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Organization

# ► Securing decent work for nursing personnel and domestic workers, key actors in the care economy

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## ► Securing decent work for nursing personnel and domestic workers, key actors in the care economy

The Nursing Personnel Convention (No. 149)  
and Recommendation (No. 157), 1977, and  
the Domestic Workers Convention (No. 189)  
and Recommendation (No. 201), 2011

**Third item on the agenda: Information and reports  
on the application of Conventions and Recommendations**

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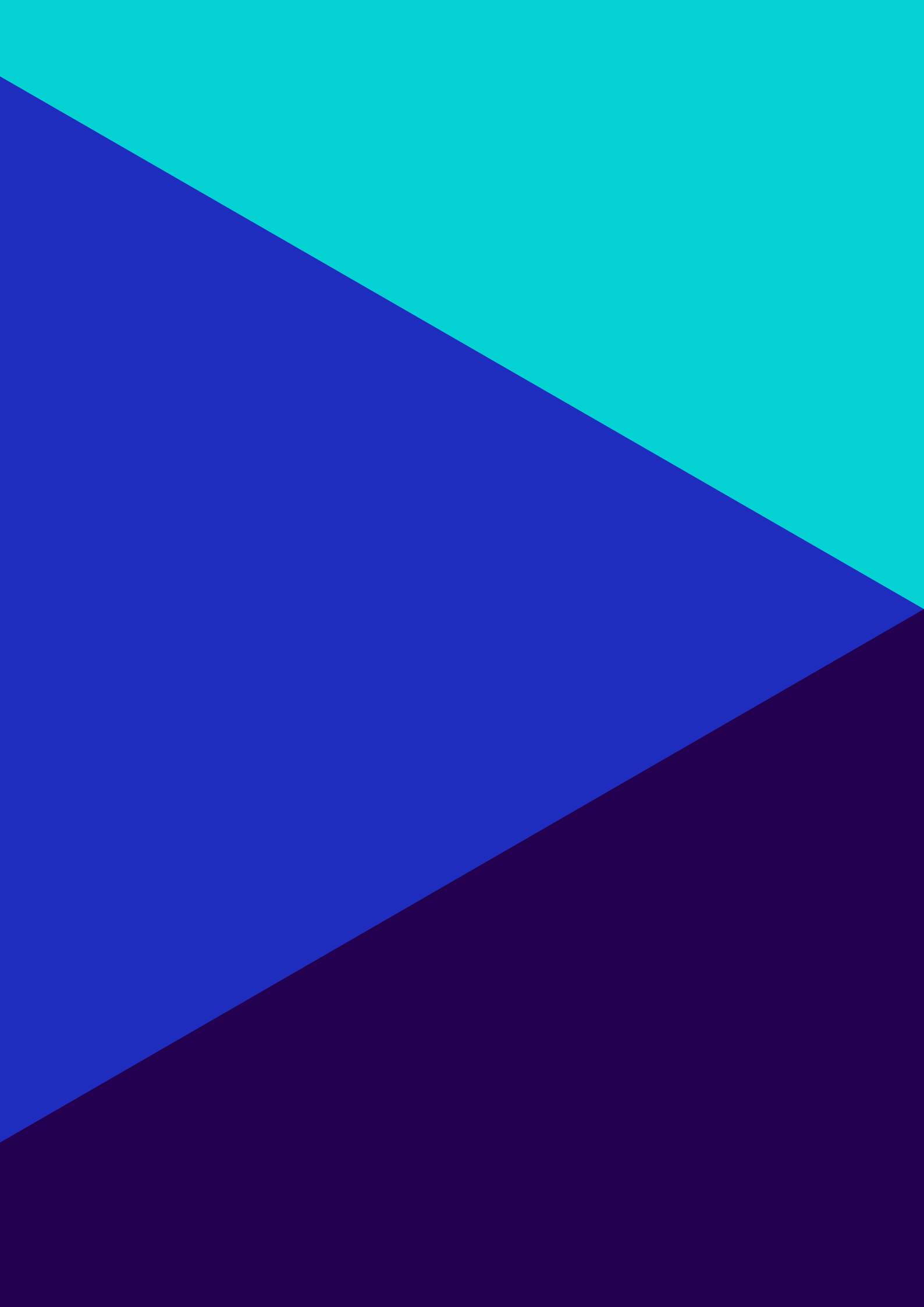
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# Introduction

## ► I. Preliminary remarks

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1. In accordance with article 19 of the ILO Constitution, at its 334th Session in October–November 2018, the Governing Body decided that the General Survey to be prepared by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2020 and submitted to the International Labour Conference (Conference) in 2021 would examine four instruments related to decent work for care economy workers in a changing economy: the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011.<sup>1</sup> The General Survey would provide a comprehensive survey of the situation in law and practice with respect to care workers, as related to Conventions Nos 149 and 189.

2. Following its decision, the Governing Body requested the Office to prepare a draft report form for the General Survey in relation to the above-referenced instruments. At its 335th Session in March 2020, the Governing Body adopted the report form to be used by Member States for their reports under article 19 of the ILO Constitution for the preparation of the General Survey. Subsequently, with the outbreak of the COVID-19 pandemic, the 110th Session of the Conference in 2020 was postponed. As a result, the preparation of the present General Survey was also put off until the 92nd Session of the CEACR (November–December 2021). The General Survey will be presented to the Conference in 2022.

3. In light of the discussions in the Governing Body in October–November 2018 and March 2019, the Committee of Experts has examined the instruments on nursing personnel and domestic workers in the broader context of care work, which includes work involving direct and indirect care (such as childcare, health care, cleaning, cooking and other personal care tasks such as dressing and bathing), and is performed primarily by women. For this reason, as requested by the Governing Body, special attention has been paid to the gender dimension of nursing, domestic work and care work more generally, as well as to the nature and impact of changes in the structure and organization of work in the care economy.<sup>2</sup>

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1 ILO (2018). “Minutes: Legal Issues and International Labour Standards Section”, Governing Body, 334th Session, Geneva, GB.334/LILS/PV, para. 69.

2 GB.334/LILS/PV, para. 59, p. 15.

## ► II. The instruments

4. This is the first occasion on which the instruments on nursing personnel (Convention No. 149 and Recommendation No. 157) and decent work for domestic workers (Convention No. 189 and Recommendation No. 201) have been the subject of a General Survey.

### Nursing personnel

5. The Committee observes that the examination of the instruments on nursing personnel is particularly timely. The World Health Organization (WHO) designated 2020 as International Year of the Nurse and the Midwife, not only to commemorate the 200th anniversary of the birth of Florence Nightingale,<sup>3</sup> but also to highlight the vital role played by nurses and midwives in providing health services to their communities, and the urgent need to address persistent shortages in the global nursing workforce. Shortly thereafter, the outbreak of the COVID-19 pandemic in early 2020 further increased global attention on the vital role played by nursing personnel and other health workers.

6. On 7 April 2020, the WHO, in collaboration with the International Council of Nurses (ICN) and the global Nursing Now campaign, launched the first State of the world's nursing report entitled *State of the world's nursing 2020: Investing in education, jobs and leadership*,<sup>4</sup> which highlights the strong political commitment to universal health coverage (UHC) globally and the central role of nurses in its achievement, at a time when the emergency preparedness and resilience of national health systems is being tested by the pandemic.

7. Subsequently, in November 2020, the WHO designated 2021 as International Year of Health and Care Workers in recognition of the millions of health and care workers at the frontlines of the COVID-19 pandemic. In particular, the WHO recognized the difficult conditions in which health and care workers, including nursing personnel, provide their services. The pandemic, which has stretched health systems to breaking point in many countries, has exacerbated the difficult working conditions and decent work challenges already faced by these workers. Within this framework, the WHO launched the campaign "Protect. Invest. Together", which highlights the urgent need to invest in the health workforce.<sup>5</sup>

8. The need to ensure an adequate number of qualified nursing personnel is greater than ever, particularly in light of the pandemic. At present, the global nursing workforce totals 27.9 million, of whom 19.3 million (69 per cent) are professional nurses, 6 million (22 per cent) are associate professional nurses and 2.6 million (9 per cent) are not classified. Nursing personnel make up the largest occupational group in the health sector, accounting for some 59 per cent of the health workforce.<sup>6</sup> Nursing is also highly feminized, with women representing 89 per cent of the nursing workforce globally.<sup>7</sup>

9. The demand for health workers is expected to almost double by 2030, significantly exacerbating existing shortages of qualified nursing personnel.<sup>8</sup> The ICN estimates a global shortfall of 13 million nurses by 2030, compounded by an ageing workforce and the impact of COVID.<sup>9</sup> Disparities in the number of nursing personnel between regions are also significant, largely

3 Florence Nightingale (12 May 1820–13 August 1910) is generally considered to be the founder of modern nursing. In recognition of her work, the Nightingale Pledge is taken by new nurses, and the Florence Nightingale Medal was named in her honour. International Nurses Day is celebrated annually on her birthday.

4 WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020: Investing in education, jobs and leadership*, Geneva.

5 WHO. "[Year of Health and Care Workers 2021](#)".

6 WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., p. xiii.

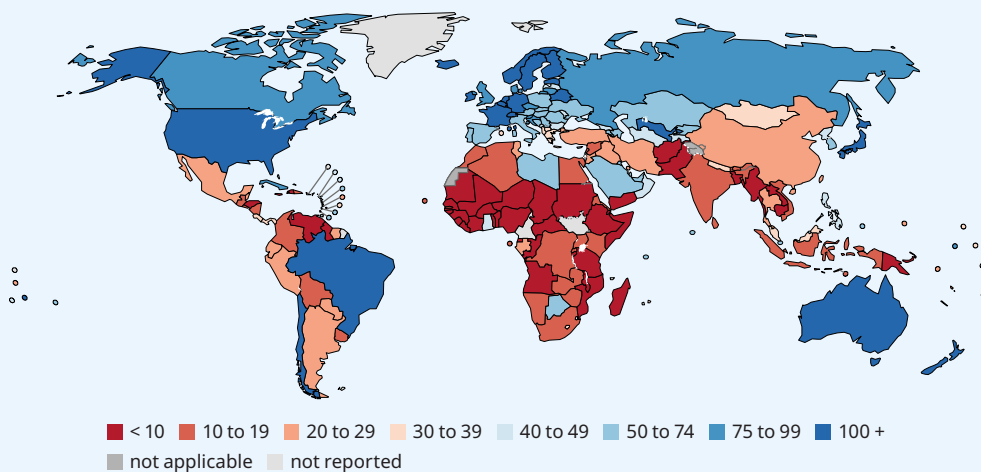
7 *ibid.*, p. 41.

8 ILO, OECD and WHO (2018). *Five-year Action Plan for Health Employment and Inclusive Growth (2017–2021)*, Geneva, para. 3.

9 ICN (2021). "[The Global Nursing shortage and Nurse Retention](#)", p. 1.

Figure 0.1

**Density of nursing personnel per 10000 population in 2018**

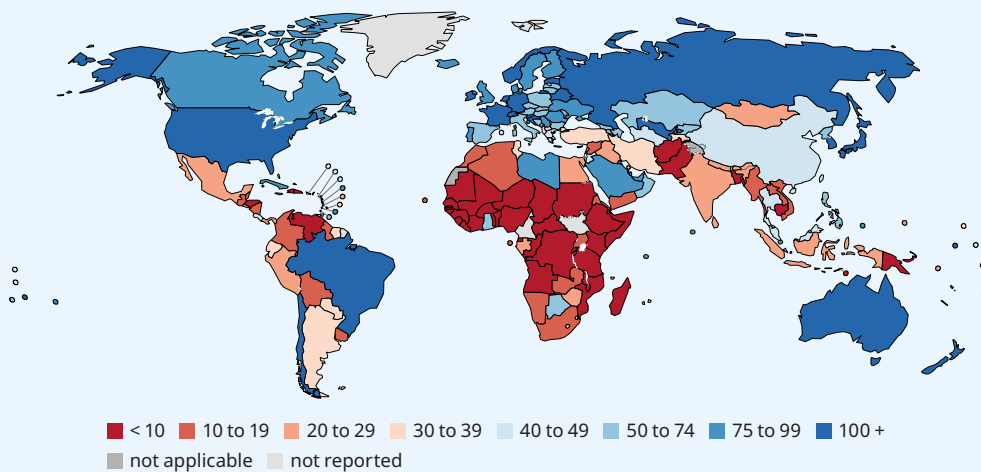


**Note:** "Nursing personnel" includes nursing professionals and nursing associate professionals

**Source:** WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., p. 41.

Figure 0.2

**Projection of nursing personnel density per 10000 population in 2030  
(global distribution)**



**Note:** "Nursing personnel" includes nursing professionals and nursing associate professionals.

**Source:** *ibid.*, p. 62.

due to migration flows from lower- to higher-income regions. For example, the average number of nurses per 10,000 population in the Africa region is 8.7, compared to 83.4 in the Americas.<sup>10</sup> Over-reliance on migrant nursing personnel by higher-income countries to the detriment of the supply on nursing personnel in lower-income countries has the potential to undermine the health systems of the latter countries, leading to severe understaffing and poorer health outcomes.<sup>11</sup>

10. Moreover, healthcare and health systems globally are undergoing rapid changes that are affecting nursing personnel directly, including changes in the burden of disease, with more long-term conditions and non-communicable diseases, as well as the emergence of new diseases, as shown by the COVID-19 pandemic. Further changes include: the increased demand for healthcare from ageing populations in many countries; the migration of health workers, largely from lower- to higher-income countries; the impact of climate change on health, such as heat stress, increased respiratory and cardiovascular diseases, injuries and premature deaths related to extreme weather events; the increasing commodification of health services, which places a premium on measurable procedures; global and national policies that prioritize health and have helped make it the largest and fastest-growing sector in the global economy;<sup>12</sup> and scientific and technological advances, such as artificial intelligence (AI) and robotics.<sup>13</sup> Nurses and other health workers face many common issues and concerns as a result of these changes, while there are also important differences between countries in education, training and development needs.

