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**Report IV(1)**

# **Decent work for domestic workers**

**Fourth item on the agenda**

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# Contents

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|  | <i>Page</i> |
|--|-------------|
| Introduction.....  | 1           |
| Chaper I. The specificity of domestic work in the contemporary global economy: The decent work challenge ..... | 5           |
| Domestic work: A multifaceted but global phenomenon .....  | 5           |
| Domestic work over time .....  | 5           |
| The extent of domestic work.....   | 5           |
| Domestic workers .....   | 6           |
| Work in the home .....   | 7           |
| The employer.....  | 8           |
| The domestic worker’s home.....  | 8           |
| Public care policies in the new economy .....  | 8           |
| The global care chain .....  | 9           |
| Migration for work .....   | 10          |
| Remittances.....   | 10          |
| Regulating domestic work: The challenge of standard setting to promote decent work .....                       | 11          |
| Domestic work: An old concern of the ILO .....   | 11          |
| Specific regulation: Work like any other, work like no other .....   | 12          |
| From status-based relationships to employment rights .....   | 13          |
| Towards the regulation of decent work.....   | 14          |
| Chapter II. International law and domestic workers: Coverage under existing ILO standards .....                | 16          |
| Coverage and supervision of fundamental principles and rights at work.....                                     | 17          |
| Freedom of association .....   | 17          |
| Equality and non-discrimination.....   | 17          |
| Forced labour .....  | 18          |
| Child labour .....   | 19          |
| The use of flexibility clauses in Conventions .....  | 20          |
| Minimum Age Convention, 1973 (No. 138) .....   | 23          |
| Concluding remarks.....  | 24          |
| Chapter III. The definition of domestic work and its inclusion in legislation .....                            | 25          |
| Scope of the study .....   | 25          |
| Understanding law and practice as it applies to domestic workers.....  | 25          |
| A dynamic landscape.....   | 27          |

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|  |    |
|--|----|
| Defining domestic work.....  | 28 |
| The domestic employment relationship and the household economy.....                            | 28 |
| Classifying domestic work.....   | 29 |
| Categories of domestic work.....   | 30 |
| Domestic work and the employment relationship.....   | 32 |
| Defining the live-in relationship.....   | 33 |
| Definition of the employer.....  | 35 |
| Chapter IV. Working conditions.....  | 36 |
| Contract of employment.....  | 36 |
| Formalizing the employment relationship.....   | 36 |
| The requirement of written contracts when crossing international borders.....                  | 37 |
| Model contracts.....   | 38 |
| Probationary periods.....  | 39 |
| Remuneration.....  | 39 |
| Minimum wages.....   | 39 |
| Payment in kind.....   | 42 |
| Regular payment of wages.....  | 43 |
| The implications of employer-provided accommodation.....                                       | 43 |
| Payment in kind.....   | 44 |
| Regulating living conditions.....  | 45 |
| Specific regulation of working time for live-in domestic workers.....                          | 46 |
| Working time.....  | 48 |
| Night work.....  | 50 |
| Weekly rest periods.....   | 50 |
| Respecting domestic workers' autonomy.....   | 51 |
| Domestic workers' fundamental right to equality and non-discrimination.....                    | 51 |
| Termination of employment.....   | 53 |
| Grounds for dismissal.....   | 53 |
| Notice periods.....  | 54 |
| Notice requirements for live-in domestic workers.....  | 55 |
| Career development.....  | 56 |
| Chapter V. Law and practice in respect of social protection.....                               | 57 |
| Social security coverage.....  | 57 |
| Social security protection for migrant domestic workers:<br>The role of sending countries..... | 61 |
| Promoting occupational safety and health protection for domestic workers.....                  | 61 |
| Maternity protection and recognition of domestic workers' own<br>family responsibilities.....  | 63 |
| Chapter VI. Combating forced labour in migrant domestic work.....                              | 66 |
| Loss of resident status and termination of employment.....                                     | 67 |
| Safe houses.....   | 67 |
| The automatic live-in requirement.....   | 69 |
| Employment agencies.....   | 69 |
| International organizations and diplomats.....   | 70 |

|  |     |
|--|-----|
| Chapter VII. Enforcement of labour laws and access to justice .....  | 72  |
| Labour inspection .....  | 72  |
| Access to courts and specialized tribunals .....   | 74  |
| The importance of public awareness campaigns for the implementation of policies in respect of domestic workers ..... | 75  |
| Chapter VIII. The collective organization of domestic workers: Decent work in action .....                           | 77  |
| Domestic workers organizing around the world .....   | 77  |
| National experience .....  | 77  |
| Regional and international organizations .....   | 78  |
| Transnational action .....   | 80  |
| Trade unions and domestic workers .....  | 81  |
| The critical role of NGOs and other members of civil society .....   | 83  |
| Legal recognition of freedom of association and the right to bargain collectively .....                              | 83  |
| Domestic workers' cooperatives .....   | 85  |
| Chapter IX. The ILO and other international initiatives .....  | 87  |
| The "invisibility" of domestic work .....  | 87  |
| Closing the gap between law and practice .....   | 89  |
| The collective organization of domestic workers .....  | 90  |
| Other international action on domestic workers .....   | 91  |
| Chapter X. Towards international standards on decent work for domestic workers .....                                 | 94  |
| The value added of (a) new international instrument(s) .....   | 94  |
| Proposed Convention and proposed Recommendation .....  | 95  |
| Why the possibility of a Convention combining binding and non-binding parts? .....                                   | 96  |
| A technical cooperation programme .....  | 97  |
| Questionnaire .....  | 99  |
| Appendix .....   | 119 |

### ***Tables***

|   |    |
|---|----|
| I.1. Domestic workers as a percentage of total employment, by sex (selected years) .....  | 6  |
| II.1. Shelved Conventions containing a flexibility clause .....   | 20 |
| II.2. Conventions allowing the exclusion of domestic workers .....  | 22 |
| III.1. Legislation specifying the inclusion or exclusion in domestic work of specific occupational categories (non-exhaustive list) ..... | 31 |
| IV.1. Inclusion/exclusion of domestic workers from minimum wage provisions by country and region .....                                    | 40 |
| IV.2. In-kind payments for domestic workers by country and region .....   | 43 |
| IV.3. Termination of employment .....   | 54 |

|      |  |    |
|------|--|----|
| V.1. | Percentage of domestic workers who contribute to social security, selected years .....   | 57 |
| V.2. | Explicit coverage of domestic workers by social security legislation by category and region and country, in selected countries ..... | 59 |
| V.3. | Coverage of domestic workers by maternity leave legislation by country and region.....   | 64 |
| V.4. | Minimum duration of maternity leave for domestic workers by country and region .....   | 65 |

***Boxes***

|         |  |    |
|---------|--|----|
| I.1.    | A note on terminology .....  | 15 |
| III.1.  | Domestic work according to the ISCO .....                          | 30 |
| III.2.  | The au pair exception.....   | 34 |
| IV.1.   | The service cheque .....   | 42 |
| VI.1.   | A safe house in British Columbia: The Kalayaan Centre.....         | 68 |
| VI.2.   | The Private Employment Agencies Convention, 1997 (No. 181).....    | 69 |
| VI.3.   | How to stop forced labour in migrant domestic work.....            | 71 |
| VII.1.  | Labour inspection and domestic work in Uruguay.....                | 74 |
| VIII.1. | The Committee on Freedom of Association and domestic workers ..... | 84 |
| VIII.2. | Homeworkers organize in the United States .....                    | 85 |

***Figures***

|       |   |    |
|-------|---|----|
| IV.1. | Maximum legal hours of work per week in the countries surveyed (percentages) .....          | 49 |
| IV.2. | Maximum legal hours of night work per 24 hours in the countries surveyed (percentages)..... | 50 |
| IV.3. | Minimum weekly rest periods in the countries surveyed (percentages).....                    | 50 |

## Introduction

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1. At its 301st Session (March 2008), the ILO Governing Body agreed to place an item on decent work for domestic workers on the agenda of the 99th Session of the International Labour Conference (2010) with a view to the setting of labour standards.
2. Domestic work is one of the oldest and most important occupations for millions of women around the world. It is rooted in the global history of slavery, colonialism and other forms of servitude. In contemporary society, care work at home is vital for the economy outside the household to function. In the past two decades demand for care work has been on the rise everywhere. The massive incorporation of women in the labour force, the ageing of societies, the intensification of work and the frequent lack or inadequacy of policy measures to facilitate the reconciliation of family life and work underpin this trend. Today, domestic workers make up a large portion of the workforce, especially in developing countries, and their number has been increasing – even in the industrialized world.
3. Domestic work, nonetheless, is undervalued and poorly regulated, and many domestic workers remain overworked, underpaid and unprotected. Accounts of maltreatment and abuse, especially of live-in and migrant domestic workers, are regularly denounced in the media. In many countries, domestic work is very largely performed by child labourers.
4. This state of affairs is due in part to the fact that paid domestic work remains virtually invisible as a form of employment in many countries. Domestic work does not take place in a factory or an office, but in the home. The employees are not male breadwinners, but overwhelmingly women. They do not work alongside other co-workers, but in isolation behind closed doors. Their work is not aimed at producing added value, but at providing care to millions of households. Domestic work typically entails the otherwise unpaid labour traditionally performed in the household by women. This explains why domestic work is undervalued in monetary terms and is often informal and undocumented. It tends to be perceived as something other than regular employment, as not fitting the general framework of existing labour laws despite the fact that its origins go back to the “master-servant” relationship. As a result, the domestic employment relationship is not specifically addressed in many legislative enactments, thus rendering domestic workers vulnerable to unequal, unfair and often abusive treatment.
5. Improving the conditions of domestic workers has been an ILO concern since its early days. As early as 1948, the ILO adopted a resolution concerning the conditions of employment of domestic workers.<sup>1</sup> In 1965, it adopted a resolution calling for normative action in this area,<sup>2</sup> while in 1970 the first survey ever published on the status of

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<sup>1</sup> ILO: *Record of Proceedings*, International Labour Conference (ILC), 31st Session, 1948, Appendix XVIII: Resolutions adopted by the Conference, pp. 545–546.

<sup>2</sup> ILO: *Official Bulletin* (Geneva), July 1965, Supplement I, pp. 20–21.

domestic workers across the world made its appearance.<sup>3</sup> The Decent Work Agenda provides a new and promising avenue for ensuring visibility and respect for domestic workers. Standard setting on decent work for domestic workers will take the ILO beyond the identification of non-compliance and towards the provisions of specific, constructive guidance on how to regulate effectively a category of worker that is singularly in need of support.

6. This report is intended to facilitate the discussion of domestic work at the Conference, and provides information from across the world that may be useful in replying to the questionnaire appended to it. A special effort has been made to identify and examine focused and innovative laws and regulations on domestic workers that are emerging in a number of countries.

7. Chapter I stresses the renewed significance of domestic work in the contemporary world as a factor in the reproduction of societies and the smooth functioning of labour markets globally. It highlights the fact that, despite the heterogeneity of domestic work, one characteristic domestic workers share is that their employee status is invisible because they work inside the household. The chapter concludes by advocating the adoption of specific international labour standards that promote decent work for domestic workers, including social protection.

8. Chapter II reviews the coverage of domestic workers under existing international labour standards, notably those embodying fundamental principles and rights at work. It also discusses the use of flexibility devices that may exclude domestic workers from the scope of international labour instruments. The chapter stresses how the ILO's supervisory bodies have maintained that the specificity of domestic work is not an adequate reason to exclude those who perform it from the protection of international labour standards to which they are entitled.

9. Chapter III deals with methods of regulating domestic work and includes a typology of regulatory techniques and definitions. In this chapter, as well as in Chapters IV and V, special attention is paid to member States that have tried to address domestic workers' conditions of employment by offering legal responses that are tailored to the specific context. The analysis of national legal measures relating to domestic workers has been complemented, whenever possible, by an analysis of dedicated policies and programmes and their impact.

10. Chapter IV examines the extent and nature of the inclusion of domestic workers in laws relating to basic conditions of employment, including the formalization of the contract of employment, remuneration, working hours and the live-in relationship.

11. Chapter V reviews a range of collective protection and insurance mechanisms from which domestic workers have historically been excluded. It discusses in detail the challenge of providing occupational safety and health protection to domestic workers and, given its relevance to this predominantly female occupational group, addresses the issue of pregnancy and maternity leave.

12. Chapter VI examines the linkages between migrant domestic work, forced labour, slavery and slave-like conditions. It highlights the circumstances that render migrant domestic workers vulnerable to forced labour and reports on a number of national, bilateral and international initiatives aimed at protecting migrant workers effectively from abusive treatment.

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<sup>3</sup> ILO: "The employment and conditions of domestic workers in private households: An ILO survey", in *International Labour Review*, Oct. 1970, pp. 391-401.



13. Chapter VII advocates the introduction of effective, accessible complaints mechanisms and procedures to ensure redress for domestic workers, including migrants. It stresses the importance of awareness raising for both domestic workers and their employers to ensure the enforcement of labour legislation. The role of labour inspection and complaints machinery, including human rights mechanisms, are also discussed.

14. Chapter VIII argues that the achievement of decent work for domestic workers ultimately depends on their capacity to organize and engage in collective action. Despite the many obstacles, including legal restrictions and the fact that domestic workers are isolated in private households, domestic workers around the world have tried to take control of their working lives by organizing. The chapter reviews these experiences and offers some policy suggestions for ensuring these rights can be effectively exercised by domestic workers.

15. Chapter IX contains a brief overview of ILO's technical assistance on domestic work since it first originated during the apartheid era in South Africa. It discusses the strategies developed across different regions in response to three primary concerns that have guided much of the ILO's work in this field: the "invisibility" of domestic work, the gap between law and practice, and the collective organization of domestic workers.

16. Chapter X builds upon the premise that decent work for domestic workers will remain an unrealized promise unless there is concerted action to improve the legislative framework. Drawing upon creative regulatory experimentation throughout the world, the chapter suggests that a new Convention be developed on decent work for domestic workers, which would establish principles and rights and offer guidance on regulation of domestic work. The chapter also advocates, subject to the availability of resources, a targeted, well-funded programme of action to promote technical cooperation in support of the specific regulation of domestic work.

17. The Conference will deal with this question according to the double discussion procedure set out in article 10 of the Standing Orders of the Governing Body and article 39 of its own Standing Orders. In accordance with the latter article, the Office has prepared this report and questionnaire as a basis for preliminary discussion at the Conference. The attention of governments is drawn to article 39, paragraph 1, of the Standing Orders of the International Labour Conference, in which they are requested "to consult the most representative organisations of workers and employers before finalising their replies". The results of this consultation should be reflected in the governments' replies. Governments are requested to indicate in their replies which organizations have been consulted.



# Chapter I

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## **The specificity of domestic work in the contemporary global economy: The decent work challenge**

### Domestic work: A multifaceted but global phenomenon

#### Domestic work over time

18. Domestic work is one of the oldest and most important occupations for many women in many countries. It is linked to the global history of slavery, colonialism and other forms of servitude.<sup>1</sup> In its contemporary manifestations, domestic work is a global phenomenon that perpetuates hierarchies based on race, ethnicity, indigenous status, caste and nationality.<sup>2</sup> Care work in the household – whether performed by paid employees or by unpaid household members as part of their family responsibilities and as a “labour of love”<sup>3</sup> – is quite simply indispensable for the economy outside the household to function. The growing participation of women in the labour force, changes in the organization of work and the intensification of work, as well as the lack of policies reconciling work and family life, the decline in state provision of care services, the feminization of international migration and the ageing of societies have all increased the demand for care work in recent years.

19. Domestic work, however, is still undervalued. It is looked upon as unskilled because most women have traditionally been considered capable of doing the work, and the skills they are taught by other women in the home are perceived to be innate. When paid, therefore, the work remains undervalued and poorly regulated. By contrast, studies that provide space for domestic workers to speak often reveal their belief in the dignity of their hard work,<sup>4</sup> and, as such, it warrants recognition and respect and calls for regulation.

#### The extent of domestic work

20. Data on the number of domestic workers throughout the world are hard to collect. The main reasons for the lack of accurate and comparable data include the high incidence of undeclared domestic work and the consequent under-reporting, the varying definitions of domestic work in statistical surveys, and the fact that national statistics often do not count domestic workers as a distinct category but register them under such

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<sup>1</sup> A. Fauve-Chamoux (ed.): *Domestic service and the formation of European identity: Understanding the globalization of domestic work, 16th–21st centuries* (Bern, Peter Lang, 2004).

<sup>2</sup> J. Andall: *Gender, migration and domestic service* (Aldershot, Ashgate, 2000); ILO: *A rapid assessment of bonded labour in domestic work and begging in Pakistan*, Working Paper, Collective for Social Science Research, Karachi (Geneva, Mar. 2004).

<sup>3</sup> D.E. Roberts: “Spiritual and menial housework”, in *Yale Journal of Law and Feminism* (1997), Vol. 9, No. 51.

<sup>4</sup> *ibid.*, p.17.

headings as “community, social and personal service activities”. But, such data as are available show that domestic work absorbs a significant proportion of the workforce: in developing countries it accounts for between 4 and 10 per cent of total employment (both female and male), compared to industrialized countries where the figure ranges between 1 and 2.5 per cent of total employment. Although in some countries a significant number of men are employed in private homes as gardeners, guards and chauffeurs, women invariably make up the overwhelming majority of domestic workers (see table I.1).

**Table I.1. Domestic workers<sup>5</sup> as a percentage of total employment, by sex (selected years)**

|              | Total               |                     |                     | Men  |      |      | Women |       |       | Women's share of total domestic employment 2006 (%) |
|--------------|---------------------|---------------------|---------------------|------|------|------|-------|-------|-------|---|
|              | 1995                | 2000                | 2006                | 1995 | 2000 | 2006 | 1995  | 2000  | 2006  |   |
| Argentina    | 7.42                | 7.93                | 7.94                | 0.89 | 0.82 | 0.31 | 18.05 | 18.51 | 18.31 | 92.4  |
| Belize       | 3.74                | 3.70 <sup>(a)</sup> | 5.90 <sup>(b)</sup> | 0.98 | 0.90 | 2.30 | 10.14 | 9.80  | 12.80 | 74.2  |
| Bolivia      | 6.70 <sup>(c)</sup> | 6.06                | –                   | 0.80 | 0.44 | –    | 13.70 | 13.17 | –     | –   |
| Brazil       | –                   | 7.64 <sup>(d)</sup> | 7.70 <sup>(b)</sup> | –    | 0.92 | 0.90 | –     | 18.73 | 17.10 | 93.3  |
| Chile        | –                   | 6.10 <sup>(d)</sup> | –                   | –    | 0.90 | –    | –     | 15.80 | –     | –   |
| Costa Rica   | 5.60                | 6.17                | 7.17                | 1.40 | 0.92 | 1.21 | 15.50 | 17.56 | 17.79 | 91.7  |
| Ecuador      | –                   | 6.35                | 4.16                | –    | 0.81 | 0.40 | –     | 15.18 | 9.78  | 89.6  |
| El Salvador  | 4.30 <sup>(e)</sup> | 4.32                | 5.01                | 0.40 | 0.49 | 0.84 | 10.30 | 9.88  | 10.63 | 90.1  |
| Ethiopia     | –                   | –                   | 5.26                | –    | –    | 0.70 | –     | –     | 9.78  | 90.7  |
| France       | –                   | –                   | 2.50 <sup>(b)</sup> | –    | –    | 0.80 | –     | –     | 4.50  | –   |
| Israel       | 1.66                | 1.56                | 1.78                | 0.25 | 0.34 | 0.31 | 3.57  | 3.03  | 3.49  | 94.1  |
| Luxembourg   | 2.13                | 2.24                | 2.67 <sup>(b)</sup> | –    | –    | –    | –     | –     | –     | –   |
| Mexico       | 3.35                | 4.47                | 4.16                | 0.44 | 0.78 | 0.54 | 9.46  | 11.55 | 10.34 | 90.9  |
| Panama       | 5.98                | 5.66                | 6.19                | 1.07 | 1.21 | 0.98 | 16.30 | 14.48 | 15.53 | 87.1  |
| South Africa | –                   | 9.36                | 8.66                | –    | 3.11 | 3.05 | –     | 17.56 | 16.13 | 79.7  |
| Spain        | 2.84                | 2.75                | 3.85                | 0.62 | 0.49 | 0.59 | 7.11  | 6.67  | 8.63  | 90.9  |
| Switzerland  | 1.24                | 1.47                | 1.24                | 0.04 | 0.43 | 0.29 | 2.87  | 2.81  | 2.40  | 83.0  |
| Uruguay      | –                   | 9.49                | 8.69                | –    | 1.61 | 1.36 | –     | 20.12 | 18.88 | 92.5  |

(a) 1999. (b) 2005. (c) 1996. (d) 2002. (e) 1998. By default, labour force surveys were used to produce these data. Official estimates were used in the case of Switzerland and Luxembourg. Chile relied on a population census, as did Brazil, but only for the year 2000.

Source: ILO Bureau of Statistics, data extracted from [www.laborsta.ilo.org](http://www.laborsta.ilo.org), June 2008.

## Domestic workers

21. One of the most striking changes in domestic work in the past 30 years has been the growing prevalence of migrant work. In several regions, including Europe<sup>6</sup> and the Gulf countries and the Middle East,<sup>7</sup> the majority of domestic labourers today are migrant women. Another phenomenon, notable particularly in the industrialized world

<sup>5</sup> Laborsta refers to households with employed persons.

<sup>6</sup> M. Galotti: *The gender dimension of domestic work in Europe* (ILO, forthcoming).

<sup>7</sup> The extent of domestic work varies according to the source, but all concur that migrant women make up the bulk of domestic workers in these regions. ILO: *Gender and migration in Arab states: The case of domestic workers* (Geneva, June 2004).

and a growing number of Southern American countries,<sup>8</sup> is the higher proportion of domestic workers who work for more than one employer or who work for just one employer but do not live in his or her household. As for the age of domestic workers, young girls can be found alongside older age groups. In Ghana, for instance, legal child domestic workers are reported as constituting the majority of those employed in the household sector, and a study on Abidjan, Côte d'Ivoire, reports that the lower-middle class tends to resort to girls under 20 years of age.<sup>9</sup> On the other hand, in the Southern Cone of Latin America, the bulk of domestic workers are between 29 and 49 years old, while in Jordan 70 per cent of migrant domestic workers are 30 years old and above.

## Work in the home

22. Domestic workers are paid a wage to assume a range of “gendered” family responsibilities in private homes. The home is the workplace. Yet the work that domestic workers undertake does not correspond to what is generally thought of as the “labour market” and reflects a dichotomy between work and family. Domestic workers may cook, clean, take care of children, the elderly, the disabled, or even domestic animals – tasks that may not be closely defined at the outset and may vary widely over time. The terms themselves are vague, and “taking care” of a child may range from babysitting to assuming primary responsibility for their education. Moreover, the tasks sometimes seem boundless. Indeed, one lower French court (in the groundbreaking *Siliadin v. France* case before the European Court of Human Rights) recognized that a person who remains at home with children necessarily begins work early in the morning and may well work through the night, despite periods of respite. In some countries, a significant number of domestic workers are gardeners or security guards in private homes; others work as family chauffeurs. These forms of work tend to be performed by men.

23. As a whole, domestic work is undervalued in monetary terms. Almost by definition the wages of domestic workers are less than their employers earn on the labour market, unless the work is unpaid labour in the household – which may include the care of children and elderly family members that is traditionally provided by women. A concrete illustration of how domestic work has been treated differently is the strong historical tendency to remunerate domestic workers by payments in kind. For live-in domestic workers, food and lodging has always been looked upon as a form of such in-kind remuneration.

24. There is evidence, too, of wage discrimination on grounds of gender and nationality among domestic workers. In some regions, certain nationalities seem to be better remunerated than others, irrespective of education, competence or experience. In Malaysia, for example, Filipino domestic workers are reported to receive higher wages than Indonesian workers,<sup>10</sup> while in Jordan they receive higher remuneration than Sri Lankan and Ethiopian nationals.<sup>11</sup> Non-payment or late payment of wages is also common. Domestic workers may not be paid until the end of their period of service,

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<sup>8</sup> J. Rodgers: “Cambios en el servicio doméstico en América Latina”, in N.E: Valenzuela (ed.): *Trabajadores domesticas: un largo camino hacia el trabajo decente* (Santiago, ILO, 2008), p. 20; and M. Diaz Gorfinkiel: *The situation of migrant and non-migrant domestic labour in Latin America and ILO's work in the region* (ILO, 2008).

<sup>9</sup> M. Jacquemin: “Travail domestique et travail des enfants, le cas d'Abidjan (Côte d'Ivoire)”, in *Revue Tiers Monde* (Paris, Armand Colin, 2002), Apr.–June, pp. 307–326.

<sup>10</sup> I. Josiah, et al.: *Protection of foreign domestic workers in Malaysia: Laws and policies, implication and intervention*, Programme consultation meeting on the protection of domestic workers against the threat of forced labour and trafficking, Hong Kong, China, 16–19 February 2003, p. 13, at [www.asera-aspac.net/upload\\_files/9/Protection%20of%20Foreign%20Domestic%20Workers%20in%20Malaysia.pdf](http://www.asera-aspac.net/upload_files/9/Protection%20of%20Foreign%20Domestic%20Workers%20in%20Malaysia.pdf).

<sup>11</sup> ILO: *Gender and migration in Arab states, The case of domestic workers* (Beirut, 2004), p. 18.

which may extend to a number of years, and deductions can be made for damage caused by domestic workers in the course of their work or as a form of control.

### The employer

25. Domestic workers are among the few categories in which the employer is generally assumed to be a woman, reflecting the perception that the “domestic” sphere is traditionally their responsibility, irrespective of who actually pays for the work. In the absence of effectively enforced labour legislation, domestic workers remain dependent on their employers’ sense of fairness rather than on an accepted legal norm that recognizes their dignity as human beings.

26. However, the employer need not necessarily be a private employer, even when care is provided in the home. For example, where the state provides support for the care of the elderly in the home, it may be the government intermediary that is considered to be the employer, as has been the case in the United States (see Chapter VIII).<sup>12</sup> Properly regulated employment agencies may provide the means of formalizing the domestic work relationship and imposing meaningful regulations that distribute costs equitably rather than placing them all on the domestic worker, as well as ensuring proper monitoring and enforcement procedures.

### The domestic worker’s home

27. In millions of households throughout the world, the workplace is also the domestic worker’s residence. Living and working in their employer’s home has a major impact on workers’ personal autonomy and mobility and can influence decisions as to their future, including the decision to found a family of their own. One consequence of this is that, when they reach the age of retirement, domestic workers may not have children to provide them with personal or financial support.<sup>13</sup>

### Abuse

28. The widely reported cases of abuse of domestic workers are of special concern to the ILO. Live-in and migrant domestic workers are particularly vulnerable to various forms of mistreatment at the workplace, which in the worst cases have led to their death. Verbal abuse such as shouting, insulting the employee’s nationality or race and using inappropriate language, is frequently reported.<sup>14</sup> Physical abuse of various kinds has also been identified, which in some instances is carried out with impunity in front of third parties in order to humiliate the worker or exact submission. Sexual harassment and abuse also appear to be prevalent and this, like all abuse, can have serious long-term repercussions of the domestic workers’ health, especially when the victims are young girls.<sup>15</sup>

### Public care policies in the new economy

29. The extent to which care work is assumed by domestic workers is closely bound up with public policy. Policies which consider care for young children and family services as an entitlement and enable workers to coordinate their economic and family responsibilities have a direct impact on the balance between people’s work and home life

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<sup>12</sup> L. Delp and K. Quan: “Homecare worker organizing in California: An analysis of a successful strategy”, in *Labor Studies Journal* (2002), Vol. 27, No. 1, p. 23.

<sup>13</sup> M. Díaz Gorfinkiel, op. cit., p. 25.

<sup>14</sup> ILO: *Costa Rica: Female labour migrants and trafficking in women and children*, Series on Women and Migration No. 2 (Geneva, 2002), p. 23.

<sup>15</sup> M. Díaz Gorfinkiel, op. cit., p. 24.

and on options available to them. For example, policies that acknowledge workers' family responsibilities are conducive to the development of supportive arrangements for organizing work, working hours and family-related leave. Some countries have adopted the approach of reducing regular working hours for all workers.

30. Another approach is to encourage part-time employment, so as to make it easier to reconcile work and family life. But because it is associated with lower earnings and fewer prospects, part-time work is often not the solution of choice. Subsidized childcare services outside the home are another valuable policy option for families. If a country provides financial incentives to promote institutionalized childcare services, then workers with family responsibilities are less likely to have to rely on private care arrangements or on the mother staying at home.<sup>16</sup> Policies such as these may well point to public recognition of the value of child-rearing to society as a whole, thereby reducing the cost to parents.

31. Paying for domestic workers to undertake housekeeping, childcare and care of the elderly is a “new economy” solution that dual-income, middle-class professional families tend to adopt in many industrialized market countries in order to balance their work and home life, though this is an option that is beyond the reach of most working class families. In such economies, the decision to employ a domestic worker is no doubt greatly influenced by the availability of social facilities for workers with family responsibilities.<sup>17</sup>

32. In the developing world it is commonplace for households, however modest, to have at least one domestic employee. As a strategy for reconciling work and home life, for reducing poverty and for promoting social protection and gender equality at work, the ILO encourages developing countries to organize government-supported or cooperative childcare services. Decent work for domestic workers is another key strategy in improving the quality and coverage of support services for working families.

### The global care chain

33. In recent decades, demand for domestic work has been the main reason for the mass migration of women from the southern hemisphere to cities in the North. These global care chains may be attributed, at least in part, to the lack of attention paid to care policy in industrialized countries, which leaves their nationals with no choice but to find private solutions.

34. Female migration to take up domestic employment abroad creates “transnational” households, a form of global care chain between workers with family responsibilities in the North, who require household service, and temporary migrants from the South, who can provide them – albeit at the cost of leaving their own families behind.<sup>18</sup> Some women may of course choose to migrate in order to escape a difficult marriage or to increase their personal autonomy.<sup>19</sup> Be that as it may, restrictive migration practices can

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<sup>16</sup> OECD: *Babies and bosses – Reconciling work and family life*, Vol. 4: Canada, Finland, Sweden and the United Kingdom (Paris, 2005).

<sup>17</sup> ILO: *Creating effective equality of opportunity and treatment for men and women workers: The ILO policy framework for workers with family responsibilities and national practices around the world*, Paper prepared for the Expert Group Meeting on equal sharing of responsibilities between women and men, including caregiving in the context of HIV/AIDS, in preparation for the 53rd Session of the United Nations Commission on the Status of Women, 6–8 October 2008, Geneva.

<sup>18</sup> R. Salazar Parreñas: *Children of Global Migration: Transnational Families and Gendered Woes* (Stanford, Stanford University Press, 2005), pp. 99–112; G. Mundlak and H. Shamir: “Between intimacy and alienage: The legal construction of domestic and carework in the Welfare State”, in H. Lutz (ed.): *Migration and domestic work: A European perspective on a global theme* (Aldershot, Ashgate, 2008).

<sup>19</sup> J. Henshall Momsen (ed.): *Gender, migration and domestic service* (London, Routledge, 1999).

result in prolonged separation and a care deficit for the children of these transnational families,<sup>20</sup> who may have to be cared for by members of the extended family or poorly paid local domestic workers.

### Migration for work

35. Temporary migration schemes for domestic workers reinforce the perception that they are not invited to work in the labour market but to work “for a family”, even though there may be an underlying assumption that they will live and work in the employer’s private household and will subsequently use their experience to demonstrate their suitability for employment on the labour market and apply for permanent immigration. This reinforces the impression that domestic work is something other than regular employment, and it thus diverts attention from the real constraints that are placed on domestic workers’ access to the personal freedoms and civil liberties that other workers may take for granted.

36. In much of the developing world, the basic literacy of this working population cannot be taken for granted, as many have received no formal education and have been working in households since early childhood. By contrast, migrant domestic workers in more advanced economies may have high levels of formal education and professional skills – notably as nurses or school teachers. In some migrant domestic worker schemes, training in a classroom setting or continuous paid employment in a field or occupation related to caregiving is required.<sup>21</sup> In these cases in particular, migration for domestic employment is seen as a temporary measure and a means of providing better opportunities for a worker’s own and family’s life. Despite this, however, domestic workers may remain perpetual foreigners in the receiving country.<sup>22</sup>

### Remittances

37. Monetary remittances are one of the principle reasons why certain states increasingly encourage domestic workers to seek employment abroad, and for many sending countries they are an important source of economic support. The Migration Policy Institute reports that officially recorded flows totalled over US\$280 billion worldwide in 2006, almost three-quarters of which went to developing countries. In 22 countries remittances were equal to more than 10 per cent of the gross domestic product (GDP) in 2006, while in six countries they amounted to more than 20 per cent.<sup>23</sup> And the Organization for Economic Cooperation and Development (OECD) has found that, while foreign direct investments and capital market flows fell sharply at the turn of the century owing to the economic slowdown in high-income countries, migrant workers’ remittances continued to grow, reaching US\$149.4 billion in 2002.<sup>24</sup> The link between development and remittances from migrant workers has recently come in for increasing scrutiny. Governance and economic factors in recipient countries may have

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<sup>20</sup> *ibid.*

<sup>21</sup> Government of Canada: *Immigration and Refugee Protection Regulations SOR/2002-227*, section 112 (Live-in caregivers).

<sup>22</sup> R. Salazar Parreñas, “Perpetually foreign: Filipina migrant domestic workers in Rome”, in Helma Lutz (ed.): *Migration and domestic work: A European perspective on a global theme* (Aldershot, Ashgate, 2008), pp. 99–12; Mundlak and Shamir, *op. cit.*

<sup>23</sup> Migration Policy Institute (MPI): *The Global Remittances Guide*, at [www.migrationinformation.org/datahub/remittances.cfm](http://www.migrationinformation.org/datahub/remittances.cfm).

<sup>24</sup> OECD: *Migration, remittances and development* (Paris, 2005).



the effect of preventing migrant households from taking the risk of investing socially, politically and financially in their countries of origin.<sup>25</sup>

### Regulating domestic work: The challenge of standard setting to promote decent work

38. It is the aim of this report to address domestic work in all its multiple forms; indeed, a key conclusion of its survey of domestic work around the world is that it is not a uniform phenomenon. Another conclusion relates to its specific nature. Generally speaking, domestic workers are not male breadwinners but overwhelmingly women. Their work does not constitute a “productive” labour market activity, but rather what Adam Smith initially referred to as “non-productive” personal care services. Yet the same domestic services are treated differently when regulated outside the home and when performed within the household. There is no fundamental distinction between work in the home and work beyond it, and no simple definition of public–private, home–workplace and employer–employee. Caring for children and the disabled or elderly persons in the home or in a public institution is all part of the same regulatory spectrum, wherein a range of migration and other policies shape both the supply of and the demand for care services.

39. Because they often have no clear status under modern labour legislation, domestic workers tend to be excluded de facto from formal regulations and their enforcement. This is not to imply that their working lives necessarily lack structure and regulatory control.<sup>26</sup> On the contrary, their lives and work are regulated by strong non-state norms regarding work in the employer’s household, which vary significantly from one cultural context to the next but which result in domestic workers being among the most marginalized workers – and for whom decent work is often a distant aspiration. Regulating domestic work therefore means addressing individual employers, placement agencies and care recipients, as well as the countries that supply domestic workers and those that receive them. Standard setting must take into account this spectrum of actors and policies if the ILO is to fulfil its mandate of promoting decent work for all.

40. Mere tinkering with informal rules in formal legislation is not enough. Domestic work calls for laws that can bring about decent work and social protection. That said, legislative gains for domestic workers can also be very precarious, and a complementary mix of carrots and sticks – capacity building for domestic workers, implementation incentives for employers and robust enforcement by governments – is needed if the objective is to be achieved.

41. Domestic work in the contemporary global economy therefore poses a particularly significant challenge for national regulators. It also offers one of the greatest opportunities to reaffirm the importance of international standard setting and technical cooperation for a constituency that is at once central to the work of the ILO, central to the global economy and central to the mandate of promoting decent work for all.

### Domestic work: An old concern of the ILO

42. The situation of domestic workers has been a concern of the ILO for decades. As early as 1965 the International Labour Conference adopted a resolution on the conditions

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<sup>25</sup> H. de Haas: “International migration, remittances and development: Myths and facts”, in *Third World Quarterly*, Dec. 2005.

<sup>26</sup> B. Guha-Khasnobis, R. Kanbur and E. Ostrom: “Beyond formality and informality”, in B. Guha-Khasnobis, R. Kanbur and E. Ostrom (eds): *Linking the formal and informal economy: Concepts and policies* (Oxford, Oxford University Press, 2007), p. 4.

of employment of domestic workers,<sup>27</sup> which recognized the “urgent need” to establish minimum living standards “compatible with the self-respect and human dignity which are essential to social justice” for domestic workers in both developed and developing countries. Research action was contemplated to serve as the basis on which an international instrument on the employment conditions of domestic workers could be adopted. The survey that was accordingly commissioned showed that domestic workers were “particularly devoid of legal and social protection” and “singularly subject to exploitation,” and that their legitimate interests and welfare had long been neglected in most countries.<sup>28</sup>

43. The ILO supervisory bodies have been unequivocal in their affirmation that domestic workers are entitled to decent working conditions; they have reaffirmed the ILO Declaration on Fundamental Principles and Rights at Work and promoted full compliance with applicable international labour standards for this category of workers (see Chapter II). Thanks to this ongoing supervision and to technical cooperation, domestic workers are increasingly included in coverage by basic labour legislation.

44. Despite this, and despite its nominal inclusion in legislation, paid domestic work remains virtually invisible as a form of employment in many countries. Bound up as it is with notions of the family and of non-productive work, the employment relationship is thought not to “fit” neatly into the general framework of existing labour laws, despite their origin in the “master-servant” relationship. As a result, in most legislative enactments the specific nature of the domestic employment relationship is not addressed. And yet, at the level of local, informal norms and common assumptions about the work and the workers concerned, that same specificity tends to be relied upon to justify denying domestic workers their status as “real workers” entitled to full legislative recognition and protection.

