



International
Labour
Office

Protecting the rights of migrant domestic workers

International Labour Office
**Making Decent Work a Reality for Domestic Worker in Africa:
a regional knowledge sharing forum**
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In many regions and countries across the world, the presence of international migrant workers in the domestic sector has increased over the last years. Migrant domestic workers tend to be generally more exposed than nationals to the risk of exploitation and abuse due to disadvantages stemming from their migration status, poor protection under national law and from highly informal employment practices. As the vast majority of migrant domestic workers are women, they also face specific challenges related to discrimination on the basis of their sex. Violations of rights include non-payment of salaries, excessive long working hours without rest, confiscation of passport, little access to health services and more severe cases of physical and sexual abuse and forced labour. In many

countries domestic employment is not recognised as part of regular employment, nor covered by labour legislation, often leading to working conditions that fall short of international standards. The Domestic Workers Convention, 2011 (No. 189), while not being a convention on migrant domestic workers, contains a number of provisions that seek to address the specific circumstances of migrant domestic workers.

Challenges related to decent working conditions and abuse of rights commonly start at the recruitment stage which is often undertaken by unregistered recruitment agencies, exploiting the gaps in the regularised procedures for recruitment in many countries. Many agencies charge high fees for their services. In some cases,

they deliver fraudulent employment contracts or make use of a chain of brokers who provide potential migrants with partial, if not fraudulent, information about the migration process and the terms of employment at destination. Migrants typically lack knowledge of their rights and of available support services in the country of destination. As exemplified in the section below, an increasing number of countries in Africa are now taking measures to strengthen labour migration governance; formalising the recruitment process, providing pre-departure training and negotiating bilateral agreements with main countries of destination.

Protecting migrant domestic workers entails recognising their human and labour rights, which will contribute to reducing inequalities of treatment and opportunities for an often unrecognised part of the labour force. The effective protection of migrant domestic workers needs to be based on a sound and coherent articulation between national labour law, migration policies and regulation of private recruitment agencies. At the same time, relevant labour and migration institutions and administration, in countries of origin as well as destination, need to be reinforced and supported to ensure effective enforcement and protection of the rights of migrant domestic workers.

Labour migration trends and examples of policy responses in the Africa region

The bulk of African migration – almost two thirds of the total – is within the African region itself. The dearth of employment opportunities combined with widening disparities in incomes as well as demographic trends, have led to increased migration pressures in Africa. Governance of labour migration forges special challenges as it cannot only be dealt with at national level but

necessitates intra-and interregional collaboration. The Strategic Framework for a Migration Policy for Africa adopted by the African Union in June 2006 stated, “Labour migration is a current and historical reality in Africa impacting directly on the economies and societies of African States in important ways. Establishing regular, transparent and comprehensive labour migration policies, legislation and structures at the national and regional levels can result in significant benefits for States of origin and destination”.¹

Though accurate numbers are hard to come by, estimates show an increase in the number of female migrant workers in Africa. It is estimated that 47 per cent of international migrants in Africa are women.² Many of these women are engaged in the domestic sector. They have become increasingly important in the labour force of countries of destination, as well as providing economic support to family and society in their countries of origin. However, their contribution to economic and social development, in both countries of origin and destination, is often not fully recognised.

Some countries in Africa have over the past years taken steps to improve the conditions for migrant domestic workers, by improving the regulation of recruitment agencies and processes, mandatory training for migrant workers before departure, and entering into bilateral agreements or memoranda of understanding with major countries of destination. Kenya has set up a high-level Ministerial group, led by the President, which has developed an action plan and guidelines on labour migration. This was prompted among others by the number of reported cases of abuse of Kenyan migrant workers employed in the Middle East. In 2012 the country put a ban on employment of their nationals as domestic workers in countries in the Middle East. A new

legislation on Private Recruitment Agencies was developed, to improve the enforcement of regulations regarding recruitment agencies. The country is currently involved in bilateral dialogues with some major countries of destination, and has entered into an agreement with Qatar, while an agreement with Saudi Arabia is in the process.

