



GLOBAL ACTION PROGRAMME ON MIGRANT DOMESTIC WORKERS AND THEIR FAMILIES



International
Labour
Organization

Protecting Migrant Domestic Workers: The international legal framework at a glance

Based on a report elaborated by Elisa Menegatti

Summary

Worldwide, an estimated 67 million people over the age of 15 are domestic workers. Of those, 83 per cent are women. Among the world's domestic workers, many millions have migrated from their homes to another country for work.

Due to the fact that domestic work is carried out in the employer's house and to the nature of the tasks performed, it is often associated with women's unpaid work. Most domestic work remains informal, performed outside of labour and social protection regulations. Non-compliance is decreasing but still high.

Domestic work remains one of the least protected sectors under national labour laws and it suffers from particularly poor monitoring and implementation of existing laws.¹ **Migrant domestic workers (MDWs)** are even less protected by the law. Migrant domestic workers are vulnerable to human rights abuses, due to inequalities determined by gender, race, ethnicity, national origin and social status.

Non-payment or retention of wages, long working hours, contract substitutions, passport retentions, violations of human dignity and fundamental freedoms, degrading treatment and violence, forced labour and trafficking for labour exploitation in the worst cases, are common violations suffered by these workers. The situation is critical particularly for MDWs with irregular or undocumented migration status or those who live and work in the household of the employer.

MDWs (especially if they are "live-in workers")

can face specific language and cultural barriers to access information on the legislation and socio-cultural characteristics of the country of destination. They tend to be isolated from other employees and service providers, they often have limited access to communication devices, like mobile phones or Internet to communicate with their families, and are restricted in their freedom of movement.²

Migrant domestic workers are at the crossroads of two sovereign countries, which often have different or even divergent interests and regulatory frameworks with regard to domestic workers and migrant workers.³

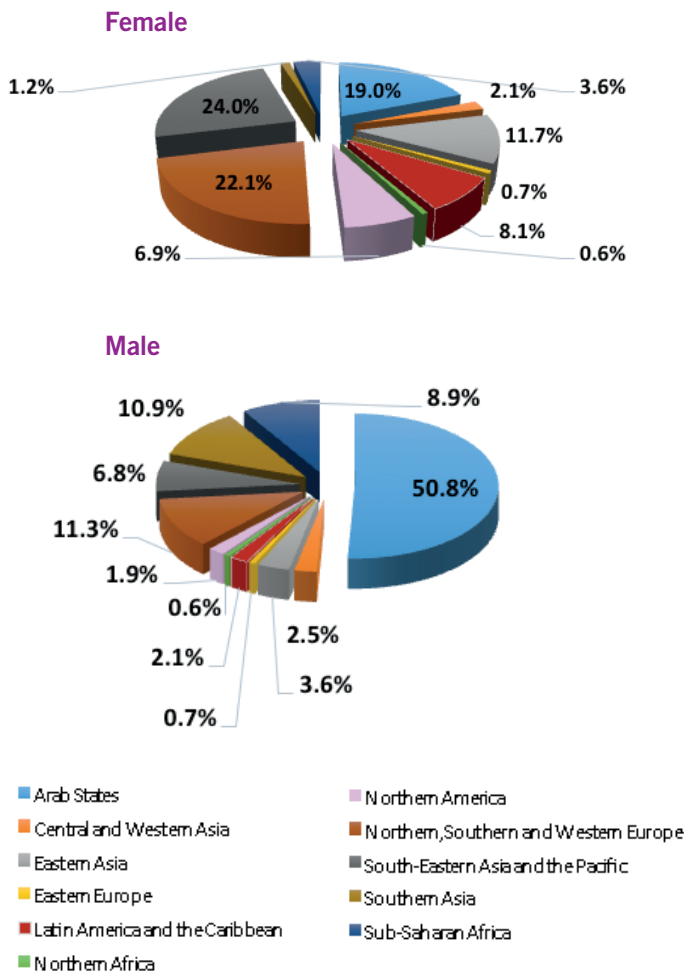
Private recruitment agencies' role in the migration process has significantly grown in the past decade. Lack of appropriate regulation and supervision has led to increasing reports of exploitation and abuses of migrant domestic workers. Abusive practices include: deception regarding conditions of work, charging unauthorized fees to workers, and retention of identity documents, perpetrated by unscrupulous recruitment agencies and informal intermediaries operating outside of legal and regulatory frameworks.

