



**Behind closed doors**

**Protecting and promoting the human rights of migrant domestic workers in an irregular situation**



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New York and Geneva, 2015

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*\*Boxes in green in the publication contain practical examples of actions, legislation, agreements, policies or other measures put in place by States or other stakeholders that are considered good or promising practice.*

## Foreword

Around the world more than 50 million people, many of them women, are domestic workers. Of these, a significant number are migrants, including migrants who are in an irregular situation. The work they do is invaluable. Among a myriad other tasks, domestic workers clean, iron clothes, cook, garden, provide home health care, drive, and take care of children and older persons. This is necessary work, but work that often goes unnoticed, particularly when it is undertaken by irregular migrants who work unseen behind closed doors.

In fact, labour legislation in several countries does not even recognize domestic work and often excludes domestic workers from access to rights and protections that are enjoyed by other categories of workers. Domestic workers often lack access to rights, to justice and to protection both as women and as migrants, creating an environment that often leads to serious human rights abuse. The situation of migrant domestic workers in an irregular situation is even more vulnerable. They are disproportionately subjected to human rights abuse, violations which often occur inside homes, where those responsible are able to operate with impunity and where victims are unseen and unprotected.

The pattern of human rights abuses is similar all over the world. Migrant domestic workers in an irregular situation face exploitative working conditions and discrimination, they lack access to basic economic, social and cultural rights and are exposed to sexual and gender-based violence. If they live in their workplace, they can be forcibly confined, lack privacy, be deprived of food and sleep, and are often prohibited from contacting their families and friends. In some countries they are subject to invasive medical tests and can be fired if they become pregnant. Very often, domestic workers are not permitted to marry. Moreover, if they flee abuse, they may be detained for lacking documents and may be denied access to social or health services or legal remedies. At risk of xenophobia and violence in the community as well as in the workplace, many may be afraid to report their suffering to the police or other authorities for fear of deportation.

This publication sheds light on the often hidden experience of irregular migrant domestic workers, and challenges Governments to take appropriate protective measures. It emphasizes that migrant domestic workers, regardless of whether they are male or female, children or adults, in a regular or irregular situation, are entitled to all fundamental human rights, without discrimination of any kind. The publication is illustrated by the experiences of two women who have lived the abuse and uncertainty that is documented here, and I express my gratitude to *Marcela* and *Maryfe* for their courage in sharing their stories. Their names and some identifying details of their stories have been altered for their protection.



**Zeid Ra'ad Al Hussein**

High Commissioner for Human Rights



# Introduction

Across the world, at least 52.6 million people are domestic workers<sup>1</sup>. Although these women, men and children carry out a wide variety of essential tasks cleaning, ironing, gardening, cooking, driving, caring for children and older persons in private households – what they do is not always considered “work”.

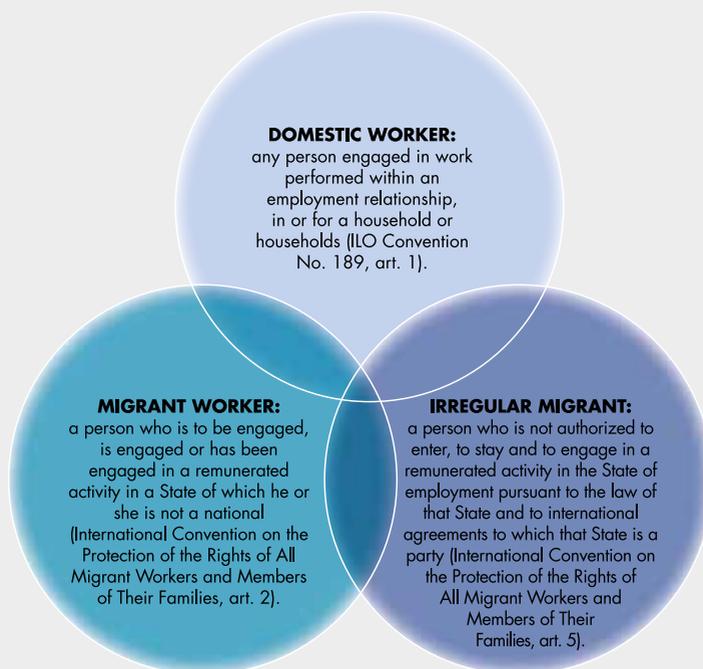
Migrants make up a substantial proportion of all domestic workers, including mi-

grants who are in an irregular situation<sup>2</sup>. Compelled to live in the shadows due to their status as a domestic worker as well as an irregular migrant, many are at risk of being exploited, ill-treated and denied their dignity as human beings.

1 This estimate is deliberately conservative. The true number is likely to be close to 100 million. See: ILO, *Domestic workers across the world: Global and regional statistics and the extent of legal protection* (2013), p. 2.

2 *Migrants in an irregular situation are persons who are not authorized to enter, to stay and to engage in a remunerated activity in a transit or destination country. See Economic, Social and Cultural Rights of Migrants in an Irregular Situation (United Nations publication, Sales No. E.14.XIV.4), introduction. Note that this publication will generally use the terms irregular migrant domestic worker (or “irregular migrant” as a shorthand) or migrant domestic worker in an irregular situation. While the term “undocumented” migrant domestic worker is also used, it should be noted that irregular migrants may possess documents such as passports, visas or even residence permits, but that these will not be the correct documents required by the immigration regulations of the country in which they are living.*

**Figure I. Who is a migrant domestic worker in an irregular situation?**



## INTERNATIONAL MIGRATION AND DOMESTIC WORK

It is estimated that today some 232 million people are international migrants, about 3.2% of the world's population. Migration has numerous causes: migrants move to take up jobs; to reunite with family and other social relations; to escape inequality, poverty, discrimination, human rights violations, conflict, environmental degradation and violence. Migration takes myriad forms and, temporarily or for long periods, migrants may become domestic workers at any point on their journey. Migrants will tend to use irregular channels when opportunities for regular migration are not available or are difficult to use. Globally, men and women migrate in more or less equal numbers and about 48% of international migrants are women<sup>3</sup>. Domestic work remains a traditionally feminized occupation and worldwide the vast majority of domestic workers (83%) are women.

A wide range of factors influence patterns of migration, including geography, historical and cultural ties, and the porosity of borders. In recent years, international migration patterns have changed significantly. International migrants increasingly tend to move within rather than between regions; movement within the global South has become as significant as movement from South to North.

Nor is it any longer possible to clearly distinguish countries of origin from countries of destination and countries of transit. Many countries are both countries of origin and destination, and many migrants settle temporarily before moving to their final destination, or remain for years in transit countries because they are unable to move on to their intended destination.

### *Worldwide 17-25 million migrant women are estimated to work in the domestic service sector.*

*Source: International Domestic Workers' Network, "Domestic workers worldwide: Summary of available statistical data and estimates", June 2010, p. 6.*

Migration for domestic work is triggered both by push factors (including social, financial, environmental and cultural factors, unemployment, conflict, domestic violence, family concerns, personal ambitions, opportunities) that vary from one individual to another, as well as by demand in countries of destination.

In countries whose population is ageing, a rising demand for care workers is often sharpened by insufficient numbers of national workers<sup>4</sup>. Further, growing economies that employ more women generate demand for cleaners, housekeepers and childminders, tasks that have traditionally been taken on by women. Income differentials allow families with moderate incomes to pay for domestic help at rates that still attract migrants.

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3 United Nations, Department of Economic and Social Affairs, *International Migration Report 2013* (2013), p. 7. However international migrants are often segregated into gender-specific work streams. In Italy, for example, 85% of the immigrants from Cape Verde are women, most of whom work as domestic workers, whereas 96% of immigrants from Senegal are men, most of whom work as street vendors. Hein de Haas, "The myth of invasion: Irregular migration from West Africa to the Maghreb and the European Union", *International Migration Institute*, 2007, p. 22.

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4 For example, the number of people in the United States who will need long-term care is expected to double from 13 to 27 million by 2050. UN-Women and International Trade Union Confederation (ITUC), *Domestic Workers Count Too: Implementing Protections for Domestic Workers* (2013).

**Figure II. What does a domestic worker do?**



## **MIGRANT DOMESTIC WORKERS IN AN IRREGULAR SITUATION**

Around 10-15% of all international migrants, or some 30 million people, are in an irregular situation. However, the nature of irregular migration is such that it is difficult to establish reliable figures. Most migration around the world is organized informally by migrants themselves and many migrants find domestic employment through family or personal connections, before or after they migrate.

Globally, there are no accurate data on the number of migrant domestic workers who are in an irregular situation. In the first place, accurate data on the number

of domestic workers in general are hard to come by because much domestic work is informal and is not reported as employment in many countries. Secondly, irregular migrants are not registered in their countries of employment and are not included in official statistics either. In addition, for evident reasons, migrants are reluctant to provide information that would reveal their irregular status to officials. Lack of information is one reason why the proportion of domestic workers who are irregular migrants is likely to be underestimated.

