringent and the Commissioner had to be satisfied that adequate provision had been made for the health and safety of workers. Current procedures appear to be less strict.

Special provisions on matters such as the cleaning of and working with dangerous machinery have been introduced for the benefit of young workers above the age of 14 years. These state that young people must be trained and supervised, and advised of the risks and necessary precautions if they are to work with such machines. Young people must

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not be employed to lift, carry or move heavy loads that might cause injury, and there are general provisions concerning their hours of work and rest, although they can labour nine hours a day for up to 48 hours a week. While rest periods are provided for, a limited period of overtime is permitted for children over 16. Holidays are regulated by statute and restrictions placed on employment outside the factory during the working period.

Factory legislation was revised in 1976 to give greater focus to occupational health. The Industrial Safety and Health Advisory Committee was created to monitor work conditions and the concept of the "authorized factory doctor" introduced. The employment of children and young people in lead processes outside the factory and in delivery and errand work was covered by the Factories Ordinance (1942) and later amended by legislation in 1976. Young people between 14 and 16 years cannot be employed in a factory for more than a week without examination and authorization concerning fitness for work by the factory doctor. Conditional certificates restricting the type of employment can be issued.

There are a number of loopholes in the legislation on child labour in industry. For example, the minister is empowered to exempt factories of a certain type from the law regulating certificates of fitness. Also, while a factory inspector may require an employer to discontinue employment of a child on health grounds, the doctor can issue a certificate of fitness for that same child. On refusal of a medical certificate, children or their parents are entitled to a written statement giving the reasons. Parents are liable to only a notional fine for permitting the employment of their children in contravention of the law.

In general, these regulatory provisions indicate a permissive attitude towards the labour of young people over 14 years in industry, the tenor of the Factories Ordinance being that the young should be treated like adult workers. This approach inevitably has some disadvantages. Although there are some special protective measures and safeguards for those over 14 years, as a result of problems of enforcement and of the way the young tend to be regarded as part of the general workforce, even these minimal safeguards are generally not available. Because of their youth, these workers are placed at greater risk than adults.

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Young factory workers share with adults in the labour force rights to compensation for injury and occupational disease. However, the law in this area was, until recently, very antiquated, being based on English legislation of the nineteenth century. It offered direct compensation without litigation, although the limited scope of this ruling and problems with judicial interpretations meant that the system was not really effective from the worker's point of view. Children under 15 years were especially discriminated against in this regard in that they were described as minors and awarded much less compensation than adult workers. Court procedures in cases involving compensation were both lengthy and costly, and victims could obtain neither legal aid nor union assistance. Poor children therefore suffered more than other groups from the inadequacy of compensation laws.

The law on compensation for workers was significantly improved by an amendment introduced in 1990.¹³ Children now receive the same right of compensation as adult workers. The range of injuries has been widened and the calculation of compensation enables a victim to obtain a reasonably high award.

The Wages Board Ordinance of 1941 also generally reflects the policy that young people do not differ from any other group in the workforce. However, the boards established under this legislation follow a tradition developed in the plantation sector by specifying a differential wage structure on the grounds of age and gender distinctions. Wage differentials based on age therefore still exist in the plantation economy and in industries such as brick and tile production.¹⁴ Although pressure from trade unions and lobbying groups has helped to create parity for women with men on the plantations and in some other sectors, a differential wage structure continues to be accepted for child workers, who have generally been neglected by such organizations.

Legal constraints on physical and sexual abuse of children in the workplace

Abuse is most common in occupations, such as domestic service and prostitution, in which children live with their employer. Child abuse in

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the workplace is regulated by the basic criminal law of Sri Lanka, which is derived from a Penal Code of 1883. This Code is based on nineteenth-century English law and deals with offences that can be used to prosecute for child abuse in employment.

Rape is considered a grave offence and carries a maximum sentence of 20 years' imprisonment. As under nineteenth-century English common law, however, the principles are weighted against women. It is often difficult to convict on grounds of a woman's uncorroborated testimony, because her "consent" to sexual intercourse is deemed to be a complete defence. Only in cases involving girls under 12 years of age is sexual intercourse automatically defined as rape, irrespective of the issue of consent. Since the age of statutory rape is so low, allegations by female employees are defeated on the question of consent. This jeopardizes the prospects of obtaining a conviction where a girl is raped by an employer on his premises. Reform is needed to shift the burden of proving consent to the accused when rape occurs in custodial situations such as domestic service. Another weakness in the law is that sexual harassment is considered a minor offence, attracting only minimal penalties. While a strict criminal liability is imposed for having sexual intercourse with children between the ages of 14 and 16 years, other forms of sexual abuse not defined specifically in the Penal Code as offences do not attract criminal sanction.

The Penal Code covers certain other types of sexual harassment and trafficking in human beings for sexual purposes. Procuring for prostitution constitutes a crime under the Penal Code which carries a maximum two-year prison sentence or whipping.¹⁵ However, as already observed, the general legal controls on prostitution are based on colonial statutes inspired by nineteenth-century English law controlling vagrancy, brothels and street prostitution. While the law imposes serious penalties on the prostitute, the procurer or pimp faces only minor charges. Judicial decisions indicate the difficulty of successfully prosecuting brothel keepers. Another problem is that these laws focus on female prostitution, failing to deal with the more recent problem of male prostitution. Consenting males who engage in homosexual conduct are considered criminal offenders under the Penal Code, but there are no

sanctions against persons who either procure males or females for involvement in homosexual practices, or procure children for use in pornography. Thus, while a statute of 1927 on obscene publications was amended recently to include the modern media, it contains no controls on child pornography.¹⁶

Restraint of personal liberty is another offence relevant in many child labour cases and this is covered by a range of legal sanctions. In such cases even parental conduct can be challenged because limitations have been imposed by Family Law on the right of parental custody of a minor.¹⁷ Girls who have reached 16 years of age and boys over 14 years must be consulted in determining custody cases. Illegal restraint of a child may be challenged in court by a third party through an application for a writ of habeas corpus. This procedure may also be used to challenge the conduct of employers who have custody of child workers.

The Constitution guarantees the right to freedom of movement and freedom from exposure to degrading treatment or punishment. But, as we have seen, such actions by employers in the private sector are not covered. The Commissioner of Labour and other public sector employers may, however, be held responsible in such cases under the Constitution on the ground that failure to enforce the law makes them responsible for the violations of fundamental rights by private sector employers. Thus, for example, it may be possible to institute an action against the police or Labour Department when they fail to deal with cases involving child domestic labourers, prostitutes or workers in fishing camps or other groups. This procedure has yet to be tested.

