



## **Fourth item on the agenda: Decent work for domestic workers**

### **Report of the Committee on Domestic Workers**

1. The Committee on Domestic Workers met for its first sitting on 1 June 2011. It was originally composed of 209 members (102 Government members, 35 Employer members and 72 Worker members). To achieve equality of voting strength, each Government member entitled to vote was allotted 420 votes, each Employer member 1,224 votes and each Worker member 595 votes. The composition of the Committee was modified six times during the session and the number of votes attributed to each member was adjusted accordingly.<sup>1</sup>
2. The Committee elected its Officers as follows:

<i>Chairperson:</i>	Mr H.L. Cacdac (Government member, Philippines) at its first sitting
<i>Vice-Chairpersons:</i>	Mr P. Mackay (Employer member, New Zealand) and Ms H. Yacob (Worker member, Singapore) at its first sitting
<i>Reporter:</i>	Ms M.L. Escorel de Moraes (Government member, Brazil) at its 15th sitting

<sup>1</sup> The modifications were as follows:

- (a) 2 June: 220 members (106 Government members with 975 votes each, 39 Employer members with 2,650 votes each and 75 Worker members with 1,378 votes each);
- (b) 3 June: 172 members (109 Government members with 902 votes each, 41 Employer members with 2,398 votes each and 22 Worker members with 4,469 votes each);
- (c) 4 June: 177 members (113 Government members with 903 votes each, 43 Employer members with 2,373 votes each and 21 Worker members with 4,859 votes each);
- (d) 6 June: 170 members (114 Government members with 35 votes each, 35 Employer members with 114 votes each and 21 Worker members with 190 votes each);
- (e) 7 June: 167 members (117 Government members with 308 votes each, 28 Employer members with 1,287 votes each and 22 Worker members with 1,638 votes each);
- (f) 9 June: 167 members (118 Government members with 297 votes each, 27 Employer members with 1,298 votes each and 22 Worker members with 1,593 votes each).

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3. At its 16th sitting, the Committee appointed a Drafting Committee composed of the following members: Mr C.A. Chocano Burga (Government member, Peru) and Mr D. Lacroix (Government member, Canada); Mr J. Kloosterman (Employer member, United States) and Mr G. Touchette (Employer member, Canada), assisted by Mr S. Barklamb of the International Organisation of Employers (IOE); Ms C. Gingras (Worker member, Canada) and Ms H. Yacob (Worker member, Singapore), assisted by Ms M. Koning of the International Trade Union Confederation (ITUC).
  4. The Committee had before it Reports IV(1), IV(2A) and IV(2B), entitled *Decent work for domestic workers*, prepared by the Office for a second discussion of the fourth item on the agenda of the Conference: “*Decent work for domestic workers – Standard setting, second discussion, with a view to the adoption of a Convention supplemented by a Recommendation*”.
  5. The Committee held 18 sittings.

## Introduction

6. The representative of the Secretary-General, Ms M. Tomei, Director of the ILO Conditions of Work and Employment Programme, welcomed the members of the Committee and invited them to nominate their Chairperson.
7. Upon his election, the Chairperson affirmed his commitment to the work of the Committee, noting that he would do his utmost to ensure that it was able to fulfil its mandate. The meeting provided a historic opportunity to recognize the social and economic value of domestic workers and for governments and the social partners to demonstrate their commitment to find effective ways of extending decent work to that group of workers. He was aware of the challenges that lay before the Committee and hoped that its members would assume responsibility for delivering meaningful outcomes, in a spirit of social dialogue and mutual understanding. Given that the International Labour Conference (ILC) was holding its 100th Session, there was no better place or time for the members of the Committee to demonstrate their adherence to consensus building and democratic involvement.

## General discussion

8. The representative of the Secretary-General recalled that the adoption of the Conclusions of the first discussion in 2010 had been a major achievement, considering the complexity of the issues addressed. Although the debate had not always been easy and there had at times been difficulties in reaching consensus, the members of the Committee had shown their determination to adopt standards to help improve the living and working conditions of domestic workers across the world. Among other things, the Committee had expressed support: for robust and flexible standards on domestic work; practical guidance to ensure real coverage; greater knowledge and dissemination of successful national practices; and better statistical information on domestic work.
9. Referring to the reports prepared by the Office since the 2010 session of the ILC, the representative of the Secretary-General noted that the “brown” report (Report IV(1)), which had been formulated on the basis of the Conclusions and had been transmitted to governments for feedback, had received the highest response rate in relation to any brown report in 15 years, reflecting the huge interest that the issue had generated both within and beyond the ILO’s constituency. The replies showed wide and strong support for working towards a Convention supplemented by a Recommendation. Positions varied, nonetheless,

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on the content of the Convention, with some governments indicating their support for a more streamlined text. After outlining the major substantive drafting changes that had been introduced to the proposed texts, she drew attention to several unresolved issues, including questions raised concerning: working time and occupational safety and health (OSH); employment agencies; and how to refer to “domestic worker” and “domestic workers” in French and Spanish. Furthermore, many governments had indicated that they attached great importance to addressing in detail the provisions concerning a possible Recommendation, which was intended to provide much-needed practical guidance on how to give effect to the basic principles and minimum levels of protection included in the proposed Convention.

- 10.** The Worker Vice-Chairperson remarked that the 100th Session of the ILC would be meaningless if it did nothing to improve people’s lives. While recalling that after every major crisis everyone called for rules, standards and regulations, she underlined that the ILO, through its standard-setting function, was trying to avert human disaster. Without international labour standards, exploitation, abuse and discrimination would be the order of the day. Identifying domestic workers as one of the most vulnerable groups, she asserted that their plight was invisible and that they needed protection. She reminded the Committee that, the previous year, a draft text calling for a Convention supplemented by a Recommendation had been adopted by consensus. Moreover, the overwhelming majority of respondents to Report IV(1) had expressed support for a Convention supplemented by a Recommendation. She considered that much enthusiasm had been generated by the work of the Committee.
- 11.** The Worker Vice-Chairperson reminded the Committee that the call for a standard to protect domestic workers had first been mooted at the ILC in 1965. Moreover, a lengthy debate had taken place the previous year on why a Recommendation alone would be insufficient to protect domestic workers; hence her appeal that a debate on core issues should not be reopened. There was a need for binding standards to provide decent work for domestic workers as a clear framework to guide governments, employers and workers. She underlined that ILO support to countries would need to be provided to ensure that the Convention would be easier to ratify and implement. She noted that the collective responsibility was to provide domestic workers with what they lacked most: recognition as workers; and respect and dignity as human beings. She concluded by outlining key areas for the Committee’s discussion, including the scope of application, OSH and social security.
- 12.** The Employer Vice-Chairperson agreed that there remained a pressing need to better protect domestic workers. He recalled that in 2010 his group had favoured a stand-alone Recommendation in preference to a Convention, with or without a Recommendation. That remained the preference of the Employers’ group and employers’ organizations around the world, because of the difficulties of managing some of the proposed approaches; an overly prescriptive Convention could suffer from a low ratification rate. However, the approach of the Employers’ group in the Committee would be based on two core themes: pragmatism and realism. That meant that the Employers’ group would acknowledge and respect the decision of the Committee’s majority as to the form of the instrument.
- 13.** In the case of a Convention, he announced that his group would be asking the Committee to examine the final provisions on the means by which it would come into force and become binding on Members. The goal would be to enhance the prospects of wide ratification. It would also be important to ensure that any adopted Recommendation would be comprehensive and robust enough to serve as a “backstop” after the end of the ILC and until progress towards ratification of a Convention was made. Using the Recommendation as a “dumping ground” for difficult issues or other matters that the Committee would not have time to discuss properly would not serve the interests of domestic workers. He also

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reemphasized the unique nature of those employers – who were also householders and families – and the need to protect families’ rights. Extraterritoriality – which would require governments to enforce legal provisions on domestic workers living and working abroad and could make matters unnecessarily difficult – should be avoided.

14. The Secretary-General thanked the delegates as well as the Office for the work carried out so far. He underlined the importance of the objective of the Committee, namely the adoption of new standards on domestic work, which would be crucial to improving domestic workers’ rights. The significance of the work of the Committee also related to the expansion of the ILO standard-setting system into the informal economy, a domain which was seldom covered by labour legislation. He acknowledged that the work of the Committee could well be difficult, as the parties might not agree on all the issues, but recalled that there was a tripartite commitment on the adoption of a Convention and a Recommendation, which would be specific, add value and make a difference to the lives of domestic workers. The adoption of such instruments would represent an important and historic achievement at a time when the ILO was celebrating the 100th Session of the ILC.
15. The Government member of Hungary, speaking on behalf of Government members of Member States of the European Union (EU) registered in the Committee<sup>2</sup> (hereinafter referred to as EU Member States), stated that national and international labour standards did not always offer adequate guidance explicitly targeted at domestic workers. The EU Member States therefore supported a specific international instrument on decent work for domestic workers that would complement existing ILO Conventions. She recalled that broad agreement had been reached by the ILC in 2010 for a Convention and a Recommendation. The Convention should provide adequate protection and focus on fundamental principles and rights concerning domestic work, while remaining flexible enough to ensure wide ratification. She expected that the outcome negotiated the previous year would be maintained and that Articles 1 and 2 of the proposed Convention would be discussed together. The Committee should focus its work on the following issues: working-time arrangements for domestic workers; the right to be informed of the terms and conditions of employment; OSH; and the role of employment agencies. Linguistic problems should not be dealt with in plenary meetings of the Committee.
16. The Government member of France, speaking on behalf of Government members of the group of industrialized market economy countries (IMEC) registered in the Committee<sup>3</sup> (hereinafter referred to as the IMEC group), stated that domestic workers were particularly vulnerable to abuse and often lacked legal protection. The IMEC group supported the aims and principles of the proposed Convention and Recommendation to supplement existing Conventions. He stressed that a Convention which established principles and objectives, while avoiding overly prescriptive ways of meeting those objectives, was key to achieving a widely ratifiable text. The proposed Recommendation, which had not yet been fully discussed, could go into more detail. He underlined that member States should be allowed flexibility in meeting the objectives, to take into account their own circumstances, laws and customs, and systems of collective agreements. Key issues that the Committee should deal with included the right to reasonable levels of safety in the workplace; working time;

<sup>2</sup> Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.

<sup>3</sup> Australia, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Republic of Korea, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

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employment agencies; and the terms and conditions of employment. Domestic workers needed basic knowledge about their working conditions, while the legal traditions and customs of each Member regarding the employment relationship should be respected.

17. The Government member of Argentina, speaking on behalf of Government members of the Group of Latin American and Caribbean Countries (GRULAC) registered in the Committee<sup>4</sup> (hereinafter referred to as GRULAC), recalled that, in the March 2008 session of the Governing Body, GRULAC had supported the inclusion of the item in the agenda of the ILC in 2010. GRULAC favoured a Convention and a Recommendation. It was necessary to take normative action to protect the rights of millions of domestic workers in developed and developing countries. He referred to the specific nature of domestic work, which was carried out within the privacy of the home, often removed from public view and without protection. The 100th Session of the ILC provided the opportunity to improve the situation of domestic workers greatly. He noted that, regardless of the decision that would be taken on the term “domestic worker”, each member State would be able to use the most appropriate term in line with their national legislation when adopting the instrument.
18. The Government member of South Africa, speaking on behalf of Government members of the Africa group registered in the Committee<sup>5</sup> (hereinafter referred to as the Africa group), recalled that the Committee had in 2010 voted in favour of international instruments – a Convention and Recommendation – to protect the rights of domestic workers and their employers, and he expressed strong support for the proposed instruments. He was mindful of the need for broad ratification of the instruments to realize benefits for the millions of domestic workers across the world. The Africa group intended to pursue the following areas of discussion: ensuring that domestic workers were viewed as an integral part of the workforce; provision of greater clarity on issues of social security and OSH protection; and the active role that private employment agencies played as employers.
19. The Government member of Australia, speaking on behalf of Government members of the Asia and Pacific group (ASPAG) registered in the Committee<sup>6</sup> (hereinafter referred to as ASPAG), welcomed the second discussion of the proposed instruments on domestic workers. The issue of undervalued and poorly regulated domestic work was highly relevant to her region, which included both source and destination countries of migrant domestic workers. Domestic workers made a significant contribution to a country’s economy by allowing men and women with family responsibilities to participate in the workforce; migrant domestic workers also contributed to their home countries’ economic performance

<sup>4</sup> Argentina, Barbados, Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador (from 4 June), Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay (from 7 June), Peru, Suriname, Trinidad and Tobago, Uruguay and Bolivarian Republic of Venezuela.

<sup>5</sup> Algeria, Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Democratic Republic of the Congo (from 6 June), Côte d’Ivoire, Egypt, Eritrea (from 4 June), Ethiopia, Gabon, Ghana, Guinea (from 9 June), Kenya, Lesotho, Liberia (from 4 June), Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria (from 4 June), Rwanda, Senegal, South Africa, Sudan, Swaziland, United Republic of Tanzania, Togo, Tunisia, Zambia and Zimbabwe.

<sup>6</sup> Afghanistan, Australia, Bahrain, Bangladesh (from 3 June), Brunei Darussalam, Cambodia, China, India, Indonesia, Islamic Republic of Iran, Iraq, Japan, Republic of Korea, Kuwait, Lebanon, Malaysia, Maldives (from 3 June), Mongolia, Nepal, New Zealand, Oman, Pakistan, Papua New Guinea, Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Thailand, United Arab Emirates, Viet Nam and Yemen (from 3 June).

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by sending remittances. The Committee should focus on developing a relevant and meaningful instrument that could be implemented under different national conditions, while providing comprehensive definitions and guidance for its implementation. The discussion of the proposed standards was an important development in the ILO's history and in its mandate to create decent work.

- 20.** The Government member of the United Arab Emirates, speaking on behalf of the Gulf Cooperation Council (GCC) countries registered in the Committee<sup>7</sup> (hereinafter referred to as the GCC countries), indicated that all countries supported the efforts to fully protect domestic workers, in line with the specificities of that type of work. A Convention supplemented by a Recommendation, which provided flexibility for both ratification and effective implementation, would help to improve the conditions of those workers. He noted that a unified labour contract for domestic workers had been adopted in Kuwait and that, in the United Arab Emirates, new legislation would allow for labour inspection in private households. As regards migrant domestic workers, cooperation and partnership between sending and receiving countries was essential. Provisions regulating employment agencies in sending countries should be considered since migrant domestic workers could be cheated by recruitment agencies in sending countries.
- 21.** The Government member of Brazil stressed that the lack of protection for domestic workers represented a significant gap in the coverage of international labour standards, and that the ILC could take the historic opportunity to fill that gap. No other category of workers included so many minorities; none were so frequently subject to abuse and violation of their rights. Nevertheless, domestic workers were essential for national economies. She recalled that Brazil's domestic workers had struggled hard since the 1930s to advance their human rights. The Committee had a unique chance to negotiate a human rights treaty that would affect millions of workers. Domestic workers around the world were looking to the ILC to adopt a Convention that would help to overcome past injustices and give domestic workers a better future.
- 22.** The Government member of the Philippines supported the adoption of a Convention supplemented by a Recommendation. He believed that the Convention should establish minimum standards that could help to end the abuse and exploitation of domestic workers. The Philippines had laws and policies in place to uphold domestic workers' rights and welfare; as a source country, it recognized the menace of illegal recruitment and trafficking, particularly of women and children, which placed migrant domestic workers at special risk. One priority was to ensure humane treatment of migrant workers in their host countries. With this objective, his Government was implementing a certification process relating to receiving countries' legal frameworks, or agreements with those countries, in order to help determine appropriate deployment policies. The Committee's members were striving for the noble end of promoting decent work for all, including domestic workers, and it was time to move from aspiration to reality.
- 23.** The Government member of Senegal recalled the Committee's agreement in its first discussion in 2010 that a new instrument on decent work for domestic workers should be both rigorous and flexible. It should establish minimum standards and practical, realistic guidelines that guaranteed genuine protection to domestic workers, and should take account of householders' privacy rights. The Committee's discussion could draw on his country's experience, enacting legislation to protect domestic workers in 1968. He highlighted the crucial role of workers' and employers' organizations, and the desirability of extending social dialogue and collective bargaining to the domestic work sector.

<sup>7</sup> Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

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- 24.** The Government member of the United States supported the IMEC statement and highlighted that domestic workers were currently often excluded from the legal protection afforded to other workers. He recalled agreements reached during the Committee's first discussion, including that the instruments should take the form of a Convention supplemented by a Recommendation; that fundamental principles and rights at work applied to all workers, including domestic workers; and that domestic workers must be able to negotiate their terms of employment. While the Committee agreed about the principle of equal treatment of domestic workers, agreement still had to be reached on how to achieve that objective. He was confident that the Committee would be able to find reasonable methods that ensured appropriate wages, decent working hours, and OSH rights for domestic workers. The role of private employment agencies in facilitating placement was important, so the proposed Convention should be aligned with the Private Employment Agencies Convention, 1997 (No. 181), to establish practical guidelines in favour of domestic workers and reputable employment agencies, and to curtail exploitative operators.
- 25.** The Government member of the United Republic of Tanzania endorsed the Africa group's statement. Domestic work was a rapidly growing sector that remained inadequately regulated; domestic workers – most of whom were female – often worked in poor conditions, largely unprotected by labour legislation. Their isolation and vulnerability were compounded by their invisibility in private homes, where they were dependent on their employers' goodwill. For millions of women and girls in exploitative forms of domestic work, the recognition and defence of their human rights was an urgent necessity. His Government therefore supported a Convention that recognized the rights and duties of domestic workers and their employers.
- 26.** The Government member of China stated that her Government recognized the benefits offered by domestic workers to families and to their country, attaching great importance to protecting their rights. Towards that end, China had begun introducing measures to protect domestic workers and develop the domestic work sector. She indicated that new international instruments on domestic workers should take into account differences in economic development among countries and the unique characteristics of domestic work. Such instruments should promote decent work for domestic workers, but should not set standards that were too high to be implemented by member States.
- 27.** The Government member of the Bolivarian Republic of Venezuela supported the GRULAC statement, recalling her Government's support at the 99th Session of the ILC for a Convention supplemented by a Recommendation. She underscored the necessity of regulating domestic work and protecting domestic workers. The ILO's objective was the promotion of decent work for women and men in conditions of equality, notwithstanding globalization, unemployment and economic crises which made finding productive and decent employment increasingly difficult. National legislation that included elements of the proposed instruments had already been developed by her Government. Member States should have flexibility in using the terminology for domestic workers that was most appropriate to national standards.
- 28.** The Government member of Kenya endorsed the Africa group's statement, reiterating her Government's support for a Convention supplemented by a Recommendation. Domestic workers deserved separate international standards tailored to their special situation which, in sub-Saharan Africa, was compounded by issues relating to child labour and human trafficking. In particular, the challenges faced by migrant workers were best met by international instruments as these could help secure bilateral and multi-bilateral agreements for domestic workers. The proposed instruments came at an opportune time for Kenya, which had recently adopted a new Constitution that had taken cognizance of and entrenched the fundamental principles and rights at work, including the economic, social

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and cultural rights of the worker. In that respect, the country was in the process of developing an integrated social protection policy that took cognizance of vulnerable workers, including domestic workers. She favoured the adoption of flexible instruments that were promotional in nature, easily ratified, and could be progressively implemented in line with national circumstances.

- 29.** The Government member of Norway preferred a Convention supplemented by a Recommendation. Noting that the proposed texts were a good basis for discussion, she wanted instruments that were meaningful and likely to be widely ratified. An important starting point for the discussion was that domestic workers should have the same protection as other workers but, given that their workplaces were private homes, necessary adaptation and special regulations were required specifically in respect of OSH and enforcement. OSH measures for domestic work might differ but should be “no less favourable” than in other occupations, as explained by the representative of the Secretary-General during the first discussion. Regarding compliance, the proposed Convention should leave room for member States to make arrangements that respected the right to privacy (which demanded special attention) and the protection of domestic workers. In general, member States should have room to adapt their protective measures to national circumstances. Provisions on employment agencies should not hamper ratification unnecessarily.
- 30.** The Government member of Algeria supported the adoption of a Convention supplemented by a Recommendation, which should encompass basic principles, such as on wages, social protection and rest periods, as well as workers’ and employers’ rights. The instruments should not be so strict as to reduce employment opportunities for domestic workers. She noted that Algerian domestic workers already benefited from social security, occupational accident compensation and maternity benefits.
- 31.** The Government member of Indonesia considered that domestic workers remained marginalized and vulnerable to discrimination, exploitation, human trafficking and other human rights abuses. He thus stressed the need to protect domestic workers’ rights and promote employment relationships based on the rights and obligations of workers and employers. His Government had taken measures to promote decent work among domestic workers, including expediting efforts to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. He confirmed his Government’s support for a Convention supplemented by a Recommendation.
- 32.** The Government member of Switzerland endorsed the IMEC and EU statements, and supported international regulations aimed at improving domestic workers’ working conditions across the world, by providing guidance on how to strengthen their protection. For these international instruments to be effective, they required ratification by many countries and support from the social partners. He favoured a Convention that defined principles, with details in a Recommendation. His Government, together with the social partners, had recently adopted a standard contract, setting a minimum wage for domestic workers in Switzerland.
- 33.** The Government member of Nepal remarked that domestic workers’ issues were of great concern for his country; domestic workers constituted a significant workforce in Nepal and among those migrating to work overseas. He thus supported standards to protect and promote their rights, on the understanding that such standards would strike a balance between legality and applicability, rigidity and flexibility, global context and local realities. While agreeing in principle with the spirit of the proposed instruments, it was important to produce a ratifiable and applicable Convention.

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34. The Government member of Canada stressed the need for gender-neutral language throughout the text, including in the title of the instruments, and raised concerns and questions on the practicality of the proposed texts of the instruments. He noted that the proposed Convention was overly detailed and prescriptive, and was inconsistent with other international labour standards – Article 4 with the Minimum Age Convention, 1973 (No. 138), Article 17 with the Private Employment Agencies Convention, 1997 (No. 181), and Paragraph 3 of the proposed Recommendation with the HIV and AIDS Recommendation, 2010 (No. 200) – and other issues such as definition, right to privacy, and OSH. He suggested adding provisions that would facilitate updating as conditions evolved, citing the Work in Fishing Convention, 2007 (No. 188), as an example.
35. The Government of Japan supported the ASPAG and IMEC statements; domestic workers remained undervalued, invisible and vulnerable, making the new instruments significant. The new Convention and Recommendation should be capable of being implemented by many countries, according to their circumstances. Japan had already taken measures to protect domestic workers in national legislation, and would continue this effort.
36. The Government member of Zimbabwe remarked that the necessity of adopting international standards on domestic workers, who worked in one of the world’s most vulnerable occupations, could not be doubted by anyone. His delegation therefore supported both a Convention and Recommendation, as proposed by the Africa group. He highlighted the work of the Zimbabwe Domestic and Allied Workers Union, registered in 1985 and affiliated to the Zimbabwe Congress of Trade Unions. The international instruments would greatly improve domestic workers’ working conditions in his country.
37. The Government member of Australia supported the ASPAG and IMEC statements. To face the challenges of developing international instruments, the Committee should first focus its efforts on issues of real concern in the Convention, and then on the Paragraphs of the Recommendation that had not benefited from sufficient time the previous year. The Committee had been charged with developing international standards that provided meaningful protection for domestic workers across the world – to set an appropriate international benchmark for generations to come, and not merely to reflect a snapshot of domestic law and practice in 2011. While national contexts were instructive, they should not be the drivers of international levels of protection in the long term. She favoured a Convention that would provide sufficient flexibility to ensure wide ratification and serve as a mechanism to lift domestic workers into the formal economy. Although the fact that domestic workers worked in their employers’ homes presented particular challenges, such workers were by no means unique. The ILO had achieved strong international labour standards for many special categories of workers in its long history. Over 60 international instruments had been developed for seafarers, for example. Her Government fervently hoped that the Committee would mark the 100th Session of the ILC with a Convention and Recommendation for domestic workers, so that they could enjoy working conditions and protection that other workers took for granted. Those standards would apply to an estimated 100 million domestic workers worldwide, as compared to 1.2 million seafarers. She recalled that, in his statement at the final plenary sitting of the 94th (Maritime) Session of the ILC, the Vice-President of the European Commission had stressed “that this [Maritime Labour] Convention deals with the human element, the importance of which can never be underestimated. It is a matter of dignity, putting an end to scandalous situations which we still see happening far too often”.<sup>8</sup> That statement should clearly resonate with the Committee as it worked towards an international standard on decent work for domestic workers.

<sup>8</sup> *Provisional Record* No. 17, 94th (Maritime) Session, ILC, Geneva, 2006.

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- 38.** The Government member of Morocco remarked that the adoption of international standards on decent work for domestic workers would be a worthy way of celebrating the 100th Session of the ILC. The fact that domestic workers had their own specific characteristics did not disqualify them from the entitlement to decent work. His Government had drafted legislation which ensured that domestic workers benefited from paid leave, one day of rest per week and a decent salary, among other things, and also prevented employers from obliging domestic workers to perform hazardous work. He supported a Convention supplemented by a Recommendation. The Convention should be easily ratifiable and remain universal while being flexible enough to protect the workers it was supposed to cover. His Government was particularly in favour of provisions protecting the fundamental rights of domestic workers, especially migrants. To assist implementation, he stressed the importance of multilateral cooperation and the exchange of experience, good practice and technical assistance.
- 39.** The Government member of Ghana confirmed that his delegation fully endorsed the position of the Africa group. Some major improvements had been made in recent years to promote decent work for domestic workers in Ghana, including the adoption of the Labour Act, which recognized and guaranteed the rights of those workers, and the National Pensions Act, which contained a provision enabling employers to contribute to the national pension scheme on behalf of their domestic workers. Nevertheless, those laws were limited in application, especially with regard to hours of work and daily and weekly rest. There was an urgent need to strengthen the country's regulatory institutions to enforce compliance.
- 40.** The Government member of Namibia indicated her support for the statement made on behalf of the Africa group. She recalled that the abuse and exploitation of domestic workers had been a feature of the apartheid colonial system, prior to the country's independence in 1990. However, since the first democratically elected Government had introduced labour laws that extended to all employees, domestic workers enjoyed the full range of labour rights and entitlements to social security benefits. Namibia strongly supported the adoption of a Convention and a Recommendation. The Convention should focus on the principle that domestic workers should be recognized as employees and should enjoy the same or equivalent rights and levels of protection as any other category of workers. She recalled the need to adopt standards that took into account variations in national and regional circumstances, while being forward-looking as regards meeting future needs.
- 41.** The Government member of Lebanon noted that there were thousands of domestic workers, especially migrant domestic workers, in her country. Some of the measures that had been taken by her Government in collaboration with the ILO Regional Office in Beirut to improve the situation of that category of workers included the introduction of a standard contract and the adoption in 2011 of legislation taking into account ILO principles. Her Government was in favour of reaching agreement on international standards that would apply to domestic workers, taking into account the conditions prevailing in individual countries.
- 42.** The Government member of France fully supported the statements made on behalf of EU Member States and the IMEC group. It was important to set minimum levels of protection for domestic workers at the international level in order to guarantee respect for their fundamental rights and establish principles in relation to their working conditions. Establishing rules would provide some security for both the worker and the employer and would ensure that each party was aware of its rights and obligations. In France, the domestic work sector was very structured, mainly because of the legal provisions that were in place but also because of the active role played by the social partners, who had negotiated collective agreements for that sector. The Government's objectives included:

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facilitating the recruitment procedure for employers; improving working conditions for workers, including by promoting vocational training; and combating non-declared work. She recognized that situations varied from country to country and hoped that the discussions would help achieve a balanced and flexible Convention that was easy to ratify.

43. The Government member of Egypt indicated that her country would support the adoption of either a Convention or a Recommendation, as it was keen to promote decent work for domestic workers. It was essential for any instrument to be flexible enough to take into account the conditions and circumstances of each country, in order to ensure successful implementation. Outlining some of the measures that were being taken in her country to protect domestic workers, she drew attention in particular to the establishment of a hotline for domestic workers to raise/discuss issues and the preparation of standard labour contracts that encouraged decent working conditions.
44. The Government member of Iraq noted that the large majority of domestic workers lacked social and labour law protection. That situation, which was exacerbated by poverty and illiteracy, was being addressed now with the proposed instruments. He highlighted the importance of adopting instruments that would take into account both the specificities of domestic work in general, and the special conditions of destination countries in particular, and that would tackle the following issues: weekly rest; annual leave; written contracts; basic rights at work; and minimum age. He also considered the provision of social protection and OSH measures an important aspect.
45. The Government member of Sri Lanka observed that there was a need to protect all members of the workforce, in both the formal and informal economy. He felt that past policies and strategies had not sufficiently covered workers in the informal economy, where domestic workers represented a significant proportion of workers. He fully supported the standard-setting process promoted by the ILO, as it represented an unprecedented opportunity to deliver decent work to the most vulnerable workers. Although countries would face constraints in implementing the new standards, due to their different levels of development, he believed that the ILO would provide technical assistance to member States in order to overcome those obstacles.
46. The Government member of the Islamic Republic of Iran supported the promotion of decent work for all, including domestic workers, as well as the adoption of instruments based on pragmatic approaches. He pointed out that more intense international collaboration was needed to protect migrant domestic workers effectively. That included the dissemination of information, experiences and lessons learned. Regarding the statistical aspects of domestic work, it would be important to collect more information on the characteristics of domestic workers and to design practical indicators to monitor progress. Any instrument should also take into account the fact that many domestic workers worked for multiple households on a daily basis, making it difficult for them to claim their rights.
47. The Government member of the Russian Federation expressed satisfaction with the results of the previous year's discussions and hoped that the remaining differences could be resolved this year. He emphasized the need for a Convention which could accommodate diverse national legislations and cultural traditions. A Convention should create the necessary legal framework for protecting the freedom of association and collective bargaining of domestic workers. He also proposed a provision that would guarantee the payment of salaries at least twice a month, in accordance with the Protection of Wages Recommendation, 1949 (No. 85), and emphasized the right to education of domestic workers. The activity of private employment agencies should not prevent the possible establishment of a direct employment relationship between householders and domestic workers.

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- 48.** The representative of the International Domestic Workers' Network and of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) related that, like many others, she had been abused as a domestic worker. While understanding the calls for a flexible instrument, she restated the importance of adopting a strong Convention to ensure equal treatment and protection for domestic workers. A weak Convention would only reinforce differential treatment. It was true that domestic workers did not work in offices or factories, but experience had shown that it was possible to protect the safety and health of domestic workers and to monitor and inspect private households. She considered that a Convention would bring various benefits: workers and employers would contribute to social security schemes, workers would pay taxes, and they would be able to support their families in ways that would reduce the burden on social security budgets. Freedom of association and collective bargaining was another fundamental principle.
- 49.** The representative of Human Rights Watch, acknowledging that the proposed texts served as a strong basis for the second discussion, noted the importance of extending protection that was not less favourable than that enjoyed by other workers, setting a minimum age for domestic work, ensuring that such work did not interfere with a child's education, and providing contracts that clearly outlined the terms and conditions of employment. She highlighted several aspects of domestic work for which the proposed instruments should provide clear guidance: hours of work and live-in domestic work arrangements; monitoring, enforcement and inspection; and the regulation of employment agencies. Moreover, the provisions on employment agencies should be consistent with the Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation (No. 188), and should prohibit agencies from charging domestic workers for recruitment costs incurred by employers, because that could lead domestic workers into debt and forced labour. Finally, she cautioned that, although flexibility in the instruments was important to accommodate diverse national contexts, overly flexible standards would only reinforce discrimination and unequal status experienced by domestic workers.
- 50.** The representative of Migrant Forum in Asia (MFA), who stated that she had been a domestic worker for nine years, considered that a Convention and Recommendation on the protection of domestic workers would address one of the most pressing injustices in the modern world of work. Such instruments would also bring ILO standards closer to the informal economy. She identified key concerns that the instruments should address: the regulation of the recruitment system, particularly with regard to exorbitant fees which could lead to debt bondage; the provision of information on terms and conditions of employment; the recognition of domestic workers' right to freedom of association and to form trade unions; and workers' right to rest and to a day off. She acknowledged the need for instruments that would be flexible and robust, but stressed that it should ensure the protection of domestic workers "as any other workers".
- 51.** The representative of International Young Christian Workers (IYCW), speaking on behalf of her organization, World Solidarity and the World Movement of Christian Workers, endorsed the proposal for a strong Convention and Recommendation. The instruments should guarantee and protect the human rights and fundamental rights at work of domestic workers and would stimulate the adoption of adequate legislation at national level, giving hope to millions of domestic workers, who should be treated with dignity and respect. The instruments should ensure that domestic workers enjoyed the same rights as other workers. More specifically, the instruments should provide for a decent wage and decent working hours, a safe and healthy working environment, and social protection including maternity protection. Specific measures were needed to protect all migrant domestic workers, and young domestic workers' right to education.

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52. The representative of Defence for Children International (DCI), a former child domestic worker also speaking on behalf of Anti-Slavery International, noted that domestic work was often the only way children could feed themselves and support their families. While not always detrimental to children, domestic work needed to be regulated in order to avoid exploitation and abuse. She supported Article 4 of the draft Convention and Paragraph 4 of the Recommendation, which offered protection that other international standards had failed to provide. Reaffirming that domestic work was unsuitable for children less than 14 years old, she noted that special attention needed to be paid to the hazards of child domestic work. Child domestic workers could not be expected to perform the same tasks as adults. Because they often lived far away from their families, and because they were totally dependent on employers to treat them well, their working and living conditions needed to be closely monitored. While calling for the promotion of education as a right for domestic workers, she underscored the need for governments to facilitate access to schools.
53. The Employer Vice-Chairperson recognized that there was a consensus in favour of a Convention supplemented by a Recommendation. As a result, his group would work towards such instruments and try to ensure that the Convention would be both flexible enough to accommodate national circumstances and tight enough to have real teeth. He also noted the near unanimous call to further discuss three key concerns: hours of work, OSH and the role of employment agencies.
54. The Worker Vice-Chairperson expressed satisfaction about the consensus in favour of a Convention supplemented by a Recommendation. She commended those governments that had been inspired by the previous year's debate to start putting in place measures, including legislation, to protect domestic workers. She recognized that the instruments should provide flexibility and indicated that that notion was already embedded in some of the proposed provisions. However, a proper balance needed to be struck as flexibility should not weaken the protection of domestic workers in the instruments.

## **Consideration of the proposed Convention contained in Report IV(2B)**

55. The Chairperson outlined some basic rules for the discussion of amendments and, following discussions, suggested that the Committee could start by considering the amendments to the Preamble, and then move on to those relating to Articles 1–9.

### **Title of the proposed Convention**

56. The Government member of Canada, on behalf of the IMEC group, introduced an amendment which applied to the French and Spanish versions, but had no impact on the English version, to use terminology in the title of the proposed Convention that applied to both male and female domestic workers. Gender-sensitive language was particularly important for the instruments under discussion, thus the amendment proposed replacing the words "*travailleurs domestiques*" in the French and "*los trabajadores domésticos*" in the Spanish version, by "*travailleuses et travailleurs domestiques*" and by "*las trabajadoras y los trabajadores domésticos*", respectively. An amendment to Article 1(b) would also be submitted to make it clear that the term "domestic worker", as used throughout the text, applied to both female and male workers.
57. The Government member of France explained that the amendments mentioned by the previous speaker had been proposed to provide a positive solution to the concerns raised in relation to gender-sensitive language during the first discussion. The aim was to ensure that sufficient visibility be given to gender equality and the recognition of work performed

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by women, and it would be the first time that such language was used in the title of an ILO standard, which would be a remarkable development. It also provided greater legal clarity. Such language was in conformity with the resolution concerning gender equality and the use of language in legal texts of the ILO,<sup>9</sup> adopted by the Governing Body in March 2011 and approved by the Selection Committee of the ILC two days previously. He urged the Committee to support the amendment, to expedite its work and simplify many linguistic issues through this “package” of amendments.

58. The Worker Vice-Chairperson, noting with satisfaction that a consensus appeared to have been reached, endorsed the proposed amendment.
59. The Employer Vice-Chairperson also endorsed the proposed amendment.
60. The Government members of Argentina and Congo, on behalf respectively of GRULAC and of the Africa group, also supported the proposed amendment.
61. The Government members of Algeria and Egypt objected to the proposed amendment, noting that it was unnecessary to use language differentiating male and female workers, as the terminology applied to all workers.
62. The amendment was adopted. The Chairperson clarified that the amendment applied to both the French and the Spanish versions of the text, but left the English text unchanged.
63. The title of the Convention was adopted as amended.