## Domestic workers

11. The inclusion of the Domestic Workers Convention (No. 189) and its corresponding Recommendation No. 201, 2011, in this General Survey is also extremely fitting, as it is now over ten years since their adoption by the Conference. The General Survey examines the evolution of law and practice in Member States over the past decade and identifies the good practices developed and implemented at the national level to give effect to the principles of the instruments.

12. The COVID-19 pandemic has brought into sharp relief the vulnerability of the over 75.6 million domestic workers around the world.<sup>14</sup> Most domestic workers (76.2 per cent) are women,<sup>15</sup> who are often in informal employment. Many domestic workers are also migrants, who are frequently in informal and precarious employment, thereby increasing their risk of exploitation and abuse. Moreover, migrant female domestic workers, who often come from disadvantaged population groups, are more likely to be victims of intersectional or multiple forms of discrimination, compounding their vulnerabilities.

10 For instance, , foreign-born nurses represented 16.4 per cent of the nursing workforce from 2015 to 2016. In absolute terms, the United States remains the main country of destination for migrant doctors and nurses (45 per cent of all foreign-born health workers who practise in OECD countries). See: OECD (2019), [Recent Trends in International Migration of Doctors, Nurses and Medical Students](#), OECD Publishing, Paris, pp. 17 and 20. See also: WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., p. 37.

11 *ibid.*, p. xiii.

12 WHO (2016). [Working for health and growth: Investing in the health workforce](#), Report of the High-Level Commission on Health Employment and Economic Growth (HEEG), Geneva, p. 21.

13 All-Party Parliamentary Group on Global Health (2016). [Triple impact: How developing nursing will improve health, promote gender equality and support economic growth](#), London, p. 11.

14 ILO (2021). [Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 \(No. 189\)](#).

15 *ibid.*, p. 12.

13. The ILO estimates that, as of June 2020, at least 72.3 per cent of domestic workers have been significantly affected by the pandemic in terms of their health and working conditions.<sup>16</sup> Domestic workers have been particularly vulnerable to exposure to COVID-19, often lacking adequate access to personal protective equipment (PPE), and to health services and social protection in the event of infection.<sup>17</sup> Physical distancing is difficult, if not impossible, for many domestic workers due to the nature of their work in family households, particularly where their duties include the provision of personal care for ill, elderly or disabled family members. The risk of exposure to the virus is higher for domestic workers who are employed by multiple households.

14. During the pandemic, many migrant live-in domestic workers were summarily dismissed by their employers due to fear of infection, and many were left on the streets to fend for themselves, frequently with no means of returning to their home countries.<sup>18</sup> In contrast, other migrant live-in domestic workers were forbidden to leave their employers' homes, and as a result were often required to work excessive hours, while being unable to take leave or dispose freely of their rest time.<sup>19</sup> Overall, domestic workers, both nationals and migrants, have been severely affected by the pandemic, which has exacerbated existing problems, including poor working conditions, violence and abuse.<sup>20</sup>

### ► III. Reports received by region

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15. The Committee notes that 115 Member States have provided reports on the position of national law and practice in relation to matters addressed in the instruments examined in the General Survey: 25 reports from Africa, 23 from the Americas, 6 from the Arab States, 21 from Asia and the Pacific and 40 from Europe and Central Asia.<sup>21</sup> Full details on the reports due and received are set out in Appendix II. According to its usual practice, the Committee has also taken into account the observations submitted by 14 employers' and 135 workers' organizations. This list is set out in Appendix III.

### ► IV. Ratifications

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16. Convention No. 149 came into force on 11 July 1979. To date, it has been ratified by 41 Member States, most recently by *El Salvador* on 30 January 2013.

17. Convention No. 189 came into force on 5 September 2013. It has been ratified by 35 Member States. In the preceding four years, Convention No. 189 has been ratified by 11 countries: *Antigua and Barbuda, Brazil, Grenada, Madagascar, Malta, Mexico, Namibia, Norway, Peru, Sierra Leone* and *Sweden*.

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16 ILO (2020). "[Impact of the COVID-19 Crisis on Loss of Jobs and Hours among Domestic Workers](#)", 15 June 2020.

17 ILO (2021). [Promoting employment and decent work in a changing landscape](#), Addendum to the General Survey, International Labour Conference, 109th Session, Geneva, para. 66.

18 Bahar Makooi and Sam Ball (2020). "Abandoned by Employers, Ethiopian Domestic Workers are Dumped on Lebanon's Streets", France24 (video), 25 June 2020.

19 ILO (2021). [Promoting employment and decent work in a changing landscape](#), Addendum to the General Survey, op. cit., Part VI, paras 266–270.

20 *ibid.*

21 The Committee examined a total of 142 Government reports: 115 initial reports and 26 supplementary reports.



18. Eleven countries have ratified both Conventions: *Ecuador, Finland, Guyana, Italy, Jamaica, Malta, Norway, Philippines, Portugal, Sweden and Uruguay.*

**19. *The Committee encourages Member States to consider the possibility of ratifying one or both of these crucial instruments to provide effective protections for these essential workers. In this regard, the Committee recalls that countries may avail themselves of technical assistance from the Office should they wish to do so.***

20. A list of the Member States that are currently bound by the provisions of these instruments is contained in Appendix I.

## ► V. Objectives and structure

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21. In accordance with the focus of the General Survey, as indicated by the Governing Body in its discussions, Chapter 1 begins by providing a general overview of the care economy, what it is and who care workers are. It examines the characteristics of the care economy workforce, including the highly feminized nature of care work, the large number of care workers in informal employment and the large migration flows among care workers.

22. Chapters 2 to 6 then examine the provisions of Convention No. 149 and Recommendation No. 157, as well as current issues relating to nursing personnel. Chapters 7 to 10 examine the provisions of Convention No. 189 and Recommendation No. 201, addressing the specific challenges faced by domestic workers, particularly migrant women domestic workers.

23. Chapters 11 and 12 examine issues of particular relevance to either nursing personnel or domestic workers, or both. Chapter 11 focuses on issues related to the migration cycle of nurses and domestic workers, while Chapter 12 addresses freedom of association and collective bargaining rights.

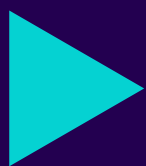
24. Chapter 13 looks at the potential of the instruments, examining prospects for the ratification of Conventions Nos 149 and 189, as well as the challenges and obstacles to ratification and implementation reported by Member States. It also focuses on good practices and lessons learned in the implementation of the instruments.

25. In light of the diverse matters addressed by the four instruments examined, the Committee has examined only certain issues in depth. Other topics have been examined in less detail and to the extent that they are relevant to the underlying subject of decent work for care economy workers in a changing economy.

26. The Committee hopes that this General Survey will contribute to the development and effective implementation of measures by ILO Member States, in consultation with the social partners, to improve the situation of nursing personnel, domestic workers and other care economy workers, promote respect for their labour rights and ensure their access to decent work.







1

# Achieving decent work for all care economy workers

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## ► I. Overview of the care economy

27. All of us need care at different times in our lives. We need care to survive in infancy, when we suffer an accident or illness, whether the impact is short, chronic or long-term, to support families and households, and to ensure the best possible quality of life as we age, including at the close of life. Care work is also crucial to ensure the health, education and well-being of the current and future workforce and adequate care for the growing numbers of older people in many countries. In addition, given that women perform the majority of unpaid care work in households, paid care work offers possibilities for women to enter, advance and remain in the workforce.<sup>22</sup> Care workers, whether paid or unpaid, are essential to meet this basic and multidimensional human need for care in many forms and through a broad range of tasks.

28. The Committee notes that the provision of care is changing in many different and profound ways, driven by demographic shifts, such as the growing elderly population in many countries and the increasing number of people living with non-communicable diseases. As care needs continue to expand and diversify, the care economy offers enormous potential for employment generation, particularly for women, who represent the vast majority of care workers. However, care work throughout the world is characterized by a range of decent work deficits, largely attributable to gender-biased undervaluation and discriminatory factors.<sup>23</sup>

29. The Committee notes that, according to the 2021 ILO Global estimates on international migrant workers, there is a growing labour demand in the health and domestic work sectors. Many care workers, including nursing personnel and domestic workers, are also migrants and predominantly female.<sup>24</sup> Migration flows of these workers are characterized by a confluence of social factors. These typically include race, colour, sex, religion, national extraction or social origin, *inter alia*, coupled with the historical undervaluation of care work. These factors contribute to the precarious, discriminatory or abusive situations that migrant care workers may encounter at any stage of the migration process.<sup>25</sup> The Committee observes that there is high economic demand for nurses and domestic workers in high-income countries, leading to South-North migration. On the other hand, there are also emerging migration patterns from Asia, Africa and the Caribbean to other regions and countries, as well as South-South migration amongst countries within the same region.<sup>26</sup> The benefits and risks of migration for nursing personnel and domestic workers will be examined in detail in Chapter 11.

22 ILO (2018). *Care work and care jobs for the future of decent work*, Geneva, p. 6. See also: S. Razavi (2013). "Households, families, and social reproduction", in G. Waylen (ed.): *The Oxford handbook of gender and politics* (Oxford, Oxford University Press), pp. 289–312; S. Rai, et al. (2012). "Depletion: The Costs of Unpaid Domestic Work", E-International Relations, 19 March 2012; T. Bhattacharya (ed.) (2017). *Social Reproduction Theory: Remapping Class, Recentering Oppression*, Pluto Press, London.

23 ILO (2016). *Providing care through cooperatives: Survey and interview findings*, Geneva, p. 4.

24 ILO (2021). *ILO global estimates on international migrant workers: Results and methodology – Third edition*, Geneva, p. 13.

25 A.R. Hochschild (2000). "Global care chains and emotional surplus value" in A. Giddens and W. Hunton (eds): *On the edge: Living with global capitalism*, (London, Jonathan Cape), pp. 130–146; N. Yeates (2004). "Global care chains", in *International Feminist Journal of Politics*, Vol. 6, No. 3, pp. 369–391; R.S. Parrenas (2000). "Migrant Filipina domestic workers and the international division of reproductive labor", in *Gender and Society*, Vol. 14, No. 4, pp. 560–580.

26 For instance, with regard to migration of nursing personnel, see: WHO (2020). *State of the world's nursing 2020*, p. 27.

## ► II. Care workers: Who they are and what they do

30. Care work may be broadly defined as the “activities and relations involved in meeting the physical, psychological and emotional needs of adults and children, old and young, frail and able-bodied.”<sup>27</sup> Care work may take the form of direct care (nursing services, child care or personal care for ill persons or those with disabilities, as well as the elderly) or indirect care (which may include cooking, cleaning and other services).<sup>28</sup> Both direct and indirect care services may be provided in a range of settings, including hospitals, clinics, long-term care facilities or other institutions, as well as in private households.<sup>29</sup>

31. Care work is delivered at the intersection of health and social systems.<sup>30</sup> According to the ILO report *Care work and care jobs for the future of work*, the global care workforce includes care workers in care sectors (health, education and social work), care workers in other sectors and domestic workers, as well as non-care workers in care sectors (such as hospital cleaners and cafeteria workers).<sup>31</sup> The care economy includes a broad range of workers who differ markedly in terms of education levels, skills, sectors and remuneration, including doctors, psychologists, dentists and nurses, to childcare workers, community health workers, social workers and personal care workers.<sup>32</sup> It also includes persons who offer unpaid care work in their work. The variety of services provided, the heterogeneity of the workforce and the use of different terminologies, such as community health workers, personal carers, long-term carers, home care workers, and elder care workers, including those workers who provide care under various systems of health and medicine,<sup>33</sup> make a common understanding and description of care workers and the care economy challenging.

### 1. The gender dimension of the care economy

32. It is estimated that there are approximately 381 million care workers globally (249 million women and 132 million men).<sup>34</sup> The care workforce is highly feminized, with some two thirds being made up of women, rising to over three quarters in the Americas, Europe and Central Asia.<sup>35</sup> Globally, women account for over 70 per cent of the healthcare workforce. Moreover, nursing remains the largest occupational group in the health sector,<sup>36</sup> and is the most feminized healthcare occupation in the vast majority of countries (see Chapter 6).

27 ILO (2018). *Care work report*, op. cit., p. 6.

28 ILO (2019). “Proposed form for reports to be requested under article 19 of the ILO Constitution in 2020”, Governing Body, 335th Session, Geneva, March 2019, [GB.335/LILS/3](#), p. 5.

29 The General Survey examines the working conditions of paid care workers in the context of the selected instruments. Therefore, unpaid care work is only addressed with regard to volunteer nursing personnel, covered under Article 2 (3) of Convention No. 149.

30 ILO (2020). “[COVID-19 and care workers providing home or institution-based care](#)”, ILO Sectoral Brief, Geneva, p. 1.

31 ILO (2018). *Care work report*, op. cit., p. 167.

32 *ibid.*, p. 8.

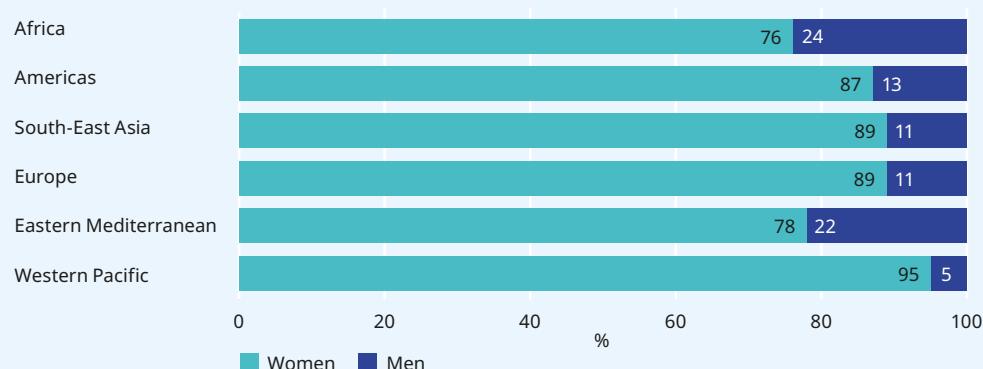
33 WHO (2019). *WHO Global Report on Traditional and Complementary Medicine*, Geneva, 2019, p. 48. See also WHO (2013). *WHO Traditional Medicine Strategy, 2014-2023*.

