

International Campaign for the Rights and Recognition of Domestic Workers/8-HR

Support the ILO Convention on Domestic Work

About the Convention

At its 301st Session (March 2008), the International Labour Organization (ILO) Governing Body agreed to an agenda item on decent work for domestic workers on the agenda of the 99th Session of the International Labour Conference (ILC) 2010, with a view to the setting of labour standards.¹ The final decision will be taken in 2011. ILC 2010 will decide the number and type of draft instrument (s).

The ILO and the Governing Body

The International Labour Organization was founded in 1919 and became a specialized agency of the United Nations in 1946. It currently has 178 member states. The ILO has a unique “tripartite” structure, which brings together representatives of governments, employers, and workers on an equal footing to address issues related to labour and social policy. The ILO’s broad

¹ International Labour Conference, 99th Session 2010, Report IV (1), Decent Work for Domestic Workers, p 1

policies are set by the ILC which meets once a year and brings together its constituents. The Conference also adopts new international labour standards and the ILO’s work plan and budget.

Between the sessions of the Conference, the ILO is guided by the Governing Body, the executive body of the International Labour Office that meets 3 times a year, in March, June and November. It makes decision on ILO policy, decides the agenda of the International Labour Office, adopts the draft programme and budget of the Organization for submission to the Conference, and elects the Director General. It consists of 28 government members as well as 14 employer members and 14 worker members.

The ILO’s Secretariat, the International Labour Office, has its headquarters in Geneva, Switzerland. The current Director-General of the ILO is Juan Somavia.

What are International Labour Standards (ILS)?

International labour standards are legal instruments drawn up by the ILO’s constituents (governments, employers and workers) setting out basic principles and rights at work. They are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e not linked to any convention.

About the convention

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How are labour standards operationalized?

Why are International Labour Standards important?

ILS are tools for government seeking to draft and implement labour law and social policy, as targets for harmonizing national law and practice and as models for drafting law and policy.

For CSOs, ILS are tools to call for changes in policy, law and practice.

Who adopts international labour standards?

The International Labour Conference brings together delegations from all ILO member states. Each delegation comprises:

- 2 government delegates
- 1 employer delegate
- 1 worker delegate
- Government, employer and worker delegates each have one vote in plenary

Output of Standard Setting Process

ILC 2010 will decide the number and type of instrument(s) on domestic work. The different possibilities are:

1. a Convention
2. a Recommendation
3. a Convention and a Recommendation
4. a Convention with binding and non-binding parts

How are international labour standards used?

