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Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA)
Introduction

This publication was put together by Migrant Forum in Asia (MFA) and the Asian Migrant Domestic Workers Alliance (ADWA) in preparation for the 2010 International Labour Conference (ILC) where “Decent Work for Domestic Workers” is part of the Agenda. The publication is part of a series of information education materials produced by MFA in ADWA in relation to its campaign on the “Recognition of Domestic Workers as Workers”.

MFA is a regional network of migrant organizations, non-governmental organizations (NGOs), associations and trade unions working to protect and promote the rights of migrants and members of their families. MFA is by far the broadest and most representative membership-based network of Asian Migrant Organizations and support groups in the region. Established in 1994, MFA currently has more than 200 official members from 15 Asian countries with its secretariat based in the Philippines.

The Asian Migrant Domestic Workers Alliance (ADWA) is an Asian regional alliance of and for migrant domestic workers (MDWs). It is a self-representative alliance that promotes, protects, and advocates for the rights, interests, welfare, dignity, and status of DWs, specifically MDWs. ADWA’s members are composed of MDW organizations, grassroots groups, trade unions, non-government organizations (NGOs)/civil society groups, and advocates. The alliance is led by the grassroots MDW organizations while the NGOs/civil society partners provide support and facilitation to enable MDWs in Asia to self-represent and to promote and advocate for their common interests and objectives. The Asian Migrant Centre (AMC) and Migrant Forum in Asia (MFA) are the Asian regional advisers and partners of ADWA.

The first part of the publication is a compilation of Bills on Domestic Work from Asia, the United States of America and Europe. The bills from Asia are from the following countries: India, Philippines, Sri Lanka and Taiwan. Two bills are included from the U.S.A. from the State of New Your. The compilation from Europe includes the proposed bill from Ireland.

The second part of the publication is a compilation of CSO responses to the ILO Questionnaire on Decent Work. Included are the consolidated responses of MFA and ADWA, Responses from the Christian Aid Network, response from Human Rights Watch and Anti Slaver International and the RESPECT network from Europe.

The third part of the publication features special reports on domestic workers. The first Report is from Human Rights Watch discussing the protection for the rights of migrant domestic workers in Asia. The last report is the Committee on Migrant Workers 12th Session Draft General Comment on the No.1 on Migrant Domestic Workers.

This publication was made possible through the contributions of MFA and ADWA members, network partners and support groups.
I. COMPILATION OF BILLS ON DOMESTIC WORK:

ASIA
India
Philippines
Sri Lanka
Taiwan
Domestic Workers
(Regulation of Employment, Conditions of Work, Social Security and Welfare) Bill, 2009

Author: National Domestic Workers Movement - India

Statement of Objects and Reasons
Chapter I: Application
Chapter 2: Registration of workers
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STATEMENT OF OBJECTIVES AND REASON

Domestic workers are a hugely neglected workforce in terms of recognition as labour, dignity of work and also in terms of organizing. Large number of people are engaged in Domestic Work specially women and children. The workers work in conditions resembling forced and bonded labour. There is also trafficking in Domestic Work;

The discrimination and exclusion of Domestic Workers begin from not recognizing them as a worker. The nature of their work place, working hours, definition of employer and employee relationship along with the reality that their workplace is someone’s home bring forth the feudal relationship between Employer and employee.

Working conditions and realities of Domestic Workers are very different from that of other workers in the informal economy and therefore to ensure that they are not excluded from the benefits accruing to workers protected by labour laws there is a need for a comprehensive central legislation.

This legislation is made in order to secure decent work for domestic workers and respect their fundamental rights and principles at work.

CHAPTER 1: SCOPE AND APPLICATION

1. Effect of laws and agreements inconsistent with this Act;

a) The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or
b) The Appropriate Government may by notification in the Official Gazette and subject to such conditions as may be specified in such notification, exempt any employer of domestic worker from the operation of this Act, if the domestic workers under such employment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

2. Application of Various Laws to Domestic Workers:

Notwithstanding anything contained in any other law for the time being in force, provision of workmen's Compensation act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Maternity Benefit Act 1961, Minimum Wages Act 1948, Equal Remuneration Act 1976, Employee's State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972 subject to modifications of this Act will also apply to all the Domestic Worker covered under this Act.

3. Rules of evidence:

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme have been effected will be entirely on the employer and the units of the Board wherever applicable.

4. Definitions:

1. Domestic Workers
2. Employer
3. Child Worker
4. Replacement worker
5. Placement agency / Service provider / NGO’s doing placements
6. Contractor
7. Tripartite Welfare Board
8. Appropriate Government
9. Minimum wage:

The appropriate government may notify the minimum wage to be paid to domestic workers. The minimum wages should include the element of risk while working, security for old age and pregnancy, odd hours of work and working in un-safe areas should be considered before deciding the wages; wages should be fixed by the hour and as per location and should be based on percentage of employers’ salary and should be revised with the increase in price index. It should be a living wage. Wages should be decided in consultation with the workers.

CHAPTER 2: REGISTRATION OF WORKERS AND EMPLOYERS

5. Registration at source;

(1) There be compulsory registration of Employers, Workers, and all service providers including placement agents and contractors;
(2) Workers should be compulsorily registered at the source and work area and regulation of employment along with ID cards be done at source. Where ever possible onus should be on employers to register the workers and the principle responsibility should. Any local council including Panchayat and other Local self-government;

CHAPTER 3: WAGES AND CONDITIONS OF WORK

6. Minimum wages

With effect from the notification of this act an employer must pay a domestic worker at least the minimum wage prescribed in the schedule to this Act.

(1) An employer must pay a full time domestic worker i.e who works more than 27 ordinary hours of work per week at least the weekly or monthly wage set out in Table 1; or by agreement between the employer and domestic worker, at least the hourly rate set out in Table 1 for every hour or part of an hour that the domestic worker works.

(2) An employer must pay a domestic worker who works 27 or less ordinary hours of work per week at least the weekly or monthly wages set out in Table 2; by agreement between the employer and domestic worker, at least the hourly rate set out in Table 2 for every hour or part of an hour that the domestic worker works.

(3) A domestic worker who works for less than four hours on any day must be paid for four hours’ work on that day.

7. Annual wage increases

(1) Every domestic worker must be granted wage increases of at least 8% every year.

(2) The wage increases in terms of sub-clause (1) must be calculated on the domestic worker’s actual wage in the preceding month.

(3) If the annual increase in the Consumer Price Index is 10% or higher, domestic workers will be entitled to receive a wage increase equivalent to the increase in the Consumer Price Index.

8. Calculation of wages

(1) The wage of a domestic worker must be calculated by reference to the domestic worker’s ordinary hours of work.

(2) For the purposes of any calculation in terms of this determination—the hourly wage of a domestic worker is obtained by dividing the daily wage by the number of ordinary hours worked in a day; or dividing the weekly wage by the number of ordinary hours worked in a week. The daily wage of a domestic worker is obtained by – multiplying the hourly wage by the number of ordinary hours worked in a day; or dividing the weekly wage by the number of ordinary hours worked in a week. The weekly wage of a domestic worker is obtained by – multiplying the hourly wage by the number of ordinary hours worked in a week; or multiplying
9. Payment of wages

(1) An employer must pay a domestic worker -
• in rupees
• daily, weekly, fortnightly or monthly; and
• in cash, by cheque or by direct deposit into an account designated by the domestic worker.

(2) Any payment in cash or by cheque must be given to each domestic worker -
• at the workplace;
• during the domestic worker's working hours; and
• in a sealed envelope which becomes the property of the domestic worker.

(3) An employer must pay a domestic worker on the normal pay day agreed to by the domestic worker.

10. Information concerning pay

(1) On every pay day, the employer must give the domestic worker a statement showing –
• the employer’s name and address;
• the domestic worker’s name and occupation;
• the period in respect of which payment is made;
• the domestic worker’s wage rate and overtime rate;
• the number of ordinary hours worked by the domestic worker during that period;
• the number of overtime hours worked by the domestic worker during that period;
• the number of hours worked by the domestic worker on a public holiday or on a Sunday;
• the domestic worker’s wage;
• details of any other pay arising out of the domestic worker’s employment;
• details of any deductions made; and
• the actual amount paid to the domestic worker.

(2) An employer must retain a copy or record of each statement for three years.

11. Prohibited acts concerning pay

(1) An employer may not receive any payment directly or indirectly, or withhold any payment from a domestic worker in respect of -
• the employment or training of that domestic worker;
• the supply of any work equipment or tools;
• the supply of any work clothing; or
Compilation of Draft Bills on Domestic Work

- any food supplied to the domestic worker while the domestic worker is working or is at the workplace.

(2) An employer may not require a domestic worker to purchase any goods from the employer or from any person, shop or other business nominated by the employer.

(3) An employer may not levy a fine against a domestic worker.

(4) An employer may not require or permit a domestic worker to –

- repay any pay except for overpayments previously made by the employer resulting from an error in calculating the domestic worker’s pay; or
- acknowledge receipt of an amount greater than the pay actually received.

12. Deductions

(1) An employer may not make any deduction from a domestic worker’s pay except:

- a deduction, calculated on the basis of the domestic worker’s wage, proportionate to the length of any period that the domestic worker is absent from work, other than an absence on paid leave or at the instance of the employer;
- deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker by the employer if the accommodation—is weatherproof and generally kept in good condition; has at least one window and door, which can be locked; has a toilet and bath or shower, if the domestic worker does not have access to any other bathroom.
- with the written consent of the domestic worker, a deduction of any amount which the employer has paid or has undertaken to pay—to any holiday, sick, medical, insurance, savings, provident or pension fund of which the domestic worker is a member, to any registered trade union in respect of subscriptions; to any banking institution, building society, insurance business, registered financing institution or local authority in respect of a payment on a loan granted to the domestic worker to acquire a dwelling; to any person or organisation in respect of the rent of a dwelling or accommodation occupied by the domestic worker;

(2) a deduction, not exceeding one-tenth of the wage due to the domestic worker on the pay-day concerned, towards the repayment of any amount loaned or advanced to the domestic worker by the employer; or

(3) a deduction of any amount which an employer is required to make by law or in terms of a court order or arbitration award.

CHAPTER 4: EMPLOYMENT CONTRACT

(13) Every employer of a domestic worker shall enter into a contract of employment which specifies the terms and conditions of the employment. The contract must be drawn up in accordance with the model contract as specified in Schedule.
CHAPTER 5: HOURS OF WORK

(14) An employer may not require or permit a domestic worker to work more than-

- 45 hours in any week; and
- nine hours on any day if the domestic worker works for five days or less in a week; or
- eight hours in any day if the domestic worker works on more than five days in any week.

Overtime

(15) An employer may not require or permit a domestic worker:

- to work overtime except in accordance with an agreement concluded by the employer and the domestic worker
- to work more than 15 hours’ overtime a week; or
- to work more than 12 hours, including overtime, on any day.

Payment of overtime

(16) Payment of Overtime

(1) An employer must pay a domestic worker at least one and one-half times the domestic worker’s wage for overtime worked.

(2) Despite sub-clause (1), an agreement may provide for an employer to-

   (i) pay a domestic worker not less than the domestic worker’s ordinary wage for overtime worked and grant the domestic worker at least 30 minutes’ time off on full pay for every hour of overtime worked; or
   (ii) grant a domestic worker at least 90 minutes’ paid time off for each hour of overtime worked.

(3) (a) An employer must grant paid time off in terms of sub-clause (2) within one month of the domestic worker becoming entitled to it.

   (b) An agreement in writing may increase the period contemplated by paragraph (a) to twelve months.

   (c) An agreement concluded in terms of paragraph (b) with a domestic worker when the domestic worker commences employment, or during the first three months of employment, is only valid for one year.

(4) Any time worked on a Sundays or public holidays must be paid in accordance with the provisions for Sundays and public holidays in clauses 17 and 18.
17. Night work

(1) For the purposes of this clause, “night work” means work performed after 18:00 and before 06:00 the next day. An employer may only require or permit a domestic worker to perform night work, if agreed in writing and if:

- the domestic worker is compensated by the payment of an allowance; and
- the domestic worker resides at the workplace or transport is available between the domestic worker’s place of residence and the workplace at the beginning and end of the domestic worker’s shift.

18. Standby

(1) For the purposes of this clause, ‘standby’ means any period between 20:00 and 06:00 the next day when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if necessary.

- An employer may only require or permit a domestic worker to be on stand by if it is agreed in writing and if the domestic worker is compensated by the payment of an allowance of at least R20,00 per shift.
- An employer may not require or permit a domestic worker to be on stand by more than five times per month or 50 times per year.
- An employer may only require or permit a domestic worker to perform work which is required to be done without delay.
- An employer must pay a domestic worker for any time worked in excess of three hours during any period of stand-by at –
  The domestic worker’s overtime rate calculated in terms of clause 12(1);
  or grant the domestic worker paid time-off in terms of clauses 12(2) and (3).

19. Meal intervals

(1) An employer must give a domestic worker who works continuously for more than five hours a meal interval of at least one continuous hour.

(2) During a meal interval, a domestic worker may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another domestic worker.

(3) A domestic worker must be paid—for a meal interval in which the domestic worker is required to be available for work; for any portion of a meal interval that is in excess of 75 minutes, unless the domestic worker lives at the workplace

(4) For the purpose of sub-clause (1), work is continuous unless it is interrupted by a meal interval in accordance with this clause.

(5) An agreement in writing may reduce the meal interval to not less than 30 minutes; dispense with a meal interval for a domestic worker who works fewer than six hours on a day.
(6) Whenever an employer is required to give a domestic worker a second meal interval because of overtime worked, that interval may be reduced to not less than 15 minutes.

20. Rest period

(1) An employer must grant a domestic worker—a daily rest period of at least twelve consecutive hours between ending work and starting work the next day; weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.

(2) A daily rest period in terms of sub-clause (1)(a) may, by written agreement, be reduced to 10 hours for a domestic worker—who lives at the workplace is situated; and whose meal interval lasts for at least three hours.

(3) Despite sub-clause (1)(b), an agreement in writing may provide for a rest period of at least 60 consecutive hours every second week.

21. Payment for work on Sunday

(1) An employer must pay a domestic worker who works on a Sunday – at double the domestic worker’s wage for each hour worked; or if the work is part of the domestic worker’s ordinary hours of work, at one and one half times the domestic worker’s wage for each hour worked.

(2) If the payment calculated in terms of sub-clause (1) is less than the domestic worker’s daily wage, the employer must pay the domestic worker, for the time worked on that Sunday, the domestic worker’s daily wage.

(3) Despite sub-clauses (1) and (2), an agreement may permit an employer to grant a domestic worker who works on a Sunday paid time off equivalent to the difference in value between the pay received by the domestic worker for working on a Sunday and the pay the domestic worker is entitled to receive in terms of sub-clauses (1) and (2) at double the domestic worker’s wage for each hour worked.

(4) (a) A domestic worker must grant paid time off in terms of sub-clause (3) within one month of the domestic worker becoming entitled to it. (b) An agreement in writing may increase the period contemplated by paragraph (a) for 12 months.

(5) Any time worked on a Sunday by domestic worker who does not normally work on a Sunday is not taken into account in calculating a domestic worker’s ordinary hours of work in terms of clause 10, but is taken into account in calculating the overtime worked by the domestic worker in terms of clause 11(1)(b).

(6) If a shift worked by a domestic worker falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
22. Public holiday

(1) An employer may not require a domestic worker to work on a public holiday as notified by the central government, except in accordance with an agreement.

(2) If a public holiday falls on a day on which a domestic worker would otherwise have worked, an employer must pay a domestic worker—who does not work on the public holiday the domestic worker’s daily wage; who does work on the public holiday at least double the daily wage.

(3) If a domestic worker who works on a public holiday on which the domestic worker would not normally work, the employer must pay that domestic worker an amount equal to the domestic worker’s daily wage; plus the domestic worker’s hourly wage for each hour worked on the public holiday.

(4) An employer must pay a domestic worker for a public holiday on the domestic worker’s normal payday.

If a shift worked by a domestic worker falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

23. Working conditions

(1) Accommodation: Adequate, safe, secure, hygienic, private and fixed space for sleeping (with bedding), and belongings should be provided to residential workers. Part time and full time workers should be allowed use and access to bathrooms and toilet;
   - Safe drinking water should be provided
   - Quality nutritious, fresh and sufficient food be provided and not left overs.
   - Full time work: Breakfast, lunch and tea

(2) Residential work: Breakfast, lunch, Dinner, tea and food during weekly / or other days off

(3) Part time work: Tea and snacks

(4) Night shift work: tea, snacks and breakfast and dinner where applicable

CHAPTER 6: LEAVE

24. Annual leave

(1) An employer must grant a domestic worker –
   - at least three weeks annual leave on full pay in respect of each 12 months of employment (the ‘annual leave cycle’);
   - by agreement, at least one day of annual leave on full pay for every 17 days on which the domestic worker worked or was entitled to be paid; or
   - by agreement, one hour of annual leave on full pay for every 17 hours on which the domestic worker worked or was entitled to be paid.
(2) An employer must grant a domestic worker an additional day of paid leave if a public holiday falls on a day during a domestic worker’s annual leave on which the domestic worker would otherwise have worked.

(3) An employer may reduce a domestic worker’s entitlement to annual leave by the number of days of occasional leave on full pay granted to the domestic worker at the domestic worker’s request in that annual leave cycle.

(4) An employer must grant –
   • at least three weeks annual leave on full pay in respect of each 12 months of employment (the ‘annual leave cycle’) not later than six months after the end of the annual leave cycle or the year in which the leave was earned;
   • the leave earned in one year over a continuous period, if requested by the domestic worker.

(5) Annual leave must be taken –
   • in accordance with an agreement between the employer and employee; or
   • if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.

(6) An employer may not require or permit an employee to take annual leave during –
   • any other period of leave to which the employee is entitled in terms of this Chapter; or
   • any period of notice of termination of employment.

(7) An employer may not require or permit a domestic worker to work for the employer during any period of annual leave.

(8) An employer may not pay a domestic worker instead of granting paid leave in terms of the clause except on termination of employment in terms of clause 25.

(9) An employer must pay a domestic worker leave pay at least equivalent to the full pay the domestic worker would receive for working for a period equal to the period of leave calculated on the basis of the domestic worker’s rate of pay immediately before the period of leave.

(10) Leave pay in terms of clause (9) must be calculated on the basis of the domestic worker’s rate of pay immediately before the period of leave.

(11) An employer must pay a domestic worker leave pay before the beginning of the period of leave.

25. Sick leave

(1) For purposes of this clause “sick leave cycle” means the period of 36 months employment with the same employer immediately
   • following – when the domestic worker commenced work; or
   • the end of the domestic worker’s prior sick leave cycle.
During every sick leave cycle, a domestic worker is entitled to an amount of paid sick leave equal to the number of days the domestic worker would normally work during a period of six weeks.

Despite sub-clause (2) during the first six months of work, a domestic worker is entitled to one day’s sick leave for every 26 days worked.

An employer may, during the domestic worker’s first leave cycle, reduce the domestic worker’s entitlement to sick leave in terms of sub-clause (2) by the number of days’ sick leave taken in terms of sub-clause (3).

Where an employer, at the request of the domestic worker, pays fees for a domestic worker’s hospital or medical treatment, the fees paid may be set off against the worker’s pay.

An employer may require a domestic worker who has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period to produce a medical certificate before paying the domestic worker in terms of this clause.

The medical certificate in terms of sub-clause (6) must –
• be issued and signed by a medical practitioner, a traditional healer, a professional nurse who is authorised to issue certificates, or any other person who is certified to diagnose and treat patients and is registered with a professional council, established by an Act of Parliament; and
• state that the domestic worker was unable to work for the duration of the domestic worker’s incapacity.

If it is not reasonably practicable for a domestic worker who lives on the employer’s premises to obtain a medical certificate, the employer may not withhold payment in terms of this clause unless the employer provides reasonable assistance to the domestic worker to obtain the certificate.

26. Family responsibility leave

This clause applies to a domestic worker -
• who has been employed by an employer for longer than four months; and
• who works on at least four days a week for that employer

An employer must grant a domestic worker, during each 12 months of employment, at the request of the domestic worker, five days’ leave, which the domestic worker is entitled to take-
• when the domestic worker’s child is born;
• when the domestic worker’s child is sick; or
• in the event of the death of-
  • the domestic worker’s spouse or life partner; or
  • the domestic worker’s parent, adoptive parent, grandparent, child, adopted child, grandchildren or sibling.

A domestic worker may take family responsibility leave in respect of the whole or part of the day.
(4) Subject to sub-clause (5), an employer must pay a domestic worker for a day’s family responsibility leave - the wage the domestic worker would normally have received for work on that day; and on the domestic worker’s usual payday.

(5) Before paying a domestic worker for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in sub-clause (2) for which the leave was required.

(6) A domestic worker’s unused entitlement to leave in terms of this clause lapse at the end of the annual leave cycle in which it accrues.

27. Maternity leave

(1) A domestic worker is entitled to at least four consecutive months’ maternity leave.

(2) A domestic worker may commence maternity leave -
   • at any time from four weeks before the expected date of birth, unless otherwise agreed; or
   • on a date from which a medical practitioner or a midwife certifies that it is necessary for the domestic worker’s health or that of her unborn child.

(3) A domestic worker may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

(4) A domestic worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the domestic worker had commenced maternity leave at the time of the miscarriage or stillbirth.

(5) A domestic worker must notify an employer in writing, unless the domestic worker is unable to do so, of the date on which the domestic worker intends to commence maternity leave; and return to work after maternity leave.

(6) Notification in terms of sub-clause (5) must be given - at least four weeks before the domestic worker intends to commence maternity leave; if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) No employer may require or permit a pregnant domestic worker or a domestic worker who is nursing her child to perform work that is hazardous to her health or the health of her child.

CHAPTER 7: PROHIBITION OF CHILD LABOUR AND FORCED LABOUR

28. Child Labour and Forced Labour

(1) No person may employ as a domestic worker a child - who is under 15 years of age; or who is under the minimum school leaving age in terms of the Right to Education Act, 2009 or any law, if this is 15 or older.
(2) No person may employ a child in an employment-
   • that is inappropriate for a person of that age;
   • that places at risk the child’s well being, education, physical or mental health, or
     spiritual, moral or social development.

(3) An employer must maintain for three years a record of the name, date of birth and address of
   every domestic worker under the age of 18 years employed by them.

(4) Subject to the Constitution of India all forced labour is prohibited.

(5) No person may, for their own benefit or for the benefit of someone else cause, demand or
   impose forced labour in contravention of sub-clause (4).

(6) A person who employs a child in contravention of sub-clause (1) and (2) or engages in any
   form of forced labour in contravention of sub-clauses (4) and (5) commits an offence in terms
   of the child labour (regulation and Abolishment) Act and the Bonded labour abolition act.

29. Special provisions for emigrant workers

(1) The age of work for emigrant workers may be 21.

(2) Migrant and immigrant labour should be registered with the TWB and should be given an ID
   and monitoring of welfare given to them. Ensure that there rights and welfare by consultation
   with overseas department;

(3) Government should have proper contracts between the employers and the workers to protect
   the interests of workers;

(4) Migrant should be registered at source and place of work with compulsory registration of
   employer;

(5) Migrant workers and their agents should register with the labour dept and the lab. Dept should
   provide them with certification so that the workers know whom to contact in distress

(6) If migrants are employed through placement agency there should be an investigation into
   placement agencies and cancellation of their licenses if they have not followed the registration
   and other procedures;

(7) If migrant worker is thrown out of work shelter arrangement should be there set up by the
   govt.;

(8) There should be Training centers for migrants labour;

(9) Passport / Travel Documents to be with the worker
CHAPTER 8: TERMINATION OF EMPLOYMENT

31. Termination of employment

(1) A contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than –
   • one week, if the domestic worker has been employed for six months or less;
   • four weeks, if the domestic worker has been employed for more than six months.

(2) The employer and domestic worker may agree to a longer notice period but the agreement may not require or permit a domestic worker to give a period of notice longer than that required of the employer.

(3) Notice of termination of contract of employment must be given in writing except when it is given by an illiterate domestic worker; If a domestic worker who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the domestic worker in an official language the domestic worker reasonably understands.

(4) Notice of termination of a contract of employment given by an employer must-
   • not be given during any period of leave to which the domestic worker is entitled in terms of clause 17(1);
   • not run concurrently with any period of leave to which the domestic worker is entitled in terms of this determination, except sick leave.

(5) Nothing in this clause affects the right of -
   • a dismissed domestic worker to dispute the lawfulness or fairness of the dismissal in terms of any other law; and
   • an employer or a domestic worker to terminate a contract of employment without notice for any cause recognized by law.

(6) Instead of giving a domestic worker notice in terms of this clause, an employer may pay the domestic worker the full pay the domestic worker would have received if the domestic worker had worked during the notice period. If a domestic worker gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the full pay referred to in sub-clause (6), unless the employer and domestic worker agree otherwise.

31. Retirement age:

No domestic worker may be permitted to work beyond the age of 60.

32. Payment on termination

(1) On termination of employment, an employer must pay a domestic worker all monies due to the domestic worker for any -
   • wages, allowance or other payments that have not been paid;
   • paid time-off that the domestic worker is entitled to in terms of clause 12 or 17 that the
domestic worker has not taken;

- leave in terms of clause 19 that the domestic worker has not taken, irrespective of whether the domestic worker has completed an annual leave cycle or year of service, unless the domestic worker has not been employed longer than four months.

(2) For the purposes of clause 25(1)(c), a domestic worker is entitled to be paid in respect of any period for which leave was not granted –

- one week’s wages for every four months worked; or

- one day’s wages in respect of every 17 days on which the domestic worker worked or was entitled to be paid.

33. Accommodation on termination

(1) If the employer of a domestic worker who resides at the workplace or in other accommodation supplied by the employer terminates the contract of employment of that domestic worker before the date on which the employer was entitled to do so in terms this clause, the employer is required to provide the domestic worker with accommodation for a period of one month or if it is a longer period, until the contract of employment could lawfully have been terminated.

(2) If a domestic worker elects to remain in accommodation in terms of sub-clause (8) after the employer has terminated the domestic worker’s contract of employment in terms of this clause, the employer may deduct for that period 10% of the amount the employer is required to pay in terms of this clause as the value of the accommodation.

34. Severance pay

(1) For the purposes of this clause, “operational requirements” means requirements based on the economic, technological, structural or similar needs of an employer.

(2) An employer must pay domestic worker who is dismissed for reasons based on the employer’s operational requirements severance pay equal to at least one week’s full pay for each completed year of continuous service with that employer.

(3) A domestic worker who unreasonably refuses to accept the employer’s offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of sub-clause (2).

(4) The payment of severance pay in compliance with this clause does not affect a domestic worker’s right to any other amount payable according to law. If there is a dispute only about the entitlement to severance pay in terms of this clause, the domestic worker may refer the dispute in writing to the CCMA.

35. Payment of gratuity

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,
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- on his superannuation, or
- on his retirement or resignation, or
- on his death or disablement due to accident or disease:

36. Certificate of service

(1) On termination of employment, a domestic worker is entitled to a certificate of service stating:
- the domestic worker's full name;
- the name and address of the employer;
- the date of commencement and date of termination of employment;
- the title of the job or brief description of the work for which the domestic worker was employed at the date of termination;
- any relevant training received by the domestic worker;
- the pay at date of termination; and
- if the domestic worker requests, the reason for termination of employment.

CHAPTER 9: ACCIDENT PROTECTION

37. Employers liability

Every employer is liable to pay compensation to a domestic worker for any accident arising out of and in the course of such employment.

The compensation will be computed in accordance with the provisions of the workmen's compensation act.

CHAPTER 10: SOCIAL SECURITY

38. Section: Workers welfare fund

- The central government shall constitute a workers welfare fund in every state.
- Section: contributions to the fund
- Employers contribution:
- Employers will contribute two months wages per annum to the workers welfare fund towards social security of the workers.
- State contribution: A matching contribution to the employers contribution should also be given by the Central and state governments.

CHAPTER 11: AUTHORITIES UNDER THE ACT

39. Authorities under the Act:

(i) Controlling authority

The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.
a dispute between an employer an employee relating to any provision of this act shall be settled by the controlling authority named under this act and in such summary manner, as the State Government may be rules specify in this behalf.

(ii) Welfare boards

The appropriate Government in States and Union Territories shall, by notification in the official Gazette, establish Domestic Worker Welfare Board for domestic employments for each State. Apart from the representatives of workers and employers, each Board shall also consist of representatives of the State Govt., one representative of the Central Government and such number of experts as are considered necessary.

(iii) Tripartite Workers Board (TWB)

The State Government shall after consulting the State Advisory Committee, by notification in the official Gazette and subject to the condition of prior publication set up tripartite bodies at the district level and below on the same pattern as each of the State Domestic Worker Board named the TWB (Tripartite Workers Board)

(iv) Worker’s Facilitation Centre (WFC)

(v) Inspectors

40. Rights to inspection

The workplace and living space of a Domestic Worker may be inspected by individuals / groups / organisations (including Trade Unions, NGO’s working with Domestic workers, Welfare organisations working as service providers, along with the Labour Department and Police where necessary) as assigned by the Tripartite Welfare Board along with the protection officer;

41. Schemes for Domestic workers

(1) The appropriate Government may in consultation with its welfare boards and after consulting the Central Government frame schemes for the benefit of the domestic workers. Each Scheme may provide for one more benefit for the domestic workers for the whole State / Union Territory.

(2) In particular, the Scheme may provide for any or all of the following;

a) for ensuring regular employment and regulating employment in the domestic employments in the unorganized sector and providing benefits to workers;

b) for training, imparting skills to and providing welfare for domestic workers; such as housing, crèche, assistance for accidents, natural death of the registered workers, marriage and education of children etc.
42. Functions of the Boards:

(1) The welfare boards set up in a State or in a Union Territory shall be responsible for administering the Act and the schemes and shall exercise such powers and perform such functions as may be conferred on them by the Act.

(2) The District Boards shall perform the following functions:

- The district Board shall Monitor and maintain records regarding the movement of women and children from village/district to any other place in connection with domestic work
- Education of children of Domestic Worker: Welfare boards to pay for the primary, secondary and graduation of the child and wherever based on merit, post graduation and above. There should be a tie up with the government schemes for education and aid be defined for two children / family; Education subsidy for the children of domestic workers be set up by the board and to ensure that child labour get education;
- Education, Training and skill development of the worker: Welfare boards to run training and skill development centers (specifically in the area of house / home management skills) and assist the workers to take advantage of the government run literacy centers and other such skill development and enhancement programmes. The board will also assist in identifying them as workers beneficiaries under these programmes. Employers at their own initiative should ensure minimum literacy to the workers they employ. The Government through the TWB should have a role in running worker facilitation centers as per local needs and facilities available;

43. Functions of the TWB

- To formulate adequate Insurance schemes to cover complete health of the Domestic Workers
- To set up crèches/child care centre near the place of work;
- To conduct taluk / local wise meeting of registered workers in each scheduled grouping of employments shall be held every year and the minutes placed before the corresponding boards in the subsequent meeting.
- Authorize the WFC to act as an authorized intermediary in collecting contributions from the workers and others as mandated under the Act and remit them to the district Board;

44. Powers of the Board:

Powers of the District Board:

CHAPTER 12: OFFENCES AND PENALTIES

45. Offences and Penalties

(1) Any employer or service provider who contravenes the provisions of the Act or any rules made there under shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to two thousand rupees, or with both, and in the case of a continuing
contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both:

(3) Any person who willfully obstructs any officer so authorized by the district boards to conduct inspection under the act or refuses or willfully neglects to afford the such officer any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to the employer or a service provider to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to two thousand rupees, or with both.

(4) Whoever willfully refuses to produce on the demand of such an inspecting a person so authorized by the district boards, any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspecting person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months or with a fine which may extend to two thousand rupees, or with both.

46. Cognizance by court

CHAPTER 13: MISCELLANEOUS

47. Recovery of money due from an employer.

- Recovery of money due from an employer.-(1) Where any money is due to a worker from an employer under a settlement or an award or under the provisions of this Act. The worker or any other person authorised in writing in this behalf, or, in the case of the death of the worker, an assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

- Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

- Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
1. Short title and commencement :- (1) This Act may be called the Maharashtra Domestic Workers Welfare Board Act, 2008.

(2) It shall come into force in such area and on such date, as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas.

2. In this Act, unless the context otherwise requires,—

(a) "Advisory Committee" means an Advisory Committee constituted under section 25 ;

(b) "beneficiary" means a domestic worker registered under section 11 ;

(c) " Board " means a Board established under section 3 ;

(d) "domestic work" means household work like sweeping, cleaning utensils, washing clothes, cooking and such other manual work as is mutually agreed between the employer and domestic worker carried out at the work place ;

(e) "domestic worker" means a worker who is engaged for doing domestic work ;

(f) "employer", in relation to a domestic worker, means the person having the control as head of the family or the manager ;

(g) "fund" means the fund constituted by the Board under section 16 ;

(h) "Government" or "State Government" means the Government of Maharashtra ;

(i) "member" means a member of a Board and includes the Chairperson of the Board ;

(j) "prescribed" means prescribed by rules ;

(k) "regulations" means regulations made by the Board ;

(/) "rules" means rules made by the Government ; and

(m) "work place" means any residential bungalow, wada, house, flat, palace, villa or such other premises, including precinct thereof, in which or in any part of which, any domestic work is being or is ordinarily carried on.
3. Constitution of Board :- (1) The State Government may for the purposes of preparation and implementation of the schemes for welfare of domestic workers, in a District, by notification in the Official Gazette, establish such number of Boards to be known as "--------- District Domestic Labour Welfare Board " :

Provided that, the State Government may constitute such Board for two or more Districts :

Provided further that, the State Government may, by like notification also constitute more than one Board for a District and specify the local limits in which such Boards shall have jurisdiction.

(2) Every such Board shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, and to enter into contracts, and may by that name sue or be sued.

(3) The Board shall consist of members nominated, from time to time, by the State Government representing the employers, the domestic workers and the State Government.

(4) The members representing employers and domestic workers shall be equal in number, and the members representing the State Government shall not exceed one-third of the total number of members representing employers and domestic workers.

(5) The Chairman of the Board shall be one of the members appointed to represent the State Government, nominated in this behalf by the State Government.

(6) After nomination of all the members including the Chairman, the State Government shall, by notification in the Official Gazette, publish the names of all the members of the Board.

(7) The term of office of members of the Board shall be such as may be prescribed.

(8) Every member shall be paid (not being a member representing the State Government) from the fund of the Board, traveling and daily allowances for attending meetings of the Board at such rates as may be prescribed.

(9) The meetings of the Board and the procedure to be followed for the purpose and all matters supplementary or ancillary thereto shall be such as may be laid down by the regulations.

4. Power of State Government to appoint Board consisting of one person :- (1) Where, for any reason whatsoever, it appears to the State Power of Government that it is unable to constitute a Board for the specified area State in accordance with the provisions of section 3, the State Government may, by notification in the Official Gazette, appoint a person who shall hold office until a Board is duly constituted under section 3 for such specified area.

(2) The person so appointed shall be deemed to constitute the Board for the time being, and shall exercise all the powers and perform functions and discharge all the duties conferred and imposed upon the Board by or under this Act. He shall continue to be in office until the day immediately
preceding the date of the first meeting of the Board under section 3.

(3) The person constituting the Board shall receive such remuneration from the fund of the Board, and the terms and other conditions of service shall be such as the State Government may determine.

5. Disqualification and removal of member :- (2) No person shall be chosen as, or continue to be, a member of the Board who,—

(a) is a salaried officer of the Board;

(b) is or at any time has been adjudged insolvent;

(c) is found to be a lunatic or become of unsound mind; or

(d) is or has been convicted of any offence involving moral turpitude.

(2) The State Government may remove from office any member, who,—

(a) is or has become subject to any of the disqualifications mentioned in sub-section (1); or

(b) is absent without leave of the Board for more than three consecutive meetings of the Board;

(c) in the opinion of the Government, has so abused the position of member as to render his persons continuation in the office detrimental to the public interest or is otherwise unfit or unsuitable to continue as such member:

Provided that, no person shall be removed under clause (c), unless that person has been given a reasonable opportunity to show cause as to why he should not be removed.

(3) Notwithstanding anything contained in any other provisions of this Act, the members shall hold office during the pleasure of the State Government and if in the opinion of the State Government,—

(a) the member representing employers and the domestic workers, ceases to adequately represent the employers or, as the case may be, the domestic workers, or

(b) having regard to exigencies of circumstances or services in the State Government, the member representing the State Government cannot continue to represent the State Government, then it may, by an order, remove all or any of them from office at any time.

6. Resignation of office by member :- . Any member of the Board may at any time resign his office by writing under his hand addressed to the State Government, and his office shall, on acceptance of the resignation, become vacant.

7. Vacancy to be filled in as early as possible :- In the event of any vacancy occurring on account of death, resignation, disqualification or removal or otherwise, the Board shall forthwith
communicate the occurrence to the State Government, and
the vacancy shall be filled in not later than ninety days from the date of the occurrence of the vacancy, and the person nominated to fill in the vacancy shall hold office so long only as the member in whose place he is nominated would have held it, if the vacancy had not occurred.

8. Proceedings presumed to be good and valid: - No act or proceeding of the Board shall be questioned or invalidated merely by reason of any vacancy in its membership or by reason of any defect in the constitution thereof.

9. Secretary and other officers of Board: - (1) The Board shall, with the approval of the State Government, appoint a secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The Secretary of the Board shall be its Chief Executive Officer

(3) The functions, terms and conditions of appointment and the salary and allowances payable to the secretary and other officers and employees of the Board shall be such as may be laid down, from time to time, by regulations.

10. Functions of Board: - The Board shall perform following functions, namely:—

(a) registration of domestic workers as beneficiaries under the Act;

(b) to grant following benefits to beneficiaries which they are entitled to under the Act:—

(i) provision for immediate assistance to a beneficiary in case of accident;

(ii) financial assistance for the education of children of the beneficiary;

(iii) provision for medical expenses for treatment of ailments of a beneficiary or his such dependent;

(iv) provision for maternity benefit to the women beneficiaries:

Provided that, such maternity benefit shall be restricted in case of two children only;

(v) make payment of funeral expenses to the legal heir on the death of the beneficiary;

(vi) such other benefits as may be decided by the Board, from time to time;

(c) to constitute and administer the fund for the purposes of this Act as specified in section .15;

(d) to appoint a secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act;
(e) such other functions as may be assigned to it by the State Government, from time to time.

11. Registration of domestic worker as beneficiary: (1) Every domestic worker who has completed eighteen years of age, but has not completed sixty years of age and who has been engaged in any domestic work shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form as may be prescribed and shall be submitted to the officers authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fees as may be prescribed, from time to time.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the domestic worker as a beneficiary under this Act or he may for reasons to be recorded in writing reject the application:

Provided that, the application for registration shall not be rejected unless the applicant has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer authorised by the Board in this behalf and decision of the Secretary on such appeal shall be final:

Provided that, the Secretary may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

12. Identity Card: (1) The Board shall give to every beneficiary an identity card, with his photograph duly affixed thereon.

(2) The Identity Card shall be in such form and shall contain the name, address, photograph of the beneficiary and such other particulars as may be prescribed.

13. Cession as beneficiary: (1) A domestic worker who has been registered as a beneficiary under this Act shall cease to be as such when he is not engaged in the domestic work or when he has not paid his contribution under section 16 for a continuous period of not less than one year, unless the payment of contribution is waived by the Board under the proviso to section 16:

Provided that, if the Secretary of Board is satisfied that the non-payment of contribution was for a reasonable ground and that the domestic worker is willing to deposit the arrears, he may allow the domestic worker to deposit the contribution in arrears and on such deposit being made, the
registration of domestic worker shall stand restored.

(2) Notwithstanding anything contained in sub-section (2), if a person had been the beneficiary for atleast three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be decided by the Board.

14. Grant by State Government: The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to every Board in each financial year by way of grants from the Consolidated Fund of the State, such sums of money as it may deem fit for being utilized for the purposes of this Act.

15. Fund, its application and procedure thereof: (1) There shall be constituted by every Board a fund for providing various benefits to the registered domestic workers and there shall be procedure credited thereto —

(a) grants received from the Government every year;

(b) all contributions made by the beneficiaries;

(c) all other sums received by the Board from any other sources.

(2) The fund shall be applied for meeting,—

(a) expenses of the Board in the discharge of its functions under section 10; and

(b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(c) expenses on other objects and for the purposes authorized by the State Government.

(3) No Board shall, in any financial year, incur expenses towards salaries, allowances, and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent., of its total expenses during that financial year.

(4) The Board may keep current and deposit account with such Bank and the same may be operated by such officers of the Board as may be laid down in the regulations.

(5) Every domestic worker registered as a beneficiary may make an application to the Board in such form and accompanied by such documents as may be prescribed, for grant of payments out of the fund towards the benefits he is entitled to under this Act.

(6) The Board may after receipt of every such application, conduct such inquiry as it may deem fit, and either grant the application or, for the reasons to be recorded in writing, may reject the same:

Provided that, any such application shall not be rejected unless a reasonable opportunity of being heard is given to the applicant.
(7) The decision of the Board in this regard shall be final.

16. Contribution of domestic worker: - A domestic worker who has been registered as a beneficiary under this Act shall until he attains the age of 60 years, contribute to the fund such amount per month, as may be prescribed:

Provided that, the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

17. Investment of fund: - Where the fund or any portion thereof cannot be applied at any early date, in performing the functions of the Board, the Board shall invest the same in any of the securities specified in clause (a) to (d) and (f) of section 20 of the Indian Trusts Act, 1882.

18. Powers of Board to borrow: - The Board may, from time to time, with the previous sanction of the State Government and subject to the provisions of this Act, borrow any sum required for the purposes of this Act.

19. Accounts and Audit: - (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance sheet in such form as may be prescribed.

(2) The accounts of the Board shall be audited annually by such qualified person as the State Government may appoint in this behalf.

(3) The auditor shall at all reasonable times have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require, or examine any member or officer of the Board.

(4) The accounts of the Board certified by the auditor, together with the audited report thereon, shall be forwarded annually to the State Government, before such date as the State Government may specify in this behalf.

(5) The Board shall comply with such directions as the State Government may, after perusal of the report of the auditor, think fit to issue.

(6) The cost of audit as determined by the State Government shall be paid out of the funds of the Board.

20. Budget: - The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government.

21. Annual Report: - The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous
financial year, and submit a copy thereof to the State Government.

22. Directions by State Government to Board :- The State Government or any officer authorized by the State Government may give the Board such directions which in its opinion are necessary or expedient in connection with the expenditure from the fund or carrying out the other purposes of the Act and it shall be the duty of the Board to comply with such directions.

23. Powers of State Government or authorised officer to call for records etc. :- The State Government or any officer authorized by the State Government may call for the records of the Board, inspect the same and may supervise the working of the Board.

24. Supression of Board :- (1) If the State Government is satisfied that, or otherwise is of the opinion that,—

(a) the Board is unable to perform its functions, or

(b) the Board has persistently made delay in the discharge of its functions or has exceeded or abused its powers,

then the State Government may, by notification in the Official Gazette, supersede the Board and re-constitute it in the manner specified in section 3 within a period of twelve months from the date of supersession. The period of supersession may be extended for sufficient reasons by a like notification by not more than six months:

Provided that, before issuing a notification under this sub-section on any of the grounds mentioned in clause (6), the State Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) After the supersession of the Board and until it is reconstituted, the powers and functions of the Board under this Act shall be exercised and performed by the State Government or by such officer or officers as the State Government may appoint for this purpose.

(3) When the Board is superseded, the following consequences shall ensue, that is to say,—

(a) all the members of the Board shall, as from the date of publication of the notification under sub-section (1), vacate their office;

(b) all the powers and functions, which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such persons as may be specified in the notification;

(c) all funds and other property vesting in the Board shall, during the period of supersession, vest in the State Government and on the reconstitution of the Board, such funds and property shall revest in the Board.

25. Advisory Committee :- (1) The State Government may constitute an Advisory Committee to
advise upon such matters arising out of the administration of this Act or relating to the application of the provisions of this Act to domestic workers and employers or co-ordination of the work of various Boards, as the State Government may refer to it for advice.

