



International
Labour
Organization

▶ **A rapid assessment on
extending social security to
domestic workers**



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extending social security
to domestic workers**

Verite Research

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▶ Table of abbreviations

Abbreviation	Definition
C102	Social Security (Minimum Standards) Convention, 1952 (No.102)
C103.....	Maternity Protection Convention (Revised), 1952 (No. 103)
C183.....	Maternity Protection Convention, 2000 (No.183)
C189.....	Domestic Workers Convention, 2011 (No.189)
CSO	Civil Society Organization
CBSL	Central Bank of Sri Lanka
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DoL	Department of Labour
DW	Domestic workers
EPF	Employees' Provident Fund
ETF	Employees' Trust Fund
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
KII.....	Key Informant Interview
MBO	Maternity Benefits Ordinance
MLB	Maternity Leave Benefits
R201.....	Domestic Workers Recommendation, 2011 (No. 201)
UDHR.....	Universal Declaration of Human Rights
WCO.....	Workmen's Compensation Ordinance No.19 of 1934

► Foreword

Domestic workers provide critical care and home services to millions of people Sri Lanka. Yet, they are typically informally employed, face some of the most arduous working conditions and lack access to social security. This study was conducted to examine the current legal and policy gaps in Sri Lanka in terms of extending social security for domestic workers. The study highlights the legal and practical barriers to extending social security benefits to domestic workers and provides insight into overcoming these barriers through both legislative and non-legislative steps.

The legal recognition of domestic workers as part of the labour force has been part of the rights discourse in Sri Lanka for decades. Domestic workers have not enjoyed recognition thus have been left out of the formal labour market. Domestic workers remain within a virtually invisible form of employment in the informal economy, which exacerbates occupational vulnerabilities they face on a daily basis.

The adoption of the ILO Decent Work for Domestic Workers Convention, 2011 (No. 189) marked a turning point for domestic workers by recognizing domestic work as work for the first time. ILO Convention 189 is at once an instrument of equality and of formalization, as it aims to ensure that domestic workers have rights equal to those of other workers with respect to most areas of labour and social security protection. In relation to social security protection, it calls on Member States to provide the same social security benefits that are available to workers in other sectors. The existing social security schemes in Sri Lanka explicitly exclude domestic workers. Therefore, to bring domestic workers under these schemes will require both legal and administrative reforms.

Domestic workers in Sri Lanka face multiple barriers in accessing effective social security systems. While many of these barriers exist owing to the atypical nature of their employment, some are also due to cultural and social norms. The key findings of this study point to five key practical impediments: lack of recognition of the employment relationship; exclusion from legislation and ambiguity in the law; poor record keeping and lack of digitalized registration system; complex administrative processes that

impede access; and difficulty of monitoring and enforcing compliance.

While virtually all workers have seen their working lives affected by COVID-19, statistics show that domestic workers have suffered significantly more compared to other workers in terms of employment, working time and wages. Among domestic workers, those in informal employment were more affected and domestic workers were much more likely to lose their jobs compared to other workers. Lack of safety nets in times of crisis further exacerbated their vulnerabilities and pushed them deeper into poverty.

The report proposes both short-term and long-term legislative recommendations to overcome the legal and practical impediments to extending social security benefits to domestic workers. The recommendations specifically include the introduction of a new law that comprehensively encompasses all legal aspects of domestic work. The report also proposes that the existing legislation should be amended to include domestic workers.

Domestic work remains a critical economic sector and source of employment across Asia and the Pacific, particularly among women. As they provide direct and indirect care services to households, the demand for domestic work is likely to grow with an aging population in the region. Meeting the demand will require the provision of a sufficient supply of qualified workers, and decent working conditions. As such, there is ample incentive for governments, employers' organizations and workers' organizations in the region to address the current legal and compliance gaps prevalent within the domestic work sector to ensure that domestic workers are allowed equal opportunity and access to comprehensive social security schemes that would provide them adequate coverage in time of crisis and in old age.

It is my hope that the study can provide the necessary policy and legislative elements so that domestic workers are able to avail of social security.

Simrin Singh
Director
ILO Country Office for Sri Lanka and Maldives

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▶ Executive Summary

Domestic workers in Sri Lanka can be susceptible to labour exploitation due to the informal nature of their work and their largely undocumented status. The International Labour Organization commissioned a rapid assessment on extending social security benefits to domestic workers in Sri Lanka. The methodology was primarily comprised of desk-based research which was supplemented with limited key informant interviews with key stakeholders. The report provides a brief analysis of the legal and practical challenges of extending the existing social security benefits for domestic workers. It is presented in four chapters. The first chapter provides insight into domestic work in the Sri Lankan context by providing an overall legal gap analysis with international conventions. It also provides an overview

of six socio-cultural impediments civil society organizations (CSOs) face when advocating for domestic workers. The second chapter is a more focused assessment on the gaps in the law relating specifically to social security benefits in Sri Lanka. This section also provides a brief description of the key institutions involved in the administration of social security benefits. The third chapter provides an assessment of the impediments for extending existing social security benefits to domestic workers. This chapter assesses five key schemes which are elaborated upon below. Finally, the report concludes by providing recommendations to overcome the identified legal and practical impediments for domestic workers to access social security benefits.

▶ Legal gap analysis and socio-cultural aspects

The social security benefits that are covered under the existing legal framework in Sri Lanka are: (1) the Employees' Provident Fund (EPF)/the Employee's Trust Fund (ETF); (2) maternity benefits; (3) worker's injuries and compensation; and (4) gratuity.

The legal gap analysis revealed that Sri Lanka's labour law framework is not consistent with international best practices because domestic workers are specifically excluded from the legal framework. Specifically, domestic workers are repeatedly excluded from the definition of an "employee" or "worker", and domestic work is excluded from the definition of "employment" or "trade".

The report sets out why domestic work in Sri Lanka is largely invisible. It identifies that there are six sociocultural factors that have impeded the advocacy efforts by CSOs. These are : (1) the lack of information, statistics and media coverage on the sector, which has prevented the problems related to domestic work from being identified and this has in turn contributed to the lack of attention from CSOs; (2) the lack of conceptualization of domestic workers as a separate labour sector, which prevents discourse on the issues faced by the sector; (3) the sub-altern status of domestic workers by virtue of their role, which makes it difficult for their employers to empathise with them; (4) desensitization and cultural normalization of domestic workers means there is

resistance to challenging the status quo; (5) domestication of workers who are seen as part of the family, instead of as an employee means there is less discourse on their vulnerability; and (6) confusion about identifying the issues among CSOs on how to categorise the challenges faced by

domestic workers means that they are not always connected to issues that CSOs work on.

The analysis of these socio-cultural aspects as well as the domestic legal framework in Sri Lanka revealed that domestic workers have been distinctively marginalized in Sri Lanka.

► Legal and practical impediments for domestic workers to access social security benefits

The report discusses five key social security schemes: 1) EPF; (2) ETF; (3) gratuity; (4) maternity benefits; and (5) worker's injuries and compensation. These five schemes are then discussed through two lenses: (a) whether domestic workers are covered legally by the scheme; and (b) the practical impediments that should be considered due to the unique features of domestic work in Sri Lanka.

The analysis of the legal and practical impediments to these five schemes revealed that there are five overarching impediments across all five social security schemes.

1. *Undefined and unrecognised employment relationship:* In Sri Lanka there is no specific legal definition of domestic work or a domestic worker. Sri Lanka also lacks a criteria to identify domestic workers working on an occupational basis as opposed to "sporadic or occasional" work as required by our obligations under C189.
2. *Exclusion from legislation:* The EPF, ETF and the Payment of Gratuity Acts expressly exclude domestic workers from their purview. There is ambiguity whether the Maternity

Benefits Ordinance and the Workmen's Compensation Ordinance apply to domestic workers, as they both define a "worker" as being linked to the word "trade" which has a business connotation, and therefore the household environment typically falls out of the notion of "trade".

3. *Poor record keeping:* Maintenance of records of payments made to domestic workers is poor and is usually informal and undocumented. Therefore, it will be difficult to monitor for compliance of wages paid or determining contributions to be paid by the employer.
4. *Complexity of administrative procedures:* The current registration mechanism for EPF and ETF is time-consuming and involves detailed documentation, which may be perceived as a burden for both the household employer and employee.
5. *Difficulty of inspection and monitoring compliance:* Unlike a business establishment, domestic work is performed in a household environment, therefore conducting labour inspections may be difficult due to privacy concerns.

► Recommendations

The report proposes both short-term and long-term legislative recommendations to overcome the legal and practical impediments to extending social security benefits to domestic workers. The recommendations specifically include the introduction of a new law that comprehensively encompasses all legal aspects of domestic work. However, the

introduction of a new law may take time and therefore in the interim the existing legislation should be amended to include domestic workers in their ambit.

A summary of the long-term and short-term recommendations are presented below:

Short-term

- i. Amending existing legislation
 - a. Broad interpretation of the law to include domestic worker: Domestic workers should be brought within the definition of a 'worker' in existing legislation such as the Workmen's Compensation Ordinance and the Maternity Benefits Ordinance.
 - b. Require digitised registration: Household employers employing domestic workers must be required to register with the Grama Niladhari in order to ensure that minimum standards for working and living conditions are adhered to.
 - c. Minimum wage: domestic workers should be brought within the purview of the National Minimum Wage of Workers Act, No. 3 of 2016 or alternatively a Wages Board must be established for domestic workers to ensure that the wages of domestic workers do not fall below a certain threshold.

Long-term

- i. Introduction of a new law which considers the following aspects:
 - a. Minimum labour standards as per Article 7 of C189 in order to identify working hours, daily and weekly rest, minimum wages, overtime payment, social security and paid annual leave will provide essential employment standards for domestic workers.
 - b. Recognition and promoting of a contract of employment similar to the regime used for female migrant workers employed in the housemaid category would complement the new legal framework.
 - c. Supporting ratification of C189 by specifically defining domestic workers to exclude those who work occasionally or sporadically and not on an occupational basis.
- ii. Establishment of a regulatory body to monitor the implementation of the law on domestic workers and establish a complaint mechanism.

The report also proposes recommendations to overcome the practical impediments in each of the social security schemes in Chapter 4 such as:

(1) EPF/ETF:

- ▶ Amending the existing EPF and ETF legislation to include domestic workers.
- ▶ Digitise the registration process to enable employers to easily register workers and make payments through a mobile application.
- ▶ Encourage employers to provide employment contracts to domestic workers that include working conditions and social security.
- ▶ Reduce the administrative burden of employers/employees by providing a single point of collection or payment for both EPF and ETF contributions and have this point of collection integrated with existing systems for utility payments.
- ▶ Offset concerns about extra cost by requiring the government to make a matching contribution (in place of the contribution the employee is expected to make); this will encourage employers to make EPF/ETF contributions knowing the government will make an additional contribution to support the domestic worker. This incentivises the employee to track compliance by the employer as well.
- ▶ Easy and non-confrontational complaint filing procedures must be established: complaints that are made should be investigated, mediated and negotiated by a third party in order to protect the employee who is generally dependent on the employer.

(2) Payment of gratuity

- ▶ Amend the Payment of Gratuity Act to include domestic workers: Section 5(1) of the Payment of Gratuity Act requires the employer to make gratuity payments if the worker has been employed for more than 5 years, and when the employer employs 15 or more workers within the year of termination. While there may be instances where domestic workers have been employed with the same employer for a period exceeding 5 years (first condition), the possibility of a household employer employing a minimum of 15 or more workmen on any day during the period of one year before the termination of the service of the domestic worker (second condition) is unlikely. Therefore, the Act should be amended to declare household workers as a category that falls outside the two primary conditions stipulated in Section 5(1).

- Revise the Payment of Gratuity Act to accommodate part-time workers: The Act must be amended to suit the different employment arrangements that exist with domestic workers and specify how gratuity is to be calculated, for example for live-in or live-out workers.

(3) Maternity benefits

- Expand the definition of “worker” under the Maternity Benefits Ordinance (which is currently ambiguous as to whether the definition extends to domestic workers) to expressly include domestic workers.
- State funded maternity leave benefits for female domestic workers: Requiring employers to bear the full burden of paying maternity leave benefits could result in a reluctance to hire female workers. ‘State funded maternity leave’ which requires the state to bear the cost of maternity leave benefits instead of the employer is considered a best practice in several countries and will increase the economic participation of female employees.
- Granting of tax deductibility by the state of maternity leave benefits as a short-term incentive to employers:

until state funded maternity leave is implemented, an incentive can be offered to employers whereby the state deducts maternity leave benefits paid by employers from private sector taxes.

(4) Employment injury

- Amend the Workmen’s Compensation Act – which is currently ambiguous as to whether it applies to domestic workers – to expressly include domestic workers and amend the definition of “employer” to include a household employer.
- Introduce private insurance schemes for domestic workers financed by the employer. However regulatory oversight from the Insurance Regulatory Commission of Sri Lanka would be required to ensure that insurance companies charge fair premiums.

Overall, the analysis presented in the study provides a brief assessment of the legal and practical barriers to extending social security benefits to domestic workers and provides insight into overcoming these barriers through both legislative and non-legislative steps.

► Introduction

The International Labour Organization (ILO) defines domestic work as “work performed in or for a household or households”.¹ Domestic workers are defined as “any person engaged in domestic work within an employment relationship” and on an occupational basis.² The definition encompasses a broad range of tasks, so long as they are performed in or for a household or households. It also encompasses live-in and live-out domestic workers, those working directly for a household and those working for or through a service provider, and those working on a casual basis, as long as it is on an occupational basis. By this definition, there are at least 75.6 million domestic workers worldwide, and 76 per cent of them are women domestic workers as of 2021.³ This number is steadily increasing in developing countries.⁴

In Sri Lanka, approximately 234,913 people are working as domestic workers, of which over 85,198 of workers are female as of 2018.⁵ The domestic workers in total consist of 2.9 per cent of the entire labour force in Sri Lanka,

wherein female domestic workers form 3.1 per cent of the female labour force in Sri Lanka and male domestic workers form 2.8 per cent of the male labour force in Sri Lanka.⁶ Domestic workers in Sri Lanka can be broadly categorized as live-in workers and live-out workers.⁷ ‘Residential workers’ or ‘live in workers’ are those that take up residence at their place of employment. While, ‘non-residential’ workers or ‘live out workers’ are those who live separately and travel to their place of employment. Live-out workers are often described as ‘daily’ workers as they are paid on a daily basis, however, they are also hired on a ‘weekly’ or ‘monthly’ basis as well.⁸

Amidst the large number of workers that are employed to carry out household work in Sri Lanka, the domestic workers sector is largely unregulated, and undocumented. Due to the absence of a regularised mechanism to recognise domestic work as employment in Sri Lanka, domestic workers are often susceptible to labour exploitation.⁹

1 International Labour Organization, ‘Domestic Workers (The Care Economy)’, (2021) at <https://www.ilo.org/global/topics/domestic-workers/who/lang-en/index.htm> [last accessed on 10 December 2021]

2 International Labour Organization, Article 01 of ‘Convention C189 – Domestic Workers Convention, 2011 (No.189)’, (2021), at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 [last accessed 10 December 2021]

3 International Labour Organization, ‘Making Decent Work A Reality for Domestic Workers: Progress and Prospects Ten Years After the Adoption of the Domestic Workers Convention, 2011 (No. 189)’, (2021) at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf [last accessed on 10 December 2021], p.1-17

4 *ibid.*, p.21

5 *ibid.*

6 *ibid.* p.273

7 International Labour Organization Country Office for Sri Lanka and the Maldives, ‘Domestic Workers and Decent Work in Sri Lanka’, International Labour Organization, (2020), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 11 December 2021], p.1 -3

8 Verité Research, ‘Sri Lanka Domestic Workers – Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.3

9 *ibid.*, p.27

The informality attached to the work carried out by these workers has somewhat taken away the professional aspect of the employment to the extent that employers fail to recognise it as a mode of employment. As such, long hours of work, hard labour, lack of regular wages, leave, medical care, and other benefits are common complaints from domestic workers.¹⁰ Moreover, domestic workers who are predominantly women, often come from historically marginalized communities that originated from India and settled in Sri Lanka's hill country areas.¹¹ A majority of domestic workers are unable to voice their grievances, and as such their vulnerabilities have often been overlooked by legal and policymakers for decades.

Currently, domestic workers in Sri Lanka are not protected by any social security programs. The ILO defines "social security" as the protection that society provides to individuals and households to ensure access to health care, and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.¹² Social security has often been referred to as the 'minimum protective threshold below which human beings could not live and work with dignity'.¹³

The lack of recognition of a domestic worker as an 'employee' or 'workman', through the labour law poses a significant challenge in providing domestic workers access to employment related social security benefits. Therefore, the introduction of a new law or adding amendments to existing legislation is essential if meaningful changes are

to be made to protect the basic rights of the marginalized domestic workers.¹⁴ More importantly, enabling their access to social security schemes will financially secure the domestic workers beyond their age of active participation in the labour market and help them overcome other vulnerabilities in the event of an injury or pregnancy.

Accordingly, in December 2021 the Sri Lankan government announced plans to introduce social security benefits for insurance brokers, journalists, carpenters, masons, as well as laborers and domestic workers in the informal sector.¹⁵ Furthermore, the government expressed its willingness to make essential changes to current labour laws to reflect the most recent trends and requirements in their respective sectors for the benefit of workers.¹⁶

As a primary initiative the government has reportedly commenced developing a system to extend Employees Provident Fund (EPF) and Employees Trust Fund (ETF) benefits for informal sector workers including domestic workers while facilitating the process of formalization by preparing a new registration system of domestic workers.¹⁷ It was reported that these benefits will be introduced by effecting changes to the labour law framework, enabling them to access social security benefits.¹⁸ Furthermore, the government has proposed incorporating domestic workers into the Labour Ordinance. Relevant labour legislation, notably the EPF Act and the ETF Act, are reportedly to be revised in order to safeguard the welfare and security of domestic employees. In addition, the government stated

10 International Labour Organization Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization, (2020), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 11 December 2021], p.21

11 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers-_Employers-Survey.pdf [last accessed on 17 February 2021], p.9

12 International Labour Organization, 'Facts on Social Securities', at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf [last accessed on 13 December 2021], p.1

13 Jean Michel Servais, 'International Standards On Social Security Lessons From The Past For A Better Implementation', Professor, Universities of Liège (Belgium) and Gerona (Spain), (2014) at https://isssl.org/wp-content/uploads/2014/12/Servais_2014_Asian_Conf.pdf [last accessed on 13 December 2021], p.4

14 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.31

15 Irangika Range, 'Social security benefits for several informal sectors', Daily News, (4 December 2021), <https://www.dailynews.lk/2021/12/04/local/266428/social-security-benefits-several-informal-sectors> [last accessed on 13 December 2021]. See also, Pamodi Waravita, 'Labour Minister Nimal Siripala says law will provide workers EPF/ETF', The Morning - Sri Lanka News, (6 August 2021) at <https://www.themorning.lk/cabinet-paper-on-domestic-workers-soon/> [last accessed on 22 December 2021]. See also, 'Govt. proposes amendments to Labour Ordinance to include domestic workers', Daily Ft, (12 August 2021) at <https://www.ft.lk/front-page/Govt-proposes-amendments-to-Labour-Ordinance-to-include-domestic-workers/44-721581> [last accessed on 21 December 2021].

16 *ibid.*

17 Irangika Range, 'Social security benefits for several informal sectors', Daily News, (4 December 2021) at <https://www.dailynews.lk/2021/12/04/local/266428/social-security-benefits-several-informal-sectors> [last accessed on 21 January 2022].

18 *ibid.*

that it intends to establish a wage board for domestic workers.¹⁹

In this context, the ILO has decided to conduct a rapid assessment on extending social security benefits to domestic workers in Sri Lanka. Following the introduction and methodology this rapid assessment has four sections. Chapter 1 will first lay out the legal gap analysis of the existing legal framework in comparison with the international standards, i.e. C.189. It will then highlight some of the socio-cultural aspects that Civil Society Organizations (CSOs) have found to be challenging and hinders their advocacy in the domestic sector. Chapter

2 will identify gaps in the current laws relating to social security benefits in Sri Lanka in comparison with the ILO conventions. The same Chapter will briefly identify the state entities that oversee the administration of the social security schemes. Chapter 3 will discuss in detail the legal and practical impediments in relation to each of the following social security schemes: (i) EPF/ETF, (ii) gratuity, (iii) maternity leave benefits, and (iv) employment injury. Under each scheme, the legal impediments and other practical impediments have been distinctively identified. Chapter 4, will propose possible solutions and recommendations for legal as well as the other practical impediments identified in Chapter 3.

19 'Govt proposes amendments to Labour Ordinance to include domestic workers', Daily FT, (12 August 2021) at <https://www.ft.lk/front-page/Govt-proposes-amendments-to-Labour-Ordinance-to-include-domestic-workers/44-721581> [last accessed on 13 December 2021].

See also, Irangika Range, 'Social security benefits for several informal sectors', Daily News, (4 December 2021) at <https://www.dailynews.lk/2021/12/04/local/266428/social-security-benefits-several-informal-sectors> [last accessed on 13 December 2021].

