



## **“Domestic Workers at the interface of Migration & Development: Action to Expand Good Practice”**

**GFMD Thematic Meeting organized and hosted by the Planning Institute of Jamaica (PIOJ), Ministry of Foreign Affairs and Foreign Trade, Government of Jamaica in partnership with the GFMD Swiss Chair, UN Women & IOM**

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### **Checklist to protect and support migrant domestic workers**

Domestic workers, whether local or international, perform work in or for a household in an employment relationship. They are an integral part of the global labour force, currently estimated at between 53 million to 100 million worldwide, with women constituting 83% of this workforce<sup>1</sup>. Domestic work contributes significantly to the economic and social development of all countries. Despite this, it is hardly regulated. This is because it is invisible, mostly undertaken by women and conducted within the private space of the home – not defined as a “workplace”. It also carries the low value of women’s unpaid housework as family members, not defined as work, because it is not perceived as producing value. Domestic work is in fact seen as a “labour of love” or part of women’s innate attributes, needing no special skill. The special bonds of attachment that may develop between employers, workers, and family members being cared for, further complicate an understanding of domestic work as work that needs regulation.

Against this backdrop, it is not uncommon to find domestic workers who are “adopted” by employers, or paid only in kind or not paid at all.<sup>2</sup> However, there are several promising examples of provincial or national legislation and programmes for domestic workers that offer elements of a comprehensive gender sensitive approach to protect, support and promote the rights of migrant domestic workers. These cut across several policy fields, including labour, migration and social welfare, and are largely the same as for any other workers in an overseas contractual situation, but with additional measures tailored to the unique features of domestic work. Underpinning such efforts, the most path-breaking instruments in the international human rights regime specifically



addressing domestic workers are the ILO Convention No 189 on Decent Work for Domestic Workers, 2011<sup>3</sup>; the General Comment on Migrant Domestic Workers by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), 2010<sup>4</sup> and the Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No 26. on Women Migrant Workers, 2008 (which also addresses domestic workers)<sup>5</sup>. Domestic workers organizations and their support groups have contributed strongly to these outcomes.

Regulating this sector and promoting and protecting the rights of migrant domestic workers at all stages of migration is an equity and efficiency issue, key to all development endeavours. It gives recognition to the economic and social contribution of domestic work to human development. It reduces social and economic costs to abused workers, families, communities and states and thus promotes human development and good governance. Any analysis of labour and migration legislation and its implementation to promote and protect the rights of migrant domestic workers, should therefore be made with reference to these international standards and good practice by national actors and should be aligned with these standards.

The following is an agreed checklist for labour and migration/immigration laws based on the above international standards to help policy makers formulate and implement policies and programmes that promote and protect the rights of domestic workers, both female and male, taking account of differences mediated by ethnicity, nationality, gender and occupational segmentation, where applicable, between males and females within the sector:

### **1. Recognition as Work**

- Does a country recognize:
  - (a) the significance of the economic and social contribution of domestic workers?
  - (b) its undervaluation and invisibility?
  - (c) its performance, largely by women and girls, many of whom are international migrants and/or members of disadvantaged communities, particularly vulnerable to social, economic, civil, labour market discrimination and other abuse?
  - (d) the special conditions under which domestic work is carried out, thus making it desirable to supplement general human rights standards with those specific to the situation of domestic workers, to enable them enjoy their rights fully?

- In these respects, do labour and migration laws refer to international instruments, especially those cited earlier?

## **2. Definition**

- Does a country use the definition of domestic work and domestic worker as defined in the ILO Convention 189 on decent work for domestic workers<sup>6</sup> and definition of migrant domestic worker as defined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>7</sup> and its General Comment of the Migrant Committee on migrant domestic workers?<sup>8</sup>

## **3. Coverage**

- Does the country cover all domestic workers, unless some categories are otherwise provided for with at least equivalent protection?

## **4. Nature of Rights Protected in Labour Laws**

- Does the law guarantee the fundamental human rights and freedoms of domestic workers and measures against all forms of abuse, harassment and violence<sup>9</sup>, including of undocumented domestic workers?<sup>10</sup>
- Does the law guarantee the fundamental principles and rights at work, including freedom of association and right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour, elimination of discrimination in employment and occupation; and protect the right of migrant domestic workers and their employers to establish and join organizations, federations and confederations of their choosing?<sup>11</sup>
- Does the law provide for fair employment terms, decent working and living conditions, an employment contract reflecting this, and for migrant domestic workers to receive their employment agreements before they depart to work in the country of employment – unless covered by bilateral, regional agreements, multilateral allowing free movement of persons?<sup>12</sup>
- Does the law provide for social protections, such as access to health insurance, maternity protections, etc?<sup>13</sup>