## **Preamble**

### ***Third preambular paragraph***

64. The Government member of Jamaica introduced an amendment, seconded by the Government member of Barbados, which sought to replace the words “significant contribution of domestic workers to the global economy” by “significance of domestic workers in the global economy”. The intention was to introduce clearer language that brought out the importance of domestic workers more succinctly.
65. The Employer Vice-Chairperson supported the proposed amendment, as it added clarity.
66. The Worker Vice-Chairperson opposed the proposed amendment, arguing that it affected the substance of the paragraph. In the text proposed by the Government member of Jamaica, the word “significance” could relate merely to the numerical significance of domestic workers, whereas the original text acknowledged that domestic workers made a significant contribution to the global economy. She therefore favoured maintaining the existing text, which more clearly highlighted domestic workers’ significant contribution to the global economy.
67. The Government members of Bangladesh, Brazil, Nepal, South Africa (on behalf of the Africa group), the United Arab Emirates (on behalf of the GCC countries), the United

<sup>9</sup> Contained in Appendix I to document GB.310/11/1 ([http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_153499.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_153499.pdf)), for submission to the 100th Session of the International Labour Conference – decision of the Governing Body at [http://www.ilo.org/gb/lang--en/WCMS\\_153668/index.htm](http://www.ilo.org/gb/lang--en/WCMS_153668/index.htm).

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States and Uruguay opposed the amendment on similar grounds, arguing that the original text was stronger and clearer and therefore should be retained.

68. In light of the views expressed by the Worker Vice-Chairperson and Government members, the Employer Vice-Chairperson withdrew his support for the proposed amendment.
69. The Government member of Jamaica withdrew the amendment.
70. An amendment submitted by the Government member of Jamaica, which sought to delete the words “which includes increasing paid job opportunities for men and women workers with family responsibilities” was not seconded and therefore fell.
71. The Employer Vice-Chairperson introduced an amendment that sought to insert the words “greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries,” into the paragraph after the words “workers with family responsibilities”. He argued that the current text was too narrow in singling out one contribution made by domestic workers – increased job opportunities for workers with family responsibilities – and other significant areas where domestic workers created value for society should also be listed.
72. The Worker Vice-Chairperson supported the amendment, as did the Government members of Hungary, on behalf of EU Member States, the United Arab Emirates and the United States.
73. The amendment was adopted.

#### ***Fourth preambular paragraph***

74. The Employer Vice-Chairperson introduced an amendment to insert the word “often” so that the first line would read “Considering that domestic work continues to often be undervalued and invisible.” While agreeing that domestic work was commonly undervalued, which was a significant issue, he argued that that was not necessarily true at all times. The proposed amendment would bring more clarity and differentiation on this.
75. The Worker Vice-Chairperson proposed a subamendment to add “too” before “often”.
76. The Employer Vice-Chairperson subamended the English version, for grammatical reasons, changing the word order to “Considering that domestic work continues too often to be undervalued and invisible.”
77. The Government member of South Africa, on behalf of the Africa group, opposed the subamendment, since the original rationale of the paragraph was to state a lasting reality, namely that domestic workers were undervalued generally, not temporarily, conditionally or vaguely.
78. The Government member of the United States also opposed the subamendment, since the desired rationale for undertaking standard setting was already reflected in the original text.
79. The Government member of Brazil agreed with the previous speakers, noting that the original text was more correct, direct and precise.
80. The Government member of Argentina preferred the original text because it reflected realities in most countries.

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81. The Employer Vice-Chairperson observed that the reason for the proposed amendment was that the original text was factually incorrect because in many countries domestic work was not undervalued.
  82. The Worker Vice-Chairperson withdrew her subamendment in view of the Government members' comments.
  83. The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the proposed amendment, indicating that the original text led to a generalization applying to all workers, which was inaccurate.
  84. The Employer Vice-Chairperson withdrew the amendment, while noting the wide support in the Committee for its sentiments.
  85. The Employer Vice-Chairperson introduced an amendment to replace the word "invisible" by "not visible to the wider community," in the first line, with the aim of replacing a confusing general statement by clearer wording, which better reflected domestic workers' lack of visibility.
  86. The Worker Vice-Chairperson opposed the amendment, preferring clear, direct text that exactly defined the reality of domestic work, namely its invisibility.
  87. The Government member of Egypt preferred the original text, which reflected the reality of domestic workers' invisibility.
  88. The Government member of Brazil favoured keeping the original text, as domestic workers' invisibility was precisely the reason for the new Convention.
  89. The Government member of Australia supported the previous speakers, since the invisibility of domestic workers went beyond "the wider community" and related to formal regulation and wider legislation, the workers being mostly in the informal economy.
  90. The Employer Vice-Chairperson withdrew the proposed amendment.
  91. The Employer Vice-Chairperson introduced an amendment to replace the word "therefore" by "who are" in the third line, aimed at removing an incorrect notion of causality.
  92. The Worker Vice-Chairperson supported the proposed amendment, which did not affect the substance of the paragraph.
  93. The amendment was adopted.
  94. The Employer Vice-Chairperson introduced an amendment to delete the word "historically" in the third line, explaining it implied that domestic workers had been members of disadvantaged communities in the past, whereas that situation still prevailed.
  95. The Worker Vice-Chairperson supported the proposed amendment, highlighting that the Preamble should provide an accurate background of the situation of domestic workers, who were historically and currently disadvantaged.
  96. The Government member of Uruguay opposed the proposed amendment, explaining that the Committee should consider the context of the Convention being adopted, so the word "historically" seemed more appropriate.
  97. The Government member of South Africa supported the proposed amendment.

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98. The amendment was adopted.

99. The Government member of Indonesia introduced an amendment to insert: the words “and remain marginalized” after “communities” in the third line; “and exploitation” after “discrimination” in the fourth line; and “including trafficking in persons and people smuggling” after “human rights,” in the fifth line.

100. The proposed amendment was not seconded and thus fell.

### ***Fifth preambular paragraph***

101. The Government member of Indonesia introduced an amendment to replace the paragraph with the following text: “Considering also that domestic workers constitute a significant proportion of the national workforce and noting that both sending and receiving countries obtain benefits from migrant domestic workers, and”.

102. The proposed amendment was not seconded and thus fell.

103. The Government member of Jamaica introduced an amendment to delete the word “also” from the first line, and move the paragraph to below the third preambular paragraph.

104. The proposed amendment was not seconded and thus fell.

105. The Employer Vice-Chairperson introduced an amendment to delete “developing” from the first line in order to broaden the scope of the paragraph to all countries.

106. The Worker Vice-Chairperson, noting a subsequent amendment submitted by the Employer members to replace the words “constitute a significant proportion of the national workforce and remain among” by “are amongst”, asked the Employer Vice-Chairperson to clarify whether or not they considered that domestic workers constituted a significant proportion of the workforce in many countries.

107. The Employer Vice-Chairperson responded that the number of domestic workers might be very high in certain countries and insignificant in others. However, regardless of the proportion of domestic workers in the workforce, the important point was that domestic workers were marginalized.

108. The Government member of Namibia, on behalf of the Africa group, opposed the amendment that had been introduced. She recalled that the fifth preambular paragraph had originally been proposed during the first discussion the previous year precisely to highlight the situation in developing countries where domestic work was the only job available for those with few opportunities and skills. As regards the amendment under discussion and the subsequent one, domestic workers made up a significant proportion of the national workforces in developing countries.

109. The Government member of Egypt supported the amendment under discussion as it applied to all countries without distinction, a view shared by the Government member of Iraq.

110. The Government members of Brazil and South Africa opposed the proposed amendment, citing that the original text of the fifth preambular paragraph reflected the realities in their countries. In Brazil, domestic workers comprised almost 7 per cent of the employed population. The Government member of South Africa further explained that the Preamble was supposed to create the framework from which the proposed Convention would flow.

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111. In view of the previous statements, the Employer Vice-Chairperson withdrew both amendments.

***New paragraph after the fifth preambular paragraph***

112. The Employer Vice-Chairperson introduced an amendment to add a new paragraph after the fifth preambular paragraph, in order to provide a balanced picture of the context in which domestic work occurred: “Considering the unique nature of domestic work in or for households, and the unique nature of those who engage domestic workers, the majority of whom act in an individual capacity, and who are householders, parents and/or have other caring responsibilities.” The “household” aspects and the interaction between domestic workers and householders who employed them were important and made domestic work unique.
113. The Worker Vice-Chairperson opposed the proposed amendment as it would limit the Convention for three reasons. First, everyone (including domestic workers) could be a householder, a parent or have caring responsibilities; however, once a person hired someone else for work, he/she became an employer and that entailed obligations. Second, the proposed amendment would limit the application of the Convention to householders, excluding employment agencies that employed domestic workers. Third, in view of the preceding points, the amendment would be inconsistent with the rest of the draft instruments.
114. The Government members of Australia, the United States and Uruguay also opposed the amendment. The Government member of Australia further pointed out that domestic workers were also parents, sisters, and so on, and thus had similar concerns to those of employers of domestic workers.
115. The Employer Vice-Chairperson emphasized that employers were part of the equation of domestic work, and it was that aspect that rendered the employment relationship in domestic work unique.
116. The Worker Vice-Chairperson recalled that the proposed instruments were about decent work for domestic workers, and that the Employer members’ proposed amendment would indirectly exclude other forms of domestic work.
117. While stressing that the intention of the proposed amendment was to add balance to the Preamble, the Employer Vice-Chairperson withdrew it in view of the previous interventions.

***Seventh preambular paragraph***

118. The Employer Vice-Chairperson introduced an amendment to delete the words “and the Employment Relationship Recommendation, 2006 (No. 198),” in the fifth line. He explained that the Employers’ group had voted against the adoption of that hotly debated Recommendation. Moreover, he had not seen evidence that relationships discussed in that Recommendation affected domestic workers.
119. The Worker Vice-Chairperson opposed the proposed amendment. Recommendation No. 198 had been adopted by the ILO and was a full-fledged ILO standard that was indeed relevant to domestic workers as it dealt with issues such as triangular relationships, identifying the “real employer”, and differentiating employment from contracts for services.

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- 120.** The Government member of Namibia, on behalf of the Africa group, stated that the relationships discussed in Recommendation No. 198, in particular triangular relationships, existed in Africa (notably the renting out of workers by individuals within a country) and she therefore opposed the amendment.
- 121.** The Government member of Argentina opposed the amendment.
- 122.** The Employer Vice-Chairperson questioned the relevance of Recommendation No. 198 for domestic workers but withdrew the proposed amendment. He pointed out that the Private Employment Agencies Convention, 1997 (No. 181), dealt with private employment agencies, which would be discussed later.

### ***Eighth preambular paragraph***

- 123.** The Government member of the United States, speaking on behalf of the IMEC group, introduced an amendment to replace the words “the right to privacy that each domestic worker and each household member enjoys” by “respect for privacy”. That was the wording proposed by the Office in the “brown report” (Report IV(1)) and used in the Home Work Recommendation, 1996 (No. 184). The amendment did not change the sense of the paragraph but avoided obstacles to ratification. A similar amendment would be proposed to Article 9 of the Convention.
- 124.** The Worker Vice-Chairperson supported the amendment, referring to a similar amendment submitted by EU Member States.
- 125.** The Employer Vice-Chairperson agreed with the amendment and suggested a subamendment to add the words “of the domestic worker and each member of the household” after “respect for privacy”.
- 126.** The Worker Vice-Chairperson and the Government members of Nepal, Norway and the United States supported the subamendment.
- 127.** The Government member of South Africa stated that the right to privacy was enshrined in almost every country’s Constitution; however, the subamendment watered down the original text. He therefore preferred to retain the original text.
- 128.** The Government member of Brazil noted that the French translation of the subamendment still referred to the right to privacy. She supported the French text because there was a difference between “respect for privacy” and “right to privacy”. The right to privacy was enshrined in the Universal Declaration of Human Rights (1948) and in the Brazilian Constitution.
- 129.** The Government member of Peru concurred with the previous speaker, asserting that privacy should be considered a right, which should be reflected in the text.
- 130.** The Government members of Canada and France supported the subamendment and confirmed the difference in the French translation.
- 131.** The Government member of Namibia opposed the subamendment.
- 132.** The Government member of Australia supported the subamendment, noting that it made the text much clearer.

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133. The Government member of the Philippines requested that the Committee first conclude the substantive amendment submitted by the Employer members before addressing the subamendment.
  134. In supporting the subamendment, the Worker Vice-Chairperson reaffirmed that the right to privacy was already covered earlier in the paragraph, but there was a need to emphasize it; the subamendment addressed this point.
  135. The Government member of Brazil proposed the following rephrasing: "... to enable them to enjoy their rights fully, including the respect for privacy of the domestic worker and each member of the household". She quoted Article 12 of the Universal Declaration of Human Rights, as follows: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."
  136. The Employer Vice-Chairperson opposed the rephrasing because it risked making the standard less ratifiable.
  137. The Government member of South Africa recalled that privacy was a right in many countries, and supported the inclusion of "taking into account the right to privacy" in the text, possibly adding "respect for" that right.
  138. The Government member of Indonesia supported the subamendment and agreed on retaining the "right to privacy" in the paragraph.
  139. The Government member of Brazil noted the lack of consensus and proposed a further subamendment to delete the final words of the paragraph relating to the issue of the right to or respect for privacy. She remarked that the Preamble was not the appropriate place to address the issue; it would be discussed under Article 5 of the proposed Convention.
  140. The Government member of the United States seconded the subamendment, which was supported by both the Employers' and Workers' groups.

### ***Ninth preambular paragraph***

141. The Employer Vice-Chairperson submitted an amendment to delete the whole paragraph, indicating that the general list of international instruments did not add any value to the Preamble and that it was unclear whether the list was comprehensive.
142. The Worker Vice-Chairperson opposed the amendment, explaining that the ILO Convention was not the only relevant international instrument, and that it was important to cross-reference other instruments that were relevant to domestic workers.
143. The Government members of Argentina, Norway, Peru, the Philippines and South Africa, on behalf of the Africa group, opposed the amendment for the same reasons.
144. The Employer Vice-Chairperson also considered the other international instruments important, but wondered whether there might be an issue of "importation" whereby legal obligations would be created for governments that might not have ratified those instruments. With that in mind, he asked Government members whether they felt comfortable with the paragraph.
145. The Worker Vice-Chairperson recalled that the Preamble was not a binding part of the Convention and that, in any event, the listed international instruments were very widely

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ratified. The paragraph would serve to provide the necessary context and background for the ILO Convention.

- 146.** In response to the question raised by the Employers' group, the Government member of Norway confirmed that she was comfortable with the paragraph.
- 147.** The Employer Vice-Chairperson withdrew the amendment.
- 148.** The Worker Vice-Chairperson introduced an amendment to add "the International Covenant on Civil and Political Rights" and "the International Covenant on Economic, Social and Cultural Rights" to the list of instruments. Together with the Universal Declaration on Human Rights, the two Covenants, which had been widely ratified, constituted what was known as the International Bill of Human Rights. She explained that the omission of those two fundamental human rights instruments would give the false impression that they were not relevant to domestic workers.
- 149.** The Employer Vice-Chairperson did not oppose those additions.
- 150.** The amendment was adopted.
- 151.** The Worker Vice-Chairperson introduced an amendment to also include a reference to the "Protocol against the Smuggling of Migrants by Land, Sea and Air" of the United Nations Convention against Transnational Organized Crime. She explained that the UN Convention had two Protocols. The first – the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" – was already included in the proposed text of the Preamble, but, the second Protocol was also important and relevant, as trafficked domestic workers were particularly vulnerable to abuse.
- 152.** The Employers' group and the Government member of Brazil supported the amendment.
- 153.** The amendment was adopted.

### ***Tenth preambular paragraph***

- 154.** The Government member of South Africa withdrew an amendment, on behalf of the Africa group, which had proposed to delete the words "which is the fourth item on the agenda of the session".

### ***Twelfth preambular paragraph***

- 155.** The Government member of France, on behalf of the IMEC group, introduced an amendment not affecting the English version of the text but modifying the text of the French and Spanish versions of the Preamble to ensure consistency with the title of the Convention as previously amended.
- 156.** The Government member of Canada supported the amendment and observed that there was a clear majority of Government members in favour of the amendment in both languages.
- 157.** The Employers' and Workers' groups did not oppose the amendment and suggested referring the matter to the Committee Drafting Committee.
- 158.** The Preamble was adopted as amended.

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## Articles 1 and 2

- 159.** The Government member of the United Kingdom tabled a motion, on behalf of EU Member States, and Switzerland, to consider the two Articles together as they constituted a package. Once discussed, the Articles could be adopted jointly.
- 160.** The Employer Vice-Chairperson and the Worker Vice-Chairperson supported the motion.
- 161.** The Government member of South Africa, on behalf of the Africa group, tabled a motion to close the discussion on the two Articles and adopt them in their current form. The current version was the outcome of intense tripartite discussion and negotiation in a working group the previous year, and had been endorsed by the Committee.
- 162.** The Employer Vice-Chairperson and Worker Vice-Chairperson confirmed that the text of the Articles was the result of delicate negotiations the previous year; reopening the discussion on them would show disregard for the previous tripartite agreement. They noted, however, that the text in front of the Committee was not identical to the text adopted by the working group and the Committee the previous year because the Office had introduced some changes. Both groups thus opposed the motion for closure.
- 163.** The Government members of Canada, Egypt and the United Kingdom, on behalf of EU Member States, also opposed the motion for closure. The Government member of France noted that the French and Spanish versions of the current text contained alternative wordings in brackets, and that closing the debate would mean that it remained unclear which version would be adopted.
- 164.** The Government member of the United States recalled that the 2010 negotiations had led to an outcome acceptable to all parties, even though many members had problems with individual points. He suggested reverting to the version of the text as adopted by the Committee in 2010.
- 165.** The motion for closure was rejected since it was not supported by the majority of the Committee.
- 166.** The Employer Vice-Chairperson and Worker Vice-Chairperson supported the motion tabled by the Government member of the United Kingdom, on the understanding that the purpose of the discussion was to revert as close as possible to the text that had been agreed upon by the Committee in 2010. The Worker Vice-Chairperson appealed to the Committee to exercise restraint and not to revisit issues that had been settled the previous year.
- 167.** The motion was further supported by the Government members of Canada, Hungary (on behalf of EU Member States), Norway and the United States.
- 168.** In the spirit of reverting to the text agreed upon in 2010, ten proposed amendments were withdrawn by the Employer members, the Worker members, the Government member of Argentina (on behalf of GRULAC), and the Russian Federation. Three amendments submitted by the Government member of Indonesia and one by the Government member of the Islamic Republic of Iran were not seconded and therefore fell.
- 169.** The Government member of France, on behalf of the IMEC group, introduced an amendment, to replace Article 1(b) with the following: “the term ‘domestic worker’ means any person, female or male, engaged in domestic work within an employment relationship”. The text would appear in the English, French and Spanish versions. It addressed the issue of gender terminology, and was related to the title of the proposed Convention, which had already been revised. While the proposed English text might not be

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elegant, the term “female and male” was used instead of “women and men” so as to include boys and girls. The proposed text could be referred to the Committee Drafting Committee.

170. The Employer and Worker Vice-Chairpersons agreed that this was a good solution to terminology problems, and understood that the issue would not be raised again in the rest of the text.
171. The Government member of South Africa opposed the amendment regarding the English version because in English there was no ambiguity about the word “worker”, which was gender neutral, and because “any person” meant both male and female. The Government members of Australia and the United States supported that view, stressing that terminological problems regarding the use of the masculine or feminine concerned only the French and Spanish versions.
172. The Government member of Spain clarified that the intention of the proposed amendment was to highlight gender, not sex.
173. The Worker Vice-Chairperson and the Government members of Canada and France agreed that the proposed amendment should affect only the French and Spanish versions, and that the English version should not be changed. All the bracketed texts in the French and Spanish versions of the two draft texts would thereafter be removed; the terms “*travailleurs domestiques*” and “*trabajadores domésticos*” would be used instead.
174. At a later sitting, recalling the above discussion, the Chairperson confirmed that agreement had been reached in the Committee on the use of language in the French and Spanish versions that applied to both male and female domestic workers. In response to queries from the Government members of France and Spain, the representative of the Secretary-General explained that there was no need to submit further amendments on the issue; the Committee Drafting Committee would ensure that the text incorporated the agreed wording.
175. The Chairperson closed the discussion on Article 1(b), ruling that the Committee Drafting Committee might need to refine the text but that sufficient guidance had been provided by the Committee to deal with gender terminology.
176. The Government member of Hungary, on behalf of the IMEC group, introduced an amendment to replace “as a means of earning a living” by “on an occupational basis” to keep to the agreement that had been reached on Article 1(c) during the discussion in 2010. A similar amendment had been submitted by the Employer members.
177. The Employer Vice-Chairperson and Worker Vice-Chairperson supported the amendment.
178. The amendment was adopted.
179. The Government member of Argentina, on behalf of GRULAC, withdrew an amendment to specify that in Spanish the term “domestic” was used as a synonym of “household”; this followed agreement on a proposal by the secretariat to add an asterisk at the end of the titles of the Convention and Recommendation which would refer to a note that, in the context of the instruments, the expression “*trabajador del hogar*” was synonymous with “domestic worker”.
180. In response to a question by the Government member of Japan, the representative of the Secretary-General confirmed that it was up to governments, in consultation with the social

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partners, to decide which groups of workers could be excluded from the scope of the Convention, in accordance with the provisions of Article 2(2)(a) and (b).

181. The Employer Vice-Chairperson introduced an amendment to replace the words “after consulting representative employers’ and workers’ organizations, and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist,” with the words “after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and organizations representative of employers of domestic workers”. He explained that the amendment aimed to ensure that the most representative workers’ and employers’ organizations would be consulted along with other relevant organizations, in consistency with the Home Work Convention, 1996 (No. 177).
182. The Worker Vice-Chairperson fully agreed with the amendment.
183. The Government member of Hungary, on behalf of EU Member States, wondered whether “most representative” was the usual wording in ILO instruments and whether it was appropriate in relation to organizations of domestic workers.
184. The Employer Vice-Chairperson stated that the notion of the “most representative workers’ and employers’ organizations” was rooted in the ILO’s Constitution. Both the Employer Vice-Chairperson and Worker Vice-Chairperson considered that the amendment would discourage governments from consulting unrepresentative workers’ or employers’ organizations, which might have only ten members. The proposed amendment would ensure that peak organizations could not be excluded from consultations.
185. The Chairperson concluded that there was broad consensus on the proposed amendment.
186. Articles 1 and 2 were adopted as amended.

## **Article 3**

### ***Paragraph 1***

187. The Government member of Indonesia introduced an amendment, seconded by the Government member of Bangladesh, which proposed that Members should not only ensure effective protection of the human rights of domestic workers but also ensure their “promotion”.
188. The Employer Vice-Chairperson and Worker Vice-Chairperson supported the amendment.
189. The amendment was adopted.
190. The Employer Vice-Chairperson withdrew an amendment to delete the word “human” in the first line.
191. The Employer Vice-Chairperson introduced an amendment, which he immediately subamended to add the words “as set out in the Convention” after “domestic workers”. This would strictly limit the reporting obligations of governments under article 22 of the ILO Constitution to the text of the Convention itself.
192. The Government member of Brazil opposed the amendment on the grounds that it would possibly restrict the interpretation of the Article. The Government members of Chile,

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Ecuador, Peru and South Africa (on behalf of the Africa group) opposed the amendment for the same reason.

**193.** The Worker Vice-Chairperson and the Government members of Australia, New Zealand, Switzerland and the United Arab Emirates (on behalf of the GCC countries) supported the amendment.

**194.** The amendment was adopted.

## **Paragraph 2**

**195.** The Employer Vice-Chairperson introduced an amendment to replace the word “measures” with “the measures set out in this Convention”.

**196.** The Worker Vice-Chairperson supported the amendment, considering that it would in no way dilute the intent or purpose of the Article.

**197.** The Government members of Australia and Egypt also supported the proposed amendment.

**198.** The amendment was adopted.

**199.** An amendment, proposed by the Government member of Indonesia, to insert the words “and protect” after “promote” in the second line was not seconded and thus fell.

**200.** The Employer Vice-Chairperson introduced an amendment to delete the phrase “in good faith and in accordance with the ILO Constitution” on the grounds that it was misplaced and irrelevant. The notion of good faith usually referred to negotiations.

**201.** The Worker Vice-Chairperson supported the amendment, considering that it would in no way dilute the intent or purpose of the Article.

**202.** The amendment was adopted.

**203.** The Government member of the United States, speaking on behalf of several IMEC group countries, introduced an amendment to replace “fundamental principles and rights at work” with “principles concerning the fundamental rights”. The change would be in line with the text of the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

**204.** The Employer Vice-Chairperson, the Worker Vice-Chairperson and the Government member of Bangladesh opposed the amendment.

**205.** The Government member of the United States withdrew the amendment.

**206.** The Worker Vice-Chairperson introduced an amendment to replace in the French version the expression “*liberté d’association*” with “*liberté syndicale*”. She insisted that the change would only affect the French version, and called on the amendment to be referred to the Committee Drafting Committee.

**207.** The Employer Vice-Chairperson and the Government member of Canada supported the proposal to refer the matter to the Committee Drafting Committee.

**208.** The amendment was referred to the Committee Drafting Committee.

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**209.** An amendment proposed by the Government member of Chile was not seconded and thus fell.

**210.** The Worker Vice-Chairperson introduced an amendment to insert a new paragraph after paragraph 2, which would read as follows:

In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:

- (a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing and to the right of organizations of domestic workers to join workers' organizations, federations and confederations;
- (b) protect the right of employers of domestic workers to establish and join organizations, federations and confederations of employers of their choosing; and
- (c) take or support measures to strengthen the capacity of organizations of domestic workers to protect effectively the interests of their members.

The amendment was central to the goal of freedom of association and the right to organize that was essential to domestic workers. As it stood, Article 3 was too general and not specific enough. There was a need to go beyond generalities to help domestic workers achieve those rights.

**211.** In response, the Employer Vice-Chairperson expressed his support for the basic tenets of the proposed amendment. He proposed to address the various elements one at a time.

**212.** The Chairperson suggested that the amendment be discussed part by part.

**213.** The Employer Vice-Chairperson proposed a subamendment to insert "and their employers" after "domestic workers" in the chapeau. He indicated that the French and Spanish versions needed further work, which could be entrusted to the Committee Drafting Committee.

**214.** The Worker Vice-Chairperson accepted the subamendment.

**215.** The Government member of Germany, on behalf of EU Member States, concurred.

**216.** The Government member of South Africa requested clarification of the intent of the original amendment. He understood that its purpose was to operationalize the provisions of Article 3; if that was correct, the text should be in the Recommendation, not the Convention.

**217.** The Government member of Canada fully supported the concerns raised by the previous speaker.

**218.** The Government member of the United Arab Emirates, on behalf of the GCC countries, agreed that the text proposed by the Worker members should be in the Recommendation – moving it to the Convention would only cause confusion. He observed that Article 3 focused on fundamental principles, whereas the proposed amendment listed practical measures.

**219.** The Employer Vice-Chairperson explained that the proposed amendment reflected several points agreed between the Workers' and Employers' groups about fundamental principles and rights at work; it simply expanded on what was required to implement the measures described in Article 3, through a series of steps to be taken.

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- 220.** The Worker Vice-Chairperson reiterated that the proposed text was a matter of principle and clearly related to paragraph (2) of the Article, which referred to taking “measures to respect, promote and realize ... the fundamental principles and rights at work”, including freedom of association and the right to collective bargaining. The text was intended to expand on that, by providing that governments should take measures to remove any obstacles to the enjoyment of those principles and rights by workers and employers, including by changing laws and policies if necessary. It was therefore a fundamental, substantive issue that should be addressed in the Convention, not the Recommendation.
- 221.** The Chairperson inquired whether the amendment was intended as Article 3’s final paragraph or as a new Article.
- 222.** The Worker Vice-Chairperson explained that her group had initially proposed it as a new Article, but it would also be an appropriate final paragraph of Article 3.
- 223.** The Government member of Chile questioned the use of the word “should” at the end of the chapeau, noting that “shall” was usually used in texts of Conventions.
- 224.** The Government member of Bangladesh thanked the Worker and Employer Vice-Chairpersons for their explanations, but preferred that the text remain in the Recommendation, not the Convention. He regretted that an issue so painstakingly discussed the previous year had been reopened.
- 225.** The Government member of Norway agreed with the statements made by the Government members of Bangladesh and Canada and others opposing the amendment, which departed from the agreement to focus on principles in the Convention and on implementation issues in the Recommendation. She recalled that, during the first discussion, many Government members had accepted the text because it was in the Recommendation only; they should not be obliged to support employers’ and workers’ organizations in such a specific way.
- 226.** The Government member of Brazil, on behalf of GRULAC, strongly supported the amendment and agreed with the Workers’ group that the text related to matters of principle and should therefore be included in the Convention.
- 227.** The Government member of the United States agreed with those who felt that it was more appropriate to keep the text in the Recommendation rather than the Convention. The Government member of Japan concurred.
- 228.** The Government member of Australia sympathized with the contrasting views on the amendment. On one hand, specific measures would be required to protect workers’ freedom of association and right to collective bargaining because the particular characteristics of domestic work made it difficult for them to organize and bargain collectively. On the other hand, the obligations entailed by the present amendment would make it difficult for governments to ratify the Convention. To accommodate the Workers’ group’s intent, she suggested incorporating the “flavour” of the amendment in paragraph 2 of the Article without being overly prescriptive, via the Committee Drafting Committee.
- 229.** The Employer Vice-Chairperson, responding to the Worker Vice-Chairperson’s request, presented his group’s subamendments to give a fuller picture of the proposed new paragraph. He submitted three subamendments: on subparagraph (a), inserting “subject to the rules of the organizations concerned” after the word “choosing”; on subparagraph (b), adding “subject to the rules of the organizations concerned” at the end; and moving subparagraph (c) to the Recommendation because the Convention should not oblige governments to strengthen the capacity of domestic workers’ organizations (which should be the responsibility of such organizations).

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- 230.** The Worker Vice-Chairperson agreed with the approach of those amendments, including moving subparagraph (c), which removed most of the problematic detail.
- 231.** The Government members of South Africa and the United Arab Emirates, on behalf of the Africa group and the GCC countries respectively, reiterated that the Convention should contain principles, not implementation measures. The Government member of South Africa further endorsed the Government member of Australia's suggestion to retain the essence of the amendment as that would not present problems. He found the proposed subamendments unacceptable because they would subject governments to rules and policies of organizations, thus making compliance more difficult.
- 232.** The Government member of the United States proposed a subamendment, seconded by the Government member of Australia, as a solution to the impasse, to delete subparagraph (a), and place subparagraph (b) directly after the opening line of the amendment, as well as replace "should" by "shall" in the chapeau.
- 233.** The Employer Vice-Chairperson also found this acceptable, but suggested adding "subject to the rules of the organizations concerned" at the end of the subparagraph.
- 234.** The Worker Vice-Chairperson concurred, but recalled that subparagraph (b) referred to organizations of employers.
- 235.** Given these interventions, the subamendment was revised as follows: "In taking measures to ensure that domestic workers and their employers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and join organizations, federation and confederations of their own choosing, subject to the rules of the organization concerned."
- 236.** The Government member of South Africa insisted that the subamendment was still prescriptive, elevating implementation steps to the level of principles, which would cause problems for African member States.
- 237.** The Employer Vice-Chairperson noted that the wording "rules of the organizations" was not directed at governments but at workers' and employers' organizations. The concept was well founded in the ILO and reflected in many cases at the Committee on Freedom of Association.
- 238.** The Worker Vice-Chairperson added that the wording "rules of the organizations" was based on the widely ratified Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2 of which stated: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation." That clearly did not constrain governments.
- 239.** The Government member of Germany, on behalf of EU Member States, supported the subamendment without the further subamendment of the Employers' group.
- 240.** The Government member of Brazil also supported the subamendment. She suggested aligning the wording with the text of Article 2 of Convention No. 87. The Government member of Bangladesh shared that view.
- 241.** The Worker Vice-Chairperson proposed the following wording:

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In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organizations concerned, to join organizations, federations and confederations of their own choosing.

242. The Employer Vice-Chairperson and the Government member of South Africa supported the amendment, which was adopted as subamended.
243. Article 3 was adopted as amended.

## **Article 4**

### ***Paragraph 1***

244. The Employer Vice-Chairperson introduced an amendment to delete references to the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). He stated that it did not reflect disrespect for those Conventions; the wording “consistent with” was very problematic because it required member States not having ratified those Conventions to set a minimum age in line with Convention No. 138. It could also create duplication or additional reporting requirements for them. He suggested working towards requiring States to set a minimum age for domestic workers in line with their national legislation, without referring to Convention No. 138.
245. The Worker Vice-Chairperson opposed the amendment because it would leave it entirely to member States to set a minimum age without the reference points of Conventions Nos 138 and 182 (with 159 and 173 ratifications, respectively).
246. In reply to a question by the Worker Vice-Chairperson, the representative of the Secretary-General confirmed that it was well-established practice to cross-reference other international labour instruments in Conventions.
247. The Government member of the United Arab Emirates, on behalf of the GCC countries, opposed the amendment, arguing that the inclusion of the two Conventions would provide better protection for domestic workers.
248. The Government member of Hungary, on behalf of EU Member States, reminded the Committee that those Conventions were fundamental labour standards, and their application was vital for domestic workers. She therefore rejected the proposed amendment.
249. The Government member of Australia also rejected the amendment. She reminded the Committee that, although her country had not yet ratified Convention No. 138 (for technical reasons), she had no problem with its inclusion in the text, as it did not impose any extra burden on her country.
250. The Government members of Canada and Indonesia supported the retention of the reference to the two Conventions.
251. The Government member of Ecuador referred to the high number of migrant workers, some of whom were minors; he supported the inclusion of the two child labour Conventions and opposed the amendment.

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- 252.** The Employer Vice-Chairperson withdrew his amendment, but noted that countries such as Australia and his own country, New Zealand, had problems ratifying Convention No. 138.
- 253.** The Government member of South Africa, on behalf of the Africa group, introduced an amendment to delete the words “for workers generally” after “laws and regulations”. He argued that the existing text made it appear that domestic workers were a separate group from the general labour force.
- 254.** The Worker and Employer Vice-Chairpersons countered that in effect the proposed amendment would remove the requirement to achieve parity with other workers, which the Convention should call for.
- 255.** The Government member of South Africa withdrew the amendment.

## **Paragraph 2**

- 256.** The Government member of Canada, also speaking on behalf of the Government member of Japan, introduced an amendment which called for the deletion of “further education or vocational training” after the words “compulsory schooling”. He requested clarification from the secretariat as to whether the existing text corresponded to the provisions of Convention No. 138.
- 257.** The representative of the Secretary-General responded that the text went beyond the educational provisions of that Convention.
- 258.** The Government member of Canada suggested that the extra obligations called for additional responsibilities on the part of member States, which might hinder wide ratification.
- 259.** The Employer Vice-Chairperson opposed the amendment, as he believed domestic workers should have opportunities for further education or vocational training.
- 260.** The Worker Vice-Chairperson argued that, through vocational training and skills development, domestic workers could lift themselves out of poverty. Moreover, there was no guarantee that compulsory schooling, which in some countries was basic, would be adequate to provide sustainable livelihoods. Access to further education or vocational training would be crucial for the development needs of domestic workers. Those provisions would not present a heavy burden on governments.
- 261.** In rejecting the proposed amendment, the Government member of Brazil affirmed that domestic workers should be able to benefit from compulsory schooling, further education or vocational training. Another member of the delegation presented her own inspiring testimony about having been a domestic worker in her youth, but having subsequently been trained as a lawyer; she was currently the head of Brazil’s labour court.
- 262.** The Government member of Norway called for consistency in the Convention about domestic workers having the same rights as other workers, so she supported the comments of the Government member of Canada.
- 263.** The Government member of the United Arab Emirates, on behalf of the GCC countries, rejected the amendment, arguing that the text was intended to protect domestic workers.
- 264.** In response, the Government member of South Africa concurred with the previous speakers who opposed the amendment.