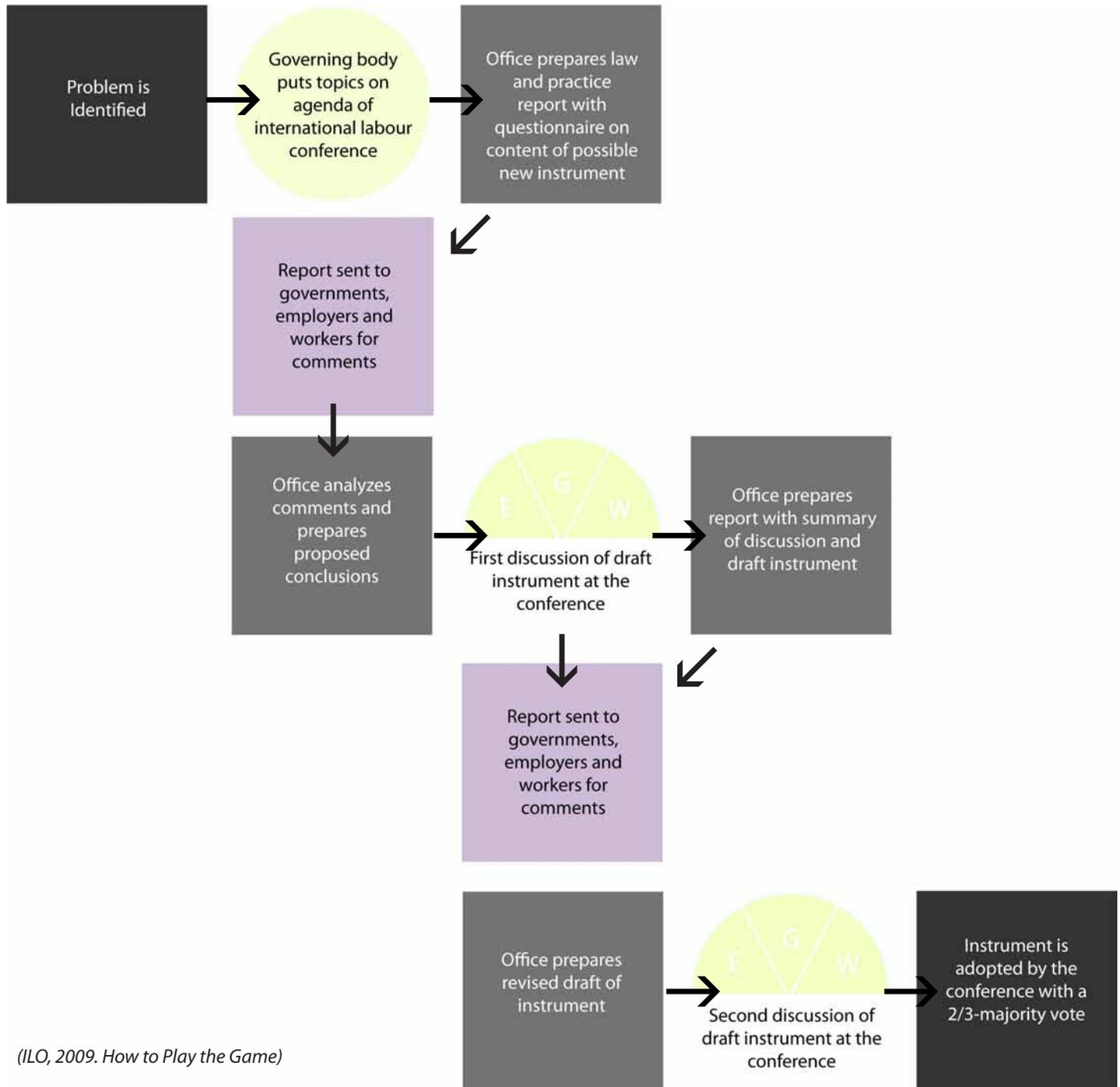
- Models and targets for labour law
- Sources of International Law applied at the national level
- Guidelines for social policy

How are international instruments supervised?

There are two kinds of supervisory mechanisms:

- The regular system, which is the examination of periodic reports, submitted by Member States on the measures they have taken to implement the provisions of the ratified Conventions
- Special procedures (representation, complaint, special procedure regarding freedom of association)

What is the ILO Standard Setting Process?



(ILO, 2009. How to Play the Game)

Domestic Work: A Situational Analysis

According to the ILO report domestic work is one of the oldest and most important occupations for many women. Domestic absorbs a significant proportion of the workforce. In developing countries, it accounts for between 4 and 10 percent of total employment (both female and male). In Asia, DW is the single most important source of income for women migrants.

The ILO report revealed that there is no accurate data on the number of domestic work is difficult to gather. This is mainly due to the fact that there is a high incidence of undeclared domestic work and subsequent under-reporting and the varying definitions of domestic work in statistical surveys which categorize domestic work under “community and service sector”.

Domestic work is perceived to be a women’s work in the private sphere (live in arrangement) which does not produce anything with exchange value. It is perceived as something other than regular employment which does not fit under the general framework of existing labour laws because “there is no employment relationship” that exists. Their lives and work are regulated by strong non-state norms regarding work in the employer’s household, which vary significantly from one cultural context to the next but which result in domestic workers being among the most marginalized workers – and for whom decent work is often a distant aspiration.

For the past 30 years, one of the major changes in domestic work is the growing prevalence of migrant work which is overwhelmingly performed by women. This phenomenon further creates “transnational” households, a form of global care chain between workers with family responsibilities in the North, who require household service, and temporary migrants from the South, who can provide them – albeit at the cost of leaving their own families behind. The existence of this phenomenon is heavily felt in Europe, the Gulf countries and the Middle East.

In some States of the Gulf and the Middle East, 40% of the total population are migrant workers where

majority of work as migrant domestic workers. Human Rights Watch’s “As If I Am not Human” report in 2008 revealed that there are approximately 1.5 million women domestic workers, primarily from Indonesia, Sri Lanka, and the Philippines, working in Saudi Arabia.