See also, Pamodi Waravita, 'Labour Minister Nimal Siripala says law will provide workers EPF/ETF', The Morning - Sri Lanka News, (6 August 2021) at <https://www.themorning.lk/cabinet-paper-on-domestic-workers-soon/> [last accessed on 22 December 2021].

▶ Methodology

The methodology is comprised primarily of a desk-based review. This desk-based research has been supplemented where possible with limited primary data gathered through key informant interviews (KIIs) identified in consultation with the ILO. These interviews include the Department of Labour, the ETF Board, Office of the Commissioner for Workmen's Compensation, EPF Department at the Central Bank of Sri Lanka, an Attorney-at-law specializing in labour law, members of the academia, and two domestic workers' union representatives. Interviews were conducted from December 2021 until February 2022.

This study was commissioned by ILO as a rapid assessment in the form of a situational analysis of Sri Lanka. Hence, it will be outside the scope of this study to lay out a lengthy overview of all the legal and policy aspects of existing systems in Sri Lanka relating to domestic workers or to identify an exhaustive list of practical impediments hindering their access to social security benefits. Therefore, the study will identify key legal/policy aspects relating to social security benefits and will identify key practical impediments.

▶ 1. Domestic work in the Sri Lankan context

This Chapter first identifies the gaps in the existing legal framework in comparison to the international conventions on domestic workers. The legal gap analysis will be followed by a description of socio-cultural aspects

surrounding the domestic work sector in Sri Lanka. Combined, these two sections are meant to provide a broad overview of domestic workers in Sri Lanka.

▶ a) Legal gap analysis with the international conventions

Sri Lanka is a party to a number of international conventions that promote protection of human rights, decent working conditions, protect the rights and freedoms of workers, and ensure that workers are treated with respect across

all sectors of work. Table 1 below will identify some of the key international conventions Sri Lanka has ratified and the salient provisions therein.

▶ Table 1: Relevant international standards

International convention	Ratification status	Salient provisions
The Universal Declaration of Human Rights (UDHR)	Ratified by Sri Lanka.	Article 22 Everyone has the right to the “realization... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality” Article 23 Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests. Article 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

International convention	Ratification status	Salient provisions
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Ratified	Article 7 Everyone has the right to enjoyment of just and favourable conditions of work, which ensures fair wages without discriminations and a decent living for them and their families.
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Ratified	Article 11 (1) (d) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, in particular; the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. Article 11 (2) (a) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

In addition to the above, Sri Lanka is also a party to a number of ILO international conventions such as the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87); the Equal Remuneration Convention, 1951 (No. 100); the Minimum Age Convention, 1973 (No. 138); and the Maternity Protection Convention (Revised), 1952 (No. 103). The rights and obligations embedded in these conventions relate to domestic workers as well.²⁰

In addition to the above international instruments, ILO Domestic Workers Convention, 2011 (No. 189) along with Recommendation No. 201, stipulate the recognized international standards to provide domestic workers

basic protection in their employment. Convention No. 189 specifically aims at providing domestic workers rights no less favourable than those that are available to other workers.²¹ Recommendation (No. 201) provides practical guidance on legal and other measures to implement the rights and principles stated in the convention.²² Although Sri Lanka is yet to ratify this Convention, it has been used as a benchmark because it is the most comprehensive. The existing legal gaps in comparison to Convention No. 189 and Recommendation No. 201 has been identified in detail in Table 2 below.

20 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.10

21 Article 14, C189 - This includes, inter alia, that "domestic workers should enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity" and also refer to Article 14.1 - "Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity."

22 International Labour Organization Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization, (2020) at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 12 July 2022], p.1

Legal Gap analysis with Convention No. 189

► Table 2: Convention No. 189 - Gap analysis

Key category	C.189/ R.201 – Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011	Relevant Sri Lankan law	Analysis
Payment of wages	<p>Article 11 of the C.189 states that, each Member should take measures to ensure that domestic workers enjoy minimum wage coverage while ensuring gender equality.</p> <p>Article 12 elaborates the modes of payments while ensuring that “in kind payments” could be offered only with the consent of the worker, for their personal use and advantage, and that the monetary value assigned to them is just and reasonable.</p>	<p>The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954.</p> <p>The Wages Boards Ordinance No. 27 of 1941.</p> <p>National Minimum Wages Act, No. 3 of 2016 (as amended)</p>	<p>The Shop and Office Act provides protection for employees employed in or about the business of a shop or office.</p> <p>Domestic workers are excluded from the protection of this Act.</p> <p>The Wages Boards established under the Ordinance would regulate the terms and conditions of the employees of “trade”. However, the term ‘trade’ denotes a commercial facet and cannot be interpreted to include “domestic services”.²³</p> <p>Currently domestic workers also do not have a wages board to regulate their minimum wages.²⁴</p> <p>National Minimum Wages Act prescribes the minimum monthly or daily wage or salary entitled to by a worker.</p> <p>The National Minimum Wage is defined as (i) the contractual wage or salary of the worker or the wage prescribed under the Wages Boards Ordinance for the industry or service to which the worker belongs; and (ii) wages or basic salary together with the cost of living allowance, special living allowance or any other similar allowance.</p> <p>However, the Act explicitly excludes “domestic servants” from the definition of a “worker”. In the Act “worker” means, “any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship... and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time and includes any person whose services have been terminated but does not include a domestic servant”.²⁵</p>

23 *ibid*, p.23

24 ‘Govt proposes amendments to Labour Ordinance to include domestic workers’, Daily FT, (12 August 2021) at <https://www.ft.lk/front-page/Govt-proposes-amendments-to-Labour-Ordinance-to-include-domestic-workers/44-721581> [last accessed on 13 December 2021].

25 Section 14, National Minimum Wages Act, No. 3 of 2016 (as amended)

Key category	C.189/ R.201 – Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011	Relevant Sri Lankan law	Analysis
<p>Minimum Age of employment</p>	<p>Article 4 states that each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.</p> <p>Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education or interfere with opportunities to participate in further education or vocational training.</p>	<p>The Employment of Women, Young Persons and Children Act, No. 47 of 1956 (as amended)</p> <p>The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954</p>	<p>The Employment of Women, Young Persons and Children Act was amended in 2021²⁶ to raise the minimum age of employment from 14 to 16. According to the new amendment a child between the age of 16 – 18 could only be recruited for employments which does not pose a threat to his/her life, health and education.</p> <p>The term “Young person” is defined as “a person who has attained the age of sixteen years but is under the age of eighteen years”. In addition to that the term “child” was defined as a person who is under the age of sixteen years.</p> <p>Further part III of the Act provides for employment other than in Industrial Undertakings and at Sea. Section 13 of Part III places restrictions on a child being employed except in accordance with the provisions of Part III of the Act. Section 13(2) identifies such employment as an offence.²⁷</p> <p>Section 17 of the Act restricts anyone from employing a child in such a manner as to prevent the child from attending school in accordance with the provisions of any written law. Further Section 17(1) restricts employing a child in contravention of any restrictions imposed by the Commissioner of Labour under Section 15.</p> <p>The Employment of Women, Young Persons and Children Act does not explicitly exclude domestic workers from its coverage and covers employment beyond industrial undertakings. Consequently, the Act may be interpreted to include domestic workers within its purview.</p> <p>Section 10 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act was amended to restrict employing a person who has not attained the age of sixteen. However, the Act excludes domestic workers from its protection.</p>

26 Employment of Women, Young Persons and Children (Amendment) Act, No. 2 of 2021

27 Section 13 (2) Where a child is employed in contravention of the provisions of subsection (1) the employer or the person (other than the child employed) to whose act or default the contravention is attributable shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate be liable to a fine not exceeding ten thousand rupees or imprisonment of either description for a period not exceeding twelve months or to both such fine and imprisonment and in addition be ordered to pay compensation of such amount as may be determined by the court, to the child in respect of whom the offence was committed.

Key category	C.189/ R.201 – Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011	Relevant Sri Lankan law	Analysis
Social security	<p>Article 14 of C.189 states that in line with the national laws and regulations and with due regard for the specific attributes of domestic work, member states should ensure that domestic workers enjoy conditions that <i>are not less favourable</i> than those applicable to workers generally in respect of social security protection, including maternity benefits.</p>	<p>The Employees’ Provident Fund Act No. 15 of 1958 (EPF Act) The Employees’ Trust Fund Act No. 46 of 1980. The Payment of Gratuity Act No. 12 of 1983</p>	<p>Both EPF and ETF Acts do not cover domestic workers. The EPF Act only applies to covered employments.²⁸ Covered employment, within the meaning of the EPF Act, means an employment declared by regulation (through a Gazette notification) to be a covered employment. Domestic workers do not fall within the ambit of covered employments.²⁹</p> <p>The ETF Act specifically excludes “domestic servants” in any household from the protection offered by the Act.³⁰</p> <p>The Payment of Gratuity Act expressly excludes domestic workers. It provides in section 7 (a) that an employer’s liability to provide gratuity would be excluded when a workman was employed as a domestic servant or as a personal chauffeur in a private household.</p> <p>Therefore, current Sri Lankan labour laws do not facilitate social security benefits for domestic workers.</p>

28 Section 8(1), Any employment, including any employment in the service of a corporation whose capital or a part of whose capital is provided by the Government, may by regulation be declared to be a covered employment.

29 The Website of Employers’ Federation of Ceylon (EFC), ‘Employees’ Provident Fund Regulations, No.15 of 1958’, at https://employers.lk/wp-content/uploads/2021/03/2_Employees-Provident-Fund-Regulations-1958.pdf [last accessed on 13 December 2021].

30 ‘Extraordinary Gazette No.171/2 of 14 December 1981’, at https://www.velaiththalam.lk/images/pdf/labor_laws/social_security/Employees-Trust-Fund-Act-Regulations.pdf [last accessed on 13 December 2021].

Key category	C.189/ R.201 – Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011	Relevant Sri Lankan law	Analysis
<p>Maternity Benefits</p>	<p>Article 14 of C.189 exclusively recognizes maternity benefits as a condition that should be enjoyed by the domestic worker. The employers should consider the special nature of the domestic work and make sure that workers enjoy equal benefits as normal workers.</p>	<p>The Maternity Benefits Ordinance No. 32 of 1939.</p> <p>Section 3 of the Ordinance provides paid maternity leave of (i) 12 weeks, i.e. 2 weeks prior to the confinement, and 10 weeks immediately after the delivery, if the confinement results in the issue of a live child, (ii) 6 weeks, i.e. 2 weeks up to and including the day of her confinement and 4 weeks immediately following that day, if the confinement does not result in the issue of a live child.</p> <p>Section 10A prohibits the employer from giving a notice of dismissal within such authorized maternity leave period.</p> <p>Section 12B of the Ordinance also extends its protection towards the post-natal period. The section provides nursing mothers two nursing intervals if the child is under one year of age.</p> <p>The Maternity Benefit Ordinance only applies to employees who work in a “Trade.”</p> <p>As such, the Ordinance covers pregnant females employed on a wage in any trade, industry, business <i>undertaking, occupation,</i> (emphasis added) profession, or calling.</p>	<p>Currently, the Ordinance does not explicitly apply to domestic workers from the definition of ‘trade’. The term ‘trade’ could potentially permit a domestic worker on the basis that she engages in an ‘occupation’ or an ‘undertaking’³¹</p> <p>It is ambiguous whether the maternity benefits could be extended to domestic workers.</p> <p>However, the term ‘trade’ is interpreted to include domestic workers in other legislation.</p> <p>For example, the Trade Union Act, No. 14 of 1935 clearly states that domestic workers are capable of forming a trade union. So this Act recognizes domestic workers as workmen capable of forming a trade union.</p> <p>So there is inconsistency between the Maternity Benefits Ordinance and the Trade Unions Act in terms of the definition given to a domestic worker.³²</p> <p>Moreover, the Maternity Ordinance is drafted based upon the ILO Convention No.103, which was ratified by Sri Lanka. The Ordinance was applicable to women workers employed in any ‘trade’ in accordance with the ILO Convention No. 103.^{33 34}</p> <p>However, Sri Lanka is yet to ratify the subsequent ILO Convention on maternity benefits, ILO Convention No. C183.</p> <p>The Convention No. 183 supersedes Convention No. 103 and extends its protection to <i>all</i> employed women, including those in atypical forms of dependent work.³⁵</p> <p>As such, the Sri Lankan Maternity Benefits Ordinance does not reflect the wider definition under Convention No. 183 in terms of the definition of ‘trade’.</p>

31 Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.18

32 *ibid*, p.23

33 Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.23

34 *ibid*, p.23

35 Article 2 of C183 at <https://www.lawnet.gov.lk/c183-maternity-protection-convention-2000-2/> [last accessed on 12 December 2021].

Key category	C.189/ R.201 – Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011	Relevant Sri Lankan law	Analysis
Hours of work	<p>Article 25(1) of the R.201³⁶ states that concerns of domestic workers should be taken into consideration during the context of more general efforts to reconcile work and family responsibilities.</p> <p>Article 10 states that each Member State should take steps to ensure that domestic workers are treated equally to other workers in terms of normal working hours, overtime pay, daily and weekly rest periods, and paid annual leave, in accordance with national laws, regulations, or collective agreements, taking into account the unique characteristics of domestic work.</p> <p>Further Article 10 (2) states that workers should be allowed at least 24 hours rest for a week.</p> <p>Periods during which domestic workers are not free to spend their time as they wish and remain at the disposal of the household in order to respond to possible calls would be regarded as hours of work considering the national laws, regulations, or collective agreements according to Article 10 (3).</p>	<p>Shop and Office Employees (Regulation of Employment and Remuneration) Act (No. 19 of 1954).</p> <p>The Act specifies that the normal period during which any person may be employed in the business of any shop or office— (a) on any one day shall not exceed eight hours; and (b) in any one week shall not exceed forty-five hours.</p> <p>Wages Boards Ordinance, No. 27 of 1941.</p> <p>As per Section 24, every Wages Board should determine the fixed number of hours constituting a normal working day or a normal working week, depending on the nature of the work that particular wages board is established. However, such working hours are subject to the condition that it should not exceed nine hours (including the meal break of one hour) and in any case must not exceed 48 hours per week.</p> <p>Factories Ordinance No. 45 of 1942. (Regulates Night work)</p> <p>The Factories Ordinance makes provisions for the safety and welfare of workers in factories.</p> <p>These provisions also include regulations of the working hours for women at night in a factory or industrial undertaking. Section 67 A of the Act permits a woman to work in night hours. Section 67A (2) presents the conditions for employing a woman at night, in a factory setting.</p> <p>These conditions clearly declare that the night shift should be a voluntary undertaking by a woman.³⁷</p> <p>Secondly in case of employing a woman for work after 10 p.m. at night, the occupier of the factory should obtain a prior sanction in writing from the Commissioner of the Labour.</p> <p>Section 67A (2) I prohibits employing a woman who had worked a day shift from being employed again for a night shift on the same day. The Act also requires female wardens to be appointed to see to the welfare of woman workers who work at night.³⁸</p>	<p>Presently there are no applicable labour laws in Sri Lanka that control working hours in the domestic sector. Since domestic workers are exempted from the Shop and Office Act and the Wages Boards Ordinance, employers are not required to follow the laws' mandated for rest intervals, yearly leave, or maximum working hours.</p> <p>The provisions of the Factories Ordinance provide better coverage for women who work night hours. However, this Act is only applicable to factories according to Section 124 of the Ordinance.³⁹</p> <p>Consequently, these provisions cannot be utilized to protect domestic workers who work at night hours.</p>

36 'R201 - Domestic Workers Recommendation, 2011 (No. 201)', (ilo.org), at https://www.ilo.org/dyn/normlex/en/fp=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:R201 [last accessed on 12 December 2021].

37 Section 67A (2) (a) - "no woman shall be compelled to work at night against her will"

38 Section 67A (2) (e) - "there shall be appointed female wardens to see the welfare of woman workers, who work at night"

39 Section 124 - "Save as in this Ordinance otherwise expressly provided, the provisions of this Ordinance shall apply only to factories, as defined by this Ordinance, but shall, except where the contrary intention appears, apply to all such factories"

Key category	C.189/ R.201 – Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011	Relevant Sri Lankan law	Analysis
Living conditions	<p>Article 7 of the C.189 states that the employer has the responsibility to inform workers in an understandable manner about the conditions of the work. This also includes the provision of food and accommodation, if applicable.</p> <p>Article 6 of the C.189 states that each Member shall take steps to ensure that domestic employees, like all workers, have fair terms of employment, acceptable working conditions, and, if they live with the family, decent living arrangements that respect their privacy.</p>	<p>The Workmen's Compensation Ordinance No. 19 of 1934.</p> <p>This Ordinance provides compensation for the injuries sustained during the employment. The ordinance in its Schedule I provides the list of injuries deemed to result in permanent / partial disablement. This list includes permanent and incurable loss of limbs or mental capacity causing fatal incapacity to work.</p> <p>These injuries would be covered by compensation according to Section 3 of the Act.⁴⁰</p> <p>Further Schedule III of the Act provides a list of diseases that are covered.⁴¹</p> <p>Schedule IV of the Act provides the exact amount of compensation an employee is entitled to.⁴² The main factors considered are:</p> <ul style="list-style-type: none"> • Monthly wages of the workman injured. • The degree of the disablement suffered • Compensation method. 	<p>Domestic workers' living conditions in Sri Lanka are currently unregulated by labour legislation.</p> <p>The Workmen's Compensation Ordinance No. 19 of 1934 provides protection to workmen who have entered into or work under a contract with an employer for the purposes of his trade or business in any capacity.⁴³ This clearly illustrates that the Ordinance intends to cover a business/corporate undertaking rather than an individual employer.⁴⁴</p> <p>Thus, it is ambiguous whether the protection offered by the Ordinance could be expanded to domestic workers.</p>
Dispute resolution	<p>Article 17 of C.189 states that each member state must develop effective and accessible complaint channels as well as ways to ensure that national laws and regulations protecting domestic workers are followed.</p> <p>Article 17(2) points out that in line with national laws and regulations, each Member shall design and implement measures for labour inspection, enforcement, and sanctions that take into account the unique characteristics of domestic employment.</p>	<p>Industrial Dispute Act No. 43 of 1950 (as amended)</p> <p>Section 31B gives a workman or a trade union which represents such workman the right to apply to the Labour Tribunal for relief.</p> <p>Section 33(3) of the Act specifically identifies domestic workers by indicating that in an unlawful termination, "domestic servants" could be paid compensation in lieu of reinstatement.</p>	<p>Sri Lankan law is only partially compliant with Article 17 (1).⁴⁵</p> <p>This is because, the jurisdiction of the Labour Tribunal in relation to domestic workers is limited. Under section 31B (1)⁴⁶ of the Act, domestic workers are only entitled to make complaints against the termination of their service and 'conditions of labour'.</p> <p>However, the Industrial Disputes Act does not define such 'conditions of labour' in the context of domestic works.</p> <p>Further, Sri Lankan law is also inconsistent with Article 17(2) of the C189. As there are no provisions promoting labour inspections for the domestic work sector.</p>

40 Section 3 - "If personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Ordinance"

41 Section 4 - "Employer's liability to pay compensation for certain diseases contracted by a workman"

42 The Schedule IV of the Workmen's Compensation Act.

43 Section 2 of the Workmen's Compensation Act.

44 Verité Research, 'Sri Lanka Domestic Workers - Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021].

45 *ibid*, p.29

46 Section 31B (1) - A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to a labour tribunal for relief or redress.

► b) Invisibility of domestic work in Sri Lanka

This section provides a general overview of six socio-cultural aspects that have been identified as impediments in advocacy efforts by civil society organisations (CSOs) in relation to domestic workers. Verité Research identified these findings during a previous study conducted on domestic workers that also captured the views and opinions of CSOs.⁴⁷ Although the following has been included for completeness of the rapid assessment, they are not necessarily characteristics of the domestic work sector. These six aspects provide an overview of why the issues and problems associated with domestic work have remained largely invisible in the Sri Lankan advocacy space.

- a. **Lack of information and media coverage** - Since the domestic worker sector is an atypical environment which is largely informal, there is a lack of statistics, research and media coverage about the sector. The absence of information has also resulted in CSOs being less enthusiastic in covering the issues in this sector.⁴⁸ Verité Research's survey has found that the lack of research and statistics on domestic workers leads to inadequate identification of the precise nature and extent of problems related to domestic work.⁴⁹ Media silence on the issue has also contributed to the lack of attention from civil society.⁵⁰ The lack of media coverage was described as relegating the domestic workers to an 'invisible status in people's lives'.⁵¹
 - b. **Lack of conceptualisation** - The inability to conceptualise domestic workers as a distinct labour group or sector over time has also resulted in concealing the fact that domestic workers have collective grievances. This has somewhat prevented civil society groups from measuring the impact of those grievances. This hesitance to accept domestic work as a form of employment has pre-empted the sector receiving any training, or skills developments that usually attaches professionalism. Since CSOs are often at the centre of dialogue, debate and reform, the study noted that the lack of conceptualizing perhaps
- inhibits discourse on the cultural, legal and socio-political status of domestic workers.⁵²
- c. **Sub-altern status** - The unique subordinate or inferior role the domestic workers play in a household has attached a sub-altern status to them. This includes, class and caste-based discrimination; the unique master-servant dynamic that underscores the relationship between the domestic worker and the employer; and the domestic worker's hierarchy of needs (i.e. a 'hand-to-mouth' existence) that permits little time and resources for organizing or self-development.⁵³ The interviewees that participated in the Verité Research study expressed that the immense class gap and prejudice that exist between upper, upper-middle class and lower-middle class inhibits the struggle for rights. As such, the fact that employers belong to a different upper class makes them less capable of empathising with domestic workers.⁵⁴
 - d. **Desensitisation and cultural normalisation** - Since domestic workers have traditionally existed within Sri Lankan culture, this has generated a normalization of the informality of domestic workers and a resistance to challenging this status quo. This normalisation may not necessarily be rationally related to any particular tradition or historical practice but may simply be an aversion to change by employers, policy makers and the society at large. The Verité Research study noted that although there is conversation around informal sector workers, women who work in the home and agricultural workers, there is seldom public conversation around domestic workers.⁵⁵
 - e. **Domestication of the workers** - Due to the type of work that is being conducted by domestic workers, they are often conceptualised as being part of the private (family) domain and therefore, rarely thought of as employees in an employment relationship. This conceptualisation therefore makes the issues/problems associated with

47 Verité Research, 'Sri Lanka: Domestic Workers and Civil Society - In sight but out of mind', at <https://www.veriteresearch.org/publication/sri-lanka-domestic-workers-and-civil-society-in-sight-but-out-of-mind/> [last accessed on 22 December 2021].

