

BACKGROUND PAPER

(Original Version English)

**Roundtable 3 – Managing Migration and Perceptions of Migrants for
Development Outcomes**

**Round Table 3.3 - *Protecting Migrant Domestic Workers – Enhancing their
Development Potential***

RT 3.3 Co-chairs: Philippines and Turkey

Team members preparing the session: Austria, Belgium, Ecuador, Ghana, Jamaica, Mexico, South Africa, USA, and UN Women, ILO, IOM, IFRC

RT 3.3 Coordinators – Elizabeth Adjei and H.E. Usha Dwarka-Canabady

This paper was drafted by Dr. Jean d’Cunha, Advisor, Employment and Migration, UN Women, and Gloria Moreno-Fontes Charrmartin, Senior Specialist on Migration Policy, ILO, with inputs provided by IOM, IFRC, the RT 3.3 team and the RT Coordinator, Elizabeth Adjei. The aim of the paper is to inform and facilitate the discussion of Roundtable session 3.3 during the Mauritian GFMD summit meeting in November 2012. It is not exhaustive in its treatment of the 3.3 session theme and does not necessarily reflect the views of the GFMD organizers or the governments involved in the GFMD process.

Executive Summary:

This background paper supports the preparations and discussions of Roundtable session 3.3 on “Protecting Migrant Domestic Workers – Enhancing their Development Potential”. The session will build on discussions within the GFMD over the last two years on the international migration of domestic workers¹, which has helped to locate this important policy issue at the interface of gender, international labor mobility and development.² The session seeks to take forward concrete outcomes from the GFMD 2011 workshops in Jamaica and Ghana on migrant domestic workers and continue exploring ways of protecting and improving the conditions of domestic workers globally.³

The paper opens with the normative and economic case for promoting and protecting migrant domestic workers, highlighting emerging trends in migrant domestic work that further reinforce the need for protections. It proceeds to foreground the ILO Convention No.189, and discusses some strategies and promising practices aligned with international human rights standards, highlighting impacts and lessons learned. These good practices include: national legislation and enforcement, provision of frontline services, organizing migrant domestic workers and collective bargaining. Finally the paper makes suggestions on what governments can do further in partnership with civil society and international organizations to implement legal and social protections for migrant domestic workers.

The paper is not exhaustive, but intended rather to stimulate debate and dialogue towards meeting the session’s objectives. It concludes with four questions to guide the discussion and proposes some concrete outcomes for the session. These outcomes include: enhancing awareness and promoting ratification and implementation of ILO Convention No. 189; encouraging the introduction, strengthening and robust implementation of policy, legal and social protection measures that promote and protect the rights of migrant domestic workers, in line with the human rights standards set by the ILO Convention No. 189 on Decent Work for Domestic Workers, CEDAW and its General Recommendation No. 26 on Women Migrant Workers 2008; and the Migrant Committee’s General Comment No. 10 on Migrant Domestic Workers, 2010.

Objectives of the session

The paper aims to achieve the following key objectives:

- To highlight the economic and social contribution of domestic work to economic growth and human development in countries of origin and destination and to share information on ways and means to enhance the development potential of migrant domestic workers;

¹ For the purpose of Convention 189; a) the term “domestic work” means work performed in or for a household or households; b) the term “domestic worker” means any person engaged in domestic work within an employment relationship; c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

² In 2010, the Mexican Chair-in-Office and UN Women organized a pre-GFMD meeting to inform the outcomes of the roundtable session on Gender, Family, Migration and Development; the issue was discussed in the RT session (see the background paper annex on global domestic workers written by UN Women and IOM); and governments agreed to continue with this as a GFMD focus. In 2011, under the Swiss Chair-in-Office, two global meetings were organized on migrant domestic workers at the interface of migration and development in partnership with the governments of Jamaica, Ghana, UN Women, IOM, the Migration Policy Network and others.

³ Two concrete outcomes of the 2011 workshops were (a) the launch of a Caribbean-wide network of civil society organizations supported by UN Women and ILO to work with governments to ratify and implement the ILO Convention No. 189 on Domestic Workers and other relevant standards (b) an agreed checklist based on Convention 189, CEDAW and other standards, to help governments and civil society develop and implement protections for domestic workers. (See Annex attached)

- To enhance awareness and promote ratification and implementation of the ILO Convention No 189 , and to share information on related developments and experiences;
- To highlight current gaps in data collection and analysis on migrant domestic workers and ways in which these can be addressed, including through Migration Profiles as tools for appropriate policy formulation;
- To encourage strengthening of policy and legal efforts and initiatives to protect domestic workers in and between countries of origin and destination, particularly in the global south, through sharing good practices, experiences and practical tools, (and their benefits) on social and legal protections for domestic workers, in areas including labour law reform, bilateral arrangements or agreements between countries of origin and destination.