34 ILO (2018). *Care work report*, op. cit., p. 168.

35 *ibid.*, p. 8.

36 ILO (2020). “[COVID-19: Are there enough health workers?](#)”, ILOSTAT, 3 April 2020.

Figure 1.1

**Percentage of women nursing personnel, by WHO region (percentages)**

Source: WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., p. 41.

33. In view of the highly gendered nature of the care economy, the situation of care workers, including nursing personnel and domestic workers, mirrors the situation faced by women workers generally around the world, which is characterized by gender segregation and segmentation, poor working conditions, low remuneration, gender pay gaps, as well as an increased risk of violence and harassment.<sup>37</sup> For instance, in the *United States of America*, a study found that, even though nine out of ten nurses are women, male nurses earn higher salaries, with a wage gap of about US\$5,000 a year, which has remained constant over the past 25 years.<sup>38</sup>

The International Trade Union Confederation (ITUC) observes that gendered perceptions of women's roles in society, particularly in relation to caregiving, contribute to occupational segregation and the undervaluation of the work that women perform, both within and outside the care sector. Moreover, governments and international institutions do not yet recognize or value unpaid work within the household in the development of economic and social policies, despite the fact that they contribute between 20 and 60 per cent of gross domestic product (GDP).<sup>39</sup>

The ITUC points out that, although women represent the overwhelming majority of the global health and social care workforce, they are often over-represented in low-paying occupations and remain under-represented in managerial and decision-making positions within the health and care sectors. Therefore, it emphasizes that special measures should be adopted and implemented, including through collective bargaining,

<sup>37</sup> ILO (2018). *Care work report*, op. cit., p. 166.

<sup>38</sup> L. Rapaport (2015). "[Even in nursing, no equal pay for women](#)", in *Scientific American*, 24 March 2015.

<sup>39</sup> The Committee refers to the 20th International Conference of Labour Statisticians (ICLS), which has included such unpaid work that is often invisible in labour statistics and therefore not calculated. The [UN International Classification of Activities for Time-Use Statistics 2016 \(ICATUS 2016\)](#) includes care work as part of the guidelines for time-use surveys.

to encourage the recruitment, retention and promotion of women and under-represented groups to senior and leadership positions in health and care services. Such measures may include: anti-discrimination and equal treatment policies and measures; measures on maternity protection and on promoting work–family reconciliation; objective, gender-neutral job evaluations in the setting of pay scales, pay transparency and other equal pay measures; as well as measures for career progression. They should address both vertical and horizontal gender occupational segregation.

Adequate public investment in the care economy would reduce these shortfalls and stimulate economic growth through the creation of millions of quality jobs. Research commissioned by the ITUC shows how investing 2 per cent of GDP in public care services can create millions of quality jobs, narrow the gender pay gap, reduce overall inequality, help redress the exclusion of women from decent jobs and contribute to inclusive economic growth.

## 2. The importance of care economy workers to achieving the United Nations Sustainable Development Goals

34. Care work is a major source of employment globally, particularly for women, and demand for care services continues to grow. According to the ILO Care work report, the global care workforce represents 11.5 per cent of total global employment,<sup>40</sup> and it is estimated that increasing investment in the care economy to achieve the Sustainable Development Goals (SDGs) will result in a total of 475 million jobs by 2030, or 117 million new jobs.<sup>41</sup> The State of the world's nursing 2020 report notes that nurses are critical to the global effort to achieve the SDGs.

Nurses “make a central contribution to national and global targets related to a range of health priorities, including universal health coverage, mental health and non-communicable diseases, emergency preparedness and response, patient safety, and the delivery of integrated, people-centred care”.<sup>42</sup>

35. Nursing personnel and other healthcare workers contribute to SDG 3 on ensuring healthy lives and promoting well-being, as well as SDG 4 on education, SDG 5 on gender equality, and particularly target 5.4 on access to public services, and SDG 8 on full and productive employment and decent work. The goal of achieving universal health coverage embedded in target 3.8 means that there will be even greater demand for nurses and midwives. In addition, as the health and social sectors are a large and growing source of jobs, employment in health and care offers a key pathway to decent work and economic growth (SDG 8) and constitutes a major opportunity to make progress towards the achievement of several other SDGs.

36. The Committee notes the enormous contribution of domestic workers to the health and well-being of families and households, as well as to the participation of both women and men in the labour market. Domestic workers frequently provide personal care services in their employers' homes, thereby contributing to access to care and quasi-nursing services in many cases. The Committee further notes that, in countries where the qualifications of foreign nursing personnel are not recognized, migrant nurses often provide in-home care (Chapter 11).

40 ILO (2018). *Care work report*, op. cit., p. xxxviii.

41 *ibid.*, pp. xli, 2–3, 251.

42 WHO (2020). *State of the world's nursing 2020*, op. cit., p. xii.

The International Organisation of Employers (IOE) observes that the examination of the instruments on nursing personnel and domestic workers is very timely as the world is facing a global health pandemic. Since the outbreak of COVID-19 in early 2020, healthcare and medical services have remained one of the most essential services around the world. It adds that healthcare workers, especially those working in hospitals, have been on the front lines fighting the virus, which has infected over 199 million people and taken more than 4.24 million lives worldwide.

The IOE points out that the recently adopted ILC Resolution on COVID-19 recovery recognizes the importance of healthcare workers in its paragraph 11.B(c), in which the tripartite constituents commit, *inter alia*, to:

“provide that workers at higher risk of exposure to COVID-19 and those at greater risk of negative health impacts, such as healthcare workers and all other front-line workers, including those working transnationally, have access to vaccines, personal protective equipment, training, testing and psychosocial support, and that they are adequately remunerated and protected at work, including against excessive workloads.”<sup>43</sup>

The IOE indicates that this reference firmly confirms the relevance and significance of the categories of workers addressed in the four instruments for examination in the 2022 General Survey.

### ► III. The situation of nursing personnel and other healthcare workers

37. The Nursing Personnel Convention, 1977 (No. 149), and its accompanying Recommendation No. 157, call on ILO Members to develop and implement measures that provide nursing personnel with education and training appropriate to the exercise of their functions and employment and working conditions designed to attract women and men to the profession and retain them in it.<sup>44</sup> As indicated in Chapters 2 to 6, nursing personnel, including nurses and midwives, auxiliary nurses, nurses’ aides and other categories of nursing personnel, are affected by a number of decent work deficits, including understaffing, excessive working hours, shift work, low remuneration and lack of career prospects, as well as higher risk of work-related discrimination, violence and harassment.

38. Moreover, the challenges faced by nursing personnel and other healthcare workers have been exacerbated by the COVID-19 pandemic, leading to high rates of attrition that have compounded the difficulties experienced at the national level in ensuring an adequate quantity and quality of nursing and healthcare services. The Committee notes that healthcare workers who care for COVID-19 patients have experienced extremely long working hours, fatigue, depression, burn-out and anxiety, occupational injuries and illnesses (including exposure to COVID-19), stigma and discrimination, and physical and psychological violence, and the risk of exposing their families and loved ones to infection. In particular, nursing personnel and other healthcare workers belonging to specific groups have been subject to an increased incidence of verbal and physical harassment and abuse during the pandemic, with significant consequences for their mental and physical well-being.

43 ILO (2021). *Resolution concerning a global call to action for a human-centred approach from the COVID-19 crisis that is inclusive, sustainable and resilient*, 17 June 2021, para. 11.B(c).

44 Convention No. 149, Article 2(a) and (b).



*United Kingdom of Great Britain and Northern Ireland* – A recent survey found that one third of black, Asian and ethnic minority (BAME) staff in mental health services (32.7 per cent) in the National Health Service (NHS) have been subject to harassment, bullying or attacks by patients, relatives or members of the public, and the rate is more than one-in-four (28.9 per cent) for BAME workers throughout the NHS.<sup>45</sup> According to the NHS Staff Survey 2020, 26.7 per cent of all staff experienced at least one incident of bullying, harassment or abuse in the last 12 months.<sup>46</sup>

39. In light of these challenges, it is crucial for an effective and sustained effort to be made to maintain the physical and mental health of nursing personnel and other healthcare workers. The WHO has called for infection prevention and control (IPC) measures for COVID-19 to be supplemented by occupational safety and health (OSH) measures, psychosocial support, adequate staffing levels and clinical rotation to help ensure safe and healthy working environments and respect the rights of care workers to decent working conditions.<sup>47</sup>

40. In this regard, the Committee wishes to highlight the situation of certain specific categories of care workers providing healthcare services, who are subject to difficult and dangerous working conditions and often lack adequate protection.

## 1. Community health workers

41. Community health workers (CHWs) are an often overlooked component of the health workforce, made up of women. They are often untrained or undertrained, understaffed and underpaid, or indeed unpaid, and are frequently recruited to compensate for shortages of health workers, particularly in rural areas and remote communities.<sup>48</sup>

42. The Committee notes that CHWs play a vital role in many countries in providing assistance, care and health information to individuals and households in both urban and rural areas. They create a bridge between providers of health, social and community services and communities which may face difficulties in accessing these services. As members of the communities in which they live and provide health-related services, they enjoy a unique position of trust and have access to social networks and contacts that public health employees may lack. Communities in urban and rural areas in many countries rely heavily on CHWs for the delivery of primary healthcare. In particular, communities in remote and hard-to-reach areas that have little access to public healthcare services and facilities often depend on CHWs to provide primary care, including midwifery care, basic healthcare facilities and vital health information. The responsibilities assigned to CHWs have evolved and expanded over time, and now include delivering vaccinations.

43. The call made in the 1978 Declaration of Alma-Ata<sup>49</sup> on primary healthcare for greater community participation paved the way for a significant expansion in the CHW workforce,

45 A. Gregory (2021). “[Third of BAME staff in NHS mental health services face racist abuse at work](#)”, in *The Guardian*, 9 September 2021.

46 United Kingdom National Health Service (NHS) (2021). “[NHS Staff Survey 2020. National results briefing](#)”, March 2021.

47 WHO (2020). “[Coronavirus Disease 2019 \(COVID-19\): Situation Report – 82](#)”, 11 April 2020; and Centers for Disease Control and Prevention (CDC). “[Infection Control Guidance: Summary of recent changes](#)”, updated as of 10 September 2021.

48 B. Roy (2020). “[Community Health Workers: Gender, Work and Remuneration – A Study of South Asia](#)”, Occasional Paper No. 66, Centre for Women’s Development Studies, New Delhi.

49 WHO. [Declaration of Alma-Ata](#), International Conference on Primary Health Care, Alma-Ata, USSR, 6–12 September 1978.

with CHWs taking on an increasing range of functions, from health promotion to care management, and meeting a significant proportion of maternal and child healthcare needs in many countries. However, the Committee notes that CHWs are often engaged to compensate for a shortage of healthcare workers, particularly in low-income countries where healthcare personnel shortages may be more severe.<sup>50</sup>

**44.** The Committee notes that Public Services International (PSI) and its affiliates have provided extensive information on the situation and conditions of CHWs. According to this information, the income of CHWs varies between countries and may include allowances, performance-based incentives and honorariums, as well as fixed wages. In some cases, CHWs receive task-based payments, for example for each baby immunized or each set of vitamins delivered. CHWs often work excessive hours and are responsible for providing care to more people than they can manage or are paid for. Their workloads have increased as a result of the COVID-19 pandemic.<sup>51</sup> Moreover, CHWs are frequently exposed to verbal abuse, physical, mental and sexual harassment and violence. During the COVID-19 pandemic, they have also faced heightened stigmatization and discrimination. A major concern for CHWs, including those who have worked in some cases for several decades, is the lack of pension benefits or health insurance. Moreover, despite the reliance on CHWs, decisions and policies relating to them are largely made without their involvement. In certain countries, they are not recognized as regular employees and do not therefore have the right to organize, establish unions and engage in collective bargaining.

In *Nepal*, the Nepal Health Volunteers Association (NEVA) and the Health Volunteer Organisation of Nepal (HEVON) refer to the national strategy for female community health volunteers (FCHV), who number some 50,000 under the responsibility of the Ministry of Health and Population. FCHVs are not paid the minimum wage, and only receive some US\$250 a year (compared to US\$250 a month earned by public sector nurses), as well as allowances for transport and communication, which are often insufficient. FCHVs face excessive workloads. However, as they are considered to be “volunteers”, they are not treated as workers, have no access to benefits and are not protected by limits on hours of work.

In *Pakistan*, the All Sindh Lady Health Workers and Employees Union (ASLHWAEU) and the All Sindh Lady Health Workers Association Employees Union (ASLHWA) describe the Lady Health Workers (LHW) programme launched by the Ministry of Health in 1994. There are now 110,000 LHWs employed in provincial and local public health departments, who engage with urban and rural communities and provide family planning, prenatal and neonatal care, immunization and other vital health services for children and women in the community. However, LHWs do not benefit from working-time protection or social security coverage, and are vulnerable to harassment and violence. Moreover, during the COVID-19 pandemic they did not receive adequate training in prevention and were not provided with personal protective equipment. They have faced additional challenges during the pandemic due to the fear among community members that LHWs might spread infection.<sup>52</sup>

<sup>50</sup> ILO (2018). *Care work report*, op. cit., p. 183.

<sup>51</sup> PSI (2021). “[Fighting COVID on the Frontlines: Stories of South Asia’s Community Workers](#)”.

<sup>52</sup> *ibid.*, p. 18.



## 2. Workers engaged in providing personal care and long-term care

45. Personal care workers normally provide direct personal care for daily activities, such as feeding, bathing and carrying out basic health checks. They are especially prevalent in long-term care provision in institutional settings and in home-based and community care. Over half (56 per cent) of personal care workers are employed in home-based care, where they may be required to work night shifts, split shifts or short hours, often on precarious contracts with poor benefits and working conditions.<sup>53</sup>

46. Care workers providing long-term home or institutional care have been neglected for many years and their work is significantly undervalued. A large proportion of personal care workers are women and many are migrants. They are often badly paid and work extended hours. In a number of countries, many care home workers are employed under part-time or temporary work arrangements, or casual or zero-hour contracts, which leave them with unpredictable or excessive hours of work, little or no job security or access to employment-related benefits, including paid sick leave, and little or no social protection. They are also likely to be exposed to discrimination and OSH risks.<sup>54</sup>

In *Austria*, the trade union Die Daseinsgewerkschaft indicates that it has been successfully campaigning for more staff in the health and social services sector at the municipal level. It adds that, in Vienna, more than 1,300 new positions were created in the health and social services sector in 2020.