(2) The members of the Advisory Committee shall be appointed by the State Government and shall be of such number and chosen in such manner as may be prescribed:

Provided that, the Advisory Committee shall include an equal number of members representing the employers, domestic workers and Members of the State Legislature and the members representing State Government which shall not exceed one third of its total number of members.

(3) The Chairman of the Advisory Committee shall be one of the members appointed to represent the State Government, nominated in this behalf by the State Government.

(4) The State Government shall publish in the Official Gazette, the names of all the members of the Advisory Committee.

(5) The meetings of the Advisory Committee and procedure to be followed thereat shall be such as may be prescribed.

(6) The term of office of members of the Advisory Committee shall be such as may be prescribed.

(7) The member of the Advisory Committee (not being a member representing the State Government) shall receive traveling and daily allowances for attending meetings of the Committee at such rates as may be prescribed.

26. Members, officers and servants of the Board to be public servant:— Members including Chairperson of the Board and all officers and servants of the Board shall be deemed to be the public servants within the meaning of section 21 of the Indian Penal Code. [45 of 1860].

27. Protection of action taken in good faith:— No suit, prosecution or other legal proceedings shall lie against any member or any officer or employee of the Board or any person acting under the direction either of the Government or of the Board, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or regulations made thereunder.

28. Power to make rules.:- (1) The State Government may, by notification in the Official Gazette, and subject to the conditions of previous publication except when the rules are made for the first time, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing provision, such rules may be made for all or any of the following matters, namely:—

(a) term of office of members of the Board;

(b) rate of traveling and daily allowances to be payable to members of the Board for attending
Domestic workers (Registration social security and welfare) Act 2008

Author: National Commission for Women

Statement of objects and reasons

The issue of exploitation of women and children domestic workers is frequent and regularly reported. With no rights and rules to fall back on, most of the domestic helps have become contemporary slaves. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations. In last few decades there has been a tremendous growth in the demand for domestic workers which has led to the trafficking and other forms of exploitation of millions of Women and children of the both sexes and to meet this growing demand there has been a spurt of thousands of placement agencies providing domestic workers in metro-towns of many states who are exploited in various ways as well as trafficked and remain outside the purview of any legislative control.

Absence of any legal protection, has led to severe exploitation women and children which include depriving domestic workers from there entire salary average more then 16-18 hours of work per day, absence of proper food and living/sleeping condition, forced and total cut off from their family members, bounded labour, sexual exploitation by agent during transit, at the office of agency and at the work place in houses of employers. The list of exploitation is endless and frequently reported upon by the media.

The legislations such the recent notification on prohibition of child labour in domestic work under Child Labour (Prohibitions &Regulation) Act, 1986 can not be implemented in the absence of any implementation mechanism in this Act. Recently few State Govt. have taken different initiative such as including domestic workers under minimum wage notification but in the absence of a central legislation capable of reaching all domestic workers none of these state level measures can really benefit the domestic workers. That only a Comprehensive Central Legislation specifically designed to meet the working condition of the domestic workers including registration, who are an important segment of service sector of Indian economy and who have an Multiplier impact on the economy by enabling the women in particular to work by sharing the family burden, can ensure the end of the exploitation of these domestic workers. That in the public interest that the domestic workers, employing, as it does, a very large number of women and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, Placement agencies must be regulated so that the Directive Principles of the Constitution more particularly the relevant provisions Article 39, 41, 42, 43, and 43-A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the 7th Schedule in the Constitution.
CHAPTER ONE
PRELIMINARY

1. Short title, Extent and Commencement

(a) This Act may be called the **Domestic workers (Registration, social security and welfare) Act 2008**

(b) It extends to the whole of India except the state of Jammu & Kashmir

(c) It does not apply to such domestic workers emigrating for employment to any other country

(d) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions - in this Act unless the Context otherwise requires

(a) “**Appropriate Government**” means the concerned State Government or the Union Territory administration.

(b) “**Beneficiaries** “ means every domestic worker registered as a beneficiary under this Act

(c) “**Child** “means a person who has not completed eighteen years of age.

(d) “**Central Advisory Committee** “ means an advisory Committee constituted by the central Government under section 4 of the act

(e) “**District Board**” means the District monitoring Board for domestic workers established under Section --- of the act

(f) “**Domestic Worker**” means, a person who is employed for **remuneration whether in cash or kind**, in any house hold through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work or allied work

EXPLANATION: household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, caring/nursing of the children/sick/old/handicapped

(g) **Domestic Workers Welfare Fund** – means the fund under section of the Act

(h) “**Employer**” means any person that engages the domestic worker to do any work in a household whether part time or full time either directly or through any other person or agency and who has an ultimate control over the affairs of the household and includes any other person to whom the affairs of such household is entrusted, whether such person is called an employee or is called by any other name

(i) “**Notification**” means a notification published in the Official Gazette.

(j) “**Service provider**” means any voluntary association registered under the society’s registration
Compilation of Draft Bills on Domestic Work

Act 1860 or a company registered under the companies Act 1956 or any other law for the time being in force, which espouses the cause of domestic work and/or provides or engages in employment of domestic workers and includes any person or an association of such persons or placement agency whether registered or otherwise through whom any such worker is engaged in any household work with the principal employer. Explanation: “Placement Agency” means any agency /bureau /contractor or person(s) or association whether registered or otherwise which facilitate the placement of domestic help for prospective employers and includes such agency or person offering such services through any print, electronic or any form of communication

(k) State Monitoring Board means the State monitoring Board for domestic workers established under section --- of the act

(l) Workplace means any household where a domestic worker works. Explanation: household means any residential place where the domestic worker works

(m) "Wages" means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to a domestic worker in respect of work done but does not include -

(i) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the Government;
(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;
(iii) any traveling allowance or the value of any traveling concession;
(iv) any sum paid to the domestic worker to defray special expenses entailed on him by the nature of his employment

3. Act not in derogation of other laws. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

CHAPTER TWO
IMPLEMENTING AUTHORITIES UNDER THE ACT

4. CENTRAL ADVISORY COMMITTEE

(1) The Central Government shall, constitute a Committee to be called the Central Advisory Committee (hereinafter referred to as the Central Committee)

(2). The Central Committee shall consist of-

(a) A Chairperson to be appointed by the Central Government;
Compilation of Draft Bills on Domestic Work

(b) such number of members, as the central government may nominate, that shall include association, Union or persons espousing the cause of domestic workers, individuals having expertise in issues relating to labour matters, women and child issues, law and any other interests which in the opinion of the central Government, ought to be represented on the central Board. Provided further that composition of committee shall be at least 5 members excluding the chairperson.

(3) The number of persons to be appointed as members from the categories specified in sub-section (2), the term of officer and other conditions of service of, the procedure to be followed in the discharge of their functions and the manner of filling up of vacancies shall be such as may be prescribed.

5. Functions of the Central Committee

(1) The Central committee shall perform the following functions:
(a) To review and monitor implementation of the Act and rules made there under and recommend to the Central Government of any changes in the said Act and rules.
(b) Review and monitor the implementation of the Act in States
(c) Advise the State Boards regarding schemes for benefit and welfare of domestic worker such as social security,
(d) Advise upon such matters arising out of the administration of this Act or any scheme made under this Act or relating to the application of the provisions of this Act to any particular class of domestic workers and employers, and coordination and monitoring of the work of various Boards
(e) In consultations with State Boards prescribe Minimum Standards to achieve Decent Conditions of Work
(f) Recommend appropriate strategies on elimination of any form of forced/bonded and child labour
(g) Any other matter as may be prescribed by the central Government.

6. State Board

(1) The Central or State Government, as the case may be, shall constitute a Board to be called the Domestic worker Board (hereinafter referred to as the Board)

(2) The Board, shall consist of—

(a) A Chairperson to be appointed by the Central Government;
(b) such number of members, as the appropriate Government may nominate, that shall include association, Union or persons espousing the cause of domestic workers, individuals having expertise in issues relating to labour matters, women and child issues, law and any other interests which in the opinion of the appropriate Government, ought to be represented on the central Board. Provided further that composition of Board shall be at least 5 members excluding the chairperson.

(3) The number of persons to be appointed as members from the categories specified in sub-section
7. Functions of the State Board

(1) The State Board shall perform the following functions:

(a) Review and monitor the District Board constituted for the State and take appropriate steps to ensure its proper and effective implementation
(b) Allocate funds to the district Board and administer the domestic workers welfare fund and allocate such amounts to the State and district Boards as may be considered necessary
(c) Prescribe the fees to be charged from the employers, service providers and domestic workers from time to time
(d) Prescribe fee for registration as beneficiaries under the Fund and rate per mensem for the beneficiaries of the fund.
(e) Implement such schemes and welfare measures as formulated in consultation with the central Board
(f) Prescribe the form of register to be maintained for registration of beneficiaries under the fund
(g) Procedure for renewal of registration certificate
(h) Entertain appeals with respect to any decision taken under section 16 (4) of the Act
(i) Ensuring decent conditions of service, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof; in consultation with central committee
(j) ensuring minimum payment to domestic workers registered as beneficiaries who are available for work in respect of periods during which full employment, or even part employment, is not available;
(g) Any other matter as may be prescribed

8. District Boards

(1) The Central Government or the State Government, as the case may be, shall by an order notified in the Official Gazette, constitute a District board in each of the districts.

(2) The number of persons to be appointed as members of the Board, the term of officer and other conditions of service of, the procedure to be followed in the discharge of their functions and the manner of filling up of vacancies shall be such as may be prescribed

9. Functions of the Board

(1) The District Boards shall perform the following functions:

(a) Designate any one or more of the following at such areas as maybe considered necessary, as Workers’ Facilitation Centres (WFC) for purposes of facilitating registration of workers:

i) Local Panchayati Raj Institutions (PRI) or urban local bodies;
ii) Resident welfare associations/society;
iii) Non-profit organizations working among the Domestic workers. Provided further that such Workers’ Facilitation Centres (WFC) shall function under the supervision of the district Board
(b) The Board shall carry out or cause to carry out the registration of domestic worker and employers and service providers as per the procedure prescribed under the Act either directly or through the WFC and maintain records.

(c) The district Board shall Monitor and maintain records regarding the movement of women and children from village/district to any other place in connection with domestic work

(d) The board shall maintain such registers and records giving such particulars of domestic workers employed the nature of work performed by the domestic worker, and such other particulars in such form as may be prescribed.

(a) Facilitate the settlement of disputes through conciliation as per the procedure provided under the Act.

(b) Maintain proper records of the beneficiaries under the fund

(c) Renewal of registration certificate

(d) Issue of identity card for the beneficiaries

(e) Disseminate information on available social security schemes for the Workers;

(i) Authorize the WFC to act as an authorized intermediary in collecting contributions from the workers and others as mandated under the Act and remit them to the district Board;

(j) Training, imparting skills to domestic workers;

(k) Implement any schemes or any welfare measures framed by the central Board in consultation with State Boards

(l) any other matter as may be prescribed

10. Powers of the District Board

Subject to any rules by the State Government in this behalf, the Board may, within the local limits

(a) Make such examination and hold such inquiry as may be necessary for ascertaining whether the provisions of this Act have been or are being complied within any place or premises:

(b) Require the production of any document, record or evidence (written or oral)

(c) Enter, with such assistance as it may consider necessary, at all times any place or premises if there are reasonable grounds for suspecting that any domestic worker has or is being subjected to any form of sexual exploitation or wrongfully confined in any such place or premises or rescue any child being used employed as a domestic worker

(2) Every employer shall accord to the Board, all reasonable facilities in the discharge of his duties
(3) Each District board shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely -

(a) enforcing the attendance of any person and examining him on oath;
(b) compelling the production of documents and material objects;
(c) issuing commissions for the examination of witnesses;
(d) in respect of such other matters as may be prescribed;

CHAPTER THREE

REGISTRATION PROCEDURE

11. REGISTRATION – (a) Notwithstanding anything contained in any law for the time being in force, all domestic workers, employers or service providers shall be registered as per procedure hereinafter prescribed.

(b) Every employer / service provider and domestic worker wherever applicable, shall within one month of the commencement of the employment of domestic worker, in the household, shall submit to the District Board or any person so authorized by the District Board, application along with prescribed fee, for registration, providing such details as prescribed.

Provided that the Board or any such person so authorized may entertain any such application for registration after expiry of the period fixed in this behalf, if satisfied that the applicant had sufficient cause from making the application in time.

c) Where a domestic worker undertakes part time work in two or more households and is not engaged through any placement agency, it shall be the duty of such domestic worker to register with the District Board.

Provided further that where such worker is engaged through any agency and works in more than one household, it shall be the duty of such agency to register the worker.

(d) where a domestic worker leaves the work in a district and moves to any other area in any part of the territory of India and takes up work in any household in such part either on his/her own or through any agency or middleman, it shall be the duty of such worker or agency or middleman, to inform the concerned Board where so registered regarding the move and register with the Board at the place where work has been taken up.

e) Notwithstanding anything contained in provisions above, where a domestic worker is engaged through a middleman or agency or service provider for work in any household, it shall be the duty of
such agency or middleman or service provider and not of the main employer in whose household such worker works, to register as per the procedure prescribed.

12. Registration fee –

(a) where a employer engages a domestic worker on full time basis, it shall be the duty of such employer to register with the Board on payment of prescribed fee, which shall form a part of yearly subscription, irrespective whether the domestic worker continues in such employment or otherwise or performs any part of household work part time in more than two Households

(b) Where a domestic worker is engaged through a agency or middleman or service provider it shall be the duty of such agency or middleman as the case may be, to provide such details for registration along with the fee as may be prescribed

Provided that the Board may on application made by any service provider exempt such service provider from payment of the fee, if so considered necessary, giving cogent reasons therefore

13. Renewal of registration certificate. A registration certificate shall be renewed at an interval of One year on the payment of the fee as may be prescribed

14. Employment of a child:

No child shall be employed as a domestic worker or for any such incidental or ancillary work which is prohibited under any law for the time being in force.

CHAPTER FOUR

ESTABLISHMENT OF FUND

15. Domestic Workers Welfare Fund

(1) There shall be formed a Fund, to be called the Domestic workers Welfare Fund, and there shall be credited thereto--

(a) Any grants made to the Fund by the Central Government;
(b) Any money received by the beneficiaries
(c) all amounts from the District Boards received as registration and other fees
(d) Any income from investment of the amounts in the Fund.
(e) All fines collected

(2) The Fund shall be administered and applied by the State Board to meet the expenditure incurred in connection with measures and facilities which, in the its opinion is necessary or expedient to promote the welfare of domestic workers; and, in particular,
(i) To defray the cost of such welfare measures or facilities for the benefit of domestic workers / beneficiaries as may be decided by the Board
(b) To sanction any money in aid of any scheme for the welfare of the domestic—workers including family welfare, family planning, education, insurance and other welfare measures;
(c) To meet the allowances, if any, of the members of the Committees and the State/District Board and WFC under this Act and the salaries and allowances, if any, of persons appointed under section;
(e) Any other expenditure which the Board may direct to be defrayed from the Fund.

CHAPTER FIVE

REGISTRATION OF DOMESTIC WORKERS AS BENEFICIARIES

16. Beneficiaries of the Fund

(1) Subject to the provisions of this Act, every domestic worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act. Every domestic worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any domestic work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form, as may be prescribed, to Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding -------rupees as may be prescribed.

(4) If Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the domestic worker as a beneficiary under this Act: Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the state Board and the decision of the State Board on such appeal shall be final: Provided that the State Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the domestic worker was prevented by sufficient cause from filing the appeal in time.

17. Identity cards

(1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon

(2) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, or any other authority for inspection.
18. Cessation as a beneficiary

(1) A domestic worker who has been registered as a beneficiary under this Act shall cease to be as such when he attains the age of sixty years or when he is not engaged in any domestic work for not less than ninety days in a year: Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from work due to any personal injury accident

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

19. Register of beneficiaries the district Board shall maintain records / register in such form as may be prescribed showing the details of employment of beneficiaries in the district.

20. Contribution of domestic workers

(1) A Domestic worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified / prescribed Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorize his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

21. Effect of non-payment of contribution

When a beneficiary has not paid his contribution under sub-section (1) of section ---for a continuous period of not less than one year, he shall cease to be a beneficiary: Provided that if the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the domestic worker is willing to deposit the arrears, he may allow the domestic worker to deposit the contribution in arrears and on such deposit being made, the registration of domestic worker shall stand restored.

CHAPTER SIX

REGULATION OF THE WORKING CONDITIONS

22. Duties of the employer and service provider

(1) Every employer and service provider shall provide such particulars of the domestic workers engaged directly or through agency, to the District Board or any person so authorized by the Board, in such form and paying such fees as may be prescribed

(2) As far as practicable the employer shall ensure
a) Allow a domestic worker a daily rest period of at least ten consecutive hours between ending and recommencing work; and who lives on the premises at which the workplace is situated.
b) Annual leave with wages for at least 15 days to the domestic work who lives in the household
c) Ensure that Minimum wages are paid to the domestic work as per the Minimum wages Act
d) No service provider or a person /agency shall carry on the business of providing domestic worker to any employer unless the said service provider or agency or person is registered under the Act
e) The service provider shall maintain the records of all the domestic workers being contracted by them for purposes of employment from any part of the territory of India and provide the details thereof in such form as may be prescribed

23. Offences and penalties

(1) Any service provider who contravenes the provisions of the Act or any rules made there under shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both:

(3) Where an employer fails to comply with the provisions of the Act he/she shall be punishable with fine which may extend to two thousand rupees

(4) any person who willfully obstructs any officer so authorized by the district boards to conduct inspection under the act or refuses or willfully neglects to afford the such officer any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to the employer or a service provider to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to two thousand rupees, or with both.

(5) Whoever willfully refuses to produce on the demand of such an inspecting a person so authorized by the district boards, any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspecting person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months or with a fine which may extend to two thousand rupees, or with both.

(6) Any person who -

(i) Knowingly sends, directs or takes any girl or woman to any place for immoral purposes or to a
place where she is likely to be morally corrupted or,
(ii) In any manner sexually exploits such woman or child or
(d) Make available young children as domestic workers shall be subjected to imprisonment for not
less than six months and which may extend up to period of seven years and fine up to 50000 rupees
or both

24. No court shall take cognizance of any offence punishable under this Act except on a
complaint--

(a) Made by, or with the previous sanction in writing of, the State Board or the district Board or
(b) Made by an office-bearer of a voluntary organization registered under the Societies Registration
Act, 1860 (21 of 1860); or
(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class
shall try any offence

punishable under this Act.

25 Limitation of prosecutions

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof
is made within three months from the date on which the alleged commission of the offence came to
the knowledge of the district or state Board

CHAPTER SEVEN

MISC PROVISIONS

26. Effect of laws and agreements inconsistent with the Act

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith
contained in any other law or in the terms of any agreement or contract of service, whether made
before or after the commencement of this Act:

(2) Nothing contained in this Act shall be construed as precluding any worker from entering into an
agreement with the principal employer as the case may be, for granting them rights or privileges in
respect of any matter which are more favorable to them than those to which they would be entitled
under this Act.

27. Protection of action taken under Act

(1) No suit, prosecution or other legal proceedings shall lie against any Member of the Board or any
Non governmental organization for anything which is in good faith done or intended to be done in
pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or
likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification or order made or issued thereunder.

28. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

29. Accounts and Audit

(a) The Central, State and district Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.

(b) The Central Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

(c) The state and district boards shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

30. Power to make rules

(1) The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the number of persons to be appointed on the Central Board , the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling of casual vacancies of the Chairperson and other members of the Board under section 4 of the Act.

(b) The form and manner in which the annual statement of accounts together with the auditor's report shall be furnished under section 29 of the Act.

(d) Any other matter which is required to be, or may be, prescribed under this Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised
in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

31. Power of the state government to make rules

(1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following

(i) the procedure for registration and the fees to be charged from the employers, service providers and domestic workers from time to time
(ii) The form in which an application for registration as a beneficiary shall be made under section 16 of the Act.
(iii) The form in which register of beneficiaries shall be maintained under section 15
(iv) The form and manner in which an application for registration of domestic workers /employers may be made under section 11 of the Act.
(v) The form in which an application for the grant or renewal of registration may be made under and the particulars it may contain;
(vi) the form of registers and records to be maintained by the district committees.
(vii) The number of persons to be appointed as members on the state board, district boards or committee ,the term of officer and other conditions of service of, the procedure to be followed in the discharge of their functions and the manner of filling up of vacancies under section 6 and 8 of the Act.
(vii) The document and the fee which shall accompany the application under sub section (3) of section 12;
(viii) The form and manner in which the funds shall be utilized to provide welfare measures to the domestic workers. Prescribe the fees to be charged from the employers, service providers and domestic workers from time to time
(ix) Prescribe fee for registration as beneficiaries under the Fund and rate per mensem for the beneficiaries of the fund.,
(x) Any other matter as may be prescribed.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

— END —
DOMESTIC WORKERS
(REGULATION OF EMPLOYMENT, CONDITIONS OF WORK, SOCIAL SECURITY
AND WELFARE) BILL 2008

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SCHEDULE

STATEMENT OF OBJECTS AND REASONS

1. Domestic workers has been an age old service provider as an integral part of the family traditional in our societies which has remain purview of labour legislations.

2. In present phase a major segment of the domestic workers has been children of less than 14 year of age, trafficked tribal girls and women from the poor urban community, all of whom are in the most vulnerable situation.

3. In last few decades there has been a tremendous growth in the demand for domestic workers which has led to the trafficking of millions of girls and children of the both sexes, to meet this growing demand and in the mushrooming of thousands of placement agencies providing domestic workers in metro-towns of many states who are outside the purview of any legislative control.

4. In the absence of any law this has led of severe exploitation women and children which include depriving domestic workers from there entire salary average more then 16-18 hours of work per day, absence of proper food and living/sleeping condition, forced and total cut off from their family members, bounded labour for several years extending to over ten years, sexual exploitation by
agent during transit, at the office of agency and at the work place in houses of employers. This list has no end.

5. The legislations such as the recent notification on prohibition of child labour in domestic work under Child Labour (Prohibitions & Regulation) Act, 1986 cannot be implemented in the absence of any implementation mechanism in this Act. Recently few State Govt. have taken different initiatives such as including domestic workers under minimum wage notification in Rajasthan & Maharashtra and under Manual Workers Act 1982 in Tamil Nadu. But in the absence of a legislation capable of reaching all domestic workers none of these state level measures can really benefit the domestic workers.

6. Recently a lot of domestic workers from India have started going abroad and the Emigration Act 1983 is not fully equipped to deal with the problems they are facing in Middle East and are likely to face in South East Asia.

7. In view of the above background only a Comprehensive Central Legislation specifically designed to meet the special working condition of the domestic workers, who are an important segment of service sector of Indian economy and who have a Multiplier impact on the economy by enabling the women in particular to work by sharing the family burden, can ensure the end of the exploitation of these domestic workers.

The proposed Law intends to incorporate the following features based on the above stated nature of employment in the domestic worker.

Right to livelihood.

Minimum Labour Standards to achieve Decent Conditions of Work.

- Right of workers in formulation and implementation of schemes through Tripartite Boards at various levels with workers having decisive voice.
- Compulsory registration of the employers and of the workers, identified by registered trade unions in all the scheduled groupings of employments and placement agencies;
- Restriction on employment in the sector to only those workers who are registered under the law;
- Prohibition of employment in domestic workers by employers, without registration under the law;
- Equitable sharing of the available employment, category-wise, on the basis of rotational booking of workers;
- Employment guarantee for a minimum number of days in a month;
- Vesting of the responsibility for determining wages including piece rates to be not less than the time rated wage for 8 hours and their disbursement in the autonomous body; and
- Provision of safety measures and for various other entitlements including social security, pension, group insurance, relief for accident and natural death and a minimum guarantee of earnings by the autonomous body.
- Provision of ESI, PF, gratuity, maternity entitlement, housing crèches etc and steps for prevention of sexual harassment of women.
- Restriction of mechanization and labour displacement strategies and promotion of labour intensive methods in the domestic workers.
- Inbuilt tripartite dispute resolution mechanism and appellate authority.
- Special protection of migrant workers and their families
- Elimination of bonded labour and child labour and ensuring compulsory education of
children in the unorganized sector.
- Special measure for prevention of sexual harassment on women workers in workplaces.

Preamble:

Social and economic justices are the promise of our Constitution. Justice to the domestic workers who are long neglected victims of very exploitative conditions is therefore an urgent imperative of our Socialist Republic.

The experience of implementation failure, legal and litigation hurdles of existing labour legislations have made it necessary to make creative changes in the structure, schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevalent in the field.

The participation of workers as envisaged by the Constitution under Article 43-A in the working of the legislation and enforcement of remedies there under is essential if credibility and confidence are to be commanded by the law.

Now, therefore; be it enacted the Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Service, Social Security and Welfare) Act, 2008.

CHAPTER I
PRELIMINARY

Short title, extent, commencement and application

The Act may be called Domestic Workers (Livelihood Rights, Regulation of Employment, Conditions of Service, Social Security and Welfare) Act, 2008.

1. It extends to the whole of India
2. Chapter I shall come into force at once. The rest of the Act shall come into force on such date or dates as the appropriate Government may, by notification in the official Gazette, appoint. However it shall not be later than 2 years from the passing of this Act. In cases where such notification is not issued within the said period, it is deemed that the Act shall come into operation immediately after the lapse of such period.

2. Declaration as to Expediency of Regulation:
It is hereby declared that it is expedient in the public interest that the domestic workers, employing, as it does, a very large number of women and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, Placement agencies must be regulated so that the Directive Principles of the Constitution more particularly the relevant provisions Article 39, 41, 42, 43, and 43-A of the Constitution are given effect to by a law made by Parliament with
3. Definitions:
In this Act, unless the context otherwise requires;

a) "Adolescent" means a person who has completed 15 years of age but has not completed 18 years of age. (Minimum Wage Act2(a))
b) "Adult" means a person who has completed 18 years of age
c) "Appropriate government" means the concerned State Government or the Union Territory administration.
d) "Board" means one of the Domestic Workers Boards established under section 9 of this Act.
e) "Central Advisory Committee" means an Advisory Committee constituted by the Central Govt under section 13;
f) "Child" means a person who has not completed 15 years of age.
g) "Contractor" relation to any establishment in the domestic employments, means a person who undertakes to supply as domestic worker ----- to for an establishment or a place-agency by engaging such workers on hire or otherwise, or who supplies such workers either in groups, or individuals; and includes a sub-contractor, an agent, domestic placement agency as any supplier of labour;
h) "Domestic Worker" means a person between the age of 15 and 60 years working in any domestic employments, directly or through any agency or contractor whether exclusively for one employer or in a group or otherwise one or more employers whether simultaneously or otherwise and includes a casual or temporary domestic worker; migrant worker. but does not include - any member of the family of an employer; 
i) "Employer" in relation to any domestic worker means the person who has an ultimate control over the affairs of the establishment work or service and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an employee or is called by any other name prevailing in the scheduled group of employments.
j) "Establishment" means any place or premises belonging to, or under the control of an employer where the domestic workers are employed in any work; and includes an establishment belonging to the employer.
k) "Family" in relation to an employer or any unorganized sector worker in the scheduled grouping of employments, mean the spouse, son, daughter, father, mother, brother or sister of such employer or any unorganized sector worker in the scheduled grouping of employments, who lives with him / her and is wholly dependent on him / her.
l) "Fund" means fund created for social security, administration and welfare schemes under this Act.
m) "Government" means either Central Government, or State Government, or Union Territory administration.

n) "Inspector" means an Inspector appointed under section 13.
o) “Inter-State migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the employer in relation to such establishment;
p) "Prescribed" means prescribed by rule or scheme made under this Act.
q) "Principal employer" means any employer who engages any domestic worker in the domestic worker directly or through a contractor.
r) "Scheme" means a scheme notified by the appropriate Government under the Act.
s) "Social security number" means the number given to the worker under section 10(2(n)).

u) "Wages" means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to a domestic worker in respect of work done but does not include -
(i) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the Government;
(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;
(iii) any traveling allowance or the value of any traveling concession;
(iv) any sum paid to the domestic worker to defray special expenses entailed on him by the nature of his employment; or
(v) Any gratuity payable on discharge.

4. Effect of laws and agreements inconsistent with this Act;
   a) The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or authority or under any settlement.
   b) The Appropriate Government may by notification in the Official Gazette and subject to such conditions as may be specified in such notification, exempt any employer of domestic worker from the operation of this Act, if the domestic workers under such employment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

5. Application of Various Laws to Domestic Workers:
   Not withstanding anything contained in any other law for the time being in force, provision of workmen's Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Maternity Benefit Act 1961, Minimum Wages Act 1948, Equal Remuneration Act 1976, Employee's State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972 subject to modifications of this Act will also apply to all the Domestic Worker covered under this Act.

6. Rules of evidence:
   In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme have been effected will be entirely on the employer and the units of the Board wherever applicable.

7. Values to be adopted in the application of the Act
   The Domestic Worker Boards, their units, the Dispute Resolution Council and any other authority which may constituted under the Act and Scheme shall strive to apply as the situation may require the principles contained in Articles 41, 42, 43, 43-A and 46 of Part IV and clauses (h) and (j) of Article 51-A of part IV A of the Constitution of India.
CHAPTER II
MINIMUM LABOUR STANDARDS TO BE ENSURED FOR THE DOMESTIC WORKERS

8. The appropriate Government shall ensure to every domestic worker the following Rights and Entitlements:

i) The right to livelihood.

ii) Not to be employed in employments such as forced/bonded labour, child labour and manual scavenging.

iii) Prohibition of discrimination in employment on grounds of religion, race, caste, creed, sex, place of birth/residence/domicile or any other reason;

iv) Minimum age of employment not to be below 15 years of age;

v) The age of superannuation not exceeding 60 years for men and 55 years for women.

vi) The right for written contract with regard to terms and conditions of employment;

vii) The right to have an uniform social security card;

viii) The duty of the appropriate Government to prescribe a model set of standing orders in consultation with worker's representatives on matters such as hours of work, weekly rest, annual leave with wages, suspension, disciplinary proceedings, discharge, termination and welfare measures with in the scope of employment, with a condition that every employer must agree to the standing order in conformity that these standing orders. Any condition of engagement, employment or service not so provided, shall be in accordance with the provisions of this Act.

ix) The right to minimum wages in accordance with norms evolved at the 15th Session of Indian Labour Conference, 1957 and Raptakos Brett Judgement.

x) The right to form the union and for collective bargaining through the tripartite mechanism or otherwise.

xi) The right to collective action by the Unions and the Workers.

xii) The employers' duty to provide occupational and other safety measures;

xiii) The right to the entitlement for vocational training and guidance through the State, Employers Organisations or otherwise.

xiv) Ensuring special protection for migrant workers and their families in providing ration cards, housing, medical help and education to their children.
Compilation of Draft Bills on Domestic Work

xv) Providing the protection for women workers against sexual harassment at work place, as defined in the Visakha judgement.

xvi) Restricting mechanization causing labour displacement and other labour displacement methods in the Domestic Worker.

xvii) Ensuring the health and medical care, employment, injury benefit, maternity benefits, group insurance, housing, gratuity, bonus and pension benefits.

CHAPTER III

CONSTITUTION OF STATE BOARDS, FRAMING OF SCHEMES

9. Domestic Workers Boards;
1. The appropriate Government in States and Union Territories shall, by notification in the official Gazette, establish Domestic Worker Board for domestic employments for each State. Apart from the representatives of workers and employers, each Board shall also consist of representatives of the State Govt., one representative of the Central Government and such number of experts as are considered necessary.

2. Every such Board shall be a body corporate with the name of aforesaid having perpetual succession and common seal with power to acquire, hold and dispose off property and to contract and may by that name sue and be sued.

3. The State Government shall after consulting the State Advisory Committee, by notification in the official Gazette and subject to the condition of prior publication set up tripartite bodies at the district level and below on the same pattern as each of the State Domestic Worker Board.

4. The representatives of workers on each of the Board shall be elected by registered Domestic Workers every three years. Rules shall be framed for conduct of elections, subsequent to the completion of the registration process. Until that time, representatives of the workers shall be the representatives of Trade Unions of the Domestic Workers in the domestic employments with such substantial membership as may be prescribed.

5. Women unorganized sector workers shall have proportionate representation among representatives of workers in all bodies.

6. The term of the members of the Boards and the District and local area bodies shall be for a period of three years.

7. The meeting of the State level boards shall take place every two months and the meeting of the district / taluk / local boards shall take place every month every year.

10. Scheme for ensuring regular employment of workers
(1) The appropriate Government may in consultation with its Domestic Workers Boards and after consulting the Central Government frame schemes to be called the Domestic Workers (Regulation of Employment and Conditions of Service) Schemes, 2008 for ensuring greater regularity of employment, for regulating the employment of domestic workers and for prescribing conditions of service for the domestic workers covered by the scheme.

1 (a) Each Scheme may provide for one more benefit for the domestic workers for the whole State / Union Territory.

2. In particular, the Scheme may provide for any or all of the following;

a) for ensuring regular employment and regulating employment in the domestic employments in the unorganized sector and providing benefits to workers;

b) for regulating the recruitment and entry into the domestic workers board, by way of registration of domestic workers identified by registered trade unions and employers including the maintenance of registers, temporary or permanent; removal of names of workers or employers from the registers and the imposition of fees for registration for provision of identity card, work book and a social security number to each worker;

c) for regulating the employment of domestic workers, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof;

d) for providing for minimum payment to domestic workers who are available for work in respect of periods during which full employment, or even part employment, is not available;

e) for prohibiting, restricting or otherwise regulating the employment of domestic workers who are not registered workers and the employment of domestic workers by employers who are not registered employers;

f) for collecting levy from employers of the domestic worker towards the scheme and social security and welfare fund;

g) for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed, including any contributions to the fund by employers and domestic workers and the rate of such contributions;

h) for creating such fund or funds as may be necessary or expedient for the purposes of social security and other welfare benefits and for the administration of such fund or funds;

i) for training, imparting skills to and providing welfare for domestic workers; such as housing, crèche, assistance for accidents, natural death of the registered workers, marriage and education of children etc.

j) for the welfare of the officers and other staff of the Board;
k) for health and safety measures in places where domestic workers are employed;

l) for implementing ESI, PF, pension from the age of 55, maternity benefit to the registered domestic workers;

m) for constituting Social Security and Welfare Fund composed of contributions from Employers through Cess, levy, annual budgetary provision from Central and State Govts and small contribution from the workers.

n) provision of National Social Security Number to each domestic worker by the Domestic Worker Boards;

o) for implementing special protection for migrant workers and families;

p) for constituting complaints committee on sexual harassment of women workers.

q) for evolving guidelines for restricting of mechanization and other labour displacement policies and practices in the domestic worker and implementing them.

r) for devising steps to help workers depending on open and common resources to see that their activities are not hindered and sustainability maintained with environmental protection.

s) for taking steps to protect the right of the domestic workers to share the public space to engage in economic activities.

t) for promotion of labour intensive methods and practices in the domestic workers;

u) for constituting, Administrative Bodies at various levels as may be necessary for the administration of the Scheme;

v) for setting up units of the Board at various levels, district, taluk etc.

w) for constituting, primary and appellate forums to adjudicate disputes that may arise between domestic workers and contractors, or between domestic workers and employers.

x) for formulating appropriate provisions for taking disciplinary action if necessary against employers and workers, and the functionaries of Boards and its bodies.

3. Contribution to Social Security and Welfare Fund: Not withstanding anything contained in any law for the time being in force or in any agreement.

i) The employers of domestic worker shall make contribution to the social security and Welfare Funds of the domestic workers boards in every State & Union Territory. At least one thousand rupees shall be paid by every employer fulltime domestic worker of two hundred rupees for the paid for the half by shall be paid with the registration before commencing employment which shall be renewed every year.
ii) Each registered worker shall make a small contribution the full-time domestic worker shall contribute Rs. 100/- per year and the part-time domestic worker shall contribute Rs. 20/- per part-time employment.

4. The Scheme may further provide for constituting appropriate dispute resolution bodies for speedy resolution of disputes that may arise between workers, the contractors, employers and Board, or any two of the domestic workers, the employer’s contractors and the Board.

5. The Scheme may further provide for the consequences and penalties for contravention of any provisions of the Scheme: for providing that a contravention of any provision thereof shall be punished with imprisonment for such term as may be specified (three months in respect of a first contravention or six months in respect of any subsequent contraventions), or with fine which may extend to such amount as may be specified (five hundred rupees in respect of a first contravention, or one thousand rupees in respect of any subsequent contraventions) or with both imprisonment and fine and if the contravention is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the contravention is so continued.

6. In framing the scheme, the appropriate Governments shall keep in view the provisions of the model scheme as may be prescribed and by the Central Government, and ensure that the provisions of the scheme framed are not in material particulars inconsistent with or less beneficial to the unorganized workers than the provisions of the model scheme. The Central Government shall in accordance its prior approval likewise ensure that the provisions of the Scheme are not in material particulars inconsistent with or less beneficial to the domestic workers than the provisions of the model scheme.

11. Variation and revocation of Schemes;

1) The appropriate Government may, by notification in the official gazette, may add to the schedule, amend alter or vary the schemes made by it for the purpose of more effective implementation of the Schemes having regard to any special condition obtaining in the State and / or for conferring additional benefits to the domestic workers.

2) Such amendments, alterations or variations of the Schemes may be effected in consultation with the Central Government and the State Domestic Workers Boards.

3) Pending the formulation and final publication of the scheme by the State Government, the provisions of the model scheme to be evolved by the Central Advisory Committees shall be applicable in that State.

12. Functions of the Boards:

1) The domestic workers boards set up in a State or in a Union Territory shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the scheme.

2) The tripartite bodies set up under Section 8 of the Act shall likewise be responsible for administering the Schemes in their respective areas, under the over all supervision and guidance of the
(ii) To conduct taluk / local wise meeting of registered workers in each scheduled grouping of employments shall be held every year and the minutes placed before the corresponding boards in the subsequent meeting.

(iii) There shall be grievance day every week in the units of the boards, local / taluk / district and the state level when the registered worker can get the redressal of grievance relating to the functioning of the scheme.

3. No decision of a Board which is adverse to the interests of domestic workers shall generally be implemented except with the concurrence of the representatives of the domestic workers on the concerned Board.

4. The Boards shall recruit necessary staff from the employment exchange. The service rules of such staff of the Boards shall be formulated by the Board in meeting and published in the gazette.

5. Notwithstanding anything contained in any other law, the Board may nominate persons or officers who would be competent to act on behalf of any domestic workers to initiate action for making any claim under any law or rules made there under or award or settlement made under any such law and appear on behalf of the domestic workers in such proceedings.

6. The Board shall submit to the Government as soon as may be, after the first day of April every year, the annual report on the working of the scheme during the preceding year ending on thirty-first March of that year. Every report so received shall be laid as soon as may be after it is received before each House of the State Legislature if it is in session, or in the session immediately following the receipt of the report.

7. The Board shall constitute a vigilance committee comprising of the representatives of workers, employers, government and experts to check corruption, monitor the functioning of the board and evolve strategies to eradicate corruption and to promote accountability and transparency.

8. Accounts and audit .

(i) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance-sheet in such form as may be prescribed.

(ii) The accounts of the Board shall be audited annually by such qualified person as the Government may appoint in this behalf.

(iii) The auditor shall at all reasonable time have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require or examine any member or officer of the Boards.

(iv) The accounts of the Board certified by the auditor, together with the audited report thereon shall be forwarded annually to the Government after it is approved by the corresponding Board.

(v) The Board shall comply with such directions as the Government may after perusal of the report of the auditor, think fit to issue.
(vi) The cost of audit, as determined by the Government, shall be paid out of the funds of the Board.

9. Recovery of dues to the Board. –

(a) On an application made by the Board for the recovery of arrears of any sum payable to it under this Act or any scheme and on its furnishing a statement of accounts in respect of such arrears, the Collector may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(b) A certificate by the Collector shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall then be recovered as arrears of land revenue by the Collector and remitted to the Board

13. Central Advisory Committee

(i) The Central Government may constitute an Advisory Committee to (i) evolve model Schemes for the domestic employments under the Act, (ii) advise upon such matters arising out of the administration of this Act or any scheme made under this Act or relating to the application of the provisions of this Act to any particular class of domestic workers and employers, and co-ordination and monitoring of the work of various Boards, as the Advisory Committee may itself consider to be necessary or as the Government may refer to it for advice.

(ii) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed:

Provided that the Advisory Committee shall include equal number of members representing unorganized sector workers while the other half would represent the employers, members of Parliament and the Government.

14. State Advisory Committee

i) State Advisory Committee shall be constituted by every State Govt. or Govt of the Union Territory, in order to evolve appropriate schemes for the scheduled grouping of employments on the basis of a survey in the State / Union Territory and the model schemes evolved by the Central Advisory Committee.

ii) The Advisory Committee shall monitor the functioning of the schemes and Boards in the State and make suggestions for suitable amendments to the schemes in conformity with the provisions of this Act.

iii) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed:

15. Inspectors

(i) Any registered trade union may have the power to inspect work premises and prosecute the erring employer for violations under this Act.
The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purpose of this Act or of any scheme and may define the limits of their jurisdiction.

(ii) Subject to any rules made by the Government in this behalf, an Inspector may -

a) enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where domestic workers are employed, or from where contractor and working for the purpose of examining any register, record of wages or notice required to be kept or exhibited under any scheme, and require the production thereof, for inspection;

b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a domestic worker employed therein or a contractor workers to whom work is given out therein;

c) require any person giving any work to domestic workers or to a group of domestic workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;

d) seize or take copies of such registers, records of wages or notices or portions thereof as he may consider relevant, in respect of an offence under this Act or scheme, which he has reason to believe has been committed by an employer; and

e) exercise such other powers as may be prescribed:

Provided that no one shall be required under the provisions of this section to answer any question or make any statement tending to incriminate him.

(iii) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

16. Obstructions:

(i) Whoever obstructs an Inspector or a person appointed under this Act or Scheme (hereinafter referred to as the authorized person) in the discharge of his duties under this Act or refuses or willfully neglects to afford the Inspector or authorized person any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees, or with both.

(ii) Whoever willfully refuses to produce on the demand of any Inspector or authorized person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Inspector or authorized person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with

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CHAPTER IV
DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

17. Resolution of Disputes:

All disputes arising out of the enforcement of the provisions of this Act shall be resolved only by Dispute Resolution Councils and Appellate authority duly constituted under this Act.

18. Constitution of Dispute Resolution Councils and Appellate Authority:

1) The Dispute Resolution Council in every district unit or local area unit shall comprise of three members, representing the Government, the domestic workers and the employers in each of the Domestic Workers Board.

2) The term of office of the members of the council shall be three years and the members may be nominated by each Board for such term.

3) The Appellate authority shall likewise be a tripartite body, representative in composition and constituted in the same manner by each Board.

19. Reference of disputes:

1) Where the appropriate unit of the Board is of the opinion that dispute exists or is apprehended it may at any time, by order in writing -
   a) refer the dispute to the Board for promoting a settlement there of; or
   b) refer any matter appearing to be connected with or relevant to the dispute to a Council for inquiry; or for resolution of the dispute as provided in the Scheme.

2) No proceeding pending before a Dispute Resolution Council or the appellate authority in relation to a dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such council or appellate authority shall complete such proceedings and submit its award to the appropriate unit of the Board.

CHAPTER V
PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

20. Procedures and powers of Boards, Councils and appellate authorities:
1) Subject to any rules that may be made in this behalf by the Board, the Dispute Resolution Council or appellate authority shall follow such procedure as may be deemed fit and conforming to principles of natural justice.

2) Every unit of the Board, Dispute Resolution Council or the appellate authority shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely -

a) enforcing the attendance of any person and examining him on oath;

b) compelling the production of documents and material objects;

c) issuing commissions for the examination of witnesses;

d) in respect of such other matters as may be prescribed; and every enquiry or investigation by a Board or Dispute Resolution Council shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the India Penal Code (45 of 1860).

3) Every document in relation to a dispute as above said, will be a public document within the meaning of Section 76 of the India Evidence Act, 1972. Any person interested in the dispute or his authorized representatives shall have a right to obtain copies of such documents.

4) The Dispute Resolution Council may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which it has ground for considering being relevant to the implementation of any Award or to carrying out any other duty imposed on it under this Act. For the aforesaid purposes, the Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) (in respect of enforcing the attendance of any person and examining him or of compelling the production of documents).