Generally, migrant domestic workers are at heightened risk of certain forms of exploitation and abuse. At the heart of their vulnerability is isolation and dependence, which can include the following elements: the isolation of life in a foreign land and often in a foreign language, far away from family; lack of basic support systems and unfamiliarity with the culture and national labour and migration laws; and dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants' workplace may also be their only shelter and the reliance of family members back home on remittances sent back from the domestic work. Women migrant domestic workers face additional risks related to their gender, including gender-based violence. These risks and vulnerabilities are further aggravated for migrant domestic workers who are non-documented or in an irregular situation, not least because they often risk deportation if they contact State authorities to seek protection from an abusive employer.

Source: Committee on the Rights of Migrant Workers, general comment No. 1 (2011) on migrant domestic workers, para. 7.

Despite these difficulties, estimates are available for some countries. In Spain, it is calculated that around 30% of the 660,000 domestic workers in the country in 2012 were women migrants working

irregularly.<sup>5</sup> In the United States, it is estimated that at least 21% of migrants who work in the care sector are undocumented.<sup>6</sup> It is also estimated that there are at least 1 million undocumented migrant domestic workers in Europe and around 1.2 million in Asia.<sup>7</sup>

These estimates suggest that millions of migrant domestic workers across the world are in an irregular situation. Compared to other sectors, domestic work is easily accessible to irregular migrants and does not necessarily require specific qualifications.

The majority of migrants in an irregular situation have entered the country regularly and only subsequently fall into an irregular situation either consciously or owing to circumstances that he or she may not be aware of or cannot control. Many enter into a state of irregularity owing to unreasonably restrictive or overly complicated immigration laws and procedures. In some countries, employers must sponsor migrant domestic workers and domestic workers may fall into a state of irregularity simply because their employer has failed to renew their labour or residence permit, or because, having fled an abusive employer, they are no longer sponsored.

5 This figure is extrapolated from data in *Migrant Domestic Workers in Focus: an ILO Newsletter*, No. 2 (Oct. 2013–Feb. 2014), p. 3; and Joaquín Arango, Magdalena Díaz Gorfinkiel and Djaouida Moulhi, "Promover la integración de las trabajadoras y los trabajadores domésticos migrantes en España", *ILO International Migration Paper No. 114* (16 September 2013), p. 13.

6 Institute for Women's Policy Research, *Increasing pathways to legal status for immigrant in-home care workers* (2013), p. 13.

7 UN-Women and ITUC, *Domestic Workers Count Too*, p. 52.

Many migrant domestic workers are deceived during recruitment about the nature of their job, working conditions, pay, living conditions, the identity of their employer, their migration status, or their right to end the working relationship and return home. These practices can cause recruited migrants to fall into an irregular situation. Some migrants will have little option but to accept abusive working and living conditions in order to survive, particularly if they have been forced into debt in order to migrate. Recruitment practices may also obscure the exact status of domestic workers, who may be recruited under a sponsorship programme but end up working irregularly for a different employer.

***Cambodian migrant domestic workers must labour in Malaysia without a salary for six to seven months to repay loans, along with the exorbitant recruitment and training fees.***

*Source: Human Rights Watch, They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia (November 2011), pp. 11-12.*

Abusive recruitment practices are more likely to occur when recruitment is inadequately regulated by national laws and law enforcement authorities.

Prompted by the number of reported cases of abuse of Kenyan migrant workers employed in the Middle East, Kenya has developed a new law on Private Recruitment Agencies to improve their regulation of recruitment agencies. The country is currently involved in bilateral dialogues with several major countries of destination, and has already signed an agreement with Qatar. An agreement with Saudi Arabia is under way.

*Source: ILO, "Protecting the rights of migrant domestic workers", Briefing Note No. 4, pp. 2-3.*

In Lebanon, a Code of Conduct, launched in June 2013, provides guidance to recruiting agencies on how to promote and protect the rights of migrant domestic workers in the country. Developed in consultation with the Middle East Office of OHCHR and ILO, it was drafted jointly by the Lebanese Ministry of Labour, the Syndicate of Owners of Recruitment Agencies in Lebanon and Caritas Lebanon's Migrant Centre. The Code's principles include: transparency in business operations; provision of information to workers about their conditions of employment in Lebanon; verification of workers' qualifications; and prohibition of recruitment of underage workers.

*Source: OHCHR, "Lebanon: a code of conduct to recruit migrant domestic workers", news release, 29 July 2013. Available from [www.ohchr.org/EN/NewsEvents/Pages/LebanonCodeOfConduct.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/LebanonCodeOfConduct.aspx).*

Following reports of serious and repeated human rights violations against migrant domestic workers, countries have occasionally banned their nationals from migrating to certain countries. For instance, the Philippines banned migration to Lebanon in 2006, and both the Philippines and Ethiopia banned migration to Jordan in 2008. However, such bans have often proved unsuccessful and may create an additional pathway into irregular status. In the example above, many Filipino and Ethiopian nationals used irregular channels to travel to Lebanon and Jordan to work, since they were unable to migrate through regular channels<sup>8</sup>.

8 Open Society Foundation, "Breaking the isolation: Access to information and media among migrant domestic workers in Jordan and Lebanon", Research Report (2014), p. 10.

In Nepal, local research institutions, in partnership with international organizations, undertook a situational and policy analysis of Nepali women migrant workers, including domestic workers. The evidence generated by that initiative contributed to the decision to lift the ban on Nepali women migrant workers, including domestic workers, migrating to the countries of the Gulf and also contributed to the adoption by the Government of Nepal of the Foreign Employment Act (2007), which includes gender-sensitive provisions.

Source: "Promotion and protection of human rights, including ways and means to promote the human rights of migrants: Report of the Secretary-General" (A/70/259), para. 75.



## Marcela's story

Marcela was born in Brazil. In May 2006, at the age of 52, she travelled to visit her daughter, who was an irregular migrant worker, in order to see her new grand-child. Marcela travelled on a tourist visa that allowed her to stay for three months but not to work.

While she was visiting, her daughter was faced with the prospect of losing her job as her employer wanted her to come back to work. So in order to help her daughter, who had a newborn baby to care for, Marcela agreed to take on her daughter's job and become a live-in domestic worker in an irregular situation.

*"I sacrificed not seeing my husband and the rest of my family for long periods of time, also hoping to secure a better pension for us. I saw this [job] as an opportunity."*

For three years, Marcela worked seven days a week, taking care of two small children as well as shopping, cooking, cleaning and ironing. She worked from 7 a.m. to 8 p.m., with short breaks and only had Saturday evening off along with a couple of hours on Sunday afternoon. She made only 1,000 dollars a month, which she knew was far less than other domestic workers who had a permit. She had her own small bedroom. Often she would iron clothes at night there because she didn't have time during the day.

*"Sometimes the husband would tell me: Marcela, go up to your room, it's late, and you've worked enough. But my employer would never tell me this. Even though I did what I thought was a great job, she was never happy and*

*would complain. It was never good enough. Sometimes she came back from work and started screaming at me and the children if she didn't like something."*

When Marcela fell ill, she would continue to work because her employer expected her to. She didn't know that even though she was undocumented she was entitled to health care in her country of employment. She felt she had little option but to keep on working. "Without papers," she says, "you can't get a prescription from the doctor that says you have to rest."

*"I knew nothing about the country, I could not speak a word of the language. I was obliged to accept the conditions, because I could not find other work. I was scared of the police, because I didn't have papers. My employer would tell me not to open the door to anyone because I was working illegally."*

In 2009, Marcela applied for regularization and obtained a temporary residence permit. Thanks to a promise of work from her daughter's new employer (a domestic worker agency), she obtained a temporary residence permit after three months. She now works 8 hours a day with regular breaks and time off, and is happy to pay her social security and pension contributions.

*"For me today it's good. I was lucky to get help. I know that for some girls it's not like that. I'm more relaxed. I pay my taxes and everything. I'm paid, and I'm going to get a pension; so everything is good for me."*

# I. PROTECTION PROVIDED BY INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights affirms that “all human beings are born free and equal in dignity and rights”. The comprehensive framework of international human rights law and standards is directed at ensuring the enjoyment by all of all human rights. Accordingly, every person must have access to the fundamental human rights set out in the Declaration and the nine core international

human rights treaties<sup>9</sup>. Member States of the United Nations are bound by these human rights principles set out in the Declaration and elaborated in the nine core instruments, and are obliged to make sure that everyone under their jurisdiction enjoys these rights. States have duties to respect, protect and fulfil human rights.

<sup>9</sup> *International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Convention for the Protection of All Persons from Enforced Disappearance, and Convention on the Rights of Persons with Disabilities.*

## RESPECT



States must refrain from interfering with the enjoyment of human rights

E.g. refrain from the arbitrary detention, torture or collective expulsion of migrants.

## PROTECT



States must prevent private actors or third parties from violating human rights

E.g. regulate recruitment agencies; sanction abusive employers; protect migrants from violence and abuse by smugglers.

## FULFIL



States must take positive measures to ensure the realization of human rights

E.g. consult migrants in the development of relevant public policy; introduce alternatives to immigration detention.