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- 265.** The Government member of Hungary, on behalf of EU Member States, proposed a subamendment to replace “does not deprive them of, or interfere with, their compulsory schooling, further education or vocational training” by “does not jeopardize their education”, highlighting that many children had little or no education, and that she considered “further education” a nebulous concept.
- 266.** The Worker Vice-Chairperson recalled that Article 7(2)(c) of the Worst Forms of Child Labour Convention, 1999 (No. 182), also made reference to “vocational training”. Her group did not support the subamendment as it weakened the existing text; the explicit reference to compulsory schooling, vocational training and further education should be retained.
- 267.** The Employer Vice-Chairperson reiterated that compulsory education was an absolute objective, whereas further education and vocational training were not obligatory and were thus on a different level.
- 268.** The Government member of Australia opposed the subamendment and agreed with previous speakers supporting the original text. She remarked that domestic workers were often deprived of access to education due to their long working hours. The wording “deprive them of, or interfere with” was much stronger than the language proposed in the subamendment, and should be retained. She recalled that the age of compulsory schooling differed substantially between countries.
- 269.** The Government member of Hungary withdrew the subamendment.
- 270.** The Chairperson reopened the debate on the original amendment.
- 271.** The Government member of Argentina opposed the amendment, preferring the original text.
- 272.** The Government member of Bangladesh asked the sponsors of the amendment whether the wording proposed in an amendment to be introduced by the Employer members would address their concerns.
- 273.** The Government member of Canada agreed that domestic workers should not be deprived of access to further education. The amendment had been introduced in order to maintain consistency with Convention No. 138. However, the intent was compatible with the Employer amendment referred to by the Government member of Bangladesh, so he withdrew the amendment.
- 274.** The Employer Vice-Chairperson introduced the abovementioned amendment which sought to replace the words “of, or interfere with, their compulsory schooling, further education or vocational training” with “of compulsory education, or interfere with opportunities to participate in further education or vocational training”.
- 275.** The Worker Vice-Chairperson supported the amendment.
- 276.** The Government member of Australia supported the amendment and considered it a good solution to the concerns previously expressed.
- 277.** The Government members of Namibia and the United Arab Emirates, on behalf of the Africa group and the GCC countries respectively, concurred.

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- 278.** The Government member of Japan confirmed that the Employer members' amendment addressed the intent behind the amendment co-sponsored by his delegation. He therefore supported the amendment.
- 279.** The amendment was adopted. Another amendment seeking to delete the term "further education" consequently fell.
- 280.** Article 4 was adopted as amended.

## **Article 5**

- 281.** The Government member of the United States introduced an amendment, seconded by the Employers' group, to replace the Article with the following: "Each Member shall take measures to ensure that domestic workers enjoy terms of employment, working conditions and, where applicable, living conditions which respect their privacy, no less favourable than those generally enjoyed by other categories of workers." The aim was to set out the principle of comparability of treatment with other wage earners. While still allowing for some flexibility, the proposed wording was tighter than the original "like workers generally".
- 282.** The Employer Vice-Chairperson proposed a subamendment to replace "which respect their privacy" with "respecting the privacy of the domestic worker and each household member", to reflect previous discussions on the issue of privacy in relation to household members.
- 283.** The Worker Vice-Chairperson accepted the proposed subamendment.
- 284.** The Government members of Australia, Indonesia and South Africa did not oppose the proposed amendment or subamendment, but wondered whether it was necessary to address the issue of respecting the privacy of household members in Article 5. They reminded Committee members that the principal aim of the Article was to protect domestic workers.
- 285.** The Government members of Argentina and Uruguay agreed with previous speakers and opposed both the amendment and the subamendment, arguing that they introduced a form of conditionality which appeared to erode the fundamental rights of domestic workers.
- 286.** The Government member of Namibia, on behalf of the Africa group, objected to the amendment and subamendment, noting that the Article intended to address historical injustices – particularly mistreatment – against domestic workers.
- 287.** The Government member of Hungary, on behalf of EU Member States, rejected the amendment and subamendment because they introduced confusion.
- 288.** The Government member of the United Arab Emirates, on behalf of the GCC countries, preferred the original text, reminding the Committee of the purpose of the Article.
- 289.** The Government member of the United States withdrew the amendment to avoid reopening difficult debates that had taken place in 2010.
- 290.** The Worker Vice-Chairperson introduced an amendment calling for the addition of "without any form of discrimination" after "employment" in the second line. The proposed amendment sought to prohibit more explicitly any sort of discrimination against domestic workers.

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- 291.** The Employer Vice-Chairperson agreed in principle but considered that there also existed some positive forms of discrimination. He therefore proposed a subamendment by adding “unlawful” between “of” and “discrimination”, making the full amendment read as follows: “without any form of unlawful discrimination”.
- 292.** The Worker Vice-Chairperson wished to know what forms of discrimination would be classified as lawful, and requested the secretariat to read Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to ensure that the Committee did not introduce unhelpful language into the text of the new Convention.
- 293.** After the representative of the Secretary-General had read out Article 1 of Convention No. 111, defining the term “discrimination”, the Worker Vice-Chairperson stated that the meaning of “discrimination” in ILO usage was very clear. There was no need to introduce the word “unlawful” as a qualification of the term “discrimination”. Her group opposed the subamendment proposed by the Employers’ group.
- 294.** The Government members of Australia and Brazil also opposed the subamendment.
- 295.** The Employer Vice-Chairperson withdrew the subamendment on the understanding that the term discrimination only applied to negative or “prohibited” forms of discrimination.
- 296.** The Government members of Australia, and the United Kingdom, on behalf of EU Member States, agreed that prohibition of discrimination was an important objective, but opposed the Worker members’ amendment. Since Article 3(2)(d) already referred to discrimination, it was unnecessary to repeat this in Article 5.
- 297.** The Worker Vice-Chairperson, noting that the Committee had unanimously spoken against discrimination towards domestic workers and that reference was made to discrimination elsewhere in the instrument, withdrew the amendment.
- 298.** The Government member of Argentina, on behalf of GRULAC, withdrew an amendment that had sought to replace “if they reside in the household, decent living conditions which respect their privacy” with “decent living conditions which respect their privacy, particularly if they reside in the household”.
- 299.** The Government member of Indonesia introduced an amendment, seconded by the Government member of Bangladesh, to delete “if they reside in the household” and add “including the freedom to manifest their religion and beliefs” at the end of the Article.
- 300.** The Worker Vice-Chairperson strongly supported the right of domestic workers to freedom of religion. However, the amendment’s intent was already covered in Article 3(1), which obliged Members to take measures to ensure the effective protection of the human rights of all domestic workers. Further, the Preamble listed the relevant international human rights instruments that protected the freedom of religion. Her group would therefore not support the amendment.
- 301.** The Employer Vice-Chairperson was concerned that the proposed amendment would establish a complex obligation for member States to “take measures” that enabled domestic workers to manifest their religion and beliefs. As that could be a potential barrier to ratification, he opposed the amendment.
- 302.** The amendment fell.
- 303.** In view of the earlier discussion, the Worker Vice-Chairperson withdrew an amendment.

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- 304.** The Employer Vice-Chairperson introduced an amendment to replace “which respect their privacy” with “respecting the privacy of the worker and of each household member”, so as to establish a more comprehensive reference to privacy.
- 305.** The Worker Vice-Chairperson recalled that the primary objective of Article 5 was to ensure decent working and living conditions for domestic workers; the proposed amendment would dilute the Article. Her group opposed the amendment for the reasons stated earlier in the discussion.
- 306.** The Government members of Australia, Hungary, on behalf of EU Member States, and Norway opposed the amendment, preferring the original wording of the Article.
- 307.** The Employer Vice-Chairperson withdrew the amendment.
- 308.** Article 5 was adopted as amended.

## Article 6

- 309.** The Government member of Denmark, on behalf of EU Member States, introduced an amendment to replace the Article. In his view, the comprehensive list in subparagraphs (a)–(i) was too detailed for a Convention, and could be moved to the Recommendation. The new text would read:

1. Domestic workers have the right to be informed of the terms and conditions of their employment. This information should be provided in an appropriate and easily understandable manner.
2. Each Member shall take measures to ensure that a domestic worker within a reasonable time is notified of the essential aspects of the employment relationship, preferably, where possible, in a written contract in accordance with national laws and regulations.
3. A Member may in law or regulations exclude certain limited cases of employment relationship from the obligation in the preceding paragraph, when it is justified on objective grounds.

The objective of the amendment was: to state the principle that domestic workers had a right to be informed of the terms of their employment relationship; to clarify the obligations of member States; and to maintain a degree of flexibility. The purpose of the proposed paragraph 3 was to cover cases where it was very difficult to comply with the requirements of the preceding paragraph, for instance when an employment relationship was of very short duration or for very limited hours per week.

- 310.** The Employer Vice-Chairperson, while agreeing that the details of the Article could be placed in the Recommendation, raised issues regarding the exact meaning of the amendment’s “within a reasonable time” in paragraph 2 and “limited cases of employment relationship” in paragraph 3. Given that Article 1 had defined domestic work as an employment relationship, how could there be different types of employment relationship? He also requested that Government members express their views.
- 311.** The Worker Vice-Chairperson rejected the amendment on several grounds. First, it was not clear that the amendment was superior to the original draft text, which aimed to provide basic protection by ensuring that workers were informed of their terms and conditions of employment before accepting a job. Second, it contained ambiguities: what specific information on terms and conditions of employment did domestic workers have a right to receive; and what was the meaning of “essential aspects” of the employment relationship? Third, if the intention of paragraph 3 was to exclude some groups of employers from an

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obligation to notify workers about their employment terms and conditions, that would hamper domestic workers wishing to file complaints against unfair, inhumane working conditions. Finally, the original text did not seem more onerous than the EU Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, which specified the terms and conditions of employment to be reflected in an employment contract.

- 312.** In response to the questions, the Government member of Denmark explained that the intent of the EU amendment was not to lower the level of protection to domestic workers. Legislation in the EU already obliged employers to inform domestic workers of their terms and conditions of employment. However, the current draft of Article 6 was stricter than the regulations applicable to workers generally in Europe. It was too detailed, and contained aspects that could lead to minor violations involving small formalities such as the inclusion of an incorrect address in the contract. Ratification of the Convention would thus be hampered. He urged the Committee members to take a realistic approach.
- 313.** The Government member of Bangladesh raised issues regarding paragraph 3 of the amendment, which sought to exempt some types of employment relationship on “objective grounds” from the obligation of notifying workers about their terms and conditions of employment. First, there could be varied interpretations of “objective grounds”. Second, if “objective grounds” included short-term employment – as explained by the Government member of Denmark – this would reduce the comprehensiveness of the proposed Convention.
- 314.** The Government member of Uruguay preferred the original text and indicated that the Article addressed the right to information, which was absolutely crucial. It was therefore essential to adopt a sufficiently wide-ranging text, ensuring that domestic workers would receive basic information when entering employment relationships.
- 315.** The Government member of Australia strongly opposed the amendment for three reasons. First, the issue had been extensively discussed in 2010 and a compromise reached. Second, the Article was at the heart of the Convention and addressed a key area of domestic workers' vulnerability, especially for migrant workers. Third, it was not the first time that an ILO Convention stated specific requirements: that approach had already been followed in the Maritime Labour Convention, 2006 (MLC, 2006).
- 316.** The Government member of Brazil supported the previous speaker's view and strongly opposed the amendment on the grounds that Article 6 was fundamental to the proposed Convention's purpose of promoting of domestic workers' rights. The EU proposal contained vague elements and exclusions that would weaken workers' protection.
- 317.** The Government member of Indonesia concurred with previous speakers and considered that the amendment would modify the essence of the Article.
- 318.** The Government member of India supported the amendment, highlighting that the new text would make the Convention more practical and easier to ratify and implement, which should be the ultimate objective of a standard-setting exercise. He noted that many ILO Conventions had not yet been ratified, so a more flexible and less detailed text would be more successful. Details could be moved into the proposed Recommendation.
- 319.** The Government member of the United States opposed the amendment, indicating that the Article was at the core of the Convention, allowing domestic workers to receive protections not less favourable than other workers. Poor access to information was a key factor in the vulnerability of domestic workers. He considered that the Article was not too

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onerous and did not make the Convention too difficult to ratify. First, the provisions of the existing text were merely about basic information. Second, the Article included flexibility clauses, such as “where possible”, “if applicable” and “in accordance with national law and regulations”, which allowed governments to maintain consistency with existing national legislations and practices.

- 320.** The Government member of the Denmark, on behalf of EU Member States, withdrew the amendment.

### **Chapeau**

- 321.** The Government members of the Philippines and the United States withdrew a joint amendment to insert the words “in a language they can understand” after “through written contracts”, in the chapeau. That proposal would be submitted in the related text of the Recommendation.

- 322.** The Worker Vice-Chairperson introduced an amendment to insert the words “or collective agreements” after the word “regulations” in the fourth line. The amendment was similar to one submitted by the Employer members. She explained that the proposal was consistent with the rationale of the Article and the objective of promoting the rights of domestic workers, which were also enshrined in collective bargaining agreements, as domestic workers were also represented in workers’ organizations.

- 323.** The Employer Vice-Chairperson supported the amendment, indicating that a number of amendments submitted by his group aimed at including similar clauses.

- 324.** The Government members of Algeria, Hungary (on behalf of EU Member States) and Uruguay supported the amendment, indicating that collective agreements played an important role in promoting decent work for that category of workers.

- 325.** The amendment was adopted.

- 326.** The Employer Vice-Chairperson consequently withdrew his group’s amendment.

### **Subparagraph (a)**

- 327.** The Government member of Hungary, on behalf of EU Member States, withdrew an amendment and supported a similar amendment by the Workers’ group.

- 328.** The Worker Vice-Chairperson introduced an amendment to add a new subparagraph after subparagraph (a) to read “the address of the workplace or workplaces”. She explained that domestic workers had a right to know where they would work. That could be different from the address of the employer.

- 329.** The Employer Vice-Chairperson supported the intent of the amendment, suggesting a subamendment to add “usual” before “workplace or workplaces”, because some domestic workers were expected to work in more than one place.

- 330.** The Worker Vice-Chairperson and the Government members of Argentina, Canada, Ecuador, Hungary (on behalf of EU Member States), Indonesia and the Philippines supported the subamendment.

- 331.** The Government member of Norway observed that persons working for a cleaning agency might not have a “usual” workplace but she supported the subamendment.

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- 332.** The Government member of the United Arab Emirates, on behalf of the GCC countries, considered that the subamendment introduced excessive detail and that the word “usual” did not provide additional protection to domestic workers.
- 333.** The Government member of the United States understood and supported the concept but he had difficulty with the subamendment. He asked if it applied when a person worked nine days out of ten at the primary residence of the employer, but every second weekend at the vacation home of the employer.
- 334.** The Employer Vice-Chairperson stated that “usual” related to the place where the domestic worker was most likely to be found. Without the addition of “usual”, the provision would become very difficult for governments to administrate.
- 335.** The Worker Vice-Chairperson explained that the general sense of the amendment and subamendment was to ensure that the normal, usual place of work for a domestic worker was agreed prior to signing the contract.
- 336.** The amendment was adopted as subamended.

#### Subparagraph (e)

- 337.** The Government member of France, speaking on behalf of EU Member States, introduced an amendment to insert the word “expected” before “duration” to cover fixed-term contracts of unspecified duration. The current wording would, for example, exclude contracts to replace workers on sick leave for a duration that could not be known in advance. The amendment was intended to provide legal certainty and make the provision more inclusive.
- 338.** The Worker Vice-Chairperson opposed the amendment; the new wording would result in more uncertainty for the worker. Workers always needed to know in advance the duration of their contract, so the new provision would undermine workers’ need for stability in an employment relationship.
- 339.** The Government member of France shared the concerns of the Workers’ group, but the intent of the proposed change specifically focused on covering contractual situations where terms and conditions were uncertain. Another example was contracts for maternity leave replacement, the duration of which could not be established in advance. The original text of subparagraph (e) did not cover such cases, while the amendment would cover workers having contracts of unspecified duration.
- 340.** The Worker Vice-Chairperson remarked that the original text of subparagraph (e) aimed to cover both contracts with no fixed duration and those with specified duration; thus it already provided protection for workers and it was unclear why a “specified period of time” needed to be qualified by the word “expected”.
- 341.** The Employer Vice-Chairperson supported the amendment and observed that subparagraph (e) covered permanent contracts (in which only the starting date should be specified) and contracts for a specified period of time, which was sometimes impossible to indicate precisely, for instance maternity leave replacement. As a worker on statutory maternity leave might decide to extend her leave, it would be useful to reflect that by setting an “expected” duration for the replacement worker’s contract. He explained that employers often lost court cases when they had to terminate workers on fixed-term contracts before the allotted date, so the proposed amendment would help address that problem.

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- 342.** The Government member of South Africa, on behalf of the Africa group, opposed the amendment, since the current text already included contracts for specified periods of time, so inserting the word “expected” was redundant and also not legally grounded (that wording would be more appropriate for open-ended contracts).
- 343.** The Government member of Namibia opposed the amendment and indicated that in labour law there were fixed-term and without-limit-of-time contracts. The clause in the original text was neutral and did not imply that workers could choose the type of contract. However, if workers accepted fixed-term contracts, their duration should be indicated. There was no merit in adding the word “expected”.
- 344.** The Government member of Australia also opposed the amendment, explaining that the lack of specificity and duration of domestic workers’ contracts was a key issue, requiring a suitable solution. A valid approach could again be found in the MLC, 2006, whose paragraph 4(g)(ii) of Standard A2.1 on “Seafarers’ employment agreements” set out that if a contract was for “a definite period, the date fixed for its expiry” should be specified.
- 345.** The Government members of the Islamic Republic of Iran, Iraq and the United Republic of Tanzania supported the views put forward by the three previous speakers and opposed the amendment.
- 346.** The Employer Vice-Chairperson reiterated his support for the amendment, but observed that it was up to its proposers to determine its fate.
- 347.** The Worker Vice-Chairperson confirmed her group’s opposition to the amendment.
- 348.** The Government member of France, on behalf of EU Member States, withdrew the amendment, regretted that discussions had focused mainly on principles rather than practicalities that, if addressed, would make the Convention ratifiable by EU Member States. Fixed-term contracts with no specified duration were not covered by the original provision. His group’s intent was to make subparagraph (e) more inclusive, not restrictive. The Committee should aim to adopt a balanced text that would allow broad ratification.
- 349.** An amendment submitted by the Government member of Indonesia fell, as it was not seconded.

#### Subparagraph (f)

- 350.** The Worker Vice-Chairperson withdrew an amendment to replace the word “if” by “where” in subparagraph (f) and indicated that it would be submitted to the Committee Drafting Committee.

#### Subparagraph (h)

- 351.** The Employer Vice-Chairperson introduced an amendment to subparagraph 6(h) to insert the words “for migrant domestic workers” after “the terms of repatriation”, in order to make clear that repatriation only applied to migrant workers.
- 352.** The Worker Vice-Chairperson opposed the amendment, explaining that ILO usage of the term “migrant workers” denoted people who worked outside the boundaries of their country of origin. Thus, internal migrant workers in China, for example, would not be refunded for their travel costs by their employer, even if they had to fly to their province of origin.

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- 353.** The Government member of the South Africa asked the secretariat to confirm that the term “migrant worker” necessarily implied extraterritoriality.
- 354.** The representative of the Secretary-General indicated that “migrant worker” referred in ILO terminology exclusively to people migrating across borders and did not include internal migrants.
- 355.** The Government member of Brazil opposed the amendment, observing that “repatriation” meant moving from one country to another, and could not include workers travelling from one place to another within the same country. The original text was preferable and already covered migrant workers.
- 356.** The Employer Vice-Chairperson withdrew the amendment, noting the valid clarifications and the fact that repatriation only applied to migrant workers.

Subparagraph (i)

- 357.** The Employer Vice-Chairperson presented an amendment to replace the text of the subparagraph with the following: “any period of notice required for termination of employment by either the domestic worker or the employer”, stressing the importance of clearly including in contracts the notice period that the worker and employer should give when an employment relationship was to be terminated.
- 358.** The Worker Vice-Chairperson agreed with the concern of the Employers’ group that the notice period was among the essential terms and conditions of termination that a contract should include. With that in mind, she proposed a subamendment: “terms and conditions related to the termination of employment, including any period of notice by either the domestic worker or the employer”.
- 359.** The Employer Vice-Chairperson supported the subamendment.
- 360.** The Government member of Brazil supported the subamendment, but asked for clarification about the word “any”, which seemed to affect the clarity of the provision.
- 361.** The Employer Vice-Chairperson supported the inclusion of the word “any”, as it was more suitable to cover countries such as the United States, where no notice period was required, as well as member States providing a long notice period.
- 362.** The Worker Vice-Chairperson also favoured the inclusion of “any”, which reflected the diversity of national contexts.
- 363.** The Government member of Brazil confirmed her support for the subamendment, while noting that a notice period should be always provided.
- 364.** The Government member of the United Kingdom, speaking on behalf of EU Member States, believed that the reference to “terms and conditions of termination of employment” in the Workers’ subamendment, was too broad. It could establish a requirement to include very detailed lists of terms and conditions in each employment contract.
- 365.** The Worker Vice-Chairperson noted that the phrase “terms and conditions” was already used in the subparagraph on termination of employment.
- 366.** The Government member of the United Kingdom reiterated the position of EU Member States against the inclusion of the phrase “terms and conditions”, and informed the Committee that they had therefore submitted an amendment that sought to remove it. He

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opposed the Worker members' subamendment but supported the Employer members' original amendment.

- 367.** The Government member of Switzerland concurred with the previous speaker. In his view, the phrase "terms and conditions" was too vague. The Government member of Norway shared that view.
- 368.** The Worker Vice-Chairperson noted that the opening phrase of Article 6 specified reference to "accordance with national laws and regulations", so the terms and conditions were clearly delimited. It was important for domestic workers to know what would happen if their employment contract was terminated before the end of the expected duration.
- 369.** The Employer Vice-Chairperson clarified that the intent of the amendment was to give prominence to notice periods.
- 370.** The Government members of Australia and Bangladesh supported the subamendment proposed by the Worker members. The Committee had debated the same issue at length the previous year, and the wording "terms and conditions" had been the consensus solution.
- 371.** The Chairperson identified majority support for the amendment, which was adopted as subamended. As a consequence, an amendment, submitted by EU Member States, to replace "terms and conditions" by "a period of notice" fell.

New subparagraph after subparagraph (i)

- 372.** The Government member of the United States introduced an amendment, seconded by the Government member of Indonesia, to add a new subparagraph: "other terms and conditions of employment to which they are legally entitled, including daily and weekly rest periods, holidays, or other benefits". The purpose of the proposed new subparagraph would be to ensure that other essential information concerning legal entitlements was included in contracts (without being prescriptive about what those terms and conditions should be).
- 373.** The Worker Vice-Chairperson saw the value the new subparagraph would add to Article 6, supported the proposal and emphasized that annual leave and daily and weekly rest periods were particularly important.
- 374.** The Employer Vice-Chairperson supported the amendment, although he considered that it could equally be placed in the Recommendation.
- 375.** The Government member of Bangladesh felt the amendment introduced granular details into the Convention that would better be addressed in the Recommendation. He therefore opposed the amendment.
- 376.** The Government member of Switzerland opposed the amendment and aligned himself with the position taken by the Government member of Bangladesh.
- 377.** The Government member of South Africa, speaking on behalf of the Africa group, supported the amendment.
- 378.** The Government member of Brazil supported the substance of the amendment, but favoured its placement after subparagraph (d) that pertained to normal hours of work. The Government members of New Zealand and the Philippines agreed.

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- 379.** The Government member of the United States considered that placement after subparagraph (d) would be appropriate.
- 380.** The Government member of Hungary, on behalf of EU Member States, warned against extending the list in Article 6. The Convention should be clear and restrict itself to principles. She therefore opposed the amendment, but was willing to consider it in the Recommendation.
- 381.** The Government member of the United Kingdom associated himself with the EU statement. In common-law systems, it was impossible to list all entitlements, which were often implicit, such as the duty of good faith. The requirement to list them would therefore be difficult to enforce.
- 382.** The Government member of Germany concurred, noting that his country's labour law included a substantial set of rights and duties. If the entire body of legislation had to be included in every employment contract, that would present an obstacle to ratification.
- 383.** The Government member of the United Arab Emirates, on behalf of the GCC countries, felt that the text should not be overburdened by details that could present obstacles to ratification. The issues raised by the proposed amendment could be considered in the Recommendation. The Government members of Canada and Hungary shared those concerns. The Government member of Canada noted that Article 6 was already very prescriptive in nature.
- 384.** The Government member of Australia suggested removing the general reference to other terms and conditions of employment, but retaining specific reference to paid annual leave and to daily and weekly rest periods. She proposed a subamendment – seconded by the Government member of the United States – to rephrase the amendment as follows: “paid annual leave, and daily and weekly rest periods”.
- 385.** The Worker and Employer Vice-Chairpersons supported the subamendment.
- 386.** The Government member of Norway questioned whether specifying daily and weekly rest periods was necessary when the Article already contained a subparagraph pertaining to normal hours of work.
- 387.** The Government member of Argentina noted that most countries had specific legislation on daily and weekly rest periods; these should be specified in an employment contract. She therefore supported the amendment, as subamended.
- 388.** The Government member of Germany suggested that stating the normal hours was sufficient; no specific reference to daily and weekly rest periods was needed, and perhaps only “paid annual leave” was required.
- 389.** The Government member of France concurred with the previous speaker. The Convention should be applicable to all domestic workers in the world, while some members of the Committee seemed to work on the assumption that it would be applied only to full-time domestic workers. For instance, it would be impractical to specify rest periods for a domestic worker who worked only two hours per week for a household. He warned that the clause could present an obstacle to ratification.
- 390.** The Employer Vice-Chairperson remarked that rest periods could also fall within normal hours of work, and suggested that the reference to normal hours of work did not make mentioning of rest periods unnecessary.

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- 391.** The Government member of Hungary, on behalf of EU Member States, emphasized that the subamendment included requirements that were too detailed; thus they opposed it.
- 392.** The Government member of Norway asked for clarification on whether rest periods could fall within normal hours of work.
- 393.** The Employer Vice-Chairperson gave the example of New Zealand, where workers were entitled to two ten-minute breaks over a certain period of work.
- 394.** The Worker Vice-Chairperson talked about poor domestic workers who started their working day at 6 a.m. and worked without interruption until the late evening, without any weekly rest.
- 395.** The Employer Vice-Chairperson recalled the broader context of the discussion. The Article was aimed at ensuring that domestic workers were informed about all important terms and conditions of their employment, and the list therefore had to contain all important issues that domestic workers should know about; that was not an onerous requirement.
- 396.** The Government member of Namibia, speaking on behalf of the Africa group, supported the subamendment.
- 397.** The amendment was adopted as subamended.
- 398.** The Chairperson informed Committee members that the adopted subamendment might require reordering; as agreed earlier, the issue of reordering would be dealt with at the end of the discussion, and would then be referred to the Committee Drafting Committee.

### ***New paragraph at the end of Article 6***

- 399.** The Government member of Denmark, on behalf of EU Member States, introduced an amendment to add a new paragraph at the end of Article 6, as follows: “A Member may in law or regulations exclude certain limited cases of employment relationship from the obligation in the preceding paragraph, when it is justified on objective grounds.” to introduce some degree of flexibility in the Convention.
- 400.** The Employer Vice-Chairperson proposed a subamendment to insert “certain categories of domestic workers” in place of “certain limited cases of employment relationship”.
- 401.** The Worker Vice-Chairperson objected to both the amendment and subamendment, recalling that Article 2 already provided for such categorizations and exemptions.
- 402.** The Government member of Denmark reiterated that the wording of Article 2 could not address their concerns adequately.
- 403.** The Government member of France concurred with the previous speaker.
- 404.** The Government member of Bangladesh considered the subamendment to be redundant; categorization was already provided for in Article 2, while the proposed amendment did not provide enough clarification. He therefore rejected both the amendment and subamendment.
- 405.** The Government member of Australia also rejected the proposed amendment and subamendment, arguing that they would undermine the overall objective of Article 6; Article 2 already provided for exclusion of certain categories of domestic workers.

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406. The Government members of Indonesia, Namibia, speaking on behalf of the Africa group, and Uruguay opposed both the amendment and subamendment.
  407. The Government member of the United Arab Emirates, on behalf of the GCC countries, likewise rejected both texts, indicating that additional exceptions would render employment contracts meaningless.
  408. The Employer Vice-Chairperson withdrew the subamendment.
  409. The Government member of Denmark withdrew the amendment.
  410. Article 6 was adopted as amended.

## **Article 7**

### **Paragraph 1**

411. The Employer Vice-Chairperson introduced an amendment – to insert “of countries in which migrant domestic workers are to work” after “National laws and regulations”, and to delete “who are recruited in one country for domestic work in another” in the second line – seeking to limit the obligations to the receiving country.
412. The Worker Vice-Chairperson wished to retain the original text, which placed the obligation of defending the domestic worker on both the countries of origin and countries of destination. She noted that, in a number of cases, the source of the problem lay in countries of origin where recruiting agencies operated. Limiting the obligation to receiving countries would render the Convention less effective.
413. The Government member of Bangladesh – a sending country – wished to ensure that the obligations of defending migrant workers lay with sending and receiving countries. He therefore rejected the amendment.
414. The Government members of Argentina, Indonesia, the United Arab Emirates and the United Republic of Tanzania also opposed the amendment.
415. The Employer Vice-Chairperson withdrew the amendment.
416. The Government member of the United States introduced an amendment – seconded by the Government member of Indonesia – to insert “that is enforceable in the country of employment” after the words “contract of employment” in the third line. Often domestic workers signed their contracts of employment outside the country of employment; this should be enforceable in the country where employment would take place.
417. The Worker Vice-Chairperson endorsed the amendment, commenting that the non-enforcement of employment contracts when domestic workers reached the country of employment was indeed a problem faced by many migrant workers.
418. The Employer Vice-Chairperson, while noting that the enforceability of contracts of employment in the country of employment was self-evidently important, supported the proposed amendment.
419. The Government member of Namibia concurred with the sentiment of the amendment but sought clarification from the secretariat on the concept of “country of employment”. Based on the Private Employment Agencies Convention, 1997 (No. 181), she asked whether “the

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country of employment” of agency-recruited domestic workers assigned to work in another country was the one where they worked or the one where they were recruited/employed.

420. In response, the representative of the Secretary-General clarified that the country of employment was the receiving country, i.e. the place of employment.
421. The Government member of Namibia affirmed her support for the proposed amendment.
422. The Government member of the United Arab Emirates, in supporting the amendment, reiterated that domestic workers should be informed of, and should accept, their terms and conditions of employment *before* going to the country of employment. A contract signed in the sending country should be the same enforceable contract in the receiving country.
423. The Government member of Australia proposed a subamendment, aimed at adding clarity, to insert “that is enforceable in the country in which the work is performed” after the phrase “contract of employment”.
424. The Employer and Worker Vice-Chairpersons and the Government members of United States and Uruguay endorsed the subamendment.
425. The amendment was adopted as subamended.
426. In view of the adoption of the previous amendment, the Government member of the United States withdrew two amendments on the same paragraph.
427. Paragraph 1 was adopted as amended.
428. Responding to the request by the Government member of the United States to refer their amendment concerning Article 7 to the Committee Drafting Committee, the Chairperson explained that, as Article 7(1) had been adopted, it was not possible to reopen the discussion on that paragraph.
429. The Government member of Hungary, on behalf of EU Member States, fully agreed. She noted that the Committee worked on the basis of the English version of the proposed instruments.
430. The Government member of the United Kingdom indicated that, if there remained a problem, he would address the matter in plenary during the adoption of the report.

### ***New paragraph after paragraph 2***

431. The Government member of the United States, introduced an amendment, co-sponsored by the Government member of South Africa, to add a new paragraph after paragraph 2, as follows: “Each Member shall specify, by means of laws, regulations, or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.” The aim was to ensure that migrant domestic workers were informed of the conditions under which they were entitled to no-cost repatriation. Returning to their country of origin, after termination of employment, could force domestic workers to use a large part of their earnings. The proposed new provision was not an obligation on governments or employers to provide repatriation at no cost to workers; it was an obligation to inform.
432. The Employer Vice-Chairperson observed that the amendment would bring complexity back to the proposed Convention by adding more detail, which might be seen by

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governments as a burden. He recalled that Article 6 already covered the concern of the amendment.

- 433.** The Worker Vice-Chairperson strongly supported the amendment. Migrant domestic workers often did not know who was supposed to pay the cost of their repatriation. If they had to return to their home country and had no means to cover that journey, they could encounter great hardship. She cited a Singaporean law that clearly specified who should cover repatriation costs and under what conditions.
- 434.** The Government member of Hungary, speaking on behalf of EU Member States, recalled that the amendment came from the proposed Recommendation; it might present problems for future ratification.
- 435.** The Government members of Canada, Norway and Switzerland opposed the amendment, emphasizing that the issue was already covered by Article 6 of the Convention and Paragraph 21 of the Recommendation.
- 436.** The Government member of Norway observed that the amendment obliged governments to stipulate conditions for repatriation at no cost to workers.
- 437.** The Government member of Bangladesh noted that the recent experience of thousands of Bangladeshi migrant workers caught in conflict areas demonstrated the problem caused by the lack of clarity as regards who should cover repatriation costs of migrant workers, and under which conditions. He noted that the amendment was flexible.
- 438.** The Government members of Ecuador, Namibia (on behalf of the Africa group), the Philippines and the United Arab Emirates (on behalf of the GCC countries) supported the amendment.
- 439.** The Employer Vice-Chairperson highlighted that repatriation was a complex issue, evidenced by the differing opinions expressed. The underlying causes of termination of employment varied, some through no fault of the worker, some apparently justified. However, the proposed amendment was formulated regardless of causes. The Convention should focus on principles, the Recommendation on providing guidance; and governments should examine carefully the implications of adopting the amendment.
- 440.** The Worker Vice-Chairperson advised Government members that it was in their interest to ensure clarity as to who bore the cost of repatriation and under what conditions. Migrant domestic workers whose employment contracts had been terminated, but who had no means of returning to their home country, would have no choice but to stay in the receiving country, which would lead to them finding themselves in an irregular situation, at no fault of their own. For migrant domestic workers, clarity in repatriation conditions was important from a human rights perspective.
- 441.** The Government member of Portugal, on behalf of EU Member States, proposed a subamendment to delete “at no cost to themselves”. He recognized that repatriation at no cost to the workers might be necessary and normal for workers unduly dismissed from their employment, but also observed that there were many reasons underlying termination. Moreover, all migrant workers, not only migrant domestic workers, should be protected. Echoing previous statements on behalf of EU Member States, he suggested that repatriation was best dealt with in Paragraph 21 of the Recommendation.
- 442.** The Government member of the United States seconded the subamendment in a spirit of compromise, but noted that it changed the intention of the amendment.

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443. The Worker Vice-Chairperson supported the subamendment, bearing in mind that a similar provision was included in the Recommendation.
444. The Employer Vice-Chairperson and the Government member of Brazil did not think that the subamendment changed the amendment's meaning. The Government member of Brazil added that an entitlement to repatriation implied that somebody else, either the employer or the government, would pay for the repatriation.
445. The Government members of Bangladesh, Ecuador, Namibia (on behalf of the Africa group), the Philippines and the United Arab Emirates (on behalf of the GCC countries) supported the subamendment.
446. The amendment was adopted as subamended.

### **Paragraph 3**

447. The Employer Vice-Chairperson proposed an amendment to delete the paragraph, because an instrument that required member States to cooperate posed practical and legal difficulties and was unenforceable.
448. The representative of the Secretary-General – responding to a question from the Worker Vice-Chairperson – explained that there were no legal difficulties in requiring member States to cooperate.
449. The Employer Vice-Chairperson pointed out that, if two countries ratified the Convention, they were required to cooperate which was in practice not always possible. He considered it an agreement to agree, which was not sustainable.
450. The Worker Vice-Chairperson noted that there were different types of cooperation, such as talking, sharing information and organizing workshops. Countries already cooperated in the field of migration and she saw no legal problems with a requirement to cooperate.
451. The Government member of the United Arab Emirates, speaking on behalf of the GCC countries, preferred to retain the paragraph. Cooperation was very important and could take many forms. The paragraph would not hinder ratification and implementation.
452. The Government member of Bangladesh stated that, as a major sending country, much cooperation already took place between Bangladesh and other countries, notably those of the GCC. His country was willing to pursue the obligation to cooperate with other countries and he saw no reason for the Employers' group to object.
453. The Government member of the United States, seconded by the Government member of Bangladesh, proposed a subamendment to retain the original text of paragraph 3, with the addition of the words "take measures to" after "Each Member shall".
454. The Employer Vice-Chairperson supported the subamendment because it removed the absoluteness of the requirement to agree.
455. The Worker Vice-Chairperson noted that similar wording was found in several ILO instruments relating to migration; she supported the subamendment.
456. The Government members of Namibia (on behalf of the Africa group), Norway, the Philippines and the United Arab Emirates (on behalf of the GCC countries) supported the subamendment.