Ultimately, it is the criminal law that deals most effectively with conduct amounting to interference with personal liberty. Thus, persons who unlawfully prevent a child from leaving their employ or curtail the child's freedom expose themselves to criminal prosecution, either for the minor offence of wrongful restraint or the more serious one of kidnapping or abduction. The latter is deemed particularly grave if sexual exploitation or slavery is involved or when the child — especially if a girl — is conveyed overseas. However, parental consent can be used as a defence in such cases; the Penal Code does not cover trafficking in boys that is condoned by parents or guardians, unless their consent has

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been obtained by false pretences. The transport of boys overseas for camel riding with parental consent is, therefore, not covered. As with other crimes under the Penal Code, the technical nature of these offences and the requirement of proof are loopholes that prejudice the chances of successful prosecution. Selling a child into bondage, as with the children who once worked in the fishing camps, is a grave crime under the Code.

Employers are prohibited from exercising corporal punishment on their child workers, although the penalty for such conduct is minimal. Under the Penal Code the offences of causing hurt or grievous hurt can be used in cases of serious abuse, but they are defined in very narrow and technical terms.

Parents are conceded a right to exercise disciplinary authority over their children. Unreasonable behaviour attracts criminal sanction, since the right to administer "moderate chastisement" is not a recognized general defence in the Penal Code. "Criminal force" is a technical offence that would not cover conduct such as battery. The Code imposes a heavy prison sentence on the parent or custodian who abandons a child under the age of 12. Abuse of parental authority can also be restrained by depriving the parent of custody in legal proceedings where a civil court exercises its jurisdiction as Upper Guardian of Minors.

The Children and Young Persons Ordinance (1939) has also conferred Sri Lanka's Juvenile Court with jurisdiction to deal with cases of child abuse. Children may be brought before the court by a probation officer and the court is empowered to place the child in care with an individual or institution. The Ordinance was meant to include a range of offences against children, including certain forms of physical abuse and exploitation, committed by parents and others, and prosecutions were to be carried out in the magistrate's court. However, this part of the Ordinance has never been brought into operation. Today, magistrates' courts have the authority to refer cases of child abuse to the Juvenile Court. They can also make a care order themselves. Yet the exclusive source of legislation on child abuse remains the Penal Code.

The complexity of legal proceedings connected with abuse of child employees undermines implementation. Different sanctions are imposed in different legal forums. Thus, while criminal sanctions for

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violations of the Penal Code may be applied in ordinary criminal prosecutions, violations of labour statutes may result in actions against the employer under different statutes or in Labour Tribunals. Moreover, when the Employment Act is violated an action has to be instituted in the magistrates' courts and this procedure requires the sanction of the Commissioner of Labour.

NOTES

¹ Conventions (1926) and (1956); Convention for the Suppression of Traffic in Women and Children (1921); Sri Lanka Ordinance (1844).

² Employment of Women, Young Persons and Children Ordinance (1923) and Act (1956); Minimum Wage (Indian Labour) Ordinance (1927); Employment of Children Regulation (1957); *Ceylon Government Gazette*, No. 11302, 25 Apr. 1958; Employment of Young Persons at Night in Industrial Undertakings Regulation (1957) of the same date; Factories Ordinance (1942); Shop and Office Employees Act 1954; the Minimum Age (Industry) Convention, 1919 (No. 5), as revised 1937 by Convention No. 59; the Minimum Age (Sea) Convention, 1920 (No. 7), as revised 1936 by Convention No. 58.

³ The Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); the Minimum Age (Family Undertakings) Recommendation, 1937 (No. 52); Night Work Legislation, No. 32 (1984) amending Employment of Women, Young Persons and Children Act (1956).

⁴ Employment of Women, Young Persons and Children Act (cited as EWYC) (1956), amended (1984), ss.2(1), 7(1) and earlier Ordinance (1923); Children and Young Persons Ordinance (cited as CYP) (1939), s.59(1); Shop and Office Employees Act (1954), s.10, as amended (1984) also reflects this prohibition; Factories Ordinance (1942), as amended (1984), s.67(b).

⁵ Employment of Women, Young Persons and Children Ordinance (1923); Employment of Women, Young Persons and Children Act (1956), s.34(1); Factories Ordinance (1942), s.127(1).

⁶ Education Act (1939), s.37(2)(S); EWYC Act, ss.13(1), 7(a)(b), 9(2)(a).

⁷ Factories Ordinance (1942); Workmen's Compensation Ordinance (1934).

⁸ Industrial Disputes Act (1950); Trade Union Ordinance (1935).

⁹ Jayaweera (1985), p. 47; *Labour Laws and the Employment of Women* (Colombo, Department of Labour), Issue No. 3, Jan. 1984.

¹⁰ EWYC Act, s.9(1), 13(2).

¹¹ Mines and Minerals Law (1973); Employment of Females in Mines Ordinance (1937).

¹² Employment Regulation (1957), *op. cit.*, and its Schedule.

¹³ Workmen's Compensation Ordinance (Amendment) Act No. 15 of 1990.

¹⁴ Ratio of 5.4:3: for men, women and children who were Indian Tamil labourers, under the Minimum Wages (Indian Labour) Ordinance (1927); Labour Laws and the Employment of Women, *op. cit.*, referring to wages in trades regulated under Wages Board Ordinance (1941); Special Allowances of Workers Law (1978), Schedule I; *Women of Sri Lanka in Statistics* (Women's Bureau, Colombo, 1985), p. 70.

¹⁵ Goonesekere (1987); Penal Code, s.360A.

¹⁶ Penal Code, ss.365, 365A; Vagrants Ordinance (1841); Brothels Ordinance (1889); Obscene Publications Ordinance (1927), as amended 1983.

¹⁷ Goonesekere (1987), Ch. VI; Penal Code, s.352, indicating an "age of discretion" where the minor is released from parental custody.

4. Enforcement

The context of enforcement

The ability of the law to provide relief for child workers depends entirely on the effectiveness of enforcement measures. In the Sri Lankan case, these measures are based on the English model. Most labour statutes are brought into effect by regulations developed by the Labour Minister and disseminated by notification in the *Government Gazette*. The rules of employment are set out in the main body of a statute and in accompanying ministerial regulations.

However, in some instances crucial gaps in the regulations accompanying statutes mean that there is no basis for enforcing statutory provisions and the policies articulated in them. Considerable importance is attached to these regulations and their absence provides a rationale for failure to implement statutory provision. For example, the lack of coherent regulations on occupational health under the Factories Ordinance means that workers in industry do not receive the protection envisaged in the statute. The absence of the relevant regulations has thus provided a defence for labour officials who are faulted with failing to monitor occupational health in the industrial sector. The importance given to the promulgation of regulations can also result in misunderstandings of the content of the law. Thus, as we have observed, the prohibition on the employment of children under 12 years has been removed from

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the statute and enacted in the form of a regulation. While this regulation is generally known to and applied in the formal labour market, informal sector employers and members of the public are largely unaware of it and as a result there is considerable confusion over the minimum legal age for employment.

