



Decent Work for Domestic Workers:

Recommendations to ILO Members regarding the Law and Practice Report and Questionnaire

June 2009

Summary and Key Recommendations:

Human Rights Watch and Anti-Slavery International welcome the International Labour Organization's attention to decent work for domestic workers, and the decision of the ILO Governing Body to place decent work for domestic workers on the agenda of the 2010 International Labour Conference.

The ILO has found that domestic work is an important occupation for millions of individuals, absorbing up to 10 percent of total employment in some countries. However, this work is undervalued and poorly regulated, and many domestic workers are overworked, underpaid, unprotected, and vulnerable to abuse. For these reasons, we strongly support the ILO's recommendation (Report IV(1) for the International Labour Conference, 99th Session, 2010) that ILO Members develop a new instrument that addresses the special conditions in which domestic work is carried out, and strengthens protections for domestic workers.

Our research on domestic work in twenty countries¹ confirms that domestic workers are among the most exploited and abused workers in the world. Predominantly, though not

¹ Costa Rica, El Salvador, Guatemala, Guinea, India, Indonesia, Kuwait, Lebanon, Malaysia, Morocco, Peru, the Philippines, Saudi Arabia, Singapore, Sri Lanka, Tanzania, Togo, the United Arab Emirates, the United Kingdom, and the United States. For detailed

exclusively women and girls, they often experience working conditions that fall far short of international standards, including low and irregular pay, excessively long hours of work, lack of rest periods, and exclusion from social protection such as social security and maternity benefits.

Domestic workers may also face physical, psychological, and sexual abuse, food deprivation, forced confinement, and trafficking into forced labour. These risks are heightened given their isolation, the imbalance of power between employer and domestic worker, lack of information or ability to seek help, and financial pressures and debts that make them afraid to lose their employment.

The risk of abuse is heightened for child domestic workers, who make up a significant proportion of domestic workers. The ILO estimates that more girls under sixteen work in domestic service than in any other category of child labour. Their young age, isolation and separation from their families and peers, and near-total dependence on their employers exacerbate their vulnerability. As early as 1989, the ILO stated that “youngsters working as household domestic servants may be the most vulnerable and exploited children of all.”²

Migrant women and girls are another population of particular concern. Migrants comprise an increasingly large proportion of domestic workers and are often at heightened risk of exploitation due to policies linking workers’ immigration status to individual employers, excessive recruitment fees, language barriers, and confiscation of passports.

Some governments have taken laudable steps to ensure domestic workers equal protection under their labour laws. However, such cases are sadly the exception rather than the norm. As the ILO has found, many governments have traditionally regarded domestic workers as “informal labour” and thus beyond the scope of regulation and scrutiny. Hidden in private households, women and girl domestic workers may remain unregistered, uncounted, and unprotected. They are often not recognized as workers, and are excluded from key labour protections accorded workers in the formal sector. The exclusion of domestic workers from these rights denies them equal protection of the law and has a discriminatory impact on women and girls, who constitute the vast majority of domestic workers.

Although the protections of many existing ILO conventions technically apply to domestic workers, traditional perceptions of domestic workers as “helpers” rather than “workers” and

reports of our findings, please visit (<http://www.antislavery.org/homepage/resources/PDF/PDFbondedlabour.htm>) and (<http://www.hrw.org/en/reports/2006/07/27/swept-under-rug>).

² ILO, *Still so far to go: Child workers in the world today*, 1989.

the location of employment in private households rather than commercial enterprises has meant that in practice, these protections have not extended to domestic workers. National-level legislation and existing conventions have often failed to address the unique circumstances of domestic workers and the need to provide additional and specific legal guidance to protect their rights.

Existing conventions fail to recognize the special circumstances of child domestic workers in particular. Despite the repeated concerns of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) about the exploitation and abuse of child domestic workers, current ILO child labour standards make no explicit reference to their situation as a special cause for concern. Moreover, as the ILO has reported, ILO Convention 138 on the Minimum Age for Admission to Employment allows scope for ratifying States to exclude child domestic workers from national minimum age legislation.³

Human Rights Watch and Anti-Slavery International strongly support the drafting of a new Convention and Recommendation regarding decent work for domestic workers. As ILO Members provide their input regarding the content and scope of the proposed Convention and Recommendation, we encourage members to prioritize the following key elements:

- 1) **Comprehensive legal protections:** Labour protections in national law that apply to the formal sector should be extended to domestic workers to ensure equal protection under the law, including provisions related to minimum wages, hours of work, days of rest, freedom of association, etc. as well as additional provisions specific to the unique circumstances of domestic work such as living conditions and standby periods (see in particular, #15, #19, and #20 in the section following);
- 2) **Special protections for child domestic workers:** Because of its inherent risks to children, domestic work should be prohibited before age 15; child labour protections that apply to other working children (aged 15-17) should be extended to child domestic workers, and special measures taken to ensure their access to education (see #10, #20, and #36, following);
- 3) **Special protections for migrant domestic workers:** Temporary employment-based visas for migrant domestic workers should be nonspecific to employers and instead be administered through the government and centralized labour authorities since tying workers' immigration status to their employers is often a contributing factor to situations of exploitation and forced labour (see #14, following);

³ See ILO, "Decent Work for Domestic Workers," Report IV(1) for the International Labour Conference, 99th Session, 2010, para 78.

- 4) **Explicit employment agreements:** Domestic workers should have the right to explicit, written terms of employment, outlining their specific duties, hours, remuneration, days of rest, conditions of work, etc, (see #13, following);
- 5) **Measures to protect domestic workers from physical, sexual, and psychological violence and harassment:** Such measures should include confidential, accessible, and culturally-competent complaints mechanisms; prompt and thorough investigations of alleged abuse; prosecution of perpetrators; and removal and recovery services for workers who have experienced such abuse (see #14, following);
- 6) **Monitoring:** Both employers who employ domestic workers and placement agents should be subject to registration and monitoring mechanisms to ensure that they comply with their legal obligations, including prohibitions on charging excessive recruitment and placement fees (see #26 and #32, following).

Support by Members for a Convention with these key elements will be a critical step forward in protecting the rights and dignity of both adult and child domestic workers, and will be a strategic and powerful measure to help prevent forced labour, human trafficking, and the worst forms of child labour.

Recommendations for Members' responses to the ILO Questionnaire regarding the new instrument

Below, we offer our recommendations regarding the content and scope of the new Convention and Recommendation, utilizing the questions posed by the ILO in its questionnaire to ILO Members.

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?

Yes. The ILO law and practice report found that domestic work is undervalued, under-regulated, and subject to serious abuses. Existing conventions have been inadequate to provide domestic workers with sufficient protections or to address their special circumstances. Without concerted action to improve legislative frameworks, the ILO has found that domestic workers' conditions do not improve. New normative standards are needed to establish basic principles and rights and offer guidance on the regulation of domestic work.

2) Should the instrument take the form of a Convention, Recommendation, Convention supplemented by a Recommendation, or a Convention comprising binding and non-binding parts?

A Convention supplemented by a Recommendation. Some of the new standards should be binding in order to ensure maximum protection for domestic workers. However, guidance is also needed for the regulation of domestic work. These two goals can best be accomplished through the adoption of a convention and recommendation.

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?

Yes. It should also take specific note of ILO Convention 182 on the Elimination of the Worst Forms of Child Labour, ILO Convention 29 concerning Forced Labour, and ILO Convention 138 concerning the Minimum Age for Admission to Employment.

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?

Yes.

5) Should other considerations be included in the preamble?

Yes. The preamble should note that large numbers of domestic workers are populations that are often at heightened risk of exploitation due to their status in society, including children, migrants, indigenous or minority groups, and people living in poverty. The vast majority of these are women and girls.

The preamble should also note the existence of other instruments of international law that recognize the rights of children, women, and migrants, including the Convention on the Rights of the Child (CRC), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and CEDAW general recommendation 26 on migrant women.

The preamble should note that the lack of protection for domestic work is linked to the historical legacy of slavery as well as undervaluing of work traditionally performed by women and girls in the “reproductive” or “care” economy of households.

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?*

Yes.

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

Yes. However, special attention must be paid to ensure that domestic workers who are remunerated ‘in-kind,’ including those working for extended family members, remain included in the definition. In particular, care must be taken not to exclude the many child domestic workers who work without pay, or whose payment takes the form of food, shelter, and gifts from their employer.