1. Background and Context:

1.1 Why Promote and Protect the Rights of Migrant Domestic Workers

Domestic work⁴- household and personal care work, such as cooking, cleaning, laundering, caring for children, the elderly, the ill and disabled, performed by domestic workers is dominated by women and is an important source of women’s employment. According to 2011 ILO estimates based on official statistics from 117 countries, there some 53 million domestic workers worldwide, 83 per cent of them being women. It plays an important role for the functioning of families, households and labor markets. It sustains and renews human life and households, including that of its working members. It frees up household members to join labor markets, and in doing so, domestic workers contribute to productivity, economic growth and human development in countries of employment and origin- considering their economic and social remittances to families and communities back home. A 2006 Asian Development Bank study in East and Southeast Asia found that nearly 2 million migrants, mostly women, remitted over US\$3 billion from Hong Kong, China, Japan, Malaysia and Singapore averaging from US\$300 to US\$ 500 per month. (ADB, 2006)

Yet the rights of domestic workers and their contributions have been peripheral to the sustainable development agenda. Domestic work is poorly regulated, because it is performed by women “invisible” in private homes – often still not perceived as “workplaces”; it carries the “low value” of women’s unpaid care work, not defined as work and is seen as a woman’s natural attribute, needing no special skill. The inadequacy of labor & migration legislation, including a lack of policy coherence between them and the pervasive public perception of domestic workers as “unskilled, low end and expendable”, paves the way for abuse and exploitation. This reduces the positive development impact of migrant domestic work. Further, the private, geographically dispersed nature of domestic work makes enforcement and compliance with laws, where they exist, difficult. (UN Women, 2005)

Against this background the historic ILO Convention No.189 and Recommendation No.201 concerning Decent Work for Domestic Workers, 2011, together with the CEDAW General Recommendation No 26. on Women Migrant Workers, (including domestic workers), 2008 and the General Comment on Migrant Domestic Workers by the Committee on Migrants, 2010, provide a framework to promote and protect the

⁴ As defined by Convention No. 189, the term “domestic work” means “work performed in or for a household or households”, while a domestic worker is “any person engaged in domestic work within an employment relationship”(Article 1). The Convention applies to all domestic workers, including migrant domestic workers.

rights of domestic workers. Domestic workers' organizations and trade unions have been at the heart of this standard setting and advocacy, leading to the adoption of the fore-mentioned ILO Convention and other instruments.

1.2 Economic and Social contributions of Domestic Workers

But implementing legal and social protections for domestic workers also makes good economic sense. An abundance of research shows that enhancing women's economic participation improves national economies, increases household productivity and living standards. It enhances the well being of women and children with long term economic impacts and can increase women's agency and overall empowerment. According to the World Bank's World Development Report 2012 – "Gender Equality and Development", although overall labor force participation remains low, the expansion of employment opportunities for young women (linked to the growth of the garment industry, health services, and social work) has increased girls' school enrollment and lifted social restrictions on female mobility, allowing for a visible feminization of public spaces. In China, increasing adult female incomes by 10% of the average household income increased the fraction of surviving girls by a percentage point and increased the years of schooling for both boys and girls (Qian, N, 2008). In Brazil and Mexico, cash transfers directed at women have resulted in higher nutrition and educational levels for children, especially girls, decreases in child labour and better employment for young women (UN DESA, 2009).

Women migrant workers, including domestic workers often remit a greater proportion of their earnings than low skilled men migrant workers and are often more stable and consistent remitters. Their remittances tend to be invested in family well being - nutrition, health care, education, skills development of children/other family members, thus building human and social capital - as well as in small businesses. This contributes to economic growth and development (UN Women, 2008, 2009). A positive migration experience also contributes to other important aspects of human development. Evidence shows that women migrant domestic workers acquire confidence and self esteem in negotiating the public space. This, together with their roles as financial life-lines often provide them with a higher status and a stake in family and community decision-making on return. Moreover there are examples of women migrant workers organizations who effectively influence national policy to render it more gender sensitive (UN Women 2005-11) and are also capacitated to participate in and influence regional and global norm setting.

Domestic work involves a range of tasks and services that are crucial to households, requires skills, and responsibility and has social and economic value. Despite this, evidence suggests that domestic workers are subject to socio-economic discrimination based on economic status, gender, ethnicity among others. They are disproportionately affected by low wages, exclusion from minimum wage coverage⁵, excessively long hours of work, insufficient rest periods and leave⁶, lack of social security, and in the worst cases psychological, or physical abuse, including sexual harassment and violence. In addition, occupational health hazards (i.e. being exposed to cleaning related chemicals), lack of access to health services and heightened levels of depression as a result of difficult working conditions and isolation are not a rare occurrence in the lives of migrant domestic workers. Lack of recognition of domestic work as real work, its gender-based undervaluation, the lack of labour and social protection, a high degree of informality, and the worker's isolation at the workplace - a private home, increases the negative impact on the domestic workers' well-being.