In addition, the eight fundamental Conventions of the International Labour Organization (ILO) as well as ILO Conventions Nos. 97 and 143 address the protection of the labour rights of migrant workers<sup>10</sup>. Recent ILO Convention No. 189 provides additional standards on decent conditions of work for domestic workers.



10 The eight fundamental ILO Conventions are: the *Freedom of Association and Protection of the Right to Organize Convention, 1948* (No. 87); the *Right to Organize and Collective Bargaining Convention, 1949* (No. 98); the *Forced Labour Convention, 1930* (No. 29); the *Abolition of Forced Labour Convention, 1957* (No. 105); the *Minimum Age Convention, 1973* (No. 138); the *Worst Forms of Child Labour Convention, 1999* (No. 182); the *Equal Remuneration Convention, 1951* (No. 100); and the *Discrimination (Employment and Occupation) Convention, 1958* (No. 111).

### **ILO Domestic Workers Convention, 2011 (No. 189) on decent work for domestic workers**

The Convention was adopted in June 2011 and entered into force in September 2013. Combined with Recommendation No. 201 on Domestic Workers, ILO Convention No. 189 establishes a set of norms and standards for the effective promotion and protection of the rights of domestic workers, whether they are nationals or non-nationals.

ILO Convention No. 189 applies to all domestic workers, including migrants (art. 2.1), and has provisions that address the situation of migrant domestic workers. It states that migrant domestic workers should receive, before departure, a written contract that they can understand and that is enforceable in the country of employment (art. 8). It encourages States parties to collaborate to ensure the effective application of the Convention to migrant domestic workers (art. 8.3). It calls on States to regulate recruitment of domestic workers by private employment agencies (art. 15). It also calls on States to conclude bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in the recruitment, placement and employment of migrant domestic workers. Article 15.1 (e) further states that fees charged by private employment agencies should not be deducted from the remuneration of domestic workers.

Migrant domestic workers in an irregular situation are also protected under a number of regional instruments and mechanisms, including the European Convention on Human Rights, the European Social Charter, the Inter-American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the Arab Charter on Human Rights.

## **ALL HUMAN RIGHTS FOR ALL MIGRANT DOMESTIC WORKERS**

The fundamental principle of non-discrimination in international human rights law requires that any difference of treatment (between nationals and non-nationals or between different groups of non-nationals) must serve a legitimate objective, and that any course of action that States take to achieve such an objective must be proportionate and reasonable<sup>11</sup>. The principle of non-discrimination applies to everyone, including migrant domestic workers who are in an irregular situation.

The prohibition of discrimination covers both formal and substantive discrimination. This means that States have to ensure that their constitution as well as domestic laws and policies do not discriminate on prohibited grounds, such as race, religion or nationality, against migrant domestic workers. At the same time, States are obliged to adopt necessary measures to prevent, diminish and

eliminate the conditions and attitudes that cause or perpetuate de facto discrimination. Migrant women domestic workers who are in an irregular situation are particularly at risk of discrimination on multiple, often overlapping, grounds based on sex and gender as well as due to their nationality, migratory status, sector of work and frequently also based on their race and social status.

All migrant domestic workers in an irregular situation are entitled to protection from torture or other cruel, inhuman or degrading treatment or punishment, forced labour, slavery and trafficking. Cases of repeated and serious abuse by employers or other private individuals, including physical, sexual and psychological violence, arguably engage a State's obligation to prevent such acts. States must also protect the right to life, to family, to privacy, to freedom of thought, conscience and religion, and to freedom of assembly of all persons.

Migrant domestic workers are also protected against arbitrary arrest and detention. The international legal framework establishes that administrative detention of migrants should be a last resort, and should be prescribed by law and be necessary, reasonable and proportionate in each case. Alternatives to the detention of migrants in an irregular situation should be sought whenever possible and the immigration detention of children should cease.

All migrant domestic workers have the right to housing and to an adequate standard of living for themselves and their family as an essential element of human dignity. Migrant domestic workers are also entitled to the highest attainable standard of physical and mental health.

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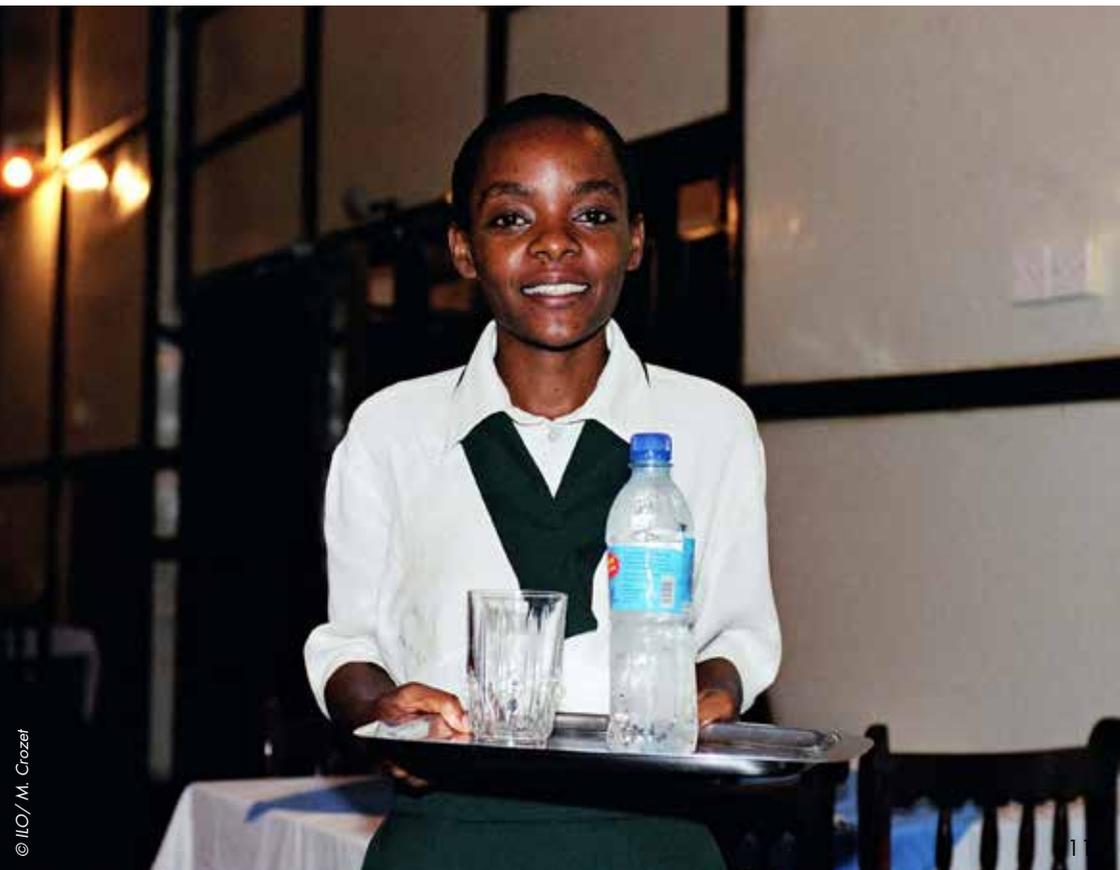
11 *Economic, Social and Cultural Rights of Migrants in an Irregular Situation, chap. I, sect. A. In certain circumstances, national legislation may legitimately differentiate between migrants of different nationalities or States may negotiate specific additional protections for their migrants under bilateral agreements with host countries that may not be available to all migrants in the host country. However, such differential treatment would need to be justified under international human rights law and it should not result in human rights violations.*

***States have the power to refuse to give irregular migrants access to their labour market. But as long as such migrants are in fact working, they are entitled to equal conditions of work, based on the principle of equality and non-discrimination.***

*Source: "Report of the Special Rapporteur on the human rights of migrants, François Crépeau: labour exploitation of migrants" (A/HRC/26/35), para. 58.*

All irregular migrant domestic workers have the right to decent work and to just and favourable conditions of work, including fair and equal remuneration for equal work that allows a decent living for themselves and their family; safe and healthy working conditions; and rest, leisure and reasonable limitation of working hours and periodic holidays with pay. They have the right to form and join trade unions and to social security, including social insurance.

International human rights law also protects the right of irregular migrants to access justice, including the right to equality before the courts, to an effective remedy and to procedural guarantees.



## II. THE VULNERABILITY OF MIGRANTS IN AN IRREGULAR SITUATION

Migrants in an irregular situation are “invisible”. For the authorities of their country of employment, they do not exist; they are unrecorded in population statistics and other administrative data. This invisibility often makes it difficult for them to claim and enjoy their rights. The misperceptions and myths that surround irregular migration can also contribute to stigmatization and abuse. For example, it is often assumed that irregular migrants are a burden on the national economy. In fact, they contribute to the economy and often pay taxes.<sup>12</sup>

### Irregular migration is not a crime

Irregular migration may constitute an administrative offence, but it is not a crime against persons, property or national security. However, in some countries, irregular entry or stay is still criminalized. For what should be considered an administrative offence, many undocumented migrants are nevertheless arrested, detained and deported. The fact that irregular migrants need to conceal their identity from the authorities increases their insecurity and their exposure to abuse.