## **5. Nature of Rights in Migration/immigration Laws: Conditions of exit, entry, residence**

- Are laws free from sex-specific bans and restrictions on women's migration based on age, marital status, disability, pregnancy or maternity status, or restrictions requiring permission from spouses or male guardians to travel and obtain travel documents?<sup>14</sup>
- Are laws free from provisions restricting women's employment in job categories dominated by men, or excluding certain female dominated occupations from visa schemes?<sup>15</sup>
- Are laws free from bans on migrant domestic workers marrying nationals, or permanent residents or securing independent housing?<sup>16</sup>
- Are laws, regulations and practices free from provisions (a) resulting in loss of work visas based on positive HIV or maternity status; (b) for mandatory medical testing of migrant domestic workers for HIV or pregnancy?<sup>17</sup>

## **6. Services at all stages of migration, including to strengthen access to justice**

- Do laws in countries of origin, transit and destination provide for gender-sensitive worker-centered pre departure, on-site and on-return services (socio-economic, health, legal services, emergency shelter and economic support etc) that promotes use of legal migration channels, decent work and integration, protection against and support when abused and reintegration on return? <sup>18</sup>
- Do laws and regulations in countries of origin and destination provide for gender-sensitive worker-centered 'remittance for productive investment' services and support services that enhance women's access to justice?<sup>19</sup>
- Do laws in countries of origin and destination provide for gender-sensitive worker-centered pre departure, on-site and on-return information dissemination and training for domestic workers on legal, labour and social protections, skills enhancement, how to access socio-economic, health including psychological, legal services, complaints and redress mechanisms at all stages of migration?<sup>20</sup>
- Do laws facilitate worker contact with families and family support services back home or provide for dependant services in countries of destination?<sup>21</sup>

## **7. Undocumented migration, smuggling and trafficking**

- Do laws, regulations and practices ensure that migrant domestic workers have good access to regular channels of migration based on actual demand, to prevent undocumented migration, smuggling and human trafficking?<sup>22</sup>
- Do countries of origin, transit and destination protect the human rights of undocumented domestic workers, including their children regardless of the parents' immigration status, including providing for gender-sensitive worker-centered regularization programmes to avoid or address situations in which migrant domestic workers are undocumented or are at risk of becoming undocumented?<sup>23</sup>
- Are laws and regulations free from provisions making the immigration status of migrant 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 and increases their vulnerability to exploitation and abuse, including conditions of forced labour and servitude?<sup>24</sup>

## **8. Co-operation between States, including bilateral, regional, multilateral frameworks and agreements**

- Does the law provide for co-operation among states, including bilateral, regional and multilateral co-operation between countries that promotes, supports and protects the rights of migrant domestic workers?<sup>25</sup>

## **9. Regulations for Recruiting Agencies, Monitoring, Complaint and Redress Mechanisms**

- Does the country have laws, regulations or practices governing the operation of private employment agencies recruiting or placing domestic workers, and employers of domestic workers (such as establishing legal liability of households and agencies; registration and qualification requirements for agencies, including disclosing past violations, obligations of private recruiting agencies and employers towards domestic workers) to protect domestic workers from abuse?<sup>26</sup>
- Does the law ensure that adequate machinery and procedures – such as labour inspections with due respect for the privacy of households - exist to monitor employers, employment agencies and agents, investigate complaints, alleged abuses and fraudulent practices by private recruiting agencies and employers against domestic workers?<sup>27</sup>

- Does the law have effective and accessible complaint and redress mechanisms (courts, tribunals or other dispute resolution procedures) that are not less favourable than those available to workers generally, including for migrant domestic workers and their families?<sup>28</sup>

#### **10. Nature of Remedies Provided**

- Does the law provide for a mix of civil and criminal remedies?

#### **11. Accountability Mechanisms**

- Does the law have provisions for penalizing employers, employment agencies, agents, public officials who abuse domestic workers agencies?<sup>29</sup>

#### **12. Co-ordinated multi-sector response, including participation of domestic workers organizations at all stages of the policy process**

- Does the law mandate co-ordinated multi sector response of key government agencies, sustained participation of domestic workers organizations and their support groups, employment agencies, agents and others at all stages of the policy process – formulation, implementation, monitoring, evaluation of the law?<sup>30</sup>

#### **13. Training and awareness raising for public officials, recruiting agencies and employers**

- Is the State mandated to provide institutionalized, regular training and education for police officers, prosecutors, the judiciary, social workers and public officials, including embassy staff, targeted awareness raising for recruiting agencies and employers and to create public awareness to promote and protect the rights of domestic workers?<sup>31</sup>

#### **14. Research, data collection and analysis**

- Do laws mandate States Parties to conduct and support quantitative and qualitative research, data collection and analysis to identify concerns of domestic workers at all stages of migration, so as to formulate and implement appropriate policies and programmes and serve as a basis for impact assessment?<sup>32</sup>

**15. Monitoring and Evaluation**

- Is monitoring and evaluation of effectiveness and impact built into the law, including provisions placing specific responsibility on agencies to compile data on complaints, cases of exploitation and abuse and relief measures?

**16. Resource Allocation**

- Does the law provide for sufficient financial and capacitated human resources to be allocated by countries for effective implementation of policies and programmes to promote, support and protect the rights of domestic workers?