Countries like Ghana, Senegal and Uganda also send many migrant domestic workers to the Gulf Cooperation Council States (GCC). Ethiopia remains the major country of origin of African migrant domestic workers in the GCC. The Ethiopian Ministry of Labour recorded a total of more than 37, 000 female migrant workers between 2008 and 2010 to Lebanon, Kuwait, Saudi Arabia, and the United Arab Emirates using regular channels. However, a far greater number is estimated to migrate irregularly using the so called "desert route" or through unregistered private employment agencies. The country has a Regulation on employment exchange services. Proclamation 632/2009 has very specific provisions for the protection of the rights of migrant domestic workers, which include obligations not to hire domestic workers below the age of 18, issuing of written contract before leaving the country, and attendance to a pre-departure orientation training.

However, there are still challenges in the enforcement of this regulation in terms of government control of the private employment agencies. Also, there is limited presence of labour attaches or ad hoc missions in the main destination countries to provide support services to their nationals. Ethiopia has also signed a bilateral agreement with Kuwait.

As stated earlier, the majority of migration in Sub-Saharan Africa is intra-regional, and many countries in the region host migrant domestic

workers from neighbouring countries. South Africa remains one of the largest receiving countries of domestic workers in Africa, with most of the workers originating from countries such as Zimbabwe, Mozambique and Lesotho. In 2002, The Sectoral Determination No. 7 under the Basic Conditions of Employment Act (No. 75 of 1997) was introduced in South Africa and it sets out comprehensive standards and protection for domestic workers, governing working conditions, including a minimum wage, hours of work, overtime pay and leave entitlements.

Migrant domestic worker organizations are also active in the Africa region as part of the International Domestic Workers' Network (IDWN), and a founding congress to establish a regional network will take place in June this year.

ILO response

Migration for employment is very much a part of the global agenda of the ILO and its Decent Work Agenda. The ILO has an obligation and unique role to play in developing principles and guidelines for governments, social partners and other stakeholders, and has a comparative strength in its tripartite structure.

Conventions Nos. 97 and 143³ are important instruments for the protection of international migrant workers, recognising equality of treatment for migrant workers and national workers, and providing measures against discrimination and exploitation. Convention No. 97 defines a migrant worker as "a person who migrates from one country to another with a view to being employed otherwise than on his own account (...)" (Article 11).

Convention 97

- Only applicable to lawfully resident migrant workers
- Addresses recruitment and orderly migration of foreign workers
- Equal treatment with nationals in respect of wages and working conditions, trade union rights, social security, accommodation, access to courts
- Recommendation 86 contains a model bilateral labour migration agreement

Convention 143

- Protects basic human rights of all migrant workers, including migrants in irregular situations
- Specifically, the rights of undocumented migrants arising out of past employment (unpaid wages, social security) are safeguarded
- Principle of equal treatment of regular migrants with nationals
- Recommendation 151

It is also important to underscore that all international labour standards, unless otherwise stated, are applicable to migrant workers. Particularly relevant are also those instruments containing specific provisions on migrant workers such as the Private Employment Agencies Convention, 1997 (No. 181) and social security instruments. The adoption of Convention No. 189 concerning decent work for domestic workers, including migrant domestic workers, brings more protection and addresses specific challenges faced by this category of workers.

The ILO Multilateral Framework on Labour Migration provides non-binding principles and guidelines for a rights-

based approach to labour migration, and is an important tool for improving governance mechanisms.

The ILO is currently undertaking several technical cooperation projects on migrant domestic workers, focussing on research to enhance the knowledge base and providing direct assistance to tripartite constituents as well as migrant domestic workers' organisations.

Ways to improve protection and working conditions of migrant domestic workers

Challenges faced by migrant domestic workers can best be addressed through coordinated measures taken by governments in collaboration with social partners and other stakeholders including migrant domestic workers themselves. Some key areas of action are suggested below.

