



## **Submission to the Special Committee on Manpower DPRD Kota Yogyakarta**

Human Rights Watch submits this submission to the Special Committee on Manpower's review of the draft Regional Regulation for Yogyakarta City Concerning Manpower (*Peraturan Daerah Kota Yogyakarta: Penyelenggaraan Ketenagakerjaan*; hereafter "the Bill").

Human Rights Watch is an independent, nongovernmental organization based in New York that monitors the compliance of countries with their obligations under international human rights law. Last year we conducted research on over 70 countries, including both Indonesia and the United States.

Human Rights Watch regularly examines the treatment of domestic workers and child workers. In the recent past we have published reports on the treatment of both child and adult domestic workers, including migrant workers, in El Salvador, Guinea, Guatemala, Lebanon, Malaysia, Morocco, Saudi Arabia, Togo, the United States, and Indonesia.

Since 2004, Human Rights Watch has conducted extensive research into the problems child domestic workers face in Indonesia, including in Yogyakarta. Our research includes interviews with more than 200 people, including child domestic workers, police officers, labor recruiters, employment agents, and government officials.

The analysis below is limited to our review of articles 21-23, 25-27, and 36 of the Bill. We rely on a draft version of the Bill dated November 23, 2007, which the Chair of this Special Committee has informed us is the most recent version. We have also received and reviewed a redrafted version of the Bill produced by a coalition of civil society groups who work with domestic workers in Yogyakarta. Human Rights Watch

urges this Committee to also consider the recommendations included in that group’s draft version of the Bill.

## **Introduction to International Legal Obligations**

The analysis offered below is based on our review of Indonesia’s current obligations under international law and draws upon best practices that we have observed around the world.

Indonesia is a party to a number of international treaties relevant to the Bill, including the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights (“ICCPR”), the International Convention on Economic, Social, and Cultural Rights (“ICESCR”), International Labour Organization (“ILO”) Convention No. 138 (“Minimum Age Convention”), ILO Convention No. 182 (“Worst Forms of Child Labour Convention”), ILO Convention No. 100 (“Equal Remuneration for Men and Women Workers for Work of Equal Value”), ILO Convention No. 111 (“Discrimination in Respect of Employment and Occupation”), and the Convention for the Elimination of All Forms of Discrimination Against Women (“CEDAW”).

By choosing to sign and ratify these treaties, Indonesia has agreed to respect and follow their requirements. Therefore the city government of Yogyakarta should also act in accordance with these international legal obligations.

## **Specific and Detailed Concerns**

### *1. The bill lacks definition of a child*

In its present draft form, the Bill does not provide any definition of the term “child.” The Convention on the Rights of the Child uses as its definition of a child “every human being below the age of 18 years,”<sup>1</sup> and both Indonesia’s Child Protection Law<sup>2</sup> and Law on Manpower<sup>3</sup> also define a child as being a person under the age of 18.

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<sup>1</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Indonesia on January 20, 1990, article 1: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

Recommendation: The definitions section of the bill should include the definition that a “child” is “every human below the age of 18 years.”

*2. The bill is unclear as to minimum age of entry to work*

In its present draft form, the Bill is entirely unclear as to the minimum age for entry to work. The Bill begins by stating categorically that entrepreneurs are forbidden to employ children (art. 21(1)), but then goes on to provide certain exceptions for 13- and 14- year-old children to partake in limited light work (art. 21(2)-(3)). No exceptions are provided for 15-17-year-old children. If left in its current form, the Bill would paradoxically allow children ages 13-14 to engage in light work and adults 18 years and older to work, but children ages 15-17 would not be allowed to do any work.

*a. Minimum age for entry to general work*

The Minimum Age Convention provides that the general minimum age for admission to employment “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.”<sup>4</sup> As nine years education is compulsory in Indonesia<sup>5</sup> and children generally begin elementary school at age seven, the Committee should be mindful that there will be children who will have turned 15 years old but who have not yet completed their compulsory education.

This means that in order to conform with its obligations under international law, Yogyakarta city must establish the absolute minimum requirement for an individual to enter into general work as someone who is at least fifteen years old and has completed nine years of compulsory education.