⁵ Some 43 per cent are not included in the minimum wage coverage where it exists for other workers (ILO, 2011).

⁶ Roughly half of the world's domestic workers do not enjoy the right to weekly rest day or limitation of their weekly working time (ILO, 2011)

1.3 Costs of lack of protection

The human and economic costs of violence to migrant domestic workers could be huge for the individual, families, communities and the economy. Although precise data is not available, some analogies can be made. According to the World Bank East Asia and Pacific Regional Report 2012, gender-based violence imposes significant costs on the economies of developing countries, for example, through lower worker productivity and incomes, lower human capital investments, and weaker accumulation of social capital). In addition to indirect costs, gender-based violence has large direct economic costs on society. In Canada, for instance, the annual monetary cost of violence against women has been estimated at CAD\$684 million in the criminal justice system and CAD\$187 million for policy (United Nations Millennium Project, 2005).

Reducing gender-based violence would thus have significant positive effects on the region's economies by reducing healthcare costs, increasing investments in women's human capital, female worker productivity, and women's accumulation of social capital.

Women migrant domestic workers can be confronted with additional vulnerabilities leading to violations of their human and labor rights. This could be linked, among other things, to lack of access to legal channels for migration and/or precarious recruitment processes (including passport and contract substitution, and excessive fee charging), the use of visa sponsorship systems, and absence of adapted assistance and protection mechanisms. Exposure to abusive practices could be exacerbated by relative social and cultural isolation due to language and cultural differences, lack of advance information on terms and conditions of employment, absence of labor law coverage and/or enforcement in the country of destination, as well as restrictions on freedom of movement and association. Recent ILO estimates on forced labor indicate that out of a total of 20.9 million forced laborers globally, 14.2 million (68 per cent) are victims of forced labour exploitation in three economic activities such as agriculture, construction, domestic work or manufacturing (ILO, 2012).

2. Trends in domestic work

Domestic work represents a significant portion of the labour market in most countries. At least 7.5 per cent of women in paid employment globally, are domestic workers. The same ratio stands at 31.8 per cent for the Middle East and 26.6 per cent for Latin America and the Caribbean (ILO, 2011). Women also constitute a large share of international migrants, comprising about half the total migrant stock worldwide (UN DESA, 2011). A significant proportion of overseas women migrant workers are domestic workers, with regional and country specific differences in migration trends. More than 18 per cent of employed female third-country nationals in the 27 EU Member States are engaged by private households, compared to one per cent among nationals (EUROSTAT, 2011). Considering the limitations of available labor market and census data in capturing domestic work and migrant workers, especially undocumented migrant workers, the actual numbers of domestic workers can be expected to be substantially higher.

Domestic work is significant but also a growing economic sector, as more households are substituting care work previously performed by female household members with external domestic services. The growing demand for domestic work is linked to greater female labor market participation and ageing populations together with decreasing social expenditures by welfare states. It is also linked to increasing affordability for more households fuelled by socioeconomic development and a global labour force that responds to this growing demand. While global and regional data on patterns of international migration for domestic work is not readily available in countries of origin, domestic workers in the Middle East are largely migrants, a majority of them women, from Asia and Africa. Households in the EU tend to mostly rely on domestic workers from the Eastern Europe, Africa and Latin America. Intra-regional and south-south migration for domestic work is also a growing phenomenon. In Latin America important migration corridors are the Nicaragua and San Salvador to Costa Rica, Paraguay and Bolivia to Argentina, Peru to Chile and Colombia to Venezuela. In Asia, such movement occurs from less developed countries in the region to growing

economies such as Malaysia, Singapore, Hong Kong and Thailand. Similarly women migrating from Lesotho, Mozambique, Swaziland to South Africa for domestic work, appears to be a relatively significant phenomenon.

Despite their protection needs, policies promoting and ensuring decent work for all domestic workers are lacking. Laws may be in need of reform or better compliance and enforcement where they exist. Elsewhere labour and social protection for domestic workers may be absent or incomplete in law. (ILO,2011). Migration regimes may de facto hamper or limit migrant workers effective coverage by labour protective legislation. Bi-lateral or multi-lateral agreements protecting migrant domestic workers remain an exception and information on their operation and impact is scarce.

Against this background, an unprecedented and dynamic domestic workers movement has emerged, with a multitude of groups, organizations, networks acting at the local, national, regional and global levels. Together with the trade union movement, they have effectively contributed to the development and adoption of the ILO Convention No.189 on decent Work for Domestic Workers, with strategies in countries of origin and destination underway for its ratification and implementation. For instance, the “12-by-12” campaign for ratification and implementation of Convention No. 189, led by the International Trade Union Confederation (ITUC) in partnership with International Domestic Workers Network (IDWN), other global unions and NGOs has campaign teams working in over 80 countries. A pioneering capacity building program to promote the rights of migrant workers in the Middle East and Asia that took place in May 2012 brought for the first time, workers’ organizations and NGOs supporting migrant domestic workers from countries of origin together with their NGO and trade union counterparts in Middle Eastern countries.