48 *ibid*, p. 15

49 *ibid*.

50 *ibid*.

51 *ibid*, p.16

52 *ibid*, p.17

53 Verité Research, 'Sri Lanka: Domestic Workers and Civil Society - In Sight but out of mind', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021].

54 *ibid*, p. 20

55 *ibid*, Quote from The Asia Foundation, p.17

their work 'unsuitable for public engagement'.⁵⁶ For instance, some CSOs opined that, '*the way they would have viewed themselves in more feudal settings was not as domestic workers but as part of an extended family*'.⁵⁷ As such, there is less public discourse on the vulnerability of domestic workers as they are considered more of a family member than as an employee.⁵⁸

f. Confusion about identifying the issue- There is also general confusion among CSOs over the characterization of the challenges within the domestic worker sector, i.e. whether they are 'women's issues', 'labour issues', a 'rights issue' or a 'development issue'.⁵⁹ Typically CSO's advocacy work is based around a specific thematic area or issue-based. Domestic workers are not always seen as connected to the issues that CSOs are working on. This is linked to the lack of conceptualisation mentioned above in that CSOs may not view domestic workers as a vulnerable group. Therefore, the inability to identify domestic workers as a distinct group within an employment relationship, who have faced specific

exclusions, could prevent domestic workers' from being incorporated within the mandates of CSOs and other policy makers.⁶⁰

The above analysis provides sufficient justification to conclude that domestic workers are a distinctively marginalised sector, from both a legal as well as a socio-cultural perspective in Sri Lanka. The six barriers identified above are important to keep in mind when considering why domestic workers have largely been invisible from advocacy efforts by CSOs in Sri Lanka. The vulnerability of domestic workers and the exclusion from the legal framework could be addressed by bringing domestic workers within the social security schemes in Sri Lanka. By extending social security to domestic workers and bringing them under the legal framework this also ensures decent work for domestic workers. There are multiple challenges when assessing the extension of social security benefits for domestic workers. As such, the next section will explore the possibilities for domestic workers in Sri Lanka in obtaining access to existing social security benefits.

56 *ibid*, p.18

57 *ibid*, Quote by Dr. Saravanamuttu, p.14

58 *ibid*, Quote by representative of Centre for Poverty Analysis.

59 Verité Research, '*Sri Lanka: Domestic Workers and Civil Society - In sight but out of mind*', at <https://www.veriteresearch.org/publication/sri-lanka-domestic-workers-and-civil-society-in-sight-but-out-of-mind/> [last accessed on 22 December 2021], p.18

60 *ibid*.

► 2. Social security – the legal gaps and situational analysis of Sri Lanka with respect to social security of domestic workers

This chapter provides a more focused assessment on social security benefits for domestic workers. It has been divided into two overarching sections. The first section identifies the international standards on social security and compares this with Sri Lanka's legal framework to identify the legal gaps that exist. This section identifies where Sri Lanka not only falls short when it comes to domestic workers but also in relation to the formal sector's social security protection. It identifies that the existing social security schemes in Sri Lanka explicitly exclude domestic workers. Therefore, to bring domestic workers under these schemes, it will require both legal and administrative reforms. In the second section, a brief description of the government entities that administer each social security scheme is provided along with a summary of the administrative procedures involved. The second section provides an overview of the legal and practical challenges with respect to four key social security schemes: (i) EPF/ETF; (ii) payment of gratuity; (iii) maternity benefits and (iv) employment injuries. This section is divided into two sub-sections on each of the four schemes and identifies (a) whether domestic workers are included in the scheme; and (b) the practical impediments that should be considered due to the unique features of domestic work in Sri Lanka.

The basic premise emphasized by the Convention No. 189 - Domestic Workers Convention, 2011 (No. 189) in relation to social security protection is that domestic workers should be provided the same social security benefits that are available to workers of other sectors. As such, Article 14 of Convention

No. 189 emphasizes that members should take appropriate measures, as per its national laws, that ensure domestic workers enjoy conditions that are not less favourable than other sectors of workers, in relation to social security protections. Such measures could be applied in a progressive manner, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.⁶¹ As such the legal and practical impediments noted in Chapter 3 below will attempt to identify how domestic workers in Sri Lanka could be brought under the same social security protections offered to workers of other sectors.

In relation to social security there are two important international conventions, namely the Social Security (Minimum Standards) Convention, 1952, (No. 102), and ILO Social Security Protection Floors Recommendation, 2012 (No. 202).

The Social Security (Minimum Standards) Convention, 1952 (No. 102), establishes the minimum standard of social security protection to be provided for by social security schemes. This basic criteria was developed after taking into account both qualitative and quantitative benchmarks provided by the ILO.⁶² This Convention identifies nine major types of benefits that social security programs are required to provide. These are medical care, sickness, unemployment, old-age benefit, employment injury, family benefit, maternity benefit, invalidity benefit, and survivor's benefit.

61 Article 14, C.189 states that "Each member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity."

62 International Labour Organization, 'Minimum requirements in ILO social security standards', (2019), at <https://www.social-protection.org/gimi/RessourcePDF.action?id=55516> [last accessed on 13 December 2021].

The ILO Social Security Protection Floors Recommendation, 2012 (No. 202) is the recommended labour standard that member states can use as a benchmark. The Recommendation No. 202 provides guidance to member states on building comprehensive social protection systems and extending social security coverage by prioritizing the establishment of national floors of social protection accessible to all in need.⁶³ The principles set out by this Recommendation underlies the state's responsibility on extending social protection to all sectors of the society, including workers in the informal sector.⁶⁴ As such, the principles embedded in this Recommendation have also been taken into consideration in formulating recommendations set out in Section 6.

The Convention No. 102 covers nine branches of social security that could be extended to workers such as sickness benefits, family/child benefits, survivors' benefits, unemployment benefits and others. However, the extension of these types of social security benefits are rarely recognised under the current legal framework in Sri Lanka even for the majority of the formal sector employees. Therefore, for the purpose of this assessment, only social security benefits that are covered under the existing legal framework i.e. EPF/ETF, maternity benefits, worker's injuries and compensation have been chosen for the gap analysis discussed in Table 3.

63 International Labour Organization, 'The ILO Social Security Protection Floors Recommendation, 2012 (No.202)', at https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205341/lang--en/index.htm [last accessed on 21 July 2022]

64 *ibid.*

► a) Legal gap analysis with Convention No. 102

► Table 3: Gap analysis against Convention No. 102

Categories	Convention No. 102	Sri Lanka law	Analysis
Old age benefit	<p>Covered by Articles 25-30</p> <p>Survival beyond a prescribed age (65 or higher according to working ability of elderly persons in country)</p> <p>Expected benefits:</p> <p>Periodic payments: at least 40 per cent of reference wage;</p> <p>Coverage provided for 50 per cent of all employees</p> <p>or</p> <p>Economically active people forming not less than 20 per cent of residents</p> <p>or</p> <p>All residents under the prescribed threshold.</p> <p>Protection would be provided from prescribed age to the death of beneficiary.</p>	<p>EPF and ETF Acts</p> <p>EPF- contributory scheme from employer as well as employee</p> <p>ETF- Employer contributory scheme</p> <p>Social Security scheme – voluntary contributory scheme for self employed.</p> <p>The Social Security Board was established under the Social Security Board Act, No. 17. of 1996. The main function of this Board was to establish a pension and Social Security Benefit Scheme for self-employed persons.</p> <p>The scheme established under this Act provides the following benefits according to section 8 of the Act.⁶⁵</p> <p>a. a periodical pension of a prescribed amount;</p> <p>b. in cases of permanent partial disablement, a lump sum gratuity or if he continues to pay his contributions after disablement, a lump sum gratuity and a pension when it becomes due</p> <p>c. in cases of permanent total disablement, a lump sum gratuity or a periodical allowance of a prescribed amount</p> <p>d. a death gratuity</p> <p>Payment of Gratuity Act, No. 12 of 1983 – Employer contributory scheme</p> <p>According to the Payment of Gratuity Act, the employer is liable to pay gratuity to workmen for the termination of the service, provided the workman in question has worked for five years.⁶⁶</p> <p>Section 7 (a) of the Act explicitly excludes workers employed as domestic servants or personal chauffeurs in a private household from the benefits offered by the Act.⁶⁷</p>	<p>The EPF and ETF schemes do not provide protection to domestic workers.</p> <p>The social security schemes by the Social Security Board provides protection for all informal employees, including domestic workers. However, this is a voluntary scheme. International experiences suggest that voluntary participation in social security schemes have rarely proven successful or effective.⁶⁸ Furthermore, the C.189 Convention recognizes that domestic work is work within an employment relationship. As such, schemes for self-employed workers are not considered for evaluation in this report.</p> <p>According to the regulations of the Social Security Board Act⁶⁹ any person who is not entitled to receive a pension or anyone who is not holding a pensionable post would become eligible for the scheme. During the KIIs it was intimated by the Board that, currently there is only one pension scheme under this Act available for all persons above the age of 18 that provides old age benefits.</p>

65 Section 8(1), Social Security Board Act, No.17 of 1996

66 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf>, [last accessed on 12 December 2021], p.16

67 Section 7(a), Payment of Gratuity Act, No.12 of 1983

68 International Labour Organization, 'Extending Social Security to Workers in the Informal Economy: Lessons from International Experience', at <https://www.social-protection.org/gimi/Emodule.action?id=59> [last accessed on 21 January 2022]

69 Regulation No 04, Extraordinary Gazette Notification from Government of Sri Lanka – No. 1464/5 dated 25 September 2006, at <http://www.ssb.gov.lk/Files/Gazzet2006E.pdf> [last accessed on 12 December 2021].

Categories	Convention No. 102	Sri Lanka law	Analysis
Employment injury protection	<p>Covered by Articles 31-38</p> <p>Ill health and/or incapacity for work due to work-related accident or disease, resulting in suspension of earnings; total loss of earning capacity or partial loss at a prescribed degree, likely to be permanent, or corresponding loss of faculty; loss of support for the family in case of death of the breadwinner.</p> <p>The coverage provided for at least 50 per cent of all employees and their wives and children.</p> <p>Expected benefits:</p> <p>Medical care and allied benefits: General practitioner, specialist, with a view to maintaining, restoring or improving health and ability to work and attend to personal needs.</p> <p>Cash benefits: Periodic payments: at least 50 per cent of reference wage in cases of incapacity to work or invalidity; at least 40 per cent of reference wage in cases of death of breadwinner.⁷⁰</p> <p>Article 37</p> <p>Benefits provided in case of morbid conditions (Art 34) and workers loss of capacity to work (Art 36) should be covering a person who was employed at the time of the accident if the injury is due to accident or at the time of contracting the disease if the injury is due to a disease.</p> <p>Article 32</p> <p>In case of a widow, the right to benefit may be made conditional on her being presumed, in accordance with national laws or regulations, to be incapable of self-support.</p>	<p>The Workmen's Compensation Ordinance No.19 of 1934 ("WCO") – Employer's liability</p> <p>Provides compensation for employment injury.</p> <p>An employment injury is defined as a disablement sustained as a result of an employment-related accident that limits the workman's earning potential; hence, temporary and permanent disability, as well as death due to work-related accidents, are covered in this Act.⁷¹</p> <p>Widows' and Orphans' Pension Fund Ordinance No. 1 of 1898 –</p> <p>Employee contributory scheme</p> <p>Provides a pension to the widows/widowers, orphans and/or dependents of public officers who are in permanent and pensionable positions if they die before becoming eligible to receive the pension</p> <p>ETF</p> <p>Permanent disability insurance scheme provides benefits to active members in case of permanent disability resulting in incapacity to work.</p> <p>Termination of Employment of workman (Special provision Act) –</p> <p>Employer's liability</p> <p>In the event of death or permanent disability owing to work-related injuries, compensation of up to Rs. 550,000 must be provided to the victim or his beneficiaries in the case of death or permanent disability caused by work-related injuries. However, if an employee has a temporary impairment in identical circumstances, he is entitled to a maximum of Rs. 5,500 every half-month.⁷²</p>	<p>The WCO defines a workman as “any person who has entered into or works under a contract with an employer for the purposes of his trade or business in any capacity.</p> <p>Since most domestic workers are not hired under a contract of employment and they do not fall within the definition of a ‘trade’ in the sense of an establishment, it is ambiguous whether or not this definition could extend to domestic workers.</p> <p>The WCO formally excludes the military and police personnel. By definition, the self-employed are excluded, due to the absence of an “employer”.⁷³</p>

70 International Labour Organization, 'Minimum Requirements in ILO Social Security Standards', at <https://www.social-protection.org/gimi/ResourcePDF.action?id=55516> [last accessed on 13 December 2021].

71 Section 2 of Workmen's Compensation Ordinance interpret “partial disablement” as - “disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement”

72 The Employers' Federation of Ceylon and ILO Bureau for Employers' Activities (ACETEMP), 'Repositioning Social Security Systems for Private Sector Employment in Sri Lanka', at <https://employers.lk/wp-content/uploads/2021/08/ILO-EFC-Study-on-Repositioning-Private-Sector-Social-Security-Systems-in-Sri-Lanka.pdf> [last accessed on 12 December 2021], p.34

73 International Labour Organization Country Office for Sri Lanka and The Maldives, 'In-depth Assessment of Employment Injury Compensation Arrangements in Sri Lanka', International Labour Organization, (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636599.pdf [last accessed 13 December 2021], p.10

Categories	Convention No. 102	Sri Lanka law	Analysis
Maternity	<p>Covered by Articles 31-38</p> <p>Medical care required by pregnancy, confinement and their consequences; resulting in lost wages.</p> <p>The coverage for all women of prescribed class which holds more than 50 per cent of all employees</p> <p>or</p> <p>Economically active people forming not less than 20 per cent of residents (consider the maternity benefits for the wives of men in this classification)</p> <p>or</p> <p>Women under the prescribed threshold</p> <p>Expected benefits:</p> <p>Hospital and medical assistance and cash benefits at least 45 per cent of the reference wage for at least 12 weeks.</p> <p>Article 51</p> <p>The benefits to be provided to a woman who has completed such qualifying period as may be considered necessary to preclude abuse.</p>	<p>Maternity Benefits Ordinance, No. 32 of 1939</p> <p>(Employer's liability)</p> <p>Pregnant females employed on a wage in any trade, industry, business undertaking, occupation, (emphasis added) profession, or calling are covered by the Ordinance.</p>	<p>There is ambiguity in the definition of 'trade' provided under the Ordinance-see above Table 1.</p> <p>As such, the Maternity Benefits Ordinance does not explicitly offer protection to domestic workers.</p> <p>Moreover, the current Ordinance is based on the ILO Convention No. 103 which provides the member states the liberty to exclude domestic workers.⁷⁴</p> <p>However, ILO Convention No.103 was superseded by ILO Convention 183 – in 2000 - which covers all employed women, including domestic workers.⁷⁵ Sri Lanka is yet to ratify C183. As such the wider definition provided to domestic workers in Sri Lanka under C.183 does not extend to domestic workers in Sri Lanka.</p>

74 Article 7 of International Labour Organization, C103 - Maternity Protection Convention (Revised), 1952 (No. 103), at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312248 [last accessed on 12 December 2021]

75 Article 2 of ILO Convention C183 - "This Convention applies to all employed women, including those in atypical forms of dependent work."

Categories	Convention No. 102	Sri Lanka law	Analysis
Disability/ Invalidation benefits	<p>Covered by Article 53- 58</p> <p>Inability to engage in any gainful activity, likely to be permanent, or that persists beyond sickness benefit (total invalidity).</p> <p>Coverage:</p> <p>At least 50 per cent of all employees; or</p> <p>Categories of the economically active population (forming not less than 20 per cent of all residents); or</p> <p>All residents with means under prescribed threshold</p> <p>Periodic payment: at least 40 per cent of reference wage.</p> <p>As long as the person remains unable to engage in gainful employment or until old-age pension is paid.</p> <p>Article 57</p> <p>Payment of contribution or a qualifying period of 15 years of employment (for contributory schemes) or 10 years of residency (for non contributory scheme).⁷⁶</p> <p>If all economically active people are covered 3 years of contribution and average number of contributions prescribed on yearly basis.</p> <p>Reduced benefit could be obtained by 5 years of contribution or employment.</p> <p>If all economically active people are covered 3 years of contribution and half the average number of contributions prescribed on yearly basis.</p>	<p>Disability insurance scheme provided by ETF⁷⁷</p> <p>(Employees making contributions under ETF are eligible for this benefit.)</p> <p>The qualifying criteria is that employee has gone through a disability resulting in loss of employment.</p> <p>Or</p> <p>Partial disability or</p> <p>Medical Treatment for heart and cataract surgery.</p> <p>Benefit: provide 24 times the average salary drawn during the 6 months prior to the disability.</p>	<p>The ETF Act excludes domestic workers from its ambit, its protection does not extend to domestic workers.</p>

76 International Labour Organization, 'Minimum Requirements in ILO social security standards', at <https://www.social-protection.org/gimi/RessourcePDF.action?id=55516> [last accessed on 13 December 2021].

77 The Website of the Employees' Trust Fund , 'Non Statutory Benefits', <https://etfb.lk/non-statutory-benefits/> [last accessed on 13 December 2021]

Categories	Convention No. 102	Sri Lanka law	Analysis
Unemployment benefits	<p>Covered by Article 19-24</p> <p>Suspension of earnings due to inability to find suitable employment for capable and available persons.</p> <p>Expected Benefits:</p> <p>Minimum 45 per cent reference wage</p> <p>Coverage provided for -50 per cent of all employees;</p> <p>or</p> <p>– all residents with means under prescribed threshold.</p> <p>For schemes covering employees: At least 13 weeks of benefits within a period of 12 months.</p> <p>For means-tested (non-contributory) schemes: At least 26 weeks within a period of 12 months.</p> <p>Article 23</p> <p>Qualifying period may be prescribed as necessary to prevent abuse.</p>	<p>Termination of Employment of Workmen Act – (Employer’s liability)</p> <p>This functions as a severance pay system which provides compensation if the employment contract is terminated by the employer.⁷⁸</p> <p>“worker” has the same meaning as in the Wages Boards Ordinance; and</p> <p>“workman” has the same meaning as in the Industrial Disputes Act.</p> <p>Domestic workers according to Section 31(b) (1) of the Industrial Dispute Act could seek protection for termination of service.⁷⁹</p>	<p>Section 31(b)(1) of the Industrial Dispute Act could be utilized by domestic workers to raise issues related to termination of their service and about the conditions of labour.⁸⁰</p> <p>However, these provisions provide protection only in case of termination of employment and act as a severance pay.</p> <p>Currently, the Sri Lankan laws do not provide unemployment benefits to an employee who is unemployed due to the inability to find suitable employment even though such person is capable and available, as required in C.102.</p>
Medical care	<p>Covered by Articles 7-12</p> <p>Any ill-health condition, whatever its cause; pregnancy, childbirth and their consequences will be covered.</p> <p>Expected benefit:</p> <p>Provide medical facilities and hospitalization in need.</p> <p>This protection covers 50 per cent of all employees and their wife and children</p> <p>or</p> <p>Economically active people forming not less than 20 per cent of residents</p> <p>Article 11</p> <p>Qualifying period may be prescribed as necessary to prevent abuse.</p>	<p>Under ETF Fund “Shramasuwa Rekawarana” Hospitalization Medical Scheme - (Employees making contributions under ETF are eligible to avail this benefit.)</p> <p>This is provided for the employees as a non-statutory benefit.⁸¹</p>	<p>Healthcare is available free of charge in Sri Lanka at public hospitals under Health Services Act, No. 3 of 1977. Therefore, provision of medical benefits/insurance is not provided by law as a statutory obligation on the employer.</p>

78 Termination of Employment of Workmen Act, Act No.45 of 1971.

79 Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.29

80 *ibid*, p.28

81 The Website of Employees’ Trust Fund, ‘Non Statutory Benefits’, at <https://etfb.lk/non-statutory-benefits/> [last accessed on 13 December 2021]

As noted in Table 3 above, domestic workers are explicitly excluded from the legal framework when it comes to social security benefits. In Sri Lanka each social security scheme has a specific institution that oversees the administrative aspects of the execution of the scheme, while some institutions oversee multiple aspects of the scheme. The next

section will briefly provide a description of the institutions that are related to the provision of social security benefits in Sri Lanka. It will be followed by the chapter that lays out in detail the key practical impediments if domestic workers are to be included in the existing social security mechanisms in Sri Lanka.