Facts and Figures

ILO estimates put the number of migrant domestic workers globally at 11.5 million, representing 17.2% of all domestic workers and 7.7% of all migrant workers worldwide. In other words, almost every fifth domestic worker in the world was an international migrant in 2013. About 74% of all migrant domestic workers are women, compared to 80% of national domestic workers.

The share of migrants among domestic workers has significant regional variations. Nearly 80% of migrant domestic workers tend to be concentrated in high-income countries. Those countries accounted for 9.1 million out of the estimated 11.5 million migrant domestic workers globally (See Fig.1).⁴

Figure 1. Distribution of migrant domestic workers, by sex and broad sub region, 2013 (percentages)



What is domestic work?

ILO Convention No. 189 defines domestic work as “work performed in or for a household or households” (Art. 1(a)). This work may include tasks such as cleaning the house, cooking, washing, grocery shopping and ironing clothes, taking care of children, the elderly and/or the sick, gardening, guarding the house, driving, even pet sitting. Domestic work remains a highly gender-specific niche of the labour market.

Who is a domestic worker?

Under ILO Convention No. 189, a domestic worker is “any person engaged in domestic work within an employment relationship” (Art. 1(b)). A domestic worker may work on a full-time or part-time basis; may be employed by a single household or by multiple employers; may be residing in the household of the employer (live-in worker) or may be living in his or her own residence (live-out). A domestic worker may be working in a country of which she/he is not a national.

Who is a migrant worker?

Migrant workers are people who leave home to find work outside of their hometown or home country. Persons who move for work in their own country are “internal” migrant workers. Persons who move for work to another country are commonly called “foreign” or “international” migrant workers.

Labour migration is considered as “regular” and migrant workers are considered as being “in a regular situation” if they are authorized to enter, stay and work pursuant to the law of the destination country and international agreements to which it is a party. When they do not comply with those conditions, they are considered as “undocumented” or “in an irregular situation”. Migrant workers in irregular situations are very likely to find themselves vulnerable to abuse and exploitation of all types.

Migrant workers in irregular status are entitled to their human rights, including labour rights. From its very inception, the ILO resolved to protect “the interests of workers employed in countries other than their own” regardless of their immigration status.⁵ In principle, unless otherwise stated, all international labour standards cover all workers irrespective of their nationality or immigration status.

Peculiarities of this sector

The private character of the workplace is a peculiarity of this sector. It implies a coincidence between the public sphere normally related to employment relationships and the private nature of family and household dynamics.⁶ The other distinctive element is the juridical status of the employer, who is normally a private employer who would otherwise

receive pecuniary gains from the employee's work. Both factors are keys to determining the peculiarity of the employment relation and the widespread low level of protection guaranteed to the workers of this sector. Another important peculiarity is that domestic work is perceived as "women's work" and as such is not seen as requiring specific skills.

How ILO Actions are Relevant to MDWs

Conventions, Protocols and Recommendations

International labour standards lay out basic principles, articulate rights and duties of employers and workers, establish policy objectives or provide guidance on means and procedures to be employed. International labour standards are designed to promote decent work for workers of all nationalities.

International labour standards can be: Conventions, which are legally binding international treaties that may be ratified by member states, Protocols, that are supplementary instruments often used to amend or implement previous frameworks, and Recommendations, which serve as non-binding guidelines. Conventions, Protocols and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a Convention and/or Protocol is adopted, Member states are required under the ILO Constitution to submit them to their competent authority (normally the Parliament) for consideration for ratification. If it is ratified, it generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the Convention in national law and practice and reporting to the ILO on its application at regular intervals. The supervisory mechanism of the ILO is in charge of monitoring the application of Conventions and Recommendations. The ILO provides technical assistance if necessary.