Indonesia’s international obligations mean that the Committee is free to set the age of entry into general work higher than 15 years old, should it choose to do so. Indeed,

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<sup>2</sup> Child Protection Law (*Undang-Undang Tentang Perlindungan Anak*), No. 23/2002, article 1(1).

<sup>3</sup> Law on Manpower (*Undang-Undang Ketenagakerjaan*), No. 13/2003, article 1(26).

<sup>4</sup> ILO Convention No. 138 concerning the Minimum Age for Admission to Employment (“Minimum Age Convention”), adopted June 26, 1973, 1015 U.N.T.S. 297, entered into force June 19, 1976, ratified by Indonesia on June 7, 1999, article 2(3). An exception to the minimum age of 15 is made only for a state “whose economy and educational facilities are insufficiently developed,” which may “initially specify a minimum age of 14 years.” *Ibid.*, article 2(4). Indonesia has set the minimum age of employment at 15.

<sup>5</sup> Child Protection Law, No. 23/2002, article 48.

the Minimum Age Convention requires Indonesia to “raise progressively” the minimum age of work “to a level consistent with the fullest physical and mental development of young persons.”<sup>6</sup>

The Minimum Age Convention also states that national laws “may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling,” provided the work “is not likely to be harmful to their health or development,” and does not prejudice their attendance at school or participation in vocational training programs.<sup>7</sup> For such children, the Convention requires governments to “determine activities in which employment is permitted and [to] prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.”<sup>8</sup>

Recommendations:

- (1) Clarify the minimum age for entry to work. The absolute minimum requirement for a child to enter general work is that he or she is 15 years of age and has completed compulsory schooling.
- (2) Add an article to the Bill providing effective sanctions against any adult who employs children who have not reached the appropriate minimum age, or who violates the conditions required for work at that age.
- (3) Provide labor inspectors or other designated inspectors with the resources and training necessary to effectively monitor the age of children entering into labor, including domestic work, and to refer for prosecution those responsible for abusing working children by hiring children who do not meet the minimum requirements for entering into work.
- (4) Add an article to the Bill requiring employers to review birth certificates or compulsory education certificates of prospective domestic workers prior to recruiting them for domestic work to ensure compliance with minimum age laws.

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<sup>6</sup> Minimum Age Convention, article 1: “Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”

<sup>7</sup> Ibid., article 7(1-2).

<sup>8</sup> Ibid. article 7(3).

- (5) Add an article to the Bill requiring employers to register the name and age of each domestic worker working in their homes with the local labor agency or another appropriate local authority.

*b. Minimum age for entry to light work*

Although Yogyakarta City is not obligated to allow children younger than the general minimum age to work, international standards do not prohibit children 13 to 15 years old from partaking in limited “light” work under certain conditions,<sup>9</sup> as currently addressed in the Bill in Article 21(2)-(3). Human Rights Watch is aware, however, that a number of Yogyakarta civil society groups who work with child domestic workers and other child laborers are of the opinion that children 13 to 15 years old should not engage in light work. Because of their experience working with young child workers in Yogyakarta, Human Rights Watch urges this Committee to seriously consider the perspective of these civil society groups.

Recommendations:

- (1) Consult with local child workers and civil society groups to consider whether children 13 to 15 years old should be permitted to engage in light work.
- (2) Add an article to the Bill providing effective sanctions against any adult who employs children in conditions that violate the laws governing light work.

