

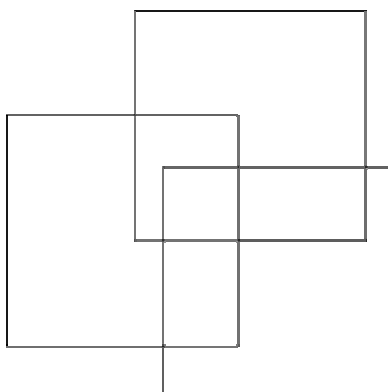


International
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Bringing Domestic Workers into the Formal Economy: Implementing ILO Convention No. 189

**A background paper for the Informal Meeting of Ministers of Labour and Social
Affairs hosted by the Irish EU Presidency during the 102nd Session of the International
Labour Conference**

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Introduction

Around the globe many domestic workers endure poor working conditions and are excluded from legal protection as most domestic work takes place in the hidden economy. In order to strengthen the position of domestic workers, in 2011 the ILO adopted Convention No. 189 concerning Decent Work for Domestic Workers.

The Informal Ministerial Meeting proposes to address Convention No. 189 from a forward looking perspective. The Informal will provide an opportunity for participants to share experiences of existing measures to promote decent work for domestic workers, including enforcement activities. It will also consider how implementation of Convention No. 189 can help bridge the gap in the domestic work sector between the hidden economy and the formal economy, with a focus on how the increasing employment potential of the domestic work sector, in light of demographic trends, can be harnessed to create quality jobs for domestic workers in the formal economy.

The new ILO Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011, have turned the spotlight onto a group of workers that had largely remained at the margins of public policy-making. The broad interest in these historic instruments marks a paradigm shift embodying a global consensus recognizing domestic work as an occupation and a sector in its own right.

The new standards identify the protection needs of domestic workers and encourage the effective integration of domestic work into the Decent Work Agenda. Protecting the rights of domestic workers is therefore placed in the context of creating decent employment opportunities and promoting sustainable social and economic development more generally, in light of the increasing demand for care and household services. A key challenge in this context is the development of effective formalization and implementation strategies.

Domestic work: Features and issues

Characteristics and trends

Domestic work is a significant and growing sector. ILO estimates placed the number of domestic workers worldwide at 52.6 million in 2010. As a single occupational category, this represents a workforce that is as large as that of countries such as Mexico, Nigeria or Viet Nam. Moreover, their numbers have increased by over 19 million since 1995, when the global count of domestic workers was 33.2 million. Both figures are conservative estimates and are likely to understate the true extent of domestic work, as domestic workers are often undercounted in labour force surveys. The figures also exclude domestic workers below the age of 15 years.

The domestic work sector is usually smaller in developed countries, although available data suggest that its importance is also growing in these countries, probably due to more women entering the labour market and the ageing of populations, which both translate to a higher demand for care and household services. Although situations may vary, a large proportion of domestic workers are migrant women. Close to one-fifth of employed women third-country nationals in the 27 European Union Member States are engaged by private households, compared to 1 per cent of European Union nationals.

Gender equality issues

An almost universal feature of domestic work is that it is predominantly carried out by women. Over 80 per cent of all domestic workers are women and girls. Among women in wage employment, 7.5 per cent globally are engaged in domestic work, with much higher shares in some regions (26.6 per cent in Latin America and the Caribbean, and 31.8 per cent in the Middle East). Improving the working conditions of domestic workers is therefore a strategic entry point for tackling gender inequality in the world of work and society by empowering large numbers of women workers. Domestic work services are also an important means of reconciling work and family, which is key for gender equality at work, especially in a context of demographic ageing and the shrinking of public welfare budgets.

While decent work for domestic workers would mean better jobs for the millions of women working in the sector, it would also involve avoiding that reliance on domestic work services for the achievement of work and family reconciliation occurs at the expense of the women engaged in domestic work. Indeed, many women domestic workers are migrants who leave their own families behind so that they can support them. There is also a need to address the uneven sharing of household and care responsibilities between women and men in the home, and occupational segregation in the labour market, which reinforce perceptions of domestic work as not being “real work”, as well as the gender-based undervaluation of women’s work, despite its social and economic value.