### Specific regulation: Work like any other, work like no other

45. Part of the specificity of paid domestic work is that it is often perceived to be something other than employment. Instead, it is commonly claimed that domestic workers are “like one of the family”. It is certainly true that in some countries domestic workers tend to be distant relatives, often children, who are entrusted by their parents to wealthier or better-educated family members to be cared for and, ideally, educated in the hope of a better life. More often, though, this expression is used to convey the (presumed) existence of a close, amicable interaction between the employer’s family and the domestic worker. It can, however, divert attention from the existence of an employment relationship, in favour of a form of paternalism that is thought to justify domestic workers being asked to work harder and longer for a “considerate” employer without material reward. In fact, these arrangements are the vestiges of the master–servant relationship, wherein domestic work is a “status” which attaches to the person performing the work, defines him or her and limits all future options. Informal norms and some entitlements do develop, but they are subject to a power imbalance that leaves domestic workers without the kind of protection that other workers enjoy in the formal economy.

46. By contrast, a framework focused on the decent work paradigm emphasizes a rights-based rather than a status-based employment relationship, while also recognizing the employee’s human dignity as a person worthy of appreciation and respect both from

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<sup>27</sup> ILO: *Official Bulletin* (Geneva), July 1965, Supplement I, pp. 20–21.

<sup>28</sup> ILO: *International Labour Review*, Oct. 1970, op. cit. See also A. Blackett: *Making domestic work visible: The case for specific regulation*, Labour Law and Labour Relations Programme, Working Paper No. 2 (Geneva, ILO, 1998).

the employer and from society as a whole. It signals a transition from the paternalistic conception of the “good employer”, acting out of a sense of *noblesse oblige*, to one that is founded on respect for domestic workers’ labour rights.<sup>29</sup> This trajectory is so familiar that it hardly needs to be emphasized here, were it not that vestiges of the traditional approach to domestic work remain so troublingly present – vestiges that the ILO is called upon to address in an era of fair globalization.

47. A crucial component of the focus on decent work for all is the recognition that domestic workers really are workers, whether they work in a family, are placed in a private household by an agency or are employed in a public or private institution. Domestic work requires specific, effective laws and regulations. It means acknowledging the personal character of the work and the context in which it takes place, while reaffirming its compatibility with the employment relationship. Domestic work must be treated both as work like any other, and as work like no other.<sup>30</sup>

### From status-based relationships to employment rights

48. The implications for employers of such a move toward a decent work regulatory framework should not be underestimated. While cases of extreme exploitation may reach the newspapers, the routine, day-to-day decisions made by conscientious employers of domestic workers tend to go unnoticed. In many societies, the relationship between employers and domestic workers is fraught with ambiguity that combines stark social differences and close physical proximity. In the absence of adequate specific regulation, employers of domestic workers are thrust into the role of establishing the “law” that governs the work done in their home, at best in the shadow of national legislation. Moreover, employers are likely to have to assume responsibility for any work that domestic workers cannot or do not complete, and in a sense this places them in an inherently conflictual position vis-à-vis their employee. In other words, although domestic work may entail a multiplicity of household tasks or expectations, if a domestic worker does not do the work a member of the household must.

49. Cultural conventions have, of course, developed over time, and domestic workers have certain expectations regarding their entitlements – sometimes conveyed by employment agencies. But the balance of power remains overwhelmingly in favour of the employer, who has to take decisions that are of fundamental relevance to conditions of employment: fixing an appropriate wage in the absence of tripartite wage-fixing machinery; making arrangements for rest periods when the worker takes care of a child or elderly member of the family; finding an ethical response when a pregnant migrant worker is ineligible for state maternity benefits; determining whether a product used in domestic work constitutes an occupational risk, and so on.

50. It is common for labour and social security legislation of general application to overlook such aspects of the domestic work relationship and to leave them up to the individual employer. Highly flexible notions of “good employer” and a certain amount of social pressure are all that remain. Even for the most well-intentioned employers, self-regulation is not an adequate replacement for specific regulations that extend international labour standards to domestic workers effectively. A decent work framework specifically designed to regulate domestic work provides the opportunity to

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<sup>29</sup> See, for example, D. Vidal: “Le syndicat des travailleurs domestiques de Rio de Janeiro: un observatoire des transformations de l’emploi domestique au Brésil”, in *Sociologie du travail*, July 2007, pp. 351–365.

<sup>30</sup> A. Blackett: “Promoting domestic workers’ human dignity through specific regulation”, in A. Favre-Chamoux (ed.): *Domestic work as a factor of European identity: Understanding the globalization of domestic work, 16th–21st centuries* (Bern, Editions scientifiques européennes, 2005).

introduce fair rules which are tailored to domestic work – and upon which conscientious employers can rely.

51. Governments also stand to gain from formalizing domestic work and implementing social protection for those concerned. Once domestic work is treated as decent work and paid accordingly, it can become a source of employment promotion and gains in efficiency. In France, for example, this policy approach is central to regulatory initiatives in this area.

52. There is no doubt that more focused research is needed on the kind of strategies required to promote decent work for domestic workers. This will involve a necessary element of coordinated experimentation, which the ILO is ideally placed to lead. Standard setting on decent work for domestic workers would take the ILO beyond merely identifying non-compliance; it would be able to provide concrete, constructive guidance on ways to achieve a meaningful regulation of a category of worker that belies traditional workplace assumptions but is singularly in need of support. In the process, it could change the perception (and self-perception) of domestic workers in the social order and reaffirm loudly that they too are entitled to their human and labour rights.

### Towards the regulation of decent work

53. The specific regulation of domestic work is an essential concern of those committed to decent work for all, and the ILO's decision to place standard setting on domestic workers on the forthcoming Conference agenda highlights the Organization's priorities in three important ways. It signals: (i) a recognition that care work in the home is part of the ILO's mandate to promote decent work for all; (ii) a determination to pursue the promotion of social protection for informal economy workers, in keeping with the International Labour Conference's resolution and conclusions concerning decent work and the informal economy adopted in 2002; and (iii) a resolve to promote fair globalization in the light of the ILO's resolution concerning a fair deal for migrant workers in a global economy, and of the non-binding Multilateral Framework on Labour Migration, *inter alia*, by restricting some of the worst forms of labour migration that perpetuate contemporary forms of forced labour.

54. Standard setting to promote decent work for domestic workers embodies all four pillars of the ILO's Decent Work Agenda: employment promotion; working conditions and social protection; fundamental principles and rights at work; and tripartism and social dialogue. In the first place, it acknowledges that domestic work is both one of the most important forms of employment for women, as well as one that enables workers with family responsibilities to participate actively in the labour market. Second, it is aware of the ethical consequences of leaving this isolated and vulnerable category of workers outside effective regulation and social protection. It also recognizes to what extent a failure to regulate the employment of domestic workers infringes upon their autonomy, dignity and security. Regulating their working conditions and providing them with social protection is an acknowledgement not only of the economic importance of care work in the home but also of the inherent dignity of caring for others. In strictly pragmatic terms, such regulation provides employers with a rights-based framework upon which to determine what is "fair" in the domestic workplace, and allows them to identify factors that might be a source of occupational risk and to take appropriate steps. Third, standard setting seeks to address the inequalities and often multiple forms of discrimination that many domestic workers face and to root out the forced labour that some migrant workers endure – and to which the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly drawn attention. Finally, it reaffirms the right of domestic workers, like all workers without

distinction, to the effective recognition of their freedom of association and entitlement to bargain collectively. Moving beyond the abstract, it builds on comparative law and practice to consider ways in which domestic workers and their employers might truly exercise that freedom of association and engage in tripartite action and social dialogue.

**Box I.1**  
**A note on terminology**

The use of the terms “domestic work” and “domestic workers” should be explained, as the language surrounding this occupation has varied greatly over time and according to geographical and cultural context. Their meaning can therefore vary from one country to another.

The language used in this report has the virtue of updating the archaic terms of “maid” and “servant” that clearly implied direct subservience. The shift to “worker” is particularly significant for the ILO, which is responsible for improving the conditions of *all* workers.

Some parts of the world have already moved away from the language of “domesticity”, because of its pejorative connotations and the tendency to undervalue care work. Others, on the other hand, have opted to retain the concept of “domestic” work and note that the word has its place in the language of international relations, side by side with that of the individual state. Others again prefer to speak of “*private* household”, but this risks institutionalizing a distinction between public and private regulation that has already been superseded by the ILO’s Home Work Convention, 1996 (No. 177).

The decision of some countries to espouse the concept of “home care” has some real advantages, but it also comes with problems. Although theoretically the language is gender neutral, perhaps for that very reason it does not readily conjure up the image of a gardener or chauffeur. It may be something of a euphemism, too, masking the broad range of menial household duties that domestic workers are called upon to undertake, while tasks of a more uplifting nature are reserved for members of the family, generally the mother. However, the real virtue of this language is the inherent principle that caring *is* a form of work. Indeed, some academics speak of “caretaking” rather than caregiving”, to emphasize the skills associated with care work and the importance of their remuneration.

In other countries again, the terms used are “household helper” or “household aide”, a formulation that unfortunately takes the emphasis away from the notion of “worker” and runs the risk of “de-skilling” the occupation. A number of civil associations have therefore preferred “household work” as a linguistic solution. But here there is a real danger of confusion with the term “home work” employed in past standard-setting exercises – a confusion that is aggravated by the problem of translation into other languages.

Be that as it may, the language chosen for the future instrument must reflect the wide range of responsibilities and skills required in domestic work.

This report by the Office abides by the Governing Body’s decision to refer to decent work for “domestic workers”, in keeping with the usage of the ILO’s supervisory bodies and other ILO reports. As far as possible, the report has also updated references in past ILO documents to “servants” and “maids”.

That said, it must be made clear that the International Labour Conference is at liberty to adopt a Convention with a different title and that ILO Members, in consultation with their representative employers’ and workers’ organizations, might retain the authority to use the terminology most suited to their local context. Self-definition, particularly by those doing the work, is crucial. The important thing is that the workers who come within the scope of the proposed international instrument should benefit effectively from the protection it affords.

## Chapter II

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### **International law and domestic workers: Coverage under existing ILO standards**

55. One of the most important tools available to the ILO to improve the law and practice of member States with respect to decent work for domestic workers is the adoption and supervision of international labour Conventions and Recommendations. Although there are currently no international instruments that apply exclusively to domestic workers, they are covered by international labour standards in many key areas, notably those that relate to fundamental principles and rights at work. Some Conventions and Recommendations, such as the Sickness Insurance (Industry) Convention, 1927 (No. 24), and the Medical Examination of Young Persons Recommendation, 1946 (No. 79), specifically stipulate that they apply to domestic workers.

56. The ILO has repeatedly taken the position that, unless a Convention or Recommendation expressly excludes domestic workers, these workers are included in the international instrument's scope.<sup>1</sup> Indeed, it has taken steps to ensure that domestic workers are not inadvertently excluded from the scope of Conventions. For example, when the members States were discussing the adoption of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), the proposed definition of insolvency contained in Article 1, paragraph 1, was revised to refer to "employer's assets" rather than the more restrictive "enterprise's assets" to ensure that domestic workers would not be indirectly excluded.

57. More importantly, the ILO's supervisory bodies have underscored the vulnerability of domestic workers by calling for labour protection to be extended to them in a meaningful manner and have maintained that the specific nature of domestic work is not an adequate reason to exclude such workers from the protection of international labour standards.

58. This chapter reviews the coverage and supervision of international labour standards, notably those embodying fundamental principles and rights at work, and discusses the use of flexibility clauses that may result in the exclusion of domestic workers from certain ILO Conventions. In the light of such limitations, it suggests that the international constituency would benefit from an instrument that offers guidance on how to regulate and ensure compliance with labour standards to ensure that domestic workers benefit effectively from the promise of decent work.

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<sup>1</sup> Office of the Legal Adviser, Legal Opinion of 29 July 2002.

## Coverage and supervision of fundamental principles and rights at work

59. This chapter illustrates ways in which the ILO's CEACR has sought to ensure that the fundamental principles and rights at work are respected with regard to the working conditions of domestic workers. The views of the CEACR, which comments regularly on the implementation of ILO Conventions in the law and practice of member States, are discussed in Chapter IV.

### Freedom of association

60. Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applies to all "workers and employers, without distinction whatsoever." Similarly, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), seeks to ensure that workers enjoy adequate protection against interference in the establishment, functioning and administration of their representative organizations. The CEACR has consistently interpreted these Conventions as requiring that legislative provisions concerning freedom of association, including the right to organize, be extended to domestic workers. For example, in 2008 the Committee of Experts published individual observations to this effect on Bangladesh, Canada (Ontario), Haiti, Kuwait and Swaziland. The Committee has also noted the intention of China, Macau (China), Gambia and Yemen to modify legislation to include the right of domestic workers to organize.

61. But the CEACR has moved beyond the requirement that adequate provision be made in national legislation. In its observation to the Government of Mexico concerning Convention No. 87 in 2005, it noted that, although domestic workers were covered by Mexico's Federal Labour Act, the Government should ensure that they enjoyed the guarantees of the Convention "in practice".

### Equality and non-discrimination

62. The fundamental principles of non-discrimination and equality of opportunity reflected in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), also apply to domestic workers. The CEACR has drawn attention to the vulnerability of these workers, in particular migrant domestic workers, to multiple forms of discrimination and abuse due to the individual employment relationship, lack of legislative protection, stereotyped thinking about gender roles and undervaluing of domestic work. The Committee of Experts has recalled that laws or measures designed to promote equality of opportunity and treatment in employment and occupation that exclude domestic workers from their scope are contrary to these Conventions.<sup>2</sup> It has called for laws and regulations not only to provide for the nominal inclusion of domestic workers, but also for Governments to ensure that the protection against employment discrimination and inequalities in remuneration are effective and subject to enforcement. For example, it has noted that, in the United Arab Emirates, domestic workers are covered by the Act on civil procedures

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<sup>2</sup> ILO: *Equality in employment and occupation*, Report III (Part 4B) (General Survey), ILC, 75th Session, Geneva, 1988, para. 127.

and that the Nationality and Residence Department has a special unit to supervise the work of migrant domestic workers from whom it can receive complaints. But it has requested the Government to provide more information on how the legislation protects workers in practice; details on the number and nature of complaints received by the Nationality and Residence Department; and information on campaigns to inform migrant domestic workers of their rights and of the relevant complaints machinery – and on the outcome of such complaints.<sup>3</sup>

63. The CEACR has also found that domestic workers are often affected by wage disparities between men and women and has cautioned against undervaluing domestic work when fixing minimum wages. It has called upon governments to ensure that rates for female-dominated occupations such as domestic work are not set below the level of rates for male-dominated occupations involving work of equal value. For example, Costa Rica's National Institute for Women (INAMU) and Gender Equality Unit have taken action to ensure that the minimum wage of female domestic workers is equivalent to the minimum wage for unskilled workers, and that the national Wages Board approves a percentage increase. In respect of Convention No. 100, the CEACR noted that this constituted progress as it improved the income of female domestic workers. However, considering the complex tasks and responsibilities assumed by many domestic workers, the CEACR questioned the classification of domestic work as "unskilled" work.<sup>4</sup>

### Forced labour

64. In its 2007 General Survey on the eradication of forced labour, the CEACR recalled that the prohibition of the use of forced or compulsory labour was a peremptory norm of modern international human rights law. Conventions Nos 29 and 105, which seek to ensure that all human beings are free from forced labour in law and in practice, apply to all workers, including domestic workers. Indeed, the CEACR has noted that, despite the existence of anti-slavery legislation in some countries, such as Niger, conditions of slavery continue to be transmitted by birth to individuals from certain ethnic groups, who are compelled, *inter alia*, to perform domestic work for their master without payment.<sup>5</sup>

65. The CEACR has addressed the important issue of trafficking of women, to which migrant domestic workers can be particularly vulnerable. It has also tackled other forms of forced labour that these workers experience, emphasizing the structural elements of laws, regulations and migratory practices that are conducive to such situations. In its 2001 general observation on Convention No. 29, the CEACR asked Members to ensure that those responsible for the exaction of forced labour from legal or illegal migration, *inter alia* in domestic work, are actually punished, and that trafficking in persons be suppressed. It has also called upon both sending and receiving countries to ensure that

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<sup>3</sup> CEACR: direct request, United Arab Emirates, Convention No. 111, 2008.

<sup>4</sup> CEACR: direct request, Costa Rica, Convention No. 100, 2008. See also: direct request, Haiti, Convention No. 100, 2008; direct request, Saint Vincent, Convention No. 100, 2008. The CEACR noted that Costa Rica had adopted regulations to establish minimum wages covering domestic workers and asked the Government how it ensured that rates for female-dominated occupations were not set below those for male-dominated occupations involving work of equal value.

<sup>5</sup> ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations (RCE), Report III(1A), ILC, 97th Session, Geneva, 2008, pp. 235–236 (Niger). See also CEACR: individual observation, Sudan, Convention No. 29, 1998.



appropriate measures are taken. The CEACR's firm attitude vis-à-vis these practices is that respect for principles and rights concerning forced labour can be effective in addressing many of the abuses faced by migrant domestic workers.

66. For example, in an observation on Lebanon in 2001, the CEACR referred to allegations by the World Confederation of Labour regarding the illegal exploitation and abuse of migrant domestic workers from Africa and Asia, whose employment relations and social status left them vulnerable to the non-payment of salaries, corporal punishment, sexual abuse and enforced sequestration.<sup>6</sup> It accordingly requested governments to take appropriate measures to put a stop to forced labour in domestic work, while noting that the Lebanese authorities had passed legislation on agencies bringing in migrant domestic workers to prevent the illegal exaction of forced labour.

67. In a direct request to the United Kingdom, which drew attention to the particular vulnerability of migrant domestic workers, the CEACR cited a report submitted to the United Nations<sup>7</sup> to the effect that women had been recruited abroad on the false promise of work as nurses. The Government reported that it was working closely with the NGO Kalayaan to bring about greater rights for domestic workers in the United Kingdom. An investigation had been undertaken of work permits with the authority to act on any notice of abuse, irrespective of the source of information, which could give rise to legal proceedings.

68. In the case of Indonesia, the CEACR drew closely upon a June 2006 study prepared by the ILO's Jakarta Office<sup>8</sup> that expressed concern about recent legislation containing provisions intended to improve the conditions of migrant workers, notably by controlling the activities of recruitment agencies. The CEACR considered, however, that the law did not appear to provide effective protection for migrant workers against the risks of exploitation due to its vague provisions and numerous shortcomings. Despite the measures adopted, illegal networks proliferated, increasing the risk of exploitation faced by the million Indonesian workers who were expected to migrate for work in 2008. The CEACR also formulated observations on the Memorandum of Understanding (MoU) on domestic workers signed with the host country Malaysia, as reported by the United Nations Special Rapporteur on the human rights of migrants.<sup>9</sup> That report noted that, while the MoU covered procedural matters with respect to recruitment, it made little mention of employees' rights, failed to guarantee standard labour protection and did not include measures to prevent and respond to cases of abuse. The CEACR concluded that the MoU did not meet international labour standards, especially regarding the right of workers to hold their own passports.

## Child labour

69. The CEACR has been very active in responding to the problem of child domestic labour, given the special attention paid to the matter in the Worst Forms of Child Labour Convention, 1999 (No. 182). Convention No. 182, along with the ILO's Conventions on forced labour and minimum age, is a crucial source of guidance on the setting of standards to combat child domestic labour. Implementation of the Conventions is

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<sup>6</sup> ILO: RCE, 2008, op. cit., p. 226 (Lebanon).

<sup>7</sup> United Nations Commission on Human Rights: *Report of the Working Group on Contemporary Forms of Slavery* (Geneva, 2001), doc. E/CN.4/Sub.2/2001/30.

<sup>8</sup> ILO: *Using Indonesian law to protect and empower Indonesian migrant workers: Some lessons from the Philippines* (Jakarta, 2006).

<sup>9</sup> ILO: RCE, 2008, op. cit., p. 222.

facilitated through the provision of substantial technical cooperation, notably through the International Programme on the Elimination of Child Labour (IPEC) (see Chapter IX). The CEACR has repeatedly called upon member States to take effective action to prevent child domestic labour, highlighting the traditional practice of entrusting young children (often distant relatives) to the care of adults – such as the *restavek* system in Haiti that has led children into forced labour. It has noted allegations by the United Nations Committee on the Rights of the Child regarding full-time, live-in child domestic workers in Bangladesh who, while being perceived as never really at work – are in fact assigned labour-intensive tasks, work endless hours and are subject to verbal and physical abuse. The Committee of Experts has also urged the Government to examine the situation of child domestic workers in the light of the Forced Labour Convention, 1930 (No. 29). A general observation by the CEACR in 2004 on the Minimum Age Convention, 1973 (No. 138), notes that its application continues to give rise to serious difficulties in practice, even in countries that have obtained the technical assistance of the ILO to resolve the problem of child labour.

70. As the coverage of child domestic labour by ILO labour standards is quite developed, the Committee of Experts' detailed observations on the subject of child labour will not be reviewed here.

### The use of flexibility clauses in Conventions

71. Although most international labour Conventions apply to domestic workers, a few permit their exclusion wholly or in part from their scope. However, to draw a clear picture of their coverage, it is important to examine how such flexibility clauses are used in practice and how they are interpreted by the ILO's supervisory bodies.

72. Five of the Conventions containing flexibility clauses have been “shelved”, that is they are no longer considered relevant to current needs (see table II.1). Their ratification is not encouraged any more, and no requests are made for detailed regular reports on their application.

**Table II.1. Shelved Conventions containing a flexibility clause**

| Shelved Convention  | Flexibility clause   |
|---|--|
| Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)                | Article 2, paragraph 2(j)  |
| Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)             | Article 2, paragraph 2(j)  |
| Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39)             | Article 2, paragraph 2(j)  |
| Unemployment Provision Convention, 1934 (No. 44)                            | Article 2, paragraph 2   |
| Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60) | Article 1, paragraph 4 (possible exemption of “domestic work in the family performed by members of that family”) |

73. The CEACR has construed the exclusion of domestic workers narrowly. The Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), for example, is considered outdated because 22 of 25 ratifying Members have denounced it, but it has not been shelved. In Article 1, paragraph 3, the Convention provides explicitly for the possible exclusion, of “domestic work in the family performed by members of that

family”. Without ruling on how the notion of “family” might be interpreted, the CEACR has emphasized that this provision does not provide for total exemption of domestic work. “The minimum age must be fixed and applied in accordance with the provisions of the Convention in regard to domestic work performed by a person who is not a member of the family in question”.<sup>10</sup>

74. In some cases, flexibility clauses that exist in Conventions may never have been used. Generally, instruments containing such clauses require members States to provide a formal declaration of exclusion at the time of ratification. Where governments have failed to do so, the CEACR has exercised care in its review of action taken to exclude domestic workers from the coverage of the relevant Conventions. For example, under Article 7, paragraph 1(c), of the Maternity Protection Convention (Revised), 1952 (No. 103), which is no longer open to ratification and has been revised by the Maternity Protection Convention, 2000 (No. 183), an ILO Member that ratifies the Convention may, by a declaration accompanying its ratification, provide for exceptions from the application of the Convention in respect of “domestic work for wages in private households”. But when Italy, in its first report on the application of the Convention in 1974, announced its intention to resort to this exception in respect of Article 6, which prohibits dismissal while a woman is on maternity leave, the CEACR considered the proposed exclusion to be unacceptable, as the Government did not provide for the exception at the time of ratification.<sup>11</sup>

75. A number of Conventions allow the exclusion of limited but unidentified categories of workers for which there are problems of a substantial nature, after consultation with the representative organizations of workers and employers concerned (see table II.2). For example, Article 1(3)(h) of Convention No. 103 makes it quite clear that “domestic work for wages in private households” falls within the meaning of “non-industrial occupations” that are covered by the Convention. A Member may only exclude this category of work from the scope of the Convention by way of a declaration accompanying ratification of the international instrument, pursuant to Article 71(c). An international Convention may also require a member State to list excluded categories of workers in its first report upon ratification of the Convention, as do the Maternity Protection Convention, 2000 (No. 183), and the Termination of Employment Convention, 1982 (No. 158). In the case of the latter, the CEACR has interpreted Article 6, paragraph 6, strictly, recalling that governments may take account of future developments to reduce the exclusions mentioned in the first report but may not subsequently introduce new exceptions.<sup>12</sup> Indeed, some instruments explicitly require progressive extension of the provisions to workers initially contemplated in the exclusions. In the case of the Minimum Wage Fixing Convention, 1970 (No. 131), the CEACR has frequently raised the question of the extension of minimum wage protection to domestic workers in the absence of a clear indication at the time of ratification that they were not covered pursuant to Article 1, paragraph 3.

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<sup>10</sup> ILO: RCE, 1998, *op. cit.*, p. 138.

<sup>11</sup> CEACR: direct request, Italy, 1971. See also CEACR: observation, Cuba, Convention No. 103, 1957.

<sup>12</sup> CEACR: direct request, Morocco, Convention No. 158, 2006.

**Table II.2. Conventions allowing the exclusion of domestic workers**

| Convention   | Flexibility clause     | Declaration of exclusion of domestic workers   |
|--|------------------------|--|
| Holidays with Pay Convention (Revised), 1970 (No. 132)                             | Article 2, paragraph 2 | Belgium, in its first report on the application of the Convention <sup>1</sup>   |
| Occupational Safety and Health Convention, 1981 (No. 155)                          | Article 2, paragraph 2 | None   |
| Termination of Employment Convention, 1982 (No. 158)                               | Article 2, paragraph 5 | None   |
| Night Work Convention, 1990 (No. 171)  | Article 2, paragraph 2 | Dominican Republic, in its first report on the application of the Convention <sup>2</sup>  |
| Part-Time Work Convention, 1994 (No. 175)  | Article 3, paragraph 1 | Netherlands, in a declaration accompanying its instrument of ratification dated 5 October 2001 <sup>3</sup>  |
| Maternity Protection Convention, 2000 (No. 183)                                    | Article 2, paragraph 2 | None   |
| Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) | Article 4, paragraph 2 | None   |
| Medical Care and Sickness Benefits Convention, 1969 (No. 130)                      | Article 5              | Luxembourg, in its first report, excluding domestic workers employed for fewer than 16 hours per week.   |
| Minimum Wage Fixing Convention, 1970 (No. 131)                                     | Article 1, paragraph 3 | Several States, including Bolivia, Chile, Egypt, France, Guyana, Uruguay, Yemen and Zambia <sup>4</sup>  |
| Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)   | Article 4, paragraph 2 | Spain, in its first report, excluding from the scope of Part III of the Convention persons who are parties to an employment relationship of a special nature at the service of a private household |

<sup>1</sup> The Government indicated that domestic workers are excluded from Royal Decree of 30 March 1967 determining the general modalities for the execution of the laws related to annual leave of salaried workers and Royal Decree of 28 June 1971 adapting and coordinating the legal provisions concerning annual leave of salaried workers. <sup>2</sup> See direct requests addressed to the Dominican Republic in 1997 and 1998. The Dominican Republic indicated that economic reasons and supervisory mechanisms currently prevented the rules on the period of night work from being extended to domestic workers in the Labour Code. It further confirmed that the exclusion had been discussed and agreed upon with the representative organizations of employers and workers during tripartite discussions at the time of adoption of the Labour Code. <sup>3</sup> The exclusion applied to domestic work in private households for less than three days a week. The Netherlands Trade Union Confederation (FNV) has expressed concern that domestic workers with a full-time work week for three different households would be excluded from the scope of the Convention. <sup>4</sup> NORMES indicates that Guatemala, Republic of Korea, Lebanon, the Netherlands and Sri Lanka seem to exclude domestic workers from the scope of the minimum wage legislation without a clear indication of fulfilment of procedural requirements under Art. 1, para. 3, of Convention No. 131.

76. A review of the preparatory reports and negotiations on the relevant international Conventions shows that domestic workers have frequently been considered by ILO constituents as a suitable category for exclusion in instruments of general application, inasmuch as they are not designed to address the specific nature of domestic work.

77. For example, during the first Conference discussion of the Occupational Safety and Health Convention, 1981 (No. 155), an amendment was introduced that proposed extending the scope of the proposed instrument, as its provisions might otherwise not apply to certain branches of activity in some countries. Nonetheless, instead of excluding certain branches of activity from the entire instrument, the flexibility clause allowed the exclusion of particular categories only in respect of difficulties of application. <sup>13</sup> In the

<sup>13</sup> ILO: *Record of Proceedings*, ILC, 66th Session, Geneva, 1980, §p. 35/4. See also ILO: *Record of Proceedings*, ILC, 67th Session, Geneva, 1981, p. 25/4.

case of the Termination of Employment Convention, 1982 (No. 158), an amendment seeking to permit domestic workers to be excluded was ultimately withdrawn, as domestic workers had already been identified as one of the groups of workers liable to encounter special problems of a substantial nature; they were therefore covered by the general flexibility clause. As regards Convention No. 155, although the record shows that a few countries alluded to the possible exclusion of domestic workers, most considered that the Convention should apply to all branches of economic activity. Regarding Convention No. 131, the Office's law and practice report noted that domestic workers formed one of the categories of workers most often excluded under minimum wages systems that did not provide general coverage.<sup>14</sup> Finally, under the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), Members discussed at length the possible exclusion of domestic workers. The amendment to this effect was eventually withdrawn, however, as the aim of the Protocol was to extend labour inspection to workplaces of the non-commercial sector rather than to proprietors of establishments.

### Minimum Age Convention, 1973 (No. 138)

78. Convention No. 138 contains three provisions that concern domestic workers. The first is the flexibility clause contained in Article 4, paragraph 1, circumscribed by paragraph 3 which states that it cannot be invoked in respect of hazardous work. During the Conference discussion leading to the adoption of the Convention, no express mention was made of the possibility of excluding domestic workers from its scope. However, Egypt has made use of Article 4 to exclude domestic workers, on the grounds that the nature of the work makes it virtually impossible to ensure that hazardous work is not covered by the exclusion. In the case of Japan's exclusion of domestic workers from its application of the Convention, the CEACR requested the Government to provide information on the measures taken or envisaged to ensure that children under 18 years of age working as domestic workers did not carry out work likely to jeopardize their health, safety or morals.<sup>15</sup> Other ILO Members have been more specific in their use of the flexibility clauses, while some, like the Governments of Sweden and Turkey, have amended or supplemented their laws to ensure that domestic workers receive protection under the Convention.

79. The second provision that concerns domestic workers is Article 5, paragraph 1, which provides that Members "whose economy and administrative facilities are insufficiently developed" may, after consultations with the organizations of employers and workers concerned, initially limit the scope of application of the Convention. Article 5, paragraph 3, lists the sectors to which Convention No. 138 must apply as a minimum, and does not include domestic work. Accordingly, Cameroon initially limited the Convention's application to the minimum branches of activity identified in that Article. However, the CEACR has requested the Government to provide information on children employed or working outside of those branches of activity.<sup>16</sup> Some other governments, such as Brazil and Viet Nam, initially limited the application of the Convention to the sectors but have national labour legislation of general application.<sup>17</sup>

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<sup>14</sup> ILO: Report VII(1), ILC, 53rd Session, Geneva, 1969, p. 23.

<sup>15</sup> CEACR: direct request, Japan, Convention No. 138, 2007.

<sup>16</sup> CEACR: direct request, Cameroon, Convention No. 138, 2006.

<sup>17</sup> CEACR: direct request, Brazil, Convention No. 138, 2005; direct request, Viet Nam, Convention No. 138, 2006.

80. Finally, Article 7, paragraph 1, of Convention No. 138 permits Members to set a lower minimum age (13 years of age, or 12 in the case of Members with a statutory minimum age limit of 14 whose economy and educational facilities are insufficiently developed) for the performance of “light work”, which is not likely to be harmful to health or development and not prejudicial to school attendance or participation in vocational orientation or training programmes. Some member States, notably the Bahamas, Congo and the United Kingdom, have introduced this flexibility into their legislation – for example, by permitting domestic work in hotels and other establishments. The CEACR has supervised compliance carefully to ensure that the 12-year minimum age is applied only in countries that have stipulated a general minimum age of 14 years. It has encouraged member States to address particular local practices, such as the *vidomègon* in Benin whose Government indicated that it would consider adopting a code for the protection of children in partial response to the problem of child domestic workers.<sup>18</sup>

### Concluding remarks

81. Where domestic workers have been excluded from the scope of a Convention, the main problem has been that their work is so specific that it is difficult for an instrument dealing with an economic activity carried out in an industrial context to cover them effectively. Domestic workers form a significant part of the working population and, given their vulnerability to dangerous, discriminatory and abusive working conditions, they warrant special attention rather than exclusion. That said, ILO Members can certainly benefit from guidance on ways to regulate domestic work so as to meet international labour standards. This is all part of the process of recognizing the value of, and ensuring decent employment conditions for, the endless invisible tasks that are involved in domestic work.

82. There remains a paradox that should be underlined. Although ILO Members have expended considerable efforts in the drafting of flexibility clauses, few have resorted to them in practice. Although many governments may exclude domestic workers from the scope of their legislation, as will be seen in Chapters IV, V and VIII, the fact is that the ILO’s constituents are seeking guidance from the Office on how to ensure decent conditions for this category of workers. A regulatory instrument that recognizes the specificity of domestic work and responds to the decent work deficit would be an excellent opportunity for the Office to provide precisely the kind of technical cooperation guidance that is needed.

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<sup>18</sup> CEACR: direct request, Benin, Convention No. 138, 2005.

## Chapter III

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### **The definition of domestic work and its inclusion in legislation**

#### Scope of the study

83. One of the reasons for adopting international labour standards on decent work for domestic workers is that there is no coordinated mechanism for information sharing and learning from good practices in the regulation of domestic work. New standards would play a pivotal role in enabling the ILO to help constituents draw on comparative experience to promote decent work for this category of workers.

84. The Office has carefully studied the information available at headquarters and in the field, as well as information shared by governments, social partners, civil society actors specializing in domestic work and a number of academic experts and research policy networks. It has also engaged in extensive legislative research to gather information on the way in which countries at the national level deal with domestic work. The information, though considerable, is far from complete. It is not based on systematic or comprehensive communications from governments or social partners, except in so far as it has been collected in the course of other work – notably, technical cooperation provided by the Office. The information below should therefore only be taken as indicative.

#### Understanding law and practice as it applies to domestic workers

85. This chapter is based on a detailed review of the legislation of 72 ILO Members as it applies to domestic workers; it also includes selective references to a number of other ILO member States. These countries make up over 80 per cent of the world's population. While the study focuses chiefly on labour legislation, the Office wishes to stress that the national constitutions of some ILO Members, such as Brazil and Mexico, have extended certain social rights to domestic workers, thus pointing to a shift in perception of domestic work from the private to the public sphere.<sup>1</sup>

86. Relevant labour protection standards are also found in a range of other national and transnational legislative instruments, including: human rights legislation, immigration laws, civil codes and statutory regulations and policies, as well as memorandums of understanding between labour-sending and labour-receiving countries.

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<sup>1</sup> For example, Brazil, Constitution, 1988, article 7(1); Mexico, Constitution, article 123.

87. In preparing this report, the Office has, along with the CEACR and the ILO's Legal Adviser, made the assumption that unless domestic workers are explicitly excluded from the scope of labour legislation they are included.

88. That assumption is important from the standpoint of entitlement to protection. Formal legislation of general application to all workers is of enormous importance for domestic workers. In some countries it has been the basis from which domestic workers have been able to achieve gains through individual complaints. However, in many parts of the world that assumption is quite likely misleading and bears little relevance to the way domestic work is regulated in practice.

89. Moreover, as we have seen, the effective regulation of domestic workers' conditions of employment and the enforcement of their fundamental principles and rights at work call for a proper understanding of the specific nature of the tasks they perform. Special attention is therefore given here to labour standards that are specifically designed to address the issue of domestic work.

90. Another important feature of the contemporary landscape is that in many countries the domestic work sector is characterized by a prevalence of migrant workers, many of whom may be undocumented. Although, as previously noted in Chapter II, ILO standards generally apply to both national and foreign workers, this principle is not always reflected in national laws. Depending on the legal system, domestic workers may be excluded from labour protection precisely because of their status as migrants.<sup>2</sup> Certainly, where a law or regulation can be interpreted in such a way, courts in some jurisdictions are careful to interpret immigration legislation in a manner that does not limit their fundamental rights, such as the right to fair labour practices. That was the approach adopted recently by a South African Labour Court in *Discovery Health Ltd v. Commission for Conciliation, Mediation and Arbitration*.<sup>3</sup> However, in cases where the labour legislation is applied to all workers on the member State's territory, migrant workers – and especially undocumented migrant workers – may fear that instituting legal proceedings will lead to their expulsion from the host country.

91. This chapter focuses on this dimension of the problem, while special measures to prevent forced labour among migrant domestic workers are addressed in a separate chapter.

92. For all of these reasons, this report examines a representative selection of the laws of a large number of ILO members States (see table III.1). The laws have been studied in detail in order to appreciate the challenge of regulating domestic work so as to ensure its effective coverage. It pays special attention to countries that have tried to address the specific nature of the employment conditions of domestic workers by offering deliberately tailored legal responses. In some cases, those responses fit comfortably within the ambit of existing ILO Conventions and Recommendations. In others they diverge from them somewhat, either because the international instruments do not deal with specifics or because they offer less protection.

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<sup>2</sup> For example, *Hoffman Plastics Compounds Inc. v. NLRB*, 535 U.S.137 (2002).

<sup>3</sup> Case No. JR 2877/06 of 28 March 2008 (Van Niekerk AJ).



## A dynamic landscape

93. In various parts of the world some innovative, specific regulations on domestic workers are emerging. These may be contained within a general labour code, a separate regulatory instrument or a mixture of both. In 2006, Uruguay's Act No. 18.065 on domestic work extended a range of labour protection measures to domestic workers that were complemented on 25 June 2007 by a Presidential Decree releasing them from prohibitive conditions and requirements for obtaining social security protection. The Decree also conferred workplace rights that were specific to domestic employment. In Spain a Royal Decree has been issued, a form of direct regulation supplanting the generally applicable Workers' Statute that was chosen because of the complex nature of domestic employment and the need for more focused enforcement measures.<sup>4</sup> In South Africa, the Basic Conditions of Employment Act, 1997 (BCEA), came into effect in 1998, providing domestic workers with access to the Commission for Conciliation, Mediation and Arbitration. And, on 1 September 2002, a binding sectoral determination came into force under the BCEA to establish detailed conditions of employment and minimum wages specific to domestic work.

94. In Hong Kong, China, domestic workers have the legal right to organize and are covered by the generally applicable Employment Ordinance. Since most domestic workers are migrants, the Immigration Department requires that its standard employment contract with mandatory terms and minimum standards be issued prior to delivery of an entry visa.

