Day of General Discussion on Migrant Domestic Workers
14 October 2009

On Wednesday 14 October 2009, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) held a Day of General Discussion in Geneva focusing on “Protecting the Rights of Migrant Domestic Workers”.

The full day of discussion took place during the eleventh session of the Committee at the United Nations Office at Geneva (Palais Wilson) and was a public meeting at which government representatives, UN bodies and specialised agencies, intergovernmental organisations and non-governmental organisations were invited to participate.

The discussion was oriented towards four outcomes:

- to assist the Committee in adopting a general comment on migrant domestic workers (MDW);
- to assist the Committee in developing concrete recommendations in relation to the protection of the rights of migrant domestic workers, when examining reports of States Parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);
- to provide input specific to domestic workers who are migrants to the debate at the 99th session of the ILO’s International Labour Conference in 2010 which will discuss ‘Decent Work for Domestic Workers’ and consider the adoption of a new international instrument on domestic workers by 2011;
- to promote greater consideration of the particular situation and rights of MDWs among participants in the multiple processes of the Global Forum on Migration and Development, including

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* The Human Rights Committee publishes its interpretation of the content of human rights provisions, in the form of General Comments on thematic issues. For more information please see: http://www2.ohchr.org/english/bodies/hrc/comments.htm
According to the United Nations, there are around 213 million migrant workers in the world today and women account for a significant portion of these workers; in some countries they make up more than half of the migrant worker population. Among these migrant workers, moreover, is the growing number of domestic workers. The International Labour Organization’s Law and Practice Report on Domestic Work (2009), describes domestic work as one of the oldest and most important occupations for many women, accounting for between 4 and 10 percent of total employment (both female and male) in developing countries. The nature of domestic work renders it undervalued in monetary terms and in legal treatment. Because it is perceived as something other than regular employment and does not fit under the general framework of existing labour laws, employment relationship is not recognized and domestic workers are excluded from the purview of social legislation with regard to benefits and even access to justice. Moreover, domestic workers are vulnerable to abuse and maltreatment.

In Asia, domestic work is one of the most important source of income for some women migrants. Intra-regional migration finds women from Indonesia, the Philippines, Bangladesh, Nepal, Sri Lanka, India, Thailand and Lao PDR engaged in domestic work in Malaysia, Hongkong, Singapore, Thailand, Macau, India, Taiwan and the Middle East.

While migrant domestic workers (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, restrictions on the freedom
of movement and greater vulnerability to physical abuse and humiliation. In most cases, they are also not protected under the national labour laws particularly in countries where governments arbitrarily choose whether to include MDWs in their existing policies and laws, to what extent, and what restrictions or exclusions they want to impose. The four pillars of decent work – rights at work, productive employment, social protection and social dialogue – become truly problematic in the case of migrant domestic workers since there is no specific international instrument looking into the specific conditions of domestic workers to warrant their protection.

The issue of domestic work has been a long and arduous debate at the ILO since 1948. Thus, the ILO’s decision to include the discussion on decent work for domestic workers in the 2010 International Labour Conference (ILC) is an historic opportunity to formally recognize domestic workers as workers, affirm their basic rights and equality of status with all other workers in society, and establish minimum standards of treatment and protection for domestic workers. MFA welcomes this ILO initiative and has consistently engaged the process since 2003 when the International Labour Conference (ILC) took up migration during its 92nd session. Consistent with its long-running advocacy for the international recognition of domestic work as work, MFA, also as Secretariat for the Asian Migrant Domestic Workers Alliance (ADWA), spearheaded national and regional consultations on the ILO Questionnaire on domestic work released in April 2009. These processes sought to generate responses to a possible ILO instrument that addresses the specific conditions of domestic workers and strengthens protection for this vulnerable informal sector. The consultations were done in collaboration with MFA members, partner trade unions and other civil society organizations, and came up with specific recommendations addressing the special needs of migrant domestic workers.

As ILO convenes for the 99th Session of the International Labour Conference (ILC 2010) with a view to the setting of labour standards for domestic workers, the network would like to put forward these Recommendations to the Committee on Migrant Workers, for consideration in their General Comment on Migrant Domestic Workers. MFA believes that the special conditions of domestic workers require legislative frameworks that address their needs for rights protection and which must be based on the dignity of work and rights to life and safety. An international instrument such as the envisioned ILO Convention on Domestic Work will go a long way in setting standards that can be translated into national legal frameworks.