Migration for domestic work

In some regions, the demand for domestic services is to a large extent satisfied by migrant workers, although statistical information in this regard is not always available. Labour migration for domestic work is both a North-South and South-South phenomenon. Low esteem for domestic work as an occupation and unfavourable working conditions continue to be obstacles to attracting local workers to the sector. At the same time, inequalities of income between countries and disparities in labour force skill profiles act as major drivers for migration for the many thousands of women seeking work in the domestic sector. Even where no formal migration channels are available, the domestic work sector absorbs large numbers of migrant workers, including second generation and undocumented workers. Recent debates on migration and development have highlighted the need for the protection of domestic workers’ rights as a means of maximizing the potential of domestic work for both countries of origin and countries of destination.

Vulnerability to exploitation and abuse

Historically, domestic services have by and large been performed by those lacking other means of subsistence. This still often holds true today, despite the fact that societies are moving away from feudal or class-based systems to a social organization based on recognition of equal rights and dignity. However, disadvantaged social groups remain highly vulnerable categories of workers, particular in domestic work. The reasons include the power imbalances with the beneficiaries of their services, and the fact that domestic work is performed in the private sphere. As many workers and employers still perceive their arrangements as personal or a type of kinship, rather than an employment relationship, abuse and exploitation is hidden and difficult to address.

Domestic workers can, in many cases, suffer from low remuneration, excessively long hours, the lack of a weekly rest day and, at times, physical, mental and sexual abuse, or restrictions on their freedom of movement. The factors underlying these practices often include the absence of recognition of domestic work as employment, gaps in labour legislation (or unawareness and enforcement of the respective laws) or weaknesses in the governance of labour migration. The exploitation and abuse of domestic workers can also reflect discrimination based on sex, race and social origin (including caste) or other grounds. To a large extent, in the case of care and household tasks, gender-based undervaluation is among the reasons why domestic work is among the lowest paid occupations.

Domestic work is one of the three sectors with the highest prevalence of human trafficking for labour exploitation, and child labour in domestic work continues to be a matter of serious concern. The vulnerability of migrant workers has its roots in, among other factors, precarious recruitment and migration processes, particularly when unscrupulous and unregulated middlemen or agencies are involved, live-in arrangements and the operation of sponsorship systems.

Strengthening protection: From informal to formal

Achieving decent work for domestic workers is also very much about addressing informality and its negative effects. Domestic work is a sector in which informality finds expression in different ways, each of which offer potential entry points for the promotion of informal-to-formal transitions. Although there is no one-size-fits all approach, formalization has positive effects for workers and employers, as well as from a labour market and social policy perspective. While there exists a significant amount of national experience of the regulation and formalization of domestic work, continuing efforts are needed to assess the impact and to develop and share knowledge on successful interventions and tools. Improving statistical information on the domestic work sector and research into the prevailing conditions and needs of domestic workers and employers alike are important in this regard.

Addressing gaps in labour law

Although domestic work is addressed by the labour and social laws in many countries, considerable gaps remain. ILO research shows that only 10 per cent of all domestic workers are covered by general labour legislation to the same extent as other workers. In contrast, over a quarter – 29.9 per cent, or some 15.7 million domestic workers – are completely excluded from the scope of national labour legislation. Between these extremes, there exist intermediate regimes. Exclusions and partial coverage by labour legislation result in weaker protection in certain countries for domestic workers in a number of important areas, including working time, minimum wages and maternity protection.

Gaps in legal protection: Examples

Working time: Over half of all domestic workers workload are not covered by any limitation on their normal weekly hours of work under national law, and approximately 45 per cent have no entitlement to weekly rest periods.

Minimum wages: just over half of all domestic workers enjoy minimum wage protection on an equal basis with other workers, and some 5.9 per cent are entitled to lower minimum wage rates. This means that 42.6 per cent of domestic workers globally do not benefit from minimum wage protection.

Maternity protection: Over a third of all women domestic workers are currently not entitled to maternity leave and associated maternity cash benefits. With most domestic workers being women, this is of particular concern.