3. The Convention No. 189 concerning Decent Work for Domestic Workers

3.1. Key principles and standards:

This section provides a brief overview of ILO Convention 189, key principles and standards and related guidance from Recommendation No. 201 - emphasizing those particularly relevant for migrant domestic workers. These international labour standards illustrate a shift towards recognizing domestic work as “real work” which should be governed by labour and social policies. The Convention applies to all domestic workers, including migrant domestic workers. Domestic workers, like any other workers, have the right to enjoy fair terms of employment and decent working and living conditions, and a range of measures in this regard are set out in the Convention.

Under the Convention, domestic workers that take up a position abroad should receive a written contract or job offer containing the specific terms and conditions of employment before they travel to the country of employment - a key principle to combat forced labour and human trafficking. A written contract containing terms and conditions of employment is crucial to formalize the employment relationship, helps both workers and employers to understand their mutual rights and obligations, and facilitates resolution of employment disputes that may arise. Information on terms and conditions should be provided to migrant domestic workers in a verifiable and easily understandable manner. Vulnerabilities related to the recruitment process also relate to the role played by private employment agencies as actors in international migration for domestic work, on both ends of migration corridors. The Convention provides that ratifying member states shall determine the conditions for private employment agencies’ operations and other measures of protection. The Convention consequently requires measures to be taken to determine the conditions for agencies’ operations and other measures of protection for migrant domestic workers, including complaints mechanisms and investigations into alleged abuses and fraudulent practices and imposition of penalties where this occurs.

The Convention further states that domestic workers should be free to reach an agreement with their employer or potential employer on whether to reside in the household. Measures should be taken to ensure that live-in domestic workers enjoy decent living conditions respecting their privacy. Recommendation No. 201 includes details of employer-provided accommodation and food. It recommends that a reasonable notice period is given in cases of termination other than for serious misconduct, to enable the workers to find new employment and accommodation. The Convention further provides that migrant domestic workers are entitled to keep their travel and identity documents in their possession and that domestic workers who reside in the household are not obliged to remain in the household or with members of the household during periods of rest or leave.

Working time and remuneration are two key dimensions of working conditions to be addressed to ensure decent work for domestic workers. Like any other workers, domestic workers enjoy the human right to have their working hours limited and to receive fair pay. Absence of regulatory measures in these areas contributes to conditions under which forced labor is more likely to occur. Limitation of working time is a pre-condition for domestic worker to be able to access social and health services, as well as for their recreation and participation in religious services. In this regard, Convention No. 189 calls for measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave. As regards remuneration, domestic workers should be included in minimum wage coverage, where such coverage exists, and remuneration should be determined free-from gender-bias. Further, remuneration is to be paid directly to the worker, in regular intervals but not less than once a month, and payments in kind (such as deductions for accommodation and food) are only permitted to a limited extent and under strict conditions. Lastly, measures should be taken to ensure that fees charged by agencies are not deducted from the remuneration of domestic workers.

While mechanisms for protection from all forms of abuse, harassment and violence and infringements of labour rights should be available for all domestic workers, particular attention is to be paid to ensure their efficacy in protecting migrant domestic workers, taking into account their specific situation and needs. The Convention identifies a range of measures in this regard - pre-placement visits to the household, outreach and information on legal rights and available protection targeting migrant domestic workers, hotlines with interpretation services, accessible complaints mechanisms both during and after employment irrespective of departure from the country concerned, legal assistance funds, emergency housing, social and specialized consular services.

Finally, steps are to be taken, under the Convention to ensure the occupational safety and health of domestic workers and that they should enjoy conditions not less favourable than applicable to other workers in respect to social security including in respect to maternity. Progress in extending social security to domestic workers goes hand in hand with strengthening social security protection for migrant domestic workers, including through bi-lateral, regional or multilateral agreements providing for equality of treatment with respect to social security, as well as access to and preservation of portability of social security entitlements, as mentioned in Recommendation No. 201.

4. Strategies for Implementation and Selected Good Practices: Impact and Lessons Learned

One among the many key challenges is to secure widespread ratification of the Convention and its effective implementation, together with other relevant human rights standards, especially in national legal and policy frameworks and programs to protect all domestic workers. These may include laws and regulations, collective agreements, arbitration awards or other means, including practical measures such as model contracts, research and data collection, awareness raising campaigns, information services and other outreach activities, as well as training and capacity building.