*The Special Rapporteur notes with concern that irregular entry and stay is considered a criminal offence in some countries. He wishes to stress that irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property or national security. It is important to emphasize that irregular migrants are not criminals per se and should not be treated as such.*

*Source: “Report of the Special Rapporteur on the human rights of migrants, François Crépeau” (A/HRC/20/24), para. 13.*

For obvious reasons, irregular migrants’ first fear is detection by the police. In seeking to evade detection they are rendered invisible in society, which can prevent them from accessing or enjoying rights to which they are entitled.

Their need for anonymity is isolating; it cuts them off from their host society and impedes their integration. If, in addition, the staff of schools, hospitals or health facilities are required to report undocumented migrants to the authorities, then migrants will not use these facilities, which deprives them of access to essential ser-

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<sup>12</sup> *In the United States of America, various studies have estimated that 50-70% of undocumented immigrants currently pay personal income tax, using false social security or individual tax identification numbers. See Institute on Taxation and Economy Policy, “Undocumented immigrants’ State and local tax contributions”, July 2013, p. 4. Available from [www.itep.org/pdf/undocumentedtaxes.pdf](http://www.itep.org/pdf/undocumentedtaxes.pdf).*

vices such as education and health care. If community police officers are expected to also carry out immigration functions, irregular migrants will not turn to them to report crimes, including hate crimes.

***Migrants in an irregular situation are more likely to face discrimination, exclusion, exploitation and abuse at all stages of the migration process.***

***They often face prolonged detention or ill-treatment, and in some cases enslavement, rape or even murder. They are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers and sexual predators, and can easily fall prey to criminal traffickers and smugglers. Rendered vulnerable by their irregular status, these men, women and children are often afraid or unable to seek protection and relief from the authorities of countries of origin, transit or destination.***

*Source: Global Migration Group, Statement on the human rights of migrants in an irregular situation, 30 September 2010.*

Migrants are likely to be unfamiliar with national laws and the judicial system of their country of employment, and may not find it easy to obtain information about their rights, notably when they are in an irregular situation and do not speak local languages. These factors all increase their exposure to abuse and human rights violations.

Being far away from home, often without their families, is a source of stress and anxiety, reinforced by the challenges associated with integrating into a new society. The support provided by informal networks, including those based on faith or nationality, may partially meet this need. Migrants are also more likely than nationals to work in the informal economy, which may increase their economic insecurity and isolate them from mainstream human rights protection and services. Migrants in an irregular situation are less likely to be aware of services, including health care, social protection and legal aid, that are available to them.

Some Governments sign bilateral agreements to protect their migrating domestic workers.

In February 2014, Saudi Arabia and Indonesia signed a memorandum of understanding on the recruitment of domestic workers. More than 1.2 million Indonesians work in Saudi Arabia, many as domestic workers. The memorandum of understanding guaranteed that Indonesian workers would be paid via banks, be provided online access to their work contracts and granted one day of holiday per week as well as leave entitlements and health insurance. The memorandum of understanding further affirmed that Indonesian domestic workers were entitled to communicate with their embassy and access a 24-hour call centre if they needed help or needed to be repatriated.

*Source: 'Saudi Arabia moves to protect rights of Indonesian maids', BBC News, 19 February 2014. Available from: <http://www.bbc.com/news/world-middle-east-26259326>*

Their motives for migrating (such as poverty, domestic violence, conflict) may further increase migrants' risk of abuse. They may lack the means to go home or feel that they cannot return. To make the journey to the country of destination, many migrants borrow money and acquire debts they must reimburse. Migrants typically also send money home, which provides a vital lifeline to their families. For some, the shame of not having made a success of themselves in the country of employment prevents their return. As a consequence, many migrants end up in vulnerable and dependent situations, unable to return home and at high risk of exploitation.

Their fear of detection, detention or deportation also exposes them to exploitation, notably by employers but also by others such as landlords. The asymmetrical work relationship between employers and migrant workers is even more evident when migrant workers depend on their employers for their work permit and residence permit. In such circumstances, migrants are vulnerable because they need to work and earn money, and because they are unable to seek another job. Dependence depresses their bargaining power and their vulnerability is increased by the fact that they may be unable to access essential public services.



### III. SPECIFIC RISKS FACED BY MIGRANT WOMEN AND GIRLS

#### WOMEN MIGRANT DOMESTIC WORKERS

For women who migrate freely, migration can be empowering. They can acquire or increase their autonomy and independence, including financial independence, and acquire new skills. However migration can also increase the risks of exploitation and abuse that women face because of their gender. Notably when they are in an irregular situation, women are at risk of exploitation and abuse, including physical and sexual abuse, food and sleep deprivation, and harassment by their employers.

Under international human rights law, all women, including migrant women, have a right to be free from sex- and gender-based discrimination. The Convention on the Elimination of Discrimination against Women requires States parties to take all appropriate measures without delay to eliminate all forms of discrimination against women and to ensure that they will be able to exercise and enjoy de jure and de facto rights on an equal basis with men in all fields.

*Although both men and women migrate, migration is not a gender-neutral phenomenon. The position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the*

*forms of abuse they suffer and the consequences thereof. To understand the specific ways in which women are impacted, female migration should be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration.*

*Source: Committee on the Elimination of Discrimination against Women, general recommendation No. 26 (2008) on women migrant workers, para. 5.*

In general, migrant women face many of the same human rights violations as migrant men, but also face additional risks because of their sex, including physical violence, and sexual harassment and abuse. The link between domestic work, migrant women and gender-based violence is frequently made, and women migrant domestic workers are one of the groups most exposed to physical and sexual violence. Several reports give appalling examples of physical and psychological abuse, including verbal abuse (harsh insults, threats, belittlement), often accompanied by physical abuse (including slaps, pulled hair, poked eyes, kicks in the stomach, pinching or holding hot objects against the skin) and psychological intimidation. Some domestic workers report being thrown down stairs or stabbed with knives; or beaten with wooden planks, tree branches, broomsticks, iron bars and wires, even for small “errors” in their work.

Women migrant domestic workers in an irregular situation are also at risk of being physically and sexually abused by officials when they are arrested, detained or deported. Women who experience or make complaints about violence and ill-treatment against them, especially migrant women who are in an irregular situation, must often overcome financial and administrative obstacles before they can obtain protection, psychological assistance, counselling, medication or access support programmes.

In October 2013, during the United Nations General Assembly's High-level Dialogue on International Migration and Development, States unanimously adopted a Declaration that recognized "that women and girls account for almost half of all international migrants at the global level, and the need to address the special situation and vulnerability of migrant women and girls by, inter alia, incorporating a gender perspective into policies and strengthening national laws, institutions and programmes to combat gender-based violence, including trafficking in persons and discrimination against women and girls". The General Assembly emphasized in this regard the need to establish appropriate measures for the protection of women migrant workers in all sectors, including those involved in domestic work.

*Source: Declaration of the High-level Dialogue on International Migration and Development, General Assembly resolution 68/4, paras. 11-12.*

As mentioned above, domestic work is traditionally a highly feminized occupation, regarded by many as "women's work" that does not require qualifications. The tasks it involves (such as cleaning, cooking, caring for children or the elderly) are regarded by some as degrading and dirty. Women migrants who work as domestic workers are not always considered workers with human rights, but as helpers or family members who are dependent on the charity of the family that they live with.

In Spain, irregular migrant women who are victims of physical violence have access to emergency accommodation and police protection as soon as they lodge a complaint. For instance, the Madrid City Council operates a care service for domestic violence. A specialized intervention model for survivors of gender-based violence operating within municipal social services, it is open 24 hours a day, 365 days a year. With a free phone service, it provides immediate assistance, legal information and support, psychological help, and emergency short-stay accommodation. Staffed by a multidisciplinary team of police and gender-based violence specialists, it coordinates with municipal and privately run support services in the city.

*Source: Platform for International Cooperation on Undocumented Migrants, Strategies to End Double Violence Against Undocumented Women: Protecting Rights and Ensuring Justice (2012), p. 84.*

## CHILD MIGRANT DOMESTIC WORKERS

It was estimated in 2008 that over 15.5 million children aged between 5 and 17 years were engaged worldwide in domestic work and that 73% were girls.<sup>13</sup> While more recent data have not been collected, there is every reason to believe that a significant number of children continue to be employed as domestic workers, and of this number several would be migrants.

The Convention on the Rights of the Child protects all children from economic exploi-

tation and from performing hazardous or harmful work or work that interferes with a child's right to education. International labour law has also guided that children under 15 years of age should not be employed.<sup>14</sup> States are required to ensure that the best interest of the child is the primary consideration for all action taken in regard to children.