47. The COVID-19 pandemic has accentuated these risks. Care homes have been acutely affected by the pandemic, with care home residents accounting for up to half of infections and a high proportion of fatalities in *Australia*, the *United States*, and some countries in Europe. Their carers have also been disproportionately affected. Thousands of care workers, including nurses, have been exposed to the virus and infected. For example, as of 22 April 2020, 5,832 nursing home care workers in *Germany* had been infected with COVID-19, while a total of 39,294 COVID-19 cases among the staff of long-term care facilities were reported in *France* as of 11 May 2020.<sup>55</sup> An analysis of COVID-19 related deaths by occupation in England and Wales shows that persons working in social care, including care workers, have significantly higher fatality rates from COVID-19 than people of the same sex and age in the general population.<sup>56</sup>

53 ILO (2018). *Care work report*, op. cit., p. 180.

54 *ibid.*

55 Aerzteblatt (2020). "[COVID-19: Ein Drittel aller Toten in Alteneinrichtungen](#)", 22 April 2020.

56 Office for National Statistics. "[Coronavirus \(COVID-19\) related deaths by occupation, England and Wales: deaths registered between 9 March and 25 May 2020](#)".

## ► IV. Domestic workers as care workers

48. Domestic workers form part of the care economy, and often provide both direct and indirect care for households.

The ILO report, *Making decent work a reality for domestic workers*, notes that the work performed by healthcare workers and domestic workers frequently overlaps and may be categorized differently, depending on the circumstances:

Understanding domestic work as care work can result in some occupations landing at the intersection of person care/social care, healthcare and domestic work, particularly when they work for or through a service provider. This area of overlap has implications for how they are accounted for in national statistics. For example, personal care workers who provide services for households through a service provider are likely to be counted, statistically speaking, as care workers in the health and social work sector, whereas if they provide the same services when employed directly by households, they may be counted as domestic workers. Yet, in both cases, they would fall within the scope and definition of domestic workers” in Convention No. 189.<sup>57</sup>

PSI observes that the line between domestic work and home care work is blurred in many countries. This is often linked to the insufficiency of public care provision and lack of coverage of long-term care services. PSI maintains that the existence of a large informal market for domestic work, which provides cheap alternatives to care work for households, serves to maintain poor working conditions among domestic workers and undermines the working conditions of care workers generally.

49. The situation of domestic workers, as defined in the Domestic Workers Convention (No. 189) and its accompanying Recommendation (No. 201), 2011 is examined in Chapters 7 to 9. Domestic workers are subject to some of the poorest working conditions in the care workforce. In view of the nature of their work in private households, they are particularly vulnerable to exploitation and abuse. The majority of domestic workers are employed in the informal economy in precarious jobs that are poorly paid, often below the minimum wage, and which generally lack access to social protection and maternity benefits, as well as a range of other types of protection.<sup>58</sup>

50. Domestic workers are often required to provide personal care services for children, ill persons or those with a disability, or elderly family members. When domestic workers are also migrants, their status frequently leads to poor working conditions, especially for live-in workers. They may be expected to work around the clock to provide care, without private accommodation or defined rest periods.<sup>59</sup>

57 ILO (2018). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Geneva, p. 6.

58 *ibid.*

59 ILO (2018). *Care work report*, op. cit., p. 181.

CEACR – In its comments concerning *Germany*, the Committee noted the Government's indication that caregivers are defined by section 18(1)(3) of the Working Hours Act as persons living in a common household with those whom they are responsible to raise, look after or care for. They are excluded from the scope of the Working Hours Act. Because caregivers are often required to stay with their employers for long periods and often reside with them to assist them on a 24-hour basis, it is not possible to distinguish between their leisure and working time. In its observations, the German Confederation of Trade Unions (DGB) indicated that caregivers are often required to work excessive hours and are frequently on call around the clock. Migrant domestic workers are particularly vulnerable to exploitation. The DGB added that many domestic workers are not provided with their own room in the employer's household, and are often expected to stay next to their patient throughout the night.<sup>60</sup>

51. Personal care workers engaged under live-in working arrangements normally fall within the scope of Convention No. 189, but in practice are frequently unprotected.<sup>61</sup>

PSI indicates that in some countries care workers are not paid for overnight shifts when they sleep on the premises and are required to be available when needed.<sup>62</sup>

52. The Committee notes that both national and foreign domestic workers have been profoundly affected by the COVID-19 pandemic in terms of their health status as well as their working conditions. Given that they perform their work in the homes of others, and frequently in multiple homes, and are in close contact with household members and items through which they may be exposed to infection, they are also front-line workers. There have been cases of live-in domestic workers being required to work longer hours during the pandemic to keep their employers' homes particularly clean, while some have been prohibited from leaving the home at all due to the fear that they might bring the virus back.<sup>63</sup> The ILO estimates that up to 73.7 per cent of domestic workers have been significantly affected by the crisis, with many losing their jobs.<sup>64</sup>

60 CEACR – *Germany*, C.189, direct request, 2016.

61 ILO (2018). *Care work report*, op. cit., p. 181.

62 S. Norris (2021). "[Revealed: The pay disparities in social care](#)", in *Byline Times*, 22 March 2021.

63 Women in Informal Employment: Globalizing and Organizing (WIEGO). "[DOMESTIC WORKERS: Frontline Care Workers at Risk](#)" (blog).

64 ILO (2020). "[Impact of the COVID-19 crisis on loss of jobs and hours among domestic workers](#)", 15 June 2020.

## ► V. Improving the working conditions of care economy workers

53. The Committee notes that the efforts of workers' organizations in a number of countries have resulted in recognition of the status and working conditions of certain categories of care economy workers, including CHWs and care home workers.

In *Pakistan*, PSI reports that lady health workers (LHWs) were regularized in 2012 following collective action by the All Sindh Lady Health Workers and Employees Union (ASLHWA) and the All Sindh Lady Health Workers Association Employees Union (ASLH-WAEU). They now receive the minimum wage, although payment of their wages is often delayed. Moreover, they face difficulties in obtaining medical leave and allowances, and retired LHWs have not yet begun to receive their pensions.

*New Zealand* – On 18 April 2017, the Government announced an historic NZ\$2 billion pay equity settlement for care and support workers in aged and disability residential care and home and community support services.<sup>65</sup> The settlement originated from a pay equity claim brought before the Employment Court under the Equal Pay Act 1972 by the union E tū on behalf of care workers. E tū claimed that there had been systemic undervaluation of care and support work because it was mainly performed by women. The Employment Court allowed the claim to be tested in court, but the Government decided to settle the case out of court and to include home and disability care workers, as well as aged residential care workers in the settlement. The resulting Care and Support Worker (Pay Equity) Settlement Act, adopted unanimously in 2017, led to workers receiving pay rises of between 15 and 50 per cent, depending on their qualifications and expertise. The settlement is being introduced over a five-year period.

65 *New Zealand*, Ministry of Health, "[Care and support workers pay equity settlement](#)".

## ▶ VI. Contribution of the care economy to comprehensive social protection systems

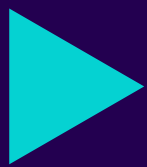
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54. The Committee notes that the establishment of a legal entitlement to care through specific social security provisions creates an opportunity to influence and shape the care economy and to secure sustainable statutory financing for care services, as well as decent work for care workers. The Committee recalls the Conclusions concerning the second recurrent discussion on social protection adopted by the International Labour Conference in June 2021<sup>66</sup> relating to measures to promote universal social protection. The Conclusions call on Members, with the support of the Organization, and in accordance with national circumstances, to “invest in the care economy to facilitate access to affordable and quality childcare and long-term care services as an integral part of social protection systems”.

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<sup>66</sup> ILO (2021). [Conclusions concerning the second recurrent discussion on social protection \(social security\)](#), International Labour Conference, 109th Session, Geneva, paras 13(g) and 17(f).





## 2

## Nursing personnel: Definitions and scope of application

## ► I. Background

55. From its earliest years, the ILO has been concerned with the status and working conditions of nursing personnel and other health professionals. As early as 1930, the International Labour Conference (Conference) adopted the Hours of Work (Hospitals, etc.) Recommendation, 1930 (No. 39), which called for the application of international labour standards on working time to, among others, nursing personnel.<sup>67</sup> The Conference subsequently adopted the Medical Care Recommendation, 1944 (No. 69), which includes a section on the working conditions and status of doctors and members of allied professions, such as nursing personnel. These instruments reflected the view that, to ensure the adequate quality of medical care, it is necessary to ensure the appropriate status and working conditions of nursing personnel, doctors and other health workers.<sup>68</sup>

56. In the ensuing decades, the ILO Advisory Committee on Salaried Employees and Professional Workers examined issues related to the status and working conditions of nurses. In 1960, the ILO, in collaboration with the World Health Organization (WHO), produced a study on the employment and working conditions of nurses.<sup>69</sup> In 1967, the Advisory Committee adopted a resolution inviting the ILO Governing Body “to request the Director-General to submit to it, after consultation with the World Health Organisation, proposals for the preparation of an international instrument on the status of nursing personnel, with special reference to nurses”.<sup>70</sup>

57. The ILO’s interest in the status and working conditions of nursing personnel is in many respects aligned with the mandate of the WHO, the objective of which is “the attainment by all peoples of the highest possible level of health”.<sup>71</sup> Nurses are essential to achieving this objective. At its First Session in 1948, the World Health Assembly recognized the crucial importance of nursing care, and nursing and midwifery development is a priority of its human resources for health programme.<sup>72</sup> In 1949, the second World Health Assembly decided to establish an Expert Committee on Nursing to advise it on the training of nurses as well as on nursing services. At its First Session in 1950,<sup>73</sup> the Expert Committee considered the worldwide lack of nursing personnel, which “hampers progress of practically all health programmes”. The Committee highlighted certain factors and attitudes that interfere with the recruitment of candidates for nursing positions. Due to certain social attitudes, nurses were not always accorded high social esteem, and their work required a high level of personal sacrifice. Other factors included relatively unattractive salaries and the number and organization of working hours.<sup>74</sup>

58. In 1966, at its Fifth Session, the Expert Committee on Nursing once again discussed the shortage of all types of nursing and midwifery personnel, the existence of many different methods for ensuring their adequate supply, and the need for training, recruitment and employment standards. The Expert Committee also emphasized that, in addition to the recognition of nursing qualifications, other factors influencing the quality of nursing personnel include conditions of work, lack of opportunities for skills and career development, and the

67 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), International Labour Conference, 61st Session, Geneva, p. 1.

68 Recommendation No. 69, Part IV, Working Conditions and Status of Doctors and Members of Allied Professions, paras 56–65.

69 ILO (1960). *Employment and conditions of work of nurses*, Studies and Reports, New Series, No. 55, Geneva.

70 ILO. *Official Bulletin*, Vol. LI, No. 3, July 1968, p. 285, “Resolution (No. 63) concerning the Employment and Working Conditions of Nursing Personnel, with Special Reference to Nurses”; ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 1.

71 Article 1 of the *Constitution of the World Health Organization*, 1946.

72 WHO (2017). *Nursing and midwifery in the history of the World Health Organization 1948–2017*, Geneva, Executive Summary, p. ix.

73 WHO (1950). *Expert Committee on Nursing: Report on the First Session*, WHO Technical Reports Series, No. 24, Geneva, p. 4.

74 *ibid.*, pp. 6 and 10.



need to establish a rational system of nursing personnel, which would ensure leadership to guide the development of nursing as a whole.<sup>75</sup>

59. In November 1973, an ILO-WHO Joint Meeting on the Conditions of Work and Life of Nursing Personnel met in Geneva with a view to developing standards for adequate personnel policies and working conditions for nursing personnel. The Joint Meeting adopted a set of conclusions<sup>76</sup> forming a suggested code of good practices. Both organizations recommended that these conclusions should be incorporated into an international labour instrument.<sup>77</sup>

60. Acting on this joint ILO-WHO proposal, at its 193rd Session (May–June 1974), the ILO Governing Body decided to include a standard-setting item on the “Employment and conditions of work and life of nursing personnel” on the agenda of the 61st Session (1976) of the Conference with a view to the adoption of a Recommendation.

61. Following a double discussion process, in June 1977, the Conference adopted the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977. An annex to the Recommendation contains suggestions concerning practical application to assist in the implementation of the instruments. The Conference also adopted a resolution recalling that nursing personnel are covered by many ILO Conventions and Recommendations that establish general standards concerning employment and conditions of work.<sup>78</sup>

## ► II. Rationale for the nursing personnel instruments

62. Nurses and midwives play a key role in the delivery of essential health services and constitute the backbone of national healthcare systems, making up the largest component of the healthcare workforce in most countries. As noted in the preparatory work for the nursing personnel instruments, the expansion of national health services in the 1970s, especially in developing countries, resulted in a spectacular rise in the numbers of nurses and midwives.<sup>79</sup> In addition, the adoption of the primary healthcare (PHC) approach by WHO Member States in the 1970s resulted in significant changes to the organization and delivery of health services at the national level. As a consequence, nursing personnel assumed greater relevance for delivering PHC services, as health planners sought to achieve an appropriate mix of skills for the delivery of people-centred care.<sup>80</sup>

63. With the growth of health services and programmes, the demand for nurses had increased exponentially, but in almost all countries, there was a shortage of nursing personnel in terms of both numbers and qualifications. The undervaluation and often low social status of nursing

75 WHO (1966). *Expert Committee on Nursing: Report on the Fifth Session*, WHO Technical Report Series, No. 347, Geneva, p. 11.

76 ILO-WHO (1973). *Joint Meeting on Conditions of Work and Life of Nursing Personnel* (Geneva, 19–30 Nov. 1973), Report, Doc. JMNP/1973/II.

77 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 3.

78 ILO (1977). *Record of proceedings*, Plenary, Report of the Committee on Nursing Personnel, International Labour Conference, 63rd Session, Geneva, p. 6.