Labor ministries are responsible for following-up on the new instruments to introduce and implement labor and social protections for migrant domestic workers. But, as domestic work intersects with multiple public policy areas, - employment, migration, gender equality, anti-trafficking, health and social affairs – policy coherence and multi stakeholder partnerships, including with domestic workers can enhance implementation.

A number of promising practices in this regard have already been implemented by governments and civil society to promote and protect the rights of domestic workers with insightful lessons and the potential for upscaling and replication.

4.1 Data collection and Research for Evidence based Policy Formulation and Implementation:

It is necessary to generate appropriate knowledge about domestic work and domestic workers in countries of origin and destination, including statistical data, analysis of the situation of domestic workers at all stages of the migration process, including on site employment conditions. This information can be used strategically to develop national policies, programs to protect domestic workers, as well as national action plans that prioritize interventions in short, medium and longer-term. In *New York*, the New York State Department of Labor has undertaken a study to assess the feasibility of collective bargaining for domestic workers and Domestic Workers United – an organization of domestic workers has published a study entitled, “*Domestic Workers and Collective Bargaining: A Proposal for Immediate Inclusion of Domestic Workers in the New York State Labor Relations Act*”, October 2010 to ascertain what inclusion in collective bargaining would mean for domestic workers and which models might be best suited to this sector. In *Nepal*, local research institutions in partnership with international organizations undertook a situational and policy analysis of out-migrating women migrant workers, including domestic workers. This became a powerful evidence based advocacy tool that convinced the government of Nepal to lift the ban on Nepali women migrant workers, including domestic workers migrating to the Gulf countries and contributed to the government of Nepal adopting the Foreign Employment Act, 2008 with gender sensitive provisions.

4.2 Labor law coverage and enforcement:

Given the existing gaps in labor law coverage, legislative initiatives are an important step towards protecting the rights of domestic workers, as they provide for codified rights and entitlements. Labor laws covering domestic workers have been introduced and implemented in several countries over the years, including Argentina, Bolivia, Brazil, Chile, France, Hong Kong, Jordan, South Africa, Spain, Switzerland, Uruguay, some US State laws and others. Strong implementation needs the creation of effective compliance and enforcement mechanisms at the national level to give legal effect to laws and regulations protecting migrant domestic workers. This includes ensuring the domestic workers’ right to access to court on one hand, while on the other hand, it calls for assigning responsibility to a competent governmental authority to supervise compliance with relevant laws and regulations. Under the Convention No.189, this includes requirement to develop and implement measures for labour inspection, enforcement and penalties.

Spain became the first country to introduce new regulations regarding domestic work following the adoption of Convention No. 189. Royal Decree 1620/2011 of 14 November 2011 improves regulations of 1985 governing domestic work. New measures include better protection from discrimination; a right to a written contract and the provision of a model contract by the authorities; a right to the national minimum wage, while payments in kind cannot represent more than 30 per cent of the remuneration (with a prohibition of payments in kind below the minimum wage threshold); an increase of the daily rest period to a minimum of 12 hours; improved rules for on-call periods; and improved support and information for employers to facilitate compliance. Spain has also recently adopted new legislation in 2011 extending the general social security system to domestic workers.

The government of *Jordan* revised its Labour Code and issued Regulation No.90 of 1st October 2009, to include domestic workers, cooks, gardeners and similar workers, becoming the first Arab country to provide labour protections to domestic workers. It introduced a standard unified working contract for migrant domestic workers even earlier in 2003, with important rights provisions. These include provisions for employers to bear workers' travel costs, work and residence permits; life and accident insurance, with workers paying for half the insurance premium; suitable accommodation, meals, clothing and medical care; a weekly holiday; a monthly salary with payment records kept by both parties; no restrictions on worker's communications and correspondence; a bonus equivalent to 15 days wages at the end of a 2 year contract. Information dissemination to raise employer and worker awareness on these protections, establishment of complaints and grievance redress mechanisms to give effect to legislation were some initiatives enforced. However there remain huge challenges in closing the policy-practice gap.

Domestic workers can be covered by general labor and social protection measures, but additional measures may be called for to address the specific characteristics of domestic work, particularly in the migration context. In *Lebanon* a unified employment contract was issued by governmental decree in 2009 and a draft law on domestic work has been developed. In March 2011, the UN Country Team issued a Code of conduct for UN staff in Lebanon employing domestic workers. New anti-trafficking legislation was enacted in August 2011. More recently a revised unified employment contract was prepared to bring it in line with the new ILO standards; the Lebanese Syndicate of the Owners of Recruitment Agencies developed a Code of ethics and a related implementation mechanism. The Government has also recently published an information guide for migrant domestic workers in Lebanon.

The New York State Domestic Workers Bill of Rights passed in 2010 is the first of its kind in the US. It provides for an 8 hour work day, over-time pay, a weekly rest day, a yearly minimum of 3 days paid leave, protection from discrimination and sexual harassment, workers compensation insurance protection benefiting over 200,000 domestic workers, most of whom are immigrants of color, working as nannies, housekeepers and companions for the elderly in New York State. Further, the Department of Labor per requirement of this law is assessing the feasibility of domestic worker organizing and collective bargaining.