► **b) Institutions administrating the social security benefits in Sri Lanka**

This section provides a brief description of the relevant institutions related to social security benefits and the role of each institution.

The Employees' Provident Fund (EPF)

The Employees' Provident Fund (EPF) was established under Act No. 15 of 1958. The EPF is a mandatory defined contribution retirement scheme. This scheme facilitates benefits for much of the private and semi-government sector employees in Sri Lanka, most of whom are not covered by a pension scheme. According to the Act, the Commissioner of Labour acts as administrator and the Central Bank of Sri Lanka (CBSL) is the custodian of the fund.⁸²

The Employees' Trust Fund (ETF)

The Employees' Trust Fund was established on 1st March 1981 under the provisions of the Employees Trust Fund Act No. 46 of 1980. The Fund is administrated by the Employees' Trust Fund Board. The fund is functioning under the Ministry of Finance, Economy, and Policy Development.⁸³ The employer is required to contribute an amount equal to 3 per cent of the employee's gross monthly earnings according to the Act. The fund covers all the employers in public and private sector whose employees are not eligible for the government pension scheme. The employers of the private sector must adhere to this scheme irrespective of the number of employees employed in their institutions.

Department of Labour

The Department of Labour (DoL) was started under the Indian Immigrant Labour Ordinance, No. 01 of 1923. In its inception, the main objective of the department was to provide welfare for Indian migrant estate labourers. This has evolved with time and the DoL, the head of which is the Labour Commissioner, currently administers matters relating to the labour force in Sri Lanka as stipulated by over 50 labour related legislation. As such, the DoL, which is vested with power to implement all labour legislation, also provides advisory services regarding the payment of EPF/ETF, Gratuity under the Payment of Gratuity Act, No. 12 of 1983 (as amended) and any complaints regarding the non-payment of wages or other entitlements under employment relations.

In the current context the Department of Labour functions as the principal institution which promotes industrial peace and international competition. The department is responsible for promoting social security schemes such as the EPF, supervising the private provident funds, enforcing laws in relation to the protection of children, women and young person's employment and ensuring that processes are in place to be followed by the industries to protect the security and the health conditions of employees.⁸⁴ In terms of enforcement, the Department also deploys its officers, as labour inspectors to supervise workplaces for compliance with the law. The ETF/EPF units also deploy labour inspectors for assessing compliance with these specific Acts.

82 The Website of Employees' Provident Fund at [Employees Provident Fund | Central Bank of Sri Lanka \(cbsl.gov.lk\)](https://www.epf.gov.lk/) [last accessed on 13 December 2021]

83 The Website of the Employees' Trust Fund at [WELCOME – EMPLOYEES' TRUST FUND BOARD \(etfb.lk\)](https://www.etfb.lk/) [last accessed on 13 December 2021].

84 The Website of Labour Department at http://www.labourdept.gov.lk/index.php?option=com_content&view=article&id=44&Itemid=28&lang=en [last accessed on 13 December 2021].

Office for the Commissioner for Workmen's Compensation

The Office for the Commissioner for Workmen's Compensation was established under the Workmen's Compensation Ordinance, No. 19 of 1934 (WCO) to provide payment of compensation to workmen injured in the course of the

employment. The Commissioner for compensation is vested with both civil and magisterial powers to administer the WCO and order compensation for the workmen.

However, the WCO only recognizes 'any body of persons, incorporated or unincorporated', as an employer. Hence, domestic workers are excluded from the ambit of the WCO.

▶ 3. Legal and practical impediments for domestic workers to access social security benefits

This chapter provides an overview of the legal and practical challenges with respect to the five key social security schemes.

- a. The Employees' Provident Fund, No. 15 of 1958 (EPF)
- b. The Employees' Trust Fund No. 46 of 1980 (ETF)
- c. The Payment of Gratuity Act No. 12 of 1983 (Gratuity)
- d. Maternity Benefits Ordinance No. 32 of 1939
- e. Workmen's Compensation Ordinance, No. 31 of 1957 (Workmen's Compensation)

Each of the five schemes are discussed in this chapter through two different lenses: (a) whether domestic workers could be considered to be covered legally by the scheme; and (b) the practical impediments that should be considered due to the unique features of domestic work in Sri Lanka.

In addition to the above, there are also other voluntary social security schemes such as Samurdhi Programme⁸⁵, and beneficiary schemes introduced under the Social Security Board to persons who do not receive a pension.⁸⁶ Conventions

No.189 requires that domestic workers be treated with equality with other workers in the formal sector, therefore, voluntary schemes, have not been discussed in this report.

None of the compulsory social security mechanisms in Sri Lanka have been designed to accommodate informal sector workers, specifically domestic workers due to the atypical nature of domestic work and the absence of a recognised employment relationship. Unfortunately, Sri Lanka is similar to other countries globally. In 2020, ILO indicated that out of 168 countries, 102 countries (60.7 per cent) have extended some aspects of social security coverage to domestic workers.⁸⁷

Conventions No.189 provides in Article 14 that all member states that have ratified the Convention, shall take appropriate measures to ensure that domestic workers enjoy conditions that are applicable to workers generally in respect of social security protection, including with respect to maternity benefits.⁸⁸ Although Sri Lanka has not ratified Conventions No.189 it provides the international standards for domestic workers that Sri Lanka should use as a guidepost. This is especially true in light of recent statements made by the minister in charge of labour affairs, who expressed

85 Samurdhi, 'Dawn of a New Era', Ministry of Youth Affairs, Sports and Rural Development (1994), at https://www.samurdhi.gov.lk/web/images/stories/publications/english/dawn_of_a_new_era.pdf [last accessed on 13 December 2021].

86 Sri Lanka Social Security Board Act, No 17 of 1996 at <https://www.ssb.gov.lk/Files/Gazet2006E.pdf> [last accessed on 13 December 2021].

87 International Labour Organization, 'Making decent work a reality for Domestic Workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)', at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf [last accessed on 2 March 2022], p.122

88 Social Protection Department and Inclusive Labour Markets, Labour Relations and Working Conditions Branch, 'Social protection for domestic workers: Key policy trends and Statistics', International Labour Organization (2016), at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_458933.pdf [last accessed on 13 December 2021], p.6

interest in establishing social security benefit schemes for the informal sector, including domestic workers.⁸⁹

However, as identified in above sections, the existing social security schemes in Sri Lanka fall short in relation to domestic workers when compared against the standards established in Conventions No.102. Therefore, extending the existing social security schemes available to the formal sector to be extended to domestic workers will require both legal reforms and additional administrative interventions.

The next section details (1) the legal challenges, i.e whether or not domestic workers are covered/included in the scheme, and (2) the practical impediments that need to be considered due the unique features of domestic work under each social security scheme. The schemes are: (1) EPF (2) ETF; (3) gratuity; (4) maternity benefits and (5) employment injuries. For ease we have combined the practical impediments of EPF and ETF below. Each of the aforementioned schemes will follow the same structure and contains three separate sub-sections. The first sub-section will provide a brief description of the scheme. Following which, the legal impediments will be articulated in the second sub-section. The third sub-section will detail the practical/ administrative impediments that may arise under each scheme. Chapter 3 concludes by summarising the fundamental legal and practical impediments identified throughout the Chapter that need immediate solutions if social security schemes are to be extended to domestic workers.

In the third sub-section of this Chapter, the practical impediments in each of the schemes will be discussed in relation to the following areas:

1. Registration procedures - difficulties that may arise in registering the workers in the scheme

2. Eligibility requirements / qualifying conditions - whether there are additional eligibility requirements than what was detailed in sub-section two on legal impediments / are there any requirements that workers should fulfil to qualify for the schemes.
3. The calculation of benefits- the difficulties in calculating the benefits each worker is entitled to.
4. Financing mechanisms - whether mechanisms are state sponsored, or financed through contributions of the participants
5. Awareness raising and information dissemination mechanisms; and
6. Monitoring and compliance mechanisms.

Two key generalised challenges can be identified across all schemes when it comes to both (5) awareness raising and information dissemination mechanisms; and (6) monitoring and compliance mechanisms that are worth noting at the outset. First, is that domestic workers generally lack access to information and are likely to find it difficult to find the requisite information and navigate the complicated administrative systems. This is likely to be a challenge irrespective of the scheme involved and will be detailed below. Second, is that across all of the schemes, administrative institutions and labour inspectors will face unique challenges when it comes to monitoring and compliance due to the nature of domestic work - in that it occurs within households which makes privacy a concern. As such, most of the practical impediments that arise in relation to (5) and (6) above are valid across all schemes.

89 Irangika Range, 'Social security benefits for several informal sectors', Daily News (December 4 2021), at <https://www.dailynews.lk/2021/12/04/local/266428/social-security-benefits-several-informal-sectors> [last accessed on 12 December 2021]

▶ 1. EPF/ETF

Sub-section one will provide a brief overview of both the EPF and then the ETF schemes. The second section will then identify the legal impediments – whether or not domestic workers are covered under EPF and ETF. Since there are no qualifying conditions or eligibility criteria under these schemes, this section will only focus on the application of

the existing law to domestic workers. The third sub-section will then discuss the practical impediments under the following five issues: (i) Registration, (ii) Calculation, (iii) Financing difficulties, (iv) Awareness raising, and (v) Monitoring and compliance.

(1) EPF/ETF description of procedure

EPF procedure

The EPF is retirement scheme requires employers and the employees to collectively contribute at least 20 per cent of the gross monthly earnings to the EPF fund. Employers are required to contribute 12 per cent and workers are required to contribute 8 per cent.

For example, if the employee's total earnings are Rs. 5,000/-;

Amount deductible from employee's salary- $5,000 \times 8\% =$ Rs. 400/-

Employer's contribution - $5000 \times 12\% =$ Rs. 600/-

Total amount payable to EPF= Rs. 1,000/-

There is no minimum number of employees, the employer has to employ before paying contributions to the EPF. Even if the employer has one employee, the employer is required to register within 14 days of the recruitment of the first employee.⁹⁰ Upon recruitment of the employee, the employer must register with the Fund by submitting a form upon which the employer will receive a registration number.

First an employer must register himself as an employer with the Department of Labour and/or EPF Department (Central Bank of Sri Lanka). Once the employer is registered the employer is given a registration certificate. Thereafter, it is the responsibility of the employer to assign an EPF member number to all its employees.⁹¹ Member numbers are assigned to each employee that will identify his/her individual account number. The contributions should be

calculated in respect of total earnings, including cost of living allowances, holiday pay, food allowances. An employee in order to register as a member of the Fund must submit 3 forms to the nearest labour office through the employer. Although the employee duly fills in the personal details, it is the employer who must submit these forms to the EPF Department (See Appendix 1 for relevant registration forms). Upon the submission of the Forms the employee will be registered as a member of the Fund. The employee is then provided with an Employee Membership Card also named the "B" card. The employer must also affix the fingerprint of the employee in all the forms submitted to the Fund for identification purposes.⁹² The fingerprints are used to verify identification of the worker at the point of claiming the benefits.

EPF also facilitates various types of ancillary benefits. For example, there are structured opportunities for members to receive home loans using their EPF fund balances as collateral.⁹³

The purpose of EPF is to allow the contributing members to receive a lump sum refund of account balances accumulated in his/her name upon reaching the retirement age. The EPF allows members to refund their account balances before reaching the prescribed ages under several circumstances:

- ▶ a female employee who ceases employment on grounds of marriage
- ▶ an employee ceasing employment due to incapacitation or permanent disability.
- ▶ due to migration.

90 The Website of Employees' Provident Fund, 'Registering for EPF', at <https://epf.lk/?p=163> [last accessed on 14 December 2021].

91 Central Bank of Sri Lanka and Department of Labour, 'Handbook of Employee's Provident Fund', at <https://epf.lk/wp-content/uploads/2017/06/employeehandbook.pdf> [last accessed on 21 January 2022]

92 *ibid.*

93 *ibid.*

- if the worker has shifted to engaging in a permanent pensionable post in the government sector.⁹⁴

In the event of default of EPF contribution payments, the EPF Act states that with regard to any money due to the Fund, the Labour Commissioner has the power to recover such money by resorting to a court procedure.⁹⁵

ETF procedure

The employees of the fund include any person employed on a casual, temporary, contract or piece-rate basis and also any apprentice or learner who is paid a remuneration, irrespective of age.⁹⁶ "Domestic servants", charitable institutions with less than 10 employees, institutions training orphans, deaf, dumb and blind persons and institutions carried on by family members are excluded from the ambit of the ETF Act.⁹⁷

There is no registration requirement under ETF. Once the employee is registered with the EPF, contributions to the ETF can be sent under the same EPF number in respect of those employees. However, to file remittances for the first time, an employer must, depending on the number of employees he employs, fill a form. If the employer has less than 15 employees, the former must file ETF R4 (Advice of Remittance) form in duplicate with the member details filled in. Payments can be remitted to the Fund either by Cheques/Money Orders/Cash or electronic mode.⁹⁸

Members of the ETF are entitled to a variety of welfare benefits. More importantly, unlike the EPF, members of the ETF are eligible to withdraw money upon retirement, resignation from a job, dismissal from a job, or vacation of post. However, a member may not file a claim for withdrawal

of money until five years have passed from the date of termination of employment for which a reimbursement has been made. According to Act No. 47 of 1988, exceptions to this regulation include: (a) attaining the age of 60, (b) moving overseas for permanent residence, (c) entering state service that qualifies the member to a pension, (d) cessation of work owing to a permanent disability, and (e) death of the member.⁹⁹

In terms of monitoring compliance, KIIs revealed that the officials can carry out inspections for any violations of the Act upon the receipt of a complaint or on its own volition. There are two types of violations that are usually identified: (i) defaulters; and (ii) non-contributors. Defaulters are employers who have filled in the forms with the ETF Board but have not paid or regularly contributed the amount ought to be paid to the employees. While, non-contributors are employers who have not submitted any filings with the ETF Board for the payment of contributions at all.

Generally, as noted above, the employer and the employee must both be registered with the EPF to file contributions. Over the years, the EPF and ETF schemes have been criticized due to several structural shortcomings in the schemes. One of the main problems in the two schemes is their inadequacy to function as a social security in old age, i.e. by way of a periodic pension to private sector employees in retirement.¹⁰⁰ Since EPF/ETF is a one-time lump sum payment, the employee receives the total amount accumulated in his/her account over the years, at once. Hence, the effective use of this sum is therefore completely dependent on the receiver's financial literacy and knowledge.¹⁰¹

The key practical impediments that may arise if the schemes are to be extended to the domestic workers, are discussed below.

(2) Legal impediments

There are no qualifying conditions or eligibility requirements imposed by law to contribute to the EPF/ETF. However, there are several legal barriers that pre-empt domestic workers from participating in the schemes. They are as follows: (i)

both EPF and ETF Acts expressly excludes domestic workers from their purview; and (ii) the absence of a criteria to identify casual workers. These are further discussed below.

94 The Website of Employees' Provident Fund, 'Retirement Benefits', at <https://epf.lk/?p=218> [last accessed on 14 December 2021].

95 Section 138, EPF Act

96 *ibid.*

97 Extraordinary Gazette No. 171/2 Of 14 December 1981.

98 The Website of the Employees' Trust Fund, 'Employed Members', at <https://etfb.lk/employed-members/> [last accessed 15 February 2022]

99 The Website of the Employees' Trust Fund, 'Statutory Benefits', at [Statutory Benefits - EMPLOYEES' TRUST FUND BOARD \(etfb.lk\)](https://etfb.lk/statutory-benefits/) [last accessed on 13 December 2021].

100 ILO Country Office for Sri Lanka and the Maldives, 'Analysis of the Sri Lankan Social Protection Schemes in the Context of Social Protection Floor Objectives: A Rapid Assessment and Estimating the Costs of a Social Protection Floor in Sri Lanka', International Labour Organization (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636600.pdf [last accessed on 21 July 2022], p. 50

101 *ibid.*

i. *Both the EPF and ETF, expressly excludes domestic workers from its application*

Since domestic workers are excluded from a majority of labour laws in Sri Lanka, there is a significant legal barrier for domestic workers to be eligible under EPF and ETF schemes. Both EPF and ETF legislation specifically exclude domestic workers from its purview. Moreover, EPF Act only applies to sectors that are classified as ‘covered employees’, which explicitly excludes ‘domestic workers’.¹⁰² Covered employment is an old concept used in the early stages of introduction of the EPF law which recognized employments that fall within the EPF Act by a specific gazette notification. However, KIIs with the DoL noted that in practice they recognize employment relationships that have not been legally recognized as covered employment relationships to encourage contribution. However, despite the process implemented in practice, a strict interpretation of the EPF and ETF law still excludes domestic workers from its purview.

ii. *No criteria to identify casual workers*

The term “domestic worker” under Conventions No.189 is defined as any person engaged in domestic work within an employment relationship; and a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.¹⁰³ Domestic workers in Sri Lanka have various work arrangements with households. Specifically, there

are categories that are hired on an occasional, ad-hoc basis. As per the definition of Conventions No.189, this latter category, i.e. live-out workers who report to work in a household, occasionally, or on an ad-hoc basis are eliminated. However, currently there is no legal framework or specific criteria to determine this categorization of “occasional or ad hoc” basis in Sri Lanka.

Moreover, In Sri Lanka the protection offered by labour laws, including the EPF and ETF Acts are offered only to workers who establish an employer/employee relationship. The distinction between an employee and independent worker (the latter does not give rise to an employment relationship) has often been a question that was subject to judicial interpretation in Sri Lanka. Case law exists where the contract of employment does not give out a clear distinction, the court has looked at the specific circumstances of the case to determine an employment relationship.¹⁰⁴

Therefore, it is important to clearly define through the law the type of domestic work arrangements that would give rise to an employment relationship. Domestic workers who are residential can be a fairly straightforward classification of an employment relationship. However, the arrangements with regard to non-residential workers can still be complex if there isn't a regular pattern of reporting to work. Hence, clear identification of the employment arrangements that would qualify for EPF, ETF and other social security related legislation is important, in order to not unnecessarily burden the employers, as well as the workers who are engaged in casual type arrangements.

(3) General impediments

3.1. Registration process

The registration process will be discussed separately for EPF and ETF below.

3.1.1. Registration process - EPF

a. Detailed documentation process - In order to contribute to the EPF, the employer must first register him/herself as an employer at the Department of Labour / Central Bank and obtain an Employer Registration Certificate (See Appendix 1 for the Registration Form). Thereafter, the

employer must register each employee employed by him/her at the Department of Labour (DoL). The registration of each new employee as a member of the EPF at the DoL must be done within 14 days of recruitment. Each new employee must submit through the employer the duly filled ‘A’, ‘B’, ‘H’ forms to the Labour Department with the details of NIC in registration (See Appendix 1 for specimen of Form A).

The above administrative tasks associated with the detailed registration process for EPF, which requires detailed documentation, may burden both domestic workers and the employer:

¹⁰² Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 12 December 2021], p.16

¹⁰³ C.189, Domestic Workers’ Convention, 2011 (No. 189)

¹⁰⁴ R.K.S. Suresh Chandra, ‘The Employment Relationship (Scope) In Sri Lanka’, at http://ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205382.pdf [last accessed on 21 February 2022], p. 4

- i. Currently under the EPF, all communications with the DoL are made through the employer. As stated above, the details of the employer has to be registered at the Central Bank of Sri Lanka (CBSL) database before making contributions to the employees.¹⁰⁵ When a domestic worker starts working under a new employer, the new employer must first submit the duly filled forms to the EPF Division (Central Bank) through the DoL to register the domestic worker as an employee employed by him/her. The previous employer also has to remove the particular employee who ceased employment from the list of employees registered under its name in the EPF Department's database.¹⁰⁶ If the employer changes his/her residence, the change of the postal address also should be notified directly by a written request to the EPF Department.¹⁰⁷
- ii. As such, each time an employee/worker starts working under a new employer, the employee has to register him/herself under the new employer. This registration has to occur through the new employer, who has to file the necessary forms along with the employment details. According to KIIs, currently, there are systems in place to accommodate registrations under multiple employers. However, the administrative hassle to the workers in managing the paperwork will be high.
- iii. These administrative processes, specifically the filling of different forms will be cumbersome for the domestic workers as well as employers because domestic workers generally are engaged in short-term employment with one employer.
- iv. Since employers have to submit and update EPF details at the DOL with each new domestic worker, household employers may be hesitant to go through a tedious and time-consuming documentation process for a single employee. During a Verité Research survey, employers highlighted the high staff turnover, and pointed out that "if workers tend to terminate employment every few months (which has been the experience of most employers) they (employers) may find it difficult to manage the paper work related to EPF and ETF".¹⁰⁸
- b. Lack of identification documents - At the point of filing details of employment for EPF, the employee has to also submit proof of identification such as a birth certificate, or a National ID number, and provide family history (See Appendix 1 for Employee Registration Form). However, most domestic workers hired for household work in sub-urban areas in Sri Lanka come from rural parts of the country.¹⁰⁹ Most workers migrating to urban areas in Colombo are originally from among the Hill Country Tamil population living in the plantation sector.¹¹⁰ This community faces additional challenges in accessing state resources and in many instances lack proper identification documents or birth certificates as proof of identity.¹¹¹ In such cases, it will be difficult to file identity related documents of the worker for EPF registration.¹¹²
- c. Change of any personal details - The employee has to notify the EPF through the employer of any changes to the personal details of the employee (worker). For example, in the event of name change of the worker due to marriage, or a change in birth certificate or National ID, the copies of all birth/marriage certificates, ID, court orders and legal documents should be sent to the EPF / DoL through the local labour office relevant to the area.¹¹³ This will likely be a cumbersome administrative process to both domestic workers as well as their employers.

