

**International Labour Conference, 100th Session, 2011**

**Report IV(2A)**

# **Decent work for domestic workers**

**Fourth item on the agenda**

**International Labour Office Geneva**

ISBN 978-92-2-123105-9 (print)  
ISSN 978-92-2-123106-6 (Web pdf)  
ISSN 0074-6681

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*First edition 2011*

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## ABBREVIATIONS

### Employers' and workers' organizations

CIETT		International Confederation of Private Employment Agencies
IOE		International Organisation of Employers
ITUC		International Trade Union Confederation
Argentina	CGTRA	General Labour Confederation of the Argentine Republic
	UIA	Argentine Industrial Union
Australia	ACCI	Australian Chamber of Commerce and Industry
	ACTU	Australian Council of Trade Unions
Austria	BAK	Federal Chamber of Labour
	WKO	Austrian Chamber of Commerce
Plurinational State of Bolivia	FENATRAHOB	National Federation of Bolivian Household Workers
Botswana	BFTU	Botswana Federation of Trade Unions
	BOCCIM	Botswana Confederation of Commerce, Industry and Manpower
Brazil	CNA	National Confederation of Agriculture
	CNC	National Confederation of Trade in Goods, Services and Tourism
	CNI	National Confederation of Industry
	CUT	National Federation of Workers of Brazil
Burkina Faso	CNTB	National Confederation of Workers of Burkina Faso
Canada	CSN	Confederation of National Trade Unions
China	FADWU	Hong Kong Federation of Asian Domestic Workers' Unions
	HKCTU	Hong Kong Confederation of Trade Unions
Colombia	CGT	General Confederation of Labour
	CTC	Confederation of Workers of Colombia
	CUT	Single Confederation of Workers of Colombia

Costa Rica	UCCAEP	Costa Rican Union of Chambers and Associations of Private Enterprise
Cyprus	CCCI	Cyprus Chamber of Commerce and Industry
	CEIF	Cyprus Employers' and Industrialists' Federation
	PFL	Pancyprian Federation of Labour
	SEK	Cyprus Workers' Confederation
Czech Republic	CMKOS	Czech–Moravian Confederation of Trade Unions
	SPD	Confederation of Industry and Transport of the Czech Republic
Denmark	DA	Danish Employers' Confederation
	LO	Danish Confederation of Trade Unions
Dominican Republic	CASC	Autonomous Confederation of Class Unions
	CNTD	National Confederation of Dominican Workers
	CNUS	National Confederation of Trade Union Unity
	COPARDOM	Employers' Confederation of the Dominican Republic
Egypt	ETUF	Egyptian Trade Union Federation
El Salvador	CASALCO	Chamber of Commerce for Construction
	MUSYGES	United Trade Union and Guild Movement of El Salvador
Finland	AKAVA	Confederation of Unions for Academic Professionals
	EK	Confederation of Finnish Industries
	KT	Commission for Local Authority Employers
	SAK	Central Organization of Finnish Trade Unions
	STTK	Finnish Confederation of Salaried Employees
	VTML	State Employer's Office
France	CFDT	French Democratic Federation of Labour
	FEPEM	National Federation of Household Employers
	UNSA	National Union of Autonomous Trade Unions
Germany	DGB	German Confederation of Trade Unions
Greece	ESEE	National Confederation of Greek Trade
	GSEE	General Confederation of Greek Workers
Guatemala	COSME	Consortium of Social and Trade Union Organizations for Women in the Economy
Honduras	CTH	Confederation of Honduran Workers
Hungary	MGYOSZ	Confederation of Hungarian Employers and Industrialists
	OKISZ	Hungarian Industrial Association
	VOSZ	National Association of Entrepreneurs and Employers
India	SEWA	Self-Employed Women's Association

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Indonesia	DPN APINDO	Indonesian Employers' Association
Ireland	ICTU	Irish Congress of Trade Unions
Italy	CGIL	Italian General Confederation of Labour
Japan	JTUC–RENGO	Japanese Trade Union Confederation
	NK	Japan Business Federation
Latvia	LBAS	Free Trade Union Confederation of Latvia
Malaysia	MEF	Malaysian Employers Federation
	MTUC	Malaysian Trades Union Congress
Mauritania	CLTM	Free Confederation of Workers of Mauritania
Mexico	CTM	Confederation of Mexican Workers
Montenegro	CTUM	Confederation of Trade Unions of Montenegro
	MEF	Montenegrin Employers Federation
Nepal	GEFONT	General Federation of Nepalese Trade Unions
Netherlands	FNV	Netherlands Confederation of Trade Unions
	MKB–Nederland	Dutch Federation of Small and Medium-sized Enterprises
	VNO–NCW	Confederation of Netherlands Industry and Employers
Nicaragua	CNMSN	National Committee of Women Trade Unionists of Nicaragua
	CTN	Nicaraguan Workers' Confederation
Panama	CS	Convergencia Sindical
Paraguay	CNT	National Confederation of Workers
	CUT–A	Authentic Single Confederation of Workers
Peru	CATP	Autonomous Confederation of Peruvian Workers
	CGTP	General Confederation of Workers of Peru
	CUT	Single Central Organization of Workers of Peru
	SINTTRAHOL	Union of Household Workers in the Lima Region
Philippines	APL	Alliance of Progressive Labour
	ECOP	Employers' Confederation of the Philippines
	FFW	Federation of Free Workers
	TUCP	Trade Union Congress of the Philippines
Portugal	CCP	Confederation of Trade and Services of Portugal
	CTP	Portuguese Confederation of Tourism
	UGT–P	General Union of Workers
Rwanda	COTRAF	Congress of Labour and Brotherhood of Rwanda
Serbia	CATUS	Confederation of Autonomous Trade Unions of Serbia

Slovakia	AZZZ SR	Federation of Employers' Associations of the Slovak Republic
	KOZ SR	Confederation of Trade Unions of the Slovak Republic
	RUZ SR	National Union of Employers
Spain	CCOO	Trade Union Confederation of Workers' Committees
Switzerland	UPS	Confederation of Swiss Employers
United Republic of Tanzania	TUCTA	Trade Union Congress of Tanzania
	ZATHOCODAWU	Zanzibar Tourism, Hotels, Conservation, Domestic and Allied Workers' Union
Thailand	ECBIN	Employers' Confederation of Business and Industries of the Nation
	NCTL	National Congress of Thai Labour
	NLC	National Labour Congress
Trinidad and Tobago	NUDE	National Union of Domestic Employees
Ukraine	FPU	Federation of Trade Unions of Ukraine
	JRBE	Joint Representative Body of Employers at the National Level
United Kingdom	TUC	Trades Union Congress
Bolivarian Republic of Venezuela	CTV	Venezuelan Workers' Confederation

### **Other abbreviations**

CRC	Committee on the Rights of the Child
EU	European Union
UN	United Nations
OHCHR	Office of the United Nations High Commissioner for Human Rights

## INTRODUCTION

The agenda of the 99th Session of the International Labour Conference in 2010 included an item on decent work for domestic workers. The background to this item can be traced back to 2008, when the Governing Body of the ILO, at its 301st Session (March 2008), decided to place such an item on the agenda of the 99th Session of the International Labour Conference in 2010 for a double discussion leading to the adoption of international labour standards on decent work for domestic workers.<sup>1</sup> It was considered necessary to adopt international standards on this subject given the historical and continued exclusion of domestic workers, mainly women and girls, from labour protection. Setting new standards on domestic work presents an unprecedented opportunity for the ILO to break into the informal economy and deliver decent work to millions of the world's most vulnerable workers.

In preparation for the first discussion in 2010, the Office produced two reports: Report IV(1)<sup>2</sup> and Report IV(2).<sup>3</sup> The Conference Committee on Domestic Workers considered these reports and adopted its own report, which in turn was submitted to and adopted by the plenary of the Conference on 16 June 2010.<sup>4</sup> At the same sitting, the Conference also adopted the following resolution:

The General Conference of the International Labour Organization,

Having adopted the report of the Committee appointed to consider the fourth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of Governments, proposals for a comprehensive standard (a Convention supplemented by a Recommendation) concerning decent work for domestic workers,

Decides that an item entitled "Decent work for domestic workers" shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a comprehensive standard (a Convention supplemented by a Recommendation).

In the light of this resolution and in conformity with article 39, paragraph 6, of the Standing Orders of the Conference, the Office prepared and communicated Report IV(1),<sup>5</sup> containing a proposed Convention and Recommendation based on the Conclusions adopted by the Conference at its 99th Session.<sup>6</sup> The text was formulated on the basis of the first discussion by the Conference and took into account the replies received to the questionnaire contained in Report IV(2).<sup>7</sup> Pursuant to article 39, paragraph 6, of the Standing Orders, this text was

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<sup>1</sup> ILO: *Date, place and agenda of the 99th Session (2010) of the International Labour Conference*, Governing Body, 301st Session, Geneva, March 2008, GB.301/2.

<sup>2</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, 2010.

<sup>3</sup> ILO: *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th Session, Geneva, 2010.

<sup>4</sup> ILO: *Report of the Committee on Domestic Workers, Provisional Record No. 12*, International Labour Conference, 99th Session, Geneva, 2010; and *Provisional Record No. 19*, International Labour Conference, 99th Session, Geneva, 2010.

<sup>5</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010).

<sup>6</sup> See ILO: *Report of the Committee on Domestic Workers*, op. cit.

<sup>7</sup> ILO: *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th Session, Geneva, 2010.

communicated to governments so as to reach them not later than two months from the closing of the 99th Session of the Conference. In accordance with the consistent practice since 1988, the report of the Committee on Domestic Workers appointed by the Conference to consider this item was sent to member States in its entirety, together with the record of the discussion held in the plenary session of the Conference.<sup>8</sup>

In accordance with article 39, paragraph 6, of the Standing Orders of the Conference, governments were invited to send, after consulting the most representative organizations of employers and workers, their suggested amendments or comments so as to reach the Office by 18 November 2010 at the latest. Governments were also requested to inform the Office, by the same date, whether they considered that the proposed texts provide a satisfactory basis for discussion by the Conference at its 100th Session (June 2011) and to indicate which organizations they had consulted. It should be noted that consultations are also required by Article 5(1)(a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), for countries that have ratified this Convention. The results of the consultations were to be reflected in the governments' replies.

Following the publication of Report IV(1),<sup>9</sup> the Office provided assistance to constituents in several countries with regard to their examination of the draft instruments. In this context, the Office supported the holding of consultations or tripartite workshops on domestic work in a number of countries, including Argentina, Brazil, Chile, China, India, Indonesia, Kenya, Philippines, the United Republic of Tanzania and Uganda.

At the time the present report was prepared, the Office had received replies from constituents from 93 member States, including the governments of the following 81 member States: *Albania, Argentina, Australia, Austria, Belarus, Belgium, Benin, Botswana, Bulgaria, Canada, Cape Verde, China, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Finland, France, Ghana, Greece, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Israel, Italy, Japan, Jordan, Kenya, Latvia, Malaysia, Mauritius, Mexico, Republic of Moldova, Montenegro, Morocco, Myanmar, Namibia, Netherlands, Nicaragua, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sudan, Swaziland, Sweden, Switzerland, United Republic of Tanzania, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay and Zimbabwe.*

Most governments indicated that their replies had been drawn up after consultations with organizations of employers and workers. Some of those governments incorporated in their replies the opinions expressed by these organizations on certain points, while others transmitted the observations of employers' and workers' organizations separately. In some cases, replies were received directly from employers' and workers' organizations. Several of the replies received from governments and workers' organizations indicated that they included contributions from civil society organizations and domestic workers' associations. Moreover, the International Trade Union Confederation (ITUC), the International Organisation of Employers (IOE) and the International Confederation of Private Employment Agencies (CIETT) sent replies.

Observations on the proposed texts by the United Nations (UN) High Commissioner for Human Rights, the Special Rapporteur on contemporary forms of slavery of the United Nations Human Rights Council and the Committee on the Rights of the Child were included in the present report in accordance with article 39bis of the Standing Orders of the Conference. In this

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<sup>8</sup> ILO: *Report of the Committee on Domestic Workers*, op cit; and *Provisional Record* No. 19, op. cit.

<sup>9</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010).

connection, it should be noted that the Special Rapporteur on contemporary forms of slavery issued a report in June 2010 focusing on the theme of domestic servitude.<sup>10</sup> The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, during its 13th Session (November–December 2010), adopted a General Comment on Migrant Domestic Workers.<sup>11</sup>

The Office also received a reply from the European Commission.

Replies were also received from a number of other stakeholders such as civil society organizations, including Anti-Slavery International, Human Rights Watch, Migrant Rights Centre Ireland, the RESPECT Network, Justice for Domestic Workers, United for Foreign Domestic Workers' Rights, Migrant Forum in Asia, and some domestic workers' associations. Their replies have been noted but could not be included in the present report.

To ensure that both the English and French texts of the proposed Convention and Recommendation on decent work for domestic workers are received by the governments within the time limit laid down in article 39, paragraph 7, of the Standing Orders of the Conference, Report IV(2) has been published in two volumes. The present volume (Report IV(2A)) has been drawn up on the basis of the replies received from governments, employers' and workers' organizations and the United Nations, and contains the essential points of their observations. It is divided into three parts: the first part comprises comments of a general nature, while the second and third parts contain the observations of the constituents on specific provisions of the proposed Convention and Recommendation, respectively. For practical reasons, it has been necessary at times to group similar replies. Most comments closely followed the structure of the texts and specified the parts of the text to which they referred. In those instances where that was not the case, however, the Office has, to the best of its ability, allocated observations to appropriate parts of the report.

The bilingual Report IV(2B) contains the English and French versions of the proposed texts, as amended in the light of the observations made by governments and by employers' and workers' organizations and for the reasons given in the Office commentaries, as set out in the present volume. Some minor drafting changes have also been made, in particular to ensure full concordance between the two versions of the proposed instruments. If the Conference so decides, these texts will serve as a basis for the second discussion, at its 100th Session (June 2011), with a view to adopting a Convention supplemented by a Recommendation on decent work for domestic workers.

Governments have generally welcomed the proposed texts and 39 of them explicitly stated that the text contained in Report IV(1)<sup>12</sup> provides a satisfactory basis for the second discussion by the Conference, at its 100th Session in June 2011. Similarly, workers' organizations voiced broad support, whereas most employers' organizations expressed preference for a Recommendation only.

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<sup>10</sup> United Nations: *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Gulnara Shahinian, Human Rights Council, 15th Session, 18 June 2010, A/HRC/15/20.

<sup>11</sup> See *Committee on Protection of Rights of Migrant Workers concludes thirteenth session*, United Nations press release, 3 December 2010, [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10581&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10581&LangID=E).

<sup>12</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010).

## REPLIES RECEIVED AND COMMENTARIES

### 1. GENERAL OBSERVATIONS

#### GOVERNMENTS

*Albania.* The number of domestic workers has continued to increase in Albania. Hence, the adoption of the instruments is significant.

*Argentina.* It is not acceptable to use the expression “travailleurs domestiques” in the French version with a footnote explaining that reference is being made to both female and male workers.

*Australia.* Supports a principle-based Convention setting minimum standards, accompanied by a Recommendation providing practical guidance. The Recommendation should be structured so that it can be read alongside the Convention. Where possible, it should go beyond the terms of the Convention to describe the international “best practice” approach to the issue. Additional paragraphs should be considered to facilitate this objective, including paragraphs corresponding to Articles 8, 14, 16 and 17 of the Convention (see comments below).

*Austria.* The texts are generally welcomed. It is hoped that remaining obstacles to possible ratification, as indicated in the comments on specific provisions, can be addressed.

*Benin.* The term “travailleurs domestiques” should be used throughout the French version of the instruments to refer to both men and women domestic workers.

*Canada.* Supports the use in the French version of the term “travailleuse ou travailleur domestique” wherever the English term “domestic worker” is used, as well as the term “travailleuses et travailleurs domestiques” in the plural.

*Cape Verde.* The proposed texts are consistent with the guiding principles underpinning national labour law, namely fundamental principles and rights at work, respect for privacy and the promotion of decent work.

*Costa Rica.* In Spanish, the title of the Convention could be “Convenio sobre trabajo decente para personas trabajadoras domésticas remuneradas”, or “Convenio sobre el trabajo decente para las personas trabajadoras dedicadas a las labores domésticas”. Instead of “labores domésticas”, the expressions “labores del hogar” or “labores en casas de habitación” could be used.

*Croatia.* The proposed instruments are welcomed.

*Denmark.* There is an urgent need for better regulation as domestic workers in many countries are living in miserable conditions and often remain outside the labour laws and collective agreements. The special focus on the situation of women and the efforts to combat abuse, discrimination, forced labour and child labour are welcome. A Convention supplemented by a Recommendation is suitable, provided that the Convention will be general and flexible. The proposed Convention is considered too detailed and questions may be raised as to its ratifiability.

*El Salvador.* The term “las trabajadoras y los trabajadores domésticos” should be used to refer to domestic workers in the Spanish version. Consideration should be given to referring to “remunerated domestic workers” throughout the texts.

*Eritrea.* The proposed texts are comprehensive and significant because they address the special circumstances of domestic workers and ensure that these enjoy the same rights as all other workers. A new global standard with detailed provisions will help ensure fundamental rights and essential protection for millions of women and girls working in a historically neglected and undervalued sector.

*Honduras.* Despite the fact that national law is consistent with many of the provisions of the proposed texts, it appears that the current conditions in the country would not allow for their

implementation. However, there is a willingness to strengthen dialogue with this sector to create specific policies and programmes.

*India.* The right balance needs to be ensured between the protection of the rights of domestic workers and the sensitivities around the issue of the privacy of the individuals employing them. The practicability of the provisions and their enforceability are also a matter to be considered. The text of the proposed instruments is supported, notwithstanding certain reservations in relation to some provisions.

*Iraq.* The terminology “domestic workers and similar workers” should be used, including in the titles of the instruments.

*Italy.* The proposed texts are acceptable from the viewpoint of both their underlying principles and the objectives they pursue. These principles are in line with the fundamental rights embedded in Italian legislation, in particular the right to privacy of both the employer and the domestic worker.

*Japan.* It is important that domestic workers enjoy decent work and that the unique nature of domestic work is taken into account when developing new instruments. The instruments should encourage as many countries as possible to make efforts to expand protection for domestic workers. Governments must have enough flexibility to respond to their respective national conditions.

*Malaysia.* Domestic work is not seen as ordinary employment. The rights of householders should also be considered. A Recommendation would be more suitable than a Convention.

*Mexico.* The terms “los trabajadores domésticos” and “trabajo doméstico” should be used in the Spanish version for “domestic workers” and “domestic work”.

*Republic of Moldova.* Establishing new international labour standards will be an important step towards providing domestic workers with appropriate legal protection, on an equal footing with other employees. In the Republic of Moldova, the Labour Code obliges employers to conclude written contracts with their domestic workers, and to register them with the labour inspectorate.

*Montenegro.* The proposed texts are supported. The issue of decent work for domestic workers should be regulated in a Convention.

*Morocco.* The respective rights and obligations of domestic workers and their employers should be balanced. The texts must take into account the particular nature of domestic work, especially the issues arising in connection with the workplace being a household. Sensitivity is also warranted with regard to the increased costs for employers that will be incurred by labour protection.

*Myanmar.* The new instruments should extend high levels of protection to domestic workers globally.

*Namibia.* Great importance is attached to strong and effective international labour standards to guarantee the rights and protection of domestic workers.

*Netherlands.* Supports the objective of securing decent work for domestic workers. Finding a common framework for action is challenging as circumstances under which domestic work is carried out in member States differ considerably and legislation has been developed in line with those specific circumstances. The proposed Convention is in some aspects too detailed, which could impede widespread ratification, and, hence, its effectiveness.

*Nicaragua.* Agrees with the proposed texts, subject to the comments made on particular provisions.

*Panama.* Both proposed texts should be examined closely to attain consensus and to achieve realistic international instruments ensuring decent work for domestic workers.

*Paraguay.* The term “las trabajadoras y los trabajadores domésticos” should be used in the Spanish version to refer to domestic workers.

*Peru.* Progressive implementation should be foreseen. The term “las trabajadoras y los trabajadores del hogar” should be used to refer to domestic workers in the Spanish version.

*Poland.* The Convention should address the specificity of work performed in the household and allow governments to tailor legal responses to their respective national contexts. The terms “travailleur(s) domestique(s)” in French and “trabajador(es) doméstico(s)” in Spanish encompass both male and female workers and should be used throughout the texts.

*Romania.* The Convention must ensure adequate protection while providing flexibility so that many countries may implement it. The term “travailleurs domestiques” should be used throughout the French version of the texts.

*Seychelles.* The Government looks forward to a successful second discussion.

*Slovenia.* Domestic workers require adequate protection. A difficulty related to the adoption of the proposed Convention is ensuring respect for the right to privacy of persons employing domestic workers, while also ensuring proper supervision of labour legislation. In Slovenia, both the employer and the employee may object to an inspection of the residential premises. In such cases, the inspector must obtain an order from the competent court to proceed. Determining the existence of an employment relationship is also a challenge for enforcement bodies.

*Spain.* A provision in the Preamble or the operative part could state that the term “trabajadores domésticos” (used in the Spanish version to mean “domestic workers”) refers to “las trabajadoras y los trabajadores domésticos y a las trabajadoras y los trabajadores del hogar”.

*Swaziland.* The proposed instruments are welcomed.

*Sweden.* The Government has forwarded the views of the tripartite Swedish ILO Committee, which are reflected in the present report. The Confederation of Swedish Enterprise entered a reservation to those views, considering that domestic work is not suitable for international regulation.

*Switzerland.* Matters regulated in several provisions of the proposed instruments are relevant not only to domestic workers (Articles 3, 5 and 8 of the proposed Convention; Paragraphs 6–11, 14 and 17 of the proposed Recommendation). Consistent with preambular paragraphs 6 and 8 of the proposed Convention, it is suggested that reference be made to the existing instruments regarding these general matters. The new instruments should focus on standards specifically relating to the protection of domestic workers. In addition, further attention needs to be given to the proper sequencing of provisions. Titles grouping certain matters together would improve readability. Consultations are being undertaken with the cantons, to which the competence to legislate on the working conditions of domestic workers is delegated.

*Thailand.* Agrees in principle with the proposed Convention and Recommendation.

*Uganda.* Domestic work is undervalued and invisible, and is one of the most exploitative kinds of work carried out by women and girls. Domestic workers usually have no job description and are left to carry out a wide range of tasks in the home, often for extended periods of time. They also face all kinds of abuse, especially sexual harassment.

*Ukraine.* No comments or amendments.

*United Arab Emirates.* The proposed instruments will contribute to providing legal protection for this important segment of the labour force.

*United Kingdom.* Domestic workers are a vulnerable group of workers who require particular attention.

*Uruguay.* In Spanish, the Convention’s title should be “Trabajo decente para las trabajadoras y trabajadores del hogar”. Throughout the texts, the terms used to refer to “domestic worker” in Spanish should be “trabajadora o trabajador del hogar”.

## EMPLOYERS

*UIA (Argentina).* A Recommendation should be adopted to provide practical guidance. A Convention would be too legalistic an approach, only delaying the implementation of measures and not allowing for the flexibility needed. The scope of application of the texts should be revised to ensure that not all persons working in households are covered by the same standards. Exclusions should be allowed. Employment agencies play an important role in providing domestic work to households and new standards should not discourage employment agencies from being active in this sector. In this regard, the proposed texts are not balanced and need revision. General working time concepts cannot be applied to domestic work. Social security provisions need to be more flexible. Freedom of association and any measures in that regard to be taken by governments should be equally applicable to workers’ and employers’ representatives.

*ACCI (Australia).* The best outcome would be a Recommendation to provide a platform for a practical campaign to support real and immediate changes for domestic workers. Action in response to the issues and concerns of domestic workers can be best achieved by a Recommendation acknowledging the importance of domestic work and issues in providing protection and regulation. In the case of a Convention, considerations around the issue of ratification would divert time and attention. The proposed Convention contains views which, in any event, are better suited to a Recommendation.

*WKO (Austria).* Given the wide range of activities covered and the need for flexibility, a Recommendation is viewed as being more appropriate.

BOCCIM (Botswana). No comments.

CNA (Brazil). The term “trabajadoras y trabajadores domésticos” is preferred in the Spanish text.

CNI (Brazil). A Recommendation only would be the most appropriate outcome, considering the diversity of the existing realities. Should a Convention be considered, it should not include provisions that are controversial or difficult to implement. Rights must be established with due consideration of the different stages of development of ILO member States. Provisions pertaining to collective bargaining and labour inspection in private households may be difficult to implement. Considering the specificity of domestic work, matters raised in various provisions of the draft Convention should be left to the national legislator to determine.

CNC (Brazil). Any new international labour standard, especially when a Convention is being considered, must lay down norms that can be applied and take into account the socio-economic circumstances of the world of work. Although it does not represent the employers of domestic workers, the CNC considers the adoption of a Recommendation to be more appropriate than a Convention.

UCCAEP (Costa Rica). Domestic work is a source of employment for millions worldwide. Failure to regulate properly may cause damage to this sector rather than being beneficial. Enforcement of legislation is complicated. A Recommendation only should be adopted.

CCCI (Cyprus). A Recommendation is preferred. The nature of domestic work differs from country to country. Organization of working time is different than in other types of employment.

CEIF (Cyprus). The genuine concerns regarding domestic work are shared. However, given its nature, a Recommendation is preferred.

SPD (Czech Republic). The adoption of international labour standards on domestic workers is not supported. Practical solutions should be found at the national level.

