



ILO Regional Office for the Arab States

Regional Tripartite Conference on ILO Convention No. 189: Raising Awareness and Sharing Knowledge on Decent Work for Domestic Workers Cairo-Egypt

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Background Note: Extending Labour Laws - Ensuring Compliance

A new global trend towards better regulation of domestic work

A growing number of countries around the world are putting in place labour laws protecting domestic workers. Since 2011, when ILO Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation No. 201 were adopted, several additional countries have been engaged in such legal reform or have already adopted new provisions on domestic work (e.g. Bahrain, Bolivia, Chile, Jamaica, Philippines, Spain, Thailand, Vietnam or Zambia). These recent legislative initiatives have touched upon key areas of protection for domestic workers, such as working time, minimum wages, employment contracts, social security, prohibition of forced labour, and sexual harassment and other abuses.

Labour law coverage for domestic workers, a majority of whom are women, is recognized as indispensable for ensuring their human and labour rights. The ILO supervisory bodies see the inclusion of domestic workers under the scope of labour laws as essential for the implementation of several ILO Conventions, particularly those concerning fundamental principles and rights at work. Similarly, the United Nations human rights treaty bodies and the recommendations made under the Universal Periodic Review have highlighted the need for better protection of domestic workers under labour legislation.

Why extend labour laws to domestic workers?

First and foremost, labour law protects the worker, who is the weaker party in the employment relationship. This is even more critical in the case of migrant domestic workers. Laws serve to define and articulate rights and they create a legal basis for workers to claim these rights in case of non-respect.

But employers of domestic workers also benefit from regulation: it provides guidance for managing the employment relationship in a mutually satisfactory manner. Clear and transparent rules governing the domestic work-employment relationship can prevent misunderstandings and disputes.

Extending labour legislation to cover domestic work in line with international standards addresses the long-standing unequal treatment of this group of workers. Given that domestic workers are predominately women, it is also a step towards gender equality in the world of

work. Importantly, regulating and enforcing labour standards for domestic workers contributes to preventing human trafficking for labour exploitation.

In the Arab region, domestic workers, unlike other foreign workers, remain excluded from coverage of labour laws (see Background Note No. 1). The ILO estimates that in 2010 there were at least 2.1 million domestic workers in the Middle East, some two-thirds of them being women.

Is enacting labour laws that cover domestic workers sufficient?

Enacting laws that set labour standards governing domestic work is essential for achieving the goal of decent work for all. However, what ultimately matters is that all women and men engaged in domestic work enjoy, in practice, the rights set out in national legislation. The State's responsibility in this field does not only relate to defining legal standards but also to taking measures for bringing about compliance.

Making decent work a reality for domestic workers requires designing and implementing measures to promote and ensure compliance, including through public enforcement action. Compliance is best promoted and ensured through a comprehensive strategy which brings together efforts in various areas and by various actors.

What are important elements of strategies for compliance?

There is no one-size-fits-all approach for ensuring compliance with labour laws and regulations protecting domestic workers. Every country will have to take the measures required by their prevailing circumstances. At the same time, it is possible to identify certain key elements for compliance strategies. Where domestic workers are largely women migrant workers, which is the case in the Arab region, compliance strategies need to take into account the special situation of these workers and integrate a gender perspective.

Information, awareness raising and empowerment

Targeted action is needed to reach out to employers and the public at large to raise awareness of the social and economic value of domestic work. Such efforts aim at better recognition of domestic work as real work that is governed by laws and public policies. Awareness raising can be pursued, for instance, through media campaigns, educational curricula and human rights education programmes. Efforts to make domestic work visible and recognized should also include the development of appropriate statistical data on domestic work to feed into awareness raising efforts and to serve as a basis for future policy-making.

Clear and accessible information for employers on applicable laws and regulations, including information on consequences and sanctions in case of non-compliance, should be developed and widely disseminated. Similarly, it is crucial that workers are aware of their rights and such information should be offered to them in a language they can understand. Ensuring compliance is indeed a matter of empowering workers through information, but also of easing their isolation through promoting organization and representation.