3.1.2. Registration process - ETF

Employers are required to remit monthly an amount equivalent to 3 per cent of total earnings of the employee's salary as ETF. Monthly contributions should be sent to reach the ETF Board on or before the last working day of the following month.

- a. There are no registration requirements for ETF as remittances are made by a particular employer using the EPF member number. However, for every remittance of contribution a remittance form must be submitted to the

105 The website of the Employees' Provident Fund, 'Registering for EPF', at <https://epf.lk/?p=163> [last accessed on 12 December 2021].

106 *ibid.*

107 *ibid.*

108 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 17 February 2022], p.27

109 *ibid.*, p.9

110 *ibid.*

111 International Centre for Ethnic Studies, 'Estate Workers in Sri Lanka: An Account of the Legal and Policy Framework', (2020) p. 9

112 The Website of Employees' Provident Fund, 'Details that have to be filled in - Form A', at https://epf.lk/wp-content/uploads/2017/03/form_a.pdf [last accessed on 21 July 2022]

113 Central Bank of Sri Lanka and Department of Labour, 'Handbook of Employee's Provident Fund', at <https://epf.lk/wp-content/uploads/2017/06/employeehandbook.pdf> [last accessed on 21 January 2022], p.20

ETF by the employer.¹¹⁴ Unlike an employer with multiple employees in the formal sector, a household employer - who in most circumstances employs only one domestic worker - may find this documentation process burdensome to employ only one worker.

3.2. Calculation of benefits – EPF/ETF

- a. There will likely be limited calculation difficulties as domestic workers will be treated similar to any other workman recognized under the EPF and ETF Acts. As such, under EPF, domestic workers will contribute 8 per cent from his/her salary, and 12 per cent from the employer. Under ETF, employers will allocate another 3 per cent from the domestic worker's salary.

3.3. Financing mechanisms – EPF/ETF

- a. Workers will receive a reduced take-home salary - EPF is a member contributory scheme which will affect employees as well. Assuming that domestic workers salary remains unchanged or will be receiving the same amount as he/she used to, after the introduction of the EPF, the workers will receive a reduced take-home salary after deducting 8 per cent of the salary for EPF. Hence, there may be potential push back from domestic workers who might often have only a subsistence wage. This may be partially due to how they view saving habits. During the Verité Research study, employers expressed that domestic workers have very poor savings habits and that the workers will not like the idea of deducting funds from their salary.¹¹⁵ For instance, an ILO study on domestic workers in Sri Lanka indicated that only 18.1 per cent of live in domestic workers considered savings as a priority, while only 6.8 per cent live-out workers expressed interest in savings as a priority.¹¹⁶

3.4. Awareness raising and information dissemination mechanisms – EPF/ETF

According to KIIs, public authorities use various methods to raise awareness and disseminate information to general public. These include, conducting workshops at worksites, distributing leaflets, mobile registration and awareness services and mass media campaigns.

In relation to raising awareness and information dissemination, the following practical impediments have been identified.

- a. Low awareness of labour rights and access to information – the Verité Research survey findings note that domestic workers have both low levels of education and awareness of their labour rights. The study found the level of awareness of workers' rights among domestic workers to be very low: 39 per cent of the domestic workers interviewed had no knowledge of social security systems (EPF/ETF), and 38 per cent had very limited knowledge.¹¹⁷ "Awareness of workers' rights was assessed based on the workers' understanding of social security systems (EPF/ETF), trade unions and worker/union rights. Knowledge of trade unions was even lower: 67 per cent of workers did not know what a trade union was, while 21 per cent had very limited knowledge. Furthermore, 81 per cent of workers had no knowledge of worker/union rights. Of the workers interviewed by Verité Research, 71 per cent had never been a member of any form of organisation at any level of society."¹¹⁸
- b. Lack of reliable and updated information on domestic workers – the difficulty of obtaining practical data also impedes ways of effectively enforcing contributory schemes, raising awareness and formulating meaningful laws and policies in two ways. First, as awareness raising may require some unique modalities, knowing the areas where domestic workers are employed may be useful to carryout awareness campaigns. Second, once the scheme has been extended to domestic workers, it will be useful to understand the particular challenges domestic

114 The Website of Employees' Trust Fund, 'Remittance form for less than 15 employees', at https://etfb.lk/wp-content/uploads/2021/11/R4_Remittance_Form_20210713.pdf [last accessed on 21 July 2022].

115 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 2 March 2022], p.16

116 ILO Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization (2020), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 21 July 2022], p.38

117 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 12 December 2021], p.16

118 *ibid.*

workers/employers face in compliance. Therefore, having a database that is current will be useful.¹¹⁹

- c. Time and cost - KIIs with officers in the DoL suggested that conducting door-to-door awareness programs will be effective, but the time and cost consumption of that method will be high.
- d. Lack of awareness among household employers- Due to the type of work that is being conducted by domestic workers, they are often conceptualised as being part of the private (family) domain.¹²⁰ Therefore, domestic workers are rarely seen as employees in an employment relationship. Similarly, due to this informality, household employers also rarely consider themselves as employers. More importantly they lack awareness about their responsibilities and obligations as an employer of a worker. Since documents related to EPF/ETF should be filed through the employer it is important household employers are made aware of filing requirements.

3.5. Monitoring and compliance mechanisms – EPF/ETF

- a. *Poor maintenance of records*- At present, the payments made to domestic workers largely vary based on live-in or live-out basis, and hours of work. The survey by ILO shows a significant variance of daily and monthly wages paid to domestic workers. Therefore, in the absence of a contract of employment that sets out the terms of employment such as wages/salary, overtime payments, leave entitlements, working hours, allowances, there is no mechanism to determine the wages a domestic worker is entitled to. And as such, in the absence of such documents, it is difficult to determine the correct contribution, and whether the workman's contributions are underpaid by the employer. According to a KII with the DoL, it was noted that regular maintenance of registers of attendance, payslips, clock-in hours will be difficult in a household environment unlike in business

establishments or formal set up of employment. Keeping a track of number of hours, days worked will be even more difficult of part time or live out workers. In the event of a dispute, the burden of proof lies with the employer to establish that correct contributions have been made. However, it is advisable for workers also to maintain work records, such as payslips to prove his/her dispute. Therefore, monitoring for compliance may be difficult in the absence of proper records.

- b. *Lack of resources*- KIIs reveal that the labour inspectorate in Sri Lanka already finds it challenging to physically inspect all corporate establishments for labour law violations, including EPF/ETF with existing resources. Given the high number of households that employ domestic workers this *will* add to the burden on the labour department officials to cover all households with domestic workers.
- c. *Enforcement difficulties*- According to Verité Research survey findings, although domestic workers have high bargaining power *due* to high demand for their work, they rarely have the ability or confidence to exercise that bargaining power.¹²¹ As such they have low levels of assertiveness. The ILO survey also reports that domestic workers hardly complain about their employers due to the fear of losing their job.¹²² The Verité Research study found that residential workers are unlikely to file a complaint for unfair treatment, compared to non-residential workers.¹²³ The survey also states that the workers would rather prefer to leave the employer than to file a complaint.¹²⁴ As such, the hesitance of domestic workers to file complaints will likely result in underreporting of defaults and will also lead to non-compliance.
- d. *Present bias / Low interest in savings* – as per the findings of the Verite Research survey, domestic workers show poor interest in savings, and employers also perceived that domestic workers may be uninterested in EPF/ETF if it reduces their salary.¹²⁵ In this context there may be reluctance from domestic workers to contribute to a social security mechanism such as EPF as it may reduce their expendable income.

119 Verité Research, 'Sri Lanka: Domestic Workers and Civil Society- In sight but out of mind', at <https://www.veriteresearch.org/wp-content/uploads/2018/10/Domestic-Workers-and-Civil-Society-In-Sight-but-Out-of-Mind.pdf> [last accessed on 22 December 2021], p. 15

120 *ibid*, p.18

121 *ibid*, p.16

122 ILO Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization (2020), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 21 July 2022].

123 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 17 February 2022], p.16

124 *ibid*.

125 The survey findings also indicate that young girls from the Hill Country Tamil community are usually sent for employment by their parents and the father will call several times to the employer for money - Verité Research, 'Sri Lanka: Domestic Workers and Civil Society- In sight but out of mind', at <https://www.veriteresearch.org/publication/sri-lanka-domestic-workers-and-civil-society-in-sight-but-out-of-mind/> [last accessed on 22 December 2021], p. 27

e. *Privacy concerns over inspection:* At the outset, it should be noted that while this may not be a direct impediment to successful introduction of existing social security schemes to domestic workers, privacy concerns may arise during the inspection procedure. The EPF Act permits any officer carrying out the duties provided under the Act “to enter and inspect at all reasonable hours by day or night any premises or place for examining” purposes any records.¹²⁶ However, during the KIIs, the DoL specifically mentioned that labour inspectors do not have powers to inspect any household premises. Moreover, there may be hesitation from the employers to entertain intrusions by the labour inspectors into their private homes to supervise the conditions of the domestic workers. KIIs also pointed out the potential difficulty of scheduling inspection visits to private households. For instance, upon receiving notice from the DoL, the employer will have to make arrangements to stay at home to facilitate the inspection visit as per the scheduled time. This might be a burden for the employer if they have to take a day off from work to accommodate a labour inspection.

On the other hand, in relation to privacy, KIIs noted that the labour inspectors carrying out household inspections will have to be mindful of additional challenges that may arise due to the nature of the ‘workplace’ being a private household. For instance, KIIs were mindful that because workplaces are private residences there may be complaints on intrusions to privacy. Therefore, these KIIs were of the opinion that in order to curb these types of complaints, they should be given advance training on carrying out inspections.

f. *Hesitance to comply-* The Verité Research survey indicated that although household employers liked the idea of extending social security to workers, they found it too expensive to fund.¹²⁷ Employer’s *willingness* to comply may therefore stem from lack of capacity to pay or other factors such as the administrative burdens associate with

the process. The survey also found that the domestic workers have low assertiveness in enforcing their rights, and are unlikely to complain against an employer.¹²⁸ Therefore, if social security benefits are not complied with, it will be unlikely that workers will raise this as a problem as domestic workers are: (i) unaware of social security; and (ii) lack assertiveness and are unlikely to complain about this.¹²⁹ As such, the employer’s hesitance to contribute, and worker’s unawareness of social security combined creates a larger possibility of social security being neglected, and may lead to non-compliance. High rates of non-compliance will require more resources to monitor and inspect.

g. *Change of employer’s address or an employer ceases to exist –* KIIs with the DoL noted that, in the current system if there is a complaint by an employee regarding the EPF/ETF contributions against a former employer who is no longer in business/or at the same address, there is a tedious administrative process. First, the worker will have to produce a letter from the Grama Seva Niladhari from the employer’s area, confirming the name of the employer, whether he/she is a resident in that area. Then this letter has to be certified by the Divisional Secretary. This process may be cumbersome with regard to domestic workers who have limited spare time if the household employer has changed his/her residence, is deceased, or is no longer in the country.¹³⁰ However, the administrative difficulties of this type can naturally arise due to the fact that the existing system has been created only to accommodate business entities rather than household employers. Once systems are developed to accommodate household employers, it will be easier to overcome administrative difficulties of this nature. For example, if the registration of both employers and workers are made through their National ID Number it will enable the employers to be located easily.

126 Section 32 (a), Employees’ Provident Fund Act

127 Verité Research, ‘Sri Lanka Domestic Workers & Employers survey’, at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domes-tic-Workers_-_Employers-Survey.pdf [last accessed on 3 March 2022], p. 27

128 *ibid*, p. 16

129 *ibid*.

130 Verité Research, ‘Sri Lanka Domestic Workers & Employers survey’, at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domes-tic-Workers_-_Employers-Survey.pdf [last accessed on 3 March 2022], p.16

▶ 2. Payment of gratuity

Sub-section one will provide a brief overview of the procedure involved in the scheme. The second section will then identify the legal impediments – whether or not domestic workers are covered under Gratuity scheme. It finds that the Gratuity Act does not apply to domestic workers. Along with the legal impediments, the section also identifies two eligibility criteria that pre-empts domestic workers from participating in the scheme; the Act only applies to workers who have worked in the same employment for more than 5

years and whose employer employs more than 15 workers. The third sub-section will then discuss the practical impediments under the following five issues: (i) Registration, (ii) Calculation, (iii) Financing difficulties, (iv) Awareness raising, and (v) Monitoring and compliance. One of the key points is that because Gratuity is a one-time payment at termination of employment, this can make monitoring for compliance challenging.

(1) Description of procedure and calculation

The Payment of Gratuity Act No. 12 of 1983 stipulates the payment of gratuity by the employers to their employees. Part I of the Act applies to the workers in the plantation sector whose employment was terminated due to the takeover of the estate lands vested in the Land Reform Commission. The Act expressly excludes “domestic servants”, personal chauffeurs, employees entitled to a pension under any non-contributory pension scheme, government employees, employees in local authorities and employees under co-operative commission.¹³¹

is required to pay gratuity, if the worker has completed five years or more of service preceding to the termination. This system does not require an application process. Gratuity payment by the employer must be paid within 30 days from the termination of the worker. In case of default of payment, the employee can make a complaint to the labour office in the area where his/her working station is located. Gratuity for the workmen who are regulated under Part II would be normally calculated based upon the last drawn wage or salary.¹³²

Part II of the Act provides that every employer who has fifteen or more workers on any day during a 12-month period

(2) Legal Impediments

The Payment of Gratuity Act, explicitly excludes “domestic servants” from receiving gratuity benefits.¹³³ Section 7 of the Gratuity Act expressly excludes employers making gratuity contributions for persons “employed as a domestic servant or as a personal chauffeur in a private household”.

more than 5 years, and when the employer employs 15 or more workers within the year of termination. These two requirements pre-empt informal workers, such as domestic workers, who typically have short term employments, from receiving gratuity. Also, households do not typically employ more than 15 workers. Therefore, domestic workers would not easily qualify for this.

Eligibility requirements

The Payment of Gratuity Act only holds the employer liable for gratuity payment if the worker has been employed for

131 The Website of Labour Department, ‘Giving instructions on payment of gratuity and taking action on complaints on gratuity’, at http://www.labourdept.gov.lk/index.php?option=com_content&id=206&Itemid=33&lang=en [last accessed on 2 May 2022]

132 *ibid.*

133 Section 7, Payment of Gratuity Act, No. 12 of 1983.

(3) General impediments

3.1. Registration process

There is no registration process to receive gratuity. Every employee who fits the eligibility criteria, specified in the Gratuity Act is entitled to receive gratuity.

3.2. Calculation of benefits

- i. Gratuity of a workman drawing a monthly salary or wage is currently calculated using the following formula:

$(\text{Basic monthly salary} / 2) \times \text{No. of years of employment} = \text{Gratuity}.$ ¹³⁴

Any other workmen, fourteen days' wage or salary for each year of completed service computed at the rate of wage or salary last drawn by that workman.¹³⁵

- ii. The Gratuity Act currently does not distinctively identify part time or full-time workers in terms of calculation of gratuity. Therefore, the existing provisions would need to be adjusted to suit the different employment arrangements that exist in the society. Hence, should this Act apply to domestic workers, the provisions will need to identify a calculation system that accommodates various methods of employment, i.e. live-in or live-out. The live-in workers gratuity calculation will be somewhat easier to calculate since their daily/monthly wage is fairly regular. However, if the worker is a live out worker, who is paid hourly, or per day, the calculation of benefits will be problematic.

3.3. Financing mechanism

- i. Currently, the entirety of the gratuity payment is the liability of the employer. Therefore, it is a significant added cost to the household employer at the point of termination. However, domestic workers are usually given in-kind payments when they leave an employment in addition to their typical wage.

3.4. Awareness raising and information dissemination mechanisms

- i. Low awareness of Gratuity entitlement- Unlike EPF and ETF, the gratuity payment is not one that employers are required to pay out on a regular basis. Gratuity is a one-time payment given at the termination of the employment. Therefore, the supervision would be possible only if there is a notification of employment termination or a complaint is made by the employee about not receiving gratuity. Due to the low educational background of domestic workers and their limited knowledge on the Gratuity Act and/or calculation of gratuity, complaints might be limited.¹³⁶ Also, due to the low assertiveness of domestic workers stemming from the low bargaining power,¹³⁷ domestic workers are unlikely to enforce their right to receive gratuity. The state can support the receipt of gratuity by monitoring domestic worker EPF accounts to spot those who are potentially due for gratuity. For example, monitor those who have received EPF payments for over 4 years, have ceased to receive regular payment for over 3 months, and check if employment has been terminated and gratuity has been paid.

3.5. Monitoring and compliance mechanisms

- i. Application to labour tribunal- the Industrial Disputes Act stipulates instances where a worker can present his/her grievance to the Labour Tribunal in terms of any defaults relating to the payment of gratuity under Section 31(B). However, since domestic workers are explicitly excluded from the application of the Payment of Gratuity Act, it is ambiguous whether a domestic worker can apply to the Labour Tribunal. This ambiguity was also highlighted in KIIs with the DoL.
- ii. In the event of a dispute, such as non-payment of gratuity by the employer, the Labour Commissioner conducts an initial inquiry. According to the Act, the burden is on the employer to show evidence of payment of gratuity and dispute the claims of

¹³⁴ Section 6 (2) (a), Payment of Gratuity Act, No.12 of 1983.

¹³⁵ Section 6 (2) (b), Payment of Gratuity Act, No.12 of 1983.

¹³⁶ Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 17 February 2022], p.16

¹³⁷ *ibid.*

the employee. However, in a dispute the employee is also expected to try and produce evidence of employment and salary slips as evidence, in case the employer disputes the claims of the employee. Supporting documents, that the employee can produce, include but are not limited to: salary slips,

employee's declaration or an affidavit, and extracts of attendance registers.¹³⁸ When household employers fail to maintain such records of employment due to the informality attached to domestic employment, domestic workers will have difficulty in establishing their claims.

▶ 3. Maternity benefits

Sub-section one will provide a brief description of the scheme, which identifies that maternity benefits in Sri Lanka is entirely employer liability for workers in all sectors and is not a social insurance-based system. The second sub section will then identify the legal impediments – whether or not domestic workers are covered under Maternity Benefits Ordinance (MBO). Since there are no qualifying conditions or eligibility criteria under the law, this section will only be focusing on application of existing law to domestic workers.

The section highlights that there is legislative ambiguity on whether the Maternity Benefits Ordinance applies to domestic workers and notes that under the Ordinance, workers are entitled to receive maternity benefits from only one employer for a particular consignment. The third sub-section will then discuss the practical impediments under the following five issues: (1) registration, (ii) calculation, (iii) financing difficulties, (iv) awareness raising, (v) monitoring and compliance.

(1) Description of maternity benefits

In Sri Lanka maternity benefits for women employed are governed by three main legislations. These are: (i) the Shop and Office Employees' Act, (ii) the Maternity Benefits Ordinance, and (iii) the Establishment Code. The Shop and Office Act covers all female workers working for a business of a shop or office. The MBO covers females employed on a wage related to any trade, industry or a profession. However, the MBO excludes female workers covered by the Shop and Office Employees' Act, casual workers, and domestic workers in a private household. All female workers working for the public sector are covered by the Establishment Code (Chapter XII).¹³⁹

The benefits provided by each Act in general includes maternity leave with payments. According to the MBO the payments in relation to maternity leave will be calculated based upon the prescribed rate and will be paid by the employer. The Shop and Office Employees' Act and

the Establishment code provides for fully paid Maternity Leave which is borne by the private employers and the state respectively.¹⁴⁰

Sri Lanka's existing maternity leave benefits structure already grapples with several shortcomings, even within the private sector. Currently, employers are required to bear the full cost of providing maternity leave benefits to their employees for a period of 12 weeks. This makes hiring women more costly than hiring men and creates incentives for discriminatory recruitment practices, where male job applicants are preferred over female job applicants.¹⁴¹ The fact that the individual / household employer would have to bear the full cost of the maternity leave of the domestic worker (regardless of the duration they have worked for the employer) can create a significant push-back in extending the existing maternity benefits scheme to domestic workers.

138 The Website of Labour Department, 'Giving instructions on payment of gratuity and taking action on complaints on gratuity', at http://www.labourdept.gov.lk/index.php?option=com_content&id=206&Itemid=33&lang=en [last accessed on 14 December 2021].