In 2002, Sectoral Determination⁷ under the Basic Conditions of Employment Act, 1997, was introduced in *South Africa* which for the first time set out comprehensive standards and protections for domestic workers governing working conditions, including a minimum wage, hours of work, overtime pay, salary increases and leave entitlements. Domestic workers and their employers are also required to contribute 1% of their wages to the Unemployment Insurance Fund. Research finds that real wages, average monthly earnings and total earnings of all employed domestic workers have risen since the legislation came into effect (Hertz, 2005).

In *South Africa*, labor authorities publish user-friendly information on labor standards for domestic workers and the labor inspectorate has developed innovative means for approaching individual households, including household visits and verifying compliance.

Uruguay- combines legislative protection and collective bargaining for domestic workers. For instance, all employers including those of domestic workers were legally required to register employees with the Banco de Prevision Social (BPS, Social Welfare Bank) under which employers and employees make monthly payments to the employees' pension and health fund. Further, Law No. 18.065 adopted in 2006 set norms to regulate domestic work and paved the way for their collective bargaining. Broad-based information campaigns following the adoption of Uruguay's 2006 law helped to widely publicize it. The labor inspectorate has a special unit that monitors compliance and regularization of domestic workers in respect of social security contributions. Domestic workers can file complaints with the inspectorate which is also authorized to inspect workplaces, including private residences to enforce domestic workers' rights.

In **Belgium** diplomats and the domestic workers they employ need to sign an employment contract in accordance with Belgian legislation. The embassy of Belgium ensures that the domestic worker understands the terms and conditions of his/her contract during an interview preceding the issue of a visa. On arrival in Belgium, the domestic worker is required to collect in person a special identity card at the Protocol and Security service of the Ministry of Foreign Affairs - a service responsible for monitoring the work situation of foreign domestic workers employed by diplomats accredited in Belgium. The annual obligation to collect/renew the identity card in person allows the competent civil servant to talk to the worker about his/her work situation, provide advice or information if required to address an abusive situation that the worker may discuss during the interview. Such a procedure aims at better informing domestic workers of their rights and offering protection to the people who need it.

In 2009, Belgian consulates also began providing information through flyers to workers in countries of origin migrating to work in Belgium. These flyers designed in question and answer format, and available in the native language of the migrant, provide information on the worker's rights and organizations that they may access in the event of a problem in Belgium. This information inserted in the worker's passport is particularly designed for workers migrating to work in sectors in which economic exploitation and abuse is rife – domestic work, construction etc, and is an important initiative that arms workers to cope with potential exploitation, before departure and during their stay in Belgium.

In Ireland, the National Employment Rights Agency is currently carrying out a pilot program of inspections in the area of domestic work, the purpose of which is to inform future inspection and information activities in this area. A recent report by the EU Fundamental Rights Agency has explored enforcement challenges in relation to undocumented migrant domestic workers (FRA, 2011).

4.3 Tripartite Consultation and Collective Bargaining:

In the *United Republic of Tanzania*, the Government in consultation with social partners is currently undertaking a review national law and practice with a view to ratification and implementation of ILO Convention No. 189.

Germany, Uruguay and France are good examples of countries having collective bargaining mechanisms for domestic workers with some combination of the following: a domestic worker union or another union representing domestic workers; an employer bargaining entity; an institutional monitoring framework for bargaining facilitated by government; a collective bargaining process that successfully ended in a collective agreement

The domestic worker collective bargaining agreement in **Uruguay** was reached through a tripartite structure bringing together the Domestic Workers Union, the Uruguayan League of Homemakers and Consumers, that undertook to represent employers of domestic workers in wage negotiations, and the Ministry for Employment and Social Security Ministry (MTSS). The first agreement of August 2008 among other things provided for minimum wages and increases, severance pay, overtime and early termination payments and banned sexual harassment. The second of 2010, renewed the provisions of 2008 and increased minimum wage levels. Both agreements were extended to the entire domestic work sector in Uruguay.

4.4 Dialogue and Consultative Platforms on Domestic Work:

Inclusive social dialogue and tripartite consultations, including with domestic workers organizations at all stages of the policy process - design, implementation and assessment stage of measures protecting domestic workers are critical. In the **Philippines**, a technical working group of government and non-government stakeholders developed the Philippines national position for negotiations on ILO standards on domestic work, while simultaneously discussing and advancing implementation measures. This included labor law reform to prepare for ratification. In **Lebanon**, a National Steering Committee on women migrant domestic workers comprised of government, civil society and international organizations was established in 2006 to

make proposals towards the better protection these workers. In *South Africa*, agreement was reached in May 2012 regarding ratification of Convention No. 189 in the framework for the National Economic Development and Labour Council. In *Jordan*, the standard working contract on migrant domestic workers 2003, was discussed and developed by a multi stakeholder committee chaired by the Ministry of Labor, with representation from ministries of foreign affairs and interior, diplomatic missions of countries of origin, the Jordanian National Women's Union and NGOs supporting domestic workers.