95. Several ILO member States, including France, Italy and Mali, have national or regional collective agreements that combine elements of contract law generating obligations between the signatories with regulatory mechanisms (usually in the form of decrees) and thereby extend the standards provided to domestic workers and employers. National and regional collective agreements of this kind are usually negotiated by tripartite commissions and cover an extensive array of conditions of work and social protection. Some member States have introduced special statutory instruments concerning domestic workers. Although these are sometimes in the form of delegated legislation or regulations, their relationship to the general labour laws and regulations is important. For example, Mali's Collective Agreement on the Employment Conditions of Household Employees (section 41) specifically states that, for cases not expressly provided for under the relevant decree, the conditions laid down in the Labour Code, the Social Security Code and other regulatory texts in force shall apply.

96. Important legal initiatives are in preparation in other member States. For example, on 23 October 2008, the upper house of the Indian Parliament, the Rajya Sabha, passed the Unorganized Sector Workers' Social Security Bill, which covers a broad range of security schemes for workers in the informal sector, including domestic workers. The Bill addresses pensions, maternity insurance, general insurance and health insurance. It also provides for a new decision-making body, the National Social Security Board,

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<sup>4</sup> R. Quesada Segura: *El contrato de servicio doméstico* (Madrid, Distribuciones de La Ley, 1991), pp. 11–45.

headed by the Union Labour Minister, as well as similar boards at the state level to recommend suitable welfare schemes. The Bill must now pass the lower house, the Lok Sabha. A Domestic Workers (Registration, Social Security and Welfare) Bill, 2008, has been proposed by India's National Commission of Women which, in its statement of objectives, refers to the "severe exploitation" faced by domestic workers in the absence of national legal protection and, in the case of child labour, the lack of enforcement machinery. Building on the initiative of some state governments in India to take regulatory initiatives in respect of domestic workers, notably on minimum wages, the Commission proposes legislation to regulate conditions of work nationally, establish a registry of workers, employers and employment agencies, and set up state and district boards to monitor and assist domestic workers.

97. In October 2007, the Philippines Senate adopted a Magna Carta for Household Helpers (*Batas Kasamahay*), currently with the Committee on Labour and Employment. If adopted by the House of Congress, it would regulate the terms and conditions of employment of the domestic workforce, including working hours, leave, minimum wage and payment of a thirteenth monthly wage, as well as membership in the social security system and the PhilHealth system.

98. In Lebanon, by virtue of Ministry of Labour Decision No. 16/1 of 16 February 2006, a National Steering Committee has been created to examine the situation of migrant domestic workers and prepare a separate protective Bill.<sup>5</sup>

99. The list of countries to which the following paragraphs refer, along with the extent of coverage of domestic workers in national rules and regulations, will be found in the appendix to this report.

## Defining domestic work

### The domestic employment relationship and the household economy

100. Generally speaking, a fundamental criterion of domestic work is that it takes place in the "household". This has two implications. First, very few countries surveyed extend the legislation beyond the private household,<sup>6</sup> although an important exception is section 139 of Costa Rica's Executive Decree No. 19010-G of 1999, which includes domestic workers in monasteries and convents. Spain's Royal Decree is careful to specify that domestic work may take place both in or for the household. Similarly, in the United States (Montgomery County, Maryland) the definition of "domestic service" under Bill No. 2-08 extends to work that is "primarily performed in a home".

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<sup>5</sup> CEACR: direct request, Lebanon, Convention No. 111, 2008.

<sup>6</sup> In Mexico, section 332 of the Federal Labour Act specifically excludes such workplaces as hotels, restaurants, hospitals, boarding schools (*internados*) and similar establishments from the scope of domestic work. See also section 150 of the Labour Code of Paraguay.

101. Second, many seek to capture the non-lucrative nature of domestic work by excluding assistance with commercial or “professional” activities that may be performed within the home. In Argentina (Decree No. 7.979/56) and Malaysia (Labour Code), the relevant legislation excludes labour connected with a trade, business or profession conducted by an employer in the employer’s home from the scope of domestic work. Brazil excludes work that does not have a non-lucrative objective.<sup>7</sup> In section 161 of the Labour Code, Guatemala excludes from the definition work that provides profit or business for the employer. Section 2 of the Household Workers’ Act and section 1 of the accompanying regulation exclude work that provides profit or business for the employer or the employer’s family.

102. In Uruguay, section 1 of Act No. 18.065 of 15 November 2006, concerning standards for the regulation of domestic work, focuses instead on tasks that lead to “direct economic gain” by the employer. The use of this language illustrates both that domestic work requires a broad range of skills and training and that it can provide material benefits to families and to the broader economy. The terminology employed in the Swiss canton of Geneva points to a similar approach.

### Classifying domestic work

103. The ILO’s International Standard Classification of Occupations (ISCO) recognizes domestic work under two broad classification groupings (5 and 9) and identifies associated tasks and the corresponding skill levels (see box III.1). By contrast, much of the national legislation surveyed does not define domestic work. This is not surprising where domestic workers are either specifically excluded from the legislation or when their inclusion is implicit. The Latvian Labour Act of 9 November 2006 (sections 2–4), which considers that labour laws are binding on all employers irrespective of their legal status and on employees if the mutual legal relationships are based on an employment contract, is a case in point. Both employer and employee are defined broadly to include natural persons. In other jurisdictions quite the opposite occurs, with several definitions appearing under separate legislative provisions. In the United States, for instance, the California Wage Order gives examples of “household occupations” (companions, cooks, house cleaners, maids, practical nurses, etc.), while defining “personal attendants” as persons hired by a private householder or “third party employer recognized in the health-care industry” to work in a private household to assist the elderly or the physical or mentally disabled in need of supervision. Personal income tax provisions refer to household employees and include home health-care workers within their scope.<sup>8</sup>

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<sup>7</sup> Section 1 of Act No. 5.859 of 11 Dec. 1972.

<sup>8</sup> State of California (Employment Development Department): *Household Employers’ Guide 2009*.

**Box III.1**  
**Domestic work according to the ISCO**

Classification 5 addresses commercial establishments, institutions and private households. It covers two key categories: housekeeping (minor group 512), which includes housekeepers and related workers and cooks; personal care and related workers, including childcare workers and home-based personal care workers (minor group 513). Housekeeping foreseen under 5121 emphasizes the supervisory work of the housekeeper. Classification 5131 defines childcare workers as those who “take care of employers’ children and oversee their daily activities” and considers that the tasks include:

- (a) assisting children to bath, dress and feed themselves;
- (b) taking children to and from school or outdoors for recreation;
- (c) playing games with children, or entertaining children by reading or storytelling;
- (d) maintaining order in children’s bedrooms and playrooms;
- (e) taking care of schoolchildren at lunch or other school breaks;
- (f) taking care of schoolchildren on excursions, museum visits and similar outings;
- (g) performing related tasks;
- (h) supervising other workers.

Similarly, home-based personal care workers under classification 5133 “attend to various personal needs and in general provide personal care for persons in need of such care at their own homes because of physical or mental illness or disability or because of impairment due to old age”. Tasks of this category, an example of which is a “home nursing aid”, include:

- (a) assisting persons in getting into and out of bed and making the appropriate change in dress;
- (b) changing bed linen and helping persons with their bath and toilet;
- (c) serving food – prepared by them or others – and feeding persons needing help;
- (d) giving or ensuring that persons take the necessary medicaments;
- (e) watching for any sign of deterioration in the person’s health and informing the relevant medical doctor or social services;
- (f) performing related tasks;
- (g) supervising other workers.

Classification 913 speaks specifically of “domestic and related helpers, cleaners and launderers”. It covers private households, hotels, offices, hospitals and other establishments, as well as a variety of vehicles to keep interiors and fixtures clean. The classification includes domestic helpers and cleaners, as well as hand-launderers and pressers. Under classification 9131, domestic helpers and cleaners “sweep, vacuum, clean, wash and polish, take care of household linen, purchase household supplies, prepare food, serve meals and perform various other domestic duties”.

### Categories of domestic work

104. Not all countries surveyed provide guidance on the nature of domestic work (see table III.1). A broadly shared understanding of the nature of domestic work can be found in section 146 of the Chilean Labour Code, which refers to “cleaning and assistance peculiar or inherent in the household”.

105. Some countries specify the occupational categories in a list that may nonetheless expressly provide for the inclusion of others in similar occupations, as long as a homeowner employs them “to work directly at his or her place of normal residence”.<sup>9</sup>

<sup>9</sup> Cambodia, section 4 of the Labour Code.

**Table III.1. Legislation specifying the inclusion or exclusion in domestic work of specific occupational categories (non-exhaustive list)**

| Category   | Specifically included in definition  | Specifically excluded from the definition   |
|--|--|---|
| Cook   | Burkina Faso, <sup>1</sup> France, Kenya, Malaysia, Paraguay, Switzerland (Geneva), United States (California), United States (Oregon), Zimbabwe |   |
| Butler   | Kenya, Malaysia, United States (California), United States (Oregon)  |   |
| Childminder/nanny/governess/child's nurse                                | Burkina Faso, Kenya, Malaysia, Paraguay, Switzerland (Geneva), United States (Oregon), Zimbabwe  | Finland (registered children's nurses)  |
| Gardener   | Burkina Faso, Kenya, Malaysia, Paraguay, South Africa, Switzerland (Geneva), United States (California), Zimbabwe                                | Costa Rica  |
| Laundry personnel, washerwoman, ironing personnel                        | Burkina Faso, France, Kenya, Malaysia, Paraguay; Switzerland (Geneva)  |   |
| Security guard/watchman  | Burkina Faso, Cambodia, Kenya, Malaysia  |   |
| Driver/chauffeur of vehicle for private use                              | Cambodia, Chile, France, Kenya, Malaysia, Paraguay, South Africa, Switzerland (Geneva), United States (California) <sup>2</sup>                  | Argentina (if exclusively responsible); Costa Rica  |
| Household employee/housekeeper/house-servant/maid/"boy"                  | Burkina Faso, Cambodia, France, Kenya, Malaysia, Paraguay, United States (California), United States (Oregon), Zimbabwe                          |   |
| Elder caregiver  | France, South Africa, United States (Oregon)   | United States (Montgomery County, Maryland) <sup>3</sup>  |
| Caregiver to the disabled or infirm                                      | France, Paraguay, South Africa; Canada (British Columbia)  | Argentina (if exclusively responsible); Finland; Switzerland (Geneva)                             |
| Night attendant  | Canada (British Columbia)  |   |
| Cleaning personnel   | Switzerland (Geneva), United States (California)   |   |
| Porters, valets  | Kenya; United States (California), United States (Oregon)  | Mexico; Uruguay   |
| Custodians   |  | Uruguay   |
| Rural domestic workers/farm workers                                      | Zimbabwe   | Uruguay; South Africa (Basic Conditions of Employment Act); France; Switzerland (Geneva)          |
| "Au pair"  |  | Portugal; Switzerland (Geneva)  |
| Apprentices  |  | Switzerland (Geneva)  |
| Student babysitters; occasional/casual/short-term babysitters/caregivers |  | Canada (Alberta); Canada (Ontario); Canada (Quebec); Switzerland (Geneva); United States (Oregon) |

<sup>1</sup> Cooks and chefs are distinguished and classified differently, the latter recognized as having a higher skill level. <sup>2</sup> Californian law is interpreted as covering pilots of private airplanes for family use. See *State of California: Household Employers' Guide, 2009*. <sup>3</sup> The legislation excludes "a companion worker for disabled individuals or an individual over age 67 who is unable to take care of him or herself – unless the worker is employed by an agency".

106. Some of the exclusions simply indicate that the provision relating to domestic workers does not include certain categories (such as farm workers) that might be covered under legislation. In France, for example, rural domestic workers are covered by a specific national collective agreement, while gardeners and gardener/guards of private property are covered by a separate agreement.

107. Legislation in some countries provides non-exhaustive lists of tasks that domestic workers may undertake, without listing them in separate occupational categories.<sup>10</sup> The French collective agreement is particularly detailed when it comes to caring for children (preparing meals, laundry, dressing, cleaning, walks and accompaniment, cleaning rooms, bathrooms and kitchen, and contributing to children's development). The Collective Home-Care Agreement for workers employed in a triangular relationship in the Netherlands includes maternity care within its scope.

108. It is clear from the foregoing that the definition of occupational categories and tasks is far from airtight, and that one of the characteristics of domestic workers in many parts of the world is that the jobs they are called upon to perform in private households are difficult to delineate.

### Domestic work and the employment relationship

109. Some laws and regulations speak of employment while others refer to a situation of subordination or dependence and to remuneration. In Viet Nam, section 139 of the Labour Code specifically includes domestic workers, defining them as persons who are employed to help in households. The Domestic Employee Act of Barbados defines a "domestic employee" as "any person employed for reward for the purpose of performing household duties in a private dwelling". Section 2(1) of the Legislative Decree of Portugal relies on the notion of subordination for coverage and explicitly excludes self-employed workers.

110. Most of the texts examined strive to offer comprehensive coverage for domestic workers. Some stipulate that domestic workers should be included in the relevant legislative provisions, irrespective of the manner and frequency of their remuneration. This is the case in the Swiss Canton of Geneva, where the standard contract defines "workers in the domestic economy" as both full-time and part-time workers employed regularly or occasionally according to an agreed schedule, which might be hourly, half day, full day or weekly. Others refer also to multiple employers of the same domestic worker, as do Uruguay (section 1 of Act No. 18.065 on norms regulating domestic work) and Burkina Faso (Decree No. 77-311PRES/FPT of 17 August 1997).

111. Some countries restrict the coverage of domestic workers in terms of the duration of employment. A formulation found in several laws requires the work to be "on a regular basis" and/or "continuous". For example, in Bolivia the (Household Worker Act of 3 April 2003) requires that the work be "continuous"; Paraguay (section 148 of the Labour Code) that it be "regular"; Panama (section 230 of the Labour Code) and Guatemala (section 161 of the Labour Code) that it be "regular and continuous"; Nicaragua (section 145 of the Labour Code) that it be either "regular" or "continuous";

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<sup>10</sup> Costa Rica, section 139 of Executive Decree No. 19010-G of 1999 listing cleaning, cooking, ironing, washing and assistance"; Italy, CCN, section. 10, listing house cleaning, washing, kitchen, cleaning stables and horses, assisting with domestic animals, taking care of green areas, manual functions, accompaniment, babysitting, multifunctional household collaboration including cleaning, washing, cooking, assisting with animals; household security guard, ironing, waiting, gardening, driving, assisting self-sufficient persons, assisting persons with disabilities, chauffeurs, chef, administering family patrimony, acting as a butler; Portugal, section 2(2) of Legal Decree No. 235/92 listing washing and cleaning, taking care of elderly and ill persons, taking care of domestic animals, and taking care of the garden.

and Portugal (section 2(1) of the Legislative Decree) that it be executed continuously. Similar requirements are found in Tunisia and the United States.

112. Other legislation requires that domestic workers remain employed by the same employer for a minimum number of hours or days per week. Argentina excludes employment of less than one month, fewer than four hours per day or fewer than four days per week for the same employer. Section 2 of the Employment of Household Workers Act of Finland excludes domestic workers whose contractual engagement is for less than one month, or who work a maximum of one day per week for the same employer, or whose regular hours for the same employer do not exceed three hours per day.

113. A few categories of domestic work in some national economies – notably in a number of industrialized market economies – may in fact be structured like an enterprise. Gardening and snow-removal services, as well as periodic home-cleaning services, are an example of this. Considering that laws and regulations – and their interpretation – should be compatible with the objectives of decent work, and that employment or labour law seeks, among other things, to address a potentially unequal bargaining position between parties to an employment relationship, the ILO’s Employment Relationship Recommendation, 2006 (No. 198), refers to the importance of “ensur[ing] standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due” and of “combat[ing] disguised employment relationships”.

114. In this regard, the law of some countries deems that all domestic workers are covered by the Labour Code. Section 141 of the Labor Code of the Philippines applies to “all persons rendering services in households for compensation” and defines “domestic or household service” as “service in the employer’s home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer’s household, including services of family drivers”. In France, article 1(a) of the National Collective Agreement of Employees of Individual Employers considers any person who undertakes household tasks of a familial or housekeeping nature, whether on a full-time or part-time basis, to be an employee. Switzerland (Geneva) has the same approach. A few legislative texts, such as section 31 of South Africa’s Sectoral Determination 7, extend protection explicitly both to domestic workers, defined as employees, and to independent contractors who perform domestic work in a private household and who receive, or are entitled to receive, pay.

115. A category of domestic worker that is frequently excluded is the employer’s family members. Some legislation speaks specifically of the employer’s immediate family. Section 61 of Panama’s Resolution No. 39/2007, for instance, stipulates in detail the nature and degree of relationship and excludes the employer’s own children (including adopted children) and spouse/partner. Argentina’s Legislative Decree No. 326/56 excludes persons who are related to the head of the household.

### Defining the live-in relationship

116. Given the nature of domestic work, many legislative texts specify that domestic workers may either “live in” or “live out” and regulate accordingly (this is discussed in more detail in Chapter IV). In Canada (British Columbia), however, live-in workers are defined as domestics, residential care workers, night attendants and live-in home support workers, while “sitters” are live-out workers.

117. Given the abuses that can occur against young people working “au pair”, the ILO’s constituents may wish to consider “au pairs” as both workers and young people on a cultural exchange, and to regulate their working conditions appropriately (see box III.2).

**Box III.2**  
**The au pair exception**

Au pair programmes allow young people to travel abroad and live with another family for a year or two, on what is often a first cross-cultural exchange. It also offers them an opportunity to learn a different language. But to earn their board, lodging and pocket money, au pairs also work, usually by providing assistance in childcare, caregiving and housekeeping.

The International Au Pair Association (IAPA), established in 1994 to self-regulate the ever-growing industry, chiefly operates with au pair agencies in Europe, the United States and a few countries in Latin America, although qualified au pair agencies are also found in China, Ghana and New Zealand, among others countries. The Council of Europe, in the 2004 report of the Committee on Equal Opportunities for Women and Men, has reported on instances of abuse, noting that “au pairs are not meant to work as replacement housekeepers or nannies, but some of them end up being exploited in this way or, even worse, violently treated or sexually abused. ... Cases [have] included a girl from Romania who committed suicide after having been forced to work like a slave for €1 a day, a Russian girl forced to sleep on a mattress in the attic, and a Slovakian girl left with huge debts after having been hospitalized without health insurance”.

Recommendation 1663 (2004) adopted by the Parliamentary Assembly of the Council of Europe on 22 June 2004, urged, as regards the placement of au pairs, that the Committee of Ministers:

- (a) issue guidelines in the form of a Committee of Ministers’ recommendation to member States, which would ensure that the distinctive status of au pairs (neither students nor workers) is recognized and safeguarded, their working conditions and social cover are fixed and that the au pair industry is appropriately regulated at national and international level;
- (b) recommend government regulation of the au pair placement industry, through the creation of a system of accreditation, by virtue of which agencies that commit themselves to certain minimum standards – such as charging reasonable fees, ensuring au pairs enter into a legally binding contract with their employers which clearly states rights, responsibilities and duties and providing emergency help in cases of difficulty – would see visa applications put forward on their behalf validated automatically. Accredited agencies should also be committed to doing background checks on both the prospective au pair and the prospective host family to ensure that they do not have criminal convictions, for example for sexual or child abuse;
- (c) ensure regular monitoring by appropriate authorities of the agencies accredited under the “accreditation” system referred to in subparagraph (b) above.

In its reply of 17 January 2005 the Committee of Ministers expressed its indignation over the phenomena addressed in the Recommendation and indicated other action under way in the Council of Europe, notably to combat trafficking.

The ILO’s constituents might appropriately turn their mind to whether, despite the distinct formal objectives of an au pair programme associated with providing a cultural exchange experience to young people, it is still appropriate to treat the au pair relationship as an exception to the definition of domestic worker in a new international standard. It might well be fully compatible to consider au pairs as both workers and youth on a cultural exchange, and to regulate their working conditions appropriately. This might help to prevent the kind of exploitation of au pairs that is comparable to that of other categories of domestic workers.

Source: Parliamentary Assembly of the Council of Europe: *Recommendation 1663 (2004), Domestic slavery: servitude, au pairs and “mail-order brides”*, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/EREC1663.htm>.



## Definition of the employer

118. Legislation may also define the domestic employer. Many countries specify that the employer must be a “natural person”, while others include the entire family. In Brazil, for instance, section 3 of Decree 71.885/1973 specifies that the employer is the “person or family that admits into its service a domestic employee”.

119. Some other countries surveyed provide a broad definition of the employer of a domestic worker. In Barbados, an “employer”, as defined in section 2 of the Domestic Employees Act, 1985, is any person employing one or more domestic employees and includes any agent, manager or representative of such person who is responsible directly or indirectly for the payment, in whole or in part, of remuneration to a domestic employee.

120. In Bulgaria, while the Labour Code does not define domestic workers, an employer may be not only a natural person but also a household, so long as it “independently hires employees under employment relationships”.

121. A particularly significant clarification found in some legislation is that the employer may be a third party. In the United States, California’s Wage Order specifically provides that a “personal attendant” may be employed not only by a private householder but also by a third party employer recognized in the health-care industry. Other jurisdictions define domestic work and/or the worker in the inclusive manner described above and place less attention on the nature of the employer.

## Chapter IV

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### Working conditions

122. This chapter examines the law and practice governing the basic conditions of employment of domestic workers. It focuses on formalizing the contract of employment, probationary periods, remuneration (including the prevalence of payment in kind), the live-in relationship, the implications of employer-provided accommodation, the personal autonomy of domestic workers, working time, equality, termination of employment and career development.

### Contract of employment

#### Formalizing the employment relationship

123. A contract of employment is often assumed to be a clear sign of a formalized employment relationship – and therefore taken for granted in labour legislation. However, in many countries the ability to establish an employment relationship is deemed sufficient and the employment contract might either be in writing or verbal. Indeed, unwritten contracts are frequently assumed to be of unlimited duration. For some associations of domestic workers, a written employment contract is seen as an important vehicle to overcome challenges to the existence of an employment relationship and its agreed terms.

124. In Bolivia, Brazil, Costa Rica, Nicaragua, Guatemala, Paraguay, Spain, Viet Nam and elsewhere, labour legislation specifically provides that a domestic employment contract may be verbal or in writing. In a number of cases, the legislation still includes reporting requirements on the part of the employer; in others, domestic workers are exempted from this requirement.

125. In Trinidad and Tobago, section 10 of the Minimum Wages (Household Assistants) Order of 1991 requires that “the duties, hours of work and rest periods of every household assistant shall be clearly set out in writing by his employer when the household assistant first assumes duty”. Similarly, in Ireland, section 5.1 of the code of practice for protecting persons employed in other people’s homes requires employers of persons employed in the home of another person to supply a written statement of terms and conditions of employment, in conformity with the Terms of Employment (Information) Acts 1994 to 2001. These include hours of work, rates of pay, list of duties, periods of annual leave, place or places of work, commencement date and details of rest breaks. In Brazil, while a written contract is not obligatory, section 2 of Act No. 5.859/1972 and sections 4–5 of Decree No. 71.885/73 require that a Letter of Labour and Social Welfare be drawn up which includes specific conditions of work.

126. In the United States (New York), a written contract is required for domestic workers placed by employment agencies.

127. In South Africa, section 9(1) of Sectoral Determination 7 requires an employer to supply a detailed, written list of particulars to domestic workers when they start work. An annex to the legislation contains a sample of written particulars provided by the Department of Labour. Section 9.2 is particularly original, as it requires an employer to ensure that the domestic worker understands the written particulars by explaining them in a language the worker knows. While this places an important responsibility on employers to ensure clarity of contractual terms, a legislative provision designed to promote worker autonomy and empowerment might more appropriately situate the responsibility for explaining the contract with the labour authorities.<sup>1</sup>

128. Placing a written requirement on employers is a legislative practice that could facilitate the formalization of the domestic work relationship, while clearly putting the onus of responsibility on the party with greater bargaining power. In this regard, it should be noted that the European Information Directive No. 91/533/EEC of 14 October 1991 requires an employer to inform employees to whom the Directive applies of the conditions applicable to the contract or employment relationship, by means of a written contract of employment, a letter of appointment or one or more other written documents.

### The requirement of written contracts when crossing international borders

129. Written contracts are often required when domestic workers cross national borders to work. Article 5 of Annex I and Article 6 of Annex II of the Migration for Employment Convention (Revised), 1949 (No. 97), provide that an employment contract is one of the documents that should be given to migrant workers prior to their departure. However, this obligation applies to those States that have a system of supervision of employment contracts. In the United Republic of Tanzania, labour legislation provides that a contract with an employee must be in writing if the contract stipulates that the employee is to work outside the country; otherwise, the employer must provide certain particulars in writing, including the place and hours of work, remuneration and method of calculation, and details of benefits or payment in kind.<sup>2</sup> Elsewhere, MoUs between sending and receiving countries require that contracts be in writing. For example, the MoU between Indonesia and Kuwait on the placement of Indonesian domestic workers specifies that the terms of the contract of employment be clear and comprehensible. The Indonesian recruitment agency has a responsibility to ensure that the terms are fully and clearly explained to the domestic worker, who is entitled to a copy of the signed contract before, or at the time of, commencing employment.

130. The Agreement between the Philippines and Qatar concerning the employment of Filipino manpower requires the individual employment contract not only to be prepared in Arabic and English and to specify the basic employment conditions in conformity with the Qatari Labour Act (section 6), but also to indicate in detail the employer's obligations regarding the worker's accommodation (section 7). The contract, certified by the Department of Labour, must be verified and authenticated by the embassy or consulate. While the Arabic text of the employment contract is held to prevail (section 9), the employer may not introduce any change in the contract unless it improves the terms and conditions of service for the worker (section 8).

<sup>1</sup> Gugulethu Mbatha: "The predicament of an African woman: A critique of current legislation relating to domestic workers" (2003), 15 *S.A. Merc. L.J.* 407, 410 and 413.

<sup>2</sup> Sections 14 and 15, Employment and Relations Act, 2004.

131. The CEACR has indicated that, in the light of fraudulent practices, migrant-receiving countries should take a more active role in supervising the issuance and execution of contracts of employment.<sup>3</sup>

### Model contracts

132. Several countries have taken the added initiative of providing a model contract. In Peru the model contract prepared for reference purposes and accessible via the Internet provides a guidance function, clarifying for example that a regular work-day should not exceed eight working hours and leaving room only to indicate the start and end times.<sup>4</sup> In France, the model contract is annexed to the national collective agreement and must be in keeping with its provisions. The model contract also offers guidance on terms of employment; for example, the contract should specify both the gross salary and the net salary after required deductions.<sup>5</sup>

133. Some receiving countries have prepared standard employment contracts and made them a mandatory requirement for a visa. In Hong Kong, China, the contract is issued by the Department of Immigration and refers to the labour standards contained in the Employment Ordinance, to which domestic workers are entitled.

134. In Singapore, the Standard Employment Contract between Foreign Domestic Workers and Employers, prepared by the accredited agencies of the Association of Agency Employers, serves as the regulatory framework if there is no reference to basic standards in the legislation applicable to domestic workers. For example, with respect to the number of rest days per month, section 7 of the First Schedule of the Employment of Foreign Manpower Act regulating conditions of work for foreign domestic workers states that: “The employer shall ensure that the worker is not ill-treated, exploited, wilfully neglected or endangered. This includes providing the worker with adequate rest, as well as rest day(s) in accordance with the terms of the employment contract.” However, clause 12 of the Standard Employment Contract allows the parties to choose whether the domestic worker is entitled to one, two, three or four rest days per month, and specifies that if the rest day is not taken it is to be compensated in cash.

135. In Canada (Quebec), foreign nationals are issued a certificate of acceptance for immigration purposes by the Ministry of Immigration and Cultural Communities (MICC) only when they meet certain requirements, including signing a written employment contract with the employer “for the duration of the employment”. The MICC stipulates the mandatory content of the contract. Furthermore, it has, in consultation with associations representing domestic workers, prepared a model live-in caregiver contract of employment. This contract specifies the conditions of work that must be agreed upon before the certificate of acceptance is signed and states that the employer must abide by the Act respecting Labour Standards with regard to the way in which wages are paid and overtime calculated, as well as to meal periods, statutory holidays, annual leave, family leave, benefits and legal recourse. Clause 12 clarifies arrangements regarding travel expenses, specifying that an employer is not entitled to withhold any part of the employee’s wages on that account, and that any contractual terms less favourable to the employee than the standards in the Act are null and void.

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<sup>3</sup> ILO: *Migrant workers*, Report III (Part 1B) (General Survey), ILC, 87th Session, Geneva, 1999, para. 143.

<sup>4</sup> [www.mintra.gob.pe/contenidos/archivos/trab\\_hogar/mod\\_con\\_trab\\_hog.pdf](http://www.mintra.gob.pe/contenidos/archivos/trab_hogar/mod_con_trab_hog.pdf).

<sup>5</sup> In Switzerland, the responsibility for preparing a standard contract lies with the Canton. The Canton of Geneva has also prepared a model contract for full-time and part-time workers in the domestic economy, but the model contract in this case takes the form of a legislative prescription rather than a model agreement that the parties can simply fill in and sign.

136. Model contracts issued by government authorities may assist domestic employers and employees in formalizing the work relationship in a manner that conforms to appropriate labour standards. They may also simplify the administrative burden on the parties, thereby facilitating the formalization of domestic work. The key is that model contracts should be drafted in such a way as to recognize domestic workers' fundamental human and labour rights.

## Probationary periods

137. Probation periods specifically applicable to domestic workers vary widely, with some of the shortest periods lasting one week<sup>6</sup> and the longest around 90 days.<sup>7</sup> The norm of the countries surveyed is 15–30 days. In Spain the maximum is 15 days; in Colombia the presumed probation period for domestic workers is 15 days (Labour Code, section 77(2)), which can be shortened in writing. In Italy, under the National Collective Agreement, and, in Viet Nam, under the Labour Code, the maximum is 30 days. In France, section 8 of the national collective agreement stipulates a maximum probation period of one month, although it may be renewed provided the employee is notified in writing before the first period expires. Section 8 of the collective agreement on the employment conditions of domestic workers in Mali also provides for a one-month probation period, renewable once.

138. The implications of probationary periods are more severe for domestic workers on temporary migration contracts. The bilateral MoUs on migrant workers generally do not address this issue; nor do those dealing with domestic workers between Indonesia and Malaysia and between Indonesia and Kuwait. The implications are discussed in connexion with fundamental principles and rights at work.

## Remuneration

### Minimum wages

139. National practice with respect to minimum wages varies considerably, demonstrating that minimum wage fixing, as well as the protection of wages in this area, are both complex and crucial. Indeed, domestic workers are structurally dependent on the degree to which different households can afford domestic work – and this may explain the customary low levels of wages paid to domestic workers and the relative power of employers to force wage levels downwards. It is therefore crucial to have minimum wage fixing and legislation to protect wages so as to ensure decent working conditions. Domestic workers' unequal bargaining power and frequent isolation often undermine their ability to extract an adequate living wage, let alone one that is commensurate with the work that they perform and the skills required. Moreover, the perception that the ability to perform domestic work is innate may further result in the various skill levels being undervalued when wages are established.

140. Table IV.1 illustrates the minimum wage provisions of 66 ILO member States.<sup>8</sup> They establish that virtually a two-thirds majority of countries establish minimum wages for domestic workers.

<sup>6</sup> Austria, section 13(4), Act governing Domestic Help and Domestic Employees (HGAG), 1962.

<sup>7</sup> Portugal, section 8, Law Decree No. 235/92 (90 days).

<sup>8</sup> The research was carried out over the period from May to September 2008 and covers legislative standards adopted at the national level.

**Table IV.1. Inclusion/exclusion of domestic workers from minimum wage provisions by country and region**

| Region                                    | Not covered by minimum wage protection  | Covered by minimum wage legislation   | Covered by collective bargaining | Covered by other minimum wage fixing machinery |
|---|---|---|----------------------------------|--|
| Industrialized countries                  | Canada; <sup>(a)</sup> Denmark; Finland; Japan; Switzerland <sup>(a)</sup>                                    | Belgium; France; Ireland; Netherlands; Portugal; Spain; United Kingdom; United States <sup>(b)</sup>        | Austria; Germany; Italy          |  |
| Central, Eastern and South-Eastern Europe | Croatia   | Bulgaria; Czech Republic; Estonia; Romania; Turkey  |                                  |  |
| Commonwealth of Independent States (CIS)  |   | Kazakhstan; Republic of Moldova; Russian Federation   |                                  |  |
| Asia                                      | Bangladesh; Cambodia; China; India; <sup>(c)</sup> Indonesia; Republic of Korea; Malaysia; Pakistan; Thailand | Philippines; Viet Nam   |                                  |  |
| Latin America                             | Peru  | Bolivia; Brazil; Chile; Colombia; Costa Rica; Guatemala; Mexico; <sup>(d)</sup> Nicaragua; Panama; Paraguay | Uruguay <sup>(e)</sup>           | Argentina <sup>(f)</sup>                       |
| Caribbean                                 |   | Trinidad and Tobago   | Barbados                         |  |
| Middle East                               | Jordan; Lebanon; Saudi Arabia; Yemen  | Israel  |                                  |  |
| Africa                                    | Egypt; Mozambique; Senegal  | Burkina Faso; Côte d'Ivoire; Mali; Niger; South Africa; Tunisia; Zimbabwe                                   |                                  |  |

<sup>(a)</sup> There is no minimum wage provision for domestic workers in Canada and Switzerland at the federal level but some Canadian provinces (Manitoba, Ontario and Quebec) and one Swiss canton (Geneva) have minimum wages for domestic workers. <sup>(b)</sup> The Fair Labor Standards Act sets a federal minimum wage rate for employees in certain occupations, including household employees, but excludes "casual" workers such as babysitters and "companions" for the sick or the elderly. <sup>(c)</sup> The central Government sets minimum wages for 45 occupations from which domestic work is excluded. Nonetheless, central and regional governments are allowed to set minimum wage rates for additional occupations. The states of Karnataka, Kerala, Andhra Pradesh, Tamil Nadu, Bihar and Rajasthan have set minimum wage rates for domestic work. <sup>(d)</sup> There is a specific minimum wage for domestic workers which is yet to come into force but the implementation process is still ongoing. <sup>(e)</sup> A wage board on domestic workers was established in August 2008. Negotiations to increase the minimum wage for this category of workers are under way. The ILO is monitoring the situation to see whether an agreement has been reached and signed. <sup>(f)</sup> The Ministry of Labour fixes the minimum wage rate for domestic workers, while for other categories of workers it is the responsibility of the Minimum Wage Board, a tripartite body.

141. The CEACR has emphasized that "it is essential not to overlook the real objective of the minimum wage system, which is to contribute to the eradication of poverty and ensure a decent living standard for workers and their families".<sup>9</sup> For domestic work to be treated as decent work, households have to be willing and able to pay minimum wages set with these objectives.

142. The CEACR has also emphasized the importance of recognizing the varying degree of skill associated with domestic work when establishing remuneration, so as not to undervalue the work performed – as was discussed with respect to Convention No. 100 in Chapter II. Gender bias in wage-fixing criteria should be avoided.

<sup>9</sup> CEACR: individual observation, Uruguay, Convention No. 131, 2003.

143. An important illustration comes from South Africa, which introduced minimum wages for its 1 million domestic workers in November 2002. Statistical data are limited, and the moral argument for decent wages is doubtless more persuasive for domestic workers. However, a gender-disaggregated 2005 study of the effect of minimum wages on the employment and earnings of South Africa's domestic workers found that real hourly wages, average monthly earnings and total earnings of both male and female domestic workers had risen since the minimum wage regulations came into force. That said, as of September 2004 approximately 58 per cent of domestic workers were still earning less than the regulations stipulated. While there was a marginal increase in growth in employment for men, for women total hours worked per week and overall employment had fallen. Minimum wages may have reduced overall poverty somewhat for domestic workers.<sup>10</sup>

144. The CEACR has actively sought to ensure that domestic workers are included in schemes for the protection of wages and minimum wage fixing. For example, the CEACR noted that wages in Belize, in non-unionized workplaces, are determined by individual agreement between the worker and the employer, as well as through legally established wage regulations for certain categories of workers, including domestic workers. In Zimbabwe, the Wages and Salaries Advisory Board determines wages for workers in occupations that have no forum for collective bargaining, including domestic workers.<sup>11</sup>

145. As shown in table IV.1, where minimum wage fixing for domestic workers exists it is generally determined unilaterally by governments.

146. The CEACR has attempted to ensure that minimum wage fixing is conducted in accordance with the provisions of Article 4, paragraph 2, of the Minimum Wage Fixing Convention, 1970 (No. 131) – by consulting with the representative organizations of workers and employers concerned. In 2008, following the Committee's observations on how to move from unilateral determination by government of the minimum wages of domestic workers towards a mechanism ensuring full consultation, Uruguay established a new tripartite wage board to negotiate the terms and conditions of employment of domestic workers, for whom a new occupational category was introduced (Group 21). The Board's establishment was fraught with difficulties since no employers' representative organization could be found, and the existing National Confederation of Domestic Workers had not yet been registered as a trade union. Eventually, however, these obstacles were overcome and the Board met twice in 2008 (see Chapter VIII).

147. Whatever the chosen mechanism, simplifying the payment of wages, as several ILO Members have done, can increase compliance with state regulation. In 2006 Brazil (see box IV.1) combined two mechanisms to foster the entry of domestic work into the formal economy and the payment of wages: (1) income tax deductions linked to the payment of social security benefits on behalf of the domestic worker to the National Institute of Social Security (INS); and (2) simplified social security payment procedures. The formalization of domestic work and the increase in contributions to the social security scheme were believed to offset the tax incentives to employers, although it is too early to provide statistical data on the outcomes.

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<sup>10</sup> T. Hertz: *The effect of minimum wages on the employment and earnings of South Africa's domestic service workers*, Development Policy Research Unit Working Paper 05/99, Oct. 2005.

<sup>11</sup> CEACR: direct request, Zimbabwe, Convention No. 100, 2008.

**Box IV.1**  
**The service cheque**

An important development in several countries has been the introduction of the “service cheque”. This system facilitates the calculation of mandatory employment deductions and may assist payment for services rendered by employees (such as cleaning personnel) on an intermittent basis to several different employers. It is a practice designed to facilitate the transition from the informal to the formal economy, in part by reducing the transaction cost for employers and employees.

The service cheque was introduced in France on 21 December 1993, and was replaced by the universal employment service cheque (CESU) under Act No. 2005-841 of 26 July 2005. The CESU permits an employer in metropolitan France to pay a range of services carried out by a domestic employee, as well as to remunerate the employee while also paying social protection contributions. It may be used for both occasional and regular domestic work.

