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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families

General comment No. 1 on migrant domestic workers

I. Introduction

1. Domestic work is an important occupation for millions of individuals, accounting for up to 10 per cent of total employment in some countries.[1] 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.

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 (hereinafter referred to as the Committee), at its eleventh session in October 2009, resolved to issue a general comment in order to provide States with guidance on how to implement their obligations under the International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families (hereinafter referred to as the Convention) with respect to migrant domestic workers. The Committee organized a Day of General Discussion on this subject on 14 October 2009, which generated strong participation by States, international organizations, non-governmental 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 Convention.

3. As defined by the Convention, 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"[2]. Accordingly, the Convention expressly provides

[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 International Labour Organization (ILO) (2009), "Decent Work for Domestic Workers", Report IV(1), International Conference, 99th session, 2010.

[2] Convention, art. 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

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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"[3].

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 Convention delineates rights that apply to all migrant workers regardless of their status[4], and then distinguishes further rights of migrants who are documented or in a regular situation[5], this general comment shall refer to all migrant domestic workers, unless expressly indicated.

5. The terms "domestic work" or "domestic worker" have not yet been defined in any international instruments. However, drawing on common elements found in definitions set out in national legislation[6], the Committee notes that the term "domestic worker" generally refers to a person who performs work within an employment relationship in or for other people's private homes, whether or not residing in the household.

6. The Committee considers that migrant domestic workers are included in the term "migrant worker" as defined in article 2, paragraph 2, of the Convention and that any distinction made to exclude migrant domestic workers from protection would constitute a prima facie violation of the Convention.

7. Whereas many of the human rights issues and concerns identified in this general comment are relevant to all domestic workers, 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 family; lack of basic support systems and unfamiliarity with the culture and national labour and migration laws; and dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants' workplace may also be their only shelter and the reliance of family members back home on remittances sent back from the domestic work. Women migrant domestic workers face additional risks related to their gender, including gender-based violence. 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.

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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 (art. 3(d)).

[3] Convention, art. 1.

[4] Convention, Part III.

[5] Convention, Part IV.

[6] See ILO (2009), "Decent Work for Domestic Workers", report IV(1), International Conference, 99th session 2010; José Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective*, ILO (2003).

A. Problems faced by migrant domestic workers and members of their families

8. 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 violations of their human rights including those protected under the Convention.

Recruitment, pre-departure and in countries of transit

9. 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. Some prospective migrant domestic workers are deceived by illegal recruitment agents and lured into paying for fraudulent visas or other documentation and non-existent jobs.

10. While transiting through foreign countries, women and girls are particularly at risk of being subjected to physical and sexual abuse by agents and intermediaries.

At arrival and during employment

11. Upon arrival the migrants are often left stranded with high levels of debt from their migration and without legal papers and employment, rendering them vulnerable to abuse and exploitation. Even where contracts had been signed pre-departure, many migrant domestic workers are compelled to sign new contracts upon arrival, nearly always for less pay and often for different work conditions of employment and abode than had been agreed upon or promised and often in a language they do not understand, without legal counselling, and under duress.

12. The withholding of passports by the employer 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.

13. In the workplace, many are subjected to abusive working conditions, including:

(a) Partial and in many cases, total, restriction on movement outside the house and on communication with individuals outside the house, including with family members left behind;

(b) Excessive and often undefined working hours. Especially for migrant live-in domestic workers, there is often an express or implied expectation of total availability, where the worker can be called on to work at any time;

(c) Insufficient rest and leisure time. Many migrant domestic 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 of losing their jobs even where there are legitimate reasons for absence such as illness or personal/family emergencies;

(d) Restrictions on their ability to travel even for essential family matters, such as serious illness or bereavement in the family;

(e) 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, often without any traceable payments into bank accounts, or with salaries paid in kind;

(f) Lack of social security protection, including sickness and family benefits and building pension rights;

(g) Psychological, physical and sexual abuse and harassment from their employers as well as from recruitment agents or intermediaries; and

(h) Inadequate, unsanitary and degrading living accommodations.