It has been found in most countries that collective bargaining is generally more effective in keeping the management and workforce fully informed of terms of employment than regulatory legislation. While this procedure is sometimes used in Sri Lanka, child workers are given no priority and their employment is in the main still conditioned by regulatory legislation. The regulations are sometimes quite detailed — as in the case of specifications concerning the hours allowed for the labour of children in domestic service. Difficulties in monitoring the implementation of these regulations make them almost unenforceable. The last government intervention concerning child labour was in 1958, when regulations under the Employment Statute of 1956 were enacted.

The Government has a long record of concern with child welfare and has created several agencies to deal with children's problems in general. A Department of Probation and Child Care was established in the 1930s, for example, to attend exclusively to children's issues. The Women and Children's Affairs Division of the Ministry of Labour, the Women and Children Bureau of the Colombo City Police, and the Children's Secretariat were all formed in the last decade to focus on children. We have noted that the Government appointed a special committee on "Early Childhood Care and Education" in 1986 to investigate the needs of children and recommend a planning strategy.

But there remain several serious obstacles to the implementation of a consistent policy on child labour. For example, the failure of the Early Childhood Education and Care Committee to focus on child labour highlights the low priority given to this subject generally. Overall, the division of responsibility for enforcement of child labour laws between several agencies is a major factor undermining state effectiveness in reducing child exploitation at the workplace, largely because collaboration between agencies is poor.

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Thus, the failure of any single body to assume direct control in cases concerning child labour has been the major factor behind the recent inability to obtain any action in respect of child prostitution, child camel riding and child labour in fishing camps. The police, the Fraud Bureau, the Department of Probation and Child Care, the Bureau of Foreign Employment and the Ministry of Fisheries have all been concerned with these various issues at one time or another, but none of them has assumed full responsibility. Besides, the Women and Children's Division of the Ministry of Labour usually takes the position that these matters are the concern of other government organizations. Thus, the issue of trafficking in children for camel riding in the Gulf States has been passed from one agency to another and has now been left to immigration and diplomatic authorities for resolution. It is clear that priority can be given to the exploitation of children at work only if one key agency with sufficient power takes the initiative in policy formulation, planning and enforcement.

Another problem with implementation is that none of the agencies concerned with children's issues has developed an effective programme for tackling the problem of child labour. For example, the Children's Secretariat was intended to develop a coordinated policy on children, but has neglected the issue of child exploitation altogether, dealing solely with child care and nutrition. Equally, the Women and Children's Division of the Ministry of Labour is meant to be the coordinating agency on child labour, but has not fulfilled this function because of a lack of dynamic official support. A major concern of government in the last decade has been to protect private investment. Implementation of regulatory controls in regard to workers' rights and management responsibility has received far lower priority. Working conditions and workers' rights of children have been entirely neglected. Indeed, current trends in many respects legitimate public sector neglect of child labour. For example, the increasing cost of adult domestic help and traditional values concerning feudal patronage provide social and official endorsement for the use of children in domestic service.

As far as abuse and exploitation of child domestic labour is concerned, there is no lack of information. The Women and Children's

Bureau of the Colombo City Police and the Ministry of Labour hold files of photographs and newspaper cuttings on child abuse in domestic service. Some of these photographs have been published in a local newspaper with the consent of the City Police. They were also distributed at a conference on child abuse organized by the Centre for Women's Research in 1986. The former head of the Women and Children's Bureau, Inspector Mrs. Siribaddana, was extremely committed to investigating child abuse, especially in domestic employment. However, the Bureau's work has always been hampered by inadequate law enforcement machinery. Nor have the trade unions taken up the issue, despite the fact that child abuse in employment and child prostitution have been discussed in seminars held in recent years by the Centre for Women's Research, the Conference of Public Services Independent Trade Unions and the Sri Lanka University Women's Federation. The differential wages paid to adults and children in the formal labour force have been taken for granted, even when there have been moves to obtain equal wages for women. Since children only enter the formal sector when there is a shortage of adult labour and do not form a major component in the formal labour force, the trade unions and the Employer's Federation pay them little attention.

Inspection and enforcement

Overall responsibility for ensuring that employment rules are adhered to lies with the Commissioner of Labour and his officials in the Labour Department, rather than workers or management. Labour officers have the power to enter premises where children are employed. However, for a prosecution to proceed under the Employment Act, a certificate is required from the Commissioner of Labour. For their part, employers are required to maintain a register of child workers, giving their ages, and copies of this must be made available to the inspectorate. Employers, parents or guardians may also be required to furnish additional information on working children.

The availability of facilities for inspection is crucial to effective enforcement. While labour inspectors may enter work premises, the Em-

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ployment Act does not confer on them the power to search such premises. This requires a search warrant which has to be obtained by the police through court proceedings. There is a general reluctance to obtain police assistance in these matters. The absence of a power of search clearly operates as a constraint to law enforcement, in a context where labour authorities do not seem to use police assistance.

Since 1983 the Women and Children's Affairs Division, which is headed by a Deputy Commissioner of Labour, has been charged with enforcing the law on child labour. The Deputy claims that the Labour Division is understaffed and poorly equipped and has no reliable statistics on child labour with which to work. The Division is aware of the overall lack of commitment to enforcement and also complains of a lack of support from employers and the public. These deficiencies seriously hamper both inspection and prosecution.

Moreover, exploitative employers are sometimes wealthy, well-educated and influential members of society, who are able to intimidate inspectors into dropping a case. Inspectors, on the other hand, are rarely high-ranking officials and it has been alleged that they are subject to pressures from management and also prone to corruption. Sometimes employers are wage-earners themselves, struggling to make a living. In such cases inspectors are reluctant to enforce the law. In the main, the inspectorate is not aware that under Sri Lankan law they are protected from legal action. This is because there does not exist a general right of privacy and there are therefore no constraints on their powers of entry to work premises.

In the absence of an effective enforcement policy some labour inspectors adopt a permissive attitude to child labour. The Women and Children's Affairs Division of the Ministry of Labour keeps a low profile on the grounds that the issue of child labour — and especially child domestic labour — is politically sensitive and enforcement cannot be undertaken without proper support from the Government. In spite of these difficulties, though, the Division collaborated recently with the Ministry of Transport in controlling the number of children employed as bus criers and has conducted a series of ad hoc surveys on the incidence of child labour in the City of Colombo.

Another problem is that enforcement appears to be particularly weak in provincial areas. While the surveys undertaken by the Division of Women and Children's Affairs give some information on the incidence of child labour in Colombo, there is an overall lack of information on the state of affairs outside the capital. It has also been alleged by youth workers that inspections are not made outside Colombo. On the other hand, the Labour Department is active in prosecuting violations in the payment of provident funds in some outlying areas.¹

However, the problems in enforcing child labour legislation generally affect the condition of child workers in the informal more than the formal sector. This is evident in the absence of state intervention over child domestic workers, despite the publicity given to the abuse and exploitation they suffer. Activities such as street trading and home-based outwork and small business enterprises such as shops and hotels are also neglected. Labour laws in such concerns are violated with impunity. On the whole it is easier for the inspectorate to gain entry to premises in the formal sector. Inspections of this type are perceived by officials as part of their duty. There is greater embarrassment in regard to entry into private residences or other unregistered establishments employing children. And, as we have seen, the social legitimacy of child labour in some informal sector occupations undermines enforcement.