Government bodies, diplomatic missions, workers' and employer' organizations, NGOs and the media can all play an important role in disseminating information and promoting awareness. Private employment agencies and employers can be required by law to provide information on the rights of domestic workers and available mechanisms to address non-compliance.

Formalizing the employment relationship

Where employers and workers know and understand their mutual rights and obligation, and where domestic work is performed under formalized employment relationships, compliance is more likely to be achieved. This is why Convention No. 189 favours the conclusion of written

contracts and provides that migrant domestic workers should receive the contract before travelling to the country of employment. Contracts should be in a language the worker understands and set out key terms and conditions of employment. Other ways of formalizing the employment relationship are payslips or other methods of proving payment, working time records and the registration of contracts with a public body. Such measures can assist in settling disputes, should they arise.

Effective dispute settlement and enforcement

Although compliance strategies should aim to prevent disputes through better awareness, information and formalized employment relationships, they also need to include effective mechanisms for solving employment disputes and the enforcement of relevant laws and regulations.

When establishing mechanisms, institutions and procedures for enforcement and dispute settlement, one needs to keep in mind that domestic workers, in particular migrant domestic workers, are in need of support and assistance to access and benefit these mechanisms. Allowing foreign domestic workers to change employers is a powerful tool to achieve better compliance; non-compliant employers are well aware that under current arrangements workers are unlikely to complain. At the same time, existing labour administration bodies may need training to handle labour disputes in the domestic work sector.

Different types of mechanisms for dispute settlement, monitoring and enforcement exist:

- *Conciliation and mediation.* Uncertainty about the respective rights and obligations of the parties to the employment relationship are frequent in the context of domestic work. Mechanisms providing information, advice and recommendations on how to address disagreements, accessible by both workers and employers, can help to settle disputes in a consensual manner while preserving the employment relationship.
- *Ongoing supervision.* Labour administration authorities, including labour inspectorates, are responsible for supervising the application of labour laws. This role should also extend to laws and regulations applicable to domestic workers. The labour administration can rely on a range of different methods, such as requiring contract registration, asking employers to submit documentation (e.g. proof of payment), requesting meetings with domestic workers and/or employers, and cooperation with unions and NGOs. Where inspection visits by labour inspectors in homes are envisaged, an appropriate legal framework needs to be in place to ensure respect for the inviolability of the home (e.g. through a requirement to seek consent of the household, or judicial authorization).
- *Complaints-based enforcement.* Judicial and administrative complaints mechanisms, as a matter of last resort, serve to ensure the worker's right to access to justice and to obtain enforceable decisions. Ensuring domestic worker's effective access to courts and tribunals is called for in Convention No. 189. This poses particular challenges where the residency status of the migrant is linked to the existence of an employment relationship. Such measures are necessary to provide workers with access to justice, even after the employment relationship has ended.

Dispute settlement and enforcement mechanisms: examples

In **Argentina**, the Domestic Work Tribunal of Buenos Aires functions as a court of first instance for employers and domestic workers. Its procedures are simple, favouring verbal accounts and conciliation. The Tribunal has a specific mandate providing advice and raising awareness.

In **Ireland**, the National Employment Rights Agency (NERA) is currently implementing a pilot programme on compliance in the domestic work sector. Letters are sent to employers of domestic workers seeking inspection appointments, followed-up by phone calls. Most employers agree to receive a NERA inspector in their home, while in other cases meetings are held elsewhere. NERA inspectors speak foreign languages or employ interpreters to communicate with workers if required.

In **Jordan**, contracts of employment of domestic workers must be placed on record with the Ministry of Labour. When the Ministry receives information or complaints regarding violations of worker's rights, it may summon the employer and worker with a view to reaching a settlement. Home inspections regarding the domestic worker's accommodation can be made with the consent of the householder. However, where the consent is not given, the Ministry of Labour may take "other appropriate measures".

In **Uruguay**, a specialized section of the labour inspection services is charged with monitoring compliance with domestic workers' legislation. Home inspections may be done when there is a "presumed violation" of labour or social laws and with the authorization of a competent judicial authority.