14. 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 to violations of their rights under the Convention, including the basic right of access to education.

Families left behind

15. The prolonged absence of migrant domestic workers negatively affects the family unity, and the social and psychological wellbeing of members of their families and also often results in violations of the rights of their children who have remained in the country of origin.

Upon return

16. Migrant domestic workers may encounter difficulties in reintegrating into the labour market and society in their countries of origin upon their return. They may also encounter difficulties related to the portability of pension and social security benefits.

17. 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 and with no possibility of seeking compensation and remedies. 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 of seeking legal remedies.

B. 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] In line with other human rights treaties, the protection against abusive and exploitative labour conditions afforded under the Convention extends to all migrant workers, irrespective of their migration status. In this regard, the Committee notes with concern that, at national level, major categories of law

[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) on women migrant workers; Committee on Economic and Social Rights, general comment No. 18 (2005) on the right to work; Committee on the Rights of the Child, general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin; Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non citizens; Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant.

often ignore, or explicitly exclude domestic work and workers in ways that contribute to exploitative labour practices and limit avenues for legal redress in cases of violations.

19. *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 to be "employers". Equally, traditional perceptions of domestic work as tasks associated with unpaid work in the home performed by women and girls as well as traditional perceptions of domestic workers as either being "family helpers" often militate against the extension of national labour law to effectively cover domestic work. Because of their de facto and/or de jure, "unrecognized" status as "workers", domestic workers are unable to exercise the rights and freedoms granted by labour law to other workers.

20. 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, migrant domestic workers 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.

21. *Immigration law.* Laws regulating the conditions of entry and stay in countries of employment are often a source of specific vulnerabilities for 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.

22. Under some countries' laws regarding work permit and security bond conditions, women migrants, including domestic workers, who get pregnant or who are found to be HIV positive 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.

23. *Contract law.* National laws and regulations pertaining to contracts are often inapplicable to domestic work and/or domestic workers, either categorically or as a practical matter because domestic work is performed in the informal labour market.

24. *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 gender-sensitive health care coverage further increases the vulnerability of migrant domestic workers and their dependence on their employers.

Protection gap: practical

25. 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.

26. A range of factors constitutive of domestic work itself, and even more so, of domestic work performed by migrants, hides abuses from view, and makes detection of protection needs difficult.

(a) Workplaces are unseen, behind closed doors and out of the public eye;

(b) Domestic work is commonly part of the informal labour market, where work and workers are unregistered;

(c) The physical and social isolation of workers blocks individual and collective action;

(d) The large number of workplaces, their geographical spread and national privacy laws complicates effective inspections and monitoring by labour departments.

27. 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:

(a) Specific mechanisms available to receive and address complaints from domestic workers are often not available;

(b) 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.

(c) 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. These restrictions, and the long periods it may take for cases to be resolved, often lead to domestic workers choosing not to report complaints or withdrawing their cases in order to return home more quickly.

C. Recommendations to States parties

Pre-departure awareness-raising and training

28. 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 the 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:

(a) Information on different types and arrangements of domestic work;

(b) Basic knowledge of applicable national and transnational legal frameworks;

(c) Essential information and perspectives on:

(i) Migration-related fees and debt;

(ii) Family aspects and effects on family life, such as separation, right to family visits or return, pregnancy during employment, etc.; and

(iii) Other risks of domestic work outside the country of origin.

29. 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 relevant non-governmental organizations, migrant domestic workers and their families, and recognized and reliable recruitment agencies, and could cover:

(a) A comprehensive “know your rights” curriculum, covering both international and national frameworks, using the Convention as a reference;

(b) “Know your obligations” orientation to essential aspects of the law and culture of the country of employment;

(c) “Awareness-raising” training, including issues of migration, working conditions, social security, debt, finance and work-related fees and basic knowledge on methods of conflict resolution, and avenues for redress;

(d) Financial literacy, including information on remittances and saving schemes;

(e) Contact information for emergency assistance, including embassies and consulates and relevant civil society organizations in countries of employment; and

(f) Other information needed on logistics, safety, health, human rights issues and points of assistance during the entire migratory process.