The successful exclusion of children from formal employment in the free trade zone and from the official labour force on plantations, in industry and commerce and in the more hazardous occupations, shows that minimum age legislation can be enforced and a regulatory framework used to prevent exploitative child labour where there is a will. Formal sector employers are aware of the legal position with regard to child labour and of the sanctions for infringement. Their enterprises are inspected by labour officers. Even though inspections may not be conducted frequently due to the various constraints discussed, and focus mainly on adherence to laws on the minimum wage, social security payments and the termination of employment, violations of child labour legislation can also be detected. The risk of prosecution appears to be an effective deterrent for established employers, both

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inside and outside the free trade zone, who are sensitive to the views of trade unions and the Employers' Federation of Sri Lanka.

Research indicates that some new problems with the enforcement of acceptable working conditions in the formal sector have surfaced with the creation of the free trade zone. For example, it has been found that labour inspection in the zone is especially inadequate. Many young women between 16 and 18 years of age who are employed there in garments manufacture face the same pressures of difficult working conditions as adult workers, and complain of having to work at night to meet unreasonable production targets without the proper facilities allowed for by the law. Enforcement is particularly deficient with regard to occupational health in industry, whether within or outside the free trade zone (Goonatilake and Goonesekere, 1988). Plantation workers, on the other hand, are better protected because of the influence of trade unions and the use of collective bargaining procedures in this sector. As we have seen, the Employment Act obliges employers to keep a record of child workers with their ages to assist inspection and enforcement. Children's ages can be established through examination by a doctor, a procedure initiated by labour officials with the authorization of either the Juvenile Court or a magistrate. Clearly, adequate means for proving age are crucial to effective law enforcement. However, this information is often lacking. For example, because their births have not been registered within the specified time and the legal procedures for obtaining the relevant documents after this period are complicated, many children from poor homes do not have birth certificates. Since 1981, though, it has been possible to issue children over 16 years old with a national identity card and this can be used in place of a birth certificate as proof of age.

Parental provisions

The law provides for either the police or probation officers to bring an action in the Juvenile Court to have children placed in care. This procedure can be used in child employment cases, yet this is done

only rarely. Child workers apprehended in violation of labour laws are usually returned to their parents. Often this results in their going back to similar, if not the same, employment. In prosecutions against employers, parents are easily persuaded to drop the charges, and proceedings therefore often fail through lack of evidence.

Frequently law enforcement agencies face insurmountable problems. The absence of effective immigration controls in respect of minors accompanying adults overseas, for example, has encouraged the trafficking in young children for employment abroad. Recently the press has reported that new immigration controls are to be introduced to monitor the activities of couriers who accompany children as guardians. There are also plans to limit the right of a parent or other adult to have a child's name entered on their passport on the grounds that the issue of separate travel documents for children will help prevent them being taken abroad for nefarious motives.

Parents can also be culpable in the exploitation of their children's labour. Some parents hand their children over to an employer or agency for mercenary reasons without considering the possible consequences for the child. A system of penal sanction seems to be an essential strategy to end exploitation by both job placement agencies and parents. To this end, provisions in the Children and Young Persons Ordinance (1939) on child abuse which have still not been brought into operation should be revived and implemented. Yet penalties alone are insufficient and parents also need to be educated about their responsibilities towards their children and supported in their role as care-givers by welfare measures. The growing tide of child abandonment and the increased availability of children for highly exploitative forms of labour suggest that such intervention is crucial to stemming the problem of child labour.

Judicial interventions

In Sri Lanka statutory and other laws are interpreted by the two superior courts, the Supreme Court and the Court of Appeal, and the rulings made by these bodies are published in law reports. Non-

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statutory law in Sri Lanka is clearly child oriented and, despite children's minority status and the legal incapacities associated with this status, awards children a distinct legal identity. We have seen that under non-statutory Roman-Dutch law, the courts are conceded a special role as guardians of child welfare. It is in the exercise of this jurisdiction that the superior courts have evolved legal principles to safeguard the interests of children in important areas such as custody and economic or property rights. For example, when in the early nineteenth century statutory provision made it possible for employers to prosecute labourers for deserting their employment, children were exempted because they were considered too young to be bound by a contract of service. Since then, however, child labour has been neglected by the superior courts, despite the passing of legislation on the issue in 1939 and again in 1956.

The courts experience a number of problems in cases involving child labour as a result of certain intrinsic procedural limitations and also because different courts are charged with handling different aspects of the child labour issue. Thus, while Labour Tribunals deal with disputes involving the termination of employment for children who work legally, child labour cases are usually handled either by the Juvenile Court, which has jurisdiction over children in need of care and protection, or by the minor magistrates' courts, which deal with violations of labour law. In addition, the major civil jurisdiction in matters relating to child custody and the property rights of children has been placed with the ordinary civil courts, though they are now described as Family Courts. While the Women and Children's Division of the Labour Ministry is charged with investigating the case for the prosecution, the case itself is handled by a different department in the Ministry.

Proceedings for placing a child who is unlawfully employed "in care" may be initiated in the Juvenile Court under the Children and Young Persons Ordinance of 1939 by either the Women and Children's Bureau of the City Police or the Probation and Child Care Department. The Juvenile Court may also order an investigation following a written complaint concerning child labour. The probation authorities may initiate proceedings to take a child into care on the basis of the

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Court's initiative or a hospital report on child abuse. The Labour Department is the agency entitled to prosecute for violation of labour laws. However, it rarely initiates such prosecutions in the magistrates' courts because, in order to proceed, authorization must be obtained from the Commissioner of Labour. Moreover, a unit other than the Women and Children's Division is charged with handling such cases. The Women and Children's Bureau of the City Police complains that it is difficult to move the labour authorities to prosecute in child labour cases and that it is easier to initiate "in care" proceedings in the Juvenile Court.

Thus, the issue of employment is closely connected with that of children placed in care following abuse or exploitation. However, while the juvenile judge may issue a care order, the law does not give him or her the jurisdiction to impose sanctions for violation of child labour laws. Nor does it allow for the punishment of adults for abusing children since the provisions on cruelty in the Children and Young Persons Ordinance are not in operation. Faced with this constraint, the judge of the Juvenile Court invariably investigates and settles the case by requesting the employer to pay a modest sum of money into a savings account in the child's name. Rarely are cases referred to the labour authorities for prosecution in the magistrate's courts. The Juvenile Courts generally believe that children benefit more by receiving a settlement than by fining employers. The employer's behaviour is thus punishable only if a criminal prosecution is initiated by the police for child abuse or by labour authorities, under separate proceedings. The leniency of the law in this regard clearly encourages the exploitation of children at work. The employed child is invariably released to the parents with a warning, or placed under the supervision of a probation officer or in a home for children. Cases involving older children tend to enter the courts when employers are prosecuted for violation of employment regulations on matters such as minimum wages or provident funds.