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

Yes.

d) *Should the term “employer” include intermediaries?*

Yes. Given the diverse nature of many domestic work arrangements, the term “employer” should include intermediaries such as any agent, representative, company, or third party that is responsible directly or indirectly for employment and/or payment to a domestic worker.

e) *Should any other terms be defined by the instrument or instruments?*

Yes. A child domestic worker should be defined as a person under 18 years who performs work in and for a household. As defined above (see 6a), this includes housekeeping, child care, and other personal care, as well as running errands, and helping their employers run small businesses. A child domestic worker may be paid, unpaid, or receiving ‘in-kind’ remuneration such as food and shelter.

The instrument/s should also define recruiters/brokers who play an intermediary role in recruitment and placement of domestic workers, but who are distinct from employers.

IV. Scope

7) *Should the instrument apply to all domestic workers?*

Yes.

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

No. The new standards may not apply to family members performing household work for their immediate family; however, the recommendation that domestic workers be defined as workers receiving compensation already put such individuals outside the scope of this instrument. Therefore no exceptions should be allowed.

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 collective bargaining;*
- b) the elimination of all forms of forced and compulsory labour;*
- c) the effective abolition of child labour; and*
- d) the elimination of discrimination in respect of employment and occupation?*

Yes to all.

10) *Should the Convention stipulate a minimum age for admission to domestic work?*

Yes. The Convention should specify the minimum age for admission to domestic work as not less than the age of completion of compulsory schooling and, in any case, not less than 15 years. The circumstances of domestic work—including isolation, separation from family for long periods of time, working (and typically living) in private households with little access to outside sources of support, and the degree to which employees are dependent on their employers— place children at particular risk of abuse, and are not acceptable for children under age 15. We also note that the ILO Recommendation concerning the Minimum Age for Admission to Employment (adopted over 30 years ago)

states that members who have an age lower than 15 should take urgent steps to raise it to 15, and that their objective should be the progressive raising of the minimum age to 16 years.⁴

The Convention should also reiterate that no children under 18 may be engaged in domestic work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety, or morals.

The Convention should provide that Members establish effective mechanisms to remove child domestic workers who are under age 15 from employment and reunify them with their families, if this is in the best interest of the child, and prioritize their return to school. The Convention should also require Members to provide effective sanctions against any adult who employs children who have not reached the appropriate minimum age, or who violates the conditions required for work at that age.

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

Yes. Both children and migrant domestic workers are particularly vulnerable to abuse; child migrant workers are doubly so. Our research has found that the many of the worst cases of migrant abuse and trafficking into domestic servitude involve children. Children are extremely vulnerable to abuse when migrating abroad and have far fewer resources for escape from situations of abusive employment. Some states have dramatically reduced the number of abuse cases by raising the minimum age of migrant domestic work employment.

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;*
- b) a safe and secure workplace;*
- c) social security, including maternity protection?*

⁴ ILO Recommendation concerning Minimum Age for Admission to Employment (R 146).

Yes to all.

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;*
- b) the type of work to be performed;*
- c) the rate of remuneration, method of calculation and pay interval;*
- d) the normal hours of work;*
- e) the duration of the contract;*
- f) the provision of food and accommodation, if any;*
- g) the period of probation, if applicable, and*
- h) the terms of repatriation, if applicable?*

Yes to all. Making such terms and conditions explicit prior to starting work provides clarity and protection for both domestic workers and their employers. Employers should also inform domestic workers about the terms of termination of contracts, entitlements to paid leave, health insurance, and other benefits, and the conditions under which an employment relationship/contract could be broken either by the employer or domestic worker.

Contracts with child domestic workers:

In Member States where the prevailing legal system excludes children from entering into contracts, a special exemption should be given allowing children who are of legal age to work to enter with free and informed consent into fair and reasonable employment contracts. Children should retain the right to void such contracts on the grounds of insufficient capacity, yet adults who have bound themselves by contract with a child cannot later void the contract based solely on the child's lack of legal competency.

Contracts with adult domestic workers:

In Member States where the prevailing legal system excludes youth, unmarried women, or married women, from entering into contracts, there should be a special exemption from the general rule on capacity when it relates to entering with free and informed consent into fair and reasonable employment contracts.

Written contracts:

Employment contracts should be required to be written, in accessible terms and in a language the domestic worker understands, with copies available to the domestic worker.

In Member States where oral contracts are enforceable, in the event of a contractual dispute where there is no written agreement despite the requirement that contracts be written, the absence of a written agreement is not to be taken as conclusive evidence of the absence of an enforceable contract between the parties.