*c. Minimum age for entry to “hazardous work”*

The current Bill fails to provide a minimum age for entry to “hazardous work.” The Convention on the Rights of the Child guarantees children the right “to be protected from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental,

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<sup>9</sup> Minimum Age Convention, article 7: “(1) National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is-- (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received....(3) The competent authority shall determine the activities in which employment or work may be permitted under paragraph[] 1...and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.”

spiritual, moral or social development.”<sup>10</sup> Under the Worst Forms of Child Labour Convention some forms of child labor are flatly prohibited, such as slavery or practices similar to slavery. Other types of work are prohibited if they constitute “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”<sup>11</sup>

According to the Recommendations adopted by the International Labour Organization to supplement the Worst Forms of Child Labour Convention, “hazardous work” may include:

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.<sup>12</sup>

The Worst Forms of Child Labour Convention requires the Yogyakarta Kota government to consult with civil society groups to identify the kinds of work which,

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<sup>10</sup> Convention on the Rights of the Child, article 32(1): “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

<sup>11</sup> ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (“Worst Forms of Child Labour Convention”), adopted June 17, 1999, 38 I.L.M. 1207 (entered into force November 19, 2000, ratified by Indonesia on March 28, 2000), article 3: “For the purposes of this Convention, the term the worst forms of child labor comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

<sup>12</sup> ILO Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (“Worst Forms of Child Labour Recommendation”), ILO No. R190, June 17, 1999, article 3.

by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>13</sup>

The Recommendations also call upon governments to give “special attention” to “the problem of hidden work situations, in which girls are at special risk.”<sup>14</sup> Such work must then be prohibited for children to engage in, and the government must take immediate and effective measure to secure the elimination of these worst forms of child labor as a matter of urgency.<sup>15</sup>

#### Recommendations:

- (1) Consult with local civil society groups, including children’s rights organizations, to identify the kinds of work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Include this list of occupations within the regulation, and provide a mechanism by which this list can be reviewed regularly and updated.
- (2) Add articles to the Bill prohibiting individuals less than 18 years old from partaking in hazardous work, including: (a) work for long hours; (b) work during the night; (c) work where the child is unreasonably confined to the premises of the employer; (d) work in hidden situations; (e) work that restricts the child’s abilities to communicate with family members; (f) work that is excluded from minimum wage regulations; (g) work which exposes children to physical, psychological or sexual abuse; (h) work underground, under water, at dangerous heights or in confined spaces; (i) work with dangerous machinery, equipment and tools, (j) work involving the manual handling or transport of heavy loads; and (k) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health.
- (3) Add an article to the Bill providing effective sanctions against any adult who employs children in hazardous work.

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<sup>13</sup> Worst Forms of Child Labour Convention, article 4(1)-(3).

<sup>14</sup> Worst Forms of Child Labour Recommendation, article 2(c)(iii).

<sup>15</sup> Worst Forms of Child Labour Convention, article 1.

- (4) Add a provision to the Bill requiring labor inspectors or other designated inspectors to monitor labor supply agencies and workplace conditions, providing authorization for inspectors to monitor private households, conduct unannounced visits, and interview domestic workers privately about working conditions.
- (5) Provide inspectors with the resources and training necessary to effectively monitor child labor in hidden work situations, including child domestic labor, and to refer for prosecution those responsible for abusing working children.

*3. The Bill does not adequately regulate hours of work and rest for adult and child domestic workers*

Under the current form of the Bill, workers employed in the formal sector may only work seven hours a day and forty hours a week in a six-day work week or eight hours a day and forty hours a week in a five-day work week.<sup>16</sup> Workers in the formal sector have the right to at least half an hour of rest after working four hours consecutively; one day of rest after six workdays a week, or two days after five workdays a week; and, at minimum, an annual period of rest of twelve workdays, if they have worked for twelve months consecutively.<sup>17</sup> The law allows for overtime work of a maximum of three hours a day up to fourteen hours a week; provided the worker agrees and is paid overtime wages.<sup>18</sup>

Individuals who work in the informal sectors, including domestic workers, are completely excluded from these legal protections in the Bill. Under the current draft, employers of domestic workers are not legally obligated to limit the length of the workday, provide breaks during the day, or give weekly or annual holidays. No legitimate reasons exist for this exclusion:

Arguments that the nature of domestic work does not lend itself to regulations on working hours and rest days, do not address the obligation to protect domestic workers' rights to just and favorable work, health, and right to rest.

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<sup>16</sup> Draft Bill, article 25(1).

<sup>17</sup> Ibid., article 26(2)(a)-(c).

<sup>18</sup> Ibid., article 25(2).



