

ILO Decent Work Agenda for Domestic Workers

INTERNATIONAL STANDARD-SETTING FOR DOMESTIC WORKERS

I. RATIONALE FOR INTERNATIONAL LABOUR STANDARDS FOR DOMESTIC WORKERS

The rationale for supporting an international labour convention and an associated recommendation on domestic workers' labour rights includes:

- Domestic workers represent the single largest group of unprotected workers, and the single largest group of female salaried workers toiling away in households of others in their own country or abroad, being excluded from labour legislation in most countries and often denied fundamental rights, such as freedom of association and protection against discrimination, child labour and forced labour conditions.
- Domestic workers enable other workers and their families to improve their living standards by taking care of their homes, and household members (children, elderly, sick, disabled)
- In countries, like many Asian and Arab States, where social policies do not include care needs of workers and their families, domestic workers provide the much needed home-based care allowing for women of those households to become or continue being economically active
- In fact, if not provided by domestic workers, the services needed by households would cost many times more if purchased from market-based providers, (dry cleaners, caterers, child care centres, care homes for elderly, etc.)
- Since their work is done in private households, which are not considered work places in many countries, their employment relationship is not addressed in national labour laws or other legislation, denying them recognition as workers entitled to labour protection. However, some Asian countries, such as the Philippines and Hong Kong, have passed laws on domestic work extending labour protection coverage to domestic workers.
- The particular vulnerability of domestic workers to abuse and exploitation in the absence of labour protection and work place inspection, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances.
- ILO has long expressed the need for specific attention to domestic workers. In fact the International Labour Conference has regularly called for standard-setting for domestic workers from 1936 onwards.

- Yet there continues to be inadequate attention to key aspects of domestic work in international law, including in existing ILO Conventions. In fact, a number of ILO Conventions permit the exclusion of this category of workers from the scope of their provisions.
- Many domestic workers are migrant women. In their countries of origin, many of them may hold qualifications that are considerably higher than those required for domestic workers but the social reality and the obvious need of money to survive push those women to accept to travel and to work as domestic workers in working conditions that are inextricably linked with living conditions and general treatment making them vulnerable to labour abuses and exploitation.
- There are millions of domestic workers in Asian and Arab countries. Many are Asian and African women from poor families who leave their homes and loved ones to work for very low pay in total dependence on their employers/sponsors. They suffer exclusion from national labour rights in most Asian and Arab States in their double capacity as migrants and domestic workers.
- In many countries domestic work is considered a most hazardous form of child labour, because of the high propensity for abuse and exploitation in private households. However, in many countries children as young as five are working long days in households, without an opportunity to learn, play and develop.
- A number of governments have recently initiated steps to establish national policies and legal protection for domestic workers and others are considering doing so. International standards will provide timely guidance for such measures.
- The ILO Governing Body decided in March 2008 to place standard-setting for domestic workers as an agenda item for the International Labour Conference in June 2010.
- The development of international labour standards for domestic workers will fill a significant gap in the promotion of decent work for all.

II. MAIN ISSUES REGARDING THE WORK CONDITIONS OF DOMESTIC WORKERS - FINDINGS FROM THE ILO LAW AND PRACTICES REPORT ON DOMESTIC WORK -

Contract of employment

- Many domestic workers do not have written employment contracts, particularly in countries where written contracts are not required by law.
- For the domestic workers who do have a written employment contracts, many of these are not adhered to by employers and agencies and effectively not enforced by administrative or court systems.
- Contracts facilitate the formalization of the employment relationship
- Contracts may be verbal (e.g. Bolivia, Costa Rica, Guatemala, Paraguay, Viet Nam) or written (e.g. Brazil, Nicaragua, Spain)

- Some countries are starting to provide non-binding model contracts for domestic workers and employers to utilize, (e.g. Peru, Canton of Geneva)
- When domestic workers cross international borders to work:
 - Several countries require a written contract (e.g. Tanzania, Indonesia, Canada, Hong Kong, Singapore)
 - Some countries furthermore require a written contract translation of the contract in the language of the domestic worker (e.g. Philippines and Qatar Memorandum of Agreement)

Working conditions: Remuneration

- Domestic work is undervalued
- Domestic Workers are often excluded from minimum wage coverage.
- Domestic workers have limited bargaining power
- Wages are often used as a form of control
- Under payment or late payment of wages is common
- Lodging and board are typically regarded as a form of payment, but some countries forbid this practice
- Salary deductions are often made for damage caused by domestic workers in the course of their work

Working conditions: working time

- Significant differences between generally applicable working time standards and those that concern domestic workers
- About 50% of countries do not impose a mandatory limit on normal hours of work for domestic workers
- 50% of countries permit domestic worker to work longer hours than other workers; over 45% impose the same limit for all workers
- 58 % of countries provide between 1 and 2 days of rest time per week; 40% do not specify any rest time period.
- 83% countries do not impose any specific limit on night work; most of the remainder set the limit at eight hours

Social protection and domestic workers

- Significant variation in the extension of social benefits to domestic workers
- Domestic workers are often excluded from occupational safety and health (OSH) legislation, their work being considered not risky
- As long as the household is not recognized as a workplace, occupational health and safety for domestic workers will be difficult to achieve