5) All members of the Council and the presiding officers of a Council or Appellate Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Subject to any rules made under this Act, the costs of, and incidental to any proceedings before a Council shall be in the discretion of that Council, which shall have full power to determine by whom, to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may on application made to the appropriate Board, by the person entitled, be recovered by the appropriate government in such manner as it deems appropriate.

6) Every Council shall be deemed to be civil court for the purposes of (Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

21. Bar of jurisdiction of civil and labour courts: No civil or labour court shall entertain the suit or application in respect of any matters arising under this Act or the Scheme.

22. Contravention of provisions regarding employment of Unorganized Sector workers:
Whoever contravenes any provisions of this Act or of any rules made there under regarding the employment of unorganized sector workers, or contravenes any other provision under this Act or this Scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend up to one hundred rupees for every day during which such contravention continues even conviction for the first such contravention.

23. Other Offences:

If any person contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to thousand rupees, or with both.

24. Offences by Companies:

1) Where an offence under this Act or Scheme has been committed or the provisions thereof have been violated by a company, it shall be presumed that appropriate instruction has not been issued by the Company for wholesome compliance with the Act and Scheme unless it is otherwise proved.

2) Where it is not so proved, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

3) Where it is so proved the person who is responsible for such violation shall be proceeded against and punished accordingly.

4) Notwithstanding anything contained in sub-section (i), if the commission of the offence under this Act is attributable to any omission or negligence on the part of the director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:

For the purposes of this section:

a) 'company' means any body corporate and includes a partnership firm or other association of individuals; and

b) 'director', in relation to a firm, means a partner in the firm

25. Cognizance of Offences:

1) Every offence punishable under this Act and the scheme shall be cognizable only by a Judicial Magistrate not lower in rank than a First Class Magistrate of the area concerned.

2) Whenever any contravention of the provisions of the Act and Scheme takes place, the Inspector of the Board or any person aggrieved by such contravention may in writing complain to the Magis-
trate for taking cognizance of the offence.

3) Whenever an Inspector without sufficient reason refuses or fails to make a complaint of such a contravention, the Board, may suo moto or on a report from the person aggrieved, make a report to the Magistrate in writing to take cognizance of the offence. This will be without prejudice to such disciplinary action that the Board may cause to be initiated against the Inspector for his lapse.

26. Power to make Rules:

The Central Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

27. Power to make regulations:

Without prejudice to the power of the Central Government to make rules under Section 31, the appropriate Government and its Unorganized sector workers boards together shall have the power to make regulations for the purposes of effective functioning of the Scheme.

1) In particular the appropriate Government and its domestic workers boards shall have the power to make regulation in respect of the following:

a) The election of representatives of domestic workers in the domestic workers boards.

b) Health, safety and medical facilities, social security and maternity benefits, and domestic workers welfare funds.

c) Enforcement of Provisions of the Act and Scheme, including machinery for such enforcement.

d) Provisions in regard to welfare crèches, education and such other social welfare benefits for the children of domestic workers.

e) The conditions of service including recruitment, pay, allowance, tenure, discipline and appeal, retirement benefits of various categories of employees of the Board and their welfare.

f) The remuneration of honorarium payable to the Presidents and other Office bearers of the Boards.

g) Provisions for leisure time activities, recreation, library any literacy measures including legal literacy among domestic workers.

28. This Law will not affect the functioning of any other State or Central Act which is more beneficial that this Act.
SCHEDULE-I
LIST OF EMPLOYMENTS IN THE DOMESTIC WORKER

1. DOMESTIC WORK WILL INCLUDE
   a. gardening,
   b. baby sitting,
   c. cooking and serving
   d. cleaning & washing
   e. care of the sick & aged
Compilation of Draft Bills on Domestic Work

Proposed Bill for the Kasambahay

Republic of the Philippines
Congress of the Philippines
Metro Manila
Fourteenth Congress
___ Regular Session

Begun and held in Metro Manila, on (day), the __ day of (month), two thousand and seven.

_00

REPUBLIC ACT NO. ___

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

AN ACT
INSTITUTING REGULATORY POLICIES FOR THE HOUSEHOLD EMPLOYMENT INDUSTRY, ESTABLISHING STANDARDS OF PROTECTION AND PROMOTION OF THEIR WELFARE AND OF THEIR FAMILIES, AMENDING FOR THIS PURPOSE PERTINENT PROVISIONS OF PRESIDENTIAL DECREE NO. 442, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES AND FOR OTHER PURPOSE

ARTICLE 1
TITLE, POLICY, PRINCIPLES AND DEFINITION OF TERMS

SECTION 1. Short Title. — This Act shall be known as the “Magna Carta for the Kasambahay 2006” or “Batas Kasambahay”.

SECTION 2. Declaration of Policies. — The following State policies shall be observed at all times:

(a) The State values the dignity of every person, and guarantees full respect, protection, and promotion for human rights.

(b) The State affirms labor as a primary social force and commits to protect the rights of workers and promote their welfare including the rights of women and child workers. Consistent with this policy the State has bound itself to international human rights instruments to eliminate forced labor, discrimination in employment and occupation, and abolish child labor exploitation and trafficking in persons.

(c) The State recognizes the dignity of honest labor, the nobility and self-respect inherent in the household helper industry and the vital and necessary work they performed for Filipino households and their important role in the society.

(d) The State is aware that the nature of their work makes the kasambahays one of the most vulnerable sectors in society. The State seeks to uphold the rights and dignity of kasambahays to protect them from abuse and exploitation by providing safe and humane working conditions consistent with the Decent Work Framework outlining good conditions of

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Asian Migrant Domestic Workers Alliance (ADWA)
work for Filipino workers, which includes establishing labor standards, decent employment and income, enhanced coverage of social protection and strengthened social dialogue, including kasambahays.

(c) The State recognizes that the household worker industry is predominantly composed of women. The State shall ensure safe and healthful working conditions for women including providing gender sensitive measures such as taking particular account to their maternal functions and needs in formulation, implementation and proper dissemination of policies and programs affecting the women kasambahay.

(f) The State further recognizes that kasambahays of minority age have special inalienable rights and privileges that should be espoused and protected, particularly in the areas of education and self-improvement.

(g) The State is aware that its duty to protect the kasambahays’ rights carries with it the duty to equal protection of the employers rights.

(h) The State recognizes the vital role of non-government organizations, employers organizations, concerned individuals and civil society as partners in promoting and protecting of the rights and welfare of kasambahays and in enabling the kasambahays to be empowered members of society.

SECTION 3. Definition of Terms. – As used in this Act, the term:

(a) "Kasambahay" or “household helpers”, “househelper” refers to any person who renders domestic or household services to an employer as family driver, baby sitter, gardener, cook, nursemaid or yaya, or laundry woman. The term “kasambahay” or “kasama sa bahay” shall be used in lieu of “katulong” to properly signify the worth of household helpers.

(b) "Batang-kasambahay" or “household helpers of minority age” refers to children fifteen (15) years of age up to seventeen (17) years of age employed as kasambahay or household helper under a valid contract of employment.

(c) “Employer” refers to any person who engages the services of the kasambahay for household work and/or is party to the employment contract.

(d) “Household” refers to an aggregate of persons generally but not necessarily bound by ties of kinship, who sleep in the same dwelling unit and have common arrangements for the preparation and consumption of food.

(e) “Household work” refers to tasks performed by the kasambahay as specified in the employment contract.

(f) “Hours of work” refer to the period of time during which a household helper is required to be on duty or to be at a prescribed workplace and/or the period of time during which the househelper is permitted to work;

(g) “Deployment expenses” refer to expenses that are directly used for the relocation or transfer of the househelper from the place of origin to the place of work including, but not limited to,
the cost of transportation and finder’s fees or agency fees if the househelper comes from an employment agency. Advances or loans made by the household helper are not included in the definition of deployment expenses;

(h) "Hazardous work" refers to any activity or circumstance where the kasambahay is exposed to risk which constitutes an imminent danger to his or her safety, health or morals as provided for by existing laws.

(i) “Wages” – adopt official definition of wages, to be provided by NWPC.

(j) “Board and lodging” – shall refer to food and shelter which shall be afforded to the kasambahay free of charge and nondeductible to his or her wage.

ARTICLE 2
RIGHTS AND PRIVILEGES OF KASAMBAHAY

SECTION 4. Right to decent and humane conditions of work and employment. The kasambahay has the right to a safe and healthy work environment, decent work which includes decent employment and income, humane conditions of work, access to and coverage in social protection schemes, and the opportunity for social dialogue and representation.

SECTION 5: Right to just and humane treatment. The employer and other members of the household, shall at all times, treat the kasambahay in a just and humane manner. Abusive language, physical violence or any act which debases the dignity and intrinsic worth of a person shall not be used against the kasambahay.

SECTION 6. Extent of duty. The employer may request the househelper to perform a task outside his or her household for the benefit of another with the consent of the househelper and payment of just compensation.

SECTION 7. Prohibition on Labor Sub-contracting. The employer shall be prohibited from subcontracting the service of the household helper to any third party or household.

SECTION 8. Prohibition on Recruitment and Finder’s Fees. Regardless of whether the household helper was sourced either through an employment agency or a third party, said househelper shall neither be charged nor levied a share in the recruitment fees or finder’s fees by the said employment agency or third party.

SECTION 9. Basic Necessities. In a manner befitting the means of a responsible head of the family, the homeowner shall provide for the basic necessities of the household helper. These shall include:

(a) Food — at least three (3) adequate meals per day;
(b) Shelter — provision of humane sleeping arrangements that ensure privacy and safety of the household helper; and
(c) Medical — the advance of the necessary funds to cover work-related illnesses or injuries sustained by the household helper, to be reimbursed by the latter from the proceeds of the benefits accruing from his or her membership with the SSS.
In no instance shall the employer be allowed to withdraw or hold in abeyance the Provision of these basic necessities as punishment or disciplinary action meted out to the househelper.

SECTION 10. Guarantee of Household Helper Privacy. The employer shall respect the privacy of the household helper during the course of the latter’s rest periods. The househelper’s right to privacy shall extend to any and all forms of personal communications, including letters, correspondence, telephone calls, and text messages.

SECTION 11. Access to Outside Communication. The employer shall grant the househelper access to outside communication, either through letters or telephone, especially in cases of personal or family emergency. Further, the employer shall guarantee the househelper access to the household’s private telephone for the purpose of communicating with the latter’s family at least once a week: Provided, That the cost incurred for long distance and overseas telephone bills shall be shouldered by the household helper.

SECTION 12. Prohibition on Bonded labor. It shall be prohibited for the employer to use future services of the househelper as collateral for a loan or advance made by the latter. Likewise, it shall be prohibited for the employer to bind the household helper for his or her continuous employment as a form of payment for any loan or advance made by the latter. Should a household helper with an outstanding loan or advance decide to unilaterally terminate the contract of employment, he or she shall pay said loan or advance under terms and conditions specified in a duly-executed promissory note between the parties.

SECTION 13. Access to Lawful Third-Party Mediation. Upon employment, the employer shall furnish the househelper with the names, addresses and telephone numbers of the following:
   a) The Department of Labor and Employment (DOLE) and the Regional Offices of the DOLE having jurisdiction over the area of employment of the household helper;
   b) Barangay office which has jurisdiction over the household; and
   c) Duly-registered non-government organizations accredited to mediate in employee-employer disputes involving househelpers and their employers.
   d) The employer shall further guarantee the househelper access to all means of communication to be able to contact any of the above institutions.

ARTICLE 3
TERMS AND CONDITIONS OF EMPLOYMENT

Section 14. Employment contract. An employment contract shall be executed by and between the employer and household helper before the commencement of the service, in a dialect or language understandable to both parties. It must be duly signed and attested to before the punong barangay of the place of employment. Each party must have a copy of the said contract.

A contract of employment shall include the following provisions:

(a) period of employment which shall not exceed two (2) years for the initial contract; thereafter it may be renewed annually;
(b) monthly compensation and mode of payment;
(c) allowable leave, rest days and holidays;
(d) working hours, rest periods and day-off;
(e) living quarters, and food and medical provisions;
(f) duties and responsibilities;
(g) Social Security System (SSS) and Philippine Health Insurance Corporation (Philhealth) contributions; and
(h) annual salary increases.

Provided, That in the case of employment of a househelper of minority age, said contract of employment shall be signed on his or her behalf by either parent or legal guardian, with the express consent of the minor.

SECTION 15. Medical Certificate as Pre-requisite for Employment. A medical certificate attesting to the physical and mental fitness of the household helper must be secured from a licensed physician as a pre-requisite for employment, the cost of which shall be for the account of the employer.

SECTION 16. Minimum Wage. The minimum compensation of househelpers shall not be less than the following rates:

a) Two thousand five hundred pesos (P2,500.00) a month for those employed in the National Capital Region;
b) One thousand seven hundred pesos (P1,700.00) a month for those employed in other chartered cities and first class municipalities; and
c) One thousand five hundred pesos (P1,500.00) a month for those employed in other municipalities.

Within one (1) year from the effectivity of this Act, the Regional Tripartite Wages and Productivity Boards (RTWPBs) shall determine and adjust, the appropriate minimum wage rates of household helpers, and every year thereafter.

SECTION 17. Payment of Wages. Wages shall be paid in cash directly to the household helper, at least once every two (2) weeks or twice a month. No deductions from said wages shall be made by the employer except those allowed by law, The express written consent of the household helper shall first be secured before any deduction from his or her wages is made.

SECTION 18. Payment of 13th Month Pay. All household helpers shall be entitled to 13th month pay equivalent to one (1) month basic salary, which shall be payable not later than December 24 of every year.

SECTION 19. Membership in the Social Security System. (SSS). All household helpers shall be covered by the Social Security System (SSS) and be entitled to all the benefits in accordance with the pertinent provisions of Republic Act No. 1161, as amended.

The SSS shall implement an outreach program that will facilitate the remittance of SSS contributions of the househelper and employer through the most feasible means. This outreach program shall be conceptualized and initiated within one (1) year from the date of effectivity of this Act.
SECTION 20. Membership in the Philippine Health Insurance Corporation (Philhealth). All househelpers shall be covered by the Philippine Health Insurance Corporation (Philhealth) in accordance with its guidelines and be entitled to all the benefits provided by law.

SECTION 21. Normal Hours of Work. The normal hours of work of a househelper or kasambahay shall not exceed ten (10) hours a day, exclusive of breaks of one (1) hour each for breakfast, lunch, and dinner. Any work done by the househelper beyond the normal hours of work shall be duly compensated by the employer. In addition, the household helper shall be allowed at least eight (8) hours of continuous rest per day.

SECTION 22. Regular Working Days. All household helpers shall render work for not more than six (6) consecutive days per week. While the specific day of the week set aside as rest day for the househelper may be stipulated in the employment contract, the same may be changed for another day of the week upon the mutual agreement of the employer and the household helper as the exigencies of the household may dictate: Provided, That the employer shall respect the preference of the househelper for his or her weekly rest day when said preference is based on religious grounds.

SECTION 23. Vacation Leave. All househelpers, who have rendered one (1) year of service, shall be entitled to an annual five (5) days vacation leave with pay: Provided, That any unused portion of said vacation leave shall not be cumulative or shall not be carried over to the next succeeding years.

SECTION 24. Maternity and Paternity Leave Benefits. All female househelpers who have rendered an aggregate length of service of two (2) years or more shall, in addition to the leave granted them, be entitled to maternity leave in accordance with Sec. 14-A of Republic Act No. 8282, otherwise known as the “Social Security Act of 1997”.

A paternity leave of seven (7) days with pay shall be granted to all married male household helpers when their legitimate spouses deliver a child or suffer a miscarriage.

SECTION 25. Deployment Expenses. Deployment expenses of household helpers, which may include transportation and agency fees, shall be shouldered by the employer.

SECTION 26. Termination of Service. If the period for household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus the equivalent of fifteen (15) days work by way of indemnity. If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding the equivalent fifteen (15) days of work.

ARTICLE 4
SPECIAL RIGHTS AND PRIVILEGES OF HOUSEHOLD HELPERS OF MINORITY AGE

SECTION 27. Allowable Employment of Household Helpers of Minority Age. Children fifteen (15) years of age up to seventeen (17) years of age may be employed as household helpers.

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Asian Migrant Domestic Workers Alliance (ADWA)
In no instance shall children below fifteen (15) years of age be employed as household helpers.

SECTION 28. Children of Household helpers. Unless expressly employed as household helpers under a duly executed contract of employment, children of household helpers who live with their parents at the employer’s residence or those whose sustenance or education is being provided for by the homeowner, shall not be considered as household helpers themselves.

SECTION 29. Normal Hours of Work. Household helpers of minority age shall not be allowed to render work for more than ten (10) hours a day and more than five (5) days per week. He or she shall be allowed breaks of not less than one (1) hour each for breakfast, lunch and dinner.

SECTION 30. Prohibition on Night Work. Household helpers of minority age shall not be allowed to render work between ten o’clock in the evening and six o’clock in the morning of the following day.

SECTION 31. Prohibition on Work to be Undertaken. Household helpers of minority age shall not be allowed to render work beyond their mental and physical capabilities.

SECTION 32. Prohibition on Hazardous Work, Activities, Conditions and/or Undertakings. Household helpers of minority age shall not be employed in any hazardous work, activity or undertaking, and neither shall he or she be exposed to hazardous working conditions. Section 12 (d) of RA 9231 shall likewise apply in determining the worst forms or hazardous child labour.

SECTION 33. Minimum Wage. Household helpers of minority age shall be paid the same minimum wage rates prescribed in this Act.

SECTION 34. Right of the Child to Wages Earned. Any and all wages, remuneration or compensation earned by a household helper of minority age during the period of his or her employment shall be paid by the employer directly to the former.

No parent, guardian or relative shall be allowed to borrow against the compensation of the household helper of minority age without the express written consent of the latter. Neither shall the minor be made to render work in payment of a loan or liability incurred by a parent, guardian or relative.

SECTION 35. Rescue of Abused Household Helpers of Minority Age. Upon report or discovery of abuse and exploitation of a househelper of minority age, the Department of Social Welfare and Development (DSWD), in collaboration with the Department of Labor and Employment (DOLE), shall immediately rescue the said minor. The rescued minor shall be supervised and escorted by a social worker back to his or her parent, legal guardian or relatives. The cost of such operation shall be borne by the agency which recruited or deployed the househelper or, in its absence, the DSWD. The Secretary of Labor and Employment and the Secretary of Social Welfare and Development shall formulate the rules and regulations governing such rescue operation.

SECTION 36. Protective Custody and Placement of Rescued Household Helpers of Minority Age. Should a rescued household helper of minority age refuse to be brought back to his or her parent, legal guardian or relatives, against the recommendation of the DOLE and the DSWD, said household helper may be placed under the protective custody and care of the DSWD or that
of a duly-recognized and accredited non-government organization, or placed in a suitable household for employment.

SECTION 37. Applicability of Other Law. The provisions of RA 9231 shall apply in the protection and promotion of the rights and best interests of the batang kasambahay.

ARTICLE 5
THE ROLE OF GOVERNMENT ENTITIES IN THE DELIVERY OF PROGRAM AND SERVICES

SECTION 38. Role of Local Government Units: Local Government Units (LGUs) shall facilitate access of Kasambahays to all existing programs and services. The LGUs, through their local development plans, shall prioritize concerns regarding Kasambahays and develop and implement plans and programs in support of this law.

The LGUs shall establish a registration system for the mutual protection of the Kasambahays and his or her employer, effective information and monitoring of the employment of the kasambahay. The registration system shall be included as a priority activity of the LGUs in the Internal Rules and Regulations of this Act.

SECTION 39. Support Institutions:

(a) Role of Department of Interior and Local Government. The DILG shall oversee and provide technical assistance to ensure the implementation of LGU on the kasambahay programs and services. The DILG shall be responsible for the continuous upgrading and enhancement of the knowledge and skills of barangays to assume their assigned responsibilities under this Act.

(b) Role of the Department of Labor and Employment. The DOLE shall be responsible for the continuous enhancement of standards for the employment and welfare of kasambahays. Towards this end, the DOLE shall also provide a venue for the continuous dialogue between and among stakeholders and domestic workers. It shall also conduct trainings and seminars on improving working conditions in the households, occupational safety and health, labor education and livelihood development. It shall also provide employment facilitation services for the kasambahay.

(c) Role of Department of Social Welfare and Development. The DSWD shall institute a program designed specifically to provide emergency services to the kasambahay in need of custody, shelter, healing or legal, medical, psychological and rehabilitative services.

(d) Role of Department of Education. The DepEd shall develop and administer equivalency test and alternative educational programs for the accreditation of educational qualification of the kasambahays. The DepEd shall work with LGUs in establishing and strengthening special education programs including capacity-building for instructional managers.

(c) Role of Technical Education and Skills Development Authority. The TESDA shall be responsible for the continuous enhancement of training regulations which will serve as the basis for the development of curricula, registration and delivery of training programs for kasamba-
hays. It shall also be responsible for the development and administration of assessment packages and certification of kasambahays.

(f) Role of Philippine National Police. The PNP shall coordinate with LGUs, DSWD and other relevant agencies in conducting rescue operations for abused kasambahays. (consult PNP for other existing mechanisms)

(f) Role of NGOs and other groups. Non-government organizations and other groups shall equally contribute to the delivery of programs and services to be provided by government offices as prescribed in this law.

ARTICLE 6
SETTLEMENT OF DISPUTES

SECTION 40. Mechanism for Settlement of Disputes: A mechanism for settlement of disputes arising from the employment contract is hereby prescribed as follows:

a.) Katarungang Pambarangay - The katarungang pambarangay shall serve as the primary resort in settling disputes and shall render conciliation and mediation services in disputes.

b.) Department of Labor and Employment - The Department of Labor and Employment (DOLE) shall take cognizance of disputes arising from the employment of kasambahays for any violation of the labor standards provisions hereof, only upon the exhaustion of conciliation and mediation at the katarungang pambarangay level.

c.) National Labor Relations Commission - The National Labor Relations Commission (NLRC) shall assume jurisdiction on disputes arising from employment of kasambahays over cases which it has original and exclusive jurisdiction, only upon the exhaustion of conciliation and mediation at the level of the barangay.

d.) Courts - Regular courts which have exclusive and original jurisdiction of cases other than disputes arising from the employment of kasambahays shall take cognizance only after prior recourse in the barangay level has been exhausted.

ARTICLE 7
MANDATORY EMERGENCY SERVICES FOR CASES OF ABUSE

SECTION 41. Rescue and Protection: The Philippine National Police, in partnership with the DSWD, local government units, and Non-Government Organizations, shall make available and popularize emergency hotline services for abused and exploited Kasambahays. The Philippine National Police shall also form composite multi-disciplinary task forces at the municipal or city level to ensure timely and appropriate interventions for such cases of abuse and exploitation.

The Department of Interior and Local Government and the Philippine National Police, in partnership with other stakeholders, shall develop a continuing program for the training and capacity-building of law enforcers and barangay officials to ensure child-friendly and gender-sensitive handling of cases of abuse of Kasambahays.
SECTION 42. Healing and Reintegration. The Department of Social Welfare and Development, in partnership with local government units and NGOs, shall formulate and implement a continuing program for the provision of psycho-social and center-based services for abused and exploited Kasambahays. The DSWD, in partnership with relevant institutions, shall also cause the provision of livelihood and skills training for such cases of abuse.

SECTION 43. Education Services. The Department of Education, in partnership with stakeholders, shall develop and implement curriculums and programs to ensure continuing access to education for Kasambahays, taking into consideration the special needs and circumstances of the sector.

SECTION 44. Access to Legal Services. The Department of Justice shall work with stakeholders/relevant institutions to ensure free access to legal services for abused domestic workers. Abused Kasambahays shall also be exempted from filing of legal fees.

ARTICLE 8
PENAL PROVISIONS

SECTION 45. Penal Provisions. Any violation of the provisions of this Act shall be punished with a fine of not less than Ten thousand pesos (P10,000), nor more than Forty thousand pesos (P40,000), or imprisonment of not less than six months but not more than six years, or both at the discretion of the court. Provided, that the maximum penalty shall be applied if the offender is a relative of the Kasambahay. Provided further that existing applicable laws with higher penalties shall apply in their maximum in case of violations of any provisions of this Act.

SECTION 46. Abuse of Kasambahays. The maximum penalty under the other relevant laws shall apply in cases of abuse of Kasambahays. Provided that the penalty of one degree higher than that prescribed under the relevant laws shall apply if the offender is a relative of the Kasambahay.

ARTICLE 9
MISCELLANEOUS PROVISIONS

SECTION 47. Implementing Rules and Regulations. The Department of Interior and Local Government and the Department of Labor and Employment, in collaboration with other government agencies charged with the implementation of the provisions of this Act shall, within a period of one (1) year from the date of its effectivity, promulgate the necessary implementing rules and regulations.

SECTION 48. Araw ng mga Kasambahay. The date upon which the President shall approve this Batas Kasambahay will be designated as the "Araw ng mga Kasambahay".

SECTION 49. Non-diminution clause. Nothing in this Act shall be construed to cause the diminution or substitution of any benefits and privileges currently enjoyed by the kasambahay. All existing arrangements between employer and kasambahay shall conform to the minimum standards set by this Batas Kasambahay within a period of sixty (60) days upon effectivity of this Act.
SECTION 50. Repealing Clause. All laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

Article 143 paragraph (c) and (d) of PD 442 as amended is hereby expressly repealed. (Article on the provision of education for Jbatang-kasambahay) All laws, decrees, presidential issuances, executive orders, rules and regulations or parts thereof not consistent with the provisions of this Act are hereby amended, repealed or modified accordingly.

SECTION 51. Separability Clause. If any part or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected thereby shall remain valid.

SECTION 52. Effectivity Clause. This Act shall take effect fifteen (15) days upon completion of its publication in at least two (2) national newspapers of general circulation.

Approved by:
EXPLANATORY NOTE

This bill recognizes the dignity and the nobility of the household helper industry.

Under this proposed legislation, the rights and interests of household helper are enhanced and protected by ensuring just and equitable terms and conditions of their employment are embodied in their contract with their employers. This includes the payment of at least the minimum wage, 13th month pay, Social Security System (SSS) and Philippine Health Insurance Corporation (Philhealth) coverage, maternity and paternity benefits. Under this proposed law, employers are prohibited from sub-contracting the service of the household helper to any third party or household.

Likewise provided in this bill are the enumeration of the special rights and privileges of household helpers of minority age, as well as rights and privileges of self-employed, and part-time or day-to-day household helpers.

This proposed legislation is an affirmation of the value and dignity of every person and guarantee full respect for human rights.

The approval of this bill is earnestly requested.

AQUILINO Q. PIMENTEL JR.

AN ACT INSTITUTING POLICIES GOVERNING THE HOUSEHOLD EMPLOYMENT INDUSTRY, ESTABLISHING A STANDARD OF PROTECTION AND PROMOTING THE WELFARE OF HOUSEHOLD HELPERS

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:
ARTICLE I

TITLE, POLICY, PRINCIPLES AND DEFINITION OF TERMS

SECTION 1. Short Title. — This Act shall be known as the “Magna Carta of Household Helpers” or “Batas Kasambahay”

SECTION 2. Declaration of Policies. — It is the declared policy of the State to value the dignity of every person and guarantee full respect for human rights.

Recognizing the dignity of honest labor and the nobility of the household helper industry, the State shall nurture and protect the interest of the household helpers by ensuring that effective mechanisms are instituted so that their rights and benefits are protected.

Recognizing the need to protect working women, the State shall provide them with safe and healthful working conditions, and take particular account of their maternal functions and needs. Further recognizing the vulnerabilities of women household helpers, the State shall ensure that the formulation and implementation of policies and programs affecting them shall be gender sensitive.

Finally, in line with the above declarations, the State shall cooperate, in a spirit of trust and mutual respect, with duly recognized legitimate non-governmental organizations in the protection of household helpers and in the promotion of their welfare.

SECTION 3. Definition of Terms. — As used in this Act, the term:

(a) “Household helper”, “househelper” or “kasambahay” refers to any person who renders domestic or household services exclusively to an employer as family driver, babysitter, gardener, cook, nursemaid or yaya, or laundry woman. The term “kasambahay” or “kasama sa bahay” shall be used in lieu of “katulong” to properly signify the worth of the labor of househelpers.

(b) “Self-employed”, “part-time” or “day-to-day” household helper refers to any person who renders domestic or household services to more than one (1) employer on a contractual, part time or day-to-day basis. He or she may work in a single household, but not for more than three (3) days; otherwise he or she shall be considered as a household helper or kasambahay;

(c) “Household helper of minority age” or “batang kasambahay” refers to a child fifteen (15) years of age and above up to seventeen (17) years of age who is engaged as a household helper under a valid contract of employment;

(d) “Homeowner” or “employer” refers to any person who engages the services of a house helper. For purposes of this Act, the employer shall be the one identified to be the head of the family or any member of the household designated by the head of the family to manage the general housekeeping functions for the family;

(e) “Household” refers to the immediate members of the family and/or the occupants of the house that are directly provided services by the house helper;
(f) “Hours of work” refer to the period of time during which a household helper is required to be on duty or to be at a prescribed workplace and/or the period of time during which the househelper is permitted to work;

(g) “Deployment expenses” refer to expenses that are directly used for the relocation or transfer of the house helper from the place of origin to the place of work including, but not limited to, the cost of transportation and finder’s fees or agency fees if the househelper comes from an employment agency. Advances or loans made by the household helper are not included in the definition of deployment expenses;

(h) “Hazardous work” refers to any activity or circumstance where the househelper is exposed to risk which constitutes an imminent danger to his or her safety and health such as, but not limited to:

(a) any work, employment or activity which exposes the household helper to physical, emotional or sexual abuse;

(b) any work which involves manual handling or transport of heavy loads;

(c) any work in an unhealthy environment which exposes household helpers to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;

(d) any work which requires the household helper to render services for long periods of time or during late nights;

(e) any or all forms of slavery or practices similar to slavery, such as the sale and trafficking of household helpers, forced or compulsory labor, debt bondage and serfdom;

(f) any use, procuring or offering of the household helper for prostitution or pornography;

(g) any use, procuring or offering of the household helper for the commission of any offense or crime, particularly for the production and trafficking of prohibited drugs and substances as defined in Republic Act No. 9136;

(h) any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of the house helper; and

(i) any other type of work, activity, condition or undertaking that may hereinafter be defined as hazardous by the Department of Labor and Employment.

ARTICLE 2

TERMS AND CONDITIONS OF EMPLOYMENT

SECTION. 4. Employment Contract — An employment contract shall be executed by and between the employer and household helper before the commencement of the service, in a dialect or language understandable to both parties. It must be duly signed and notarized. Each party must
A contract of employment shall include the following provisions:

(a) period of employment which shall not exceed two (2) years for the initial contract; thereafter it may be renewed annually;
(b) monthly compensation and mode of payment;
(c) allowable leave, rest days and holidays;
(d) working hours, rest periods and day-off;
(e) living quarters, and food and medical provisions;
(f) duties and responsibilities;
(g) Social Security System (SSS) and Philippine Health Insurance Corporation (Philhealth) contributions; and

(h) annual salary increases. Provided, That in the case of employment of a house helper of minority age, said contract of employment shall be signed on his or her behalf by either parent or legal guardian, with the express consent of the minor.

SECTION. 5. Medical Certificate as Pre-requisite for Employment. — A medical certificate attesting to the physical and mental fitness of the household helper must be secured from a licensed physician as a pre-requisite for employment, the cost of which shall be for the account of the employer.

SECTION. 6. Minimum Wage. — The minimum compensation of househelpers shall not be less than the following rates:

a) One thousand five hundred pesos (P1,500.00) a month for those employed in the National Capital Region;

b) One thousand two hundred pesos (P1,200.00) a month for those employed in other chartered cities and first class municipalities; and

c) One thousand pesos (P1,000.00) a month for those employed in other municipalities.

The Regional Tripartite Wages and Productivity Boards (RTWPBs) may determine and adjust, from time to time, the appropriate minimum wage rates of household helpers.

SECTION. 7. Payment of Wages. — Wages shall be paid in cash directly to the household helper, at least once every two (2) weeks or twice a month. No deductions from said wages shall be made by the employer except those allowed by law. The express written consent of the household helper shall first be secured before any deduction from his or her wages is made.
SECTION. 8. Payment of 13th Month Pay. All household helpers shall be entitled to 13th month pay equivalent to one (1) month basic salary, which shall be payable not later than December 24 of every year.

SECTION. 9. Membership in the Social Security System. (SSS). All household helpers shall be covered by the Social Security System (SSS) and be entitled to all the benefits in accordance with the pertinent provisions of Republic Act No. 11611, as amended.

The SSS shall implement an outreach program that will facilitate the remittance of SSS contributions of the househelper and employer through the most feasible means. This outreach program shall be conceptualized and initiated within one (1) year from the date of effectivity of this Act.

SECTION. 10. Membership in the Philippine Health Insurance Corporation (Philhealth). — All house helpers shall be covered by the Philippine Health Insurance Corporation (Philhealth) in accordance with its guidelines and be entitled to all the benefits provided by law.

SECTION. 11. Normal Hours of Work. The normal hours of work of a house helper or kasambahay shall not exceed ten (10) hours a day, exclusive of breaks of one (1) hour each for breakfast, lunch, and dinner. Any work done by the house helper beyond the normal hours of work shall be duly compensated by the employer. In addition, the household helper shall be allowed at least eight (8) hours of continuous rest per day.

SECTION. 12. Regular Working Days. — All household helpers shall render work for not more than six (6) consecutive days per week. While the specific day of the week set aside as rest day for the house helper may be stipulated in the employment contract, the same may be changed for another day of the week upon the mutual agreement of the employer and the household helper as the exigencies of the household may dictate: Provided, That the employer shall respect the preference of the house helper for his or her weekly rest day when said preference is based on religious grounds.

SECTION. 13. Vacation Leave. — All house helpers, who have rendered one (1) year of service, shall be entitled to an annual fourteen (14) days vacation leave with pay: Provided, That any unused portion of said vacation leave shall not be cumulative or shall not be carried over to the next succeeding years.

SECTION. 14. Maternity and Paternity Leave Benefits. — All female house helpers who have rendered an aggregate length of service of two (2) years or more shall, in addition to the leave granted them, be entitled to maternity leave in accordance with Sec. 14-A of Republic Act No. 8282, otherwise known as the “Social Security Act of 1997”.

A paternity leave of seven (7) days with pay shall be granted to all married male household helpers when their legitimate spouses deliver a child or suffer a miscarriage.

SECTION. 15. Deployment Expenses. — Deployment expenses of household helpers, which may include transportation and agency fees, shall be shouldered by the employer.
SECTION. 16. Termination of Service. — If the period for household service is fixed, neither the employer nor the house helper may terminate the contract before the expiration of the term, except for just cause. If the house helper is unjustly dismissed, he or she shall be paid the compensation already earned plus the equivalent of fifteen (15) days work by way of indemnity. If the house helper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding the equivalent fifteen (15) days of work.

ARTICLE 3

RIGHTS AND PRIVILEGES OF HOUSEHOLD HELPERS

SECTION. 17. Standard of Treatment. - The employer and the other members of the household shall, at all times, treat the house helper in a just and humane manner. Abusive language, physical violence or any act which debases the dignity of a person shall not be used against a house helper.

SECTION. 18. Extent of Duty. — The employer may request the house helper to perform a task outside his or her household for the benefit of another with the consent of the house helper and payment of just compensation.

SECTION. 19. Prohibition on Labor Sub-contracting. --- The employer shall be prohibited from sub-contracting the service of the household helper to any third party or household.

SECTION 20. Prohibition on Recruitment and Finder’s Fees. — Regardless of whether the household helper was sourced either through an employment agency or a third party, said house helper shall neither be charged nor levied a share in the recruitment fees or finder’s fees by the said employment agency or third party.

SECTION. 21. Basic Necessities. — In a manner befitting the means of a responsible head of the family, the homeowner shall provide for the basic necessities of the household helper. These shall include:

(a) Food — at least three (3) adequate meals per day;

(b) Shelter — provision of humane sleeping arrangements that ensure privacy and safety of the household helper; and

(c) Medical — the advance of the necessary funds to cover work-related illnesses or injuries sustained by the household helper, to be reimbursed by the latter from the proceeds of the benefits accruing from his or her membership with the SSS.

In no instance shall the employer be allowed to withdraw or hold in abeyance the Provision of these basic necessities as punishment or disciplinary action meted out to the house helper.

SECTION. 22. Guarantee of Household Helper Privacy. The employer shall respect the privacy of the household helper during the course of the latter’s rest periods. The house helper’s
right to privacy shall extend to any and all forms of personal communications, including letters, correspondence, telephone calls, and text messages.

SECTION. 23. Access to Outside Communication. The employer shall grant the house helper access to outside communication, either through letters or telephone, especially in cases of personal or family emergency. Further, the employer shall guarantee the house helper access to the household’s private telephone for the purpose of communicating with the latter’s family at least once a week: Provided, That the cost incurred for long distance and overseas telephone bills shall be shouldered by the household helper.

SECTION. 24. Prohibition on Bonded labor. — It shall be prohibited for the employer to use future services of the house helper as collateral for a loan or advance made by the latter. Likewise, it shall be prohibited for the employer to bind the household helper for his or her continuous employment as a form of payment for any loan or advance made by the latter. Should a household helper with an outstanding loan or advance decide to unilaterally terminate the contract of employment, he or she shall pay said loan or advance under terms and conditions specified in a duly-executed promissory note between the parties.

SECTION. 25. Access to Lawful Third-Party Mediation. — Upon employment, the employer shall furnish the house helper with the names, addresses and telephone numbers of the following:

a) The Department of Labor and Employment (DOLE) and the Regional Offices of the DOLE having jurisdiction over the area of employment of the household helper;

b) Barangay office which has jurisdiction over the household; and

c) Duly-registered non-government organizations accredited to mediate in employee-employer disputes involving house helpers and their employers.

The employer shall further guarantee the house helper access to all means of communication to be able to contact any of the above institutions

ARTICLE 4

SPECIAL RIGHTS AND PRIVILEGES OF

HOUSEHOLD HELPERS OF MINORITY AGE

SECTION. 26. Allowable Employment of Household Helpers of Minority Age. Children fifteen (15) years of age up to seventeen (17) years of age may be employed as household helpers. In no instance shall children below fifteen (15) years of age be employed as household helpers.

SECTION. 27. Children of Household helpers. --- Unless expressly employed as household helpers under a duly executed contract of employment, children of household helpers who live with their parents at the employer’s residence or those whose sustenance or education is being provided for by the homeowner, shall not be considered as household helpers themselves.
SECTION. 28. Normal Hours of Work. — Household helpers of minority age shall not be allowed to render work for more than ten (10) hours a day and more than five (5) days per week. He or she shall be allowed breaks of not less than one (1) hour each for breakfast, lunch and dinner.

SECTION. 29. Prohibition on Night Work. — Household helpers of minority age shall not be allowed to render work between ten o’clock in the evening and six o’clock in the morning of the following day.

SECTION. 30. Prohibition on Work to be Undertaken. — Household helpers of minority age shall not be allowed to render work beyond their mental and physical capabilities.

SECTION. 31. Prohibition on Hazardous Work, Activities, Conditions and/or Undertakings. — Household helpers of minority age shall not be employed in any hazardous work, activity or undertaking, and neither shall he or she be exposed to hazardous working conditions.

SECTION. 32. Minimum Wage. — Household helpers of minority age shall be paid the same minimum wage rates prescribed in this Act.

SECTION. 33. Right of the Child to Wages Earned. — Any and all wages, remuneration or compensation earned by a household helper of minority age during the period of his or her employment shall be paid by the employer directly to the former. No parent, guardian or relative shall be allowed to borrow against the compensation of the household helper of minority age without the express written consent of the latter. Neither shall the minor be made to render work in payment of a loan or liability incurred by a parent, guardian or relative.

SECTION. 34. Rescue of Abused Household Helpers of Minority Age. — Upon report or discovery of abuse and exploitation of a house helper of minority age, the Department of Social Welfare and Development (DSWD), in collaboration with the Department of Labor and Employment (DOLE), shall immediately rescue the said minor. The rescued minor shall be supervised and escorted by a social worker back to his or her parent, legal guardian or relatives. The cost of such operation shall be borne by the agency which recruited or deployed the house helper or, in its absence, the DSWD. The Secretary of Labor and Employment and the Secretary of Social Welfare and Development shall formulate the rules and regulations governing such rescue operation.

SECTION. 35. Protective Custody and Placement of Rescued Household Helpers of Minority Age. Should a rescued household helper of minority age refuse to be brought back to his or her parent, legal guardian or relatives, against the recommendation of the DOLE and the DSWD, said household helper may be placed under the protective custody and care of the DSWD or that of a duly-recognized and accredited non-government organization, or placed in a suitable household for employment.

ARTICLE 5
RIGHTS AND PRIVILEGES OF SELF-EMPLOYED,

PART-TIME OR DAY-TO-DAY HOUSEHOLD HELPERS

SECTION. 36. Exclusivity Clause. — For the purpose of this Act, the rights and privileges of self-employed workers working as part-time or day-to-day household helpers shall be limited to the provisions of this Article.

SECTION. 37. Treatment of the Household Helper. — The homeowner as well as the members of the household, shall treat the household helper in a just and humane manner. In no instance shall abusive language, physical violence or any act which debases, degrades or demeans the intrinsic worth and dignity of the household helper as a human being be used against the latter.

SECTION. 38. Scope of Work to be Undertaken. — Prior to the commencement of any work to be undertaken by the household helper, both the employer and the household helper shall mutually agree on the scope of work, the period of time within which the work must be completed, the amount of compensation to be paid and the manner by which the compensation shall be made.

SECTION. 39. Payment for Work. — Unless the parties had agreed otherwise prior to the commencement of the work, compensation for work completed, to the satisfaction of the employer, shall be in the form of cash paid directly by the employer to the household helper immediately upon completion of the work.

Where the method of payment of wages agreed upon by the employer and the household helper is on a piece or output basis, the rates shall be such that will assure the household helper of the minimum monthly or the equivalent daily rate as provided in this Act.

SECTION. 40. Normal Hours of Work. — The period of time within which the work must be completed by the household helper shall be mutually agreed upon by the parties prior to the commencement of the work; Provided, That the household helper shall not be required to render work for a period longer than ten (10) hours per day, exclusive of breaks of one (1) hour each for meals.

SECTION. 41. Provision for Free Meals. — The employer shall provide the household helper with meals free of charge during the hours of work.

SECTION 42. Medical Expenses. — All medical expenses incurred for work-related illnesses contracted or injuries sustained by the household helper shall be shouldered by the employer.

ARTICLE 6

SPECIAL PROVISIONS FOR KASAMBAHAY EDUCATION

SECTION. 43. Opportunity for Self-Improvement. — The employer shall allow the household helper who is eighteen (18) years of age or above to pursue his or her education. The cost of such education shall be shouldered by the household helper.
Should the household helper decide to pursue his or her education, the employer shall adjust the work schedule in accordance with the former’s class schedule. In no case shall the household helper’s compensation be adjusted on account of his or her pursuit of education.

SECTION. 44. Access to Education and Training. — No household helper of minority age shall be deprived of formal or non-formal education. In cases where household helpers of minority age are allowed to be employed, the employer shall allow said household helper access to public primary, secondary or vocational education. Said employer may advance all or part of the expenses incidental to the pursuit of said education. The employer shall be reimbursed out of deductions from the household helper’s monthly compensation. Said deductions shall, at all times, be no greater than twenty percent (20%) of the minor’s monthly compensation.

Should the household helper of minority age decide to pursue his or her education, the employer shall adjust his or her work schedule in accordance with the former’s class schedule: Provided, That the adjusted schedule shall in no way hamper the completion of the former’s assigned tasks to the satisfaction of the employer. In no case shall the household helper suffer any diminution in compensation on account of his or her pursuit of education.

SECTION. 45. Employer Initiatives for Skills Development. — Should the employer decide to improve the inherent skills of the household helper through training, the employer shall bear the cost and expenses of said training. The time spent by the household helper in attending the said training, including the time spent going to and from the training venue, shall be considered as part of the household helper’s hours of work.