Criminal prosecutions for child abuse and employment often fail through a lack of evidence, or because of the difficulty of proving that the child is under the relevant age, or the tendency of employers to settle out of court. A lawyer who handled two recent cases involving the

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branding and burning of two domestic workers under the age of 12 complained that in one case the prosecution failed because neither the child nor the parents responded to the summons to appear in court. In the second instance, in which the child died as a result of burns, the prosecution almost collapsed because the mother did not have sufficient funds to travel to the city. However, she subsequently obtained legal aid and the employers were committed for trial on a murder charge.

Because criminal prosecutions involving child employment and abuse rarely succeed and proceed for trial to the High Court, it is difficult to find a superior court decision on these matters. In any event, the record of these courts in the area of child abuse is not encouraging. Whereas superior courts have been swift to act in disputes over custody or property, they appear willing to accept jurisdictional and technical legal arguments which undermine the orders of trial courts in child abuse cases. The inadequacy of penal sanctions for dealing with child abuse in employment is especially relevant in cases involving the use, procurement and trafficking of children in prostitution, pornography or camel riding. There exist a number of loopholes in the law, such as the lack of controls on immigration or the rental of accommodation for immoral purposes. Cases involving injury or sexual offences in general fail because of the problem of corroborating evidence or establishing proof.

Since Sri Lankan laws are generally child oriented, children's interests may be represented in civil proceedings initiated either by or against them. Thus, the Adoption Ordinance (1941) provides for independent representation for the child and the court is required to appoint either an individual or a body to safeguard his or her interests in the proceedings. The courts have exercised their jurisdiction as guardians to ensure representation of children in litigation involving property, and the Juvenile Court in particular uses the services of family counsellors and probation officers to obtain information on children in court proceedings.

However, there exists no system for ensuring separate legal representation for children in child abuse or child labour cases, and proba-

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tion officers do not necessarily have the interests of the child foremost. This means that when parents and employers conspire to drop a prosecution, children cannot be helped. For example, the 12 year-old child-minder who was charged with killing a baby was not represented during court proceedings and was therefore placed originally in a remand home by the magistrate. She has now been released on bail and lawyers are watching her interests. Lack of separate representation also means that actions for violation of fundamental rights cannot be brought before the Supreme Court by children.

NOTE

¹ *Ceylon Daily News*, 2 June 1989 and 15 May 1989, reports of special correspondents, Matugama and Panadura districts.

5. Alternative approaches to child labour

Investigation and advocacy

For child workers to benefit from national legislation regulating their employment and conditions of work, it is essential that they be properly informed and aware of their employment rights. There is no commitment on the part of the Government in Sri Lanka, at the moment, to providing such information. The Employment Act requires employers to notify all workers between the ages of 14 and 18 years of the regulations pertaining to their work. But there are no provisions for increasing the awareness of young workers of their rights, and no schemes for investigating labour law violations or for providing child workers with free legal aid or counselling services.

Because of the constraints on the implementation of labour laws in relation to children, and because of the poor dissemination of information on child labour, regulatory controls must be supplemented by other programmes aimed at either removing or limiting child employment. Thus, investigation, advocacy and lobbying on behalf of working children by the press and non-statutory bodies are very important in obtaining justice within both the legal system and the community as a whole. They can be crucial to the enforcement of regulatory controls and can stimulate the critical evaluation and revision of the law and the development of alternative strategies for action.

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In recent years, the Davasa newspaper group particularly has investigated and made public a number of aspects of the problem of child labour. The subject receives fairly regular coverage in their publications. A strong stand has been taken against this form of child exploitation, in both the reports of individual journalists and the editorial columns. Specific instances have been researched and exposed, and the lack of action on the part of the Government reported. In fact, a section of the press has in many ways provided leadership and helped to generate debate and discussion on the subject. Press initiatives have, for example, led a number of non-governmental groups to follow up individual cases of exploitation.

Occasionally the national television or radio services follow up a particular child labour issue that has been covered in the press, especially when it concerns child domestic employment. However, there is a virtual conspiracy of silence in these official media on the problems of child prostitution and related matters such as sexually transmitted diseases. Given the high rate of adult literacy in Sri Lanka and the wide circulation of newspapers in both urban and rural areas, and the more limited accessibility to radio and television, this omission is not as serious as might be expected. Yet radio and television are a popular medium of communication with a wide reach, and can be used effectively to lobby on child labour problems and issues.

There are a number of well-established non-governmental and church organizations in Sri Lanka that are concerned with child welfare, some of which have been in existence for a considerable time. Yet, while they have created reception centres and homes for children in need of care, none of these bodies monitors children's rights or child labour and none lobby on these issues. A number of groups that have been founded more recently have taken up the question of children's rights, but only in a general sense as part of an overall concern with human rights and women's issues. Two national seminars on child labour have been organized by a group of trade unions, together with the Centre for Women's Research, and the issue has been confronted in debates connected with the United Nations Convention on the Rights of the Child. Articles on the theme have also been published in a

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newsletter and one particular child abuse case was monitored as it progressed through the courts in 1986. In addition, radio programmes conducted by the Open University have focused on the issue of child labour, and it is to feature in a programme on legal literacy and continuing education for lawyers conducted by the same university. It is hoped that these latter initiatives will lead to the creation of small groups of lawyers who will provide legal aid and counselling facilities to poor parents and children in child labour cases.

A working group called the National Foundation for Children, consisting of professionals and others interested in children's issues, has been formed recently with encouragement from UNICEF. This group hopes to develop a programme of action on children's rights, and child labour has featured importantly in its discussions. The Commissioner of Probation and Child Care is a member of the group and has suggested that government departments and agencies might link with non-governmental organizations in developing strategies to combat child labour. However, neither the probation authorities nor any other government agency have played a lobbying or advocacy role on behalf of child labour and these bodies have yet to collaborate with non-governmental organizations on this issue.

Despite the efforts of the press, the public remains largely unconcerned about the problem of child labour. Even those non-governmental organizations which give priority to the issue have been less effective than the press in detecting child abuse and violations of employment law, and have failed to initiate change. There has, for example, been no attempt to bring labour authorities to the Supreme Court for violating the fundamental rights of children. For their part, Labour Department officials complain of a lack of civic conscience on the issue, saying that members of the community at large generally refuse to assist when called upon to provide information in cases of child abuse in employment, even when they have been witness to events. The limit of public involvement seems to be the occasional anonymous complaint to the Commissioner of Probation and Child Care. Whilst such a move may help to initiate an investigation, it will not sustain court proceedings. We have already observed that militant groups in the north have dispensed

summary justice, by destroying fishing camps and intervening to end the exploitation of children used in a type of bonded labour.