DA (Denmark). Domestic workers play an important role in the economy and for households. Many domestic workers require some protection. However, it would be regrettable if an instrument were created that could not be widely ratified. The standards must be realistic and concentrate on the peculiarities of domestic work. Coverage is too wide. A Recommendation is suitable in this context. Better compliance with existing instruments should be pursued, rather than discussions on ratifying a new one.

COPARDOM. (Dominican Republic). Households cannot be required to comply with the same rigorous labour standards as ordinary workplaces. Domestic work should be covered by special regulations rather than generally applicable norms. The proposed texts do not reflect the situation in developing countries, where domestic work is a source of income for many workers, who otherwise would not find alternative jobs. Rigid standards will lead to households not hiring domestic workers. Only a Recommendation should be adopted.

CASALCO. (El Salvador). The effort to ensure decent work for domestic workers is recognized. Ratification and implementation will only be feasible if the instruments reflect realities on the ground.

EK (Finland). Concerns relating to domestic workers in various countries would be best addressed in a Recommendation. A Convention is too inflexible to take varying situations into account and may not be widely ratified. The scope of any new instrument must be clearly defined, with room for national exemptions.

KT (Finland). Overall, the proposed texts are seen as a suitable basis for further discussions. Finnish municipalities employ home help service workers whose employment conditions are specified by collective agreement. Under the proposed Convention, these municipality workers would be treated on an equal footing to domestic workers working for a family. This broad scope is viewed as an obstacle to ratification.

VTML (Finland). Report IV(1) provides a suitable basis for further discussion.

FEPEM (France). The labour model for domestic workers in France is successful and structured. It provides for social dialogue between workers’ and employers’ organizations and the Government, two collective agreements that deal specifically with this sector, social protection and training for domestic workers, ongoing negotiations on occupational health and safety, simplified administrative procedures for employers and other innovative mechanisms.

ESEE (Greece). It is essential that labour markets operate smoothly and follow rules. The standards concerning domestic workers should set certain basic principles for the protection of not only workers, but of employers as well, given the nature of the relationship. The texts should explicitly refer to both sexes (for example, the term “travailleur et travailleuse” should be used in the French version).

MGYOSZ (Hungary). There is no need for additional regulation of domestic workers. This would complicate the national legal system and generate disputes. No new obligations should be imposed on employers.

OKISZ (Hungary). The endeavours aimed at improving the working conditions of domestic workers are welcomed.

VOSZ (Hungary). The proposed instruments would have no relevance for Hungary. There is nevertheless willingness to participate in the further preparation of new standards.

DPN APINDO (Indonesia). The protection of domestic workers is important, but due regard to national contexts is warranted. A Convention should not be too detailed or burdensome to follow. Complex matters should be placed in the Recommendation. A number of the provisions of the proposed texts are important for Indonesia and are supported, especially those regarding migrant domestic workers.

NK (Japan). The provisions of any instrument should provide for flexibility, permitting implementation corresponding to national circumstances. The proposed texts lack legal clarity and contain inadequacies, which create difficulties in terms of ratification and implementation. A Recommendation only is preferred and comments are provided on this assumption. Many of the provisions still require careful discussion.

MEF (Malaysia). Supports a Recommendation. It would allow the ILO and governments to address priority concerns. The scope of coverage must be laid out clearly. Not all persons working in homes are domestic workers. The “normal hours of work” paradigm is not viable in the domestic work context. Providing domestic workers with the same access to social security as other workers also poses difficulties. Regulation of domestic workers should not create unrealistic obligations for employers. A balanced approach to employment agencies is needed. Generally, exemption clauses and greater flexibility are needed.

MEF (Montenegro). The proposed texts are viewed positively.

VON–NCW, MKB–Nederland (Netherlands). There is concern about overlap between the proposed texts and about ratification obstacles. A Recommendation could be supplemented by a resolution that confirms the fundamental rights and principles at work for all workers. The effectiveness of a Convention on these issues is unclear. If retained, the proposed texts would require more consideration.

ECOP (Philippines). ECOP supports the common position of the Philippines, which is summarized under the Philippine Government’s comments.

CTP (Portugal). The texts should aim to: combat ethnic discrimination; ensure greater justice in remuneration and greater adherence of actual working time arrangements to the relevant international principles and guidelines; raise the awareness of the general public about human rights; promote equal opportunities and social justice; and encourage the formalization of migrant workers and their registration in the national social security systems.

AZZZ SR, RUZ SR (Slovakia). Support the adoption of a Recommendation only.

UPS (Switzerland). The discussions on domestic workers illustrate legitimate concerns and unacceptable practices violating human rights. A Convention would imply a legislative approach, which takes time to be implemented. The existing concerns would be best addressed by a Recommendation, which would allow the ILO and governments to respond to priority concerns and to implement immediate and targeted action, and would take into account the fact that there are information gaps in this area. The current text should be shortened.

ECBIN (Thailand). Agrees in principle with the proposed Convention and Recommendation.

JRBE (Ukraine). No comments or amendments.

IOE. There is an urgent need to address the real and pressing concerns facing domestic workers. The most appropriate outcome would be a Recommendation encouraging the creative and innovative development of policies, forms of protection and dialogue and immediate action. Confronted with a Convention, countries would have to apply legislative and compliance-oriented approaches which take time to implement. A Convention would also require the ILO to shift towards promoting ratification, rather than supporting practical campaigns. The proposed Convention contains provisions of an aspirational or general nature which are more suited to a Recommendation. There is also lack of clarity and agreed understanding of many concepts and practices in relation to domestic workers. The current text does not take into account the different situation of live-in and live-out workers and contains provisions that are inconsistent with

national law and practice or existing ILO standards, or are too vague. Despite the above, feedback is provided on the texts as they will be considered by the Conference. The comments and suggestions put forward, however, are without prejudice to the proposal for a Recommendation only.

## WORKERS

ACTU (Australia). Supports a Convention supplemented by a Recommendation. The instruments should emphasize the need for equal treatment between domestic workers and other workers, while taking the specificities of domestic work into account and providing clear guidance on how to promote decent work for domestic workers.

FENATRAHOB (Plurinational State of Bolivia). Supports the comments made by ITUC. In the Spanish version, the term used to refer to “domestic worker” should be “trabajadora del hogar”. The term “remunerated domestic work” should also be used.

BFTU (Botswana). The proposed texts are satisfactory and should be adopted.

CUT (Brazil). The expression “trabajadoras y trabajadores del hogar” should be used in Spanish, while in Portuguese the expression “trabalhadoras e trabalhadores domésticos” is preferred.

CNTB (Burkina Faso). In French, the terms “travailleurs et travailleuses domestiques” would better describe the profession.

CSN (Canada).<sup>13</sup> Supports the use of gender-sensitive terminology in the proposed texts, to acknowledge that the vast majority of domestic workers are women.

FADWU, HKCTU (China). Most of the proposed texts are supported, as it is recognized that domestic workers should enjoy equal rights as other workers.

CGT (Colombia). The terms used in Spanish to refer to domestic workers should be “las trabajadoras y los trabajadores del hogar”.

CTC, CUT (Colombia). The proposed texts are a significant recognition of domestic workers’ rights, protecting groups that have historically been discriminated against. The term used to refer to domestic workers in Spanish should be “las trabajadoras y los trabajadores del hogar”.

PFL (Cyprus). The proposed texts provide a satisfactory basis for the second discussion.

SEK (Cyprus). The proposed texts are balanced and a positive step forward. Definitions could be more accurate and inclusive, especially regarding occasional workers. A clear and sensitive approach to work–life balance would be useful. Recognition of the special nature of domestic work calls for a text that facilitates the full enjoyment of rights. The Recommendation should include a provision on language training for domestic workers, which is important for their inclusion in local societies.

LO (Denmark). Domestic workers are among the most vulnerable workers in the informal labour market. In Denmark, there are groups of employees, covered by existing collective agreements, who would fall under the definition of domestic workers under the instruments (such as personal assistants for persons with disabilities). LO expects that these collective agreements will, at the very least, incorporate the conditions defined in the proposed Convention.

CASC, CNTD, CNUS (Dominican Republic). The term used to refer to domestic workers in Spanish should be “trabajador y trabajadora del hogar”.

ETUF (Egypt). Agrees with the Government’s comments.

MUSYGES (El Salvador). The expression used to refer to domestic workers in Spanish should be “trabajadora, trabajador del hogar”.

AKAVA (Finland). The proposed instruments and the alternative wording suggested by the Office regarding a number of provisions are generally acceptable.

GSEE (Greece). Supports the adoption of a Convention and Recommendation. Intermediaries should be included in the notion of “employer.”

COSME (Guatemala). Supports the comments made by ITUC.

CTH (Honduras). No comments or suggestions.

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<sup>13</sup> The comments by the CSN reflected in this report are those of the Ad Hoc Working Group on Promoting Decent Work for Household Workers (Quebec, Canada) of which the CSN is a member.

ICTU (Ireland). The Convention should cover domestic workers in diplomatic households and embassies. Otherwise, a large number of domestic workers will continue to depend solely on the goodwill of their employers. In cases of abuse, these domestic workers have few avenues of redress.

CGIL (Italy). The texts are generally supported.

LBAS (Latvia). The various references to privacy in the proposed Convention require further clarification and explanation, possibly in the Recommendation.

MTUC (Malaysia). Supports the proposed instruments, which will enhance protection against exploitation and reduce abuse and “runaway” cases to a great extent.

CTM (Mexico). The terms used to refer to domestic workers in Spanish should be “las trabajadoras y los trabajadores del hogar”. “El trabajo del hogar” should be used to refer to domestic work.

CTUM (Montenegro). The instruments are supported and require adoption.

GEFONT (Nepal). Domestic work is work and domestic workers should be treated equally to workers generally.

CNMSN (Nicaragua). The terms used to refer to domestic workers in Spanish should be “las trabajadoras y los trabajadores del hogar”. The comments made by ITUC are supported.

CTN (Nicaragua). The Convention should cover the situation of women who take their young children to the household where they work.

CS (Panama). Domestic workers should be given the opportunity to study in the evenings and should be helped in that regard.

CNT (Paraguay). The terms used to refer to domestic workers in Spanish should be “las trabajadoras y los trabajadores del hogar”.

CUT–A (Paraguay). Prefers the expression “los trabajadores domésticos”, as it includes both male and female domestic workers.

CATP, CUT (Peru). Support the comments made by ITUC. In addition, the Convention should contain a provision against the arbitrary dismissal of domestic workers.

CGTP, SINTTRAHOL (Peru). The terms used to refer to domestic workers in Spanish should be “las trabajadoras y los trabajadores del hogar”. The term “vulnerable” should remain in the texts, as it describes the reality of many domestic workers. A provision establishing protection against arbitrary dismissal is supported.

APL, FFW, TUCP (Philippines). Support the common position of the Philippines, which is summarized under the Philippine Government’s comments. Additional comments were provided, jointly with the Visayan Forum, the Migrant Forum for Asia and the Philippine domestic workers’ association SUMAPI. The Recommendation should address: free access to courts; support services, including board and lodging, while litigation is ongoing; and access to proper services for victims of abuse.

KOZ SR (Slovakia). Supports the adoption of a Convention supplemented by a Recommendation.

CCOO (Spain). The term used to refer to domestic workers in Spanish should be “trabajadoras y trabajadores del hogar”.

NLC (Thailand). Agrees in principle with the proposed Convention and Recommendation.

NUDE (Trinidad and Tobago). Supports the expression “trabajador del hogar” in the Spanish text. It has a more positive meaning than the alternative.

FPU (Ukraine). Supports the proposed instruments and the Office’s suggestions.

TUC (United Kingdom). Opposes moving any provisions of the proposed Convention to the Recommendation. Supports gender-inclusive language.

CTV (Bolivarian Republic of Venezuela). The initiative of adopting international standards to determine working conditions for this sector is fully supported. The organization shares ITUC’s views.

ITUC. The proposed instruments are a satisfactory basis on which to resume negotiations. Arab trade unions affiliated to ITUC adopted a statement supporting the proposed instruments. As regards the Spanish version, Spanish-speaking affiliated organizations would support the expression “trabajadora, trabajador del hogar” for “domestic worker”.

## UNITED NATIONS

CRC. The exploitation of children as domestic workers, based on certain conditions of domestic work in certain countries, is often akin to the worst forms of child labour. The Convention could include provisions on the prevention of domestic child labour through: economic support to families and communities of origin through the promotion of productive employment and access to social security and social protection; the enhancement of community and families' solidarity networks; and the dissemination of information about the risks of domestic child labour. Additional provisions should be included in the Recommendation regarding domestic workers under the age of 18, addressing the issues of: contacts with and visits to their family; participation in cultural and recreation activities; and the right of such workers to have their opinion taken into consideration when alternatives to work are offered.

Special Rapporteur on contemporary forms of slavery. The ILO's resolve to adopt a Convention on decent standards for domestic workers is welcomed.

OHCHR. The ILO is commended for this important initiative to ensure that the rights of domestic workers are adequately protected. The proposed texts generally reflect human rights standards adequately.

## OFFICE COMMENTARY

*Terminology to refer to "domestic worker(s)" in the French and Spanish texts.* During the first discussion, the Committee decided to defer the decision as to whether to replace in the French text the term "travailleur domestique" by "travailleuse ou travailleur domestique", where the term "domestic worker" is used in English. Likewise, the decision was deferred as to whether to replace in the Spanish text the term "trabajador doméstico" by either "trabajadora o trabajador doméstico" or "trabajadora o trabajador del hogar".<sup>14</sup> Among the few replies received with regard to the French terminology, there is a preference for using the term "travailleur domestique" and "travailleurs domestiques" in the plural. As regards the Spanish text, the three options mentioned above have each solicited a similar level of support among governments commenting on the matter. Workers from Spanish-speaking countries have overwhelmingly supported the use of "trabajadora o trabajador del hogar".

In this context, it is relevant that, at its November 2010 session, the Governing Body of the ILO considered proposals, based on informal tripartite consultations, with a view to ensuring gender-sensitive language in the ILO Constitution. Two options were discussed: (1) the amendment of the ILO Constitution;<sup>15</sup> and (2) a draft resolution to be adopted by the Conference expressing the Organization's will to view the Constitution in terms consistent with gender equality and an editor's note to be added to the Constitution.<sup>16</sup> The Governing Body reached consensus on working towards a draft resolution and an editor's note, rather than an amendment to the Constitution. Accordingly, the Governing Body requested the Office to prepare a revised draft resolution of the Conference for its consideration in March 2010.

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<sup>14</sup> See ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011, (published in 2010), p. 5.

<sup>15</sup> Among the possible constitutional amendments discussed were the replacement, in the French and Spanish texts, of the terms "travailleur" and "trabajador" by "travailleuse et travailleur" and "trabajadora o trabajador", respectively. See ILO: *Constitution of the International Labour Organization: Proposals to introduce inclusive language for the purpose of promoting gender equality*, Governing Body, 309th Session, Geneva, Nov. 2010, GB.309/LILS/2, Appendix I.

<sup>16</sup> GB.309/LILS/2, op. cit., and ILO: *Reports of the Committee on Legal Issues and International Labour Standards*, Governing Body, 309th Session, Geneva, Nov. 2010, GB.309/12/1(Rev.).

In line with the decision by the Conference in 2010 to determine the terminology for “domestic worker” to be used in the French and Spanish texts at its 100th Session, the various options remain in brackets in the texts as they appear in Report IV(2B).<sup>17</sup> The Conference may also wish to take into account the outcome of the discussion by the Governing Body in March 2011.

## 2. OBSERVATIONS ON THE PROPOSED CONVENTION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

### Preamble

#### GOVERNMENTS

*Argentina.* With regard to the eighth preambular paragraph, it is understood that respect for privacy cannot be subject to negotiation and that labour inspectors must be authorized to enter households where domestic work is performed.

*Australia.* In the fifth preambular paragraph, the words “and vulnerable” should be reintroduced, as the issue of vulnerability is central when describing the employment and living conditions of domestic workers.

*Australia, Austria, Canada, Ethiopia, Greece, United States, Zimbabwe.* Support the alternative wording suggested by the Office for the eighth preambular paragraph.<sup>18</sup>

*El Salvador.* In the fifth preambular paragraph, the term “proportion” should be replaced by “percentage”.

*Ethiopia.* In the fourth preambular paragraph, the phrase “many of whom are migrants or members of historically disadvantaged communities” does not reflect the reality in all member States. In the fifth preambular paragraph, reference should be made to “limited” opportunities. Furthermore, the statement that domestic workers constitute a significant proportion of the workforce does not reflect the situation everywhere.

*Indonesia.* The fourth preambular paragraph should also emphasize the marginalization and exploitation of women and girls, including their vulnerability to being trafficked. The fifth preambular paragraph should be streamlined to recognize that both sending and receiving countries receive benefits from migrant domestic workers. The issue of marginalization is redundant.

*Kenya.* In the fourth preambular paragraph, women should not be characterized as being vulnerable. In the fifth preambular paragraph, reference should be made to high unemployment rates as well as to scarce opportunities for formal employment. In the eighth preambular paragraph, the phrase at the end should read “taking into account respect for the right to privacy”.

*Mexico.* In the eighth preambular paragraph, the reference to the right to privacy should remain in the text. The words “among others” should be added at the end of the ninth preambular paragraph.

*Namibia.* The concept of vulnerability is not understood as gender-biased, but connotes the situation of workers who are subject to the most exploitative conditions while lacking protection.

*Netherlands.* In the sixth preambular paragraph, the words “, unless otherwise provided,” should be moved to the beginning, after “Recalling that”.

*Oman, Qatar, Saudi Arabia, Sweden, United Arab Emirates.* The reference to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should be removed.

*Oman, Qatar, Saudi Arabia, United Arab Emirates.* In the fifth preambular paragraph, the reference in the previous draft to “high rates of unemployment” is preferred.

<sup>17</sup> ILO: *Decent work for domestic workers*, Report IV(2B), International Labour Conference, 100th Session, Geneva, 2011.

<sup>18</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 4.

*Peru.* In the eighth preambular paragraph, reference should be made to the right to privacy.

*Philippines.* The current text for the eighth preambular paragraph should be retained.

*Spain.* The sixth preambular paragraph is considered contradictory to the objective of establishing specific standards for domestic workers. The following words should be added: “when compatible with the specific characteristics of the activity”. Reference to other international instruments may be an obstacle to ratification, particularly where these instruments allow for the exclusion of domestic workers. In the eighth preambular paragraph, the word “supplement” should be replaced by “adapt”, to ensure coherence with the sixth preambular paragraph.

*Sweden.* The Preamble should refer to the Beijing Declaration and Platform for Action of 1995 and the 23rd Special Session of the UN General Assembly (Beijing+5), in 2000.

*Switzerland.* In the eighth preambular paragraph in the French text, reference should be made to “respect de la vie privée” instead of “protection de la vie privée”. In the ninth preambular paragraph, the references to treaties that are not universally ratified and that are not supervised in a tripartite manner are questionable and could lead to confusion (see also comments under Article 3).

*Tanzania, United Republic of.* The fifth preambular paragraph could also emphasize the importance of the continued formalization of informal activities. The text in the eighth preambular paragraph should be retained as is. It will reinforce domestic workers’ rights.

*Trinidad and Tobago.* The current text in the eighth preambular paragraph is preferred, but the phrase “while recognizing their responsibilities” should be inserted after “rights fully”.

*Uganda.* Retain the current eighth preambular paragraph.

*Uruguay.* In the eighth preambular paragraph, the clause at the end should be replaced by the following: “taking into account their right to respect for privacy”. This is consistent with Article 9(2).

#### EMPLOYERS

*CNA (Brazil).* The current text of preambular paragraph 8 is preferred, so as to ensure consistency with the content of Article 9(2).

*UPS (Switzerland).* Reference to other ILO and UN Conventions in preambular paragraphs 9 and 10 is not supported. The latter instruments are not tripartite in nature and should not be mentioned in an ILO Convention.

*IOE.* Consideration should be given to inserting the following wording at the end of the third preambular paragraph: “greater scope for caring for ageing populations, children and persons with a disability, income transfers to often historically disadvantaged communities, and substantial remittance flows between countries”. The fourth preambular paragraph should be rephrased as follows: “Considering that domestic work continues to often be undervalued and not be visible to the wider community ...”. The word “therefore” should be replaced by “who are”. The alternative wording suggested by the Office for preambular paragraph 8 and the references to other international instruments in preambular paragraph 9 are not supported.

#### WORKERS

*CGTRA (Argentina).* The Office suggestion for the eighth preambular paragraph appears to be less precise.

*BAK (Austria).* The Office suggestion regarding the eighth preambular paragraph raises no objections. Employers of domestic workers voluntarily accept a limitation of their privacy.

*CNTB (Burkina Faso).* The current wording in the eighth preambular paragraph is preferred. Deleting the reference to “rights” weakens the text.

*CSN (Canada).* The eighth preambular paragraph should not refer to the right of employers to privacy. No other ILO instrument does so.

*FADWU, HKCTU (China), SAK (Finland).* Support the alternative wording suggested by the Office for the eighth preambular paragraph.

*CTC, CUT (Colombia).* Respect for privacy should not be an obstacle to monitoring the working conditions of domestic workers.

MUSYGES (El Salvador). In the eighth preambular paragraph, the proposal to replace the words “right to privacy” by “respect for privacy” is supported.

CFDT (France). The alternative wording suggested by the Office for the eighth preambular paragraph is preferred; it is coherent with Article 5. The word “particularly” in the fourth preambular paragraph suggests that men are excluded and could be replaced by “often”.

DGB (Germany), GEFONT (Nepal), ITUC. In relation to the eighth preambular paragraph, “respect for privacy” must not be an impediment to the enforcement of labour legislation applicable to domestic workers. From that perspective, the change proposed by the Office could be considered as an improvement.

GSEE (Greece). The Preamble should mention “multiple discrimination”.

COSME (Guatemala). The current text of the eighth preambular paragraph is preferred.

SEWA (India). The fifth preambular paragraph, should refer to “high rates of unemployment, underemployment and increasingly scarce opportunities in the formal sector”.

CTM (Mexico). In the seventh preambular paragraph, the phrase “unless otherwise provided” should be deleted. The clause regarding privacy in the eighth preambular paragraph should be replaced by two separate paragraphs addressing the right to privacy of workers and employers, respectively.

FNV (Netherlands). In the fifth preambular paragraph, insert the words “and decent” after “for formal”.

CGTP, SINTTRAHOL (Peru). The reference to “historically scarce opportunities for formal employment” should be replaced.

APL, FFW, TUCP (Philippines). The Preamble should acknowledge that domestic work is historically rooted in slavery.

UGT-P (Portugal). It is important to ensure that privacy is not used to circumvent verification of compliance with labour legislation.

TUCTA (Tanzania, United Republic of). The current text in the eighth preambular paragraph is preferred. It reinforces the right of domestic workers to privacy.

NUDE (Trinidad and Tobago). The effect of the wording in the eighth preambular paragraph is unclear. Respect for privacy should not impede the enforcement of labour legislation.

#### UNITED NATIONS

CRC. A reference to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography should be included.

OHCHR. In the eighth preambular paragraph, reference to the right to privacy should be retained. In the ninth preambular paragraph, a reference should be added to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights, which together with the mentioned Universal Declaration of Human Rights form the International Bill of Human Rights.

#### OFFICE COMMENTARY

The comments regarding the eighth preambular paragraph indicate no clear preference for the alternative language suggested by the Office. Several respondents considered that the reference to a right to privacy should be maintained, including OHCHR, which emphasized that privacy is a human right to be enjoyed by all persons. Workers’ organizations emphasized that respect for privacy should not be an impediment to the enforcement of labour legislation. The IOE was in favour of wording addressing the concerns of both workers and household employers. The Office maintained the text of the eighth preambular paragraph, with the addition of the word “members” after “household” to clarify that reference is being made to the human right to privacy enjoyed by all persons.

Several comments were made regarding the references in the Preamble to other ILO and UN instruments. The Office recalls that such references are regularly made in ILO Conventions and Recommendations. In the context of the development of new ILO standards, the Legal Adviser

has frequently recalled that the Preamble is non-binding in nature and that its primary function is to set out the context of the instrument. In accordance with the 1969 Vienna Convention on the Law of the Treaties, Preambles are part of the context for the purpose of the interpretation of particular provisions of a treaty. Nonetheless, in ILO practice, Preambles have rarely been used for the purpose of interpreting the scope of a given provision of a Convention.<sup>19</sup>

## Article 1

### GOVERNMENTS

*Italy.* The definitions contained in Article 1 are appropriate.

#### *Article 1(a) and (b)*

*Cape Verde.* According to national law, work performed in crèches, homes for the elderly, hotels and other profit-oriented undertakings is not considered to be domestic work.

*China, Czech Republic, Egypt, Malaysia, Morocco, Russian Federation.* Add a definition of “employer”.

*China, Costa Rica, Paraguay.* In Article 1(b), include the words “for remuneration” or refer to “a remunerated employment relationship”.

*Costa Rica.* Persons carrying out domestic tasks in their own home should be excluded.

*Ecuador.* A subparagraph should be added, requiring Members to regulate domestic work performed on an hourly or part-time basis as long as it is performed regularly, under a contract and with the appropriate payments of social security contributions as required by national law.

*Egypt.* Article 1(a) covers work that does not involve domestic tasks, including that done by a resident nurse, a private secretary, an electrician or a plumber. Article 1(b) should be amended to specify that the employment is “for a determined or undetermined period”. Continuity of the contractual relationship should be spelled out as a criterion.