## ENDNOTES

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<sup>1</sup> ILO (2011) *Global and Regional Estimates on Domestic Workers* (Policy Brief No. 4) p. 6. Available at: <[http://www.ilo.org/travail/whatwedo/publications/lang--en/docName--WCMS\\_155951/index.htm](http://www.ilo.org/travail/whatwedo/publications/lang--en/docName--WCMS_155951/index.htm)>.

<sup>2</sup> UN Women, *Domestic Workers at the Interface of Migration and Development*, 2011

<sup>3</sup> hereafter referred to as the ILO Convention on Domestic Workers

<sup>4</sup> hereafter referred to as the General Comment of the Migrant Committee on migrant domestic workers

<sup>5</sup> hereafter referred to as the Cedaw General Recommendation on women migrant workers

<sup>6</sup> The term “domestic work” means work performed in or for a household or households; the term “domestic worker” means any person engaged in domestic work within an employment relationship; a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker (Art.1 (a, b, c), ILO Convention on Domestic Workers)

<sup>7</sup> Hereafter referred to as the Migrant Convention

<sup>8</sup> As defined by the Convention, the term “migrant workers” 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” (Art 2 CMW). Article 3 of the migrant 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 law or specific agreements; students and trainees; 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)).

<sup>9</sup> Art 5 ILO Convention

<sup>10</sup> Art 42 of General Comment of Migrant Committee on Migrant Domestic Workers; and Art 26 (j, l) of the Cedaw General Recommendation on Women migrant Workers

<sup>11</sup> Art 3 (1, 2 (a, b, c), 3) of ILO Convention; Art 38, 45, 46 of General Comment of Migrant Committee on Migrant Domestic Workers; Art 26 (b, d) of the Cedaw General Recommendation on Women migrant Workers

<sup>12</sup> Art 6,7, 8 (1), 9(a,b,c), 10(1,2,3), 11, 12(1,2), 13 (1,2), 14 (1,2) of ILO Convention on Domestic workers; Art 37, 38, 39, 40 of General Comment of Migrant Committee on Migrant Domestic Workers and Art 26(b) of the Cedaw General Recommendation on Women migrant Workers.

<sup>13</sup> Art 14 (1, 2) of ILO Convention and Art 42,43,44 of General Comment of Migrant Committee on Migrant Domestic Workers

<sup>14</sup> Art 24 (a) of the Cedaw General Recommendation on Women Migrant Workers

<sup>15</sup> Art 26 (a) Cedaw General Recommendation on Women Migrant Workers

<sup>16</sup> Art 61 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>17</sup> Art 61 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>18</sup> Art 38, 42, 43, 44 of the General Comment of Migrant Committee on Migrant Domestic Workers; Art 24b (d-j) of the Cedaw General Recommendation on Women migrant Workers.

<sup>19</sup> Art 24 (g) of the Cedaw General Recommendation on Women migrant Workers; Art 26 (c iii, iv) and Art 49, 50 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>20</sup> Art 28 (a-c (i),(ii), (iii)), 29 (a-f), 30 (a-c) of the General Comment of Migrant Committee on Migrant Domestic Workers; Art 24 b (i-iii, v) of Cedaw General Recommendation on Women Migrant Workers

<sup>21</sup> Art 54 and 55 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>22</sup> Art 51 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>23</sup> Art 52 of the General Comment of Migrant Committee on Migrant Domestic Workers and Art 26 (l) of the Cedaw General Recommendation on Women Migrant Workers

<sup>24</sup> Art 53 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>25</sup> Art 27(a, b (i), (ii) of General Comment of Migrant Committee on Migrant Domestic Workers and Art 31, 32 (a, b, c) of the Cedaw General Recommendation on Women migrant Workers

<sup>26</sup> Art 15 (a, c) of ILO convention; Art 34 (a), 35, 36 of the General Comment of Migrant Committee on Migrant Domestic Workers



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<sup>27</sup> Art 17(1,2,3); Art 33, 34 (b,d), 41 of General Comment of Migrant Committee on Migrant Domestic Workers and Art 26 (l, h) of Cedaw General Recommendation on Women migrant Workers

<sup>28</sup> Art. 16 of ILO Convention; Art. 49, 50 of the General Comment of Migrant Committee on Migrant Domestic Workers

<sup>29</sup> Art 17 (2), ILO Convention, Art 34 © of the General Comment of Migrant Committee on Migrant Domestic Workers and Art 25(b) of the Cedaw General Recommendation on Women migrant Workers

<sup>30</sup> Art 65 of the General Comment of Migrant Committee on Migrant Domestic Workers and Art 23 (b) of the Cedaw General Recommendation on Women Migrant Workers

<sup>31</sup> Art 24b (iv, j); 25 (a) of Cedaw General Recommendation on Women Migrant Workers

<sup>32</sup> Art 23 © of the Cedaw General Recommendation on Women Migrant Workers