Fears that such regulations would be difficult to enforce can be assuaged by strengthening workers' associations and labor resource centers, devising accessible complaint mechanisms, legally empowering inspectors to verify compliance, and providing effective sanctions.

Attempts to justify the exclusion of domestic workers from these labor protections by relying upon the Javanese cultural tradition of *ngenger*, under which poor relatives were taken into the household and worked in exchange for education and housing, ignore the reality of current practices. Many employers choose to use young, uneducated, and socio-economically disadvantaged girls as domestic workers precisely because they tend to be cheaper, more compliant, and less likely to advocate for their own rights. This is a relationship dynamic that is highly prone to exploitation, and requires government regulation.

Concerns that the costs of adhering to these labor standards would be unaffordable to some employers, thus excluding them from the market, ignores that the government does not provide all citizens with an entitlement to a domestic worker; rather, the government is obliged to protect all individuals in the workforce without discrimination.

Such discrimination against informal workers by excluding them from labor protections afforded to formal workers is impermissible under the international legal obligations that are binding on Indonesia. International human rights standards provide that everyone is entitled to just and favorable conditions of work, rest, leisure, reasonable limitations on working hours, and periodic holidays.<sup>19</sup>

Moreover, the majority of individuals working in the formal sector and therefore benefiting from the regulations on work hours and rest are male, while the vast majority of those working as domestic workers and excluded from these benefits are female. The exclusion of domestic workers from the Bill has a serious discriminatory

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<sup>19</sup> International Covenant of Economic, Social, and Cultural Rights, adopted December 16, 1966, entered into force January 3, 1976, acceded to by Indonesia February 3, 2006, article 7: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: ... (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

impact against women and girls who predominantly perform such work and denies them equal protection of the law.

The Convention on the Elimination of All Forms of Discrimination Against Women obligates governments in Indonesia to ensure the “right to equal remuneration [between men and women], including benefits, and to equal treatment in respect of work of equal value.”<sup>20</sup>

Governments in Indonesia are also obligated by the Convention on the Rights of the Child to regulate the hours and conditions of employment and to ensure that children have adequate time for rest, leisure, and play.<sup>21</sup> In addition, the Indonesian Child Protection Act promises every child the right “to rest and enjoy free time, to mix with other children of his/her own age, to play, enjoy recreation.”<sup>22</sup>

#### Recommendations:

- (1) Ensure that informal workers receive equal rights as formal workers under the Bill, including an eight-hour work day, overtime wages, a weekly day of rest, rest periods during the day, national holidays, and vacation.
- (2) Ensure that all working children between the ages of 15 and 18, including child domestic workers and others in the informal sector, have reasonable hours of work and adequate time for rest, leisure, and education during the workday.
- (3) Provide for effective sanctions for employers who violate the regulations regarding hours of work and rest.

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<sup>20</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, 1249 U.N.T.S. 13, entered into force September 3, 1981, ratified by Indonesia on September 13, 1984, article 11(d).

<sup>21</sup> Convention on the Rights of the Child, article 31:” (1) States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. (2) States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.” Article 32: “(1) States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. (2) States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”

<sup>22</sup>Child Protection Law, No. 23/2002, article 11.

- (4) The city government should also consider additional policy measures that support workers' associations, recreation centers, and labor resource centers, as means of disseminating information about workers' rights, access to services, and improving skills. Such services should particularly be directed at child domestic workers and other child workers.

4. *The Bill does not adequately protect adult and child domestic workers from wage exploitation*

Domestic workers are almost always grossly underpaid for the long hours they are required to work, according to the research of Human Rights Watch as well as other international and Indonesian organizations. Although the Bill ostensibly provides the guarantee that “every worker/laborer is entitled to earn a living that is decent from the viewpoint of humanity,” in practice, minimum wage laws in Yogyakarta are applied only to those in the so-called “formal” sector.