When they work as domestic workers, children are vulnerable to all the human rights violations and abuses risked by adult workers but, because they are children, these violations and abuses assume particular gravity. Child domestic workers may be exposed to dangerous and toxic substances or undertake dangerous tasks. They are particularly at risk of being subjected to forms of slavery such as forced labour and servitude. Migrant children can be particularly exposed to physical, psychological and sexual violence. Their conditions of life and work are often inhumane: they may be allocated substandard sleeping areas, asked to work as much or even more than adults, paid less than adults or not paid at all. Child migrant domestic workers are often children who have migrated alone unaccompanied by parents or other caregivers and who as a consequence generally lack support. Their situation of isolation and vulnerability prevents them from enjoying other human rights such as the rights to education and to leisure and play.

13 ILO International Programme on the Elimination of Child Labour, *Ending Child Labour in Domestic Work and Protecting Young Workers from Abusive Working Conditions* (ILO, 2013), p. 20. Available from [www.ilo.org/public/libdoc/ilo/2013/113B09\\_111\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2013/113B09_111_engl.pdf).



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14 ILO Convention No. 138 on the minimum age for admission to employment (1975) notes that developing countries are entitled to initially specify a minimum age of 14 years, but that they must regularly consider raising the minimum age.

# IV. HUMAN RIGHTS CHALLENGES FACED BY MIGRANT DOMESTIC WORKERS IN AN IRREGULAR SITUATION

The nature of domestic work lends itself to certain forms of abuse, which can more easily take place unnoticed and with impunity in private households.

As domestic work is most frequently carried out in private households, it is often less regulated, or not regulated at all, let alone monitored and inspected. This situation can be exploited by abusive employers. Domestic workers who live with their employers are particularly at risk of isolation and abuse, and if they are in an irregular situation their lives may be even more clandestine.



Even if certain protections for migrant domestic workers are provided under national laws, there is often a gap between protections enjoyed by such workers in law and in practice. Some of the practical obstacles faced relate to the “hidden” nature of domestic work and factors preventing or deterring migrant domestic workers from claiming their rights. A range of factors constitutive of domestic work itself, and even more so, of domestic work performed by migrants, hides abuses from view, and makes detection of protection needs difficult. (a) workplaces are unseen, behind closed doors and out of the public eye; (b) domestic work is commonly part of the informal labour market, where work and workers are unregistered; (c) the physical and social isolation of workers blocks individual and collective action; (d) the large number of workplaces, their geographical spread and national privacy laws complicates effective inspections and monitoring by labour departments.

*Source: Committee on the Rights of Migrant Workers, general comment No. 1 (2011), paras. 25-26.*

## A. VIOLATIONS OF DIGNITY

Migrant domestic workers are often treated with disrespect. Attitudes towards them may be condescending and abusive. They may be insulted, shouted at, beaten, deprived of food or drink, or experience other forms of harassment or ill-treatment, or psychological and physical abuse, that deny their dignity as human beings.

Migrant domestic workers' right to privacy is often violated; their correspondence is opened, their telephone calls are monitored, their rooms are searched. The invasion of their privacy is a form of harassment that violates their dignity and strengthens the perception of inferiority or lack of respect. All these abuses strengthen the dominant/submissive relationship between employer and the migrant domestic worker.

*Source: Report of the Special Rapporteur on the human rights of migrants (E/CN.4/2004/76), para. 28.*

Demeaning or degrading treatment is a particularly insidious form of abuse. Aggressively delivered orders, shouting and constant belittling criticism contain an underlying threat of violence or may be seen as violent. Abuse may also include withholding of food, not allowing the worker the freedom to prepare her own food and relying on "handouts" from the mistress of the house, which may be leftovers from the family meal. There have been cases where locks were put on refrigerators and in one case an alarm was installed. Employees may be belittled on a daily basis, such as name-calling (Hmara, or "donkey" is the most common term used). Sometimes, names are changed to suit the employer.

*Source: United Nations Research Institute for Social Development, "Migrant workers and xenophobia in the Middle East" (UNRISD/PPICC2/03/2).*

Such abusive behaviour seeks to humiliate and dehumanize the migrant, to affirm his or her inferiority or punish him or her. Where racism, xenophobia and discrimination against migrants are wide-

spread, employers are likely to behave in even more inappropriate or abusive ways. Media reports can also reinforce xenophobic attitudes and beliefs, such as newspaper reports that use discriminatory and insulting language about migrants, targeting in particular those who are in an irregular situation.

*Go to [...] a 1970s mall in central Singapore, and you will find five levels of brightly lit rooms and galleries called "Homekeeper" and "Budget Maid". Inside these rooms, dozens of women sit in a listless, artificial silence. They nod respectfully as you enter, and some watch closely as you speak to staff. You might take one home with you - for two years, or longer. The women, domestic workers, come from Indonesia, the Philippines, and Myanmar. They sit beneath garish signs and posters, testifying to their friendliness and industriousness, or advertising "super promo" rates and "special discounts". [...] [The] executive director of the Humanitarian Organisation of Migration Economics (HOME), a migrant workers advocacy group based in Singapore, said that some agencies market their domestic workers like "commodities". He adds that racial stereotypes are sometimes used in transactions with patrons. "Some of the stereotypes include Filipinos as 'smarter', Indonesians as 'less bright' and Burmese as 'sweet-natured and compliant'."*

*Source: Michael Malay, "Buy a discount maid at Singapore's malls", Al Jazeera, 27 June 2014. Available from [www.aljazeera.com](http://www.aljazeera.com).*



In extreme cases, employers have abused migrant domestic workers to the point that their punishments or mental coercion amount to degrading or inhuman treatment, or even torture.

## **B. LACK OF ACCESS TO HEALTH CARE AND HEALTH SERVICES**

In some countries irregular migrant workers are legally excluded, partly or completely, from health care and health services; they may be permitted to obtain only emergency medical care, for example. Even where they are legally entitled to full health coverage, however, their access may be limited in practice: many avoid using public and private health facilities for fear of arrest and deportation; others cannot afford the cost of treatment or cannot produce required documents (insurance, a work permit, an identification card). In addition, many migrant workers lack information about the health system in their country of employment and their entitlements with respect to it.

Irregular migrant workers who work in private households may additionally be prevented from accessing health care because they cannot leave the house or because their employer withholds permission.

***Every domestic worker has the right to a safe and healthy working environment. Each Member shall take [...] effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.***

Source: ILO Domestic Workers Convention No. 189, article 13 (1).

Domestic work may cause specific health problems linked to domestic tasks or overwork. Where working conditions are insecure or oppressive, anxiety and depression may be an issue. The health of migrant domestic workers may also be undermined if they are malnourished or exposed to unhygienic environments and living conditions.

Even when they are sick, irregular migrant domestic workers may not receive care and may be obliged or compelled to work. Following work accidents, they are often denied the right to see a doctor and receive necessary and appropriate medication or medical treatment. They may also face dismissal if they are ill for any length of time.

In Argentina, Migration Law No. 25.971 (art. 8) grants all migrants, irrespective of their status, access to social assistance and health care. The law explicitly states that health authorities shall provide migrants with guidance and counselling on regularization procedures.

In the Plurinational State of Bolivia, Migration Law No. 370 (art. 12) states that migrants shall exercise and enjoy the right to health and sexual and reproductive rights.

In Uruguay, Migration Law (No. 18.250) guarantees all migrants and their families access to health, labour, social security, housing and education on an equal footing with nationals (art. 8). Their irregular status does not limit migrants' access to justice and health facilities. Health authorities are expected to provide migrants with information on how to regularize their status in the country.

Women migrant domestic workers in an irregular situation are often unable to enjoy their sexual and reproductive health rights, either because they are denied these rights formally or because they fear arrest and deportation. In countries where irregular migrants have access only to emergency health care, women migrant domestic workers are excluded from preventive sexual and reproductive health services, such as periodic smear tests to identify cervical cancer. Migrant domestic workers may be denied gynaecological care and are often unable to access essential obstetric services.

Pregnancy tests can be imposed on migrant domestic workers in the course of their employment, causing women who are pregnant to seek abortions that are unsafe, especially in countries that criminalize abortion, or to lose their jobs. A domestic worker who is dismissed for being pregnant may end up homeless and at risk of further abuse. Some pregnant migrant women have been charged with having “illegal sexual relationships” when they became pregnant after rape and are held in detention centres in deplorable conditions pending their deportation.

### **C. LIMITATIONS ON THE RIGHT TO FAMILY LIFE**

Migrant women domestic workers may have limited or no access to maternity leave, even unpaid, and may have to continue working until they give birth. During pregnancy or once their child is born, they are at risk of being dismissed and having to leave their employer’s house, sometimes with nowhere to go. If they remain in their employer’s service, they may be expected to work very soon after delivery.

They may be asked to entrust their child to someone else, or accept deductions from their pay for childcare. It can be extremely difficult for domestic workers to care for their own children while continuing to work, especially if their duties include complicated hours or night shifts. When they are in an irregular situation, they may not receive public maternal and child benefits, and their children may not be able to use public childcare facilities. They may have to send their children away to live with family members or rely for support on other migrant women. Women who are in an irregular situation may be unable to register the birth of their child in the country of employment.