Practical programmes to reduce or control child labour

Education

In the nineteenth century education was perceived as a strategy for excluding children from the labour force in the plantations. However, the economic pressures experienced by the plantation workers, the traditional attitudes of the Indian Tamil community towards child labour and the planters' need for a constant supply of labour combined to ensure that education was neglected in this sector for many decades. The expansion of education opportunities for the poor over the course of the twentieth century, though, was facilitated by the strong tradition of learning among the population and the interest in providing a system of formal state schooling. Statistics drawn from the 1981 census show that as many as 83.7 per cent of boys and 83.6 per cent of girls between the ages of 5 and 14 were enrolled in schools in the early 1980s (Jayaweera, 1985).

Temple schools today provide rudimentary pre-schools for children from middle- and low-income families and supplementary teaching for children from all sectors of the population who are required to sit public examinations. Although fees are charged, these are sufficiently modest to be affordable even by poor children. Research on villages in the Mahaweli settlement area, and among slum dwellers and home-based workers in urban areas, indicates a strong interest in education and child care generally. Poor parents actively seek an education for their children and are grateful for even the very meagre pre-school facilities available. Thus, the study of home-based workers shows how hard children strive to combine work and schooling and how their economic activity is perceived as a strategy for financing education and training.¹

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Yet, in spite of the interest in education in Sri Lanka, the school drop-out rate has been increasing over the years and is now a serious cause for concern. Research indicates that drop-out rates are particularly high in poor communities, whether in urban or rural areas, and statistics also reveal a low participation rate in low-income communities for the age group 15 to 19 years.² Poor children tend to drop out before completing the primary level because they are not well prepared for learning, school facilities are often rudimentary and teaching fails to stimulate their interest. Importantly, the State has not established free pre-school education, although it has created a limited number of crèches and other facilities. Pre-school education, therefore, is not widely available for poor children unless provided by a temple school or non-governmental agency. The State helped poor children to participate in primary and secondary schooling in 1980 by issuing free textbooks. Free buns and biscuits have also been made available from time to time and free school meals were introduced recently as an aspect of the Government's "poverty alleviation" programme.

The 1939 Education Act accepted the principle of compulsory education and monitoring of school attendance, although the Government long ago ceased either to appoint officials to carry this work out or to initiate prosecutions. Moreover, the compulsory education regulations have not been revised and remain unimplemented. There is therefore even confusion over the age of cessation of compulsory schooling among education authorities, some of whom believe that, in accordance with employment legislation, 14 years is the upper limit in Sri Lanka.

The absence of up-to-date regulations on compulsory education is particularly prejudicial to children working in occupations such as domestic service. An employer who fails to send a child to school is in fact violating a legal obligation under employment law. When labour officials are apathetic, education authorities are not in a position to ensure that children attend school. Enforcement of compulsory education regulations would be one strategy for ensuring that educational opportunities are not denied to working children, even though there may still be financial constraints against their utilizing such opportunities.

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The lack of adequate facilities for pre-school education or for monitoring attendance may be contributory in the non-utilization of free primary schooling. The additional cost of schooling is perhaps as much a disincentive as inadequacies in the school curriculum, which is too academic and fails to stimulate the interest of children from poor backgrounds. The non-formal unit of the Ministry of Education has established literacy centres in Colombo and certain provincial areas for children of school age who are not attending, with the aim of tackling the drop-out problem among poor children. This kind of initiative may prove far more effective than the more formal approach to schooling in sustaining attendance rates.

Child care

We have noted that there are a few pre-school facilities in some areas of Sri Lanka. They are available in some state receiving homes, for example, and the Probation and Child Care Department has also established a few day-care centres for the pre-school children of working parents. A number of non-governmental organizations run their own pre-school and day-care centres. Three nutrition centres have also been created to provide therapy for the severely undernourished in state institutions for children. In the new settlement areas such as Mahaweli, children's centres established by the Children's Secretariat supplement pre-school facilities provided by other organizations. The plantations have their own child-care centres and crèches which receive financial assistance from agencies such as Save the Children Fund UK and UNICEF.

Facilities for abandoned children

Overall, the priority in Sri Lankan policy is to award primary responsibility for child-rearing to the family. However, we have seen that recent trends reveal an increase in child abandonment nationally, causing concern about parents' attitudes towards the care and rearing of

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children. The exploitation of children by parents in some of the new forms of employment has also been noted as a major problem. Adult education and literacy classes that look at the long-term costs to children of these practices have yet to be introduced, even though there exist many governmental and non-governmental community development programmes that could incorporate such work. At present, adult education and awareness creation tends to focus mainly on issues such as family planning and primary health care, sometimes to the detriment of child protection and welfare.

From the 1930s onwards, homes for disadvantaged children in need of care were created by both the Government and non-governmental organizations. These institutions serve as a refuge for children exploited and abused at work and also prevent at least some abandoned and destitute children from entering the labour market. A wide range of such institutions which provide for child offenders and children in need of care have been established and maintained by the State, and non-governmental organizations, which include social service groups and religious denominations. These institutions include remand or detention homes, certified schools, state receiving homes and approved schools, and they provide some facilities for vocational training as well as custodial care. It is in these institutions that child labourers who have been abused by or run away from their employers are generally placed. Since these children are placed "in care" on court orders, both court officials and custodians tend to perceive them as offenders rather than as victims. The children are brought to court and taken back in prison vehicles and custodial orders are commonly referred to as "detention" or "remand".

With only seven certified schools or remand homes and seven state receiving homes, the custodial facilities in Sri Lanka are insufficient to cope with the large number of children referred by the courts. Even with the recent assistance of international aid agencies, the pressure on these institutions has not diminished. On the contrary, demand on custodial facilities has grown because of the displacement of many children due to the armed conflict and the abandonment of others in state receiving homes by parents emigrating to the Middle East in search of employ-

ment. The probation and child-care authorities try to discourage this latter practice and Juvenile Court magistrates take care to investigate cases to ensure that proceedings and facilities for children in care are not abused by unscrupulous parents.

Those institutions run by non-governmental organizations receive grants from the State, and are not only registered with but also monitored by the Probation and Child Care Department. Many such institutions serve as receiving centres for children in need of care. Most have some kind of skills training programme. Boys are taught subjects like motor mechanics and carpentry, and girls, cookery and needlework. Children are also provided with formal education either in local schools or within the institution. However, even though some of these institutions offer valuable services, the quality of facilities is very variable and many are extremely poor.