The role of workers' and employers' organizations

Once ratified, the Convention becomes legally binding for the country under international law, and the government has the obligation to implement it in law and practice. At this stage, workers' organizations and employers' organizations as well as other concerned stakeholders may play an important role to ensure that the Convention is respected. These organizations can use the Convention to:

- Defend the rights of workers who have suffered abuse or exploitation in national courts;
- Pressure authorities in order to adopt national legislation in conformity with international labour standards;
- Provide guidance and counseling to workers on the application of the Convention;⁷

Workers' and employers' organizations may also provide to the ILO their own comments on the application of the Convention by a ratifying country and start procedures on the violation of the Convention by ratifying countries (Arts. 23 and 24 of the ILO Constitution).

Key International Legal Provisions Relevant to MDWs

Universal Declaration of Human Rights, 1948

This non-binding instrument establishes the overriding principles of equality and non-discrimination applicable to everyone, everywhere and always (Art. 2).

International Covenant on Civil and Political Rights, 1966

Art. 8: prohibits slavery and slave trade in all their forms as well as forced labour.

Art. 13: establishes a due process for expulsion of an alien lawfully in the territory of a country.

Art. 22: establishes the right to freedom of association.

International Covenant on Economic, Social and Cultural Rights, 1966

Art. 7-10: recognizes the right of everyone to the enjoyment of equal and satisfactory working conditions, the right to form trade unions and join them, and the right to enjoy social security, including social insurance and maternity leave.

UN Convention on the Elimination of All Forms of Discrimination against Women, 1979

Art. 11: establishes the obligation of all the State Parties to work for the elimination of discrimination against women in the field of employment.

General Recommendation No. 17: recommends taking into account the unremunerated domestic activities of women as a contribution to the gross national product.⁸

General recommendation No. 26: considers that countries of destination should ensure that migrant women workers enjoy the same rights as national women workers.⁹

UN Convention on the Elimination of All Forms of Racial Discrimination, 1990

General Recommendation No. 30: recommends removing any obstacle preventing “the enjoyment of economic, social and cultural rights by non-citizens”, notably in the area of employment among others, and any discrimination “in relation to working conditions and work requirements”.¹⁰

UN Convention on the Rights of the Child, 1989

Art. 32: recognizes the right of the child to be protected from economic exploitation and from performing any work.

UN Convention for the Protection of the Rights of all Migrant Workers and members of their families, 1990

Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, General Comment No.1 on migrant domestic workers notes that MDWs are at increased risk of certain forms of exploitation and abuse, largely due to isolation and dependence characteristic of domestic work, and that female MDWs face additional risks due to their gender, including gender-based violence. The Committee calls on member States to address the rights of migrant domestic workers within the larger framework of decent work for domestic workers.¹¹

UN Convention against Transnational Organized Crime, 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air are important instruments in the fight against the trafficking and smuggling of persons.

Key ILO instruments

The Declaration on Fundamental Principles and Rights at Work, 1998 commits Member States to respect and promote universal principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The Migration for Employment Convention (revised), 1949 (No. 97) protects regular migrant workers from discrimination and exploitation, ensuring equality of treatment between regular migrant workers and national workers with respect to hours of work, rest period and holidays.

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) entitles migrant workers in irregular status to equality of treatment in working conditions and in respect of rights arising out of their past employment.

It provides both equality of treatment and equality of opportunities for migrant workers in regular status and members of their families. This equality also applies to social security, trade union and cultural rights.

The Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the **Maintenance of Social Security Rights Convention, 1982 (No. 157)** aims at equal treatment of migrant workers as compared to national workers with regard to all nine branches of social security.

The Private Employment Agencies Convention, 1997 (No.181) encourages States to enter into bilateral agreements to prevent abuses and fraudulent practices. It prohibits the denial of workers’ rights to freedom of association and collective bargaining; the practice of discrimination against workers; and the charging of fees to workers.