79 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 5.

80 WHO (2017). *Nursing and Midwifery in the History of the World Health Organization, 1948–2017*, op. cit., p. xi.

are closely linked with the concentration of women in the profession.<sup>81</sup> Despite advances over recent decades, most of these challenges remain.

**64.** The relationship between the poor conditions of employment and work of nursing personnel and persistent shortages of nurses is complex. Issues of concern include: remuneration; working hours (which are often long and require shift work at inconvenient times); rest periods and holidays; inadequate occupational safety and health protection; insufficient social security coverage; lack of training facilities; staffing practices; the organization of work; the lack of career development opportunities; the low participation of nurses in general in the determination of their conditions; and lack of suitable accommodation in certain countries. In addition, the nursing profession is often undervalued as a result of negative stereotypes in society about the role of nursing personnel. All of these factors contribute to low job satisfaction. The freedom of action of nursing personnel is also limited by the fact that nursing is considered a vital public service and nurses and other health workers are covered by special obligations to ensure uninterrupted care services. The chronic shortage of nurses is exacerbated by the migration of nursing personnel in search of better working conditions and career development opportunities.<sup>82</sup>

**65.** Convention No. 149 and Recommendation No. 157 seek to address the multiple challenges faced by the nursing workforce with a view to protecting nurses and midwives, as well as public health. The Convention establishes minimum requirements that take into account the particular conditions in which nurses work.

Convention No. 149 calls on ratifying States to establish a national policy that ensures:

- ▶ education and training appropriate to the exercise of nursing functions;
- ▶ attractive employment and working conditions, including career prospects, remuneration and social security;
- ▶ occupational safety and health regulations adapted to the specific nature of nursing work;
- ▶ active participation of nursing personnel in the planning of nursing services and consultation on decisions that concern them;
- ▶ negotiations with nursing personnel regarding their employment and working conditions and dispute settlement mechanisms and procedures.

**66.** Since the adoption of the Convention in 1977, although there has been continued progress in the development of a qualified nursing workforce and the improvement of working conditions, many of the major constraints that led to the adoption of the Convention have persisted, while new constraints have arisen. Insecure jobs, difficult working conditions and the inequitable geographical distribution of nursing personnel contribute to the ineffectiveness of health services and affect the quality of care provided (see Chapter 6).

81 WHO (1974). *Report of the Joint ILO/WHO Meeting on Conditions of Work and Life of Nursing Personnel*, WHO Executive Board, Doc. EB54/6, Geneva, p. 3.

82 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., pp. 6–7.

### ► III. Scope of application of the instruments

#### Article 1 of the Convention

1. For the purpose of this Convention, the term **nursing personnel** includes all categories of persons providing nursing care and nursing services.
2. This Convention applies to all nursing personnel, wherever they work.
3. The competent authority may, after consultation with the employers' and workers' organisations concerned, where such organisations exist, establish special rules concerning nursing personnel who give nursing care and services on a voluntary basis; these rules shall not derogate from the provisions of Article 2, paragraph 2(a), Article 3, Article 4 and Article 7 of this Convention.

#### 1. Elements of the definition of nursing personnel

67. The definition of “nursing personnel” was the subject of considerable discussion during the preparatory work for the instruments.<sup>83</sup> While the very different practices and standards prevailing in the various Member States made it a challenge to find a clear definition that could be applied internationally,<sup>84</sup> it was generally agreed that the instruments should cover all nursing personnel in a very wide sense.<sup>85</sup> The Convention and its accompanying Recommendation therefore offer a broad definition of the term “nursing personnel” as including “all categories of persons providing nursing care and nursing services” and specify that they apply “to all nursing personnel, wherever they work”.<sup>86</sup>

68. The Committee notes that in most countries there is a legal definition of “nurse” or “registered nurse”,<sup>87</sup> and in some cases there is also a legal definition of “nursing”.<sup>88</sup> Other countries indicate that they do not have a legal definition of “nursing personnel”, but that a *de facto* definition exists in practice.<sup>89</sup>

*Honduras* – The Government indicates that there is no definition in the legislation of the term “nursing personnel”, but adds that, in accordance with the definition used in practice, the term includes all categories of personnel (qualified nurses and nursing auxiliaries) who provide nursing assistance and services in the various areas: teaching, research, direct care and administration.

83 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(2), International Labour Conference, 61st Session, Geneva, p. 64.

84 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 15.

85 The definition contained in the instruments is based on the conclusions adopted by the ILO–WHO Joint Meeting on Conditions of Work and Life of Nursing Personnel. ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(2), op. cit., pp. 63–64.

86 Convention No. 149, Article 1(1) and (2), and Recommendation No. 157, Paragraphs 1 and 2.

87 For instance, *Bahrain, Belgium, Benin, Cambodia, Cameroon, Costa Rica, Cuba, Cyprus, France, Indonesia, Israel, Japan, Kazakhstan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Madagascar, Mauritius, Morocco, Myanmar, Nepal, New Zealand, Nigeria, Philippines, Poland, Portugal, Oman, Saint Kitts and Nevis, Saudi Arabia, Senegal, Seychelles, South Africa, Spain, Suriname, Switzerland, Thailand, Togo, Trinidad and Tobago, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe*.

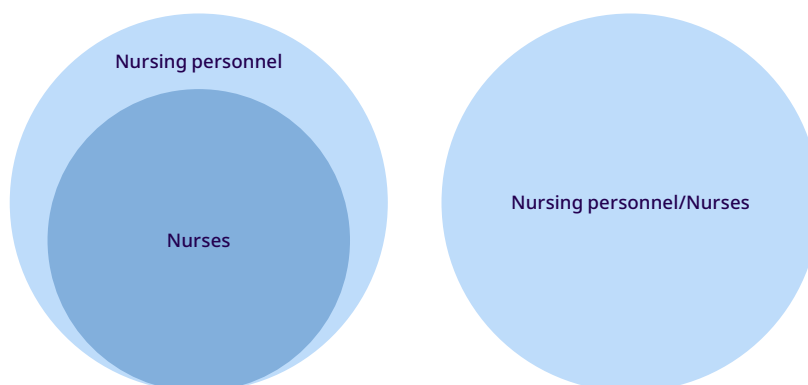
88 For instance, *Algeria, Austria, Belgium, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czechia, Denmark, Dominican Republic, Finland, Guatemala, Indonesia, Islamic Republic of Iran, Iraq, Israel, Kazakhstan, Latvia, Lithuania, Madagascar, Mali, Mauritius, Morocco, Mozambique, Nepal, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Philippines, Portugal, Qatar, Saudi Arabia, Senegal, Spain, Suriname, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Bolivarian Republic of Venezuela and Zimbabwe*.

89 For instance, *Honduras and Madagascar*.

69. The scope of the term “nursing personnel” varies widely from one country to another. In some countries, the term is limited to the various categories of nurses,<sup>90</sup> while in others it includes not only nurses, but also other categories of care workers, such as midwives<sup>91</sup> and “health visitors”.<sup>92</sup>

In *Madagascar*, the Nurses and Midwives Union indicates that the practical definition of the term “nurse” includes: any person (general nurse, mental health nurse, laboratory technician, nurse anaesthetist, electrocardiology nurse, kinesiotherapist nurse, ergo-therapist nurse, midwife, nurse specializing in ophthalmic care, nurse specializing in emergency and disaster management, nurse specializing in health frameworks, nurse specializing in community nutrition, nurse specializing in prosthetics and orthotics) who provides preventive, curative or palliative care with a view to promoting, maintaining or restoring health.

70. In other countries, the definition of “nursing personnel” or “nurse” has been embedded within a broader definition of “health workers”.<sup>93</sup>



*Norway* – The Government indicates that the term “nursing personnel” is not defined in the national legislation. However, Act No. 64 of 2 July 1999 relating to Health Personnel (the [Health Personnel Act](#)) defines “health personnel” as including a broad range of categories, including general nurse, midwife, healthcare worker, auxiliary worker and care worker (sections 3 and 48 of the Act).

71. The Committee notes that definitions of “nursing” are also found, implicitly or explicitly, in codes of ethics,<sup>94</sup> specifications of the scope of nursing practice<sup>95</sup> and educational curricula. Indeed, very few countries report not having either a definition of “nursing personnel” or “nurse”.<sup>96</sup>

90 For instance, *Burkina Faso, Niger, Pakistan and Tunisia*.

91 For instance, *Madagascar and Zimbabwe*.

92 For instance, *United Kingdom of Great Britain and Northern Ireland*.

93 For instance, *Armenia, Austria, Belarus, Ecuador, Hungary, Kiribati, Lao People's Democratic Republic, Latvia, Norway, Oman, Philippines, Saudi Arabia, Sweden, Turkey and Zimbabwe*.

94 For instance, *Netherlands* (Dutch Professional Code of Ethics).

95 For instance, in *Australia*, the Queensland Nursing Council carried out a project concerning the scope of practice of nursing personnel, which includes a definition of “nursing practice”. See: Royal College of Nursing (RCN) (2003). [Defining nursing](#), London, p. 9.

96 For instance, *Georgia*.

### (a) Persons providing nursing care and nursing services

72. Convention No. 149 and Recommendation No. 157 do not provide a definition of either “nursing care” or “nursing services”.<sup>97</sup> The Committee observes that, as highlighted during the preparatory work, since the aim of the instruments is to promote the efficiency of nursing personnel by improving their status, it is essential for the instruments to apply to “all nursing personnel, whatever their legal status in employment – workers in the private sector, civil servants or employees in the public sector, self-employed or voluntary workers – and whatever the area in which they exercise their profession”.<sup>98</sup> The instruments adopted a broad approach to include categories of personnel providing nursing care and services in accordance with national circumstances and taking into account progress in medical science and changes in the functions and numbers of the various categories of healthcare personnel.<sup>99</sup>

73. The Committee notes that nursing functions and tasks are closely related to the concept of “nursing care”. According to the conclusions adopted by the 1973 ILO–WHO Joint Meeting, nursing care “in most countries is delivered by a variety of workers who provide services ranging from simple repetitive manual skills based on predetermined patterns of response to services involving a high level of judgment in applying scientific principles and in choosing the appropriate action to be taken”.<sup>100</sup> The Committee observes that this concept varies greatly from country to country, depending on the health system, and evolves as new health knowledge is acquired and as changes occur in the functions performed by and the availability of other classes of health personnel, in the context of the national social, physical and economic situation, the characteristics of the population and its health problems.<sup>101</sup>

74. The Committee emphasizes that the establishment of a definition of “nursing care” is important for such purposes as the formulation of national policy on nursing personnel and nursing services, the specification of the scope of nursing practice, and the development of educational curricula and codes of ethics.<sup>102</sup> As indicated in the literature regarding the importance of standardized terminology to describe nursing: “If we cannot name it, we cannot control it, finance it, research it, teach it, or put it into public policy.”<sup>103</sup>

75. The Committee notes that Florence Nightingale, often acknowledged as the founder of modern nursing, identified a number of key elements characterizing nursing in 1859 and emphasized that “nursing is different from, and not a sub-division of, medicine; it focuses on the patient, not the disease; it is concerned with health, not only sickness; it is more than specific tasks”.<sup>104</sup>

76. The Committee also notes the widely known and well-accepted definition of nursing developed by Virginia Henderson in her “Nursing Need Theory”, which describes the “unique function” of the nurse.<sup>105</sup> It also includes the distinction between dependent, independent and interdependent practice, which is critical to understanding the complexity of nursing and its particular contribution within multi-professional healthcare teams.<sup>106</sup> Henderson’s definition

97 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(2), op. cit., p. 64.

98 *ibid.*

99 *ibid.*, pp. 13 and 64.

100 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., Annex I, paras 6–9.

101 WHO (1971). “[Planning and programming for nursing services](#)”, Public Health Papers No. 44, Geneva, pp. 12–13.

102 J. Clark and N. Lang (1992). “[Nursing’s next advance: An international classification for nursing practice](#)”, *International Nursing Review*, 38(4), pp. 109–112.

103 *ibid.*

104 S. Hinchliff, S. Norman and J. Schober (2008). *Nursing practice and health care: A foundation text*, 5th edition, London, Routledge, p. 20.

105 V. Henderson (1960). *Basic principles of nursing care*, London, ICN.

106 Hinchliff, Norman and Schober (2008). *Nursing practice and health care*, op. cit., p. 21.

was adopted by the International Council of Nurses (ICN) in 1960 and is still the most widely and internationally used definition of nursing.

“The unique function of nurses in caring for individuals, sick or well, is to assess their responses to their health status and to assist them in the performance of those activities contributing to health or recovery or to dignified death that they would perform unaided if they had the necessary strength, will, or knowledge and to do this in such a way as to help them gain full or partial independence as rapidly as possible.”<sup>107</sup>

77. Another definition of nursing, adopted by the American Nurses Association (ANA) in 1980 and updated several times, has also had a significant impact. This definition includes the elements set out in Nightingale’s definition, while also highlighting the process of clinical decision-making (diagnosis and treatment).<sup>108</sup>

78. In addition to adopting the Henderson definition, in 1987 the ICN established its official definition of “nursing” at the international level.<sup>109</sup> In 2002, the ICN developed a shorter edited version of its definition of “nursing”, which has been adopted by the WHO.

“Nursing encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well, and in all settings. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people. Advocacy, promotion of a safe environment, research, participation in shaping health policy and in patient and health systems management, and education are also key nursing roles.”<sup>110</sup>

79. The Committee notes that the definition of “nursing care” varies widely among countries. It nevertheless observes that all the definitions cited above contain common key elements found in the national definitions of “nursing” in many countries:

- (a) a focus on health, and not only on sickness;<sup>111</sup>
- (b) a clientele that includes people of all ages in all settings, as individuals, families and communities;<sup>112</sup> and
- (c) the identification of “human responses to actual or potential health problems” as the concern of nursing.<sup>113</sup>

80. The Committee further notes that in many countries the definition of “nursing” includes not only the provision of treatment, but also the promotion of health, as well as the prevention of illness and/or disability.<sup>114</sup>

107 Henderson (1960). *Basic principles of nursing care*, op. cit.

108 Hinchliff, Norman and Schober (2008). *Nursing practice and health care*, op. cit., p. 23.

109 See ICN, “[Nursing policy: Nursing definitions](#)”.

110 RCN (2003). *Defining nursing*, op. cit., p. 7.

111 For instance, *Austria, Bahrain, Belarus, Canada, Chile, Colombia, Czechia, Germany, Guatemala, Kazakhstan, Hungary, Indonesia, Kiribati, Mauritius, Myanmar, Niger, Paraguay, South Africa, Spain, Seychelles and Thailand*.