***The Committee further recommends the adoption of legislative, administrative and other measures guaranteeing access to social security and other labour benefits, including paid maternity leave, for female domestic workers and migrant workers in the informal and rural sectors.***

*Source: Committee on the Elimination of Discrimination against Women, Concluding observations: El Salvador (CEDAW/C/SLV/CO/7), para. 32.*

Separation from their partners and children who have stayed behind in the country of origin can be a very difficult emotional burden, particularly because irregular migrants will not usually be able to travel to visit their family back home. Among women migrant workers, such separation is one of the principal causes of mental health problems (anxiety, headaches, insomnia, stress, depression).

## D. INADEQUATE HOUSING, FOOD, WATER AND SANITATION

Live-in migrant domestic workers in an irregular situation are often totally dependent on their employer to provide food, water, accommodation and sanitation. Employers can deprive such migrants of food and water, or force them to live in unsanitary or unsafe conditions.

International standards provide that the right to housing should not be interpreted narrowly in terms of shelter (meaning just the provision of walls and a roof) but understood to imply an entitlement to live in security, peace and dignity, with adequate privacy and adequate space. Yet migrant domestic workers are forced to sleep in kitchens, storage rooms, hallways and corridors, or they may be compelled to sleep in the room of the child they are caring for. Migrant domestic workers may not have space to store their personal affairs, access to a lockable bathroom and toilet, or opportunities to be alone. Some women migrant domestic workers are victims of physical or sexual violence because they have to share their room with other employees or cannot lock the door to their room.

Live-in domestic workers also face discrimination or abuse with regard to food and water. Some receive food that is insufficient in quantity or nutritional value, or is not in accordance with their cultural or religious values. Others are expected to eat the leftovers from their employer's meals, or are not allowed to sit at the table to eat, or are forced to eat on the floor. Many live-in domestic workers are not able to buy and to cook their own food and therefore cannot choose how or what they eat.

## E. RESTRICTIONS ON FREEDOM OF MOVEMENT; SOCIAL AND PHYSICAL ISOLATION

Some employers of live-in domestic workers restrict their employees' freedom of movement and hence their ability to meet friends and maintain social contacts. Domestic workers may be refused permission to leave the house or are locked in; their phone calls may be monitored or they may not be allowed to own a mobile phone.

*Employers of domestic workers in a variety of countries use remarkably similar techniques to control and confine their employees, ranging from limiting their ability to contact family and friends, confiscating passports and immigration documents, to forced confinement in the household. Employers, agents, and even governments often defend these practices as necessary to protect the employer's household, the privacy of the family, and the personal security of the domestic worker, and to prevent workers from running away. Arbitrary denial of freedom of movement and association is abusive in its own right, and [...] dramatically increases the vulnerability of domestic workers to economic exploitation, forced labor, intimidation, and sexual violence and harassment.*

*Source: Human Rights Watch, Swept Under the Rug: Abuses against Domestic Workers Around the World (July 2006), p. 73.*



Migrants who work as domestic workers in South Africa are covered by South African laws regulating domestic work. A labour court decision has also recognized that non-national domestic workers who lack a valid work permit in South Africa have the right to fair labour practices and are fully protected by the Labour Rights Act and the Basic Conditions of Employment Act.

Both these laws offer comprehensive protection to domestic workers, including migrants in an irregular situation. They affirm the right to form and join trade unions, make provision for minimum and overtime pay and employment benefits, and regulate hours of work, leave, remuneration and termination, as well as workplace inspections. They set out criteria of decent housing

for live-in domestic workers, which include respect for their privacy. They regulate recruitment agencies and indicate the respective responsibilities of recruiters and employers.

The Commission on Conciliation, Mediation and Arbitration oversees disputes that arise under the Labour Rights Act and deals with issues of unfair treatment and unfair dismissal. The Commission also has a wider education mandate and makes use of radio and road shows to inform workers of their rights. Its procedure is accessible to domestic workers, including irregular migrants, who can easily lodge complaints.

*Source: Solidarity Center and United States Agency for International Development, "Domestic workers and socio-economic rights: A South African case study", 2013.*

For migrant domestic workers in an irregular situation, social networks are a vital source of solidarity and information. Such networks are almost always informal, including national or hometown organizations and religious associations. In cases of grave abuse, social networks can help domestic worker to escape from their situation and also provide assistance. For migrant domestic workers who have little time to rest and relax, such networks provide vital support.

The Migrant Rights Centre Ireland (MRCI) set up a Domestic Workers Action Group, which brings together migrant domestic workers in vulnerable and isolated situations, and empowers them through peer support and solidarity. The group has over 300 members, most of whom are women, and is at the forefront of efforts to fight for the rights and dignity of workers employed in Irish private homes.

*Source: MRCI statement, Committee on the Rights of Migrant Workers, Day of general discussion on workplace exploitation and workplace protection, 7 April 2014. Available from [www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/MigrantRightsCentreIreland.doc](http://www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/MigrantRightsCentreIreland.doc).*

Social and physical isolation can exacerbate health problems (stress, anxiety and depression) and make it even harder for the migrant to access health and other services.

The right of migrants in an irregular situation to form or join trade unions is not always recognized in national law. For isolated migrants, the ability to bargain collectively, and find support and assistance, is very important. Trades unions can represent migrant domestic workers in mediation procedures or labour courts, and can provide support and advice if their rights are violated.

The Democratic Organization of Migrant Workers in Morocco is the first trade union of undocumented workers in Africa. It is an independent section of the Democratic Organization of Labour (*Organisation démocratique du travail*), and is directly managed by migrants. Its objectives are to: defend the rights of migrant workers of all origins living in the country, raise awareness on the precarious situation of undocumented workers, promote the rights to education, social security, equal pay and equal working conditions; demand regularization of undocumented workers; and promote the integration of migrants in Moroccan society.

*Source: African, Caribbean and Pacific Observatory on Migration, "The evidence behind the picture: Irregular migration in ACP countries and the global South", Background note, 2014, p. 21.*

The Senegalese and Mauritanian labour confederations (Confédération Nationale des Travailleurs Sénégalais and Confédération Générale des Travailleurs de Mauritanie) have signed a mutual cooperation agreement to ensure that violations of migrant domestic workers' rights are followed up and supported.

*Source: ILO, "Protecting the rights of migrant domestic workers", Briefing Note No. 4, p. 5.*

*Migrants in an irregular situation are allowed to join and/or form trade unions in all of the EU Member States studied.*

*Source: European Union Agency for Fundamental Rights (FRA), Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States (2011), p. 35.*

## F. LABOUR EXPLOITATION AND SLAVERY-LIKE PRACTICES, SUCH AS FORCED LABOUR AND DEBT BONDAGE

Forced labour is the term used by the international community to denote situations in which the persons involved – women and men, girls and boys – are made to work against their free will, coerced by their recruiter or employer, for example through violence or threats of violence, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.<sup>15</sup> Unfortunately, labour exploitation of migrant domestic workers, especially those who are in an irregular situation, is widespread in all regions of the world. Migrants may be asked to work excessive hours without rest; they may not be paid or may have arbitrary sums deducted from their pay; they may be forced to work in hazardous and dangerous conditions; may be refused sick leave or denied compensation following an accident; may be dismissed without justification; or they may have their passports confiscated by their employers.

In 2006, Uruguay also recognized that domestic workers should have equal right to labour protection and social security rights, including a limit to working hours, weekly and nightly rest, minimum wages and the right to insurance benefits for unemployment and health coverage. In Uruguay, migrant domestic workers have the same rights as national domestic workers.

*Source: "Promotion and protection of human rights, including ways and means to promote the human rights of migrants: Report of the Secretary-General" (A/70/259), para. 54.*

Migrant domestic workers are commonly expected to work excessive hours. This demand is often aggravated by refusal to pay for these hours, or to pay at a fair rate. Requests for salary increases or fair pay will often result in employers sacking the irregular worker, who generally is not able to challenge the dismissal.

In Qatar, Amnesty International interviewed 14 women who said they worked at least 15 hours a day, seven days a week, amounting to average working weeks of more than 100 hours.

*Source: Amnesty International, My Sleep is My Break: Exploitation of Migrant Domestic Workers in Qatar (2014), p. 28.*

In London, Human Rights Watch interviewed overseas migrant domestic workers who were on call 24 hours a day, 7 days a week, and who worked between 15 and 17 hours a day.

*Source: Human Rights Watch, Hidden Away: Abuses against Migrant Domestic Workers in the UK (2014).*

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<sup>15</sup> ILO, "2012 Global estimate of forced labour: Executive Summary".

Migrants can be coerced to work through the use or threat of violence, but also such means as debt bondage, retention of identity papers or threats of denunciation to immigration authorities. Forced labour is an absolute violation of fundamental human rights and is considered a crime in most national legal systems.