Other programmes

There exist some child-centred programmes that benefit the general population of children, which often provide resources that can be, and are, used for the potential child-worker population. However, they are rarely used by the small number of working children whose cases come before the courts and none are targeted specifically at child labourers. The Institute of Workers' Education and the Open University provide educational opportunities that could be used to develop training programmes for working children who need to earn. But neither of these centres have focused on the needs of children or young people that work. Also, while self-employment and income-generation schemes established by the Women's Bureau and the Ministry of Youth Affairs give some young workers over 15 years the opportunity to acquire vocational and skills training, outreach is poor, largely because of the inadequacy of resources.

There is one specialist intervention — an institution run by the government Social Services Department that caters exclusively to girls above the age of 14 years who have been referred by the courts in prosecutions for vagrancy and prostitution. This institution is one that caters for

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a particular sector of the working-child population. Some vocational training is made available at this centre in domestic tasks such as sewing and coir-making, and the girls are assisted after some years to obtain employment. The children of these girls, even though housed with their mothers and sent to nearby schools, come under the care of the Probation and Child Care Department.

Given the shortage of custodial facilities, recent welfare interventions on behalf of children have aimed to educate and generally help poor families to care for their children at home with nutrition, child care, family planning and immunization programmes (Government of Sri Lanka, 1986; Soysa, 1985). Although not specifically prioritized as beneficiaries, working children clearly benefit to some extent from such schemes. Targeting the especially poor and disadvantaged has become general policy in welfare programming. Thus, a system whereby food stamps are made available solely to low-income groups has replaced the free food rations which were once given to the community as a whole. A limited range of basic necessities can be purchased with the stamps. Supplementary feeding programmes, such as the Triposha and leaf gruel, or Kola Kanda schemes, which are subsidised by the State, attempt to provide nutritious food free of charge to disadvantaged children. Up to 1986 there had been 650,000 beneficiaries of this programme. Since 1980 the Probation and Child Care Department has also conducted a child sponsorship scheme, in which families are provided income support to care for children within the home. The scheme is administered and monitored by the Department, with donations from both local and foreign benefactors. The Sri Lankan President has inaugurated another similar scheme of child sponsorship, through donations into what is known as the Sevana (Haven) Fund. This also aims to give income support for children within the family and is administered by a special government department.

Finally, the Government's recently introduced (*Janasaviya*) programme provides financial support and free distribution of nutritious dry rations to families with a combined income which falls below a specified poverty level. To become eligible for this grant, members of the family must work in community development projects organized by

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the State. It is important to note, though, that unless the implementation of food-for-work programmes such as these is carefully monitored, they can result in an increased use of children as family labour.

NOTES

¹ Rajapake (1989a); Jayaweera and Dias (1989; de Silva (1981), p. 391.

² Jayaweera (1985); Census of Ceylon — 1981, Statistics on participation rates, p. 59.

6. Conclusion

One of the main trends in child labour in Sri Lanka over this century has been the almost complete exclusion of children in employment in formal sector concerns. This is due primarily to education and child welfare policies, the availability of cheap and often skilled female labour, and the impact of labour legislation and trade union policy. The literacy of poor women and their willingness to utilize child welfare programmes and opportunities for education, rather than exploit the labour of their children, has also contributed to keeping many poor children out of the labour market. As a result, the great majority of child workers are found today in the informal sector of home-based work, domestic service, agriculture and industry, in activities not covered by labour laws or regulations. The persistence of child labour in these activities is largely a consequence of changes in values and serious financial pressures on the family.

We have seen that some of these informal sector occupations are extremely hazardous for children. Yet despite the risks entailed, the State has not totally rejected the view that poor children are an economic resource for use by the family. Thus, child welfare is not awarded complete priority and employment is permitted for children over 12. Moreover, the social legitimacy of many forms of child labour provides the rationale for neglecting law enforcement. A significant concession made to child welfare in employment has been the endorsement of ILO

policy distinguishing between non-permissible, hazardous employment and legitimate, non-hazardous labour.

The State is especially lenient when it comes to the employment of children in family concerns. However, in many instances a child's normal growth, development and education is jeopardized by labour for the family enterprise. Careful monitoring is needed to ensure that children working with their families are able to combine work and study and are not sacrificed to family needs.

The Sri Lankan case demonstrates, above all, the crucial role parents play in child labour. Thus, education and other welfare policies have been effective in containing the incidence of child labour mainly because of a strong interest on the part of many parents in child care, education and nurture. However, the present adverse social and economic conditions mean that many parents are being forced to use their children in new forms of exploitation. Both the State and local non-governmental organizations need to develop programmes encouraging parents to adhere to traditional values of child care.

The breakdown of these values is most evident among the few parents who place their children in prostitution or camel riding in the Middle East. If these practices are not controlled, the cost to Sri Lanka will be high, undermining the social and legal value system in regard to child labour and parental and state responsibility towards children. Unfortunately, because of conflicting policies on foreign relations and tourism there has been a failure to impose sanctions for these practices. It seems, therefore, that international measures will be required to bring about a change in national policy. Among other things, penal sanctions should be introduced as a priority to prevent the trafficking in children for prostitution and camel riding.

Sri Lanka has already instituted health, nutrition and child-care measures intended to encourage the growth and development of the child within the family. Income support, child sponsorship, nutrition, health and pre-school programmes aim to assist poor parents to provide for their children. However, in order to further enhance child protection and welfare, there should be a greater focus on parental education and family life, especially in the remoter parts of the country. Equally, since

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the State cannot afford to provide institutional care on a significant scale, every effort should be made to strengthen preventive measures and support children within the community.

Of all welfare measures, education has had the greatest impact on the incidence of child labour. As a rule, child labour prevails in communities where the education system fails to live up to the expectations of the poor. Poor children who do not attend or drop out of school in favour of work are usually from families that have not received adequate support to enable them to utilize educational opportunities. Clearly, if children are to be attracted away from labour at an early age, it is important that both public sector policy and the law should serve to maintain a positive value system in favour of education and ensure good quality of schooling.

We have argued that in Sri Lanka legislative developments have been fundamental to the effort to prohibit or regulate child labour. The exclusion of children from employment in industry and plantation agriculture shows that legal prohibitions, if supplemented by welfare measures, can effectively contain child exploitation at work. However, a number of major gaps in legal controls and in enforcement have been highlighted. For example, while the system of licensing of factories and other such concerns has helped to contain the incidence of child employment in hazardous work in some sectors, its scope is still limited. This procedure should be strengthened and expanded to include establishments that engage outworkers in home-based production. Existing safeguards for outworkers and laws regulating subcontracting are inadequate and offer no protection to children who participate in the labour market as family helpers.

One fundamental inadequacy of the existing system is the complexity of regulations which stipulate a wide range of limitations on conditions of employment. These regulations seriously undermine enforcement and absolute prohibition would be far easier to implement. Labour laws pertaining to children are found in many statutes and subsidiary regulations which are so detailed that violations cannot be monitored. They also vary greatly according to the child's age — something that is very difficult to prove in communities where many children do not even have a birth certificate.