30. Where appropriate, States parties could also support pre-departure training offering:

(a) Basic language preparation;

(b) Training for specific types of work, including key job skills where appropriate; and

(c) Cross-cultural destination-specific orientation.

Cooperation among States

31. States of origin, States of transit and States of employment share the responsibility for regulating and monitoring recruitment and placement processes.

32. In line with articles 64 and 65, States of origin and employment are encouraged to cooperate on:

(a) Protection-sensitive and transparent frameworks and agreements, including bilateral, multilateral and regional agreements between States;

(b) 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 and multilateral agreements between countries of origin and employment;

(c) Regular and public reporting of migrant domestic worker flows, employment, rights issues, training and other programmes, and issues of justice administration.

Recruitment agencies

33. In accordance with article 66, States parties have an obligation to effectively regulate and monitor labour brokers, recruitment agencies and other intermediaries to ensure that they respect the rights of domestic workers.

34. 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:

(a) Licensing, possibly involving processes of accreditation and periodic renewal;

(b) Monitoring, inspection and evaluation;

(c) Sanctions and penalties;

(d) Systems of recording and reporting, including web-based formats that are widely and easily accessible to the public, with particular attention to instances of complaints and conflicts involving workers.

35. 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' organizations themselves, non-governmental organizations working with migrant workers and with workers' and employers' organizations.

36. 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. States parties should ban recruitment fees charged to domestic workers, including through salary deductions.

Conditions of work

37. The rights of migrant domestic workers should be dealt with within the larger framework of decent work for 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.[8]

38. 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, social security protection, including with respect to maternity, pension rights and health insurance, as well as additional provisions specific to the circumstances of domestic work. In this regard, migrant domestic workers should enjoy treatment not less favourable than that which applies to nationals of the State of employment (article 25).

39. States should protect the right of migrant domestic workers to freedom of movement and residence, including by ensuring that migrant domestic workers are not required to live with their employers or stay in the house during their time off (article 39). States should also ensure that migrant domestic workers retain possession of travel and identity documents (article 21). In addition, States should take all necessary measures to promote a shift in public perceptions so that domestic work becomes widely recognized as work and domestic workers as workers with fundamental rights, including labour rights.

40. States parties are encouraged to ensure that migrant domestic workers have explicit, written terms of employment, in a language they can understand, 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.

41. States parties should 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.

[8] This recommendation is in line with Committee on Economic, Social and Cultural Rights general comment No. 18 (2005) on the right to work, para. 10.

Social security and health services

42. States parties should ensure that migrant domestic workers are granted access to social security benefits on the basis of equal treatment with nationals (article 27).

43. States should ensure effective access of all migrant domestic workers to any medical care urgently required to avoid irreparable harm to their health (article 28). Particular attention should be given to women migrant domestic workers with irregular status, who are especially vulnerable during pregnancy, as they are often afraid to contact public health services out of fear of deportation. States should not require public health institutions providing care to report data on the regular or irregular status of a patient to immigration authorities.

44. States should ensure that migrant domestic workers in a documented or regular situation enjoy equal treatment with nationals in relation to 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.[9]

Right to organize for collective bargaining and protection

45. The right to organize and to engage in collective bargaining is essential for migrant domestic workers to express their needs and defend their rights, in particular through trade unions (articles 26 and 40) and labour organizations.

46. The laws of States parties, particularly countries of employment of migrant domestic workers, should recognize the right of the latter to form and join organizations, regardless of migration status (article 26) and self-organization should be encouraged.

47. 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.

Freedom of religion or belief and freedom of expression

48. States parties should take effective measures to ensure that migrant domestic workers are free to practise the religion or belief of their choice, as well as their freedom of expression, individually or in community with others, in public and in private, in accordance with articles 12 and 13 of the Convention and other international human rights standards (articles 12 and 13).