In practice, nevertheless, migrants in an irregular situation who are victims of forced labour may be prevented from, or face difficulties in, lodging or pursuing a complaint. This may be owing to their situation (if they are confined to the house, for example, or their employer has retained their documents) or to procedures that do not allow them to bring complaints, or do not protect them from expulsion while their case is processed.

countries, either voluntarily or by being forcibly deported. They may be detained in appalling conditions and for long periods of time prior to being deported. Migrant women and children are often not detained separately from men or unrelated adults respectively, and migrants are often detained together with persons who have been convicted of crimes. In detention, migrants' physical and psychological health tends to deteriorate and access to health services is likely to be poor. Pregnant women or women with babies and children rarely receive special care. Detention centres tend to be run by police or prison authorities or private security companies, often without appropriate training in the human rights of migrants or in the provision of health services.

It is estimated that 60-70% of Ethiopian women migrating to take up domestic work abroad do so irregularly.

*Many Ethiopian women working in domestic service in the Middle East face severe abuses, including physical and sexual assault, denial of salary, sleep deprivation, withholding of passports, confinement, and murder. Many are also driven to despair and experience psychological problems, with some committing suicide.*

*Source: United States Department of State, 2012 Trafficking in Persons Report - Ethiopia (19 June 2012). Available from [www.refworld.org/docid/4fe30ccb32.html](http://www.refworld.org/docid/4fe30ccb32.html).*

## G. DETENTION AND DEPORTATION

Irregular migrant domestic workers who have been identified by the authorities of the country of destination will usually be expected to return to their home



*Some States have applied alternative measures to detention for irregular migrants, with some explicitly acknowledging that particularly vulnerable groups, such as children, should not be detained. In Spain, the immigration detention of children is prohibited by law; such children are to be referred to services for the protection of minors and may be detained only with their parents in facilities that are appropriate for families.*

*All European Union countries, except for Cyprus and Malta, have legislated that alternatives to detention must be pursued prior to any decision for detention. The 2004 immigration law of the Bolivarian Republic of Venezuela prohibits detention and provides several alternatives that may be adopted within a deportation procedure, including reporting regularly to the competent authority, settling in a given locality during the administrative procedure and providing a financial security guarantee (for which the migrant's economic condition must be taken into account).*

*Source: "Promotion and protection of human rights, including ways and means to promote the human rights of migrants: Report of the Secretary-General" (A/68/292), paras. 77 and 79.*

Both during detention and deportation, irregular migrant domestic workers, especially women, are at particular risk of physical and sexual violence. Irregular migrants often endure collective expulsions and forced returns, which are arbitrary and can lead to further multiple human rights violations. Concerns have been raised about the treatment of migrants during forced returns, including

the use of excessive force and unnecessary restraint techniques and the administration of non-medically justified sedatives and other medications. Of great concern is the death of migrants during forced returns, owing primarily to the treatment they are subjected to while being returned.

## **H. GAPS IN LEGAL PROTECTION, LACK OF ACCESS TO REDRESS AND COMPENSATION**

The legal system in many countries does not provide adequate protection for irregular migrant domestic workers. Often this is because domestic work is not considered formal work and domestic workers (whether they are nationals or foreigners) are not covered by the general national legislation that protects workers' rights. In other countries, domestic work is regulated and some protection is available (with respect to minimum wages, hours of work and paid leave, for example), but the legislation discriminates against domestic workers because it does not offer them the same level of protection that other workers enjoy. Migrants may also be excluded from protection because of their nationality or their migration status. National laws often exclude migrants in an irregular situation, explicitly or by omission. As a result, they are often unable to access or enjoy essential services or social protection.

### **The New York Domestic Workers' Bill of Rights**

In 2000, domestic workers in New York, United States, formed the New York Domestic Workers Justice Coalition. With the United States National Domestic Workers Alliance, Employers for Justice and other groups, it campaigned for eight years for a Domestic Workers' Bill of Rights. The Bill became law on 29 November 2010, and guarantees for domestic workers:

1. A normal work day of 8 hours; a work week of 40 hours for live-out domestic workers and 44 hours for live-in domestic workers.
2. The minimum wage of workers in New York State (currently US\$ 8.75 per hour).
3. Overtime pay of 1.5 times the worker's regular wage.
4. One rest day in each calendar week, which (where possible) should coincide with the worker's day of worship.
5. Three paid days off after one year of employment.

The Bill prohibits workplace discrimination and sexual harassment. It applies to all domestic workers, including irregular migrants.

Migrant domestic workers in an irregular situation find it difficult to access legal remedies when their rights are violated. First of all, they face the same obstacles that all migrant workers face (unfamiliarity with national laws and judicial systems, unfamiliarity with local languages, inappropriate or inadequate legal assistance) and that all domestic workers face (gaps in legal protection, restrictions

on freedom of movement, association and expression).

In addition, they face obstacles that are specific to their irregular situation. Fear of expulsion often deters irregular migrants from lodging complaints against an abusive employer. In some cases, employers play on these fears by threatening to denounce them – and fear is well-founded wherever judicial or other public officials are obliged to report irregular migrants to the immigration authorities. The effect is to cause many irregular migrants to choose to endure abusive conditions.

*A general climate of criminalisation of irregular immigrants combined with the fear and risk of being arrested and expelled may further fuel the belief, including among the victims themselves, that migrants in an irregular situation do not have any rights. This complex of fear and insecurity, produced by the illegal situation, dissuades migrants from seeking redress. Many instead prefer to leave abusive employers and not to seek redress.*

*As many interviewees from Poland, Germany, Sweden, France and Ireland said, the price for claiming their rights – deportation – “would be too high”.*

Source: FRA, *Migrants in an irregular situation employed in domestic work*, p. 42.

In the absence of mechanisms that provide protection to migrants who bring complaints, it is extremely difficult for migrant domestic workers in an irregular situation to initiate or pursue a complaint against an employer or abuser. While the case is being settled, they are likely to need permits, and access to temporary accommodation and social services, especially if the complaint involves sexual abuse or violence. Victims of serious criminal offences such as forced labour, slavery or physical or sexual violence can be granted a temporary residence permit that allows them to remain in the country of employment while their case is heard. However, conditions may be attached (willingness to collaborate with the police) and these often do not allow the complainant to work. In some countries, investigations are systematically dropped if the complainant leaves the country.

*In Bahrain, the embassies of the Philippines and India provide shelter to female migrant domestic workers who have had problems with their employer.*

*Source: E/CN.4/2004/76, para. 61.*

Nor can migrants in an irregular situation easily access the justice system if they cannot produce evidence of a work relationship with their employer or prove their conditions of work. Salaries are often paid in cash, without a paper trail. In private households, there are often no witnesses of abuse. In many countries, no provision exists for labour inspections of private households and, even when a law is in place, such inspections are extremely difficult to carry out.



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As labour inspectors are unable to enter private homes in Lebanon, social workers have been appointed to monitor the conditions of domestic workers. Labour inspectors have been given specialized training courses to assist them in monitoring the implementation of laws and regulations concerning decent work, including for domestic workers.

In Peru, under the Ministry of Labour and Employment, labour inspectors are mandated to investigate domestic workplaces. Inspectors carried out 152 inspections with regard to domestic workers from April to December 2014.

*Source: "Promotion and protection of human rights, including ways and means to promote the human rights of migrants: Report of the Secretary-General" (A/70/259), paras. 65-66.*

Direct or indirect discrimination against foreigners in judicial proceedings as well as corruption (for instance, when the police or judicial officials collude with employers against their migrant employees) are some of the other obstacles that impede migrant domestic workers from seeking and obtaining redress in cases of abuse. Courts can discriminate against irregular migrants when they do not enforce contracts in which one of the parties is known to be in an irregular situation. This allows employers to ignore their contractual obligations such as payment of salaries.

It is also an obligation of countries of origin to protect their nationals who work abroad, notably by providing effective consular services and mechanisms for receiving complaints from migrant workers in embassies and consulates.

In its concluding observations to the Government of the Philippines in 2009, the Committee on the Rights of Migrant Workers expressed concerns about the incidence of abuse and exploitation of Filipino workers abroad, especially women. The Committee made detailed recommendations for their protection. For example, it asked the Government of the Philippines to "[negotiate] more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent" and to "increase dissemination channels to increase awareness among migrant workers, especially women in domestic service, on the available mechanisms for bringing complaints against employers and so that all abuses, including ill-treatment, be investigated and punished". It reiterated these recommendations in 2014. The Committee has clarified the obligations of countries that promote institutionalized migration, by inviting them to regulate the industry and apply human rights standards, rather than consider economic and development aspects alone.

In response, the Government of the Philippines passed a Migrant Workers and Overseas Filipinos Act, which improved the protection offered to Filipino migrant workers abroad, raised awareness of poor or fraudulent recruitment practices, and increased the number of consular staff available to assist and protect Filipino migrants in other countries.