112 For instance, *Belgium, Colombia, Cuba, Dominican Republic, Guatemala, Indonesia, Mauritius, Nicaragua, Paraguay, Philippines, Thailand, Uruguay and Bolivarian Republic of Venezuela*.

113 For instance, *Austria, Belgium, Benin, Canada, Chile, Czechia, Norway, Poland, United Arab Emirates, United States of America and Uruguay*. See: RCN (2003). *Defining nursing*, op. cit., p. 7.

114 For instance, *Chile, Colombia, Guatemala, Paraguay, Spain and Bolivarian Republic of Venezuela*.

*Paraguay* – Section 2(a) of Act No. 3206/07 provides that “the exercise of nursing shall mean any activity which provides: (a) care of the health of the individual, family and community, taking into account the promotion of life and quality of life, the prevention of disease and participation in its treatment, including rehabilitation, irrespective of the stage of growth and development attained, with the duty to maintain to the maximum extent possible the physical, mental, social and spiritual well-being of the person”.<sup>115</sup>

*Thailand* – The Government indicates that “nursing” means “any act upon a human being concerning tending and assisting due to illness, rehabilitation, disease protection and health promotion, including assisting doctors in disease treatment by using scientific theory and the art of nursing”.

81. The Committee observes that in some countries the definition of nursing care is restricted to the provision of medical treatment prescribed by a doctor and/or physician.<sup>116</sup> ***The Committee considers that, while this element of the definition indeed governs the practice of certain categories of nurses, particularly those with fewer qualifications and less experience, limiting all nursing practice in this manner ignores the wider contribution of professional nursing to healthcare provision. These restrictions may also have the effect of preventing nurses from using their skills and qualifications to their full potential.***

*Bahrain* – Decree No. 1 of 1991 on the regulation of the occupational practice of nursing defines “nursing occupation” as being the provision of necessary nursing care for the promotion and maintenance of health and the provision of medical treatment prescribed by a licensed physician.<sup>117</sup>

82. The Committee observes that, in other countries, the definition specifies that the tasks encompassed by “nursing care” are provided “independently” by nursing personnel. The Committee notes that in this case the definition explicitly provides that a “nurse” is a professional who meets the educational, legal and administrative requirements established in the country to practice nursing, but with an appropriate degree of autonomy.<sup>118</sup>

*Hungary* – Under section 110(2) of the Health Ministry Regulation *Eütv*, persons may perform healthcare activities independently who have obtained the qualifications necessary for doing so, who have fulfilled the mandatory training obligations with respect to the given qualification and who are registered in the operational register.

<sup>115</sup> Paraguay, [Ley núm. 3206 de 2007, del ejercicio de la enfermería](#).

<sup>116</sup> For instance, *Bahrain, Benin and Senegal*.

<sup>117</sup> *Bahrain*, [Decree No. 1 of 1991 regulating the occupational practice of nursing](#).

<sup>118</sup> For instance, *Latvia, Hungary, Poland and Switzerland*.



*Switzerland* – Section 2(1) of the Federal Act on Healthcare Professions provides that, “under the terms of the present Act, persons considered to be exercising a healthcare profession within the meaning of the present Act include: (a) nurses; and ... (d) midwives”. Section 3(2)(a) on the competences of persons who have completed their studies, provides that healthcare professionals, including nurses and midwives, shall “be capable, under their own professional responsibility and in accordance with good professional practice, of providing quality services in the field of health”.<sup>119</sup>

### **(b) A person who has met the legal, educational and administrative requirements to practice nursing**

83. Article 1 of Convention No. 149 does not define “nursing personnel” or establish specific requirements to be met by such workers. However, Article 3(1) of the Convention calls for Member States to establish “basic requirements regarding nursing education and training”. The Convention thus leaves Member States free to decide on the content of such requirements. In this regard, the Committee emphasizes that the core tasks characteristic of the nursing profession must be performed by personnel who are trained for that purpose and possess the requisite competences established at the national level. Moreover, in accordance with Article 4 of the Convention, national laws or regulations “shall specify the requirements for the practice of nursing and limit that practice to persons who meet these requirements”.<sup>120</sup>

84. The Committee observes that these requirements have a dual objective: (a) to ensure the status of nursing personnel by distinguishing legally qualified and accredited or licensed nursing personnel from other care providers; and (b) to protect the public from individuals who are not adequately trained, competent or authorized to practice as nursing personnel, but who offer to provide health services that only nurses are allowed to furnish. Thus, the establishment of requirements is in the interest of both the public and nursing personnel. The nature and extent of these requirements is examined further in Chapters 4 and 5 below.

85. In this context, the Committee notes that, according to the WHO, “[t]he title ‘nurse’, in its various forms, should indicate a person who has met the legal, educational and administrative requirements to practice nursing”.<sup>121</sup> The ICN emphasizes that the title “nurse” should be protected by law and applied to and used only by those legally authorized to represent themselves as nurses and to practice nursing (see Chapter 5). In the absence of formal protection, any person could represent themselves as a nurse without having the required qualifications or competence.<sup>122</sup> Persons receiving healthcare and those employing nurses have a right to know whether they are dealing with a legally qualified nurse.<sup>123</sup> Reserving the title “nurse” for those who meet the legal standards enhances public protection by allowing the public to distinguish between legally qualified nurses and other care providers.<sup>124</sup>

86. The WHO has also highlighted the importance of establishing a legislative definition of “nursing” that includes such requirements. The Committee notes, for instance, that the WHO European strategic directions for strengthening nursing and midwifery towards Health 2020

<sup>119</sup> *Switzerland*, [Loi fédérale sur les professions de la santé](#), of 2016.

<sup>120</sup> See also Para. 13 of Recommendation No. 157.

<sup>121</sup> WHO (2020). [State of the world's nursing 2020: Investing in education, jobs and leadership](#), Geneva, para. 20.

<sup>122</sup> ICN. “Position Statement: Protection of the title ‘Nurse’”, Geneva, adopted in 1998, reviewed and revised in 2004 and 2012.

<sup>123</sup> *ibid.*

<sup>124</sup> M.M. Styles and F.A. Affara (1997). *ICN on Regulation: Towards 21st Century Models*, Geneva, p. 20.



goals includes among its objectives ensuring that the definitions of “nursing” and “midwifery” are embodied in legislation and that mechanisms are in place to safeguard the public in order to ensure that: (a) a register exists of nurses and midwives who have achieved the required level of competency to practice safely; (b) legislation is in place to define and regulate practice and conduct of nurses and midwives; (c) a supervisory authority is in place to oversee the safety, quality and professional practice in nursing and midwifery; and (d) guidelines are developed to define standards of practice and best practice.<sup>125</sup>

87. The Committee notes that the definition of “nurse” in most countries includes the following formal requirements: (a) acceptance into an educational programme or successful completion of all requirements necessary for obtaining a degree from a formal educational programme;<sup>126</sup> and (b) receipt of a license or registration following the successful completion of the programme.<sup>127</sup>

*Qatar* – Law No. 8 of 1991 regulating the practice of auxiliary medical professions specifies in Chapter Two that the nursing profession is an auxiliary medical profession. Section 3 specifies that no one may, in any capacity, practice one of the auxiliary medical professions, whether in the government sector, public sector, or in the private sector, except after having obtained a license to that effect from the committee, in accordance with the provisions of this Law. A Ministerial Decision specifies the qualifications and requirements that need to be met in order to obtain a licence for the practice of a profession.<sup>128</sup>

88. The Committee notes that the establishment of legal, educational and administrative requirements is important to distinguish between professional nursing and the nursing care provided by other persons, such as informal carers, relatives and a variety of care assistants and support workers.<sup>129</sup> The Committee observes in this regard that there are two parallel trends: increasing professionalization, alongside a process of deskilling, through which cost savings are achieved by transferring certain tasks to lower-paid aides, such as orderlies, attendants, less-highly trained nurses or community-based carers.<sup>130</sup> Reforms to modernize health services, cost-containment measures and a shortage of registered nurses have led to skill-mix changes in which work formerly undertaken by nurses is transferred to lesser-qualified (and correspondingly less well-remunerated) personnel.<sup>131</sup> It is important for patient safety, as well as for nursing as a profession, to be able to distinguish between the

<sup>125</sup> WHO (2015). *European strategic directions for strengthening nursing and midwifery towards Health 2020 goals*, WHO Regional Office for Europe, Copenhagen, p. 31.

<sup>126</sup> For instance, *Algeria, Armenia, Austria, Bahamas, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Cabo Verde, Cambodia, Cameroon, Colombia, Costa Rica, Cuba, Cyprus, Czechia, Denmark, Ecuador, Finland, France, Germany, Guatemala, Hungary, Indonesia, Islamic Republic of Iran, Iraq, Israel, Japan, Kazakhstan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Madagascar, Mauritius, Morocco, Myanmar, Nepal, New Zealand, Oman, Philippines, Poland, Portugal, Oman, Saint Kitts and Nevis, Saudi Arabia, Senegal, Seychelles, South Africa, Spain, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Turkey, United Kingdom, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe*.

<sup>127</sup> For instance, *Algeria, Armenia, Austria, Bahamas, Bahrain, Belarus, Belgium, Benin, Cambodia, Colombia, Costa Rica, Cuba, Cyprus, Czechia, Denmark, Ecuador, Finland, France, Germany, Guatemala, Hungary, Indonesia, Iraq, Ireland, Israel, Japan, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Mauritius, Myanmar, Nepal, New Zealand, Nigeria, Norway, Oman, Philippines, Poland, Portugal, Saint Kitts and Nevis, Saudi Arabia, Senegal, South Africa, Spain, Suriname, Sweden, Thailand, Togo, Trinidad and Tobago, Turkey, United Kingdom, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe*.

<sup>128</sup> *Qatar*, Law No. 8 of 1991 regulating the practice of auxiliary medical professions.

<sup>129</sup> RCN (2003). *Defining nursing*, op. cit., p. 4.

<sup>130</sup> F. Lund (2010). “*Hierarchies of care work in South Africa: Nurses, social workers and home-based care workers*”, *International Labour Review*, 149(4), pp. 495–509.

<sup>131</sup> Hinchliff, Norman, and Schober (2008). *Nursing practice and health care*, op. cit., p. 24.

role of registered nurses and the equally valuable but different role of healthcare assistants.<sup>132</sup> The distinction between professional nursing and nursing provided by others is complex and includes various factors, such as: (i) the clinical judgement inherent in the processes of assessment, diagnosis, prescription and evaluation; (ii) the knowledge that is the basis of the assessment of need and the determination of action to meet the need; (iii) personal accountability for all decisions and actions; and (iv) the structured relationship between the nurse and the patient, which incorporates professional regulation and a code of ethics within a statutory framework.<sup>133</sup>

89. The Committee further notes that such formal requirements also contribute to differentiating nursing personnel from other healthcare workers, such as physicians. The Committee observes that in some countries there has also been a trend for nursing personnel to come under pressure to perform work formerly undertaken by doctors.<sup>134</sup> Shortages of doctors, coupled with new technological developments may lead to nurses taking on complex technical procedures, including surgery and the prescription of drugs.<sup>135</sup> The complexity of healthcare needs requires collective knowledge, skills and the referral and coordination of care with other health professions. Each discipline shares some knowledge and skills with others, but also makes its own unique contribution to the collective pool. Some parts of the definition of nursing personnel may be shared with other healthcare professions, but the uniqueness of nursing lies in their combination.<sup>136</sup> ***The Committee therefore considers that definitions of the roles and scope of practice of nursing need to reflect what is distinctly nursing, while conveying the inter-professional nature of health care.***

### (c) Place of work

90. Article 1(2) of Convention No. 149 and Paragraph 2 of Recommendation No. 157 make it clear that the instruments apply to all nursing personnel, wherever they work.<sup>137</sup> This provision encompasses the entirety of the nursing profession, whether nurses work in hospitals, clinics, community services, or in any of a vast range of other settings, including factories, schools, private households, residential homes for people with dementia and long-term conditions, hospices, prisons, on the streets with homeless people and sex workers, in the armed forces in conflict zones, or in humanitarian organizations caring for victims of conflicts, refugees and internally displaced people, and those affected by human and humanitarian disasters.<sup>138</sup> In addition, as the world of work is transformed by technological innovations, many nurses may provide services remotely from their home or other settings.

<sup>132</sup> *ibid.*

<sup>133</sup> RCN (2003). *Defining nursing*, *op. cit.*, p. 4.

<sup>134</sup> *ibid.*

<sup>135</sup> *ibid.*, p. 26.

<sup>136</sup> *ibid.*, p. 4.

<sup>137</sup> The definition established by the ILO–WHO Joint Meeting in its conclusions was narrower, indicating that the term “nursing personnel” encompasses all those categories of persons referred to in definitions who function “in any health care setting where nursing care is given”.

<sup>138</sup> All-Party Parliamentary Group on Global Health (APPG) (2016). *Triple Impact: How developing nursing will improve health, promote gender equality and support economic growth*, London, 17 October 2016, p. 10.

91. The Committee notes that many countries implicitly include nursing personnel working in all types of settings in their national definitions, as these definitions either do not refer to specific settings<sup>139</sup> or, when they do, specifically include settings other than healthcare facilities, such as private households.<sup>140</sup>

*Senegal* – Section 473 of Decree No. 53-1001 of 5 October 1953 codifying the legislative texts respecting public health provides that: “any person who habitually provides the care prescribed or advised by a physician either at home, or in a public or private hospital or consultation services shall be considered as exercising the profession of nurse”.