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, paragraph 1, and 83). States parties should ensure that such complaints are investigated in

[9] See International Covenant on Economic, Social and Cultural Rights, art. 12. As the Committee on Economic, Social and Cultural Rights underlines in its general comment No. 20 (2009) on 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 recommendation No. 30 (2004) on discrimination against non citizens.

an appropriate manner and within a reasonable period of time and that cases of violations are appropriately sanctioned. To facilitate access to redress mechanisms, States parties could for example designate a domestic workers' Ombudsperson. States parties should also ensure that migrant domestic workers can obtain legal redress and remedies for violations of their rights by employers who enjoy diplomatic immunity under the Vienna Convention on Diplomatic Relations.

50. In order to ensure effective access to justice and remedies for 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 should have access to temporary shelter when needed due to the abusive circumstances of their employment. States parties are encouraged to consider time-bound or expedited legal proceedings to address complaints by migrant domestic workers. Moreover, States parties 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 based on actual demand (article 68).

52. States parties should take appropriate measures to address the extreme vulnerability of undocumented migrant domestic workers, especially women and children. 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 or guardianship of a specific employer, since any such arrangement may unduly restrict the liberty of movement of migrant domestic workers (article 39) and increases their vulnerability to exploitation and abuse, including in conditions of forced labour or servitude (article 11).

Respect for family unity

54. States parties shall take appropriate measures to protect the unity of the families of migrant domestic workers in a regular situation (article 44, paragraph 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. States parties should ensure that children separated from one or both parents are allowed to maintain direct contact with both parents on a regular basis.

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, paragraph 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. In line with the Convention on the Rights of the Child and relevant International Labour Organization (ILO) instruments, States should ensure that migrant children do not

perform any type of domestic work which is likely to be hazardous or harmful to their health or physical, mental, spiritual, moral or social development. States shall refrain from adopting policies aimed at recruiting domestic migrant children.

57. States parties shall 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. Schools should not be required to report data on the regular or irregular status of pupils to immigration authorities.

58. Children of migrant domestic workers shall be registered soon after birth, independently of the migration status of their parents, and be provided with birth certificates and other identity documents States should take all appropriate measures to ensure that children are not deprived of a nationality. (article 29)

59. States parties should eliminate discriminatory policies and practices that deny or restrict the rights of children of migrant domestic workers, notably their right to health and education (articles 28 and 30).

Gender perspective

60. 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.[10] Recognizing that most domestic workers are women and girls and taking into consideration traditional roles, the gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration, States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies to the gender-based discrimination that they face throughout the migration process.

61. 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 repeal discriminatory laws, regulations and practices related to HIV, including those which result in the loss of work visas based on HIV status, and ensure that medical testing of migrant domestic workers, including tests for pregnancy or HIV, is only done voluntarily and subject to informed consent.

Embassies and consulates

62. While the States of employment have the primary responsibility to protect the rights of migrant domestic workers, embassies and consulates of States of origin 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

[10] Committee on the Elimination of Discrimination against Women, general recommendation No. 26 (2008) on women migrant workers, para. 5.

where migrant domestic workers are employed are encouraged, in coordination with the authorities in the countries of employment, to:

(a) Ensure adequately trained staff and mechanisms (including telephone hotlines) to receive and address complaints made by migrant domestic workers, including through the provision of legal aid;

(b) Provide counselling and facilitate appropriate shelter for migrant domestic workers, especially women and children, fleeing from abusive employment circumstances;

(c) Expedite the processing of temporary travel documents and return tickets to avoid migrant domestic workers in distress being trapped in shelters for lengthy periods of time;

(d) 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:

(i) Actual country and employment conditions;

(ii) 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.

63. Embassies and consulates of countries of origin are encouraged to cooperate with each other to identify abusive recruitment agencies and to promote appropriate protection policies for migrant domestic workers.

64. In the case of detention of a migrant domestic worker or a member of his or her family, the person shall be contacted by the embassies or consulates concerned with a view to arranging visits by the relevant consular officials in consultation with the State of employment. (articles 16, paragraph 7, and 23).

Participation of migrant domestic workers and civil society

65. 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

66. States parties should include in their reports information about efforts to monitor the situation of migrant domestic workers, including through the provision of statistical data, and to protect their rights under the Convention, keeping in mind the recommendations contained in the present general comment.