*El Salvador.* In Article 1(a), the wording “unless it is for profit or gain” and “for the upbringing and care of its members” could be added. In Article 1(b), the expression “within an employment relationship” should be replaced by “in households, in the labour market”.

*Eritrea.* The definition of “domestic work” could refer to the tasks involved, including maintenance of the house and the care and comfort of members of the household, including gardening, guarding and driving.

*France.* Article 1(a) should exclude persons working at their own home for a private employer, such as childminders taking care of children during the day in their own residence. Such workers are not dependent on their employer in the same way as domestic workers are and may thus be regulated differently (particularly as regards working time and remuneration). Therefore, the words “or for” should be deleted. This would also help clarify that the intention of Article 1 is not to cover homeworkers. Alternatively, a general exemption for such caregivers could be developed.

*Indonesia.* Article 1(b) should specify that a domestic worker should be any person who meets the criteria set out by the Convention.

*Kenya, Tanzania, United Republic of.* In relation to Article 1(a), national laws should define the meaning of “household”.

*Malaysia.* Article 1(a) should exclude chores done in a household that relate to the employer’s trade, business or profession.

*Mexico.* Add in Article 1(a) the words “other than one’s own household”, to clarify the intention of the provision.

*Morocco.* Tasks constituting domestic work should be mentioned. Domestic work should be distinguished from janitorial and guard work.

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<sup>19</sup> See ILO: *Manual for drafting ILO instruments*, Office of the Legal Adviser, Geneva, 2006, para. 12.

*Paraguay.* Article 1(a) should refer to work performed in a “household, place of residence or private accommodation”.

*Peru.* Article 1(a) could read as follows: “the term ‘domestic work’ means work and tasks which are commonly performed in or for a household or households”.

*Philippines.* In Article 1(a), delete “or households” as this could be a window for exploitation. At any rate, “household” covers domestic workers working for more than one household.

*Romania.* Article 1(a) should exclude work done by the worker in his or her own home.

*Russian Federation.* Article 1(b) should read: “the term ‘domestic worker’ means any natural person who has concluded a contract of employment with an employer for the performance of work in a household, or for one or more households.”

*Slovakia.* The texts would benefit from a definition of the terms “household” and “employer” and from a reference to the activities performed in a household. One adult member of the family should be recognized as the employer.

*Switzerland.* A new provision should be included in the Recommendation to clarify which types of activities are considered domestic work within the meaning of Article 1. Such a provision could state that domestic work includes tasks performed at the employer’s residence essentially aimed at the maintenance of the household, including cleaning, laundry, shopping, cooking, participation in care of children, the elderly or ill, and ordinary garden work. Such a provision could also provide guidance on which activities are not considered domestic work, for instance, childminding in the worker’s own residence, residential medical care or work going beyond ordinary household needs, such as professional gardening, cooking or driving.

*Trinidad and Tobago.* More comprehensive definitions would be useful, given that domestic work takes many forms. A definition of “household” should be included.

*Uganda.* The definition should cover work by family or relatives and those working in the informal economy. The tasks that constitute domestic work should be specified. Article 1(b) should mention the minimum age of employment.

*Uruguay.* Employees of a company providing household services (such as a cleaning company) should not be included. Another criterion should be that the work does not generate profits for the household.

### **Article 1(c)**

*Argentina, Austria, Benin, Canada, Cyprus, Ethiopia, Hungary, Kenya, Mexico, Namibia, Oman, Paraguay, Peru, Philippines, Poland, Qatar, Saudi Arabia, Trinidad and Tobago, United Arab Emirates, United States, Zimbabwe.* The alternative text proposed by the Office for Article 1(c) is acceptable.<sup>20</sup>

*Australia.* The definition should ensure that the Convention does not inadvertently apply to workers other than domestic workers, for example outworkers, contractors engaged under genuine commercial relationships (for example, tradespersons) and medical professionals. A provision seeking to exclude domestic workers that perform domestic work for a household on an irregular basis only is supported. However, given the ambiguity of the phrase “not on an occupational basis”, the wording should be changed into the following: “a person who performs domestic work only occasionally or sporadically and not within an employment relationship is not a domestic worker”.

*Austria, Greece.* Could support the deletion of Article 1(c). Article 2 provides scope for exclusions.

*Belgium.* The current wording, achieved through negotiations, is preferred.

*Greece.* The exclusion of occasional or sporadic domestic workers risks barring these workers from adequate protection, as the use of flexible forms of employment is on the rise. Moreover, it enhances the phenomenon of undeclared work.

*Egypt, El Salvador.* Delete “not on an occupational basis”.

*Indonesia.* Add “or temporarily”.

<sup>20</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 5.

*Portugal.* The current wording is preferred. The expression “not as a means of earning a living” could create difficulties. A student, for instance, could earn a living temporarily by working as an au pair, without domestic work becoming her or his profession.

*Romania.* Coverage of day labourers and other precarious workers may require further clarification.

*Slovakia.* Article 1(c) could read: “a person who performs domestic work only occasionally or sporadically may not be regarded as a domestic worker”.

*Spain, Tanzania, United Republic of.* The current text is preferred.

*Switzerland.* Article 1(c) lacks clarity. An occasional or sporadic activity can be an incidental activity bringing in necessary additional remuneration for the employee without it being the person’s occupation. Article 1(c) could be deleted and instead the following inserted at the end of Article 1(b): “Any person performing domestic work otherwise than as their main or secondary occupation shall not be deemed to be a domestic worker.”

*Uruguay.* The intention of Article 1(c) is to exclude workers who perform this work in a circumstantial or occasional manner. However, the expression “not on an occupational basis” should be discussed very carefully before including it in an international instrument. Neither the remuneration nor the contract modalities should serve as a basis for exclusion from the definition.

## EMPLOYERS

CNA (Brazil). The alternative text proposed by the Office for Article 1(c) is acceptable.

CNI (Brazil). The current text fails to mention that the aim of the employer is not to generate a profit, and that only continuous and regular work is covered.

UCCAEP (Costa Rica), COPARDOM (Dominican Republic). The definition of the term “domestic worker” is unclear.

FEPEM (France). Domestic work is regularly offered on a part-time basis and performed for several employers. The words “only occasionally or sporadically” in Article 1(c) fail to take this reality into account and should therefore be deleted to prevent confusion.

DPN APINDO (Indonesia). Only domestic workers in the formal sector should be covered, for example, in Indonesia, those recruited by official employment agencies.

NK (Japan). The current text in Article 1(c) is preferred. The alternative wording proposed by the Office constitutes a change in scope of the instruments.

CCP (Portugal). The expression “as a means of earning a living” is preferred.

IOE. The alternative wording suggested by the Office for Article 1(c) is not supported. It appears to raise subjective considerations.

## WORKERS

CGTRA (Argentina), CTC, CUT (Colombia), MUSYGES (El Salvador), SAK (Finland), CGIL (Italy), LBAS (Latvia), CTN (Nicaragua), CGTP, SINTTRAHOL (Peru), TUCTA (Tanzania, United Republic of), TUC (United Kingdom). Agree with the alternative wording suggested by the Office for Article 1(c).

BAK (Austria). The expression “not on an occupational basis” in Article 1(c) as well as the alternative suggested by the Office may render domestic work even more precarious. The definition should cover all domestic workers.

CUT (Brazil). Delete Article 1(c).

CNTB (Burkina Faso). The phrase “not as a means of earning a living” is more accurate where the work is occasional and part time.

CSN (Canada). The alternative wording proposed by the Office is supported. A number of domestic workers work part time for multiple employers, and should be included.

FADWU, HKCTU (China). Article 1(c) should be deleted. It is unclear and could be interpreted to exclude part-time workers. Article 1(a) and (b) are sufficiently clear, as they define as domestic workers those within an employment relationship.

CTC, CUT (Colombia). The term “domestic worker” should include all workers whose income depends on performing domestic work, regardless of the duration and whether or not they have a written contract.

STTK (Finland). The term “domestic worker” should mean any person engaged in domestic work that constitutes the worker’s sole or principal source of income.

CFDT (France). The current text is preferred. It is difficult to see the connection between “occupational basis” and “means of earning a living” in the context of precarious and part-time work, which have direct consequences on levels of work income.

UNSA (France). The current text in Article 1(c) is preferred. In fact, the purpose of the text is to exclude from the definition of “domestic worker” persons who perform very temporary work in this sector (such as au pairs or students who provide childcare services to finance their studies).

DGB (Germany). The alternative wording suggested by the Office for Article 1(c) is supported. It clarifies that the Convention should cover those people whose income comes directly from performing domestic work.

GSEE (Greece). Vague wording limiting the scope is not supported.

SEWA (India). The definitions should not allow for exclusions.

GEFONT (Nepal). Article 1(a) and (b) provide for satisfactory definitions. Article 1(c), even if amended as suggested by the Office, is not necessary and should be deleted.

FNV (Netherlands). The alternative wording suggested by the Office for Article 1(c) may be interpreted to exclude part-time domestic workers; it could be acceptable if it included the words “or part of their living”. Otherwise, the current text is preferred.

CUT–A (Paraguay). Workers performing cleaning tasks in hotels, guest houses and so on, and those simultaneously performing domestic work and other work (such as commercial work) for the same employer should be excluded from the term “domestic workers”.

APL, FFW, TUCP (Philippines). The term “domestic worker” could explicitly exclude categories of workers performing specialized services that require special skills and a licence.

CATUS (Serbia). The scope of the instruments should be clearer. The activities and tasks that constitute domestic work should be identified.

TUCTA (Tanzania, United Republic of). The term “household” should be defined by national laws.

NCTL (Thailand). Article 1(a) should specify more clearly that domestic work only pertains to duties undertaken in the household or for the household.

NUDE (Trinidad and Tobago). Article 1(a) and (b) are supported; however Article 1(c) requires clarification. The phrase “and not as a profession” could be used.

ITUC. Article 1(a) and (b) provide for a satisfactory definition of domestic work and domestic workers and should be retained in the final text. Regarding Article 1(c), the change proposed by the Office can be supported as it makes it clearer that the Convention should cover those workers whose income comes from performing domestic work.

#### OFFICE COMMENTARY

Article 1(a) and (b) received broad support. A number of respondents suggested further review of the current text to achieve greater clarity or to exclude from the definition work that is clearly not domestic work. One of the possibilities mentioned was to specify that “domestic work” includes work commonly performed for the ordinary maintenance of the household and the care and comfort of its members. Some respondents suggested explicitly excluding work performed in and for the worker’s own household, including work performed by the worker in his or her own home for an outside employer.

With regard to Article 1(c), the alternative wording suggested by the Office has been found acceptable by a large number of respondents and was therefore included in the text. However, it should be noted that not all respondents have considered it fully satisfactory. Several governments

and workers' organizations suggested the deletion of Article 1(c), given that Article 2 allows for the flexibility to exclude certain categories.

A considerable number of respondents suggested the inclusion of a definition of the term "employer". In this regard, the Office proposes the following wording for consideration: "the term 'employer' means any natural or legal person employing a domestic worker".

It is for the Conference to review the text of Article 1 further and to discuss any changes that may be desirable, possibly in conjunction with Article 2.

## Article 2

### GOVERNMENTS

*Australia.* Article 2(1)(a) could be further clarified and thus read as follows: "categories of workers who are otherwise provided with at least equivalent protection of their rights and entitlements as set out in this Convention".

*Denmark.* Coverage is too wide and should be more focused. There should be scope to make exceptions on an ongoing basis, such as of persons engaged in domestic work for eight hours a week or less.

*Finland.* The scope is too broad in some respects. However, in its current form, Article 2 addresses concerns arising in this connection.

*Greece.* The inability or unwillingness of employers' and workers' organizations to consult with governments may impede the application of the instruments.

*Indonesia.* In Article 2(1), an additional subparagraph should provide for the possibility to exclude persons performing domestic work within the context of the family or for relatives.

*Mexico.* Article 2(1) should read: "The Convention applies to all domestic workers. Each Member may, after consulting ...". The expression "provided that" in the Spanish text appears limiting.

*Poland.* Article 2(1)(a) could be interpreted too widely. Exclusions should be limited to those captured under Article 2(1)(b).

*Slovakia, Tunisia.* The phrase "special problems of a substantial nature", used in Article 2(1)(b), should be clarified.

*Spain.* In Article 2(1), in Spanish, the term "pueda" should be replaced with "pudiendo". Article 2(2) should apply only to exclusions under Article 2(1)(b). There will be no reason to extend the scope to domestic work performed by an enterprise.

*Sweden.* Consideration should be given to clarifying Article 2(1), in order to avoid uncertainty with regard to the groups that can be excluded.

*Switzerland.* The Article could be restructured so that Article 2(1) would read "The Convention applies to all domestic workers"; Article 2(2) would read "Each Member which has ratified it may, after consulting ... problems of a substantial nature arise"; and the current Article 2(2) would become Article 2(3).

*United States.* Article 2(1)(a) should be clarified by replacing "at least equivalent protection" by "protections at least equivalent to those provided for workers generally".

### EMPLOYERS

CNI (Brazil). Casual domestic workers (*diaristas*) should be excluded from the scope of the Convention.

FEPEM (France). Reference should be made to "representative organizations of employers of domestic workers, where they exist".

ESEE (Greece). The exemptions must be defined as clearly and as precisely as possible.

NK (Japan). The *most* representative employers' and workers' organizations should be consulted.

UPS (Switzerland). Not all workers who work in a residence are domestic workers covered by the new standard. Governments should insist on a targeted instrument that clearly determines which workers are covered.

CCP (Portugal). The expression “organizations of employers of domestic workers” needs to be used consistently throughout texts. It should include all organizations representing this type of employers, namely private employment agencies and enterprises providing domestic services to households as well as the individuals who employ domestic workers to work in their homes.

IOE. There should be scope in certain cases to exclude certain categories of workers, categories of employment or occupation or particular work arrangements, even in the absence of “equivalent protection”. Exclusions must be possible on a temporary or ongoing basis. Governments need scope to make exceptions as and when necessary following ratification and this possibility should not be limited to the first report under article 22 of the ILO Constitution. Article 2(1) should be amended to refer to the *most* representative organizations of employers and workers and the words “in particular” should be deleted. All other references to consultation with social partners throughout the texts should be amended to read the same.

#### WORKERS

ACTU (Australia). Care must be taken to ensure that the proposed Convention does not continue the pattern of exclusion of domestic workers from national and international regulation. The Convention should not undermine standards applicable to workers already recognized and covered in national industrial relations systems (such as, in the case of Australia, care workers who visit residential homes for the aged). This problem appears to be addressed by the inclusion of Article 2(1)(a). The meaning of the term “special problems of a substantial nature” in Article 2(1)(b) is unclear.

CSN (Canada). Article 2(1)(b) is vague, but must be interpreted restrictively.

CTC, CUT (Colombia). Article 2(2) should not be so ambiguous.

CASC, CNTD, CNUS (Dominican Republic). Article 2(1)(b) can be interpreted too broadly and could lead to the exclusion of workers who should be covered.

MUSYGES (El Salvador), DGB (Germany), TUC (United Kingdom), ITUC. Article 2(1)(a) is supported as it prevents categories of professional workers who work in households, such as nurses, from being covered. Article 2(1)(b) raises concerns as it could be interpreted broadly. There are concerns that governments may use this provision to exclude domestic workers in the diplomatic corps. Article 2(2), however, provides some guarantees that this exclusion will be interpreted narrowly.

SAK (Finland). Article 2(1)(b) should be interpreted narrowly in line with Article 2(2).

ICTU (Ireland). The Convention should apply to domestic workers regardless of their immigration status. It should also explicitly apply to non-diplomatic locally recruited staff and au pairs performing domestic work on an occupational basis.

CLTM (Mauritania). The text should be more specific as to the grounds for excluding certain categories of workers.

GEFONT (Nepal). Article 2(b) raises concerns, as scope for exclusions, especially based on categories of work, is problematic. Article 2(a) is supported as it prevents other categories of professionals performing work in the household from being considered domestic workers.

APL, FFW, TUCP (Philippines). Article 2 should be deleted.

COTRAF (Rwanda). There is concern that this Article could be used to exclude many categories of domestic workers.

NUDE (Trinidad and Tobago). The language of Article 2(1)(b) requires clarification. It could be interpreted to exclude domestic workers working for the diplomatic corps, who also need protection.

#### UNITED NATIONS

OHCHR. Article 2(1)(b) should be omitted, as it appears to leave wide discretion to Members to exclude specific groups of domestic workers, including those in particularly vulnerable situations.

## OFFICE COMMENTARY

Article 2(1) was divided into two separate paragraphs to enhance the clarity of these provisions. The Office notes that the wording concerning consultation with employers' and workers' organizations contained in new Article 2(2) and Article 17 is different. The Office encourages further discussions on the wording of the various consultation clauses throughout the proposed Convention and Recommendation.

### Article 3

#### GOVERNMENTS

*Australia.* The wording of Article 3(2), which is consistent with the 1998 Declaration on Fundamental Principles and Rights at Work, reflects the fact that not all member States have ratified all eight fundamental Conventions. Not having done so should not act as a barrier to the ratification of this Convention. Australia considers that the requirement under this provision is no different to member States fulfilling their obligations under the Declaration.

*Costa Rica.* In Article 3(2), add a clause on the right to personal integrity.

*El Salvador.* Article 3(2)(d) could be replaced by text specifically addressing the gender pay gap affecting domestic workers and the issue of equal access to training and advancement.

*Ghana.* It would be useful to include in this provision a reference to the authority competent for ensuring protection of domestic workers' human rights.

*Indonesia.* In Article 3(1), reference should be made to the "promotion and protection" of human rights. Article 3(2) should also require measures to *protect* the fundamental principles and rights at work.

*Malaysia.* In Article 3(2)(a), add the words "within the context of national laws".

*Mexico, Paraguay, Sudan.* Delete the words "in good faith" in Article 3(2), as respect for the ILO Constitution implies good faith.

*Netherlands.* In the chapeau of Article 3(2), the wording should be further aligned with the 1998 Declaration.

*Philippines.* In the chapeau of Article 3(2), the word "protect" should be added after the word "promote".

*Poland.* The obligations under Article 3(1) are unclear. The provision seems to exceed the ILO's mandate (and could be moved to the Preamble).

*Switzerland.* Article 3(1) seems to go beyond the ILO's mandate. The current text is considered as including a quasi-obligation to respect certain international treaties adopted outside the ILO, which States may not have ratified. This constitutes an obstacle for universal ratification (see also comments by Switzerland on the Preamble). In the French text, Article 3(2) should read as follows: "Tout Membre doit prendre des mesures pour *faire* respecter, promouvoir ...".

*Tanzania, United Republic of.* Article 3 is important as it reinforces domestic workers' human rights. The phrase "in good faith" should be reconsidered as the word "shall" imposes an obligation on governments.

*United States.* In Article 3(2), the expression "fundamental principles and rights at work" should be replaced by "principles concerning the fundamental rights" to bring the text into greater conformity with the 1998 Declaration.

#### EMPLOYERS

CNI (Brazil). Given the specific nature of domestic work, the effective recognition of the right to collective bargaining would be difficult to enforce.

NK (Japan), IOE. There is agreement with the intention behind Article 3. However, the provision is unclear and aspirational in nature and should be moved to the Preamble. Alternatively, the words "as set out in this Convention" should be added at the end of Article 3(1). The measures required under Article 3(2) are equally unclear; if the provision remains in the operative part, it should begin with the words "the

measures set out in this Convention to respect, promote and realize ...”. The words “in good faith and in accordance with the ILO Constitution” could be deleted.

#### WORKERS

SEK (Cyprus). Include a clause on respect for occupational health and safety standards.

SEWA (India). Article 3(1) should require “effective measures” to ensure “full protection”.

CLTM (Mauritania). Article 3(2) should include a reference to the fundamental Conventions.

APL, FFW, TUCP (Philippines). The term “in good faith” could be deleted.

#### UNITED NATIONS

CRC. Article 3(2) should read “measures to respect, protect and realize”.

OHCHR. At the end of Article 3(1), a non-discrimination clause could be added as follows: “without distinction of any kind, such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”. In Article 3(2), replace “measures to respect, promote and realize” with “measures to respect, protect and fulfil”.

#### OFFICE COMMENTARY

Several respondents have proposed the inclusion of the word “protect” in the introductory clause of Article 3(1). However, the expression “measures to respect, promote and realize” mirrors the 1998 Declaration on Fundamental Principles and Rights at Work which refers to the obligations of ILO Members under the Constitution. A recurrent suggestion regarding Article 3(2) was to omit the words “in good faith”. The text of Article 3 appears unchanged in the proposed Convention in Report IV(2B).

### Article 4

#### GOVERNMENTS

*Albania, Dominican Republic, El Salvador, Eritrea, Iraq.* Taking into account the nature of domestic work and the particular vulnerability of adolescents to abuse in this context, the minimum age for admission to domestic work should be 18 years.

*Australia.* Article 4(2) could be strengthened by requiring ratifying Members to “take measures to ensure” rather than “ensure” that work performed by young domestic workers does not deprive them of, or interfere with, their schooling or vocational education.

*Belgium.* Compulsory schooling in Belgium consists of full-time and part-time studies for persons 18 years of age and under. However, the current wording seems to include more than compulsory schooling.

*Canada.* Compulsory schooling is a more appropriate focus for Article 4(2). This principle is covered by the Minimum Age Convention, 1973 (No. 138), which is already referenced in Article 4(1). Article 4(2) could be deleted or amended as follows: “Each Member shall take measures to ensure that work performed by domestic workers does not deprive them of, or interfere with, their completion of compulsory schooling.”

*China.* The Hong Kong Special Administrative Region, China, indicates that there is no legislation governing the hours of work of young persons in the age groups concerned. Hence, there is no legal basis for enforcement action or for determining whether any work performed interferes with the worker’s education or training, as envisaged in Article 4(2).

*Cyprus.* In Article 4(2), a provision facilitating the completion of compulsory schooling should be added.

*Ethiopia.* Article 4(2) should require Members to ensure the right of domestic workers to compulsory basic education, which is in line with the Millennium Development Goals. Ensuring vocational training should be included in the Recommendation.

*Ghana.* Article 4(2) should require Members to ensure compulsory education and to ensure that the minimum age of employment does not interfere with the education of young domestic workers.

*Greece.* Compulsory education in Greece is not determined by age.

*Indonesia.* The following text should be added at the end of Article 4(2): “, where applicable, taking into account the national compulsory education age and their preferences”.

*Israel.* The current text in Article 4(2) is preferred. It facilitates different educational frameworks, in addition to compulsory education.

*Kenya.* Most domestic workers in Kenya have completed their compulsory education but need additional education through vocational training institutions.

*Mexico.* The last part of Article 4(2) could be reformulated as follows: “... does not deprive them of compulsory education and shall promote their vocational training”.

*Namibia.* The current text in Article 4(2) captures more than compulsory education and affirms the dignity of domestic workers and their human right to further their education. The words “or contact with their families” should be added at the end.

*Peru.* Article 4(2) could focus on the completion of compulsory education. Employers should facilitate the school attendance of young domestic workers. Additional guarantees, such as the limitation of working hours, should be included.

*Portugal.* The current wording is preferred.

*Slovakia.* Article 4(2) should read “education and vocational training”.

*Spain.* In Article 4(2), reference to compulsory schooling is supported. However, the words “or interfere with” should be deleted; it is difficult for domestic workers to follow education during the hours it is normally dispensed.

*Sweden.* A focus on compulsory education in Article 4(2) would be unproblematic. Irrespective of the wording, reference should be made to the “rights to” education and training, or compulsory education, consistent with the language used in the Convention on the Rights of the Child.

*Switzerland.* Given the competence of the cantons on this matter, consultations with them are ongoing.

*Tanzania, United Republic of, Uganda.* A focus on compulsory education in Article 4(2) is acceptable.

*Trinidad and Tobago.* In Article 4(2), include the phrase “and physical and mental development” at the end of the sentence.

*Tunisia.* The last part of Article 4(2) should be amended to read: “... not deprive them of, or interfere with, their health, security, morals, education or vocational training”. This would better reflect Article 3(1) and (2) of Convention No. 138.

*United States.* The reference to “education or vocational training” could be replaced by “compulsory schooling, further education or vocational training”.

*Zimbabwe.* The current wording of Article 4(2) is acceptable.

## EMPLOYERS

*CNA (Brazil).* It is suggested that the current wording of Article 4(2) be replaced by the following text: “Each Member shall take measures within its possibilities to ensure the completion of compulsory education and encourage the vocational training of domestic workers above the minimum age of employment, as defined by national law.”

*NK (Japan).* It is not possible to compel employers to prioritize education over work performed in accordance with legislation. Article 4(2) should refer to measures in accordance with the prevailing national circumstances.

*VNO–NCW, MKB–Nederland (Netherlands).* In Article 4(2), “education and vocational training” could be replaced by “completion of compulsory schooling”. If a domestic worker wishes to combine work and training, this could be part of the agreement with the employer, without interference by regulation.

*CCP (Portugal).* Compulsory schooling is a more appropriate focus.

IOE. The concept of the completion of compulsory education could be considered. However, retaining the reference to training may in fact better account for the varying realities across member States.

#### WORKERS

CGTRA (Argentina). Young workers above the minimum age of employment and under the age of 18 should complete compulsory education to be able to access a professional qualification.

BAK (Austria). Reference to “completion of compulsory schooling” would be meaningful in cases where the minimum age for admission to employment is set below the age of completion of compulsory schooling.