The Domestic Workers Convention, 2011 (No.189)

Convention No. 189 does not distinguish between nationals and non-nationals employed as domestic workers and it constitutes an important step towards gender equality. Relevant Articles concern:

Migrant domestic workers

Art. 8 (1): requires members to establish that migrant domestic workers receive a written contract enforceable in the country of employment, or a written job offer, prior to traveling to the country of employment (does not apply to migrant domestic workers who are already within the territory of the country of employment).

Art. 8 (4): requires States to specify the conditions under which domestic workers are entitled to repatriation at the end of their employment.

Remuneration

Art. 11: each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

Modalities of Payment

Article 12: Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.

Live-in workers

Art. 6: requires States to take measures to ensure decent living conditions that respect the workers' privacy.

Art. 9: establishes: a) freedom to reach agreement with employers or on whether or not to reside in the household; b) free decision on whether to remain in the household or with its members during periods of daily and weekly rest or leave; c) freedom to keep their identity and travel documents in their possession.

Decent working conditions and no discrimination

Art. 6: ensures that domestic workers enjoy fair terms of employment.

Eight fundamental ILO Conventions

- No. 87: Freedom of Association and Protection of the Right to Organise Convention, 1948
- No. 98: Right to Organise and Collective Bargaining Convention, 1949
- No. 29: Forced Labour Convention, 1930 (and its Protocol, 2014)
- No. 105: Abolition of Forced Labour Convention, 1957
- No. 138: Minimum Age Convention, 1973
- No. 182: Worst Forms of Child Labour Convention, 1999
- No. 100: Equal Remuneration Convention, 1951
- No. 111: Discrimination (Employment and Occupation) Convention, 1958

Art. 10(1): ensures equal treatment between domestic workers and workers generally, in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave. The weekly rest period is at minimum 24 consecutive hours.

Art. 11: ensures that remuneration is established without discrimination based on sex (minimum wage protection).

Art. 12 (1): regulates modalities of payment:

- i. directly to the domestic worker, as opposed to a third party;
- ii. in cash;
- iii. at regular intervals but at least once a month.

Health and social security protection

Art. 13: establishes the right to a safe and healthy working environment ("in accordance with national laws, regulations and practice").

Art. 14: requires Members to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect to social security protection, including as regards maternity benefits. These measures are to be taken "in accordance with national laws and regulations" and "with due regard to the specific

Protection from abuse, harassment and violence

Art. 5: requires Members to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

Information

Art. 7: requires that domestic workers are informed of their terms and conditions of employment (such as: usual workplace, the remuneration, the normal hours of work, periods of daily and weekly rest etc.).

Freedom of association

Art. 3(3): protects the right of freedom of association and the effective recognition of the right to collective bargaining.

Private employment agencies

Art. 15: ensures adequate machinery for the investigation of complaints by domestic workers; adopts measures to adequately protect domestic workers and prevent abuses, including laws or regulations specifying the respective responsibilities of the agency and the household and providing for penalties; considers concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices; ensures that fees charged by agencies are not deducted from the remuneration of domestic workers.

Compliance and enforcement

Art. 16: guarantees that domestic workers have effective access to the court, tribunals or other dispute settlement mechanisms.

Art. 17(2): calls on Members to develop and implement measures for labour inspection, enforcement and penalties, in accordance with national laws and regulations.

Other ILO Instruments

The ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) recognizes that migrant workers often encounter high levels of stigma and discrimination that, especially when coupled with risk factors in the migration process itself, may make migrants particularly vulnerable to HIV. For this reason, Recommendation No. 200 provides explicitly that there should be no stigma or discrimination against workers due to the fact that “they belong to regions of the world or segments of the population deemed to be at greater risk or more vulnerable to HIV infection” (para. 3c).

Recommendation No. 200 also provides that HIV testing or other forms of screening for HIV should not be required of migrant workers (paragraph 25), and that workers should not be required by countries of origin, transit or destination to disclose HIV-related information about themselves or others (paragraph 27). The Recommendation stipulates that “migrant workers, or those seeking to migrate for employment, should not be excluded from migration by the countries of origin, of transit or of destination

on the basis of their real or perceived HIV status” (paragraph 28), while its paragraph 47 calls for the countries of origin, transit and destination to take measures to ensure access to HIV prevention, treatment, care and support services for migrant workers.