#### (d) Employment status

92. The instruments apply to all nursing personnel irrespective of their employment status. During the Conference discussions leading to the adoption of the instruments, it was agreed that, as the aim of the instruments is to promote the efficiency of nursing services by, among others, improving the status of nursing personnel, they should apply to all nursing personnel, irrespective of their legal employment status (workers in the private sector or civil servants, employees, self-employed, agency workers or voluntary workers) and irrespective of the area in which they exercise their profession.<sup>141</sup> It was, however, acknowledged that certain provisions, such as those concerning remuneration or hours of work and rest, are by their nature difficult to apply to self-employed or voluntary workers.<sup>142</sup>

93. The Committee notes that in most countries the definition of nurse includes all nursing personnel irrespective of their employment status.<sup>143</sup>

## 2. Special rules concerning nursing personnel who provide nursing services on a voluntary basis

94. Article 1(3) of Convention No. 149 and Paragraph 3 of Recommendation No. 157 provide that the competent national authority may establish special rules concerning nursing personnel who provide nursing care and services on a voluntary basis. Unpaid nursing activities are therefore covered by the provisions of the instruments to the extent that their application is possible and justified.<sup>144</sup> For this reason, the instruments allow Member States to establish, under certain conditions, special rules with regard to nursing personnel who provide services on a voluntary basis. The rationale behind the inclusion of voluntary nursing personnel within

139 For instance, *Algeria, Austria, Bahrain, Belgium, Benin, Cambodia, Costa Rica, Indonesia, Lao People's Democratic Republic, Latvia, Madagascar, Mauritius, Nepal, Qatar, Panama, Philippines, Poland, Saudi Arabia, Saint Kitts and Nevis, Seychelles, Suriname, Thailand, Togo, Turkey and Zimbabwe*.

140 For instance, *Senegal*.

141 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(2), op. cit., p. 64. With regard to nursing personnel of the Red Cross, in its decision of 17 November 2016 concerning [Case No. C-216/15 – Betriebsrat der Ruhrlandklinik](#), the Court of Justice of the European Union (CJEU) decided that nursing personnel of the German Red Cross Nurses' Association fall within the definition of workers set out in Directive 2008/104 on temporary work. The CJEU held that the nature of the nurses' relationship with the Association was that of an employment relationship, even though they did not meet the definition of a worker under German law, as there was no employment contract between the Association and the nurses it supplied. In holding that the nurses were employees, the CJEU relied on, *inter alia*, the fact that they received a monthly remuneration calculated in accordance with the usual criteria in the medical and health care sector.

142 *ibid.*, p. 65.

143 For instance, *Australia, Denmark, Ghana, Hungary, Iraq and Turkey*.

144 ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(1), p. 10, para. 34; and ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(2), op. cit., p. 65.

the scope of the instruments is the protection of the public and of the workers concerned since, if they were excluded, they would not be expected to have qualifications and meet the minimum requirements for the practice of the profession.<sup>145</sup>

95. Article 1(3) of the Convention provides that any special rules regarding voluntary nursing personnel shall be developed after consultation with the employers' and workers' organizations concerned, where such organizations exist. Moreover, such special rules should not derogate from the provisions concerning education and training for the exercise of the functions of nursing (Articles 2(2)(a) and 3 of the Convention, and Parts II and III of the Recommendation), the laws or regulations respecting the practice of the profession (Article 4 of the Convention and Part IV of the Recommendation) and occupational health and safety protection (Article 7 of the Convention and Part IX of the Recommendation). These provisions seek to ensure that nursing personnel, including volunteer personnel, have adequate skills and competences to provide quality nursing care and services.

96. The Committee notes that many countries report that special rules respecting nursing personnel working on a voluntary basis have not been established,<sup>146</sup> while others indicate that they do not have volunteer nurses.<sup>147</sup> A number of countries report that they have adopted specific provisions regarding nursing personnel who provide services on a voluntary basis.<sup>148</sup>

*Bahamas* – The Government indicates that local and international nurses seeking to volunteer their services to assist in emergency and disaster situations in the Bahamas must email the Ministry of Health and provide a completed healthcare provider and nursing council form, together with copies of their passport, medical degree or certification, board certification, jurisdictional license to practice and curriculum to determine eligibility. If a nurse is successfully vetted to provide volunteer services, he or she is notified by email by the Ministry of Health.

*Bosnia and Herzegovina* – The Government reports that nurses and midwives may perform their activity without compensation, on a voluntary basis, in humanistic organizations, citizens' associations and foundations. These nurses and midwives have to report this activity to the competent chamber for the purposes of registration and records.

### 3. Nurse: Towards a universal definition?

97. The Committee notes that, while the term "nursing" varies widely between countries, in most countries a nurse is defined as "a person qualified and authorized to practice nursing".<sup>149</sup> The Committee therefore considers it useful to examine the definitions of the term "nurse" established in the various countries. The Committee notes in this regard that some national definitions of "nurse" are aligned with definitions established at the international level, although such standardized definitions may conceal a wide range of variations.

<sup>145</sup> ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(2), op. cit., p. 65.

<sup>146</sup> For instance, *Austria, Belgium, Benin, Bulgaria, Burkina Faso* (provision of nursing care on a voluntary basis is not permitted), *Cabo Verde, Cameroon, Cyprus, Czechia, Denmark, Dominican Republic, Germany, Guatemala, Honduras, Hungary, Kazakhstan, Lithuania, Mali, New Zealand, Niger, Nigeria, Norway, Peru, Portugal, Suriname, Switzerland, Togo, Turkey* and *Uruguay*.

<sup>147</sup> For instance, *Oman* and *Turkey*.

<sup>148</sup> For instance, *Bahamas, Bahrain, Belarus, Bosnia and Herzegovina, Chile, Islamic Republic of Iran, Ireland, Madagascar, Mozambique, Oman, Panama, Philippines, Saudi Arabia* and *Trinidad and Tobago*.

<sup>149</sup> Hinchliff, Norman and Schober (2008). *Nursing practice and health care*, op. cit., p. 26.

98. Some national definitions have been aligned with the definition adopted by the ICN,<sup>150</sup> which was endorsed by the WHO Expert Committee on Nursing at its fourth meeting in October 1958.<sup>151</sup>

The ICN defines a “nurse” as “a person who has completed a programme of basic, generalized nursing education and is authorized by the appropriate regulatory authority to practice nursing in his/her country. Basic nursing education is a formally recognized programme of study providing a broad and sound foundation in the behavioural, life and nursing sciences for the general practice of nursing, for a leadership role, and for post-basic education for specialty or advanced nursing practice.”

99. In other countries, the term “nurse” has been defined in accordance with the type of work performed and the national definition is harmonized with the ILO 2008 International Standard Classification of Occupations (ISCO-08).<sup>152</sup> The ISCO-08 includes nursing personnel under two occupational groups:<sup>153</sup> nursing professionals (ISCO code 2221) and nursing associate professionals (ISCO code 3221). The distinction drawn by the ISCO-08 between professional and associate professional nurses is made on the basis of the nature of the work performed in relation to the tasks specified in this definition. The qualifications held by individuals or that predominate in the country are not the main factor in making this distinction, as training arrangements for nurses vary widely between countries and have varied over time within countries.<sup>154</sup>

**2221 Nursing professionals** provide treatment, support and care services for people who are in need of nursing care due to the effects of ageing, injury, illness, or other physical or mental impairment, or potential risks to health. They assume responsibility for the planning and management of the care of patients, including the supervision of other healthcare workers, working autonomously or in teams with medical doctors and others in the practical application of preventive and curative measures.<sup>155</sup>

**3221 Nursing associate professionals** provide basic nursing and personal care for people in need of such care due to the effects of ageing, illness, injury, or other physical or mental impairment. They generally work under the supervision of, and in support of, implementation of healthcare, treatment and referral plans established by medical, nursing and other health professionals.<sup>156</sup>

150 Within the framework of the *Defining nursing* project, ICN members were asked whether the country in question had an official definition of nursing and whether the national nurses' association had developed a definition of nursing. The presidents of 34 ICN members replied, resulting in 30 being identified as having either an official country definition of nursing, or a definition developed by the national nurses' association (NNA), or both. In some cases, the NNA definition had been adopted as the official country definition. Of these 30 countries, 11 used the ICN definition of nursing, and key concepts used in this definition could be seen in several of the NNA definitions. See RCN (2003). *Defining nursing*, op. cit., Appendix 1, p. 19.

151 WHO (1966). *Expert Committee on Nursing: Report of the Fifth Session*, op. cit., p. 9.

152 For instance, *Cabo Verde, Greece, Lithuania and Tunisia*.

153 ISCO is a tool for organizing jobs into a clearly defined set of groups according to the tasks and duties undertaken in the job. The two latest versions of ISCO are ISCO-88 (dating from 1988) and ISCO-08 (dating from 2008).

154 ILO (2012). *International Standard Classification of Occupations: Structure, group definitions and correspondence tables*, Vol. I, Geneva, p. 128.

155 Examples of the occupations classified under ISCO code 2221 include: clinical nurse consultant, district nurse, nurse anaesthetist, nurse educator, nurse practitioner, operating theatre nurse, professional nurse, public health nurse and specialist nurse.

156 Examples of the occupations classified under ISCO code 3221 include: assistant nurse, associate professional nurse, enrolled nurse and practical nurse. *ibid.*, p. 187.

100. Some national definitions of nursing personnel are aligned with regional legislation and regulations. For instance, national definitions in Member States of the European Union are aligned with the relevant European Union Directives.<sup>157</sup> National definitions in the legislation of countries that are members of the Caribbean Community (CARICOM) are aligned with the definition set out in the CARICOM Skilled Nationals Act.<sup>158</sup>

Section 2(1) of the Caribbean Community Skilled Nationals Act provides that “nurse” means a person who has successfully completed a basic or higher level of training for nurses and who is registered with the General Nursing Council of a qualifying Caribbean Community State and is designated as a registered nurse.<sup>159</sup>

101. However, the Committee observes that the role of nurses may vary from one country to another, which emphasizes the importance of internationally standardized definitions in support of an analysis determining who constitute nursing personnel, understanding of nursing functions and planning of health services in which the contribution of nurses is optimized for the achievement of health goals.<sup>160</sup>

Public Services International (PSI) observes that defining “nursing personnel” within the healthcare workforce is made difficult due to the significant differences that exist in how occupational categories are classified between countries and the lack of harmonized information systems.

102. The absence of consensus around the use of standardized definitions, particularly in respect of the different categories of nursing personnel, has an impact on the compilation and comparability of nursing density data, which shows wide disparities in the number of nurses per 1,000 population.<sup>161</sup> ***The Committee emphasizes the importance of achieving clarity regarding the categories and types of nurses in each country as a basis for the collection and analysis of comparable data (see Chapter 3).***

103. The Committee also notes that the use of standardized definitions would have an impact on health service restructuring and changes in skill mixes, the problem of the high turnover in nursing, nurse staffing levels and patient outcomes.<sup>162</sup> In this regard, the Committee observes the progressive implementation of so-called “skill mix” changes in many countries in the context of health service restructuring and cost containment, which has seen an increase in the devolution of direct patient care to auxiliary and assistive staff, such as healthcare assistants (HCAs). This has resulted in unchecked growth in the range of roles that a nurse may be expected to fulfil, with a knock-on effect on associated job titles and descriptions.<sup>163</sup> A number of studies have raised serious concerns regarding the range

157 For instance, *Cyprus, Czechia, Denmark, Finland, Germany and Hungary*.

158 For instance, *Suriname*.

159 [The Caribbean Community Skilled Nationals Act](#), CAP. 25:04, as revised on 31 December 2017.

160 In this context, the question arises of whether a standard should be specified for the minimum number of nurses per capita. However, such an approach would presuppose the same definition of a “nurse” in all countries. See: WHO (2020). *State of the world's nursing 2020*, op. cit., para. 22.

161 E.J. Currie and R.A. Carr-Hill (2013). “[What is a nurse? Is there an international consensus?](#)”, *International Nursing Review*, Vol. 60, pp. 67–74.

162 *ibid.*

163 *ibid.*



of problems associated with uncontrolled skill mixing and scope of practice developments.<sup>164</sup> ***The Committee considers that differences in skill mixes and scope of practice cannot be generalized or interpreted beyond the specific context of each country, and that these workforce changes, in the absence of the standardized use of terms, may generate role confusion and increase workplace stress.***<sup>165</sup> ***It can also hinder wage comparison among occupational groups.***<sup>166</sup> ***The Committee therefore encourages countries to seek to improve standardization and agreement on terminology at the regional level as a basis for meaningful comparisons between countries of patterns of nursing provision and their relation, for example, to nursing workforce turnover and patient outcomes. Such standardization should include the definition of categories of nurses, job descriptions of the various occupational roles in nursing and the required level of qualifications. The Committee considers that the challenge of how such agreement could be reached should be given priority consideration by regulatory nursing bodies, nurses' associations, workers' and employers' organizations and related organizations.***

104. The Committee notes in this context that, according to the ICN position on the scope of nursing practice, national nursing organizations make a substantial contribution to defining nursing and nurses' roles that are consistent with accepted international definitions and relevant to national healthcare needs.<sup>167</sup> The ICN further emphasizes that, while "nurses, through professional, labour relations and regulatory bodies, take a central role in defining, monitoring and periodically evaluating roles and scope of practice, the views of others in society, including the public, government, health care employers and other professional groups contribute to defining nurses' scope of practice".<sup>168</sup>

105. The Committee wishes to highlight in this regard that the future role, function and scope of practice of nurses depend heavily on the policies that are currently being developed at the local, regional and international levels, including policies on workforce development, nursing education systems and the future role of nurses in health and social care.<sup>169</sup> ***The Committee considers that it is crucial for such policies to be based on a clear understanding of the nature of nursing and its potential contribution to public health. In this context, it is essential for nurses, who best understand the nature and purpose of their work, to be fully involved in the development, implementation, monitoring and review of the policies concerning the role, function and scope of practice of nursing.***

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164 See for instance: A. Adams et al. (2000). "Skill-mix changes and work intensification in nursing", *Work, Employment and Society*, 14(3), pp. 541–555; T.C. Ayre, M.F. Gerdtz, J. Parker and S. Nelson (2007). "Nursing skill mix and outcomes: A Singapore perspective", *International Nursing Review*, 54(1), pp. 56–62; S. Bach, I. Kessler and P. Heron (2008). "Role redesign in a modernised NHS: The case of health care assistants", *Human Resource Management Journal*, 18(2), pp. 171–187; V. Harmer (2010). "Are nurses blurring their identity by extending or delegating roles?", *British Journal of Nursing*, 19(5), pp. 295–299; H. McKenna, S. Keeney and F. Hasson (2009). "Health care managers' perspectives on new nursing and midwifery roles: Perceived impact on patient care and cost effectiveness", *Journal of Nursing Management*, 17, pp. 627–635; and K. Spilsbury and J. Meyer (2001). "Defining the nursing contribution to patient outcome: Lessons from a review of the literature examining nursing outcomes, skill mix and changing roles", *Journal of Clinical Nursing*, 10, pp. 3–14.