Where municipal or local governments make the determination that because of prevailing levels of illiteracy within that community the requirement to enter into written contracts would hinder parties from entering with free and informed consent into fair and reasonable employment agreements, they may grant an exemption to the general requirement on written contracts, on a time-bound temporary basis, and with the provision of an alternative, independent, monitoring mechanism that can oversee the creation of fair and reasonable employment contracts between employers and employees.

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?

Yes. Such measures should include the following:

- a) explicit prohibitions under national legislation, including of unlawful confinement;
- b) the establishment of accessible complaints mechanisms for domestic workers to report such abuse, including confidential, fully staffed, toll-free, 24-hour hotlines to receive reports of abuses against women and girl domestic workers with interpreters in relevant languages available;
- c) mechanisms such as local registration (see #32) to ensure greater visibility of domestic workers and allow for better access to them;
- d) prompt investigation and prosecution of perpetrators of physical violence, sexual violence, and other abuses against domestic workers, including unlawful confinement;
- e) protocols to train police officers on how to respond to domestic workers' complaints appropriately, including how to investigate and collect evidence and provide referrals for assistance;
- f) establishment of removal and recovery programs that can provide temporary accommodation, immediate physical and psychological health care, legal assistance, and access to schooling or vocational training. Such programs should prioritize child domestic workers for removal and recovery assistance.

Member States should also adopt measures to abolish immigration sponsorship policies that link a migrant domestic worker's employment visa and immigration status to her or his employer. Migrant domestic workers are often at heightened risk of abuse and harassment due to these policies, which are especially common in the Middle East and Asia. These systems give employers inordinate power over domestic workers, including the ability to prevent them from changing or discontinuing employment, or from leaving the country. Human Rights Watch has repeatedly documented how employers abuse these policies by threatening workers with deportation, seizing their passports, or forcing them to work against their will. This system fuels abuses such as unpaid wages, exploitative working conditions, and forced labour.

Some countries have reformed immigration sponsorship policies so that temporary employment-based visas are nonspecific to employers and are instead administered through the government and centralized labour authorities. These reforms are positive measures which reduce the risk of abuse for domestic workers.

15) Should the Convention provide that each member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists?

Yes. The ILO finds that domestic workers are routinely underpaid relative to other sectors of employment, and often excluded under existing labour laws, including minimum wage requirements. To ensure non-discrimination and to ensure achievement of minimum standards for decent work, domestic workers should be explicitly entitled to minimum wage coverage equivalent to workers in the "formal" sector.

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

Yes. Research has shown that some employers withhold wages from workers, not only as a form of wage exploitation, but also to ensure that the worker lacks the resources to flee an abusive employment situation. In particular, children and migrants whose immigration status is dependent on their employers may be intimidated from asking their employer for regular payment of wages.

Furthermore, in many places, employers deduct wages to repay recruitment costs or as a form of punishment for "mistakes." Member States should prohibit such deductions.

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.

The Convention should discourage the payment of wages in kind due to the high risk of such arrangements being abused. The most common form of payment in kind is provision of room and board. However, live-in arrangements are primarily for the benefit of the employer who is then able to have the domestic worker on standby around-the-clock. The Convention should not allow any payment in kind or deductions due to room and board. However, the Convention should retain the flexibility to allow Member States to allow payment of wages in kind for other goods in limited cases, with specific provisions that these not exceed 25 percent of the payment and that the domestic worker can refuse such arrangements.

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?

Yes. Domestic workers should have the right to choose their own housing, and to live separate from their employer if they so choose. Live-in arrangements often contribute to violations of limits on working hours and domestic workers' isolation. Furthermore, domestic workers have little control over the quality and type of accommodation and food. Live-in arrangements can contribute to situations of forced labour for migrants due to restrictions on movement outside of the employer's home and the loss of immigration status and residency if the employment relationship is terminated. The right to choose their place of residence is also important for child domestic workers in order to reduce their isolation and maintain regular contact with their families (if their families' home is within a reasonable distance of the employer).

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?

Yes. Ideally, domestic workers should have access to private rooms that can be locked to ensure both privacy and personal security. At a minimum, domestic workers should be accorded a reasonable amount of privacy, decent storage space for their belongings, and access to a bathroom/shower. Domestic workers should have access to food of sufficient quality and quantity, with no significant difference from the employer's family's. Domestic workers should also—as long as respectful to cultural norms of the

employer—have the ability to cook, store, and consume food of their own cultural preference, should they choose.