Awareness-raising, facilitation and incentives

Even where domestic work is recognized and regulated by law, the workers concerned often do not benefit in practice from rights and protections that may be available in law. Workers and employers frequently refrain from discussing or even agreeing upon essential terms and conditions of employment, or laying them down in writing, particularly when they do not perceive themselves as “workers” and “employers” in the first place. Information and awareness-raising through effective and innovative means are crucial to address this.

A number of approaches are being used to encourage the parties to formalize their employment relationship. Written contracts or statements of particulars in accordance with statutory requirements, and additional agreements facilitate a better understanding by parties of their rights and obligations. They also create a basis for addressing differences, if they should arise. Similarly, practical records of hours worked, wages statements, work books and the supervision or registration of contracts can be useful in this regard.

Employers, and also workers, may deliberately choose to remain outside existing formal frameworks (e.g. the non-declaration of their work to social security institutions). To address the issue of undeclared work, multi-pronged approaches focussing on compliance, as well as incentives and the reduction of the administrative burden, have shown positive results. Several countries such as France are using strategies relying on financial and fiscal incentives for formalization or operate simplified procedures for payment of social security contributions which take into account the specific characteristics of the domestic work sector (for example, by allowing the accumulation of work for multiple households). In respect of migrant workers, access to and preservation or portability of social security entitlements can be promoted.

Formalization can also be pursued through the improvement of intermediation services and schemes for skills development and certification, set up for example in Belgium and France, which in turn lead to better quality services. Formalization policies are effective in systems that favour direct employment relationships between workers and household members, systems involving third-party employers in the form of public or private organizations, as well as cooperatives.

Developing compliance mechanisms

Ensuring compliance and the enforcement of laws and regulations governing domestic work is often seen as a challenge. The informal nature of domestic work and the fact that it is performed in private homes, rather than factories, offices or workshops, raises specific issues. Yet, tackling these challenges is indispensable if laws and policies on domestic work are to produce the

desired results. The absence of compliance mechanisms and enforcement not only invites unfair treatment and exploitation but also prevents effective responses to serious violations, including child and force labour.

Compliance strategies are likely to be most effective when they rely on a combination of approaches, broad-based information campaigns and efforts for the formalization of the employment relationship. The domestic work laws and regulations adopted recently in several countries call on the labour administration to pursue active information dissemination policies. Labour inspectorates in a number of countries, such as Costa Rica, Ireland, South Africa and Uruguay, have focussed specifically on the domestic work sector and have gained valuable experience in this area.

Although individual complaints procedures and access to the courts are important, purely complaints-based approaches appear to be insufficient, as domestic workers are often reluctant to lodge complaints against their employers and often lack the information and capacity to bring formal complaints. This is particularly the case when workers are linguistically or culturally isolated, their residence status is linked to their employment status or they are living and working irregularly in a country other than their own.

Workers' and employers' organizations

Convention No. 189 highlights consultations with workers' and employers' organizations as a central element in designing and implementing measures to promote decent work for domestic workers. Action by and cooperation between workers and employers' organizations, including through collective bargaining, codes of conduct and services to their members, in countries such as France, Uruguay and Zambia, are good examples of how these organizations can contribute to promoting decent work for domestic workers. The International Trade Union Confederation (ITUC) and its affiliates have been implementing a broad-based campaign in support of Convention No. 189, and have been co-operating with specialised civil society organisations to that end.

Momentum for change

In its 2011 Resolution concerning efforts to make decent work a reality for domestic workers worldwide, which was adopted along with the domestic work instruments, the International Labour Conference acknowledged the urgency of ensuring decent working conditions for domestic workers. The ILO's call for decent work for domestic workers is being echoed and supported by the United Nations and a range of other international organizations and fora. In the European Union, the Council, the Commission and the European Parliament have been taking steps to promote the ratification and implementation of Convention No. 189.

Since 2011, Convention No. 189 and Recommendation No. 201 have started to serve as an effective point of departure for new efforts to strengthen national laws and policies, or have provided fresh impetus for ongoing initiatives (see below). Uruguay, Philippines, Mauritius, Nicaragua, Italy, Bolivia and Paraguay have ratified the Convention (as of 25 May 2013), while other countries are preparing to do so. In Germany, the *Bundestag* approved ratification on 17 May 2013.