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- 457.** The Government members of Brazil and Indonesia preferred the original text, but supported the subamendment in a spirit of compromise.
- 458.** The subamendment was adopted.
- 459.** The representative of the Secretary-General – responding to a question from the Government member of France – explained that the provision was addressed to member States ratifying the Convention.
- 460.** The Government member of the United States withdrew an amendment to replace the existing text.
- 461.** Article 7 was adopted as amended.

## **Article 8**

- 462.** The Employer Vice-Chairperson introduced an amendment – adding “consistent with the protections available to workers generally” after “violence” – to clarify that domestic workers should not be considered a separate category of workers.
- 463.** The Worker Vice-Chairperson opposed the amendment because it diluted the purpose and the intent of the Article. Domestic workers faced different kinds of abuse, harassment and violence compared to other workers. While other workers were already protected under national laws, domestic workers were often excluded from any protection. The Government members of Brazil and Ecuador echoed that view and noted that domestic workers were a particular category of workers.
- 464.** The Government member of Namibia, on behalf of the Africa group, opposed the amendment because the proposed Convention aimed to protect domestic workers.
- 465.** The Government member of the Philippines also opposed the amendment.
- 466.** The Employer Vice-Chairperson withdrew the amendment.
- 467.** The Chairperson stated that discussion of an amendment submitted by the Government member of Australia to move Article 8 to after Article 15 would take place after the discussion on the draft instruments.
- 468.** Article 8 was adopted.

## **Article 9**

### ***Paragraph 1***

- 469.** The Employer Vice-Chairperson introduced an amendment to delete subparagraph (a), noting that it should be read in conjunction with an amendment to subparagraph (b). The existing text was confusing because it implied that domestic workers could negotiate whether or not to reside in a household after they had been recruited, whereas such negotiations should be applicable only prior to recruitment.
- 470.** The Worker Vice-Chairperson opposed the amendment, pointing out that the purpose of the Article was to give domestic workers – who were often very vulnerable, highly in debt and intimidated – a bargaining position that was more equal to that of other workers.

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Governments needed to ensure that domestic workers were free to decide for themselves whether or not they wanted to live in a household.

- 471.** The Government member of Australia recalled that, during the first discussion, it had been agreed that the word “negotiate” would be used, thus not inhibiting employers from making live-in arrangements part of the conditions of employment. She understood, however, the position of the Employers’ group. She therefore proposed a subamendment – that the subparagraph would read “only reside in the employer’s household when the worker has expressly agreed to do so, prior to taking up employment”.
- 472.** The Employer Vice-Chairperson seconded the subamendment.
- 473.** The Worker Vice-Chairperson and the Government members of Canada and China supported the subamendment.
- 474.** The Government member of South Africa, on behalf of the Africa group, opposed the subamendment, as it excluded the possibility of negotiation in cases where a worker was already in an employment relationship.
- 475.** The Government member of the United Arab Emirates, on behalf of the GCC countries, wished to retain the original wording, as it provided for more flexibility in negotiations between the worker and the employer; the subamendment was less direct on that issue.
- 476.** The Government members of Algeria, Iraq and Lebanon supported the position of the previous speaker.
- 477.** The Government member of Hungary, on behalf of EU Member States, asked whether the subamendment meant that, once it had been decided that the worker would live in the household, the matter could not be renegotiated.
- 478.** The Government member of Australia confirmed that the interpretation by the previous speaker was correct; she subamended by deleting the words “prior to taking up employment” to give greater flexibility.
- 479.** The Government member of the United States seconded the subamendment, which addressed the concerns expressed by the Africa group and EU Member States.
- 480.** The Employer Vice-Chairperson said that he could live with the subamendment but pointed out that there was a legal conflict. The paragraph asked Members to take measures to ensure that domestic workers were free to negotiate whether to reside in the household. However, the Convention defined domestic workers as persons already engaged in an employment relationship. Thus the issue of where to reside needed to be resolved prior to entering into the employment relationship.
- 481.** The Worker Vice-Chairperson preferred the original text, which provided more clarity. As circumstances could change, it should be possible to renegotiate the domestic worker’s place of residence. She proposed a further amendment, as follows: “only reside in the household in which they perform their work when they have expressly agreed to do so”.
- 482.** The Government member of South Africa, on behalf of the Africa group, stated that the notion of freedom of association and collective bargaining – as embodied in the original text – was missing in the proposed amendments. He therefore preferred the original text.
- 483.** The Government members of Chile and Uruguay concurred, adding that the original text was much broader.

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- 484.** The Government member of Namibia asked the secretariat to clarify whether the subparagraph only covered persons already engaged in an employment relationship, or also extended to pre-employment negotiations.
- 485.** The Employer Vice-Chairperson reiterated that the place where the domestic worker resided should be decided prior to entering an employment relationship, and could indeed be a condition of employment (analogous to that of oil-rig workers, who could not renegotiate their place of residence). Obviously, once the contract started, workers could negotiate about residence. However, the majority of domestic workers negotiated individually, not through collective bargaining.
- 486.** The Worker Vice-Chairperson asserted that the original text was intended to give room for negotiations between domestic workers and employers regarding place of residence. She had agreed to the subamendment on the understanding that it would not compromise the right to negotiate residence in the household at the outset or subsequently.
- 487.** The representative of the Secretary-General, having examined the report of the previous year's discussions, confirmed that the consensus had been on domestic workers' freedom to negotiate where to reside, prior to and after the establishment of an employment relationship.
- 488.** The Government member of Canada affirmed that negotiating residence was fundamental to the employment relationship between domestic workers and their employers, which should be negotiated prior to engaging in employment. He concurred with the views expressed by the Government member of Australia, but proposed a subamendment – seconded by the Government member of Uruguay – that would read “only reside in the household in which they perform their work when they have expressly agreed to do so, prior to taking up employment”.
- 489.** The Government member of France suggested an alternative solution, retaining the original text but incorporating an IMEC amendment to insert “or potential employer”, which was supported by the Government members of Australia, Hungary, on behalf of EU Member States, and by the Worker Vice-Chairperson.
- 490.** The Employer Vice-Chairperson, however, noted that, while the domestic worker's right to negotiate residence was part of the topic, his concern was that in the event of a breakdown of negotiations, the domestic worker might resort to industrial action. His group was trying to prevent any potential conflict from arising. The amendment by the Government member of Australia was seeking to resolve issues about such negotiations around residence, but the amendment would in effect reinstate the unnecessary scenario. He wondered if governments wished to introduce conflict resolution into the Convention.
- 491.** The Government member of Hungary, on behalf of EU Member States, called for a reversion to the original text that would be handled together with the IMEC amendment.
- 492.** After informal consultations between Committee members, the Employer Vice-Chairperson introduced the following subamendment: domestic workers “are free to reach agreement with their employer or potential employer on whether to reside in the household”. He trusted that the wording would address the various concerns raised.
- 493.** The Worker Vice-Chairperson supported the subamendment. The Government members of Australia, Canada, Hungary (on behalf of EU Member States), Norway, South Africa (on behalf of the Africa group) and the United Arab Emirates (on behalf of the GCC countries) supported the subamendment and thanked the social partners for having reached an understanding.

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- 494.** The subamendment was adopted. As a consequence, an amendment fell.
- 495.** The Employer Vice-Chairperson introduced an amendment – to insert “who reside in the household” in subparagraph (b) – to clarify that the provision applied to live-in domestic workers.
- 496.** The Worker Vice-Chairperson and the Government member of the Philippines also supported the amendment.
- 497.** The amendment was adopted.
- 498.** The Government member of the United Arab Emirates, on behalf of the GCC countries, introduced an amendment to replace “are not bound” by “are free to negotiate whether”. However, in light of the amended previous subparagraph, he subamended it to read “are free to reach agreement”. It was good to use the same wording in both subparagraphs.
- 499.** The Worker Vice-Chairperson pointed out that subparagraph (a) (which had just been amended and adopted) and subparagraph (b) under discussion were sequential, providing a “package of rights”. Subparagraph (b) stated that domestic workers, once they had agreed to reside in the household of the employer, had a right not to be “bound” to stay in the household during periods of rest and annual leave; that was consistent with other Articles on hours of work, rest periods and standby duty. Reopening that right for discussion put at risk workers’ conditions of employment regarding hours of work, rest periods and leave.
- 500.** The Employer Vice-Chairperson agreed that subparagraph (b) differed from subparagraph (a), although there could be situations when the employer might ask the domestic worker to remain in the household during rest periods or annual leave.
- 501.** The Government member of Egypt supported the subamendment. Domestic workers should have the freedom to negotiate whether or not to remain in the household, and both worker and employer should have the flexibility to agree on the matter.
- 502.** The Government member of Brazil rejected the subamendment because it did not recognize the right of domestic workers not to stay in the household during their periods of rest and leave. The original text of the subparagraph recognized that right, and did not preclude employers of domestic workers from requesting their worker(s) to remain in the household, if necessary.
- 503.** The Government member of Hungary, on behalf of EU Member States, endorsed the previous speaker’s comments.
- 504.** Both the amendment and subamendment were rejected.

## **Paragraph 2**

- 505.** The Worker Vice-Chairperson submitted an amendment to delete the paragraph, which read “In taking these measures, due respect shall be given to the right to privacy of both domestic workers and the household members.” as the paragraph was considered irrelevant.
- 506.** The Employer Vice-Chairperson, the Government members of Canada, Ecuador and the United States supported the amendment, which was adopted. Consequently, two remaining amendments fell.
- 507.** Article 9 was adopted as amended.

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## Article 10

### Paragraph 1

- 508.** The Government member of the Netherlands, speaking on behalf of EU Member States, introduced an amendment to replace the paragraph with the following text:

Each Member shall promote, as far as possible, equal treatment between domestic workers and workers generally in relation to the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations and/or collective agreements, taking into account the special characteristics of domestic work.

Her group supported the intent of the original text, but sought to introduce some limited flexibility. Given the special characteristics of domestic workers, it would be difficult to ensure that domestic workers were treated no less favourably regarding working time, however equal treatment between domestic workers and workers generally should be promoted, as far as possible. For example, in the case of live-in domestic workers caring for very ill household members, there was not always a clear delineation between working time and non-working time. So there was a need for flexibility and practical solutions. The amendment also introduced a reference to collective agreements, as they played a key role in setting regulations on working-time arrangements in many EU Member States.

- 509.** The Worker Vice-Chairperson considered the text of the amendment too vague and proposed a subamendment to replace the word “promote” by “ensure” and to delete “as far as possible” and the words “taking into account the special characteristics of domestic work”. That would remove the ambiguity about the intent of the paragraph.
- 510.** The Employer Vice-Chairperson understood the concerns of the Worker members but noted that the principle of equal treatment with respect to working-time arrangements could create enormous challenges for governments. He therefore supported the EU amendment and proposed a further subamendment to replace “promote, as far as possible” by “ensure, as far as possible” and reinstate the sentence “taking into account the special characteristics of domestic work”. In addition, reference to “overtime compensation” should also be deleted, since it was out of context. The paragraph was about working time, not compensation.
- 511.** The Worker Vice-Chairperson opposed the subamendment as it would weaken the protection for domestic workers. She provided examples of excessive hours worked by domestic workers across the world and highlighted countries that had adopted regulations to limit the normal weekly hours of domestic workers. Overtime compensation was a broadly accepted principle, essential to ensure decent work for domestic workers, which should be maintained in the text. Introduction of further ambiguities would result in domestic workers being treated as a marginalized group, with different terms and conditions to those of other workers.
- 512.** The Government member of Australia preferred the original text of the paragraph, noting that the ILO had Conventions for specific categories of workers such as seafarers and drivers, which contained specific provisions on working hours.
- 513.** The Government member of Brazil preferred to retain the original text; the words “in accordance with national laws and regulations” provided flexibility. While recognizing difficulty in defining normal hours of work for domestic workers, she noted that Article 6 required that the employment contract should specify normal hours of work.

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- 514.** The Government members of Bangladesh, the Plurinational State of Bolivia, Canada and South Africa, on behalf of the Africa group, preferred the original text of the paragraph which, while providing effective protection, was balanced and adequate to meet the different realities of member States. The Government member of Canada indicated, however, that he shared the EU's wish for greater flexibility, which he hoped could be taken into account.
- 515.** The Government members of Argentina and the Bolivarian Republic of Venezuela opposed the Employer members' subamendment, but supported the Worker members' subamendment. The case of seafarers showed that it was possible to regulate working hours of categories of workers with special characteristics.
- 516.** The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the Employer members' subamendment and also agreed with the Worker members that domestic workers should be compensated for overtime.
- 517.** The Employer Vice-Chairperson clarified that the issues of working hours, rest and annual leave were problematic in the context of the requirement to ensure equal treatment. He did not see how member States were going to ensure an absolute requirement to equal treatment since it was very difficult to measure. He maintained that the reference to overtime compensation was inappropriate in Article 10, but was willing to withdraw the deletion of "overtime compensation" from his subamendment.
- 518.** The Government member of France associated himself with the EU position. He underlined that in France collective agreements for domestic workers existed precisely because of the need to take into account their specific characteristics. It was well known that equal treatment did not mean that the same rule applied to everybody. There were already different rules for different categories of workers, such as in the maritime sector.
- 519.** The Government member of the United Kingdom fully supported the previous speaker. He emphasized that the Committee should work towards a global standard to protect all domestic workers, including vulnerable domestic workers, that was ratifiable and implementable.
- 520.** The Government member of France, on behalf of EU Member States, took note of the views expressed and – after consulting with other Committee members – introduced a further subamendment, proposing the following text:
- Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations, and/or collective agreements, taking into account the specific characteristics of domestic workers.
- 521.** The Government member of South Africa asked the secretariat to clarify the extent to which the sentence "shall take measures towards ensuring" was different from the sentence "shall take measures to ensure" in the original text.
- 522.** The representative of the Secretary-General explained that there was no significant difference since, in both formulations, the governments' obligation would refer to the adoption of measures.
- 523.** The Employer and Worker Vice-Chairpersons, and the Government members of Canada, the Philippines, South Africa and the United Arab Emirates, on behalf of the GCC countries, supported the amendment.

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**524.** The amendment was adopted as subamended.

**525.** All other amendments on paragraph 1 fell.

## **Paragraph 2**

**526.** The Government member of India introduced an amendment, seconded by the Government member of Bangladesh, to delete the paragraph. He argued that the paragraph 2 was redundant as the Article already ensured that domestic workers received the same treatment as other workers. The fine details should be placed in the Recommendation.

**527.** The Worker and Employer Vice-Chairpersons and the Government members of Ecuador, and the United Arab Emirates, on behalf of the GCC countries, opposed the amendment because it could deny protection of domestic workers' rest periods.

**528.** The Government member of India withdrew the amendment.

**529.** The Government member of Argentina withdrew an amendment.

**530.** Speaking on behalf of EU Member States, the Government member of the Netherlands introduced an amendment to replace "weekly rest shall be at least 24 consecutive hours in every seven-day period" by "weekly rest shall be at least 24 consecutive hours per each seven-day period", and add a new sentence as follows: "Weekly rest may be accumulated in a period not exceeding 14 days." She explained that working-time arrangements were crucial and needed to be regulated. Article 10 was one of the main Articles of the proposed Convention. At the same time, there was a need for limited flexibility in allowing for the accumulation of days of leave over a period of two weeks. That meant that, in some circumstances, workers might be expected to work for 12 days in a row, before taking two days off.

**531.** The Employer Vice-Chairperson supported the amendment, but subamended it to delete "each", which he deemed redundant.

**532.** The Worker Vice-Chairperson proposed a further subamendment to delete "in every seven-day period" from the original text and also to delete the sentence that "weekly rest may be accumulated in a period not exceeding 14 days". She explained that the 14-day provision could place domestic workers at a disadvantage compared to other workers. Paragraph 1 recognized that accumulation of weekly rest would be in accordance with national laws, regulations and collective bargaining agreements, which meant that, if such laws, regulations and collective agreements allowed accumulation of weekly rest, the necessary flexibility would be provided for.

**533.** The Government member of the Netherlands, on behalf of EU Member States, sought clarification from the secretariat on whether the Worker members' subamendment could result in a reference period of more than two weeks.

**534.** The representative of the Secretary-General confirmed that with the Worker members' subamendment the reference period could in principle exceed two weeks, but that Article 12(2) should be read in conjunction with Article 12(1); thus, the conditions for accumulating weekly rest and the length of the reference period could not exceed those governing other categories of workers.

**535.** The Government member of the Netherlands, on behalf of EU Member States, accepted the subamendment proposed by the Worker Vice-Chairperson.

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- 536.** The Employer Vice-Chairperson also accepted the Worker members' subamendment, but would have preferred an explicit recognition of the flexibility to accumulate weekly rest over a certain period of time.
- 537.** The Government member of Germany observed that some EU Member States, such as his own, could have a problem with the implementation of such a text, as it was unclear whether the 24-hour provision could in some circumstances provide stronger protection for domestic workers than for other workers.
- 538.** The Government member of the United Kingdom concurred with the EU position. The concern raised by the Employer Vice-Chairperson as regards the possibility of accumulating weekly rest could be dealt with in the Recommendation.
- 539.** The Government members of Argentina, Australia, Bangladesh, Canada, Indonesia, South Africa (on behalf of the Africa group), the United Arab Emirates and the Bolivarian Republic of Venezuela supported the Worker members' subamendment.
- 540.** The amendment as subamended was adopted.
- 541.** One amendment to replace "in every" with "per" and another to replace the word "por" with "dentro de" in the Spanish version fell as a result.

### ***New paragraph after paragraph 2***

- 542.** The Employer Vice-Chairperson introduced an amendment to add the following new paragraph after paragraph 2: "Member States may provide for adaptation of the period of weekly rest, and flexibility in its application by agreement between the employer and domestic worker, provided that national law and practice must also protect the taking of adequate weekly rest." It would allow domestic workers and employers the necessary flexibility to adapt to circumstances they found themselves in, as well as recognize workers' need for adequate rest.
- 543.** The Worker Vice-Chairperson opposed the amendment. She explained that, if agreements between employers and workers were allowed to deviate from general provisions, it would contradict paragraph 1 and defeat the intention of paragraph 2.
- 544.** The Government member of Norway opposed the amendment, pointing out that the minimum weekly rest period should not be the subject of an individual agreement between a domestic worker and her/his employer. The provision was meant for vulnerable workers, and weekly rest was an important element of working-time protection.
- 545.** The Government members of Australia, Indonesia and the Philippines opposed the amendment as it did not provide adequate weekly rest period.
- 546.** The Employer Vice-Chairperson withdrew the amendment.

### ***Paragraph 3***

- 547.** The Chairperson opened the debate on two identical amendments, submitted by the Employers' group and the Government member of India, to delete the paragraph.
- 548.** The Employer Vice-Chairperson argued that there were practical problems with the requirement to treat as working time specific periods during which domestic workers were not actively working, but remained at the disposal of the household. Such standby times,

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which could be significant, should be treated differently from periods of active work. If both were considered working time on an equal basis, that could have huge cost implications for employers, especially when domestic workers were paid on an hourly basis. His group had found no appropriate way to reword the paragraph.

- 549.** The Worker Vice-Chairperson opposed the deletion of the paragraph, stating that it was not unusual to treat standby time as hours of work. For instance, Article 2 of the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), defined that “the term hours of work means the time during which the persons employed are at the disposal of the employer”. Likewise, the 2003 EU Working Time Directive<sup>10</sup> specified that working time meant “any period during which the worker is working, at the employer's disposal and carrying out his activity or duties”. Including standby time as working time was particularly important for domestic workers, who were subject to long working hours and frequently told to remain on standby beyond their core working hours. Unless included explicitly, it remained unclear whether standby time should be counted as rest time or as working time. It did not follow from the existing text that standby time had to be remunerated at the same rate as active working time. In France, the wage rate of standby time was two-thirds of the normal remuneration. In Finland, one hour of standby was treated as equivalent to 30 minutes of active work. The bottom line was that standby time had to be recognized in some form as working time.
- 550.** The Government members of Brazil and the United States opposed the deletion of the paragraph, advocating that time when domestic workers remained at the disposal of their employer should be treated as working time and should be paid.
- 551.** The Government member of India considered it necessary to keep the Convention practical, excluding over-detailed regulations that could hinder ratification. He deplored the poor ratification record of some ILO Conventions, noting that some countries had ratified no more than 14 Conventions.
- 552.** The Employer Vice-Chairperson recognized substantial opposition to the amendment, but did not wish to withdraw it.
- 553.** The Chairperson declared that the amendment lacked majority support and thus fell.
- 554.** The Worker Vice-Chairperson introduced an amendment to replace “regulations, collective agreements or any other means consistent with national practice” by “regulations or collective agreements”. She asked the secretariat what “any other means consistent with national practice” could be, other than those already explicitly mentioned.
- 555.** The representative of the Secretary-General conceded that the wording was rather general, but that arbitration awards could fall under that category.
- 556.** The Employer Vice-Chairperson added that, in addition to arbitration awards, individual statutory agreements could fall under the category “any other means consistent with national practice”.
- 557.** The Government member of the United Kingdom argued that, in common-law systems, the term could also be taken to include custom that was not codified into legislation by an act of parliament.

<sup>10</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

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**558.** The Government member of the United States echoed the argument that instruments regulating working time existed that did not have the status of national laws. In his country, for instance, an Opinion Letter issued under the Fair Labor Standards Act could develop binding force, and – as in other federal countries – relevant state and local laws existed. He therefore opposed the amendment.

**559.** The Worker Vice-Chairperson expressed satisfaction with the clarification provided by the secretariat and the Government member of the United States and withdrew the amendment.

**560.** Article 10 was adopted as amended.

## **Article 11**

**561.** The Worker Vice-Chairperson withdrew an amendment to replace “based on sex” by “based on gender or any other grounds” in the prohibition of discrimination with respect to remuneration.

**562.** Article 11 was adopted.

## **Article 12**

### ***Paragraph 1***

**563.** The Employer Vice-Chairperson introduced an amendment to replace “but not less often than” by “at least” in the first line, in order to make the text clearer.

**564.** The Worker Vice-Chairperson and the Government members of Australia and Brazil supported the amendment.

**565.** The amendment was adopted.

**566.** An amendment submitted by the Government member of the Russian Federation was not seconded, and thus fell.

**567.** The Government member of the United Kingdom, speaking on behalf of EU Member States, introduced an amendment to replace “and” with “or” in the second line, after the words “national law and practice”, so that the text would read “As appropriate under national law and practice or with the consent of the worker concerned ...”. He noted that the intention was to address not only the valid concerns of developing countries but also provide protection for domestic workers in developed countries, where payment in cash might increase the invisibility of domestic workers and encourage the growth of the “black economy”, leading to greater exploitation.

**568.** The Worker Vice-Chairperson opposed the amendment, as it suggested that employers did not need to comply with national laws and practices; it diluted the protection to be afforded to domestic workers.

**569.** The Employer Vice-Chairperson supported the amendment, observing that it was increasingly rare in industrialized countries to pay workers in cash, therefore the other payment options should be included. That could either be mandated by law and practice, or done with the consent of the worker. The important thing was to recognize that workers needed to be paid in monetary form (cash, bank transfer or other method).

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- 570.** The Government member of Bangladesh considered that the amendment could raise problems of interpretation, preferring the original wording, which already provided for some flexibility. There was no need to introduce a disjunction between national laws and practices and the worker's consent.
- 571.** The Government member of South Africa, on behalf of the Africa group, opposed the amendment, recalling that the intention of the paragraph was to ensure that workers received their payment primarily in cash, not in kind.
- 572.** The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the amendment, noting that, in many countries, including GCC countries, payment by bank transfer was a safer method of payment than payment in cash. In his country, all employers were obliged to pay their domestic workers by bank transfer, which guaranteed that they received their pay. The amendment was applicable and in line with the existing regulations in many countries.
- 573.** The Government member of Ecuador noted that, while the amendment did not affect the substance of the text, he preferred the original wording, which was clearer. It was aimed at discussing methods of payment, while paragraph 12(2) addressed payment in kind.
- 574.** The Worker Vice-Chairperson stressed that the amendment raised far more than just a technical point. The rationale for a Convention would be damaged if decisions on methods of payment were left to domestic workers and their employers. Currently, domestic workers had very little say in such matters, which was why it was essential to include the provision, which applied especially to developing countries, where many domestic workers had no bank accounts or access to automated teller machines. The status quo was unsatisfactory in many countries; it was essential to protect the right of domestic workers to receive a salary.
- 575.** The Government member of the United Kingdom, speaking on behalf of EU Member States, reiterated that the paragraph related to methods of payment, not to whether payments could be made in kind. In response to the previous speaker, he remarked that, if national law and practice stated that it was inappropriate to pay domestic workers by bank transfer for example, then cash could be a compulsory method of payment. The aim of the amendment was to allow flexibility to implement the most appropriate method of payment.
- 576.** The Government member of Norway supported the amendment, indicating that the provision was about methods of payment of the cash part of the salary. Bank transfers were a very important means to prevent undeclared work and thus should be encouraged. The Convention should target both developed and developing countries' needs.
- 577.** The Government member of Indonesia supported the Workers' group's arguments and preferred the original text. The Government member of the Bolivarian Republic of Venezuela concurred; alternative methods of payment introduced some complications not suitable to domestic workers' conditions.
- 578.** The Government member of Switzerland supported the amendment, observing that in many countries cash payments had been already overtaken by other modes of payment and that had been reflected in national laws and practice.
- 579.** The Government member of Brazil opposed the amendment and remarked that the original text already allowed the possibility for alternative modes of payment. However, in all cases, the worker's consent was essential to prevent, for example, the employer demanding receipts for fictitious payments. Domestic workers needed immediately available cash to

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support their families, so bank transfers and other alternative payments were unsuitable for them.

- 580.** The Government member of Argentina opposed the amendment for the same reasons as previous speakers, indicating that the issue was not about the form of payment, but the need to obtain the worker's consent in the case of alternative modes. Introducing the word "or" would provide the possibility of using other methods of payment without the worker's consent, which should be avoided.
- 581.** The Government member of the United Arab Emirates supported the amendment, observing that bank transfers were the safest method to protect workers' wages. That mode of payment existed in all countries. For example, in his country there were 4 million domestic workers, most of whom were illiterate, and they were able to manage bank accounts. Therefore, the amendment protected domestic workers and applied to all countries.
- 582.** The Government member of Trinidad and Tobago opposed the amendment, preferring the original text. It provided for cash as the primary mode of payment and allowed other means, such as bank transfers, which he considered a more protected form of payment.
- 583.** The Government member of the United Kingdom remarked that the original text would jeopardize the ability of EU Member States to ratify the Convention, since that provision contradicted national laws imposing payment by bank transfers. National legislation aimed to better protect all workers, including domestic workers, who could be forced to accept bogus payments or to work in the informal economy.
- 584.** The Employer Vice-Chairperson noted that many countries already mandated the payment of wages via bank transfers, with a view to protect workers. The original text thus placed an obstacle to ratification by those countries. Since non-EU member States had identified no legal problem with the amended Article, it would be best to adopt a far-reaching provision, meeting the needs of all countries.
- 585.** The Worker Vice-Chairperson explained that the original text posed no major obstacle to those countries, since the key point of the Article was the respect of national laws and practice and the worker's consent. The Article did not prohibit specific types of payment, but specified that alternative modes of payment of the cash portion of wages required the worker's consent. If national laws did not enable the worker's expression of consent, they should be modified. The worker's right to negotiate the form of payment should be protected.
- 586.** The Government member of France drew attention to the need to draft universal rules, compatible with realities in all countries. If the word "and" was retained, it would result in situations where the consent of workers could become a serious legal obstacle. In some countries, alternative modes of payments were mandated with a view to protect all workers from fraud and the informal economy. Thus, if the Convention accommodated only the needs of domestic workers, EU Member States might need to reassess their systems of protection for all workers.
- 587.** Following tripartite consultations, the Government member of the United Kingdom, speaking on behalf of EU Member States, proposed a subamendment to replace the second sentence with: "Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque or money order, with the consent of the worker concerned."

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- 588.** The Employer Vice-Chairperson proposed a further subamendment to provide for the possibility of other lawful forms of payment, by adding “, money order or other forms of lawful means of payment” after “postal cheque” to take into account other forms of payment, including financial means of the future, as well as personal cheques. However, all payments had to be lawful and with the full consent of the domestic worker.
- 589.** In response to the Worker Vice-Chairperson, the Government member of the United Kingdom explained that “as appropriate under” had been replaced by “unless provided by”.
- 590.** The Worker Vice-Chairperson agreed to support the subamendment, but noted that the Convention should have universal applicability. Workers should be paid in cash, as it was the most common form of payment in many parts of the world. The consent of the worker and national laws and regulations were crucial.
- 591.** The Government member of the United States, seconded by the Government member Bangladesh, proposed a subamendment to insert “monetary” between “of” and “payment”. This was supported by the Employer and Worker Vice-Chairpersons and the Government member of the United Kingdom, on behalf of EU Member States.
- 592.** The amendment was adopted as subamended.
- 593.** The Government member of Australia, on behalf of the IMEC group, withdrew an amendment and two other amendments fell.

## **Paragraph 2**

- 594.** An amendment to delete paragraph 2, submitted by the Government member of China, fell.
- 595.** The Worker Vice-Chairperson introduced an amendment to insert the word “exceptionally” after “awards may”, to clarify that payment should be made in cash as a rule, while in-kind payments should only be allowed as an exception to that rule. Without that clarification, the paragraph implied that in-kind payments could be the norm and provided an alternative to payments in cash, but the paragraph was only intended to accommodate limited in-kind payments that already existed in some countries, as had been agreed during an extensive discussion in 2010.
- 596.** The Employer Vice-Chairperson shared the concern that in-kind payments could be used too frequently, but questioned whether the insertion of “exceptionally” provided any additional protection.
- 597.** The Government member of the Netherlands, speaking also on behalf of the Government member of the United Kingdom, opposed the insertion of “exceptionally”. He considered that it was acceptable for domestic workers to receive a proportion of their remuneration in kind, if the other safeguards detailed in the existing text were met. It was sufficient to state that the entire remuneration could not be paid in kind; national laws already restricted the proportion of such payments.
- 598.** He asked the Chairperson to allow an adviser – a representative of Aruba<sup>11</sup> – to elaborate. The adviser specified that the amendment would be unacceptable to the Government of Aruba. Her country had a specific minimum wage for domestic workers, since live-in

<sup>11</sup> The Kingdom of the Netherlands consists of the Netherlands, Aruba, Curaçao and Sint Maarten.

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domestic workers constituted a large part of the working population. While that minimum wage was lower than that applicable to other workers, live-in domestic workers were also entitled to additional in-kind payments in the form of food and shelter which de facto were higher than the minimum wage. Such in-kind payments were therefore not “exceptional” but the rule, and in line with national law. Her Government held the view that the existing arrangements were compatible with paragraph 2 in its original form.

- 599.** The Government member of Chile mentioned that in his country all domestic workers, whether live-in or live-out, were entitled to the same minimum wage, which was paid wholly in cash. Payment in kind was not allowed even in cases where the employer provided domestic workers with meals.
- 600.** The Government member of the Plurinational State of Bolivia was concerned that Article 12(2) countered the intention of Article 12(1), and the principles behind international instruments on economic, social and cultural rights and on modern forms of slavery. Payment in kind would create greater dependency on employers among domestic workers. He proposed that the paragraph be dropped.
- 601.** The Government member of Argentina agreed; payment in kind should not be practised at all.
- 602.** The Government member of South Africa, on behalf of the Africa group, stated that payment in kind was not exceptional in Africa; he thus preferred the current draft text.
- 603.** The Government member of Canada, concurring with the Government members of the Netherlands and the United Kingdom, rejected the amendment.
- 604.** The Employer Vice-Chairperson observed that the interventions made by Government members showed that payment in kind was a norm in some countries, and therefore rejected the amendment.
- 605.** The Worker Vice-Chairperson remarked that previous statements confirmed that in Argentina, the Plurinational State of Bolivia and Chile payment in kind was not a norm and should be an exception. However, she took note of the concerns of other Government members and, on that basis, withdrew the amendment.
- 606.** The Employer Vice-Chairperson introduced an amendment to replace “allowances” by “payments”; the term “allowances in kind” had non-monetary connotations and it was important to distinguish between monetary and non-monetary payments.
- 607.** The Worker Vice-Chairperson and the Government member of Australia supported the amendment.
- 608.** The amendment was adopted.
- 609.** A similar amendment submitted by Government members of EU Member States and the IMEC group fell.
- 610.** The Employer Vice-Chairperson introduced an amendment to delete “in conditions not less favourable than those generally applicable to other categories of workers,”, explaining that there were many different types of payment in kind, some of which were not relevant to domestic work. He cautioned against attempting to compare payments in kind that were applicable to domestic workers with those applicable to other categories of workers.

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611. The Worker Vice-Chairperson opposed the amendment and asked why – if national legislation provided that in-kind payments should not exceed a given percentage of the salary of workers in general – such legislation should not apply to domestic workers.
  612. The Employer Vice-Chairperson explained that the intention was not at all to suggest that national legislation should not apply to domestic workers; it was simply to remove wording that introduced complex arrangements that might be difficult to apply, given that in-kind payments applicable to domestic workers were very different to those applicable to other categories of workers.
  613. The Government member of Australia agreed with the Employer Vice-Chairperson; the aim was to ensure that in-kind payments for domestic workers were limited and tailored to their specific needs.
  614. The Worker Vice-Chairperson underscored the importance of the paragraph and the need for consistency. The Committee had previously agreed that the laws applicable to workers generally should also apply to domestic workers. Allowing domestic workers to be excluded from the provisions of national law could do them grievous disservice.
  615. The Employer Vice-Chairperson took note of the Worker Vice-Chairperson’s concerns and suggested subamending the text by replacing “in conditions” by “criteria”.
  616. The Worker Vice-Chairperson considered that the subamendment did not resolve the problem.
  617. The Government member of Australia proposed a subamendment to delete the words “in conditions”.
  618. The Employer and Worker Vice-Chairpersons and the Government member of Bangladesh accepted the subamendment.
  619. The Government member of South Africa sought clarification from the secretariat on the intention of the wording “in conditions not less favourable than those generally application to other categories of workers” in relation to payments in kind.
  620. The representative of the Secretary-General explained that this was intended to provide limits on payments in kind should be limited and to ensure that, when setting limits, they should be aligned with those for other categories of workers.
  621. The amendment was adopted as subamended.
  622. The Government member of the United States withdrew an amendment and then introduced two similar amendments, on behalf of the IMEC group and EU Member States, to insert “and primarily” after “are appropriate” and before “for the personal use and benefit of the worker”. The proposed wording was clearer and more direct.
  623. The Worker Vice-Chairperson subamended the text by deleting the words “are appropriate and primarily”, to be even clearer and more direct.
  624. The Employer Vice-Chairperson and the Government member of the United Arab Emirates, on behalf of the GCC countries, endorsed the proposed subamendment.
  625. The amendment was adopted as subamended.
  626. The Government member of Argentina withdrew an amendment.

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- 627.** The Employer Vice-Chairperson introduced an amendment to delete the word “cash” in the sixth line, because its inclusion might limit how the value of allowances in kind was determined. Although his group’s preference was to delete the word “cash”, it could also subamend by replacing “cash” by “monetary”.
- 628.** The Worker Vice-Chairperson and the Government members of Canada, the Philippines and the United States supported the subamendment.
- 629.** The amendment was adopted as subamended.
- 630.** Article 12 was adopted as amended.