CNTB (Burkina Faso), FADWU, HKCTU (China), CMKOS (Czech Republic), CASC, CNTD, CNUS (Dominican Republic), MUSYGES (El Salvador), SAK (Finland), CFDT (France), DGB (Germany), SEWA (India), CTM (Mexico), GEFONT (Nepal), FNV (Netherlands), UGT-P (Portugal), TUCTA (Tanzania, United Republic of), FPU (Ukraine), TUC (United Kingdom), ITUC. A reference to “compulsory schooling” could be added to the current text. This would strengthen the right to access training and formal education, whether compulsory or not.

CSN (Canada). Article 4(1) should state that the nature or conditions of domestic work can compromise the health, security or morality of adolescents. The alternative suggested by the Office for Article 4(2) is useful.

CTC, CUT (Colombia). Compulsory education should be ensured for domestic workers who are under 18 years of age.

CGIL (Italy). Retain current text.

CLTM (Mauritania). Article 4(2) should guarantee that all domestic workers, irrespective of age, enjoy the right to education and vocational training.

CS (Panama), CGTP (Peru). Persons under the age of 18 should not be allowed to perform domestic work.

CGTP, SINTTRAHOL (Peru). Irrespective of the minimum age of admission to domestic work, compulsory education must be ensured.

SINTTRAHOL (Peru). The minimum age for domestic work should be 14 years.

APL, FFW, TUCP (Philippines). Article 4(2) should ensure that domestic workers have free access to compulsory education.

COTRAF (Rwanda). Article 4(2) should use the terms “shall prevent” or “shall prohibit”.

#### UNITED NATIONS

CRC. An additional paragraph could require the prohibition of children to be engaged as live-in domestic workers. There is an inherent risk of exploitation if they live with their employer or are unaccompanied migrants.

Special Rapporteur on contemporary forms of slavery. Live-in domestic work for migrant and local children is inherently hazardous, and should be prohibited. Domestic work for children under the age of 15 or still completing their mandatory education should be prohibited to the extent that it interferes with their schooling.

OHCHR. In Article 4(2), reference should be made to “their right to education”. Children who migrate for the purpose of finding domestic work are particularly vulnerable to exploitation. Consideration could be given to prohibiting employment agencies from recruiting children for the purpose of placing them as full-time domestic workers in another country.

#### OFFICE COMMENTARY

Broad support has been expressed for including a reference to compulsory schooling in Article 4(2), in addition to “education or vocational training”. Several replies noted that it would be difficult for ratifying Members to *ensure* that domestic work does not interfere with education.

The Office has adapted the wording accordingly and has included a reference to the completion of compulsory schooling and the words “take measures to” after “Members shall”.

A number of replies have pointed to the fact that domestic work may often be harmful to the health, safety or morals of children under the age of 18 and should therefore be prohibited, as hazardous work. Article 4(1) already refers to the setting of a minimum age consistent with Convention No. 138 and the Worst Forms of Child Labour Convention, 1999 (No. 182), which both address hazardous work in this sense. However, taking into account the comments received on Article 4 of the proposed Convention and Paragraph 4 of the proposed Recommendation, the Office has included additional wording in Paragraph 4 in this regard (see Office commentary on Paragraph 4 of the proposed Recommendation below).

## Article 5

### GOVERNMENTS

*Australia.* It is important to make it clear that domestic workers should enjoy equality of treatment with other wage earners in respect of minimum terms of employment and decent working conditions.

*Denmark.* The text is more suitable for the Recommendation. It is difficult to regulate respect for the privacy of both domestic workers and their employers when work takes place in private homes.

*Dominican Republic.* Respect for privacy excludes the entry of unauthorized individuals into the household.

*Ghana.* Compensation for work injuries should be mentioned.

*Indonesia.* In relation to living conditions, the provision should make reference to the workers’ privacy, religion and beliefs.

*Italy.* Delete the words “where applicable” in order to make the obligation to respect the right to privacy of domestic workers more stringent.

*Mexico.* In Spanish, the expression “condiciones de vida digna” should be used for “decent living conditions”.

*Poland.* Article 5 is too general. Addressing living conditions may exceed the ILO’s mandate (the provision should be moved to the Preamble).

*Russian Federation.* The words “and, where applicable” could be replaced by “and, if they live in the household”.

*Tanzania, United Republic of.* The words “where applicable” should be omitted. They may water down the need to have measures that ensure decent living conditions and respect for domestic workers’ privacy.

*United States.* To clarify the provision’s intent, the following wording is proposed: “Each Member shall take measures to ensure that domestic workers enjoy terms of employment, working conditions and, where applicable, living conditions which respect their privacy, no less favourable than those generally enjoyed by other categories of workers.”

### EMPLOYERS

NK (Japan), IOE. The provision is aspirational and lacks the specificity required for a substantive provision of a Convention, and should therefore be moved to the Preamble. If retained, the words “as set out in this Convention” should be inserted after “take measures”; the last part of the provision should refer to living conditions which respect “the privacy of the worker, the employer and other members of the household”.

UPS (Switzerland). The expressions “fair terms of employment”, “decent working conditions” and “decent living conditions” are not precise enough and should be improved.

## WORKERS

SEK (Cyprus). The phrase “where applicable” is confusing.

SEWA (India). The term “where applicable” should be deleted. Instead, the phrase “in the case of full-time workers, decent food and living conditions which respect their privacy” should follow the conjunction “and”.

CGIL (Italy). Delete “where applicable”.

CCOO (Spain). At the end of Article 5, the text should refer to “decent living conditions which respect *and ensure* their privacy”.

TUCTA (Tanzania, United Republic of). The words “where applicable” should be deleted.

## OFFICE COMMENTARY

A number of comments were made on the expression “if applicable” after “decent living conditions”. The Office therefore replaced this expression by the words “if they reside within the household” for the sake of enhancing the clarity of the provision.

## Article 6

### GOVERNMENTS

*Australia*. The words “where possible” should be deleted. The requirement that the contract is “preferably” in written form infers that this will be done where it is possible and where it is required by national laws and regulations. The word “preferably” is a stronger measure than “where possible”; however the combination of them both reduces the overall preference to provide a written contract of employment.

*Egypt*. Article 6(d) should be deleted; it is difficult to set working hours.

*El Salvador*. A clause requiring the name of the domestic worker should be added. Given the language barriers and illiteracy levels among domestic workers, an additional clause could require the authorities to provide support in ensuring that the terms of the contract are agreed by both parties.

*Finland*. Article 6(h) may require a more flexible wording. In Finland, terms regarding repatriation must be communicated only if work abroad is performed for longer than one month, in line with Directive 91/533/EEC adopted by the Council of the European Communities on 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship. Moreover, information on terms and conditions concerning termination is not required under this Directive.

*Ghana*. The terms and conditions of employment should be communicated clearly, whether this is done orally or in writing. Written contracts should be in a language understood by both the employer and domestic worker. The contract should also indicate the names and addresses of an emergency contact person and a passport photograph of the worker. Article 6(d) should be more specific. Domestic workers should work eight hours a day with a break of at least 30 minutes.

*Greece*. Article 6 should guarantee that domestic workers are informed of their terms and conditions of employment within a reasonable time frame.

*India*. The list of particulars should be moved to Paragraph 5(2) of the Recommendation, as they will have to be considered within the country context to ensure feasibility of implementation.

*Malaysia*. The text in Article 6(b) should be substituted with “the duties and responsibilities of domestic workers and employers of domestic workers”. A clause regarding the place of work and residence of the domestic worker should be included for enforcement purposes.

*Namibia*. The phrase “frequency of payments” would simplify the meaning of Article 6(c). A new clause should mention “other terms and conditions of work, including daily and weekly rest periods, annual leave, holidays and other benefits, where applicable”. Inclusion of this information in written contracts would enhance the awareness of domestic workers of their rights.

*Netherlands.* Both the worker and the employer should be mentioned in Article 6(a), which would read: “the name and address of the parties involved”. Article 6(f), (g) and (h) should be moved to Paragraph 5(2) of the Recommendation.

*Nicaragua.* Article 6(b) should mention the description of the tasks and place of work.

*Peru.* In cases where legislation allows for oral contracts, information on working conditions could nevertheless be provided in a written statement.

*Poland.* Include clauses on the place of work, length of annual leave and the notice period.

*Romania.* Provisions on daily and weekly rest periods, annual leave and occupational health and safety risks should be included in written contracts and, hence, be mentioned in Article 6.

*Russian Federation.* Replace “type of” in Article 6(b) by “nature of the”. Article 6(d) should read “hours of work and rest”.

*Slovakia.* Domestic workers should receive the same protection as that afforded to workers generally on this matter. The phrase “in an appropriate, verifiable and easily understandable manner” should be moved to Paragraph 5 of the Recommendation. Article 6(i) should be placed before Article 6(e).

*Spain.* The term “in accordance with national laws and regulations” should be moved to the beginning of Article 6. The elements contained in Article 6(a)–(i) are too extensive in some areas and too limited regarding others. The list should be included in the Recommendation.

*Trinidad and Tobago.* The place of work and the performance standards used to assess the worker should be included under additional clauses. Article 6(d) should also include the term “compensation”.

*Tunisia.* To enhance clarity, the phrase “in a language they understand” should be added after “easily understandable manner”. Article 6(c) could be modified to read: “the remuneration, its form, method of calculation and periodicity and method of payments”. A clause on periods of daily and weekly rest and annual leave should be added to the list.

*United States.* In the opening paragraph, the phrase “in a language they can understand” should be inserted after “their terms and conditions of employment”. Considering that many domestic workers are not aware of the forms of protection that they may be entitled to, a new clause (j) could mention “other terms and conditions of employment, including daily and weekly rest periods, holidays and other benefits”.

#### EMPLOYERS

CNA (Brazil). The items listed under Article 6 should be added to clauses (j) and (k) of Paragraph 5(2) of the Recommendation.

VNO–NCW, MKB–Nederland (Netherlands). In the interest of wide ratification, it is questionable whether a detailed list should be included in Article 6. Some items are obvious, whereas others depend heavily on national context, laws and traditions. The list should be moved to the Recommendation.

UPS (Switzerland). Article 6 must be understood in the light of national practices.

IOE. Support for Article 6(d) depends on how the concept of normal hours of work is addressed in other provisions (see comments below under Article 10). While indicative or intended hours of work may be useful, “normal hours of work” where prescribed as a specific legal concept with no regard to the unique nature of domestic work, would not. In Article 6(e), reference should be made to “the starting date of the employment and the duration of the contract, if applicable”. Article 6(h) should refer to the terms of repatriation for migrant domestic workers. Article 6(i) could cause confusion as to the scope of the parties to agree on termination arrangements where there are statutory obligations that cannot be derogated from; placing this clause in Paragraph 5(2) of the Recommendation seems preferable.

#### WORKERS

ACTU (Australia). Article 6 would be strengthened if the words “preferably, where possible” were replaced by the word “including”.

CNTB (Burkina Faso), FADWU, HKCTU (China), CMKOS (Czech Republic), CASC, CNTD, CNUS (Dominican Republic), MUSYGES (El Salvador), AKAVA, SAK (Finland), DGB (Germany), CTM (Mexico), TUC (United Kingdom), ITUC. The phrase “regularity of its payment” is preferred for Article 6(c).

CSN (Canada). A written contract should be compulsory for all domestic workers. Article 6(h) should specify that repatriation costs should be borne by either the employer or the government.

CUT (Brazil). Delete “preferably, where possible”. Add “transportation” in Article 6(f). Add a new subparagraph after (b) to refer to “conditions of work and supply of protective equipment”.

CTC, CUT (Colombia). The terms and conditions of employment should be consistent with other ILO Conventions.

SEWA (India). The phrase “and in a language they understand” should be inserted after “laws and regulations.” A clause on annual leave should be added to the list.

ICTU (Ireland). Article 6 should include provisions on overtime, sick leave and access to medical care and a prohibition on deductions for accidental breakages and charges for cleaning equipment, tools and uniforms.

CLTM (Mauritania). The contract should be in the language the worker understands best.

GEFONT (Nepal). Article 6(e) should refer to “the duration or permanent basis of the contract”.

FNV (Netherlands). Article 6 is not too detailed or prescriptive and provides ample room for governments to regulate these issues.

CTN (Nicaragua). Article 6 is too flexible. In the Spanish version, “una información” should be replaced by “toda información”.

CUT–A (Paraguay). Contracts should always be written.

CGTP, SINTTRAHOL (Peru). Article 6(d) should specify “eight hours of work a day and 48 hours a week”. Contracts should be in a language understood by the domestic worker.

APL, FFW, TUCP (Philippines). The words “preferably, where possible” should be deleted.

COTRAF (Rwanda). All domestic workers must be properly apprised of their work rights and obligations. Consideration must be given to domestic workers who are illiterate. Providing interpretation assistance at the local level could address this concern.

CCOO (Spain). The expression “preferably, where possible” could be further improved.

TUCTA (Tanzania, United Republic of). Where provision of a written contract is not possible, employers should be required to provide the domestic worker with a written statement of particulars. The words “appropriate, verifiable and easily understandable manner” presupposes that the terms and conditions of employment be in writing.

NUDE (Trinidad and Tobago). The items listed in Paragraph 5(2) of the Recommendation should be included in Article 6. All remuneration should be monetary and workers should be remunerated for living in.

#### UNITED NATIONS

CRC. A specific reference to children should be made.

Special Rapporteur on contemporary forms of slavery. Employment contracts should be written in a language that the domestic worker understands.

#### OFFICE COMMENTARY

In the introductory sentence of Article 6, the Office has inserted the word “and” before “preferably” to enhance the readability of the provision. The Office has also taken up the proposals to refer in Article 6(a) to the address of both the worker and the employer and to clarify that Article 6(e) covers open-ended employment as well as employment for a specified period of time. The text of Article 6 has been amended accordingly. In order to avoid overlap with Article 6(e), Paragraph 5(2)(a) in the proposed Recommendation was deleted.

## Article 7

### GOVERNMENTS

#### *Article 7(1)*

*Argentina.* In Article 7(1), the term “containing” is preferred over “addressing”. Supports the inclusion of “equivalent or more favourable measures under”.

*Australia.* The words “of this Convention” should be inserted after “Article 6”. It is preferable to limit bilateral and multilateral agreements to “treaties”.

*Belgium.* Article 7(1) is acceptable. In order to respect the principle of freedom of movement within the European Union, the word “agreements” could be replaced by “treaties.”

*Cape Verde.* Cape Verde is a member of the Economic Community of West African States (ECOWAS), whose member States retain the right to regulate fundamental aspects concerning the entry and residence of third party nationals. The current wording of this provision is clear and sufficient.

*Canada.* The term “more favourable measures” would benefit from greater clarity.

*Cyprus.* The reference to “more favourable measures” under the relevant agreements or rules is acceptable.

*Czech Republic.* Requiring a written job offer or contract of employment prior to crossing borders does not seem necessary.

*Dominican Republic.* Cannot agree with Article 7(1). Consideration should be given to a focus on internal migration from rural to urban areas.

*Finland.* The wording “without prejudice to equivalent or more favourable measures” could be read as referring to the requirements listed in Article 6. There is a need to clarify whether Article 7(1) would allow workers to enjoy freedom of movement within the European Union while searching for work. Consideration could be given to placing the second part of Article 7(1) in a separate paragraph.

*India.* A written statement for every domestic worker is essential in the context of international migration, as migrant domestic workers are confronted with alien conditions, including language barriers. The wording should make a specific reference to migration.

*Iraq.* Article 7(1) should require sending countries to oblige employment agencies to inform migrant domestic workers of the matters mentioned in Article 6 and in Paragraph 5(2) of the Recommendation. The countries of origin are competent to implement such measures prior to departure.

*Japan.* As the situation varies from country to country, uniformly requiring Members to legislate on this matter is inappropriate. A requirement for migrant workers to receive a job offer or contract prior to crossing borders also raises issues in terms of flexibility and ensuring implementation in practice.

*Kenya.* The provision should be retained. In addition, the Recommendation should address the responsibilities of Members in protecting migrant workers.

*Mexico.* Article 7(1) should be clear so as to guarantee migrant workers the same rights and obligations as national workers performing the same activities.

*Namibia.* Article 7(1) requires further clarification and consideration. A clause could be inserted to clarify that the contract of employment should be enforceable in the country of employment.

*Netherlands.* Article 7(1) is not acceptable as it stands; the text agreed upon during the first discussion should be used. Regional economic integration areas, such as the European Union, in which the movement of workers is regulated in a certain way, are increasingly common, as are bilateral and multilateral agreements. The Convention must not contain clauses that infringe upon previously made agreements, as would be the case if the phrase “equivalent or more favourable measures” were used.

*Peru.* In Article 7(1), the term “agreements” should be replaced by “treaties”.

*Portugal.* The expression “without prejudice to equivalent or more favourable measures”, by referring to the requirements listed in Article 6, seems to alter the intention of the text negotiated during the first discussion. Article 6 refers to the information concerning a contract of employment, not to its content. It seems inappropriate to expect a job offer to provide such a level of detail.

*Russian Federation.* Article 7(1) is supported. However, it is unclear how it would be implemented.

*Slovakia.* The second part of Article 7(1) should be a separate sentence, providing that Article 7(1) does not prevent the operation of bilateral, multilateral and regional agreements or rules concerning the functioning of regional economic or political integration areas ensuring the free movement of workers. This would only relate to border crossings between countries within such areas or covered by agreements and should not lead to lesser protection of the workers concerned. Article 7(1) should apply only if other migrant workers are also required to receive a job offer or contract prior to crossing borders.

*Switzerland.* The text could distinguish more clearly between: (1) the obligation to reach agreement on the matters listed in Article 6 before crossing borders; and (2) the requirement for written information on what was agreed.

*Tanzania, United Republic of.* The current text in Article 7(1) is preferred.

*Uganda.* By interviewing jobseekers prior to making any offer or drawing up a contract, prospective employers are able to ensure that the jobseeker meets the minimum age requirements and has the relevant work experience. Regional discussions on freedom of movement show that domestic workers are particularly vulnerable and special attention is needed on the issue of human trafficking.

*United States.* In Article 7(1), the phrase “that must be agreed upon” should be reintroduced. Otherwise, the provision can be construed as requiring the workers merely to receive a written offer, without having formally agreed to its terms. This would also underscore that a contract requires “agreement”. After “terms and conditions of employment”, the words “in a language they can understand” should be inserted. After “written job offer or contract of employment”, the expression “that is enforceable in the country of employment” should be inserted. The term “agreement” used in Article 7(1) is not problematic; the Committee’s discussions show that “binding” agreements are meant. The language currently contained in Paragraph 21 of the Recommendation should be inserted in the Convention, as originally proposed, as a new paragraph in Article 7 (see also comments regarding Paragraph 21 below).

*Zimbabwe.* The term “agreement” should cover all forms of agreement.

### **Article 7(2)**

*Australia, Belgium, Canada, Cyprus, Ethiopia, Greece, Kenya, Namibia, Oman, Peru, Qatar, Saudi Arabia, Switzerland, Tanzania, United Republic of, Uganda, United Arab Emirates.* Agree with the alternative wording proposed by the Office.<sup>21</sup>

*United States.* The following wording is proposed: “Members shall take all appropriate measures to ensure, including through cooperation with each other, that migrant domestic workers enjoy the protections of this Convention.” This would clarify that the intention is to ensure that migrant domestic workers and domestic workers, generally, enjoy the protections under the Convention.

## **EMPLOYERS**

### **Article 7(1)**

*WKO (Austria).* Clarification is needed on how Article 7(1) relates to the free movement of workers within the European Union. The term “migrant domestic worker” may need to be clarified.

*ESEE (Greece).* Reference to written job offers and contracts of employment will potentially create problems.

*NK (Japan).* Requiring a contract of employment for all migrant domestic workers prior to crossing national borders would be impracticable. For instance, Indonesian care workers being trained in Japan are sometimes engaged by a family in Japan upon completion of their training. The term “if applicable” should be inserted into Article 7(1).

*IOE.* The notion of “equivalent or more favourable measures” appears to be problematic; it is questionable whether it suitably addresses issues relating to the free movement of workers in areas such as the European Union. Using the receipt of a contract as a criterion, rather than whether it has been agreed upon, appears to be a better basis for such a provision. The use of the term “treaties” instead of “agreements” in Article 7(1) could limit the possibilities of States to cooperate.

<sup>21</sup> See ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 7.

### *Article 7(2)*

IOE. Although the wording suggested by the Office for Article 7(2) provides clearer obligations, the word “where appropriate” should be inserted after “cooperate with each other”.

### WORKERS

### *Article 7(1)*

CGTRA (Argentina). Insert the word “preferably” before “a contract of employment”. The term “agreements” should remain, as it ensures broader protection for domestic workers.

CSN (Canada). Reference should be made to both “job offer” and “contract”.

FADWU, HKCTU (China). Article 7(1) should also ensure that written job offers and contracts are provided in a language that migrant domestic workers understand. The term “treaties” is preferred.

CTC, CUT (Colombia). The Convention should not interfere with the free movement of workers engaged in this profession.

MUSYGES (El Salvador), DGB (Germany), TUC (United Kingdom), ITUC. The text is clearer while being faithful to the consensus achieved during the first discussion. However, the expression “in a language that they understand” should be added after “written job offer or contract of employment”. The proposal of the Office to replace the word “agreements” by “treaties” could be supported, provided that it does not deprive workers of the possibility to benefit from equivalent or more favourable agreements. It is important to ensure that third-country nationals who would not be covered by more favourable measures or rules under relevant agreements benefit from a written job offer or contract prior to departure.

SAK (Finland), GSEE (Greece), ICTU (Ireland), CTM (Mexico), FPU (Ukraine). The text should provide that the written job offer or contract of employment should be made in a language the worker understands.

JTUC–RENGO (Japan). The current text in Article 7(1) is supported. The instrument should provide migrant domestic workers with basic protection.

CLTM (Mauritania). Receiving a written job offer only would not provide adequate protection.

CTM (Mexico). Supports the replacement of “agreements” by “treaties”.

CGTP, SINTTRAHOL (Peru). Disagree with the replacement of “containing” by “addressing”.

UGT–P (Portugal). The contract should be in a language understood by the worker.

TUCTA (Tanzania, United Republic of). The current text is acceptable. Embassies should play a greater role in the protection of migrant domestic workers. Registration of migrant domestic workers should be compulsory and embassies should attest to contracts of employment.

ZATHOCODAWU (Tanzania, United Republic of). Embassies should attest to migrant domestic workers’ employment contracts and register the workers.

### *Article 7(2)*

CGTRA (Argentina), ACTU (Australia), CNTB (Burkina Faso), CTC, CUT (Colombia), MUSYGES (El Salvador), SAK (Finland), DGB (Germany), CTM (Mexico), GEFONT (Nepal), UGT–P (Portugal), TUCTA (Tanzania, United Republic of), FPU (Ukraine), TUC (United Kingdom), ITUC. The alternative wording for Article 7(2) proposed by the Office is supported. Consideration should be given to strengthening the protection of migrant domestic workers by referring to the principle of equal treatment between nationals and migrant workers, as provided for in the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

### UNITED NATIONS

CRC. A new paragraph should be added prohibiting unaccompanied persons who are under 18 years of age from being employed as domestic workers in another country.

OHCHR. The offer or contract should be received in a language they can understand.

## OTHERS

European Commission. Under Article 45 of the Treaty on the Functioning of the European Union, which provides for the free movement of workers, EU citizens have the right to move freely between EU Member States in order to take up positions offered to them or to search for a job. The freedom of movement of workers entails equal treatment between workers of the Member States as regards employment, remuneration and other conditions of work and employment. However, the requirement of receiving a written offer or contract of employment before crossing national borders as set out in Article 7(1) would have the effect of restricting freedom of movement.

## OFFICE COMMENTARY

*Article 7(1)*

When preparing the text of Article 7(1) as contained in Report IV(1), the Office made a number of adjustments and explained them in the related Office commentary.<sup>22</sup> Comments received on the first part of Article 7(1) were generally supportive, although a number of changes or additions were suggested. With regard to the second part of Article 7(1), several respondents considered that the expression “equivalent or more favourable measures” required clarification or was inappropriate.

The Office recalls that the purpose of Article 7(1) is to ensure that workers present in one country that are being recruited by an employer located in another country benefit from a written job offer or contract of employment before they travel to the country of employment. In fact, when this text was discussed by the Committee, the Government member of Australia proposed a subamendment to clarify this matter by including the phrase “Where migrant workers are recruited specifically to perform domestic work”, which then led to the inclusion of the phrase “for the purpose of taking up domestic work to which the offer or contract applies”.<sup>23</sup> The provision was thus not meant to cover the case where, in a given country, a migrant domestic worker seeks employment or is being employed. Taking the example given by the NK, Article 7(1) would not apply to Indonesian trainees, who, upon completion of their training in Japan, wish to take up employment as domestic workers there. In order to ensure greater clarity in this respect, the Office has adapted the beginning of Article 7(1).

The comments received regarding the second part of Article 7(1) further clarify the concern underlying this part of the text, namely the need to ensure that Article 7(1) does not undermine or limit a worker’s freedom of movement for the purpose of employment, taking into account that the workers concerned benefit from more favourable rights and means of protection than those afforded under Article 7(1). Hence, it appears appropriate to allow for an exception regarding the application of Article 7(1) in cases where workers enjoy such freedom of movement under bilateral, regional or multilateral agreement or within the framework of regional economic integration areas. The Office thus further adapted the wording to address this matter more specifically. The proposed new wording has been included in a separate provision: Article 7(2) as contained in Report IV(2B). When discussing the proposed provision, the Conference may also wish to consider deleting the word “regional” before “multilateral agreements”, as the latter category includes regional agreements.