ARTICLE 7

MISCELLANEOUS PROVISIONS

SECTION. 46. Household Helper Day. — The date of signing into law of this Act by the President of the Republic shall be designated as the “Araw ng mga Kasambahay,” a special non-working holiday with pay for household helpers, and shall be commemorated as such annually.

SECTION. 47. Emergency Services. — The Department of Social Welfare and Development (DSWD) shall, within a period of one (1) year from the effectivity of this Act, institute a program designed specifically to provide emergency services to all household helpers in need of custody, shelter, healing, or medical, psychological, legal and rehabilitative services.

SECTION. 48. Penal Provisions. — Any violation of the provisions of this Act shall be punished with a fine of not less than Five thousand pesos (P5,000.00), nor more than Twenty thousand pesos (P20,000.00), or imprisonment of not less than three (3) months nor more than three (3) years, or both such fine and imprisonment, at the discretion of the court.

SECTION. 49. Transitory Provisions. — All existing arrangements between employers and their household helpers shall conform to the minimum standards set by this Batas Kasambahay within a period of sixty (60) days after its effectivity: Provided, however, That no household helper already enjoying benefits and privileges above those stipulated in this Act shall suffer any diminution or substitution thereof.
SECTION. 50. Implementing Rules and Regulations. — The Secretary of Labor and Employment and the Secretary of Social Welfare and Development and other concerned agencies, shall, within one (1) year from the effectivity of this Act, promulgate the necessary rules and regulations to effectively implement the same.

SECTION. 51. Separability Clause. — If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

SECTION. 52. Repealing Clause. — All laws, decrees, executive orders, issuances, rules and regulations, or parts thereof, not consistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION. 53. Effectivity Clause. — This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) newspapers of national circulation.

Approved.
THE DOMESTIC EMPLOYEES ACT—SRI LANKA

The Domestic Employees (Regulation of Employment and Wages) Act No.... of 200....

An Act to provide for the Regulation of Employment, hours of work and wages of persons employed in private households (Domestic Service) and for matters connected therewith or incidental thereto.

Short Title, Employment and Date of Operation

This Act may be cited as the Domestic Employees (Regulation of Employment and Wages) Act and shall come into operation on such date as the Minister may appoint by Order published in the Gazette.

Part 1

Registration of Domestic Employees, Regulation of hours of work and determination of wages of domestic employees, and administration of this Act.

Registration of Domestic Servants:

2.(a) Every employer of domestic employees, shall, within ninety days of coming into operation of this Act, cause such employees in his employment at date, to be registered with the Commissioner of Labour.

2.(b) Every employer who employs a domestic employee after the coming into operation of this Act shall within 60 days of such employment cause such employee to be registered with the Commissioner of Labour.

2.(c) For this purpose the employer shall furnish to the Commissioner in writing a list showing the names, addresses, capacity in which such employee is employed, wages and other benefits given, the ages and date of engagement of each of his employees.

Regulation of Hours of Work and Rest Periods

3. (a) No employer of domestic employees shall employ such person in excess of fourteen hours per day.
The period referred to in this Section shall include a rest period of not less than four hours each day.

3 (b) Every person employed in domestic service shall in respect of each week be allowed one day as a holiday, without loss of wages.

**Determination in Respect of Wages**

4. The Commissioner shall determine a minimum rate of wages of workers in domestic service, provided till such time the Commissioner determines a minimum wage, employees in domestic service shall be paid not less than the minimum wage fixed under the Wages Board for the engineering trade. [for the unskilled category]

**Liability of Employer to Pay Minimum Wages**

5. (a) Every employer of employees in domestic service, shall pay to every employee employed by him, wages at not less than the minimum rate fixed under Section 4 of this Act.

5.(b) Unless otherwise agreed upon by the employee, Every employer of domestic employees recruited shall deposit 50% of the monthly wage in a savings account in a bank nominated by the employee.

**Administration of Act**

6. (1) The Commissioner of Labour shall be the Officer-in-Charge of the general administration of this Act.

6(2) Subject to any general or special directions of the Commissioner, any Deputy, Assistant Commissioner or Labour Officer may exercise, perform or discharge any power, duty or function of the Commissioner under this Act.

**Powers of Entry / Inspection**

7. (1) The Commissioner or any Officer specified in Section 6 shall have the power of:

7(1)a. to enter and inspect at all reasonable hours by day or night any premises where domestic employees are employed for the purpose of ascertaining whether the provisions of this Act are complied with or of examining any register or record required by or under this Act to be kept therein.
Compilation of Draft Bills on Domestic Work

7(1)b. to take one or more police officers, if the Commissioner or such Officer has reasonable cause to apprehend any obstruction in the execution of his duty, and

7(1)c. to require any person found in any premises or believed to be employed therein to furnish his name and address and such information as to the identity of his employer or as to any alleged contravention of, or failure to comply with the provisions of the Act.

7(2) It shall be the duty of the employer of any domestic employee employed in such premises to render such assistance and furnish such facilities as may be required by the Commissioner or any of his officers for the purpose of any entry, inspection or examination which the Commissioner or that Officer is empowered to carry out under Sub-section (1)

Duty to Maintain Records

8.( 1) Every employer of workers in domestic service shall maintain and keep in the premises where such workers are employed, a clear and accurate record in writing, in respect of such wage period of such workers, specifying the following -

- the wage period
- the name of the worker who is paid wages in respect of such wage period
- the wages paid to each such worker in respect of such wage period
- the date of payment of such wages
- the deduction from such wages

8(2) Every person who, as an employer, maintains or has maintained under Sub-section (1), a wage record in respect of such wage period shall preserve such record for two years, commencing on the last day of such period and shall, when required to do so by the Commissioner or any of his Officers, produce such record for inspection and furnish a true copy of such record or of any part of such record or permit such copy to be made.

Certificate of Service

9. Where the employment of any worker in domestic service is terminated, his employer shall issue to the employee a Certificate of Service containing the following particulars –

- Name of worker
- Period of employment
- Wages and other benefits given
Part 2

Offences

10. In the event of any contravention of or failure to comply with any provision of this Act the employer shall be guilty of an offence and shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

Penalty for Failure to Pay wages

11. (1) On conviction of an employer for failure to pay wages to any worker under this Act the Court may in addition to any other sentence, order the employer to pay that worker such amount.

Any sum ordered to be paid under the above Section may be recovered in the same manner as a fine.

11(2) In the prosecution of any employer under Sub-section (1) of this Section for the failure to make any payment to any worker the burden of proving that the payment was made shall lie on the employer.

Offences

12. All offences under this Act may be tried summarily by a Magistrate under Act to be triable summarily Sanction of

Prosecutions

13. No prosecution for any offence under this Act shall be instituted except by or with the written permission of the Commissioner and within two years of the commission of the offence.

Interpretation

14 “Commissioner” means the person for the time being holding the Office of Commissioner of Labour and includes any Deputy or Assistant Commissioner or any Labour Officer.

“Employer” means any person who employs any worker in domestic service.
“Domestic Service” means any occupation, work or calling carried out by a worker in a private household but does not include the work of a personal chauffeur or driver of a private vehicle owned by the employer.

“Domestic Employee” means any person howsoever designated, employed in a private household to perform household chores and includes a person working in the capacity of a housemaid, houseboy, cook, gardener, but shall not include a person employed as a driver of a motor vehicle.

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工人版家事服務法草案

Draft of Household Service Act, Workers’ Version

Chapter I: General Provisions

Article 1: This Act is made especially for regulating the minimum standards of labor conditions to protect household workers’ rights. For matters not regulated by this Act, regulations stipulated in other laws applies.

Article 2: The terms used in this Act are defined as following:

1. Employee: This refers to a person, including a domestic helper and/or caretaker, employed by an employer to engage in household work for wages.

2. Employer: This refers to the family members that exercise management rights, including the employer who employs an employee, the family members and delegates of the employer, and the person who is given care.

Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA)
3. Wage: This refers to the monetary gain obtained through working, including wages and premiums, allowances, and any other regular payments paid in cash on an hourly, daily, monthly, or piece-work basis.

第四條：任何人不得介入他人之勞動契約，抽取不法利益。

Article 4: No person shall intervene in another person’s labor contract to extract illegal benefits.

第五條：雇主應提供附基本設備及具隱私保障之適合居住空間予勞方，細則由主管機關訂之；若雙方同意，勞方之住所可設在雇主住所之外，但其房租及交通津貼應由雇主於工資之外另行支付。

Article 5: An employer shall provide an employee with a habitable space which is private and well equipped with basic facilities, and the competent authority shall stipulate the enforcement rules of this Article. In cases where both parties agree, an employee’s residence can be settled outside of an employer’s. In such a case, the employee’s rent and traveling allowance shall be paid by the employer, in addition to the wage.

An employer shall provide an employee with written standards for household work. When applying for a recruiting permit, these standards must also be reported to the competent authority, after which they shall take effect. The content of these standards shall not contravene the laws, public order, or good customs, and these standards must be reasonable.

An employer, during the period of the contract, shall provide the employee with three meals (breakfast, lunch and dinner) per day, or food allowance equivalent to the amount of three meals.
第六条：中央衛生主管機關應依勞工安全衛生法及就業服務法規定，主動通知僱用雙方，協助僱方參加勞工健康檢查。

Article 6: The concerned central health authority, pursuant to the regulations of The Labor Safety and Health Law and The Employment and Service Act, shall take the initiative to notify both the employer and employee when the employee is required to submit to regular medical checkups. The expense of said medical checkup shall be paid by the “Employment Security Fund”.

第七条：僱方應為僱方投保全民健康保險與勞工保險，以保障僱方的工作權益。

Article 7: The employer shall provide the employee with National Health Insurance and Labor Insurance, and guarantee the protection of all working rights of the employee.

第二章：勞動契約

Chapter II: Labor Contract

第八條：勞動契約分為定期契約與不定期契約。

Article 8: Labor contracts are divided into fixed term contracts and non-fixed term contracts. An expired fixed term contract shall be viewed as a non-fixed term contract in case any of the following situations arise:

1. Where the employee continues his/her work without any immediate expression of opposition from the employer.
2. Where a new contract has already been made, and the working period for both the old and new contract lasts for more than ninety days, and the discontinuance period in between the old and new contracts lasts less than thirty days.

第九条：非有左列情形之一者，雇主不得預告勞方終止勞動契約。

Article 9: An employer may not terminate a labor contract (with advance notice) unless any of the following situations arises:

1. Where an employee contravenes the household work standards or regulations of the labor contract, and the situation fails to improve after the employer asks the employee to change.
2. 僱方經醫院證明，罹患或遭遇其他重大疾病或傷病，而失去工作能力者。
2. Where an employee is proven by a doctor to be suffering from or afflicted with a major illness or injury and is incapable to work.
三. 受到僱主死亡或離職原因消失。
3. Where the person to be given care dies, or the reasons for employment are no longer valid.
四、不可抗力暫停工作在一個月以上時。
4. Where force majeure necessitates business suspension for more than one month.
五、勞工對於所擔任之工作確不能勝任時。
5. Where an employee is confirmed to be incompetent for his/her job duties.

異方依前項規定終止契約者，應自知悉其情形之日起，三十日內為之。異方若為外籍人士，其回程機票費用由異主負擔。
If an employer terminates a contract pursuant to this preceding regulation, he/she must act within 30 days from the date that the circumstances are made known. In case the employee is a foreign person, his/her return airfare shall be paid by the employer.

第十條：勞工有下列情形之一者，異主不得預告終止勞動契約：
Article 10: In case an employee is proven to be in any of the following situations, an employer is entitled to terminate the labor contract without advance notice:
一、受有期徒刑以上刑之宣告確定，而未論刑緩刑或未免易科罰金者。
1. Where the employee is convicted of a crime and sentenced, and the sentence is pronounced and confirmed without probation and without permission to change this sentence into a financial penalty.
二、無正當理由連續曠職三日或一個月內累計曠職逾六日者。
2. Where [an employee] is absent without justifiable reasons for three consecutive days or an accumulative six days within a month.
三、對於異方實施暴行或有重大侮辱之行為。
3. Where violence or conduct of gross insult is done to an employer.

異方依前項規定終止契約者，應自知悉其情形之日起，三十日內為之。異方若為外籍人士，其回程機票費用由其自行負擔。
An employer that terminates the contract pursuant to the preceding regulations must act within 30 days from the date that the circumstances are made known. In the case of a foreign person, the return airfare shall be shouldered by this person him/herself.

第十一條：異方有下列情形之一者，經異方提出異議一個月後，應改善而未改善者，異方得終止契約並請求主管機關轉換至其他異主：
Article 11: In case an employer is proven to be in any of the following situations, and one month after an employee raises an objection and the employer still fails to improve what should be improved, then an employee is entitled to
terminate the contract and ask the competent authority to have him/her transferred to another employer.

一、雇主未依約給付勞工工作報酬者：
1. Where an employer does not pay wages to an employee in accordance with the contract.

二、雇主未將工資全額直接給付勞方。
2. Where an employer does not pay wages to an employee directly and in the full amount.

三、雇主強迫保管勞方之所有物者。
3. Where an employer forcibly keeps an employee’s personal belongings in custody.

依前項規定而終止契約者，勞方若為外籍人士，其選擇不轉換或無其他雇主承接而須回國者，雇主應負擔勞方回程機票費用。

For a contract terminated pursuant to the preceding regulation, in case an employee is a foreign person who chooses not to be transferred to another employer, or who cannot find another employer, and desires to return to his/her own country, then this employee’s return airfare shall be shouldered by the employer.

第十二條：有左列情形之一者，勞方得不經預告終止契約：

Article 12: In case any of the following situations arises, an employee is entitled to terminate the contract without advance notice, and the original employer shall present a contract-discharging agreement:

一、勞方被迫從事契約規定以外之工作。
1. Where the employee is compelled to engage in work/tasks that are not stipulated/specify in the employment contract.

二、雇主對於勞方實施暴行、性侵害、性騷擾或有重大侮辱之行為者。
2. Where an employer renders violence, sexual assault, sexual harassment, or conducts of material insult against an employee.

三、雇主患有惡性傳染病，有傳染之虞者。
3. Where an employer suffers from a malignant, infectious disease.

四、雇主以強暴、脅迫、拘禁或其他非法之方法，強制勞方從事勞動者。
4. Where an employer commits violence or coercion, or uses other illegal means to force an employee to perform a task.

五、雇主以言語恐嚇或肢體暴力威脅，使勞方在違反其意志下另行簽署契約者。
5. Where an employer, through verbal intimidation or physical violence, forces an employee to sign any side-contract against his/her will.

六、雇主違反勞動契約或勞法令，致有損害勞方權益之虞者。
6. Where an employer contravenes the labor contract or labor law, so that an employee’s rights might be compromised by certain damaging contingencies.

勞方因前項事由而終止勞動契約，原雇主應出具解約同意書。
第十三条：雇主若为外籍人士，其选择不转换雇主或无其他雇主承接而须回国者，雇主应负担雇主回国机票费用。

Article 13: An employer who terminates a contract pursuant to Article 9 shall give notice to an employee one month in advance, or such notice shall be substituted by one-month wage.

第十四条：有左列情形之一者，雇主不得向雇方请求资遣费：

Article 14: In case any of the following situations arises, an employee shall not ask for a separation fee from his/her employer.

一、依第九条第一款

1. In accordance to Article 9, Item 1, Section 1

二、依第十条规定终止劳动契约者。

2. Where an employer terminates a labor contract pursuant to the regulation of Article 10.

三、定期劳动契约为期满离职者。

3. Where a fixed-term labor contract expires and the employee has already left the post.

第十五条：外籍劳工因雇主违反第九条或依第十一、第十二条转换雇主时，主管机关应于转换期间比照就失业保险法发给雇主失业给付。

Article 15: In case a migrant worker requests to be transferred to another employer, if the employer violates Article 9,11,12 during the waiting period before his/her transfer, the concerned authority shall pay unemployment allowance to the employee in accordance with The Employment Insurance Law.
Chapter III: Wages

Article 16: Wages shall be determined by an agreement between the employee and employer, provided that after deducting for food, lodging and travel allowance, this wage shall not fall below the minimum wage regulated by The Labor Standards Law.

Article 17: Wages shall be paid on a regular monthly basis. An employer shall pay the wage in full amount directly to the employee, and shall not deduct any further food and lodging fee. An employer shall provide an employee with pay slips written in language(s) known to the employee, with every item listed clearly on the slip, including the amounts of the wage, legal deductions such as tax, health insurance fee and labor insurance fee. After both the employee and the employer have confirmed the specific items, both parties shall sign on the slip, and each shall retain one copy of it. An employer shall keep a payroll record of workers, specifying the amount of wages payable, the computed items of wage, and the sum total of wage payments. The payroll record shall be kept in custody for three years.
Article 20: In case an employer is proven to be in arrears of wage payment, the concerned authority shall order the employer to pay the arrears within a limited period of time. If the wages owed are still unpaid by the expiry of the said period, overdue wages shall be paid from The Employment Stabilization Fee Fund. The central concerned authority shall stipulate measures for such payment.

Article 21: If a worker fulfills the above contract, he/she should be eligible for retirement pension under the The Labor Standard Law and The Act of Labor Retirement Payment.

Chapter IV: Work Time, Rest Time, and Day-Off

Article 22: The regular working hours of an employee should be at most 84 hours every two weeks. The regular working hours of an employee shall not exceed eight hours per day, and his/her work hours shall be determined by an agreement between the employer and employer. An employee shall rest for 10 consecutive hours per 24 hours. An employer shall not ask the employee to provide any manual work during his/her rest hours; in case there is an urgent need, the employer can only ask the employee to do so with the consent of the employee himself/her. The manual work provided by the employee during his/her rest hours shall be viewed as overtime, which shall not exceed two hours per day, ten hours per week, and forty hours per month.

The employer shall prepare sign-in books or time cards to record employees’ attendance on a day-to-day basis. These books and cards shall be kept in custody for one year.
Article 23: An employee shall have at least one regular day-off every seven days.

Article 24: The Employer shall provide the Employee annually with an eight-hour educational leave; the establishment should also provide them with on-job training.

Article 25: In case the Employee continues to work for the same Employer or business entity for a certain period of time, the Employee is entitled to an annual leave based on the following scale:

1. Seven days’ leave for service of more than one year but less than three.
2. Ten days for service of more than three years but less than five.
3. Fourteen days for service of more than five years but less than ten.
4. One additional day of leave for each year of service beyond ten years, up to a maximum of thirty days.

Article 26: An employee shall be granted time off on all holidays prescribed by the central concerned authority.

Article 27: The Employee need not work or serve for 24 hours during his/her regular day-off, national holidays and special leave. During these days, the Employer should pay the Employee with his/her usual wages. In cases whereby the Employee is required and agrees to work during these days, the Employee should be paid double their regular wage for the day.

Article 28: Due to an incident of natural disaster, catastrophe, or emergency event, if an employer deems it necessary [for an employee] to continue the work, an employee’s leave of absence can be suspended, provided that the wages for the period of time of this suspended leave shall be double the regular wage.
and the employee shall be granted a leave afterwards to rest as compensation for the leave suspended.

Article 29: Matters for an employee taking leave due to marriage, bereavement, sickness or other proper reasons shall be managed in accordance with the employee’s leave-taking regulations.

Chapter V: Human Right Protection, Female Protection, Gender Discrimination Prevention, Sexual Harassment Protection and Prevention

Article 30: An employer shall not prescribe any side-contracts stipulating that in case an employee gets married, becomes pregnant, or engages in activities such as child-birth and child-nursing, then this worker will have to leave his/her position, nor shall an employer use the above-mentioned factors as reasons for termination.

Article 31: A female worker is entitled to take a menstruation leave for one day per month. As for female protection measures such as maternity leave, this should be managed pursuant to relevant regulations stipulated in The Gender Equality Act.

Article 32: An employer and his/her family member(s) shall not create any hostile, intimidating, or offensive working environment for an employee through any sexual request, verbal expression or physical conduct with sexual implication or gender discrimination, with which [an employee’s] personal dignity, freedom of movement are infringed upon or interfered with, and his/her job performance is thus affected.

Article 33: During the Employee’s day-off (pursuant to Article 26), personal leave (pursuant to Article 29) and Maternity Leave (pursuant to Article 31), the Employer can apply to the Central Controlling Organization for the services
Compilation of Draft Bills on Domestic Work

Taiwan

of a temporary household care giver in case such services is needed.

Article 34: An employer shall not discriminate against an employee’s gender, nationality or social origin, race, color, religion, and shall not limit an employee’s rights to freedom of religion and association.

Article 35: In cases whereby the Employer violates the Employee’s person and dignity to a significant extent, the Employee is entitled to request for punitive compensation. In cases whereby the Employee’s reputation is violated or defamed, he/she is entitled to request that his/her reputation be properly restored.

Article 36: In case a labor dispute arises between an employee and employer, it shall be managed pursuant to the Procedures For Labor Dispute Management. The competent authority shall provide legal assistance and establish a “Rights of Action Foundation” to assist an employee in processing his/her labor dispute lawsuits.

Article 37: The competent authority, in order to manage sheltering problems arising from matters such as 1. An issue of law, 2. Reporting an employer for illegal use of worker, 3. Suffering from sexual assault, and 4. Repatriation due to employer’s unilateral decision through contract-breaching, shall set up centers for temporary sheltering, so that the work and daily life of a migrant worker can be protected, and his/her rights can be defended.

Article 38: In case an employee is injured due to his/her work, an employer shall manage it pursuant to laws relevant to occupational accident.

Article 39: The central competent authority, in order to pursue the implementation of this Act and other labor laws, shall set up labor inspection institution or authorize competent authority of special municipalities to set up special
inspection institution to proceed with the task; the competent authority of the special municipalities, counties (cities), if necessary, are also entitled to send officers to inspect.

The organization of this said labor inspection institution shall be established by the central competent authority.

Chapter VI: Monitoring and Inspection

Article 40: Upon acting in the course of his/her duties, an inspector shall produce an inspection certificate, and a business entity and employer shall not refuse such inspection. In case a business entity or an employer refuses to be inspected, an inspector is entitled to initiate an invitation to and be accompanied by the local competent authority or police agency to enforce the inspection.

While acting in the course of his/her duties, an inspector is entitled to ask a business entity (an employer) to submit necessary reports, records, books of account, and relevant documents or written descriptions. In case there is a need for abstracting materials, samples or data, an employer or his/her delegate shall be notified in advance, and a receipt shall be given to this said employer.

Article 41: In case an employee finds that a business entity (an employer) contravenes this Act or other labor laws, he/she is entitled to file a complaint to the employer, the competent authority, or the inspection organization.

An employer shall not terminate, transfer or take any disciplinary action adverse to an employee who personally files a complaint mentioned above.

Chapter VII: Penalty

Article 42: If the above offenses are committed with other offenses, the employer shall be subject to punishment.

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Article 42: Conducts in contravention of Article 4 of this Act shall be liable to a determinate sentence under 3 years, detention, a sentence, or a combined sentence liable to pay a fine more than $60,000NT.

第四十三條: 罵方有本法第十二條第一項第四款行為時，處五年以下有期徒刑、拘役或科或並科五萬元以下罰金。

Article 43: In cases where the Employer violates Article 12, Item 1, Section 4 of this law, the Employer is liable to be imprisoned for five years or below, detention or be fined in the amount of NEW TAIWAN DOLLARS FIFTY THOUSAND or below.

第四十四條: 違反本法第七條規定者，自雇用之日起至參加保險之日止應負擔之保險費金，處以三倍罰鍰。勞方因此所受之損失，並應由投保單位賠償責任。

Article 44: Conducts in contravention of Article 7 of this Act shall be liable to a fine that triples the insurance premium shouldered starting from the employment date and ending on the insured date. An employee’s damage thus caused shall be verified and compensated by the insurance authority.

第四十五條: 違反本法第九條第一項、第六十六條規定者，中央主管機關應取消雇方聘許可

Article 45: In cases whereby Article No.9, Item 1, Article No. 16 of this law is violated, the Central Controlling Organization shall cancel the Employer’s Permit to Employ a Foreign Worker.

第四十六條: 主管機關對於違反本法規定之僱方，得限期命令其停止、改正其行為或採取必要更正措施，並得處新台幣二萬元以上一百五十萬元以下罰鍰；逾期仍不停止、改正其行為或採取必要更正措施者，得繼續限期命其停止、改正其行為或採取必要更正措施，並按次連續處新台幣四萬元以上二百萬元以下罰鍰，至停止、改正其行為或採取必要更正措施為止。

Article 46: In cases wherein the Employer violates the laws stipulated herein, the In-Charge Organization shall give a deadline for the Employer to stop its violation and to correct its behavior. The Employer shall also be fined in the amount ranging from NEW TAIWAN DOLLARS TWENTY THOUSAND to ONE MILLION FIVE HUNDRED THOUSAND. In cases where the Employer does not correct its behavior and continued in its violation of the laws stipulated herein, the In-Charge Organization shall continue to order the Employer to stop in its violation and to correct its behavior. The Employer shall also be continuously fined based on the number of times of its violation in the amount ranging from NEW TAIWAN
DOLLARS FORTY THOUSAND to TWO MILLION until it stop in its violations or taken corrective measures.

Chapter VIII: Annex

Article 47: The *Enforcement Rules* of this *Act* shall be stipulated by the central competent authority.

Article 48: The date for this *Act* to take effect, shall be the date of its promulgation.
I. COMPILATION OF BILLS ON DOMESTIC WORK:

United States of America
State of New York
Compilation of Draft Bills on Domestic Work

DOMESTIC WORKERS BILL OF RIGHTS: PROTECTING A WORKFORCE IN CRISIS

Domestic workers are a cornerstone of the New York economy. Over 200,000 nannies, caregivers, and housekeepers in the New York Metropolitan area keep New York families functioning and make all other work possible.

But New York domestic workers are workforce in crisis. We need a Bill of Rights. Now.

THE CRISIS.

- Historic exclusion from legal protections.
- A workplace without standards. Anything goes.
- Long hours, low pay, no benefits.
- Extreme vulnerability to abuse, mistreatment, and labor violations.

Domestic workers bear the brunt of the current financial crisis. Even in a healthy economy, domestic workers are uniquely vulnerable to abuse and exploitation. We are excluded from basic legal protections guaranteed to other workers. We work alone, isolated in our employer's houses. We often get no time off, even to deal with medical emergencies. Domestic workers keep New York families healthy and functioning, but the precarious nature of our employment keeps our own families in constant crisis. With the economic downturn, that crisis has deepened.

THE SOLUTION.

✔ The Domestic Workers Bill of Rights: urgently needed protections for the workers who make all other work possible

The Domestic Workers Bill of Rights (A01470, S02311) amends New York State labor law to guarantee basic work standards and protections: time-and-a-half for every hour over 40 hours per week; one day off per 7-day calendar week; a limited number of paid vacation days, holidays, sick days, and personal days; protection from employment discrimination; advance notice of termination; severance pay based on the number of years worked; an annual cost of living increase tied to the Consumer Price Index; and health care coverage for all workers, either provided by employers or as a wage supplement. The bill provides a means of enforcing these standards in court. The Domestic Workers Bill of Rights applies to domestic workers in the downstate MTA region, which includes New York City and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.
DOMESTIC WORKERS BILL OF RIGHTS: PROTECTING A WORKFORCE IN CRISIS

Domestic workers are the bedrock of a functioning society, yet they are a workforce in crisis. The Domestic Workers Bill of Rights takes on a new urgency in the wake of the current financial crisis. Among New York’s least protected workers, domestic workers are among the first and hardest hit by any economic downturn. In these times, domestic workers are even more vulnerable to abuse and exploitation. Now more than ever, New York must act to protect the basic rights and human dignity of domestic workers!

Domestic workers call on the New York legislature to pass the Bill of Rights and . . .

1. End the Epidemic of Workplace Abuse

Working behind closed doors, in their employers’ homes, domestic workers are uniquely vulnerable to abuse. Without the legal protections guaranteed to other workers, domestic workers routinely endure verbal abuse, dehumanizing treatment, and exploitation. In the worst cases, this lawless industry results in situations where domestic workers are physically abused or sexually assaulted, forced to sleep in quarters unfit for human habitation, and stripped of their privacy and dignity. The extreme vulnerability of domestic workers has led to a physical and mental health crisis. New York must take action to end this crisis now!

2. Give Caregivers the Ability to Care for Themselves

Nannies and caregivers work long hours to ensure the health and safety of the children, disabled relatives, and elderly parents of New Yorkers. Yet these workers can’t afford to look after their own health and the health of their families. The vast majority receive no health benefits from their employers, and with no legal entitlement to paid sick days, many workers cannot take time off to deal with illness or medical emergencies. Some are denied sick leave entirely – paid or unpaid. For others, losing even a day or two of pay to see a doctor may mean not being able to afford both food and rent for that month.

3. Standardize an Industry that Leaves Too Much to Chance

Without established and enforceable standards, both workers and employers are left to make them up. In the worst cases, this means employers can do what they please – withholding pay, reneging on promises, restricting a worker’s basic freedom of movement. In the best cases, well-meaning employers simply don’t have the information to guide them in setting terms of employment, and they may never draw up a formal contract or clearly establish the rights and obligations each party owes to the other. As a result, domestic workers never know what to expect from their employers, and the treatment they receive is largely a matter of luck. This lawless existence leaves too much to chance. Domestic workers must be able to rely on basic standards that they can expect from each and every employer.
DOMESTIC WORKERS BILL OF RIGHTS: PROTECTING A WORKFORCE IN CRISIS

DOMESTIC WORKERS ARE VULNERABLE.

Most workers are protected by federal law when they organize for better working conditions, but because domestic workers are specifically excluded from the National Labor Relations Act, we can be fired just for asking for a raise or time off.

The lack of legal protection creates steep barriers to negotiation for a domestic worker, who may be afraid to negotiate the terms of her employment, for fear she will be fired without warning. Domestic workers are extremely vulnerable to abuse, mistreatment, and labor violations because we usually work alone, behind closed doors and out of the public eye.

THE BILL OF RIGHTS PROVIDES PROTECTIONS.

The Bill of Rights would provide domestic workers with:

✓ overtime pay
✓ one day off a week
✓ advance notice of termination
✓ severance pay
✓ annual cost of living increase

“Overtime pay and one day off a week would provide domestic workers with the same protections as other New York workers.”

“I lived with the family and worked Monday to Sunday, seven days a week. . . . I worked more than a hundred hours a week, with no days off. Sometimes my employer allowed me some time off to see friends in the city, but that was only a few times each year.”

– Wilma

“Notice and severance pay will allow a domestic worker to speak to her employer about things like raises, days off, and other concerns, because she will have the reassurance that the law will protect her from being fired on the spot. These provisions give domestic workers the security they need to seek the enforcement of their rights. A live-in worker who is fired faces the sudden and simultaneous loss of her job and her home.”

“Two and a half years later, my employer . . . [told] me that I no longer had work. . . . I asked her for permission to stay in the house that night so I could go out and find another place to live— I could not even sleep thinking about where I would go next. No one knows what I went through that night.”

– Maria

“The power dynamic between a domestic worker and her employer often prevent workers from requesting even minimal cost of living increases.”

“When the amount of money that my employer owed me accumulated, she started to humiliate me.”

– Lou.

Domestic Workers United • 1201 Broadway, Suite 907-908, New York, NY 10001 • 212-481-5747
domesticworkersunited@gmail.com • www.domesticworkersunited.org
BILL OF RIGHTS PROTECTIONS (CONTINUED.)

✔ health care

✔ paid sick days
  • Access to healthcare gives workers in abusive situations an opportunity to get the help they need.
  • If a domestic worker falls ill, she often must work through her illness, or be denied pay during her recovery. She is often unable to make a doctor appointment during work hours.
  • Despite caring for children when they are sick, many domestic workers lack even minimum health coverage for themselves.

“[My employer] called me two days after my surgery and demanded . . . that I come back to work right away. I went back to work 4 days after my surgery with stitches in my right breast and a bandage over my chest. . . . I had appointments every six months to see the endocrinologist . . . [They] would always make it hard for me to keep these appointments.”
- Carolyn

✔ paid holidays, personal days, and vacation days
  • Domestic work can be particularly physically and emotionally draining.
  • Long hours mean some domestic workers rarely see their own children and families.
  • Personal days, holidays and vacation days provide much needed time for self-care and family care, allowing domestic workers to return to work recharged and better able to take care of others.

“I worked all day and into the night. Most nights I would get three to four hours of sleep. I was never given holidays because Mr. and Mrs. “Connor” said I was not an American so the holidays were not for me.”
- Carolyn
DOMESTIC WORKERS BILL OF RIGHTS: PROTECTING A WORKFORCE IN CRISIS

Pay
Overtime pay
- Overtime pay of time-and-a-half of the worker’s regular rate of pay for every hour over 40 hours worked in a week.

Annual cost of living adjustment
- Domestic worker’s salary must be annually adjusted by the amount of the increase in the Consumer Price Index, which measures inflation (averages about 3 to 4% a year).

Time Off
- One day of rest per week
- Paid time off for sick days, vacation, and holidays
- 5 sick days per year, 5 personal days per year.
- Vacation ranges from 2 to 5 weeks, depending on the number of years working for the family.
- Holidays, including New Year’s Day, MLK Jr. Day, President’s Day, Memorial Day,
- If the worker chooses to work on a holiday, she earns time-and-a-half (or double if it puts her over 40 hours worked in the week).

Termination Standards
- Advance notice of termination
- 21 days’ notice requirement.
- Severance pay
- One week’s pay for each year she has worked for the employer.

Protection from Discrimination
- Domestic workers will be included in New York’s employment discrimination law.

Health Care
- Employers must provide domestic worker employees with either: (1) health benefits substantially equivalent to those provided by the Healthy New York plan, OR (2) an amount no less than the lowest cost of a Healthy New York plan.

Enforcement
- Workers whose rights have been violated may sue their employers in court in order to collect the money they are owed, and in some cases, extra money as punishment against the employer (punitive damages). The Commissioner of Labor and the Attorney General may also bring lawsuits on behalf of domestic workers.

Application
- The domestic workers bill of rights only applies to the MTA region, which includes New York City and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.
Summary:

BILL NO S02311C
SAME AS No same as
SPONSOR SAVINO
COSPNSR ADAMS, ADDABBO, BRESLIN, DIAZ, DILAN, DUANE, ESPADA, FOLEY, HASELLE-THOMPSON, HUNTLEY, KLEIN, KRUEGER, OPPENHEIMER, PADAVAN, PARKER, PERALTA, PERKINS, SAMPSON, SCHNEIDERMANN, SERRANO, QUADRON, STACHOWSKI, STAVISKY, STEWART-COUSINS, THOMPSON
MLTSPNSR

Add Art 19-C SS695 - 698, amd SS160, 218, 219, 651, 701 & 875, Lab L; amd S292, Exec L; amd S201, Work Comp L

Enacts provisions relating to labor standards for domestic workers; includes provisions for a living wage, overtime pay, vacation, sick and personal time, advance notice of termination and severance pay; also prohibits trafficking in domestic workers; requires record keeping and notice; includes domestic workers under provisions of the labor law; includes penalties for violations thereof.
STATE OF NEW YORK

2311--C

Cal. No. 196

2009-2010 Regular Sessions

IN SENATE

February 17, 2009

Introduced by Sens. SAVINO, ADAMS, ADDABBO, BRESLIN, DIAZ, DILAN, DUANE, ESPADA, FOLEY, HASSELL-THOMPSON, HUNTLEY, KLEIN, KRUEGER, OPPENHEIMER, PADAVAN, PARKER, PERALTA, PERKINS, SAMPSON, SCHNEIDERMAN, SERRANO, SQUADRON, STACHOWSKI, STAVISKY, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, the executive law and the workers' compensation law, in relation to establishing regulations regarding employment of domestic workers including hours of labor, wages and employment contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and intent. Many thousands of domestic workers are employed in New York state as housekeepers, nannies, and companions to the elderly. The labor of domestic workers is central to the ongoing prosperity that the state enjoys, and yet, despite the value of their work, domestic workers do not receive the same protection of many state laws as do workers in other industries. Domestic workers often labor under harsh conditions, work long hours for low wages with-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD00150-13-0
out benefits or job security, are isolated in their workplaces, and are
dangered by sexual harassment and assault, as well as verbal,
emotional and psychological abuse. Moreover, many domestic workers in
the state of New York are women of color who, because of race and sex
discrimination, are particularly vulnerable to unfair labor practices.
The legislature finds that because domestic workers care for the most
important elements of their employers’ lives, their families and homes,
it is in the interest of employees, employers, and the people of the
state of New York to ensure that the rights of domestic workers are
respected, protected, and enforced.

Domestic workers have historically been excluded from many of the
traditional protections afforded by the labor law. Additionally, domes-
tic workers are not afforded by law the right to organize labor unions
for the purpose of collective bargaining. Given the limited legal
protections historically provided to domestic workers, and bearing in
mind the unique conditions and demands of this private home-based indus-
try, the legislature further finds that domestic workers are entitled to
industry-specific protections and labor standards.

S 2. The labor law is amended by adding a new article 19-C to read as
follows:

ARTICLE 19-C
LABOR STANDARDS FOR DOMESTIC WORKERS
SECTION 695. DEFINITIONS.
1. "DOMESTIC WORKER" MEANS A PERSON EMPLOYED IN A HOME OR RESIDENCE
FOR THE PURPOSE OF CARING FOR A CHILD, SERVING AS A COMPANION TO A SICK,
CONVALESCING OR ELDERLY PERSON, HOUSEKEEPING, OR FOR ANY OTHER DOMESTIC
SERVICE PURPOSE. "DOMESTIC WORKER" DOES NOT INCLUDE ANY INDIVIDUAL WHO
IS ENGAGED IN PROVIDING COMPANIONSHIP SERVICES, AS DEFINED IN S
213(A)(15) OF THE FAIR LABOR STANDARDS ACT OF 1938, AND WHO IS EMPLOYED
BY AN EMPLOYER OR AGENCY OTHER THAN THE FAMILY OR HOUSEHOLD USING HIS OR
HER SERVICES.
2. "PAID TIME OFF" MEANS DAYS THAT THE DOMESTIC WORKER IS ENTITLED TO
TIME OFF WITH PAY CALCULATED AT EACH DOMESTIC WORKER'S REGULAR RATE OF
PAY FOR HIS OR HER REGULAR HOURS WORKED ON THAT DAY.
S 696. OTHER EMPLOYMENT CONDITIONS.
1. HOURS OF LABOR FOR DOMESTIC WORKERS. NO PERSON OR CORPORATION EMPLOYING A DOMESTIC WORKER AS DEFINED
IN SUBDIVISION ONE OF SECTION SIX HUNDRED NINETY-FIVE OF THIS ARTICLE
SHALL REQUIRE ANY DOMESTIC WORKER TO WORK MORE THAN EIGHT HOURS IN A
DAY; PROVIDED HOWEVER THAT OVERTIME WORK PERFORMED BY AGREEMENT BETWEEN
A DOMESTIC WORKER AND HIS OR HER EMPLOYER SHALL BE AT A RATE WHICH IS AT
LEAST ONE AND ONE-HALF TIMES THE WORKER'S NORMAL HOURLY RATE.
2. DAY OF REST. (A) A DOMESTIC WORKER SHALL BE ENTITLED TO AT LEAST
TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK.
(B) NO DOMESTIC WORKER SHALL BE REQUIRED TO WORK ON HIS OR HER DAY OF
REST.
(C) IN THE EVENT THAT A DOMESTIC WORKER AGREES TO WORK ON HIS OR HER
DAY OF REST, HE OR SHE WILL BE COMPENSATED AT THE OVERTIME RATE FOR ALL
HOURS WORKED ON HIS OR HER DAY OF REST.
3. PAID TIME OFF. (A) A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE
FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK SHALL BE ENTITLED
TO PAID TIME OFF ON THE FOLLOWING HOLIDAYS:
S. 2311--C                          3

1 (1) NEW YEAR’S DAY;
2 (2) MARTIN LUTHER KING JR.’S BIRTHDAY;
3 (3) INDEPENDENCE DAY;
4 (4) THANKSGIVING;
5 (5) LABOR DAY;
6 (6) CHRISTMAS DAY.

7 (B) NO DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS PER WEEK SHALL BE REQUIRED TO WORK ON A HOLIDAY.

8 (C) IN THE EVENT THAT A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK AGREES TO WORK ON A HOLIDAY, HE OR SHE WILL BE COMPENSATED AT THE OVERTIME RATE FOR ALL HOURS WORKED ON THE HOLIDAY.

9 (D) A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST FORTY HOURS A WEEK SHALL BE ENTITLED TO SEVEN DAYS OF PAID TIME OFF FOR SICK LEAVE EACH YEAR. A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK BUT LESS THAN FORTY HOURS A WEEK SHALL BE ENTITLED TO FOUR DAYS OF PAID TIME OFF FOR SICK LEAVE EACH YEAR. NOTHING IN THIS PROVISION SHALL PROHIBIT EMPLOYERS FROM PROVIDING MORE GENEROUS PAID TIME OFF FOR SICK LEAVE.

10 (E) A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST FORTY HOURS A WEEK SHALL BE ENTITLED TO FIVE DAYS OF PAID TIME OFF FOR VACATION EACH YEAR. A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK BUT LESS THAN FORTY HOURS A WEEK SHALL BE ENTITLED TO THREE DAYS OF PAID TIME OFF FOR VACATION EACH YEAR. VACATION SHALL BE AGREED UPON WITH THE EMPLOYER AT LEAST THIRTY DAYS IN ADVANCE OF THE FIRST VACATION DAY. NOTHING IN THIS PROVISION SHALL PROHIBIT EMPLOYERS FROM PROVIDING MORE GENEROUS PAID TIME OFF FOR VACATION.

11 4. TERMINATION AND SEVERANCE. (A) A DOMESTIC WORKER IS ENTITLED TO WRITTEN NOTICE OF TERMINATION FOURTEEN DAYS BEFORE HIS OR HER FINAL DAY OF EMPLOYMENT. AN EMPLOYER WHO FAILS TO GIVE NOTICE AS REQUIRED BY THIS ARTICLE IS LIABLE TO EACH EMPLOYEE ENTITLED TO NOTICE WHO LOST HIS OR HER EMPLOYMENT FOR:

12 (I) BACK PAY FOR THE PERIOD IN WHICH THE EMPLOYEE WAS ENTITLED TO NOTICE AT THE AVERAGE REGULAR RATE OF COMPENSATION RECEIVED BY THE EMPLOYEE DURING THE LAST THREE YEARS OF HIS OR HER EMPLOYMENT, OR THE EMPLOYEE’S FINAL RATE OF COMPENSATION, WHICHEREVER IS HIGHER.

13 (II) THE VALUE OF THE COST OF ANY BENEFITS TO WHICH THE EMPLOYEE WOULD HAVE BEEN ENTITLED DURING THE PERIOD IN WHICH THE EMPLOYEE WAS ENTITLED TO NOTICE.

14 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, NO EMPLOYER SHALL BE LIABLE FOR FAILURE TO PROVIDE NOTICE OF TERMINATION.

15 (I) TO AN EMPLOYEE WHO IS CONVICTED OF COMMITTING AN UNLAWFUL ACT OF THEFT OR DESTRUCTION OF PROPERTY; OR

16 (II) WHEN THE EMPLOYER HAS A REASONABLE GOOD FAITH BELIEF THAT THE EMPLOYEE HAS COMMITTED ASSAULT, NEGLECT OR ABUSE IN THE WORKPLACE. IN SUCH A CASE, THE EMPLOYER SHALL HAVE THE BURDEN OF SHOWING SUCH AN ACT.

17 (C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE REMEDIES PROVIDED IN SUBDIVISION ONE OF SECTION SIX HUNDRED NINETY-SEVEN OF THIS ARTICLE SHALL NOT BE APPLICABLE TO AN EMPLOYER’S FAILURE TO PROVIDE NOTICE OF TERMINATION.

18 5. BACK PAY. BACK PAY AND OTHER LIABILITY UNDER THIS SECTION IS CALCULATED FOR THE PERIOD OF THE EMPLOYER’S VIOLATION, UP TO A MAXIMUM OF SIXTY DAYS, OR ONE-HALF THE NUMBER OF DAYS THAT THE EMPLOYEE WAS EMPLOYED BY THE EMPLOYER, WHICHEREVER PERIOD IS SMALLER.
S 697. REMEDIES. 1. CRIMINAL PENALTIES. ANY EMPLOYER OR HIS OR HER AGENT, OR THE OFFICER OR AGENT OF ANY CORPORATION, WHO PAYS OR PROVIDES OR AGREES TO PAY OR PROVIDE TO ANY DOMESTIC WORKER LESS THAN THE WAGE, OR BENEFITS APPLICABLE UNDER THIS ARTICLE SHALL BE SUBJECT TO CRIMINAL PENALTIES PURSUANT TO SECTIONS ONE HUNDRED NINETY-EIGHT-A AND ONE HUNDRED NINETY-EIGHT-C OF THIS CHAPTER.