- Domestic workers working for multiple employers face difficulties in demonstrating eligibility to social benefits (e.g. Netherlands)
- The majority of countries provide maternity leave *de jure*, but enforcement is problematic

The special case of live-in domestic workers

- Domestic workers often work for only one employer
- The employer's household is both the workplace and home of the domestic worker
- Privacy issues:
 - Some countries only require “a reasonable amount of privacy” (e.g. Singapore)
 - Others require accommodation to be private, furnished and hygienic (e.g. Ireland, France, Canada)
- Often, domestic workers are subject to working time arrangements that can be a threat to their well-being. (e.g. availability to work for long periods or even continuously and expected to perform on-call duties)
- A few countries regulate working time and provide for overtime compensation, when applicable, (e.g. Israel, Austria, France, South Africa)
- Domestic workers often have to do night work, and they are expected to be permanently accessible, but not necessarily present (e.g. on standby), and be available at a place determined by the employer for the entire period of on-call duty

Vulnerability and abuses: the special case of migrant domestic work

- Inequality of treatment between migrant domestic workers and nationals (e.g. especially regarding social protection)
- Vulnerability to abuse:
 - Many countries tie migrant domestic workers to the employer named on their work permit; which means that the loss of employment entails a loss of work permit and thereby legal stay in the host country, (e.g. Israel)
 - Most host countries require migrant domestic workers to live in their employer's house
 - The employer frequently withholds the migrant domestic worker's passport as a form of control, and this is expected and/or required in a number of host countries, (refer e.g. to the MoU between Malaysia and Indonesia)
 - Migrant domestic workers are at risk of potential abuse by unaccredited employment agencies
 - Restrictions of personal freedoms, including forced labour

- Migrant domestic workers may not have automatic coverage under generalized national healthcare schemes
- Pregnancy, positive HIV status or other illness often result in the worker's dismissal *de jure or de facto*
- Sending countries have an important role in the social protection of domestic workers, but often this responsibility is addressed by a number of sending countries.

Domestic Workers Rights to Organize and Collectively Bargaining

- **Convention No. 87** also applies to domestic workers

It is difficult for domestic workers to exercise these rights, because of:

- Their isolation in individual households
- Poor working conditions and low pay
- Limited resources of their organizations
- Low rate of trade union membership
- Low rate of organization of employers' associations
- Non-recognition of their right to collectively bargain.
- Non-recognition of their organization as legitimate organizations of representations

Brazil: Decision of 15th Labour Tribunal for Campinas (2004)

Coverage of domestic workers under existing International Labour Standards (ILS)

- Unless explicitly excluded, domestic workers are considered to be covered by existing ILS
- A number of ILO conventions allow for their exclusion
- Domestic workers require specific regulation which acknowledges the special characteristics of the work and the context in which it takes place

III. POSSIBLE FORMATS FOR INTERNATIONAL LABOUR STANDARDS ON DOMESTIC WORKERS

- ILC 2010 will decide the number and type of draft instrument (s)
- Possible scenarios:
 - a Convention, or
 - a Recommendation, or
 - a Convention and a Recommendation, or
 - a Convention with binding and non-binding parts

Selected Elements of a Possible Convention with Binding and Non-Binding Parts:

- Beyond formal inclusion of domestic workers, towards specific regulations
- Would reaffirm the coverage of domestic workers under existing ILS
- Would provide clear targets that take into account the specificity of the domestic work relationship
- Would offer options as to how the decent work objectives might be achieved
- Would promote a multi-level approach to governance
- Clarity and simplicity

Selected Elements to be included in a Recommendation:

The purpose and contents of a recommendation would be would be standards that would enhance the protections found in a Convention, such as:

- Identification of the special conditions under which domestic work is carried out
- Circumscription of the practice of payment in kind
- Guidance on identifying, limiting and appropriately calculating working time
- Guidance on food and accommodation for live-in domestic workers
- Address vulnerabilities of domestic workers, including age and migration status, and identify standards specific to them

IV. TIME LINE FOR THE PREPARATION AND ADOPTION OF POSSIBLE ILO DRAFT INTERNATIONAL LABOUR INSTRUMENT(S) ON DOMESTIC WORKERS

- *March 2008:* The ILO Governing Body places standards-setting for domestic workers as an agenda item for the International Labour Conference in June 2010.
- *March 2009:* The Office sends a law and practice report along with a questionnaire to ILO Member States. Governments are requested to consult with the most representative workers' organizations and employers' associations
- *August 2009:* Deadline for submission of replies to the Office.
- *January 2010:* The Office sends to ILO Member States a second report examining the replies received to the questionnaire in 2009
- *June 2010:* First discussion at the International Labour Conference (ILC) of the ILO. A decision is taken on the form of the draft ILO instrument(s)- whether a Convention or a Recommendation or both or a Convention with binding and non-binding parts.
- *August 2010:* The Office sends a third report containing (a) draft instrument(s) to Member States

- *End November 2010*: Deadline for submission to the Office of comments on the third report by Member States
- *March 2011*: The Office sends two reports to member States: one examining the replies received on the third report, and the other containing the text of the draft instrument(s) revised in the light of comments received
- *June 2011*: Second discussion at the ILC. A Convention or any other agreed instrument will be discussed and adopted or rejected by the ILC

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