Since 2004, the Canton of Geneva in Switzerland has also introduced a system under which a social enterprise calculates the social charges on the salary paid to the domestic worker and declares the salary by means of service cheques.

In Austria, the Household Service Cheque Act regulates employment relationships between private persons and certain typical household services, so long as the monthly payment does not exceed a marginal threshold. The cheque must equal the agreed hourly wage. Minimum wage regulations apply to the employment relationship.

In Canada (Quebec), a somewhat different version of the employment service cheque was introduced in 1998 for the elderly and the disabled who require care and housekeeping services. The scheme introduces a fixed wage established by the provincial government, which pays for the service. At the same time as it offers a simplified payment structure, it has devolved responsibility for light support from governmental social services to individual senior citizens and disabled persons, who in turn become employers.

## Payment in kind

148. In many parts of the world, payment in kind (accommodation and meals) has traditionally been considered part of the remuneration of domestic workers. Although there is evidence that such payments may enable some domestic workers to weather economic crises better, they can be open to considerable abuse. In an employment model that seeks to foster domestic workers’ autonomy and ensure that their wages are sufficient for them to provide for themselves and for their family, payments in kind need to be analysed carefully to ensure that, if permitted by law, they do not undermine minimum wage provisions.

149. Article 4(1) of the Protection of Wages Convention, 1949 (No. 95), recognizes that “national laws or regulations, collective agreements or arbitration awards may authorise the partial payment of wages in the form of allowances in kind in industries or occupations in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned.” It requires appropriate measures to be taken to ensure that the allowances are both appropriate for the personal use and benefit of the worker and his family and that the value attributed to the allowances is fair and reasonable.

150. Several countries are attentive to the need to regulate in order to prevent the abuse of payments in kind (see table IV.2).



**Table IV.2. Payments in kind for domestic workers by country and region**

| Region                                   | Payments in kind prohibited                | Payments in kind permitted of up to 25 per cent of remuneration | Payments in kind permitted of up to 50 per cent of remuneration |
|--|--|---|---|
| Industrialized countries                 | Austria; <sup>(a)</sup><br>Canada (Quebec) |   | Spain   |
| Central and Eastern Europe               | Czech Republic <sup>(a)</sup>              |   |   |
| Commonwealth of Independent States (CIS) | Republic of Moldova                        | Russian Federation  |   |
| Asia                                     |  |   |   |
| Latin America                            | Bolivia; Brazil <sup>(b)</sup>             | Chile; Uruguay  | Costa Rica; Mexico; Nicaragua; Panama; Paraguay <sup>(c)</sup>  |
| Caribbean                                |  |   |   |
| Middle East                              |  |   |   |
| Africa                                   | Côte d'Ivoire <sup>(d)</sup>               | South Africa  |   |

<sup>(a)</sup> Payments in kind may be offered only for the portion of the wage that is higher than the minimum wage. <sup>(b)</sup> Except when the domestic worker stays in a different place than the one where he is employed. <sup>(c)</sup> Food and lodging are deemed equivalent to 60 per cent of the minimum wage and may be deducted from it. <sup>(d)</sup> Workers must be paid in wages and may refuse even a partial payment in kind.

### Regular payment of wages

151. Periodicity of payment is a particularly important issue given the social conditions identified in Chapter I. The Protection of Wages Convention, 1949 (No. 95), provides that “wages shall be paid regularly”, while its corresponding Recommendation (No. 85) calls for payment of wages twice a month for workers whose wages are calculated by the hour, day or week, and not less often than once a month for persons whose remuneration is on a monthly or annual basis.

152. Some ILO member States have introduced legislative provisions stipulating that employees must be paid regularly. In Côte d'Ivoire, section 32.3 of the Labour Code provides that salaries must be paid at regular intervals that may not exceed 15 days. In Burkina Faso, according to section 113 of the Labour Code, monthly payments must be made promptly within eight days of the end of the month. In Malaysia, sections 18 and 19 of the 1955 Employment Act, which is applicable to domestic workers, stipulate that the contract must specify a wage period not exceeding one month and that domestic workers must receive payment after lawful deductions by the seventh day following that period. Some MoUs also stipulate regular periodicity of pay.<sup>12</sup> Problems of arrears of wages, however, are reported to be common (see Chapter II).

### The implications of employer-provided accommodation

153. The issue of accommodation is central to the domestic work relationship in that the workplace is very often the worker's home. More than anything else, the dependency that results from living in an employer's home calls for regulation, and this section looks at how Members have addressed three aspects of such arrangements. The first is whether room and board should be treated as a form of payment in kind to the domestic worker

<sup>12</sup> Indonesia–Malaysia MoU, Appendix A, A.iv (monthly wages).

or as implicit in the nature of the employment – and for which the domestic worker should be paid. The second concerns the condition of the accommodation and the quality of the food provided. The third stems from the specific nature of domestic work and raises the issue of wages and working time. As will be seen, a few member States have been at pains to resolve these issues.

### Payment in kind

154. As noted earlier, the tendency has been to treat room and board as a form of payment in kind, whereby domestic workers' accommodation and meals are deducted from their earnings. An example of this approach is found in Ireland (section 5.7 of the Code of practice), which establishes maximum daily and weekly deductions for full board and lodging, full board only and lodging only. Uruguay has also adopted this system and section 11 of the Decree of the Ministry of Labour and Social Welfare (25 June 2007) under Act No. 18.065 of 27 November 2006 provides that live-in domestic workers are entitled to board and lodging for which employers may deduct 20 per cent of the minimum wage (10 per cent if only board is provided).

155. Although there may be practical reasons for this policy, live-in arrangements tend to be very much to the advantage of employers with family responsibilities. Furthermore, in some countries with migrant worker schemes there is a legal requirement for domestic workers to live in the same dwelling as their employers.<sup>13</sup> Customary expectations in the household and physical proximity render some working time provisions good in theory but problematic in practice.

156. The Workers' Housing Recommendation, 1961 (No. 115), reflects a clear preference among member States that living and working arrangements should remain separate. Paragraph 12(2) provides that it is "generally not desirable that employers should provide housing for their workers directly" unless really necessary. One such example where it may be necessary is when "the nature of the employment requires that the worker should be available at short notice". But to invoke this exception implies recognition that the live-in requirement is a benefit for the employer rather than for the employee. In other words, a domestic worker who is required to live in, at least on a standby basis, should be paid for that time under this provision.

157. The legislation of several ILO Members reflects this policy shift. Under Act 11.324 of 19 July 2006, the possibility for Brazilian employers to deduct 25 per cent of salary for room and board was replaced by a ban on making deductions for accommodation, food and personal hygiene products used by domestic workers at the workplace. In Canada (Quebec), section 51 of the Labour Standards Act prescribes that the Government may fix a maximum amount for room and board. However, section 51.0.1 was added in 1997 to specify that, notwithstanding section 51, an employer may not require an amount for room and board from a domestic worker who is housed or takes meals in the employer's residence. In France, section 6 of the sectoral collective agreement provides that, if an employee is required to reside at the employer's residence, the accommodation must not be deducted from the net salary. Otherwise, under section 20 of the agreement, accommodation may be considered a form of payment in kind in accordance with the minimum rate established by the joint committee that

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<sup>13</sup> Canada: "Live-in Caregiver Program". *IP 04 Processing Live-in Caregivers*, Appendix D, entitled "Important information for live-in caregivers", tells the domestic workers that they "must live in your employer's home or you cannot continue to work in the Live-in Caregiver Program, and you cannot apply for permanent residence". See also Hong Kong, China: Standard Employment Contract, clause 3, and the *Guidebook for the Employment of Domestic Helpers from Abroad* (ID 969).

negotiates salaries in the sector – albeit with a contractual margin for a higher rate to be established where justified.

## Regulating living conditions

158. Most countries that address the quality and nature of accommodation require domestic workers to have a separate private room for their personal use and regular, sufficient food of good quality.

159. In some cases, contractual arrangements exist (such as clause 9 of the Standard Employment Contract between Foreign Domestic Worker and Employer, prepared by the Accredited Agencies of the Association of Employment Agencies of Singapore) which, while requiring “a reasonable amount of privacy”, allows an employer to indicate whether the domestic worker will share a room with a child or children or have a separate room.

160. In Uruguay, accommodation must be private, furnished and hygienic, according to section 11 of the MTSS Decree of 25 June 2007. Food must be healthy and sufficient, and include at least breakfast, lunch and dinner, in keeping with the customs of the household. In Bolivia, domestic workers have the right to accommodation that is adequate and hygienic, with access to a bathroom and shower. The domestic worker is also entitled to the same food as the employer, according to section 21(b) of the Household Workers Act of 3 April 2003. Section 34 of Italy’s national collective agreement stipulates that meals must ensure healthy and safe nourishment and that accommodation should respect the employee’s dignity and intimacy.

161. In Ireland, section 5.2.2. of the Code of practice provides that the employer shall provide a private, secure room with a bed. In Quebec, Canada, employers must provide decent living conditions by supplying meals and a private room that is properly furnished, heated, ventilated and equipped with a working lock and safety bolt. Employers must also give domestic workers a house key. These are mandatory requirements of the model contract.

162. In France, accommodation is treated as an accessory to the employment contract, and section 21 of the collective agreement requires employers to provide “decent” lodgings, which must include a window and suitable lighting, appropriate heating and sanitary installations or access to shared sanitary installations and which the employee must keep in good condition. The employer is further required to ensure that any food that he or she provides is healthy and of sufficient quantity.

163. In Hong Kong, China, section 3.B of the Schedule of Accommodation and Domestic Duty appended to the Standard Employment Contract indicates that, unless domestic workers are provided with light and water supply, toilet and bathing facilities, bed, blankets or quilt, pillows and a wardrobe free of charge, an application by an employer for an entry visa will normally not be approved. Section 3.A requires the employer to specify the facilities to be provided to the domestic worker and states that, although the average size of an apartment in Hong Kong, China, is relatively small, the employer should provide the helper with suitable accommodation and reasonable privacy. While the Schedule states that requiring a domestic worker to share a room with an adult of the opposite sex is inappropriate, it allows for the possibility of the domestic worker to share a room with one or more children.

164. In South Africa, section 8 of Sectoral Determination 7 provides that no more than 10 per cent of the wages may be deducted for a room or other accommodation, which

must be weatherproof; generally kept in good condition; have at least one window; a door that can be locked; a toilet and a bath or shower, or access to a bathroom.

165. In Switzerland, both section 328a(1) of the Civil Code and section 17 of the standard labour contract provide that food for domestic workers must be healthy and sufficient. Section 17 of the standard contract adds that a full-time employee whose accommodation is provided by the employer has a right to a separate room that can be locked by key, is well lit (both sunlight and artificial light), well heated and contains the necessary furniture.

### Specific regulation of working time for live-in domestic workers

166. There is a definite grey area between work and home when domestic workers “live in” – and this can undermine the key objective of working time laws, which is to reduce long hours of work. Domestic workers have to be available to work for long periods or even continuously. In Spain a study found that a number of employers considered live-in domestic staff to be available at all hours.<sup>14</sup> Research in the Netherlands has found that many live-in migrant domestic workers are expected to work at any time and frequently to have their agreed day off cancelled or changed by the employer.<sup>15</sup> In Kuwait, certain groups – including cooks, drivers, security guards and housemaids – are reported to work an average of 78–100 hours a week.<sup>16</sup> Most national regimes surveyed do not address this concern in any detail, although there have been some efforts to establish a balance between work requirements in the home and working hours that are consistent with international standards.

167. This issue is the subject of considerable debate and analysis, For example, Working Time Directive 2003/88/EC of the European Parliament and the Council of the European Union of 4 November 2003 (formerly Council Directive 93/104) now permits a derogation for “family workers ... in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work ... when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves”, due account being taken “of the principles of the International Labour Organization with regard to the organization of working time, including those relating to night work [and of] ... the general principles of the protection of the safety and health of workers”. However, the European Court of Justice has paid close attention to the qualitative difference between expecting a worker to be permanently accessible but not necessarily present” (i.e. on standby) and being available at a place determined by the employer for the entire period of on-call duty, in order to ensure that the weaker party in the contractual relationship is guaranteed predictable and adequate rest.

168. In Israel, the National Labour Court has addressed the issue of working hours and overtime pay. The Hours of Work and Rest Act of 1951 applied only partially to live-in domestic workers, but it did reflect a concern that the mechanical application of working time law to the domestic work situation would not only be impossible but could be unjust. In a majority opinion, the Court judged that a live-in employee should generally

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<sup>14</sup> E.G. Rodriguez: “The ‘hidden side’ of the new economy – On transnational migration, domestic work and unprecedented intimacy”, in *Frontiers*, Vol. 28, No. 3, 2007.

<sup>15</sup> Galotti, op. cit., p. 48.

<sup>16</sup> ILO: *Gender and migration in Arab States, The case of domestic workers* (Beirut, June 2004), pp. 52–53.

be entitled to additional compensation for lengthy hours. Although the Court's decision has the merit of recognizing the overtime performed by domestic workers, the fear has been expressed that attenuating the application of overtime regulations in the case of domestic workers favours the employer's needs rather than those of the employee.<sup>17</sup>

169. In articles 3 and 6 of France's collective agreement, workers who are required to remain close to a sick person at night and to be able to intervene at any moment (without administering health care) are in a separate category. Their working hours are limited, as the job is not compatible with full-time work in the day.

170. By contrast, article 3 of the agreement introduces the notion of free time when an employee is nevertheless expected to be ready to intervene where necessary, for example when a domestic worker assumes responsibility for children, the elderly or persons with disability. These hours are paid at two-thirds of the normal rate. While allowing that the number of hours may vary greatly with circumstances, the agreement is careful to define what is considered to be "actual work". For example, an employee who takes care of children without any professional qualifications is considered to be engaged in actual work when cooking for them, cleaning and dressing them, taking them for a walk and undertaking a range of other family tasks. Workers who are called upon to assure a night-time presence compatible with employment in the day must receive compensation equal to no less than one-sixth of the standard salary for actual hours worked (article 6 of the agreement). If required to intervene several times every night, all the hours are considered to be on-call hours and remunerated at two-thirds of the normal rate. If the situation is more than transitory, the employment contract must be revised.

171. France's approach is one of the most detailed attempts to gear the employment contract specifically to the domestic work relationships and enforce it in such a way as to prevent abuse. It recognizes that, without such standards, domestic workers' jobs can be interminable (as it is for parents of young children), with endless tasks and limited opportunity to rest. However, it is crucial to avoid a situation in which the "actual" hours are considered to be only those hours when a domestic worker is being "productive".<sup>18</sup>

172. Legislation in Austria, though less detailed, has some similar features. Under section 5 of the Federal Act on Domestic Help and Servants, live-in domestic workers must have a ten-hour period of rest, including the period between 9 p.m. and 6 a.m. This is less advantageous than the 13 hours allowed live-out workers, but it does have the advantage of preserving night hours for sleep. A deviation from the stipulated rest period may be mutually agreed in the case of infants up to 3 years old or disabled members who need constant care that cannot otherwise be provided. But the legislation makes clear that the total number of rest periods must not be reduced. Other standards for domestic workers also apply, namely that the limit of hours worked in a week may not be exceeded by more than 18 hours over a two-week period and that the total duration of rest periods over the same reference period must be in line with generally applicable standards.

173. Other systems regulate on-call time by ensuring that it is limited and properly compensated. South Africa's Sectoral Determination No. 7 recognizes that the hours between 8 p.m. and 6 a.m. may be considered standby time, when a domestic worker who is required to be at the workplace is permitted to rest or sleep but must be available to work if necessary. The provisions contain a set of protective measures for such workers. Section 14 stipulates that an employer may only require a domestic worker to

<sup>17</sup> Mundlak and Shamir, *op. cit.*

<sup>18</sup> Blackett, *op. cit.*, p. 19.

be on standby if it is agreed in writing and if the domestic worker is compensated by the payment of an allowance per standby shift. An employer may not ask a domestic worker to be on standby more than five times a month, or 50 times a year. Moreover, the employer can only expect a domestic worker to perform work that has to be done without delay. If the work during the standby period exceeds three hours, the employer must pay the domestic worker at the overtime rate or grant time off in lieu of overtime pay.

## Working time

174. Domestic workers, especially live-in workers, are often subject to working time arrangements that can be a threat to their well-being. Restrictions on working hours and the provision of adequate rest periods are essential to preserve their health and safety and to ensure that they have sufficient time to devote to their families and their other responsibilities and interests. These elements of the regulation of working time feature both in international standards and in most domestic labour legislation. With respect to weekly hours, for example, the ILO Constitution and its first standard, the Hours of Work (Industry) Convention, 1919 (No. 1), identify 48 hours as the acceptable limit for a normal working week.<sup>19</sup> During the Depression of the 1930s, a new international instrument on working hours was adopted, the Forty-Hour Week Convention, 1935 (No. 47), which introduced a limit ultimately adopted as the ILO's vision of acceptable working hours.<sup>20</sup> These two international labour instruments dominated the legal landscape of the twentieth century, which witnessed a gradual reduction in standard working hours to a 40-hour week.<sup>21</sup>

175. Protection for those who work at night is also a component of most provisions on working time. Article 8 of Convention No. 171 provides that “compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work” and the Night Work Recommendation, 1990 (No. 178), suggests that night work should not normally exceed eight hours and should generally be shorter than the same work by day. National laws also tend to set stricter limits on work at night than those imposed on work during the daytime. Rest periods of a specified duration are also required. Central among these is the weekly rest, which allows workers a day or more each week to spend time with their family and friends, for example for religious observance or leisure pursuits. At the international level, such weekly-rest periods are required by the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), both of which require a minimum of 24 hours of uninterrupted rest during each seven-day period; a non-binding standard, the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), recommends a 36-hour rest period

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<sup>19</sup> On the development of the international standards on working time, see J. Murray: *Transnational labour regulation: The ILO and EC compared* (The Hague, Kluwer Law International), 2001.

<sup>20</sup> The 40-hour week was reinforced in the early 1960s, when it was expressed as “a social standard to be reached by stages if necessary” in the Reduction of Hours of Work Recommendation, 1962 (No. 116).

<sup>21</sup> ILO: *Working conditions laws 2006–07: A global review* (Geneva, 2008), p. 9. Currently, more than 40 per cent of countries have adopted a limit of 40 hours or less.

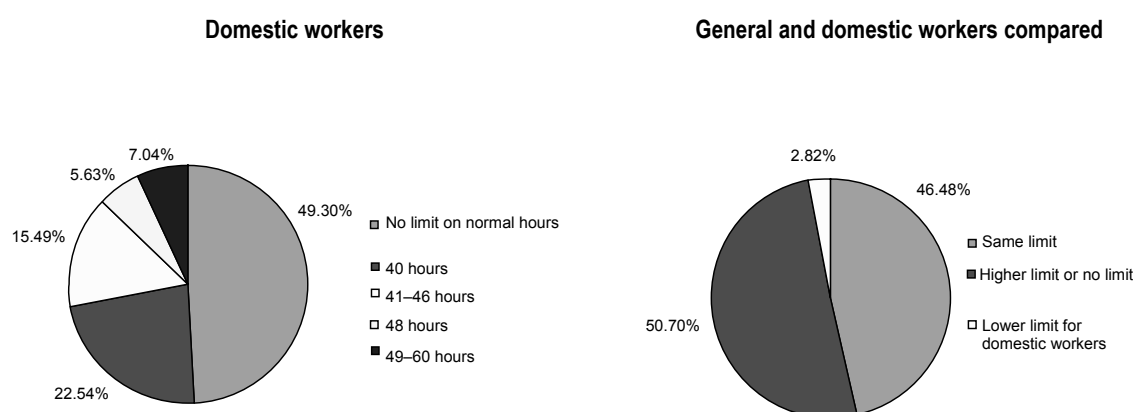
### Coverage of domestic workers by universal standards

176. This section examines the extent to which domestic workers are governed by generally applicable standards and compares the treatment of domestic workers in 71 countries.<sup>22</sup> It focuses on three aspects of working time: weekly hours, hours worked at night and weekly rest periods. The section endeavours: first, to compare the treatment of domestic workers in countries and regions across the world; and, second, to compare their legal treatment and the generally applicable legal standards. It hopes in this way to capture the extent to which the treatment of domestic workers mirrors, or differs from, that of the “mainstream” workforce.

### Normal hours

177. About half of the countries surveyed do not impose a mandatory limit on normal hours of work for domestic workers. Where such a limit is specified, the most common is 40 hours, which is found in just over 20 per cent of the countries. Around 15 per cent have enacted an intermediate limit (41–47 hours), four stipulate a 48-hour limit, and in five cases the limit is above 48 hours.

**Figure IV.1. Maximum legal hours of work per week in the countries surveyed (percentages)**



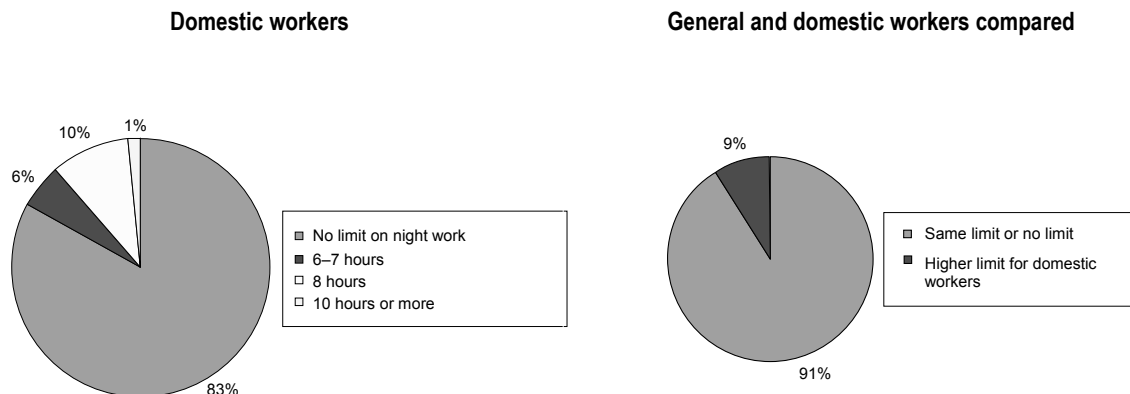
As can be seen from figure IV.1, there are significant differences between generally applicable working time standards and those that concern domestic workers. Globally, domestic workers are usually subject to less protective limits than those applied to the general workforce. Half of the countries surveyed permit the domestic labour force to work longer hours than other workers, while just over 45 per cent of countries impose the same limit for all workers; a small percentage have a lower limit or no limit at all for domestic workers.

<sup>22</sup> Argentina, Austria, Bangladesh, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Chile, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Germany, Guatemala, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lebanon, Malaysia, Mali, Mexico, Republic of Moldova, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Switzerland, United Republic of Tanzania (mainland), Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States, Uruguay, Viet Nam, Yemen and Zimbabwe. The research was carried out between May and September 2008 and covers legislative standards adopted at the national level.

### Night work

178. With regard to night work, the vast majority of countries treat domestic workers in the same way as other workers with respect to the hours worked during the night by domestic workers. Figure IV.2 shows that a substantial majority (83 per cent) do not impose any specific limit, while most of the remainder set the limit at eight hours.

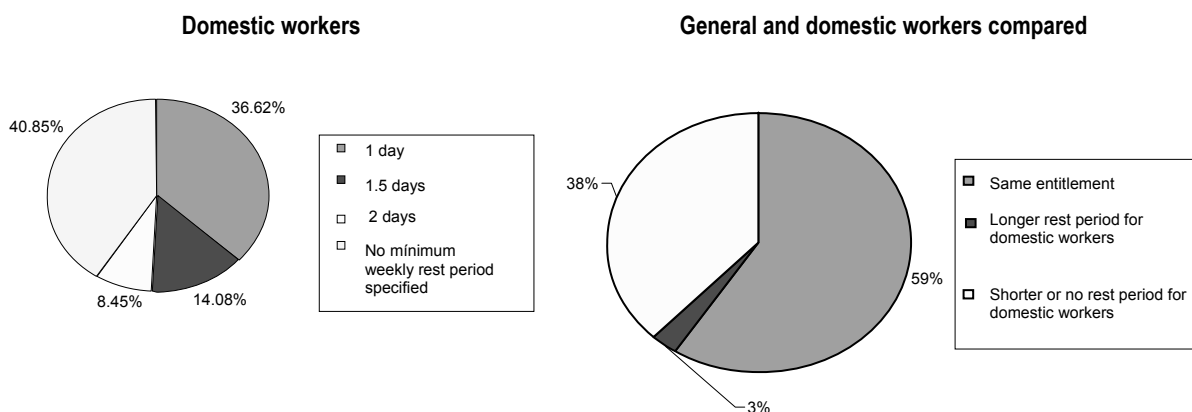
**Figure IV.2. Maximum legal hours of night work per 24 hours in the countries surveyed (percentages)**



### Weekly rest periods

179. As can be seen from figure IV.3, almost 60 per cent of the countries surveyed impose a rest period for domestic workers. The most common requirement is one day of leave per week, which is the legal standard in just over 36 per cent of the countries. Of the remainder, 14 per cent provide for a weekly rest period of 1.5 days and 8 per cent a two-day rest.

**Figure IV.3. Minimum weekly rest periods in the countries surveyed (percentages)**



180. In most countries, domestic workers are entitled to the same weekly rest as other workers. In 38 per cent of the countries, they are entitled to a shorter rest period or entirely excluded, while a very small number of countries provide for a longer rest period for domestic workers.



181. It is common for legislative measures to designate a certain day, usually Sunday or Friday, as the weekly rest day. This may not, however, extend to the domestic workforce. Of the two-thirds of countries that specify a particular day as the generally applicable rest day, more than 10 per cent do not require that domestic workers be entitled to their weekly rest on the same day. The advantage of stipulating a specific day is that it can influence society by creating the expectation that domestic workers will not be working on that day of the week – and domestic workers required to be at work when neighbouring domestic workers are free are keenly aware of the fact. In societies where domestic work is very much a part of the informal economy, this kind of standardization can have a major impact.

## Respecting domestic workers' autonomy

182. The very fact that there is a need to regulate the autonomy of domestic workers, and especially migrant workers, is indicative of the potential abuse in a work relationship. The MoU between Indonesia and Kuwait, for example, stipulates that employers must allow domestic workers to communicate with family members and with their friends in both countries, as well as with the Indonesian embassy. Section 11(A)(ix) of the MoU further specifies that, on special occasions, domestic workers must be allowed to visit their family, friends and the Indonesian Embassy. The existence of such a provision suggests that domestic workers' time is generally not their own.

183. A slightly ambiguous provision in Ireland (section 1 of the code of practice) states that the employer shall “facilitate the employee in the free exercise of personal pursuits”, which at least acknowledges that domestic workers have a life of their own.

184. Also, in Ireland, section 5.2.1 of the code of practice requires the employer to “respect the dignity and privacy” of the employee and to “take all steps necessary to safeguard the dignity and privacy of the employee working in the home”. The provision authorizes searches only where they have been provided for in the written statement of terms and conditions of employment, and stipulates that they must in any event be “exceptional and conducted in the employee’s presence”; even then, the employer is not entitled to read the employee’s personal mail or listen in on the employee’s personal phone calls.

## Domestic workers' fundamental right to equality and non-discrimination

185. As stated earlier, domestic workers are vulnerable to multiple forms of discrimination, in particular with respect to their conditions of work. Some legislative initiatives provide exceptions from equality legislation in the case of domestic workers. The CEACR has considered that such exemptions or exclusions are contrary to Convention No. 111. In Australia, several provisions provide specific, blanket exceptions which leave the door open to discrimination against domestic workers. The Equal Opportunity Act, 1995 (Victoria), for example, stipulates that an employer may discriminate in determining who should be offered employment for the provision of domestic or personal services in any person’s home.

186. Some human rights legislation might in practice allow narrowly defined exceptions, as in the renting of private dwelling places. Most member States would not sanction this kind of discrimination in the provision of home care services funded by state agencies. Now that the member States surveyed have adopted public policies that allow

individuals to hire domestic workers through private contractual arrangements, policy considerations to promote equality are compelling.

187. Moreover, several member States have adopted equality legislation addressing sexual harassment and abuse, which also promotes domestic workers' free exercise of their religion. In Bolivia, section 23 of the Household Workers Act requires public authorities receiving complaints from domestic workers about abuse, physical aggression and sexual assault by their employer or family member to initiate investigations.

188. Section 11(A)(xiii) of the MoU between Indonesia and Kuwait provides that the employer "shall respect the religious practices and traditions of the domestic worker".

189. Under section 11(A)(xviii) of the MoU, the employer is responsible for the "safety of the domestic workers against exploitation, sexual harassment, mental and physical abuses, and unpaid wages", although there is not yet any state enforcement machinery to intervene if the employer fails to live up to these obligations. Section 12 states only that the employer is responsible for paying the cost of repatriation if the domestic worker resigns due to exploitation, sexual harassment, mental and physical abuses or unpaid wages.

190. Other challenging equality issues arise in the area of mandatory medical testing requirements, particularly with respect to testing for pregnancy and HIV/AIDS. The CEACR has considered that pregnancy testing and HIV/AIDS screening are tantamount to discrimination within the context of Convention No. 111. In the case of migrant workers, refusal of entry or repatriation on the grounds that the worker concerned is suffering from HIV/AIDS – if this has no effect on the task for which he or she was recruited – constitute an unacceptable form of discrimination.<sup>23</sup> General testing requirements are frequently part of migrant worker schemes, but they also apply to locally recruited domestic workers who are required to provide a certificate of good health prior to employment.<sup>24</sup> In some cases, as in the MoU between Malaysia and Viet Nam, workers must at their own expense undergo an annual medical check-up certifying that they are medically fit.

191. In Singapore, although the employer is required to pay for the mandatory six-monthly medical check-up, the examination is explicitly required to screen out foreigner domestic workers who might be HIV-positive or have TB, and to conduct a pregnancy test. The Ministry of Manpower's web site explains that the purpose of the test is to identify foreigner domestic workers who might give birth in Singapore, "as this would contravene the work permit regulations".

192. The issue of HIV/AIDS has been addressed in some countries through case law. A recent example comes from Burkina Faso, where a claimant hired to clean and take care of a child was ordered to undertake an HIV/AIDS test by the employer and was found (erroneously) to be HIV-positive and subsequently fired. The Labour Court of Ouagadougou, which considered the dismissal to be unjust, noted that there was no legal or regulatory provision that made holding a job dependent on an HIV/AIDS test.<sup>25</sup>

193. To ensure that domestic workers enjoy full equality with other workers, specific provisions must be adopted to take account of their particular circumstances. However,

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<sup>23</sup> ILO: *Migrant workers*, Report III (Part 1B) (General Survey), ILC, 87th Session, Geneva, 1999, paras 264–266.

<sup>24</sup> Brazil, Consolidated Labour Code, section 442; Costa Rica, Labour Code, section 103; Guatemala, Labour Code, section 163; Panama, Labour Code, section 231(6); Romania, Labour Code, section 27, para. 1.

<sup>25</sup> [www.juriburkina.org/juriburkina/publication.do?publicationId=368](http://www.juriburkina.org/juriburkina/publication.do?publicationId=368).

this must not result in domestic workers having fewer rights than other workers. Honduras has taken steps to fulfil its international commitments under Convention No. 111 by providing a special scheme for domestic workers through the Equal Opportunities for Women Act.<sup>26</sup>

194. The equal treatment of migrant workers is an important part of the fundamental right to equality and is enshrined in the Migration for Employment Convention (Revised), 1949 (No. 97) (Article 6), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (Articles 9, 10 and 12(e)). This notion is reflected in some bilateral agreements, including article 10 of the Agreement on Migration between Argentina and Peru, which ensures that “immigrants shall enjoy in the territory of the Parties treatment no less favourable than that granted to nationals of the host country with regard to the application of labour legislation, particularly with respect to remuneration, working conditions and social security”.

## Termination of employment

195. Termination of employment provisions are at least as important for domestic workers as for other categories of workers, and most of the legislation surveyed regulates this question. In periods of financial crisis in particular, domestic workers may be particularly vulnerable to termination.

### Grounds for dismissal

196. The main grounds for dismissal under the Termination of Employment Convention, 1982 (No. 158), are: (i) valid reason for termination; (ii) pre-termination opportunity to respond; (iii) notice; and (iv) appeal to an independent body. According to Article 4, the reasons must be “connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service”. Although table IV.3 indicates that termination without valid reason may still be prevalent in domestic work, there have been important changes in case law. In France, for example, a 1994 judgement of the Social and Labour Chamber of the Appeals Court<sup>27</sup> ruled that section L.122-14-3 of the Labour Code containing provisions on dismissal for just and grave cause applied also to household workers. Section 12(a) of the current collective agreement sets out a detailed procedure for termination of employment by the employer, as well as for severance pay. In Burkina Faso, section 12 of Decree No. 77-311 of 17 August 1977 permitting termination with notice is interpreted by the labour courts as requiring just and grave cause for termination of an employment contract between a domestic worker and the employer.<sup>28</sup>

<sup>26</sup> CEACR: direct request, Honduras, Convention No. 111, 2002, 2004.

<sup>27</sup> France: Chambre de Cassation Sociale, 13 Jan. 1994. *Recueil de jurisprudence sociale* 3/1994, No. 329, p. 163.

<sup>28</sup> For example, *Madame Z.M. v. Madame D.T.*, Decision No. 165 of 27 Nov. 2001, Labour Court of Ouagadougou, Burkina Faso.

**Table IV.3. Termination of employment**

| Grounds for dismissal  | Provisions specific to domestic workers  |
|--|--|
| Right to fire without providing a valid reason                       | Argentina (N)(S); Austria (N)(S); Barbados (N)(S); <sup>1</sup> Belgium (N); Bolivia (S); Brazil (N); Colombia (N); Costa Rica (N)(S); Germany (N); <sup>2</sup> Ireland (N)(S); Italy (N)(S); Kenya (N)(S); Malaysia (N)(S); Mali (N)(S); Mexico (N)(S); Nicaragua; Niger (N)(S); Panama (N)(S); Paraguay (N)(S); Peru (N)(S); Philippines (N); <sup>3</sup> Senegal (N)(S); South Africa (N)(S); United States (Federal) (N); <sup>4</sup> Uruguay (S); Zimbabwe |
| Valid reason   | Austria; Bolivia; Burkina Faso; Colombia (N); Finland (N); France (N)(S); Guatemala; Italy; Kenya; Malaysia; Paraguay; Philippines; Portugal; Spain (N)(S)   |
| Serious misconduct   | Argentina(N); Bolivia; Burkina Faso (S); Finland; Mali (S); Peru;  |
| Death of employer  | Peru; Spain  |
| Termination for economic, technological, structural or other reasons | Portugal (N)   |
| Illness of employee  | Belgium; <sup>5</sup> Chile; <sup>6</sup> France (N)(S); Guatemala; <sup>7</sup> Panama; <sup>8</sup> Spain  |

N: Notice required.

S: Severance pay.

<sup>1</sup> Domestic workers are explicitly included in the Severance Payments Act. Grounds for termination are at will unless otherwise determined in the employment contract. <sup>2</sup> Only domestic workers who are party to a collective agreement are entitled to notice. <sup>3</sup> In the case of an indeterminate employment contract, notice is required. Where a contract is for a fixed term, it may be terminated only for just cause (section 149, Labour Code). <sup>4</sup> Notice of termination is only required for foreign live-in domestic workers; otherwise US Federal labour law does not address termination of employment for any category of worker. <sup>5</sup> When an employee is incapable of working for more than six months due to an illness or accident, the contract may be terminated with severance pay (section 116, Labour Contracts Act, 3 July 1978). <sup>6</sup> In the case of a contagious illness, an employee may be dismissed without notice or severance pay. An employee is entitled to sick leave without pay for eight days if he or she has worked for the employer for less than six months, 15 days if more than six months but less than one year, and 30 days if more than one year. <sup>7</sup> An employee with a contagious illness may be dismissed without notice or severance pay, unless the disease was transmitted by the employer or a member of his household (section 165(a), Labour Code). In this case, the worker is entitled to a salary until he or she recuperates fully (section 165(d), Labour Code). The employer has the obligation to pay all related health costs (section 165(d), Labour Code). An employee who is ill and rendered incapable of working for more than one week may be dismissed with severance pay. <sup>8</sup> If the disease is contagious, no notice or severance pay is required unless the disease was transmitted by the employer (section 231(6), Labour Code), in which case the employee is entitled to wages during the first three months of recuperation. In the case of a worker's incapacity due to illness, the worker may be dismissed with severance pay after four weeks (section 231(7)).

## Notice periods

197. Article 11 of Convention No. 158 embodies the principle that a worker whose employment is to be terminated is entitled to a reasonable period of notice or compensation in lieu thereof, unless guilty of serious misconduct. This is defined as “misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period”.

198. While most of the legislation surveyed requires notice to be given before termination, very few provisions anticipate the consequences of termination of employment for domestic workers whose access to housing is linked to their employment. This problem is particularly acute for migrant workers, who may also lose their residency status.

199. Although one month of notice before dismissal is constitutionally guaranteed for domestic workers in Brazil, most member States have adopted notice periods that vary according to the length of the person's employment. In France, article 12(a)(2) of the collective agreement provides that domestic workers are entitled to one week's notice if the person has worked for less than six continuous months with the same employer, one month for between six months and two years, and two months for more than two years. Payment in lieu of notice is permitted. Article 13 provides for automatic termination in the event of death of the employer but retains the employee's right to salary, notice, termination pay and payment in respect of any holiday due.

200. In South Africa, section 24 of Sectoral Determination 7 similarly provides that one week's notice is required if a domestic worker has been employed for six months or less, and four weeks if employed for more than six months. This offers domestic workers better protection than that available to most other categories of workers, who are entitled only to four weeks' notice after one year of service with an employer. While the parties may agree to a longer period of notice, the agreement may not require a domestic worker to give longer notice than that required of the employer. Severance pay amounts to one week's pay per year of continuous service, although a domestic worker may lose this entitlement if he or she "unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer" (section 27). Domestic workers are entitled to a certificate of service.

201. Another example is Mali which, under section 30 of the Collective Agreement on the Employment Conditions of Household Personnel, provides for one week's notice for employees who have worked for less than six months with the same employer, and 15 days' notice if they have been engaged for between six months and one year. Under section 35, an employee who has worked for over a year is also entitled to severance pay, while section 30 authorizes a person who has given or received notice of termination of employment to take two hours of leave each day, not including regular leave periods, to search for new employment, without loss of salary. The days may be cumulated at the end of the leave period at the worker's request. In addition, section 33 provides that, if the employer terminates the employment relationship, then the employee who finds a new job may inform the employer and leave as soon as half of the notice period has been completed, without penalty.