*Article 7(2)*

Given the broad support expressed for the wording suggested by the Office, the text has been changed accordingly, appearing as Article 7(3) in Report IV(2B).

<sup>22</sup> See ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 7.

<sup>23</sup> ILO: *Report of the Committee on Domestic Workers*, in *Provisional Record* No. 12, International Labour Conference, 99th Session, Geneva, 2010, paras 691 and 704.

## Article 8

### GOVERNMENTS

*Australia.* To facilitate a more logical progression of provisions, Articles 8, 9 and 16 could follow Article 14. A new Paragraph in the Recommendation could offer guidance in applying Article 8 by recommending the establishment of programmes and services to prevent abuse by: adopting explicit prohibitions under national legislation; establishing accessible complaints mechanisms; ensuring the prompt investigation of complaints and prosecution, as appropriate; establishing programmes for the removal and recovery of domestic workers subjected to abuse; and public awareness raising on the decent treatment of domestic workers.

*El Salvador.* The terms “abuse and harassment” should be replaced by “violence and discrimination”.

*Greece.* Add the phrase “all forms of direct or indirect discrimination on the grounds of gender, harassment or sexual harassment and all forms of abusive behaviour by the employer”.

*Netherlands.* It would be difficult for governments to *ensure* that domestic workers enjoy effective protection against all forms of abuse and harassment, especially given that this work is carried out in the private sphere. The following text is proposed: “Each Member shall take appropriate measures aimed at the effective protection of domestic workers against abuse and harassment.”

*Sweden.* The words “take measures to” should be replaced by “by means of law and regulations”.

*United States.* To guide the application of Article 8, it would be helpful to include a new Paragraph in the Recommendation after Paragraph 20. Such a provision could stress the need for the prompt and thorough investigation and prosecution, where appropriate, of all allegations of criminal abuse and harassment, as well as access to adequate support services for victims.

### EMPLOYERS

*CNA (Brazil).* The provision should read as follows: “Each Member shall undertake to adopt and implement specific measures to ensure that domestic workers enjoy effective protection against all forms of abuse and harassment.”

*NK (Japan), IOE.* No legal system can protect against *all* forms of abuse and harassment. The obligation should be to extend protection against harassment and abuse in employment in general to the domestic work setting. Hence, the words “all forms of” should be deleted and the words “consistent with that available to workers generally” should be added at the end.

### WORKERS

*FADWU, HKCTU (China).* Include the word “violence” after “abuse”.

*APL, FFW, TUCP (Philippines).* Include the terms “psychological abuse” and “violence.”

*NUDE (Trinidad and Tobago).* Domestic workers should receive compensation if their employment is terminated after they report an instance of sexual harassment.

*TUC (United Kingdom).* The term “violence” should be added at the end of the sentence.

### UNITED NATIONS

*CRC.* A specific reference to children should be made.

*OHCHR.* Reference should be made to “abuse, harassment and violence”.

### OFFICE COMMENTARY

The Office has taken up a suggestion made by the Government of El Salvador, a number of workers’ organizations and the United Nations High Commissioner for Human Rights to include an explicit reference to “violence” in this provision. Specifically highlighting that harassment and abuse may result in violence and should be addressed as such appears to make the provision more specific to the situation of domestic workers, which are predominantly women and girls. Their

vulnerability to workplace violence in its different manifestations, including sexual violence, is accentuated in the case of domestic work which takes place in private homes.

Violence as a workplace issue has received recognition through the preparation and dissemination of the ILO code of practice, *Workplace violence in services sectors and measures to combat this phenomenon*.<sup>24</sup> The HIV and AIDS Recommendation, 2010 (No. 200), has become the first international labour standard specifically to address the prevention and prohibition of violence at the workplace.<sup>25</sup> In December 2009, the UN General Assembly adopted Resolution 64/139 on violence against women migrant workers, urging States to take action to protect women migrant domestic workers from violence.<sup>26</sup>

## Article 9

### GOVERNMENTS

#### *Article 9(1)*

*Australia.* Substantive provisions on decent living conditions for domestic workers where the accommodation is provided by the employer are supported. Article 9 should be placed after Article 14 (see above comments under Article 8).

*Canada.* Living in the employer's household is a fundamental aspect of an employment relationship and would likely be negotiated prior to employment. Article 9(1)(a) should include the words "or potential employer" after the word "employer" to address this reality.

*China.* In relation to Article 9(1)(a), the Hong Kong Special Administrative Region indicates that the live-in requirement forms a cornerstone of its policy on foreign domestic helpers, which is meant to address the shortage of local live-in workers.

*Egypt.* Article 9(1) is unsuitable. The nature of domestic work requires the workers to be available all day. The provision should rather address daily hours of rest. In relation to Article 9(1)(c), travel documents should be held by a neutral party (such as an administrative authority) to ensure the security of the household.

*El Salvador.* In the Spanish version of Article 9(1)(a), the word "o empleadora" should be added after "su empleador".

*France.* In France, domestic workers caring for dependent persons may be required to remain in the household during their daily rest. The wording of Article 9(1)(b) should allow for such special arrangements regarding daily and weekly rest.

*Jordan.* Article 9 should be moved to the Recommendation. If maintained in the Convention, Article 9(1)(b) should allow for the option to postpone annual leave to the end of the contract or to pay monetary compensation in lieu.

*Latvia.* In relation to Article 9(1)(b), it could be difficult to ensure that domestic workers actually take their daily and weekly rest or annual leave.

*Malaysia.* Article 9(1)(c) should specify that domestic workers may ask their employers to hold their travel and identity documents for safe-keeping.

*Nicaragua.* An additional paragraph could provide that domestic workers are free to continue or discontinue their services in the event that their employers change residence.

*Oman, Qatar, Saudi Arabia, United Arab Emirates.* There is no reason to differentiate between Article 9(1)(a) and (b). Article 9(1)(b) should therefore be amended to ensure that domestic workers are free to negotiate with their employers as to whether or not they are obliged to remain in or with the household during periods of their daily and weekly rest or annual leave.

<sup>24</sup> ILO: *Code of practice on workplace violence in services sectors and measures to combat this phenomenon*, ILO, Sectoral Activities Programme, 2003, at [www.ilo.org/public/english/dialogue/sector/techmeet/mevsws03/mevsws-cp.pdf](http://www.ilo.org/public/english/dialogue/sector/techmeet/mevsws03/mevsws-cp.pdf).

<sup>25</sup> ILO Recommendation No. 200, Para. 14(c).

<sup>26</sup> UN: General Assembly, Resolution 64/139, adopted on 18 December 2009, para. 12.

*Philippines.* Article 9(1)(c) should, after the terms “travel and identity documents”, specifically include the following: “such as passports, employment contracts and other certificates issued by the government, and personal paraphernalia, particularly means of communication”.

*Slovakia.* In Article 9(1)(a), reference should be made to “household or households”. Article 9(1)(b) should include public holidays that workers in general enjoy.

*Spain.* Article 9 should be deleted. Article 9(1)(a) could be interpreted as entitlement to a continued employment relationship, in cases where the workers wish to change the residency arrangements initially agreed upon. Article 9(1)(b) would need to provide that workers are not bound to remain in the household once their workday or agreed time of presence is completed. Article 9(1)(c) is unnecessary.

*Sudan.* In Article 9(1)(c), the following should be added “and designate a guarantor who will provide the employer with sufficient guarantees”.

*Tunisia.* In cases where domestic workers are minors living away from their families, employers have care responsibilities towards them during rest periods. Article 9(1)(b) could jeopardize these important responsibilities.

### **Article 9(2)**

*Australia, Belgium, Austria, France, Kenya, Mexico, Netherlands, Paraguay, Tanzania, United Republic of, Uganda, Zimbabwe.* The alternative wording proposed by the Office for Article 9(2) is acceptable.<sup>27</sup>

*Belgium.* Reference to “and household members” seems unnecessary.

*Benin.* The current text is clear.

*Canada.* The Office suggestion cannot be supported; the meaning of “arbitrary interference” is unclear. Language similar to that used in Paragraph 8 of the Home Work Recommendation, 1996 (No. 184), is preferred. Accordingly, the provision could read: “In taking these measures, due respect shall be given to the right of privacy of both the domestic worker and the household, as is compatible with national law and practice concerning respect for privacy.”

*Cyprus, Ghana, Greece, Israel, Namibia, Oman, Qatar, Saudi Arabia, United Arab Emirates.* The current text of Article 9(2) is preferred.

*Ethiopia.* The current text of Article 9(2) is preferred. The notion of “arbitrary interference” in the alternative wording is subjective.

*Hungary.* “Privacy” can have many meanings, depending on the context and the legal relationship between the parties in question. The Recommendation should define the term “privacy”, taking into account the diversity of national laws.

*Latvia.* It is unclear how Article 9(2) would be applied in practice.

*Peru.* See comments regarding the Preamble.

*Philippines.* Article 9(2) should read: “In taking these measures, Members shall ensure that domestic workers and employers have the right to privacy.”

*Portugal.* The Office suggestion cannot be supported; the notion of “arbitrary interference” appears to be narrower. It is not understood in which respects reference to the right to privacy would not be in conformity with international law.

*Romania.* Further discussions on the notion of privacy should address the issue in connection with labour inspection.

*United States.* Replacing “household” by “household members” and deleting “right to” before “privacy” is supported. The Office alternative text appears to be narrower and could potentially be interpreted as permitting all interference short of “arbitrary interference”. The text of Article 9(2) should form a stand-alone article following Article 9, given that the principle expressed applies more broadly; its present location could erroneously suggest that the measures in Article 9(1) inherently implicate privacy concerns that could limit their application.

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<sup>27</sup> See ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 8.

*Uruguay.* Privacy, including the right to a private life, is a fundamental human right held by both the domestic worker and the employer. In a close relationship, where the worker often becomes a “quasi member” of the family, it is crucial that clear lines are drawn to ensure respect for the privacy and private life of both parties. The Recommendation should establish a set of measures to protect the privacy of both parties when the worker lives in the household.

#### EMPLOYERS

##### *Article 9(1)*

ACCI (Australia). Many domestic workers do reside in the house in which they work, but many others do not and attend work each day in accordance with their agreed working arrangements. Any new standard needs to acknowledge these different arrangements as not to impact unfairly upon either.

COPARDOM (Dominican Republic). Article 9(1)(b) is inappropriate considering the nature of the work. Domestic workers must be required to stay in the household during their rest periods to ensure, for example, that children under their care are not left unattended.

NK (Japan). Article 9(1)(a) should be deleted. The requirement of residence in a household is a well-established concept in various areas of employment around the world. For domestic workers, it is largely due to the necessities of their work.

##### *Article 9(2)*

IOE. The current language is preferred. The notion of arbitrary interference is vague and potentially subject to a range of interpretations.

#### WORKERS

##### *Article 9(1)*

CSN (Canada). Domestic workers must remain free to choose their place of residence.

FADWU, HKCTU (China). The term “personal belongings” should be added after “identity documents” in Article 9(1)(c).

CTC, CUT (Colombia). Article 9(1)(c) should be more explicit in prohibiting this practice.

SEK (Cyprus). Public holidays, where provided for by national laws, should be included.

CASC, CNTD, CNUS (Dominican Republic). Article 9(1)(b) should include text to ensure that workers are not bound to remain in or with the household but are entitled to do so if they so choose. Otherwise, migrant domestic workers may find themselves without a place to stay during their periods of leave. In Article 9(1)(c), the words “are entitled to keep” infer that the employer could have some right over these documents, and should therefore be deleted.

ICTU (Ireland). Article 9(c) should include an obligation on Members to implement sanctions to dissuade employers from keeping domestic workers’ passports, identity documents, bank account information or other essential documents belonging to the worker.

CUT–A (Paraguay). In relation to Article 9(1)(c), the right to keep one’s travel and identity documentation cannot be waived. It cannot depend on negotiations between the parties.

TUCTA (Tanzania, United Republic of). Employers should be prohibited from taking possession of the travel and identity documents of domestic workers.

ZATHOCODAWU (Tanzania, United Republic of). For safety purposes, migrant domestic workers should be free to deposit passports with their embassies. Under no circumstances should employers be permitted to take possession of domestic workers’ personal documents.

NUDE (Trinidad and Tobago). Employers should never be permitted to withhold a domestic worker’s personal documents.

TUC (United Kingdom). The phrase “and personal property” should be added at the end of Article 9(1)(c).

### *Article 9(2)*

CGTRA (Argentina), FADWU, HKCTU (China), SAK (Finland), UNSA (France), CLTM (Mauritania), CTM (Mexico), CUT–A (Paraguay), TUCTA (Tanzania, United Republic of). The alternative text proposed by the Office is acceptable.

CSN (Canada). Although the wording suggested by the Office is supported, the words “and household members” should be omitted. Protecting labour rights does not threaten the privacy of the household.

MUSYGES (El Salvador), DGB (Germany), GEFONT (Nepal), UGT–P (Portugal), TUC (United Kingdom), ITUC. The alternative wording suggested by the Office would be welcome provided that: (a) it allows labour inspectors – entrusted with enforcing provisions applicable to domestic workers – to enter the household or other private premises in which the work is carried out; and (b) it provides enough protection of the privacy of domestic workers.

CFDT (France). The alternative wording weakens the current text.

### UNITED NATIONS

OHCHR. Article 9(1)(b) should read: “enjoy freedom of movement and are not bound to remain in or with the household ...”. The protection against unlawful confiscation of documents should be strengthened either in Article 9(1)(c) or in the Recommendation along the lines of Article 21 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### OFFICE COMMENTARY

Further to the commentary regarding the eighth preambular paragraph and in order to ensure consistency throughout the text, Articles 9(1)(b) and 9(2) were adapted to refer to household *members*.

The alternative wording suggested by the Office for Article 9(2) was considered appropriate by a considerable number of respondents, while a similar amount of support was expressed for the current text. However, several respondents considered that the provision as it stands is unclear. With regard to Article 9(2), a number of respondents related the notion of privacy in the context of the proposed Convention to the issue of the enforcement of labour laws applicable to domestic workers. Other respondents understood the provision as addressing the case of live-in arrangements where privacy issues arise out of the fact that the worker and the employer live within the same household, or perceived the provision as setting out a more generally applicable principle. More generally, it was also noted that Article 9(2) is unclear as to the measures it would require ratifying Members to take.

As noted in Report IV(1), existing international labour standards, when addressing the issue of privacy, consistently have done so in a specific context, for instance in relation to the protection of personal data, accommodation and sanitary facilities, or inspections in private premises.<sup>28</sup>

The draft instruments, as presented in Report IV(2B), address the issue of privacy in a number of ways. First, the Preamble unambiguously recognizes that both domestic workers and household members have the right to privacy. Second, Article 5 acknowledges that where households decide to employ live-in domestic workers, measures ensuring decent living conditions for these workers also aim at ensuring the workers’ privacy. Corresponding provisions in the proposed Recommendation provide further guidance in this regard. Third, Paragraph 3 of the proposed Recommendation addresses the issue of privacy in connection with medical testing. However, as pointed out by several respondents, the intention, meaning and implications of Article 9(2) are unclear and the provision as it stands may indeed be considered unsatisfactory.

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<sup>28</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 4.

The Office encourages further discussions on the appropriateness of Article 9(2).

## Article 10

### GOVERNMENTS

*Argentina.* It would not be acceptable to require domestic workers to work during their weekly rest. No changes to Article 10(3) should be made.

*Australia, Canada, Cyprus, Ethiopia, Israel, Kenya, Philippines, Poland, Tanzania, United Republic of, Uganda, United States, Zimbabwe.* The wording used in Article 10(2) should be “in every seven-day period”.<sup>29</sup>

*Australia.* A provision ensuring that domestic workers enjoy equal treatment with other wage earners in respect of hours of work, rest and leave is supported. The text of Article 10(2) should be kept simple and provide domestic workers with the mutually recognized right to one day off per week, which applies to workers generally. References to “maximum reference periods” could be placed in the Recommendation.

*Austria.* The protection of a 24-hour weekly rest period in every seven-day period as provided for under Article 10(2) is supported, in principle. However, the current lack of flexibility excludes working time arrangements that may be in the interest of domestic workers themselves. Hence, arrangements differing from the principle established in Article 10(2) should be allowed, provided that this does not lead to treatment less favourable than comparable workers.

*China.* Considering the special nature of domestic work, Article 10(1) should refer to ensuring the normal hours of rest, rather than normal hours of work. As regards Article 10(2), an opportunity should be provided for the employer and the worker to agree on appropriate rest arrangements (such as two half days) in accordance with actual needs. Weekly rest should thus be regulated in the Recommendation rather than the Convention. However, it is proposed that a certain number of rest hours should be specified within each 24-hour period.

*Czech Republic.* Article 10(2) is unclear as to whether the weekly rest day can be deferred and given, for example, every two weeks (48 hours of rest every two weeks). Article 10(3) seemingly provides that any time the worker is available is to be considered as working time. This is incompatible with national legislation, which does not consider on-call duty outside the workplace as working time.

*Denmark.* The provisions need to include some flexibility to accommodate real-world circumstances (such as where a domestic worker accompanies a family or a person with a disability on holiday, involving more than six days of work in a row, provided that compensatory rest is offered). On-call or standby time should be addressed in the Recommendation. There is not always a clear delineation between working time and non-working time in the case of domestic work.

*El Salvador.* Hours during which domestic workers remain at the disposal of the household in order to respond to possible calls should be considered overtime.

*Finland.* Article 10(1) requires treatment not less favourable than workers generally. However special regulations often apply in practice to domestic workers, stipulating longer working hours than those under generally applicable laws. The Convention should allow for flexibility in this regard. For example, a working week not exceeding 48 hours, including overtime, and averaged over a given reference period, could be provided for. Regarding Article 10(2), there may be a need to address in more detail situations where it is not possible to grant the weekly rest day, for instance in the event of urgent work.

*France.* National standards governing specific categories of workers, particularly regarding working hours, may deviate from general law (see the Government’s comments under Article 1).

*Greece.* The words “in every seven-day period” are preferred for Article 10(2). The following should be added at the end of Article 10(2): “When providing this rest period, each Member may lay down a maximum reference period stipulated in national law and collective agreements.” Article 10(3) should be moved to the Recommendation. Standby time is determined by the courts and the manner of remuneration is agreed to by the parties.

<sup>29</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 8

*India.* Article 10 will have to be considered in the context of the feasibility of implementation in each country's context.

*Italy.* The criteria concerning the enjoyment of the weekly rest period are appropriate.

*Latvia.* It is unclear how Article 10(3) would be applied in practice.

*Malaysia.* Domestic workers cannot be equated to other workers in general. This provision should be replaced by a provision requiring measures to ensure that the terms and conditions of domestic workers are as per the contract of service.

*Mexico.* Add in Article 10(3) the phrase "within their workday or as overtime" after "shall be regarded as hours of work", so that long or exhausting workdays are avoided.

*Namibia.* Article 10(2) could be reworded as follows: "Members shall take measures to ensure that domestic workers shall be entitled to a weekly rest period of at least 24 consecutive hours."

*Netherlands.* In Article 10(2), the words "per each" should be maintained and a provision added as follows: "Members may lay down a reference period, in principle, not exceeding 14 days." Furthermore, an additional paragraph could provide that national law and regulations may determine that the periods of daily and weekly rest of live-in domestic workers, given the nature of their relationship with the household, differ from those of other workers.

*Nicaragua.* Article 10(2) should provide for a weekly rest period of at least 24 consecutive hours in every period of six consecutive days of work.

*Oman, Qatar, Saudi Arabia, United Arab Emirates.* This approach to working hours is impractical. It is impossible for the employer to determine when the worker started and completed assigned tasks, all of which are spread over the working day. An eight-hour continuous work regime would be detrimental to the employer as overtime pay would be due, while at the same time the worker may not have worked throughout the regular hours. Article 10(1) should be reformulated to require measures to ensure that domestic workers receive rest periods during the day and adequate and uninterrupted night rest. The employer shall also have an obligation to compensate a worker for work performed during rest periods. In this case, Article 10(3) is redundant and should be deleted. Article 10(2) is acceptable.

*Peru.* Domestic law establishes working time conditions for domestic workers that are different from those established for workers in general.

*Slovakia.* A new paragraph in Article 10 should specify the minimum period of daily rest. In Article 10(3), reference should be made to "household or households".

*Spain.* In Article 10(2) it is redundant to refer to "weekly rest" and "in every seven-day period"; the text could read: "domestic workers shall be entitled to a minimum weekly rest period of 24 consecutive hours". In Article 10(3), the expression "any other means consistent with national practice" should include the employment contract.

*Sweden.* Article 10(1) should be worded to allow certain differences in hours of work legislation depending on the peculiarities of particular sectors.

*Switzerland.* See comment under Article 4.

*United Kingdom.* It will be difficult to guarantee that working time for domestic workers is not less favourable than that provided for workers generally.

*Uruguay.* Article 10(2) should clearly establish the right of domestic workers to receive a weekly rest period of one day in every period of seven days worked.

## EMPLOYERS

*CNA (Brazil).* The words "and adequate compensatory rest shall be provided for, irrespective of any financial compensation" should be added at the end of Article 10(3), in line with Paragraph 11 of the Recommendation. A new paragraph should be added to indicate that periods during which domestic workers are at rest in the household in which they work shall not be regarded as overtime.

*WKO (Austria).* The requirement that the aspects of working time regulation mentioned in Article 10(1) cannot be less favourable than those applicable for workers generally is inappropriate, as the very nature of the services provided call for special regulation.

*COPARDOM (Dominican Republic).* Article 10(1) would imply that many households would not be able to afford to hire domestic workers. Article 10(3) is not compatible with the nature of domestic work,

which requires the worker to remain in the household and manage his or her rest periods and responsibilities, and not leave the household except under special authorized leave.

KT (Finland). The proposed wording for Article 10(2) and (3) is acceptable, provided that in exceptional cases a worker can work, or be on call, during his or her rest period, in compliance with more specific provisions in national laws and collective agreements.

ESEE (Greece). Given the peculiarity of domestic work, it would be reasonable for the text to provide for exceptions as regards leave entitlements.

NK (Japan). The very *raison d'être* of domestic work is 24-hour coverage within the home. It is difficult to regulate the work performed by domestic workers in the same way as that performed by workers generally, especially in Japan where on-call time is determined on the basis of the actual circumstances of each case. A realistic approach is to provide “comprehensive wages and remuneration” for the work performed overall.

UPS (Switzerland). While this subject is regulated in Switzerland by standard employment contracts *contrats-types de travail*, this approach cannot automatically be applied at the international level.

IOE. Some elements of Article 10(1) could be supported, if properly addressed. The notion of “not less favourable” is impractical; there is no single standard for workers generally. Provisions on daily rest should cover short breaks for meals and rest during the working day and a longer rest period during each 24 hour period. The word “each” in Article 10(2) should be deleted; the provision would thus clarify the level of rest to be provided while being flexible enough to accommodate the needs of workers and employers. Annual leave could be covered in a separate paragraph. The notion of “normal hours of work” is unclear. General approaches to regulating and measuring working time, including overtime, cannot be applied to domestic work. In the case of live-in workers, it is difficult to distinguish between personal and work time. Regulating hours of work appears unnecessary if minimum daily rest is provided for. Leave and remuneration arrangements should not be hours based, as they are for other workers. Article 10(3) should be deleted; it appears to require an employer to treat all hours of work during which the worker is not free to leave the house as fully remunerated. Based on the above, an amended Article 10 could include paragraphs on: (1) daily rest – meals and breaks; (2) daily rest – periods for sleep; (3) weekly rest; and (4) annual leave.

#### WORKERS

ACTU (Australia). In Article 10(2), “in every” should be used instead of “per each”, which adds complexity and risks weakening a critical employment standard.

CNTB (Burkina Faso), FADWU, HKCTU (China), MUSYGES (El Salvador), SAK (Finland), DGB (Germany), SEWA (India), CTM (Mexico), GEFONT (Nepal), TUCTA (Tanzania, United Republic of), ITUC. Reverting to “in every” to replace “per each” in Article 10(2) is supported.

CUT (Brazil). Replace “overtime compensation” by “remunerated overtime” in Article 10(1). Replace the text of Article 10(2) with the text of Paragraph 10 of the proposed Recommendation.

CSN (Canada). In Article 10(2), refer to “in every seven-day period”. The words after “hours of work” in Article 10(3) should be replaced by “and consequently remunerated”.

SEWA (India). Article 10(1) should refer to “overtime wages” instead of “compensation.”

CLTM (Mauritania). Domestic workers should enjoy one fixed day of rest.

CUT–A (Paraguay). Domestic workers should enjoy 12 hours of daily rest and two hours of breaks for taking meals.

APL, FFW, TUCP (Philippines). Article 10(1) should specify eight hours of work per day.

NCTL (Thailand). The Convention should include guidelines on leave, such as sick leave and annual leave.

TUC (United Kingdom). Article 10(2) must guarantee that domestic workers enjoy at least one day of rest in every week.

## UNITED NATIONS

CRC. A provision should be included prohibiting derogations from guarantees concerning working time in respect of children under the age of 18.

Special Rapporteur on contemporary forms of slavery. Domestic workers should enjoy the same protection of labour laws as other workers. Any discriminatory denial of entitlements regarding working hours, rest days or holidays should be eliminated.