*Source: CMW/C/PHL/CO/1.*

# V. SEEKING A SOLUTION: RETURN AND REINTEGRATION OR REGULARIZATION

## RETURN AND REINTEGRATION

Return and reintegration can be a difficult process for returning migrants. Migrant domestic workers in an irregular situation may not have chosen freely to return home; they may have been deported or returning home might have been the only way to escape an abusive employer. In such cases, returning migrants may not have planned their return and reintegration in their countries and communities of origin. They may still be indebted, perhaps to smugglers or recruiting agents in their country of origin, or to family members or neighbours. They may feel that they have failed in their goal to financially support their family and often suffer from feelings of guilt. If they have been detained in harsh conditions before their return or have suffered abuse, they may be traumatized. Many suffer from depression, exhaustion and other physical and mental illnesses upon their return. Unfortunately, they do not always find official systems in place which allow for the durable social and cultural reintegration of migrants who are returning home.

For evident reasons, many irregular migrant domestic workers do not accumulate pensions or other benefits. Those that do may find on return that such benefits cannot fully be transferred. Unless agreements exist between their countries of origin and employment, migrant domestic

workers may be obliged to renounce a part or all of their entitlements, including unpaid salaries. While abroad, they may not have contributed to their own country's pension and unemployment schemes either and as a result may benefit from neither system.

*The Government of Indonesia and NGO representatives have attempted to establish monitoring systems to screen returning migrant workers, to inform them of their rights, and to identify those needing medical attention.*

*Source: "Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante: Mission to Indonesia (A/HRC/4/24/Add.3), para. 28.*

Sri Lanka has created an insurance and pension scheme for returning migrant workers who have registered in the scheme.

*Source: Committee on the Rights of Migrant Workers, Concluding observations: Sri Lanka (CMW/C/LKA/CO/1), para. 11*

On return, migrant domestic workers may have difficulty in finding employment. Their working experience abroad may not necessarily be recognized and their vocational certifications may be outdated. They may have difficulties finding long-term and adequate housing, including because they sold or mortgaged their houses in order to finance their migration, and be forced to rely on the charity of family or friends.

## REGULARIZATION

Regularization is one of the most effective forms of protection for migrant domestic workers in an irregular situation, and

human rights experts have affirmed that migrants who have had their status regularized are able to enjoy a more secure and dignified life. The Committee on the Rights of Migrant Workers has accordingly recalled, in its general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, that “regularization is the most effective measure to address the extreme vulnerability of migrant workers and members of their families in an irregular situation. States parties should therefore consider policies, including regularization programmes, for avoiding or resolving situations whereby migrant workers and members of their families are in, or are at risk of falling into, an irregular situation” (para. 16). The Special Rapporteur on the human rights of migrants has asked States to consider regularizing migrants who have lived in a country for a long time, or who came as infants, or who are working and

thus contributing to the society in which they live.<sup>16</sup>

*Some 500,000 irregular third-country nationals employed in domestic work have been regularised since 2002 in Italy and Spain.*

*Source: FRA, Migrants in an irregular situation employed in domestic work, p. 19.*

In some countries, regularization programmes grant residence and work permits to migrants on an individual basis, taking into consideration criteria such as the applicant’s employment record, length of stay in the country of employment, family links and knowledge of the language of the country of employment.

<sup>16</sup> A/HRC/26/35, para. 58.



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## Maryfe's story

I have lived here for the last six years. I have worked as a nanny, a cleaner, a housekeeper, a baby-sitter and a carer for an elderly woman. I am "undocumented"; I do not have a permit to live and work in this country. This is my story.

I come from a poor family in the Philippines. I studied up to high school and then I quit my studies to work as a street seller. I got married very early, when I was 17, and quickly had four children. I needed to support my children and care for my sick father, and my husband was not much help. I learned that if I went abroad I could earn more money for my children and my family. In 2004 I decided to look for work outside the Philippines.

On 2 October 2004 I went to Hong Kong, having had a video interview with a Hong Kong-based recruitment agency. When I got there I was given two jobs to do by my employer; I had to care for her disabled child in one house and in the other I had to look after her bedridden father. It was hard work, and my employer was always angry with me. She called me names. She even held a knife to my throat and threatened to kill me. One day I had enough and told her that I wanted to break my contract and return home. She got very angry and called the police and told them that I had stolen HK\$ 400 from her. They searched my luggage and even strip searched me. I will never forget that. Even though they agreed with me that I hadn't stolen anything the police told me that I would have to leave Hong Kong as I had broken my contract.

So, scared from this experience, I went back to the Philippines and started selling in the market again. But I made little money and my children were growing up;

it is hard as a mother to see your children in need. So I decided I had to go abroad again.

On 9 March 2006 I went to Dubai to work as a nanny. The work was tough. I was on call most of the time. I only slept four hours a night as I would have to accompany my employer and her child out until late at night. The salary was low and I didn't have a day off.

In August 2008 the family I was working for came to this country on holiday and brought me with them. Outside the hotel one day I got talking to a Filipina who told me that she would help me run away from my employer. That night I couldn't sleep. I weighed up my duty as a mother to provide my children with a better life against the fact that it would be many years before I could see my children again. That night I called my family and told them I would not see them any more for many years. It was one of the most difficult decisions I have ever made. I miss my children every day.

I have had a few jobs since then in this country. I have worked with a family looking after their three children and even though I loved the children, I found it hard to work there. I worked 12 hours a day for five and half days a week. My employer and I argued constantly. She wanted me to come with them on their holidays in another country so that I could look after the children. She didn't understand that I did not have papers, I can't leave this country and I can't risk getting caught. I got acute hypertension. But I felt that I couldn't leave the job because I needed the money. Finally it got too much and I quit.

For one month I was without steady work and I worried constantly about money. My children and my extended family rely on the money that I send them from here.

Everyone at home thinks that because I am working in this country that I should be able to send them back lots of money. They don't know how expensive it is here, and how good work is difficult to find. Then, four years ago I found work with a family as a nanny and house-keeper, and this is where I am working today. I also work part-time during the evenings and weekends cleaning houses and looking after an elderly woman. I am happy at work, but I miss my children and family.

I worry too about my health. I have chronic hypertension and am on daily medication. I have regular appointments with the doctor through a special scheme set up by the public hospital here. My doctor writes on the prescription how much I can afford to pay – when I first started going I was told to pay 5 dollars, then they changed it to 10 dollars, and now I have been told to pay 20 dollars. I don't know why it has increased, no one has explained this to me. Recently I had an agonizing pain in my tooth and I didn't know what to do. I have never been to the dentist in all the years I have been in this city. It is too expensive. I don't have health insurance, and every time I need medical treatment I worry that I will not be able to afford to pay the bill.

When I first arrived here I shared a small studio apartment with three other women and paid a share of the rent to the one woman who had a permit and was able to rent the apartment. Now I live with my boyfriend who is also a migrant but who has papers, and I pay him for the rent, food, internet and other expenses.

It is difficult living without papers. I feel scared every time I see the police, even if it is only the transport inspectors. When I first came here I thought that they could just catch you as you were walking on

the street and send you back to your country. But now I know that they will only catch you if you get in trouble. So every month I buy a transport ticket, and make sure that I don't get in trouble with the police. I never fight with anyone because I don't want them to call the police. A few years ago my friend was suddenly dismissed by her employer without any notice. When she went to her employer to ask for her remaining salary and a reasonable notice period she was threatened by her employer's husband that he would call the police and tell them that she didn't have papers. We all advised her to just keep quiet and look for another job. What would she gain by fighting or trying to get an expensive lawyer through the trade union?

It is not worth it to get into trouble when you are undocumented. You shouldn't draw attention to yourself. This is the reality of my life.



## VI. A CALL TO ACTION

Migrant domestic workers face many legal and practical obstacles to the enjoyment of their human rights. Those that are in an irregular situation rarely have easy and effective access to services and benefits, including social security and health care. They also endure discrimination and abusive work conditions and are often unable to challenge their ill-treatment.

Women domestic workers, hidden away in private households, are frequently exposed to sexual and gender-based violence and forced confinement. In some countries they are subject to invasive medical tests, can be fired if they become pregnant and are not permitted to marry. If they flee abuse, they may face arbitrary or prolonged detention.

Domestic workers tend to live and work in the shadows, and are often explicitly excluded from the protection of domestic labour laws. They may live in substandard accommodation, with little privacy, and are often unable to freely meet

friends and associates, or practise their religion. Afraid to complain for fear of arrest, detention and deportation, many live in anonymity and isolation.

Despite the fact that they do crucial work, such as caring for children and the elderly, cooking, cleaning, running households, and enabling other women to enter and remain in the workforce, migrant domestic workers in an irregular situation are often not regarded as workers. In the worst cases, they are not even considered to be fully human beings; or in the words of the Universal Declaration of Human Rights to be “free and equal in dignity and rights” (art. 1).

States have a particular duty to protect irregular migrant domestic workers, because in certain respects they face exceptional risks. More generally, migrants are entitled to the same rights that all people enjoy under international law. Migrant domestic workers make a distinct and important contribution to society which should be acknowledged and valued. It is time that the human rights of all migrant domestic workers were protected, respected and fulfilled.

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Behind closed doors

Protecting and promoting the human rights  
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