202. Similar examples include Italy, where under Act No. 339/58 and article 38 of the National Collective Agreement of 13 February 2007, notice requirements for termination of employment vary according to the hours of work, seniority and occupational category; and Ireland, where the general conditions for employees under the Minimum Notice and Terms of Employment Act 1973 apply to domestic workers, with periods of notice ranging from one week for an employee with less than two years of continuous service to eight weeks for an employee with 15 years or more.

### Notice requirements for live-in domestic workers

203. Notice or payment in lieu of notice may not be sufficient protection for domestic workers who lose their immigrant status upon being terminated, especially as workers who leave an abusive employer risk deportation and can therefore end up in situations of forced labour. A reasonable period of notice for a live-in domestic worker who is dismissed on grounds of grave misconduct may justifiably be longer than that for many other categories of workers.

204. The overwhelming majority of member States do not foresee this eventuality. South Africa's legislation, however, identifies the conditions under which an employer may be required to provide a domestic worker with accommodation for a month or longer, "until the contract of employment could lawfully have been terminated". The domestic worker who decides to remain in accommodation must nonetheless pay for it according to an established formula .

205. Another way of addressing this issue is to grant employees free time during working hours to search for a new job during the notice period. In Senegal, section 4 of Ministerial Decree No. 974 of 23 January 1968 provides that domestic and other workers must be given two hours' time off each day during working hours, not including meal breaks, to search for new employment. If the employee and the employer are unable to reach an agreement, each chooses the hours of time off on alternate days. In France,

according to article 12(4) of the collective agreement, time off to seek new employment is two hours per day for six working days when the employee has two years of seniority, and two hours per day for ten working days when the employee has been engaged for more than two years. An employee who finds a new job is not required to fulfil the entire period of notice before taking it on. This measure is not restricted to live-in domestic workers and does not mention the eventuality of payment in lieu of notice.

## Career development

206. Career development must be central to domestic work if it is to be seen as something more than a temporary job entailing self sacrifice and low wages – the first step on the social ladder to more fulfilling employment. In the past it was often assumed that living with a more affluent family was an opportunity to acquire certain skills, and indeed some employers do encourage domestic workers to learn a trade. However, a more contemporary approach to career development that is increasingly reflected in national policies and legislation is to recognize the skills required in domestic work and to offer domestic workers a better future by promoting basic literacy skills and vocational training (see Chapter IX).

207. Legislation in a number of the countries surveyed, including Bolivia, Ireland, Mexico and Peru, affords domestic workers the right to attend basic literacy training and career development courses, usually on condition that it does not interfere with their work. Paraguay provides for the right to attend night school, while article 10 of Geneva's standard contract states that employers should make domestic workers' timetables as flexible as possible to facilitate their participation in training courses. Article 9 of Italy's collective agreement entitles fixed-term employees with more than 12 months of seniority to 40 hours of remunerated personal training, in addition to the right to study recognized under article 3.4.4.

208. Legislation aside, several ILO member States have capacity-building and other career development schemes. Peru, for instance, provides domestic workers with information on capacity building. Since 2005, Brazil has been running a three-stage government programme which focuses on social and occupational skills to improve the level of education of domestic workers and strengthen their ability to organize, and, in so doing, it has made human rights, health and combating violence against women and child domestic labour a matter of public policy. The programme has been implemented as a pilot project in its first stage (educational component) in seven key Brazilian regions, with support from the Fund for Assistance to Workers and in collaboration with the Ministry of Education. One of the goals is to mobilize the know-how that domestic workers develop through their work experience or through qualification programmes.

209. In South Africa, a massive training project entitled the Domestic Workers Skills Development Project was launched in 2008. Financed by the Department of Labour's National Skills Fund, the project aims to train 27,000 domestic workers throughout the country over three years. The training is overseen by the Services Sector Education and Training Authority, which has established a specific chamber for domestic services based in Port Elizabeth. Trainees will receive formal recognition of their skills. The project is part of a broad set of laws and regulations relating to domestic workers, including the Adult Basic Education and Training Act No. 52 of 2000, the Further Education and Training Act No. 98 of 1998 and the Skills Development Act No. 97 of 1998.<sup>29</sup>

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<sup>29</sup> [www.serviceseta.org.za/DOCUMENTS/DOCUMENT/28\\_06\\_2002/BACKGROUND\\_INFO\\_DOMESTIC\\_WORKERS\\_PROJECT.HTML](http://www.serviceseta.org.za/DOCUMENTS/DOCUMENT/28_06_2002/BACKGROUND_INFO_DOMESTIC_WORKERS_PROJECT.HTML).

## Chapter V

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### Law and practice in respect of social protection

210. Social protection includes a wide range of collective protection and insurance mechanisms from which domestic workers have historically been excluded. This chapter addresses occupational safety and health coverage, workplace compensation and comparable life and accident insurance schemes, as well as access to general health care, retirement pensions and unemployment insurance schemes. It goes on to discuss the challenge of providing occupational safety and health protection for domestic workers, and addresses in some detail pregnancy and maternity leave protection, which are of particular relevance to a predominantly female occupational category.

#### Social security coverage

211. Data on access to social security by domestic workers is fragmentary. However, a recent ILO study found that in Latin America, in 2003, 23 per cent of domestic workers contributed to a social security scheme – 23 per cent of women and 34 per cent of men (see table V.1). Although social security coverage of male domestic workers continued to be higher than that of female workers in that year, the share of female domestic workers with social security entitlements had increased by six percentage points since 1990. However, men's share had diminished by two percentage points during the same period.

Table V.1. Percentage of domestic workers who contribute to social security, selected years

|               | 1990  |      |             | 2003 * |      |       |
|---------------|-------|------|-------------|--------|------|-------|
|               | Total | Men  | Women       | Total  | Men  | Women |
| Latin America | 17.6  | 35.5 | <b>16.6</b> | 23.3   | 33.6 | 22.8  |
| Argentina     | 7.8   | 25.5 | 6.8         | 4.0    | 29.3 | 3.5   |
| Bolivia       | –     | –    | –           | 5.5    | 8.1  | 5.4   |
| Brazil        | 24.9  | 44.0 | 24.1        | 29.7   | 40.4 | 29.1  |
| Chile         | 51.7  | 66.7 | 51.4        | 53.8   | 52.1 | 57.4  |
| Colombia      | 12.5  | 51.3 | 10.8        | 24.0   | 40.9 | 23.3  |
| Costa Rica    | 40.0  | 59.5 | 39.3        | 35.7   | 41.8 | 35.2  |
| Ecuador       | 17.8  | 20.8 | 17.5        | 11.3   | 8.3  | 11.5  |
| Mexico        | 4.2   | 20.7 | 2.5         | 9.2    | 18.7 | 7.9   |

|                                  | 1990  |      |       | 2003 * |      |       |
|----------------------------------|-------|------|-------|--------|------|-------|
|                                  | Total | Men  | Women | Total  | Men  | Women |
| Nicaragua                        | -     | -    | -     | 3.8    | 9.5  | 2.9   |
| Panama                           | -     | -    | -     | 31.5   | 38.9 | 30.6  |
| Paraguay                         | -     | -    | -     | 20.5   | 6.8  | 21.2  |
| Peru                             | 17.3  | 31.3 | 16.3  | 20.5   | 6.8  | 21.2  |
| Uruguay                          | 44.8  | 42.1 | 44.8  | 97.9   | 99.4 | 97.8  |
| Bolivarian Republic of Venezuela | -     | -    | -     | 23.4   | 49.3 | 22.4  |

\* Bolivia – 2002, Chile – 2000.

Source: ILO: *Panorama Laboral 2004, OIT, 8-A*.

212. The professionalization of domestic work and the increasing proportion of female headed households are among the factors contributing to greater social security coverage of female domestic workers in Latin America.<sup>1</sup> In other regions, the situation is much less promising. Sometimes the problem lies with the discrepancy between legal entitlements and actual practice. In Bahrain, for example, domestic workers are entitled to be treated in the health centre closest to their place of work, and medical services are free for nationals, while foreign nationals pay a symbolic sum of only \$2.60. Yet the majority of domestic workers interviewed as part of an ILO case study in Bahrain did not receive the health care they needed.<sup>2</sup>

213. Table V.2 offers an overview of social security systems that explicitly include domestic workers in social security legislation. It is easier for this category of low wage earners to have access to social security under general, social welfare systems that provide universal, egalitarian access, notably to health care or age-based pension entitlements. An important caveat is that migrant domestic workers may not have automatic coverage under generalized national healthcare schemes when they do exist. A recent example is Singapore, where the Ministry of Manpower withdrew hospital subsidies for all foreign workers as from 1 January 2008 and instituted a compulsory medical insurance requirement for foreign domestic workers to ensure basic coverage for medical expenses, including hospital bills. The minimum coverage is stipulated in section 4 of the First Schedule of the Employment of Foreign Manpower Act. Moreover, as of 1 July 2008 the Ministry of Manpower increased the minimum coverage of personal accident insurance for foreign domestic workers from \$10,000 to \$40,000, as part of a broader review of work injury compensation, as well as to provide for situations of permanent disability. It also requires domestic workers to attend a four-hour safety awareness training course, which dispenses basic information on domestic safety and includes a discussion of foreign domestic workers' legal rights and obligations.<sup>3</sup>

<sup>1</sup> J. Rodgers, op. cit.

<sup>2</sup> ILO: *Gender and migration in Arab states: The case of domestic workers* (Beirut, June 2004), p. 32.

<sup>3</sup> [www.mom.gov.sg](http://www.mom.gov.sg).



**Table V.2. Explicit coverage of domestic workers by social security legislation by category, region and country, in selected countries**<sup>4</sup>

| Region                                   | Category of social security      |  |  |  |   |
|--|----------------------------------|--|--|--|---|
|  | Occupational safety and health   | Workers' compensation for employment injuries  | General health care  | Retirement pension   | Unemployment insurance  |
| Industrialized countries                 | Finland, Portugal                | Austria, <sup>1</sup> Belgium, <sup>2</sup> Canada, <sup>3</sup> Denmark, France, Germany, <sup>4</sup> Italy, Portugal, Spain, Switzerland (Canton of Geneva) <sup>5</sup> , United States (California and New York) <sup>6</sup> | Belgium, France, Germany, <sup>7</sup> Greece, <sup>8</sup> Italy, Netherlands, <sup>9</sup> Portugal, Spain, Switzerland (Canton of Geneva) <sup>10</sup>           | Belgium, France, Germany, <sup>11</sup> Greece, <sup>12</sup> Italy, Portugal, Spain, Switzerland (Canton of Geneva) <sup>13</sup> | Belgium, France, Germany, Italy, Portugal, Switzerland (Canton of Geneva) <sup>14</sup> |
| Commonwealth of Independent States (CIS) | Russian Federation <sup>15</sup> | Russian Federation <sup>16</sup>   | Russian Federation <sup>17</sup>   | Russian Federation <sup>18</sup>   | Russian Federation <sup>19</sup>  |
| Asia                                     |                                  | Cambodia, <sup>20</sup> Philippines, <sup>21</sup> Viet Nam <sup>22</sup>  | Pakistan, <sup>23</sup> Philippines, <sup>24</sup> Viet Nam <sup>25</sup>  | Philippines, <sup>26</sup> Viet Nam <sup>27</sup>  |   |
| Latin America                            | Mexico                           | Argentina, Chile, Colombia, Mexico, <sup>28</sup> Nicaragua  | Argentina, <sup>29</sup> Bolivia, <sup>30</sup> Brazil, Colombia, <sup>31</sup> Nicaragua, Panama, <sup>32</sup> Paraguay, <sup>33</sup> Peru, <sup>34</sup> Uruguay | Argentina, Brazil, Colombia, Panama, <sup>35</sup> Peru <sup>36</sup>  | Brazil, <sup>37</sup> Uruguay   |
| Caribbean                                |                                  | Trinidad and Tobago <sup>38</sup>  | Trinidad and Tobago <sup>39</sup>  | Trinidad and Tobago <sup>40</sup>  |   |
| Middle East                              |                                  |  |  | Egypt  |   |
| Africa                                   | South Africa                     | Mali, <sup>41</sup> Senegal, Tunisia   | Mali, South Africa, <sup>42</sup> Tunisia, Zimbabwe <sup>43</sup>  | Mali, Senegal  | South Africa  |

<sup>1</sup> In Austria, the social security general regime applies to all wage earners and salaried employees and, implicitly, also to domestic workers in general. However, there is an exception for non-qualified part-time workers in private households below the marginal earnings threshold of €478.10 per month. In this case, the Service Cheque Act can be applied. Payment by service cheque only includes insurance against employment injuries and occupational diseases (section 4, para. 3, Service Cheque Act and section 7, Nr. 3 General Social Security Act). Only in the case of insurance against employment injuries and occupational diseases is coverage compulsory.

<sup>2</sup> According to section 112 of the Act of 3 July 1978, in case of incapacity due to professional diseases or occupational injuries, the employer of the domestic worker must pay 100 per cent of the salary during seven days. Thereafter, the worker is reimbursed by the insurance, which is mandatory, for the sum paid. After the 30th day of incapacity, the employee receives benefits directly from the insurance.

<sup>3</sup> Employment injury benefits for domestic workers are regulated at the provincial level. In British Columbia (with limitations), Manitoba and Ontario, domestic workers are explicitly included by legislation regulating workers' compensation.

<sup>4</sup> This includes the explicit coverage of domestic workers by general social security legislation, as well as by ad hoc legislation regulating social security for domestic workers or by legislation on domestic work containing provisions on social security. This research also takes into account social security provisions contained in collective agreements (France and Italy) or standard contracts (Switzerland) regulating domestic work. Research was conducted from May to September 2008 and covered legislative standards in the following countries: Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada (federal legislation and provincial legislation of British Columbia, Manitoba, Ontario and Quebec have been subject of this research), China, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Germany, Greece, Guatemala, Hong Kong (China), India, Indonesia, Islamic Republic of Iran, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lebanon, Malaysia, Mali, Mexico, Republic of Moldova, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Switzerland, United Republic of Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States (federal legislation and state legislation of California, Florida, Oregon and New York, have been subject of this research), Uruguay, Viet Nam, Yemen and Zimbabwe.

<sup>4</sup> The general regime is explicitly applicable to domestic workers. This is confirmed by the exception to the general rules concerning “marginal employment”, where employees earn a maximum of €400 a month (section 8, para. 1, Nr 1 Sozialgesetzbuch SGB IV). In the case of these workers, only health (13 per cent) and old-age insurance (15 per cent, section 249 b, SGB V) have to be paid by the employer, plus 2 per cent taxes. If such a worker is employed in a private household for household services, this contribution is further reduced to 5 per cent both for old-age and health insurance, plus 2 per cent tax – paid by the employer to the “Minijob-centre”, (section 168, para. 1.1 c 172, para. 3 a SGB VI) – plus accident insurance. Accident insurance is at the employer’s expense.

<sup>5</sup> Specific inclusion only for the Canton of Geneva: section 20 of the standard contract for domestic workers provides that the employer shall comply with legal provisions on old-age and survivors’ pension, invalidity insurance, loss of gain, unemployment insurance, professional responsibility, family allocations and maternity insurance.

<sup>6</sup> Notwithstanding at the federal level, there is no workers’ compensation programme for domestic workers. In the State of California, domestic workers are expressly covered by workers’ compensation and insurance laws. However, the employers of domestic workers are exempt from provisions which provide penalties “for failure to secure the payment of compensation for such employees”. In the State of New York, domestic workers employed 40 hours or more per week by the same employer (including full-time babysitters, companions and live-in maids) are required to be covered by a New York State workers’ compensation insurance policy.

<sup>7</sup> See note 9. Regarding marginal employed persons, the health insurance contributions do not establish rights to sickness benefits for the employee. Only statutory or private insurance confers benefits.

<sup>8</sup> Presumably: according to the NATLEX database, Act No. 387 of 1994 integrates domestic workers in a unitary category of social security. The Act is only available in Greek.

<sup>9</sup> As a general rule, the sick worker has the right to 70 per cent of his last wage for a period of 104 weeks (during the first 52 weeks, at least the statutory minimum wage). As an exception to this rule, workers who work in the household of their employer and provide only home or personal services on less than three days a week, are entitled only to a maximum of six weeks’ paid sick leave (section 629, para. 2, Civil Code). Moreover, the Regulation on Domestic Services provides that an employee who works for an individual employer and provides only household or personal services for *up to three days a week* is exempt from paying taxes (section 5 WL – Wet op de Loonbelasting) and social security contributions (see e.g. section 6 ZW – Ziektewet). The regulation comprises everything done in the household which the owner would otherwise have done (walking the dog, babysitting, household help, garden works, maintenance, care, shopping). Sickness pay and holiday supplement have to be paid. However, the employee may pay his own health insurance as well as income tax.

<sup>10</sup> Private insurance for medical care is mandatory for all persons residing in Switzerland. Art. 20 of the standard contract for domestic workers for the Canton of Geneva provides that the employer shall monitor that her/his employees are insured by the medical insurance (section 20(1), this provision may be waived by the parties). When the labour relationship has a duration of more than three months, a worker who is unable to work, due to sickness or maternity, does not lose the right to the payment of a salary for a specified period (section 20(2), may only be waived in favour of the employee). Notwithstanding, an employer who pays for medical insurance, providing for an indemnity of 80 per cent of the wage during 720 days, is released from the obligation provided for under section 20(2), when she/he pays 50 per cent of the premium (section 20(3), which may be waived by the parties).

<sup>11</sup> See note 4.

<sup>12</sup> See note 8.

<sup>13</sup> See note 5.

<sup>14</sup> See note 5.

<sup>15</sup> The Labour Code explicitly includes under the definition of “employer-natural person” anyone who employs domestic workers. According to section 303, para. 8, of the Labour Code, an employer shall be obliged to pay insurance contributions and other obligatory payments in the procedure and amounts which are determined by federal laws. The social security system provides for health and medical care, maternity protection, old-age pension, disability pension, employment injury benefits and unemployment coverage. Regarding occupational safety and health provisions, according to section 212, paragraph 1, of the Labour Code the employer shall ensure safe conditions and protection of the employees. Domestic workers are therefore explicitly covered by the social security system, inter alia by occupational safety and health provisions.

<sup>16</sup> See note 15.

<sup>17</sup> See note 15.

<sup>18</sup> See note 15.

<sup>19</sup> See note 15.

<sup>20</sup> Chapter XI, section 249, of the Labour Code provides that property owners are liable for all work-related accidents related to their domestic workers.

<sup>21</sup> This includes domestic employees and Filipinos recruited by a foreign-based employer for employment abroad. The maximum monthly earnings for contribution purposes is 1,000 pesos.

<sup>22</sup> The Social Security Administration, Office of Policy, Office of Research, Evaluation and Statistics and ISSA, *Social security programmes throughout the world: Asia and Pacific*, Sep. 2006. [www.ssa.gov/policy/docs/progdesc/ssptw/2006-2007/asia/index.html](http://www.ssa.gov/policy/docs/progdesc/ssptw/2006-2007/asia/index.html).

<sup>23</sup> This is valid only at the provincial level (West Pakistan) and for full-time domestic workers. Medical treatment for full-time domestic workers is at the employer’s expense (domestic workers do not benefit from the social security system guaranteed to other workers, based on contributions of both the employer and the worker).

<sup>24</sup> Only domestic workers earning at least 1,000 pesos a month are covered.

<sup>25</sup> See note 22.

<sup>26</sup> See note 21.

<sup>27</sup> See note 22.

<sup>28</sup> Domestic workers are not covered by the social security mandatory scheme for work injuries and occupational diseases, since their affiliation to the scheme may only be on a voluntary basis. However, in the absence of social security coverage, the employer is responsible for compensation for work injuries (section 53 of the Act on social security and section 472 of the Labour Code; *the latter applies explicitly to special forms of labour such as domestic work*).

<sup>29</sup> Only domestic workers working at least six weekly hours for the same employer are covered.

<sup>30</sup> Apart from the obligation to register domestic workers under the National Health Fund, legislation on domestic workers provides that the employer is obliged to provide the domestic worker with first aid and transfer to a health centre. If the worker is not covered under the National Health Fund, medical expenses shall be at the employer’s expense (section 21(d)).

<sup>31</sup> With some limitations.

<sup>32</sup> Domestic workers working less than three days for week for a same employer are excluded from coverage.

<sup>33</sup> Only domestic workers who are resident in the capital are covered.

<sup>34</sup> For domestic workers working a minimum of four hours per day.

<sup>35</sup> See note 32.

<sup>36</sup> Old-age pensions for domestic workers are regulated both by general social security legislation and by ad hoc legislation.

<sup>37</sup> With limitations and only in case of dismissal without reasonable cause.

<sup>38</sup> However, an employer who employs only domestic workers may not register (section 29(1) of the National Insurance Act, Chapter 32:01, as amended up to 2004). Moreover, an employee working for less than \$100 per week may not register (persons entering the system on or after 1 March 2004, section 29(2)).

<sup>39</sup> See note 38.

<sup>40</sup> See note 38.

<sup>41</sup> Domestic workers are specifically mentioned by the Social Security Code of 1999, since section 190 of this Code provides that contributions for domestic workers are calculated on effective wages.

<sup>42</sup> Domestic workers are entitled to sickness benefits if they work more than 24 hours a month, if they are unemployed or if their earnings are reduced to no more than one-third of the regular wage (Unemployment Insurance Act No. 63, 2001, as amended by the Unemployment Insurance Amendment Act No. 32, 2003). They are also entitled to paid sick leave at the expense of the employer (Sectoral Determination 7: Domestic Workers [15 August 2002] under the Basic Conditions of Employment Act, 1997).

<sup>43</sup> In Zimbabwe no statutory cash benefits are provided. The Labour Relations (Domestic Workers) Employment Regulations, 1992, regulate paid sick leave for domestic workers at the expense of the employer.

## Social security protection for migrant domestic workers: The role of sending countries

214. The role of sending countries in social security protection needs to be stressed. Some negotiate social security protection within the terms of bilateral agreements. For example, the MoU regarding the recruitment of workers between Malaysia and Viet Nam signed on 14 November 2003 stipulates that the employer shall provide coverage for each worker under the Workmen's Compensation Act, 1952, of Malaysia.

215. In the Philippines, the Overseas Workers Welfare Administration (OWWA) provides a range of social services to the country's 3.8 million migrant workers worldwide, including domestic workers. Section 15 of the Migrant Workers Act of 1995 establishes an emergency repatriation fund administered and supervised by the OWWA, which is responsible for the repatriation of workers in case of war, epidemic, disasters or calamities, although it retains the principle that reimbursement must be made by the responsible principal or agency. The OWWA reserved US\$10 million to evacuate and repatriate approximately 6,300 workers from Lebanon between July and October 2006, in partnership with the International Organization for Migration (IOM), which repatriated almost 67 per cent of Filipino returnees. Further OWWA assistance includes counselling for workers in distress, paralegal services and low-key diplomatic initiatives. It provides life and personal accident insurance and monetary benefits for members who suffer work-related injuries, illness or disability during employment abroad, although the amounts reportedly range from only 2,000 pesos (US\$40) to 50,000 pesos (US\$1,000), or up to 100,000 pesos (US\$2,000) in case of permanent disability. Only 1,500 overseas workers received benefits in 2006, which is up from 600 in 2002. In 2003 the OWWA took steps to have the Philippine Health Insurance Corporation make arrangements for the medical insurance.<sup>5</sup>

## Promoting occupational safety and health protection for domestic workers

216. In most of the ILO member States surveyed, domestic workers are not covered by occupational safety and health legislation. Because domestic work is associated with the normal activities of a household, it tends erroneously to be perceived as safe and

<sup>5</sup> D.R. Agunias and N.G. Ruiz: *Protecting overseas workers: Lessons and cautions from the Philippines* (Migration Policy Institute, Sep. 2007), pp. 15, 17 and 20.

non-threatening.<sup>6</sup> But it can entail a number of serious risks, which increase with the fatigue of long working hours. The work tends to involve a great deal of repetition, bending and reaching, lifting heavy objects, extremes of heat (cooking, ironing), sharp objects (knives), handling potentially toxic cleaning products and prolonged exposure to dust. Vulnerability to these risks may be higher among migrant domestic workers, with their lack of knowledge of local products and of the local language.<sup>7</sup> Limited exposure to sunlight among workers who care for children during the night and nutritional problems caused by insufficient food have also been reported.<sup>8</sup> In Salvador, Brazil, a recent study of non-fatal work injuries found a statistically significant difference between domestic workers and workers in other occupations among the 1,650 women surveyed. Domestic workers were reported to have an annual incidence of non-fatal work injuries of 7.3 per cent compared to 5 per cent for the working population in general. Half of the injuries did not entail long-term disabilities, but 38.1 per cent of the domestic workers surveyed reported not being able to return to work after two weeks. This suggests that there is a need for public policies on the occupational safety and health of domestic workers.<sup>9</sup>

217. While the risks faced by domestic workers are sometimes similar to those encountered by cleaners, cooks and caregivers in institutions outside the home, the fact is that home care workers may be even more vulnerable because they cannot rely on co-workers for advice and assistance in their work.<sup>10</sup>

218. In addition to their exclusion from most occupational safety and health legislation, domestic workers are rarely able, like independent contractors, to exercise any degree of control over how to perform their tasks, what tools to use, their working hours and thus their own safety.<sup>11</sup>

219. The Home Work Convention, 1996 (No. 177), was adopted over a decade ago. Since then, awareness of the occupational health and safety risks associated with household work and of the need for regulatory mechanisms, as well as practical safety and health measures, has grown. The ILO has played an important role in this process.<sup>12</sup> But, regulating occupational health and safety for domestic workers is impossible as long as the household is not recognized as a workplace. This dilemma has often been resolved by requiring employers to protect the life and safety of domestic workers, as is the case in Bolivia's Household Workers Act of 3 April 2003. A similar provision is found in Viet Nam, where section 139 of the Labour Code obliges employers to respect the honour and dignity of domestic workers, which indicates that the employer would be held responsible if a domestic worker fell sick or suffered an accident.

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<sup>6</sup> P.R. Smith: "Aging and caring in the home: Regulating paid domesticity in the twenty-first century", in *Iowa Law Review*, No. 92, 2007, pp. 1835–1900.

<sup>7</sup> S. Al-Najjar: *Women migrant domestic workers in Bahrain*, International Migration Papers No. 47 (Geneva, ILO, June 2002).

<sup>8</sup> Human Rights Watch: *As if I am not human: Abuses against Asian domestic workers in Saudi Arabia* (New York, July 2008), p. 66.

<sup>9</sup> V.S. Santana et al.: "Emprego em serviços domésticos e acidentes de trabalho não fatais", in *Saúde Pública*, Feb. 2003, pp. 1–12.

<sup>10</sup> Smith, op. cit., p. 1884.

<sup>11</sup> C.A. Castro: "Dying to work: OSHA's exclusion of health and safety standards for domestic workers", in *The Modern American*, Apr. 2008.

<sup>12</sup> T. Kawakami et al.: *Work improvement for safe home: Action manual for improving safety, health and working conditions of home workers* (Bangkok, ILO, 2006).

220. However, simply stating that the employer has an obligation without providing a regulatory framework to give it meaning does not help either party to engage meaningfully in accident prevention. One proposal mentioned earlier (see Chapter V) is to devise a system of home visits to identify occupational hazards likely to cause serious physical harm and to make the placement of a domestic worker in a household dependent on the elimination of those hazards, together with a general obligation for employers to ensure the safety of their homes. Where the recipients of the services are senior citizens or disabled persons whose domestic costs are covered or subsidized by the State, and who may not themselves have the necessary resources to eliminate potential hazards, additional support measures might be necessary.<sup>13</sup>

221. Another crucial requirement for employers is to ensure that domestic workers receive adequate training. Many migration schemes address the issue of training, although the quality of the training may vary significantly. This could be a particularly important area for ILO technical cooperation.

### Maternity protection and recognition of domestic workers' own family responsibilities

222. Domestic workers have limited access to the kind of measures and protection that could ensure them safe and healthy pregnancies and births, a replacement income when they are on maternity leave and the right to return to their jobs. Despite legal and contractual entitlements to maternity protection in many countries (see table V.3), pregnancies often result in the dismissal of the worker. In Mexico, for example, dismissal as a result of pregnancy appears to be much more frequent in domestic work than in other occupations. In some cases, the legislation may permit or facilitate such dismissals. The CEACR specifically addressed this concern when it sought to ensure that an existing legislative provision in Italy providing women workers with protection against dismissal also applied to domestic workers (see Chapter II). With respect to migrant domestic workers, a number of receiving countries have laws or regulations that allow the dismissal and/or repatriation of domestic workers found pregnant.

223. Table V.3 shows which of the countries surveyed have general or specific legislation granting domestic workers the right to maternity leave. Although Bolivia has specific provisions affording more generous provisions for domestic workers than for other categories, most member States include domestic workers in general schemes. This is true in most regions. That said, a few member States still explicitly exclude this predominantly female occupational category from their legislation.

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<sup>13</sup> Smith, *op. cit.*, pp.1897–1898.

**Table V.3. Coverage of domestic workers by maternity leave legislation by country and region** <sup>14</sup>

| Region                                    | Domestic workers covered by general maternity leave legislation or by separate but equivalent provisions  | Domestic workers covered by separate legislation differing from general provisions | Domestic workers not covered by maternity leave legislation   |
|---|---|--|---|
| Industrialized countries                  | Austria; Belgium; Spain; Denmark; Finland; France; Germany; Ireland; Italy; Netherlands; Portugal; Switzerland; United Kingdom  |  | Japan; Canada (federal); <sup>1</sup> United States (federal) <sup>2</sup>                                  |
| Central, Eastern and South-Eastern Europe | Bulgaria; Croatia; Czech Republic; Estonia; Latvia; Romania   |  | Turkey  |
| Commonwealth of Independent States (CIS)  | Kazakhstan; Republic of Moldova; Russian Federation   |  |   |
| Asia                                      | Hong Kong (China); Philippines; Sri Lanka (only for the first and second surviving child; six weeks for the third and each subsequent surviving child and in case the child is stillborn); Viet Nam |  | Bangladesh; Cambodia; China; India; Indonesia (presumably); Republic of Korea; Malaysia; Pakistan; Thailand |
| Latin America                             | Brazil; Chile; Colombia; Costa Rica; Guatemala; Mexico; Nicaragua; Panama; Paraguay; Peru; Uruguay  | Bolivia (more favourable provisions for domestic workers)                          | Argentina   |
| Caribbean                                 | Barbados; Trinidad and Tobago   |  |   |
| Middle East                               | Islamic Republic of Iran; Israel  |  | Egypt; Jordan; Lebanon; Saudi Arabia; Yemen (presumably)  |
| Africa                                    | Burkina Faso; Côte d'Ivoire; Ethiopia; Kenya; Mali; Mozambique; Namibia; Niger; Senegal; South Africa; United Republic of Tanzania; Zimbabwe  |  | Tunisia (presumably)  |

<sup>1</sup> At the federal level, all female employees working in industries under federal jurisdiction, such as: federal Crown corporations, works or undertakings connecting a province with another province or country (e.g. railways, bus operations, trucking, pipelines, ferries, tunnels, bridges, canals, telephone and cable systems), extra-provincial shipping and related services (e.g. longshoring), air transport and airports, radio and television broadcasting, banks, uranium mining, and flour, feed and seed cleaning mills, feed warehouses and grain elevators. For all other industries – this seems to be the case also for domestic workers – maternity leave is regulated by legislation enacted by the government of the province or territory in which they are based. Provincial laws cover all female employees in the private and public sectors, with certain exceptions as listed by state provisions. In the Provinces of British Columbia, Manitoba, Ontario and Quebec analysed under this research, legislation on maternity leave applies to domestic workers.

<sup>2</sup> Regarding state legislation, domestic workers are also not covered by maternity leave provisions in the State of Oregon. In the State of Florida, there is no maternity protection, maternity leave or maternity benefits for workers in the private sector. The State of New York does not have a comprehensive public maternity leave programme for workers in any sector. Therefore, the federal scheme has jurisdiction (indirectly providing for the exclusion of domestic workers from maternity leave).

<sup>14</sup> This is based on research conducted between May and September 2008 on the legislated maternity leave standards of 74 countries: Argentina, Austria, Bangladesh, Barbados, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, China, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Germany, Guatemala, Hong Kong (China), India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lebanon, Malaysia, Mali, Mexico, Republic of Moldova, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Switzerland, United Republic of Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United States, Uruguay, Viet Nam, Yemen and Zimbabwe.

224. The length of maternity leave bears an important relationship to existing international labour standards. The minimum 12-week compulsory leave period provided for under the Maternity Protection Convention (Revised), 1952 (No. 103), is respected in the legislation of the overwhelming majority of ILO member States. The Maternity Protection Convention, 2000 (No. 183), establishes a 14-week minimum, and this is reflected in legislation applicable to domestic workers in many industrialized countries, several transition economies and a number of developing countries (see table V.4).

**Table V.4. Minimum duration of maternity leave for domestic workers by country and region**

| Region                   | Less than 12 weeks             | 12–14 weeks  |
|--------------------------|--------------------------------|--|
| Industrialized countries |                                | Germany (14 weeks); Switzerland (14 weeks)   |
| Asia                     | Hong Kong (China); Philippines | Sri Lanka (12 weeks)   |
| Latin America            |                                | Bolivia (90 days); Colombia (12 weeks); Guatemala (12 weeks); Mexico (12 weeks); Nicaragua (12 weeks); Panama (14 weeks); Paraguay (12 weeks); Peru (90 days); Uruguay (12 weeks)                                      |
| Caribbean                |                                | Barbados (12 weeks); Trinidad and Tobago (13 weeks)  |
| Middle East              |                                | Islamic Republic of Iran (90 days); Israel (12 weeks)  |
| Africa                   | Mozambique                     | Burkina Faso (14 weeks); Côte d'Ivoire; Ethiopia (90 days); Kenya (three months); Mali (14 weeks); Namibia (12 weeks); Niger (14 weeks); Senegal (14 weeks); United Republic of Tanzania (84 days); Zimbabwe (90 days) |

## Chapter VI

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### Combating forced labour in migrant domestic work

225. As noted earlier, domestic workers are particularly vulnerable to discrimination, exploitation and abuse, without this necessarily constituting trafficking or forced labour. When forced labour occurs, it may affect domestic workers migrating from rural to urban areas as well as those migrating abroad. This chapter, however, focuses on extreme forms of abuse against international migrant domestic workers, in the light of the considerable attention recently given to the link between migrant domestic work and forced labour, slavery and slave-like conditions, and human trafficking. Normative action has been based on the ILO's Forced Labour Convention, 1930 (No. 29), Protection of Wages Convention, 1949 (No. 95), Migration for Employment Convention (Revised), 1949 (No. 97), and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as the United Nations treaty framework. The United Nations Slavery Convention, 1926, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and the Protocol amending the Slavery Convention are all relevant to shaping law and practice to combat forced labour in migrant domestic work. As discussed in Chapter II, the CEACR has responded to reports submitted to United Nations bodies alleging trafficking, slavery and slave-like practices in domestic work by calling on ILO member States to engage in meaningful reform. In addition to domestic workers' organizations themselves, such NGOs as Kalayaan in the United Kingdom and the Committee against Modern Slavery (CCEM) in France, and human rights organizations like Anti-Slavery International<sup>1</sup> and Human Rights Watch, have played an important role in bringing severe cases of abuse to public attention, and in calling for an end to forced labour conditions.

226. The European Court of Human Rights in its landmark decision *Siliadin v. France* recognized a violation of the forced labour and servitude provisions of article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and found there to be a positive obligation on the State to ensure that criminal legislation in force afforded domestic workers with practical and effective protection.

227. The Council of Europe has also issued two recent Recommendations. Recommendation 1523 (2001) on domestic slavery advocates giving accurate information about the risks of working abroad to domestic workers and others when permits are requested (for instance, at embassies), and avoiding all gender discrimination in the issuing of work permits to domestic workers. Recommendation 1663 (2004) on

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<sup>1</sup> L. Chew: *Protection of domestic workers against the threat of forced labour and trafficking*, discussion paper prepared for Anti-Slavery International, in cooperation with the ILO's Special Action Programme to Combat Forced Labour, Jan. 2003.



domestic slavery: servitude, au pairs and “mail-order brides” calls, inter alia, for the urgent drafting of a charter of rights for domestic workers; the right for migrants to an immigration status independent of any employer; and the right of recognition of qualifications, training and experience obtained in the host country. It also recommends an accreditation system for agencies placing domestic workers.

## Loss of resident status and termination of employment

228. When many domestic workers lose their employment, they also lose resident status under the labour migration schemes of several member States. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), addresses this situation by providing that migrant workers, who are lawfully residing in the territory for the purpose of employment and who may lose their employment prematurely, should not be considered to be in an irregular situation. This means that their residence permit should not be revoked at the time of the loss of their employment. In its General Survey of 1995 on protection against unjustified dismissal (paragraph 77), the CEACR reaffirmed that “a worker’s freedom to end an employment relationship of indeterminate duration, subject to an obligation to give notice, is a basic guarantee of the freedom of labour protected by the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)”. Yet that freedom is curtailed if the consequence of its exercise is the immediate loss of a place to live and the loss of legal status in the country of residence.

229. In Canada a “bridge extension” has been developed whereby, if an applicant is between jobs and has not found a new employer, a two-month interim work permit is issued to bridge the gap. If the extension expires before the applicant finds a new job, the immigration authorities are directed to assess carefully the reasons for continued unemployment and given the discretion to refer the applicant to an inland immigration centre.<sup>2</sup>

230. Israel, too, has a binding system that ties migrant domestic workers to the employer named on their work permit. A 1999 report of the Ministry of Labour found that 53 per cent of undocumented workers had initially entered Israel with a work permit and had either overstayed the duration of the permit or left their original employer. The case of a Filipino care worker, Valentin Ferdinand, whose original employer had died and left him undocumented, led to some procedural changes resulting in a relocation policy that required an employer’s cooperation in providing a “position letter”. Further changes have been made since then and a worker may now obtain a 30-day tourist visa upon leaving an employer in order to find new work – but the binding system remains in place.<sup>3</sup>

## Safe houses

231. Providing temporary accommodation for domestic workers in the form of safe houses, accompanied by an efficient support network, can be crucial in enabling domestic workers to escape abusive situations (see box VI.1). Several member States, such as the United Kingdom, provide or fund safe houses for the victims of trafficking,

<sup>2</sup> Citizenship and Immigration Canada: *IP 04 Processing live-in caregivers in Canada*, section 8.5.