## **Article 13**

### **Paragraph 1**

- 631.** The Government member of Spain, on behalf of EU Member States, introduced an amendment to replace the paragraph by the following text: “Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national law and practice, appropriate measures, with due regard to the specific characteristics of domestic work, to promote the occupational safety and health of domestic workers.” He explained that appropriate safety and health conditions for domestic workers should be put into place. However, the specificities of that occupation had to be taken into account. A private household could not be considered as a normal workplace, and therefore some flexibility had to be introduced in the current text, which was deemed too restrictive.
- 632.** The Worker Vice-Chairperson supported the amendment and proposed a subamendment to replace the word “appropriate” by “effective” and the word “promote” by “ensure”.
- 633.** The Employer Vice-Chairperson proposed a further subamendment to replace “ensure” by “towards ensuring”. While acknowledging the need for providing a healthy and safe work environment, he remarked that the Convention should reflect the different conditions of member States. Thus, progressivity in the new text recognized that countries might not be in the position of immediately ensuring a healthy and safe work environment, but could be willing to work towards that objective.
- 634.** The Worker Vice-Chairperson and the Government member of Spain, on behalf of EU Member States, supported the subamendment.
- 635.** The Government member of South Africa, speaking on behalf of the Africa group, firmly opposed the subamendment. He pointed out that, although guaranteeing a safe and healthy work environment might be difficult, it was a principle that represented an immediate requirement for domestic workers. Therefore, it should be clearly enshrined in the Convention.
- 636.** The Government member of Australia shared the views of the previous speaker and opposed the subamendment, observing that the words “towards ensuring” provided for progressive application, which was reflected in Article 13(2).
- 637.** The Worker Vice-Chairperson endorsed the view of the previous speaker and considered that, if the Employer group’s subamendment were to be adopted, the second paragraph should be deleted. Otherwise, the word “ensure” should be retained.

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- 638.** The Employer Vice-Chairperson clarified that the intent of the proposed subamendment was to widen the scope for ratification, since a restrictive approach might prevent many countries from ratifying the Convention. It would be more realistic if, under article 22 of the ILO Constitution, member States were to report on progress made towards ensuring measures on, for example, OSH protection, rather than on the measures to give effect to OSH protection itself. It could take time for governments to reach the point of effective protection and – during that time – ratification might not be possible.
- 639.** The Government member of Canada supported the EU amendment as subamended by the Employers’ group. He observed that there was consensus on that text, which was in line with Report IV(2A). He preferred to keep the second paragraph.
- 640.** The Employer Vice-Chairperson indicated that, if the second paragraph stayed as it was, he could accept retaining “ensure”, as proposed in the Workers’ subamendment instead of “towards ensuring”.
- 641.** The Worker Vice-Chairperson and the Government members of Australia, South Africa (on behalf of the Africa group), Spain (on behalf of EU Member States) and the United Arab Emirates (on behalf of the GCC countries) supported the proposal of the Employers’ group.
- 642.** The Government member of the United Kingdom could not back the proposal – even if EU Member States did – and preferred the words “toward ensuring”, which reflected the agreed objective, while not imposing an absolute standard.
- 643.** The amendment was adopted as subamended.
- 644.** Four remaining amendments fell.

## ***Paragraph 2***

- 645.** The Worker Vice-Chairperson introduced an amendment to add “in full consultation with representative employers’ and workers’ organizations and, where they exist, with representative organizations of domestic workers and those of employers of domestic workers”. The amendment aimed to ensure that consultations took place regarding the progressive implementation of measures relating to OSH, which was a fundamental issue for domestic workers. Without the amendment, the progressivity opened the door to very long periods of transition.
- 646.** The Employer Vice-Chairperson supported the amendment and tabled a subamendment in line with similar paragraphs: “in consultation with the most representative employers’ and workers’ organizations and, where they exist, with organizations representative of domestic workers and those of employers of domestic workers”.
- 647.** The Worker Vice-Chairperson, and the Government members of Canada and Norway supported the subamendment.
- 648.** The amendment was adopted as subamended.
- 649.** Article 13 was adopted as amended.

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## Article 14

### *Paragraph 1*

- 650.** The Government member of France, on behalf of EU Member States, seconded an amendment by the Government member of Australia to replace the paragraph with “Each Member shall take measures, with due regard to the specific characteristics of domestic work and in accordance with national laws and regulations, to ensure that domestic workers have access to social security protection, including with respect to maternity.”
- 651.** The Government member of Australia withdrew her amendment in view of previous discussions on a similar issue and to avoid reopening a difficult debate.
- 652.** The Government member of the Netherlands, seconded by the Government member of France (on behalf of EU Member States), moved to resubmit the amendment. He stated that the proposed amendment was far more realistic than the original text.
- 653.** The Worker Vice-Chairperson opposed the amendment because it was much weaker than the original text. Social security protection, including maternity protection, was very important for domestic workers.
- 654.** The Employer Vice-Chairperson and the Government members of Bangladesh and Indonesia opposed the amendment for the same reason.
- 655.** The Government member of France, speaking on behalf of EU Member States, expressed surprise at the lack of support for the amendment, noting that achieving equivalent rights for domestic and other workers required that Members be able to take different measures depending on the context of domestic work, and taking into account different national legal systems.
- 656.** The Employer Vice-Chairperson observed that a significant majority favoured retaining the original text. It would take a long time to subamend the amendment back to the original text.
- 657.** The Government members of Algeria, Argentina, the Philippines and South Africa (on behalf of the Africa group) supported the original text.
- 658.** The Government member of South Africa proposed that the Committee Drafting Committee check the final phrase.
- 659.** The Government member of Canada supported the amendment.
- 660.** The Government member of France withdrew the amendment and placed two points on the record. First, the amendment had the same intention as the original text, namely to grant equivalent rights to domestic workers as to other workers. Second, the text of the Convention should be compatible with the diversity of legal systems and the different characteristics of domestic workers.

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- 661.** The Government member of France introduced an amendment on behalf of several Government members,<sup>12</sup> to insert in the first line “in accordance with national laws and regulations and”, after “measures”. It aimed to cover diverse social security protection arrangements in member States. The amendment was necessary since the previous amendment was not supported.
- 662.** The Worker Vice-Chairperson asked for clarification about the amendment’s intentions: as domestic workers were already excluded from most national legislation, she wondered whether the amendment in effect sought to maintain the status quo.
- 663.** The Government member of France, on behalf of EU Member States, explained that the new text would still oblige Members to take appropriate measures to ensure that domestic workers enjoyed social security protection, but in consistency with national laws and regulations.
- 664.** With that explanation, the Worker Vice-Chairperson supported the amendment.
- 665.** Also in support were the Employer Vice-Chairperson and the Government members of Canada and the United Arab Emirates (on behalf of the GCC countries).
- 666.** The Government member of Bangladesh expressed reservation about the amendment; it was related to another one which, if considered, would make it difficult for him to support the current amendment.
- 667.** The Government member of Brazil opposed the amendment because the original text was much clearer on the equal treatment of all workers with regard to access to social protection.
- 668.** The amendment was adopted.
- 669.** The Worker and Employer Vice-Chairpersons withdrew two amendments.
- 670.** The Government member of France, on behalf of EU Member States, introduced an amendment to replace “conditions that are not less favourable than those applicable to workers generally” by “decent conditions”.
- 671.** The Worker Vice-Chairperson was unsure about the connotation of “decent conditions”, and therefore opposed the amendment.
- 672.** The Employer Vice-Chairperson also opposed it, noting that adding “decent conditions” was unhelpful to the Convention.
- 673.** The Government member of the Netherlands noted the opposition to the amendment, but reiterated the need for some level of flexibility in the Article. That would avoid imposing an excessive administrative burden on private households. The existing text would make it hard for his country to ratify the Convention.

<sup>12</sup> Government members of Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

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- 674.** The Government member of France withdrew the amendment, while asking the secretariat the meaning of “not less favourable than those applicable to workers generally”.
- 675.** The representative of the Secretary-General responded that the interpretation would be provided by the Committee of Experts once the Convention had been adopted. She could not speculate on what the meaning was.

## **Paragraph 2**

- 676.** The Worker Vice-Chairperson introduced an amendment to ensure that the progressive implementation of the Convention was “in full consultation with representative employers’ and workers’ organizations and, where they exist, with representative organizations of domestic workers and those of employers of domestic workers”.
- 677.** The Employer Vice-Chairperson supported the amendment, but introduced a subamendment to clarify that the consultation should be with “the most representative” organizations as well as with “organizations representative of domestic workers and those representative of employers of domestic workers”.
- 678.** The Worker Vice-Chairperson and the Government members of Algeria and Brazil supported the amendment as subamended.
- 679.** The amendment and subamendment were adopted.
- 680.** Article 14 was adopted as amended.

## **Article 15**

- 681.** On behalf of the IMEC group, the Government member of Hungary introduced an amendment to insert after “to ensure” the words “, in accordance with national law and practice,”. She explained that, while supporting a global standard, the Article should accommodate different national legislation.
- 682.** The Worker and Employer Vice-Chairpersons and the Government members of Algeria, Brazil, Canada and the United Arab Emirates (on behalf of the GCC countries) supported the amendment.
- 683.** The amendment was adopted.
- 684.** The Worker Vice-Chairperson proposed an amendment – to insert “effective” after “have” and before “access to courts” – which would facilitate access to dispute resolution by domestic workers.
- 685.** The Employer Vice-Chairperson opposed the amendment, noting that the 2010 debate on wording such as “easy” and “effective” had yielded no consensus, so the debate should not be reopened.
- 686.** The Government member of Namibia, on behalf of the Africa group, supported the amendment. She noted that in many countries, while the legislation on paper was appropriate, access to the legal system was problematic because workers often could not afford to hire lawyers. Inclusion of “effective” would be one way of addressing the underlying problem.

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- 687.** The Government members of the Bolivarian Republic of Venezuela, Norway and the United Arab Emirates (on behalf of the GCC countries) supported the amendment,
- 688.** The Government member of Brazil concurred. In her view, the previous addition of “in accordance with national law and practice” should give comfort to those who in 2010 had expressed reservations about the terms “easy” and “effective”.
- 689.** The Government member of Bangladesh pointed out that the wording “easy access” had an established meaning in his country, whereas “effective access” was less well defined. However, given the emerging consensus in the Committee, he accepted the amendment.
- 690.** The Government members of Hungary, on behalf of EU Member States, and Indonesia supported the amendment.
- 691.** The amendment was adopted. The discussion of another amendment – to move Article 15 to after Article 17 – was referred to the Committee Drafting Committee.
- 692.** Article 15 was adopted as amended.

## **Article 16**

- 693.** The Employer Vice-Chairperson introduced an amendment – to insert “and accessible complaint mechanisms and” after the word “effective” – which should be seen in the light of another amendment that proposed to remove a similar reference from Article 17(2)(c), which referred only to domestic workers recruited through private employment agencies. The proposed amendment would give all domestic workers access to complaints mechanisms.
- 694.** The Worker Vice-Chairperson supported the amendment.
- 695.** The Government member of Canada preferred the original text.
- 696.** The Government member of Hungary asked, on behalf of EU Member States, what was the added value of moving the reference to Article 16, requesting further explanation from the Employer Vice-Chairperson.
- 697.** The Employer Vice-Chairperson replied that the major implication of the amendment was to open the complaints mechanisms to all domestic workers, not just those recruited through employment agencies.
- 698.** The Government member of New Zealand observed that it was unclear to Government members how the proposed package of different amendments would look. He asked about postponing the decision until the discussion on Article 17.
- 699.** The Government member of Bangladesh warned against conflating two separate issues, namely those of ensuring compliance with national laws and regulations (addressed in Article 16) and complaints mechanisms. The first issue was much broader.
- 700.** The Government member of South Africa, on behalf of the Africa group, believed that moving the reference to complaints mechanisms from Article 17 to Article 16 would ensure access to complaints mechanisms to all domestic workers, rather than just to those recruited through private employment agencies. He asked the secretariat whether his interpretation was correct.

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- 701.** The representative of the Secretary-General stated that interpreting the rationale behind an Employers' group amendment was a question for the Employer Vice-Chairperson. However, it was correct that Article 17 referred only to domestic workers recruited through private employment agencies, whereas the coverage of Article 16 was broader.
- 702.** The Employer Vice-Chairperson confirmed that the intention of the amendment was not to deprive agency workers of access to complaints mechanisms, but rather to extend access to all domestic workers.
- 703.** Following those clarifications, the Government members of Algeria, Australia, Brazil, Ecuador, Hungary (on behalf of EU Member States), New Zealand, the Philippines, South Africa (on behalf of the Africa group) and the United States supported the amendment
- 704.** The Government member of Canada supported the amendment so long as the proposed text would not require establishing separate complaints mechanisms specifically for domestic workers; it would only require ensuring access to existing mechanisms for domestic workers.
- 705.** The amendment was adopted.
- 706.** The Government member of Hungary, on behalf of EU Member States, introduced an amendment to add the following sentence at the end of Article 16: "In establishing these means, due respect shall be given to the privacy of both the domestic worker and the household members." She recalled that the uniqueness of workplaces for domestic workers was their location in private households, which gave rise to the need to protect privacy. That should be taken into account when developing complaints mechanisms.
- 707.** The Employer Vice-Chairperson supported the amendment.
- 708.** The Worker Vice-Chairperson opposed the amendment. An alternative amendment sponsored by her group also recognized the right to privacy, but did so in the context of granting labour inspectors access to the home and premises where work was carried out. The Committee might wish to consider that amendment also.
- 709.** The Government member of Australia supported the previous speaker. The draft Convention already had many references to privacy, and it would be inappropriate to add another one as proposed; subsequent amendments could better address the question of privacy.
- 710.** The Government member of Hungary, on behalf of EU Member States, stated that the amendment only established the general principle of respect for privacy, which made it applicable. She had reservations about the subsequent amendment sponsored by the Workers' group, which was too unspecific and could hamper ratification if adopted.
- 711.** The Employer Vice-Chairperson noted that subsequent amendments concerned privacy with respect to who, other than the domestic workers and household members, could enter the home. Access of officials and other persons external to the household went to the very heart of personal privacy. His group was strongly opposed to granting persons other than the household members and domestic workers permission to enter the home.
- 712.** The Worker Vice-Chairperson expressed general support for the right to privacy. However, the issue should not be addressed out of context; Article 16 should primarily be about establishing effective means of compliance with national laws and regulations. Privacy was addressed in a more meaningful way in the amendment sponsored by her group.

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- 713.** The Government member of South Africa, speaking on behalf of the Africa group, rejected the amendment because it did not examine the whole context of the issue of privacy. One could not deny that households had a right to privacy, but government certainly had the right to enforce labour legislation. A balance between these two rights was necessary, but the amendment failed to provide that balance.
- 714.** To resolve pending issues, the Government member of the United States suggested considering all three amendments dealing with privacy at once.
- 715.** One amendment, submitted by the Worker members, proposed to insert after “domestic workers” the following new statement: “at their workplace. In so far as it is compatible with national law and practice concerning respect for privacy, labour inspectors, or other officials entrusted with enforcing provisions applicable to domestic work, should be allowed to enter the parts of the home or other private premises in which the work is carried out”. Another amendment, submitted by the Employer members, recommended adding the following new paragraph: “Member States shall have the capacity to implement approaches to inspection, enforcement and penalties that reflect the unique nature of domestic employment within family homes and employment by parents and families.”
- 716.** The Employer Vice-Chairperson suggested that informal consultations might help merge the three amendments into an acceptable text. As a useful context for the pending issue, he quoted Article 12 of the Universal Declaration of Human Rights: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”
- 717.** The Worker Vice-Chairperson emphasized that labour inspection did not amount to arbitrary intrusion into private homes, and pointed out that the Home Work Convention, 1996 (No. 177), provided for a system of labour inspection consistent with national law and practice. She provided examples of countries where labour inspection in domestic work already existed.
- 718.** The Employer Vice-Chairperson presented a subamended text, which was the product of informal discussions between the groups, combining elements of the three amendments under consideration and which, it was hoped, addressed most of the concerns that had been raised. It read:
2. Members shall develop and implement measures for labour inspection, enforcement and penalties with due regard to the special characteristics of domestic work, in accordance with national laws and regulations.
  3. In so far as it is compatible with national laws and regulations, such measures shall specify the conditions on which access to the home may be granted, having due respect for privacy.
- 719.** The Worker Vice-Chairperson and the Government members of Australia, Brazil, Canada, Hungary (on behalf of EU Member States), Indonesia, the Philippines and the Bolivarian Republic of Venezuela supported the subamendment.
- 720.** The Chairperson recalled that the Committee had already adopted the first paragraph of Article 16, which read:
1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
- 721.** Article 16 was adopted as subamended.

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## Article 17

**722.** The Employer Vice-Chairperson introduced an amendment to replace the Article with the following text:

1. Each Member shall determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

2. Each Member shall ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers.

3. Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

4. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

5. Each Member shall take measures to ensure that fees charged by employment agencies for placement are not deducted from the remuneration of domestic workers.

6. In giving effect to each of the provisions of this Article, Members shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and organizations representative of employers of domestic workers.

During discussions with the Workers' group and with some Government members on the Office text, it had been noted that a standard addressing the abovementioned issues – the Private Employment Agencies Convention, 1997 (No. 181) – was not widely ratified. Questions had been raised as to what had prevented more ratifications. While certain elements of that Convention were generally applicable – which formed the basis of the amendment – some aspects of the standard presented difficulties for certain countries. He invited suggestions on improving the text.

**723.** The Worker Vice-Chairperson supported the amendment but proposed a subamendment: to delete the word “migrant” before “domestic workers” in paragraph 3; and to delete “for placement” after the words “fees charged by employment agencies” in paragraph 5.

**724.** The Government member of Namibia, on behalf of the Africa group, supported the subamendment and proposed a further subamendment, so that the last sentence of paragraph 3 would read:

These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

Recalling that the Committee had, in its first discussion, recognized the need to address the issue of legal liability, she explained that the aim of the subamendment was to restore some wording from the original text relating to that issue. It was intended to complement the provisions of Convention No. 181, take account of the discussions that had taken place within the ILO about the ambiguities existing in many countries regarding triangular employment relationships, which had culminated in the adoption of the Employment

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Relationship Recommendation, 2006 (No. 198), and allow a certain degree of flexibility by governments.

- 725.** The Government member of Hungary, on behalf of EU Member States, tabled the following subamendment: in paragraph 1, delete “a system of licensing or certification, except where they are otherwise regulated or determined by appropriate”; in paragraph 2, replace “ensure” with “take measures towards ensuring”; in paragraph 4, add “domestic” after “where”; in paragraph 4, after “bilateral”, add “or multilateral”; and in paragraph 5, add “private” before “employment agencies”. She agreed with the Employer Vice-Chairperson that Convention No. 181 had relatively few ratifications and its core elements should be reflected in Article 17. She highlighted that the Convention was aimed at regulating domestic work – not private employment agencies.
- 726.** While the Worker Vice-Chairperson preferred to retain the original text in paragraph 2, she could accept all the proposed subamendments.
- 727.** The Employer Vice-Chairperson was comfortable with all the subamendments.
- 728.** The Government member of Norway supported the subamendment proposed by the Government member of Hungary, which allowed much-needed scope for adaptation to national circumstances.
- 729.** The Government member of Australia noted that there was merit in reflecting elements of Convention No. 181 in Article 17. She supported the subamendment proposed by the Government member of Namibia, although she preferred the original wording. Regarding the discussion on “shall take measures to ensure” versus “shall ensure”, she fully supported the need to agree a widely ratifiable text in accordance with national law and practice. Australia expected to shortly ratify three Conventions and also to ratify the MLC, 2006, and she was very aware of what it took to ratify a Convention. However, the Committee should be careful not to so dilute the Convention as to render it meaningless. The Convention should not be just a snapshot of what already existed in national laws. The Committee should not just strive to work towards offering protection, but commit to ensuring protection to domestic workers. Lastly, she proposed a subamendment to introduce the following chapeau to Article 17: “To ensure that domestic workers recruited or placed by a private employment agency, including migrant workers, are effectively protected against abusive practices.”
- 730.** The Government member of Brazil fully supported the previous speaker and her subamendment. She opposed attempts to dilute the protection offered to domestic workers. Considering that the Worker and Employer members’ amendments were almost identical, she suggested examining them together.
- 731.** Having listened to the Government members of Australia and Brazil, the Worker Vice-Chairperson recalled her preference for the previous wording of paragraph 2 and proposed a subamendment to that effect (reinstating “shall ensure”).
- 732.** The Employer Vice-Chairperson reiterated that he was comfortable with “shall ensure” or “shall take measures towards ensuring” in paragraph 2. He also supported the subamendment to introduce a chapeau, but recalled that the amendment was the finely balanced result of careful deliberations, to address problems regarding the original text of Article 17.
- 733.** The Government members of South Africa and the United Arab Emirates, speaking on behalf of the Africa group and the GCC countries respectively, thought that Article 17 should be considered as a package.

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- 734.** The Government member of the United Arab Emirates felt that the chapeau was one of the most important clauses, covering paragraphs that clearly demarcated respective roles and responsibilities and addressed issues regarding sending and receiving countries and fee-charging.
- 735.** The Government member of Hungary, on behalf of EU Member States, opposed the deletion in paragraph 5, because it might broaden its scope to other types of fee-charging; and opposed the subamendment in paragraph 3 by the Government member of Namibia, as it was too detailed. Given the Worker Vice-Chairperson's response to her question whether the word "ensure" in paragraph 2 implied that Members could use existing machinery for investigating complaints – that if adequate investigation machinery existed, compliance with the Convention was already achieved; otherwise, Members would have to establish adequate machinery – she accepted the reinstatement of "shall ensure" proposed by the Worker members.
- 736.** The Government member of the United States endorsed the contents of paragraph 2, but suggested replacing "shall ensure that" by "shall have".
- 737.** The Employer and the Worker Vice-Chairpersons and the Government member of the United Arab Emirates, on behalf of the GCC countries, signalled support for all the current amendments.
- 738.** The Government member of Canada wished to ensure that Article 17 was consistent with Convention No. 181. He supported the current text, but was opposed to the Namibian subamendment.
- 739.** The Government member of the United Kingdom, on behalf of EU Member States, agreed on the need to be cautious about the Namibian amendment. As domestic workers recruited by employment agencies might not do domestic work all the time but perform other agency work, he felt that invoking provisions of Convention No. 181 might be counterproductive. The proposed text for paragraph 5 was clear that fees should not be charged, but this differed from Article 7 of Convention No. 181, which provided that "private employment agencies shall not charge ... any fees or costs to workers" but "in the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to [those] provisions ... in respect of certain categories of workers, as well as specified types of services provided by [such] agencies".
- 740.** The Government member of South Africa, on behalf of the Africa group, supported the amendment. He wished to allay concerns expressed by Government members by noting that the Namibian amendment to paragraph 3 was consistent with Convention No. 181.
- 741.** The Government member of New Zealand subamended paragraph 5 by inserting the word "private" before "employment agencies".
- 742.** The Government member of the Philippines supported the amendment, but called for the Committee Drafting Committee to deal with rephrasing the text.
- 743.** The Government members of Indonesia and the United States supported the text as displayed.
- 744.** The Government member of the Netherlands supported the Namibian amendment, including the subamendment.

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- 745.** The Employer Vice-Chairperson remarked that there was no prohibition in Convention No. 181 against charging agency fees. However, his concern was to ensure that such fees were not charged prior to employment but rather that they be paid after domestic workers started receiving remuneration accruing from their employment.
- 746.** The Worker Vice-Chairperson proposed a revised chapeau as follows: “To effectively protect domestic workers, including migrant workers, recruited or placed by private employment agencies, against abusive practices:”.
- 747.** The Government member of South Africa, on behalf of the Africa group, subamended the chapeau by inserting “domestic” between “migrant” and “workers” to avoid ambiguity.
- 748.** The Government members of Algeria, Australia, Brazil, Hungary (on behalf of EU Member States) and the Employer Vice-Chairperson supported the revised text.
- 749.** The amendment was adopted as subamended.
- 750.** The remaining amendments fell as a result.
- 751.** Article 17 was adopted as amended.

## **Article 18**

- 752.** The Worker Vice-Chairperson introduced an amendment to insert “the most” after “in consultation with” in the second line.
- 753.** The amendment was adopted.
- 754.** Article 18 was adopted as amended.

## **Article 19**

- 755.** Article 19 was adopted as amended.

## **New Article after Article 19**

- 756.** The Worker Vice-Chairperson introduced an amendment to add a new Article: “Members shall develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices and to effectively collect comprehensive data on domestic workers.” She argued that the paucity of such data hampered proper planning, measurement and monitoring of progress, making it difficult to implement the Convention. The amendment would facilitate government measures aimed at protecting domestic workers.
- 757.** The Employer Vice-Chairperson noted that – based on the Report of the 18th International Conference of Labour Statisticians, 2008 – it would be more appropriate to have the text in the Recommendation.
- 758.** The Worker Vice-Chairperson acknowledged the Employer Vice-Chairperson’s recognition of the need for better information on domestic work. She withdrew her proposed amendment.

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## Reordering of certain Articles

- 759.** The Chairperson reminded the Committee that discussion of three amendments on reordering certain Articles had been postponed to the end of the discussion regarding the Convention. He therefore called on the Worker Vice-Chairperson to introduce the first of those amendments.
- 760.** The Worker Vice-Chairperson suggested that the amendments be referred to the Committee Drafting Committee; the Employer Vice-Chairperson agreed, subject to the consent of the submitters of the amendments; the Government member of Australia, as submitter of such an amendment, also agreed to its referral to the Drafting Committee, with the objective of improving the logical flow of the Convention.
- 761.** The Chairperson therefore referred the reordering of Articles to the Committee Drafting Committee.
- 762.** Since all Articles of the Convention had been adopted, the entire Convention (apart from the standard final provisions) was adopted, as amended.

## Standard final provisions of the proposed Convention

- 763.** The Chairperson addressed the matter of the final provisions of the proposed Convention – which the Employers’ group had indicated in their opening statement that they wished to discuss – and informed the Committee of the well-established practice in that regard. The Articles containing the final provisions would be added by the Conference Drafting Committee just before the complete text was submitted to a final vote at the plenary sitting of the ILC. The standard final provisions in their current form dated back, for the most part, to the 11th Session of the ILC, in 1928. There were, however, two sets of parameters that were left open.
- 764.** First, there were parameters relating to the entry into force of future Conventions, namely the number of ratifications necessary and the period of time after which a Convention would enter into force. The default values were: 12 months following the ratification by two States, and thereafter 12 months after the ratification by a member State.
- 765.** Second, for the parameters relating to the denunciation of a Convention, the default value was the possibility of denunciation every ten years after a Convention first came into force, with the denunciation coming into effect for each State concerned 12 months later.
- 766.** Technical Committees (such as the present Committee) could indicate a choice with regard to these two sets of parameters when examining a draft Convention. The Conference Drafting Committee would then take that choice into account when adding the final provisions to the draft text. Committee members were invited to consult a Governing Body document on the final provisions (GB.286/LILS/1/2) for more details, and a motion to change these parameters in the final provisions had been submitted by the Employers’ group that the Committee should discuss once it had completed its work on the amendments to the proposed Convention.

## Discussion on consideration of the Employers’ group’s motion on final provisions

- 767.** The Employer Vice-Chairperson introduced a two-part motion that had been presented to the Committee the day before in writing, that sought to discuss the final provisions of the

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Convention before the Committee – the first regarding the provisions on entry into force, the second regarding denunciation of the Convention. With respect to denunciation, the standard provisions stated that Members could denounce a Convention only every ten years within a limited window of time. If that window was missed, a Member had to wait another ten years before it could denounce the Convention and adopt a different standard. Therefore, the motion proposed to allow any member State to denounce the Convention after an initial two-year period following its coming into force. On entry into force, the standard provision – in use since 1928 – was that a Convention entered into force when at least two Members had ratified it. At the time, the ILO had few member States, compared to over 180 Members at present. However, the standard final provisions had not been changed; these were attached to the text of a Convention by the Conference Drafting Committee. He asked if it would be useful to change any of the standard parameters of the final provisions. He argued that two ratifications did not present a critical mass, and that the Convention warranted a greater number of ratifications. The MLC, 2006, required ratification “by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent” under its Article VIII(3). As a result, it would cover about two-thirds of the world’s seafarers on entry into force. Revising the standard final provisions could create some leverage to cover a big block of the world’s domestic workers. For that reason, the motion proposed to increase the threshold value for entry into force to 18 Members. He therefore saw some potential value in examining the final provisions of this particular Convention.

- 768.** The Government member of France raised a point of order, seeking clarification from the Legal Adviser regarding the procedure the Committee would follow – namely, what procedure would be used to determine whether the Committee would discuss the motion; and when and if the Committee decided to discuss the final provisions, how would it do so and how would it reach decisions.
- 769.** The Legal Adviser clarified that the question before the Committee was whether to adopt a motion regarding the standard final provisions. These provisions included some parameters that were usually added unchanged by the Conference Drafting Committee unless the Committee decided otherwise. The present Committee could only decide whether it wanted to alter any of these parameters. That would take the form of a decision by the present Committee, which the Conference Drafting Committee would follow.
- 770.** The Government member of South Africa asked whether the Committee could address the motion, and whether the ILO’s Constitution made any provision for the final provisions to be discussed in a Conference Committee, rather than in the Governing Body. He noted that the issues in question had not been submitted to member States in advance, so that Government members had not had any opportunity to discuss it with their governments.
- 771.** The Legal Adviser replied that the Committee was indeed competent to discuss the open parameters of the final provisions. The text of the provisions had first been approved by the ILC in 1928, and amended in particular in 1946, but allowing for some flexibility in some parameters. He highlighted that only the open parameters could be discussed by the Committee and not the content of the final provisions.
- 772.** The Worker Vice-Chairperson suggested that, in light of the procedural clarifications received from the Legal Adviser, the Committee should discuss the merit of the motion by the Employers’ group.
- 773.** The Government member of the United Arab Emirates considered that the Employers’ group’s motion concerned an important issue. However, he questioned whether the late evening was an appropriate time to discuss it and proposed a motion, which was seconded

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by the Government member of Brazil, to postpone the discussion until the next sitting of the Committee.

- 774.** The Worker Vice-Chairperson opposed the motion for postponement in light of the limited time remaining for the Committee to conclude its discussion on the Recommendation. She feared that the Committee might spend another day discussing the Employers' group's motion.
- 775.** The Employer Vice-Chairperson contended that the discussion of the motion need not take long, and was important for the Committee to consider.
- 776.** The Government member of Canada indicated that the subject of the motion was certainly relevant, noting that its implications went beyond the Convention before the Committee, and should be addressed in the Governing Body.
- 777.** The Government member of Australia agreed with the Employer and Worker Vice-Chairpersons, remarking that the Committee still had one hour to discuss the motion. The Government member of the United States concurred.
- 778.** The Chairperson declared that the motion to postpone the discussion had been rejected.

### **Motion on final provisions**

- 779.** The Worker Vice-Chairperson opposed the motion, pointing out that changing the parameters of the coming-into-force provisions, which had been adopted by the ILC, went beyond the competence of the Committee, and had to be discussed at the Governing Body and then adopted by the ILC. Changing the minimum number of ratifications for entry into force of a Convention was not only a procedural issue, but had important substantial consequences. First, it would set a precedent, while the MLC, 2006, covered special issues and could not be considered as a valid precedent. Second, raising the minimum number of ratifications from two to 18 would be negative for governments and for domestic workers, because it would undermine the ability of countries wishing to move quickly to promote decent work for domestic workers. Third, the current denunciation period was well conceived, with important advantages. Changing the window for denunciation from once in ten years to once every two years would introduce instability in the ILO standard-setting system and at the member State level. It usually took some years for a country to adapt its laws and policies to a newly adopted Convention, even with technical assistance from the ILO.
- 780.** The Government member of the United States could not support the motion, but thanked the Employers' group for the well-articulated and provocative proposal. He noted that the Committee was not the appropriate place to discuss that issue. The standard provisions needed to be updated and there was merit in proposing a new ratification threshold of 10 per cent of the membership of the Organization for a new Convention to enter into force. The MLC, 2006, covered special issues and was not a valid precedent, as its threshold was aimed at ensuring ratification by countries with an adequate share of shipowners and seafarers, although landlocked or non-maritime nations could also ratify. However, the Governing Body and not the Committee on Domestic Workers was the appropriate place to address that reform.
- 781.** The Government member of Australia opposed the motion and supported the previous speaker. She appreciated the rationale for the Employers' group's proposal that provisions dating from 1928 should be revisited taking into account obligations on the supervisory system. In the framework of the outstanding Governing Body review mechanism, for

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adoption in November 2011, the highest ILO governance bodies were the appropriate place to discuss those changes.

- 782.** The Government member of Bangladesh opposed the motion, but recognized the merit of the points raised by the Employers' group. He supported discussion at the Governing Body, calling for the ILO to update its standard-setting and supervisory systems.
- 783.** The Government member of Norway opposed the motion for the same reasons as the previous speakers.
- 784.** The Government member of Japan also opposed the motion, but agreed that the 1928 standard provisions needed updating. Since the rationale of the proposed final provisions was valid for all the ILO Conventions, the issue should be addressed by the Governing Body.
- 785.** The Employer Vice-Chairperson withdrew the motion, noting the consensus and the recognition of the validity of his group's points. Submitting a motion to the Committee had been considered the most suitable way to launch discussion on reforming the standard final provisions. Through the IOE, the Employers' group would prepare a policy position, including all the points discussed in the Committee, for submission to the attention of the Governing Body.
- 786.** The Government member of France, on behalf of EU Member States, asked that the position of his group, which included some of the countries with the highest number of ratifications, be put on record. He observed that the motion was receivable and that the Committee had decided that the most appropriate place to address reform was the Governing Body, in the framework of its agenda item on "Improvements in the standards-related activities of the ILO". He welcomed the idea that there were no "taboo" subjects that the Committee could not discuss. He thanked the Employers' group for raising those important issues, some of which were particularly noteworthy, including a higher minimum number of ratifications for entry into force, in view of the requirement of between ten and 35 ratifications for UN international treaties.

## **Consideration of the proposed Recommendation contained in Report IV(2B)**

### **Preamble**

- 787.** The Preamble was adopted without amendment.

### **Paragraph 1**

- 788.** Paragraph 1 was adopted without amendment.

### **Paragraph 2**

- 789.** The Employer Vice-Chairperson withdrew an amendment similar to a subsequent amendment by the Worker members on clause (c).

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Clause (b)

**790.** The Worker Vice-Chairperson introduced an amendment to delete clause (b) on the need to “protect the right of employers of domestic workers to establish and join organizations, federations and confederations of employers of their own choosing” because the subject had already been reflected in the Convention.

**791.** The Employer Vice-Chairperson endorsed the amendment.

**792.** The amendment was adopted and clause (b) was deleted.

Clause (c)

**793.** The Worker Vice-Chairperson presented an amendment to replace the text of clause (c) with:

give consideration to taking or supporting measures to support the strengthening of the capacity of workers’ and employers’ organizations, organizations representing domestic workers and those of employers of domestic workers, to promote effectively the interests of their members, provided that at all times the independence and autonomy within the law of such organizations should be protected.

The proposed amendment had two key elements. First, it mentioned employers’ organizations, which had to be a strong counterpart in negotiations on better working conditions of domestic workers. Second, it aimed at protecting the autonomy of organizations of domestic workers and their employers, as embodied in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

**794.** The Employer Vice-Chairperson supported the amendment.

**795.** The amendment was adopted.

**796.** Paragraph 2 of the Recommendation was adopted as amended.

### Paragraph 3

**797.** The Employer Vice-Chairperson presented an amendment to replace the whole Paragraph with the following text:

3. Members giving consideration to medical testing for domestic workers should consider:

- (a) making public health information available to both householders and domestic workers on the primary health and disease concerns that give rise to any demand for medical testing in each national context;
- (b) making information available to both householders and domestic workers on voluntary medical testing, medical treatment, and good health and hygiene practices, consistent with public health initiatives for the community generally;
- (c) distributing information on best practices for work-related medical testing, appropriately adapted to reflect the unique nature of domestic work.

The new text recognized that domestic workers needed to know about risks to their health and safety and have access to medical treatment. However, requirements on health and safety issues across countries, such as medical testing, were complex. Thus, the new text sought to avoid increasing the burden on governments; it focused on information and

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promotion. He pointed out that prohibiting medical testing ran counter to parents' natural concern over health and safety risks that could harm their children.