2. CIVIL ACTIONS. (A) IF ANY DOMESTIC WORKER IS PAID OR PROVIDED BY HIS OR HER EMPLOYER LESS THAN THE WAGES, OR BENEFITS TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, HE OR SHE MAY RECOVER IN A CIVIL ACTION THE AMOUNT OF ANY SUCH UNDERPAYMENTS OF WAGES AND THE VALUE OF SUCH BENEFITS COSTS AND MAY SEEK ANY OTHER REMEDY AVAILABLE TO THE COMMISSIONER UNDER SECTION ONE HUNDRED NINETY-EIGHT OF THIS CHAPTER AND SECTION SIX HUNDRED SIXTY-THREE OF THIS CHAPTER.

(B) ON BEHALF OF ANY DOMESTIC WORKER PAID OR PROVIDED LESS THAN THE WAGES, OR BENEFITS TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER OR ATTORNEY GENERAL MAY BRING ANY LEGAL ACTION NECESSARY NOTWITHSTANDING ANY LAW TO THE CONTRARY TO COLLECT SUCH CLAIM AND MAY SEEK ANY OTHER REMEDY AVAILABLE TO THE COMMISSIONER UNDER SECTION ONE HUNDRED NINETY-EIGHT OF THIS CHAPTER AND SECTION SIX HUNDRED SIXTY-THREE OF THIS CHAPTER.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX YEARS.

S 698. SEVERABILITY. IF ANY PART OR PROVISION OF THIS ARTICLE, OR THE APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE, IS HELD INVALID, THE REMAINDER OF THIS ARTICLE, INCLUDING THE APPLICATION OF SUCH PART OR PROVISION TO OTHER PERSONS OR CIRCUMSTANCES, SHALL NOT BE AFFECTED BY SUCH A HOLDING AND SHALL CONTINUE IN FULL FORCE AND EFFECT. TO THIS END, THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

S 3. Subdivisions 5 and 6 of section 292 of the executive law, subdivision 5 as amended by chapter 851 of the laws of 1965 and subdivision 6 as amended by chapter 166 of the laws of 2000, are amended to read as follows:

5. The term "employer" does not include any employer with fewer than four persons in his OR HER employ. NOTWITHSTANDING THE PRECEDING SENTENCE, THE TERM "EMPLOYER" INCLUDES ANY EMPLOYER EMPLOYING ONE OR MORE DOMESTIC WORKERS, AS DEFINED BY SECTION SIX HUNDRED NINETY-FIVE OF THE LABOR LAW.

6. The term "employee" in this article does not include any individual employed by his or her parents, spouse or child[, or in the domestic service of any person].

S 4. Subdivision 3 of section 160 of the labor law is amended to read as follows:

3. For all other employees, except those engaged in farm [or domestic service] WORK and those affected by subdivision four of section two hundred [and] twenty of this chapter, eight hours.

S 5. The opening paragraph of subdivision 1 of section 218 of the labor law, as amended by chapter 304 of the laws of 2007, is amended to read as follows:

IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS VIOLATED A PROVISION OF ARTICLE SIX (PAYMENT OF WAGES), ARTICLE NINETEEN (MINIMUM WAGE ACT), ARTICLE NINETEEN-A (MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR PRACTICES FOR FARM WORKERS), ARTICLE NINETEEN-C (LABOR STANDARDS FOR DOMESTIC WORKERS), SECTION TWO HUNDRED TWELVE-A (MIGRANT REGISTRATION LAW), SECTION TWO HUNDRED TWELVE-B (FARM LABOR CAMP COMMISSARIES), SECTION ONE HUNDRED SIXTY-ONE (DAY OF REST) OR SECTION ONE HUNDRED SIXTY-THREE (WAGE AND HOURS) OF THIS ARTICLE, THE COMMISSIONER MAY ISSU
sixty-two (meal periods) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. In addition to directing payment of wages, benefits or wage supplements found to be due, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount equal to double the total amount found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the appropriate civil penalty. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements.

S 6. Subdivision 1 of section 219 of the labor law, as amended by chapter 417 of the laws of 1987, is amended to read as follows:

1. If the commissioner determines that an employer has failed to pay wages, benefits or wage supplements required pursuant to article six (payment of wages), article nineteen (minimum wage act) [or], article NINETEEN-A (MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR PRACTICES FOR FARM WORKERS), OR ARTICLE NINETEEN-C (LABOR STANDARDS FOR DOMESTIC WORKERS) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.

S 7. Subdivision 5 of section 651 of the labor law, as amended by chapter 640 of the laws of 2005, is amended to read as follows:

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) ON A CASUAL BASIS WHILE A MINOR in service as a part time baby sitter in the home of the employer; or someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or
for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (j) in or for such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (n) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or (o) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year. Any such volunteer shall be at least eighteen years of age. A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article. Such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months.

"Employee" also includes any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services except that the provisions of sections six hundred fifty-three through six hundred fifty-nine of this article shall not be applicable in any such case.

S 8. Paragraph (a) of subdivision 3 of section 701 of the labor law, as amended by chapter 43 of the laws of 1989, is amended to read as follows:

(a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his OR HER parent or spouse [or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person] or any individuals employed only for the duration of a labor dispute, or any individuals employed as farm laborers or, any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work
for which he or she is engaged is substantially impaired by physical or mental deficiency or injury.

S 9. Subdivisions 1 and 3 of section 875 of the labor law, as added by chapter 551 of the laws of 1980, are amended to read as follows:

1. "Employer" means any individual, partnership, corporation or association engaged in a business who has employees including the state and its political subdivisions. The term "employer" [does not include] INCLUDES the employment of domestic workers [or casual laborers] employed at the place of residence of his or her employer.

3. "Workplace" means any location [away from the home], permanent or temporary, where any employee performs any work-related duty in the course of his or her employment.

S 10. The opening paragraph of subdivision 5 and the opening paragraph of paragraph A of subdivision 6 of section 201 of the workers' compensation law, the opening paragraph of subdivision 5 as amended by chapter 205 of the laws of 1993, the opening paragraph of paragraph A of subdivision 6 as amended by chapter 903 of the laws of 1986, are amended to read as follows:

"Employee" means a person engaged in the service of an employer in any employment defined in subdivision six of this section, except a minor child of the employer[, except a domestic or personal worker in a private home who is employed for less than forty hours per week by any one employer], and except a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a Christian science reader, or member of a religious order, or an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock, except as provided in section two hundred twelve of this article, or an executive officer of an incorporated religious, charitable or educational institution, or persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution, or volunteers in or for a religious, charitable or educational institution, or persons participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the United States department of labor, or recipients of charitable aid from a religious or charitable institution who perform work in or for the institution which is incidental to or in return for the aid conferred, and not under an express contract of hire. The terms "religious, charitable or educational institution" mean a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

"Employment" means employment in any trade, business or occupation carried on by an employer, except that the following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States.
Compilation of Draft Bills on Domestic Work

1 States or outside the United States; service as farm laborers; casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school. The term "employment" shall include domestic or personal work in a private home. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in [paragraph] subparagraph (b) [herein] of this paragraph was not executed under duress and contains the following provisions:

S 11. The commissioner of labor shall report to the speaker of the assembly and the temporary president of the senate before December 1, 2011 on the feasibility and practicality of full- and part-time domestic workers being able to obtain common employment benefits such as vacation pay, severance pay, personal leave, or health insurance or other health coverage through collective bargaining or by law. The commissioner shall recommend measures to make these benefits affordable to employers and attainable for workers. The commissioner shall also convene an interagency task force to report to the speaker and majority leader before December 1, 2011, which shall include but not be limited to the chair of the workers' compensation board, the superintendent of insurance, the commissioner of health and the executive director of the department of economic development, to provide easily accessible educational and informational material for domestic employers and workers. Such material shall cover employment benefit, tax and insurance laws.

S 12. This act shall take effect on January first next succeeding the date on which it shall have become a law; provided that section two of this act shall take effect on the ninetieth day after it shall have become a law.
A01470 Summary:

BILL NO A01470A
SAME AS No same as
SPONSOR Wright (MS)
COSPNSR Clark, Peralta, Colton, Farrell, McEneny, Perry, Robinson, Towns, Rosenthal, Ortiz, Kavanagh, Lopez V, O'Donnell, Schimel, Lancman, Alessi, Zebrowski, Camara, Mayersohn, Scarborough, Jeffries, Ramos,
Castro, Espaillat, Rivera P, Cook, Brook-Krasny, Jaffee, Powell, Aubry, Barron, Pretlow, Peoples-Stokes
MLTSPNSR Benjamin, Boyland, Brennan, DenDekker, Glick, Beartie, Hooper, Jacobs, Kellner, Lavine, Lentol, Lupardo, Markey, Meng, Millman, Pheffer, Reilly, Rivera N, Sweeney, Thiele, Titus, Weinstein, Weisenberg

Amd SS2, 160, 160, 161, 651 & 701, Lab L; amd S292, Exec L; amd S201, Work Comp L

Relates to provisions regarding domestic workers and such workers' employment regulations concerning hours of labor and wages, employment restrictions and employment contracts.
A01470 Text:

STATE OF NEW YORK

1470--A

2009-2010 Regular Sessions

IN ASSEMBLY

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, CLARK, PERALTA, COLTON, FARRELL, MCEHENY, PERRY, ROBINSON, TOWNS, ROSENTHAL, ORTIZ, KAVANAGH, V. LOPEZ, O'DONNELL, SCHIMEL, LANCMAN, ALESSI, ZEBROWSKI, CAMARA, MAYERSON, SCARBOROUGH, JEFFRIES, RAMOS, CASTRO, ESPAILLAT, P. RIVERA, COOK, BROOK-KRASNY, JAFFEE, POWELL, AUBRY, BARRON, PRETLOW, PEOPLES-STOKES -- Multi-Sponsored by -- M. of A. BENJAMIN, BOYLAND, BRENNAN, DenDEKKER, GLICK, HEASTIE, HOOPER, JACOBS, KELLNER, LAVINE, LENTOL, LUPARDO, MARKEY, MENG, MILLMAN, PHEFFER, REILLY, N. RIVERA, SWEENEY, THIELE, TITUS, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, the executive law and the workers' compensation law, in relation to establishing regulations regarding employment of domestic workers including hours of labor, wages and employment contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and intent. Many thousand of domestic workers are employed in New York state as housekeepers, nannies, and companions to the elderly. The labor of domestic workers is central to the ongoing prosperity that the state enjoys, and yet, despite the value of their work, domestic workers do not receive the same protection of many state laws as do workers in other industries. Domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, are isolated in their workplaces, and are endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse. Moreover, many domestic workers in the state of New York are women of color who, because of race and sex discrimination, are particularly vulnerable to unfair labor practices.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

A. 1470--A

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Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA)
Additionally, domestic workers are not afforded by law the right to organize labor unions for the purpose of collective bargaining.

The legislature finds that because domestic workers care for the most important elements of their employers' lives, their families and homes, it is in the interest of employees, employers, and the people of the state of New York to ensure that the rights of domestic workers are respected, protected, and enforced.

S 2. Section 2 of the labor law is amended by adding a new subdivision 16 to read as follows:

16. "DOMESTIC WORKER" SHALL MEAN A PERSON EMPLOYED IN A HOME OR RESIDENCE FOR THE PURPOSE OF CARING FOR A CHILD, SERVING AS A COMPANION FOR A SICK, CONVALESCING OR ELDERLY PERSON, HOUSEKEEPING, OR FOR ANY OTHER DOMESTIC SERVICE PURPOSE. "DOMESTIC WORKER" DOES NOT INCLUDE ANY INDIVIDUAL WORKING ON A CASUAL BASIS WHILE A MINOR, NOR WHO IS ENGAGED IN PROVIDING COMPANIONSHIP SERVICES, AS DEFINED IN PARAGRAPH FIFTEEN OF SUBDIVISION (A) OF SECTION 213 OF THE FAIR LABOR STANDARDS ACT OF 1938, AND WHO IS EMPLOYED BY AN EMPLOYER OR AGENCY OTHER THAN THE FAMILY OR HOUSEHOLD USING HIS OR HER SERVICES.

S 3. Subdivisions 5 and 6 of section 292 of the executive law, subdivision 5 as amended by chapter 851 of the laws of 1965 and subdivision 6 as amended by chapter 166 of the laws of 2000, are amended to read as follows:

5. The term "employer" does not include any employer with fewer than four persons in his OR HER employ. NOTWITHSTANDING THE PRECEDING SENTENCE, THE TERM "EMPLOYER" INCLUDES ANY EMPLOYER EMPLOYING ONE OR MORE DOMESTIC WORKERS AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION TWO OF THE LABOR LAW.

6. The term "employee" in this article does not include any individual employed by his or her parents, spouse or child[; or in the domestic service of any person].

S 4. Subdivision 3 of section 160 of the labor law is amended to read as follows:

3. For all other employees, except those engaged in farm [or domestic service] WORK and those affected by subdivision four of section two hundred [and] twenty OF THIS CHAPTER, eight hours.

S 5. The labor law is amended by adding a new section 170 to read as follows:

S 170. HOURS OF LABOR FOR DOMESTIC WORKERS. NO PERSON OR CORPORATION EMPLOYING A DOMESTIC WORKER AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER, SHALL REQUIRE ANY DOMESTIC WORKER TO WORK MORE THAN EIGHT HOURS IN A DAY; PROVIDED HOWEVER, THAT OVERTIME WORK PERFORMED BY A DOMESTIC WORKER SHALL BE AT A RATE WHICH IS AT LEAST ONE AND ONE-HALF TIMES THE WORKER'S NORMAL WAGE RATE.

S 6. Subdivision 1 of section 161 of the labor law is amended by adding a new undesignated paragraph to read as follows:

EVERY PERSON EMPLOYED AS A DOMESTIC WORKER AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION TWO OF THIS CHAPTER, SHALL BE ALLOWED AT LEAST TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. THIS REQUIREMENT SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER MEMBER OF THE EMPLOYER'S IMMEDIATE FAMILY. NO PROVISION OF THIS PARAGRAPH SHALL PROHIBIT A DOMESTIC WORKER FROM VOLUNTARILY REFUSING THE REST REQUIRED BY THIS PARAGRAPH. THE DAY OF REST AUTHORIZED UNDER THIS SUBDIVISION SHOULD, WHENEVER POSSIBLE, COINCIDE WITH THE TRADITIONAL DAY RESERVED BY THE DOMESTIC WORKER FOR RELIGIOUS WORSHIP.

S 7. Subdivision 5 of section 651 of the labor law, as amended by chapter 640 of the laws of 2005, is amended to read as follows:

A. 1470--A
5. "Employee" includes any individual employed or permitted to work by
an employer in any occupation, but shall not include any individual who
is employed or permitted to work: (a) ON A CASUAL BASIS WHILE A MINOR in
service as a part time baby sitter in the home of the employer; or
someone who lives in the home of an employer for the purpose of serving
as a companion to a sick, convalescing or elderly person, and whose
principal duties do not include housekeeping; (b) in labor on a farm;
(c) in a bona fide executive, administrative, or professional capacity;
(d) as an outside salesman; (e) as a driver engaged in operating a taxi-
cab; (f) as a volunteer, learner or apprentice by a corporation, unin-
corporated association, community chest, fund or foundation organized
and operated exclusively for religious, charitable or educational
purposes, no part of the net earnings of which inures to the benefit of
any private shareholder or individual; (g) as a member of a religious
order, or as a duly ordained, commissioned or licensed minister, priest
or rabbi, or as a sexton, or as a christian science reader; (h) in or
for such a religious or charitable institution, which work is incidental
to or in return for charitable aid conferred upon such individual and
not under any express contract of hire; (i) in or for such a religious,
educational or charitable institution if such individual is a student;
(j) in or for such a religious, educational or charitable institution if
the earning capacity of such individual is impaired by age or by phys-
ical or mental disability or injury; (k) in or for a summer camp or
conference of such a religious, educational or charitable institution
for not more than three months annually; (l) as a staff counselor in a
children's camp; (m) in or for a college or university fraternity,
sorority, student association or faculty association, no part of the net
earnings of which inures to the benefit of any private shareholder or
individual, and which is recognized by such college or university, if
such individual is a student; (n) by a federal, state or municipal
government or political subdivision thereof. The exclusions from the
term "employee" contained in this subdivision shall be as defined by
regulations of the commissioner; or (o) as a volunteer at a recreational
or amusement event run by a business that operates such events, provided
that no single such event lasts longer than eight consecutive days and
no more than one such event concerning substantially the same subject
matter occurs in any calendar year. Any such volunteer shall be at least
eighteen years of age. A business seeking coverage under this paragraph
shall notify every volunteer in writing, in language acceptable to the
commissioner, that by volunteering his or her services, such volunteer
is waiving his or her right to receive the minimum wage pursuant to this
article. Such notice shall be signed and dated by a representative of
the business and the volunteer and kept on file by the business for
thirty-six months.

"Employee" also includes any individual employed or permitted to work
in any non-teaching capacity by a school district or board of cooper-
ative educational services except that the provisions of sections six
hundred fifty-three through six hundred fifty-nine of this article shall
not be applicable in any such case.

§ 8. Paragraph (a) of subdivision 3 of section 701 of the labor law,
as amended by chapter 43 of the laws of 1989, is amended to read as
follows:

(a) The term "employees" includes but is not restricted to any indi-
vidual employed by a labor organization; any individual whose employment
has ceased as a consequence of, or in connection with, any current labor
dispute or because of any unfair labor practice, and who has not
A. 1470--A

Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA)
obtained any other regular and substantially equivalent employment; and
shall not be limited to the employees of a particular employer, unless
the article explicitly states otherwise, but shall not include any indi-
vidual employed by his OR HER parent or spouse [or in the domestic
service of and directly employed, controlled and paid by any person in
his home, any individual whose primary responsibility is the care of a
minor child or children and/or someone who lives in the home of a person
for the purpose of serving as a companion to a sick, convalescing or
elderly person] or any individuals employed only for the duration of a
labor dispute, or any individuals employed as farm laborers or, any
individual who participates in and receives rehabilitative or therapeu-
tic services in a charitable non-profit rehabilitation facility or shel-
tered workshop or any individual employed in a charitable non-profit
rehabilitation facility or sheltered workshop who has received rehabili-
tative or therapeutic services and whose capacity to perform the work
for which he OR SHE is engaged is substantially impaired by physical or
mental deficiency or injury.

S 9. The opening paragraph of subdivision 5 and the opening paragraph
of paragraph A of subdivision 6 of section 201 of the workers' compen-
sation law, the opening paragraph of subdivision 5 as amended by chapter
205 of the laws of 1993 and the opening paragraph of paragraph A of
subdivision 6 as amended by chapter 903 of the laws of 1986, are amended
to read as follows:

"Employee" means a person engaged in the service of an employer in any
employment defined in subdivision six of this section, except a minor
child of the employer[, except a domestic or personal worker in a
private home who is employed for less than forty hours per week by any
one employer,] and except a duly ordained, commissioned, or licensed
minister, priest or rabbi, a sexton, a christian science reader, or
member of a religious order, or an executive officer of a corporation
who at all times during the period involved owns all of the issued and
outstanding stock of the corporation and holds all of the offices pursu-
ant to paragraph (e) of section seven hundred fifteen of the business
corporation law or two executive officers of a corporation who at all
times during the period involved between them own all of the issued and
outstanding stock of such corporation and hold all such offices
provided, however, that each officer must own at least one share of
stock, except as provided in section two hundred twelve of this article,
or an executive officer of an incorporated religious, charitable or
educational institution, or persons engaged in a professional or teach-
ing capacity in or for a religious, charitable or educational institu-
tion, or volunteers in or for a religious, charitable or educational
institution, or persons participating in and receiving rehabilitative
services in a sheltered workshop operated by a religious, charitable or
educational institution under a certificate issued by the United States
department of labor, or recipients of charitable aid from a religious or
charitable institution who perform work in or for the institution which
is incidental to or in return for the aid conferred, and not under an
express contract of hire. The terms "religious, charitable or educa-
tional institution" mean a corporation, unincorporated association,
community chest, fund or foundation organized and operated exclusively
for religious, charitable or educational purposes, no part of the net
earnings of which inure to the benefit of any private shareholder or
individual.

"Employment" means employment in any trade, business or occupation
carried on by an employer, except that the following shall not be deemed
A. 1470--A
employment under this article: services performed for the state, a
municipal corporation, local governmental agency, other political subdi-
vision or public authority; employment subject to the federal railroad
unemployment insurance act; service performed on or as an officer or
member of the crew of a vessel on the navigable water of the United
States or outside the United States; service as farm laborers; casual
employment and the first forty-five days of extra employment of employ-
ees not regularly in employment as otherwise defined herein; service as
golf caddies; and service during all or any part of the school year or
regular vacation periods as a part-time worker of any person actually in
regular attendance during the day time as a student in an elementary or
secondary school. THE TERM "EMPLOYMENT" SHALL INCLUDE DOMESTIC OR
PERSONAL WORK IN A PRIVATE HOME. The term "employment" shall not include
the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not
paid in cash) for the services performed by such broker or sales associ-
ate is directly related to sales or other output (including the perform-
ance of services) rather than to the number of hours worked; (b) the
services performed by the broker or sales associate are performed pursu-
ant to a written contract executed between such broker or sales associ-
ate and the person for whom the services are performed within the past
twelve to fifteen months; and (c) the written contract provided for in
[paragraph] SUBPARAGRAPH (b) [herein] OF THIS PARAGRAPH was not executed
under duress and contains the following provisions:
S 10. The commissioner of labor shall report to the speaker of the
assembly and the temporary president of the senate before December 1, 2010 on the feasibility and practicality of full and part-time domestic
workers being able to obtain common employment benefits such as vacation
pay, severance pay, personal leave, or health insurance or other health
coverage through collective bargaining or by law. The commissioner shall
recommend measures to make these benefits affordable to employers and
attainable for workers. The commissioner shall also convene an intera-
gency task force to report to the speaker and majority leader before
December 1, 2010, which shall include but not be limited to the chair of
the workers’ compensation board, the superintendent of insurance, the
commissioner of health and the executive director of the department of
economic development, to provide easily accessible educational and
informational material for domestic employers and workers. Such materi-
al shall cover employment benefits, tax and insurance laws.
S 11. This act shall take effect on the ninetieth day after it shall
have become a law.
I. COMPILATION OF BILLS ON DOMESTIC WORK

Europe

Ireland
CODE OF PRACTICE FOR PROTECTING PERSONS EMPLOYED IN OTHER PEOPLES HOME—Ireland

The trade unions in Ireland have negotiated a Code of Practice for Protecting Persons Employed in Other Peoples Homes.

The Code was a product of social partnership and agreed between government, employers and workers. The Code is featured in the ILO Report DECENT WORK FOR DOMESTIC WORKERS which is facilitating the discussion in the lead up to the 2010 Conference. The Irish Code of Practice emphasizes the entitlement of domestic workers to be recognised as workers and protected by employment rights. The Code places the employment rights of the domestic worker in the context of the private home and obliges employers to respect the privacy of the domestic worker.

Information

The term *domestic worker* refers to people employed to carry out various duties in a private home. Generally they are engaged directly by homeowners to carry out these tasks. The type of work domestic workers normally carry out include housekeeping and cleaning. Other duties may include the care of children, older people or people with disabilities. Domestic workers can work part-time or full-time and sometimes (but not always) live with their employer.

If you work occasionally in someone’s home as a cleaner or carer, you are not considered a domestic worker. Instead, you may be either employed by an agency (where you are an agency worker) or you may be self-employed. If you are self-employed you are responsible for paying your own taxes and are not covered by employment rights legislation. Care assistants and home helps are a particular category of domestic workers. Home helps are generally employed by Health Service Executive (HSE) and provide assistance to older people and those with disabilities in their homes for a specified period.

Many of those employed as domestic workers in Ireland today are migrant workers – often from outside the European Economic Area (EEA). These employees require work permits in order to work in Ireland.

In the past, a lack of monitoring combined with extreme difficulty in changing job increased the vulnerability of migrant workers employed in private homes. Women migrant workers can be particularly vulnerable as large numbers of migrant women work in the domestic sector. As one of the measures in Towards 2016 the Labour Relations Commission has developed the Code of Practice for Protecting Persons Employed in Other People's Homes (pdf) to help prevent problems faced by domestic workers. The Code of Practice emphasises the entitlement of domestic workers to the employment rights and protections available to other employees and the employers' obligation to inform these employees of their rights.
Rules

People working in other people’s home have broadly the same employment rights as other workers in Ireland. However sometimes employers and employees may not be fully aware of these rights.

Access to employment is the only area where the rights of domestic workers differ from those of other workers. In Ireland it is illegal to discriminate against prospective employees when hiring them (for example, at the interview and selection stage). The only exception is when the job is to be carried out in someone’s home. In this case it is not illegal to discriminate against a prospective domestic employee at the interview and selection stage. For example, an employer could state that they are looking for a woman to look after children without being considered discriminatory. However once the employee has taken up the job they are fully protected by anti-discrimination legislation. The Equality Authority is the body set up to ensure that discrimination on any of the 9 grounds in the legislation does not occur.

Contract of employment, wages and tax

Domestic workers have a right to a written contract of employment which states the terms and conditions of their employment. These conditions cannot be changed without the agreement of the worker. Domestic workers are also entitled to a minimum wage and a payslip. If they work on Sundays, they are entitled to a higher rate of pay. Domestic workers should pay tax and PRSI in the same way as other employees and it is the responsibility of the employer to deduct this tax from the worker’s wages. The employer must register with the Revenue Commissioners. The Employer’s Guide to PAYE explains how to operate the system and is available from the Revenue Commissioners.

Hours of work

The maximum hours of work that an employee can work in a week is 48 hours on average. The employer must keep a record of how many hours a domestic worker is employed. Domestic workers have a right to 11 consecutive hours off work every day and at least one full day off every week. They also have a right to a 15-minute break after four and a half hours of work and a 30-minute break after 6 hours of work.

Dignity and privacy

The Code of Practice provides that the employer should respect the dignity and privacy of the employee. If the employee is required to live in the home, the employer should provide a private secure room with a bed. If employees are required to share a room this should be agreed in advance. Employers should make it easy for the employees to exercise their personal pursuits outside the employees’ working time.

The Code of Practice also provides that the employer should not withhold personal documents of the employee such as a passport or visa, nor prevent the employee from joining a trade union.

Annual leave and public holidays

Full-time workers have the right to 4 weeks’ paid leave a year (this is the legal minimum and can be
Compilation of Draft Bills on Domestic Work

more). They also have the right to take 2 unbroken weeks’ holiday and to ask for payment for the time off in advance. There are 9 public holidays in Ireland and domestic workers have the right to be paid for these days or to have another paid day off instead or an extra day’s pay. If the worker travels with their employer on holiday, this is considered to be work and the employee is entitled to full pay for this time.

Sick pay

Workers in Ireland do not have a statutory (legal) right to sick pay but their contract (terms and conditions of employment) should state the procedure the employee should follow if unable to work due to illness and the arrangements for pay during this time.

Deductions from wages

If the employee is given bed and board as part of their employment the employer can deduct this from their wages. However the deduction must be fair and reasonable, it must be stated in the employee’s contract of employment and the employee must be given written notice of the deduction.

Unions have negotiated the following rates for employees in the hotel and catering sector:

**Full board and lodging**: €54.13 a week or €7.73 per day

**Full board only**: €32.14 a week or €4.60 per day

**Lodgings only**: €21.85 or €3.14 per day

Deductions for other reasons, such as breakages or loss to the employer, must meet similar criteria. The contract must state that these deductions can be made, the deduction must be fair and the employer must give the employee written notice of the deduction.

Dismissal and notice

Workers in Ireland are entitled to a minimum amount of notice if their employment ceases. Workers are also protected against unfair dismissal once they have been working for their employer for over a year. They are protected against unfair dismissal when they have worked for less than a year if the dismissal relates to specific activity such as trade union membership, pregnancy or entitlement to the minimum wage.

How to apply

The Irish Congress of Trade Unions (ICTU) campaigns to inform domestic workers of their rights and can provide information about trade unions. (A total of 56 unions in Ireland are affiliated to the Irish Congress of Trade Unions). There is an ICTU booklet on the rights of domestic workers (pdf). Many domestic workers in Ireland are migrants and the Migrant Rights Centre Ireland provides support to migrant workers.
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Where to apply

Irish Congress of Trade Unions
Line 1:
31-32 Parnell Square
County:
Dublin 1
Country:
IRELAND
Tel: +353 (0)1 8897777
Fax:+353 (0)1 8872012
Homepage: http://www.ictu.ie/
Email: congress@ictu.ie

Migrants Rights Centre Ireland
Line 1:55 Parnell Square West
Line 5:Dublin 1
County:Dublin
Country:IRELAND
Tel: +353 1 889 7570
Fax: +353 1 889 7579
Homepage: www.mrci.ie
Email:info@mrci.ie
II. Civil Society Organizations

Response to the ILO Questionnaire on Domestic Workers

1. Regional Consolidated Response of Migrant Forum in Asia (MFA) and the Asian Migrant Domestic Workers Alliance (ADWA)

2. Christian Aid, Kav La Oved and MFA

3. Human Rights Watch and Anti-Slavery International

4. Philippine Technical Working Group

5. RESPECT– Europe
Compilation of Draft Bills on Domestic Work

Consolidated Regional Response to the ILO Questionnaire

Submitted to the

International Labour Organization
Geneva, Switzerland
October 2009

Prepared by:
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INTRODUCTION

The fair and equal treatment of domestic workers has been among the major concerns of Migrant Forum in Asia (MFA) in its advocacy for the protection and promotion of the rights of migrant workers and their families in Asia. MFA is a regional migrant’s rights advocacy network that promotes and protects the right of migrant workers regardless of their status.

MFA’s commitment to the issue of domestic work dates back to the network’s establishment in 1994, in a forum held in Taiwan entitled, “Living and Working Together with Migrants in Asia”. The Forum was the high point in a process of consultations, meetings, communication and networking among a group of women human rights activists who were voluntarily serving migrant workers in host countries, particularly Malaysia and Hong Kong. The Asian Migrant Centre, one of the founding member of MFA, initiated the first program for migrant domestic workers.

MFA was the first network in the region to call for the recognition of migrant workers’ right to freedom of association and the right to organize and form associations or trade unions. MFA members in Hong Kong helped spearhead the organizing of Filipino and Indonesian migrant domestic workers’ unions. Currently, a number of members of the MFA network are associations and unions of migrant domestic workers, including the Indonesian Migrant Workers Union (IMWU) – Hong Kong, Filipino Domestic Workers’ Union (FDHGU) – Hong Kong, Coalition for Migrants’ Rights (CMR) – Hong Kong, Solidaritas Migran Scalabrini – Indonesia, and the Serikat Buruh Migran Indonesia (SBMI) to name a few.

In 2007, MFA played an instrumental role in the creation of the Asian Migrant Domestic Workers’ Alliance (ADWA), a self-representative regional alliance of migrant domestic workers. The alliance is led by the grassroots MDW organizations while the NGOs/civil society partners provide support and facilitation to enable MDWs in Asia to self-represent and advocate for their common interests and objectives. The Asian Migrant Centre (AMC) and Migrant Forum in Asia (MFA) are the Asian regional advisers of ADWA.

Domestic workers, especially women migrant domestic workers, provide an environment for other workers and their families to improve their living standards by taking care of their homes and household members (children and the elderly). Due to the nature of their work and their working environment (households of private persons), they are not monitored by labor inspectors and they are not, in most countries, included under national labor laws, thus denying their status as “real workers”. This is true in many countries, particularly in Asia, where very few countries have passed laws on domestic workers; there is also inadequate attention on key aspects of their situation in international law.

As a result, they have been suffering from persistent abuses, violence and violations of their rights, including fundamental principles and rights at work as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions.

The campaign for recognition of and respect for migrants’ rights has been a long and arduous struggle aggravated by rapid changes in our globalized world that challenge every small step towards progress, even after the Migrant Workers’ Convention came into force in 1990. Several countries are introducing policy reforms affecting migrant domestic workers yet these fall
far short of the reforms needed to combat widespread abuse, much less remove the systematic vulnerabilities and discrimination/marginalization of migrant domestic workers.

The creation of the ILO Multi-Lateral Framework on Migration in 2004 is one such step. But even as the benefits of global labor migration, especially vis-à-vis national development of sending countries, have caught on the discourse, a significant sector remains highly vulnerable: domestic workers, especially women migrant domestic workers.

The ILO’s decision to include the discussion on decent work for domestic workers in the 2010 International Labour Conference (ILC) is a significant and crucial development. In preparation for this, ILO issued a Law and Practice Report along with a questionnaire in April 2009 for governments, labor unions and employers (tripartite approach) to answer. The process hopes to culminate in a Domestic Workers Convention, which would recognize the dignity of domestic work and provide better protection for domestic workers, including migrant domestic workers.

Consistent with its advocacy for the recognition of domestic work as work and to prepare for the upcoming campaign in the ILC and ILO, and upon the release of the questionnaire, MFA and ADWA spearheaded the consultations at the national and regional levels. These processes sought to generate responses to a possible ILO instrument that addresses the specific conditions of domestic workers and strengthens protections of this vulnerable informal sector. These consultations were done in collaboration with our partner trade unions and civil society organizations.

In Asia, MFA and ADWA initiated the first national consultation on the rights of women migrants and domestic workers in Tarlac City, Philippines from May 13-16, 2009. The consultation was the first of its kind to be held in Asia. It brought together advocates of the rights of local domestic workers, migrant domestic workers and women migrants. The organizers were conscious of integrating the advocacies of migrant domestic workers with those of the local domestic workers for purposes of coming up with a convention for domestic workers. The result of this consultation was one of the working documents used by the Technical Working Group in the island-wide tripartite and workers’ consultation.

Following the Philippines were Indonesia, Cambodia and Singapore held on June 18-19 June, 7-8 July and 28 July respectively. Apart from the face-to-face consultations, MFA also conducted online consultations among its members and partners. Recognizing the need for a consolidated and coordinated action in the region, MFA together with ADWA, the National Domestic Workers Movement (NDWM) and the Center for Education and Communication held a Regional Consultation on Domestic Work from 3-4 September 2009 in Mumbai, India. This Consolidated Response is a product of these processes.

These processes validated the ILO report that while there are existing legislations/mechanisms that protect DWs, these are not enough to address specific conditions of DWs, which justifies the need for a Convention. Domestic workers face problems under the four pillars of decent work, which include: rights to work, employment, social protection and social dialogue. It was agreed that discourses on domestic work and migrant domestic work are same. The need to promote alliance of domestic workers and migrant domestic workers was emphasized. MFA and ADWA believe that the special conditions of domestic workers require legislative frameworks that address their needs if their rights are to be protected. The framework must be drafted
with focus on dignity of work and rights to life and safety, which are necessary to improve the conditions of domestic workers. An international instrument on the rights of domestic workers will go a long way in setting standards that can be translated into national legal frameworks.

DOMESTIC WORK IN ASIAN CONTEXT

The issue of domestic workers in Asia is hardly new. The Asian Migrant Centre, a regional research advocacy group, estimates that there are around four million MDWs in Asia, over 95 percent of which are women. These women mostly come from Sri Lanka, Bangladesh, India, Indonesia, the Philippines, Thailand, Nepal, Lao PDR and work in Malaysia, Singapore, Thailand, Hong Kong, Macau, India, Taiwan and the Middle East.

The general situation of domestic workers in Asian countries is that most of them live and work like slaves. In West Asian countries, domestic workers work 24-hour a day, seven days a week. Instances of under payment are in large number.

Most receiving countries do not have legislative means to protect domestic workers and many do not consider domestic work as work. As a result, domestic workers are subjected to discrimination and abuses that other workers may not face. Domestic workers often face the following issues: lack of national legislations that specifically address the situations of domestic workers; vulnerability to abuse and discriminatory policies against domestic workers; the lack of recognition of domestic work as work and extending the rights of workers to domestic workers, the derogatory labels attached to them, recruitment related abuses, deplorable working conditions, trafficking of women and children domestic workers and lack of legal mechanism to seek redress.

In Hong Kong and Jordan, policies on domestic workers are recognized. The Hong Kong employment ordinance recognizes, to a certain degree, domestic workers - there is a standard contract and recognition of rights to unionize, assemble, and seek redress of grievance. However, recognition is restricted. Workers cannot do collective bargaining. There is no institutional way of consultation between governments and domestic workers’ group and unions.

In terms of monitoring, Hong Kong’s Immigration Department oversees domestic workers, not the Labour and Welfare Department. On health policies, domestic workers are accorded health insurance. In Taiwan and Thailand, mandatory testing is required. In some countries pregnancy is considered a “disease” for migrant domestic workers.
Malaysia recognizes domestic workers as “domestic servants” that makes them more prone to abuse and exploitation.

When it comes to employment contract, only Hong Kong has a legal standard contract for all nationalities, while Lebanon has just introduced the employment contract. In the last two years, Singapore adopted a standard contract developed by employers, which the government has deemed “good enough”. Bahrain has no standard contract and does not recognize the Philippine standard contract presented by Filipino migrant domestic workers.

Domestic workers have no job security as termination of contract is allowed by both parties. In Malaysia, whatever “just cause” means, domestic workers do not receive separation of payments.
In terms of the scope of work, the Hong Kong contract specifies five main tasks for domestic workers. Working hours are 24 hours across the board. In Lebanon, contract prescribes maximum 10 hours of work and minimum eight hours of sleep. Most labour laws do not require one day off per week.

In view of these realities of domestic workers, MFA, ADWA and partner trade unions and civil society organizations recommend the following positions with regard to the adoption of an ILO Convention on Domestic Work. See attached list of organizations.

- All the items in the ILO Questionnaire should be considered as items to be included in the proposed Domestic Workers Convention.
- The Questionnaire should not segregate the items into “Convention” and “Recommendation” sections.

I. Form of the International Instrument

1. The instrument should take the form of a Convention supplemented by Recommendations. This is to ensure maximum protection for domestic workers.

II. Preamble

2. The Preamble should acknowledge that domestic work is work.

3. The Preamble should recognize that domestic workers are workers.

4. The Preamble should acknowledge that domestic workers should be afforded the same rights and protections as other workers. It is only just and fair to treat all workers as equals.

5. The Preamble should recognize that domestic workers are predominantly women.

6. The Preamble should recall that domestic work is historically rooted in slavery and the non-acknowledgement of the work of women in households.

7. The Preamble should recognize that domestic work takes place within the private sphere and as a result, is excluded, both explicitly and in practice, from many international conventions, bilateral agreements and national laws. This exclusion reinforces the vulnerability of domestic workers to abuse and exploitation and precludes domestic workers and their support groups from seeking legal redress and reforms.

8. The Preamble should cite statistics such as: the percentage of domestic workers that are women, the amount of abuses that domestic workers suffer, or the major problems/issues domestic workers experience. However, it should be noted that many governments do not have reliable statistics to provide sufficient data indicative of these problems/issues.

9. The Preamble should acknowledge that protecting domestic workers and their rights means protecting and promoting the rights of the families that depend on them.

10. The Preamble should recall the relevant and core UN treaties and declarations, in particular:
the Universal Declaration of Human Rights, the Convention on the Protection of the Rights of Migrant Workers and their Families, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination Against Women, and the Declaration on the Protection of Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. The Preamble should also recall the instruments of the International Labour Organization that protect the rights of domestic workers, in particular: the Convention on Forced or Compulsory Labour (No. 29), the Convention on Freedom of Association and the Protection of the Right to Organize (No. 87), the Convention on the Right to Organize and Collective Bargaining (No. 98), the Convention on Minimum Age Protection (No. 138), the Convention on the Elimination of the Worst Forms of Child Labour (No. 182), and the Convention on Maternity Protection (No. 183).

III. Definitions

12. The Convention should define the term “domestic work” as: Any remunerated work performed in a household other than one’s own for the employer and immediate members of the household.

13. Household work refers to housekeeping, cleaning, marketing, cooking, laundry and related household chores NOT done for commercial purposes.

14. Other “tasks” maybe included but must be defined in the contract at the time of signing; and based on an approved schedule of tasks.

15. Other services requiring special skills or licenses, such as child-care, sick-care, elderly-care, gardening, driving and securing the house, may be included in this definition provided that each of these extra services are compensated with extra pay; and only upon mutual consent of both employer and domestic worker.

16. The Convention should define the term “domestic worker” as: Any person, who engages in domestic work in the household, for remuneration, whether woman or man, stay-in or live-out, local or migrant, on a full-time or part-time basis or as part of contracted work, provided that domestic work is the primary source of income.

17. The Convention should define the term “stand-by” as: Idle time that is part of the regular work hours and should be paid, if not in full, then to a certain percentage of the official work hours.

18. The Convention should define employers and intermediaries separately.

19. The Convention should define the “employer” as: The person or entity that directly signed the contract and is directly, fully and legally responsible for paying the just/fair wages and benefits of the domestic worker.

20. The employer should also be directly responsible for work-related protection, safety and welfare of the worker, and for redress or compensation for violation of the same.

21. Persons not bound in the same manner, should be considered “intermediaries”, including: re-
recruitment agencies, brokers, labour-only contractors, manpower placement agencies and outsourcing agencies.

22. These ‘intermediaries’ or third parties are ‘agents’ and agents require a specific set of guidelines, outline of best practices and a detailed list of responsibilities and accountabilities that covers time from recruitment, pre-departure trainings, seminars, orientation, to the actual placement. These guidelines should be defined more specifically in the Recommendations.

23. The Convention should recognize that service providers or support groups should not be considered intermediaries.

24. The Convention should define the term “domestic workers’ union” as the legal organization of domestic workers that have organized themselves together to achieve common goals.

IV. Scope

25. The Convention and the accompanying Recommendation should apply to all domestic workers, regardless of location, situation or circumstance, including documented and undocumented migrant domestic workers.

26. The Convention and the accompanying Recommendation should not provide for the possible exclusion of limited categories of domestic workers.

V. Content of the Convention

Fundamental Rights:

27. The Convention should ensure that domestic workers enjoy the same fundamental principles and rights to and at work enjoyed by all workers, including:

- Freedom of association – to join and establish unions and the right to collective bargaining.
- Unions or self-represented organizations of domestic workers should be recognized as legal representatives of domestic workers in negotiating on their behalf, as well as in seeking redress of grievances.
- The elimination of all forms of forced and compulsory labor – strictly no forced and compulsory work beyond the mandated and internationally held standard of eight hours/workday, six workdays/week.
- The effective abolition of child labor.
- The elimination of discrimination in respect of employment and occupation – including gender discrimination and xenophobia.

28. The Convention should also recognize all basic human rights, including the right to privacy, right to communication, freedom of movement, and freedom to practice religions or beliefs, etc.

29. The Convention should ensure that the minimum age for admission to domestic work should be at least 18. It should also take into consideration that domestic work is a decent, formal and skilled profession.
Compilation of Draft Bills on Domestic Work

Working and Living Conditions and Social Security:

30. The Convention should ensure fair terms of employment for the domestic work that stipulate decent and fair working conditions, and where applicable, decent and adequate living conditions.

31. The Convention should require that a standard, legally binding and written employment contract be signed between the domestic worker and employer. This contract should be adhered to, and should be consistent with national and international labor and human rights standards. The contract must be translated in a language the domestic worker can easily read, appreciate and understand with copies of the same being available to the worker before commencement of work. The contract should be legally binding and recognized by both the sending and receiving country governments.

32. The Convention should require that a separate, supplementary legal undertaking should be signed by agencies or intermediaries accepting their responsibilities and obligations to the domestic worker.

33. Both the employment contract and the legal undertaking should specify the joint and individual liabilities and accountabilities of the employers and agents/intermediaries.

34. The Convention should require that work conditions emphasize the internationally held standard of eight hours/workday, six workdays/week, as well as recognize the internationally held standard of at least eight uninterrupted hours of sleep per day.