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<thead>
<tr>
<th>Year</th>
<th>Estimated number of International migrants</th>
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<tbody>
<tr>
<td>1990</td>
<td>155,518,065</td>
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<tr>
<td>1995</td>
<td>165,968,778</td>
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<tr>
<td>2000</td>
<td>178,498,563</td>
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<tr>
<td>2005</td>
<td>195,245,404</td>
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<tr>
<td>2010</td>
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1. **Highlight contributions of domestic workers in society**

The social, economic and cultural contributions of domestic workers are not recognized because domestic work is perceived as something that has no monetary value or does not generate profit. However, domestic workers actually 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, especially of the children and elderly, 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. Despite this support for families around the globe, however, domestic workers, and migrant domestic workers in particular, remain highly vulnerable to discrimination and abuse.

2. **Come up with a universal language for domestic workers**

Domestic workers are called differently in every country which most often are derogatory and inhumane in nature. The different labels attached to domestic workers have a direct effect on how domestic workers are treated. These labels include "servants" as in the case of Malaysia, service workers in Taiwan, “helpers” etc. There is a need to reflect that these labels are socially constructed. There is a need to counter-frame the language used or referenced on domestic workers. This is important in challenging the politics of dominance imposed by governments and society. The underlying frame for the recognition of domestic work must start with language.

3. **Highlight gender perspective**

Today, one of the most commonly cited trends in migration is that of its “feminization”. Yet women have long participated in international migration, though it is only recently that policy makers have begun to take notice. In fact, even in the 1960s, when the first estimates of female migrants were collected, women on the move already accounted for 46-48% of all migrants (Zlotnik, 2003). On the other hand, it is without a doubt that female labour migration has risen sharply in recent decades. In fact, today, women outnumber men moving for work, with women migrant workers composing more than half of all labour migrants. In response to the demands of industrialized countries, more women are moving to fill shortages in so-called “women specific” jobs, particularly in the service sector (e.g. domestic work, health care, care-giving and the entertainment industry). Simply put, migrant work is a highly gendered issue that is stratified by race, ethnicity and class. That said, the provisions in the instrument should be gender sensitive.

4. **Recognize domestic work as a regular job category for migrants**

Regular, safe, rights-protected channels for migration of domestic workers must be
available; migrant domestic workers must be protected by valid work contracts, employment visas, and migration mechanisms at par with other job categories.

5. Effective monitoring mechanism and strict regulations and penalties for erring recruitment agencies

Studies and reports revealed that the abuse and exploitation of migrant workers happen not only in the host countries. The abuse happens before they even leave home. This is evident by high placement fees which put many of them in debt cycles. In a study conducted by Human Rights Watch in 2007 entitled “Costly Dreams”, it was found out that many Indonesian agencies operate illegally. Indonesians who apply for domestic work are placed in “training centers” where they wait for months until they are matched to their employers. While waiting for their employers, these Indonesians are asked to work for other families for a period of one to three months. In some cases, some last until six months. Those who just stayed in the training centers are not allowed to go out; they are locked in and are virtually prisoners of the agency. What is more, when someone commits a mistake, everybody suffers.

Migrant domestic workers are regarded as commodities to be bought, sold and traded during recruitment and placement. “In a sales pitch, an employment agent in Singapore told prospective employers: “There is an initial fee of US$ 347 for an Indonesian, US$353 for a Filipina”.

Given the above, sending countries should come up with doable enforcement mechanisms to monitor, investigate and impose stiff penalties on illegal practices of these agencies.

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

7. 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.

8. Special protections for migrant domestic workers

As mentioned in the introduction, being migrant leaves migrant domestic workers twice vulnerable than local counterparts. As with other domestic workers around the globe, they are 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.