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?

Yes. Domestic workers are entitled to the same rights as other workers, including maximum hours of work, weekly day(s) of rest, overtime compensation and annual leave.

Members should also ensure that protections regarding hours of work for child domestic workers (i.e. domestic workers between 15 and 18 years of age) are equal to those for child workers in other sectors. The ILO Recommendation concerning the Minimum Age for Admission to Employment (R 146) specifies that hours of work for children under age 18 should be strictly limited “so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities.” The ILO has elsewhere recommended that child domestic workers should be allowed to sleep on average 9.5 hours each night,⁵ and Recommendation 146 states that except in extreme emergencies, children under age 18 should be granted a minimum consecutive period of 12 hours’ night rest.⁶ Weekly day(s) of rest are particularly important to ensure children’s right to contact with their family.

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?

Yes. Domestic workers are entitled to freedom of movement. Restrictions on leaving the household are a major contributing factor to isolation of domestic workers, exploitation including excessive hours of work, and situations of forced labour. Freedom to leave the household during rest periods is important to allow domestic workers to access important services and programs, including workers’ associations, recreation centers, and labour resource centers. Child domestic workers in particular should have access to

⁵ ILO, “Hazardous child domestic work: A briefing sheet,” 2007, p. 16: “Child domestic workers should not be on call for work in employers’ homes at all hours of the day and should not be confined to the household during non-work hours. They should be allowed to sleep, on average, 9.5 hours each night.”

⁶ ILO Recommendation concerning Minimum Age for Admission to Employment, R 146.

schooling opportunities outside the employer's household, and be able to visit their families on a regular basis.

In addition, the Convention should 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. Unlawful confinement to the employer's premises should be criminalized in national law.

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?

Yes. Excessive hours of work is a major problem confronted by domestic workers and standby periods often prevent workers from actually taking rest, especially for domestic workers caring for babies, the elderly, or the sick at night. Because children have particular needs for adequate rest, child domestic workers should not be expected to work (whether on "standby" or otherwise) in the early morning or late at night, i.e. before 7 a.m. or after 9 p.m.

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?

Yes. The Convention should require at least 24 consecutive hours of rest each seven-day period and recommend a 36-hour period. As per question 20, the Convention should also note that if national labour regulations establish a minimum weekly rest period that exceeds 24 hours per week for other workers, domestic workers should be entitled to the same protection. As already noted, child domestic workers should have adequate time available to visit their families on a regular basis, particularly if the family home is distant from the employer's household.

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?

Yes. The Convention should also specify that Member States should evaluate whether additional regulation is required for domestic workers due to the special circumstances of their employment in private households including training programs for employers

and workers, accessible complaints mechanisms, and inspection bodies authorized to inspect homes in accordance to national laws. Given the high rate of work injuries among domestic workers (according to the ILO, in some places domestic workers have a higher-rate of non-fatal work injuries than other workers), these measures should be applied immediately.

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.

Yes. However, where social security schemes and maternity protections already exist under local law for other labour sectors, these protections should be extended immediately, not progressively. There should be no discrimination in the right to social security, including on the grounds of nationality or citizenship.

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?

Yes. Member States should:

- a) establish criteria for the registration and qualifications of employment agencies, including publicly available information on any past violations;
- b) support accreditation programs for employment agencies with rigorous criteria and monitoring by independent auditors to improve their quality and accountability;
- c) inspect employment agencies regularly, including through unannounced inspections, to ensure compliance with relevant laws and regulations, and institute significant penalties for violations;
- d) provide accessible complaints mechanisms for domestic workers to notify authorities of abusive practices;
- e) ensure that no deduction is made from the remuneration of a domestic worker with respect to costs incurred by the employer in using an employment agency to recruit or place the employee. Many migrant domestic workers become deeply indebted to pay recruitment fees, often at high interest rates that can sometimes contribute to situations of debt bondage. ILO Convention 181 on Private Employment Agencies

prohibits private employment agencies from charging workers directly or indirectly for any placement fees.

