

Domestic Workers at the Interface of Migration and Development: Action to Expand Good Practice

Presentation of Background Paper by
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Contextualizing Care Work, Migration and Development

- Staggering global significance:
 - At 51-100 million domestic workers, 51 – 100 times that of the ‘world’s first genuinely global industry’, the maritime industry
- Regulatory / good practice deficit dulls the opportunity of migration and compounds the risk to migrant domestic workers
 - Precariousness is constructed, not innate to women migrants
 - Beyond cultivating safe remittance practices, development outcomes need closer gender-disaggregated analysis

Framework

- Framework:
 - 1. Respect for domestic workers' human rights is a central factor in assessing whether migrant domestic work can be considered development-enhancing
 - 2. International solidarity is needed to promote coherence, capacity and cooperation to expand innovative, good practice on the ground

African migrant domestic workers in focus

- Ubiquity of migrant domestic work in the region yet limits of available data
 - E.g. Table 1 reproduced from Background paper, page 10

State	DW #	Men	Women	% total employ	Women as % of total
Ethiopia	246 600	23 100	225 500	0.8	1.5
Mali	103 900	18 800	85 100	4.4	8.7
Mauritius	19 100	2 200	16 900	3.7	9.5
S. Africa	1 244 000	180 000	945 000	9.4	16.7
Tanzania	701 500	138 200	563 300	3.9	6.1
Uganda	111 100	39 500	71 600	1.2	1.5

Part II: CCC-GPs

**COHERENT, COOPERATIVE,
CAPACITY-BUILDING – FOCUS ON
GOOD PRACTICES**

South Africa: Significant Regulatory Innovation

- Post-apartheid context – structural or economic legacy of apartheid remained for domestic workers
- Regional domestic work migration: e.g. Lesotho, Zimbabwe
- Sectoral Determination No. 7 (15 August 2002) under the Basic Conditions of Employment Act, No. 75 of 1997
 - Broad scope – includes the employment of all domestic workers in SA including those ‘employed as independent contractors’ AND those ‘employed or supplied by employment services’
 - Focuses on HOURS of work and separately sets a minimum hourly wage as well as a minimum number of hours per day, overtime, night work, standby hours; wage increases built in
 - Close attention to the specific context
 - Payment method, frequency and manner, prohibition on certain withholding or deduction practices
 - Contactual Information requirements – written particulars
 - Sundays treated as the normal day off – compliance in informal economy regulation
 - Annual leave must be granted, cannot simply pay for it
 - Accommodation on termination
 - Extensive provisions for leave – sick leave, family leave, maternity leave
- Commission on Conciliation, Mediation and Arbitration
 - Innovation
 - Accessibility
- Labour Court: Irregular Migrants are covered by Labour Laws – *Discovery Health Ltd. V. CCMA* (Labour Court, 2008).

Other selected regional good examples:

Burkina Faso: Decree No. 77 of 1977 setting the conditions of work of domestic workers + strong court response against HIV/AIDS-testing in the workplace of a migrant domestic worker – Madame Z.M. v. Madame D.T., Ouagadougou Court of Appeal, November 2001

Mali: special regulation of domestic workers through a national collective agreement;
• challenge: application

Côte d'Ivoire: proactive informal dispute resolution mechanism for domestic workers through the labour administration services – well known by the domestic worker population and widely used


Kenya: National Commission on Human Rights - outspoken about migrant domestic workers' condition abroad, calling for local action

Switzerland (federal, canton of Geneva): Innovation


- Domestic work regulated through “Standard contracts”, under the authority of the Civil law (Code of obligations)
- Federal: Many standard employment provisions including stipulated minimum wages, hours of work, limits on payment in kind – stipulated by law
- Canton of Geneva: standard contract but another Innovation:
 - Simplified mechanism for the payment of social security contributions – the “service cheque” (incentive based variations in France, Brazil) – participation is required
 - Handled by private social economy enterprise separate from the state, which calculates the respective contributions of the worker and the employer
 - Covers unemployment insurance, maternity protection, family allowance, workplace injuries and non-employment injuries, pensions
 - Focus: regularization of the work

France: Comprehensive but Applicable to All Migrants?

