

International Campaign for the Rights and Recognition of Domestic Workers

Consolidated Regional Response to the ILO Questionnaire

Introduction

At its 301st Session (March 2008), the International Labour Organization (ILO) Governing Body agreed to put an item on decent work for domestic workers on the agenda at the 99th Session of the International Labour Conference (ILC) 2010, with a view to the setting of labour standards. 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 for women's movement and domestic workers groups. 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, Migrant Forum in Asia (MFA) and Asian Migrant Domestic Workers Alliance (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.

The result of this consultation was one of the working documents used by the Philippine Technical Working Group in the island-wide tripartite and workers' consultation.

Following the Philippines, consultations were held in Indonesia, Cambodia and Singapore 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 (CEC) 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 domestic workers, these are not enough to address specific conditions of domestic workers, which justifies the need for a Convention. 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.

MFA, ADWA and its partner trade unions and civil society organizations recommend the following positions with regard to the adoption of an ILO Convention on Domestic Work.

Introduction	1	VI. Terms and Conditions of Employment	5
General Structure	2	VII. Minimum Wage Coverage	5
I. Form of the International Instrument	2	Viii. Payment-in-Kind	5
II. Preamble	2	IX. Residence of Domestic Worker	6
III. Definitions	2	X. Travel Identity and Documents	6
IV. Scope	3	XI. Implementation and Enforcement	6
V. Content of the Convention	3	XII. Other Pertinent Issues	6



General Structure

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.

Household work refers to housekeeping, cleaning, marketing, cooking, laundry and related household chores NOT done for commercial purposes.

Other “tasks” maybe included but must be defined in the contract at the time of signing; and based on an approved schedule of tasks.

13. 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.

14. 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.

15. 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.

16. The Convention should define employers and intermediaries separately.

17. 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.

18. 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.

19. Persons not bound in the same manner, should be considered “intermediaries”, including: recruitment agencies, brokers, labour-only contractors, manpower placement agencies and out-sourcing agencies.

20. 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.

21. The Convention should recognize that service providers or support groups should not be considered intermediaries.

22. 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

23. 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.

24. 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:

25. The Convention should ensure that domestic workers enjoy the same fundamental principles and rights to and at work enjoyed by all workers, including:

a. Freedom of association – to join and establish unions and the right to collective bargaining.

b. 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.

c. 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.

d. The effective abolition of child labor.

e. The elimination of discrimination in respect of employment and occupation – including gender discrimination and xenophobia.

26. 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.

27. 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.

Working and Living Conditions and Social Security:

28. 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.
29. 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.
30. 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.
31. Both the employment contract and the legal undertaking should specify the joint and individual liabilities and accountabilities of the employers and agents/intermediaries.
32. 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.
33. 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.
34. 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.
35. The Convention should provide the domestic worker the right to choose their place of residence.
36. 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.
37. The Convention should ensure that all domestic workers have the right to exercise her/his own culture, religion, customs, and beliefs.
38. 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 standards at the national-level exist, domestic workers should be covered by these.
39. 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.
40. 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.
41. 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.
42. 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

43. 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:

a. 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.

b. 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.

c. Monthly payment should be made for eight hours/workday, six workdays/week, one holiday per week, and overtime pay for overtime work.

d. 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.

e. 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.

f. 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.

g. The provision of food and accommodation must be negotiated between employer and 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.

44. The Convention should ensure that payment for work is disbursed at no longer than monthly intervals.

VII. Minimum Wage Coverage

45. 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.

46. If national standard exists, this should cover domestic workers; if none, there should be specific minimum wage for domestic workers.

47. The Convention should ensure that domestic workers receive their wages in cash based on the stipulated minimum wage.

48. The Convention should ensure that domestic workers receive a living, dignified and decent wage.

49. The Convention should ensure that domestic workers receive equal pay for equal work.

50. The Convention should ensure that domestic workers are not subjected to wage discrimination.

51. The Convention should establish mechanism to determine wage and monitor compliance.

VIII. Payment-in-Kind

52. 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 53. For payment of 'wages in kind' the following should be observed:

a. The cash payment is greater than the non-cash portion;

b. The non-cash payment is not arbitrarily set by the employer, but based on authorized rates or standards;

c. 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

53. 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.

54. 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

55. 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

56. The Convention must ensure that the scope and extent of the activities of employers and intermediaries be regulated and monitored.

57. 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.

58. The Convention should ensure that arrangements are in place to demand compliance with national and international laws and regulations applicable to domestic

workers.

59. 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.

60. 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.

61. 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.

62. 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.

XII. Other Pertinent Issues

63. The Convention should include social integration policies, rights of residency: challenge immigration policies that exclude or restrict domestic workers.

64. 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.

65. The Convention should focus on preventive measures to prohibit human trafficking including forced labour.

66. The Convention should ensure that domestic workers have the right to education under national and international laws.

67. 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).

68. The Convention should require Member States to provide mechanism for registration of domestic workers and employers that is transparent and regular.

69. 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.

DOMESTIC WORK IS WORK!

DOMESTIC WORKERS ARE WORKERS!

DOMESTIC WORK IS NOT SLAVERY!



Contact Us

**Migrant Forum in Asia (MFA)
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MFA believes that migrants' rights are human rights. Documented or undocumented, irrespective of race, gender, class, age and religious belief, migrant workers' rights are guaranteed by the UN Declaration of Human Rights, the UN Convention on the Protection of Rights of All Migrant Workers and Members of their Families and other international conventions.

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