Initiatives to strengthen domestic workers' rights: Some recent examples

Since the adoption of Convention No.189 and Recommendation No. 201, numerous countries have taken steps to improve the national framework governing the working conditions and labour rights of domestic workers:

Argentina: a new Act set out domestic workers' labour rights, including in respect of overtime pay, time off, sick leave and maternity leave.

Bahrain: under the 2012 Labour Code, certain provisions apply for the first time to domestic workers, for instance those relating to contracts and dispute settlement.

Brazil: a constitutional amendment entered into force in April 2013 giving domestic workers the same rights as other workers.

Costa Rica: the labour inspectorate has developed a protocol respectively the domestic work sector.

India: domestic workers were included under new federal legislation against sexual harassment at work. A draft national strategy on domestic workers has been prepared by the Ministry of Labour.

Ireland: the National Employment Rights Agency (NERA) implemented a pilot programme focusing on compliance in the domestic work sector.

Morocco: in May 2013, the Government approved a draft law regulating the conditions of work and employment of domestic workers, and prohibiting the employment of domestic workers under 15 years of age.

Namibia: a wage commission has been created to set minimum wages for domestic workers.

Philippines: a new comprehensive Domestic Workers Act defines the labour rights of domestic workers and addresses among other matters, written contracts, minimum wages, social security, the minimum age for employment.

Spain: a new decree, replacing previous legislation on domestic work, has introduced improvements relating to minimum wage, working hours and severance pay, among other matters.

Tanzania: a newly designed survey is being carried out to assess the situation of domestic workers in the country. The pilot survey will feed into the elaboration of an assessment methodology that can be used by other countries.

Thailand: new regulations extend additional labour law provisions to domestic workers, including a weekly rest day, annual and sick leave, as well the prohibition on employing children under the age of 15.

The ILO strategy for action

As a follow-up to the 2011 instruments and the resolution on domestic workers, ILO action on decent work for domestic workers is being implemented under a dedicated strategy (2011-2014). ILO support is being provided both to countries that are currently aiming to ratify Convention No. 189, as well as countries not considering doing so at present.

ILO support is focused on knowledge sharing and development, legislative and institutional reform and related capacity-building, promoting collective organization of domestic workers and employers, and awareness-raising and advocacy. Technical assistance on domestic work is currently being provided in 20 countries. Tripartite regional knowledge-sharing fora on domestic work have been held or are planned for the 2012-2013 period, with each event addressing a selected policy area, including labour inspection, wages and working time, the extension of legal protection, social security and the promotion of collective organization. The ILO cooperates closely with a range of international organizations and institutions, including UNWOMEN, the United Nations Office of the High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE).

Suggested points for discussion

1. *Mapping progress through sharing experiences:* What initiatives and measures have participating countries taken to assist domestic workers in securing better quality jobs and stable employment?
2. *Information and compliance:* What are the opportunities and challenges at the national level in promoting decent work for domestic workers, especially through informing households, service providers and domestic workers about their rights and obligations, and implementing effective compliance strategies?
3. *Harnessing employment potential of domestic work sector:* What policies and initiatives are in place, or planned, to promote further growth in the domestic work sector, in light of demographic trends, in order to create quality jobs in the formal economy?
4. *Promoting social dialogue:* how can the voice of domestic workers be strengthened through greater involvement of workers and employers' organizations, and building on the role of specialised civil society organisations?
5. *The way forward:* How can ratification and implementation of Convention No. 189 build upon existing policies and initiatives?

Sources

EUROSTAT (2011). *Migrants in Europe: A statistical portrait of the first and second generation, 2011 edition*, Luxembourg.

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

ILO (2013a). *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, Geneva.

- (2013b). *Ending child labour in domestic work and protecting young workers from abusive working conditions*, Geneva.

- (2013c). *Tricked and trapped: Human trafficking in the Middle East*, Beirut.

- (2012). *ILO global estimate of forced labour: Results and methodology*, Geneva.

Further information can be found on the ILO's global web-portal on domestic work:

www.ilo.org/domesticworkers