It should also be noted that in some countries, the issue of migrant workers are not handled by the labour department. While it is true that most of the issues faced by migrant domestic workers are labor-related ones, they are first and foremost human rights issues. The protection of migrant domestic workers cannot be solved solely by reforming labour provisions but also taking into account the other existing mechanisms or structures that have significant effects on MDWs like restrictive and anti-migrant immigration policies.
Special Protections That Should be Accorded to Migrant Domestic Workers

a. Inclusion of migrant domestic workers in existing labour national laws and policies
One of the major reasons why domestic workers become vulnerable to abuse and exploitation is that they are not covered by national labour laws or other existing legal protection mechanisms. Laws must be consistent with decent work principles and international standards and equality of treatment at par with other workers.

b. Uphold 8 hours standard work time
One of the defining characters of domestic work tagged as "slavery-like" is the unregulated working hours, meaning they are "on call" anytime by employers. Recognising domestic work (DW) as work means that the basic principle of the 8-hour work standard – enshrined in ILO Convention No.1– must be explicitly guaranteed for domestic workers. DWs must be governed by the same working-hour standards and principles as other job categories – i.e. 8-hour standard work hours. Any overtime work should be subject to international limitations and standards of payment.

c. Ensure the provision of the following rights. These widely accepted rights and principles are accorded to workers in general but have consistently been denied to domestic workers.

(i) Rights & redress – labour and human rights of DWs, especially the right to a legal and binding employment contract; equal protection and treatment of DWs under the national labour protection laws and international labour standards; the right to organise, unionise, and collective bargaining; and the right and access to proper redress and compensation for violations of these rights.

(ii) Respect – respect of the value of DW as paid and productive work; respect for its status and multi-skilled nature; recognition of the economic value of DW as one of the productive jobs in society that either men or women can perform based on skills and qualification.

(iii) Remuneration – fair and decent wages based on multiple skills required by DW, work hours, and other merits – similar treatment as other job types paid based on merit/skills/qualifications.

(iv) Rest & recreation – rest hours, rest days, leaves; right to leisure, recreation and social life.

(v) Retirement and insurance protection – social security, accident protection, occupational safety and health protection for DWs on equal terms with other workers.

(vi) Residency & mobility rights – residency rights like other foreign workers/expats; right to stay permanently like other foreign workers; right to integrate/stay in another country; legal and fair migration channels; visa not tied to employer/sponsor; job mobility like all other workers; job mobility (right to change employers, to improve/change job qualifications, vertical and horizontal job mobility).

(vi) Reproductive, family & health rights – including pregnancy, family reunification, reproductive health; health rights, services, access and protection.

(vi) Return & reintegration – right and support to return back home, stay and reintegrate in community of origin.

d. Security of residence in host countries during the period of a contract, protection against arbitrary deportation, ease of transfer to other employers, access to employment in other professions. These are all rights and protections relating to the short and medium terms that have an immediate impact on domestic workers’ ability to improve their position under many jurisdictions.

e. Abolition of discriminatory policies against migrant domestic workers
Being migrants leaves migrant domestic workers in a very vulnerable situation while locals are protected by their governments. 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. This is something MDWs are denied no matter how many years of service they have.

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. The Middle East is currently one of the largest labour receiving regions for migrant workers, with an estimated 10 million workers in the Gulf Cooperation Council (GCC) countries alone.

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, thus they are denied to avail of such a benefit.

In Taiwan, 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.

f. The Convention should establish regulatory and monitoring mechanisms particular to working and living conditions in households where migrant domestic workers are employed, and to ensure compliance with the unified contract.

g. Provide holistic support services for domestic workers who have legal cases in the host country

The ILO should mandate sending and receiving countries to work together in providing holistic support services such as facilitating complaint systems, supporting investigations of alleged abuse, and special care for workers who have been abused or maltreated.

h. Inclusion of social integration policies and challenging immigration policies that exclude or restrict domestic workers.

The fact that domestic workers are confined in the private homes of their employers which restricts/curtails their movement, MDWs face a problem on social integration; they do not have a chance to be integrated in the host country. MDWs' right to mobility, to integrate, and to choose to stay must be upheld.

i. Member States to make preparations for reintegration

ILO Member States should have a viable reintegration program for returnee migrant domestic workers. Such steps should include social reintegration seminars for psychological and practical 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 s/he has invested her/his time, skills, energies, youth, and the most productive years of her/his life.

In the Philippines and Taiwan, labor policies are discriminatory. The ILO should mandate sending and receiving countries to work together in providing holistic support services such as facilitating complaint systems, supporting investigations of alleged abuse, and special care for workers who have been abused or maltreated.
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.