The Domestic Workers Recommendation, 2011 (No.201)

This recommendation contains valuable guidance on a range of measures that may be taken to protect migrant domestic workers – such as hotlines, interpretation services, emergency housing, consular assistance, provision of information in their languages, and measures to ensure migrant workers’ ability to pursue criminal and civil remedies and to use legal and social services (Para. 21).

The Multilateral Framework on Labour Migration, 2006

This non-binding tool guides in the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices for improving the governance, promotion and protection of migrant rights.

It includes the following principles:

Principle 9.8 – “adopting measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers including domestic workers and other vulnerable groups...”.

Principle 11.2 – “intensifying measures aimed at detecting and identifying abusive practices against migrant workers... particularly in those sectors... such as domestic work”.

The regular monitoring of ILO Conventions

Once a country has ratified an ILO convention, it is obliged to report regularly to the ILO on measures it has taken to implement it. Every two years governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four priority conventions they may have ratified; governments are required to submit copies of their reports to employers’ and workers’ organizations. These organizations may comment on the governments’ reports; they may also send comments on the application of conventions directly to the ILO.

The Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

A standing committee of the ILO International Labour Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report of the Committee

of Experts in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report.

Figure 2. Ratifications of C189 & ILO action across the world

2015					
22	21	20	19	18	17
Portugal	Panama	Belgium	Chile	Dominican Republic	Finland
					
2015 July 17	2015 June 11	2015 June 10	2015 June 10	2015 May 15	2015 Jan 8
2014					
12	13	14	15	16	
Costa Rica	Argentina	Colombia	Ireland	Switzerland	
					
2014 Jan 20	2014 Mar 24	2014 May 9	2014 Aug 28	2014 Nov 12	
2013					
8	9	10	11		
South Africa	Guyana	Germany	Ecuador		
					
2013 June 20	2013 Aug 9	2013 Sept 20	2013 Dec 18		
4	5	6	7		
Italy	Nicaragua	Bolivia	Paraguay		
					
2013 Jan 22	2013 Jan 10	2013 Apr 15	2013 May 7		
2012					
1	2	3			
Uruguay	Philippines	Mauritius			
					
2012 June 14	2012 Sept 5	2012 Sept 13			



End Notes

- 1 ILO, Domestic workers across the world 2013 report - http://www.ilo.org/travail/Whatsnew/WCMS_173363/lang--en/index.htm.
- 2 ILO, Nov 2015: Making decent work a reality for migrant domestic workers, p. 6.
- 3 Ibid, p. 5.
- 4 ILO Global Estimates on Migrant Workers 2015 report - http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang--en/index.htm.
- 5 ILO Constitution, 1919, Preamble, recital 2.
- 6 Gallotti, Maria. 2009. The gender dimension of domestic work in Western Europe. International Migration Papers No. 96, Geneva: ILO, 1.
- 7 Achieving decent work for domestic workers. An organizer's manual to promote ILO convention no. 189 and build domestic workers' power, ILO 2012.
- 8 UN Convention on the Elimination of All Forms of Discrimination against Women, 1979, General Recommendation No. 17: tenth session, 1991, Measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP.
- 9 Rights of Migrant Domestic Workers In Europe, UN OHCHR, Europe Regional Office.
- 10 UN Convention on the Elimination of All Forms of Racial Discrimination, 1990, General Recommendation No. 30: Discrimination against non-citizens: 01/10/200.
- 11 Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, General Comment No. 1, paragraph 37. http://www2.ohchr.org/english/bodies/cmwf/cmwf_migrant_domestic_workers.htm.

Project partners

The project is implemented by the ILO in collaboration with the following partners and associates:



www.unwomen.org



www.ohchr.org



www.ksbsi.org



www.ituc.org



www.idwf.org

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This project is funded by
The European Union

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ISBN 978-92-2-131032-7

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ISBN 978-92-2-131032-7



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