<sup>3</sup> A. Kemp: “Labour migration and racialisation: Labour market mechanisms and labour migration control policies in Israel”, in *Social Identities*, Vol. 10, Issue 2, 2004, pp. 267–292.

although not specifically for domestic workers. Following an ILO report that its missions were often overflowing with runaway or stranded domestic workers, Sri Lanka established safe houses in Kuwait, Lebanon and Saudi Arabia.<sup>4</sup> The Government of Lebanon has likewise signed an MoU with two international NGOs (CARITAS and the International Catholic Migration Commission) to operate a safe house for migrant workers who are victims of abuse and has begun referring traffic victims there.<sup>5</sup> The Government of Bahrain announced a plan in 2003 to assist abused migrant workers in cases of emergency, including establishing safe houses and a help hotline.

232. There are, however, real challenges, as centres in some countries require government approval and are sometimes vulnerable to closure as they may be perceived as encouraging domestic workers to leave their employers. Funding is another challenge for domestic workers' associations seeking to run safe homes.<sup>6</sup> Moreover, training for embassy officials on caring for domestic workers who face abuse is crucial if embassies are to assume this role actively.<sup>7</sup>

#### Box VI.1

##### A safe house in British Columbia: The Kalayaan Centre

In British Columbia the Philippine Women Centre (PWC) of British Columbia, in partnership with the Philippine migrant workers' group, SIKLAB (Overseas Filipino Workers' Organization), organizes rescue operations for live-in caregivers living and working in unsafe conditions and provides emergency housing for domestic workers seeking a safe home. SIKLAB provides information to Filipino migrant workers, offers skills training workshops, referrals and advocacy, and provides free legal services (in the areas of family law, immigration law and labour standards complaints). PWC and SIKLAB rely on word of mouth and pamphlets distributed in parks frequented by live-in caregivers, Filipino churches and Filipino community centres and restaurants. Domestic workers in unsafe working conditions can contact PWC and SIKLAB so that they are escorted from their workplace. In such a rescue operation, the staff of the organizations inform the employer that the domestic worker is leaving and ask him or her to be present when the domestic worker packs her suitcase, in order to prevent the employer from making any allegations of theft in the future. Emergency shelter includes a rotating schedule for cooking dinner (dinner is generally eaten together) and for the cleaning of common spaces and other household chores. Expenses are shared. Residents are encouraged to share their problems and breakthroughs in their personal and professional lives, as a means of creating a support network and overcoming isolation. Most of the legal coordinators are former live-in caregivers and former residents of the housing cooperative. A dedicated group of lawyers working pro bono train volunteers and personally handle appeals, deportation orders and legal representation. The Kalayaan Centre is listed as a resource for live-in caregivers on Citizenship and Immigration Canada's web site<sup>1</sup> and has received referrals from the Legal Services Society of British Columbia.

<sup>1</sup> Citizenship and Immigration Canada, The live-in caregiver program, at [www.cic.gc.ca/ENGLISH/work/caregiver/associations.asp](http://www.cic.gc.ca/ENGLISH/work/caregiver/associations.asp).

Source: Mae J. Nam, Law Student, PWC volunteer and co-op member.

<sup>4</sup> ILO: *Migrant workers and human rights: Out-migration from South Asia*, 2004, pp. 195–196.

<sup>5</sup> US Department of State: *Trafficking in Persons Report*, 2005, pp. 143–144.

<sup>6</sup> ILO: *Gender and migration in Arab States: The case of domestic workers*, Geneva, 2004, p. 22.

<sup>7</sup> J. Oxman-Martinez et al.: *Another look at the live-in caregivers program: An analysis of an action research survey*, PINOY, Quebec Filipino Women's Association with the Centre for Applied Family Studies, 2004.

## The automatic live-in requirement

233. While a strategy of building safe houses is demonstrably necessary, their existence and use underscores the dilemma created when domestic workers feel bound to their employers. While domestic workers may choose to live in the same home as an employer for economic reasons or for companionship, and while employers might make the provision of assistance during night-time hours an explicit part of the contract, making the issue of a work permit conditional on such a requirement is a practice that can open the door to forced labour.

## Employment agencies

234. Although employment agencies may hold out the promise of a formal domestic work relationship, their reliability can vary greatly, ranging from highly professional agencies specializing in placing nannies with wealthy clients to small-time operations with little more behind them than a person with a cell phone. Standard setting for domestic workers needs to bear this in mind.

235. One report on national practice commissioned for the ILO found that employment agencies in Ghana help to establish formal contracts between domestic workers and employers and to ensure that the contracts are respected. They also endeavour to place employees who meet minimum age requirements and to facilitate the payment of taxes. However, as many are not licensed under the Labour Code and some function more like individual agents and intermediaries than formal agencies, the risk of corrupt practices is significant.

236. The question of employment agencies is more complex in the case of labour migration, and there have been many documented instances of severe abuse, particularly in relation to transnational migration. As noted in Chapter III, abuses can occur in both sending and receiving countries. The Private Employment Agencies Convention, 1997 (No. 181), calls on member States to adopt all necessary and appropriate measures to protect and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies (see box VI.2).

### **Box VI.2**

#### **The Private Employment Agencies Convention, 1997 (No. 181)**

Although Convention No. 181 does not refer to domestic workers directly, it calls for the enforcement of measures to prevent the abusive treatment of migrant workers by private employment agencies and the prohibition of agencies that engage in fraudulent practices and abuse. On the issue of fees, Article 8 of Convention No. 95 permits deductions from wages “only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award”, while prohibiting deductions from wages in order to secure employment through an intermediary. This is consistent with Article 7(1) of Convention No. 181, which prohibits private employment agencies from charging workers directly or indirectly, in whole or in part, for any fees or costs to workers, although Article 7(2) allows some exceptions which must be justified and notified to the ILO under article 22 of the ILO Constitution.

237. National policies on migration have a crucial role to play in this respect. In the Philippines, the Migrant Workers and Overseas Filipinos Act No. 8042 of 1995, while recognizing the significant contribution of migrant workers to the national economy

through their foreign exchange remittances, states that the defence of the dignity and fundamental human rights and freedoms of Filipino citizens is the primary thrust of the country's overseas employment programme. Section 21 of the Act establishes a migrant workers' loan guarantee fund for preventing abuses against workers migrating for labour by unscrupulous illegal recruiters. In 2006, 137 such pre-departure loans were provided to overseas workers – 0.01 per cent of total membership of the Overseas Workers Welfare Administration.<sup>8</sup>

238. Bilateral arrangements are another means of addressing concerns associated with abuse by employment agencies. In the MoU between Indonesia and Kuwait and the MoU between Indonesia and Malaysia, recruitment agencies are given several responsibilities. In Kuwait they must ensure that the employment contracts are fully understood and observed by employers, protect and promote the rights and interests of domestic workers, monitor conditions of domestic workers and report on a monthly basis to the Indonesian Embassy during the first three months of each contract.

239. Recipient countries have also taken initiatives. Domestic workers are excluded from the scope of the Employment Act in Singapore.<sup>9</sup> Instead, the standard employment contract prepared by the accredited agencies of the Association of Employment Agencies permits the employer to deduct the monthly loan repayments from the domestic worker's salary, according to a repayment schedule annexed to the contract. At the same time, the Employment of Foreign Manpower Act prohibits employers from recovering the monthly foreign worker levy charged to employers by the Ministry of Manpower, as well as other costs such as training provided by the employer, fees associated with obtaining a work permit or repatriation. Employers are further prohibited from receiving "directly or indirectly" any sum or other benefit as a consideration for employing, or continuing to employ, a foreign employee or as a financial guarantee related in any way to his or her employment.

## International organizations and diplomats

240. The cases of abuse by diplomats and members of the international civil service that have been reported in the media discredit their governments and the international community. The fact is that, although domestic workers are especially vulnerable, travelling as part of a diplomatic entourage does not protect them from arbitrary treatment and abuse.

241. In article 8 of its Recommendation 1523 (2001) on domestic slavery, the Council of Europe deplored the fact that a considerable number of victims work in embassies or in the homes of international civil servants and recommended amending the Vienna Convention to waive diplomatic immunity for all offences committed in private life.

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<sup>8</sup> See Agunias and Ruiz, *op. cit.*, p. 16.

<sup>9</sup> Article 67 provides however that: "The Minister may, from time to time by notification in the *Gazette*, apply all or any of the provisions of this Act with such modification as may be set out in the notification to all domestic workers or to any group, class or number of domestic workers and may make regulations to provide generally for the engagement and working conditions of domestic workers."

**Box VI.3**

**How to stop forced labour in migrant domestic work**

Migrant domestic workers' vulnerability to forced labour is not inherent but constructed; and certain practices associated with migrant domestic work can have a significant impact on whether forced labour conditions are cultivated or rooted out. Legislation can help to prevent forced domestic work and trafficking by:

- forbidding possession of the passport by the employer;
- removing binding requirements and at least providing renewable bridge extensions to prevent immediate expulsion on termination of the employment contract;
- removing the requirement to reside in the home of the employer;
- banning the payment of agency fees by workers and restricting similar deductions from their pay;
- strengthening MoUs to prevent abuse;
- requiring agencies to be accredited.

An international instrument that identifies and seeks to put an end to forced labour in domestic work would go a long way towards promoting decent work.

## Chapter VII

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### Enforcement of labour laws and access to justice

242. With reference to Conventions Nos 97, 111 and 29, the CEACR has repeatedly recalled the need for effective, accessible complaints mechanisms and procedures to ensure redress for domestic workers, including migrant workers. It has stressed the importance of awareness-raising mechanisms so that domestic workers know their rights and know how to enforce them. It has also welcomed legislation that establishes human rights bodies allowing domestic workers to file complaints.

243. This chapter discusses the role of labour inspection, the introduction of complaints-based and human rights measures, the enforcement of labour laws and access to justice for domestic workers.

### Labour inspection

244. In many parts of the world, labour inspection services play a critical role in ensuring that labour laws are enforced. Inspired by the continental European tradition, inspection services are gaining increased recognition and support in industrial relations worldwide.<sup>1</sup> A well-functioning system of labour administration is a critical element of effective and efficient governance of labour law. Labour inspection services provide direct institutional support to labour regulations designed in the public interest and with a view to protecting public order. They employ a range of tools, including prevention, information and sanctions.<sup>2</sup> ILO technical cooperation support is increasingly sought to ensure their viability and their relevance to new and complex workplace environments and to promote the entry of domestic workers into the formal economy. The role of labour inspection services in sustaining decent work for domestic workers can hardly be overstated.

245. The ILO's Labour Inspection Convention, 1947 (No. 81), its Protocol of 1995 which extends to all workplaces not already within the scope of the Convention, as well as the Labour Inspection Recommendation, 1947 (No. 81), provide the basic regulatory framework reflected in ILO standards – alongside the Labour Administration Convention, 1978 (No. 150), and its accompanying Recommendation (No. 158). Three key elements of these Conventions are particularly relevant to the effective enforcement of domestic workers' rights, inasmuch as they empower labour inspectors to: (i) supply technical information and advice to ensure compliance while promoting preventative

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<sup>1</sup> M.J. Piore and A. Schrank: "Toward managed flexibility: The revival of labour inspection in the Latin world", in *International Labour Review*, Vol. 147, No. 1, 2008.

<sup>2</sup> M.L. Vega Ruiz: *Administración del trabajo: Asegurar la gobernanza a través de la aplicación de la ley en América latina. El papel central de la inspección de trabajo*, Dialogue Working Paper (ILO, forthcoming).

measures; (ii) promote effective cooperation between inspection services and other government services and public or private institutions, as well as collaboration between officials of the labour inspectorate and employers and workers or their organizations; and (iii) secure enforcement of legal provisions, inter alia through inspection visits.

246. National law and practice reveal a number of creative applications of the labour inspector's role in enforcing domestic workers' rights. In some member States, one specific responsibility of the inspection services is to determine the qualifications of domestic workers. Section 146 of Chile's Labour Code provides that, in the event of doubt as to whether a domestic worker is covered under the relevant legislation, the labour inspector shall make the determination.

247. There are other important initiatives to ensure that employers are aware of whether or not they are fulfilling their labour rights. In Guatemala, the labour inspectorate has placed a self-evaluation form on the Internet for all employers, so that they might verify whether they comply with labour law. This serves the dual purpose of informing employers of employment requirements and enabling them to be active in ensuring compliance, and could effectively be adapted to the employers of domestic workers.

248. The main challenge for domestic work is the inspection visit, which requires access to the household, as workplace rights might come into conflict with the principle of privacy within the family and in the home. In responding to the CEACR's 2007 observation on Convention No. 81 in respect of Kuwait, the Government stated that it was difficult for the labour inspection department to enter private households to verify the application of the Labour Code but indicated that it had established a special committee to examine the situation of domestic workers. The CEACR took note of the Government's request for technical assistance on this matter. In Brazil, although article 5 of the Constitution provides for the inviolability of the privacy of the home, labour inspectors do verify the registries of domestic workers. In Canada, the Supreme Court found that the inspection of a private home that coincides with the workplace does not render inspection powers unreasonable.<sup>3</sup>

249. Respect for privacy, though important, need not result in an absolute bar on inspection visits. As observed by the CEACR in its 2006 General Survey, the consent of the employer or occupant of a household, or prior authorization by a judicial authority, ensure respect for the principle of privacy, while balancing this with workplace rights.

250. Reference is also made to labour inspection visits in ILO instruments on home work. However, the visits in these cases take place at the worker's home and different considerations are at stake. More relevant is the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which deals with employment in an agricultural undertaking that may also be the worker's and employer's home and which embraces the balance articulated by the Committee of Experts. Convention No. 129 expressly provides for labour inspection in "any workplace liable to inspection", which it qualifies by stating that labour inspectors should only enter the private home of the operator of the undertaking with the consent of the operator or with a special authorization issued by the competent authority.

251. A recent innovation in Uruguay concerning the powers of the labour inspectorate is applicable specifically to domestic workers.

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<sup>3</sup> *Comité paritaire de l'industrie de la chemise v. Potash* (1994) 2 SCR 406, p. 407.

**Box VII.1****Labour inspection and domestic work in Uruguay**

Article 11 of the Uruguayan Constitution stipulates that the home is sacred and inviolable. It prohibits night-time visits without the consent of the head of the household and allows day-time visits only with written authorization by a competent judicial authority. Section 13 of Act No. 18.065 permits the Ministry of Labour and Social Security to undertake home inspections when there is a “presumed violation” of labour and social security norms. In the light of the new law, the labour and social security inspectorate has created a specialized section in charge of monitoring provisions on domestic work. The labour inspectorate has also coordinated with the judiciary to determine appropriate objective criteria upon which inspections are to be based. The Supreme Court of Justice has reportedly established that the decision to grant authority to carry out a home inspection visit must be established on a case-by-case basis by each labour judge using his or her technical expertise, following an independent evaluation. Labour inspection also entails preventative measures and collaboration with other entities. In effect, the inspection services have integrated into their work the recommendations of a Tripartite Commission on Equality of Opportunity and Treatment in Employment, which has supported a public awareness campaign to promote the law. One activity has been the preparation of a pamphlet for both employers and workers summarizing the rights of domestic workers. Specific mention has been made in equality plans of Uruguayan women of African descent, as many are domestic workers.

252. Conducting inspection visits before a domestic worker starts a job would help officials assess working conditions by identifying occupational safety and health hazards. In the United States, for instance, recipients of publicly funded home care must, for safety reasons, accept prior inspection of their premises by a registered nurse. It is possible that such an approach could be tailored to focus on domestic workers in general, so that serious occupational hazards would be identified before the employee entered the household. This could be combined with an employer’s ongoing responsibility to ensure workplace safety.<sup>4</sup> A model of this nature could cover broader issues of compliance with regulations, especially for migrant live-in domestic workers.

## Access to courts and specialized tribunals

253. Lack of effective access to adjudicative machinery is a major drawback in most of the countries surveyed. In addition to their frequent exclusion from labour legislation, domestic workers face many practical barriers. Even when standards are in place, enforcement may be dependent upon the domestic worker filing an individual complaint. But domestic workers are often unaware of their entitlements. Moreover, exercising those entitlements can sometimes jeopardize both their jobs and, in the case of migrant workers, their migration status and prospects of permanent residency. This risk is real, even when conditions agreed to at the outset of a working relationship, such as wage rates and increased workloads and working hours, can be amended or disregarded.<sup>5</sup> The problem is compounded when domestic workers are undocumented and/or undeclared.

254. Despite these challenges, there are examples of courts taking important decisions enforcing domestic workers’ rights, sometimes basing rulings on general principles of law. For example, in Canada the British Columbia Court of Appeal (in *Mustaji v. Tjin & Tjin*) found that employers of a domestic worker not only had breached their contract of employment with the plaintiff but also had a fiduciary relationship which they had violated; and that separate actionable wrong entailed an award of punitive and exemplary

<sup>4</sup> See Smith, op. cit.

<sup>5</sup> ILO: *Gender and migration in Arab States*, op. cit., pp. 31–32.



damages beyond the damages that flowed from the breach of contract. The defendants, who had employed a domestic worker abroad, exploited the domestic worker once she accompanied them to Canada to continue caring for their four children and doing housekeeping for them. The Court rejected the employers' attempt to attribute blame to the plaintiff on the grounds that she did not object to the long hours of work seven days a week and had not demanded payment of her proper wages, or insisted on her right to entertain friends and to receive telephone communications.

255. South Africa has innovated with the creation of a Commission for Conciliation Mediation and Arbitration (CCMA). In a recent research report analysing 873 arbitration awards sampled from unfair dismissal and labour practice cases for the years 2003–05, it was found that, while domestic workers constituted 8.7 per cent of the workforce, they accounted for 12.1 per cent of referrals to the CCMA.<sup>6</sup> This suggests that the level of awareness of employment rights amongst domestic workers is high. The CCMA, through outreach efforts and education initiatives aimed at both employers and employees, has contributed to this increased awareness.<sup>7</sup>

256. In Argentina, the Domestic Service Tribunal of Buenos Aires functions as a court of first instance for employers and domestic workers. Although the Tribunal has limited territorial competence, extending chiefly to the capital city, its procedure is reportedly clear and simple and favours verbal accounts and conciliation. Decisions of the Tribunal are subject to appeal to a national labour tribunal judge.<sup>8</sup>

257. The institution of criminal procedures are a necessary part of ensuring decent work for domestic workers, notably in cases of physical and sexual abuse, trafficking and forced labour. In Malaysia, the recent criminal conviction under section 326 of the Penal Code against a domestic employer who brutally scalded her Indonesian domestic worker is an indication of a growing awareness of the importance of strong judicial response.<sup>9</sup> Training for police officers on ways to handle such complaints may also be particularly helpful.

## The importance of public awareness campaigns for the implementation of policies in respect of domestic workers

258. In some countries with specific regulations on domestic work, a range of services has developed in both the public and the private sector to explain requirements to employers. In Colombia, a web site<sup>10</sup> published an article in May 2008 on the risks of improperly contracting domestic services. The article included model contracts for domestic workers and offered an online calculator to facilitate payment of monthly salaries and appropriate deductions for contributions to health and pensions, as well as information on such matters as vacation pay.

<sup>6</sup> I. Macun, D. Lopes and P. Benjamin: *An analysis of Commission for Conciliation Mediation and Arbitration Awards*, Development Policy Research Unit, Working Paper 08/134 (University of Cape Town, 2008), p. 15.

<sup>7</sup> Hertz, *op. cit.*, p. 21.

<sup>8</sup> "Servicio doméstico: Hay 233.000 registros en blanco", in *La Nación* (Buenos Aires), 12 Aug. 2007.

<sup>9</sup> "Malaysian woman jailed for abusing Indonesia maid", in *International Herald Tribune*, 27 Nov. 2008.

<sup>10</sup> [www.actualices.com](http://www.actualices.com).

259. South Africa's Sectoral Determination 7 must be made available in full – or in the form of an official summary – whenever domestic workers are employed. The Sectoral Determination is written in plain language, with helpful guidelines to facilitate understanding of the provisions.

260. Media reports indicate that there has been a boom in the regularization of domestic workers in Geneva, Switzerland, following a public awareness campaign preceding the entry into force of a new law to combat work in the informal economy.<sup>11</sup> The campaign enabled individuals to realize that they were indeed employers and to appreciate the social cost of workplace accidents. The calculation and payment of wages and social contributions have also been simplified through the introduction of the service cheque.

261. Some countries facilitate access to justice by providing documentation in several languages. For example, Italy's national collective agreement has been published in full in Italian, and a summary has been translated into many of the languages of domestic workers: Albanian, Arabic, English, Eritrean, Filipino, French, Polish and Spanish. The Labour Department of Hong Kong, China, publishes information on workers' rights in Indonesian, Tagalog and Thai, in addition to Chinese and English, and distributes it free of charge at airports, immigration department offices, consulates, employers' associations, labour and immigrant workers' groups and information kiosks for foreign domestic workers. It also uses television and radio commercials and publicity videos, and has a free 24-hour telephone hotline.

262. The Philippines, which is a labour-sending country, has established a legal assistance fund, under its Migrant Workers Act of 1995, to be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress. Expenditure paid for by the fund includes the fees of foreign lawyers hired by the office of the Legal Assistant for Migrant Workers Affairs to represent workers facing charges abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses.

263. Safe houses and other shelters are a critical part of access to justice for migrant live-in domestic workers (see Chapter VI).

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<sup>11</sup> "Femmes de ménage: Boom des régularisations", in *Tribune de Genève*, 13 June 2008.

## Chapter VIII

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### **The collective organization of domestic workers: Decent work in action**

264. Freedom of association and the right to bargain collectively are cornerstone ILO principles. Around the world, domestic workers demonstrate their awareness of their status as employees and claim these fundamental rights by organizing collectively to improve their working conditions and earn respect. The ILO's supervisory bodies have long recognized that these two principles are valid for domestic workers too, and yet in most parts of the world this category of workers still lacks the legal protection to make them a reality.

#### **Domestic workers organizing around the world**

265. Domestic workers, being aware of their right to decent conditions of employment, are willing to act collectively wherever possible to bring about structural change and combat exploitative working conditions and discrimination. Although many factors, especially their isolation in individual households, make it difficult for them to organize, domestic workers are themselves best placed to negotiate the terms of their employment.

#### **National experience**

266. In various parts of the world, domestic workers have been seeking to exercise their rights through collective organization for decades. In Brazil, the first organization of domestic workers was formed in 1936 in Sao Paulo, and since 1988 article 7 of the Constitution has provided protection for their right to do so. Some of the associations founded in the 1960s have transformed themselves into trade unions, such as the Domestic Workers' Trade Union of the Municipality of Rio de Janeiro (STDRJ). The main organization, the National Federation of Domestic Workers (FENATRAD), was founded in 1997 and has 35 union affiliations. It promotes the visibility of domestic work under the banner "Respect begins at home". As in many countries, however, the isolation of domestic workers in households, their poor working conditions and low pay, as well as the correspondingly limited resources of their organizations, make it particularly difficult to organize. All this is compounded by the fact that the nature of domestic work is such that union representatives tend not to fight for time off during working hours in order to participate in union activities. There are even problems when unions and employers reach an agreement. For instance, the 15th Labour Tribunal for Campinas and the surrounding region annulled a collective agreement between a domestic workers' union and employers on the grounds that domestic work was non-commercial and non-productive, and that the employer could not therefore be classified as an "enterprise" for the purposes of unionization. The Tribunal added that, while the Brazilian Constitution provides certain guarantees to domestic workers, it does not

recognize their right to enter into collective agreements. The Higher Labour Tribunal subsequently confirmed this decision.

267. Despite the difficulties, the STDRJ plays a major role in raising domestic workers' awareness of their rights and facilitating their access to justice. Alongside three lawyers and two social workers, the STDRJ is staffed by nine former or current domestic workers, three of whom receive a pension while the others continue to work on a part-time basis either with a family or as cleaning staff. Indemnities received from the union are a small supplement to their earnings. Despite a structural inability to resolve conflicts other than those related to labour legislation, the association assists approximately 8,000 domestic workers each year, many of whom are referred to the labour courts. Even so, the STDRJ's clientele tends to perceive the union as more of an extension of the administration's social services than an organization for fighting for workers' rights. For some, merely obtaining a calculation of the amounts due after the annulment of an employment contract on a paper with the union's letterhead is sufficient for the domestic worker to convince a former employer to reach an out-of-court settlement. In other cases, the social worker may also intervene with the employer, often by telephone, to mediate an end to a conflict. STDRJ lawyers may also attempt conciliation between employee and employer. Nonetheless, and despite its limits, the STDRJ's main activity is to support domestic workers through the dispute resolution process, which for many can be a source of real emotional and financial stress.<sup>1</sup>

268. In Uruguay, the establishment of the new tripartite wage board to negotiate the wages and other conditions of domestic workers (see Chapter IV) gave further impulse to the consolidation of workers' and employers' organizations representing domestic workers and their employers. The Housewives' League of Uruguay, which was originally created to revalue unpaid domestic work, agreed to act as the employers' representatives on the wage board, while the National Trade Union Confederation agreed that the National Confederation of Domestic Workers, not yet registered as a trade union, could negotiate on their behalf. The bargaining platform presented by domestic workers included a 1 per cent increase in remuneration for every two years of seniority, five fully paid days of leave in the event of the death of a close relative or of an employee's marriage, payment of overtime work in accordance with the law, and compensation for a reduction in the number of hours worked in proportion to the legal entitlement in case of dismissal.

## Regional and international organizations

269. Founded in Bogota, Colombia, on what is now Domestic Workers' Day in much of the region (30 March 1988), the Latin American and Caribbean Confederation of Household Workers (CONLACTRAHO) has member organizations from 13 countries, plus Canada and an organization of migrant workers in Europe. Most of the members have been domestic workers for 15–20 years and are committed to promoting law reform to achieve equal rights and respect for recent legislative reforms in member States, notably Bolivia, Brazil and Peru. CONLACTRAHO also promotes cooperation with trade unions, some of which receive support for political training and lobbying for law reform. Some member unions are engaged in cross-border organizing, including collaboration with organizations in the Dominican Republic, a major migration-sending country.<sup>2</sup>

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<sup>1</sup> D. Vidal: "Le syndicat des travailleurs domestiques de Rio de Janeiro: un observatoire des transformations de l'emploi domestique au Brésil", in *Sociologie du travail*, No. 49, 2007, pp. 351–365.

<sup>2</sup> IRENE and IUF: *Respect and rights: Protection for domestic/household workers*, 2006, p. 40.

270. Domestic workers' unions have been pivotal in exposing the limits of otherwise progressive legislative change. In Peru, associations of domestic workers have banded together with trade unions, women's groups and a range of support centres to protest against the Household Workers Act No. 27986 of 2 June 2003, which they claim institutionalizes discrimination against domestic workers by according them less favourable rights than other workers. The campaign was led by the Centre for Household Workers' Capacity Building under the slogan, "We are the exception to labour rights". The Centre also assisted in the founding of the National Union of Household Workers in October 2006.

271. Associations of domestic workers in India have also lobbied for improvements in working conditions since shortly after independence in 1947. A 26-day hunger strike in 1959 by the General Secretary of the New Delhi-based All India Domestic Workers' Union (AIDWU) received a surge of support from domestic workers, and their call for a one-day solidarity strike led to two private members' Bills being introduced on minimum wages and the timely payment of wages, maximum working hours, weekly rest and annual leave periods, as well as the establishment of a servant's registry to be maintained by the local police, in deference to employers. The Bills were ultimately withdrawn, however, except for the establishment of a servant's registry. Further attempts at legislative reform ensued, but a 1977 attempt indirectly suffered a setback when the Supreme Court decided (in *Bangalore Water Supply & Sewage Board v. Rajappa*) that isolated workers cannot constitute "organized labour". Although the case was not specifically concerned with the status of domestic workers under the Industrial Disputes Act, it ruled that domestic workers also belonged to the category of workers that should not be recognized as "organized labour". Domestic workers' unions have continued to organize strikes, lobby for legislative change and provide support for members, but they have not been able to provide them with the security offered by the Industrial Disputes Act. A domestic workers' union in Bombay, the Gharelu Kamgar Sangh (GKS) founded by a domestic worker in 1971, is nonetheless affiliated to a powerful central union, the Bharatiya Mazdoor Sangh (BMS), which gives it a voice within the larger union movement – even though the GKS is not officially registered.<sup>3</sup>

272. In Namibia, domestic workers organized even during the colonial era when trade union membership was illegal. The struggle against colonialism gave women the confidence to work with men on an equal footing in the union. A 1994 ILO study reported that the Namibian Domestic Workers' Union (NDWU) had recruited approximately one-third of the 12,000 domestic workers in the country, 70 per cent of whom were women. The Namibia Broadcasting Corporation played an important role in informing workers of the NDWU's existence. The biggest challenge facing the Union was funding, given that the domestic workers were poor. It was financed at the time by the Trade Union Solidarity Fund of Finland and international donors such as Oxfam, so that it could identify alternative organizational and employment options, notably cooperatives.<sup>4</sup> A more recent publication, however, reports that many domestic workers today remain outside the realm of organized labour and that the NDWU is no longer in existence, low wages and job insecurity being the main causes of the Union's inability to recruit and retain members.

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<sup>3</sup> N. Cunningham: "Domestic workers in India: A case for legislative action", in *Journal of the Indian Law Institute*, No. 36/1, 1994, pp. 56–59.

<sup>4</sup> M. Hosmer Martens and S. Mitter (eds): *Women in Trade Unions: Organizing the unorganized* (Geneva, ILO, 1994), pp. 9–10 and 45–47.

273. In Trinidad and Tobago, section 2(3)(f) of the Industrial Relations Act of 31 July 1972, as amended, does not consider household assistants to be workers. Despite that, the National Union of Domestic Employees (NUDE) was founded in 1974 as a section of the Shipbuilders and Ship Workers' Allied Union (SSAU). It was registered as a union in its own right under the Trade Union Ordinance in 1982, although it was denied the right to bargain collectively. NUDE was founded by the late Clotil Walcott, a well-known gender-equality activist within the trade union movement whose mother was a domestic worker. Walcott emphasized linkages between international engagement and local activism. NUDE recognized the continuity between unpaid housework and paid domestic work and successfully lobbied for passage of the Unremunerated Work Act, 1995, which received presidential assent on 16 October 1996. The innovative legislation committed Trinidad and Tobago to measure and value unpaid work in national statistics. NUDE has been able to sway public perception of domestic work. In 1999, the Union won the right for domestic workers to bring minimum wage disputes to the Industrial Court. Together with the ILO's Port of Spain office, the Union worked with its members, the Ministry of Labour, the Ministry of Culture and Gender Affairs and the Ministry of Social Services, as well as NGOs and university researchers, to develop a 1998 National Strategy for Domestic Workers that calls for legal recognition; training of labour inspectors on domestic workers' issues; compensation for on-call work for live-in domestic workers; the provision of meals and board in addition to wages; social security for domestic workers; training for trade union members; and broad public dissemination of the rights of domestic workers in the public at large.<sup>5</sup>

274. In Italy, workers' and employers' organizations are engaged in collective bargaining and are the signatories to the national collective agreement. Regular procedures ensure that the terms of the agreement are kept up to date. Under Act No. 339/58, provincial commissions involving representatives of employers and employees (including domestic workers) are responsible for studying monthly remuneration and determining the value of meals and lodging, with a view to establishing appropriate regulations at the provincial level.

### Transnational action

275. Despite the obstacles facing migrant domestic workers, the Asian Domestic Workers' Union (ADWU) has operated in Hong Kong, China, where domestic workers enjoy some trade union freedoms, since its establishment in 1988. Membership comprises domestic workers chiefly from the Philippines and Thailand, but also from India, Indonesia, Malaysia, Nepal, Pakistan and Sri Lanka. Run by members who devote their statutory rest day to work as volunteers, ADWU offers general assistance and support for grievances.<sup>6</sup> It has also organized high-profile protests against legislative reforms that reduced domestic workers' minimum wages and denied them access to publicly funded health care.

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<sup>5</sup> M. Karides: "Linking local efforts with global struggles: Trinidad's National Union of Domestic Employees", in N.A. Naples and M. Desai (eds): *Women's activism and globalization* (Routledge, 2002), pp. 156–171; and tributes to Clotil Walcott on her death on 20 November 2007, at [www.globalwomenstrike.net/Trinidad/TributesToClotil.htm](http://www.globalwomenstrike.net/Trinidad/TributesToClotil.htm).

<sup>6</sup> M. Hosmer Martens and S. Mitter, op. cit., pp. 51–52.

## Trade unions and domestic workers

276. Trade unions have also played an active role in protecting the rights of domestic workers travelling abroad. In Sri Lanka, the National Workers Congress (NWC) has signed a cooperation agreement with unions in receiving countries, including the Jordanian General Federation of Trade Unions. The NWC seeks to inform domestic workers prior to departure of their rights in the receiving country, while the unions in the receiving countries provide them with support.

277. In Canada, the United Steelworkers (USW) and a migrant workers' association, Migrante-Ontario, announced on 10 June 2008 that they were establishing an independent workers' association with a section representing domestic workers in Ontario.<sup>7</sup> A similar initiative is under way in Quebec, with collaboration between USW and the Quebec branch of the Filipino Women's Organization. But, in addition to the obstacles associated with domestic workers' status as temporary migrants, there are legislative barriers to their organizing. In Ontario, section 3(a) of the Labour Relations Act, 1995, explicitly excludes domestic employees working in a private home from its coverage, thereby denying them protection of their constitutional right to freedom of association. Quebec, by contrast, has repealed provisions excluding domestic workers who are now covered by the Labour Code. However, while union membership would be feasible and benefit from some statutory protection, collective bargaining is impossible in practice because the Labour Code requires certification of a majority of employees of the same employer. An important development is that largely immigrant providers of home-care services, including housekeeping and home maintenance (snow removal, gardening, preparation of meals, etc.) have won limited unionization rights in some non-profit social economy enterprises. These enterprises are subsidized by the Quebec government to provide assistance with cleaning, primarily for senior citizens and persons with mild disabilities. The collective bargaining initiatives are nevertheless limited because of a set pay structure comprising a government monetary contribution per hour worked, plus ceilings on what the social economy enterprises can charge the recipients of their services. In other words, there is not much in the way of wages for unions to bargain over, and job turnover is relatively high. The social economy enterprises have also been criticized because they have led to the outsourcing of most home cleaning services from the state-run community health-care services.<sup>8</sup> Nonetheless, the structure itself provides a third party actor to: ensure that working conditions are reasonable; visit clients' homes to verify that working conditions are adequate; arrange for a new placement in the event of conflicts or abuse; and check that the products used by domestic workers are non-toxic.

278. Despite obstacles to unionization and collective bargaining, unions in various parts of the world have created information centres for migrant workers, including domestic workers. One noteworthy development is the cooperation agreement for establishing a trade union support centre for migrants that was reached in December 2006 between the Rerum Novarum Workers' Confederation of Costa Rica, the Sandinista Workers' Confederation of Nicaragua and the International Trade Union Confederation (ITUC). The agreement recognizes the importance of strengthening bilateral relations and international solidarity in order to defend migrant workers, who suffer marginalization, racism and xenophobia. It also promotes awareness-raising through trade union training,

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<sup>7</sup> United Steelworkers (USW) press release: "New association for home workers in Ontario", 10 June 2008, at [www.newswire.ca/fr/releases/archive/June2008/10/c2502.html](http://www.newswire.ca/fr/releases/archive/June2008/10/c2502.html).

<sup>8</sup> Y. Vaillancourt et al.: *L'économie sociale dans les services à domicile* (Presses universitaires du Québec, 2003).

as well as better communication and cooperation between employers' organizations in both countries to secure better working conditions and combat the exploitation of migrant workers. The agreement further sets out to establish clear links between the women's secretariats in both countries and ensure the ratification of relevant ILO Conventions.

279. A two-year Partnership Agreement on Migrant Labour between the Malaysian Trade Union Congress (MTUC) and the Indonesian Trade Union Congress (ITUC) was signed on 17 September 2006. The agreement encourages the unions to inform workers of the positive contribution of migrant labour in both the sending and the receiving country, and to promote collective agreements and enhance living standards. One of the trade unions' objectives is to engage in immediate action and problem-solving on behalf of migrant workers.

280. At the international level, trade union federations have played an important role in militating for domestic workers' rights. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) has been at the forefront of such initiatives, drawing heavily on support from Public Services International (PSI) and Union Network International (UNI). Through its international project "Protection for Domestic Workers!", the IUF has established an international network of support.<sup>9</sup> Moreover, IUF affiliates have had unions representing domestic workers as members, including Austria's Agricultural, Food Processing and Catering Union, Germany's Union of Food Processing and Catering Workers and Italy's Federation of Workers in Commerce, Tourism and Services, and have concluded collective agreements covering domestic workers.<sup>10</sup> The IUF has recently collaborated with key civil society actors on domestic work, including Women in Informal Employment: Globalizing and Organizing (WIEGO) and International Restructuring Education Network Europe (IRENE), to form a new international network with an open architecture. Its objectives include mapping and liaising with domestic workers' organizations and support groups worldwide so as to promote their visibility, capture the magnitude of the effort already being undertaken for domestic workers' rights, as well as encourage their involvement in a network, and facilitate the exchange of information and strategies. In Europe the European Trade Union Confederation (ETUC) has prepared and disseminated a model employment contract for domestic workers.<sup>11</sup>

281. The important role played by the ILO in empowering domestic workers will be discussed in Chapter IX.

282. There are many other examples that could be cited from around the world, many of which have been captured in first-person accounts in a recent report of the International Network of Domestic/Household Workers.<sup>12</sup> It is clear that, when given the opportunity, domestic workers seek to exercise their freedom of association and right to bargain collectively. They may prefer to organize with other domestic workers because of a

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<sup>9</sup> ILO: "Domestic work", in *Labour Education*, 2007/3-4, No. 148-149.

<sup>10</sup> M. Hosmer Martens and S. Mitter, *op. cit.*, p. 52.

<sup>11</sup> ETUC: "Out of the shadows: Organising and protecting domestic workers in Europe: The role of trade unions", at [www.etuc.org/a/2809](http://www.etuc.org/a/2809).