## OFFICE COMMENTARY

A range of views have been expressed regarding Article 10(1). Support has been expressed for ensuring that domestic workers enjoy treatment no less favourable than other workers in respect of hours of work, rest periods and paid annual leave, given that these are areas where domestic workers are particularly vulnerable. With regard to hours of work and periods of rest, several respondents pointed out that regulating working time for domestic workers, given the specific nature of the work performed and services provided, may require a tailored approach. In this context, some respondents have also stated that working time legislation regularly takes into account the circumstances of particular sectors and that a comparison should be made with comparable groups. Certain comments, mainly in relation to full-time live-in domestic workers, indicated that establishing normal working hours for domestic workers is impractical and inappropriate and that working time limitations for them should be achieved through regulating rests and breaks.

With regard to Article 10(2), there is broad agreement that domestic workers should be entitled to weekly rest periods of at least 24 consecutive hours. Various suggestions were made with regard to the specific wording that could be used. A number of governments and most workers' organizations were in favour of using the expression "in every seven-day period" at the end of the provision. Conversely, some governments, mainly of European countries, preferred the current text. They pointed out that the wording of a provision on weekly rest in the Convention should not exclude arrangements whereby under national laws or collective agreements weekly rest periods can be accumulated and received following a period longer than seven days (for example within 14 days), also given that such arrangements may apply to other workers. Irrespective of whether reference is made in Article 10(2) to "in every seven-day period" or "per each seven-day period", various proposals were made on how to allow for appropriate flexibility and under which circumstances. Pending further discussions on such proposals, the Office has used the wording "in every seven-day period" in the proposed text appearing in Report IV(2B).

Relatively few comments related to Article 10(3). In reply to the Government of the Czech Republic and the IOE, the Office would like to point out that the current text of Article 10(3) provides that the periods in question shall be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national law and practice.

## Article 11

### GOVERNMENTS

*Albania.* Member States should ensure that the mandatory minimum wage shall be applied to domestic workers.

*Australia.* Consistent with the format of the rest of the Convention, the text of Article 11 could be moved to become a new paragraph 1 in Article 12.

*China.* The wording should be changed to provide that Members should take measures "to establish a minimum wage to cover or specifically target domestic workers".

*Denmark.* The provision is not flexible enough and not applicable in the Danish context, where pay and working conditions are regulated typically by collective agreements. It should be included in the Recommendation.

*Finland.* The wording is acceptable, although it could be made explicit that, in ensuring minimum pay, it would be sufficient for minimum wages to be determined according to existing mechanisms, including collective bargaining agreements. A requirement of passing new minimum wage legislation might impede ratification.

*France.* See comments under Articles 1 and 10.

*Italy.* Include “nationality” as a prohibited ground for discrimination.

*Mexico.* Discrimination based on age should be included.

*Netherlands.* Guidance is sought from the Office as to whether reference to “discrimination based on gender” would be more appropriate than the current reference to “discrimination based on sex”.

*Romania.* Article 11 should provide that remuneration is established without discrimination based on sex or other grounds.

*Trinidad and Tobago.* Discrimination on any ground must be addressed.

#### EMPLOYERS

COPARDOM (Dominican Republic). A minimum wage is not appropriate for domestic work, as this would place a burden on families with different economic realities that need the services of a domestic worker. Wages must be the result of an agreement between both parties.

IOE. Ratification should not require minimum wage setting in the domestic work sector, where no or little such coverage currently exists. Countries should be able to set targeted minimum wage rates for domestic workers or to opt for progressive implementation, provided that they ensure that domestic workers enjoy coverage, where such coverage exists. Clarification is needed as to whether the provision would require countries to end any existing exemptions they may have made under the terms of the Minimum Wage Fixing Convention, 1970 (No. 131).

#### WORKERS

LO (Denmark). Article 11 should include other grounds for discrimination, such as ethnicity and religion.

GSEE (Greece). Domestic workers should be covered by minimum wage protection. The term “gender” is preferred to “sex.” However, workers most often face discrimination on multiple grounds.

COSME (Guatemala). Article 11 should require Members with no minimum coverage to adopt measures to define a minimum wage through joint procedures or committees. The minimum wage should be set at an appropriate level.

SEWA (India). Article 11 should end with “discrimination based on sex, nationality and social origin.”

CGIL (Italy). Include “nationality” as a prohibited ground for discrimination.

CLTM (Mauritania). Article 11 should also include protection against discrimination based on race, colour and religion.

APL, FFW, TUCP (Philippines). Article 11 should read “Each Member shall ensure that domestic workers enjoy minimum wage coverage where such coverage exists without discrimination whatsoever as defined by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).”

COTRAF (Rwanda). Where a minimum wage rate does not exist, a minimum living wage should be provided.

#### UNITED NATIONS

CRC. The provision should specifically include children among the workers to be protected, including through the guarantee of non-discrimination in respect of wages for work of equal value.

Special Rapporteur on contemporary forms of slavery. All domestic workers should be covered by a minimum wage set at an appropriate level. Additional payments in kind should not be counted as part of the minimum wage.

OHCHR. Wage discrimination often results from factors other than sex, for instance it can be based on ethnic or national origin. The words “without discrimination based on any kind” should therefore be used.

## OFFICE COMMENTARY

As crafted, the second part of Article 11 aims to focus on discrimination based on sex, taking into account the fact that domestic work is mostly carried out by women and continues to be perceived as work not requiring any particular skills and qualifications and as lacking value, since it mirrors, to a large extent, work traditionally performed by women in the home without pay. While factors such as the ethnic or social origin of workers are sources of discrimination as well, a specific focus on discrimination based on sex is appropriate here, taking into consideration that the existing low pay levels of women domestic workers are fundamentally related to the gender-biased undervaluation of their work. Nonetheless, some respondents have suggested that reference should be made in this provision to other prohibited grounds of discrimination as well. An amendment to this effect was proposed and subsequently withdrawn during the first discussion.

In reply to the issue raised by the Netherlands, the Office considers that the appropriate term to be used in this context is “sex” rather than “gender”, in line with existing ILO standards and the Conclusions concerning gender equality at the heart of decent work adopted by the Committee on Gender Equality at the 98th Session (2009) of the Conference.<sup>30</sup>

With regard to the question regarding the relationship between Article 11 and Convention No. 131, the Office recalls that, under the terms of Convention No. 131, it is for the competent authority, in agreement or after full consultation with the representative organizations of employers and workers concerned, to determine, prior to the first report under article 22 of the ILO Constitution, the groups of wage earners to be covered by the minimum wage system.<sup>31</sup> Any groups not covered are to be indicated in that first report and subsequent reports are to indicate “the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups”. Article 11 of the proposed Convention, being fully consistent with Convention No. 131, would require Members to include domestic workers, where this is not yet the case, in the coverage of their national minimum wage-fixing systems.

## Article 12

### GOVERNMENTS

*Australia.* Article 12(2) should be amended to include two additional criteria that must be met before payments in kind can be authorized: (1) the allowances should not relate to the performance of the work; and (2) the way in which the cash value attributed to such allowances is calculated must be known to the worker in advance. While such amendments make Article 12(2) more prescriptive, this is justified given that the payment of wages in kind is one area where domestic workers are particularly vulnerable to exploitation. Additional guidance could be included in the Recommendation.

*Denmark.* The provision is not flexible enough and not applicable in the Danish context, where pay and working conditions are typically regulated by collective agreements. It should be included in the Recommendation.

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<sup>30</sup> The use of the term “discrimination based on gender” was specifically discussed by the Committee on Gender Equality. See ILO: *Provisional Record* No. 13, International Labour Conference, 98th Session, Geneva, 2009, para 113.

<sup>31</sup> ILO: *General Survey on minimum wages, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B)*, International Labour Conference, 79th Session, 1992, para. 84. Furthermore, the *Minimum Wage Fixing Recommendation, 1970 (No. 135)* states that exclusions from coverage should be kept to a minimum.

*Dominican Republic.* Under national legislation, food and accommodation are considered to be part of the domestic worker's salary.

*Egypt.* The expression "in conditions not less favourable than those generally applicable to other categories of workers" should be deleted.

*El Salvador.* Elements such as food and accommodation should be guaranteed to domestic workers and, therefore, should not be counted as payment in kind.

*Eritrea.* Enforcing monthly payment will be difficult for developing countries. In Article 12(1), pay intervals of up to three months should be permitted. In relation to Article 12(2), the possibility of payments in kind should be omitted from the text, as fixing a "limited proportion" could be controversial.

*Greece.* In order to avoid abuse, remuneration in kind should not constitute a usual practice.

*Italy.* The criteria set with regard to the payment of wages are appropriate.

*Mexico.* In Article 12(1), insert the wording "with the agreed periodicity" after "at regular intervals".

*Netherlands.* In Article 12(2), the concept of a "limited proportion of the remuneration" is vague. An additional paragraph is suggested as follows: "In the case of live-in domestic workers, where it may be understood that the bare necessities, such as food and accommodation, are an inherent part of the wage, this part of the remuneration may be paid in kind, provided that the cash value attributed to it is fair and reasonable."

*Nicaragua.* An additional paragraph should provide that remuneration in kind must be taken into account for the calculation of social security contributions.

*Paraguay.* Article 12(2) should be deleted.

*Philippines.* Article 12(2) should be adopted.

*Poland.* The detailed list of methods of payments in Article 12(1) should be replaced by a paragraph specifying that payments shall be made in line with the methods commonly adopted by the country.

*Russian Federation.* Paragraph 4 of the Protection of Wages Recommendation, 1949 (No. 85), should be taken into account.

*Spain.* In Article 12(2), the words "provided that measures are taken to ensure" are considered redundant. The references to personal use and benefit and fair and reasonable cash value should be deleted, as these elements are already ensured by the worker agreeing to the terms of employment. Employment contracts should be mentioned, as well as national laws or regulations, collective agreements and arbitration awards.

*Switzerland.* Article 12(1) should provide that "payment *shall* be made by bank transfer ...".

*Tanzania, United Republic of.* The word "directly" should be deleted from Article 12(1). There is no need to qualify payments made in legal tender. Article 12(2) should provide governments with more flexibility to address allowances in kind.

*Trinidad and Tobago.* Article 12(1) should refer to commonly used forms of payment (cash, cheque and direct deposit). Article 12 should require employers to provide domestic workers with payslips and to keep copies for a period specified under national law. An additional paragraph should be inserted after Paragraph 8 of the proposed Recommendation, detailing the specific information to be included in payslips.

*United States.* In Article 12(1), inserting the word "voluntary" before the word "consent" would emphasize that this involves the uncoerced choice of the worker. In Article 12(2), the phrase "the worker's acceptance of such allowances is voluntary and uncoerced" should replace the words "such allowances are agreed to by the worker". In the penultimate line, after the word "appropriate", insert "and primarily".

## EMPLOYERS

*CNA (Brazil).* In respect of Article 12(1), the text should stop after "as appropriate under national law and practice". As for Article 12(2), the use of the term "generally applicable" is acceptable.

*NK (Japan).* Article 12(2) should be omitted, as application will be difficult. Allowances may also be given to domestic workers as benefits. It would be impracticable to impose regulations requiring the domestic worker's consent on these matters.

*CCP (Portugal).* The reference to fair and reasonable cash value is supported.

IOE. The second sentence inserted by the Office in Article 12(1) is welcome. The words “in cash” should be inserted after “payment may be made”, and the expression “or other lawful means of paying remuneration” should be added at the end of the paragraph. In Article 12(2), the words “or payments in kind” should be added after “allowances in kind”, given that the term “allowances” in many national systems refers to a payment in addition to the wage. After “personal use and benefit of the workers”, food and accommodation could be referenced as examples. The qualifier “in conditions not less favourable than those generally applicable to other categories of workers” should be deleted; it is unclear which workers or industries would serve as a basis for comparison. It is sufficient to ensure that the cash value attributed to payments in kind is fair and reasonable.

#### WORKERS

ACTU (Australia). The proposed instruments may not adequately cover those situations in which employers unreasonably require employees to spend a part of their salary on a specified good or service (such as exorbitant rent or transport costs).

CSN (Canada). Article 12(2) should specify that Article 12(1) establishes the rule and that payments in kind are an exceptional form of payment.

GSEE (Greece). In the case of live-in domestic workers, accommodation and food must not be considered as remuneration. They are a means to best meet the employers’ needs.

CTM (Mexico). In the Spanish version, reference should be made to “*salario o remuneración*” in Article 12(1), to take into account the references made in Article 11. Accommodation and food should not be considered as payment in kind.

CS (Panama). Food and accommodation should not be counted as part of the minimum wage and should be an additional responsibility of the employer.

CUT–A (Paraguay). Article 12(2) should be deleted.

CGTP, SINTTRAHOL (Peru). Payments in kind should not be allowed. A new provision should establish that, in the event of dispute, the burden of proof rests on the employer.

TUC (United Kingdom). Direct payment in legal tender should be made “with a record of payment”.

#### UNITED NATIONS

Special Rapporteur on contemporary forms of slavery. Payments in kind and advance or deferred payment schemes serve to create and maintain domestic workers’ dependency on others, and should be prohibited. Wage payments should be made directly into a bank account.

#### OFFICE COMMENTARY

In the first sentence of Article 12(1), the Office has replaced the term “legal tender” by “cash”, in order to avoid any doubt as to the provision’s intent.

### Article 13

#### GOVERNMENTS

*Australia.* It is unclear whether the entitlement of workers to compensation in the event of occupational injury is adequately covered by Article 13(1)(a) and (b). A new paragraph should be included, reading as follows: “(c) workers’ compensation in case of occupational injury”.

*Austria.* As recognized in Article 13(1)(a), domestic work has specific characteristics which are often different from those of other types of work (differences relating to the place of work, tools and equipment, or risks). Hence, this raises problems as regards the comparability of domestic workers and other workers. The wording could be improved by clarifying beyond any doubt that the comparison of conditions can involve only those “other workers” whose working conditions are actually comparable to those of domestic workers.

*Costa Rica.* In Article 13(1)(b), the word “including” should be replaced by “particularly”, to clarify that this is a core aspect of the protection needed.

*Czech Republic.* Ensuring compliance with occupational safety and health regulations by way of inspections in private premises is difficult.

*Denmark.* The text is more suitable for the Recommendation. There are fundamental problems concerning the regulation of occupational safety and health in domestic work, relating to enforcement and the ability to carry out inspections.

*Finland.* Domestic workers' labour protection should essentially be equal to those of other workers. However, general occupational safety and health regulations should be applied to domestic workers as appropriate, taking into account the limitations of private household employees to take measures in this area. Rules on the planning of the work environment or staff facilities may be inapplicable, while those concerning machinery safety and chemical substances are relevant. Under Finnish legislation, an inspection may be carried out in private premises if there is reasonable cause to suspect that the work performed on the premises or the working conditions endanger the employee's life or are obviously detrimental or hazardous to the employee's health, and enforcement actions cannot otherwise be carried out satisfactorily.

*France.* Article 13(1)(a) should preferably be reformulated to provide that domestic workers enjoy "adequate occupational safety and health protection".

*Ghana.* Social security and insurance packages should be considered. Domestic workers on maternity leave should continue to receive their full salary and be temporarily replaced by another worker.

*Greece.* As Article 13(1) stands, Greece would not be in a position to commit to its implementation. Separate paragraphs on occupational safety and health and social security protection, respectively, could be introduced. The paragraph on the former could read: "Each Member shall take appropriate measures, with due regard to the specific characteristics of domestic work, to promote domestic working conditions in respect of occupational safety and health, in accordance with national law and practice."

*Latvia.* It is unclear how measures in respect of occupational safety and health could be applied progressively.

*Malaysia.* The phrase "including with respect to maternity" should be deleted from Article 13(1)(b).

*Netherlands.* If domestic workers are to enjoy conditions not less favourable than those applicable to workers generally, this would place substantive burdens on private households which, in turn, may affect the employment of domestic workers. Article 13(1) should therefore be amended to require Members to "take appropriate measures ... to ensure that domestic workers enjoy decent conditions in respect of: ...". For the same reasons, amendments to Paragraph 15 of the Recommendation are suggested (see comments below).

*Paraguay.* A maximum time frame should be included in Article 13(2).

*Philippines.* Article 13(1)(b) should refer to social security protection *and health insurance coverage*, including in respect of maternity.

*Poland.* This Article should be complemented by a clause on inspections, modelled on Article 16(2) of the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

*Slovakia.* In Article 13(1)(b), reference should be made to "maternity and paternity". Alternatively, the importance of men in caring for newborn children should be emphasized.

*Slovenia.* Given the variety of tasks performed by domestic workers, it is a challenge for inspectors to check the work environment.

*Spain.* Article 13(a) is not acceptable, as households cannot reasonably be expected to carry out risk prevention plans, risk assessments and other obligations derived from occupational safety legislation. Social security protection and occupational safety and health protection should be covered in separate articles.

*Sweden.* In Article 13(1)(b), the term "maternity" excludes men as parents and male domestic workers are consequently not given the same opportunities. The wording should be changed to provide equal protection for women and men.

*Switzerland.* Regarding Article 13(1)(a), see comment under Article 4. Regarding Article 13(1)(b), the phrase "conditions not less favourable than those applicable to workers generally" needs clarification. Consistent with the Vienna Convention on Diplomatic Relations, 1961, social security agreements between Switzerland and the countries of origin of domestic workers engaged by persons enjoying diplomatic privileges and immunities increasingly provide for the possibility that the workers concerned remain

affiliated with the social security system of their country of origin rather than the Swiss system. Other migrant domestic workers do not have the possibility of affiliation with the social security system of their country of origin and the social security coverage offered by the two systems is not necessarily identical.

*Trinidad and Tobago.* Add a provision to include employee compensation for work-related injuries.

*United Kingdom.* National occupational health and safety regulations do not apply to domestic workers.

#### EMPLOYERS

COPARDOM (Dominican Republic). Requiring that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally would limit the possibility of hiring domestic workers.

NK (Japan). It is impossible for ordinary households to guarantee the same health and safety standards as companies do. The phrase “if practicable” should be inserted.

IOE. In connection with Article 13(1), a new provision is proposed as follows: “provided that nothing in this paragraph shall diminish the capacity of member States to implement differing approaches to inspection, enforcement and penalties to reflect the unique nature of domestic employment within family homes, and employment by parents and families”.

#### WORKERS

ACTU (Australia). Article 13(2) is neither necessary nor desirable.

CSN (Canada). As most domestic workers are women, the gender dimension should be integrated into Article 13(1)(a). Article 13(2) is vague and should be deleted.

CTC, CUT (Colombia). A reference to the creation of inspection mechanisms should be included.

GSEE (Greece). Article 13(2) should be deleted.

ICTU (Ireland). Article 13(1)(b) should end with “and dental and sickness benefits”.

JTUC–RENGO (Japan). In order to achieve decent work for domestic workers, Article 13(2) should be deleted. Separate standards for domestic workers regarding social security, occupational health and safety and maternity protection are not acceptable.

CLTM (Mauritania). National social security schemes should be adapted to cover domestic workers.

FNV (Netherlands). The administrative cost borne by household employers is not a valid reason for denying domestic workers as equally favourable working conditions as workers in general.

CUT–A (Paraguay). Article 13(2) should include a provision so that the concept of progressive application is defined at the time of ratification and verified in the first report.

CGTP, SINTTRAHOL (Peru). Article 13(2) should be deleted.

APL, FFW, TUCP (Philippines). Article 13(1) should include a reference to reproductive health rights and the portability of social security benefits. Otherwise, these issues should be addressed in the Recommendation. Article 13(2) should provide clear timelines instead of including the word “progressively”.

COTRAF (Rwanda). The phrase “with due regard to the specific characteristics of domestic work” is not supported.

#### OFFICE COMMENTARY

There is broad agreement on the need for measures in the area of occupational safety and health with a view to ensuring that domestic workers, like any other workers, enjoy the right to a safe and healthy working environment. However, a considerable number of respondents pointed out that, given the specific setting in which domestic work is performed, the current text of Article 13 raised difficulties as far as occupational safety and health is concerned. It was suggested that the issues of occupational safety and health and social security should be addressed in separate provisions. In order to facilitate further discussions by the Conference, the Office has included in the proposed Convention two separate Articles on these two subject matters,

appearing in Report IV(2B) as Articles 13 and 14. Taking into account the range of comments and suggestions made regarding the provision on occupational safety and health, the Office is proposing the following wording, which could possibly replace the text in Article 13, for consideration by constituents:

*Every domestic worker has the right to a safe and healthy working environment. Each Member shall take measures suited to the specific characteristics of domestic work and the environment in which it is carried out to promote and advance the enjoyment of this right.*

In reply to the Governments of Australia and Trinidad and Tobago, the Office notes that benefits for employment injury are one of the branches of social security featuring in the Social Security (Minimum Standards) Convention, 1952 (No. 102). The notion of “workers’ compensation in case of occupational injury” mentioned by the Government of Australia also includes the possibility that compensation might take the form of a payment by the employer rather than social security benefits. The term “social security protection” used in Article 13(1)(b) is sufficiently broad to cover both possibilities to provide protection in the case of employment injury, either through social security benefits or employer-paid compensation.

## Article 14

### GOVERNMENTS

*Australia.* A provision should be included in the Recommendation to provide guidance in implementing this Article. Such a provision could recommend the consideration of measures establishing that domestic workers may appoint representatives to act on their behalf, that access to dispute resolution is affordable and that proceedings are conducted in a language the worker understands.

*France.* The phrase “by themselves or through a representative” should be replaced by “in person or, where national laws and regulations permit, through a representative”. In France, applicable procedures require that parties present themselves in person. Procedures may be carried out in the absence of the complainant only in the event of a justified impediment.

*Indonesia.* Include a requirement to ensure that domestic workers receive sufficient legal assistance.

*Slovakia.* Replace “easy” by “guaranteed”.

*Switzerland.* Delete “easy”. It is vague and redundant, given that “conditions not less favourable” are required.

*United States.* Delete “easy”; its meaning is unclear and potentially in contradiction with the notion of “not less favourable conditions”.

### EMPLOYERS

NK (Japan). Add “consistent with that available to workers generally” to account for large differences in national dispute resolution procedures.

IOE. Delete “easy” and move the provision towards the end of the instrument (see comments under Article 17).

### WORKERS

ACTU (Australia). Add the words “and affordable” after “easy”.

CSN (Canada). The vast majority of domestic workers lack the means to access justice. Reinsert “affordable”.

GSEE (Greece). Replace “easy” by “effective”.

ICTU (Ireland). Amend Article 14 to provide domestic workers in diplomatic households with dispute settlement procedures to deal with complaints about breaches of rights afforded under this and other relevant ILO Conventions. Dispute resolution measures should be established, based on national tripartite consensus, and Members should be required to communicate them to the Director-General of the ILO. In

the absence of such a declaration, Members should not be permitted to issue visas and work permits to domestic workers.

UNITED NATIONS

CRC. The provision should specifically include children.

OFFICE COMMENTARY

The Office has deleted the word “easy”.

**Article 15**

GOVERNMENT

*Australia.* Considering variations in labour inspection and enforcement in ILO member States, it would not be appropriate for the Convention to prescribe the type of inspection and enforcement arrangements that should be put in place. However, additional guidance should be included in the Recommendation. Drawing on the Home Work Recommendation, 1996 (No. 184), such a provision could recommend that Members consider: the registration of domestic workers with an appropriate local authority; the authorization of labour inspectors or other designated officials to enter and inspect premises in which domestic workers are employed; home visits by appropriate authorities before the employment of a domestic worker to assess working conditions and accommodation (if applicable); undertaking prompt and thorough investigations of reported abuse against domestic workers and the prosecution of employers under the law; and prohibiting repeatedly non-compliant employers from employing domestic workers.

*Egypt.* Owing to the privacy of the household, it is not feasible to establish a supervisory mechanism to deal with workers’ complaints.

*Netherlands.* The effectiveness of measures cannot be guaranteed in advance. The text should read as follows: “Each Member shall take appropriate measures aimed at ensuring compliance with national laws and regulations for the protection of migrant workers.”

*Poland.* The wording should be more precise.

EMPLOYERS

NK (Japan). The proposal fails to specify a clear obligation and should be deleted.

IOE. The phrase “and accessible complaint mechanisms” should be inserted after “effective”. The Article should be moved, as suggested below (see comments under Article 17).

**Article 16**

GOVERNMENTS

*Argentina.* This provision is relevant irrespective of whether the worker is a migrant or not, in line with the principle of equal treatment.

*Australia.* The obligation under Article 16(1) to take measures to ensure that domestic workers placed by employment agencies are protected from abusive practices is sufficient for the Convention. Article 16(2) should be placed in the Recommendation.

*Austria.* Article 16 in its current form may impede ratification, particularly the part of Article 16(1) referring to the respective liability of the household and the agency and the part of Article 16(2)(a) referring to the disclosure of information on past violations.

*Canada.* The following changes are proposed to avoid inconsistency with the Private Employment Agencies Convention, 1997 (No. 181) and Recommendation No. 188, and to allow for greater flexibility: Article 16(1) should end after “abusive practices”; Article 16(2)(a) should be deleted; and Article 16(2)(b) should read as follows: “ensure the compliance of employment agencies with relevant laws and regulations, and provide significant penalties for violations”.

*Denmark.* Article 16 is too detailed, which may prevent ratification. There is no need to establish a special register and complaint mechanism regarding agencies.

*Dominican Republic.* Agrees with Article 16(1), as it ensures the elimination of abusive practices. As regards the joint responsibility of the head of the household and the agency, it is noted that employment agencies in the Dominican Republic can act only as intermediaries. Supports Article 16(2).

*Eritrea.* The term “abusive practices” should be defined. In Article 16(2)(b), reference should be made to *adequate* penalties.

*Finland.* Article 16(1) is acceptable. Article 16(2) is overly detailed and could be included in the Recommendation.