Again, due to the fact that the majority of informal workers are girls and women, the effect of the current draft law would be discriminatory. A number of treaties that Indonesia has chosen to adhere to require that governments pursue equality of opportunity and treatment in respect of employment.<sup>23</sup> The Convention on the Elimination of All Forms of Discrimination Against Women obligates states parties, including Indonesia, to ensure the “right to equal remuneration [between men and women]...and to equal treatment in respect of work of equal value.”<sup>24</sup> Moreover, governments in Indonesia are obligated by the Convention on the Rights of the Child to ensure that all the rights enumerated in the Convention, including the right to be free from economic exploitation, are applied equally to all children irrespective of sex, social origin, or other status.<sup>25</sup>

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<sup>23</sup> See e.g. CEDAW, article 11(d); Convention on the Rights of the Child, article 2(1); ICESCR, article 7; ILO Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted July 29, 1951, entered into force May 23, 1953, ratified by Indonesia August 11, 1958, article 2; and ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, adopted July 25, 1958, entered into force July 15, 1960, ratified by Indonesia July 7, 1999, article 2.

<sup>24</sup>CEDAW, article 11(d).

<sup>25</sup> Convention on the Rights of the Child, article 2(1): “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

## Recommendations:

- (1) Ensure that informal workers are granted equal protections from wage exploitation as formal workers by granting them in the Bill a minimum wage equal to workers in the formal sector.
- (2) Add an article to the Bill authorizing and requiring labor inspectors or other designated inspectors to conduct spot checks of salary payment records in the informal sector.

### *5. Article on contracts for domestic workers needs further clarification*

Human Rights Watch appreciates the intentions behind article 36 of the Bill, which facilitates the creation of formal written contracts between domestic workers and their employers. The negotiation and conclusion of written contracts detailing the rights and obligations of both sides can be beneficial to both parties, as the process helps clearly define the relationship in advance and can serve as an important point of reference. Indeed, Human Rights Watch has previously advocated that Indonesian migrant domestic workers in Malaysia and Saudi Arabia benefit from standard written contracts in order to ensure their better protection.<sup>26</sup>

Human Rights Watch is also aware that a number of Yogyakarta civil society groups that work with domestic workers strongly advocate that all employers be required to enter into written contracts with domestic workers. This practice would be consistent with the best practices of other countries found around the world.

However, Human Rights Watch is also concerned about the interaction between article 36 of the Bill and Indonesia's Civil Code which precludes unmarried individuals under age 21 from forming legally binding contracts, due to their lack of legal capacity.<sup>27</sup>

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<sup>26</sup> See, for example, Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*, Vol. 16, No. 9(C), available at <http://hrw.org/reports/2004/indonesia0704/>; and Human Rights Watch, *"As If I Am Not Human": Abuses against Asian Domestic Workers in Saudi Arabia*, July 2008, available at <http://hrw.org/reports/2008/saudiArabia0708/>. Both of these reports are also available online in Bahasa Indonesia.

<sup>27</sup> Civil Code, article 1330(1) and article 330.

Several options exist in the practices of other countries to redress this problem, and the Committee should consider, in consultation with local domestic workers and civil society groups, which approach would be the most appropriate for Yogyakarta.

In a number of countries, the labor law provides a special exemption from the general rule on capacity when it relates to employment contracts:

- In Costa Rica, the labor law states that children 15-17 years old may enter work contracts, without implying any further emancipation.<sup>28</sup>
- In Belize, children who have reached the minimum age for employment may enter into employment contracts, but no damages may be assessed against children for their breach of contract.<sup>29</sup>
- In Kazakhstan, children who are 16 years or older are allowed by law to enter into employment contracts by themselves. Children who are 15 years old and have completed their compulsory education may also enter into employment contracts, if it is co-signed by a parent or guardian.<sup>30</sup> The labor law forbids any employment contract with a child to perform hazardous work, however.<sup>31</sup>
- In Croatia, a parent or guardian can provide a written authorization allowing a child older than 15 years to enter into a work contract. With this permission, the child then has legal capacity to conclude and rescind the contract. The parent or guardian has the right to limit the authorization and to terminate employment on behalf of the child.<sup>32</sup>

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<sup>28</sup> Labor Code 1943 (Costa Rica), article 46: “[Minors older than 15] shall have the capacity to obtain employment, to receive the agreed payment, and in general, to exercise all the rights and actions that arise from the present Code, from its Regulations and its associated laws ... The freedom of contract in regard to work for those older than 15 will not involve/imply their emancipation.” Article 47: “Contracts related to work of those older than 12 and less than 15 should take place with the respective legal representative, and, failing this, with the National Institute of Childhood.”