139 ILO Country Office for Sri Lanka and the Maldives, 'Study on Maternity Protection Insurance in Sri Lanka', International Labour Organization (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636596.pdf [last accessed on 24 April 2022], p.11

140 *ibid.*

141 Verité Research, 'State funding for maternity leave in Sri Lanka - a no-brainer', at https://www.veriteresearch.org/wp-content/uploads/2021/07/VR_ENG_Insights_Sep2020_State-Funding-for-maternity-leave-in-Sri-Lanka-a-no-brainer.pdf [last accessed on 22 December 2021].

In addition, the following practical difficulties may also arise specifically in relation to providing maternity leave benefits to domestic workers:

(2) Legal impediments

The MBO provides the framework for maternity benefits. As such, workers are only entitled to maternity benefits as per the definition provided under the MBO. However, the use of the word 'trade' within the definition of "worker" attaches to it the interpretation of a commercial undertaking or occupation. Hence, there is ambiguity as to whether domestic workers are eligible to avail themselves of these maternity benefits.¹⁴²

Workers with multiple employers - Section 6 of the MBO limits the entitlement of the worker to receive maternity benefits, to one employer. The situation in which the worker is working part-time for more than one employer is not anticipated/addressed in the legislation. Therefore, KIIs indicated that the workers who are employed under several employers will have to choose one employer.

(3) General impediments

3.1. Registration process

There is no particular requirement to register in order to receive maternity benefits from the employer as the maternity benefits are currently designed to be completely an employer's liability. Although there is no prerequisite to register to receive benefits, the Act does require the employer to keep a register. This is used for monitoring and compliance purposes and is therefore discussed below.

mandatorily bear the cost of the maternity benefit under the law.

There are two issues arising from this provision in relation to domestic workers: (i) the employer could find an alternative domestic worker during the period of the worker's absence due to maternity leave; and (ii) an employer while bearing the cost of employing the alternative domestic worker, would be resistant to bearing the cost of a paid maternity leave of the domestic worker who is on maternity leave.

3.2. Calculation of benefits

Entitlement to receive benefits from one employer – The MBO entitles workers to receive maternity benefits only from one employer in terms of a particular confinement. As such, although domestic workers can work under multiple employers, the worker is entitled to receive maternity benefits only from one employer as per the MBO. This would amount to only a fraction of the full monthly income, in cases of multiple part-time employers for the entirety of the 12 week period of maternity leave.

3.4. Awareness raising and information dissemination mechanisms

Difficulties in raising awareness and information dissemination in relation to maternity benefits are similar to what has been identified in relation to other schemes.

3.3. Financing mechanisms

Impediments of Employer's Liability- The MBO provides that the employment of a woman worker shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent to her pregnancy.¹⁴³ Similarly, under the MBO, a woman cannot contract to relinquish her right to receive maternity benefits. Therefore, an employer shall

3.5. Monitoring and compliance mechanisms

- i. Job security post-natal- Domestic workers may face the risk of loss of employment due to maternity. The employer most likely will replace the domestic worker during the worker's absence for 10 weeks after the confinement. In the absence of a contract of employment, the domestic worker might not have a job to return as her position is already filled.

¹⁴² *ibid.*

¹⁴³ Section 10A, Maternity Benefits Ordinance Act No. 32 of 1939, at <https://citizenslanka.org/wp-content/uploads/2016/02/Maternity-Benefits-Ordinance-No-32-of-1939-E.pdf> [last accessed on 12 December 2021].

ii. Maintaining register of women workers – While this may not be a direct impediment to successful introduction of maternity leave benefits, these issues may arise in practice. Under the MBO, the Commissioner of Labour has the power to inspect the records of women workers in any workplace with sufficient notice issued to the employer for the purposes of the Ordinance.¹⁴⁴ However, the ability to inspect private households for

compliance with the Ordinance will be less effective due to three reasons: (i) individual employers are unlikely to properly maintain a register/ records of a single employee given the informality of the work set up; (ii) as mentioned above labour inspection of a private household will be difficult due to privacy concerns; and (iii) there are insufficient resources available to physically inspect each house by the labour inspectors.

► 4. Employment injury

Sub-section one will provide a brief description of the scheme. The second sub section will then identify the legal impediments – whether or not domestic workers are covered under the Workmen’s Compensation Ordinance. Since there are no qualifying conditions or eligibility criteria under the law, this section will only be focusing on the

application of the existing law to domestic workers. The third sub-section will then discuss the practical impediments under the following five issues: (1) Registration, (ii) Calculation, (iii) Financing difficulties, (iv) Awareness raising, and (v) Monitoring and compliance.

(1) Description

In Sri Lanka an injured employee can claim compensation under the Common law and Workmen’s Compensation Ordinance (WCO) of 1934. These systems are based upon the employer’s liability. Workers can file a complaint with the Commissioner of Workmen’s Compensation, and this would require the employee to prove that the employer was negligent. The burden of proof then shifts to the employer to prove that the employee is culpable. These cases would be decided based upon the previous case facts, employers’ liability and financial capacity.¹⁴⁵ Additionally, compensation calculated under the WCO excludes all military and police personnel, workers of casual nature, workers employed other than for the benefit of the employers’ trade, and self-employers. The scheme is implemented by the Commissioner of Workmen’s Compensation and an injured employee is required to file a formal claim for compensation which would be followed by a series of inquiries and settlements. Every claim made under the Ordinance should be referred to the Commissioner if it is fatal in nature. If the injury is non-fatal, then the claim could be directly paid to the worker.

The compensation payable to the workman would be calculated according to the severity of the injury and wages of the employee while applying WCO. The Ordinance clearly stipulates the amount of payment that should be made as compensation in case of a death or permanent disablement of workman, based upon the monthly wage of the workman injured.

The frequency of the pay-out mechanism that currently exists in Sri Lanka in case of a work-related injury is carried out on an ad-hoc basis. Presently, an employee who is injured while working, as long as the employee has used/adhered to all safety mechanisms, has the right to obtain compensation from his/her employer.¹⁴⁶ The employer is then liable to compensate the employee. Further, the recent amendment to the Workmen’s Compensation Ordinance introduced in 2022 had increased the compensation amounts that had to be paid by the employer in case of death/ permanent disablement of a worker.¹⁴⁷

¹⁴⁴ Section 13 and 14, Maternity Benefits Ordinance Act No. 32 of 1939.

¹⁴⁵ ILO Country Office for Sri Lanka and the Maldives, *In-depth Assessment of Employment Injury Compensation Arrangements in Sri Lanka*, International Labour Organization (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636599.pdf [last accessed on 2 May 2022], p.10 -12

¹⁴⁶ Workmen’s Compensation Ordinance

¹⁴⁷ Workmen’s Compensation (Amendment) Act, No. 10 Of 2022

In this backdrop, the following practical impediments may arise in extending the existing workmen's compensation mechanism to domestic workers.

(2) Legal impediments

It is ambiguous whether the WCO directly applies to domestic workers within the definition of the "workman" as the definition of "trade" as provided under the Ordinance is ambiguous as to whether it includes a domestic work.¹⁴⁸ (See Table 1 above for detailed explanation).

Furthermore, the definition of "employer" in the WCO also attaches the connotation of an establishment, with the

words used in the section "employer includes.... anybody of persons whether corporate or unincorporated" in Section 2. Therefore, upon a strict interpretation of the law, it is uncertain whether a household employer falls within the ambit of WCO.¹⁴⁹ Furthermore, KIIs indicated that even if a household is considered as an employer, the identification of an exact person in the household to be held responsible for compensation will be necessary.

(3) General impediments

3.1. Registration process

- i. The injured worker or in case of his/her death, a family member, has to file a claim to the Commissioner for compensation within two years of the accident.¹⁵⁰ Once the complaint is submitted, in the event the employer refuses to pay the claiming of compensation is a detailed litigation process in a court of law.
- ii. KIIs indicated that a domestic worker is unlikely to go through a complicated judicial proceeding due to several reasons including: (i) limited awareness of their rights and entitlement for compensation,¹⁵¹ (ii) domestic workers often lack advisory support to take appropriate actions when an incident does occur; and (iii) domestic workers usually have limited economic means to participate in a long judicial process while covering traveling costs, medical costs associated.¹⁵² Legal support usually comes along free of charge, or at a minimal cost through Legal Aid Commission Sri Lanka. In addition to this, it will be beneficial if domestic workers have access to advisory support/ guidance such as trade unions that will direct domestic workers to seek help.

3.2. Calculation of benefits

- i. Determination of monthly wages- Awarding of compensation under the WCO is based on the wages earned by the workman. Under the WCO, calculation of the wage for the purpose of assessing compensation is primarily based on monthly wages earned by the worker, immediately preceding the twelve months the worker has worked with the particular employer.¹⁵³ However, in relation to domestic workers, KIIs indicated that calculation of compensation based on monthly wage will be difficult. Specially if the domestic worker suffers an injury at the beginning of the employment. For example, the WCO states if the worker has "*worked less than one month, the monthly wages of the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality.*"¹⁵⁴ In this context, KIIs mentioned that if the injured domestic worker has worked for less than one month, his/her wage will be difficult to determine due to the difficulty of finding an average wage of a domestic worker as stipulated in the WCO, unless with an updated database on domestic workers. The Verité Research survey found that the

148 Definition of "trade" - Workmen's Compensation Ordinance

149 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 17 February 2022], p.19, p.24

150 Section . of Workmen's Compensation Ordinance

151 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at <https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers--Employers-Survey.pdf> [last accessed on 17 February 2022], p.17

152 Key Informant Interviews (KIIs)

153 Section 7, Workmen's Compensation Ordinance

154 *ibid.*

wages of domestic workers differ significantly based on the number of hours worked, live-in or live-out basis.¹⁵⁵ Therefore, information relating to worker's wages will be required to arrive at an average wage per hour in the sector. It must also be noted that, during KIIs it was mentioned that the average wage also differs depending on the geographical area. It was indicated that usually wages of workers in the neighbourhoods of Colombo city are relatively higher to those in other parts of the country.

3.3. Financing mechanisms

- i. There is no mandatory insurance requirement that employees should obtain in Sri Lanka. The current system of employment injury benefits is based entirely on employer's liability.¹⁵⁶ This is also a contributing factor to under-reporting of incidents. Employers in the formal sector have expressed strong displeasure to any new scheme that would result in higher labour costs for them as the employers already bear the costs of maternity leave, and employer contributions to EPF/ETF.¹⁵⁷ These challenges will be similarly applicable to domestic workers, if they are also brought under the purview of the WCO.
- ii. Moreover, the latest legislation amendments to WCO have introduced increased levels of compensation for injuries sustained. In this context, the employers will have to resort to insurance policies to cover compensation claims. However, KIIs revealed that insurance policies are costly and most policies currently available in Sri Lanka do not cover workmen's compensation incidents. Hence, KIIs indicated that the few policies that do offer coverage for accidents in workplace, have high premiums, in relation to the anticipated risk-adjusted cost. Therefore, companies hesitate to bear the cost of such insurance. This is specially true in terms of service sector organizations, where there is less propensity for workplace accidents to occur.¹⁵⁸ Also, data is unavailable to decisively determine the frequency or the number of accidents in domestic work space, which in turn can make it difficult to secure insurance at a reasonable premium that is reflective of the risk-adjusted cost.

3.4. Awareness raising and information dissemination mechanisms

- i. Low awareness of the compensation claiming process - KIIs with the Commission revealed that the awareness among workers is generally low with regards to the existence of the Commission. The Commission also stated that the workers similarly have a low understanding of the litigation process, and the ways of seeking redress or compensation is low. As such, special programs will have to be conducted with the involvement of DoL to educate the domestic worker sector.
- ii. Training will be needed to reduce accidents or injuries - special programs are desirable in order to reduce injuries and educate domestic workers of safety methods to be followed on the job. However, participation in workshops or training courses will be limited and difficult for domestic workers since domestic workers have limited spare time due to personal commitments. Additionally, participation in workshops will also be challenging for domestic workers if they have to take a day off to attend a training session.¹⁵⁹

3.5. Monitoring and compliance mechanisms

Inspection and gathering evidence - Safety Inspection of a private home post-accident, where domestic work is usually carried out may be difficult due to privacy concerns of the employer. Labour inspectors will have to seek prior approval or issue notice to private households before inspection. Also, any incident that leads to the injury will take place within a household, which is within the complete control of the employer. As such, KIIs indicated that there may be a chance of evidence being compromised to the benefit of the employer by the time labour inspectors arrive.

155 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 17 February 2022], p.14

156 *ibid.* See also, ILO Country Office for Sri Lanka and the Maldives, 'In-depth Assessment of Employment Injury Compensation Arrangements in Sri Lanka', International Labour Organization (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636599.pdf [last accessed on 22 December 2021], p.11

157 ILO Country Office for Sri Lanka and the Maldives, 'In-depth Assessment of Employment Injury Compensation Arrangements in Sri Lanka', International Labour Organization (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636599.pdf [last accessed on 22 December 2021], p.33

158 Key Informant Interviews (KIIs)

159 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 17 February 2022], p. 17

► 5. Summary and conclusions

Domestic workers in Sri Lanka face multiple barriers in accessing effective social security systems. While many of these barriers exist owing to the atypical nature of their employment, some are also due to cultural and social norms. This section will briefly summarize and draw conclusions on the preceding chapters.

There are five key practical impediments that appear across all five social security schemes discussed above. These are: (1) undefined and unrecognized employment relationship; (2) domestic workers' exclusion from legislation and ambiguity in the law; (3) poor record keeping and lack of digitalized registration system; (4) complex administrative processes that impede access; and (5) difficulty of monitoring and enforcing compliance.

1. Definition and recognition of the employment relationship: Conventions No.189 defines a domestic worker as any person engaged in domestic work within an employment relationship; and a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.¹⁶⁰ This includes all domestic workers including live-in, live-out, and those working on a casual basis, as long as it is on an occupational basis. The latest ILO Committee Report has specifically mentioned that, "Article 1 of the Convention only excludes persons who perform domestic work occasionally or sporadically and not on an occupational basis."¹⁶¹ However, currently in Sri Lanka there is no specific definition of domestic work or a domestic worker and what elements constitute "sporadic or occasional" work.

In Sri Lanka the protection of labour laws, including social security, is offered only to workers who establish an employer/employee relationship as recognized under the current framework. Moreover, the EPF/ETF Act and other social security labour legislation in Sri Lanka only extend to those working in an employment relationship. Therefore, clear recognition of domestic work as a form of employment, and of domestic workers as employees, is an essential prerequisite to achieve social security coverage for domestic workers under EPF, ETF and other social security related legislation. More importantly, to fall within the ambit of Conventions No.189, Sri Lanka needs a criteria to distinctively identify domestic workers working on an occupational basis, as opposed to "sporadic or occasional" workers.

2. Exclusion from legislation: The existing laws relating to social security schemes in Sri Lanka have explicitly excluded domestic workers from its purview. As such, the EPF and ETF Acts, and the Payment of Gratuity Act have express provisions to exclude the applicability of the provisions therein to domestic workers. Moreover, the definition of a worker as provided in the Maternity Benefits Ordinance, and Workmen's Compensation Ordinance gives rise to ambiguity as to whether or not the definition extends to a worker employed in a domestic environment. In both these Ordinances the definition of a "worker" is linked to the words "trade" which attaches a business connotation to the word. Since a household environment typically falls outside the notion of trade, it is doubtful whether maternity benefits and workmen's compensation can be extended to the domestic environment.

3. Poor record keeping: The payments made to domestic workers vary largely based on live-in or live-out basis, and hours of work. Therefore, in the absence of a contract of employment, or payslips that sets out the terms of employment such as wages/salary, overtime payments, leave entitlements, working hours, allowances, there is no way to identify the wage a domestic worker is entitled in a particular month. In the absence of such documents, it is then difficult for authorities to determine whether the workman's contributions have been underpaid by the employer. According to KIIs, due to the informality in a household, it was noted that regular maintenance of registers of attendance, payslips, clock-in hours will be unlikely contrary to a formal set up of employment. Keeping track of the number of hours, days worked will be even more difficult for part time or live out workers. Domestic workers who are employed under multiple employers will have to maintain records of salary slips, dates of employment and other employment related details in case of future non-payment issues. For a sector of the society who are currently employed under informal circumstances, on verbal terms, with low awareness of social security and are paid in cash; introduction and maintenance of records may be challenging for domestic workers given the current status quo. Therefore, monitoring for compliance, for labour inspectorates as well as for the Labour Commissioner in the event of a dispute, will be difficult in the absence of proper records.

160 C.189, Domestic Workers' Convention, 2011 (No. 189)

161 International Labour Organization, 'ILC110/III(B) – Securing decent work for nursing personnel and domestic workers, key actors in the care economy', at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_839652.pdf [last accessed on 20 May 2022], p.222

4. *Complexity of administrative procedure:* the current registration mechanism involved in EPF, and ETF is a time-consuming administrative procedure, which involves detailed documentation. The necessity of maintaining employment records, salary slips, bank details can be perceived as a burden by a household employer. Furthermore, workers from certain communities who lack identity documents (for example, birth records), will find it difficult to register without appropriate documents. Moreover, the high turnover of domestic workers, their preference for short term employment would require household employers to go through the registration process each time a new worker is hired. Although the burden of proof lies with the employer, maintenance of employment records will make it easier for the worker at the time of collecting the funds. Therefore, the administrative procedure will be burdensome for both workers and employers. There is however a precedent, to the registration requirement in Sri Lanka. Households were required to register live in workers with the police prior to the end of the civil war in 2009, due to security reasons.
5. *Difficulty of inspection and monitoring compliance:* unlike a business establishment or a formal place of work where trade or other services are carried out, domestic work is performed in a household environment. Therefore, the work place for a domestic worker is a private household. Unlike in a formal workplace environment, conducting labour inspections in a private house will be difficult due to privacy concerns. The current legislation is ambiguous whether the definition of place of work – encompasses a domestic household. The labour officials also intimated that under current legislation they do not have authority to inspect household premises. Moreover, the labour inspectorate currently carried out by the DoL, which is already grappling with low resources, may also be overburdened if they were to add inspections to private households to their current roster. However, as noted above, the inspection difficulty may not pose a significant threat to the successful introduction of the existing mechanisms to domestic workers. However, we have identified the nature of the threat in this instance for completeness.

▶ 4. Recommendations

This section provides overarching recommendations to address some of the key practical impediments identified in the previous section. This section is broken into two main sections. The first section provides legislative recommendations, short term as well as long term, in overcoming the existing legal impediments to extending social security benefits to domestic workers.

The recommendations include the introduction of a new law that comprehensively encompasses all legal aspects of domestic work. The second section provides broad based recommendations to address some of the other practical impediments identified in Chapter 3 based on each scheme. This section will finally propose alternative monitoring and awareness options to each scheme.

▶ a) Overarching legislative reforms

As discussed in the above sections, domestic workers are, at present, explicitly excluded from a majority of labour laws in Sri Lanka including the ones relating to social security benefits. Providing legal recognition to domestic workers can occur in two ways: (i) the introduction of new laws; or (ii) amending the existing laws with a focus to bring in substantive solutions to domestic workers across all social security schemes.

The current social security laws do not provide for the unique characteristics of domestic work. The introduction of a new law that is comprehensive and covers not only social security benefits, but also ensures decent work for domestic workers is necessary, however, this will require time to formulate. Therefore, in the interim the existing legislation can be amended. This would do two things: (i) bring domestic workers under the legal regime in Sri Lanka and (ii) recognise domestic work as an employment relationship.

Short term

- i. Amending existing legislation
 - a. *Broad interpretation of the law to include domestic workers*: Legislation should incorporate domestic workers within the definitional ambit of a “worker” to provide adequate legal coverage and establish an employment relationship. As mentioned above, currently in terms of both Maternity Benefits Ordinance and Workmen’s Compensation Ordinance it is uncertain whether the word ‘trade’ used in the definition of the “worker”, includes household work.¹⁶² A useful comparison would be the definitions afforded to the terms, ‘industry’ and ‘workman’ in the Industrial Disputes Act, which is applicable to domestic workers.¹⁶³ The Industrial Disputes Act adopts a wider perspective of the term ‘industry’ to incorporate any trade, service,

162 Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 20 December 2021], p.19, p.39

163 A. Sarveswaran, ‘Domestic Workers’ Rights in Sri Lanka - Work Like Any Other, Work Like No Other: Need for a Legislative Intervention’, at <http://archive.cmb.ac.lk:8080/research/bitstream/70130/3363/1/AnnualResearchSymposium2012UniversityofColombo.141-143.pdf> [last accessed on 16 February 2022]

every occupation and every undertaking of employers.¹⁶⁴ Similarly, the definition of a workman in the Industrial Disputes Act is not confined to a particular trade or service.¹⁶⁵ An expansive definition afforded to 'trade' will also reduce the ambiguity in relation to other categories of domestic workers who perform works other than household activities, such as drivers and gardeners.