*France.* The provisions on employment agencies should be moved to the Recommendation. It is difficult to require States to take such specific measures. In France, both employing and intermediating agencies are subject to authorization (*agrément*) only if they are involved in facilitating personal services for vulnerable groups. Other agencies are subject to general law which is appropriate to address abusive practices.

*Japan.* Criteria for the disclosure of information on past violations should be part of the inspection process, hence this aspect of Article 16(2)(a) should be moved to Article 16(2)(b).

*Latvia.* It is unclear how Article 16(1) can be applied in cases where employment agencies do not employ the worker.

*Malaysia.* Employment agencies should be allowed to deduct fees from the remuneration of domestic workers, provided that it is done in a fair and equitable manner that is agreeable to both parties.

*Mexico.* The notion of “significant penalties” in Article 16(2)(b) should be defined. A provision prohibiting employment agencies from retaining travel and identity documents could be added.

*Netherlands.* Article 16(1) seems to imply a bias against employment agencies. The following text is suggested as a replacement: “In the case of domestic workers who are recruited or placed by an employment agency, each Member shall establish the respective legal liability of the household and the agency.” Subsequently, core elements of Convention No. 181 could be used as a basis for adding flesh to this Article. Article 16(2) is too detailed and might hamper ratification. If Members decide to exclude domestic workers employed by private employment agencies from the scope of the Convention by virtue of Article 2(1)(a), Article 16 should not apply. An additional provision may be needed to prevent a possible discrepancy between Articles 2 and 16.

*Philippines.* In Article 16(2)(b), the words “carry out” should be replaced by “conduct”. In Article 16(2)(c), a provision should be added requiring measures to ensure that unauthorized employment agencies are effectively prevented from operating.

*Slovakia.* Article 16(1) should apply to domestic workers who are recruited by, placed by, or recruited *and* placed by employment agencies. Article 16(2) should be placed in the Recommendation.

*Sweden.* It is inappropriate to regulate responsibility for employment agencies in the Convention. Article 16(1) could be replaced by a provision requiring measures to ensure that domestic workers recruited or placed by an employment agency, including migrant workers, are fully informed of where the employer’s responsibilities lie. Article 16(2) should be deleted.

*Switzerland.* Given that this provision seeks to reflect principles contained in Convention No. 181, which has obtained so far only a modest number of ratifications, the current text should be replaced by the wording of Point 19 of the proposed Conclusions initially prepared by the Office.<sup>32</sup>

*United Kingdom.* Requiring a licensing system would raise difficulties.

*United States.* Further discussion on Article 16(2)(d) would be helpful, to consider the complexity of various scenarios in which fees are charged or incurred by agencies and the precise scope of the intended obligation in this provision.

<sup>32</sup> ILO: *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th Session, Geneva, 2010, p. 420.

## EMPLOYERS

EK (Finland). Employment agencies should be addressed in a balanced manner. In placing domestic workers, they benefit families and those needing care.

NK (Japan). Article 16(2) should be deleted; it is inconsistent with Convention No. 181. In Japan, regular inspections of employment agencies are not carried out and deductions of remuneration are accepted to a limited extent.

VNO–NCW, MKB–Nederland (Netherlands). A specific reference to Convention No. 181 should be incorporated into Article 16(1).

CCP (Portugal). It should be clearly stated that the payment of fees to private employment agencies should be made by the employer of the domestic worker concerned.

IOE. The provision may harm efforts to promote Convention No. 181 and should be deleted. The premise that there is a particular association between agency employment and “abusive practices” is not accepted. There is no justification for associating any ongoing responsibilities with agencies in cases where they merely offer services to match offers. The legal liabilities of agencies and household employers are already addressed through the terms of the contractual relations between householders and agencies, householders and domestic workers, and domestic workers and agencies. Article 16(1) is also inconsistent with Article 12(1)(b) of Convention No. 181, which obliges Members to allocate responsibilities between agencies and “user enterprises”, thus addressing the issue of responsibility only with regard to the agencies referenced in Article 1(1)(b) of the same Convention. The reference in Article 16(1) to domestic workers “recruited or placed” by an employment agency is ambiguous with regard to the distinction established by Article 1(1)(a) and Article 1(1)(b) of Convention No. 181.

The approach reflected in Article 16(2) is overly punitive and negatively singles out one particular industry. In Article 16(1)(a), the references to “registration” and “disclosure of information on public information” are inconsistent with Article 3 of Convention No. 181 and the term “qualifications” is unclear. Article 16(2)(b) is unnecessary, given that Article 15 already covers means of ensuring compliance, including labour inspection. The term “significant” in relation to penalties is inconsistent with Convention No. 181. Replacing the term “incurred” by “charged” has made the proposed text clearer. However, there is need to clarify whether the intent is to address the issue of fees charged by an agency to the worker or the concern that some employers may try to claw back the fees they have paid to agencies from the remuneration paid to domestic workers. Any article on agency employment should be placed before the current Articles 14, 15 and 17.

CIETT. Diverging provisions in a Convention on domestic work and Convention No. 181 would create confusion and a specific Article on agencies could also hamper tripartite efforts to promote Convention No. 181. Article 16 does not add value to the new Convention. Workers employed by agencies should not be treated differently and there is overlap with Convention No. 181. Preferably, Article 16 should be deleted. Otherwise, it should be reformulated to refer to Convention No. 181 or to repeat core elements of it. Such a provision could invite Members to ratify Convention No. 181 or adopt regulations reflecting its core provisions.

## WORKERS

CGTRA (Argentina). It is reasonable and necessary that information on abusive practices and violations be processed, recorded and used as the basis of measures taken regarding the registration of employment agencies.

CUT (Brazil). Delete “including” in the last part of Article 16(1).

CNTB (Burkina Faso). The term “*honoraire facturé*” in Article 16(2)(d) should be replaced by “*commission perçue*” in the French version of the text.

CSN (Canada). Employment agencies and employers should be jointly and severally liable when the employment relationship can be said to be “triangular”. Article 16(2)(d) should prohibit employment agencies from charging domestic workers a fee.

FADWU, HKCTU (China), MUSYGES (El Salvador), DGB (Germany), CTM (Mexico), GEFONT (Nepal), TUC (United Kingdom), ITUC. The current text could be strengthened by including a provision establishing that workers should not be required to surrender their identity documents to agencies and that workers should not pay deposits or visa and travel costs.

CGT (Colombia). Article 16(2) should include an additional subparagraph requiring the authorities to publish information on available positions and to ensure that recruitment occurs in decent and lawful conditions. Article 16(2)(d) should *prohibit* deductions.

CTC, CUT (Colombia). See comments under Article 13.

CASC, CNTD, CNUS (Dominican Republic). Domestic workers employed by an agency should be covered by the legislation applied to workers in general, and should not be considered domestic workers.

SAK (Finland). Article 16(2)(d) should clearly state that domestic workers shall not be liable for the payment of visa, travel or employment services costs.

SEWA (India). The word “including” should be deleted from Article 16(1). Article 16(2)(a) should refer to “statutory regulations” rather than “criteria” and the word “public” should be added before “disclosure of information”. Article 16(2)(c) should read “provide accessible grievance redress mechanisms for domestic workers for all complaints including abusive practices”.

JTUC–RENGO (Japan). Domestic workers should have a right to know about employment agencies’ past violations.

FNV (Netherlands). Bad faith employment agencies and trafficking are serious problems in this sector. A reference to Convention No. 181 in this provision is supported.

CGTP, SINTTRAHOL (Peru). In Article 16(2)(b), the issue of employment agencies retaining identity documents should be addressed. Agencies recruiting migrant domestic workers should ensure compliance with decent working conditions in the country of employment.

APL, FFW, TUCP (Philippines). Article 16 should indicate that intermediaries and employers are jointly and severally liable for breaches of employment contracts.

#### UNITED NATIONS

Special Rapporteur on contemporary forms of slavery. Employment agencies should be prohibited from charging fees to domestic workers. This practice reinforces domestic workers’ dependency on others.

#### OFFICE COMMENTARY

A considerable number of respondents suggested extensive amendments to Article 16. Concerns frequently articulated related to the need to ensure consistency of the text with the provisions of Convention No. 181 and to the level of detail currently set out in Article 16, particularly its second paragraph. A number of governments consider that Article 16(2) should be placed in the Recommendation.

The Office considers that further discussions among constituents, taking into account the various comments made, would be helpful in further developing provisions regarding employment agencies. No amendments were therefore made to the text appearing in Report IV(2B).

Some governments have indicated that, under their legislation, employment agencies are only allowed to function as intermediaries. In other countries, employment agencies do not operate to match offers, but exclusively to employ workers and make them available to users. The current wording in Article 16(1) does not distinguish between these two types of agencies, as the intention is to cover both of them, where they exist. The expression “recruited or placed” is thus meant to cover both types of agencies.

## Article 17

### GOVERNMENTS

*Australia.* Australia supports a requirement for Members to consult organizations representing domestic workers and their employers in addition to the most representative organizations of employers and workers in the country.

*Egypt.* It is difficult to determine the nature of employers' organizations. See comments below under Paragraph 2 of the proposed Recommendation.

*Philippines.* The language concerning consultation should be aligned with Article 2(2) by introducing the phrase "and in particular, organizations representing domestic workers and those of employers of domestic workers" after the reference to "representative employers' and workers' organizations".

*Switzerland.* As is the case with Article 12(1), the means of implementation mentioned in Article 17 should be reformulated as a list of *alternative* rather than *cumulative* conditions. Article 17 could be divided into two paragraphs, the first reading as follows: "The provisions of the Convention shall be applied by means of laws and regulations, collective agreements or other measures as consistent with national practice, by extending or adapting existing measures to cover domestic workers, or by developing specific measures for them." Consultation could then be addressed in separate paragraph as follows: "When adopting such laws or regulations or other measures, each Member shall consult with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and their employers, where they exist."

### EMPLOYERS

ACCI (Australia). Members should only be required to act after having consulted with the long-standing and most representative organizations of employers and workers, as well as any other organizations that might exist to represent domestic workers or their employers. ACCI is in favour of giving Members the maximum range of options available to implement any new obligations, particularly if they are to be in the form of both a Convention and Recommendation.

FEPEM (France). The wording regarding consultation should be aligned with that proposed for Article 2.

NK (Japan). The *most* representative employers' and workers' organizations should be consulted.

IOE. The wording regarding consultation should be aligned with that proposed for Article 2 (see comments under Article 2).

### WORKERS

CSN (Canada). Article 17 should include consultation with organizations representing domestic workers. The words "or adapting" and "as appropriate" should be deleted.

### OFFICE COMMENTARY

See commentary under Article 2.

## Article 18

### GOVERNMENTS

*Netherlands.* A reference to "national laws and regulations" should be inserted.

*Philippines.* The text should refer to more favourable provisions applicable to domestic workers *under national laws and regulations* and other international Conventions.

### WORKERS

CTN (Nicaragua). Reference should be made to national legislation and applicable collective agreements.

## OFFICE COMMENTARY

The present wording follows similar provisions in existing standards. Article 19(8) of the ILO Constitution already provides that the adoption or ratification of a Convention will not be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned.

### 3. OBSERVATIONS ON THE PROPOSED RECOMMENDATION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

#### Paragraph 1

##### WORKERS

CUT (Brazil). Delete “and should be considered in conjunction with them”.

#### Paragraph 2

##### GOVERNMENTS

*Egypt.* A person could be a domestic worker and an employer of a domestic worker at the same time. It would be difficult to have organizations representing this sector.

*Switzerland.* Paragraph 2(c) would be more balanced if the words “and employers, in order” were added after “of domestic workers”.

##### EMPLOYERS

UIA (Argentina). Paragraph 2(a) and (b) should clarify that both employers and domestic workers should be allowed to join organizations of their own choosing.

IOE. Any expression of freedom of association and collective bargaining requires equal application to both workers and employers. The capacities of workers and employers to act accordingly should be equally protected. Paragraph 2 should be reworded to reflect these principles.

##### WORKERS

ACTU (Australia). The proposed instruments do not appear to address the issue of ensuring adequate information for domestic workers on their freedom of association and collective bargaining rights.

CSN (Canada). Delete Paragraph 2(b).

CGT (Colombia). Paragraph 2(a) should *prohibit* such restrictions.

SEK (Cyprus). Include a provision encouraging dialogue with social partners that regularly deal with domestic worker issues.

## OFFICE COMMENTARY

The Office has made minor changes to Paragraph 2(a) and (b) to refer to *organizations of their own choosing*, which is the wording used in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

### Paragraph 3

#### GOVERNMENTS

*Australia, France, Mexico, Paraguay, Spain, Tanzania, United Republic of.* Agree with the alternative wording proposed by the Office.<sup>33</sup>

*Austria, Sweden, Netherlands, United States.* The wording suggested by the Office and the current text could be combined.

*Canada, Greece, Kenya, Philippines, Poland.* The current text is preferred.

*Cyprus.* Disagrees with the wording suggested by the Office.

*Egypt.* The reference to compliance with international labour standards is not supported. It should be possible for employers to determine the health status of domestic workers with regard to communicable diseases.

*Israel.* There should be a distinction between medical testing in the context of national immigration policy and work-related medical testing for all workers in the receiving country. Work-related medical testing for pregnancy is acceptable in certain cases.

*Namibia.* The text set out in the proposed Recommendation, referring to international labour standards more generally, is acceptable but further discussion on this point would be welcomed.

*Oman, Qatar, Saudi Arabia, United Arab Emirates.* Employers of domestic workers should be allowed to take preventive measures to protect household members, including prior checks for contagious diseases. Paragraph 3 should state that the work-related medical check-up shall be consistent with the nature of the tasks performed by the domestic worker and their proximity to the members of the household. The wording suggested by the Office is not supported.

*Romania.* The proposed Recommendation does not address how to oversee the health of domestic workers. This should be done in accordance with international labour standards.

*Spain.* The reference to medical testing should be deleted.

*Uganda.* The wording suggested by the Office could be interpreted to mean that domestic workers should not undergo testing, even when they have consented to the procedure. Disclosure of HIV/AIDS status can also assist an employer's response if a domestic worker requires treatment or antiretroviral drugs. The household should be able to implement specific measures to protect its members.

#### EMPLOYERS

UIA (Argentina). The wording is unclear and includes many concepts that should be dealt with under different provisions and discussed further.

NK (Japan). Medical testing for occupational purposes may be appropriate.

IOE. The intended effect of this paragraph is unclear. The phrase "is consistent with international labour standards" is excessive. Member States determine the level of protection of personal data required in their respective contexts. Employers need to manage risk and make employment decisions. Legal medical testing and use of this information is central to these processes.

#### WORKERS

CGTRA (Argentina), ACTU (Australia), CSN (Canada), FADWU, HKCTU (China), MUSYGES (El Salvador), SAK (Finland), UNSA (France), DGB (Germany), ICTU (Ireland), GEFONT (Nepal), CUT-A (Paraguay), CGTP, SINTTRAHOL (Peru), TUCTA (Tanzania, United Republic of), TUC (United Kingdom), ITUC. Support the alternative wording suggested by the Office.

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<sup>33</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 100th Session, Geneva, 2011 (published in 2010), p. 9.

## OFFICE COMMENTARY

The wording for Paragraph 3 suggested by the Office in Report IV(1) to replace the current text or to be added to it was considered appropriate by a considerable number of governments and by all workers' organizations. However, a similar number of governments expressed a preference for the current text. Several respondents have also pointed to the need for further discussions on such a provision. Taking the above into account, the Office has included an amended version of Paragraph 3 in the proposed Recommendation appearing in Report IV(2B).

**Paragraph 4**

## GOVERNMENTS

*Australia.* Domestic work should not jeopardize children's health, safety or welfare, and should not interfere with their schooling. In addition, the Recommendation should provide practical guidance with respect to the specific vulnerability of children being trafficked into domestic work and also the vulnerabilities of children, particularly girls, who live with their employer. Furthermore, the Recommendation should provide practical guidance on the application of Article 4(2) of the Convention. Paragraph 4 should be strengthened by including clauses on working time restrictions to allow time for education and training, rest and leisure activities, restrictions on undertaking certain types of work, measures to protect young domestic workers living with their employer, and effective mechanisms for the withdrawal of children from hazardous domestic work and their rehabilitation.

*Austria.* Taking account of the particular protection needs of this group, the last part of the provision should include specific references to rest periods, protection of health and morals, and periodic medical examinations.

*Sweden.* Paragraph 4 should be moved to the Convention.

*Tanzania, United Republic of.* Working time should be covered under Paragraph 6.

*United States.* The provision should contain more specific guidance on measures addressing the protection needs of domestic workers under the age of 18, including with regard to working time, hazardous work and monitoring the domestic worker's well-being. Such a provision would guide the application of Article 4.

## WORKERS

*BAK (Austria).* The provisions should specifically refer to rest periods, the protection of health and morals, periodic medical examinations and the special attention that should be given to the physical strength of the workers concerned.

*CUT (Brazil).* Replace "should give special attention to" by "should guarantee".

*CSN (Canada).* The phrase "in accordance with Conventions Nos 138 and 182" should be inserted after "national laws and regulations". A minimum age of 18 should apply to migrant domestic workers, as they are the most exposed to abuse and forced labour.

## OFFICE COMMENTARY

As indicated above under Article 4, the Office, taking into account the various comments and suggestions made, considered it appropriate to include additional text in Paragraph 4 to provide more specific guidance in this area. The expanded text thus recommends that measures be taken to identify, prohibit and eliminate hazardous forms of domestic work for persons under the age of 18. It addresses in more detail the question of limitations of working hours and restrictions regarding certain types of work and recommends the establishment or strengthening of mechanisms to monitor the working and living conditions of young domestic workers.

## Paragraph 5

### GOVERNMENTS

*Australia.* As a matter of best practice, the employer should provide the domestic worker with a detailed list of duties so that it is clear what the worker is required to do. Therefore, Paragraph 5(b) should read: “job description, including a detailed list of duties”. Paragraph 5(f) should read: “the rate of pay for overtime work, including for hours on standby”. This will ensure that domestic workers will be informed of the rate at which they will be compensated for hours on standby, in the same way as other workers who are on call.

*China.* In Paragraph 5(2), items should be added relating to conditions of safety and health and social insurance benefits.

*France.* There is no way to “guarantee” that domestic workers understand this information. To maintain consistency with Article 6, Paragraph 5(1) should read “employees should be informed in an appropriate manner”. Paragraph 5(3) should make it clear that the model contract is optional. Employment contracts must be adaptable to each employment relationship.

*India.* Paragraph 5(2) should be deleted, as it does not appear to be practicable in terms of implementation.

*Mexico.* A new clause in Paragraph 5(2) should mention the work schedule.

*Paraguay.* Paragraph 5(2)(h) should be deleted.

*Peru.* Where the legislation allows for oral contracts, it will be difficult to provide information on all the terms listed and ensure that the worker has understood them.

*Philippines.* Paragraph 5(1) should provide that the contract for both migrant and local domestic workers should be written in a language understood by the employer and the worker.

*Poland.* Failing their inclusion in Article 6 of the Convention, provisions that identify the workplace, the length of holidays and notice periods for termination should fall under Paragraph 5.

*Russian Federation.* The usefulness of Paragraph 5(3) should be discussed further.

*Slovakia.* Paragraph 5(1) should provide that the information on terms and conditions should be provided in an appropriate, verifiable and easily understandable manner, while the equivalent clause would be deleted from Article 6 of the proposed Convention. Paragraph 5(2)(a) could be reworded to read: “date of the commencement of employment”.

*Switzerland.* With regard to Paragraph 5(2), the results of consultations with the cantons will be communicated in due course. In Paragraph 5(3) of the French text, the expression “modèle de contrat individuel” should be used instead of “contrat type”.

*Tanzania, United Republic of.* Particulars should include a provision on hours of work.

*Tunisia.* Paragraph 5(1) should specify who is responsible for providing such assistance. A new provision could be added, calling for special procedures to govern the termination of the employment of minor domestic workers.

*United States.* In Paragraph 5(1), the phrase “including interpretation into a language they can understand” should be added after “assistance should be provided”. In Paragraph 5(3), the words “consider establishing” should be replaced by “establish”.

### EMPLOYERS

*UIA (Argentina).* In Paragraph 5(1), it should be clear that this is a government responsibility. Paragraph 5(2) should include the following clarification: “... the conditions of employment should contain the information prescribed by national legislation or agreed by collective bargaining or any other agreement governing the employment of domestic workers, which may include those listed below”. The model contract provided for in Paragraph 5(3) could be very useful. The following should be taken into consideration: the contract should be made available at no cost; its use should not be voluntary; and employers and workers should be able to determine working conditions they consider appropriate, within the remit of the law.

*COPARDOM (Dominican Republic).* Paragraph 5(2)(f) and (k) are considered inappropriate, considering the nature of domestic work.

NK (Japan). The words “if applicable” should be added to Paragraph 5(2)(e). In Japan, there are no legal provisions for sick leave and leave for other personal reasons. Paragraph 5(2)(f) and (h) should be deleted (see comments under Articles 10 and 12 of the proposed Convention). In Paragraph 5(3), consultations should be with the representative organizations.

IOE. In Paragraph 5(1), an additional sentence should provide that this assistance should be made available by Members to domestic workers and employers free of charge. The chapeau of Paragraph 5(2) should make reference to national laws and regulations, collective agreements or practical arrangements. Paragraph 5(2)(a) should be integrated into Article 6(e) of the proposed Convention. The phrase “if applicable” should be added at the end of Paragraph 5(2)(e). Paragraph 5(2)(f) should be deleted. The term “cash” in paragraph 5(2)(g) could be deleted. To avoid confusion, the term “monetary” could substitute “cash” in Paragraph 5(2)(h). Paragraph 5(2)(i) should be deleted. Disclosure of such details is unnecessary and redundant. Paragraph 5(2)(k) should indicate “where applicable” and is preferred over Article 6(i) of the proposed Convention. Governments ought to provide a model contract for public circulation, to be used at the discretion of the parties. Penalties or adverse legal presumptions for disregarding the model contract should not be imposed.

#### WORKERS

CGTRA (Argentina). Paragraph 5(1) should be more specific as regards the assistance to be provided.

CSN (Canada). Paragraph 5(1) should provide for a written contract. The list should include an obligation to indicate the number of meals provided per day, where applicable. It should also indicate that probation periods cannot extend beyond one month and must be remunerated. Paragraph 5(2)(k) should be combined with Paragraph 17. Paragraph 5(3) should read “Members shall take measures.”

CGT (Colombia). In Paragraph 5(2)(b), a reference to the tasks involved should be added.

SEWA (India). Paragraph 5(3) should specify “establishing a model contract with terms and conditions”.

CUT–A (Paraguay). Paragraph 5(2)(h) should be deleted.

CCOO (Spain). Clauses (a), (b), (c), (d), (e), (f), (h) and (i) of Paragraph 5(2) should be included in Article 6 of the proposed Convention.

NUDE (Trinidad and Tobago). See comments regarding Article 6 of the proposed Convention.

#### OFFICE COMMENTARY

For the sake of greater clarity, the Office has reformulated the chapeau of Paragraph 5(2). Paragraph 5(2)(a) was deleted, in view of the reformulation of Article 6(e) of the proposed Convention (see Office commentary above).

### Paragraph 6

#### GOVERNMENTS

*Australia.* Paragraph 8, which relates to night work, could be included here as a new subparagraph 2. In this way, the proposed Recommendation would include one paragraph that relates to hours of work and builds on the provision included under Article 10(1) of the proposed Convention. The current Paragraph 6(2) should be reformulated to deal more generally with the development of practical guidance in respect of working hours.

*China.* The wording of Paragraph 6(1) is unclear.

*France.* The term “practical guidance” in Paragraph 6(2) requires clarification.

*India.* Delete the provision, as it does not appear to be practicable in terms of implementation.

*Latvia.* In Paragraph 6(1), the expression “to the domestic worker” should be supplemented by “or his or her representative”.

*Oman, Qatar, Saudi Arabia, United Arab Emirates.* In line with the comments made under Article 10 of the proposed Convention, Paragraph 6(1) should be deleted.

*United States.* Paragraph 6(2), should begin as follows: “Members should develop ...”.

#### EMPLOYERS

*UIA (Argentina).* General standards on hours of work cannot be applied to domestic work because of the nature of the work.

*COPARDOM (Dominican Republic).* The provision is inappropriate considering the nature of domestic work.

*IOE.* Standard assumptions on the measurement of working time cannot be applied accurately in the domestic context and therefore should not apply to domestic work. If the instrument were to include such an approach, however, a provision such as Paragraph 6(2) would be essential to support householders with the burden of keeping a record of working time. The wording on the issue of consultation would need to be aligned (see comments under Article 2 of the proposed Convention).

#### WORKERS

*CSN (Canada).* Domestic workers should also be prompted to keep a personal record of their hours of work.

*CLTM (Mauritania), COTRAF (Rwanda).* Paragraph 6 should indicate that overtime should be compensated by wages and rest.

#### OFFICE COMMENTARY

In Article 6(1), the term “hours of work” refers to hours actually worked, thus including overtime. The Office has therefore replaced the word “and” after “hours of work” by “, including”.

### **Paragraph 7**

#### GOVERNMENTS

*Australia.* Paragraph 7 is supported as it provides practical guidance on the implementation of Article 10(3) of the proposed Convention.

*Costa Rica.* Standby or on-call periods should not be allowed.

*Cyprus.* Delete Paragraph 7(c).

*India.* Paragraph 7 should be deleted as it does not appear to be practicable in terms of implementation.