- 798.** The Worker Vice-Chairperson proposed a subamendment to add the Employer members' text as a subparagraph after clause (c). She disagreed with the proposal to replace the original text because of fundamental differences between the two texts. First, the amendment talked only about making information available to domestic workers and their employers. The original text covered rights, elimination of discrimination based on medical testing results, confidentiality of personal information, and protection of domestic workers from having to undergo HIV or pregnancy testing or to disclose their HIV or pregnancy status, in line with the HIV and AIDS Recommendation, 2010 (No. 200). Second, the amendment dropped the important chapeau of Paragraph 3, which set the context for the provisions. The Employer members' amendment focused on risks to households, not those faced by domestic workers. If household members were sick and thus exposed domestic workers to health risks, household members should by that same logic also be required to undergo medical testing, but the Worker members felt it unreasonable to ask for medical testing of employers. Similarly, medical testing might also be demanded in other sectors where people worked in close proximity, such as teachers with their students and doctors with their patients, which was obviously inappropriate. On principle, HIV was not a ground for discrimination against domestic workers nor against their employers.
- 799.** The Government member of Canada supported the Worker members' subamendment, noting that certain new elements, which would be presented to the Committee in due course, could be incorporated into the existing Paragraph 3 to strengthen the text further. Recalling the challenging discussion that had taken place in 2010 on medical testing, she urged the Committee to use its outcomes as the basis for its current discussions and stressed in particular the importance of including a reference to pregnancy testing, in view of the fact that the majority of domestic workers were women.
- 800.** The Government member of Australia strongly endorsed the two previous speakers. While acknowledging the Employer members' concerns, she stressed the need for consistency with Recommendation No. 200. She supported the subamendment, noting that the text of Paragraph 3 reflected the outcomes of the 2010 discussion; a subparagraph with the text proposed by the Employers' group would be useful.
- 801.** The Government members of Argentina, Congo (on behalf of the Africa group) and Ecuador expressed their preference for the original wording and opposed the amendment and subamendment.
- 802.** The Government member of Nepal supported the subamendment, noting that principles of non-discrimination and confidentiality of data were particularly important in domestic work.
- 803.** The Government member of Brazil proposed a further subamendment, using the words of the Employer members' amendment as a new Paragraph to be inserted after Paragraph 3, instead of a subparagraph.
- 804.** The Employer Vice-Chairperson supported that subamendment.
- 805.** The Chairperson observed that there was a clear desire to retain the original text of Paragraph 3 and he saw no objection to discussing the text proposed by the Employers' group as a new Paragraph, after the completion of the discussion of Paragraph 3.

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- 806.** The Employer Vice-Chairperson agreed to discuss the proposed text in a new Paragraph but wished to propose a subamendment on the chapeau of Paragraph 3, to reflect the concerns of his group, to insert, before the words “consistent with international labour standards”, the words “, recognizing the unique concerns of domestic employers, who are also often parents responsible for the care and health of family members, and”.
- 807.** The Worker Vice-Chairperson opposed the Employers’ group’s subamendment on the chapeau, which was considered irrelevant and would introduce an unnecessary bias. The instruments being discussed were about decent work for domestic workers, who could work for any person, whether parents or not. The proposed specification added no value to the Paragraph and, if accepted, would provide grounds for introducing other specificities relating to the status of domestic workers. They too could be parents, spouses, sons, daughters, and were exposed to higher risks than householders, when it came to the care of sick family members. Those risks had to be recognized too. However, those specificities were not the subject of Paragraph 3, which addressed discrimination with respect to HIV as well as pregnancy tests.
- 808.** The Government member of Hungary, on behalf of EU Member States, opposed the subamendment on the chapeau. She agreed with the Workers’ group that the proposal was unnecessary, and preferred the original text.
- 809.** The Government member of South Africa, on behalf of the Africa group, opposed the subamendment on the chapeau, arguing that the principle of non-discrimination was universal; it could not be limited by any specific concern.
- 810.** The Government member of Brazil concurred.
- 811.** The Employer Vice-Chairperson withdrew the subamendment on the chapeau.
- 812.** The Worker Vice-Chairperson withdrew an amendment.

Clause (a)

- 813.** The Government member of Canada presented an amendment, jointly submitted with the Government member of Australia, to introduce the words “and are consistent with the ILO code of practice on the protection of workers’ personal data, 1997, and other relevant international data protection standards”, at the end of the clause. She remarked that the Paragraph covered confidentiality, consent and non-discrimination. The first principle – confidentiality – should be strengthened with respect to HIV and pregnancy tests, reflecting the most up-to-date ILO frameworks, particularly the language of Recommendation No. 200.
- 814.** The Employer and Worker Vice-Chairpersons and the Government member of New Zealand supported the amendment.
- 815.** The amendment was adopted.

Clause (c)

- 816.** The Government member of the United Arab Emirates, on behalf of the GCC countries, withdrew an amendment to delete the clause.
- 817.** The Government member of Canada presented an amendment, jointly submitted with the Government member of Australia, to introduce the words “for employment purposes” after the words “HIV or pregnancy testing”; and the words “to employers” after “pregnancy

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status”, so that the clause would read “(c) ensure that no domestic workers are required to undertake HIV or pregnancy testing for employment purposes, or to disclose their HIV or pregnancy status to employers”. The additions better covered the non-discrimination concepts enshrined in Recommendation No. 200, framing them in an employment context.

- 818.** The Worker Vice-Chairperson opposed the amendment, explaining that reference to “employment” was already provided in the chapeau, which stated that measures to eliminate discrimination shall be taken “in respect of employment and occupation”. Adding that specification in clause (c) was unnecessary and might facilitate disclosure of that information beyond the employment context.
- 819.** The Employer Vice-Chairperson also opposed the amendment, agreeing with the previous speaker. It added no clarity and limited the non-disclosure principle.
- 820.** The Government member of Canada considered that the amendment reflected the outcomes of the Committee on HIV/AIDS at the ILC in 2010.
- 821.** The amendment fell.
- 822.** Paragraph 3 was adopted as amended.

### **New Paragraph after Paragraph 3**

- 823.** The Government member of Brazil’s earlier subamendment to create a new Paragraph after Paragraph 3, using the text submitted by the Employer members under an amendment which sought to replace Paragraph 3 (see paragraph 799 above), was supported by the Worker and Employer Vice-Chairpersons and the Government members of Brazil, South Africa (on behalf of the Africa group) and the United Arab Emirates (on behalf of the GCC countries).
- 824.** The new Paragraph was adopted.

### **Paragraph 4**

#### ***Subparagraph (1)***

- 825.** The Government member of Germany, speaking on behalf of EU Member States, introduced an amendment to replace the existing Paragraph with the following:

Members should, taking into account the provisions of the Worst Form of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), identify and prohibit types of work by children which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and they should eliminate such child labour.

The amendment strengthened the notion that harmful child labour should be identified, prohibited and eliminated.

- 826.** The Employer Vice-Chairperson supported it and proposed a subamendment to delete the words “ and they should eliminate such child labour”, which he considered redundant.
- 827.** The Worker Vice-Chairperson opposed the subamendment because there was a difference between the preventive action of identifying and prohibiting child labour, and eliminating

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child labour where child labour took place. She preferred the original text as she considered it clearer.

- 828.** The Government members of Norway and the United States opposed the subamendment for the same reasons as the Worker members.
- 829.** The Government member of South Africa, on behalf of the Africa group, preferred the original text although he had some sympathy for the proposed amendment.
- 830.** The Government member of Germany, on behalf of EU Member States, opposed the subamendment and withdrew the amendment.

### ***Subparagraph (2)***

- 831.** The Worker Vice-Chairperson withdrew an amendment.
- 832.** The Employer Vice-Chairperson introduced an amendment – to insert “also taking into consideration the unique characteristics of domestic work, and working within homes” after “measures to protect them” – clarifying that domestic work was carried out in a particular context, and recognizing the distinct nature of domestic work.
- 833.** The Worker Vice-Chairperson stated that the overall goal of the Paragraph was protecting young domestic workers. There should not be a sharp contrast between the treatment of a 14-year-old child in a household and a 14-year-old domestic worker in the same household. She therefore opposed the amendment.
- 834.** The Government members of Australia, Ecuador, Indonesia and Norway opposed the amendment for the same reasons.
- 835.** The Employer Vice-Chairperson withdrew the amendment.
- 836.** The Employer Vice-Chairperson introduced an amendment to replace “, including by:” with “. Consideration should be given to:” to provide governments with slightly more flexibility.
- 837.** The Worker Vice-Chairperson opposed the amendment because it opened up the possibility that no measures would be taken by governments.
- 838.** The Government member of Australia opposed the amendment but for different reasons. She stated that the words “should give special attention to”, and the fact that it was a Recommendation, already provided governments with sufficient flexibility.
- 839.** The Government members of Hungary, on behalf of EU Member States, and the United Arab Emirates, on behalf of the GCC countries, preferred the original text.
- 840.** The Employer Vice-Chairperson withdrew the amendment.

### **Clause (a)**

- 841.** The Employer Vice-Chairperson introduced an amendment to replace “strictly limiting” by “regulating”.
- 842.** The Worker Vice-Chairperson opposed the amendment as she had difficulties with the very notion of regulating hours of work for children. In her view, children should rest at

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night and weekends and be at school during the day. Young domestic workers needed protection.

**843.** The Government members of Algeria, Argentina, France (on behalf of the IMEC group), the United Arab Emirates (on behalf of the GCC countries) and the Bolivarian Republic of Venezuela opposed the amendment.

**844.** The Employer Vice-Chairperson withdrew the amendment.

Clause (b)

**845.** The Employer Vice-Chairperson introduced an amendment to replace the clause with the following:

- (b) regulating night work where necessary, to ensure adequate time for rest, education and training (including the completion of “homework”, meaning in this context, additional educational tasks to be completed between lessons, prescribed by the educator), leisure and family activities; also taking into account the particular impacts of night work on employees both living and working in the home, which may differ from the impacts of night work on other workers.

He considered that prohibiting night work of young domestic workers was excessive and wanted to introduce flexibility into the Recommendation.

**846.** The Worker Vice-Chairperson opposed the amendment on the ground that “regulating” and “where necessary” appeared to render night work for children acceptable. There were fundamental problems with children in relation to night work, and yet the amendment sought simply to regulate it. If an employer wished to have night work performed, he/she could hire an adult domestic worker. Paragraph 3(e) of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), referred to the prohibition of night work for children, as follows: “work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer”. While the above was most applicable to industry, she noted that the same principles applied to other types of work, including domestic work.

**847.** The Employer Vice-Chairperson indicated that New Zealand allowed for the employment of professional babysitters who were under 18 years of age. If there were to be an age restriction, those babysitters would then legally be ineligible to work, hence blocking them from practising their profession until later. While night work should be discouraged, its prohibition was counterproductive, hence the need to regulate it.

**848.** The Worker Vice-Chairperson noted that allowing children to work at night would be considered a regression. The clause was part of the text of the Recommendation, and therefore not binding. The Night Work Convention, 1990 (No. 171), defined night work as “work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m.”. In line with the Convention, many countries defined night work as covering the time from 11 p.m. to 6 a.m. Allowing children to work during those hours had serious negative implications.

**849.** The Government member of the United Arab Emirates, on behalf of the GCC countries, concurred. He disagreed with the Employer Vice-Chairperson’s justification of night work for babysitters. He opposed the amendment; the original text was clearer.

**850.** The Government member of the Philippines opposed the amendment, affirming that all children required protection, given the vulnerability of children and the general concerns around child labour.

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**851.** The Government member of Brazil also opposed the amendment. She reiterated that children should not be working at night. The definition provided in the Convention classified babysitting as occasional work, not domestic work.

**852.** The Employer Vice-Chairperson agreed that children should go to school, but beyond the age of compulsory education they should be free to pursue careers and employment. He agreed that occasional babysitters were not covered by the definition of the term “domestic worker” in Article 1 of the Convention, but some young people pursued babysitting on a professional basis; denying them that opportunity by prohibiting night work was unwise. There was global recognition that youth unemployment presented a serious challenge. One employment opportunity available to young people was babysitting; the current clause could discourage them from taking up such a career.

**853.** The Government member of South Africa stressed that it was a well-established medical fact that night work was harmful to workers; and that was especially true for child workers.

**854.** The Government members of Algeria, Chile, Dominican Republic, Ecuador, Egypt and Hungary (on behalf of EU Member States) also opposed the amendment.

**855.** The amendment fell.

#### Clause (c)

**856.** The Government member of Germany, on behalf of the IMEC group, introduced an amendment to replace the words “tasks that are” with “work that is” in the clause. The use of the term “work” would align the clause with language used throughout the text of the Convention and Recommendation.

**857.** The Worker and Employer Vice-Chairpersons supported the amendment.

**858.** The amendment was adopted.

#### Clause (d)

**859.** The Government member of the United Kingdom introduced an amendment – to insert “if necessary” at the beginning of the clause – to clarify that those countries, including his own, which already had strong and effective mechanisms for monitoring working and living conditions need take no further action. The original clause seemed to suggest that all countries should establish new mechanisms and strengthen existing ones. The rewording favoured introducing a risk-based approach that prioritized monitoring the condition of the most vulnerable domestic workers.

**860.** The Government member of Finland seconded it, subamending “necessary” to “appropriate”.

**861.** The Worker Vice-Chairperson expressed concern that saying “if appropriate” encouraged governments to decide that monitoring working and living conditions of domestic workers or establishing any mechanisms with that object was unnecessary. She asked the secretariat to clarify whether the existing text required countries already having strong mechanisms to take additional measures.

**862.** The representative of the Secretary-General remarked that the text was part of the Recommendation, thus providing guidance to governments, not establishing obligations. If governments already had strong mechanisms, further action was not required.

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- 863.** The Employer Vice-Chairperson supported the amendment, which responded to a valid point.
- 864.** The Government member of the United States opposed the subamendment. He preferred the original text because it covered all situations where mechanisms were already in place and where efforts were being made to strengthen these.
- 865.** The Government member of Australia strongly endorsed that position, stressing that Recommendations were intended to support Conventions. Moreover, the Paragraph addressed a very vulnerable group – child domestic workers. Diluting the guidance provided by the Recommendation was inconsistent with the Committee’s objectives.
- 866.** The Government member of the United Arab Emirates, on behalf of the GCC countries, also strongly supported the original text, because the living conditions of domestic workers were of great importance and governments had the power to establish such mechanisms.
- 867.** The Government member of Indonesia agreed; the original text reflected governments’ commitment to protecting domestic workers.
- 868.** The Government member of the United Kingdom argued that such rights were important but not absolute, and should be balanced with others. However, he acknowledged the majority view and, taking into account the secretariat’s clarification, withdrew the amendment and subamendment.
- 869.** Paragraph 4 was adopted as amended.

## **Paragraph 5**

### ***Subparagraph (1)***

- 870.** The Employer Vice-Chairperson introduced an amendment – to insert “by Members” after “appropriate assistance should be provided” – as the original text was unclear about who should provide assistance.
- 871.** The Worker Vice-Chairperson supported the amendment.
- 872.** The Government member of France, on behalf of the IMEC group, suggested replacing “provided by Members” by “available”.
- 873.** The Employer Vice-Chairperson drew the Chairperson’s attention to the fact that the Government member of France was introducing a new amendment, which should not be receivable. In any case, on substance, the Employer Vice-Chairperson opposed it.
- 874.** The Chairperson agreed that, procedurally, the proposal by the Government member of France was not receivable.
- 875.** The Worker Vice-Chairperson also rejected the amendment because it was more ambiguous than the original text.
- 876.** The Government member of France withdrew his proposal.
- 877.** The Government members of the Philippines and the United Arab Emirates, on behalf of the GCC countries, supported the amendment as it specified who was responsible for taking action.

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- 878.** The Government member of France, on behalf of the IMEC group, rejected the amendment as it implied intervention at the individual contractual relationship level. He asked for clarification from the secretariat as to who were the “Members” referred to in the subparagraph.
- 879.** The representative of the Secretary-General quoted article 1(1) of the Constitution of the ILO: “The Members of the International Labour Organisation shall be the States which were Members of the Organisation on 1 November 1945 and such other States as may become Members in pursuance of the provisions of paragraphs 3 and 4 of this article.”
- 880.** The Worker Vice-Chairperson explained that Paragraph 5 was linked to Article 6 of the proposed Convention, which placed responsibility on Members: “Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner ...”.
- 881.** The Government member of South Africa opposed the amendment, which was redundant because, as Paragraph 5(1) was informed by Article 6, it was clear that the responsibility for providing assistance rested on Members. The Government member of Ecuador concurred.
- 882.** The Worker Vice-Chairperson wondered if the lack of agreement was due to poor drafting of the subparagraph.
- 883.** The Government member of the United Kingdom questioned strongly how governments could be asked to intervene in individual contractual relationships and facilitate workers’ comprehension of their terms and conditions of employment, and who would want this intrusion. That was the sense suggested by the amendment and it was not acceptable. The Government member of the Netherlands agreed.
- 884.** The Employer Vice-Chairperson clarified that the subparagraph was about public information services; it was in no way to be construed as government intervention in individual contractual relationships.
- 885.** The Government member of France observed that the lengthy exchange over the amendment was obviously the result of misunderstanding, and concurred with the Worker Vice-Chairperson that it might be due to a drafting problem, which the Committee Drafting Committee might resolve. The Government member of Canada concurred.
- 886.** The Chairperson ruled that the discussion dealt with a substantive matter; it could not be referred to the Committee Drafting Committee.
- 887.** The Government member of South Africa reiterated that the insertion of “by Members”, as suggested by the amendment was redundant because Paragraph 5(1) was linked to Article 6 of the proposed Convention. The subparagraph was clearly not about intervention in contracts, but about encouraging social responsibility in creating awareness among domestic workers about their terms and conditions of employment. He asked the secretariat for clarification.
- 888.** The representative of the Secretary-General explained that Paragraph 5(1) was intended to encourage provision of services to workers and employers so that workers better understood their terms and conditions of employment (and not to interfere in contractual relations). Paragraph 5 should be read in its entirety; the rest of the Paragraph suggested other measures aimed at enhancing workers’ awareness of their terms and conditions.

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- 889.** The Government member of France agreed that the amendment created ambiguity as to the role of member States in arrangements between workers and their employers.
- 890.** The Employer Vice-Chairperson reiterated the need for clarity about who was responsible for communicating the terms and conditions of employment to domestic workers and who was responsible for providing assistance in that regard. Taking into account the concerns raised, he proposed subamending as follows: “Appropriate assistance should be provided by Members, when necessary, to ensure that the domestic worker concerned has understood those terms and conditions.”
- 891.** The Worker Vice-Chairperson subamended the text, in line with Article 6 of the proposed Convention, to read “Members shall provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.”
- 892.** The Employer Vice-Chairperson withdrew his subamendment, and endorsed the Worker Vice-Chairperson’s subamendment.
- 893.** The Government member of Australia considered the subamendment a perfect solution, which addressed her delegation’s concerns on the issue of communication between employer and worker.
- 894.** The Government member of the Netherlands disagreed with the previous speaker and favoured retaining the original text. Governments could not be responsible for ensuring that domestic workers understood their terms and conditions of employment. For example, the subamended text could be interpreted to mean that governments should set up translation services.
- 895.** The Government member of the United Kingdom agreed with the previous statement; there were an infinite number of employment contracts in existence and it was not the duty of a government to ensure that terms and conditions of employment were understood by workers. It was up to individual employers to know and be able to communicate those terms and conditions.
- 896.** The Government member of Australia recalled that Article 6 of the proposed Convention required Members to take measures to ensure that domestic workers were informed of their terms and conditions of employment; the subamended text of the proposed Recommendation – a non-binding instrument – simply elaborated on how that provision should be implemented. In Australia, for example, there was a Fair Work Ombudsman who was available to help workers understand their terms and conditions of employment.
- 897.** The Employer Vice-Chairperson dismissed the concerns expressed by the Government members of the Netherlands and the United Kingdom, recalling that it was constitutionally and legally unsustainable for an international instrument to place obligations on employers.
- 898.** The Government member of France supported the subamendment; at least it eliminated any ambiguity that could lead to the interpretation that governments should be part of the contractual relations between domestic workers and their employers.
- 899.** The Government member of Ecuador also supported the subamendment, which was in line with Article 6 of the proposed Convention and Paragraph 4 of the proposed Recommendation. He noted that the word “conditions” was particularly important and should be retained.
- 900.** The Government member of Ghana considered that it was the employer’s responsibility to communicate the terms and conditions of employment to a domestic worker. She recalled

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that not all countries had a well-established labour office. She firmly believed that the issue of assistance by member States should be limited to subparagraph (3), in establishing model contracts for domestic work.

- 901.** The Government members of Argentina, South Africa, the United Arab Emirates and the Bolivarian Republic of Venezuela also supported the subamendment.
- 902.** The Government member of Brazil indicated that she would prefer to retain the original wording, which emphasized more clearly than the subamendment the need to communicate the terms and conditions of employment to domestic workers and the need for domestic workers to understand exactly what they were engaging in; it allowed for some flexibility in terms of who was to provide assistance in that regard.
- 903.** The Government member of the United States, reiterating his support for the subamendment, commented that the provision did not require the types of government action some speakers had suggested; the words “appropriate” and “when necessary” were used in relation to “assistance”. On the issue raised by the Government member of Ghana, he recalled that Recommendations could be applied progressively, so if some governments were unable to provide as much assistance as others, that was not a reason to omit the provision.
- 904.** The subamendment was adopted.
- 905.** The Employer Vice-Chairperson withdrew an amendment.

### ***Subparagraph (2)***

Clauses (a)–(c)

- 906.** The Government member of Australia withdrew an amendment.

Clause (d)

- 907.** The Employer Vice-Chairperson introduced an amendment to add the words “, if applicable” after “and any other personal leave”, as sick leave and other personal leave arrangements were not provided in all countries (for example, paid sick leave in the United States). The clause should reflect that reality.
- 908.** The Worker Vice-Chairperson supported that view and suggested, through a subamendment, moving the words “, if applicable,” to after “and”, so the clause would read “sick leave and, if applicable, any other personal leave”. She explained that sick leave was broadly provided for in national laws, thus the insertion should only apply to “other personal leave”.
- 909.** The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the subamendment.
- 910.** The Government member of Hungary, on behalf of EU Member States, sought clarification from the secretariat on the meaning of “other personal leave”.
- 911.** The representative of the Secretary-General explained that “other personal leave” comprised a variety of arrangements, including emergency leave, and maternity, paternity and parental leave.

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- 912.** The Government member of Brazil supported the subamendment, stressing that all workers should be provided with sick leave, in particular, as well as other leave measures, in general. Providing sick leave to domestic workers was also in the interest of employers.
- 913.** The Government member of Ecuador concurred, indicating that other leave provisions included bereavement leave.
- 914.** The Employer Vice-Chairperson, while noting that the proposed text was not entirely satisfactory, backed the subamendment.
- 915.** The subamendment was adopted as amended.

Clause (e)

- 916.** The Employer Vice-Chairperson presented an amendment to delete the clause, which read “the rate of pay for overtime work”, because overtime pay was not a broadly recognized concept in domestic work and compensation could include compensatory time off rather than payment.
- 917.** The Worker Vice-Chairperson strongly opposed the amendment; Paragraph 5(2)(e) was fundamental and at the heart of decent work for domestic workers. The notion of overtime compensation was already embedded in Article 10(1) of the proposed Convention and thus should be reflected in the Recommendation. The deletion would represent a step backwards and provide a ground for assimilating domestic workers’ long hours to normal hours. ILO research had shown that excessive hours of work were a serious issue in domestic work; there should be a clear distinction between normal hours, overtime and standby periods. National experiences of countries such as France, Italy, South Africa and Trinidad and Tobago showed that limiting long hours and compensating for overtime was feasible. Those principles should be included in the Recommendation.
- 918.** The Employer Vice-Chairperson, in light of those arguments, proposed a subamendment – supported by the Worker Vice-Chairperson – to use the word “compensation”, which was more balanced than “rate of pay” and was in line with Article 10(1) of the proposed Convention.
- 919.** The Government member of South Africa, on behalf of the Africa group, introduced another subamendment – to add the words “and standby allowances, if any”, at the end of the clause – to align it with Article 10(3) of the proposed Convention and include standby or on-call hours in the Recommendation – an important improvement.
- 920.** The Worker Vice-Chairperson supported the Africa group’s subamendment and proposed a further subamendment as follows: “compensation for overtime and standby work”.
- 921.** The Employer Vice-Chairperson backed the proposal, further subamending it to delete the word “work” at the end.
- 922.** The Government member of Australia endorsed that proposal, noting that it captured the key concepts of Article 10 of the proposed Convention and provided valid guidelines to member States.
- 923.** The Government member of South Africa, on behalf of the Africa group, supported the new formulation.
- 924.** The Government member of Brazil introduced a new subamendment, seconded by the Government member of the Bolivarian Republic of Venezuela, to introduce the words

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“rate of pay or” before the word “compensation”, resulting in the following text: “rate of pay or compensation for overtime and standby”. She preferred the original text of the clause and it was important to mention explicitly the concept of payment for overtime, along with other forms of compensation, such as time off.

- 925.** The Worker Vice-Chairperson requested clarification from the secretariat regarding the meaning of “compensation”, particularly whether it included payment as well as time off.
- 926.** The representative of the Secretary-General stated that the term “compensation” in international labour standards encompassed both compensatory rest and pay.
- 927.** The Worker and Employer Vice-Chairpersons and the Government members of Indonesia and Trinidad and Tobago supported the subamendment.
- 928.** The Government member of the United Arab Emirates, on behalf of the GCC countries, requested clarification regarding the notion of standby in Article 10(3) of the proposed Convention: in particular, whether standby hours should be counted as normal hours of work or, beyond some limit should be considered as overtime and remunerated accordingly.
- 929.** The representative of the Secretary-General noted that, according to Article 10 of the proposed Convention, the term “standby” included hours in which workers remained at the disposal of their employer, whether or not they were performing work. Workers were not free to dispose of standby time as they wished. The notion also included clear restrictions on how often an employer could request a domestic worker to be on standby over a determined period (per month, week or day).
- 930.** The Worker Vice-Chairperson clarified the difference between overtime and standby periods. Overtime occurred when employers asked domestic workers to continue working beyond their normal working day. If domestic workers were asked to stay in their room for several hours beyond their normal working day, and be available to work in case their services were needed (for example in the event of social functions at the household), those were standby hours.
- 931.** The amendment was adopted as subamended.
- 932.** The Worker Vice-Chairperson withdrew an amendment because the issue had been dealt with through the previous amendment.

#### Clauses (f)–(i)

- 933.** The Chairperson proposed, in consultation with the two Vice-Chairpersons, that three amendments on clauses (f) and (g) be forwarded to the Committee Drafting Committee to reflect language agreed upon in the proposed Convention.
- 934.** The Government members of Australia and the United States proposed that an amendment to replace the word “wages” by “remuneration” in clause (i) similarly be forwarded to the Committee Drafting Committee. However, when the Government member of South Africa, speaking on behalf of the Africa group, sought clarification about differences between “wages” and “remuneration”, the Committee agreed to continue to discuss it. The representative of the Secretary-General explained that, in that instance, the term “wages” was used in line with the Protection of Wages Convention, 1949 (No. 95). Article 1 of that Convention defined the term “wages” as follows:

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... the term *wages* means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.

- 935.** The Worker Vice-Chairperson concluded that the two terms had the same meaning. If “remuneration” was broader than “wage”, it meant that more protection was offered to domestic workers; that had her support.
- 936.** The Employer Vice-Chairperson and the Government member of Hungary, speaking on behalf of EU Member States, supported the amendment. The Government member of South Africa, speaking on behalf of the Africa group, concurred, given the explanation of the representative of the Secretary-General.
- 937.** The amendment was adopted.
- 938.** The Employer Vice-Chairperson withdrew an amendment.

### **Subparagraph (3)**

- 939.** The Government member of Australia proposed an amendment to insert “of employment” after “contract” for consistency and clarification. The amendment was supported by the Worker and Employer Vice-Chairpersons, and the Government members of Norway, Hungary, on behalf of EU Member States, and the United States.
- 940.** The amendment was adopted.
- 941.** An amendment relating to language agreed upon in the proposed Convention was forwarded to the Committee Drafting Committee.
- 942.** The Government member of the United States introduced an amendment to add the following new clause: “Members should consider methods and requirements for any domestic worker to receive, from the employer or otherwise, written contract information in a language the worker understands and to ensure the worker voluntarily agrees to the contract.” The amendment addressed the many cases where illiterate domestic workers (especially migrants) were unaware of provisions in their contract.
- 943.** The Worker Vice-Chairperson supported the amendment, which addressed a serious problem. Domestic workers needed to agree voluntarily to their contracts in full knowledge of their provisions.
- 944.** The Employer Vice-Chairperson opposed the amendment because it posed considerable problems for governments and employers. He questioned how one could ensure that domestic workers agreed to their contracts or understood clauses in them.
- 945.** The Government member of Hungary, speaking on behalf of EU Member States, echoed the previous speaker’s concerns about implementation; she opposed the amendment. The Government member of the United Kingdom concurred, adding that, if a worker did not voluntarily agree to the contract, it was not legally binding in any case.
- 946.** The Government member of Ghana opposed the amendment, remarking that it would be difficult to apply in Africa, where domestic workers might not understand the official language of a country, and linguistic diversity meant that many languages did not exist in written form.

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- 947.** The Government member of South Africa expressed great sympathy for the amendment but did not see how Members could develop methods to ensure that domestic workers received written contract information in a language they understood.
- 948.** The Government member of the Philippines stated that, if a worker did not understand the employment contract, the contract was meaningless. Written contracts should be in language that workers understood.
- 949.** The Government member of Brazil supported the amendment’s intent and proposed a subamendment, seconded by the Government member of the United States, that read “Members should consider measures to ensure that domestic workers receive, from the employer or otherwise, written contract information in a language the worker understands.”
- 950.** The Employer Vice-Chairperson felt that the amendment’s intent was already dealt with in Paragraph 5(1). Introducing additional requirements might in the long run work against the employment of domestic workers.
- 951.** The Worker Vice-Chairperson sought clarification as to whether it was the understanding of the Committee that Paragraph 5(1) took into account all the obligations that member States had to put in place. If that were the case, then there was no need for the amendment.
- 952.** The Government member of Hungary, speaking on behalf of EU Member States, thought Paragraph 5(1) took adequate care of the concerns of the proposed amendment; she therefore supported neither the amendment nor the subamendment.
- 953.** The Government member of Australia, although sympathetic to the views expressed by the Government member of the United States, supported the EU stand. Paragraph 5(1) was sufficient; she opposed the amendment.
- 954.** The Government member of the United States agreed that Paragraph 5(1) reflected certain provisions the amendment had intended to cover. He therefore withdrew the amendment.

### ***New subparagraph after subparagraph (3)***

- 955.** The Employer Vice-Chairperson introduced an amendment – “the model contract should at all times be made available to domestic workers, employers, representative organizations and the general community, free of charge” – to ensure that information would always be available at no cost to the concerned parties.
- 956.** The Worker Vice-Chairperson and the Government members of Brazil, Hungary, on behalf of EU Member States, and the United States supported it.
- 957.** The amendment was adopted.
- 958.** Two amendments on Paragraph 5(3) were withdrawn by the Employer Vice-Chairperson.
- 959.** Paragraph 5 was adopted as amended.

### ***New Paragraph after Paragraph 5***

- 960.** The Government member of Australia, seconded by the Government member of the Philippines, introduced an amendment supporting the implementation of Article 8 of the

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proposed Convention, providing protection for domestic workers against abuse and harassment, which would read as follows:

Members should establish mechanisms to protect domestic workers from abuse, harassment and violence by:

- (a) establishing accessible complaints mechanisms for domestic workers to report cases of abuse, harassment and violence;
- (b) ensuring that all complaints of abuse, harassment and violence are promptly investigated, and perpetrators prosecuted as appropriate; and
- (c) establishing programmes for the removal and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care.

**961.** The Worker and Employer Vice-Chairpersons concurred.

**962.** The Government member of Canada asked what was meant by “complaints mechanisms”, and whether the term referred to judicial mechanisms.

**963.** The Government member of Australia replied that the intention was not to introduce new mechanisms, as that depended on individual countries’ needs. However, systems for reporting abuse and programmes of support and rehabilitation for domestic workers in the event of abuse were desirable. It was particularly necessary where domestic workers resided in the household and found it hard to report any cases of abuse.

**964.** The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the amendment.

**965.** The Employer Vice-Chairperson proposed a subamendment to replace “establish” by “consider establishing”.

**966.** The Government member of Brazil supported the amendment; while preferring that text, she nevertheless supported the subamendment.

**967.** The Government member of Hungary, on behalf of EU Member States, expressed concern that the amendment made the Recommendation appear to drift into criminal law. She supported the subamendment by the Employer Vice-Chairperson, and proposed a further subamendment to replace “by” with “such as” in the chapeau, and in clause (b) to delete “promptly” and “perpetrators”.

**968.** The Government member of South Africa asked the secretariat for clarification as to whether an ILO Convention or Recommendation could address questions relating to the criminal justice system.

**969.** The representative of the Secretary-General observed that such a reference was consistent with established practice. For instance, Article 7(1) of the Worst Forms of Child Labour Convention, 1999 (No. 182), stated that “Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.” There was thus no obstacle to introducing such references in ILO Recommendations.

**970.** The Employer and Worker Vice-Chairpersons and the Government members of Algeria, Canada, Norway and the Philippines supported the subamendment.

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- 971.** The Government member of the United States, while preferring the amendment submitted by the Government member of Australia, supported the subamendment.
- 972.** The amendment was adopted as subamended.
- 973.** The new Paragraph after Paragraph 5 was adopted.
- 974.** Although the Paragraph had already been adopted, the Government member of Brazil wished to add for the record that she deplored the deletion of the word “promptly”. Complaints of abuse should be investigated “promptly”; it was unacceptable if they were investigated only eventually.

## **Paragraph 6**

### ***Subparagraph (1)***

- 975.** The Employer Vice-Chairperson introduced an amendment to delete the subparagraph, arguing that the Committee had already considered it difficult to determine and calculate the exact hours of work for domestic workers, given the nature of work and the flexibility of work arrangements in households. However, he acknowledged that recording hours of work would be legitimate where the domestic worker was paid on an hourly basis, and signalled his openness to subamendments along those lines.
- 976.** The Worker Vice-Chairperson regretted that the Committee would revisit discussions held earlier, specifically with respect to Paragraph 5(2)(e) on overtime payment. Overtime should be paid, and therefore must be recorded. It was accepted for other groups of workers, and she called for a paradigm shift that acknowledged that domestic workers were no different from other workers in that respect. Many countries had already legislated that the normal hours of work for domestic workers should be 40, 44 or 48 hours per week, and hours worked beyond that should be considered overtime. For domestic workers, excessive hours of work were a real problem. However, when no record of working time existed, workers and employers often made conflicting claims regarding hours worked. She drew attention to Paragraph 6(2) that called on Members to develop practical guidance in that respect.
- 977.** The Employer Vice-Chairperson clarified that the amendment was not intended to deny domestic workers fair compensation; difficulty of implementation was the primary concern. As he could not subamend an amendment that sought the deletion of a clause, he withdrew the amendment.
- 978.** The Worker Vice-Chairperson introduced an amendment to insert the words “and periods of standby” in the subparagraph so that both overtime and periods of standby would be considered hours of work, as the Committee had acknowledged earlier.
- 979.** The Employer Vice-Chairperson saw no need to insert “and periods of standby” since these were already covered by “hours of work”.
- 980.** The Government member of Brazil welcomed the amendment and agreed that it was helpful to clarify that overtime and periods of standby should be considered hours of work and thus needed to be recorded. The Government members of Indonesia, South Africa (on behalf of the Africa group), the United States and the Bolivarian Republic of Venezuela supported the amendment.

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- 981.** The Government member of Norway felt that standby periods outside the workplace were not necessarily hours of work. However, she had no particular problems with inserting of the phrase in that particular context.
- 982.** The amendment was adopted.
- 983.** The Government member of Hungary introduced an amendment, on behalf of the IMEC group, to delete “calculate and” in the subparagraph. She referred to the concerns raised earlier by the Employer Vice-Chairperson regarding the difficulty in calculating hours of work, and suggested that the deletion would improve the clarity and practicality of the provision.
- 984.** The Employer Vice-Chairperson supported the amendment. The reference to recording hours of work would already imply that total hours worked could be calculated from that record.
- 985.** The Worker Vice-Chairperson stated that the amendment would be acceptable if the term “recorded” was understood to imply that hours of work would also be calculated; she asked whether the Government member of Hungary shared that interpretation.
- 986.** The Government member of Hungary confirmed that that was the case.
- 987.** The Worker Vice-Chairperson supported the amendment.
- 988.** The amendment was adopted.