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However, it must be said that the ineffectiveness or absence of regulatory controls in regard to prostitution, trafficking in children and occupational health encourages child exploitation in these activities by both parents and other adults. The apparent effectiveness with which child labour in fishing has been stopped by militant groups in the northern areas shows that severe sanction can be a powerful deterrent. This factor is often underestimated in policy planning. We have seen that, in the main, employers do not wish to risk prosecution and unpleasant publicity. Most would prefer to desist from employing children rather than risk such a situation. In Sri Lanka the ineffectiveness of prosecutions against adults who abuse their child employees is partly due to the absence of a coherent criminal law on child abuse or cruelty to children. For example, while the Children and Young Persons Ordinance contained a range of sanctions for cruelty to children, this legislation unfortunately never came into force. Laws of this nature would provide the courts with the power to impose punishment in child abuse cases.

We have noted how the older child worker who is engaged in "legitimate" employment is protected by a range of labour laws that also serve adult workers. In this respect, the young have benefited by being treated legally as workers entitled to an equitable employment contract. On the other hand, these benefits do not take sufficient account of the special needs of young workers in terms of hours of work and occupational health and safety. The only area where differences do exist between adults and youths is with regard to wages. Anomalies in the system of payments discriminate against young people. This is largely because they have insufficient power within the labour force to fight for their rights. Trade unions and management must be made to give priority to the distinct needs of young workers if they are to receive the full benefits of equitable employment contracts.

The procedures for law enforcement present a number of problems in Sri Lanka. Existing labour laws depend on extensive inspection. Staff shortages pose a serious problem for both enforcement and the launching of prosecutions. It seems clear that fostering worker councils, trade unions and devices such as collective bargaining would be a more

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creative way of protecting workers than a total dependence on the system of inspection. Another problem is that a range of judicial tribunals deal with prosecutions for violations of employment law and child abuse. This makes for unnecessary complication. The system should be rationalized. Thus, while Labour Tribunals should retain their function as adjudicators between management and child workers, criminal prosecutions for child abuse should be dealt with by one court, rather than a variety of different tribunals.

Moreover, there should exist machinery for ensuring that the child's interests are separately represented in court proceedings. At present, several officials are empowered to initiate legal proceedings on behalf of children and coordination between them is lacking. It is vital that one authority should be entrusted not only with monitoring enforcement, but also with initiating prosecution. This authority should liaise and link closely with the Probation and Child Care Department so as to ensure that the child's interests are protected, especially in cases of child abuse in employment.

Sri Lanka has a long history of trade unionism and also of non-governmental agency involvement in child welfare. Over the years these organizations have supplemented state welfare services and helped establish reception centres for child victims of abuse. However, the scope of their work has been restricted. They have not, for example, investigated cases of child exploitation at work or lobbied on behalf of exploited children. This is particularly noticeable with the unions, who are the fierce watchdogs of the rights of adult workers. Since there is no active lobby in Sri Lanka on child labour, there is no mechanism for utilizing the findings of investigative journalism on the subject.

The Constitution of Sri Lanka now enshrines children's rights in its guarantee of fundamental human rights. The fundamental rights jurisdiction of the highest court in the land, the Supreme Court, is being used increasingly to obtain protection for employment and other rights. Non-governmental organizations and trade unions have an important role to play in helping child workers to utilize this jurisdiction and to challenge bureaucratic apathy in enforcement of laws for their benefit. However, as we have noted, Sri Lanka's Constitution embodies one crucial

limitation, in that it does not permit this jurisdiction to be used to challenge the employment practices in the private sector.

Sri Lanka does, however, have an Employers' Federation which is made up of private employers. It also has an Institute of Workers' Education and a number of programmes on legal literacy and free legal aid. Awareness-raising programmes conducted through workshops, the press and other media may prove useful in developing an understanding of the issue of child labour and the threat it poses to child welfare. Such programmes can be targeted at the workers themselves. Awareness-raising among lawyers and judges could also help ensure free legal representation and justice for children when cases of child abuse in employment come before the courts. One important development has been the introduction by the Women Lawyers' Association of Sri Lanka of free legal aid in cases involving women and children. The Open University Distance Learning Programmes on pre-school education, community education and legal literacy, and its clinical legal-aid programme, supplement this focus and are child-oriented.

Exploitative or hazardous child labour has received little attention in Sri Lanka in recent years because of the many severe social and economic problems confronting both the Government and population at large. The prolonged ethnic conflict in the northern and eastern parts of the country and political instability and violence in the south have left many casualties. Children are the group that has been most traumatized by the violence and suffering and some have even been forcibly conscripted. International human rights monitoring groups seem to provide the only hope for promoting a national response to the serious problem of conscription. But children have faced many other difficulties in the present crisis. For example, schools have been closed in some years continuously for months. Poor children have been made particularly vulnerable by the conflict. It is they who are affected the most by disruption in schools because they have no other options in education. It is also the poor refugee child who so often becomes the exploited domestic worker.

It was education that once seemed to offer a new vista of opportunities for the Sri Lankan poor. An education was a ticket to a brighter

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future, to release from poverty and deprivation. Free education policies have no doubt benefited many children and have clearly proved a positive strategy for controlling the incidence of child labour. But the experience of Sri Lanka is also a poignant reminder that free and universal education, once described as "the pearl of great price", can entail an enormous social cost unless it provides upward economic mobility for the poor and disadvantaged. Because of the failure of public sector planning and policy development, education has also fermented social and political unrest. Unemployed and impoverished educated young people have been active in the militant youth movements in the last decade.

The country now faces social and economic problems so serious that they threaten its survival and development. Under these circumstances, far better provision needs to be made for alleviating poverty and increasing adult employment. A child who is removed from the labour force by education should not have to confront the spectre of unemployment and shattered dreams.

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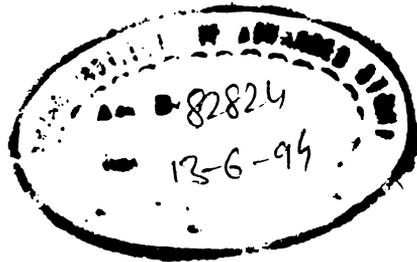
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Child labour in Sri Lanka

Learning from the past

Although Sri Lanka stands out in the developing world for its provision of welfare services and education, the problem of child labour in the informal sector continues to present a serious challenge to the Government. This report focuses on government measures to eliminate child employment, which is often of an exploitative nature, characterized by poor wages and dangerous working conditions, and occurs in workplaces completely lacking in workers' rights and labour organization.

The author, by analysing past experiences and existing legislative provisions, seeks to demonstrate how collaborative efforts on the part of the Government, non-governmental organizations and international agencies could lead to innovative approaches to the problem. Further, it discusses the prohibition on child labour and the ultimate goal of



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