- b. *Require Digitised Registration*: a digitized registration requirement should be imposed on household employers employing domestic workers with the Grama Niladhari in order to make sure that the employers adhere to minimum standards with respect to the employment and living conditions. This will enable better visibility for authorities over households in terms of workers' employment rights and protection.¹⁶⁶
- c. *Minimum wage*: Domestic workers should be brought within the purview of the National Minimum Wage of Workers Act, No. 3 of 2016. Currently the Act explicitly excludes "domestic servants" from the definition of a 'worker'. An expansive interpretation of the term 'trade', introduced as an amendment to the Act would enable the inclusion of the domestic worker in the Act. This will bring domestic workers under the general minimum wage regime. Minimum wage will be an added protection for domestic workers whose wages largely depend on various factors such as the number of hours, live-in and live-out basis.¹⁶⁷ In terms of live-out workers, whose patterns of work can vary, minimum wage can be connected to hourly basis. One possible benefit of minimum wage is that it ensures that the salary/ wage of domestic workers are not below a threshold which will later function as social security in the future.

Another alternative to expanding the Act, will be the establishment of a Wages Board for domestic workers. A Wages Board could determine minimum wages and other employment standards. However, the establishment of a Wages Board requires representatives of both workers as well as employers. Wages Boards promulgate decisions applicable to the sector. Given the poor organizational structure existing in the sector at

present, representation of workers will be easily available (through current trade unions and other CSOs). However, forming a representation of the household employers as part of the wages board will be practically difficult.¹⁶⁸ This difficulty of finding representatives of household employers was pointed out during the KIIs with DoL as well.

Long term solutions

- ii. Introduction of a new law governing domestic workers should consider the following aspects:

Minimum labour standards as per Article 7 of Conventions No. 189: Currently there is no principal legal framework for domestic workers that identifies: working hours, minimum wages, overtime payment, daily and weekly rest, paid annual leave, social security, maternity protection and safe and decent working environment.¹⁶⁹ A framework that delineates employment conditions such as working hours, minimum wages, overtime payment, daily and weekly rest, paid annual leave, will be beneficial to set employment standards for domestic workers. This will also help enhance the professionalism of domestic work as employment.

Recognition of a contract of employment: Formation of a new law that contemplates the complexities that are well inherent in the domestic work structure will be essential. In terms of introducing a new law, it will be apt to consider placing the domestic workers employed in households in Sri Lanka under a similar regulatory oversight or regime as the female migrant workers employed in the housemaid category. Female migrant workers employed in domestic sector are protected by a contract of employment, which includes all terms and conditions with regard to their employment, such as wages, working hours, and employer's responsibilities. Migrant workers are also facilitated by a complaint mechanism through the Sri Lanka Bureau of Employment. This complaint mechanism allows for migrant workers or their family members to report any contractual violations on the part of the foreign employer, or any other grievances migrant workers have suffered- to which the licensed local agency

164 Section 48, Industrial Dispute Act

165 *ibid.*

166 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 22 May 2022], p.32

167 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 2 March 2022], p.14

168 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 20 December 2021], p.14

169 A. Sarveswaran, 'Domestic Workers' Rights in Sri Lanka - Work Like Any Other, Work Like No Other: Need for a Legislative Intervention', at <http://archive.cmb.ac.lk:8080/research/bitstream/70130/3363/1/AnnualResearchSymposium2012UniversityofColombo.141-143.pdf> [last accessed on 11 February 2022]

is also held responsible.¹⁷⁰ As such, promoting a contract of employment between the employers and the domestic worker will be helpful for domestic workers in seeking redress in terms of a dispute. The contract of employment cannot be used as a substitution for a cohesive legal framework but would serve to complement the legal framework and therefore should include all terms and conditions subject to general labour laws.

Supporting ratification of Conventions No. 189: The Convention No. 189 applies to domestic workers who are in an employment relationship, where work is performed in or for a household/households. As such, all workers working occasionally or sporadically and not on an *occupational* basis fall outside the scope of Conventions No. 189. However, as stated above, Sri Lanka does not have a clear legal definition to determine the parameters of occasional or casual types of employment. As per the ILO, the objective should be to ensure that all workers who perform domestic work on an occupational basis benefit effectively from the protections afforded by the legal instrument.¹⁷¹ Sri Lanka can draw examples from countries that have ratified Conventions No. 189, such as Panama, and have captured the definition of domestic workers as per Conventions No. 189 in order to formulate a comprehensive definition that encapsulates all occupational employment arrangements of domestic workers.

According to the report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on domestic workers, they have categorically stated that Conventions No. 189 only intends to exclude “persons who perform domestic work occasionally or sporadically and not on an occupational basis”.¹⁷² The Committee noted that some countries have explicitly or implicitly, excluded “discontinuous” or “sporadic” nature of work in its definition of domestic workers. The Committee thereby emphasized that irrespective of the type of contract for domestic workers, Article 1 of the Convention covers all types of occupational arrangements.¹⁷³ The Committee, referring to the ratifying countries of Conventions No. 189, identified

Panama as an example. It noted that Section 230 of the Labour Code in Panama provides that “domestic workers are workers who perform, in a habitual and continuous manner, the services of cleaning, assistance or other household tasks for a person or the members of a family.”¹⁷⁴

In Sri Lanka, the only yardstick that may be used to interpret casual work, as per the existing legislation, is the definition provided for “employment of casual nature” in the Minimum Age of Retirement Act, No. 28 of 2021. The Act defines casual employment as, an employment of a worker not in excess of hundred and eighty days in any one calendar year. Which in other words means that if a worker has worked more than half of the calendar year, the Minimum Age of Retirement Act deems it a regular or continuous employment, as opposed to the sporadic or occasional type of work. Therefore, legislation should in line with Conventions No. 189, specifically define domestic workers to exclude those who work occasionally or sporadically, and not on an occupational basis.

In view of the above, the principal legal framework should integrate the above fundamental aspects of domestic work employment.¹⁷⁵ In addition, the new law should also incorporate the following aspects: (i) a dynamic social security payment scheme designed to address ongoing vulnerabilities of domestic work mentioned above such as the low assertiveness of workers, complexities attached to live-out workers, and difficulty of record keeping; (ii) reducing the administrative hassle created by registration; (iii) set out a legal framework with minimum standards for employers to comply with respect to living conditions, hours of work and rest for residential workers;¹⁷⁶ and (iv) provide for expedited dispute resolution systems.¹⁷⁷

iii. Establishment of a regulatory body: Establishment of a regulatory body dedicated to domestic workers to ensure adequate protection of the law towards domestic workers should include the following: oversee the implementation of the law, a complaint mechanism

170 Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985.

171 International Labour Organization, ‘ILC110/III/(B) - Securing Decent Work for nursing personnel and domestic workers, key actors in the care economy’, at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_839652.pdf [last accessed on 20 May 2022], p.217

172 *ibid*, p. 223

173 *ibid*, p.223

174 *ibid*.

175 Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’, at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 20 December 2021], p.19, p.39

176 *ibid*.

177 Verité Research, ‘Sri Lanka Domestic Workers- Legal Policy Framework’ at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 20 December 2021], p.26 – Although personal security aspect of domestic has not been a subject of this report, the new law should encompass provisions to ensure personal security against harassment, abuse and violence.

for social security benefits, and monitoring and compliance mechanisms.¹⁷⁸ This can occur in two ways: (i) create a separate regulatory body, or (ii) expand

the mandate of the department of labour to include domestic workers.

► b) Legislative and Non- legislative reforms in relation to particular scheme

The following section will list out legislative as well as non-legislative recommendations to overcome challenges identified in relation to each social security scheme.

a) EPF/ETF

1. Legal reforms

- a. Amending the existing EPF and ETF legislation: Both the ETF Act and EPF Act through subsequent regulations explicitly exclude domestic workers from their purview. The EPF Act currently applies only to 'covered employments' as declared by regulations. The inclusion of the domestic workers into the EPF Act could be made through the introduction of the domestic sector as a covered employment under the EPF regulations or expanding the applicability of EPF Act to employments other than covered employments.
- b. In relation to the ETF Act, an amendment will have to be introduced to amend the gazette notification No. 171/2, dated 1981 December 14, which prohibited the application of ETF Act to domestic workers.

2. Non-legal reforms

i. Registration mechanisms

- a. Digitize the registration process, i.e. payment mechanisms enabled through smartphones, or SMS, to reduce transaction costs associated with documentation, administration and time consumption, to facilitate the employer. A digitized process will better facilitate registration of workers under multiple employers. The use of mobile or online applications would simplify this

process even further. These platforms should contain information on the workers' registration, payment of contributions (by both parties), changes to wages, claims, or withdrawal of social security payments. Using the mobile application or website to track these payments will drastically reduce employers' time as opposed to waiting in queues for registration, amendments, and filing of termination forms. The online system or the mobile application should be configured in a way that ensures easy access and data security to both employers and domestic workers. However, the downside of digitization is that government agencies and staff may not be completely adapted to technology-based systems.¹⁷⁹ Therefore, this type of intervention will require some time to set up and for government officials to adjust to the new process. Moreover, implementation of new mechanisms requires more digitally literate staff and other state funded resources in the short term, to train and implement the systems. Creating a new system will require additional resources. Since the budget allocations for funding and other resources take time to be processed, implementing a fully functioning mechanism will be difficult in the short term.¹⁸⁰

- b. Coherent administrative procedures to overcome the lack of identification documents- The certification of birth or any form of documentation to demonstrate a person's identity, are preliminary requirements to register for the EPF. However, most domestic workers

¹⁷⁸ *ibid.*

¹⁷⁹ Key Informant Interviews (KIIs) with CBSL.

¹⁸⁰ Key Informant Interviews (KIIs) with CBSL.

from the Hill Country Tamil community do not have the proper birth registration documents.¹⁸¹ As such, innovative administrative processes should be introduced to issue temporary identification for those who lack proof of identity. The coordination between the EPF with the assistance of the Department for Registration of Persons and the Grama Niladhari of the worker's residential area will be a prerequisite.

ii. Financing and calculation of benefits

Setting up a contribution rate

This section will first consider if there is a basis for setting up a different contributory structure than the current EPF/ETF structure, and then it will discuss possible ways of structuring and subsidising contributions.

To achieve a sense of equity and legitimacy, it will be easier to have the domestic workers contribute at the same rates/amounts for the EPF/ETF as other workers. However, the manner of contribution and who is liable to make the contribution can be changed, as set out within the points below. In addition, a differentiated lower contribution rate will likely not serve the purpose of expanding social security to domestic workers – providing a monetary safety net. The domestic worker category is already a low wage earner, by reducing the percentage contribution rate to EPF/ETF will further reduce what domestic workers can earn in the long run. In addition, by having a differentiated contribution rate it may have the adverse impact of some employers re-classifying their workers as domestic workers to reduce their contribution burden.

Currently contributions from employer are as a percentage of gross wages for EPF (12%) and ETF (3%):

Employer (15%) + Employee (8%) + Govt (0%, but does not tax employer contribution) = 23%

In setting up an EPF/ETF contribution for domestic workers there are two parties that might have adverse incentives that should be overcome. First the employer, because it involves an extra cost, as well as an extra administrative burden. Second the employee because, under the current method, it involves a deduction from their take home pay.

The suggested method of structuring payments and overcoming these adverse incentives has been discussed separately below as to the (a) employer, and (b) the employee:

a. For the employer:

i. Focus on reducing the administrative burden. These two stylised examples can guide the development of methods to reduce the administrative burden for the employer:

a. Creating a special collection unit that would allow for a single point of collection for both EPF and ETF due to domestic workers. Therefore, employers do not have to make two separate transfers to two separate places in varying amounts. That is, the employer would make a single transfer of 15 per cent to a collection unit with employer and employee codes, which would then split it and remit it to the relevant EPF and ETF accounts of the worker. 80 per cent of what is remitted goes to the EPF, and 20 per cent to the ETF – that would ensure the 12 per cent and 3 per cent contribution that is due to these two entities from the employer on behalf of the employee is covered.

b. Integrating this collection unit with existing methods for payments for utilities - which in Sri Lanka can be done through multiple points of contact: e.g. electronic banking, telephone based apps, supermarket cashiers, bank tellers, offices of utility providers. Using these highly developed network systems for utility payment collections, would therefore result in reducing the administrative burden by plugging in to the existing network system. When an employer can use any of these pre-existing and familiar methods (since utility bill payments are already done by every employer) the administrative burden can be significantly reduced.

c. Create an easy and virtual process (done online or over a phone call) to register new employees and receive their employee codes – or to use the National Identity Card number of the employee as the identification code. Therefore, the process of payment will remain the same even if the employee changes. The employee code may be different code/ID number but the process will remain the same for the employer – much like paying into a bank account using a payment template. For the employer, this easy identification method would then eliminate the difficulties with regard to staff turnover etc.

ii. Offsetting concerns about extra cost:

a. People will generally be more willing to make contributions (incur an expense) when they know that there is a matching contribution. Therefore, to offset concerns about the extra cost for employers, the government should make a matching contribution.

181 International Centre for Ethnic Studies, 'Estate Workers in Sri Lanka: An Account of the Legal and Policy Framework', (2020), p. 9

The government's matching contribution should be equal to 8/15 of the amount deposited by the employer. This 8 per cent is equal to what the employee contribution would be in terms of EPF and will also provide the employer with a sense that their extra contribution goes a longer distance in supporting the employee through the matching support provided by the government.

b. For the employee:

i. Reduce incentives to collude in non-compliance.

a. There should be no requirement for a deduction and contribution by the domestic worker. This ensures that the worker does not have reduction in take home pay, and therefore has no incentive to collude in non-compliance by the employer.

ii. Create incentives to increase interest in employer compliance

a. The matching contribution by the government explained in (ii) a. above ensures that the domestic worker is doubly incentivised to ensure that the employer is compliant. That is, if the employer were to offer a side payment to forgo the EPF/ETF contribution, that side payment would now have to be higher than the 15 per cent contribution that is required, and would therefore incentivise compliance by both the employer and employee. The structure would change to the following as a percentage of gross wages:

Employer (15%) + Employee (0%) + Govt (8%, no tax deductions) = 23%

Possible options to finance contribution

Note: Calculations and other statistical Information relevant to this section are detailed in Appendix 3.

The monthly cost of the above government contribution (8 per cent) at current wages has been calculated at LKR 327.6 million, with an annual cost of LKR 3.93 billion (see Appendix 3). This annual cost is similar to just one month of the cost of the Samurdhi welfare program¹⁸² – or about one twelfth of the disbursement made under the Samurdi program.¹⁸³ The annual cost for government contribution for EPF/ETF for domestic workers would amount to less than 0.025 per cent of the government's annual budget. For instance, the failure to adjust cigarette taxes in line with the formula budgeted in 2019 will cost the government over LKR 40 billion in lost revenue in 2022– ten times the cost of this contribution to the domestic workers, if there is full compliance and take up.¹⁸⁴

The updated official poverty line in Sri Lanka, based on 2019 data, identifies a family of four as being “poor” if the household income is below LKR 27,864. In 2019, the data identifies that 14.3 per cent of Sri Lanka's population and 11.9 per cent of the households were poor.¹⁸⁵ Applying assumptions and calculations (explained in Appendix 3), to the ILO survey estimates we find that over 85 per cent of the domestic workers, both live-in (85.7 per cent) and live-out (86.7 per cent) are likely to have been classified as poor (see Appendix 3). There will be an overlap between Samurdhi beneficiaries and domestic workers. However, due to the high exclusion errors in the Samurdhi program, this social security transfer could also capture a significant number of those that are eligible for Samurdhi, but are excluded by the program at present.¹⁸⁶

In April 2022, inflation increased to 29.8 per cent and food inflation to above 46.6 per cent.¹⁸⁷ When that adjustment is made to the poverty line, almost all those in the domestic

182 Public finance.lk, 'Free and Open Access to Public Finance Data and Analysis', at <https://publicfinance.lk/en/topics/government-expenditure-on-samurdhi-payments-1628160503> [last accessed on 2 May 2022]

183 In 2020, the government spent LKR 52.5 billion on Samurdhi Relief Payments. Hence, the annual cost of Government contribution for EPF/ETF would be less than the monthly cost Samurdhi (52.5/12 = 4.375 billion) - Public finance.lk, 'Free and Open Access to Public Finance Data and Analysis', at <https://publicfinance.lk/en/topics/government-expenditure-on-samurdhi-payments-1628160503> [last accessed on 2 May 2022]

184 Verité Research, 'Updated calculations for 2022- Cigarette Taxation: 20 Billion Extra Revenue in 2020, if indexation Is implemented', at https://www.veriteresearch.org/wp-content/uploads/2021/05/VR_Eng_Insights_May2020_Cigarette_Taxation.pdf [last accessed on 5 May 2022]. See also, Twitter page of Verité Research, 'Estimated 20 BN lost in government revenue as a result of incorrect tobacco tax policy', (5 November 2021) at <https://twitter.com/veriteresearch/status/1456501721438441480?s=21> [last accessed on 21 July 2022]

185 The Website of Department of Census and Statistics, 'Poverty indicators-2019', (April 2022) at <http://www.statistics.gov.lk/Poverty/StaticalInformation/PovertyIndicators-2019> [last accessed on 24 May 2022]

186 Nadeeka Damayanthi Madduma Bandara, 'Causes and Consequences of Poverty Targeting Failures: The Case of the Samurdhi Program in Sri Lanka', Asian Politics & Policy: Volume 8, Issue 2 (2016), at <https://doi.org/10.1111/aspp.12251> [last accessed 18 May 2022], p 281-299.

See also, UNICEF, 'Being Prepared and Acting Fast: A series of case studies on UNICEF's role in the delivery of effective social protection responses to COVID-19', at https://www.unicef.org/media/110791/file/Sri-Lanka-Case_Study-Being-Prepared-Acting-First-2021.pdf [last accessed on 2 May 2022], p.4

187 Public finance.lk, 'Free and Open Access to Public Finance Data and Analysis', at <https://publicfinance.lk/en/topics/april-inflation-rises-to-29-8-food-inflation-soars-to-46-6-1651646906> [last accessed on 23 May 2022]

work category, even with some increase in wages from 2019, are likely to fall below the poverty line.¹⁸⁸

Feasibility of other financing options such as tax financing

Sri Lanka at present does not deploy taxes that are linked to specific expenditures. In this case, the calculated cost of the subsidy required to finance the worker contribution for the social security of domestic workers, is too low to require a special financing instrument. Since the amount in question is small — only 0.025 per cent of government expenditure, it can be comfortably financed from the consolidated fund of the government budget.

iii. Raising awareness, promoting, monitoring and enforcing compliance

- a. Contract of employment- terms and conditions of the employment entered into between the domestic worker and the employer by way of an agreement is one way to identify the wages, working hours, resting hours, conditions of living, and leave entitlements of the domestic worker. An agreement would be a short-term solution until legislation is amended to give legal coverage to domestic workers, and it will enable the authorities to identify the terms of employment applicable to the particular domestic worker for compliance purposes. However, currently, apart from the workmen covered under the Shop & Office Act, there is no statutory requirement for an employer to provide a contract of employment that stipulates the working conditions of the employment.¹⁸⁹ Domestic workers naturally fall outside the scope of the Shop & Office Act. Furthermore, the ILO study indicates that 54 per cent employers liked the idea of inclusion of social security in the employment contract.¹⁹⁰ However, in terms of domestic workers, the data indicates that, while over 30 per cent of both live-in and live-out domestic worker categories preferred inclusion of social security in a contract, over 60 per cent of both categories had no idea what social security benefits were.¹⁹¹ As such, employers should be encouraged to provide a contract of employment setting out the working conditions for domestic workers. The authorities will have to heavily advocate and promote the use of contracts between

employees and employers with the assistance of trade unions and CSOs.

- b. Easy complaint filing procedure- in order to ensure successful enforcement of social security contributions, given the unique nature of the employer-employee relationship in domestic work and the fact that the worker is increasingly dependent on the employer, non- confrontational methods are important.¹⁹² In this regard, intervention of a regulatory body such as the Labour Commissioner that in theory provides a robust role as an adjudicator will bring formality as well as neutrality to the process to facilitate in a non-confrontational/non-adversarial manner. One avenue to explore non-confrontational methods of dispute resolution is through the introduction of a complaint hotline to investigate complaints from domestic workers.¹⁹³ This would provide a method for workers' disputes to be handled in a fairly non-confrontational manner, as the matter will be mediated, negotiated or handled by a regulatory third party.
- c. Reporting mechanism as a complement to inspection – Since the labour inspectorate in Sri Lanka has resource constraints, perhaps the DoL can outsource the inspection powers to Grama Niladhari of the area through an amendment to the law. If a general registration requirement is imposed on every household to register their domestic worker with the Grama Niladhari, he/she will possess a list of the domestic workers employed in that area. The Grama Niladhari can distribute a list of scheduled interviews, imposing an annual or bi-annual reporting requirement to all registered domestic workers in the area. This will enable the Grama Niladhari to question the domestic workers individually, to ensure compliance with labour legislation and working conditions. The labour inspectorate should promote compliance through registration drivers, and awareness campaigns. Home inspections should be a last resort and used only in instances where the complaint rises to the level of a criminal matter.
- d. Education –Regulatory authorities such as DoL can use mass media campaigns to raise awareness on the

188 The website of Department of Census and Statistics, 'Inflation Prices', at <http://www.statistics.gov.lk/InflationAndPrices/StaticInformation/MonthlyCCPI> [last accessed on 4 February 2022].