4.5 Co-operation at bilateral, multilateral and global levels:

Migration for domestic work is a transnational, regional, global phenomenon and requires multi-stakeholder co-operation and co-ordination at bi-lateral, regional and multilateral levels to effectively protect migrant domestic workers. Important areas of cooperation at the bilateral, regional and global levels include the prevention of forced labour and trafficking in persons, access to social security, monitoring of private employment agencies, and dissemination of good practice and collection of statistics on domestic work. An example here is the well-known overseas employment programme of the *Philippines* which provides comprehensive assistance and protection to migrant domestic workers, including though regulating employment agencies, bi-lateral agreements, and labor offices in countries of destination.

4.6 Policy Advocacy, Mobilizing, Frontline Service Delivery and Access to Justice:

Kalayaan is a UK based NGO created in 1987 by domestic workers who had become undocumented after fleeing abusive employers. Its clients are mainly women from over 30 Asian and African countries. *Kalayaan* partnered with others to advocate for the adoption of the Domestic Worker's Convention, revisions to the UK visa system for domestic workers and won protections for them, such as coverage in minimum wage legislation, maternity leave, and state-funded safe houses for victims of trafficking (Kalayaan, 2011). The organization partners with lawyers to offer clients free employment and immigration advice and help them reclaim their passports -nearly 1/3rd of whom have lost possession of their passports when they come into contact with *Kalayaan*. Further, it empowers clients to claim labor protections, with women making up 91% of the cases that went to employment courts in 2010. *Kalayaan* and the North Kensington Law Centre helped its clients bring successful claims that added up to over £1.5 million (around USD 2.4 million) from 2009-2011(Jenny Moss (2011) Migrant domestic workers are also being supported to take a test case to the UK's highest courts, challenging a legal loophole that allows some employers to claim that their live-in domestic workers are "family workers" who are exempt from receiving the national minimum wage.

4.7 Collective Action by Domestic Worker's Organizations:

The historic Domestic Workers Bill of Rights in New York State ensued from precedent-setting advocacy and mobilization by domestic worker' organizations - *Domestic Workers United and the New York Domestic Workers Justice Coalition*, in partnership with other sectors. Galvanizing Asian, Caribbean, Latina, African women, their organizing strategies included: outreach to workers in sites where they congregated, worker education, legal pressure and direct action to support individuals, with recovery of about US\$ 450,000 in unpaid wages to workers; policy advocacy which included understanding the legislature, using moral persuasion, testimonies by domestic workers, legal arguments and high profile political leverage with legislators and other senior public officials. Most important however was the building of a membership and leadership base of domestic workers in partnership with a broad based coalition of support from: children of domestic workers and those raised by domestic workers, students, youth, farm workers and other excluded workers, employers, communities of faith and legislators. A systematic campaign was built around structural inequality with value and interest based messages carefully targeted at each sectoral group supporting domestic workers. Employers for instance saw the need to treat domestic workers with respect, but also saw standards as clearing ambiguities they had and

providing clear guidance on how to treat domestic workers. Personal links that common people from all walks of life have to domestic work became a key mobilizing force, transcending narrow self interest and creating a groundswell of support.

While this was a legislative victory, it also highlighted the contribution of domestic workers; recognized domestic work as work; catalyzed debate on the extent of protections and restoration of dignity; discussed the need for more inclusive federal legislation; and showed how care, compassion, respect as values and care work are threads sewing our interconnectedness and shared humanity.

4.8 Lessons learned:

The success of the above initiatives highlights the following lessons:

(a) Extending legal protections to domestic workers is feasible and has resulted in the improvement of their conditions.

(b) A strong evidence base provides a robust and convincing basis for governments to adopt and implement policies that protect the rights of domestic workers.

© Domestic work interfaces with several public policy fields making policy coherence and multi-stakeholder dialogue and consultation, including with domestic workers central to implementation.

(d) Successful advocacy to bring domestic work within the mainstream of relevant public policies deploys a variety of strategies aimed at broadening the support base. These strategies make the normative, interest-based and efficiency case for protections.

(e) Collective bargaining requires the existence of representative organizations of workers and employers. Where no such domestic workers organizations existed, other workers' organizations stepped in.

(f) Government can play a role in encouraging collective bargaining, including by providing an institutional framework and providing for national extensions of collective agreements.

(g) To ensure robust protection, labor and social protections for migrant domestic workers should be accompanied by comprehensive enforcement mechanisms, including labor inspection measures and an appropriate dispute resolution mechanisms .