In Europe and in the US as well, 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).

The nature of domestic work explains why it is undervalued in monetary terms and most often regarded as informal, excluded from social legislation, limited access to justice etc. Reports of abuse and maltreatment especially of live-in migrant domestic workers are very rampant which sometimes led to their death. Sexual assault and abuse are also prevalent that that create serious long-term effects to their health. They are also constant prey to illegal recruitment practices and trafficking, often subject to highly restrictive sponsorship policies especially in the Middle East, subject to humiliation and curtailed in their movements. One found in distress situation, there are no proper redress mechanisms in place.

Domestic Workers’ Contributions to Society

Domestic workers enable other workers and their families to improve their living standards.

In many Asian and Arab states, domestic workers provide the much needed home-based care allowing women of those households to continue being economically engaged and productive.

Domestic workers help lessen household expenditures as the services needed by households when purchased, i.e. dry cleaners, caterers etc. would cost more.

Domestic workers are denied of “real workers” status, which if granted and recognized will entitle them to labour protection and coverage under national, regional and international laws.

ILO Timeline

- **March 2009:** The Office of the ILO sent a law and practice report along with a questionnaire to ILO Member States. Governments are requested to consult with the most representative workers' organizations and employers' associations.
- **August 2009:** Deadline for submission of replies to the Office of the ILO.
- **January 2010:** The office of the ILO sends to ILO Member States a second report examining the replies received to the questionnaire in 2009.
- **June 2010:** First discussion at the International Labour Conference (ILC) of the ILO. A decision is taken on the form of the draft ILO instrument(s) - whether a Convention or a Recommendation or both or a Convention with binding and non-binding parts.
- **August 2010:** The Office of the ILO sends a third report containing (a) draft instrument(s) to Member States.
- **End November 2010:** Deadline for submission to the Office of comments on the third report by Member States.
- **March 2011:** The office Office of the ILO sends two reports to member States: one examining the replies received on the third report, and the other containing the text of the draft instrument(s) revised in the light of comments received.
- **June 2011:** Second discussion at the ILC. A Convention or any other agreed instrument will either be discussed and adopted or rejected by the ILC.

Why is the need for a legislative instrument for domestic workers important?

In principle, ILO labour conventions and other international conventions cover all workers, including domestic workers. However:

- Relevant provisions for domestic workers are spread out in many different ILO conventions and a few ILO conventions do not cover domestic workers or
- Permit the exclusion of domestic workers wholly or in part from their scope.
- Where domestic workers have been excluded

from the scope of a Convention, the main problem has been that their work is so specific that it is difficult for an instrument dealing with an economic activity carried out in an industrial context to cover them effectively.

- Domestic workers form a significant part of the working population and given their vulnerability to dangerous, discriminatory and abusive working conditions, they warrant special attention rather than exclusion.
- Many countries exclude domestic workers from coverage under national labour legislation.
- This is all part of the process of recognizing the value of and ensuring decent employment conditions for domestic work.

ILO and Domestic Worker

- 1948, the ILO adopted a resolution concerning the conditions of employment of domestic workers.
- 1965, the ILO adopted a resolution calling for normative action in this area.
- 1970, the first ever survey published on the status of domestic workers across the world.
- 2004, the need for protection of migrant domestic workers was endorsed by the ILC in adopting the conclusions of the general discussion on migrant workers.

How can we influence the process?

- Identify the most representative workers groups in your country and collaborate with them on how you can work together.
- Lobby the workers groups, employers and the governments to support our position demanding for a Convention supplemented by a Recommendation. To get a copy of our position paper, please visit our website at www.mfasia.org.
- Secure a copy of your government's response to the ILO questionnaire on Decent Work for Domestic Workers and engage on issues where it falls short.
- Get a copy of the 2nd Report reflecting the replies to the questionnaire which scheduled to be released in January 2010.
- Ensure that domestic workers are part of the workers delegation to the ILC 2010/2011.
- Organize domestic workers for possible representation to the ILC. Foster solidarity between local and migrant domestic workers.
- Help us raise public awareness on the issue and support the 8-HR campaign. For updates, please check our website at www.mfasia.org.
- Sensitize media.
- Join us in our side event in June 2010 and June 2011.
- Ensure to get a copy of the 3rd Report (the draft instrument) which is due in August 2010.
- Lobby your government to ratify the DW's Convention.