Agents who recruit or place domestic workers should be:

- a) required to fully disclose in writing and orally to prospective domestic workers provisions regarding hours of work and rest each day, weekly day(s) of rest, vacation, wages, types of work, adequate food and accommodations, medical expenses for workplace injuries, length of employment, any recruiting or placement fees, and procedures for payment of wages, social security, and termination of work;
- b) required to review the birth certificates or school certificates of prospective domestic workers prior to recruiting to ensure compliance with the minimum working age law;
- c) required to monitor the treatment of domestic workers by employers during the first three months of employment;
- d) required to discontinue placement of domestic workers with employers who have histories of abusive treatment;
- e) subject to regular monitoring by labour inspectors to ensure compliance with the above provisions and other relevant laws and regulations;
- f) prohibited from withholding the domestic worker's passport.

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?

Yes. Written contracts are a critical step to formalizing the employment relationship, establishing minimum standards of decent work, and providing workers with the ability to assert their rights in cases of violations. Member States should cooperate to create national laws and regulations, as well as bilateral and multilateral agreements to ensure that migrant domestic workers receive a written contract outlining their terms and conditions of employment prior to crossing national borders. These contracts should be translated into multiple languages as necessary to ensure they are available in a language that the domestic workers understands, and that they are legally enforceable in the country of employment.

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?

Yes. Migrant domestic workers travel to the employer's country to provide a service for the employer. The employer should bear the round-trip cost of the migrant domestic worker's travel at the beginning and end of employment and any associated fees.

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

Yes. This is an important measure to prevent situations of exploitation, forced labour, and trafficking.

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?

Yes. The transnational dimensions of migration require transnational responses. Member States should cooperate to promote migration through regulated, documented channels to ensure that migrants enjoy benefits comparable to nationals and to avoid the risks associated with undocumented migration, including exploitation and limited access to justice systems. In addition, in many countries, migrant domestic workers face discrimination in their working conditions depending on their country of origin. Member states should cooperate to ensure that migrant domestic workers enjoy equal benefits regardless of their national origin. Additional benefits such as higher pay should be based on criteria such as experience and qualifications rather than national origin. Members should cooperate with each other to ensure the protection of migrant domestic workers, including exchanging information about migration flows, blacklisted employers, and blacklisted agencies.

E. Implementation and enforcement measure

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

Yes. Mechanisms should be established to allow domestic workers to pursue administrative or legal proceedings to advocate for their rights in labour disputes with their employers regarding matters such as unpaid wages or working conditions. Existing mechanisms often fail to address the unequal bargaining power between employers and domestic workers, and Member States should ensure that dispute settlement

procedures include mechanisms for binding judgments by third parties with effective enforcement mechanisms.

Advocates should be provided to accompany and guide child domestic workers who pursue such labour complaints. Children should be granted the right to bring action in such labour complaints either independently, or in conjunction with their parents or legal guardians.

Given the precarious status of migrants who cannot often wait for lengthy periods while waiting for resolution of disputes for legal or financial reasons, and who must often forego their claims, Member States should provide expedited procedures for migrant workers, and adopt immigration policies facilitating the stay and employment of migrant domestic workers while waiting for the completion of an investigation into a labour complaint or criminal prosecution.

Member States should also facilitate the ability of returned migrants—who may have been repatriated or deported before they had a chance to report abuses—to pursue complaints in the country of employment, including through cooperation between embassies and other diplomatic channels and through legal mechanisms such as power of attorney.

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?

Yes. Such arrangements may include the following:

- a) requirements that employers register the name and age of each domestic worker working in their homes with the local labour agency or another appropriate local authority;
- b) requirements that labour inspectors or other designated inspectors monitor private households, including through unannounced visits and private interviews with domestic workers regarding their working conditions;
- c) requirements that prospective employers submit to a home visit by appropriate authorities before employing a domestic worker, to assess working conditions and accommodations (if applicable) to be provided to the domestic worker;
- d) establishment of accessible complaint mechanisms, including 24-hour hotlines, for domestic workers to report abuses;

- e) protection of domestic workers' ability to move freely outside of the employer's home, form workers' associations, and keep mobile phones. Given the nature of domestic work, practical compliance with national laws and regulations will depend heavily not only on inspections by the state and other bodies, but on self-reporting by domestic workers themselves.

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?

Yes.

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

Yes. Members should take into consideration the views of domestic worker organizations and other concerned groups, including non-governmental organizations. States should also recognize domestic workers organizations and remove any potential structural and/or legal barriers to their organizing. Trade unions should also be encouraged to recognize and bring domestic worker groups under a trade union purview.

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?

Yes. Members should ensure access to information on all aspects of effective representation of domestic workers' interests including, where appropriate, collective bargaining.