35. The Convention should allow for a regular and continuous 24-hour rest-day for every seven days of work legally termed as “day off” that gives the workers the possibilities of spending time with their families and having access to services, programmes, and associations that enhance their abilities.

36. The Convention should ensure that decent and adequate living conditions clearly stipulate private space for the domestic worker to exercise her/his basic human rights (right to privacy, right to rest, etc.) and the provision of food, where applicable (for stay-in and full time domestic workers), should take into consideration the domestic workers’ preferred and customary diet that passes the internationally held standards for daily nutrient requirements.

37. The Convention should provide the domestic worker the right to choose their place of residence.

38. The Convention should ensure there is a provision in the employment contract that allows the worker to view the accommodation prior to signing. If this is not physically possible then the burden of proof for the provision of adequate living quarters should rest on the employer prior to the formalization of the work contract.

39. The Convention should ensure that all domestic workers have the right to exercise her/his own culture, religion, customs, beliefs, etc.

40. The Convention should include social security which covers reproductive health rights (rights to marry, right to get pregnant, etc) and should also make provisions for long service benefits and for eventual retirement packages to ensure protection of domestic workers. If better stan-
41. The Convention should ensure that, apart from inclusion in the coverage of minimum wage laws, domestic workers be included by the government in a universal pension (or social security, retirement, provident fund) scheme that aims to aid all workers upon retirement.

42. The Convention should establish a central occupational compensation fund for domestic workers – a protection net for work-related injuries, diseases, and compensation for contract violations. This compensation fund should also be used to provide a living subsidy for migrant domestic workers who have pending labor cases or complaints.

43. The Convention should ensure appropriate complaint and redress mechanisms, prompt investigation and prosecution, protocol for investigation and prosecution that are appropriate to the special circumstances of domestic workers, provisions for emergency care of victims, and competent legal assistance. It should also be the State’s responsibility to create suitable monitoring and enabling mechanisms to ensure the proper functioning of these.

44. The Convention should require States to reform the immigration sponsorship policies that link migrant domestic worker’s employment visa and immigration status to the employer. This places domestic workers at a very high risk of abuse and exploitation by employers.

VI. Terms and Conditions of Employment

45. The Convention should require that all relevant information regarding the terms and conditions of employment be made available in a standard contract that is written in a language domestic workers can easily read, appreciate and understand, accepted by both the sending and receiving countries and include the following:

- The full legal name of the employer and the employer’s exact address and contact details should be provided before the first official day of employment so that the family of the domestic worker can also be sufficiently informed of the domestic workers’ whereabouts and contacts.
- A detailed job order and job description should be discussed and both the employer and employee/domestic worker should agree to commit to the type and scope of work that is required.
- Monthly payment should be made for eight hours/workday, six workdays/week, one holiday per week, and overtime pay for overtime work.
- Normal hours of work must follow international labour standards – eight hours/workday, six workdays/week, and at least one day off per week. ‘Normal hours’ must also stipulate maximum acceptable hours of work per day and per week.
- The employment contract should be in a language easily read and understood by the domestic worker and a copy should be provided to the domestic worker.
- Termination of the contract should be based on just cause as defined by law and supported by valid claims. If without just cause, employers should pay the balance of the contract. In the event of termination, domestic workers should be given extended period of notice during which they may continue living in the employer’s home provided that the home is safe for the worker.
- The provision of food and accommodation must be negotiated between employer and em-
employee as this may constitute ‘payment in kind’ at least in part, and this means a fraction of the actual pay of domestic workers is not disbursed in cash. In the event that domestic workers agree to receive partial payment in kind (food and accommodation), these payments are to be sufficient, adequate and decent and must be made available to the domestic worker regularly without prejudice.

46. The Convention should ensure that payment for work is disbursed at no longer than monthly intervals.

VII. Minimum Wage Coverage

47. The Convention should ensure that domestic workers should be covered by minimum wage laws. Minimum wage law, standard contract, and other terms of employment should be part of national labor laws.

48. If national standard exists, this should cover domestic workers; if none, there should be specific minimum wage for domestic workers.

49. The Convention should ensure that domestic workers receive their wages in cash based on the stipulated minimum wage.

50. The Convention should ensure that domestic workers receive a living, dignified and decent wage.

51. The Convention should ensure that domestic workers receive equal pay for equal work.

52. The Convention should ensure that domestic workers are not subjected to wage discrimination.

53. The Convention should establish mechanism to determine wage and monitor compliance.

VIII. Payment-in-Kind

54. A portion of the wage may be paid in non-cash form and should be strictly regulated as stipulated in Article 4, paragraph 1 Convention 95. For payment of ‘wages in kind’ the following should be observed:
   • The cash payment is greater than the non-cash portion;
   • The non-cash payment is not arbitrarily set by the employer, but based on authorized rates or standards;
   • Non-cash portion should be limited only to the cost of food and accommodation in the case of stay-in, full-time domestic workers.

IX. Residence of Domestic Worker

55. The Convention should ensure that domestic workers be afforded the right to choose whether to stay within the employer’s house or to find accommodations outside the employer’s house. National law should not bind domestic workers to the employer’s house, which is often the root of domestic worker-related conflict, abuse and violations.

56. The Convention should ensure that repatriation of the domestic worker at the end of her/his
employment contract is the responsibility of the State. Costs may be considered separately, but the State assumes ultimate responsibility.

X. Travel Identity and Documents

57. The Convention must ensure that domestic workers always have access to and control over their possessions and personal documents – identification cards (IDs), passports, work permits, visas, etc. It is illegal and punishable by law for the employer or intermediaries to keep the passport and personal documents of the domestic worker.

XI. Implementation and Enforcement

58. The Convention must ensure that the scope and extent of the activities of employers and intermediaries be regulated and monitored.

59. The Convention should require agencies to be registered. Accreditation programs with stringent criteria to ensure quality and accountability should be ensured. There is also a need for periodical inspections of agencies including surprise inspections. Complaints mechanisms regarding abuses also need to be provided to domestic workers. This should be applicable for both inter and intra country migration.

60. The Convention should ensure that arrangements are in place to demand compliance with national and international laws and regulations applicable to domestic workers.

61. The Convention should ensure that transnational violations of rights be met with transnational responses. This is particularly so at a period in history where mass transnational migrations have increased considerably alongside the abuses.

62. The Convention should ensure that safe shelters be provided by the government at the national or international levels to workers who are in a special situation or crisis. These workers should be able to access services such as counseling, legal, medical and financial assistance.

63. The Convention should ensure that dispute resolution tribunals be constituted at local, regional and national levels for prompt and adequate redress of grievances over abuses. Since dispute settlement for migrant workers is even more difficult because of their working conditions and access to dispute settlement mechanisms, this should be made available through bilateral and regional protocols and agreements. The existing review provisions should be used. These include country reports, country complaints, special rapporteurs and individual grievances. The possibility of having regional conventions that support the international conventions should be explored.

64. The Convention should include provisions for the capacity building of the workers themselves, and all stakeholders who hold responsibility to ensure the participation and empowerment of domestic workers. The workers and stakeholders should have easy access to information and the authorities should take special measures to reach the workers to be able to provide information promoting their empowerment and to build cooperation.
V. Other Pertinent Issues

65. The Convention should include social integration policies, rights of residency: challenge immigration policies that exclude or restrict domestic workers.

66. The Convention should ensure that the State makes preparations for reintegration upon return of migrant domestic workers. Such steps could include social reintegration seminars, psychological preparation, social security provisions to facilitate savings facilities, and provision of retirement and long service benefits and packages to reflect the contributions made by the domestic worker in a decent, formal, and skilled profession where she/he has invested her/his time, skills, energies, youth, and the most productive years of her/his life.

67. The Convention should focus on preventive measures to prohibit human trafficking including forced labour.

68. The Convention should ensure that domestic workers have the right to education under national and international laws.

69. The Convention should ensure that domestic workers have the right to mobility, including: the right to change employers, change job-type and social mobility (professional growth, social upwards mobility).

70. The Convention should require Member States to provide mechanism for registration of domestic workers and employers that is transparent and regular.

71. The Convention should advocate for the principle of direct hiring or state-to-state hiring with an emphasis on transparency and responsibility of the States.
Protecting rights for Domestic Workers in the Middle East through a new ILO Convention

August 2009

Christian Aid welcomes the ILO’s focus on decent work for domestic workers and the ILO Governing Body’s decision to place decent work¹ for domestic workers on the agenda of the 2010 International Labour Conference.

Christian Aid welcomes the opportunity for us and our partners and other stakeholders to contribute to the proposed Convention by providing responses to the questionnaire in the Law and Practice report. Here we set out our response to the Law and Practice Report questionnaire and principles for drafting the Convention. We endorse the specific elements recommended by the ILO to be included in the proposed Convention. In addition to the particular responses to questions, we encourage members of the ILO to prioritise the following principles in drawing up the proposed Convention:

• Domestic workers are entitled to the same legal protection as employees in formal sectors. The proposed ILO Convention would make these rights and protection explicit and more easily enforceable.

• Many domestic workers are migrants, and also women, often their migrant status is tied to their employment as domestic workers. Migrant domestic workers need special consideration and protection given their extra vulnerability.

• Domestic work is valuable and domestic workers should be regarded as contributing to an important service. The informal and under-regulated nature of the work, however, often leads to exploitation. Therefore employees, employers and officials need greater understanding of the rights of domestic workers.

¹ Decent Work’ is the ILO’s primary aim. Decent work is captured in four strategic objectives: fundamental principles and rights at work and international labour standards; employment and income opportunities; social protection and social security; and social dialogue and tripartism.
This briefing outlines Christian Aid’s and our partners’ policy position on the proposed ILO Convention for Domestic Workers. It outlines our priorities for ILO members completing the questionnaire on the Law and Practice Report, and into the drafting of the proposed Convention at the International Labour Conference in June 2010. Christian Aid will work with our partners and other organisations to advocate to members for these priorities to be included in the ILO Convention.

This briefing draws on the experience and expertise of partners in the Middle East region. Whilst the priorities we present are applicable globally, we emphasise practices derived from Middle East partners’ work and experiences. This briefing builds on detailed global statements made by similar organisations, including Anti-Slavery International and Human Rights Watch.

Background and rationale
Many people are employed in domestic work across the world. Today’s global economy includes a high demand for domestic workers, evidenced in particular by the large number of women migrating to become domestic workers in another country. Yet domestic workers are undervalued, and their rights often not recognised. The proposed Convention is welcome since it reflects the advocacy of domestic workers to gain greater recognition and respect for the work they do.

Domestic workers are vulnerable to exploitation because of the nature of the work, the context in which it happens, the difficulty of enforcing any national regulations which do exist, the lack of representation of domestic workers’ concerns and avenues of redress when things go wrong.

That domestic workers are predominantly women and girls and often migrants reinforces their susceptibility to abuse. Many domestic workers are therefore particularly disempowered not only due to the informal nature of the work, but because of their perceived status in the eyes of their powerful employers. Hostile social attitudes from employers and institutions mean that many domestic workers are subject to racism, sexism and xenophobia.

Women migrant domestic workers are often underpaid and work under poor conditions with precarious contracts, and often without adequate social protection. Moreover, the labour abuses they face in the hands of unscrupulous employers, recruitment and placement agencies often go unpunished. These abuses can occur wherever domestic work is not properly regulated, but is a particular concern in areas of the world where many domestic workers are employed in countries with poor records of enforcing human rights for migrants and women.

Christian Aid and our partners support the ILO’s recommendation for a new instrument that addresses the special conditions in which domestic work is carried out, and strengthens protections for domestic workers. We urge members of the

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2 Christian Aid is working with long-term partners Kav La’Oved and Hotline for Migrant Workers (both Israel); and Migrant Forum in Asia (based Philippines). We are also collaborating with other partners in the Middle East (Human Rights Watch and Caritas Migration Centre in Lebanon) as well as UK and global NGOs for advocacy at these levels.
ILO to agree a new Convention at the International Labour Conference in 2010 which will provide explicit and enforceable rights for domestic workers. The Convention should afford domestic workers the same rights as other workers whilst taking into account the inherent vulnerabilities of many domestic workers such as the nature and place of work and the fact that many domestic workers are migrants.

The domestic work sector is significant in many countries; in the Middle East for instance there are estimated to be around 200,000 migrant domestic workers in Lebanon and around 52,000 migrant domestic workers in Israel. (See table to follow for selected Middle East countries).

The work of domestic workers is frequently not acknowledged as ‘work’ in national statistics, labour laws and enforcement agencies of receiving states, since their work is done in households (not considered as workplaces) of private persons (not considered employers). However, the experiences surrounding the formulation and implementation of measures related to CEDAW show that it is possible to improve the rights and livelihoods of vulnerable groups in many countries across the world. Migrant workers need recognition and protection too, not least in the domestic work sector.

There is a need to provide specific, consistent international legislation with corresponding enforcement mechanisms that recognises and protects domestic workers, particularly the most vulnerable such as female migrant domestic workers, from exploitation and abuse as a result of a lack of formal regulatory framework that offers protection, recognition, support and guidance to workers within this sector. Few governments have so far ensured that domestic workers are afforded the same legal protections as other employees. As the ILO has noted, many governments see domestic work as ‘informal labour’, beyond the scope of regulation. And although existing ILO Conventions apply to domestic workers unless stated or where states use flexibility clauses to exclude them, in practice official and cultural perceptions of domestic workers mean that such rights are not upheld. Despite rights applying to all workers equally in theory, many domestic workers are not able to enjoy them due to lack of enforcement of these rights. A new Convention which helps to concretise these rights will improve enforcement of existing rights.

The need for explicit and enforceable rights for people engaged in domestic work is therefore very clear. Wide agreement and implementation of a new Convention for domestic workers would mark an important shift which must be complemented by active enforcement of agreed standards through national legislation and implementation policies and increased awareness and activation of rights on the part of domestic workers. A specific Convention will explicitly bring together preexisting rights and newly defined standards which can be understood by all stakeholders and enforced consistently. An important element of the process and outcome of drawing up a new Convention will be to enhance domestic workers’ understanding of their rights, and how to address situations when these rights and entitlements appear compromised.

4 Sources: Human Rights Watch, Kav LaOved
## Migrant domestic workers (MDWs) in selected countries in the Middle East

<table>
<thead>
<tr>
<th>Country</th>
<th>Total population&lt;sup&gt;5&lt;/sup&gt; (2009)</th>
<th>Working population&lt;sup&gt;6&lt;/sup&gt; (2009)</th>
<th>No. &amp; % MWs</th>
<th>No. of MDWs</th>
<th>Undocumented MDWs (estimates)</th>
<th>MDWs as a % of MWs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Israel</td>
<td>7.42 million</td>
<td>3.14 million</td>
<td>186,000&lt;sup&gt;7&lt;/sup&gt;, (6%)</td>
<td>52,000&lt;sup&gt;8&lt;/sup&gt;</td>
<td>40,000&lt;sup&gt;9&lt;/sup&gt;</td>
<td>48%</td>
</tr>
<tr>
<td>Lebanon</td>
<td>5.01 million</td>
<td>3.1 million</td>
<td>910,000&lt;sup&gt;10&lt;/sup&gt;, (29%)</td>
<td>200,000&lt;sup&gt;11&lt;/sup&gt;</td>
<td>N/Avail.</td>
<td>22%</td>
</tr>
<tr>
<td>Jordan</td>
<td>7.34 million</td>
<td>2.62 million</td>
<td>1 million&lt;sup&gt;12&lt;/sup&gt;, (38%)</td>
<td>46,000&lt;sup&gt;13&lt;/sup&gt;</td>
<td>20,000&lt;sup&gt;14&lt;/sup&gt;</td>
<td>7%</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>35.43 million</td>
<td>14.74 million</td>
<td>8 million&lt;sup&gt;15&lt;/sup&gt;, (54%)</td>
<td>1.5 million&lt;sup&gt;16&lt;/sup&gt;</td>
<td>N/Avail.</td>
<td>19%</td>
</tr>
</tbody>
</table>

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<sup>5</sup> CIA Factbook: [https://www.cia.gov/library/publications/the-world-factbook/](https://www.cia.gov/library/publications/the-world-factbook/) (NB Numbers in the table are totals, inclusive of migrant workers)


<sup>7</sup> Israel Central Bureau of Statistics press release, July 30, 2007

<sup>8</sup> Kav LaOved, 2009

<sup>9</sup> Kav LaOved, 2009

<sup>10</sup> CIA Factbook: [https://www.cia.gov/library/publications/the-world-factbook/](https://www.cia.gov/library/publications/the-world-factbook/) 2009 (NB Numbers in table are totals, exclusive of Palestinians)


<sup>15</sup> [http://www.unhcr.org/cgi-bin/texis/vtx/refworld/ny/main?page=search&amp;docid=487329a12&amp;skip=0&amp;query=as%20if%201%20am%20not%20human](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/ny/main?page=search&amp;docid=487329a12&amp;skip=0&amp;query=as%20if%201%20am%20not%20human), July 2008

<sup>16</sup> [http://www.unhcr.org/cgi-bin/texis/vtx/refworld/ny/main?page=search&amp;docid=487329a12&amp;skip=0&amp;query=as%20if%201%20am%20not%20human](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/ny/main?page=search&amp;docid=487329a12&amp;skip=0&amp;query=as%20if%201%20am%20not%20human), July 2008
Policy position

Christian Aid and our partners recommend that ILO members prioritize the following concerns in their responses to the Law and Practice Report questionnaire, and in the negotiation and drafting of the proposed ILO Convention:

- **Legal protection:** domestic workers should enjoy the same protection under national law as that given to employees in the formal sectors. Such rights should include the right to freedom of association and collective bargaining. Universal rights such as the right to a fair trial in cases where charges are made must also be upheld. Currently many domestic workers are illegally detained and deported even before their cases reach the courts.

- **Special protection for migrant domestic workers:** migrant workers tend to be more vulnerable than host country citizens because of their temporary nature, the more limited rights that may be applicable and because they are less likely to know where to go for help when things go wrong. Specific measures should be taken to ensure that migrant domestic workers are not exploited by further restrictions to visas such as being linked to particular employers. The Convention should address the following issues: a) Comprehensive protection of migrant domestic workers cannot be achieved by reform of labour provisions alone and requires coordination with immigration regulations. In many cases oversight of migrant domestic workers is overseen by Interior or Home Ministries rather than Labour Ministries. Governments 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, and allow for the extortion of recruitment fees well over national legal limits.

- **Universal employment contract:** the ILO should consider including a template for a universal contract which would set out the core rights applicable to domestic workers, the details of which could be decided according to national contexts.

- **Support services to domestic workers:** given the potential for abuse within their workplace, the ILO should consider specific measures to ensure that relevant authorities enhance support services including facilitating complaint systems, supporting investigations of alleged abuse; special care for workers who have been abused, and for those with special needs.

- **Enforcement:** given the context of the work, extra resources and coordination are needed to ensure that standards are followed. Special attention should be directed to enabling representatives of domestic workers to be part of the enforcement process.

- **The role of intermediaries:** the Convention should include standards which regulate the role of intermediaries in the employment of migrant domestic workers to prevent bonded labour and high levels of indebtedness to intermediaries.

- **Recognition of domestic work:** in drawing up a new Convention, the ILO should use the opportunity to demonstrate the valuable contribution that domestic workers make to the local economy, and in particular for migrant domestic workers, how earnings can be significant sources of remittances to families in countries of origin.
Compilation of Draft Bills on Domestic Work

Convention and Recommendation
All factors covered in the questionnaire should be considered as items to be included in the proposed Domestic Workers Convention. Further, all items should be considered as part of the Convention and not merely elements for a Recommendation. In the event that any elements are not included in the Convention, they should be contained in a supplementary Recommendation.

This approach will ensure that domestic workers will be afforded maximum protection. The Convention should ensure that domestic workers enjoy the same fundamental principles and rights as other workers. The Convention and instruments should apply to all domestic workers, without exceptions.

Responses to the questionnaire- Preamble
The Preamble to the new Convention should refer to ILO Conventions 29 and 105 concerning Forced Labour, Discrimination Convention 111 and Equal Remuneration Convention 100, Worst Forms of Child Labour Convention 182, Minimum Age Convention 138, Freedom of Association 87 and 98, and migrant specific conventions such as: Migration for Employment Convention 97, Migrant Workers (Supplementary Provisions) 143, in addition to UN treaty frameworks, concerning slavery and modern forms of forced labour and the Convention on the Elimination of All Forms of Discrimination Against Women.

The preamble should note that large numbers of domestic workers are populations that are often particularly marginalised and at heightened risk of exploitation due to their status in society, including migrants, indigenous or minority groups, children, women and people living in poverty. Reference should be made to existing international conventions and instruments that extend to recognise and protect these particularly vulnerable groups.

Definitions
Domestic work is work carried out in the home of an employer for the employer and their family and not for commercial purposes. Services beyond basic household tasks such gardening, driving and so on should be seen as additional and therefore to be recognised with additional payment. ‘Personal care’ should be included in the definition where it is applicable within the national definition of domestic work, including care for the infirm, elderly and people with disability who are in need of regular or constant assistance.

A domestic worker should be defined as someone who engages in paid domestic work in a household. A domestic worker may be stay-in or live-out, may be a man or a woman (but not a child under 15 years), full-time or part time, local or foreign/ migrant worker. In each permutation, a domestic worker derives their main source of income from their domestic work.

‘Domestic workers’ unions’ should be recognised by the ILO as representative organisations of domestic workers. Domestic workers’ unions should be recognised as legal representatives of domestic workers in negotiations and in seeking redress for grievances. ‘Standby’ time is idle time that is part of regular work hours and should be paid to a certain percentage of the official working hours, and recognised as part of the working commitment, and therefore factored into the calculation of entitlement to time off.
An ‘employer’ is the person or organisation who directly employs a domestic worker and is responsible for upholding their side of the contract and for fair payment of the domestic worker. Employers are also responsible for work related protection, including health and safety.

‘Intermediaries’ or ‘agents’ are not direct employers and should be considered separately. There should be specific guidelines setting standards for recruitment, training, orientation and placement.

Detailed content of a Convention

Christian Aid and our partners support all the elements referred to in the questionnaire which will enhance the rights and protection in work for domestic workers. These elements should be seen as minimum standards; where national regulations provide greater protection, they should be applied. In addition to the priorities set out above, these include regulations on:

- Minimum wage.
- Payment intervals set at a maximum of one month.
- Discouragement and limit to payment in kind.
- No requirement to live in the employer’s home.
- In the case of employees living in, there must be decent accommodation and food provided.
- Maximum hours of work.
- Employees able to spend day off outside the employer’s home.
- Standby time should be accounted for in work hours as per national laws.
- Minimum of 24 hours consecutive rest every seven days.
- Health and safety protection consistent with other workers.
- Social security schemes open to domestic workers.
- Domestic workers should be entitled to full prenatal care and maternity leave, and this should not affect their visa or immigration status.
- Repatriation of migrant workers should be at no cost to them in the event of early termination of employment.
- Employers must not keep employee documents, particularly passports.
- Domestic workers must have access to fair and effective dispute settlement procedures. Independent redress mechanisms must be put in place, primarily to resolve disputes at a low level.
- Employers and places of work must comply with national labour laws and be checked as such.
- There should be formal consultation on regulations between employers and workers.
- A competent authority should provide capacity-building for representative domestic workers’ organisations.
- There should be written contracts between employers and employees in language understandable to each party.
- The ILO should provide a model contract which can be used.
• There should be no mandatory testing of domestic workers which could impinge on their right to work; any medical tests should respect employees’ right to privacy.
• Payment of salary should be accompanied with written and understandable accounts.
• Employees should be entitled to breaks consistent with national regulations for all employees.
• Notice periods for terminating contracts should be enforced; employees wishing to remain in the home during the notice period should be allowed to do so.
• National authorities should support groups to enhance rights awareness amongst domestic workers.
• Domestic workers should have the right to form workers’ associations and trade unions.
• Domestic workers should be able to access training and development.
• Migrant domestic workers should be briefed on their rights before departure.
• Consular services should have the capacity to support migrant domestic workers.

Special problems
The Convention should take into account the following supplementary elements which are important for comprehensive application of the new instrument and the ultimate impact on rights of domestic workers:

• Public education: members should undertake education and sensitisation about domestic workers and the valuable work they do, through print media, radio and television. Such activities should educate workers and employers about their rights and responsibilities.
• Social integration: members should be encouraged to facilitate integration of migrant domestic workers in particular and all domestic workers in general, including through applying the same rights of residency as for other migrant workers.
• Respect for individual rights: national and international laws on the rights of individuals to be able to practise their religion or belief should be upheld, together with rights to freedom of association, prohibition of discrimination on the grounds of race, gender, sexual orientation, religion, nationality and so on.
• Respect for family rights: the Convention should prohibit policies and practices that forbid or otherwise sanction migrant domestic workers of the right to family (typically be revoking their authorised status).
• Fair salary and conditions: the salary and conditions of employment of migrant domestic workers should equate to those of local workers. This should not be done by artificial inflation of the cost of employment for the employer (such as taxes, fees on permits) which are typically rolled into workers’ costs, but by state enforcement of workers’ rights.
• 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.
Compilation of Draft Bills on Domestic Work

Additional specific features of protection which should be covered by the proposed Convention to ensure domestic workers are protected in their work:

- explicit prohibitions under national legislation, including of unlawful confinement;
- the establishment of accessible complaints mechanisms for domestic workers to report such abuse, including confidential, fully staffed, tollfree, 24-hour hotlines to receive reports of abuses against women and girl domestic workers with interpreters in relevant languages available;
- mechanisms such as local registration to ensure greater visibility of domestic workers and allow for better access to them;
- prompt investigation and prosecution of perpetrators of physical violence, sexual violence, and other abuses against domestic workers, including unlawful confinement;
- 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;
- 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.

Conclusion

Christian Aid and our partners welcome the proposed ILO Convention for domestic workers. We urge ILO members to highlight the priorities outlined in this briefing in their responses to the ILO questionnaire and in the process leading to the International Labour Conference in 2010, to ensure that domestic workers are given enforceable rights. We are working with other partners nationally and internationally to advance the priorities outlined in this briefing to support domestic workers gain the capacity to fulfil their rights.

For further information about this work, please contact Lucy Hayter or Oliver Pearce at Christian Aid: lhayter@christian-aid.org; opearce@christian-aid.org Telephone: 020 7523 2337/8.
Decent Work for Domestic Workers:
Recommendations to ILO Members regarding
the Law and Practice Report and Questionnaire

May 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 countries confirms that domestic workers are among the most exploited and abused workers in the world. Predominantly, though not

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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 labor. 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.

² ILO, Still so far to go: Child workers in the world today, 1989.
Although the protections of many existing ILO conventions technically apply to domestic workers, traditional perceptions of domestic workers as “helpers” rather than “workers” and 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, and child labour protections that apply to other working children (aged 15-17) should be extended to child domestic workers, including limited hours to allow school attendance (see #10, #20, and #36, following);

3) Special protections for migrant domestic workers: Legal frameworks should ensure that migrant domestic workers’ immigration status is not tied to their employers

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since this is often a contributing factor to situations of exploitation and forced labor (see #14, following);

4) Explicit employment agreements: Domestic workers should have the right to explicit, written terms of employment, outlining their specific duties, hours, renumeration, 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 (see #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.

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?

   Recommended response: A Convention supplemented by a Recommendation.

   Rationale: The ILO law and practice report found that domestic work is undervalued and under-regulated, and subject to serious abuses. It recommended specific international labour standards to promote decent work for domestic workers. Some of these standards should be binding to ensure maximum protection. 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 and ILO Convention 29 concerning Forced Labour.

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 pieces 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. Considering these inherent risk factors, domestic work should not be acceptable for children under age 15.
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?

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 Members 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.
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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 labor.

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. Maximum number of hours of work should be established to enable working children access to basic education and higher secondary education, including vocational training. 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 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. We note that the ILO has elsewhere recommended that child
domestic workers should be allowed to sleep on average 9.5 hours each night.4

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.

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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.”
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;
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.
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 the names of all child domestic workers are shared with education authorities to help ensure school attendance for child domestic workers;

c) 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;

d) 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;

e) establishment of accessible complaint mechanisms, including 24-hour hotlines, for domestic workers to report abuses;

f) 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.

As per ILO 182, Article 6, Members should “take into consideration the views of domestic worker organizations and other concerned groups.” 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. For this reason, 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; 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. Hours of work should be set to allow sufficient time to enable working children access to basic education and secondary education. Members should also ensure that child domestic workers who are over school-leaving age have opportunities to continue their education, including through access to vocational training, higher education, and informal education programs. As noted above (#32), the Convention should provide that the names of all child domestic workers are shared with education authorities and that Members establish a system to ensure that all child domestic workers are in school, if below the minimum school-leaving age, or if so desired.

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 may 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 (9.5 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, wellremunerated 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) 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 labor 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 Labor Ministries. Government should recognize domestic workers as workers and include them in the regulatory and monitoring mechanisms of labor 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 labor 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 labor or servitude as a result of employers abusing these policies.
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.

Form of the international instrument or instruments

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

**Reply: YES**

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

- A Convention [X]
- A Recommendation [ ]
- A Convention supplemented by a Recommendation or [ ]
- A Convention comprising binding and non-binding provisions [ ]

Preamble

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?

**Reply: YES**

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?

**Reply: YES**
Compilation of Draft Bills on Domestic Work

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

Reply: YES

Comment:

The Government of the Republic of the Philippines (GRP) agrees that the preamble should state that:

The current international situation in some receiving states excludes household workers from the mantle of protection provided by their labour laws. Partnership must be encouraged between domestic workers and their employers, putting primarily the protection of domestic workers, and not necessarily forgetting the benefits of employers. Decent Work should be incorporated as Framework since all these efforts are geared to ensure that domestic workers benefit effectively from the promise of decent and productive work.

Definitions

For the purposes of the instrument or instruments,

Should the term “domestic work” mean work performed in and for a household and include housekeeping, child care and other personal care?

Comment:

The Government of the Republic of the Philippines (GRP) recommends using the term Domestic Work as compared to other terms such as helper etc., to connote that they are workers and they should be afforded fundamental rights. Furthermore, the GRP defines Domestic work as work performed in a household and for a household. The GRP stresses that the term personal care be eliminated as part of tasks ascribed as domestic work.

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

Reply: YES

Should the term “standby” mean periods during which a domestic worker is not free to dispose of time as the worker pleases?
Reply: YES

Should the term “employer” include intermediaries?

Comment:

The Government of the Republic of the Philippines has clear distinction on the definition of employer for migrant domestic workers and local domestic workers.

For migrant domestic workers, employer refers to both the principal employer and foreign placement agency. They are both held solidarily liable to violations committed against the Filipino migrant domestic helper. Intermediaries refer to local placement agencies and are also considered solidarily liable but are not considered as employer.

For local domestic workers, employer refers to any person who engages the services of the domestic workers for household work.

Should any other terms be defined by the instrument or instruments? If yes, please provide particulars.

Reply: YES

The Government of the Republic of the Philippines expresses that there is a need to define the term household and proposes to adopt the following definition:

Household: an aggregate of persons generally but not necessarily bound by ties of kinship, who sleep in the same dwelling unit and have common arrangements for the preparation and consumption of food.

Scope

Should the instrument or instruments apply to all domestic workers?

Reply: YES

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

Fundamental principles and rights

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:

Freedom of association and the effective recognition of the right to collective bargaining?

Reply: YES

The elimination of all forms of forced and compulsory labour?

Reply: YES

The effective abolition of child labour?

Reply: YES

The elimination of discrimination in respect of employment and occupation?

Reply: YES

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

Reply: YES

Comment:

The GRP recommends to uphold employable age under the national laws.

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

Reply: YES

Comment:

The GRP recommends that for migrant workers, there may be a need to provide a higher minimum age due to the vulnerability of this occu-
pation which requires the household worker to be physically, emotionally mature to handle the job.

Working and living conditions and social security.

Should the convention provide that each member should take measures to ensure that domestic workers, like all wage earners, have:

Fair terms of employment as well as decent working conditions and, where applicable, living conditions;

Reply: YES

A safe and secure workplace;

Reply: YES

Social security, including maternity protection?

Reply: YES

Should the convention provide that employers should inform domestic workers of their terms and conditions of employment, in particular:

The name and address of the employer:

Reply: YES

The type of work to be performed;

Reply: YES

The rate of remuneration, method of calculation and pay interval;

Reply: YES

The normal hours of work;

Reply: YES

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?
Reply: YES

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

Reply: YES

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

Reply: YES

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.

Reply: NO

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?

Reply: YES

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?

Reply: YES

Should the convention provide that each member should ensure that domestic workers have normal hours of work, overtime compensation, period of daily and weekly rest, and annual leave as determined by national laws and regulation, and which are not less favourable than those applicable to other wage earners?

Reply: YES

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?

Reply: YES
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 or any other means consistent with national practice?

**Reply: YES**

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?

**Reply: YES**

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?

**Reply: YES**

Should the Convention provide that such measures may be applied progressively? Please elaborate.

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.

**Reply: YES**

C. Employment Agencies

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

**Reply: YES**

D. Migrant domestic Workers

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?
Reply: YES

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

Reply: YES

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

Reply: YES

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

Reply: YES

E. Implementation

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

Reply: YES

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 regards to privacy?

Reply: YES

Comment:

We need to mention that the adoption of such arrangement must be in progressive manner and in accordance with the country’s political and development situation. The Philippines for instance has a policy of ensuring the privacy of homes, as provided in the Constitution, which will make the labour inspection difficult. In addition, the limited number of labour inspectors that may be deployed to all the households may also pose challenges especially for developing countries like the Philippines.

For the migrant workers, there is already existing policy for Philippine
Overseas Labour Office (POLO) to conduct inspection or site visits to further ensure that appropriate working conditions are provided to Filipino overseas workers.

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?

Reply: YES

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

Reply: YES

Content of a Recommendation

Comment:

The Philippine government supports the adoption of a Convention on Domestic Work.
Part 1 - Introduction and Key Recommendations for an ILO Convention on Domestic Work

Submitted by

R.E.S.P.E.C.T Network
Campaigning for the Rights of Migrant Domestic Workers in Europe and Internationally

Amsterdam, May 2009
Introduction - Towards an ILO Domestic Work Convention

In May 2009, the RESPECT Network held its General Assembly (GA) and took the ILO Law and Practice Report and the proposed Domestic Work Convention as an important topic for its agenda and planning. Besides the decision to launch a campaign to participate in the ILO process as a network of domestic workers rights organisations, the RESPECT GA undertook to discuss and develop its responses to the (ILO) Questionnaire to actively promote the participation of MDWs in the process and project their voice in the development of proposals and perspectives.

The Responses to the ILO Questionnaire reflects the discussion of the 50 participants from 18 organisations across different European countries and which included MDWs from Africa, Latin America and Asia.

The struggles for the rights and protection of domestic workers has a long history globally, incorporating the structures of racism, slavery, discrimination as well as the stereotyping of women’s work. In recent decades however, domestic workers globally, including migrant domestic workers have achieved visibility and have raised their demands in the political arena – on the agenda of trade unions and governments and with policy makers at the United Nations.

Despite the fact that millions of workers are engaged in domestic work, which the ILO estimates to be as many as 10% in some countries, this important work remains for the most part excluded from the existing International instruments for the protection of workers rights.

In this context, RESPECT welcomes and strongly supports the ILO commitment to develop a Domestic Work Convention – with a timeline of preparation up to June 2011. RESPECT, a Europewide network of domestic workers self-organisations, trade unions and domestic workers rights organisations in 11 countries in Europe takes this opportunity to promote the participation and voice of Domestic Workers in the ILO process and preparation of the Convention and to join their voices with Domestic workers around the world.

Context in Europe - Domestic Work and Domestic Workers in Europe

In Europe as in other continents, we have witnessed significant restructuring and redivision of reproductive and caring labour. In Europe and in the US, as in other global regions women are increasingly participating in work outside the home, while work in the home is undertaken by live-in or live-out domestic workers, mainly migrant domestic workers from Africa, Latin America and Asia. In Europe, this also includes workers from countries of the former Eastern Europe and Soviet Union. Many European households are increasingly dependent on such migrant domestic workers and without their “re-productive” work, European employers could not participate in the “productive” economy. In this way, the transnational, globalised economy is brought into the private home, not just in goods consumed there, but at its very core in the organising and delivery of “reproductive” labour. (B. Anderson 2000)
However the discourses arising from the feminisation of the workforce, a declining welfare system and the challenges of care provision tend to make somewhat invisible both the workers who are playing such a significant role in Europe’s economic and social life as well as marginalise the issue of establishing a regulatory regime to ensure the protection of domestic workers.

In Europe, many countries do not recognise domestic work as work and therefore do not have in place adequate labour protection legislation for workers in the private household.

This situation is also aggravated by the fact that the private household as well as domestic workers are not easily accessible to trade unions. Besides, in countries where domestic work is not recognised as proper work, it is also not recognised as a category for immigration although significant numbers of domestic workers are migrants. This leads to an additionally vulnerable sector of domestic workers - undocumented migrant domestic workers. This is a status which both employers and workers want to change.

In the European context therefore, RESPECT highlights the following key considerations in preparing the proposed ILO Instruments:

1) The recognition of Domestic work: The recognition of domestic work as proper work and the inclusion of all domestic workers (women and men, young or old, national citizen or migrant, live-in or live-out) as an integral part of the workforce with an immigration status that recognises migrant domestic workers.

2) Comprehensive legal protections: Labour legislation that applies to all other workers to be applied to the domestic workers and to ensure equal protection under the law – related to written contracts, agreed wages, hours of work and rest, health insurance and other social benefits, freedom of mobility and to form self-organisations and join trade unions, freedom to change employers, as well as provisions covering the unique circumstance of live-in domestic workers regarding living conditions and privacy.

3) Effective mechanisms of enforcement of labour legislation: This should include instruments protection against unjust termination; against the risks of homelessness of live-in domestic workers; paid holidays and sick leave days.

4) Effective protection for migrant domestic workers: Migrant domestic workers should have a work permit independent of their employer to ensure avoidance of abuse and violation of rights regularly experienced in ‘tied’ employment. Domestic work is not a category for migration in most European countries. Therefore while migrant workers are on the one hand delivering an enormous contribution – economically and socially - to needed and important work in
European societies, on the other hand they are vulnerable to exploitation (such as long hours of work, low payment and to personal abuse by members of the families) as a consequence of the separation of juridical residence and work permit.

5) Effective protection for Domestic Workers in the employment of the Diplomatic corps: Domestic workers in the employment of the Diplomatic corps should be protected by existing and new labour legislation and be able to access legal redress in the case of unjust or abusive treatment. Specific mechanisms should be put in place ensuring a judicial process in relation to diplomats who are responsible for abusing their domestic workers.

6) Effective protection for ‘au pairs’: This is a particularly vulnerable sector of people who work in the private home. It has been a practice to accept that au pairs undertake “light household work” as exchange for accommodation while undertaking a cultural exchange. However there is increasing evidence that this framework is exploited to access a flexible and cheap source of domestic workers. The ‘au pair’ framework should therefore be strongly regulated.

7) Provisions to protect domestic workers against physical, sexual and psychological violence: These provisions include access to immediate and confidential redress as well as support for and access to legal redress.
Part 11- Specific Recommendations and Comments to ILO Members regarding the Law and Practice Report and Questionnaire on the proposed ILO DW Convention

May 2009

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?

RESPECT Comments: YES

An instrument should be adopted:
- There is an urgent need that Domestic Work be recognized as decent work.
- Domestic workers labour rights should be protected.
- Domestic work in the private household should be recognized as proper work and be included in national employment legislation.

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

   RESPECT Comments:
   A binding Convention together with a Recommendation – this should be adopted to be binding and effective among parties covered by the Instrument

   d) A Convention comprising binding and non-binding provisions?

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?

RESPECT Comments: YES – The general principles and specific conditions should be applied to all domestic workers working in the private household, women and men, live in- and live out, working in diplomatic services, and including local domestic workers as well as Transnational Migrant Domestic Workers.

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
Compilation of Draft Bills on Domestic Work

supplement the general standards by standards specific to domestic workers, to enable them to enjoy their rights fully?

**RESPECT comments:**

**YES** – The preamble should have general principle and specific conditions applied to all domestic workers. Domestic work is not recognized as proper work therefore domestic workers are vulnerable to exploitation and abuse of their rights in the workplace – the private household. The specific conditions of domestic work should be identified so that specific standards can be applied to remedy these conditions.

5. Should other considerations be included in the preamble? Please specify.
RESPECT comments: Migrant receiving countries where migrants are working as domestic workers in the private household should provide the possibility to migrate as domestic workers in order to avoid vulnerability to human rights abuse i.e. violation of human and labour rights, trafficking of persons, human smuggling, etc…

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?—

**RESPECT comments:**
For the purpose of the Instrument the definition of Domestic Work should be comprehensive and inclusive; the current definition is too narrow. Country definitions of domestic work will vary. It should also include other categories such as housekeeping, childcare, caring for elderly, caring for animals, gardening, driving, fetching children, house setting, serving a table, etc.

Domestic work is remunerated work in the principal domicile/household/address where the family resides; such work may be performed by women or men hired for the purpose and primarily involves housekeeping (cooking, serving at table, cleaning, laundry, ironing, general house maintenance). This may include gardening, childcare, sick care, elderly care, securing the house (not requiring specialised license) and any other specialised work provided domestic workers are given additional payment for services not included in the agreement with the employer.
Domicile refers to the stated address in the contract where the family physically resides, excluding other family houses and those that are used for commercial purposes.

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

RESPECT comments:
YES – This definition should be applicable to those with multiple employers. All persons doing work as described in question (6.a.) should have remuneration. In-kind payment is unacceptable. Full-time, part-time, live-in or live-out local and transnational migrant domestic workers (women and men) hired with a contract. Limitations (working hours and continuous sleep) should be defined for those workers who are on a full-time and/or live-in status.

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

RESPECT comments: The term “standby” is not clear. Does it mean to be on call’? Standby might mean free time/day – which should be given to full-time and/or live-in domestic workers. And also it might mean that if the worker is required to do work outside of the agreed working hours, additional remuneration should be given in proportion to the wage she/he is receiving. Whatever it means, it should be made in writing to be effective and binding for both parties.

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

RESPECT comments: NO The term “employer” should not include intermediaries. The contract should primarily be between worker and employer, and intermediaries should be excluded. ‘Intermediary’ should be defined (Agency? Government in destination country?). Employer refers to the person who pays the wages and benefits and signs the contract with the domestic worker. Intermediaries are discouraged because this will somehow create another problem like violation of the agreed remuneration and trafficking.
(e) Should any other terms be defined by the instrument or instruments? If yes, please provide particulars.—

RESPECT comments:
YES -The instrument should make applicable and binding to: terms and conditions of work including contracts, remuneration (in cash or in-kind), hours of work, rest period, privacy, stay-in and live-out, etc.

IV. Scope

7. Should the instrument or instruments apply to all domestic workers?
The instrument must (like the preamble) be applied to all domestic workers working in the private household, women and men, live in- and live out, working in diplomatic services, and including local domestic workers as well as Transnational Migrant Domestic Workers.

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.

RESPECT comments:
NO exclusions, - all workers should be entitled to their rights in this Convention. All workers (domestic and migrants) should be entitled to their rights under this Convention.

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;

RESPECT comment: YES - We strongly recommend that there will be in each Member State own independent trade union of (migrant) domestic workers, based on self-organization.

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

c) the effective abolition of child labour; YES
d) the elimination of discrimination in respect of employment and occupation YES

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

    RESPECT comment:
    Yes, this should be 16 years of age to coincide with the obligatory requirement years at school.

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

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; Yes
   b. a safe and secure workplace; Yes
   c. social security, including maternity protection?

    RESPECT comment: Yes- There is a need to add here: the right to sick leave: payment while employers are on holidays; the need to facilitate access to social benefits for those in the specific conditions of working part-time and for multiple employers.

13. Should the Convention provide that employers should inform domestic workers of their terms and conditions of employment, in particular: YES from a-g

   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?

    RESPECT comment: In case of repatriation:
    The domestic worker should have the choice whether to repatriate or not. Both governments – country of origin and host country – should provide for adequate support for survival back in the country of origin. Encourage migrant domestic worker self-organisations to undergo orientation in country of destination to participate in reintegration programs, e.g. Migrant Savings for Alternative Investments (MSAI).
Referrals to reliable partners whose programmes have a track record in support services that provide project feasibility and sustainability advice on the efforts of returning migrants to create new livelihoods in their country of origin.