1. A comprehensive framework of protection at destination. Countries of destination have an obligation to protect the rights of workers irrespective of their nationality. National labour legislation must guarantee access of migrant domestic workers to effective protection from exploitation and abuse and to equality of treatment. Workers should similarly have access to complaint and redress mechanisms. Recognising the challenges of law enforcement in this specific sector and the unique situation of migrant women, innovative measures (e.g. hot lines in different languages, migration information and assistance centres) could be put in place to better protect them. Workers organisations and consular authorities of countries of origin have a role to play in providing workers with information, legal counselling and support services in their language of origin. Migration policies and procedures should also be reviewed. Often de-linked from employment and labour policies,

and restrictive or cumbersome, these could de facto push migrant domestic workers in a situation of irregularity and greater exposure to abuse.

- 2. Cooperation between countries of origin and destination.** Bilateral agreements or memoranda of understanding between countries of origin and destination are important instruments to complement national legislation and provide for better or more specific protection of migrant workers. Such agreements provide for organised and regular labour migration between countries of origin and destination with a view to avoiding irregular movements, excessive costs in migration and exploitative conditions. They can also be instrumental to address gaps in sectors that are often not covered in national labour codes, such as the domestic sector. These instruments should have provisions on the working conditions of the migrant domestic workers (contracts of employment before departure, working hours, daily and weekly rest, remuneration, access to healthcare facilities, etc.) in line with ILO Convention No. 189 and other relevant conventions. For these agreements to be effective, they should include provisions for mutual and/or independent monitoring and evaluation.
- 3. Regulation of private recruitment agencies.** Regulation of private recruitment agencies in both countries of origin and destination is vital for securing decent working and living conditions for migrant domestic workers. Entry to the recruitment industry is in many countries restricted through a licensing system, which allows the authorities to limit recruitment to companies that have the resources and capacity to recruit migrants under decent conditions, and to suspend or cancel licenses for violations of regulations. This system is

however costly and hard to enforce, and monitoring and enforcement mechanisms are required to ensure that the regulatory framework is implemented adequately.

- 4. Trade union collaboration.** Trade unions can develop cooperation agreements that give migrant domestic workers the opportunity for support and follow-up via the trade unions of the receiving countries. An example is the cooperation agreement between the Senegalese and Mauritanian labour confederations, the CNTS (Confédération Nationale des Travailleurs Sénégalais) and CGTM (Confédération Générale des Travailleurs de Mauritanie). The agreement establishes a liaison committee to ensure a mutual follow up and support in case of violation of migrant domestic workers' rights.
- 5. Pre-departure information.** These trainings should include information on the laws and regulations of the destination countries, sensitisation to culture and language, and migrant workers' rights. They could also provide contact details of embassies in the destination countries, NGOs and trade unions providing support for migrant domestic workers.
- 6. Facilitate access to social security of the destination countries.** Access to health care and portability of benefits if necessary, should be guaranteed to migrant domestic workers.
- 7. Facilitate enrolment in language courses and orientation in cultural practices.** Communication with the household members is essential for the integration of migrant domestic workers and the protection of their rights. Lack of language skills does not help migrant domestic workers accomplish their duties in an effective way and makes them more vulnerable to discrimination.

Questions for discussion

1. What are the main challenges faced by migrant domestic workers from your country or working in your country?
2. Share one example of a good bilateral or regional policy or programme implemented to promote and protect the rights of migrant domestic workers. How did this concretely impact domestic workers (i) prior to departure; (b) while in the country of employment; or (c) on return to country of origin?
3. Do you have specific examples of how legal and social protection has been provided to migrant domestic workers? What are the key challenges?
4. Can you provide an example of how social partners or civil society organisations in your country have been involved in providing support services to migrant domestic workers, either before departure or while working in country of destination?

¹ African Union, The Migration Policy Framework for Africa, AU Executive Council, 9th Ordinary Session, 25-29 June, Banjul, The Gambia, EX.CL/276 (IX).

² OECD, International Migration Outlook, OECD, SOPEMI, 2010

³ Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

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