DOMESTIC WORK IS NOT SLAVERY!

International Campaign for the Rights and Recognition of Domestic Workers
Support the ILO Convention on Domestic Work in 2011

International
Working Group



Some of the Issues of Migrant Domestic Workers in Asia

The issue of domestic workers in Asia is hardly new. Asia is home to around 60 million migrant workers (UN estimates) where a vast majority are women. In most cases, these women are engaged in domestic work in Malaysia, Hongkong, Singapore, Thailand, Macau, India, Taiwan and the Middle East. Most of them come from Indonesia, the Philippines, Bangladesh, Nepal, Sri Lanka, India, Thailand and Lao PDR.

The general situation of migrant domestic workers (MDWs) in Asian countries is that a large number of them live and work in slavery like conditions. While MDWs generally suffer the same abuse as local domestic workers, they face other kinds of exploitation owing to their status as migrants. They experience wage discrimination, contract substitution, abandonment, forced confinement, lack of job mobility, confiscation of identity documents, restriction on the freedom of movement and vulnerable to physical abuse and humiliation.

As with other domestic workers around the globe, they are also not protected under labour laws. Most receiving countries do not have legislations that protect domestic workers against labour law infringements; domestic work is not recognized as work within the labour code. If they are included in recognition and protection, it is only to a certain degree.

In Malaysia, MDWs are under the Employment Act of 1955 ("domestic server"), but the recognition of rights is limited to the termination of contract under sec 57 [1]; the Act does not provide equal protection for MDWs (eg Sec. XII) [4]. This makes domestic workers in Malaysia more prone to abuse and exploitation.

In Taiwan, migrant workers are considered "class B" foreigners, professionals being the "class A" as stipulated in Chapter 5 of the Employment Service Act of 1992 (revised) – Employment and Management of Foreigners, Article 46, expanded by the Regulations on the Permission and Administration of the Employment of Foreign Workers.

In Hong Kong, domestic work Employment ordinance recognizes a standard contract and recognition of rights to unionize, assemble, and seek redress for grievance. However, recognition is restricted. Workers cannot engage in collective bargaining because they do not serve a single employer which is required in the process. There is no institutional mechanism for consultation between governments and domestic workers' groups and unions. Domestic workers can form credit unions but participation is limited to membership because officers or Board Members have to be legal permanent residents in HK. This is something MDWs are denied of no matter the years of service.

When it comes to an 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". In most cases, standard contracts from the origin countries are not recognized or upheld by receiving countries which often results in contract substitution. Most often this "substitute" contract works favorably for the employers. In Malaysia, once a domestic worker is terminated for whatever "just cause", she or he is not entitled to receive separation pay.

In the Middle East, most countries practice the sponsorship ("kafala") system that ties MDWs' visas to their employers. This further fuels exploitation and abuse as the employers hold immense control over the workers. In this system, employers assume full responsibility for the workers and must grant explicit permission before they can enter the country, transfer employment and/or leave the country.

Health policies are likewise equally discriminating. In Thailand, health insurance is required by labour law; however, migrant domestic workers are not recognized under the labour law or in legal job categories for migrant workers denying them to avail of such a benefit.

In Taiwan, all migrant workers are required to submit "Certified Health Examination Report" and the "Certification of Proper Conduct". Regular health examination is required for the following tests: HIV test, X-ray, syphilis, hepatitis B, intestinal worm tests. Those found positive in HIV are immediately deported. This is also true in Singapore and Malaysia. This practice contradicts the ILO Code of Practice on HIV/AIDS and the World of Work and the UNAIDS/IOM Statement on HIV-related Travel Restrictions. In some countries, including Singapore and Malaysia, pregnancy is considered a "disease" for migrant domestic workers resulting in the termination of contract and expulsion from the host country.