Encourage critical assessment of re-integration programmes, particularly those that offer financial incentives being offered both by country of destination and country of origin.

Re Withholding Passport: Special mention to be made that Domestic workers should never be obligated to surrender their passport (and other official documents) to their employer.

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?

**RESPECT comment: YES - The convention must provide that each Member State has to take measures to ensure that domestic workers are protected against all forms of abuse and harassment.**

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

YES

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

YES

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.

**RESPECT comment: NO-and the worker should have the right to refuse in-kind payments.**

- The Domestic worker should have to right to decide in her/his own right.
- This convention aimed that Domestic work should be recognise as a “Decent Work” therefore such work should be paid with decent salary equivalent to her/his working hours.

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?
**RESPECT comment:**
YES – it should not be a requirement but an option for the Domestic Worker to decide if she/he would take it or not.

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?

**RESPECT comment:** YES

The house (the working place) must be a secure and safe place to work. In no case should employers be allowed to keeping their possession domestic workers’ travel and/or identity documents.

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?

**RESPECT Comment:**
YES. Refer to previous sections

• International Labour Standards and Regulations should apply.
• The employer is responsible for fair terms of employment (in written contract) and decent working conditions and, where applicable, living conditions. The terms of employment provided in detail between employer and domestic worker. Additional work has to be additional negotiated and additionally paid.

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**

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?

**RESPECT Comment:** YES - There should be no tolerance for “stand by” arrangements in the convention. In terms of collective agreement we strongly recommend that there will be in each Member State an independent trade union of (migrant) domestic workers, based on self-organization.
Compilation of Draft Bills on Domestic Work

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

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.

**RESPECT Comment:**
YES – The house (the working place) must be a secure and safe place to work.

- The employer is responsible for fair terms of employment (in written contract) and decent working conditions and, where applicable, living conditions.
- There must be a provision that health and liability insurance is mandatory and this insurance is not deducted from the salary.
- All Domestic workers must be included in a health insurance system in the country where he/she works.

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.

**RESPECT Comment:**
YES – The convention must comply with the UN declaration of Human Rights. Social security and maternity and reproductive protections must be treated as two separate issues. Social security must be based on established social security legislation; maternity and reproductive protections in accordance with CEDAW and CEDAW GR 26.

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?

**RESPECT Comment:**
YES – specific and joint liability should be defined but not limited to the withholding of documents, illegal work, and contract substitution, trafficking or bonded labour.
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?

RESPECT Comment:
YES – to all workers (National Domestic Workers and Migrant Domestic Workers) legal and binding contracts, recognised by government.

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?

RESPECT Comment:
YES – Migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract.

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

RESPECT Comment:
YES – especially the passport and other official documents (birth certificate, visa etc) and the communication gadgets (mobile phone etc) of the domestic worker and other travel and/or identity documents.

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?

RESPECT Comment: YES -
The convention must provide that each Member State has to take measures to ensure that domestic workers are protected against all forms of abuse and harassment and enjoy the same protections under the law as all other workers.
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.

RESPECT Comment:
YES – it should also be accessible to the Migrant Domestic Workers and with strict observation of confidentiality; culturally- and gender-sensitive.

• Domestic Workers allowed to stay and earn while the process is in progress. (Undocumented) migrant domestic workers must have access to legal assistance and availability of translation services.
• Strengthen existing structures
• Assistance of governments and Civil Society Organization’s partners

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.

RESPECT Comment:
YES – including immigration, labour laws and confidentiality.

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?

RESPECT Comment:
YES – the Domestic Workers should be explicitly stated and appropriate repeal made of existing inconsistent Conventions and other national laws.

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

RESPECT Comment:
YES – consultation must expand to include the Domestic Worker selforganisations and trade union sections of domestic workers and ensure the institutional participation of Domestic Workers’ groups.
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?

RESPECT Comment:
YES – Domestic workers should have their own independent trade union of (migrant) domestic workers, based on self-organization as it is their right, and this should be recognised by the government.

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.

RESPECT Comment:
YES – Governments should regulate child labour, and protect young people from being abused in the context of domestic work. Children and young adults’ right to education and right to leisure and play should be protected.

B. Working and living conditions and social security

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

RESPECT Comment:
YES - The employer is responsible for fair terms of employment (in written contract) and decent working conditions and, where applicable, living conditions.

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 - YES
b) a detailed list of duties - YES (must have the detailed list of work to be covered i.e. including multiple duties
c) annual leave - YES
d) daily and weekly rest - YES (8 hours work per day, 40 hours a week)
e) sick leave and any other personal leave - YES
f) the rate of pay for overtime work - YES
g) any other cash payments to which the domestic worker is entitled – YES
h) any in-kind allowance and its cash value –

**RESPECT Comment:**
NO ("in-kind" payment for the job should not be considered)

i) details of any accommodation provided – YES
j) any authorized deductions – YES (deductions should be made clear to the domestic worker e.g., social security, tax deductions This item needs to be more specific.)
k) the period of notice required for termination –

**RESPECT Comment:**
YES -This needs to be agreed in the contract.... And this section needs to include other items: on severance pay, cost of living annual wage increase, no deductions for working uniform or cleaning materials; right to compensation and medical care when domestic work has a work related accident.

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

**RESPECT Comment:**
YES – this will be effective to provide standard guidelines.

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?

**RESPECT Comment:**
YES - In case of any work-related medical testing the domestic workers’ right to privacy must be respected and free from discrimination, including in case of pregnancy and HIV status. The domestic worker should have the right to refuse.

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?

**RESPECT Comment:**
YES - At time of each payment the domestic worker must be given an - easily understandable - written account of the payments due and the amounts paid.
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?

**RESPECT Comment:**
**YES** - Laws and regulations concerning the protection of wages, including in the case of the employer’s insolvency or death, must be also apply to domestic workers.

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;

**RESPECT Comment:**
**YES** – No discrimination should be allowed. Standards of Convention should prevail and be consistent with the national conditions and the accommodations should be provided by the employer i.e. comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated; include access to suitable sanitary facilities, shared or private; be adequately lit, and as appropriate heated and air-conditioned in keeping with prevailing conditions within the household.

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

and

(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?

**RESPECT Comment:**
**YES** – Recommendation should provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer (this must be stipulated in the work contract).
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?

RESPECT Comment:
YES – Recommendation should 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. This should also be confirmed by employer to the domestic worker.

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?

RESPECT Comment:
YES – Recommendation should provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day.

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;

RESPECT Comment:
NO (“Stand-by” is not acceptable. Extra hours should be negotiable and subject to proper payment, and should be stated in work contracts.)

(b) the maximum number of hours per week, month or year that an employer may require a domestic worker to be on ‘stand-by’; refer answer to Question 47 a
(c) the compensatory rest period if the normal period of rest is disturbed by standby; and ; refer answer to Question 47 a
(d) the extent to which the standby hours should be remunerated according to normal or overtime wage rates refer answer to Question 47 a

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?

RESPECT Comment:
YES – Recommendation should provide that domestic workers whose normal duties are performed at night should be treated not less favourably than other wage earners performing night work.
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?

**RESPECT Comment:**

**YES** – Recommendation should 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.

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?

**RESPECT Comment:**

**YES** – Recommendation should 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 and any hours of work over eight hours should be paid.

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?

**RESPECT Comment:**

**YES** – Recommendation 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.

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

**RESPECT Comment:**

**YES** – Recommendation should provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given: an extended period of notice during which they may continue living in the employer’s home and reasonable time off with pay during the notice period to enable them to seek new employment.

(a) an extended period of notice during which they may continue living in the employer’s home; - **YES**
Compilation of Draft Bills on Domestic Work

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

53. Should the Recommendation provide that Members should:

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

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?

**RESPECT Comment:**
**YES** – The Recommendation should provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment.

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?

**RESPECT Comment:**
**YES** – It should include language training and it should be included in the contract as part of the working hours.

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

**RESPECT Comment:**
Yes – the domestic worker should have the right to choose repatriation

**Recommendation:**
In case of repatriation:
- Both governments – country of origin and host country – should give adequate support to survive back in the country of origin.
- Encourage migrant domestic worker self-organisations to have orientation in country of destination to participate in reintegration programs e.g., Migrant Savings for Alternative Investment (MSAI).
- Referrals to reliable partners whose programmes have a track record in support services that provide project feasibility and sustainability advice on the efforts of returning migrants to create new livelihoods in their country of origin.
- Encourage critical assessment of re-integration programmes, particularly those that offer financial incentives being offered both by country of destination and country of origin.
- There is a need to clarify the implications, but a warning should be given as well as the justification for repatriation.

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

**RESPECT Comment:**
Yes – Independent of their legal status: access to safe emergency house should be ensured to undocumented Migrant Domestic Workers.

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

**RESPECT Comment:**
Yes – Needs to be clarified: who is doing the placement visit? MDW should have the right to a placement visit. Useful, but a placement visit will not guarantee if a household will be safe to the migrant domestic worker after the visit.

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 beforehand, establishing legal assistance funds, social services and specialized consular services and by any other additional measures? Please specify.
RESPECT Comment:
Yes - Legal assistance funds should be ensured.

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;

RESPECT Comment:
Yes - Special measures should be also adopted to facilitate the childcare of DWs including MDWs. Needs to clarify the implications, but a warning should be given as well as the justification for repatriation.

(b) promote work-life balance for families; or Yes

(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? Please elaborate.

RESPECT Comment:
Yes, to protect the rights of all Domestic Workers including migrants working in the private household as Domestic Workers.

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?

RESPECT Comment:
Yes –
There are unique features of national law (such as currently immigration laws in several countries and labour legislation which does not recognise domestic workers which will lead to practices that are liable to create difficulties in the practical application of the instrument.

We recommend that there must be compatibility between national legislation and the instrument – both in migration law and in labour law.
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?

**RESPECT Comment:**
All legislation protecting rights of domestic workers should be binding at whatever level.

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

**RESPECT Comment:**
On effective protection for ‘au pairs’: The questionnaire does not particularly include this vulnerable sector who work in the private home. It has been a practice to accept that au pairs undertake “light household work” as exchange for accommodation while undertaking cultural exchange.

However, there is increasing evidence that this framework is exploited to access a flexible and cheap source of domestic workers. The “au pair” framework should therefore be addressed in the questionnaire and be strongly regulated.

Domestic Workers in the employment of the Diplomatic corps: Domestic workers in the employment of the Diplomatic corps should be protected by existing and new labour legislation and be able to access legal redress in the case of unjust or abusive treatment.

Child labour: RESPECT also supports all instruments which will protect children and young persons from human rights violations and being exploited in domestic work.
ILO Questionnaire
Submitted by the Migrant Rights Centre Ireland. Aoife Smith

Questionnaire

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: Yes

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
   (d) a Convention comprising binding and non-binding provisions?
   Comments:

The instrument should take the form of a Convention supplemented by a Recommendation. Many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation and to inadequate attention on key aspects of their situation in international law and national legislation, including in existing ILO Conventions. Quite a number of ILO Conventions permit the exclusion of this category of workers from the scope of their provisions.

The particular vulnerability of domestic workers to abuses of basic human rights, including fundamental principles and rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances. The development of international standards is therefore meant to fill an important gap in the promotion of decent work for all.

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?
Comment: Yes

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, tenable them to enjoy their rights fully?

Comments:
Yes. Many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation. Their particular vulnerability to abuses of basic human rights, including fundamental rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances.

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

Yes. Attention should be drawn to inadequate attention on key aspects of the situation of domestic workers in international law and national legislation. In fact, in too many countries domestic workers are not covered by labour legislation. Reference should therefore be made in the preamble to the relevance of the Employment Relationship Recommendation (No 198). The preamble should recognize the significant contribution of domestic workers to the global economy and highlight that domestic workers overwhelmingly comprise women from historically disadvantaged communities and regions, who often suffer social exclusion and work informally, beyond the scope and protection of national labour laws and enforcement mechanisms.

The preamble should also mention that any standards that apply to those who perform care work for pay should be seen in relation to the Workers with Family Responsibilities Convention and Recommendation, 1981 that provides for the adoption of a national policy to promote the development of accessible and quality child care and other personal care services with a view to promoting work-life balance for families. As domestic workers predominantly comprise migrant domestic workers, the preamble should also make reference to the principles of equality of treatment and opportunity contained in Conventions 97 and 143 on migrant workers.

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: 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?

Comments: Yes
(c) should the term ‘standby’ mean periods during which a domestic worker is not free to dispose of time as the worker pleases?

Comments: Yes

(d) should the term ‘employer’ include intermediaries?

Comments:
Yes. It should be stressed that fee-charging private agencies acting as brokers between migrant domestic labour from countries of origin and employers in countries of destination should be included in the definition of employers. Companies and agencies that hire workers to perform home help activities for a user individual at home or for his/her home should also be considered to be an employer.

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

Comments: 

IV. Scope

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

Comments: Yes

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:
No. It should be recalled that one of the main reasons for the decent work deficit affecting domestic workers is related to their exclusion from many provisions in international labour standards.

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: Yes, however collective bargaining does not apply in Ireland
(b) the elimination of all forms of forced and compulsory labour;
   Comments: Yes
(c) the effective abolition of child labour; and

Comments: Yes

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

Comments: Yes

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

Comments: Yes in line with conventions 138 and 182.

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

Comments: Yes

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: Yes. These terms should be further detailed in the Recommendation

(b) a safe and secure workplace; and

Comments: Yes

(c) social security, including maternity protection?

Comments:

Yes. While maternity protection is essential, all other aspects of social security are important for domestic workers. The Recommendation should provide for specific mechanisms to take account of the specific situation of many domestic workers working part-time for multiple employers and to ensure access of these workers to social security benefits. A positive step towards this goal is found in models aimed at guaranteeing the regular payment of fair wages and some social security entitlements to part-time and casual domestic workers like the gchequeservice h as developed in France or the gTitre Service Voucher h developed in Belgium.
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: Yes

(b) the type of work to be performed;
Comments: Yes

(c) the rate of remuneration, method of calculation and pay interval;
Comments: Yes

(d) the normal hours of work;
Comments: Yes

(e) the duration of the contract;
Comments: Yes

(f) the provision of food and accommodation, if any;
Comments: Yes

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

Yes. Attention should also be paid to the terms of the termination of employment, with particular reference to live-ins domestic workers. This question is dealt with in the recommendation (question 52) but basic principles should be laid down in the Convention to avoid situation of abuses.

(h) the terms of repatriation, if applicable?
Comments: Yes. (At no cost to the worker see question 28)

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

Comments: Yes. In countries where minimum wages are set by occupation special measures should be taken to ensure that the skills and responsibilities associated with domestic work as well as conditions under which it is carried out are assessed without gender bias in light of the fact that experience shows that domestic work is often undervalued.

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

Comments: Yes

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: Payment of wages in kind should be strictly limited and regulated and the value attributed to the allowances should be fair and reasonable. In this connection, it should be recalled that Article 8, paragraph 1, of Convention 95 (much like Article 4, paragraph 1, regulating payments in kind) makes exclusive referente to national laws or regulations, collective agreements and arbitration awards as being the only valid legal bases for effecting deductions from wages. In both cases, the aim is clearly to exclude "private" arrangements which might involve unlawful or abusive deductions, or unsolicited payments in kind, to the detriment of the worker's earnings.

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: Yes. Such requirement has been shown to lead to abusive conditions and should therefore be proscribed.

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: Yes.

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?
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: Yes. Attention also should be paid to the right of live-in domestic workers to receive the visit of relatives and friends.

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: Yes

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: Yes

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:

The Convention should provide for equality of treatment between domestic workers and other wage earners in respect of occupational safety and health. The right to a safe and healthy working environment is a key right for workers hence instead of a progressive application measures should be introduced combining protection of domestic workers’ health and safety, employers responsibility to protect the health and safety of domestic workers, awareness raising and training for domestic workers and those employing them on their respective rights/duties/responsibilities in the area of occupational safety and health, a regulatory frame providing meaningful protection as well as a system of monitoring and enforcement. On the latter one option worth exploring could be the system of roving safety representatives

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:

Yes. Coverage in respect of pension, general health care including maternity protection, compensation for occupational injuries and diseases as well as unemployment benefits are particularly important for domestic workers. Progressive introduction of social security
measures can only apply for higher social security provisions and provided that at the time of ratification a mechanism is introduced in terms of time frame and ways to achieve wider coverage of domestic workers by social security schemes.

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: Yes

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: Yes

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: Yes. But the Convention should also make provisions as follows, concerning expulsion, back pay and the rights of domestic workers who have lost their employment by no fault of their own, in particular:

On condition that he/she has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit.

Accordingly, he/she shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Domestic migrant workers who find themselves in irregular situation and whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his/her case to a competent body, either him/herself or through a representative.
29. Should the Convention provide that each Member should prohibit employers from keeping in their possession domestic workers’ travel and identity documents?

Comments: Yes

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: Yes

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: Yes. This should include access to court, the provision of free legal assistance and legal remedy in case of rights abuse. Similarly the Convention should make provisions for sanctions in case of abuse by the employer. Sanctions must be effective, dissuasive, appropriate and proportional to the seriousness of the offences committed.

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: Yes

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: Yes

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

Comments: Yes

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?
Compilation of Draft Bills on Domestic Work

Comments: Yes

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:
Yes. The needs of young domestic workers include access to education and training and this should be taken into account when regulating working and living conditions for this category of domestic workers.

B. Working and living conditions and social security
37. Should the Recommendation provide that the terms of employment should be provided in writing?
Comments: Yes

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?
Comments: Yes

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: 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?
Comments:
Yes. But this provision should be included in the Convention as it relates to fundamental labour rights (discrimination).
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: 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?

Comments: 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;

Comments: Yes

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

Comments: Yes

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

Comments: 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?

Comments: Yes

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: Yes

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: 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;

Comments: Yes

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

Comments: Yes

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

Comments: Yes

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

Comments: Yes

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: 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?

Comments: Yes

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:

Yes. But while Members should establish the principle of a fixed day of the week for rest and ensure implementation, the choice and determination of this day should be left to the parties to the employment contract.

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: Yes
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 home;

Comments: Yes

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

Comments: Yes

53. Should the Recommendation provide that Members should: (a) identify, mitigate and prevent occupational hazards specific to domestic work;

Comments: Yes

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

Comments: Yes

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

Comments: Yes

(d) develop training programmes and disseminate guidelines on occupational safety and health requirements?

Comments: Yes

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:

Yes. Special efforts should also be made towards ensuring that domestic workers working parttime or on an occasional basis for multiple employers have access to social security benefits.

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 Yes

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: Yes

(b) prohibit any payment by migrant domestic workers to cover repatriation costs;

Comments: Yes

(c) identify the time frame and circumstances for the exercise of the right to repatriation?

Comments: 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

Comments: Yes

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

Comments: Yes

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: Yes. But the instrument should also make provisions for cooperation between countries of origin and countries of destination of migrant domestic workers, namely:

Cooperation between countries of origin of domestic migrant workers and their countries of destination to enhance governance of migration, in the fields of the establishment of legal avenues for labour migration, strengthening of labour inspection, legal cooperation in case of trafficking and abusive situations, issues of maintenance of social security entitlements and the strict supervision and control of activities by recruitment and employment agencies (in conformity with ILO Convention No. 181 on Private Employment Agencies), and subcontractors, as well as the elimination of abuse of sponsorship schemes.
Development of joint measures, including legal support, for immediate action to prevent abusive practices and to find solutions to them through legal remedies or other available dispute-resolution mechanisms.

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: Yes

(b) promote work-life balance for families; or

Comments: Yes

(c) promote the domestic workers’ employment in occupational categories that match their education and skills?

Comments: 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?

Please elaborate.

Comments: Yes (see comments to question 58)

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: Yes, in Ireland Work Permits for migrant domestic workers from outside the EU EEA are tied to employers, not the domestic sector. This creates difficulties for workers to assert their rights as they risk becoming undocumented.

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?
Compilation of Draft Bills on Domestic Work

Comments:

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: At present, there is a lack of statistics on domestic workers, and migrant domestic workers. Consideration should therefore be given in the instruments on the adoption of appropriate measures so that labour statistics include, to the extent possible, domestic workers and migrant domestic workers. Without adequate statistics domestic work will remain invisible and hence vulnerable.

The issue of the diplomatic sector and immunity is absent in this paper. How do domestic workers take redress and access their rights when working in the diplomatic sector?
III. SPECIAL REPORTS

1. Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East
2. Committee on Migrant Workers 12th Session: Draft General Comment no.1 on Migrant Domestic Workers, April 2010
Compilation of Draft Bills on Domestic Work

Slow Reform
Protection of Migrant Domestic Workers in Asia and the Middle East

Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA)
Slow Reform

Protection of Migrant Domestic Workers in Asia and the Middle East
Summary

I wanted to make a new life and try my luck so that my kids would have a different life than their mother…. But I was mistreated by my employers. I began work at 5 a.m. and sometimes finished around 2 or 3 a.m. I never got a day off. The door was always locked, I could never go out alone. I slept in the dining room.

My full salary was deducted [to pay initial recruitment fees] for six and a half months. If I didn’t finish [a task quickly], my employer would hit me …. she usually shouted and screamed at me. Once when I was hanging clothes, I had a black eye and my neighbor asked me what happened. My employer had beaten me. That evening the police came and arrested my employers.

— Ati K., Indonesian domestic worker, Kuala Lumpur, Malaysia, February 12, 2010

Domestic work is one of the oldest and most important occupations for millions of workers around the world…. Domestic work is essential for the economy outside the household to function and, yet, it is undervalued…. It is poorly regulated because it is not regarded as “real” work…. Domestic workers’ conditions do not improve unless there is concerted action to improve the legislative framework…. 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.

—Conclusions from a global survey of laws and practices on domestic work, International Labor Organization, 2009;

On International Workers’ Day, a holiday celebrated on May 1 in many countries around the world as an opportunity to take rest and celebrate the achievements of the labor movement, millions of domestic workers, the vast majority of them women and girls will remain hard at work. Often underpaid and overworked, domestic workers perform services essential for many households to function and to allow others to participate in the formal economy. However, hidden in private homes, their work remains invisible throughout the year, and many governments have yet to accord them full recognition or equal legal protection under labor laws.

Several countries across the Middle East and Asia host significant numbers of migrant domestic workers, ranging from 196,000 in Singapore to approximately 1.5 million in Saudi Arabia. Increased reporting and awareness about abuse against these workers has resulted in active policy debates and in some cases change. Building upon six years of research, this report surveys the patterns of labor, immigration, and criminal justice reforms in Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Lebanon, Jordan, Singapore, and Malaysia, highlighting both best practices and continuing gaps.

Millions of Asian and African women, many from socially and economically disadvantaged circumstances, migrate to work as domestic workers in the Middle East and Asia. For many, this employment is one of their few opportunities to earn money to build a house, pay for medical and school fees, and provide basic necessities for their families in their home countries. Many report decent working conditions and are able to provide financial support to their families.

However, safety and financial opportunity are a matter of luck and by no means guaranteed. In many host countries, the combination of significant gaps in labor laws, visa systems that give employers immense control over workers, and racism against an often darker-skinned “servant” class has contributed to exploitative working conditions for migrant domestic workers. In addition to demanding excessively long hours with no days off for little or no pay, employers often take the passports of migrant domestic workers and confine them in their homes. In some cases, migrant domestic workers endure slavery-like conditions including physical abuse, sexual abuse, and food deprivation, sometimes continuing for months or years. In the worst cases, migrant domestic workers lose their lives or are trapped in situations of forced labor or trafficking.

In recent years, increased mobilization by migrants’, women’s, and human rights organizations, support from trade unions, attention from international bodies like the
International Labor Organization (ILO), and high-profile media exposure have intensified pressure for government action, including labor and immigration reforms. The governments discussed in this report have begun to introduce initiatives to improve the treatment of domestic workers or to prevent and respond to abuse. But change has been slow and incremental, and many of the most critical reforms lag behind, such as including domestic workers in labor laws, diverting the employer of power over the domestic worker’s immigration status, and creating stronger oversight over recruitment processes. Reforms often encounter stiff resistance from employers fearing higher costs and fewer entitlements, labor brokers profiting off a poorly-regulated system, and government officials who view migrants as a security threat.

Improving protections for domestic work has become an issue of public debate and reform not only at national and regional levels, but also globally. Although domestic workers have rights under existing international labor conventions, these standards do not address the unique circumstances of domestic work, such as employment in private homes, or provide adequate guidance for guaranteeing them access to decent employment conditions. In recognition of the importance of protecting a sector that is a major source of employment and that has been historically neglected and undervalued, members of the ILO will begin formal discussions in June 2010 on a possible new global instrument, potentially a binding international treaty, to establish international labor standards for domestic work.

Many governments have argued that it is impossible to monitor private homes as a workplace, citing violations of employers’ privacy and the difficulty in tracking conditions such as hours of work. Yet labor legislation in Hong Kong and South Africa has set positive examples: domestic workers have the right to a minimum wage, overtime pay, a weekly day of rest, maternity leave, and paid annual leave. While the domestic workers in these countries are not immune from abuse, they have legal remedies available, unlike their counterparts elsewhere. Enjoying relative freedom to form associations and trade unions, many of these domestic workers have greater awareness of their rights, an ability to negotiate better working conditions, and avenues for reporting labor exploitation.

Of the countries surveyed in this report, Jordan has taken the most significant strides in strengthening legal protections for domestic workers. It is the only one that has amended its labor law to include domestic workers, guaranteeing protections such as monthly payment of salaries into a bank account, a weekly day of rest, paid annual and sick leave, and a ten hour workday. However, the provisions for domestic workers still fall short of providing rights equal to those guaranteed to other workers. For example, domestic workers cannot leave the
workplace without permission from their employer – even when they are off-duty – and are entitled to a minimum of only eight hours of continuous rest at night. In addition, the test of these legal reforms will be the government’s success in publicizing the new requirements and enforcing compliance.

Most other labor-receiving countries have relied on introducing standard employment contracts to regulate terms and conditions of employment. Such contracts represent an improvement over having no formalized work agreement or minimum standards, but have much weaker protections than most labor laws. For example, Singapore’s standard contract does not require a weekly day off, instead giving employers and workers the option of negotiating one to four days off per month or to receive payment instead of taking the day off. Given workers’ fear of losing their jobs and uneven bargaining power, most are not in a position to demand time off. The United Arab Emirates’ standard contract fails to provide for any rest days at all. Neither the UAE nor Singapore’s contract establishes rights to overtime pay or limits to hours of work.

Immigration systems that tie a migrant domestic worker’s immigration status to her employer contribute significantly to the unequal power relationship between employers and workers and can enable abuse. Employers can have domestic workers repatriated at will or withhold consent from a worker who wishes to transfer to another employer. Reform of such systems, however, is particularly sensitive in countries of employment with large migrant populations given host governments’ fears that relaxing immigration controls could increase irregular migration. Despite a growing consensus that the current immigration “sponsorship” system in the Middle East contributes to domestic servitude and slavery-like conditions, change in this area has come at a glacial pace. Employers’ stereotypes of foreign women as promiscuous or naïve continue to be used to justify paternalistic and restrictive policies and practice that give the employers control over domestic workers’ lives.

In addition, governments have not dedicated significant resources to create monitoring mechanisms to detect cases of deception, exploitation, and abuse of domestic workers, or to take steps to make labor and criminal justice systems more accessible and responsive. Improving treatment of domestic workers requires effective complaint and enforcement measures, such as wide dissemination of information about rights and responsibilities for employers and employees, random inspections, and strong penalties for violations. Singapore stands out as a country that has vigorously and successfully prosecuted employers and recruiters who physically abused domestic workers. Most other countries discussed here have mixed records. Some employers receive tough punishments but numerous obstacles stand in the way of such victories.
For example, systems for filing complaints are often out of reach of domestic workers trapped in private homes and unable to speak the local language. For cases that do reach the attention of the authorities, legal proceedings often stretch over years, while victims typically wait in overcrowded shelters, unable to work. The lengthy waits and uncertain outcomes cause many domestic workers to withdraw their complaints or negotiate financial settlements so they can return home quickly. In other cases, such as in Saudi Arabia, domestic workers must often defend themselves from counter-allegations of theft, witchcraft, and adultery.

Some of the most encouraging changes in recent years have been the emergence of migrants’ rights movements. Organizations promoting domestic workers’ rights are growing in size, diversity, and sophistication. Many informal networks have formalized their operations, gained funding, and established services such as shelters for workers in crisis, helpdesks at airports and shopping malls, and training courses to help domestic workers use their time abroad to gain skills for upward economic mobility. In some cases, these organizations have been able to institute working relationships with relevant government bodies such as officials who oversee labor disputes or deportation proceedings.

This report is based on ongoing research and advocacy engagement on migrant domestic workers by Human Rights Watch and draws upon our work in Bahrain, Indonesia, Jordan, Kuwait, Lebanon, Malaysia, the Philippines, Saudi Arabia, Singapore, Sri Lanka, and the United Arab Emirates.

Key Recommendations to Governments of Labor-Receiving Countries

To Labor Ministries and Parliaments

- Extend labor protections in national law to domestic workers, including provisions related to a minimum wage, periods of daily and weekly rest, overtime pay, social security, workers’ compensation, health care, and maternity leave. Introduce additional protections to address the specific nature of domestic work, such as intermittent working hours, living accommodations, and provision of food.

- Strengthen regulation and monitoring of employment agencies and recruitment fees, and impose significant penalties for violations of laws and regulations on domestic workers’ rights.
Compilation of Draft Bills on Domestic Work

Ensure that domestic workers have the right to freedom of association, the right to form an association or trade union, and to bargain collectively with employers and brokers.

To Ministries of Interior

Reform the visa sponsorship system so that workers’ visas are no longer tied to individual employers serving as immigration sponsors. Ensure that workers can change employers without losing legal status and without having to obtain their first employer’s permission, and that they are able to leave the country without being required to first secure the consent of their employer.

Facilitate the approval of valid immigration status for workers awaiting the outcome of legal proceedings and allow them to work. To Foreign Ministries

Promote bilateral and multilateral cooperation with labor-sending countries to ensure employment contracts applied in labor-receiving countries are the same ones signed by workers prior to migration, to monitor transnational recruitment (including capping recruitment fees), to resolve outstanding labor disputes and criminal complaints, and to arrange for timely repatriation.

Support a binding convention on domestic work with an accompanying recommendation during the International Labor Conference in June 2010. To Ministries of Justice and Social Affairs

Improve access to the criminal justice system, including through confidential complaint mechanisms in the languages spoken by migrant domestic workers and provision of legal assistance.

Expand victim services for survivors of abuse, such as shelters, hotlines, access to health care, counseling, and support to civil society and faith-based groups offering these services.

Improve identification of cases of trafficking into forced domestic servitude and ensure that victims have access to specific protections and services under national counter-trafficking laws and programs.

Take steps to prevent, investigate, and prosecute criminal violence against domestic workers including physical abuse, sexual abuse, forced labor, and trafficking. Establish mechanisms to expedite these processes in cases involving migrants.
Background

Societies in this region … are supported thoroughly and function smoothly largely through the hard work and resourcefulness of migrants…. Unfortunately, all too often many migrants to this and other regions experience discrimination, abuse, exploitation and other human rights violations.

The situation of migrant domestic workers is of particular concern because their isolation in private homes makes them even more vulnerable to physical, psychological and sexual violence…. Some are held in prolonged detention after they escape abusive employers, and may be unable to obtain access to judicial recourse and effective remedies for their plight.

— Navi Pillay, United Nations high commissioner for human rights, Jeddah, Saudi Arabia, April 19, 2010

Migration for Domestic Work in Asia and the Middle East

The number of women migrants has increased significantly over the last three decades. They now comprise approximately half of the estimated 214 million international migrants worldwide.2 The feminization of international labor migration is particularly pronounced in those migrating from the Philippines, Indonesia, and Sri Lanka, where for several years, national-level estimates indicate that women comprise between 50 and 76 percent of documented international migrants.3 The majority of these women migrate for domestic work in Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Jordan, Lebanon, Singapore, Malaysia, and Hong Kong.

Both labor-sending countries and labor-receiving countries rely heavily on migrant domestic workers. Labor-receiving countries have addressed labor shortages and inadequate child care alternatives by creating special immigration schemes to bring in live-in migrant domestic workers to meet households’ need for child care, house cleaning services, and elder care. For labor-sending countries, remittances constitute

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an important source of income for poor households. In 2008, international migrants sent home an estimated US$444 billion, of which US$338 billion went to developing countries. Labor-sending countries often actively promote out-migration to relieve underemployment and to generate foreign exchange. For example, although data disaggregating the contribution of domestic workers is not available, Filipino migrants sent home US$19 billion in 2008, 11.4 percent of the country’s gross domestic product.

Accurate estimates are difficult, especially as some migration takes place outside of formal channels and is not picked up by official statistics. However, according to estimates Human Rights Watch has collected from labor-sending and labor-receiving governments and figures released by governments to the media, there are approximately 1.5 million migrant domestic workers in Saudi Arabia; 660,000 in Kuwait; 200,000 in Lebanon; 300,000 in Malaysia; and 196,000 in Singapore. In some countries, including Kuwait, Saudi Arabia, Malaysia, and Singapore, migrant domestic workers may comprise close to one quarter of the overall migrant population.

Human Rights Abuses against Migrant Domestic Workers

Many migrant domestic workers enjoy decent work conditions and positive migration experiences. However, the failure to properly regulate paid domestic work facilitates egregious abuse and exploitation, and means domestic workers who encounter such abuse have few or no means for seeking redress.

Migrant domestic workers routinely encounter exploitative working conditions, including excessively long working hours, lack of rest days or rest periods, poor living accommodations, and restrictions on freedom of movement and association. They typically earn wages that are a fraction of the prevailing minimum wage, and nonpayment of salaries, for months or years at a time, is the most frequent complaint reported to authorities and nongovernmental organizations. There is little monitoring for abuse—exclusion from national labor protections often means there are no inspections of migrant domestic workers’ workplaces, and many governments prohibit labor inspectors from entering private homes.


6 Committee of Supply (Speech 4) by Hawazi Daipi, senior parliamentary secretary for manpower and health, Singapore, March 12, 2010.
Except for Jordan, the labor codes in the countries surveyed in this report specifically exclude domestic workers from key labor protections afforded to most other categories of workers. Such rights include guarantees of overtime pay, weekly rest days, limits to working hours, paid leave, fair termination of contracts, benefits, and workers’ compensation. This exclusion denies domestic workers equal protection under the law and has a discriminatory impact on women and girls, who constitute the vast majority of this category of workers.

The recruitment and placement of migrant domestic workers remains poorly regulated and monitored. In their home countries, recruitment brokers may give migrant domestic workers inadequate or misleading information about their employment abroad, or charge them excessive recruitment fees, especially to those migrating to Singapore or Malaysia. In order to pay these fees, migrants typically have few options but to borrow money at exorbitant interest rates from local moneylenders or to receive a “loan” from the employment agency which they must repay by turning over the first six to ten months of their salary once employed. This debt burden makes it difficult for migrant women to report workplace abuse for fear of losing their jobs and the resulting inability to pay off their debts. In labor-receiving countries, recruitment agencies may engage in abusive practices such as substituting the employment contracts signed by workers in their home countries with different contracts that have poorer terms, coercing domestic workers to stay in exploitative employment situations, charging excessive transfer fees, and in some cases, physical or sexual violence.

Immigration policies affect the extent to which migrant domestic workers are at risk of abuse. Migrant domestic workers typically arrive in Singapore, Malaysia, Saudi Arabia, Kuwait, Jordan, Lebanon, and other countries on two-year employment visas in which their immigration status is linked to their employer. As the immigration sponsor, the employer can typically have the domestic worker repatriated at will, provide or withhold consent on whether she can change jobs, and in Saudi Arabia and Kuwait, obstruct her ability to leave the country. In practice, termination of employment often means the worker is obliged to leave the country immediately with no opportunity to seek redress for abuses or settlement of unpaid wages.

This system gives employers immense control over domestic workers, and can leave domestic workers forced to stay in jobs with abusive conditions and unable to demand fair treatment. Migrant domestic workers who leave their employment without their employer’s consent lose their legal status, making them subject to immigration penalties and deportation. The widespread practice of employers withholding domestic workers’ passports contributes to their precarious situation. Domestic workers, fearing deportation and anxious
to repay recruitment debts and provide money for expenses at home may endure exploitative conditions in order to keep their employment and residency in the host country. Domestic workers’ isolation in private homes also places them at heightened risk of illtreatment, including physical, sexual, and psychological abuse, food deprivation, and forced confinement. In the worst cases, domestic workers may become trapped in situations of forced labor, trafficking, or slavery, or they die from murder, botched escape attempts, or suicide.

Restrictions on freedom of movement, language barriers, lack of information, and their vulnerable immigration status impose formidable barriers to migrant domestic workers’ access to the police or other government authorities. In some cases, police may dismiss complaints and return domestic workers complaining of abuse to their employers. Employers may deter domestic workers from approaching the police by filing or threatening spurious counter-accusations of theft or running away. Human Rights Watch has documented patterns in which the combination of poorly conducted investigations, lengthy trials, and weak enforcement of judgments combine to pressure victims of violence into accepting small financial settlements, a return ticket home, or nothing at all.

Some labor-sending countries with large numbers of migrant domestic workers, particularly Indonesia, the Philippines, and Sri Lanka, operate emergency shelters in their missions abroad for migrant domestic workers with complaints of unpaid wages, poor working conditions, or physical abuse. Countries with fewer resources or lower numbers of migrants, such as Nepal and Ethiopia, may be unable to establish such shelters as needed. The Philippines typically meets the highest standards in terms of shelter operations, whereas others often have extremely overcrowded conditions where a small staff without enough relevant training are totally overwhelmed with the high numbers of complaints each day. Domestic workers in these shelters usually have little information about their case or their options, and get stuck in these shelters for months. Regardless of resources, officials face many obstacles to resolving these cases given the labor and immigration frameworks of host countries.

Shelters run by the host government, especially in the context of the anti-migrant security-driven framework of immigration policies, are more akin to detention centers than shelters. They have strict entry requirements, domestic workers cannot leave voluntarily, and it typically serves as a holding space before repatriation.
Estimating the prevalence of abuse is difficult given the lack of reporting mechanisms, the private nature of work, the lack of legal protections, and restrictions on domestic workers’ freedom of movement. There are many indications, however, that human rights violations are widespread. For example, Indonesian authorities reported more than two thousand complaints from domestic workers returning from the Middle East in the last three months of 2009. In Saudi Arabia, the Indonesian, Sri Lankan, and Philippine embassies handle thousands of complaints of unpaid wages, physical or sexual abuse, or poor working conditions each year. In many other cases, abuses are never reported at all.

**Labor Reforms**

_We are fully aware in the UAE of the need to improve the situation of domestic workers and have been working systematically towards that goal._

— Dr. Anwar Gargash, minister of state for federal national council affairs, United Arab Emirates, October 27, 2009

Several labor-receiving countries in Asia and the Middle East have begun to acknowledge the precarious situation of domestic workers and to enact reforms. These reforms typically take the form of a standard employment contract that outlines the monthly wage and arrangements over repatriation costs, but that falls short of providing the comprehensive protections provided under national labor laws, such as limits to hours of work, overtime pay, benefits including maternity leave, and social security. While such standard contracts are usually legally binding, measures to publicize the requirements or enforce the provisions often remain limited. Jordan amended its labor laws in 2008 to include domestic workers, and the United Arab Emirates, Saudi Arabia, Kuwait, Bahrain, Lebanon, and Malaysia are considering either reforms to existing labor codes or drafting new legislation. The dynamic policy environment provides optimism about

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10 Human Rights Watch interview with Majeed Alawi, minister of labor, Kingdom of Bahrain, Manama, February 3, 2010; Human Rights Watch interview with Alex Zalami, advisor, UAE ministry of labor, Manila, October 30, 2008; Government of the United Arab Emirates, Responses to the list of issues and questions with regard to the consideration of the initial periodic report, CEDAW/C/ARE/Q/1/Add.1, October 19, 2009, p. 27; International Labor Office, “Did you know? Frequently asked questions and answers about live-in domestic workers in Lebanon,” ILO Beirut factsheet, August 31, 2009,
provides optimism about increased protections for domestic workers, but despite active debates, these proposed legislative changes have moved slowly, often stalling for years. The points of greatest contention typically involve establishing weekly rest days in which domestic workers have the freedom to leave the workplace, a limit on working hours, and classification of private homes as workplaces subject to government inspection and intervention.

Standard Employment Contracts

Several governments, for example, the United Arab Emirates in 2007 and Lebanon in 2009, have introduced mandatory standard employment contracts. In other countries, such as Singapore and Saudi Arabia, these contracts may be formulated and implemented by private recruitment agencies. These standard contracts represent a significant improvement over informal work arrangements with no written terms of employment, often establishing for the first time a set of minimum standards for domestic work.

However, standard contracts vary in their level of protections, and typically provide much weaker protection regarding hours of work, rest days, overtime pay, workers’ compensation, safety and health requirements, annual and sick leave, or other benefits than would be found in the country’s labor law. For example, Singapore’s contract only requires at least one day off per month instead of one per week; furthermore, it recommends but does not require eight hours of continuous rest. Lebanon’s unified contract, adopted in 2009, provides for a weekly rest day, but gives employers the ability to negotiate the conditions of this arrangement, in deference to many employers’ preference to prevent domestic workers from leaving the house on their days off.

Provisions regarding adequate food, accommodation, and overall treatment tend to be vague and do not establish clear minimum standards. For example, many contracts simply call for provision of adequate food, but do not clarify that no deductions should be made from the salary for meals, or specify the quantity, quality, and frequency of these meals—a significant omission given the high numbers of complaints about food deprivation. It is harder to monitor and enforce the provisions regarding terms and conditions of work in standard employment contracts in the absence of accompanying reforms in labor laws. Unlike other labor sectors, oversight of domestic workers falls under the interior or home ministry instead of the labor ministry in Malaysia, Saudi Arabia

10 Human Rights Watch telephone interview with Saleh Ashour, member, national assembly of Kuwait, Geneva, Switzerland, April 22, 2010.
Kuwait, and the UAE. Interior ministries oversee immigration and policing and officials tend to emphasize oversight of migrant domestic workers as an immigration enforcement problem rather than a labor issue. These officials do not have the level of expertise about labor standards and relations housed in labor ministries, and domestic workers do not have equal access to labor-dispute resolution mechanisms as categories of workers overseen by labor ministries.

There is often lack of clarity whether contractual labor disputes can be resolved through procedures at labor courts or other dispute-resolution mechanisms. Instead, such disputes often continue to be mediated by embassy officials or recruitment agents in situations where workers have far less bargaining power than their employers and end up with disadvantageous outcomes. Legislative reforms that place the protection of domestic workers under the purview of the labor ministry and subject to the labor protections provided for other workers are key to enforcing their rights.

Bilateral Agreements: the Example of Indonesia and Malaysia

Another strategy in lieu of comprehensive labor reform has been to forge bilateral labor agreements between countries. Such agreements have been negotiated between Malaysia and Indonesia; Sri Lanka and the UAE; Sri Lanka and Indonesia with Jordan; and the Philippines with several host countries. These bilateral labor agreements normally represent an improvement on the status quo but, like standard contracts, offer fewer and weaker protections than those in national labor laws, and have unclear enforcement mechanisms and penalties.

Indonesia and Malaysia are revising a 2006 Memorandum of Understanding regulating migration of domestic workers. The 2006 agreement allowed employers to keep workers’ passports, lacked clear standards on a minimum wage or rest periods—including a weekly day off—and did not establish clear penalties and enforcement mechanisms. Large numbers of complaints from domestic workers of nonpayment of wages and a series of high-profile abuse cases in 2009 led Indonesia to suspend migration of domestic workers to Malaysia until new protections were provided in a revised agreement. This suspension was still in effect as of late April 2010.