<sup>29</sup> Labor Act Chapter 297, 2000 (Belize), article 31: “[A]ny person who is under the age of eighteen years shall be competent to enter into a contract of service otherwise than as an employer: Provided that no damages and no payments...shall be recoverable from a child or young person for a breach of any contract of employment.” Article 54(2): “A young person shall not be capable of entering into a contract except for employment in an occupation approved by a labor officer as not being injurious to the moral or physical development of non-adults.”

<sup>30</sup> Labor Code, 2007 (Kazakhstan), Article 30: “(1) It is permitted to conclude employment contracts with citizens who have reached the age of sixteen years. (2) With the written consent of one parent, guardian or adoptive parent, an employment contract may be concluded with: (a) citizens who have reached the age of fifteen years, in cases when they have received a secondary education in a general educational institution .... (3) In cases determined by clause 2 of this article, the employment contract shall be signed by a parent, guardian or adoptive parent as well as by the minor.”

<sup>31</sup>Ibid., article 26: “Conclusion of an employment contract shall not be permitted ... with citizens under the age of eighteen years for performance of heavy or harmful work, work under harmful (particularly harmful) and (or) hazardous working conditions, as well as for a position and for work envisaging full material liability of the employee for failing to ensure safekeeping of property and other values of the employer.”

<sup>32</sup>Labor Act, 1995 (Croatia), article 22: “(1) If a minor over fifteen years of age is authorized by his or her legal representative to conclude a specific labor contract, this minor shall have legal capacity to conclude and rescind the contract in question and to carry out all the legal actions related to the fulfillment of rights and obligations from this contract or in relation to this contract .... (4) The legal representative may withdraw or limit the authorization referred to in paragraph 1 of this Article or

At a minimum, the Committee should consider reinforcing the protections provided under Indonesia's Civil Code to children who enter into contracts, whereby children retain the right to object to a contract, although adults who have bound themselves by contract with a child cannot later void the contract based on the child's lack of legal competency.<sup>33</sup>

In situations where a contract is found void or is annulled, the child must remain entitled to any unpaid wages and benefits already earned or accrued.

Recommendations:

- (1) Consult with local domestic workers and civil society groups to consider whether a special exemption should be included to allow child domestic workers to enter into employment contracts, and the appropriate form this special exemption should take.
- (2) At a minimum, reiterate that children who enter into contracts retain the right to later object to the terms of the contract, although adults who have entered into a contract cannot excuse themselves from their performance on the grounds that the other party was a child.
- (3) Add a provision to the Bill requiring that in any situation where a contract is found void or annulled, the child is entitled to any unpaid wages and benefits already earned or accrued.
- (4) Require that written contracts specify hours of work and rest each day, weekly day of rest, vacation, wages, types of work, adequate food and accommodations, health care, medical expenses for workplace injuries, length of employment, procedures for payment of wages, social security, and termination of work.
- (5) Require that domestic worker supplier agencies and employers deposit copies of written contracts with the local labor agency.

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terminate employment on the minor's behalf ... (6) The authorization referred to in paragraph 1 of this Article shall be given in writing."

<sup>33</sup> Civil Code, article 1331: "The incompetent individuals mentioned in the previous article may, however, object to the agreement unless such objection is excluded by law. The individuals who are competent to bind themselves cannot invoke the incompetence of the minors ... with whom they have dealt."

- (6) Add an article requiring domestic supplier agencies fully disclose in writing and orally any recruiting or placement fees to both domestic workers and employers prior to recruitment and placement.

Respectfully submitted,

A handwritten signature in black ink that reads "B. Sheppard". The signature is written in a cursive, flowing style with a large initial "B" and a long, sweeping tail.

Bede Sheppard  
Researcher  
Children's Rights Division  
Human Rights Watch