### ***Subparagraph (2)***

- 989.** The Employer Vice-Chairperson withdrew an amendment that sought the deletion of the subparagraph.
- 990.** Paragraph 6 was adopted as amended.

### **Paragraph 7**

- 991.** The Employer Vice-Chairperson withdrew an amendment to delete the Paragraph and indicated that he would address his group’s concerns through the discussion of other proposed amendments. The Paragraph was more restrictive than Article 10(3). In his understanding, Article 10(3) left it to member States to decide whether standby hours were considered hours of work, while Paragraph 7 implied that member States were compelled to treat standby as work. The Paragraph thus restricted the possibility of member States deciding not to treat standby hours as hours of work. The question went to the heart of the affordability of domestic work. He fully agreed with the need to protect domestic workers, but the financial consequences of the Paragraph should not be such that it made domestic work unaffordable, or that it compromised job opportunities for domestic workers. The provisions in Paragraph 7 were one of two or three crucial issues on which the acceptability of the whole instrument would depend for his group.

### **Chapeau**

- 992.** The Government member of Hungary introduced an amendment, on behalf of EU Member States, to replace “national laws and regulations or collective agreements should regulate” by “Members should consider regulating, in accordance with national laws and regulations

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or collective agreements” to provide for the required flexibility when implementing the Convention.

- 993.** The Employer Vice-Chairperson supported the amendment, stating that it alleviated some of the concerns just expressed by his group.
- 994.** The Worker Vice-Chairperson opposed the amendment. She saw no need for another element of flexibility as the chapeau already provided sufficient flexibility. Governments should not just “consider” regulating, they should be recommended to actually do it. She disagreed with the Employers’ group’s interpretation of Article 10(3) which seemed to be that the expression “to the extent determined by” provided governments with the option of regulating or not regulating standby time as working time. Her group’s view was that Article 10(3) required all governments to treat hours on standby as working hours. The reference to national laws, regulations and collective agreements was only to provide flexibility with respect to how it should be regulated.
- 995.** The Government member of Bangladesh had difficulty in supporting the amendment if Paragraph 7 was to be read in the context of Article 10(3).
- 996.** The Government member of Australia supported the amendment.
- 997.** The Government member of Brazil proposed a subamendment to replace “consider regulating” by “regulate”.
- 998.** The Worker Vice-Chairperson supported the subamendment.
- 999.** The Employer Vice-Chairperson opposed the subamendment. Reverting from “consider regulating” to “regulate”, as had been suggested by the Government member of Brazil, would give rise to the same concerns he had expressed earlier.
- 1000.** The Government member of Norway supported the subamendment. In her understanding, under Article 10(3) of the Convention, standby time shall be regarded as hours of work only to the extent determined by national laws or regulations. That left the possibility open for member States not to regard standby time as hours of work and provided enough flexibility. Furthermore, she saw it as reasonable that the maximum number of hours should be limited.
- 1001.** The Employer Vice-Chairperson introduced a subamendment to rephrase the last part of the sentence in the chapeau as “Members, to the extent determined by national laws and regulations or collective agreements, should regulate”. That would bring the words of the Recommendation in line with the words of the Convention.
- 1002.** The Worker Vice-Chairperson and the Government members of Australia, Hungary (on behalf of EU Member States), the Philippines and South Africa (on behalf of the Africa group) also supported the subamendment.
- 1003.** The amendment was adopted as subamended.

Clause (a)

- 1004.** The Government member of Hungary, on behalf of EU Member States, withdrew an amendment to delete “maximum”.

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Clause (b)

**1005.** The Government member of France, on behalf of EU Member States, withdrew an amendment to delete clause (b), following the agreement on the chapeau and given that Article 10(3) of the Convention provided the context for Paragraph 7.

**1006.** Paragraph 7 was adopted as amended.

**Paragraph 8**

**1007.** The Employer Vice-Chairperson withdrew an amendment to delete the Paragraph because he was aware that the amendment would not receive support. But Paragraph 8 included clauses that were important to his group and these could have large cost implications. So he hoped that the Paragraph could be improved through the discussion on the subsequent amendment by the Worker members.

**1008.** The Worker Vice-Chairperson withdrew an amendment.

**1009.** The Employer Vice-Chairperson expressed his surprise, reintroduced the amendment and immediately proposed a subamendment to renumber Paragraph 8 as 7(2) and to revise the text of the amendment as follows: “Members should similarly consider specific measures for domestic workers whose normal duties are performed at night, taking into account the constraints of night work.”

**1010.** The Government member of South Africa, on behalf of the Africa group, opposed the subamendment. Whereas the Recommendation was expected to help Members implement the Convention, the subamendment simply repeated what was already stated in the Convention. It did not provide more guidance in the form of specific measures that Members could consider.

**1011.** The Employer Vice-Chairperson explained that the relevant specific measures were listed under clauses (a), (b) and (c) of Paragraph 7.

**1012.** The Government member of Australia proposed a further subamendment, seconded by the Government member of Brazil, to specify the point just made by the Employers’ group. She proposed inserting “these” before the phrase “specific measures”.

**1013.** The Worker Vice-Chairperson endorsed the subamendment.

**1014.** The Employer Vice-Chairperson opposed the subamendment. He appreciated the intention, but considered that the specific measures did not apply literally, because they referred to standby time while the subparagraph referred to night work which was carried out as part of a worker’s normal duty.

**1015.** The Government member of the United States observed that the proposed subamendment was unclear: what was referred to by the word “these”? And what did “similarly” mean?

**1016.** The Government member of Australia explained that “these” referred to the measures about maximum number of hours, compensatory rest period, and the rate of remuneration, while “similarly” was meant to highlight that night work, like standby time, deserved special recognition and should be regulated.

**1017.** The Government member of Ghana objected to the idea of making the text a subparagraph under Paragraph 7, as that Paragraph related specifically to standby, and not to night work.

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She agreed however that elements of subparagraphs (a), (b) and (c) of Paragraph 7 could also be applied to night work and could be reflected in Paragraph 8.

- 1018.** The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the further subamendment proposed by the Government member of Australia, which took into account the concerns.
- 1019.** The Government member of Norway agreed with the Government member of Ghana that the issues of night work and standby should be addressed in separate Paragraphs, in order to avoid confusion and to prevent difficulties for employers with regard to offering compensatory rest for night work which should be considered part of a worker's normal duties. She stressed the need to accommodate different national circumstances and indicated that she was in favour of retaining the original text.
- 1020.** The Government member of South Africa, on behalf of the Africa group, observed that confusion had arisen because of the attempt to merge two distinct constructs: standby – which could be sporadic and intermittent – and night work which was performed as part of the normal duties of domestic workers. As he had stated earlier, he would prefer to retain the original text.
- 1021.** The Employer Vice-Chairperson, taking note of the comments made, proposed a new subamendment to restore the text as Paragraph 8 rather than as a subparagraph of Paragraph 7 and to remove the word “similarly”.
- 1022.** The Worker Vice-Chairperson said that it would be difficult for her group to accept that proposal. The reference to “specific measures” was too broad; and consideration should be given to making reference to the provisions of Paragraph 7. In her view, there were clear links between the two Paragraphs.
- 1023.** The Employer Vice-Chairperson withdrew the amendment and subamendment in the interest of progressing in the discussion. However, he regretted that consensus could not be reached on the text put forward by his group. He recognized that there was some flexibility in the text and considered that employers would have to debate the financial compensation of night work in their home countries.
- 1024.** Paragraph 8 was adopted.

## **Paragraph 9**

- 1025.** Paragraph 9 was adopted without amendment.

## **Paragraph 10**

- 1026.** The Government member of the Netherlands, on behalf of EU Member States, introduced an amendment to replace the text of the Paragraph by the following: “The day of weekly rest should be one day per every period of seven days, to be determined by the agreement of the parties, or by national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.” Starting with the proposal reflected the lengthy discussion and consensus reached on Article 10 of the Convention. The new text, and in particular the words “per every period of seven days”, introduced some degree of flexibility on the reference period for the calculation of weekly rest. However, he admitted that the text should provide more guidance relating to the notion of “per every period”, because it still retained some

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ambiguity. Therefore, to prevent weekly rest from being accumulated over an unreasonably long reference period, he subamended it to add the following at the end of Paragraph 10: “With regard to the weekly rest period, national law, regulations or collective agreements may provide for a reference period that should not exceed 14 days.”

- 1027.** The Worker Vice-Chairperson submitted a further subamendment to add the words “a fixed day” before “per every period” in the first sentence of the Paragraph; and to add the word “exceptionally” before “provide” in the last sentence, to make clear that weekly rest should be the norm.
- 1028.** The Employer Vice-Chairperson opposed the introduction of the notion of a “fixed day”, which limited the employer’s flexibility and could become problematic in contexts and within groups with different cultural and religious preferences. In addition, he expressed some doubts relating to the use of the term “reference period”, a statistical notion not frequently used in labour law. With that in mind, he asked the secretariat to provide a definition of “reference period”.
- 1029.** The representative of the Secretary-General explained that ILO standards used the words “over a period of”, rather than “reference period”.
- 1030.** The Government member of the Netherlands, on behalf of EU Member States, was concerned that inserting a “fixed day” would be tantamount to proposing a one-size-fits-all approach. He also could not accept the insertion of the word “exceptionally” since EU countries allowed for a two-week reference period for workers generally, and since there should be equity between domestic workers and other workers. He proposed a further subamendment, on behalf of EU Member States, to delete “with regard to the weekly rest period” and to insert “National laws, regulations or collective agreements may provide for weekly rest to be accumulated in a period not exceeding 14 days.”
- 1031.** The Employer Vice-Chairperson proposed a subamendment to insert “one day” in place of a “fixed day”, and to replace “in” with “over”. He agreed with the Government of the Netherlands that determining a “fixed day” would be difficult, especially when the domestic workers were of different cultural, religious or social backgrounds. Furthermore, flexitime was nothing exceptional.
- 1032.** The Government member of Brazil noted that a provision on weekly rest already existed in Article 6(1) of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), which stated that “All persons to whom this Convention applies shall, except as otherwise provided by the following Articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.” She therefore called for adherence to that language. She also noted that in Brazil accumulating rest days would be unconstitutional. If the possibility of accumulating rest days was to be considered, then it should be made under “exceptional” circumstances.
- 1033.** The Government member of South Africa informed members that in his country it was impossible to accumulate rest days beyond seven days. It was not appropriate to let domestic workers stay away from their own families for more than seven days, apart from in “exceptional” circumstances.
- 1034.** The Employer Vice-Chairperson asserted that the word “agreement” in the text would ensure mutual acceptance to both parties in determining the accumulation of rest days.
- 1035.** The Worker Vice-Chairperson considered that the inclusion of “exceptionally” was necessary to take into account the worker’s physical and psychological needs. However, there would be a process to follow if domestic workers wished to accumulate their rest

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days. In the absence of “exceptionally” in the text, she would rather have the original text retained.

- 1036.** The Employer Vice-Chairperson proposed a subamendment that would have the Paragraph read as follows: “National laws, regulations or collective agreements exceptionally may provide for weekly rest to be accumulated in a period not exceeding 14 days.” The word “may” could allow the Employers’ group to live with inclusion of the word “exceptionally”.
- 1037.** The Government members of Argentina, Australia, Bangladesh, and the United Arab Emirates, on behalf of the GCC countries, agreed to the subamendment.
- 1038.** The Government member of the United States, seconded by the Government member of the Netherlands, proposed an alternative subamendment: “The day of weekly rest should be a regular period of 24 consecutive hours.” to clarify that the regular period of rest would be weekly, thus the word “exceptionally” was no longer needed.
- 1039.** After consultation among EU Member States, the Workers’ group and the Employers’ group, the Government member of the Netherlands, on behalf of EU Member States, submitted a further subamendment – in line with Article 10(2) of the Convention – as follows:

Weekly rest should be at least 24 consecutive hours.

(1) The day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.

(2) Where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, such a period should not exceed 14 days for domestic workers.

The first subparagraph stated how the day of rest should be determined, and the second ensured equal treatment of domestic workers as compared to workers generally, and limited the accumulation of weekly rest.

- 1040.** The Worker Vice-Chairperson supported the subamendment on condition that the word “fixed” be added so that subparagraph (1) would refer to a “fixed day of weekly rest”; domestic workers needed to know their day of rest in advance. Subparagraph (2) would then provide for an exception to that general rule.
- 1041.** The Employer Vice-Chairperson supported the EU and Workers’ group’s subamendments. While the drafting required further attention, the text provided a balanced solution.
- 1042.** The Government member of the Netherlands, on behalf of EU Member States, supported the subamendment moved by the Workers’ group.
- 1043.** The Government member of Australia recognized that the proposed text was the outcome of collaboration between the different parties; it reflected their different requirements, and she supported it. However, she wanted to keep the Recommendation’s wording clear and simple and avoid adding qualifying texts.
- 1044.** The Government members of Bangladesh, Norway, South Africa (on behalf of the Africa group), Switzerland and the United Arab Emirates (on behalf of the GCC countries) also supported the text and thanked the different parties for having found a solution.

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**1045.** The Government member of Bangladesh reiterated his delegation's concern about reference to equality of treatment for domestic workers.

**1046.** The amendment was adopted as subamended. Three other amendments consequently fell.

**1047.** Paragraph 10 was adopted as amended.

## **Paragraph 11**

**1048.** The Worker Vice-Chairperson withdrew an amendment – that had sought to insert “exceptionally” into Paragraph 11 to clarify that “domestic workers may be exceptionally required to work during the period of daily or weekly rest” – in the interest of time and based on the understanding that it was already reflected in the requirement that grounds for such work needed to be defined by national laws and regulations.

**1049.** Paragraph 11 was adopted.

## **Paragraph 12**

**1050.** The Government member of Australia introduced an amendment – seconded by the Government member of South Africa on behalf of the Africa group – to replace “annual leave” with “paid annual leave”, in line with usage in the Convention and Recommendation. The Employer and Worker Vice-Chairpersons supported the amendment.

**1051.** The amendment was adopted as amended.

**1052.** Paragraph 12 was adopted as amended.

## **Paragraph 13**

**1053.** At the suggestion of the Employer Vice-Chairperson, endorsed by the Worker Vice-Chairperson, two amendments were referred to the Committee Drafting Committee.

**1054.** The Worker Vice-Chairperson introduced an amendment that sought to specify that the overall limit on the proportion of the remuneration that may be paid in kind shall be such that it does not “fall below” the cash remuneration necessary for the maintenance of domestic workers and their families, replacing the term “diminish unduly”. She withdrew the amendment, after the Committee had considered different alternative wordings to capture the intent of the amendment.

**1055.** The Government member of Australia withdrew an amendment, while the Worker Vice-Chairperson withdrew two amendments following discussions on several issues, and clarification from the secretariat about the basis for the criteria mentioned in the draft text of Paragraph 13(b) for establishing cash value of allowances in kind.

**1056.** The representative of the Secretary-General explained that those criteria – widely used for establishing the cash value of in-kind payments – were in line with the Protection of Wages Convention, 1949 (No. 95).

**1057.** The Worker Vice-Chairperson presented an amendment – to add a new clause after Article 13(c): “if a domestic worker is required to reside at the employer's residence, the

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accommodation must not be deducted from the net salary;” – as domestic workers were concerned about food and accommodation being used as in-kind payment, which some countries did not consider as part of remuneration. If the requirement to live in the employer’s household was part of the worker’s job and contract, the worker had no choice; food and accommodation should be provided as part of the contract.

- 1058.** The Employer Vice-Chairperson believed that the amendment would pose difficulties for Members as certain national systems, such as that of New Zealand, allowed part of monetary remuneration to be offset by board and lodgings. The amendment was inconsistent with those realities.
- 1059.** The Government member of Portugal noted a contradiction – if domestic workers could negotiate whether to live in or live out of the employer’s household, there was no sense in specifying cases where domestic workers were required to live in. In Portugal, food and accommodation could be deducted from cash remuneration as in-kind payment.
- 1060.** The Government member of Spain concurred; in Spain, accommodation could be deducted from domestic workers’ remuneration.
- 1061.** The Government member of the Netherlands echoed the two previous speakers, stating that deductions for accommodation should be allowed, provided that the monetary value attributed to them was fair and reasonable.
- 1062.** The Government member of the United Arab Emirates opposed the amendment; it was normal to deduct from cash payments an amount for food and lodging provided by the employer.
- 1063.** The Government member of Australia appreciated both sides’ views. The MLC, 2006, ensured that seafarers had no deductions for board and lodgings. She agreed that deductions for food and lodgings were open to exploitation due to the unbalanced employment relationship between worker and employer.
- 1064.** The Worker Vice-Chairperson provided examples of countries whose laws and regulations prohibited payment in kind: Brazil, Canada, France and Singapore.
- 1065.** The Employer Vice-Chairperson noted that, while some countries prohibited deductions from remuneration for food and accommodation, other countries allowed them. The subparagraph should reflect the different realities. The MLC, 2006, example was not relevant because it was a form of global collective bargaining agreement for seafarers.
- 1066.** The Government member of Bangladesh suggested that the Worker Vice-Chairperson read Paragraph 13(c) in relation to Paragraph 13(a), as Paragraph 13 was a complete package.
- 1067.** The Government member of Ecuador supported the amendment, which was in line with Ecuadorian labour law. The Government members of Argentina, Indonesia and the Bolivarian Republic of Venezuela also supported it.
- 1068.** The Government member of Ghana remarked that live-in domestic workers usually received lower wages than live-out workers, and often had to pay for a family home in addition to their accommodation in the employer’s household. Noting that it was the gross rather than the net salary that should be taken into account, she asked the Workers’ group to review the amendment’s wording to ensure that live-in workers did not bear undue burdens.

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- 1069.** The Government member of South Africa, on behalf of Government members of the Africa group, also queried the use of “net”, pointing out that it referred to the salary received after all allowable deductions. He doubted that the intention was to allow double deductions.
- 1070.** The Government member of Canada opposed the amendment, in view of the concerns raised by previous speakers. As Canada was a federal State, each province and territory was free to adopt its own rules on deductions for accommodation, with limitations.
- 1071.** The Government member of Norway also preferred the original text, noting that live-in arrangements could benefit employers and workers. It would be complicated to implement the provision in countries that had no minimum wage.
- 1072.** The Government member of the United Arab Emirates, on behalf of the GCC countries, proposed a subamendment to read “if a domestic worker is required to reside at the employer’s residence, the accommodation must not be deducted from the net salary, unless agreed to by the worker.”
- 1073.** The Employer Vice-Chairperson supported the subamendment, provided that the word “net” was deleted. It would be unfair to agree to a text that allowed deductions to be made from net salary.
- 1074.** The Worker Vice-Chairperson endorsed the proposal to delete the word “net”, noting that the intention of the amendment was to recognize that domestic workers – especially migrant domestic workers – were in an unequal bargaining position and therefore needed some form of protection; it gave workers an element of choice.
- 1075.** The Government member of South Africa, on behalf of the Africa group, proposed a further subamendment to replace “salary” by “remuneration”, reflecting language used elsewhere in the text. He saw no value in adding “unless agreed to by the worker”, as it was implicit that they had to agree to live in the household.
- 1076.** The Employer and Worker Vice-Chairpersons and the Government members of Canada, the Philippines, Portugal and the United Arab Emirates (on behalf of the GCC countries) supported the proposal.
- 1077.** The Government member of Brazil could accept the subamendment, in view of the addition of the words “unless agreed to by the worker”, but firmly believed that the cost of accommodation should not be deducted from a domestic worker’s remuneration if he/she was required to live in the employer’s household.
- 1078.** The Government member of Uruguay could accept the subamendment but noted his concerns about opening the door to allow deductions from workers’ salaries. He recalled that several international labour standards addressed payments in kind, notably Article 4 of the Protection of Wages Convention, 1949 (No. 95).
- 1079.** The Worker Vice-Chairperson reiterated that her group would prefer to prohibit any payment in kind, but in the interests of consensus had agreed to accept certain deductions for food and accommodation. She recalled that the remuneration of domestic workers was usually very low and that many such workers, especially migrant domestic workers, had no choice but to live in their employer’s residence.
- 1080.** The amendment was adopted as subamended.

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## Clause (d)

- 1081.** The Government member of Hungary, on behalf of EU Member States, proposed discussing all three amendments related to Paragraph 13(d) together. The clause was deemed confusing, since it could mean the prohibition of providing uniforms, tools or protective equipment, relating to the performance of domestic workers' duties. She proposed the deletion of clause (d) and introducing a new subparagraph 13(2) at the end of the Paragraph, which would read "Objects that are directly related to the performance of work duties, such as uniforms, tools or protective equipment, shall not be considered as allowance in kind and their value shall not be offset with remuneration", subamending it to replace "shall" by "should". She endorsed the Workers' group's amendment to add the words "and their cleaning and maintenance", after the word "equipment".
- 1082.** The Employer Vice-Chairperson supported the proposal, indicating that the word "allowance" should be replaced by "payment".
- 1083.** The Worker Vice-Chairperson supported the proposal and the rationale behind the creation of a new subparagraph 13(2), separated from the chapeau text in subparagraph 13(1), which dealt with remuneration in the form of allowances in kind, as the provision of equipment relating to the performance of domestic work should by no means be considered an in-kind allowance. For the sake of more clarity, she submitted a subamendment to replace "offset with" by "deducted from".
- 1084.** The Government member of Australia suggested improving clarity by subamending the proposed text – seconded by the Government member of Brazil – through replacing the word "Objects" by "Items", which was more comprehensive, and replacing "value" by "cost".
- 1085.** The Employer and Worker Vice-Chairpersons proposed subamendments that amended as follows: "(2) Items that are directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, should not be considered as payment in kind and their cost should not be deducted from the remuneration of the domestic worker".
- 1086.** The Employer Vice-Chairperson and the Government members of Hungary (on behalf of EU Member States), Indonesia, Japan and the United States agreed with the new subparagraph.
- 1087.** The amendment was adopted as subamended.
- 1088.** Paragraph 13 was adopted as amended.

## Paragraph 14

- 1089.** The Employer Vice-Chairperson submitted an amendment to delete the words "the payments due to them," from the second line of Paragraph 14(1). He explained that the subparagraph was about the "payslip", which usually included the worker's salary, bonuses and/or deductions. The current text, notably the words "payments due to them", carried an inherent confusion, implying that workers' future wages could possibly not be paid. The Worker Vice-Chairperson proposed a subamendment to replace "the payments due to them, the amounts paid" by "the total remuneration due to them" – to ensure that salary slips would provide the amount due to the domestic worker and any deductions/bonuses. The Employer Vice-Chairperson supported the subamendment.

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**1090.** The Worker and Employer Vice-Chairpersons withdrew two amendments.

**1091.** Paragraph 14 was adopted.

## **Paragraph 15**

**1092.** The Government member of Spain, on behalf of EU Member States, presented an amendment, subamended to take Article 17's adopted wording into account, so that Paragraph 15 would read as follows:

(1) Each Member should take, in accordance with national law and practice, effective measures, with due regard to the specific characteristics of domestic work, to ensure the protection of workers' claims in the event of the employers' insolvency or death.

(2) Domestic workers employed by private employment agencies should enjoy conditions not less favourable than those of workers generally in the event of the employers' insolvency.

**1093.** The Employer Vice-Chairperson appreciated the distinction between the two types of employers and could support the subamendment.

**1094.** In reply to the Worker Vice-Chairperson's questions (on the distinction made between domestic workers and other workers regarding outstanding wage claims towards employers), the Government member of Spain explained that several European countries had social security or insurance schemes that protected workers employed by enterprises, such as private employment agencies, in the event of the employers' insolvency. As those schemes covered companies only, not private employers, domestic workers employed by a householder were not covered by those schemes. In the case of the death of an individual employer, the wages of domestic workers were protected like other workers' wages. The difference was that there were no specific social security or insurance schemes for workers employed by private employers. The subamendment distinguished two types of employers: individual or natural employers and private employment agencies. Workers generally enjoyed additional protection in the case of insolvency of enterprises through specific guarantee schemes. Paragraph 15(1) applied to domestic workers employed directly by private employers or natural persons.

**1095.** The Government member of Norway observed that the subamendment reflected a balance between the need to protect the worker and the obligations of the employer. However, workers whose salary from a deceased or insolvent employer was a substantial part of their means of earning a living should always be entitled to protection of their claim.

**1096.** The Government member of Australia appreciated the specific legislation in European countries but noted that the Employer members had not commented on the original text, nor presented any subamendments. She preferred the existing text, which did not preclude the EU concerns, nor exclude considering national circumstances. The guidance given in Recommendations did not always have to take account of Members' legislation.

**1097.** The Employer Vice-Chairperson supported the previous speaker. His view was that there was an understanding about what should happen when an employer died or became insolvent; he saw no need for the subamendment.

**1098.** The Government member of Switzerland saw merit in the comments by the Government member of Australia and supported the subamendment because it clarified that there were different situations.

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**1099.** The Worker Vice-Chairperson and the Government members of South Africa (on behalf of the Africa group) and the United States preferred the original text.

**1100.** The Government member of Spain withdrew the amendment.

**1101.** The Worker Vice-Chairperson withdrew an amendment.

**1102.** Paragraph 15 was adopted as amended.

## **Paragraph 16**

**1103.** The Worker Vice-Chairperson withdrew an amendment.

**1104.** The Employer Vice-Chairperson introduced an amendment – to insert “to the extent reasonable” after “adapted” in the first line – to ensure that workers’ cultural and religious requirements as regards meals should be kept within reasonable limits.

**1105.** The Worker Vice-Chairperson thought “taking into account national conditions” adequately addressed the issues being raised; nevertheless, she supported the amendment, as did the Government member of Australia.

**1106.** Paragraph 16 was adopted as amended.

## **Paragraph 17**

**1107.** An amendment fell.

**1108.** Paragraph 17 was adopted.

## **Paragraph 18**

**1109.** The Chairperson informed the Committee that various sponsors of amendments under Paragraph 18 had agreed to submit a consolidated text. The Employer Vice-Chairperson introduced the subamendment, which read as follows:

Members should take measures, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and organizations representative of employers of domestic workers, such as to:

- (a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the household workplace;
- (b) provide an adequate and appropriate system of inspection, consistent with Article 16 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;
- (c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;
- (d) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and

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- (e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

**1110.** While commending the submitters of the revised text, the Government member of Australia inquired about “other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries”.

**1111.** The Employer Vice-Chairperson responded that other types of information existed, which could not all be listed in the Recommendation, but remained key inputs to decision-making, for instance morbidity and mortality rates.

**1112.** The Worker Vice-Chairperson and the Government members of Bahrain (on behalf of the GCC countries), Brazil and Hungary (on behalf of EU Member States) supported the negotiated text.

**1113.** The subamendment was adopted.

**1114.** Paragraph 18 was adopted as amended.

## **Paragraph 19**

**1115.** The Employer Vice-Chairperson introduced an amendment to insert “and domestic workers” after “by employers” in the second line, because in some countries, contributions were made jointly by workers and employers, in others not. Ensuring that domestic workers had social security protection was crucial. The amendment was not intended to establish new obligations for domestic workers regarding social security contributions.

**1116.** The Worker Vice-Chairperson argued that this was only relevant where national regulations foresaw employers and workers jointly contributing. It could be misinterpreted to mean that all domestic workers should pay contributions.

**1117.** The Employer Vice-Chairperson proposed a subamendment to delete the reference to “employers and domestic workers”.

**1118.** The Worker Vice-Chairperson further subamended it to add “in accordance with national laws and regulations” after “Members should”. Although she normally opposed the phrase, it seemed appropriate there.

**1119.** The Employer Vice-Chairperson and Government members of Brazil, Colombia, Hungary (on behalf of EU Member States), Japan, Namibia, South Africa (on behalf of the Africa group) and the United States supported the subamendment.

**1120.** The subamendment was adopted.

**1121.** The Worker Vice-Chairperson introduced an amendment to add a new subparagraph as follows: “Members in countries of origin and destination of migrant domestic workers should cooperate to establish the portability of social security entitlements for migrant domestic workers.” Migrant domestic workers made substantial contributions to social security schemes, but lost entitlements when they moved to another country and had to start building new entitlements from zero. She subamended the text by replacing “establish” with “facilitate”. The proposed text was aligned with the Maintenance of Social Security Rights Convention, 1982 (No. 157).

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- 1122.** The Employer Vice-Chairperson supported the idea of portability of social security entitlements. He suggested aligning the text with the draft conclusions of the Committee for the Recurrent Discussion on Social Protection (meeting concurrently at the ILC) as follows: “Members should consider concluding bilateral, regional or multilateral agreements to provide equality of treatment in respect of social security, as well as access to and preservation and/or portability of social security entitlements, to migrant domestic workers to be covered by such agreements.” The Worker Vice-Chairperson and Government members of Argentina, Australia, Bahrain (on behalf of the GCC countries), Brazil, Colombia, Indonesia and the Philippines supported it.
- 1123.** The Government member of Bangladesh expressed reservations about using the term “equality of treatment” and felt that the term “cooperate” in the original amendment was preferable – since cooperation could take forms other than bilateral, regional or multilateral agreements – but he would not stand in the way of consensus.
- 1124.** The Government member of the United Kingdom asked whether the “equality of treatment” was between migrant domestic workers and other migrant workers, or between migrant domestic workers and other domestic workers.
- 1125.** The representative of the Secretary-General could not provide clarification since the wording had emerged from the work of a Committee that had met simultaneously.
- 1126.** The Employer Vice-Chairperson supported the reference to equality of treatment and felt that it was sufficiently general in the present context.
- 1127.** The Government member of South Africa supported the text. He drew attention to a planned provident fund in his country to which both employers and domestic workers would contribute. Since it was basically a bilateral agreement between workers and employers, it would be difficult for his Government to ensure portability of any entitlements that stemmed from it.
- 1128.** The amendment was adopted as subamended.
- 1129.** The Worker Vice-Chairperson introduced an amendment to add another new subparagraph – “The cash value of payments in kind should be duly considered for social security purposes, including in respect of the contribution by the employers and the entitlements of the domestic workers.” – because it was important to ensure that such payments did not lead to a shortfall in social security contributions, which would occur if only the cash element of total remuneration were assessed.
- 1130.** The Employer Vice-Chairperson subamended the text to replace “cash” by “monetary”. The Worker Vice-Chairperson accepted this.
- 1131.** The Government member of the United Kingdom appealed to the Government members to look carefully at the consequences – greater social security contributions could be disadvantageous for employers and/or for domestic workers.
- 1132.** The Employer Vice-Chairperson explained that the new text gave governments flexibility to consider and decide exactly how in-kind payments would be dealt with in calculating social security contributions.
- 1133.** The Worker Vice-Chairperson noted that, if part of a worker’s remuneration was paid in kind, it was correct to base social security contributions on the cash value of in-kind payment; otherwise workers would suffer a shortfall in contributions and thus in benefits.

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**1134.** The subamendment was adopted.

**1135.** Paragraph 19 was adopted as amended.

## **Paragraph 20**

**1136.** The Worker Vice-Chairperson presented amendment to replace “migrant domestic workers’ rights” by “domestic workers and, in particular, migrant domestic workers”. The chapeau of the current draft restricted the measures enumerated in (a)–(f) to migrant domestic workers; while those workers were more vulnerable than other domestic workers, the measures were relevant to all domestic workers.

**1137.** The Employer Vice-Chairperson accepted the amendment but warned that the subsequent list of clauses presented some problems.

**1138.** The Government members of the Bangladesh, Brazil and the United States supported the amendment. The Government member of Bangladesh remarked that he would have preferred a Paragraph dedicated to migrant domestic workers.

**1139.** The amendment was adopted and another amendment consequently fell.

**1140.** The Employer Vice-Chairperson introduced an amendment to delete subparagraph (1), clause (a) because of concerns over labour inspections of private households. Clause (a) might be appropriate for households with live-in workers, but visits to households were problematic generally. He asked for Government members’ views, as household visits would be governments’ responsibility.

**1141.** The Worker Vice-Chairperson objected to deleting the clause; to ensure the well-being and safety of domestic workers, it was reasonable to expect a system of visits of households where workers were to be employed. Moreover, the words “should consider” in the introductory part of subparagraph (1) allowed flexibility.

**1142.** The Employer Vice-Chairperson questioned how clause (a) could be implemented. Prior to workers being employed, who would express concern over working conditions in the household if they were not there and no violation of rights had yet been infringed upon? How would governments visit millions of households?

**1143.** The Government member of Ecuador believed that clause (a) was important to ensure compliance with the provisions of the Convention.

**1144.** The Employer Vice-Chairperson insisted that clause (a) was impractical. He stressed the sheer magnitude of the imposition it entailed: households had to inform government that they would employ domestic workers, and inspectors would then have to visit households. It did not make sense.

**1145.** The Government member of Australia recognized the challenges presented by a system of visits to private households, but recognized the value of such a system.

**1146.** The Government member of the United Kingdom wondered whether anything would be achieved by clause (a) that was not already achieved by Article 16 of the Convention.

**1147.** The Government member of South Africa, speaking on behalf of the Africa group, agreed with the Employer Vice-Chairperson that a pragmatic approach was needed; it would be

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wholly impossible to ask governments to inspect households that were intending to employ a domestic worker.

- 1148.** The Worker Vice-Chairperson observed that, if the amendment to delete the clause was withdrawn, the Committee would have the opportunity to consider subsequent amendments relating to that clause. She suggested that all those amendments could be considered together. Recalling that the provisions of a Recommendation were not binding, she reiterated that her group was in favour of allowing for household visits and that including such a provision did not mean that governments would be obliged to visit every single household; it would merely allow for a system of selective inspections, raise the awareness of households and help ensure that employers were complying with their obligations.
- 1149.** The Employer Vice-Chairperson considered that governments could not possibly be expected to know which households were intending to employ a domestic worker. He supported the motion to discuss all the subsequent amendments relating to the clause on a caucus basis and withdrew the amendment.
- 1150.** The Chairperson suggested that the sponsors of the other amendments relating to the same clause should hold informal discussions and present a text that reflected a caucus position.
- 1151.** The Worker Vice-Chairperson presented the text resulting from the compromise of the submitters, which stated “consistent with Article 16, a system of pre-placement visits to households in which migrant domestic workers are to be employed”.
- 1152.** The Employer Vice-Chairperson supported the proposal.
- 1153.** The Government member of Ecuador conceded that the text was valid, but the provision should cover both migrant and non-migrant domestic workers, thus the word “migrant” should preferably be deleted.
- 1154.** The Government member of the United States endorsed the text presented by the Workers’ group and observed that although the new chapeau covered all domestic workers, the clause was essentially about migrant domestic workers.
- 1155.** The Government member of South Africa, speaking on behalf of the Africa group, opposed the new text as it intended to cover an employment relationship yet to be established.
- 1156.** The Government member of Ecuador highlighted that “a system of pre-placement visits” was not a real system of labour inspection visits, which required fixing appointments and a timetable. Visits regarding the adoption of children showed that preliminary visits could be carried out; governments should recognize that it was feasible.
- 1157.** The Government member of Hungary, on behalf of EU Member States, accepted the compromise in the text presented by the Workers’ group, but pointed out that a number of EU Government members had raised serious concerns about the practicality of implementing the clause.
- 1158.** The Worker members’ subamendment was adopted.
- 1159.** The Employer Vice-Chairperson submitted an amendment to move the text of clause (c) to become the first in the list of clauses. He explained that the new order was more logical, since “establishing a national hotline with interpretation services for domestic workers who

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need assistance” should be the first step for domestic workers to get information when arriving in a country.

**1160.** The Worker Vice-Chairperson suggested that the amendment be addressed by the Committee Drafting Committee; the Employer Vice-Chairperson agreed.

**1161.** The amendment was sent to the Committee Drafting Committee.

**1162.** The Employer Vice-Chairperson submitted an amendment to replace clause (d) by the following text:

providing employers with information on: good practices in the employment of migrant domestic workers, employment and migration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to migrant domestic workers and their employers;

While keeping the key points of the original clause, the new text provided a more comprehensive construction, which highlighted and strengthened the role of exchanging good practice.