11 Lack of information, time, money, and representation impose barriers to redress even in countries such as Bahrain where domestic workers fall under the purview of the labor ministry and are able to pursue complaints through regular administrative and judicial channels.
After several bilateral meetings and missed deadlines, Indonesia and Malaysia have agreed on revisions that will permit domestic workers in Malaysia to keep their passports and have a weekly day of rest. However, the two governments still disagree on Indonesia’s demand for a minimum monthly wage, and employers will have the option of paying a worker to forego the day of rest. This provision can be abused easily since a worker who prefers a day off in lieu of extra payment may not have the bargaining power to demand it, especially if she fears termination of her employment. The negotiations to date suggest that rights such as freedom to form associations and reasonable limitations on hours of work will not be covered in the agreement.

Legislative Reform

Jordan stands out as a country that, after introducing a standard contract in 2003, amended its labor laws to include domestic workers in 2008 and issued the associated implementing regulations in 2009.12 This reform is an important model in the region and includes provisions such as requiring employers to pay monthly salaries directly into workers’ bank accounts, buy the worker health insurance, and limit work to ten hours per day. While these amendments are an advancement, the true test of this reform will be the government’s commitment to publicizing and enforcing the new standards.

Furthermore, the implementing regulations also contain provisions that restrict domestic workers’ freedoms. These include requiring a domestic worker to obtain her employer’s consent to leave the workplace, including during time off, and holding her liable for damages caused by “mistakes” in housework. The regulations also lack a specific prohibition for employers to engage in the common practice of holding their domestic worker’s passport.

Other governments have announced intentions or have already begun to draft separate legislation on domestic workers, such as the UAE, Kuwait, Bahrain, and Lebanon.13 Proposed provisions in current drafts represent significant improvements in legal protections for domestic workers and have begun to address the unique circumstances of domestic work such as employers’ responsibilities to provide decent accommodation and adequate food. A risk of developing separate legislation is that it will fall short of equal and comprehensive protections as provided to workers under the main labor laws. Furthermore, the development of these bills has not involved broad


13 See footnote ten.
development of these bills has not involved broad consultation with different stakeholders or an opportunity for public debate and comment. These processes have stagnated for years, often receiving lower priority than labor reforms to other sectors with higher visibility, such as construction, and have no specific timelines for action.

Malaysia and Saudi Arabia are considering amendments to labor laws that would improve protections for domestic workers but fall short of providing equal protections as those accorded other workers. For example, Malaysia in 2009 proposed amending the Employment Act of 1955 to extend a weekly rest day to domestic workers, but did not announce plans to remove the exclusions of domestic workers from other protections, such as limits to working hours, public holidays, annual and sick leave, maternity protection, and fair termination of contracts.14 Saudi Arabia’s Shura Council, after years of discussion, passed an annex to the labor code on domestic workers in 2009 that greatly improved existing protections but stopped short of regulating fair working hours. According to news reports, a clause requiring employers to provide domestic workers rest between 10 p.m. and 5 a.m. was dropped because it “contradicted” the needs and traditions of Saudi families.15

Of the countries surveyed here, only Singapore has made no movement to amend their labor laws to include domestic workers. Government officials often cite reliance on market mechanisms alone to set domestic workers’ wages and recruitment fees, even though this leaves domestic workers at high risk of exploitation because of their weaker bargaining position relative to employers and recruitment agents. Singapore’s ministry of manpower also argues, “it is not practical to regulate specific aspects of domestic work i.e. hours of work, work on a rest day, and on public holidays. It would also be difficult to enforce the terms of the Employment Act for domestic workers as: [they] work in a home environment; and [the] habits of households vary.”16 While minimum labor standards for domestic work may require additional enforcement strategies than those used in factory or office settings, the success of such regulations in Hong Kong, South Africa, Brazil, and other countries demonstrates its feasibility.

14 1955 Employment Act of Malaysia, part XII.
Compilation of Draft Bills on Domestic Work

Immigration Policies

“This is the end of the sponsorship system, which does not differ much from slavery.”
—Majeed Al Allawi, minister of labor of Bahrain, May 4, 2009, upon announcing reforms to allow migrant workers to change jobs without their employers’ consent. The change did not apply to migrant domestic workers.17

Incremental Reforms in other Labor Sectors Employing Migrants

Governments have made fewer reforms to immigration policies than to labor policies, and these have mostly applied to migrant workers in sectors such as construction and manufacturing and excluded migrant domestic workers. This is partly because oversight of domestic work falls to home ministries instead of labor ministries in some countries and partly because governments still hesitate to enact reforms that involve regulating private individuals and homes.

In the Middle East, governments have relaxed visa restrictions in specific circumstances. Several governments now allow migrant workers in sectors other than domestic work to appeal for exemptions to the requirement for sponsor consent before transferring jobs if they have validated complaints of unpaid wages or mistreatment. For example, the UAE introduced reforms that allowed workers to seek government aid in changing employers if they had not been paid for two months.18 In August 2009, Kuwait's labor ministry issued a decree permitting workers to change employers without sponsor consent at the end of their contract term, providing they had completed three continuous years of service with the same employer. However, this decree excluded domestic workers.

In 2009, Bahrain adopted the strongest sponsorship reform in the region by permitting migrant workers to change employment without their employer’s consent and in the absence of allegations of nonpayment of wages or abuse. Majeed Al Alawi, the minister of labor in Bahrain, likened the kafala (sponsorship) system to slavery when justifying the reform.19 The 2009 legal reform allows migrant workers to change


change employment after meeting certain notice requirements and provides a 30-day grace period to remain legally in the country while they seek new employment. These positive changes do not apply to domestic workers; moreover some human rights advocates in Bahrain are concerned that the law’s requirements are so burdensome that they undermine the reform’s intent. Further investigation is needed to determine the reform’s full impact.

Governments increasingly acknowledge the risks inherent in a system where employers double as immigration sponsors, and are exploring alternatives in which either the government or recruitment agencies serve as the sponsor.

However, none have implemented significant reform despite years of proposals and debates. For example, Saudi Arabia is considering a proposal to transfer sponsorship of domestic workers away from employers to three or four large recruitment agencies. The government argues that this move would dissolve all smaller recruitment agencies, and leave it in a better position to monitor the large recruitment agencies that remained. Despite numerous announcements that reform was imminent, this idea has languished for almost ten years. Kuwait is considering a proposal to shift all sponsorship to a single, private-public recruitment agency that would be monitored by a set of shareholders.

**Resistance to Ending Employer-Based Visas**

Government officials, employers, and recruitment agents often make arguments against reform that reveal deep racial and gender stereotypes about migrant women and men, and the insecurities of wealthy elites that may feel physically and culturally threatened by large migrant populations but are also deeply dependent on them. These dynamics are particularly pronounced in the Gulf, for example in Kuwait, where there are two foreigners for every Kuwaiti, and in the UAE, where more than 90 percent of the private labor force is foreign.

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21 Human Rights Watch interview with Marietta Dias, head of action committee, Migrant Workers Protection Society, Manama, January 28, 2010.

These fears contribute to government officials in the Gulf often viewing “migration management” as much a national security issue as an economic one. Government officials in Asian labor-receiving countries such as Singapore and Malaysia, where migrants can more easily blend with the local population, cite fears of being flooded by undocumented migration. These two countries also generate significant revenues by imposing levies on employers who hire migrant workers.23 Despite a growing recognition of the abuses fostered by the employer-based sponsorship system, governments have been reluctant to institute reforms that would increase migrant domestic workers’ freedom of movement and freedom to protest working conditions, or that would have the consequence of reducing the funds generated from levies.

A second set of tensions around immigration reform center on sexual stereotypes and fears. Employers commonly describe their fear of migrant men or express stereotypes of migrant women as either sexually loose or as innocent and naïve in order to justify their practices of confining migrant domestic workers to the home and prohibiting them from taking a day off. Government officials often echo these attitudes. Employers cite fears of domestic workers using unsupervised free time outside of the workplace to a) engage in sex work, b) find a boyfriend and get pregnant, c) bring home foreign men while the employers are at work and then rob them, or d) get “influenced” by foreign men to run away, sometimes for better employment and sometimes to be sold into forced prostitution.24 These greatly exaggerated fears also conveniently make the domestic worker available for around-the-clock household service.

Recruitment and immigration policies reinforce these attitudes and behaviors since employers may incur financial penalties or losses if the domestic worker over whom they have sponsorship runs away or becomes pregnant, since that is grounds for her losing her permission to be in the country and makes her subject to deportation. For example, in Singapore, employers forfeit a S$5,000 [US$3,500] security bond to the government if their domestic worker runs away and is not later located.25 Some employers develop a sense of entitlement and ownership created by payment of high recruitment fees. The governments in Malaysia and Singapore tolerate practices in which employers pay

23 For example, Singaporean employers must pay S$170-265 (US$118-184) monthly to a central government fund in order to employ a migrant domestic worker. Given 196,000 migrant domestic workers, this translates to roughly $33-52 million [US$23-36 million] per month in revenue. Portions of these government revenues may come from workers’ salaries given the practice of some employers in Malaysia and Singapore illegally passing on the cost of the levy to domestic workers.

24 For a fuller discussion, see Human Rights Watch, Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia, (New York, Human Rights Watch: 2004); Human Rights Watch, Ending Abuses against Migrant Domestic Workers in Singapore (New York, Human Rights Watch: 2005); and Human Rights Watch, As I Am Not Human.

25 The government gives employers a grace period to attempt to find the worker before forfeiting the bond. If the employer locates and repatriates the worker, the employer may submit a request to have the bond money reimbursed.
high fees to recruitment agents but then recoup the costs by deducting them from the salaries of domestic workers for the first four to ten months of their employment. This practice contributes to employers’ reluctance to allow domestic workers to terminate their jobs early or to risk having them run away. Employers in the Gulf typically pay the entire recruitment fee and are loath to lose their initial financial investment should a domestic worker leave their employment after the three-month “free replacement” period offered by many employment agencies.

Criminal Justice System

Malaysia asks why Indonesia is upset. We say it’s because [abuse] cases happen, and there is no response from the government. We understand individual cases [will happen], but if the police take action, there would be less of a negative reaction from Indonesia. In some recent cases, the police have taken the necessary steps.

—Tatang Razak, minister and deputy chief of mission, embassy of Indonesia, Kuala Lumpur, February 10, 2010

Governments have a mixed record in responding to criminal abuses against migrant domestic workers. Some governments, such as Singapore, have taken vigorous action to monitor for such abuse, prosecute cases, and to publicize the outcomes as a deterrent. In Saudi Arabia, high-profile cases have demonstrated the barriers to abused domestic workers receiving redress even when there is extensive evidence. Labor-sending governments’ outrage over abuse and the poor response by host governments has periodically led sending countries to impose temporary bans on new migration of domestic workers until greater protections are in place.

Singapore’s measures include increasing the criminal penalties for abuse of a domestic worker by 150 percent, mandating orientation programs for new employers, and ensuring that prosecutions of abusive employers and recruiters receive public attention. For example, in March 2009, a district court sentenced Tong Chew Wei to 20 months imprisonment for hitting and scalding domestic workers and another sentenced...

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26 In some cases, employers pay a lump sum to agencies and then recoup the fees from domestic workers through deducting their monthly salaries. In other cases, the employer takes a “loan” from the agency and turns over the worker’s monthly wage to the agency as payment until the loan is repaid.

27 For example, in 2009, Indonesia suspended new migration of domestic workers to Malaysia and Kuwait. The Philippines has suspended migration to Lebanon since 2006, temporarily suspended migration to Jordan in 2008.
Loke Phooi Ling and her mother Teng Chen Lian to eight months and four weeks imprisonment respectively for beating a domestic worker and banging her head against a wall.28

The Singaporean police reported there were 53 substantiated cases of domestic worker abuse in 2008 in comparison to 157 cases in 1997.29 The government introduced the steeper penalties for criminal abuses in 1998 and suggests these have contributed to lower levels of abuse. Furthermore, while countries such as Lebanon and Kuwait continue to confront high numbers of domestic workers dying from suicides or in attempts to escape their workplace, the number of such deaths in Singapore has decreased even as the number of migrant domestic workers has grown. In the first 11 months of 2009, nine domestic workers died due to suicide or workplace accidents in comparison to 40 in 2004.30

The governments included in this report have claimed they deal rigorously with domestic worker abuse cases. Yet recent cases show multiple barriers to justice, including deportation of domestic workers before they are able to present their complaints to relevant authorities, inadequate investigations by the police, and burdensome and expensive procedures to enable workers to obtain special immigration status to stay in the country during legal proceedings. In Kuwait, there have been several incidents in which police and immigration officers admitted to raping migrant domestic workers in their custody. One officer, tasked with transporting women from investigative detention to deportation facilities, confessed that he had engaged in this practice for a period of fifteen years.31 Although the Kuwaiti government has responded by prosecuting these officers, these cases suggest the incidence of other such abuses, and many victims of violence may fear to approach the police.

Even in successful prosecutions in host countries, many barriers impose an undue burden on domestic workers, including requirements to remain in the country during lengthy legal proceedings. In the prominent abuse case of Nirmala Bonat, a Malaysian court sentenced her employer, Yim Pek Ha, to 18 years imprisonment (later reduced to 12 years in December 2009) for severe beatings and repeatedly burning Bonat


29 Theresa Tan, “Manpower Ministry says foreign maids faring better today than 5 years ago,” The Straits Times, December 12, 2009.

30 Ibid.

with an iron across her breasts and back. Bonat, who had to defend herself from charges that her wounds were self-inflicted, was confined in the Indonesian embassy shelter during much of the time that the case was before the courts from 2004 to 2009. The Indonesian government, which was awaiting conclusion of the criminal case, will likely file a civil suit seeking damages on behalf of Bonat later in 2010.

The investigation, prosecution, and appeals process often stretches over years. In the meantime, in most host countries, domestic workers involved in legal proceedings face immigration restrictions on working, moving freely outside of a shelter, or returning home.

These constraints, the uncertainty of a successful conviction and of any judgments being enforced, and the desire of abused workers, often deeply traumatized, to return home result in many abused workers withdrawing their complaints rather than seeking redress. Furthermore, police and immigration authorities often fail to identify domestic workers who are victims of human trafficking and who may be entitled to special legal status and protection as such.

Domestic workers also have little protection against spurious counter-allegations, most commonly employers accusing a “runaway” domestic worker of theft. In the Gulf, domestic workers raising complaints of sexual assault open themselves to allegations of adultery or fornication. For example, Human Rights Watch interviewed Sri Lankan domestic workers sentenced to prison and whipping in Saudi Arabia after their employers had raped and impregnated them. In 2007, an Indonesian domestic worker in al-Qasim province was sentenced to 10 years in prison and 2,000 lashes for witchcraft, a reduction from an original sentence of death. The Indonesian embassy did not learn about the arrest, detention, or trial of the worker until one month after the sentencing. Access to translation and legal aid remains spotty and typically depends on the presence, resources, and leadership of laborsending countries’ diplomatic missions.

Domestic workers face formidable challenges to organizing, including restrictions on freedom of movement, fear of angering employers and risking deportation, and a lack of free time outside of working hours, and also the problems of working in countries that tightly control and restrict nearly all types of civil society organizing. Civil society groups, faith based organizations, and trade unions have grown more active in protecting domestic workers’ rights, especially through raising public awareness and providing victim services. In host countries, such organizations are growing in size, diversity, and sophistication. Many informal networks have formed themselves into nongovernmental organizations (NGOs), raised funding, and established services such as shelters for workers in crisis, helpdesks at airports and shopping malls, and training courses to help domestic workers use their time abroad to gain marketable skills. In some cases, these organizations have been able to institute working relationships with relevant government bodies such as agencies that handle labor disputes or deportation proceedings.

In Malaysia, Singapore, and Lebanon, faith-based organizations have played an early and particularly critical role in identifying abuses against migrants, providing emergency services, and organizing social and education outlets such as picnics or training programs. In these countries, activists, academics, and students have experimented with creative strategies to challenge mistreatment of domestic workers, for example through essay competitions among children about domestic workers, exhibits with photos taken by migrants about their lives, candlelight vigils, and sports and cultural events.

These organizations have also developed SMS hotlines which help overcome domestic workers’ inability to seek help if locked in the workplace, hotlines staffed by volunteers in languages spoken by migrants, relationships with pro bono lawyers who can aid in criminal cases as well as accompanying them in negotiations with employers for unpaid salaries or payment of a return ticket home, and provision of emergency shelter. These organizations struggle with inadequate resources, especially to handle the high volume of complaints, to have enough interpreters, and to deal with issues like trauma counseling.

While most trade unions in the countries surveyed here do not have a history of including domestic workers in their membership, in recent years a few have begun to integrate advocacy for migrant domestic workers’ rights into their broader campaigns. Most notably, the Malaysian Trades Union Congress coordinates closely with migrants’ NGOs in Malaysia and has engaged actively with the media and the government to raise concerns about poor labor protections and exploitative working conditions for domestic workers. However, trade unions in Lebanon and Jordan have yet to coordinate closely with domestic workers’ groups, and Saudi Arabia bans trade unions. In Kuwait, as in other labor-receiving countries, many of the members of the Kuwait Trade Union Federation are employers of domestic workers themselves, resulting in conflicts of interest that may partially explain their lack of work on this issue.

Governments in Malaysia, Saudi Arabia, and the United Arab Emirates have histories of discouraging public debate, harassing activists, and making it difficult for civil society to register or obtain funding. In some countries, domestic workers’ employment visas prohibit them from forming or joining workers’ associations.

Positive models from other countries underline the importance and influence of domestic workers’ associations and unions. Hong Kong’s vibrant domestic work movement, comprised of migrants’ NGOs, domestic workers’ trade unions, and allied with the broader labor movement have been successful in fighting proposals such as a cut to the minimum wage, improving public awareness about labor abuses faced by domestic workers, and strengthening accountability for such abuses when they occur.
Conclusion

Governments have been engaging more in rhetoric about protection of migrant domestic workers than in reform. While there has been progress in several areas, for example, the formalization of working conditions in standard contracts and greater cooperation with civil society groups advocating for domestic workers’ rights, many underlying forms of discrimination have yet to be addressed. These include major gaps in labor protections, restrictive immigration sponsorship policies that establish incentives for abusive behavior, and prevailing social norms that justify practices such as confining domestic workers to the workplace.

Governments also have yet to ensure a strong and consistent response to abuse of migrant domestic workers by the criminal justice system. This includes consideration of expedited processes given constraints introduced by precarious immigration status, police training, and provision of language interpretation services and legal aid.

One of the most promising elements of promoting domestic workers’ rights arises out of civil society and workers’ groups mobilizing to identify abuses, provide services, influence social attitudes, and demand comprehensive legal protections. Governments in host countries should create greater space for civil society including by removing obstacles to the legal registration of associations and trade unions and ensuring freedom from excessive government control and interference.

Lebanon, Jordan, Saudi Arabia, Kuwait, the UAE, Bahrain, Singapore, and Malaysia have been engaged in active debates about domestic workers’ rights and the types of protections that should be guaranteed by governments. While reforms that promote respect for domestic workers’ human rights in these countries have been slow and hard-fought, some—such as Singapore’s response to criminal abuse of migrant domestic workers—represent significant advancements that could serve as models to be adopted in neighboring countries. Slow movement in other areas, such as changes in immigration policy, point to the challenges ahead for the consideration of comprehensive reform.

The ILO’s recognition of domestic work as an undervalued sector requiring more specific and comprehensive protections, and the global discussions taking place among governments, employers, and workers in June 2010 at the annual International Labor Conference on whether to adopt a binding international convention on domestic work demonstrate the extent to which a once invisible issue has finally caught public attention. Governments not only in the Middle East and Asia, but across the world should seize the opportunity to rectify gaps and weaknesses in national laws that leave domestic workers at high risk of abuse and exploitation and adopt international standards that ensure full respect for their rights.
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Compilation of Draft Bills on Domestic Work

Slow Reform
Protection of Migrant Domestic Workers in Asia and the Middle East

Millions of Asian and African women migrate to work as domestic workers in the Middle East and Asia. Migrant domestic workers perform services essential for many households to function, and their earnings constitute a significant proportion of the billions of dollars in remittances sent to their home countries each year. Yet most host governments systematically deny them key labor protections accorded other workers and implement immigration policies that impede workers’ ability to escape abusive conditions.

While many migrant domestic workers report decent working conditions, Human Rights Watch research over the past six years has shown that they risk a range of abuses. Common complaints include unpaid wages, excessive working hours with no time for rest, and heavy debt burdens from exorbitant recruitment fees. Isolation in private homes and forced confinement in the workplace contribute to psychological, physical and sexual violence, forced labor, and trafficking.

Slow Reform surveys progress in Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Lebanon, Jordan, Singapore, and Malaysia in extending protections to domestic workers under labor laws, reforming immigration "sponsorship" systems that contribute to abuse, ensuring effective response by police and courts to physical and sexual violence, and allowing civil society and trade unions to organize.

The report highlights best government responses and continuing protection gaps and makes detailed recommendations to ensure respect for migrant domestic workers’ rights.
Committee on Migrant Workers
Twelfth session
26 to 30 April 2010

Draft general comment no. 1

Migrant domestic workers

Introduction

1. Domestic work is an important occupation for millions of individuals, accounting for up to 10 percent of total employment in some countries. The trend over the past decades has been a growing prevalence of migrants amongst domestic workers. Women make up the overwhelming majority of these workers. Indeed, according to the ILO, the majority of domestic workers in several regions of the world are migrant women.

2. Noting the omission of express references to either domestic work or domestic workers in a broad range of national and international frameworks of law, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (the Committee), at its eleventh session in October 2009, resolved to issue a General Comment on risks and recommendations pertaining to the vulnerabilities of domestic workers who are migrants. The Committee organized a Day of General Discussion on this subject on 14 October 2009, which generated strong participation by States, international organizations, NGOs and trade organizations, civil society and migrants, including a number of written perspectives and studies. This General Comment draws upon those contributions as well as the Committee’s experience in reviewing with States parties their reports on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families (the ICRMW or Convention).

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1. There is no accurate data on the number of domestic workers throughout the world, partly due to the high incidence of undeclared domestic work and the fact that national statistics often do not count domestic workers as a distinct category. However, such data as are available show that domestic work accounts for between 4 and 10 per cent of total employment in developing countries and between 1 and 2.5 per cent in industrialized countries. See ILO (2009), Decent Work for Domestic Workers, Report IV(1), International Conference, 99th session 2010.
3. As defined by the ICRMW, the term “migrant worker” refers to any person who “is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. Accordingly, the Convention expressly provides protection to migrant workers and their family members not only when the migrants are actually working, but “during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence”.

4. Depending on their administrative status under national immigration laws, some migrants are considered as documented or in a regular situation, while others are considered as non-documented or in an irregular situation. Just as the ICRMW delineates rights that apply to all migrant workers regardless of their status, and then distinguishes further rights of migrants who are documented or in a regular situation, this General Comment shall refer to all migrants, unless expressly indicated.

5. The terms “domestic work” or “domestic worker” have not yet been defined in any international instruments. Rather than proposing specific definitions in this preliminary draft General Comment, the Committee will await the outcome of discussions on this issue at the 99th International Labour Conference in June 2010. However, as a preliminary observation, drawing on common elements found in definitions set out in national legislation, the Committee notes that “domestic workers” generally refer to persons working in or for other people’s private homes, whether or not residing in the household, in return for remuneration on a regular basis, even if it is part-time.

6. Whereas many of the human rights issues and concerns identified in this General Comment are relevant to all domestic workers, whether migrants or nationals of a country, several issues and concerns are specific to the situation of domestic workers who are migrants. Generally, migrant domestic workers are at heightened risk of certain forms of exploitation and abuse. At the heart of their vulnerability is isolation and dependence, which can include the following elements: the isolation of life in a foreign land and often in a foreign language, far away from

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1 ICRMW article 2. Article 3 of the Convention excludes from its scope of application a number of categories of workers, including certain employees of international organizations and of States, investors residing outside of their State of origin, whose status are regulated by general international law or specific agreements; students and trainees; and seafarers and workers on offshore installations who have not been admitted to take up residence and engage in a remunerated activity in the States of employment. Moreover, refugees and stateless persons are only included under the Convention if such application is provided in national legislation (article 3(d)).

2 ICRMW Article 1, emphasis added.

3 ICRMW Part III.

4 ICRMW Part IV.

family; lack of basic support systems and unfamiliarity with the culture; and dependence on the job and employer because of migration-related debt, legal status, the reliance of family members back home on remittances sent back from the domestic work, and even the simple fact that the migrants’ workplace may also be their only shelter. These risks and vulnerabilities are further aggravated for migrant domestic workers who are non-documented or in an irregular situation, not least because they often risk deportation if they contact State authorities to seek protection from an abusive employer.

**Problems faced by migrant domestic workers and members of their families**

7. The vulnerability of migrant domestic workers does not begin and end in the workplace. Migrant domestic workers face risk throughout the migration cycle with a number of factors exposing them to particular vulnerability.

*Recruitment and pre-departure*

8. In many countries, recruitment agencies, labour brokers, and other intermediaries charge exorbitant fees to migrant domestic workers and do not provide accurate information, meaningful preparation for migrants before travel, or written contracts. In particular, migrants are often not provided with information on their rights and on avenues for reporting abuse.

9. Some prospective migrant domestic workers are deceived by illegal recruitment agents and lured into paying for fraudulent visas and non-existent jobs. Upon arrival the migrants are left stranded with high debt from their migration and without legal papers and employment, rendering them vulnerable to abuse and exploitation.

*At arrival and during employment*

10. Even where contracts had been signed pre-departure, upon arrival, many migrant domestic workers are compelled to sign new contracts—nearly always for less pay and often for different work than they had been promised and often in a language they do not understand, without legal counselling, and under duress.

11. The illegal withholding of passports is widespread, reinforcing isolation and dependence and restricting the movement of the migrant worker out of the house as well as out of the country.

12. In the workplace, many are effectively subjected to conditions of involuntary servitude. Conditions include:

- Severe—and in many cases, total—restriction on movement outside the house;
• Excessive and often undefined working hours. Especially for “live-in” domestic workers, there is often an express or implied expectation of total availability, where the ‘live-in’ can be called on to work at any time;

• Insufficient rest and leisure time. Many domestic migrant workers have no agreed leave day at all; others only have one day off per month and frequently any agreed ‘day-off’ is cancelled or changed arbitrarily by the employer; when the employer is on holiday, or the worker is ill, a practice of ‘no work – no pay’ is applied. Others experience reprimands or threats to lose their job even where there are legitimate reasons for absence such as illness or personal/family emergencies;

• Restrictions on their ability to communicate with family members left behind or to travel even for essential family matters, such as serious illness or bereavement in the family;

• Low salaries and late payment or non-payment of salaries. As a result of the absence or inapplicability in most countries of minimum wage laws for domestic workers, many migrant domestic workers are paid only a fraction of what other workers in comparable sectors receive;

• Psychological, physical and sexual abuse and harassment from their employers.

13. The risk of abuse is heightened for child domestic workers, who make up a significant proportion of domestic workers. Their young age, isolation and separation from their families and peers, and near-total dependence on their employers exacerbate their vulnerability. Moreover, domestic work often interferes with a child’s education.

Families left behind

14. When migrant domestic workers leave their spouses and children behind this poses risks to the unity of families and to the social or psychological wellbeing of children and adolescents growing up with one or both of their parents working far away.

Upon return

15. Migrant domestic workers upon their return may encounter difficulties in reintegrating into the labour market and society in their countries of origin. They may also encounter difficulties related to the portability of pension and social security benefits.

16. Many migrants are unable to seek remedies for violations of their rights by employers because they are not entitled to stay in the country of employment once the employment relation has been terminated. As a result migrant domestic workers may for example return to the country of origin with less pay than they are due.
17. Those who return to their countries of origin in order to escape an abusive work relationship, often have no access to support mechanisms and no possibility to seek legal remedies.

Gaps in protection

Protection gaps: “legal”

18. A wide body of international treaties articulate human rights, including labour rights, basic to all human beings, including all workers. ⁷ At the same time, these treaties are generally silent about domestic workers and, in some cases, allow for the exclusion of domestic workers from their coverage ⁸

19. Similar omissions are found at national levels, where major categories of law ignore, or explicitly exclude, domestic work and workers in ways unhelpful to their protection.

20. Labour law. In many countries, domestic workers are not legally recognized as “workers” entitled to labour protection. A number of premises and special definitions are used to exclude domestic workers from the protection of labour laws, including the consideration that they work for private persons, who are not considered “employers”. Equally, traditional perceptions of domestic workers, for example as either being “helpers” or “helped”, often militate against the extension of national labour law to effectively cover domestic work. Because of their, de facto and/or de jure, “unrecognised” status as “workers”, domestic workers are unable to exercise the rights and freedoms granted by labour law to other workers.

21. Some national labour laws include protections for domestic work and workers, but exclude migrant domestic workers from some or all of these protections. For example, migrants are often restricted in their ability to organize for their labour rights. In other cases where labour or other standards and protections apply both to domestic work and to migrant domestic workers, laws can bar monitoring and labour inspections in home settings.

22. Contract law. National laws and regulations pertaining to contracts are often inapplicable to domestic work and/or migrants doing

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⁷ The core international human rights treaties all contain standards and safeguards which are of relevance to the protection of migrant domestic workers. Several of the other human rights treaty monitoring bodies have paid specific attention to the situation of migrants and migrant workers, including migrant domestic workers. See in particular, Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 (2008), Women migrant workers; Committee on Economic and Social Rights, General Comment No. 18 (2005), The right to work; Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin; Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 (2004), Discrimination against non citizens; Human Rights Committee, General Comment No. 15 (1986), The position of aliens under the Covenant.

⁸ For example, flexibility clauses under relevant ILO Conventions, such as Nos. 138 (Minimum Age for Admission to Employment), 155 (Occupational Safety and Health), 171 (Night Work) and 183 (Maternity Protection), are often invoked by States to exclude domestic workers.
it, either categorically or as a practical matter because domestic work is performed in the informal labour market.

23. **Social security laws.** Domestic workers, especially those who are migrants, are often excluded from rights under national law related to social security. The lack of social security benefits and of health care coverage further increases the vulnerability of migrant domestic workers and their dependence on their employers.

24. **Family law matters.** In some cases, national laws discriminate against domestic workers in general or specifically against migrant domestic workers. For example, under some countries’ laws regarding work permit and security bond conditions, women migrants, including domestic workers, who get pregnant lose their permit. It is not uncommon for women migrant workers to be subjected to mandatory health testing related to sexual and reproductive health without consent or counselling.

25. **Immigration law.** Laws regulating the conditions of entry and stay in countries of employment are often a source of specific vulnerabilities of migrant domestic workers. Overly restrictive immigration laws may lead to higher numbers of migrant domestic workers who are non-documented or in an irregular situation, and thus particularly vulnerable to human rights violations. Even for workers with a documented or regular migration status, similar vulnerabilities arise where immigration laws tie their status to the continued sponsorship of specific employers. Consequently, migrant domestic workers may risk deportation if they try to escape an abusive employment relationship or seek legal remedies against their employers.

*Protection gap: practical*

26. Even if certain protections for migrant domestic workers are provided under national laws, there is often a gap between protections enjoyed by such workers in law and in practice. Some of the practical obstacles faced relate to the ‘hidden’ nature of domestic work and factors preventing or deterring migrant domestic workers from claiming their rights.

27. A range of factors constitutive to domestic work itself, and even more so, domestic work performed by migrants, hides abuses from view, and makes detection of protection needs difficult.

- Worksites are unseen, literally behind closed doors and out of the public eye;
- Domestic work is commonly part of the informal labour market, where work and workers are unregistered;
- The physical and social isolation of workers blocks individual and collective action.
28. A number of factors make it difficult for migrant domestic workers to claim their rights and seek redress in case of violations, including the fact that:

- Specific mechanisms available to receive and address complaints from domestic workers are often not available;
- Migrant domestic workers often do not know to whom to address their labour problems or may be reluctant to contact the police or labour authorities out of fear of deportation. Language barriers and the costs of administrative and legal processes may be additional deterrents.
- Migrant domestic workers who depend on their employers for their immigration status may not report abuse for fear of arrest, detention or deportation. In some countries, if the victim brings a formal complaint against the employer, he or she can neither seek alternative employment while the case is in court, nor leave the country for the duration of the case.

Recommendations to States parties

Pre-departure awareness-raising and training

29. For nationals considering whether to migrate for domestic work, States parties should take appropriate measures to disseminate information on their rights under the Convention as well as conditions of their admission and employment and their rights and obligations under the law and practice of other States (article 33). Such awareness-raising could include:

- Information on different types and arrangements of domestic work
- Basic knowledge of applicable national and trans-national legal frameworks
- Essential information and perspectives on:
  - Migration-related fees and debt;
  - Family aspects and effects on family life, such as separation, right to family visits or return, pregnancy during employment, etc.; and
  - Other risks of domestic work outside the county of origin.

30. For workers who have made the decision to migrate for domestic work, States parties are encouraged to develop more specific pre-departure training and awareness-raising programmes. Such training may be developed in consultation with concerned non-governmental organizations, migrant domestic workers and their families, and recognized and reliable recruitment agencies, and could cover:
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- A comprehensive “know your rights” curriculum, covering both international and national frameworks, using the ICRMW as a reference;
- “Know your obligations” orientation to essential aspects of the law and culture of the country of employment;
- “Protect your rights” training, including issues of migration and work-related fees, debt and finance, basic knowledge on methods of conflict resolution, and avenues for redress;
- Contact information for emergency assistance, including embassies and consulates and relevant civil society organizations in countries of employment; and
- Other information needed on logistics, safety, health, human rights issues and points of assistance during the entire migratory process.

31. Where appropriate, States parties could also support pre-departure training offering:
- Basic language preparation; and
- Training for specific types of work, including key job skills where appropriate.

Cooperation among States

32. States of origin and States of employment share the responsibility to oversee and regulate recruitment and placement processes.

33. In line with articles 64 and 65, States of origin and employment are encouraged to cooperate on:
- Protection-sensitive and transparent frameworks and agreements, including bilateral agreements between States;
- The use of standard, unified and binding employment contracts, with fair, full and clear conditions and labour standards that are enforceable – and enforced – by systems of law in countries both of origin and employment; Such standard contracts, as well as services where migrant domestic workers can receive counselling and guidance or submit complaints, could also usefully be included in bilateral agreements between countries of origin and employment;
- Regular and public reporting of migrant domestic worker flows, employment, rights issues, training and other programmes, and issues of justice administration.
- Recruitment agencies

34. In accordance with article 66, States have a role to play in effectively regulating and monitoring labour brokers, recruitment agencies and
other intermediaries to ensure that they contribute to the protection of rights of domestic workers.

35. Agencies engaged in the movement of migrant domestic workers, whether in countries of origin, transit or employment, must be subject to authorization, approval and supervision by public authorities. This may take the form of formal, regular, transparent and State-regulated:

- Licensing, possibly involving processes of accreditation and periodic renewal;
- Monitoring, inspection and evaluation;
- Sanctions and penalties;
- Systems of recording and reporting, including web-based formats that are widely and easily accessible to the public, with particular attention to:
  - Fees and other charges to the workers;
  - Financial and other arrangements with other agencies, brokers, employers and government officials or institutions;
  - Instances of complaints and conflicts involving workers.

36. States parties should establish specific criteria relating to migrant domestic workers’ rights and ensure that only those agencies observing these criteria and codes can continue to operate. Such criteria could usefully be established in consultations with migrant workers’ themselves and non-governmental organizations working with migrant workers.

37. Additionally, States parties are encouraged to adopt codes of conduct on the recruitment of migrant domestic workers, including specific rules governing fees and salary deductions, and to provide for appropriate penalties and sanctions to enforce them.

Conditions of work

38. The rights of migrant domestic workers should be dealt with within the larger framework of decent work of domestic workers. In this regard, the Committee considers that domestic work should be properly regulated by national legislation to ensure that domestic workers enjoy the same level of protection as other workers. 9

39. Accordingly, labour protections in national law 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 circumstances of domestic work. In this regard, migrant domestic workers...

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9 The Committee on Economic, Social and Cultural Rights makes the same recommendation in its General Comments No.18 (2005), *The Right to Work*, para. 10.
workers should enjoy treatment not less favourable than that which applies to nationals of the State of employment (article 25).

40. States should also promote a shift in public perceptions so that domestic work becomes widely recognized as work and domestic workers as workers with fundamental human rights, including labour rights.

41. States parties are encouraged to ensure that domestic workers have explicit, written terms of employment, outlining their specific duties, hours, remuneration, days of rest, and other conditions of work, in contracts that are free, fair and fully consented to. In particular, States parties may wish to consider developing model or standard provisions for these purposes. States should also ensure that migrant domestic workers retain possession of travel and identity documents belonging to them (article 21).

42. States parties are also encouraged to include provisions for monitoring mechanisms of the working conditions of migrant domestic workers in national legislation and strengthen labour inspection services to carry out such monitoring and to receive, investigate and address complaints of alleged violations.

**Social security and health services**

43. States should ensure that migrant domestic workers are granted access to social security benefits on the basis of equal treatment with nationals (articles 27).

44. Women migrant workers who are in irregular status are especially vulnerable in case of pregnancy, as they are often afraid to get in contact with public health services out of fear of deportation. In order to ensure effective access of domestic migrant workers to any medical care urgently required to avoid irreparable harm to their health (article 28), public health institutions providing care should not be required to report data on the regular or irregular status of a patient to immigration authorities.

45. States should ensure that migrant domestic workers in a documented or regular situation enjoy equal treatment with nationals in relation to all social and health services (article 43(1)(e)). Moreover, the Committee recalls the obligations assumed by States under other core international human rights treaties, notably the International Covenant on Economic, Social and Cultural Rights, to take appropriate measures towards ensuring to all persons within their jurisdiction, irrespective of their immigration status, the highest attainable standard of physical and mental health and medical care, services and attention in the event of sickness.  

10 See ICESCR article 12. As the Committee on Economic, Social and Cultural Rights underlines in its General Comment No. 20 (2009), *Non-discrimination in economic, social and cultural rights*, “The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation” (para. 30). See also Committee on the Elimination of All Forms of Racial Discrimination, General Comment No. 30 (2004), *Discrimination against non-citizens.*
Right to organise for collective bargaining and protection

46. The right to collective organising and action is essential for migrant domestic workers to express their needs and defend their rights, in particular through trade unions (articles 26 and 49) and labour organizations.

47. The laws of States parties, particularly countries of employment of migrant domestic workers, should recognize their right to collective association, regardless of migration status (article 26) and self-organization should be encouraged.

48. States parties are encouraged to provide migrant domestic workers with information about relevant associations that can provide assistance in the country/city of origin and employment.

Access to justice and remedies

49. States of employment should ensure that all migrant domestic workers have access to mechanisms for bringing complaints about violations of their rights (articles 18 (1) and 83). States parties should ensure that such complaints are promptly investigated and that cases of violations are appropriately sanctioned. To facilitate access to redress mechanisms, States parties could for example designate a domestic workers’ Ombudsman.

50. In order to ensure the effective access to justice and remedies of all migrant domestic workers, the Committee considers that migrant domestic workers should be able to access courts and other justice mechanisms without fear of being deported as a consequence, and that migrant domestic workers who wish to leave an abusive employer should have access to temporary shelter if needed. Moreover, States are encouraged to enter into bilateral agreements in order to ensure that migrants who return to their country of origin may have access to justice in the country of employment, including to complain about abuse and to claim unpaid wages and benefits.

Access to regular migration status

51. With a view to preventing irregular migration as well as smuggling and human trafficking, States parties should ensure that migrant domestic workers have access to regular channels for migration which realistically matches actual demand (article 68).

52. States parties should take appropriate measures to address the extreme vulnerability of undocumented migrant domestic workers, predominantly women. In particular, States parties should consider policies, including regularization programmes, to avoid or resolve situations in which migrant domestic workers are undocumented or are at risk of falling into irregular status (article 69).

53. States parties should avoid making the immigration status of migrant domestic workers conditional on the sponsorship of a specific employer,
bearing in mind how such arrangement may unduly restrict the liberty of movement of migrant domestic workers (article 39) and increases the vulnerability of migrants to exploitation and abuse, including in conditions of forced labour or servitude (article 11).

Respect for family unity

54. States parties should take appropriate measures to ensure the protection of the unity of the families of migrant domestic workers in a regular situation (article 44 (1)). In particular, migrant domestic workers should have reasonable opportunities for family contact and family-related mobility, including opportunities to communicate with family left behind, travel to participate in essential family matters such as funerals, and especially in the case of long term migrants, to visit spouses and children in other countries.

55. Moreover, States parties should take appropriate measures with regard to migrant domestic workers in a regular situation to facilitate their reunification with their spouses and children (article 44 (2)). In the event of the death of or divorce from a migrant worker with a regular status, States parties should favourably consider granting independent residence status to family members of that migrant worker (article 50).

Special protections for children

56. Child labour protections that apply to other working children should be extended to child domestic workers. In this regard, the Committee recall the obligations of States under the Convention of the Rights of the Child as well as ILO Conventions No. 138 (Minimum Age for Admission to Employment and Work) and No. 182 (Worst Forms of Child Labour) to provide for minimum age for employment and to ensure that work performed by children is not exploitative or likely to be hazardous or to be harmful to the child's health or physical, mental, spiritual, moral or social development. 11

57. States parties should ensure that all migrant children, independently of their migration status, have access to free and compulsory primary education as well as to secondary education on the basis of equality of treatment with nationals of the State concerned (article 30), and that the domestic work carried out by children does not interfere with their education.

58. Children of migrant domestic workers should be registered rights after birth, independently of the migration status of their parents (article 29).

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11 The Convention on the Rights of the Child and existing ILO conventions addressing child domestic work (ILO Convention Nos. 138 (Minimum Age for Admission to Employment) and 182 (Worst Forms of Child Labour)) do not explicitly address the special circumstances of child domestic workers in particular. However, the Committee on the Rights of the Child and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) regularly raise concerns about the exploitation and abuse of child domestic workers.
Gender perspective

59. As noted by the Committee on the Elimination of All forms of Discrimination against Women, the position of female migrants is different from that of male migrants with regard to, inter alia, the migration channels used, the sectors of the labour market where they are employed, the forms of abuse they suffer and the consequences and impact thereof. Recognizing that most domestic workers are women and girls, States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies to the gender-based discrimination that migrant domestic workers face throughout the migration process.

60. States parties should repeal sex-specific bans and discriminatory restrictions on women’s migration on the basis of age, marital status, pregnancy or maternity status (articles 1 and 7), including restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel (article 8) or bans on women migrant domestic workers marrying nationals or permanent residents (article 14), or securing independent housing. States parties should also ensure that medical testing of migrant domestic workers, including tests for pregnancy or HIV/AIDS, is only done voluntarily and subject to informed consent.

Embassies and consulates

61. Embassies and consulates should play an active role in protecting the rights of their nationals employed as migrant domestic workers. In particular, embassies and consulates of countries of origin that are present in countries where migrant domestic workers are employed are encouraged to:

- Check on the working conditions and circumstances of migrant domestic workers
- Ensure adequately trained staff and mechanisms (including telephone hot-lines) to receive and address complaints made by migrant domestic workers, including through the provision of legal aid;
- Provide counselling and facilitate appropriate shelter to migrant domestic workers, especially women and children, fleeing from abusive employers;
- Receive, record and report information that can be useful to migrant domestic workers in the country of employment as well as to prospective migrant workers back home regarding:

12 Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 (2008), Women Migrant Workers, para. 5.
• Actual country and employment conditions;

• The experience of migrant domestic workers, including travel and arrival, migration-related fees and debt, the effects on family, workplace conflicts, issues of rights and access to justice.

62. In the case of detention of a migrant domestic worker or a member of his or her family, the person concerned shall be informed without delay of his or her right to contact the consular authorities of his or her country of origin. If the person concerned so requests, the State of employment shall inform said authorities without delay and facilitate visits by the relevant consular officials (articles 16 (7) and 23).

Participation of migrant domestic workers and civil society

63. The Committee emphasizes the importance of genuine consultations with migrant domestic workers and civil society organizations in the development and implementation of legislative and other measures related to migrant domestic workers and the protection of their rights.

Monitoring and reporting

64. States parties are encouraged to include in their reports information about efforts to monitor the situation of migrant domestic workers and to protect their rights under the Convention, keeping in mind the recommendations contained in the present General Comment.
MFA believes that migrants’ rights are human rights. Documented or undocumented, irrespective of race, gender, class, age and religious beliefs, migrant workers’ Rights are guaranteed by the UN Declaration of Human Rights, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and other International Conventions.