<sup>12</sup> IRENE and IUF, *op. cit.*



commonality of experience and the self-empowerment associated with speaking in their own voice – and because traditional unions may not have readily recognized them and granted them a place in the past. But the moment is critical, because international, regional and national unions are increasingly showing solidarity with domestic workers in their efforts to organize and to secure their labour rights and respect.

## The critical role of NGOs and other members of civil society

283. The challenges for domestic workers are manifold and their union structures depend on support not only from established unions and confederations but also from NGOs and other solidarity organizations. The crucial research and strategic work of international NGOs, in particular Human Rights Watch and Anti-Slavery International, as well as international networks like WIEGO and IRENE, have contributed significantly to understanding the complex dimension of domestic work in different parts of the world. These NGOs have focused in particular on migrant domestic work, child labour in domestic work and the links between domestic work, forced labour and human trafficking, as well as on ways to understand the gendered structure of the informal economy. In their efforts to promote meaningful legislative and policy reform, they have persuaded regional and United Nations-based human rights bodies to give these issues serious consideration. At a very basic level, they have taken up the challenge of gaining effective access to freedom of association and collective bargaining machinery.

284. Local NGOs have also played an important role. Among many other examples, an ILO study cites an unconventional but crucial prevention strategy deployed by the Centre Emmanuel in Senegal, with the participation of the International Programme on the Elimination of Child Labour (IPEC). The strategy is designed to counter the tendency of women to move to urban centres to escape the endless chores associated with village life and its monotony. The Centre has been able to lighten in part the burden of domestic work in rural areas by creating mechanized structures, such as the establishment of mills to relieve women from having to pound grain for food. Alternative sources of income have been developed, and a range of sporting and cultural activities have been introduced for young people which serve also as a means of making people aware of the perils of uninformed migration to the cities.

## Legal recognition of freedom of association and the right to bargain collectively

285. A major problem is that regulations dealing with domestic work tend to ignore trade union rights, as demonstrated earlier in the text by the decision of the Tribunal of Campinas in Brazil in 2004 to annul the collective agreement negotiated between domestic employers and unions.

286. The Committee on Freedom of Association has consistently upheld the view that those countries whose legislation denies domestic workers the right to organize should take the necessary steps to ensure that they are granted this right (see box VIII.1).<sup>13</sup>

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<sup>13</sup> ILO: *Freedom of association and collective bargaining*, Report III (Part 4B) (General Survey), ILC, 81st Session, Geneva, 1994, para. 59.

**Box VIII.1**

**The Committee on Freedom of Association and domestic workers**

In Case No. 2477 examined by the ILO's Committee on Freedom of Association, the Workers' Confederation of Argentina (CTA) indicated that in 2006 its delegates approved reforms to its by-laws to permit direct affiliation by domestic workers. In calling on Argentina to respond to the CTA's request for recognition, the Committee considered that Article 3 of Convention No. 87 entitled workers and employers to establish by-laws, including the right to affiliate directly with federations or confederations.

In Case No. 1900, the Committee not only reaffirmed that Convention No. 87 applied to domestic workers, but also that they should benefit from its guarantees. In response to the contention by Canada (Ontario) that a labour relations regime with collective dispute resolution machinery was inappropriate for non-industrial workplaces because of the non-structured nature of the workforce and the low margin of benefits, the Committee did not require the Government to regulate domestic workers by means of the same legislative instrument as all other workers but to introduce a specific regulation.

287. Considerable legislative progress has been made in this area, and a number of ILO member States now recognize domestic workers' right to freedom of association and to collective bargaining. For example, in the Republic of Korea, article 33 of the Constitution embodies fundamental labour standards including freedom of association, collective bargaining and collective action, and a domestic workers' federation has been registered under the enabling legislation, the Trade Union and Labour Relations Adjustment Act of 27 March 1997. In Ireland, section 5.12 of the code of practice reminds employers that, in accordance with Irish law, an employer may not restrict an employee's right to trade union membership consistent with the latter's constitutional right; the right to trade union membership is reaffirmed in section 1.2 of the code of practice. In Switzerland (Geneva), article 11 of the standard contract affirms that unionized workers, or workers who defend their rights, may not be subject to discrimination or fired on those grounds.

288. The greatest challenge for collective bargaining is how to give effect to the nominal rights of domestic workers living in relative isolation in individual households. The situation in Canada and the United States has been discussed above. In Australia, state-level industrial relations legislation implicitly cover domestic workers in several jurisdictions, but the legislation does not deal with the manner in which this right might be implemented. In Thailand, section 88 of the Labour Relations Act requires that workers be of Thai nationality to join a union.

289. Responding to this challenge calls for creativity. The member States that have been most successful in recognizing domestic workers' freedom of association and right to bargain collectively have gone beyond simply recognizing the right to organize and have put in place machinery that enables vulnerable workers such as domestic workers to exercise those rights in practice.

290. Models that have been particularly successful to date have allowed workers' associations and employers' associations to negotiate collectively, and have extended those resulting agreements to domestic workers across the territories covered. This is the approach in France, Italy and Belgium. A crucial aspect of the labour relations structure in these countries is the existence of employers' organizations that are able to bargain and thus to counterbalance the unions acting on behalf of domestic workers.

291. An example from the United States illustrates the relationship between organizing efforts and enabling legislation. Organizing started between 1987 and 1993, ordinances were passed between 1993 and 1997 and union contracts were signed between 1997 and 2000. Wage rates vary considerably but are reportedly still relatively low. But the

organizing effort was praised for dealing creatively and strategically with complex issues, and is seen as a model for organizing other care workers, including childcare workers (see box VIII.2).

**Box VIII.2**  
**Homeworkers organize in the United States**

Home care workers who assumed the main responsibility for care of the elderly were successfully unionized in California through a strategy that built on the AFL–CIO’s prioritization of grass-roots organizing. In addition to word of mouth, phone calls and door-to-door visits, this entailed union members visiting senior citizens’ centres, doctors’ offices, markets and churches. Workers’ support and the establishment of a workers’ centre to reach out to new recruits, together with a state-wide campaign to increase the minimum wage, were also part of the grass-roots organizing strategy. Once workers were reached it took little to convince them to join the union, notably because wages at the time were low. In Los Angeles alone, for example, 12,000 workers were signed up in less than six months between 1987 and 1988, and by 1999 Local 434B of the Service Employees International Union (SEIU) had a membership of approximately 74,000 workers.<sup>1</sup>

The second element of the strategy focused on legal reform to identify the employer with whom bargaining could take place. The Union wanted the employer to be a state agency. As the majority of California’s 74,000 mostly minority immigrant and female home care workers were paid through an agency of the state government, the SEIU’s Local 434B sought, first through the courts and then through massive lobbying, to establish a public authority with whom the Union could engage in collective bargaining. Once California Senate Bill 485 of 1992 and Senate Bills 35 and 1078 of 1993 had been passed, individual counties were enabled to issue public authority ordinances.

Thirdly, SEIU worked in coalition with service recipients, namely seniors and disabled persons. The disabled persons’ community sought an increase in funding for independent care providers to enable people to live at home, rather than funding for nursing homes. Initially, part of the community resisted the unionization of home care workers, out of fear that hours of service would decrease. But the organizing strategy succeeded, in part because the Union was able to establish that better working conditions for home care workers would also translate into a better quality of care for service recipients. While the employer was considered to be the state for the purposes of organizing, the recipients of health-care services retained some control over service delivery, which varied according to the specific nature of the county-level collective agreements.

<sup>1</sup> L. Delp and K. Quan: “Homecare worker organizing in California: An analysis of a successful strategy”, in *Labor Studies Journal*, No. 27, 2002.

## Domestic workers’ cooperatives

292. Although the abovementioned initiatives are important, many organizers of domestic workers believe that a more effective way of organizing domestic workers is through workers’ cooperatives. Cooperatives, as reflected in the ILO’s Promotion of Cooperatives Recommendation, 2002 (No. 193), can create structures that allow domestic workers to take control of their working lives and their working time. They break the daily isolation and reinforce solidarity.

293. There has been some experimentation with the cooperative model as it applies to domestic workers around the world. In the United States, two examples are noteworthy. In Maryland, grass-roots organizations such as the United Women of Maryland are forming workplace cooperatives to push for improved conditions for all workers; they also seek out Spanish-speaking domestic workers to inform them of their rights in their own language. As a cooperative, the United Women of Maryland seeks to provide decent work for its members through day-time cleaning services; 10 per cent of their

proceeds go to social justice organizations.<sup>14</sup> In New Mexico, the La Mesa Cooperative, run by domestic workers, provides full- and part-time cleaning jobs in homes, offices and yards. Following a not-for-profit model, it charges customers an hourly rate but is able to set standards and provide a degree of protection for the working conditions of domestic workers.<sup>15</sup>

294. In India, Nirmala Niketan is a ten-year old cooperative of tribal women from Jharkhand working as full-time, in-house domestic workers. It organizes girls and women to fight for their rights.<sup>16</sup> Since domestic work was not considered an acceptable vocation for registration as a cooperative society, it became part of Apna Nirman Mazdoor Cooperative Society Ltd, a registered cooperative of construction workers, and an active partner of the National Campaign Committee for Unorganized Sector Workers (NCC-USW).

295. From 2001 to 2003, Nirmala Niketan participated in the formation of the Domestic Workers' Forum in Delhi. It has also lobbied for coverage of domestic workers by the social security legislation for unorganized sector workers. In 2006 it started reaching out to other organizations working in Jharkhand and Delhi to protect domestic workers, a large number of whom are child workers – most of them tribal girls.

296. Also in India,<sup>17</sup> efforts are being made to establish a cooperative venture run by domestic workers near Bangalore, called Mahila Seva, which is associated with the Karnataka Domestic Workers' Union. Mahila Seva has a pool of skilled domestic workers who are placed as either part-time or full-time employees. It is a non-commercial venture that requires employers and employees to adhere to a contract that provides for the payment of a minimum wage and a mandatory leave period every week. The employer has to provide a bus pass if the distance to the place of work is over five kilometres, besides ensuring respectable working conditions. The workers can be trained in housekeeping by the Karnataka Domestic Workers' Union.

297. To conclude, domestic workers, when given the chance, are generally keen to represent themselves and to take control of their working lives by organizing. In many parts of the world they can still only do so in the shadow of the law. While member States, with the guidance of the ILO's supervisory bodies, are increasingly recognizing domestic workers' right to freedom of association and to bargain collectively, they require concrete technical cooperation assistance to develop meaningful strategies to ensure that domestic workers' rights can be effectively exercised. An international instrument can serve as a valuable guide in this process.

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<sup>14</sup> J.M. Zarembka: "America's dirty work: Migrant maids and modern-day slavery", in B. Ehrenreich and A. Russell Hochschild: *Global Woman*, p. 152.

<sup>15</sup> C.A. Castro: "Dying to work: OSHA's exclusion of health and safety standards for domestic workers", in *The Modern American*, Apr. 2008, p. 7.

<sup>16</sup> S. Madhok: "Trafficking women for domestic work", in *Infochange women* (Pune, India), Apr. 2008.

<sup>17</sup> "Domestic workers form cooperative", in *The Hindu* (Chennai, India), 26 Dec. 2007.

## Chapter IX

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### The ILO and other international initiatives

298. The ILO's technical assistance in the area of domestic work originated in the apartheid era in South Africa. During that period, the Organization singled out domestic workers among the categories of workers excluded from the coverage of labour and social security laws under the apartheid regime. This interest in domestic work in South Africa continued after the end of apartheid and was particularly prominent at the 80th Session of the International Labour Conference in 1993, which hosted the seventh sitting of the ILO Committee on Action against Apartheid.<sup>1</sup> The Committee stressed that domestic workers and workers in the public and agricultural sectors were not covered by the relevant legal provisions and called for the scope of the legislation to be extended. From these beginnings the work of the ILO has expanded to embrace concerns about domestic work in other countries and regions, focusing on three distinct areas of concern: migrant work, forced labour and child labour. This section singles out three themes that underlie much of this work: the "invisibility" of domestic work, the gap between law and practice, and the collective organization of domestic workers.

### The "invisibility" of domestic work

299. As has been indicated throughout this report, the needs and interests of domestic workers are often hidden and not fully integrated into the policy debate. Much of the work of the ILO has accordingly been centred on enhancing the visibility of domestic work by raising awareness of the extent and profile of domestic workers and of the nature of their working lives.

300. In part, this awareness-raising has been carried out through the traditional method of research, and its findings have been widely disseminated among key institutional actors and the public at large. Domestic workers, for example, were the subject of a series of studies in the Middle East<sup>2</sup> that generated data on the extent of domestic work, the processes of recruitment and employment contracts, and the profiles of the workers and their employers. The studies identified some of the causes of the vulnerability of women migrant workers in particular and suggested strategies to enhance legal, labour and social protection in the countries of both origin and destination. Rapid assessment studies have been widely conducted by the ILO in Paraguay and Peru,<sup>3</sup> and in Ghana,

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<sup>1</sup> ILO: *Record of Proceedings*, ILC, 80th Session, Geneva, 1993, p. 18/1.

<sup>2</sup> ILO: *Gender and migration in Arab States*, op. cit.

<sup>3</sup> ILO-IPEC: *Perfil del trabajo infantil doméstico en Brasil, Colombia, Paraguay y Perú: Análisis de las metodologías de evaluaciones rápidas de situaciones (RAS)*, Working Paper No. 4., Vol. I (Lima, 2004).

Ecuador and the Philippines.<sup>4</sup> Research-related activities have also involved building the capacity of researchers to carry out further work in this area. A project in Asia, for example, included a subregional training workshop on the prevention and elimination of exploitative child domestic work through education and training that was held in October 2004 for researchers and government officials.

301. In response to the long-standing perception of domestic work as a form of “women’s work” that does not require any real skills, qualifications or training, the ILO and its constituents have asserted the value of domestic work to both the families and the workers involved, their households and the economy as a whole. This theme is prominent, for instance, in the work carried out under the Formujer–Argentina programme that seeks to improve technical and vocational training policies with the goal of enhancing employability and the exercise of citizenship. Under this programme training courses have been offered to domestic workers in both job-searching techniques and domestic tasks. In Brazil, the Decent Work Agenda of Bahia and the Citizenship Programme for Domestic Workers promote strategies that include initiatives to promote the integrated social and professional qualifications of domestic workers, enhance their education, formalize domestic work and extend social protection to this category of workers.

302. The ILO’s work on child labour has highlighted the fact that certain forms of domestic labour inhibit children’s growth and development and has done much to foster an awareness of child domestic labour among parents and guardians. The project on combating child labour in the domestic work sector in East Africa (February 2003–June 2005),<sup>5</sup> for example, sought to sensitize parents and guardians to this issue and to encourage them to bring home children engaged in domestic work in other regions so as encourage skills training. A subregional project on the prevention and elimination of the worst forms of child domestic labour in Central America and the Dominican Republic (April 2001–December 2005) informed the families of child domestic workers of the risks and consequences of such work and the role of education in combating poverty.

303. The ILO’s work on domestic labour has involved creative forms of awareness raising that are tailored to local cultures, languages and modes of communication. In Cambodia, where a round-table discussion among senior government officials was broadcast on national television, the ILO worked with the Children’s Committee – a youth volunteer organization – to produce television programmes on child domestic work and to have educational films shown in cinemas. In Indonesia, the Jakarta Institute of Arts produced a series of short films on domestic labour, and a community radio station was established in one region to increase awareness of the trafficking of domestic workers. And in Thailand a range of advocacy techniques were developed, including a documentary film, a web site, comic books and a mobile exhibition for at-risk communities, and information material was distributed along the Lao–Thai border.

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<sup>4</sup> ILO–IPEC: *Girl child labour in agriculture, domestic work and sexual exploitation: Rapid assessments on the cases of the Philippines, Ghana and Ecuador*, Girl child labour studies, Vol. II (Geneva, 2004); ILO–IPEC: *A comparative analysis: Girl child labour in agriculture, domestic work and sexual exploitation: The cases of Ghana, Ecuador and the Philippines*, Girl child labour studies, Vol. 2 (Geneva, 2004).

<sup>5</sup> ILO–IPEC: *Combating child labour in the domestic work sector in East Africa*, Final Report, June 2005; and *Emerging good practices on action to combat child domestic labour in Kenya, Tanzania, Uganda and Zambia* (Dar es Salaam, ILO, 2006).

## Closing the gap between law and practice

304. The existence of a gap between the formal legal entitlements of domestic workers and their treatment in practice has frequently been recognized in the work of the ILO. In a review of a project on forced domestic work in Asia, it was suggested that a more rights-based approach would have been an advantage. The project, it was suggested, could have more firmly focused on empowering domestic workers to know and claim their rights, and on encouraging duty-bearers such as ministries, the police and recruitment agents to fulfil their obligations. This kind of insight has been incorporated into other projects that have attempted to improve the legal protection of domestic workers through awareness-raising, advice and assistance and institutional reform.

305. As part of the an ILO project with Costa Rica's Domestic Workers' Association (ASTRODOMES), pamphlets were produced on the labour and social security rights and duties of both domestic workers and their employers. These were distributed in supermarkets and on Sundays at the common meeting places of domestic workers, such as churches and plazas. These efforts were complemented by dissemination of the material through local media outlets. Other initiatives have attempted to bridge the gap between statutory entitlements and individual contracts concluded between domestic workers and their employers. A project in English-speaking Africa, for example, generated a code of conduct for child domestic workers that sets out the rights and obligations involved in this working relationship. The code contains a model employment contract that can be drawn on and adapted to govern individual working relationships.

306. In some projects, the focus has been on extending legal assistance to domestic workers to help them to claim and enforce their legal rights. In Thailand and the Philippines, legal assistance and rights-education have been provided to domestic workers. A project on the Greater Mekong subregion developed an information package on migrant workers' rights and responsibilities, and a shorter version is available in Thai and English, as well as in Burmese, Cambodian and Laotian.<sup>6</sup> These leaflets were distributed to employment offices. Furthermore, an action programme targeting the child domestic workers sector, which was part of the Philippines Time-Bound Programme on the Elimination of the Worst Forms of Child Labour, created a network of specialized crisis centres and telephone hotlines for abused child domestic workers in urban centres and a national system of registration of child domestic workers. This project also contributed to the large-scale registration of child domestic workers in the social security system.

307. Certain projects have focused on ensuring that the entitlements of domestic workers are reflected in their contracts of employment. In Lebanon, a project to promote the rights of women migrant domestic workers, for example, is trying to seek a broad recognition that migrant domestic workers are entitled to labour rights, and to establish mechanisms for regulating placement agencies and households. To these ends, a draft law has been designed to extend the relevant legislative measures to incorporate domestic workers. This legislative initiative is accompanied, however, by efforts to ensure that the rights adopted under legislation will be reflected in actual working relationships. The draft of a comprehensive rights-based standard labour contract has been drawn up and is intended to be adopted throughout Lebanon and signed by all domestic workers and their employers.

<sup>6</sup> ILO: *Reducing labour exploitation of children and women: Combating trafficking in the Greater Mekong subregion* (Bangkok, ILO, 2008).

308. Some projects have concentrated on providing assistance and support to officials who enforce legal measures on domestic work. In China, efforts have been made to improve the ethics of job agencies and prevent them from becoming the accomplices of traffickers – and a contact network of 200 agencies in Hunan and Guangdong provinces has been established. This project has revealed, *inter alia*, that limited pressure should be put on institutions, since the technical and administrative standards expected by the ILO are relatively advanced and should be achieved incrementally.

309. Other efforts have centred on the broader organization of enforcement institutions, and have involved efforts at the institutional level to create new mechanisms or to restructure existing agencies. For instance, as part of a project in East Africa, multi-sectoral child labour committees were decentralized from the district to the divisional, village and school level in order better to monitor and report on child domestic work, and it was mainstreamed as part of district and divisional development plans.

310. The work on institutional reform appears to have been particularly advanced in Latin America. One of the objectives of the project “Weaving networks against the exploitation of children and adolescents” in Chile, Colombia, Paraguay and Peru, for example, was to create legal, institutional and cultural frameworks appropriate for effective action against child domestic labour. This involved harmonizing national legislation with ILO Conventions, as well as improving and strengthening inspection and other monitoring activities. A particularly innovative element of this project was that it developed municipal registers of domestic workers. A subregional project on Central America and the Dominican Republic inspired the introduction of a Bill in Costa Rica to revise the Childhood and Adolescence Code. This Bill, which is still pending, includes provisions to formalize and legalize the presence of labour inspectors at the workplaces of domestic staff. In Panama, the Ministry of Labour adopted a 2005–06 workplan on child domestic workers that included an element of institutional strengthening; and in Guatemala, a Technical Monitoring Committee for the Prevention and Eradication of Child Domestic Labour in Private Homes was created, with a programme that focuses in part on monitoring children involved in domestic work.

## The collective organization of domestic workers

311. As highlighted in Chapter VIII, efforts to facilitate the collective organization of domestic workers are essential to improving the status of this segment of the workforce. The ILO has taken a number of initiatives to achieve this goal and, in so doing, has built up experience and gained valuable insights that will help it in its attempts to protect these workers.

312. The work of the ILO has been directed towards ensuring that issues of concern to domestic workers are reflected in the agendas of workers’ organizations. This was an outcome of the Declaration of Montevideo, adopted in December 2005, in which the participating trade unions and domestic workers’ associations from Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, Bolivarian Republic of Venezuela, Uruguay and Spain pledged to place domestic work on the agenda of the national trade union movements to guarantee them equal rights and improved working conditions.

313. Other initiatives have focused on building the capacity of employers’ and workers’ organizations to represent domestic workers and assist them in other ways. In Cambodia trade unions have raised awareness about domestic work among their members and have established an inter-union committee on child domestic work, which has developed a countrywide policy on the issue. And, in the Philippines, efforts have been made to



recognize and federate national domestic workers' unions. In some contexts, efforts to organize domestic workers have formed part of broader initiatives on the informal economy, as has been the case in West Africa where the ILO has supported social partner and civil society organizations that organize workers engaged in informal work.

314. The ILO has also offered support in setting up unions specifically for domestic workers and in sustaining their work – and this has resulted in a number of initiatives targeted directly at domestic workers. In the United Republic of Tanzania, for example, the Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU) has worked with the Government in establishing a sectoral minimum wage council for domestic workers. It has also conducted campaigns to raise awareness of this work and inform domestic workers of their legal rights. And, in Latin America, the ILO has collaborated with the Latin American and Caribbean Association of Domestic Workers (CONLACTRAHO), which has developed a broad array of complementary initiatives on domestic work.

315. The experience of the ILO has also highlighted the significance of the exchange of information and experience among trade unions and between trade unions and other organizations. An interregional workshop held in Geneva in February 2006 revealed the common approach that trade unions have towards domestic work, and underlined their role in ensuring the recognition and protection of domestic workers, establishing collective bargaining mechanisms and conducting awareness-raising campaigns. The need to build alliances with other organizations has also become apparent. In the Philippines, for instance, a project aimed at organizing domestic workers confirmed the need to establish links between migrant and local domestic workers' groups, as well as between trade unions. In Uganda and Zambia, efforts have been made to strengthen partnerships between trade unions, government bodies and NGOs. In the United Republic of Tanzania, CHODAWU has established child domestic labour units from the village to the national level and works closely with local and other government departments, police authorities, NGOs and community-based organizations.

## Other international action on domestic workers

316. The ILO has not been the only United Nations agency involved in raising awareness of the problems associated with domestic work. The topic has also been covered by numerous publications and reports of various United Nations bodies.

317. A number of Special Rapporteurs of the United Nations on the Human Rights of Migrants have commented on this issue in turn. In 2004, the Special Rapporteur at the time observed that, in developed countries, migrant domestic workers were becoming indispensable to enable women in these countries to advance in employment and in society. She pointed out a number of factors that made migrant domestic workers an extremely vulnerable category, and put forward a series of recommendations to the States of origin and destination on measures that could take to ensure the protection of these workers at all phases of migration, from recruitment to their return home.<sup>7</sup> She also highlighted the need for watchdog mechanisms and adequate monitoring by governments, recruiting agencies and consulates. In December 2006 the Special Rapporteur, after visiting Indonesia, described the especially harsh conditions under which women domestic workers were employed and made recommendations to the

<sup>7</sup> United Nations: *Specific groups and individuals: Migrant workers*, Report of the Special Rapporteur, Ms G. Rodríguez Pizarro, submitted pursuant to Commission on Human Rights Resolution 2003/46, Commission on Human Rights, Sixtieth Session, Geneva, 2004 (doc. E/CN.4/2004/76).

Indonesian Government,<sup>8</sup> while another Special Rapporteur raised the issue of mistreatment of migrant women working as domestic workers in Bahrain.<sup>9</sup>

318. The United Nations Committee on the Elimination of Racial Discrimination has also been active on this matter. In March 2004, after reviewing its periodic report on Lebanon, it expressed serious concern at the situation of migrant workers in practice – in particular domestic workers – who do not benefit fully from the protection of the Labour Code.<sup>10</sup>

319. In 2006, The United Nations Department of Economic and Social Affairs, in collaboration with UNICEF, presented a paper on the vulnerability and exploitation of child domestic workers.<sup>11</sup> It was a review of the main problems related to domestic work, especially those of young workers, and included a checklist of measures that could be taken to protect them.

320. UNICEF has also worked with various organizations to tackle issues directly or indirectly related to domestic work. It joined forces with the Nigerian National Agency for Prohibition of Traffic in Persons and Other Related Matters to reunite trafficked domestic workers with their families and provided vocational and literacy classes for hundreds of domestic workers.<sup>12</sup> In Lesotho, the agency commissioned a survey which revealed the serious challenges imposed on children as they become increasingly reliant on various forms of labour to support their HIV/AIDS-stricken families.<sup>13</sup> And, in Guinea, UNICEF provides equipment, assistance and consulting advice to the Ministry of Education in order to ensure that girls are equipped with skills and knowledge that will keep them out of domestic work.<sup>14</sup>

321. The Economic Commission for Latin America and the Caribbean (ECLAC) has contributed to the debate as well. In 2003, an ECLAC report on time-use surveys touched on a number of issues related to domestic work and put forward several recommendations for measuring the distribution of paid and unpaid work at the country level.<sup>15</sup> Four years later, through the Quito Consensus, it recognized the social and economic value of the unpaid domestic work performed by women. Its member States agreed to equalize the labour conditions and rights of domestic work with those of other types of paid work in accordance with ratified ILO Conventions and international

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<sup>8</sup> UNOG: “Special Rapporteur on human rights of migrant ends visit to Indonesia”, 27 Dec. 2006, at [www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/87B80737ACF31E93C1257251004FD873?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/87B80737ACF31E93C1257251004FD873?OpenDocument).

<sup>9</sup> Bahrain Centre for Human Rights: *UN Report of the Special Rapporteur on the human rights aspect of the victims of trafficking in persons*, 27 Mar. 2006, at [www.bahrainrights.org/en/node/385](http://www.bahrainrights.org/en/node/385).

<sup>10</sup> United Nations Committee on the Elimination of Racial Discrimination: *Concluding observations of the Committee on the Elimination of Racial Discrimination* (New York, Apr. 2004).

<sup>11</sup> C. Flores-Oebanda: *Addressing vulnerability and exploitation of child domestic workers: An open challenge to end a hidden shame*, Expert Group Meeting organized by the UN Department of Economic and Social Affairs, Division for the Advancement of Women, in collaboration with UNICEF at the UNICEF Innocenti Research Centre, Florence, 25–28 September 2006.

<sup>12</sup> United Nations Integrated Regional Information Network (IRIN): “Nigeria: Domestic workers or modern day slaves?”, 21 Sep. 2006, at [www.wow.gm/africa/niger/article/2006/9/21/nigeria-domestic-workers-or-modern-day-slaves](http://www.wow.gm/africa/niger/article/2006/9/21/nigeria-domestic-workers-or-modern-day-slaves).

<sup>13</sup> IRIN: “Lesotho: Abuse of child domestic workers uncovered”, 1 Dec. 2004, at [www.irinnews.org/report.aspx?reportid=52274](http://www.irinnews.org/report.aspx?reportid=52274).

<sup>14</sup> UNICEF: “Centres provide a second chance for education in Guinea”, 19 Oct. 2007, at [www.unicef.org/infobycountry/guinea\\_41281.html](http://www.unicef.org/infobycountry/guinea_41281.html).

<sup>15</sup> United Nations Economic Commission for Latin America and the Caribbean (ECLAC): *Report of the Meeting of Experts on time-use surveys*, Santiago, Chile, 11 and 12 December 2003.

standards of women's rights, and to eradicate all forms of exploitation of domestic work by young girls and boys.<sup>16</sup>

322. In 2002 the International Organization for Migration (IOM), in cooperation with European Union institutions, jointly organized a conference on preventing and combating trafficking in human beings, an issue that has direct relevance to domestic service.<sup>17</sup>

323. The World Bank explored domestic work within the context of a broader study aimed at understanding the relationship between informal work, lack of social protection and gender in Uruguay. The study, carried out in 2008 in cooperation with the National Women's Institute (INAMU),<sup>18</sup> recommends that the implementation gap between legal entitlements and the exercise of labour rights by domestic workers be addressed within broader policy frameworks on child care and care of the elderly. Among regional development banks, the Asian Development Bank addressed the issue in the framework of the development implications of remittances of migrant workers.<sup>19</sup>

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<sup>16</sup> ECLAC: Tenth Session of the Regional Conference on Women in Latin America and the Caribbean, Quito, Ecuador, 6–9 August 2007.

<sup>17</sup> International Organization for Migration (IOM): European conference on preventing and combating trafficking in human beings: Global challenge for the 21st century, Brussels, 18–20 September 2002.

<sup>18</sup> INAMU/World Bank: *Uruguay: Ampliando las oportunidades laborales para las mujeres* (Washington, DC, 2008).

<sup>19</sup> Asian Development Bank: *Technical assistance. Final report: Enhancing the efficiency of overseas workers' remittances* (July 2004); and *Labour migration and trafficking: A gender and human rights approach* (Manila, 29 May 2007).

## Chapter X

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### **Towards international standards on decent work for domestic workers**

324. This review has shown that domestic work is one of the oldest and most important occupations for millions of workers around the world, especially for low-educated women. Domestic work is essential for the economy outside the household to function and, yet, it is undervalued and poorly regulated. It is undervalued because the skills and competencies associated with it are considered to be a woman's innate, rather than acquired, capacity. It is poorly regulated because it is not regarded as "real" work, and, where the law protects it, enforcement is often problematic. Decent work deficits for this large category of workers are huge; inaction on this front would both delay the realization of decent work for all workers and compromise the achievement of gender equality at work.

325. One of the most important findings in the review of law and practice is that domestic workers' conditions do not improve unless there is concerted action to improve the legislative framework – and that is a sobering insight. However, one of the most encouraging discoveries is that creative experimentation in regulating the occupation is under way in a broad cross-section of member States around the world. Studies confirm that well-crafted regulatory mechanisms with a suitable enforcement machinery make an important difference in the everyday lives of domestic workers – and they convey the message that domestic workers are indeed workers who deserve both rights and respect.

326. New international instrument(s) on this historically disadvantaged group would be an opportunity for the ILO to provide appropriate normative and technical guidance and to promote the systematic gathering of statistical information about domestic work.

### **The value added of (a) new international instrument(s)**

327. Domestic workers already have rights under existing international labour standards. What is lacking is the application of decent work principles to their special employment relationship and the availability of clear and comprehensive guidance for guaranteeing them access to decent employment conditions. This means promoting action at several levels of governance. At the same time, the ILO's constituents have the responsibility to ensure that any new standards preserve domestic workers' existing rights. New instrument(s) are therefore needed that both reaffirm the international protections to which domestic workers are already entitled and contribute a real value added.<sup>1</sup>

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<sup>1</sup> A. Blackett, *op. cit.*, pp. 211–237.

## Proposed Convention and proposed Recommendation

328. At its 301st Session (March 2008), the Governing Body decided to put on the agenda of the 99th Session (2010) of the International Labour Conference an item on decent work for domestic workers for a double discussion, with a view to adopting international labour standards, possibly in the form of a Convention supplemented by a Recommendation.

329. The Office considers that the objectives of the new instrument(s) should be to:

- ensure broad coverage to reach as many domestic workers as possible;
- facilitate wide, immediate ratification and continuous improvement of domestic workers' working and living conditions and access to social security; and
- provide sufficient guidance and incentives to enable the provisions to be meaningfully implemented into practice.

330. To ensure these goals, the Office considers that the main approach to standard setting should be twofold. First, the instrument(s) should seek to recall that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided. In this regard, the Office feels that a Convention should emphasize that domestic workers enjoy fundamental principles and rights at work, and recalls the importance of equality of treatment between domestic workers and other wage earners with respect to their working and living conditions and access to social security, including maternity protection.

331. Second, the proposed new instrument(s) should identify and address the special conditions in which domestic work is carried out that make it desirable to supplement the general standards by standards specific to domestic workers, to enable them to enjoy their rights fully. The Office privileges strategies that, as described in the report, are simple, supportive and smart. In this regard, both a proposed Convention and a proposed Recommendation would identify elements of domestic workers' working and living conditions and access to social security that require special attention.

332. The provisions of a Convention would build on many of the national regulatory innovations in law and practice identified in this report that reflect the specificity of domestic work. For example, it would seek to circumscribe the practice of payment in kind, offer particular guidance on identifying, limiting and appropriately calculating working time, and address food and accommodation for live-in domestic workers. A Convention would also take into account some particular vulnerabilities of domestic workers, including age and migration status, and identify standards specific to them. A number of standards are formulated with flexibility devices that would allow some Members to promote progressive implementation, notably of social security standards.

333. In this respect, the nature of ILO Conventions should be recalled. While Conventions give rise to obligations upon ratification, they normally provide flexibility through clauses which contain various options as to how they should be applied. Some Conventions contain provisions establishing rights and obligations. Others are promotional in nature, intended to guide the actions of member States in formulating and

progressively putting measures into practice in a long-term process, such as the formulation and application of a policy on a particular topic.<sup>2</sup>

334. Given the significance of deeply rooted informal practices that disadvantage domestic workers in their employment relationship, the proposed instruments need to offer sufficient guidance to ILO Members to ensure that coverage is real, rather than being only a commitment on paper. The Office considers that many of these explanatory standards would usefully be found in a Recommendation. The Recommendation also offers standards that would enhance the protections found in the Convention.

335. The ILO constituency might alternatively consider the prospect of a Convention, containing both binding and non-binding parts.

### Why the possibility of a Convention combining binding and non-binding parts?

336. A Convention combining binding and non-binding parts would reaffirm the coverage of domestic workers under existing international labour standards, while providing clear targets that take into account the specificity of the domestic work relationship and offer options as to how the decent work objectives might be achieved. Such a proposed Convention could promote a multi-level approach to governance, establishing targets and offering member States options as to how to attain their goals. It could provide useful guidance while respecting the scope for local, national, bilateral and regional action by governments and by representative organizations of domestic workers and domestic employers. The main reason for such a Convention is that, as noted in Chapter II, international labour standards on many key subjects, including fundamental principles and rights at work, already apply to domestic workers. The challenge here is to move beyond the formal – but largely invisible – inclusion of domestic workers in labour legislation and towards the specific regulation of their employment and their real visibility.

337. The leading example of a Convention combining binding and non-binding parts is the Maritime Labour Convention, 2006, which consolidates a multitude of complex, detailed ILO standards regulating the maritime sector. The regulation of domestic workers, whose inclusion in a plethora of key international labour standards is at least implicit, is at the opposite end of the spectrum. Strikingly, the Maritime Labour Convention deals with a range of issues that parallel the working environment of domestic workers. For example, it provides that workers obliged to reside far away from their families at their place of employment should have the opportunity to take paid home leave on a periodic basis. The substantive standards laid down in that Convention may provide a basis for identifying appropriate standards for domestic workers in individual households.

338. The following are some of the insights gleaned from available studies on the subject:<sup>3</sup>

- Careful thought needs to be given to the appropriate level at which domestic work should be governed. This report has documented the extent to which domestic

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<sup>2</sup> Examples of such promotional instruments are the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Occupational Health Services Convention, 1985 (No. 161).

<sup>3</sup> The reflections in this part draw heavily on the insights in B. Guha-Khasnobis, R. Kanbur, and E. Ostrom (eds): *Linking the formal and informal economy: Concepts and policies* (Oxford University Press, 2007).

work is both deeply localized – isolated as it is in individual homes – and characterized by considerable labour migration across national borders. Regulating domestic work must offer a mix of international, regional and bilateral governance initiatives (notably, fostering collective bargaining) which are as close as possible to the reality experienced by domestic workers.

- Model contracts are a good example of the kind of initiative that can effectively buttress existing legislation but they are of little help if the regulatory framework and minimum standards do not exist. The need for a regulatory framework to improve domestic workers' employment conditions is the main theme of this report.
- The introduction of laws and regulations should not only fine-tune employment conditions but also address abusive practices. Any new legislation on the subject must therefore take into account the distinctive character of domestic work and address it meaningfully through regulation that promotes equality with other wage earners.
- Clarity and simplicity are of the essence. Regulation should not be overly complex or unnecessarily detailed. It should seek to build the capability of domestic workers to understand and defend their own rights.
- Conferring a formal right is not enough of a policy intervention to ensure the formal recognition of domestic work. For domestic work to be brought into the formal economy, the rights that go with it need to be both respected and enhanced.

339. The questionnaire that follows seeks to elicit views on the nature and content of (a) comprehensive standard(s). The views expressed in reply to the questionnaire, as well as proposed conclusions on the structure and content of the instrument(s), will be provided in a second report. Both the law and practice report and the second report will be the basis for discussions on the standard-setting item, decent work for domestic workers, by the International Labour Conference in 2010 (the first discussion). The second discussion would take place at the 100th Session (June 2011) of the International Labour Conference, with a view to adopting the standard(s). The questions reflect to some extent the Office's perception of whether a particular provision should be included in a Convention (which would be binding for Members which ratify it) or in a Recommendation (which would not be binding but would provide guidance). However, if respondents believe that a provision does not belong in the Convention but rather belongs in the Recommendation, or vice versa, they should state so clearly.

340. With regard to article 38, paragraph 1, of the Standing Orders of the Conference, governments are requested to consult the most representative organizations of employers and workers concerned before finalizing their replies to this questionnaire, to give reasons for their replies and to indicate which organizations have been consulted. Governments are also reminded of the importance of ensuring that all relevant departments are involved in the present consultative process, including the departments responsible for women's affairs and migration. The experience gained by the Office in obtaining the information provided in the law and practice report also points to the value of consultations, where possible, with regional and local authorities within member States.