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.

Because child domestic workers are particularly vulnerable to abuse, special protections are essential. Key provisions should be included in the content of the Convention, which is binding, rather than the Recommendation, which is non-binding.

As indicated under #20, above, maximum hours of work should be established in the Convention for child domestic workers between ages 15 and 18 that are equal to those established for child workers in other sectors and that allow enough time for education, training, and related homework; work during early and late hours (before 7 a.m. and after 9 p.m.) should be prohibited.

Particular attention should be paid to child domestic workers' right to education. Members should ensure that child domestic workers have opportunities to continue their education, if desired, including through access to basic and secondary education, vocational training, and informal education programs, and that special measures are taken to ensure that child domestic workers and their employers are aware of such opportunities. Members should also undertake strategies to remove barriers to education, including school fees and related costs that may push children into domestic work.

Members should identify types of work that may be hazardous and thus prohibited. State practice around the world has demonstrated that many Member states have had considerable difficulty in interpreting the ban against forms of domestic labour "which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." The Recommendation affords an opportunity to provide greater guidance for decision makers on risk prevention and risk reduction measures. Greater clarity should be provided as to certain hazards such as: (1) the use of chemicals such as pesticides, acids, and chemical solvents; (2) musculoskeletal problems; (3) care, supervision, and isolation; (4) noise; and (5) electricity and portable electrical items. Guidance on this issue could incorporate research by the ILO, including, for example, the 2007 ILO publication "Hazardous child domestic work: A briefing sheet."

The Recommendation should also urge Members to ensure that relevant child protection systems are involved in systematic monitoring of the well-being of child domestic workers, including through visits and dialogue with households employing children.

B. Working and living conditions and social security

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

Yes. As stated in #13 above, we believe that written terms of employment should be stipulated in the Convention, rather than the Recommendation.

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

- (a) the starting date of the employment*
- (b) a detailed list of duties*
- (c) annual leave*
- (d) daily and weekly rest*
- (e) sick leave and any other personal leave*
- (f) the rate of pay for overtime work*
- (g) any other cash payments to which the domestic worker is entitled*
- (h) any in-kind allowance and its cash value*
- (i) details of any accommodation provided*
- (j) any authorized deductions*
- (k) the period of notice required for termination?*

Each of these particulars should be included in the terms of employment, and included in the list provided under #13 to be included in the Convention itself.

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

Yes.

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?

Yes. This provision should be included in the Convention.

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?

Yes.

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?

Yes.

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;

Yes. The ILO and other studies have noted the particular vulnerability of domestic workers to physical and sexual abuse by members and associates of the employer's family. Providing a locked, private room would, in particular, provide domestic workers greater protection from sexual abuse.

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

Yes.

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

Yes.

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?

Yes. See response to #17, above.

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?

Yes. This provision should be included in the Convention.

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?

Yes.

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;

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

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

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

Yes to all. These provisions should be reflected in the Convention rather than the Recommendation. Also, as noted above, the Convention should state explicitly that child domestic workers should not be expected to work standby hours at night.

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?

Yes.

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?

Yes. This should be reflected in the Convention. (See #20)

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?

Yes.

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?

Yes. This should be reflected in the Convention. (See #21)

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

Yes. Because many domestic workers are dependent on their employers not only for work but also for a place to live, adequate notice of termination is essential.

53. Should the Recommendation provide that Members should:

- (a) identify, mitigate and prevent occupational hazards specific to domestic work;*
- (b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;*
- (c) advise on occupational safety, health and hygiene as well as on ergonomics and protective equipment; and*
- (d) develop training programmes and disseminate guidelines on occupational safety and health requirements?*

Yes to all. Training programs and guidelines should be made available in relevant languages for migrant domestic workers. In the development of these elements, Members should give particular attention to the specific dangers that domestic work may pose to children. For example, because of child domestic workers' younger age, stage of physical development, and often smaller size, some tasks (e.g. carrying heavy loads) and working conditions (e.g. use of cleaners and solvents) may pose greater hazards to child domestic workers than to adults. As noted above, the ILO also

recommends longer periods of rest (12 hours/night) for child domestic workers, which can help prevent work-related accidents.

C. Professional Development

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?

Yes.

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?

Yes. In particular, child domestic workers should have opportunities to access secondary education or vocational training in order to give them greater access to skilled, well-remunerated employment.