*Oman, Qatar, Saudi Arabia, United Arab Emirates.* In line with the comments under Article 10 of the proposed Convention, Paragraph 7 should be deleted.

*Poland.* Add a provision to ensure that domestic workers receive protection that is not less favourable than that from which workers generally benefit under national laws and regulations.

*Slovakia.* The terms “on-call” and “standby” may have various meanings in different jurisdictions.

*Tanzania, United Republic of.* The sentence should be rephrased to eliminate ambiguities about when domestic workers can stop working.

#### EMPLOYERS

*UIA (Argentina).* General standards on hours of work and rest periods cannot be applied to domestic work because of the nature of the work.

*COPARDOM (Dominican Republic).* The provision is inappropriate considering the nature of domestic work.

*NK (Japan).* Delete Paragraph 7. See comments under Article 10 of the proposed Convention.

*IOE.* Delete Paragraph 7. These concepts have no merit in the context of domestic work and may have unintended consequences. Otherwise, the chapeau must allow governments to address these issues

with measures consistent with national practice. Arbitration should be a legitimate course of action. Compensatory rest should be agreed to by the parties where rest periods are disturbed by work. Remuneration should be based on a weekly or monthly wage that is equal to or greater than minimum wage for such work.

#### WORKERS

CSN (Canada). See comments for Article 10 of the proposed Convention.

CGTP, SINTTRAHOL (Peru). The same working hours limits should apply to domestic workers who live in the household.

COTRAF (Rwanda). Such practices may amount to slavery.

#### OFFICE COMMENTARY

In Paragraph 7(b), the Office has replaced the word “disturbed” by “interrupted” to clarify that standby periods are distinct from rest periods.

### Paragraph 8

#### GOVERNMENTS

*Australia*. Paragraph 8 should be added to Paragraph 6.

*Dominican Republic*. Such periods would be hard to identify when domestic workers live in the household.

*United States*. The provision should invite Members to *take* specific measures.

#### EMPLOYERS

UIA (Argentina). General standards on hours of work cannot be applied to domestic work because of the nature of the work and the conditions under which it has to be performed.

COPARDOM (Dominican Republic). The provision is inappropriate considering the nature of domestic work.

NK (Japan). The provision should be deleted. Domestic workers must occasionally work late and wages should reflect this work.

IOE. The underlying rationale for this concept does not apply to domestic work. Paragraph 8 should be deleted. Domestic workers often live in the workplace, have tasks that are circumscribed to the daytime or have been contracted to work at night. Treating domestic night work as occasional or episodic work leads to confusion with standby in the evening and double counting.

#### WORKERS

ACTU (Australia). This provision should confirm that night work performed by domestic workers should be treated no less favourably than night work performed by other workers.

CUT (Brazil). The words “should consider specific measures” should be replaced by “should adopt measures”.

CSN (Canada). Night work must not be confused with standby periods. Paragraph 8 should be redrafted to ensure that Members take specific measures that must not be less favourable than those applicable to other workers generally.

## Paragraph 9

### GOVERNMENTS

*Australia.* The Recommendation could be restructured to include just one paragraph on periods of daily and weekly rest, combining Paragraphs 9, 10 and 11.

*Dominican Republic.* Rest periods should be determined by national law.

*Paraguay.* Such measures should not be less favourable than those taken for other workers.

*Slovakia.* Replace “working day” by “work”.

### EMPLOYERS

IOE. See comments under Article 10 of the proposed Convention.

## Paragraph 10

### GOVERNMENTS

*Australia.* While recognizing that setting a fixed day for weekly rest may be difficult (particularly for those domestic workers on a seven-day roster system), it is considered that this is the easiest way to guarantee that domestic workers enjoy their entitlement to 24 consecutive hours of weekly rest in every seven-day period. The “family requirements” of the domestic workers should be added as a consideration to be taken into account in determining the fixed day of weekly rest. This directly relates to Paragraph 22(b). Paragraph 10 should be added to Paragraphs 9 and 11 to form one consolidated provision relating to daily and weekly rest.

### EMPLOYERS

UIA (Argentina). This provision should also allow for the worker and the employer to agree on a change of such a fixed day.

NK (Japan). The day of weekly rest should not be fixed. It should be flexible and agreed to by the parties.

CCP (Portugal). Add “whenever possible” at the end.

IOE. Paragraph 10 should read follows: “The day of weekly rest should be fixed per seven-day period by agreement between the domestic worker and employer of the domestic worker, provided that the day may be varied as set out in Paragraph 11.”

### WORKERS

CSN (Canada). See comments for Article 10(2) of the proposed Convention. A fixed day of rest every week facilitates work–life balance.

CUT (Brazil). This paragraph should be moved to become a new subparagraph under Article 10 of the proposed Convention.

CLTM (Mauritania). National legislation should impose a fixed day of rest for domestic workers.

## Paragraph 11

### GOVERNMENTS

*Australia.* Paragraph 11 should be added to Paragraphs 9 and 10 to form one consolidated provision relating to daily and weekly rest.

*France.* In view of French laws and regulations, there are no cases to which Paragraph 11 would apply.

*Switzerland.* See comment under Article 4 of the proposed Convention.

## EMPLOYERS

UIA (Argentina). The provision should also indicate that measures consistent with national practice may be used to define grounds on which a worker may be required to work during a period of rest.

NK (Japan). This paragraph should be deleted. In Japan, where financial compensation is considered as extra pay, granting compensatory rest is unnecessary.

IOE. The phrase “or other measures consistent with national practice” should be inserted after “collective agreements”. A subparagraph should be added that allows employers and domestic workers to agree to vary rest periods and to accommodate the cultural, religious and social requirements of the domestic worker (moved from Paragraph 10; see comment above).

## WORKERS

CUT (Brazil). This paragraph should be moved to become a new subparagraph under Article 10 of the proposed Convention.

CUT–A (Paraguay). The term “require” should not be used, as this should be determined by the employment contract and not by the free will of the employer.

**Paragraph 12**

## GOVERNMENTS

*Australia*. Domestic workers should be entitled to the same annual leave provisions as provided to workers generally.

*Dominican Republic*. Employers and workers should be able agree that such time should be considered as holiday provided that the domestic worker is not performing any tasks for the employer.

*India*. Paragraph 12 should be deleted, as these provisions do not appear to be practicable in terms of implementation.

*Slovakia*. Add “or weekly rest” at the end.

*Tanzania, United Republic of*. Domestic workers willing to do so should be able to accompany the household during their annual leave periods.

## WORKERS

CUT (Brazil). This provision should be moved to become a new subparagraph under Article 10 of the proposed Convention.

CSN (Canada). Paragraph 12 must ensure that holiday time is calculated as working time and that travel costs are borne by the employer. Another clause should provide that live-in domestic workers may decline this work and their residential situation will remain unchanged.

## OFFICE COMMENTARY

The Office added the word “members” after “household”.

**Paragraph 13**

## GOVERNMENTS

*Dominican Republic*. The proportion of the remuneration that may be paid in kind should be left for the parties to determine. Considering that the employer is obliged to provide tools, Paragraph 13(d) is not necessary.

*El Salvador*. Paragraph 13(c) needs to be revised. See comments under Article 12 of the proposed Convention.

*India*. Paragraph 13 should be deleted, as it is not practicable in terms of implementation.

*Paraguay*. Delete Paragraph 13.

*United States.* In the chapeau, the word “consider” should be deleted and the verb in each subparagraph should be amended accordingly.

#### EMPLOYERS

NK (Japan). Delete Paragraph 13. See comments on Article 12 of the proposed Convention.

IOE. Article 12(2) could be improved and this would eliminate the need for Paragraph 13 (see comments above). The question of how to address the matter covered by Paragraph 13(d) could be discussed further.

#### WORKERS

CUT (Brazil). The term “consider” should be deleted after the term “should” and the term “and transportation” should be added at the end of Paragraph 13(c).

CSN (Canada). See comments under Article 12 of the proposed Convention.

CUT–A (Paraguay), CGTP, SINTTRAHOL (Peru). Paragraph 13 should be deleted.

COTRAF (Rwanda). Remuneration in the form of allowances in kind should be prohibited.

CCOO (Spain). These provisions should be included in the Convention.

### Paragraph 14

#### GOVERNMENTS

*Australia.* This requirement is critical to formalize the employment relationship and assist in safeguarding the rights of domestic workers. Written documents could be used as evidence by the inspection and enforcement regime.

*Slovakia.* The provision could provide that domestic workers should receive all outstanding payments by the end of the month following the termination of their employment. Migrant domestic workers returning to their home countries should receive any outstanding payments the day their employment is terminated.

*Tanzania, United Republic of.* Paragraph 14(2) could be moved to Paragraph 17.

*United States.* The payslip should be provided “in a language they can understand”.

#### EMPLOYERS

NK (Japan). In Paragraph 14(2), the phrase “at the initiative of the employer” should be added after “termination of employment.”

IOE. Paragraph 14(1) should be reworded to refer to a written account “of the payments being made to them, and the specific amount and purpose of any deductions”. Paragraph 14(2) should specifically refer to termination of employment “at the initiative of the employer”.

#### WORKERS

CSN (Canada). The written account should indicate the number of hours worked.

### Paragraph 15

#### GOVERNMENTS

*Australia.* Measures to ensure that domestic workers enjoy working conditions not less favourable than those enjoyed by workers generally are supported.

*France.* The words “taking into account the specificity of domestic work and the employment relationship” should be added. In France, there is an obligatory insurance scheme that covers wages upon insolvency. However, private employers are not required to register.

*Greece.* Paragraph 15 is difficult to apply because of the peculiarity of a natural person's insolvency. This issue is best dealt with at the national level. If retained, the provision should read as follows: "Each Member shall consider taking effective measures to ensure compliance ...".

*Netherlands.* The reference to "not less favourable than ... workers generally" should be deleted.

*Spain.* This paragraph should be deleted. Differential treatment by households should be possible.

#### WORKERS

CFDT (France). This provision should be incorporated into the Convention.

### Paragraph 16

#### GOVERNMENTS

*Australia.* In acknowledgement of the fact that live-in domestic workers are at greater risk of harassment and abuse and are isolated from the community, an additional subparagraph should recommend that Members take measures to ensure that domestic workers who reside with their employers are not prevented from maintaining communication with their family and friends. In addition, Paragraph 16 could be moved to after Paragraph 17. This way, consistent with the structure recommended by Australia for the Convention, all provisions relating to terms of employment and working conditions will be dealt with together, followed by provisions relating to living conditions and other matters.

*China.* The chapeau should provide that accommodation and food should take into account national conditions, culture and traditions.

*Dominican Republic.* Providing a separate private room for domestic workers is not possible in the country. Accommodation should be adequate in view of the country's weather conditions.

*Slovakia.* Article 16(d) should recommend that at least one hot meal is provided per day.

*Tanzania, United Republic of.* Paragraph 16 should be placed after Paragraph 12 to facilitate the continuous flow of information.

#### EMPLOYERS

UIA (Argentina). Generally supports the paragraph, but would like to add in Paragraph 16(d), after "cultural and religious requirements", the words "as far as possible".

COPARDOM (Dominican Republic). It is not realistic to request in Paragraph 16(c) that air conditioning be provided.

NK (Japan). Delete "furnished". In Japan, it is rare to find a room that is furnished.

IOE. The concept of reasonableness should be used to assess the cultural and religious food requirements of a domestic worker.

#### WORKERS

CSN (Canada). Employers should be obliged to provide domestic workers with access to the household by providing keys and, where applicable, alarm codes. Live-in domestic workers should also have access to a means of communication.

COTRAF (Rwanda). Paragraph 16 should set the minimum dimensions for a private room and state that meals must be provided at least three times a day.

#### UNITED NATIONS

CRC. Paragraph 16(a) should provide for a study desk and lamp for domestic workers under the age of 18.

#### OFFICE COMMENTARY

The chapeau of Paragraph 16 was adapted to improve the readability of the provision.

## Paragraph 17

### GOVERNMENTS

*Australia.* While recognizing that, in many countries, it would be difficult to legislate on this matter, the non-binding nature of the Recommendation makes the inclusion of this kind of “best practice” provision desirable.

*China.* It should be clear that reference is being made to reasons other than serious misconduct *on the part of the worker*.

*Dominican Republic.* The situation envisaged by the provision could jeopardize the safety of the household.

*Peru.* Does not support the reference to “time off during that period to enable them to seek new employment and accommodation”, as it does not reflect the socio-economic reality.

*Philippines.* The provision should specify that the period of time should not be more than one month.

*Switzerland.* At the end of the provision, the following words should be added: “when the legislation permits them to prolong their stay in the territory of the host country”.

### EMPLOYERS

CNA (Brazil). Reasonable conditions and a reasonable period of notice should also be envisaged for the employer, to enable him or her to find another worker.

NK (Japan). The words “for reasons other than serious misconduct” should be deleted and the wording “at the initiative of the employer” and “treatment consistent with that accorded to workers generally” should be added.

IOE. Domestic workers ought to receive a reasonable period of notice and time off to seek new employment and accommodation when their employment is terminated for reasons other than serious misconduct. Employers should be able to bring the employment and residential arrangement to an end by payment in lieu of notice. If termination is by mutual agreement prior to the expiration of the notice period, no compensation is required.

### WORKERS

CFDT (France). Irrespective of the reason for termination, live-in domestic workers should receive reasonable notice prior to being obliged to leave the residence.

CLTM (Mauritania). The notice period should be two months.

COTRAF (Rwanda). The term “reasonable” is vague. Minimum notice could be set at two months.

### OFFICE COMMENTARY

In line with the provision’s intent, the Office has added the expression “at the initiative of the employer” after “termination of employment”.

## Paragraph 18

### GOVERNMENTS

*Australia.* Paragraph 18 should follow Paragraph 14 concerning payslips.

*Greece.* In the chapeau, the words “according to national law and practice” should be inserted after the word “should”. Paragraph 18(a) should read: “promote the assessment and prevention of possible occupational hazards specific to domestic work”. Paragraph 18(b) should be deleted. Paragraph 18(c) should read: “provide information and advice on occupational safety and health, especially on prevention of occupational hazards, ergonomic aspects and protective equipment”. Training programmes and guidelines should be provided to the domestic worker prior to employment and free of charge.

*Latvia.* It is not clear who would be responsible for developing training programmes on occupational safety and health. Generally such a provision may be problematic as countries do not share the same experiences in this area.

*Spain.* Delete Paragraph 18. Alternatively, Paragraph 18(c) could be supported, and Paragraph 18(d) amended as follows: “develop training programmes on occupational safety and health issues related to domestic work”.

*Switzerland.* See comment under Article 4 of the proposed Convention.

*Trinidad and Tobago.* Paragraph 18(d) should begin with: “develop training and development programmes ...”. A provision should be added on establishing systems to ensure compensation to domestic workers for injuries sustained in the course of employment.

#### EMPLOYERS

CNA (Brazil). Paragraph 18(c) should be modified to read: “provide information on occupational safety and health, including through appropriate guidance on ergonomic aspects and protective equipment”.

NK (Japan). In Paragraph 18(a), the word “prevent” should be replaced by “minimize”. Paragraph 18(b) should be deleted and the issue addressed in Paragraph 22(2).

IOE. Article 13(1)(a) of the proposed Convention captures most issues. The chapeau of Paragraph 18 should refer to the taking of measures in consultation with the appropriate representative organizations (using the same wording as suggested under Article 2 of the proposed Convention). Paragraph 18(a) seems redundant, but “prevent” could be replaced by “minimize, so far as is reasonably practicable.” Statistics should be collected and published annually. The words “ergonomic aspects and protective equipment” should be replaced by a wider notion of promoting household safety to the general community. The word “guidelines” should be replaced by “guidance materials.”

### Paragraph 19

#### GOVERNMENTS

*Spain.* The provision should begin as follows: “Members should consider means to facilitate the payment of social security contributions by those obligated to make them ...”.

*Switzerland.* See comment under Article 13 of the proposed Convention.

#### WORKERS

CSN (Canada). The provision should begin as follows: “Members shall take measures to ...”. A simplified system of payment is best for both parties and would help prevent tax evasion.

### Paragraph 20

#### GOVERNMENTS

*Australia.* It is pivotal that the Recommendation include additional measures on safeguarding the rights of migrant workers. Paragraph 20(1)(a) could be strengthened by extending the system of inspections to households where migrant domestic workers are commonly employed, rather than limiting them to households where migrant domestic workers will be employed in the future. Therefore, Paragraph 20(1)(a) could read: “providing for a system of visits to households in which migrant domestic workers will be, or are commonly, employed”. Paragraph 20(1) could be restructured to group related matters together. The Government strongly supports the guidance in Paragraph 20(2), which appropriately complements Article 7(2) of the proposed Convention. Paragraph 21 could form a new subparagraph (3) in Paragraph 20.

*Russian Federation.* In Paragraph 20(1)(a), the word “visits” could be replaced by “inspections”. A new provision should address the need to carry out non-judicial inspections to ensure the observance of domestic workers’ labour rights.

*Switzerland.* Paragraph 20(1)(a) should be deleted. Labour and wage controls are not carried out in private households as matter of respect for privacy. Claims by domestic workers are pursued through civil proceedings.

*Tanzania, United Republic of.* In Paragraph 20(2), the words “establishing legal assistance funds” should be replaced by “providing legal assistance”. The consular offices of the countries of origin of migrant domestic workers should be furnished with the particulars of the respective employers.

*Tunisia.* A system of visits to households should be envisaged for all domestic workers.

*United States.* Paragraph 20(1) should begin “Members should take additional measures ...”. In the chapeau, the word “migrant” should be deleted, as the measures mentioned are needed for all domestic workers. An improved text for Paragraph 20(1)(c) could refer to a national hotline “to provide assistance to domestic workers in a language they can understand”.

#### EMPLOYERS

NK (Japan). Paragraphs 20(a), (e) and (f) should be deleted. These would be difficult to implement.

UPS (Switzerland). Paragraph 20(1)(a) will be very difficult to implement. The services mentioned in Paragraph 20(1)(f) should not have to be public.

IOE. Additional measures may be warranted for migrant domestic workers. The purpose of Paragraph 20(1)(a) is unclear. Other means of inspection exist. Paragraphs 20(1)(b) and (c) could be combined. Domestic workers should have access to existing support services. The use of such services should release the employer of all sponsoring duties. Paragraph 20(1)(d) could be worded more precisely. The wording of Point 43(1)(e) of the 2010 Conclusions<sup>34</sup> is preferred over that used in Paragraph 20(1)(e) of Report IV(1). Migrant domestic workers should receive information on the host country’s migration law. Combining Paragraphs 20(2) and 23 could facilitate the development of these services through bilateral cooperation.

#### WORKERS

CUT (Brazil). In Paragraph 20(1), the word “consider” should be replaced by “adopt”.

CSN (Canada). An additional provision should ensure that migrant domestic workers can change employers without consequence to their immigration status. Paragraph 20(1)(a) should extend to all domestic workers. Paragraphs 20(1)(e) and (f) should fall under a general paragraph on access to justice.

CTM (Mexico). In Paragraph 20(1)(f), reference should be made to civil, criminal and labour remedies.

TUCTA (Tanzania, United Republic of). Paragraph 20(2) should end with “including furnishing their consular offices with particulars such as the names and addresses of the respective employers”.

#### OFFICE COMMENTARY

In Paragraph 20(1)(a), the words “will be” were changed to “are to be”

In Paragraph 20(2), “through” was added at the end, before “any other appropriate measures”.

### Paragraph 21

#### GOVERNMENTS

*Australia.* Paragraph 21 could be combined with Paragraph 20 to form one consolidated provision concerning migrant domestic workers.

*Latvia.* The provision should explicitly state that the costs of repatriation are to be covered by the employer rather than by public funds.

*Netherlands.* The reference to “at no cost to themselves” should be deleted.

*Philippines.* This provision should be expanded to provide that repatriation shall be at no cost to the worker except in cases of serious misconduct and that the cost of repatriation should be shouldered by the

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<sup>34</sup> ILO: *Report of the Committee on Domestic Workers, Provisional Record No. 12*, International Labour Conference, 99th Session, Geneva, 2010.

employers, the recruitment agency or intermediary or, in the failure of the aforementioned possibilities, by the host and sending countries.

*Poland.* These provisions should be limited to cases of migration facilitated by employment agencies. Repatriation costs should not be imposed on the employer. Liability for repatriation costs should be borne by employment agencies, where appropriate.

*United States.* Points 27(4) and 42 of the 2010 Conclusions<sup>35</sup> have been merged; however, they contain important differences. Point 27(4) obligates each Member to specify *when* repatriation occurs at no cost, while Point 42 recommends that each Member give consideration to migrant workers receiving such repatriation at no cost. Point 42 should be retained as Paragraph 21, as follows: “In relation to Article 6(h) of the Convention, consideration should be given to migrant workers receiving repatriation ...” (see also comment under Article 7 of the proposed Convention).

#### EMPLOYERS

NK (Japan). This paragraph should be deleted. The issue of repatriation costs should be addressed in the employment contracts of migrant domestic workers.

CCP (Portugal). The words “in respect of the right to privacy of the worker and the householder” should be added at the end.

IOE. Employers and domestic workers should be able to agree on arrangements which include or do not include repatriation. Where the migrant domestic worker is already present in the country of employment, the employer should not bear repatriation costs. Costs should be incurred by the domestic worker in cases where they have committed fraud, gross misconduct, misrepresentation or misdemeanour or are the object of a deportation order. A requirement for consultation with the appropriate representative organizations should be included (see proposed wording under Article 2 of the proposed Convention).

#### WORKERS

CGTRA (Argentina). Replace the word “or” before “other measures” by “and”. A new provision should recommend the establishment of a mechanism facilitating the return travel of unemployed migrant domestic workers, involving the national labour administration and the embassies concerned.

CUT (Brazil). The words “consider specifying” should be replaced by “specify”.

CSN (Canada). Loss of work should not automatically mean loss of immigration status.

JTUC–RENGO (Japan). The beginning of Paragraph 21 should read: “Members should specify by means of laws ...”. Migrant domestic workers should be entitled, without exception, to repatriation at no cost to themselves.

### Paragraph 22

#### GOVERNMENTS

*Australia.* While this may be difficult to implement in practice for all domestic workers, Paragraph 22(1) presents a best practice approach to improving the working lives of domestic workers. In relation to Paragraph 22(2), the word “and” between “offices” and “to” should be deleted.

*Dominican Republic.* In relation to Paragraph 22(1)(a), employers should provide domestic workers with access to continuous training on the tasks that they perform as well as with access to the national education systems available in the country. Paragraph 22(1)(c) is acceptable, provided that the measures are compatible with the work.

*Japan.* Paragraph 22(2) should begin with the words: “Members, in the light of national conditions, should develop ...” Governments should determine the coverage of appropriate indicators and measurement systems with respect to data collection on domestic workers.

*Poland.* Paragraph 22(1)(b) should be deleted. It seems to overlap with Paragraph 22(1)(c).

*Tanzania, United Republic of.* Paragraph 22(1) should have the same formulation as Article 2(1) of the proposed Convention, regarding representative organizations.

<sup>35</sup> ILO: *Report of the Committee on Domestic Workers*, op. cit.

*Trinidad and Tobago.* Paragraph 22(1)(c) should refer to the “rights and responsibilities of domestic workers and their respective employers”.

#### EMPLOYERS

IOE. The standard wording “the most representative organizations of employers and workers” should be used in Paragraphs 22(1) and (2). In Paragraph 22(1)(a), it should be clear that governments are responsible for career and employment opportunities. Paragraphs 22(1)(b) and (c) could be combined. Paragraph 22(2) should aim at what is essential, rather than at “comprehensive data collection”. Key priorities are to close information gaps and to track how well measures perform. Evidence-based policy making is best, but undue burdens cannot be imposed on households.

A new Paragraph 22(2)(b) could provide that the International Labour Office shall report to the International Conference of Labour Statisticians at its first meeting after the completion of the 2011 session of the International Labour Conference, on options for the collection of data on domestic work, with a view to issuing international guidance and assistance to Members, and towards encouraging internationally consistent approaches to the implementation of Paragraph 22(2) of the Recommendation. Particular consideration should be given to the needs of Members with less developed systems of statistical collection.

#### WORKERS

FADWU, HKCTU (China). Paragraph 22 should also address the question of reintegrating migrant domestic workers who return from abroad. Governments should ensure that former migrant domestic workers can attain self-sufficiency. Policies and programmes should ensure comprehensive social security coverage, job opportunities, cultural reintegration, consultation services and retirement benefits.

JTUC–RENGO (Japan). A reference to national conditions could be taken as allowing for government inaction.

CLTM (Mauritania). Paragraph 22 should be moved to the Convention.

#### OFFICE COMMENTARY

In Paragraph 22(1)(a), the words “so as” were changed to “in order”.

### **Paragraph 23**

#### GOVERNMENTS

*Dominican Republic.* Paragraph 23(2) is acceptable provided that the measures are feasible.

*Netherlands.* The reference to “the monitoring of employment agencies” in Paragraph 23(1) should be deleted, as it implies bias against such agencies.

*Trinidad and Tobago.* Members should cooperate for the purpose of monitoring, evaluating and enhancing the protection of domestic workers. Paragraph 23(2) should end with the phrase “and training and development”.

#### EMPLOYERS

IOE. The reference in Paragraph 23(1) to the monitoring of private employment agencies is pejorative and presents an unbalanced approach. Paragraph 20(2) could be integrated into Paragraph 23(2).

#### OFFICE COMMENTARY

In Paragraph 23(1), the Office has moved the reference to “the prevention of forced labour and human trafficking” to follow immediately after “especially in matters concerning”.