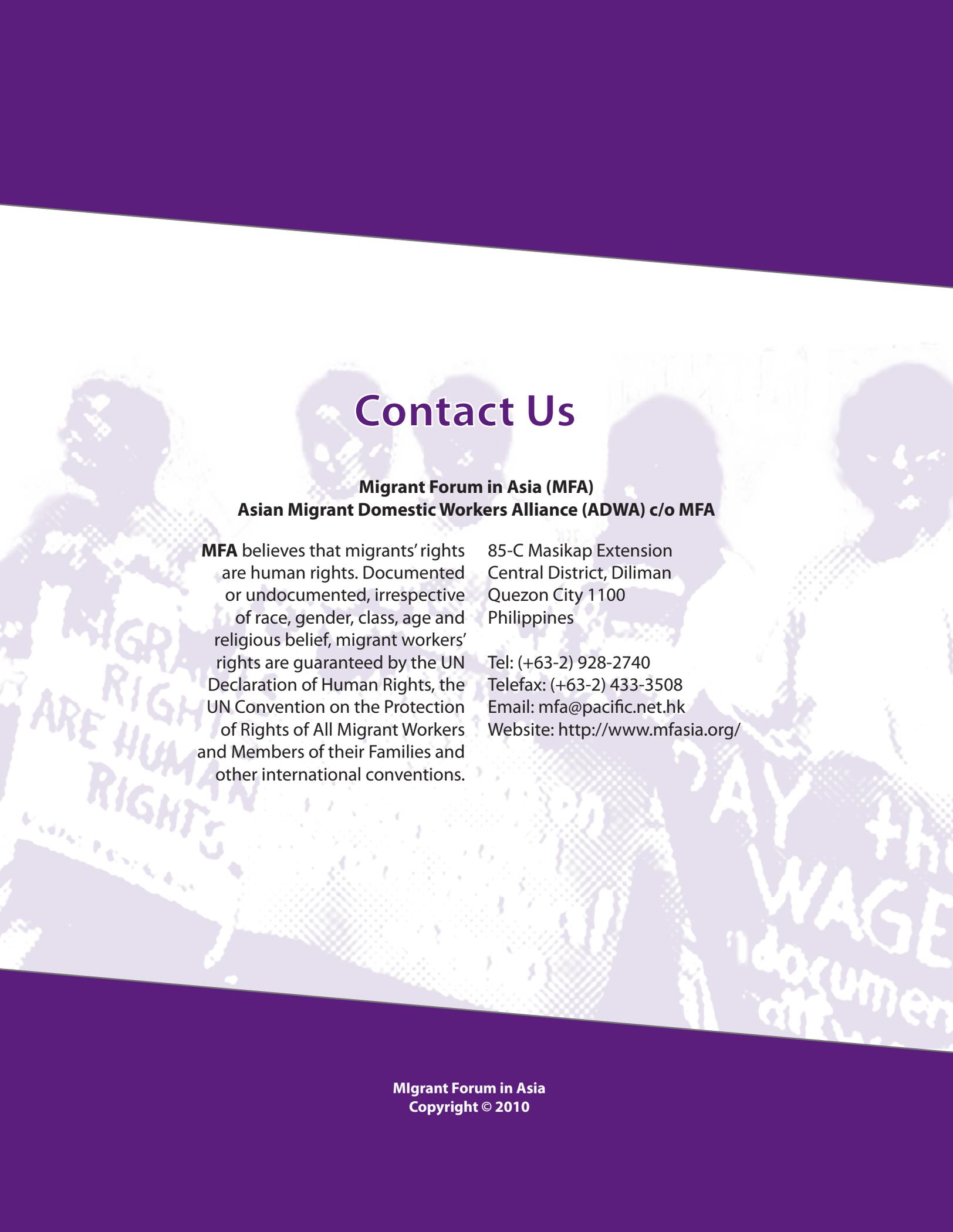
The circumstances described above validate existing reports that migrant domestic workers face problems under the four pillars of decent work- rights at work, productive employment, social protection and social dialogue. This situation certainly justifies the need for a Convention to ensure maximum legal protection for domestic workers.

References

Mandatory HIV testing for employment of migrant workers in eight countries of South-East Asia: From discrimination to social dialogue. ILO and IOM. 2009

Decent Work for Domestic Workers. ILO. 2007

"As If I Am Not Human" Abuses against Asian Domestic Workers in Saudi Arabia. Human Rights Watch (HRW). 2008



Contact Us

**Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA) c/o MFA**

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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