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;*
- (b) prohibit any payment by migrant domestic workers to cover repatriation costs;*
- (c) identify the time frame and circumstances for the exercise of the right to repatriation?*

Yes.

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*
- (b) a placement visit of the household in which the migrant domestic worker will be employed?*

Yes. The Recommendation should also suggest visits or private telephone interviews with migrant domestic workers within the first month of their placement, and a registry of the name and address of their employer with the local authorities and their embassy. The Recommendation should encourage cooperation between countries of employment and the embassies of migrants' countries of origin to create mutually enforceable contracts, regulate and monitor international recruitment, and investigate and prosecute cases of abuse, especially once a migrant has already been repatriated/deported.

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.

Yes. All of the above. Sending countries also have a particular responsibility to regulate and monitor recruitment agencies, including by prohibiting the fees they extract from migrant domestic workers, many of whom end up highly indebted. They should register recruitment agencies and village-level brokers, establish accreditation programs, consult with migrants' associations, NGOs and other relevant groups to establish an independent monitoring system of recruitment agencies, and punish recruiters who engage in abusive practices.

Consular services should be accessible to migrant domestic workers, including by having a 24-hour guard available to receive domestic workers who have escaped abusive situations, and by remaining open on days (typically Fridays or Sundays) that domestic workers may have off. Embassies should have emergency shelters that have suitable accommodation, food, and trained women staff who can provide counseling. Consular staff should help domestic workers to resolve complaints in a timely manner and provide them information about their options and the status of their case.

Sending countries should cooperate with each other to prevent unhealthy competition that results in a "race to the bottom" and to establish shared minimum standards. They should also cooperate with employment countries to share information about blacklisted employers and recruitment agencies, to cooperate in the rescue of domestic workers in abusive situations, and to cooperate in the investigation and prosecution of abusive employers.

Sending countries should also mount public awareness campaigns to raise general awareness about the risks involved with migration, the regulations regarding recruitment practices and fees, warning signs of abusive recruiters, and complaints mechanisms for both pre-departure and post-return abuses.

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;*
- (b) promote work-life balance for families; or*
- (c) promote the domestic workers' employment in occupational categories that match their education and skills?*

Yes.

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

Yes.

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?

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?

63. Are there any other pertinent problems not covered by the present questionnaire that ought to be taken into consideration when drafting the instruments?

Yes.

- 1) Public education and sensitization: The Recommendation should urge Members to carry out public education and sensitization activities about the rights of domestic workers, including migrant and child domestic workers, through print media, radio and television. Such activities should educate workers and employers about their rights and responsibilities.
- 2) National laws should protect domestic workers' rights to practice religion or belief; to freedom of association; and should prohibit discrimination against domestic workers on grounds including gender; sexual orientation; religion; race; nationality, etc.
- 3) The Convention should specifically outline protections for domestic workers to form workers' associations and trade unions.
- 4) Recommendation to progressively raise the minimum age for entry into domestic work: The Minimum Age Convention requires Members to "raise progressively" the minimum age of work "to a level consistent with the fullest physical and mental development of young persons." (Art. 1) Recommendation 146 states that Members' objective should be to raise the age to 16 years of age. Therefore, although this Convention defines the minimum age for entry into domestic work as 15 years old, Members should pursue a national policy to raise progressively the minimum age of entry into domestic work.
- 5) Domestic workers are increasingly comprised of international migrants, who confront many additional layers of risk of abuse due to their immigration status, language barriers, unfamiliarity with their country of employment, and discriminatory policies. The convention should address the following issues: a) Comprehensive protection of migrant domestic workers cannot be achieved by reform of labour provisions alone and require coordination with immigration regulations. In many cases oversight of migrant domestic workers are overseen by Interior or Home Ministries rather than Labour Ministries. Government should recognize domestic workers as workers and include them in the regulatory and monitoring mechanisms of labour ministries; b) They should also adopt measures to abolish immigration sponsorship policies that link a domestic worker's employment visa and immigration status to her or his employer. Migrant domestic workers are often at heightened risk of labour

exploitation and violence due to these policies, which are especially common in the Middle East and Asia. These systems give employers inordinate power over domestic workers, including the ability to refuse them the ability to change or discontinue employment, or to leave the country. Domestic workers who are not being paid, are being overworked, or experiencing violence and other forms of exploitation are often trapped in situations of forced labour or servitude as a result of employers abusing these policies.



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