**1163.** The Worker Vice-Chairperson opposed the new text. First, exchange of information and good practices should not be restricted to migrant domestic worker issues. Second, the original text emphasized the importance of raising employers’ awareness about their obligations and sanctions in case of violations. That dimension had to be differentiated from an approach based on promotional measures and information exchange.

**1164.** The Employer Vice-Chairperson proposed a subamendment to add “raising employers’ awareness by” before “providing”.

**1165.** The Worker Vice-Chairperson proposed a further subamendment to add “on their obligations and providing” after “awareness”, and delete “migrant” in the first and the last lines.

**1166.** The Employer Vice-Chairperson proposed a minor grammatical change to replace “on” by “of”, and to add “by” before “providing”.

**1167.** The Government members of Australia, Ecuador, France, South Africa (on behalf of the Africa group) and the United Kingdom supported the subamendment.

**1168.** The subamendment was adopted.

**1169.** The Employer Vice-Chairperson introduced an amendment to insert in clause (f) “concerning both employment and migration law, and criminal law protections against crimes such as violence and deprivation of liberty”, after “available complaint mechanisms and legal remedies”. He explained that migrant domestic workers were often confused about their rights. Like the previous amendment, the goal was to expand the scope of the subparagraph.

**1170.** The Worker Vice-Chairperson supported the proposed amendment.

**1171.** The Government member of the United States proposed a subamendment to add “, human trafficking” after “violence”.

**1172.** The Worker and Employer Vice-Chairpersons and the Government members of Brazil, France, Indonesia and the United Kingdom supported the subamendment.

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**1173.** The amendment was adopted as subamended.

**1174.** Paragraph 20 was adopted as amended.

## **Paragraph 21**

**1175.** The Government member of the United States withdrew an amendment to delete the Paragraph.

**1176.** The Government member of Hungary, on behalf of EU Member States, resubmitted the amendment seeking to delete the Paragraph. She considered that the text was redundant, as it was already fully reflected in Article 7 of the Convention.

**1177.** The Employer Vice-Chairperson felt indifferent to either retaining or deleting the Paragraph.

**1178.** The Worker Vice-Chairperson noted that there was merit in retaining the Paragraph, as it did not create any obligation on the part of member States. She asked for guidance from the secretariat concerning the relationship between this Paragraph and Article 7 of the Convention.

**1179.** The representative of the Secretary-General explained that Conventions were international instruments that posed certain obligations on member States ratifying them; whereas Recommendations were not binding on them and posed no additional obligations. With regard to Article 7, it required Members to take measures to specify the conditions under which migrant domestic workers were entitled to repatriation. The wording was general in nature and offered Members flexibility on addressing repatriation entitlements. On the other hand, Paragraph 21 of the Recommendation stated what member States might wish to take into account in case repatriation of migrant domestic workers became necessary.

**1180.** The Government member of Australia opposed the amendment. She recalled that the text of the Paragraph recognized that Members would be free to set the conditions of repatriation. She noted that Recommendations were intended to guide member States on how to implement Conventions. Specifying guidance on repatriation was one way of ensuring that domestic workers could be empowered to extricate themselves from certain undesirable situations, including abuse.

**1181.** The Government member of Portugal supported the amendment. He considered that employment termination could occur for legitimate reasons and that it would not make sense to ask the employer to pay for repatriation of a domestic worker who was dismissed for justified reasons.

**1182.** In response to a request from the Government member of Norway and a concern raised by the Government member of Portugal, the representative of the Secretary-General explained that, according to the current wording of Paragraph 21, repatriation of the migrant domestic worker “at no cost to them” depended on the existing national laws and regulations in place.

**1183.** The Government member of Brazil called for the retention of the Paragraph, noting that the Paragraph was a broad one which allowed for the discretion of member States to put in place the requisite measures towards repatriation of the domestic worker. Such flexibility was already in practice in Brazil where the State was obliged to repatriate migrant domestic workers.

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- 1184.** The Employer Vice-Chairperson reiterated that his group had no particular preference on the amendment.
- 1185.** The Worker Vice-Chairperson aligned her views with those of the Government members of Australia and Brazil. She emphasized the importance of retaining the words “at no cost” in the Recommendation; it provided some guidance towards resolving the vulnerable situation of domestic workers. If domestic workers were unable to afford repatriation costs, they might easily fall victim to mistreatment. She therefore called for the retention of the Paragraph.
- 1186.** The Government member of Hungary, on behalf of EU Member States, withdrew the amendment on the understanding that this part of the Recommendation created no particular obligations for governments.
- 1187.** The Employer Vice-Chairperson introduced an amendment to insert “, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers,”. Employers were interested in being part of the process through which governments would decide on the conditions under which migrant domestic workers were entitled to repatriation.
- 1188.** The Worker Vice-Chairperson and the Government members of Bahrain (on behalf of the GCC countries), Norway, South Africa (on behalf of the Africa group) and the United States supported the amendment.
- 1189.** The amendment was adopted.
- 1190.** Paragraph 21 was adopted as amended.

### **New Paragraphs after Paragraph 21**

- 1191.** The Employer Vice-Chairperson introduced an amendment to provide guidance to private employment agencies by inserting the following new Paragraph:
- Members should promote good practices by private employment agencies in relation to domestic workers, including migrant domestic workers, taking into account the principles and approaches in the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188).
- 1192.** The Worker Vice-Chairperson welcomed the amendment.
- 1193.** The Government members of Australia, Bangladesh, Brazil, Indonesia, the Netherlands, South Africa (on behalf of the Africa group) and the United Kingdom supported the amendment.
- 1194.** The amendment was adopted.
- 1195.** The Worker Vice-Chairperson proposed an amendment to add a new Paragraph, subamending it to read as follows:
- Consistent with Article 16 of the Convention, and in so far as it is compatible with national law and practice concerning respect for privacy, labour inspectors or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter the parts of the home or other private premises in which the work is carried out.

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She explained that the Recommendation did not contain a reference to the inspection of households. The proposed Paragraph was based on the Home Work Recommendation, 1996 (No. 184), and aimed to make the Recommendation more comprehensive.

- 1196.** The Employer Vice-Chairperson felt uncomfortable about the general message of the amendment. The explicitness of the wording gave the impression that labour inspectors could enter every part of the home.
- 1197.** The Worker Vice-Chairperson proposed a subamendment to add “Members may consider the conditions under which” after “privacy”.
- 1198.** The Employer Vice-Chairperson considered the subamendment helpful but continued to feel uncomfortable with its explicit message. He proposed a subamendment to delete “parts of the home or other private”.
- 1199.** The Worker Vice-Chairperson supported the subamendment. She stated that, in practice, inspectors usually only asked some questions and did not inspect all parts of the home.
- 1200.** The Government member of France considered that the reference to Article 16 was problematic since the latter only covered labour inspections, while the text of the amendment also opened access to “other officials”.
- 1201.** The Worker Vice-Chairperson proposed a subamendment to delete “Consistent with Article 16 of the Convention, and”.
- 1202.** The Employer Vice-Chairperson and the Government members of Argentina, Australia, Canada, Ecuador, Indonesia, Norway, the Philippines, Trinidad and Tobago, the United Arab Emirates (on behalf of the GCC countries) and the Bolivarian Republic of Venezuela supported the subamendment.
- 1203.** The Government member of South Africa, on behalf of the Africa group, asked whether the text might imply unlimited access by inspectors to private homes at all times, or access only in relation to enforcing provisions applicable to domestic work.
- 1204.** The Worker Vice-Chairperson clarified that the intention of the text was that access should only be granted when enforcing provisions applicable to domestic work. That was clear from the purpose of the provision.
- 1205.** The representative of the Secretary-General also explained that the context of the provision made it clear that access to households should be granted only when inspecting compliance with laws and regulations concerning working conditions. It did not entail unlimited access to households.
- 1206.** With these explanations, the Government member of South Africa, on behalf of the Africa group, also supported the subamendment.
- 1207.** The amendment was adopted as subamended.
- 1208.** The two new Paragraphs were adopted.

## Paragraph 22

- 1209.** The Government member of Hungary, on behalf of EU Member States, withdrew an amendment to replace “establish” by “consider establishing”.

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- 1210.** At the suggestion of the Employer Vice-Chairperson, endorsed by the Worker Vice-Chairperson, an amendment concerning the wording of a reference to employers' and workers' organizations was referred to the Committee Drafting Committee, to ensure consistency throughout the text.
- 1211.** The Government member of Hungary, on behalf of the IMEC group, introduced an amendment to replace the term "career" with "professional development". The latter term was broader and recognized that domestic workers may change occupation.
- 1212.** The Worker and Employer Vice-Chairpersons as well as the Government members of Brazil, Colombia and Ecuador supported the amendment.
- 1213.** The amendment was adopted.
- 1214.** At the suggestion of the Worker Vice-Chairperson, an amendment presented by the Employer Vice-Chairperson to introduce the phrase ", after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers," was referred to the Committee Drafting Committee.
- 1215.** The Employer Vice-Chairperson withdrew an amendment that had sought to replace "in order to" by "and" in the second line of the Paragraph.
- 1216.** The Employer Vice-Chairperson introduced an amendment to delete "and" in the second line of the same Paragraph to improve the sentence structure.
- 1217.** The amendment was adopted.
- 1218.** The Employer Vice-Chairperson introduced an amendment to replace "comprehensive data on domestic workers" with "data necessary to support effective policy-making regarding domestic work" in the same Paragraph. That was more specific.
- 1219.** The Worker Vice-Chairperson and the Government members of Brazil, Norway and the United Kingdom supported the amendment.
- 1220.** The amendment was adopted.
- 1221.** Paragraph 22 was adopted.

## **Paragraph 23**

- 1222.** The Employer Vice-Chairperson introduced an amendment to insert a new subparagraph at the beginning of the Paragraph to read "Members should cooperate with each other to ensure the effective application of the provisions of the Domestic Workers Convention, 2011, and this Recommendation, as appropriate, to migrant domestic workers." This reflected Article 7(3) of the Convention and made the Recommendation more complete. He then subamended "should cooperate" into "should consider cooperating".
- 1223.** The Worker Vice-Chairperson proposed a subamendment to delete the words "as appropriate", which were unnecessary.

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- 1224.** The Employer Vice-Chairperson and the Government members of Argentina, Indonesia and the United Arab Emirates (on behalf of the GCC countries) and the Bolivarian Republic of Venezuela supported the subamendment.
- 1225.** The amendment was adopted as subamended.
- 1226.** The Employer Vice-Chairperson and the Government member of the United States each withdrew an amendment.
- 1227.** The Government member of the United States, on behalf of the IMEC group, presented an amendment to insert “the provision of” before “social security” to add clarity.
- 1228.** The Employer and Worker Vice-Chairpersons and the Government members of Brazil and Ecuador supported the amendment.
- 1229.** The amendment was adopted.
- 1230.** The Employer Vice-Chairperson introduced an amendment, subamending it to replace the phrase “the monitoring of private employment agencies” by “monitoring the activities of employment agencies recruiting persons to work as domestic workers in another country”. Cross-border movements of domestic workers required monitoring the activities of recruitment agents, rather than employment agencies per se.
- 1231.** The Worker Vice-Chairperson accepted the amendment.
- 1232.** The Government member of South Africa, on behalf of the Africa group, preferred the original text.
- 1233.** The Government member of the United Arab Emirates, on behalf of the GCC countries, supported the amendment.
- 1234.** The Government member of the United Kingdom proposed a subamendment to add “private” before employment agencies – as in the original Paragraph 23.
- 1235.** The Worker and Employer Vice-Chairpersons and the Government members of Brazil, Colombia and Norway supported the subamendment.
- 1236.** The amendment was adopted.
- 1237.** The Government member of Hungary, on behalf of EU Member States, presented an amendment, which proposed the insertion of a new subparagraph at the end of the Paragraph as follows:
- Members should consider adopting, in the context of diplomatic immunity, voluntary codes of conduct aimed at preventing violations of domestic workers’ rights and cooperating with each other in the event of abusive practices in order to establish legal jurisdiction or to enable a dispute resolution procedure.
- Although the Convention and Recommendation addressed all domestic workers, it was important to focus on domestic workers employed by the diplomatic community because protecting such workers from abusive practices presented a challenge.
- 1238.** The Employer and Worker Vice-Chairpersons welcomed the proposed new subparagraph.

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**1239.** The Government member of the United States proposed a subamendment, seconded by the Government member of Australia, as follows:

In the context of diplomatic immunity, Members should:

- (a) adopt policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights; and
- (b) cooperate with each other at the bilateral and multilateral levels to address and prevent abusive practices towards domestic workers.

This was a broader formulation, because establishing legal jurisdiction, as suggested by the EU amendment, could be complex.

**1240.** The Government member of Hungary, on behalf of EU Member States, proposed a subamendment to add "consider to" at the end of the first line.

**1241.** The Government member of France wondered why the United States wished to remove the reference to establishing legal jurisdiction.

**1242.** The Government member of the United States explained that she wished to remove the reference to legal jurisdiction because it was a narrow concept that did not address other violations. Although the Vienna Convention on Diplomatic Relations, 1961, obliged diplomats to comply with national laws of their host countries, the problem was enforcing the laws while the diplomat was posted in the host country. In the United States, the Government could prosecute a diplomat who had committed a violation only once they had returned to the United States, not while they were still in the overseas post. For those reasons, and in the interest of the domestic worker, the proposed subamendment had a broader formulation to address cases while they were occurring or while a diplomat was posted overseas.

**1243.** The Employer and Worker Vice-Chairpersons and the Government members of Canada, Hungary (on behalf of EU Member States) and Switzerland supported the subamendment.

**1244.** The Government member of Bangladesh understood the importance of the issue, but felt that the provision went beyond the Committee's mandate; issues pertaining to diplomatic immunities and privileges should be addressed solely by the United Nations and existing provisions in the relevant international instruments should suffice in case of any incidents concerning domestic workers. As there had been no time to carry out appropriate consultations at national level, his delegation could not support the proposed amendment, even if a majority was in favour of it.

**1245.** The amendment was adopted as subamended.

**1246.** Paragraph 23 was adopted as amended.

**1247.** Since all the Paragraphs of the proposed Recommendation had been adopted, the entire Recommendation was adopted.

## **Adoption of the report**

**1248.** The Reporter presented the Committee's draft report, noting that it was the result of the Committee's common determination to adopt a draft Convention and accompanying Recommendation that could help improve the working conditions of domestic workers worldwide. She recalled that the Committee Drafting Committee had been tasked with ensuring that certain terms were used consistently throughout both draft texts, and with

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considering the reordering of certain Articles. This had resulted in a number of changes to both texts.

**1249.** The spokesperson of the Workers' group and several Government members requested changes to the text of the draft report pertaining to their statements during the discussions, to be submitted in writing. The Chairperson confirmed that these would be reflected in the report to be submitted to the Conference – together with the proposed Convention, Recommendation and resolution – for adoption.

**1250.** The report was adopted.

## **Adoption of the proposed Convention and Recommendation**

**1251.** The Committee adopted the text of the Convention and of the Recommendation.

## **Consideration of the proposed resolution concerning efforts to make decent work a reality for domestic workers worldwide**

**1252.** The Government member of France, speaking on behalf of EU Member States, invited the Committee to consider a draft resolution, the intention of which was to maximize the effectiveness of the provisions of the proposed Convention and Recommendation by calling on the ILO and its Members to mobilize resources in that regard. Although it was not customary for Conference Committees to take such action, it was not unprecedented. The Chairperson invited Committee members to submit written comments on the draft.

## **Adoption of the resolution**

**1253.** The Chairperson explained that the resolution, which had previously been introduced by the Government member of France, speaking on behalf of EU Member States, had been revised by the secretariat on the basis of written comments submitted by Committee members. The revised text had been circulated to all Committee members through regional coordinators of governments and both Vice-Chairpersons.

**1254.** The Employer Vice-Chairperson proposed an amendment, agreed upon in consultation with the other Committee members, to delete the words “at different levels, including” from subparagraph (d) of the resolution.

**1255.** The resolution was adopted as amended.

## **Closing statements**

**1256.** Almost all the speakers in their closing statements included special thanks to the Chairperson, the Secretary-General, the secretariat, the Government members, the Worker and Employer Vice-Chairpersons and the interpreters for their excellent work, and for the spirit of cooperation, dialogue and consensus that had led to a very positive outcome.

**1257.** The Government member of Hungary, on behalf of EU Member States, commended the Committee for having reached broad agreement on the Convention and Recommendation,

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in a spirit of tripartite cooperation. EU Member States had negotiated in good faith on developing instruments that provided decent work for domestic workers and sufficient flexibility to accommodate diverse national settings.

- 1258.** The Government member of France, on behalf of the IMEC group, highlighted that the Committee had dealt with many substantive and delicate issues before adopting the new standards, after intense and constructive discussions, and his group had been actively committed to the Committee's work, aiming to provide a high level of protection to domestic workers that matched the diversity of working conditions and legal systems worldwide. The IMEC group hoped that the new instruments would be supported by a resolution calling for the dissemination and implementation of the principles the Committee had agreed on.
- 1259.** The Government member of Australia, speaking on behalf of ASPAG, was proud that her region was home to the Chairperson, the Employer Vice-Chairperson and the Worker Vice-Chairperson, all of whom had played such an effective role. The adoption of the Convention and Recommendation would give domestic workers around the world long-awaited recognition as legitimate workers alongside other workers. ASPAG countries would each carefully consider ratification of the Convention, and looked forward to the critical role that the new instruments would play in achieving a material difference in domestic workers' lives for generations to come. The adoption of a Convention and a Recommendation on decent work for domestic workers was a historic event.
- 1260.** Ms Michelle Bachelet, Executive Director of UN Women, congratulated the Committee members for their determined work to secure decent work for domestic workers. Decent work deficits in domestic work were huge and could no longer be tolerated. UN Women would collaborate with the ILO to support the ratification of the Convention and to promote its principles in the formulation and implementation of policies, legislation and programmes at country level. She considered that the proposed instruments set a historic precedent by defining domestic work as "work", making it integral to the development agenda, and laying down global minimum standards on the protection of domestic workers.
- 1261.** The Government member of Canada stated that, when/if the Conference adopted the Convention, his Government would review it thoroughly and give careful consideration to its ratification. Some technical requirements of the proposed Convention needed to be considered and could potentially make it difficult for his Government to ratify, but he fully and strongly supported its principles. He also recognized the significant progress achieved on the adoption of gender-sensitive language.
- 1262.** The Government member of South Africa, on behalf of the Africa group, stressed that the Committee had seized the opportunity to help improve the lives of domestic workers. While the proposed instruments might not be the best documents that could have been achieved, they represented a sincere commitment to respond to the real concerns of domestic workers. The Africa group committed itself to work towards ratification of the proposed Convention, although countries in the region were at different levels of readiness to do so.
- 1263.** The Government member of Switzerland noted that the Committee had negotiated high-level standards that were sometimes too detailed, rendering ratification difficult for many countries – including Switzerland. His Government would analyse the proposed Convention before deciding on eventual ratification.
- 1264.** The Government member of Norway stated that her Government had a sincere and strong desire to ratify the proposed Convention, and would proceed rapidly with the necessary

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consideration, consultation and work towards that end. They would keep an open mind regarding changes to their existing legislation and system.

- 1265.** The Government member of the United Republic of Tanzania urged governments and the social partners to undertake decisive measures towards improving domestic workers' working conditions by ratifying the Convention, once adopted. The engagement of the social partners and effective social dialogue were necessary to achieve the most appropriate national policies for progressive implementation of decent work for all domestic workers.
- 1266.** The Government member of Swaziland supported the Africa group's statement; his delegation was proud to be part of a historic moment, when the ILO and its tripartite structures had succeeded in considering the long-standing plight of domestic workers the world over. It was time to treat and recognize domestic workers as normal mainstream workers, grant them decent work, decent pay and adequate rest time, protect them from violence and extend social security and other benefits due to them. The Convention and Recommendation would help to bring relief to what was a voiceless but important part of the international workforce. Swaziland was ready to enhance its current legislation to bring it into conformity with the Convention.
- 1267.** The Government member of Australia paid tribute to the non-governmental organizations (NGOs) that had played a critical role in bringing the plight of domestic workers to the attention of the international community. Her delegation was pleased with the historic outcome of the Committee's work – which would help lift domestic workers into the formal economy – and was proud of its involvement. There was no doubt that the Committee's success would be measured in terms of the impact of the Convention in the real world. Several countries had already shown the way, by putting effective domestic legislation into place. She encouraged all governments to adapt national law and practice and focus on how – rather than on whether – to ratify the Convention. She paid tribute to domestic workers around the world, recognizing them as the professional workers that they were. She commended those who had stood up and sought recognition as legitimate workers, often against all odds. The new international standards could make a strong and substantive difference to the quality of their working lives and mark a new era of decent work for domestic workers.
- 1268.** The Government member of the United States noted that the Committee's approval of the two instruments represented a historic achievement and an overdue first step. Those instruments broke new ground and constituted the first international effort to confer equal treatment on a whole sector of workers who largely remained "out of sight, out of mind" and were still regarded by many as being less than other workers. The Committee had established that domestic workers were real workers, with families and responsibilities of their own; they too suffered from illness, required rest and would need social protection when they were no longer able to work. Because they were invisible, they were often more susceptible to abuse and harassment. Greater awareness of those issues and of domestic workers in general could galvanize governments and society as a whole to take positive action. Most domestic workers were simply trying to perform decent work and earn a living; they deserved to work with dignity. He hoped that all governments would help make the shared vision a reality.
- 1269.** The Government member of the United Arab Emirates, on behalf of the GCC countries, highlighted the value of dialogue, which characterized the ILO and its tripartite nature. He noted with satisfaction that the first steps had been taken to ensure that domestic workers, who in many cases had enjoyed no legal protection and were not recognized as professional workers, would be able to enjoy a future of decent work. He appealed to all governments, employers, workers and civil society organizations to work towards

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implementing change, raising awareness and ensuring that the Convention became more than just a piece of paper.

- 1270.** The Government member of Namibia – speaking also on behalf of Namibian Worker and Employer delegates – felt privileged to have been part of the Committee’s historic work. The Namibian participants would return home with a tripartite commitment to ratify and implement the Convention as soon as possible. She thanked everyone who had participated in the debate, and had learned much from their experience and insights; she looked forward to discussing those matters further in the years to come. Finally, she paid tribute to the domestic workers who had provided their input to the work of the Committee.
- 1271.** The Government member of the Russian Federation expressed satisfaction with the adoption of the proposed Convention and Recommendation. That achievement showed the ability of the ILO and its tripartite constituents to resolve a topical problem and bring international regulation into the area of domestic work. The new international standards were in the interest of millions of domestic workers around the world. He hoped that member States would adopt all the appropriate measures to bring the Convention into force.
- 1272.** The Government member of the Dominican Republic welcomed the adoption of new instruments for the protection of around 100 million domestic workers around the world. Her Government was ready to introduce policies aimed at ratifying the Convention and implementing both standards. If ILO constituents were united, a better world could be achieved.
- 1273.** The Government member of Kenya supported the Africa group’s statement, remarking that the adoption of a Convention and Recommendation was the beginning of the end of domestic workers’ invisibility and vulnerability. She expressed hope that the tripartite members at country level would jointly shape policies, programmes and the necessary legislative reforms aimed at: promoting the rights at work of domestic workers; encouraging decent employment opportunities; enhancing social protection; and strengthening social dialogue on work-related issues affecting domestic workers. The new standards would also assist member States in the development of bilateral and multilateral agreements improving the living and working conditions of migrant workers.
- 1274.** The Government member of Brazil stressed that the adoption of the new instruments provided a solid framework to ensure decent work for domestic workers, and her delegation was very pleased to have played an active role in that process. She gave the floor to the Minister of Labour of Brazil, who – speaking on behalf of Government members of MERCOSUR (Common Market of the Southern Cone) – indicated that the new instruments represented a landmark for the tripartite constituents of MERCOSUR and Latin America in general, as domestic workers had so far been an important part of many people’s family life, but their fundamental rights at work and decent working conditions had not been recognized. He also highlighted a new resolution just adopted by his Government, which would enable all public bodies to provide mediation services on issues related to domestic work.
- 1275.** The Government member of Peru, in common with other Government members of GRULAC, expressed satisfaction with the adopted instruments, which he was sure met the aspirations of millions of domestic workers around the world. He was confident that the Convention would be carefully analysed with a view to ratification by his country. Peru would work towards the implementation of both standards, based on the protection and promotion of human rights.

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- 1276.** The Government member of Colombia noted that the adoption of the new instruments would benefit domestic workers, placing their rights at work on an equal footing with other workers. Her Government would do its utmost to ratify and take appropriate measures to implement the Convention, which represented a historic achievement for domestic workers.
- 1277.** The Government member of the Bolivarian Republic of Venezuela considered that the joint efforts of all participants had made the achievement of that historic success possible. She expressed appreciation for all workers – domestic workers and workers in general. Her Government backed fully the adoption and effective implementation of the Convention, which constituted a very good basis for valuing and protecting domestic workers and promoting decent working and living condition for them all.
- 1278.** The Employer Vice-Chairperson considered that the work of the Committee represented a unique opportunity to bring the international spotlight on law on domestic work. He thanked the NGO Human Rights Watch for helping open the eyes of the Employers’ group to the plight of domestic workers. The adoption of a Convention and Recommendation on decent work for domestic workers was a first step; real success would only be achieved when those instruments made a difference to domestic workers’ lives. The Committee’s discussions were a fine example of global tripartite negotiation. He recalled that, at the opening of the Committee’s 2010 sittings, the Employers’ group had been in favour of a Recommendation alone, but had shown pragmatism and realism by working towards a Convention and a Recommendation, which was the choice of the majority. He highlighted that his group was proud to be part of that process and saw the advancement of decent work for domestic workers as a work in progress, in which employers would stand ready to support, lobby and push for implementation of the Convention at national level. Employers were aware of the challenge that governments could face in that endeavour, but he encouraged them not to hesitate to ask for support, since employers’ organizations would be ready to help.
- 1279.** The spokesperson of the Workers’ group reflected that the hard work of the Committee had culminated in a historic moment: the Committee’s adoption of the Convention supplemented by a Recommendation. Her group was extremely pleased with the guidance the proposed instruments provided. Their mission had been to make “decent work for all” a truly inclusive agenda by ensuring that it also applied to domestic workers. The Committee’s work had laid a solid foundation for this, and its conclusions aptly addressed three distinguishing features of domestic work: it was performed in private homes; domestic workers were consequently more vulnerable to abuse; and domestic workers lacked the protection afforded to other workers. The proposed instruments addressed all four strategic objectives of the Decent Work Agenda, namely: employment; fundamental principles and rights at work; social protection; and social dialogue. Member States, employers and workers now had the responsibility to ensure that national laws, regulations, practices and collective agreements reflected the consensus reached in the Committee, and to work towards ratification and implementation of the instruments after their adoption by the plenary of the Conference.
- 1280.** The representative of the Secretary-General emphasized that the approval of the proposed instruments was a major achievement, especially considering that in 2010 the Committee had been unable to examine in detail the provisions in the proposed Recommendation. The debates had been lively, frank and insightful. Although there had been moments of tension and difficulties in reconciling different – but equally legitimate – viewpoints, the members of the Committee had maintained their commitment to deliver better living and working conditions for domestic workers. A driving force had been the recognition of the historic importance of the standard-setting exercise. She and her team felt privileged to have helped the Committee accomplish its historic task. The determination shown by its

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members to achieve a meaningful outcome and to remain engaged in negotiation had highlighted the added value of tripartism and the real difference that effective dialogue could make to people's daily lives. The Committee aimed to rectify a social injustice that had lasted far too long. She reiterated the ILO's commitment to gender equality as a core value and goal.

- 1281.** The Chairperson thanked all the participants and stated that he was very proud of the results achieved. The Committee's work had been marked by enthusiasm for a meaningful, effective and ratifiable Convention supplemented by a Recommendation. The constructive attitude and perseverance of the participants throughout the proceedings, and their willingness to seek consensus, had provided an excellent example of social dialogue. He also commended the Government members for their constructive input, which was reflected in the excellent results achieved.

Geneva, 13 June 2011

*(Signed)* H.L. Cacadac  
Chairperson

M.L. Escorel de Moraes  
Reporter

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## A. Proposed Convention concerning decent work for domestic workers

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on ... June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that, in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), as well as of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006), and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime, and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the

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Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this ... day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

### *Article 1*

For the purpose of this Convention:

- (a) the term “domestic work” means work performed in or for a household or households;
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

### *Article 2*

1. The Convention applies to all domestic workers.

2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:

- (a) categories of workers who are otherwise provided with at least equivalent protection;
- (b) limited categories of workers in respect of which special problems of a substantial nature arise.

3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

### *Article 3*

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

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- (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.

3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

#### *Article 4*

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

#### *Article 5*

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

#### *Article 6*

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

#### *Article 7*

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;
- (e) the remuneration, method of calculation and periodicity of payments;

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- (f) the normal hours of work;
  - (g) paid annual leave, and daily and weekly rest periods.
  - (h) the provision of food and accommodation, if applicable;
  - (i) the period of probation or trial period, if applicable;
  - (j) the terms of repatriation, if applicable; and
  - (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

#### *Article 8*

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.

3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

#### *Article 9*

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

#### *Article 10*

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

2. Weekly rest shall be at least 24 consecutive hours.

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3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

#### *Article 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.

#### *Article 12*

1. 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.

2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind, which are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

#### *Article 13*

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

#### *Article 14*

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

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### *Article 15*

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

- (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
- (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
- (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;
- (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and
- (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

### *Article 16*

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

### *Article 17*

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

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*Article 18*

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers' and workers' organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

*Article 19*

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

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## **B. Proposed Recommendation concerning decent work for domestic workers**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on ... June 2011, and

Having adopted the Domestic Workers Convention, 2011 (...), and

Having decided upon the adoption of certain proposals with regard to decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Domestic Workers Convention, 2011 (...);

adopts this ... day of June of the year two thousand and eleven the following Recommendation, which may be cited as the Domestic Workers Recommendation, 2011.

1. The provisions of this Recommendation supplement those of the Domestic Workers Convention, 2011 (“the Convention”), and should be considered in conjunction with them.

2. In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:

- (a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers’ organizations of their own choosing and to the right of organizations of domestic workers to join workers’ organizations, federations and confederations;
- (b) give consideration to taking or supporting measures to strengthen the capacity of workers’ and employers’ organizations, organizations representing domestic workers and those of employers of domestic workers, to promote effectively the interests of their members, provided that at all times the independence and autonomy, within the law, of such organizations are protected.

3. In taking measures for the elimination of discrimination in respect of employment and occupation, Members should, consistent with international labour standards, among other things:

- (a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers, and are consistent with the ILO code of practice “Protection of workers’ personal data” (1997), and other relevant international data protection standards;
- (b) prevent any discrimination related to such testing; and
- (c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status.

4. Members giving consideration to medical testing for domestic workers should consider:

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- (a) making public health information available to members of the households and domestic workers on the primary health and disease concerns that give rise to any needs for medical testing in each national context;
  - (b) making information available to members of the households and domestic workers on voluntary medical testing, medical treatment, and good health and hygiene practices, consistent with public health initiatives for the community generally; and
  - (c) distributing information on best practices for work-related medical testing, appropriately adapted to reflect the special nature of domestic work.

5. (1) Taking into account the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labour.

(2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:

- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
- (b) prohibiting night work;
- (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
- (d) establishing or strengthening mechanisms to monitor their working and living conditions.

6. (1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.

(2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:

- (a) a job description;
- (b) sick leave and, if applicable, any other personal leave;
- (c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention;
- (d) any other payments to which the domestic worker is entitled;
- (e) any payments in kind and their monetary value;
- (f) details of any accommodation provided; and
- (g) any authorized deductions from the worker's remuneration.

(3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers

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and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

(4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public.

7. Members should consider establishing mechanisms to protect domestic workers from abuse, harassment and violence, such as:

- (a) establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence;
- (b) ensuring that all complaints of abuse, harassment and violence are investigated, and prosecuted, as appropriate; and
- (c) establishing programmes for the relocation from the household and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care.

8. (1) Hours of work, including overtime and periods of standby consistent with Article 10(3) of the Convention, should be accurately recorded, and this information should be freely accessible to the domestic worker.

(2) Members should consider developing practical guidance in this respect, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

9. (1) With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:

- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;
- (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is interrupted by standby; and
- (c) the rate at which standby hours should be remunerated.

(2) With regard to domestic workers whose normal duties are performed at night, and taking into account the constraints of night work, Members should consider measures comparable to those specified in subparagraph 9(1).

10. Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.

11. (1) Weekly rest should be at least 24 consecutive hours.

(2) The fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.

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(3) Where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, such a period should not exceed 14 days for domestic workers.

12. National laws, regulations or collective agreements should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.

13. Time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.

14. When provision is made for the payment in kind of a limited proportion of the remuneration, Members should consider:

- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the remuneration necessary for the maintenance of domestic workers and their families;
- (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate;
- (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation;
- (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker;
- (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker.

15. (1) Domestic workers should be given at the time of each payment an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which may have been made.

(2) Upon termination of employment, any outstanding payments should be made promptly.

16. Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of the employer's insolvency or death.

17. When provided, accommodation and food should include, taking into account national conditions, the following:

- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
- (b) access to suitable sanitary facilities, shared or private;
- (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and

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- (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.

18. In the event of termination of employment at the initiative of the employer, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.

19. Members, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, should take measures, such as to:

(a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace;

(b) provide an adequate and appropriate system of inspection, consistent with Article 17 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;

(c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;

(d) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and

(e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

20. (1) Members should consider, in accordance with national laws and regulations, means to facilitate the payment of social security contributions, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.

(2) Members should consider concluding bilateral, regional or multilateral agreements to provide for migrant domestic workers covered by such agreements equality of treatment in respect of social security, as well as access to and preservation or portability of social security entitlements.

(3) The monetary value of payments in kind should be duly considered for social security purposes, including in respect of the contribution by the employers and the entitlements of the domestic workers.

21. (1) Members should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, such as:

(a) establishing a national hotline with interpretation services for domestic workers who need assistance;

(b) consistent with Article 17 of the Convention, providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed;

(c) developing a network of emergency housing;

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- (d) raising employers' awareness of their obligations by providing information on good practices in the employment of domestic workers, employment and immigration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers;
  - (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
  - (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.

(2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and through any other appropriate measures.

22. Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.

23. Members should promote good practices by private employment agencies in relation to domestic workers, including migrant domestic workers, taking into account the principles and approaches in the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188).

24. In so far as compatible with national law and practice concerning respect for privacy, Members may consider conditions under which labour inspectors or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter the premises in which the work is carried out.

25. (1) Members should, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, establish policies and programmes, so as to:

- (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, in order to enhance their professional development and employment opportunities;
- (b) address the work–life balance needs of domestic workers; and
- (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.

(2) Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, develop

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appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices to effectively collect data necessary to support effective policy-making regarding domestic work.

26. (1) Members should consider cooperating with each other to ensure the effective application of the Domestic Workers Convention, 2011, and this Recommendation, to migrant domestic workers.

(2) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning the prevention of forced labour and trafficking in persons, the access to social security, the monitoring of the activities of private employment agencies recruiting persons to work as domestic workers in another country, the dissemination of good practices and the collection of statistics on domestic work.

(3) Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.

(4) In the context of diplomatic immunity, Members should consider:

- (a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights; and
- (b) cooperating with each other at the bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.

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## **Resolution concerning efforts to make decent work a reality for domestic workers worldwide**

The General Conference of the International Labour Organization at its 100th Session,

Having adopted the Domestic Workers Convention and Recommendation, 2011,

Acknowledging the specific conditions under which domestic work is carried out,

Recognizing the importance and urgency of ensuring decent working conditions for domestic workers worldwide,

Invites the Governing Body of the International Labour Office to request the Director-General to consider, subject to the availability of resources, cost-effective measures to:

- (a) promote, through appropriate initiatives, the widespread ratification of the Convention and the effective implementation of the Convention and Recommendation;
- (b) support governments and employers' and workers' organizations in the sharing of knowledge, information and good practices on domestic work;
- (c) promote capacity building of governments and employers' and workers' organizations to ensure decent working conditions for domestic workers;
- (d) encourage cooperation with regard to the promotion of decent work for domestic workers between the International Labour Organization and other relevant international organizations.



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