189 R.K.S. Suresh Chandra, 'The Employment Relationship (scope) in Sri Lanka', at http://ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205382.pdf [last accessed on 21 February 2022], p.4

190 International Labour Organization Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization (2020) at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 21 July 2022], p.66

191 *ibid.*

192 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework', at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 20 December 2021], p.30

193 *ibid.*

responsibility of employers to contribute to domestic workers' social security in all three languages. In addition, DOL could issue a manual prepared in a simplistic form for domestic workers that sets out the following: (a) steps of registration for EPF/ETF; (b) the fundamental terms of employment each domestic worker should ideally secure in writing (e.g. minimum wage, holidays, rest hours etc.); and (c) the complaint mechanism available in the event these conditions are breached.¹⁹⁴ Since, domestic workers have limited knowledge of social security systems and are unlikely to be members of organisations where this type of information is disseminated, it will be necessary to take specific measures to raise their awareness through a variety of channels. The promotion and awareness raising among the public of procedures involved for EPF/ETF such as registration, filing amendments, changes relating to employment, and filing forms, can be carried out through mass media campaigns and community events. Although filings are made by the employer, awareness of these requirements from the domestic worker will benefit him/her if issues of compliance occur.

- e. Promoting collective bargaining- As mentioned above, currently the organizational set up of domestic workers

is extremely poor. The Verité Research study on domestic workers revealed that despite them not having enough spare time for community level engagement with organisations, 56 per cent of workers surveyed indicated their willingness to join an association set up to promote decent work for domestic workers.¹⁹⁵ As such, the promotion of association among domestic workers, with the active participation of CSOs could be beneficial as a tool of information dissemination. The lack of an organization of employers of domestic workers also inhibits collective bargaining.

- f. Collection of Data- This study was mainly based on desk-based research and used certain survey data reports from Verité Research and ILO published in 2015¹⁹⁶ and 2020¹⁹⁷ respectively. The context in Sri Lanka has shifted and therefore more up to date data would be useful to understand the following: (i) the capacity of domestic employers to finance social security, and (ii) the various societal dynamics that drive the willingness of employers to finance domestic workers' social security. Comprehensive and updated data will provide insight as to the income levels and what factors could potentially influence employers' willingness to contribute to domestic workers' social security.

b) Payment of Gratuity

1. Legal Reforms

Section 7 of the Payment of Gratuity Act should be amended to include domestic workers as a sector eligible to receive gratuity payments from the employers. However, even if domestic workers were included in the Act through an amendment, it is unlikely that domestic workers will pass the two primary eligibility conditions stipulated in the Gratuity Act. There may be instances where domestic workers qualify for gratuity payment if they have been employed with the same employer for a period exceeding 5 years. However, the possibility of private households employing a minimum of 15 or more workmen on any day during the period of 12 months immediately preceding the termination of the services is unlikely. Therefore, for effective payment of gratuity, the Act will have to be amended to declare household workers as a category that falls outside

the two primary conditions stipulated in Section 5 (1) of the Payment of Gratuity Act.

The Payment of Gratuity Act should also be considered for revision to accommodate part-time workers. The existing Gratuity Act does not explicitly stipulate a calculation method for gratuity for part time workers. Since many of the live out domestic workers have a tendency to work part time, an amendment to the existing Gratuity Act to accommodate part time workers will provide a solid foundation for the calculation of gratuity for part time workers of all sectors.

However, these amendments to the Gratuity Act should be a long-term solution. The extension of gratuity can be extended once the more pressing requirements on social

194 *ibid*, p.29

195 Verité Research, 'Sri Lanka Domestic Workers & Employers survey', at https://www.veriteresearch.org/wp-content/uploads/2018/05/Domestic-Workers_-_Employers-Survey.pdf [last accessed on 17 February 2022], p. 17

196 *ibid*.

197 International Labour Organization Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization (2020), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 23 May 2022].

security are addressed, namely EPF and ETF have been extended.¹⁹⁸

2. Non Legal Reforms

i. Calculation of benefits

- a. Currently, the gratuity payment is calculated using the base wage of the worker. However, it will be difficult to always determine a base wage of a domestic worker if the wages they receive are irregular, and there is also no contract of employment. A possible solution would be to use the EPF and ETF systems to arrive at an average wage earned by the particular domestic worker in a given time period.

- b. Alternatively, the domestic workers' basic wage can be calculated as stipulated in an employment contract, payslips or other records of employment. Basic wage mentioned in each domestic worker's employment contract, payslip or other record will avoid any ambiguities in relation to gratuity calculation.

ii. Financing mechanisms

- a. As discussed above, Gratuity calculations can be complicated, specifically in terms of live-out domestic workers. This is due to the fact that, working hours, days of live out workers differ. Hence, the cost of government subsidizing can be a complicated procedure to determine whether subsidizing is a feasible option or not. Therefore, the employer will have to bear the cost of gratuity, provided the calculation is determined using one of the criteria identified above 2 (i).

c) Maternity Benefits

1. Legal Reforms

- a. Expanding the definition of "worker" in the MBO- the MBO should be amended to expressly include domestic services within the meaning of the term "worker". Currently the definition of a "worker" only extends to "any trade" in a manner that attaches a business connotation to the term.¹⁹⁹ As domestic households fall outside the scope of a typical commercial or business establishment, it is ambiguous whether the definition extends to domestic workers. Therefore, the MBO should be amended to expressly include domestic workers within the meaning of the term "worker".
- b. An amendment of the MBO will also bring Sri Lanka in line with its international obligation in terms of Maternity Protection Convention (Revised) No. 103 of 1952, which has been ratified by Sri Lanka. Conventions No. 103 extends its protection to "women employed in industrial undertakings and in non-industrial agricultural occupations, including women wage earners working at home". However, as mentioned above, Sri Lanka has not expressly extended the MBO to domestic workers. As such, the MBO should be amended to include 'all wage earners' – giving domestic workers the right to obtain

maternity protection and be free from pregnancy related discrimination.²⁰⁰

2. Non legal reforms

i. Financing

a. State funded maternity leave benefits

Employers bearing the full cost of maternity leave benefits have negative social and economic impacts, such as low hiring rates of women workers.²⁰¹ State funded maternity leave benefits are therefore an appropriate alternative to this issue. According to the research conducted by Verité Research, shifting the cost of maternity leave benefits (MLB) to the state would benefit the country in three ways:

- i. It would become an incentive for the employers to recruit female employees and elevate their economic participation.²⁰² The government can also provide economic incentives to private sector employers by setting off their MLB payment against taxes.

198 Key Informant Interviews (KIIs) conducted with the domestic workers' representative organizations.

199 Section 21, Maternity Benefits Ordinance

200 Verité Research, 'Sri Lanka Domestic Workers- Legal Policy Framework' at <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf> [last accessed on 20 December 2021], p.19

201 Verité Research, 'State funding for maternity leave in Sri Lanka - a no-brainer', at https://www.veriteresearch.org/wp-content/uploads/2021/07/VR_ENG_Insights_Sep2020_State-Funding-for-maternity-leave-in-Sri-Lanka-a-no-brainer.pdf [last accessed on 21 December 2021], p.3

202 *ibid*, p.3

ii. Assuming that those employed in domestic work are above the age of 20 and possibly have children, we can derive the following calculations: based on the distribution of live births in the country by age group, we can calculate the number of live births by those who are engaged in domestic work. Based on the 2019 labour force data provided by ILO, this number is equal to 4,057 and that the cost of paying for 3 months of maternity leave benefits for this 4,057, is LKR 212 million (see Appendix 4 for detailed calculations). This is about 6 per cent of the EPF subsidy calculated above in Section a (2) (ii) - Financing of EPF/ETF. This therefore has a vanishingly low impact on government finances.

iii. State funded MLB is considered a best practice that has already been recognized by 129 countries for the social and economic value it adds to the country. It is noteworthy that among those 129 countries, 96 countries fully fund MLB through state funds.²⁰³

b. State Incentives for employers

Until such time legislation and policy changes are effected to fully fund maternity benefits by the state,

the state can allow tax deductibility of maternity benefits as a short term incentive.²⁰⁴ This could be implemented through state-supported programs where the state deducts maternity leave benefits from private sector taxes, i.e. specifically household employers that employ domestic workers.²⁰⁵ However, this may not be an effective proposal as the percentage of taxpayers on income are less in Sri Lanka.²⁰⁶ Hence there may not be lot of household employers that may benefit from the tax deductibility offered.

c. Maternity cash benefits

Cash benefits are best handled through the general system rather than one that specifically targets domestic workers. A general system will reduce the administrative costs and other costs associated in developing a new system. Cash transfer programs for the poor, already exist in the country. Domestic workers that are poor therefore would already qualify for support under the existing schemes. (Samurdhi Program is the main scheme). Maternity cash benefits can therefore be captured through social security mechanisms that are already in place.

d) Employment Injury

1. Legal Reforms

a. The law relating to employment injury, i.e. Workmen's Compensation Ordinance has to undergo significant changes to afford better and improved benefits across all sectors of employees in Sri Lanka.²⁰⁷

With respect to domestic workers, the WCO should be amended to explicitly include domestic workers within the purview of the definition of a "worker". The definition in the WCO as it currently stands is ambiguous in terms of its application to domestic workers. The term "trade", as defined in the Ordinance- by the use of the words "any industry, business, undertaking, occupation, profession or calling," does not expressly mention whether domestic workers are covered by the WCO. Similarly, the definition of "employer" must

also be amended to include a household employer, as the use of words "any body of persons, incorporated or unincorporated" attaches a business connotation to the term. However, such amendment should also encompass a framework to identify a specific person in the household to implicate liability in the event of an injury caused to the worker.

2. Non legal reforms

i. Financing mechanisms

a. Differentiated insurance schemes

Private insurance schemes should be introduced for domestic workers depending on the following: (i) the

203 *ibid*, p.3

204 Verité Research, 'Cost of extending maternity benefits to private sector only Rs. 4.2 b: Verité', at <https://www.veriteresearch.org/2020/10/05/cost-of-extending-maternity-benefits-to-private-sector-only-rs-4-2-b-verite/> [last accessed on 21 December 2021]

205 *ibid*.

206 *Supra*, n.182

207 ILO Country Office for Sri Lanka and the Maldives, 'In-depth Assessment of Employment Injury Compensation Arrangements in Sri Lanka', International Labour Organization, (2016), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636599.pdf [last accessed on 21 July 2022]

wages earned by the domestic worker, and (ii) the annual income of employer's household. Insurance policies can be introduced at differentiated rates to suit different income levels of domestic workers. Since this is a private insurance scheme, the cost of the insurance will have to be financed alone by the employer for the benefit of the worker or share the cost with the worker. However, the benefit would be that the policy will secure the employer against high compensation claims from the worker. This will also reduce the underreporting of workplace injuries since the employees are registered in an insurance scheme. However, regulatory oversight from the Insurance Regulatory Commission of Sri Lanka will be required to prevent insurance companies from charging exorbitant premiums. For example, in Hong Kong, employees, including domestic workers, are covered by the Employees' Compensation Ordinance. However, with regards to employment injury compensation, Hong Kong only provides for this, if the employer is insured. The law requires employers to acquire mandatory private insurance coverage. The government regulates the standards of such insurance policies.²⁰⁸

ii. Information dissemination and awareness

- a. Implementing preventive measures - Introducing regulations and guidelines to be observed by the employers and domestic workers in order to promote occupational safety and health within the domestic environment.²⁰⁹ For example, Indonesia has developed
 - a check-list which provides guidance on improvements for occupational safety within the domestic environment for domestic workers and employers. Sri Lanka can use this checklist as a benchmark²¹⁰ in creating their own, in order to minimize the risk faced by the workers and create a sense of accountability among the employers.
 - b. Manual to employers – DoL can introduce an easy to comprehend manual that contains safety procedure, precautionary methods of handling dangerous and inflammable items, a list of emergency contacts and other guidelines for employers.
- Conducting training sessions- State mandated training courses aimed at improving skills and professionalisation of domestic work can reduce potential injuries. Domestic workers engage in different activities using different tools, chemicals, and electric devices. They should have a proper understanding of the technicalities related to these tasks. Training and awareness programs overseen by DoL, similar to the existing training courses conducted for migrant workers could be extended to domestic workers as well. The cost of the training course for migrant workers are currently borne by the migrant workers. The costs of the training programme for domestic workers within Sri Lanka will also have to be borne by the domestic worker as it is unlikely that employers will be amenable to bear the costs of training. Training of workers would help minimize injuries that may be caused due to the careless handling of these machineries, chemicals and tools.

208 *ibid*, p.41

209 The government of Indonesia and ILO has developed a checklist that can help workers conduct self-monitoring on working conditions and make voluntarily efforts for improvement. The checklist is expected to help employers and domestic workers creating an occupational safety and health culture in the domestic environment, so that the work-related accidents can be minimized, International Labour Organization, 'Guidance on Improvements of Occupational Safety and Health in Domestic Environment for Domestic Workers and Employers', at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_548677.pdf [last accessed on 21 December 2021].

210 *ibid*.

▶ APPENDIX

▶ Appendix 1 – Registration Forms for EPF

EMPLOYEES' PROVIDENT FUND – EMPLOYEES' RECORD CARD					
			E.P.F. 1	FORM A	
<i>PART I</i>					
Full Name	_____		Employer's No.	_____	

Other Names	_____		Member's No.	_____	

Address	_____				
Nationality	Sex	Age	Date of Birth*	Place of Birth	
_____	_____	_____	_____	_____	
Married or Single	Name of Spouse		_____		
_____	_____		_____		
Name and Place of Birth of Father	_____		Name of Mother	_____	
	_____			_____	

Employee information registration – Form A ²¹¹

Name and Place of Parental Grandfather } _____ _____	Name of Maternal Grandfather } _____ _____				
Name and address of last Employer } _____ _____	National Identity Card Number } _____ _____				
Nature of Employment _____	Period Employed _____				
IDENTITY : (Give your thumb marks and Numbers of Available documents) (1) National Savings Bank Book (2) Post Office Identity Card (3) Ceylon Savings Bank Book (4) Certificate of Competence to drive (5) Temporary Residence permit (6) Citizenship registration (7) Passport					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Left Thumb Mark</td> <td style="width: 50%; text-align: center;">Right Thumb Mark</td> </tr> <tr> <td style="height: 100px;"></td> <td style="height: 100px;"></td> </tr> </table>	Left Thumb Mark	Right Thumb Mark		
Left Thumb Mark	Right Thumb Mark				
Any Natural distinguishing marks * Give Serial No. of birth registration if available – estates only.					

211 The Website of Employees' Provident Fund, 'Form A', at https://epf.lk/wpcontent/uploads/2017/03/form_a.pdf [last accessed on 21 July 2022].

Employer registration form – Form D²¹²

E.P.F. 9
(F 2*S., T. & E.) 10/70
(Regulation 8)

The Employees' Provident Fund Act. No. 15 of 1958

FORM "D"

PARTICULARS OF EMPLOYEES

1. Name of establishment, estate or land			
2. Nature of Business (In the case of estates, or lands give the acreage of each cultivated crop separately)			
3. Business Registration Number			
4. Registered address			
5. Revenue district			
6. Name of Proprietor / Lessee (If a limited liability company, the names of all the directors, and if a partnership, the names of all the partners should be given.)			
(a) Address of the Proprietor / Lessee			
(b) Date of ownership of Establishment/Estate/Land			
7. Name of Manager or Superintendent			
8. Total Number of Employees who are fourteen years of age and over	Males	Females	Total
	_____	_____	_____
	_____	_____	_____
9. Total Number of Employees in covered employment	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
10. Number of Employees in employments other than covered employments	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
10. (a) Date from which one or more employees were engaged or date on which liability to contribute commenced			

212 The Website of Employees' Provident Fund, 'Form D', at https://epf.lk/wp-content/uploads/2016/06/form_d.pdf [last accessed on 21 July 2022].

► Appendix 2 – Minimum wages set out by Wages Boards in other sectors²¹³

Garments Manufacturing Trade (monthly rate) – 2018

Designers, Tailors; Design punchers, Disket Makers (1st year) - 14,500/-

Cutters, Cutters (hand), Machine Minders, Final Checkers (1st year) - 12,700/-

Janitorial service trade (day rate) - 2018

Cleaners, Janitors (operational personnel) - 600/-

Employees in-charge of Operational Personnel - 700/-

Security services trade (monthly rate) - 2018

Security officers, Security guards, Watchers, Patrolmen (1st year) - 10,000/-

Supervisory (employers in charge of operational personnel) (1st year) - 10,620/-

Tea Growing and Manufacturing Trade (minimum rate of daily wage for time work) -2020

Minimum daily wage Labour - 1000/-

Baking Trade (monthly rate) -2018

Foremen, head bakers, head besses, cooks, “short eats” makers (1st year) - 12,180/-

Dough mixers, scalars and weighers, divider men (1st year) - 11,125/-

Flour dumpers, flour sifter, rolling machine men, sugar grinders (1st year) - 10,070/-

213 The Website of Department of Labour, at http://www.labourdept.gov.lk/index.php?option=com_content&view=article&id=276&lang=en [last accessed on 3 August 2022].

► Appendix 3 - Assumptions and calculations related to financing of EPF/ETF

► Table 4 - Assumptions and data²¹⁴

Assumptions and data	
Number of domestic workers in Sri Lanka	234,913
Number of women domestic workers	85,198
Number of men domestic workers	149,715

► Table 5 - Wages of Live-in/ Live-out percentage of domestic workers²¹⁵

Income category*	live-in %s	live-out %s	Midpoint						
Less than 5000	1.80%	2.50%							
5,000 to 10,000	13.7%	19.1%	7,500						
10,000 to 20,000	36.9%	54.3%	15,000						
20,000 to 30,000	38.4%	13.0%	25,000						
over 30,000	8.7%	10.5%	37,500	Assumption: 45,000 as a maximum in the range					
Not known	0	0.60%							
Percentage of total	25%	75%		Assumption					
Expected govt. subsidy on social security	8.0%			of the gross income					
2019 Official Poverty Line (OPL)	6,966	per capita		Source: 2019 Household income expenditure survey, Census and Statistics, page 41					
Population below the poverty line	14.3%			2019 Household income expenditure survey, Census and Statistics, table 5.1 page 42					
Households below the poverty line	11.9%			2019 Household income expenditure survey, Census and Statistics, table 5.1 page 42					

214 International Labour Organization, 'Making Decent Work A Reality For Domestic Workers: Progress And Prospects Ten Years After The Adoption Of The Domestic Workers Convention, 2011 (No. 189)', Annex 5 (2021) at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf [last accessed 3 August 2022].

215 International Labour Organization Country Office for Sri Lanka and the Maldives, 'Domestic Workers and Decent Work in Sri Lanka', International Labour Organization, (2020), at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf [last accessed on 3 August 2022].

► Table 6 - Calculations based on assumptions and data

Domestic worker incomes total in Sri Lanka							
	number	mean income	As of total 234, 958				
Live in domestic workers	58,728	19,425	25%				
Live out domestic workers	176,185	16,765	75%				
average DM income per month		17,430					
Total DM income per month		4,094,533,590					
Govt. contribution per month		327,562,687					
Govt. contribution per year		3,930,752,246	This is the cost of the annual subsidy by government				

Appendix 4- Maternity Leave Benefits (MLB) related calculations

► Table 7 - MLB data and calculations

MLB -- 2019 data and calculations						
Age	Total female household population above age 20	Total no. of females employed in the labour force	Total no. of females employed in domestic work ²¹⁶	Females employed in domestic work as a % of household population	No. of live births ²¹⁷	No. of live births of women employed in domestic work
(i)	(a)	(b)	(c)	[c/a]	(e)	(d)
				(d)		
1. 20-24	690,182	274,044	7,839	1.14%	64,173	729
2. 25-29	660,451	312,354	8,935	1.35%	101,615	1,375
3. 30-39	1,564,365	694,122	19,856	1.27%	145,283	1,844
4. 40+	5,050,123	1,697,883	48,568	0.96%	11,420	110
	7,965,121	2,978,403	85,198	4.72%	322,491	4,057
			Weighted average wage per worker			17,430
			Number of months of maternity leave			3
			Total cost of MLB benefits for DWs			212,161,667

216 38.4% of females in the LF are employed in the private sector

217 The Website of Department of Census and Statistics, 'Table 2.5: Live births registered by age of mother and ethnicity of mother - 2015', at <http://www.statistics.gov.lk/Population/VitalStatistics/Births/2015/table2.5> [last accessed on 21 July 2022].

▶ A rapid assessment on extending social security to domestic workers

Domestic workers represent 2.9 per cent of the labour force in Sri Lanka, and women make up a large percentage of domestic workers. Domestic workers in Sri Lanka are unregulated and mostly undocumented. This informality makes them susceptible to labour exploitation. The lack of recognition of domestic workers through the labour law leads to unguaranteed rights and further hinders their ability to secure social security benefits. In December 2021, the Sri Lankan government announced plans to introduce social security benefits for workers in the informal sector. The government has also expressed its readiness to make essential changes to current labour laws to reflect the most contemporary trends and requirements to benefit the informal sector. In this context, ILO's rapid assessment report on extending social security benefits to domestic workers in Sri Lanka draws attention to the deficits experienced by domestic workers in Sri Lanka and identifies the legal and practical barriers to extending social security to them. This report sets out legislative and non-legislative recommendations to overcome the existing legal and practical impediments to extending social security to domestic workers in order to make the right to social security a reality for domestic workers.

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