(h) Bi-lateral, regional and multilateral agreements related to transnational, regional, global phenomenon like migrant domestic work, should include provisions protecting the rights of domestic workers with accompanying enforcement mechanisms.

5. Moving Forward: What governments could do

Measures underway in many countries indicate an increasing momentum for improved protection of domestic worker's rights. Moreover domestic workers continue to be active agents, advocating with and partnering with governments to promote and protect their rights. Challenges however remain, and efforts to address these need to continue. The following may be considered areas for future action by governments:

- Consider ratifying ILO Convention No.189 concerning Decent Work for Domestic Workers and ensuring its application and that of the CEDAW Convention and General Recommendation No.26 on Women Migrant Workers in national laws and practice.
- Develop better knowledge and understanding of the domestic work sector and the conditions of domestic workers, including through improved data collection and analysis, strong data bases and profiles on migrant domestic workers, gender sensitive research on their contribution, and on immigration and labor policies governing their entry, conditions of work and stay in countries of employment
- Extend labor law coverage and other legal and social protections to domestic workers in line with the ILO Convention No. 189, the CEDAW Convention, its GR No.26 on Women Migrant workers, and other relevant UN and ILO instruments and guidance.
- Provide legal channels of migration for domestic work based on objective labour market assessments taking into account the care crisis and related demand for domestic work.
- Provide protection through bi-lateral and multi-lateral labor and social security agreements.
- Promote the formalization of the domestic work employment relationship, including through written and enforceable contracts for migrant domestic workers in line with international standards.
- Put in place a comprehensive system to ensure compliance and accountability by employers of their statutory and contractual obligations to domestic workers, including through labor inspection measures, effective access to information and courts, specialized dispute resolution mechanisms, sanctions for non-compliance.
- Provide gender sensitive front line services at all stages of migration that help prevent and protect against abuse and exploitation, provide assistance when abused and facilitate rehabilitation and long term recovery. More specifically these include: information dissemination to communities in source sites to help them make informed decisions and use legal channels, targeted pre-departure information and training, information dissemination in countries of employment on rights, obligations, public services; access to health care and trauma counseling, hotlines, emergency shelters, legal aid and redress, safe return to countries of origin, cheap and efficient remittance transfers and avenues for productive investment including financial literacy programmes at pre, post and during migration stages; access to skills upgrading, services for business development and entrepreneurship; access to support services for families left behind.
- Raise awareness and build institutional capacities of policy makers, service providers, government officials including diplomatic and law enforcement staff to address migrant domestic workers and their concerns according to human rights standards, and consider supporting organizations providing assistance to these workers.
- Promote public awareness programs and targeted awareness raising for employers emphasizing that domestic work is work, highlighting the contributions of domestic workers, debunking myths and stereotypes about them, and reiterating the need to treat them with dignity and respect.
- Promote broad-based policy and social dialogue on how to ensure decent work for domestic workers, including through institutionalized cooperation between the government and domestic workers' organizations, unions and their support groups with regard to the development, implementation, monitoring and evaluation of policies and programs related to lives and work of domestic workers and their families.

- Monitor and evaluate the impact policies, programs and budgets on domestic workers and revise future policies and programs accordingly.
- In relation to the above, work in partnership with civil society and international organizations.

Discussion Questions

- Following the adoption of the Convention No.189, what are the steps taken or under consideration with regard to possible ratification and implementation of the Convention and other related standards?
- In what specific ways will legal and social protections for domestic workers benefit (a) governments of countries of origin, transit and destination (b) employers and (c) workers?
- Share at least one promising regional, bilateral, national, sub-national initiative - good policy and/or program - implemented to promote and protect the rights of domestic workers (a) prior to departure; (b) in the country of employment; (c) on return?. How did this concretely impact domestic workers? What were the key lessons learned - positive and negative?
- What are the key challenges you face to advancing legal and social protections for domestic workers? What kinds of assistance can civil society and international organizations provide?

Possible Outcomes of the session

- Enhanced recognition of domestic work as work and of the contribution of domestic workers to society; information shared on strategies that support maximizing the contribution of domestic workers to economic and social development of countries of origin and destination.
- Participants informed of key principles and measures envisaged under Convention No. 189, taking into account linkages with other relevant international instruments; information regarding ratification and implementation efforts, as well as related technical assistance needs is shared.
- Experiences, good practices and challenges in implementing social and legal protections for migrant domestic workers are shared (i.e. labour law reform, bilateral labour agreements, social security bilateral and multilateral agreements, employment contracts, monitoring of PEAs, regularization programmes etc.), as an aide to governments in ensuring gender sensitive protection, in line with human and labour rights standards.
- Existing models and methodologies for collecting gender disaggregated migration data shared; and data collection gaps on migrant domestic workers and assistance needs for addressing same identified.

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