## A technical cooperation programme

341. The effective implementation of the proposed instrument(s) would require the Office to disseminate and promote them proactively. Moreover, the traditional

monitoring of these instrument(s) by the ILO supervisory bodies would need to be backed by extensive cooperation from the Office, in order to assist Members that are genuinely striving to promote decent work for domestic workers. The quality and quantity of the ILO's technical cooperation in respect of child domestic workers is an excellent indication of the progress that can be made to secure decent work for domestic workers where there is a specific international instrument that sets priorities and provides a framework for member States to act. The ILO can then help its Members to collect statistical data on paid domestic work, which is as important to measuring the impact of legislative initiatives as it is sorely lacking.

342. The Office can also broaden its existing support to member States in the drafting of labour legislation. In addition to the three cases of legislation under preparation that were highlighted in Chapter III, the ILO has been informed of several other initiatives. In addition, initiatives are regularly reported in the light of the CEARC's observations and of court decisions. In Saudi Arabia, for instance, a draft regulation on domestic workers is under preparation, with a view to protecting the dignity of domestic workers.<sup>4</sup> Angola has indicated that it is drafting provisions on domestic workers to be inserted into its Labour Code.<sup>5</sup> In Jordan, it has been proposed that domestic workers should be governed by the Labour Code and that appropriate regulations, instructions and decisions be implemented.<sup>6</sup>

343. Building on the new international standard, the ILO, subject to the availability of resources, would be in a position to assist member States in the drafting of legislation that is suited to their national conditions. Particular attention should be paid to regulations that recognize and respect domestic workers' rights as workers. It is a matter of equality of opportunity and of treatment. To a large extent this kind of focused regulation is the province of legislators and actors engaged in collective bargaining, who are closer to – and therefore better able to capture – the reality of domestic workers' employment conditions. The ILO's technical assistance would be particularly important in helping its Members introduce legislative reform that is not confined to the industrial relations approach. Domestic workers are workers like any others, but to be meaningful the labour standards concerning them must be quite specific in their application. At the same time, the ILO could assist member States by compiling comparative data on how to draft legislation in plain language, so as to ensure that the domestic workers themselves can understand their rights and that employers can respect them.

344. The Office can also promote the effective implementation of legislation so that it has a genuine impact on domestic workers' lives. This kind of capacity building would be a long-term undertaking.

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<sup>4</sup> ILO: RCE, 2007, p. 216.

<sup>5</sup> CEACR: direct request, Angola, Convention No. 111, 2008.

<sup>6</sup> CEACR: direct request, Jordan, Convention No. 111, 2008.



# Questionnaire

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At its 301st Session (March 2008), the Governing Body decided to put on the agenda of the 99th Session (2010) of the International Labour Conference an item on decent work for domestic workers for a double discussion leading to the possible adoption of a Convention supplemented by a Recommendation.

The purpose of the questionnaire is to request the views of member States on the scope and content of the proposed instruments, after consultation with the most representative organizations of employers and workers. Replies received should enable the Office to prepare a report for the Conference.

## I. Form of the international instrument or instruments

1. *Should the International Labour Conference adopt an instrument or instruments concerning decent work for domestic workers?*

*Comments:*

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2. *If so, should the instrument or instruments take the form of :*

- (a) *a Convention*
- (b) *a Recommendation*
- (c) *a Convention supplemented by a Recommendation or*
- (d) *a Convention comprising binding and non-binding provisions?*

*Comments:*

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## II. Preamble

3. *Should the preamble of the instrument or instruments recall that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided?*

*Comments*

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4. *Should the preamble of the instrument or instruments refer to the special conditions in which domestic work is carried out that make it desirable to supplement the general standards by standards specific to domestic workers, to enable them to enjoy their rights fully?*

*Comments:*

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5. *Should other considerations be included in the preamble? Please specify.*

*Comments:*

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## III. Definitions

6. *For the purposes of the instrument or instruments,*  
(a) *should the term “domestic work” mean work performed in and for a household and include housekeeping, child care and other personal care?*

*Comments:*

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- (b) *should the term “domestic worker” mean any person who undertakes domestic work, whether on a full-time or part-time basis, for remuneration?*

*Comments:*

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(c) *should the term “standby” mean periods during which a domestic worker is not free to dispose of time as the worker pleases?*

*Comments:*

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(d) *should the term “employer” include intermediaries?*

*Comments:*

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(e) *should any other terms be defined by the instrument or instruments? If yes, please provide particulars.*

*Comments:*

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#### IV. Scope

7. *Should the instrument or instruments apply to all domestic workers?*

*Comments:*

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8. *Should the instrument or instruments provide for the possible exclusion of limited categories of domestic workers and, if so, under what circumstances? Please specify.*

*Comments:*

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## V. Content of a Convention

### A. Fundamental principles and rights

9. *Should the Convention provide that each Member should take measures to ensure the enjoyment by domestic workers of the fundamental principles and rights at work, namely:*

(a) *freedom of association and the effective recognition of the right to collective bargaining;*

*Comments:*

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(b) *the elimination of all forms of forced and compulsory labour;*

*Comments:*

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(c) *the effective abolition of child labour; and*

*Comments:*

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(d) *the elimination of discrimination in respect of employment and occupation?*

*Comments:*

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10. *Should the Convention stipulate a minimum age for admission to domestic work? Please specify.*

*Comments:*

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11. *Should the Convention provide that the minimum age of employment for migrant domestic workers should be 18?*

*Comments:*

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**B. Working and living conditions and social security**

12. *Should the Convention provide that each Member should take measures to ensure that domestic workers, like all wage earners, have:*

(a) *fair terms of employment as well as decent working conditions and, where applicable, living conditions;*

*Comments:*

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(b) *a safe and secure workplace; and*

*Comments:*

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(c) *social security, including maternity protection?*

*Comments:*

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13. *Should the Convention provide that employers should inform domestic workers of their terms and conditions of employment, in particular:*

(a) *the name and address of the employer;*

*Comments:*

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(b) *the type of work to be performed;*

*Comments:*

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(c) *the rate of remuneration, method of calculation and pay interval;*

*Comments:*

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*(d) the normal hours of work;*

*Comments:*

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*(e) the duration of the contract;*

*Comments:*

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*(f) the provision of food and accommodation, if any;*

*Comments:*

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*(g) the period of probation, if applicable; and*

*Comments:*

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*(h) the terms of repatriation, if applicable?*

*Comments:*

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14. *Should the Convention provide that each Member should take measures to ensure that domestic workers are protected against all forms of abuse and harassment, including physical, verbal, sexual and mental abuse and harassment?*

*Comments:*

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15. *Should the Convention provide that each Member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists?*

*Comments:*

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16. *Should the Convention provide that all domestic workers should be paid for their work at no greater than monthly intervals?*

*Comments:*

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17. *Should the Convention allow partial payment of wages in kind? If so, please specify any circumstances and limits, in particular whether a domestic worker can refuse such in kind payments.*

*Comments:*

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18. *Should the Convention provide that each Member should ensure that domestic workers are not required by national law or regulation to reside in the home of the employer?*

*Comments:*

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19. *Should the Convention provide that, when accommodation and food are provided by the employer, the accommodation should be safe and decent, and should respect the worker's privacy, and the meals should be of good quality and sufficient quantity?*

*Comments:*

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20. *Should the Convention provide that each Member should ensure that domestic workers have normal hours of work, overtime compensation, periods of daily and weekly rest, and annual leave as determined by national laws and regulations, and which are not less favourable than those applicable to other wage earners?*

*Comments:*

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21. *Should the Convention provide that each Member should ensure that domestic workers are not bound to remain in the household during the period of daily or weekly rest?*

*Comments:*

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22. *Should the Convention provide that periods of standby should be regarded as hours of work to the extent determined by national laws and regulations, collective agreements or any other means consistent with national practice?*

*Comments:*

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23. *Should the Convention provide that each Member should take measures to ensure that domestic workers enjoy at least 24 consecutive hours of rest in every seven-day period?*

*Comments:*

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24. *Should the Convention provide that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of occupational safety and health? Should the Convention provide that such measures may be applied progressively? Please elaborate.*

*Comments:*

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25. *Should the Convention provide that each Member should take measures to ensure the application of social security schemes, including maternity protection, to domestic workers? Should the Convention provide that certain measures may be applied progressively? Please elaborate.*

*Comments:*

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**C. Employment agencies**

26. *Should the Convention provide that each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, particularly migrant domestic workers, are effectively protected against abusive practices?*

*Comments:*

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**D. Migrant domestic workers**

27. *Should the Convention provide that national laws and regulations should require that migrant domestic workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders?*

*Comments:*

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28. *Should the Convention provide that migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract?*

*Comments:*

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29. *Should the Convention provide that each Member should prohibit employers from keeping in their possession domestic workers' travel and identity documents?*

*Comments:*

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30. *Should the Convention provide that Members should cooperate with each other to ensure that migrant domestic workers enjoy benefits comparable with those of nationals?*

*Comments:*

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**E. Implementation and enforcement measures**

31. *Should the Convention provide that each Member should ensure that domestic workers have easy access to fair and effective dispute settlement procedures? Please specify.*

*Comments:*

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32. *Should the Convention provide that each Member should ensure that arrangements are in place to ensure compliance with national laws and regulations applicable to domestic workers, such as labour inspection services, with due regard to privacy? Please elaborate.*

*Comments:*

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33. *Should the Convention provide that its provisions should be applied by laws, regulations, collective agreements or other measures consistent with national practice, by extending existing measures to cover domestic workers, adapting them, where appropriate, and developing specific measures for domestic workers?*

*Comments:*

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34. *Should the Convention provide that, in implementing its provisions, each Member should consult the employers' and workers' organizations concerned?*

*Comments:*

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## VI. Content of a Recommendation

### A. Fundamental principles and rights

35. *Should the Recommendation provide that the competent authority should take or support measures to promote capacity building for representative organizations of employers and domestic workers, including collective bargaining?*

*Comments:*

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36. *Should the Recommendation provide that, when regulating working and living conditions, Members should give special attention to the needs of young domestic workers, including in respect of working time and restrictions on undertaking certain types of domestic work? If yes, please specify.*

*Comments:*

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### B. Working and living conditions and social security

37. *Should the Recommendation provide that the terms of employment should be provided in writing?*

*Comments:*

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38. *Should the Recommendation provide that additional particulars should be included in the terms of employment, such as:*

- |   |                          |
|---|--------------------------|
| <i>(a) the starting date of the employment</i>                              | <input type="checkbox"/> |
| <i>(b) a detailed list of duties</i>  | <input type="checkbox"/> |
| <i>(c) annual leave</i>   | <input type="checkbox"/> |
| <i>(d) daily and weekly rest</i>  | <input type="checkbox"/> |
| <i>(e) sick leave and any other personal leave</i>                          | <input type="checkbox"/> |
| <i>(f) the rate of pay for overtime work</i>                                | <input type="checkbox"/> |
| <i>(g) any other cash payments to which the domestic worker is entitled</i> | <input type="checkbox"/> |
| <i>(h) any in-kind allowance and its cash value</i>                         | <input type="checkbox"/> |

- (i) details of any accommodation provided
- (j) any authorized deductions
- (k) the period of notice required for termination?

Comments:

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39. *Should the Recommendation provide for a model contract, for example prepared by each Member in consultation with organizations of employers and workers concerned?*

Comments:

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40. *Should the Recommendation provide that any work-related medical testing should respect domestic workers' right to privacy and should be free from discrimination, including on the basis of pregnancy and HIV status?*

Comments:

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41. *Should the Recommendation provide that domestic workers should be given at the time of each payment an easily understandable written account of the payments due and the amounts paid?*

Comments:

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42. *Should the Recommendation provide that national laws and regulations concerning the protection of wages, including in the case of the employer's insolvency or death, apply to domestic workers?*

Comments:

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43. *Should the Recommendation provide that, consistent with national conditions, the accommodation when provided by the employer should:*

(a) *comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated;*

*Comments:*

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(b) *include access to suitable sanitary facilities, shared or private; and*

*Comments:*

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(c) *be adequately lit, and as appropriate heated and air conditioned in keeping with prevailing conditions within the household?*

*Comments:*

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44. *Should the Recommendation provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer?*

*Comments:*

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45. *Should the Recommendation provide that the hours of work and overtime should be accurately calculated and recorded by the employer and this information communicated to the domestic worker?*

*Comments:*

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46. *Should the Recommendation provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day?*

*Comments:*

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47. *Should the Recommendation provide, with respect to standby work, that national laws and regulations or collective agreements should regulate:*

- (a) *that standby hours should only apply to night hours as defined in national laws or regulations or collective agreements;*

*Comments:*

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- (b) *the maximum number of hours per week, month or year that an employer may require a domestic worker to be on standby;*

*Comments:*

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- (c) *the compensatory rest period if the normal period of rest is disturbed by standby; and*

*Comments:*

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- (d) *the extent to which the standby hours should be remunerated according to normal or overtime wage rates?*

*Comments:*

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48. *Should the Recommendation provide that domestic workers whose normal duties are performed at night should be treated not less favourably than other wage earners performing night work?*

*Comments:*

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49. *Should the Recommendation provide that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic worker of daily and weekly rest?*

*Comments:*

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50. *Should the Recommendation provide that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation?*

*Comments:*

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51. *Should the Recommendation provide that domestic workers should not be required to remain in or with the household during their annual leave, and that time spent accompanying the household on vacation is not considered annual leave?*

*Comments:*

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52. *Should the Recommendation provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given:*

*(a) an extended period of notice during which they may continue living in the employer's home;*

*Comments:*

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(b) *reasonable time off with pay during the notice period to enable them to seek new employment?*

*Comments:*

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53. *Should the Recommendation provide that Members should:*

(a) *identify, mitigate and prevent occupational hazards specific to domestic work;*

*Comments:*

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(b) *establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;*

*Comments:*

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(c) *advise on occupational safety, health and hygiene as well as on ergonomics and protective equipment; and*

*Comments:*

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(d) *develop training programmes and disseminate guidelines on occupational safety and health requirements?*

*Comments:*

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54. *Should the Recommendation provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment?*

*Comments:*

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**C. Professional development**

55. *Should the Recommendation provide that Members should, in consultation with the employers' and workers' organizations concerned, establish policies and programmes for domestic workers to encourage ongoing development of their competencies and qualifications, including literacy training as appropriate, as well as to enhance their career and employment opportunities?*

*Comments:*

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**D. Migrant domestic workers**

56. *Should the Recommendation provide that regulation concerning repatriation of domestic workers should:*

*(a) ensure financial guarantees by those responsible for repatriation costs;*

*Comments:*

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*(b) prohibit any payment by migrant domestic workers to cover repatriation costs;*

*Comments:*

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*(c) identify the time frame and circumstances for the exercise of the right to repatriation?*

*Comments:*

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57. *Should the Recommendation provide that Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:*

*(a) the development of a network of safe emergency housing; and*

*Comments:*

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(b) *a placement visit of the household in which the migrant domestic worker will be employed?*

*Comments:*

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58. *Should the Recommendation provide that Members that are sending countries should assist in the effective protection of migrant domestic workers' rights, including by informing migrant domestic workers of their rights before departure, establishing legal assistance funds, social services and specialized consular services and by any other additional measures? Please specify.*

*Comments:*

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**E. Relationship to other national policies**

59. *Should the Recommendation provide that Members should be encouraged to develop national policies that:*

(a) *promote accessible, collective measures for the delivery of child care and other personal care;*

*Comments:*

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(b) *promote work-life balance for families; or*

*Comments:*

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(c) *promote the domestic workers' employment in occupational categories that match their education and skills?*

*Comments:*

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F. International cooperation

60. *Should the Recommendation provide that Members should be encouraged to continue improving protection of domestic workers, notably through cooperation at bilateral, regional and international levels? Please elaborate.*

*Comments:*

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VII. Special problems

61. *Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instruments?*

*Comments:*

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62. (For federal States only) *In the event of the instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?*

*Comments:*

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63. *Are there any other pertinent problems not covered by the present questionnaire that ought to be taken into consideration when drafting the instruments?*

*Comments:*

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## Appendix

### Coverage of domestic workers in labour laws and regulations, by country

| Europe         | Explicitly included in standards governing working conditions | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions | Standards specific to domestic workers   |
|----------------|---|---|--|--|
| Austria        | X   |   |  | <ul style="list-style-type: none"> <li>– The Federal Act on Domestic Help and Servants</li> <li>– The Home Care Act</li> <li>– Minimum wage regulations</li> <li>– The Household Service Cheque Act</li> <li>– Different minimum wage regulations for domestic workers exist at a state level</li> </ul>   |
| Belgium        | X   |   |  | <ul style="list-style-type: none"> <li>– <i>Arrêté royal rendant obligatoire la Convention collective de travail du 1<sup>er</sup> décembre 2005, conclue au sein de la Commission paritaire pour la gestion d'immeubles et les travailleurs domestiques, relative à la classification professionnelle et aux salaires</i></li> <li>– <i>Arrêté royal du 18 avril 1974 autorisant les jours fériés les travaux effectués en exécution d'un contrat de travail domestique</i></li> <li>– <i>Arrêté royal n° 483 du 22 décembre 1986 portant réduction des cotisations patronales de sécurité sociale pour l'engagement de travailleurs domestiques</i></li> </ul> |
| Bulgaria       |   | X   |  |  |
| Croatia        |   | X   |  |  |
| Czech Republic |   | X   |  |  |
| Denmark        |   | X   |  | <ul style="list-style-type: none"> <li>– Act on Certain Employment Relationships in Agriculture, etc. (AERA)</li> </ul>  |
| Estonia        |   | X   |  |  |
| Finland        | – <i>Act on the Employment of Household Workers</i>           | – <i>Employment Contracts Act</i>                             |  | – Act on the Employment of Household Workers   |

| Europe               | Explicitly included in standards governing working conditions   | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions | Standards specific to domestic workers   |
|----------------------|---|---|--|--|
| France               | X   |   |  | – <i>Convention collective nationale de travail du personnel employé de maison en vigueur le 27 juin 1982</i>  |
| Germany              | X   |   |  |  |
| Ireland              | Domestic workers are explicitly included in some labour legislation provisions under the code of practice for protecting persons employed in other people's homes |   |  | – Code of practice for protecting persons employed in other people's homes   |
| Italy                | X   |   |  | – Act No. 339/1958 on the protection of domestic work<br>– Presidential Decree No. 1403/1971 on regulating the obligation to provide social insurance for domestic workers, including workers in charge of "clearing up" and cleaning premises<br>– National Collective Agreement (CCNL) of 13 February 2007 (expiring 28 February 2011) regarding the regulation of domestic work |
| Latvia               |   | X   |  |  |
| Moldova, Republic of |   | X   |  |  |
| Netherlands          |   | X   |  | – The House Service Regulation specifically excludes domestic workers from social security contributions and tax payments  |
| Portugal             | – Act No. 144/99 establishing penalties for violations of special regimes of labour contracts, including domestic work  | X   |  | – Decree No. 235/92 (regime regulating the employment contract of domestic workers)<br>– Act No. 12/92 (establishing a special status for domestic workers and regulating relations of a familial character)<br>– Decree No. 43/1982 regulating the social security regime of domestic workers   |
| Romania              |   | X   |  |  |
| Russian Federation   |   | X   |  |  |
| Spain                | Explicitly included under the <i>Real Decreto N.º 1424/1985</i>   |   |  | – <i>Real Decreto N.º 1424/1985, de 1 de agosto, por el que se regula la relación laboral de carácter especial del Servicio de Hogar Familiar</i><br>– <i>Decreto N.º 2346/1969, de 25 septiembre, regulador del Régimen Especial de la Seguridad Social para los Empleados de</i>   |

| Europe         | Explicitly included in standards governing working conditions   | Implicitly included in standards governing working conditions  | Excluded from standards governing working conditions  | Standards specific to domestic workers   |
|----------------|---|--|---|--|
|                |   |  |   | <i>Hogar</i>   |
| Switzerland    |   | Domestic workers are included in the general provisions on the labour contract under the <i>Code des Obligations</i> | Domestic workers are implicitly excluded from the Federal Labour Code of 13 March 1964 under section 2. It does not apply to private residences | <ul style="list-style-type: none"> <li>– Standard contract of the Canton of Geneva for full-time and part-time domestic workers is used as a reference in this document</li> <li>– In the French-speaking cantons, domestic workers may be paid under the <i>chèque-emploi</i> (service voucher) system</li> </ul>   |
| Turkey         |   |  | Domestic workers are explicitly excluded from the Federal Labour Code under section 4, except for the provision on payment of minimum wage      |  |
| United Kingdom |   | X  |   |  |
| Africa         | Explicitly included in standards governing working conditions   | Implicitly included in standards governing working conditions  | Excluded from the working conditions regimes  | Standards specific to domestic workers   |
| Burkina Faso   |   | X  |   | <i>Décret n° 77- 311PRES/FPT fixant les conditions de travail des gens de maison (17 août 1997)</i>  |
| Cote d'Ivoire  |   | X  |   |  |
| Egypt          |   |  | Explicitly excluded under section 4(b) of the Labour Code   |  |
| Ethiopia       |   | X  |   |  |
| Kenya          |   | X  |   | <ul style="list-style-type: none"> <li>– The Domestic Employment Registration (Repeal) Act (No. 55 of 1958 (amended)</li> <li>– The Regulation of Wages (Domestic Servants) Order 1967 (LN No. 254 of 1967)</li> <li>– The Regulation of Wages (Domestic Servants Council Establishment) Order 1967 (KN No. 106 of 1967) (amended by regulations wages of 2007)</li> </ul> |
| Mali           | – <i>Décret n° 96-178/P-RM du 13 juin 1996 ; Décret du code du travail avec une partie déterminant les conditions générales d'emploi et de rémunérations des gens de maison</i> |  |   | – <i>Conditions d'emploi des gens de maison</i>  |

| Africa                       | Explicitly included in standards governing working conditions                           | Implicitly included in standards governing working conditions | Excluded from the working conditions regimes                                 | Standards specific to domestic workers  |
|------------------------------|---|---|--|---|
| Mozambique                   |   | X   |  | The Labour Code provides that domestic work is regulated by special legislation, but this legislation is pending  |
| Namibia                      |   | X   |  |   |
| Niger                        |   | X   |  |   |
| Senegal                      | – <i>Convention collective nationale interprofessionnelle du Sénégal du 27 mai 1982</i> | X   |  | – <i>Arrêté ministériel n° 3006 MFPT-DTESS du 20 mars 1972 modifiant et complétant l'arrêté n° 974 MFPT-DTSS du 23 janvier 1968 déterminant les conditions générales d'emploi des domestiques et gens de maison</i><br>– <i>Arrêté ministériel n° 974 M.F.P.T-DTSS du 23 janvier 1968 déterminant les conditions générales d'emploi des domestiques et gens de maison (abrogé par les dispositions plus favorables du code du travail de 1997 et la Convention collective de 1982)</i><br>– <i>Arrêté ministériel n° 10117 MFPT-DTSS-CAB 4 du 12 septembre 1975, abrogeant et remplaçant l'article 8 de l'arrêté ministériel n° 974 du 12 septembre 1975 MFPT-DTSS du 23 janvier 1968 déterminant les conditions générales d'emploi des domestiques et gens de maison</i> |
| South Africa                 | X   |   |  | – Sectoral Determination 7: Domestic Workers (15 August 2002)   |
| Tanzania, United Republic of | Labour Institutions (Regulation of Wages and Terms of Employment) Order, 2007           | Employment and Labour Relations Act, 2004                     |  |   |
| Tunisia                      |   |   | The Labour Code applies only to industrial establishments (sections 1 and 2) | – <i>Décret n° 2002-916 du 22 avril 2002 relatif aux modalités d'application de la loi 2002-32 du 12 mars 2002, relative au régime de sécurité sociale pour certaines catégories de travailleurs dans les secteurs agricoles et non agricoles (explicitly includes domestic workers)</i>  |
| Zimbabwe                     |   | X   |  | – Labour Relations (Domestic Workers) Employment Regulations Act, 2006<br>– Labour Relations (Domestic Workers) Employment Regulations, 1993<br>– Labour Relations (Domestic Workers) Employment Regulations, 1992  |



| Caribbean           | Explicitly included in standards governing working conditions | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions  | Standards specific to domestic workers   |
|---------------------|---|---|---|--|
| Barbados            |   | X   |   | <ul style="list-style-type: none"> <li>– Domestic Employee Act</li> <li>– Domestic Employees (Rate of Pay and Hours of duty) Order (as of 1982)</li> </ul>   |
| Trinidad and Tobago |   | X   |   | The Minimum Wages (Household Assistants) Order, 1991, Legal Notice No. 160   |
| Latin America       | Explicitly included in standards governing working conditions | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions  | Standards specific to domestic workers   |
| Argentina           |   | X   |   | <ul style="list-style-type: none"> <li>– <i>Decreto Ley N.º 326 del 20 de enero de 1956 sobre el régimen de trabajo del personal doméstico</i></li> <li>– <i>Decreto Nacional N.º 7.979 del 30 de abril de 1956 reglamentario del Decreto Ley N.º 326/956 sobre el régimen de trabajo del personal doméstico, modificado por el Proyecto de Ley sobre la modificación del decreto ley N.º 326/56, sobre el Régimen de Trabajo del Personal Doméstico del 7 de mayo de 2004</i></li> <li>– <i>Resolución 1.306/07 del Ministerio de Trabajo, Empleo y Seguridad Social que establece remuneraciones mínimas para los trabajadores del servicio doméstico</i></li> <li>– <i>Ley N.º 25.239 que establece el Régimen Especial de Seguridad Social para empleados del servicio doméstico del año 1999</i></li> </ul> |
| Bolivia             | X   |   |   | <ul style="list-style-type: none"> <li>– <i>Ley de la Trabajadora del Hogar del 3 de abril de 2003</i></li> </ul>  |
| Brazil              |   |   | <p>Domestic workers are excluded, except where they are expressly included (section 7 of the Labour Act (CLT))</p> <ul style="list-style-type: none"> <li>– Decree No. 71/889.73 stipulates that domestic work only applies under the chapter of the CLT concerning holidays (section 2)</li> </ul> | <ul style="list-style-type: none"> <li>– Act No. 5859 of 11 December 1972 concerning the occupation of domestic workers</li> <li>– Decree No. 3.361 of 10 February 2000, issued under Act No. 5.859 of December 1972 to enable domestic employees to benefit from the Guarantee Fund for Length of Service (FTGS) and the Unemployment Guarantee Programme</li> <li>– Directive No. 23 of the National Social Security Institute (31 May 2000), including the domestic worker in the Guarantee Fund for Length of Service (FTGS)</li> </ul>  |

| Latin America | Explicitly included in standards governing working conditions                       | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions | Standards specific to domestic workers  |
|---------------|---|---|--|---|
|               |   |   |  | <ul style="list-style-type: none"> <li>– Resolution No. 253 of 4 October 2000 establishing procedures for granting unemployment insurance to domestic workers</li> <li>– Act No. 10.208 of 23 March 2001 amending Act No. 5.859 of 11 December 1972 to enable domestic employees to benefit from the Guarantee Fund for Length of Service (FTGS) and unemployment insurance</li> <li>– Ministerial Directive No. 77 of 12 March 2008 establishing social security contribution quotas for domestic employees</li> <li>– Ac No. 7.195 of 12 June 1984 concerning the civil responsibility of agencies providing domestic employees</li> <li>– Decree No. 6.841 of 12 June 2008 regulating Articles 3(d) and 4 of Convention No. 182 of the International Labour Organization (ILO) concerning the prohibition and immediate action for the elimination of the worst forms of child labour, as provided by Legislative Decree No. 178, of 14 December 1999, and promulgated by Decree No. 3.597 of 12 September 2000, and other provisions</li> </ul> |
| Chile         | X   |   |  |   |
| Colombia      | – Some sections of the Substantive Labour Code apply explicitly to domestic workers |   |  | – <i>Decreto N.º 0824 del 29 de abril de 1988 por el cual se desarrolla la Ley 11 de 1988 la cual consagra unas excepciones en el régimen del Seguro Social para los Trabajadores del Servicio Doméstico</i>  |
| Costa Rica    | X   |   |  | – <i>Proyecto de Ley de Reforma del Código de la Niñez y la Adolescencia, Protección de los Derechos de las Personas Adolescentes en el Trabajo Doméstico, Expediente N.º 15.895 (pending)</i>  |

| Latin America | Explicitly included in standards governing working conditions | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions | Standards specific to domestic workers   |
|---------------|---|---|--|--|
| Guatemala     | X   |   |  | – <i>Acuerdo Gubernativo del Ministerio de Trabajo y Previsión Social N.º 24-2005 del 2 de febrero de 2005 que crea el Comité Técnico de Seguimiento para la Prevención y Erradicación del Trabajo Infantil Doméstico, que realizan niñas, niños y adolescentes en casa particular</i>   |
| Mexico        | X   |   |  | – <i>Reglamento regulador de la afiliación voluntaria de los trabajadores domésticos en el régimen obligatorio de la seguridad social</i><br>– <i>Iniciativa con Proyecto de Decreto que reforma y adiciona diversas disposiciones de la Ley Federal del Trabajo relativa a las trabajadoras y los trabajadores del hogar de septiembre de 2007 (pending)</i><br>– <i>Iniciativa con Proyecto de Decreto que reforma y adiciona diversas disposiciones de las Leyes Federal del Trabajo; Federal para Prevenir y Eliminar la Discriminación; y para la Protección de los Derechos de Niñas, Niños y Adolescentes (prevé la reforma de varios artículos relativos a los trabajadores del hogar) I</i> |
| Nicaragua     | X   |   |  | – <i>Reglamento de Aplicación del Seguro Social a los Trabajadores del Servicio Doméstico, Reglamento N.º 202 de 2 de noviembre de 1978</i>  |
| Panama        | X   |   |  |  |
| Paraguay      | X   |   |  |  |
| Peru          |   | X   |  | – <i>Ley de los Trabajadores del Hogar N.º 27.986 de 2003</i><br>– <i>Decreto Supremo N.º 015-2003-TR que aprueba el Reglamento de la Ley de los Trabajadores del Hogar</i><br>– <i>Resolución de Superintendencia N.º 191-2005-SUNAT de 2005 que establece Registro de Empleadores de Trabajadores del Hogar, Trabajadores del Hogar y sus Derechohabientes</i>   |

| Latin America             | Explicitly included in standards governing working conditions | Implicitly included in standards governing working conditions | Excluded from standards governing working conditions  | Standards specific to domestic workers   |
|---------------------------|---|---|---|--|
| Uruguay                   |   | X   |   | <ul style="list-style-type: none"> <li>– Ley N.º 18.065 de 15 de noviembre de 2006 sobre normas para la regulación del trabajo doméstico</li> <li>– Decreto del Ministerio de Trabajo y Seguridad Social del 25 de junio de 2007</li> <li>– Decreto del Ministerio de Trabajo y Seguridad Social y del Ministerio de Economía y Finanzas del 15 de enero de 2007 sobre el salario mínimo de trabajadores domésticos</li> <li>– Decreto N.º 162/993 de 31 de marzo de 1993 por el que se establece que tendrán derecho al cobro de asignación familiar y subsidio por maternidad las personas que en cualquier área territorial realicen tareas domésticas</li> </ul> |
| Middle East               | Explicitly included in standards governing working conditions | Implicitly Included in working conditions regimes             | Excluded from standards governing working conditions  | Standards specific to domestic workers   |
| Iran, Islamic Republic of | X   |   |   |  |
| Jordan                    |   |   | – Explicitly excluded under section 3(c) of the Labour Code and Amendment No. 8 of 1996   | Special working contract for non-Jordanian domestic workers  |
| Lebanon                   |   |   | – Explicitly excluded under section 7 of the Act of 23 September 1946 issued under the Labour Code  | <ul style="list-style-type: none"> <li>– Order No. 334 of 5 August 1965 concerning the supervision of housekeepers, servants and foreign cooks working in private households</li> <li>– Legislation on the regulation of the work of domestic workers in draft form</li> </ul>   |
| Saudi Arabia              |   |   | – Explicitly excluded under section 7(b) of the Labour Act, 2006 (Royal Decree No. M/51)  | Draft regulations on domestic workers have been elaborated and are awaiting final approval (see CEACR observation of 2007 on Convention No. 111, Saudi Arabia)   |
| Yemen                     |   |   | – Explicitly excluded under section 3(b) of the Republican Decree on Act No. 5 of 1995 concerning the Labour Act, and its amendments under Act No. 25 of 1997 |  |

| Asia             | Explicitly included in working conditions regimes | Implicitly included in standards governing working conditions  | Excluded from standards governing working conditions   | Standards specific to domestic workers  |
|------------------|---|--|--|---|
| Bangladesh       |   |  | – Explicitly excluded under section 1(4) of the Labour Act   |   |
| Cambodia         |   |  | – Domestic workers are explicitly excluded, unless a provision explicitly applies to them (Labour Code, section 1)   |   |
| China            |   | – Domestic workers are implicitly included in the Contract Act and the General Principles of the Civil Act | – Domestic workers are implicitly excluded from the Labour Contract Act, Labour Act, Provisions on Minimum Wages, and Regulations of the State Council on the Hours of Work of Employees                     |   |
| Hong Kong, China |   | X  |  |   |
| India            |   |  | – Domestic workers are implicitly excluded from the National Minimum Wages Act, 1948, No. 11 of 1948, but states may extend its application to domestic workers on their territory through state legislation | – Domestic Workers (Registration Social Security and Welfare) Bill, 2008 is pending at the national level<br>– Regimes exist in some states and territories, such as:<br>Karnataka: Minimum Wages Act for Domestic Workers, Notification No. KAE 15 LMW 04, 12 March 2004<br>Kerala: Notification of 23 May, 2006, G.O. (MS) No. 48/2005/LBR, regarding the inclusion of domestic workers in the Schedule of the Minimum Wages Act, 1948<br>Andhra Pradesh: Fixation of Minimum Rates of Wages in the Employment of Domestic Workers in Part-1 of the Schedule of the Minimum Wages Act, 1948, GO Ms. No. 119, Labour Employment, Training and Factories (Lab. 11), 10 December, 2007<br>Tamil Nadu: Creation of the Domestic Workers Welfare Board under section 6 of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 – GO Ms. No. 169 13 August, 2007 |

| Asia               | Explicitly included in working conditions regimes  | Implicitly included in standards governing working conditions   | Excluded from standards governing working conditions  | Standards specific to domestic workers   |
|--------------------|--|---|---|--|
| Indonesia          |  |   | – Domestic workers are implicitly excluded from Act No. 13 of 2003 on Manpower. Only employers considered to be an enterprise have obligations under this law |  |
| Japan              |  | – Domestic workers employed by agencies who rent their services to households are covered by the Labour Standards Act   | – Domestic workers employed directly by households are explicitly excluded under section 116(2) and implicitly under section 9 of the Labour Standards Act    |  |
| Kazakhstan         | X  |   |   |  |
| Korea, Republic of |  |   | – Domestic workers are explicitly excluded under section 10 of the Labour Standards Act   |  |
| Malaysia           | – Domestic workers are included, except where they are explicitly excluded (see First Schedule of the Employment Act 1955) |   |   |  |
| Pakistan           |  |   | – Domestic workers are implicitly excluded from the Payment of Wages Act, 1936 under section 4  |  |
| Philippines        | X  |   |   |  |
| Sri Lanka          |  | – The Wages Boards Ordinance implicitly applies to domestic workers (section 64)  |   | – Ordinances Nos. 28 of 1871 and 18 of 1936 to provide for the registration of domestic servants |
| Thailand           |  | – Domestic workers are implicitly included in the Civil and Commercial Code.<br>– Implicitly included in the Labour Protection Act except where implicitly excluded (see Ministerial Regulation B.E. 2541 (1998)) |   |  |
| Viet Nam           | X  |   |   |  |

| <b>Australia and selected states</b> | <b>Explicitly included in standards governing working conditions</b>  | <b>Implicitly included in standards governing working conditions</b> | <b>Excluded from standards governing working conditions</b>  | <b>Standards specific to domestic workers</b> |
|--------------------------------------|---|--|--|---|
| Federal                              |   |  | – Domestic workers are implicitly excluded from the Workplace Relations Act 1996 under section 6(1)              |   |
| Western Australia                    |   |  | – Domestic workers are explicitly excluded from the Minimum Conditions of Employment Act 1993 under section 3(1) |   |
| Tasmania                             |   | X  |  |   |
| Queensland                           |   | X  |  |   |
| <b>Canada, selected provinces</b>    | <b>Explicitly included in standards governing working conditions</b>  | <b>Implicitly Included in working conditions regimes</b>             | <b>Excluded from standards governing working conditions</b>  | <b>Standards specific to domestic workers</b> |
| Federal                              | Domestic work is not regulated at the federal level in Canada   |  |  |   |
| British Columbia                     | X   |  |  |   |
| Manitoba                             | – Domestic workers are explicitly included, but those that work less than 12 hrs/week are exempt from some provisions (Manitoba Regulation 6/2007, section 4)   |  |  |   |
| Ontario                              | X   |  |  |   |
| Quebec                               | – Domestic workers are included, but workers whose exclusive duties are to provide care, including workers who perform domestic duties directly relate to the care needs are excluded from the Act Respecting Labour Standards (section 3(2)) |  |  |   |

Decent work for domestic workers

| United States and selected states | Explicitly included in standards governing working conditions  | Implicitly included in standards governing working conditions   | Excluded from standards governing working conditions | Standards specific to domestic workers   |
|-----------------------------------|--|---|--|--|
| Federal                           | Domestic workers are included, but “casual” workers such as babysitters and companions are explicitly excluded (FLSA 29 U.S.C. section 213(a)(15)) |   |  |  |
| California                        |  | X   |  | California Wage Order No. 15, 2001, regulating wages, hours and working conditions for household occupations   |
| Florida                           |  | X   |  |  |
| New York                          |  | – Domestic workers are implicitly included, but babysitters and caregivers whose primary duties do not include housekeeping are explicitly excluded (Minimum Wage Act 12 NYCRR section 651(5)(a))   |  | – Domestic Workers and Household Employees Act, pursuant to 12 NYCRR section 690 et seq., applies to employment agencies that arrange work for “domestic or household employees” |
| Oregon                            |  | – Domestic workers are implicitly included, but domestic workers employed on a casual basis (Oregon Revised Statutes (ORS) 653.020(2), childcare providers (ORS 653.020(13), and companions (ORS 653.020(14)) are exempt from some provisions |  |  |