Detailed National Collective Agreement regulating conditions of work (CCN – 3180 on Employees of the Individual Worker) – a **collective representation** based model signed by two employers' associations and four trade union federations deemed by law to be 'representative' WITH specialized enforcement through the Conseil des Prud'hommes



Simplified payment mechanism in the form of a Universal Service Cheque capturing the situation of multiple employer work relationships and extending social protection



Professional accreditation model to establish competencies across the various 'services to the person' and increasingly to enable workers to move between the different forms of employment – the historically recognized employers' federation, FEPEM, has emphasized vocational training

Uruguay: Labour Inspection

- Specific Decree 224/07 regulating domestic work
- Constitution protecting the sacred, inviolable character of the home
- Act. No. 18.065: labour inspection permitted
- Need a 'presumed violation' of labour and social security norms
- Night time inspections are prohibited without the consent of the head of the household
- Day time visits require judicial authorization in writing
- Concrete administrative measures:
 - Labour administration coordinating with the judiciary to establish objective criteria upon which to base inspections
 - Public awareness campaigns on domestic workers' rights
 - Attention to particular situation of Uruguayan women of African descent, many of whom are domestic workers

Centralization: Kenya, Philippines

- Kenya's new migration unit – IOM initiative
- Philippines Overseas Employment Administration (POEA) With a Mandate on:
 - Industry Regulation:
 - In particular issuing licenses to agencies
 - Hearing complaints from agencies
 - Setting minimum Labour Standards
 - Employment Facilitation
 - Including entering into MoU
 - Workers' Protection
 - Pre-deployment information and seminars
 - Legal Assistance
 - Repatriation assistance
 - General Administration and Support
 - Including research

Centralization:

Potential concerns:

- relative weight accorded to the regulatory and worker protection dimensions
- will domestic workers trust a one-stop-shop?
- must supplement rather than replace access to general labour dispute resolution mechanisms in sending and destination countries

Advantages:

- Ability to coordinate information provision, regulating (in particular agencies), licensing, monitoring enforcement functions
- Development and implementation may be supported by international technical cooperation
- Becomes an important technical interface with destination countries

Social Protection for Migrants

- Coverage of migrants in destination country:
 - Informal models (risk assumed by domestic workers)
 - Migrant domestic workers in Tunisia
 - Insurance based models (risk assumed by employers, agencies or sending country)
 - Philippines, Jordan, Quebec
 - National coverage – simplification mechanisms (risk assumed by destination country) – facilitating contributions:
 - Brazil, Switzerland (various cantons); France
- Portability of benefits and regional cooperation:
 - SADC – Charter of Fundamental Social Rights, 2003
 - ECOWAS – General Convention on Social Security, 1993 – equality of treatment model between nationals and non-nationals
 - C.I.PRE.S. – 1993 – harmonize legislation and regulation on social security institutions

Negotiated agreements

Require national conformity with internationally-recognized rights of migrant worker in the text of the Agreements



Good Examples:

Philippines - Qatar

Migrant Workers and Overseas Filipinos Act of 1995



Challenges:

Bilateralism is limited – e.g. Philippines has recently faced a pre-emptive ban by Saudi Arabia, which through agencies has turned to Kenya and Ethiopia for migrant domestic workers

Good practice circumvented? Impact on women from Kenya and Ethiopia?
Impact on regulatory change within Saudi Arabia?

Occupational Segmentation by Race and National Status

- African migrant domestic workers face acute race and national origin-based occupational segmentation –
 - Limited opportunities for forms of employment other than domestic work
 - Limited opportunities within domestic work due to existing hierarchies based on race and national origin
 - Risk of a ‘race to the bottom’ in nation-based selection processes in which migrant domestic workers from African countries are forced to endure the worst abuses
- Multilevel responses –
 - National labour dispute resolution, labour administration AND human rights bodies in destination countries
 - How might sending and destination states envisage negotiations to pre-empt this shared problem? Role of the regional?

General Recommendations:

- 1. Comprehensive, gender-disaggregated data collection
- 2. Technical cooperation with governments on labour law reform and the development of social protection mechanisms
- 3. Domestic worker regional network
- 4. International Solidarity through inter-regional/ multilateral dialogue and cooperation