165 Currie and Carr-Hill (2013). "What is a nurse?", op. cit.

166 See in this regard: K. Tijdens, D. H. de Vries, and S. Steinmetz (2013). "[Health workforce remuneration: comparing wage levels, ranking, and dispersion of 16 occupational groups in 20 countries](#)", *Human Resources for Health*, Vol. 11 (11), 28 February 2013.

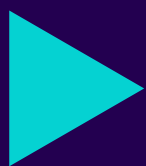
167 ICN. "[Position statement: Scope of nursing practice](#)", p. 1.

168 *ibid.*

169 RCN (2003). *Defining nursing*, op. cit., Appendix 1, p. 23.







# 3

## National policy concerning nursing personnel and nursing services

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## ► I. The crucial importance of developing and implementing national policies that promote decent work for nursing personnel and other healthcare workers

**106.** Nurses are the backbone of national health systems and are critical to the delivery of health services. They support the improvement of health outcomes and the cost-effectiveness of the services provided.<sup>170</sup> Nevertheless, there are challenges in almost all countries in recruiting, deploying and retaining sufficient numbers of well-trained and motivated nurses and midwives.<sup>171</sup>

**107.** Decent work deficits are among the key drivers behind the persistent shortages of nursing personnel. Such shortages may be further exacerbated by increased international migration flows of health workers, affecting particularly resource constrained countries, thereby undermining already vulnerable national health systems. National policies that focus on investing in quality education and training, jobs with decent working conditions, leadership and career advancement opportunities, effective labour protection and rights at work are urgently needed to attract and retain sufficient numbers of qualified nurses, midwives and other healthcare workers.<sup>172</sup>

In *Colombia*, the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT) point out that there is currently a loss of motivation to study nursing due to the low economic and social status of the profession and precarious working conditions. This situation has prompted many nursing personnel to migrate to other countries.

In *South Africa*, the Congress of South African Trade Unions (COSATU) indicates that nursing shortages, unrealistic workloads, poorly equipped facilities, unsafe working conditions and perceived unfair compensation are some of the factors affecting the work life and performance of nurses and midwives.

**108.** In 2017, the ILO Tripartite Meeting on Improving Employment and Working Conditions in Health Services explored decent work strategies to effectively address shortages of health workers. The tripartite experts observed that decent work for workers in the health sector, including nursing personnel, is fundamental to ensuring effective and resilient health systems. They emphasized that decent work is also a prerequisite to address persistent shortages of qualified nursing personnel and achieve the goal of equal access to quality healthcare.<sup>173</sup>

**109.** The World Health Organization (WHO), in the State of the World's Nursing 2020 report, observes that "[e]mployment characteristics and working conditions are major drivers of attractiveness of employment, performance and productivity, and retention of the health

170 World Health Organization (WHO) (2016). *Global strategic directions for strengthening nursing and midwifery 2016–2020*, Geneva, p. 6.

171 WHO, International Council of Nurses (ICN) and Nursing Now (2020). *State of the world's nursing 2020: Investing in education, jobs and leadership*, Geneva, p. 42.

172 WHO, ILO and OECD (2018). "Five-year Action Plan for Health Employment and Inclusive Growth (2017–2021)", Geneva, para. 4.

173 ILO (2017). "Conclusions on improving employment and working conditions in health services", Tripartite Meeting on Improving Employment and Working Conditions in Health Services, Geneva, 24–28 April, para. 1.

workforce”.<sup>174</sup> For this reason, the WHO Global Strategy on Human Resources for Health: Workforce 2030 emphasizes the need to uphold “the personal, employment and professional rights of all health workers, including safe and decent working environments and freedom from all kinds of discrimination, coercion and violence”.<sup>175</sup>

110. As noted in Chapter 1, ensuring decent work for nursing personnel is also critical to the achievement of a number of the United Nations Sustainable Development Goals (SDGs).<sup>176</sup> In addition, there is clear evidence that decent working conditions of nursing personnel have a positive impact on the quality of care and patient safety.<sup>177</sup>

111. In this respect, the Committee notes that a number of recent global policy initiatives have highlighted the critical need for investment in health and the health workforce, including nursing personnel. These initiatives point to the integrative potential of strengthening the health sector to address various SDGs simultaneously.<sup>178</sup>

#### International policy framework on health workers and nursing personnel

The High-Level Commission on Health Employment and Economic Growth (the HEEG Commission) was established by the United Nations Secretary-General in March 2016 to make recommendations aimed at stimulating and guiding the creation of at least 40 million jobs in the health and social sectors and reducing the projected shortfall of 18 million health workers by 2030, primarily in low- and lower-middle-income countries. The Commission recognized the health sector as a key economic sector and generator of jobs, particularly for women and young people, and called for urgent action to address current and projected health workforce shortages.<sup>179</sup>

At the request of the HEEG, the ILO, OECD and WHO developed the Five-Year Action Plan for Health Employment and Inclusive Economic Growth (2017–21). The ILO–OECD–WHO Working for Health programme was also adopted in 2017 to assist countries in the implementation of the Commission’s recommendation along with the Five-Year Action Plan.<sup>180</sup>

In addition, the WHO has adopted the WHO Global Strategy on Human Resources for Health: Workforce 2030 and the WHO Global strategic directions for strengthening nursing and midwifery 2021–25.

112. At its 331st Session (November 2017), the ILO Governing Body endorsed the conclusions of the 2017 Tripartite Meeting and requested the Director-General “to work with the WHO and the OECD on the implementation of the recommendations of the [HEEG Commission] and to take into account its guidance in the implementation of the Five-Year Action Plan for

174 WHO, ICN and Nursing Now (2020). *State of the world’s nursing 2020*, op. cit., para. 107. The report was launched in April 2020 to commemorate the International Year of the Nurse.

175 WHO (2016). *Global strategy on human resources for health: Workforce 2030*, Geneva, pp. 8 and 24.

176 Particularly, SDGs 3, 4, 5 and 8. See: United Nations, “[The 17 Goals](#)”.

177 ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 37. See also: G. Ryder (2021): “Safe staff save lives: The case for health workers’ safety and health”, *The overlooked pandemic. How to transform patient safety and save healthcare systems*, G20 and RLDatax, p. 27.

178 ILO (2017). *Improving Employment and Working Conditions in Health Services*, op. cit., para. 2.

179 WHO (2016). *Working for health and growth: Investing in the health workforce*, Report of the High-Level Commission on Health Employment and Economic Growth (HEEG), Geneva.

180 On 31 May 2021, the World Health Assembly (WHA) in its resolution [WHA74.14 on Protecting, safeguarding and investing in the health and care workforce](#) renewed the “Working for Health” programme mandate and tasked WHO, working with its partners ILO and OECD and Member States, to update and strengthen implementation of the Action plan on health employment and inclusive economic growth. See also: WHO (2021). “[Update from the Seventy-fourth World Health Assembly](#)”, Press release, 28 May 2021.

Health Employment and Economic Growth”. The Committee notes that the ILO therefore has a constituent-driven mandate to support Member States in the implementation of the HEEG recommendations.<sup>181</sup>

**113.** The Committee considers that the SDGs offer challenges as well as opportunities to strengthen national nursing systems and service delivery, particularly in a context in which the recent COVID-19 global pandemic has confirmed the urgency of building resilient health systems and strengthening global health security. According to the State of the World’s Nursing 2020 report, the world does not currently have a global nursing workforce commensurate with the SDG and Universal Health Coverage (UHC) targets. Not only is there a significant global shortage of nurses, but the nursing workforce that exists is unequally distributed. Over 80 per cent of the world’s nurses are in higher-income countries that account for half of the world’s population.<sup>182</sup>

**114.** At its 74th Session in October 2019, the United Nations General Assembly expressed concern at “the global shortfall of 18 million health workers, primarily in low- and middle-income countries”. It recognized “the need to train, build and retain a skilled health workforce, including nurses, midwives and community health workers, who are an important element of strong and resilient health systems”.<sup>183</sup> The achievement of UHC and leaving no one behind requires action to address demographic, geographical and skills disparities in the availability of and access to the health workforce, particularly nurses. To enhance global health, all countries must commit to supporting and investing in a qualified and motivated nursing workforce.<sup>184</sup>

## ► II. The obligation to adopt and implement a national policy

**115.** Article 2(1) of Convention No. 149 requires ratifying States “to adopt and apply ... a policy concerning nursing services and nursing personnel”. The Convention does not prescribe the form that such a policy should take, instead leaving it to each country to formulate its national policy “in a manner appropriate to national conditions”. The Convention’s flexible approach enables its provisions to be adapted to different national circumstances, requirements, legal and regulatory frameworks and practices. It nevertheless establishes a set of minimum requirements with regard to the content of the national policy and its development and adoption.

**116.** The Committee recalls that the 2017 Tripartite Meeting called on constituents in the health sector to: “define, invest in, and implement national health workforce strategies in accordance with the recommendations of the HEEG Commission with the active involvement of relevant stakeholders” and to “ensure policy coherence in international initiatives and related partnerships in line with existing international labour standards and WHO guidance tools”.<sup>185</sup> This Chapter accordingly refers to the recommendations set out in such global policy initiatives as they relate to the implementation of Article 2 of the Convention.

<sup>181</sup> ILO (2017). “[Decision on the third item on the agenda: Sectoral meetings held in 2017 and proposals for 2018](#)”, para. (e), Governing Body, 331st Session, October 2017.

<sup>182</sup> WHO, ICN and Nursing Now (2020). *State of the World’s Nursing 2020*, op. cit., p. xiii.

<sup>183</sup> United Nations (2019). “[Political declaration of the High-level Meeting on Universal Health Coverage: ‘Universal health coverage: Moving together to build a healthier world’](#)”, A/RES/74/2, 10 October, para. 23.

<sup>184</sup> WHO, ICN and Nursing Now (2020). *State of the World’s Nursing 2020*, op. cit., p. viii and para. 90.

<sup>185</sup> ILO (2017). “[Conclusions on improving employment and working conditions in health services](#)”, op. cit., para. 14(b) and (c). See also WHO (2021). *Global strategic directions for strengthening nursing and midwifery (2021-2025)*, op. cit., Geneva, point 5.1.

117. The Committee notes that in most countries the national policy on nursing personnel and nursing services is embedded within a broader national health policy or national health workforce policy.<sup>186</sup> However, stand-alone policies on nursing personnel and nursing services have been adopted in some countries.<sup>187</sup> Many Member States have also implemented a diverse range of measures addressing specific aspects of the nursing profession and nursing services, especially to regulate the practice of nursing and establish the related education and training requirements.<sup>188</sup>

### ► III. Objective of the national policy

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118. The objective of the national policy on nursing services and nursing personnel is “to provide the quantity and quality of nursing care necessary for attaining the highest possible level of health for the population” (Article 2(1)). The goal is to ensure that the right numbers of nurses are in the right place at the right time with the right skills to deliver the required care,<sup>189</sup> which requires a balance in both the numbers and distribution of the nursing workforce, relevant education and training, and measures to ensure efficiency and optimal performance.<sup>190</sup> The Committee notes that the objective of ensuring an adequate quantity and quality of nursing personnel is also embedded in the relevant global policy initiatives.<sup>191</sup>

119. The Preamble to the Convention explicitly notes that there is a shortage of qualified nursing personnel in many countries, that existing staff are not always utilized to best effect, and that this is an obstacle to the development of effective health services. Article 2(2) of the Convention implicitly recognizes the need to address the persistent shortages of qualified nurses by improving their status and working conditions and calls on States to “take the necessary measures to provide nursing personnel with: (a) education and training appropriate to the exercise of their functions; and (b) employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it”.<sup>192</sup> These aspects of the national policy on nursing services and nursing personnel are addressed in Chapters 4 and 6, respectively.

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186 For instance, *Algeria, Armenia, Austria, Bahamas, Bahrain, Burkina Faso, Cabo Verde, Cameroon, Ecuador, Finland, France, Guinea, Iraq, Kazakhstan, Lao People’s Democratic Republic, Mali, Malta, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Portugal, Qatar and Turkey.*

187 For instance, *Argentina, Belarus, Colombia, Costa Rica, El Salvador, Georgia, Kenya, Kyrgyzstan, Lithuania and Malawi.*

188 For instance, *Algeria, Argentina and Kyrgyzstan.*

189 J. Buchan (2007). *Nurse workforce planning in the UK: A report for the Royal College of Nursing*, London, Royal College of Nursing, p. 4; and ILO (2017). *Improving Employment and Working Conditions in Health Services*, op. cit., para. 5.

190 WHO (2003). *Nursing and midwifery workforce management: Guidelines*, Regional Office for South-East Asia, New Delhi, p. 1.

191 For instance, the WHO Global Strategic Directions call on countries to increase the availability of health workers by sustainably creating nursing and midwifery jobs, effectively recruiting and retaining midwives and nurses, and ethically managing international mobility and migration. See: WHO (2021). *Global strategic directions for nursing and midwifery 2021–2025*, op. cit., p. 6; WHO (2016). *Working for health and growth: Investing in the health workforce*, op. cit., p. 11.

192 The objective of ensuring an adequate quantity and quality of nursing personnel is also embedded in the global policy initiatives. WHO (2016). *Report of the High-Level Commission on Health Employment and Economic Growth*, Geneva, p. 11.



## ► IV. Ensuring a participatory policy process

120. Article 2(3) of the Convention provides that the policy “shall be formulated in consultation with the employers’ and workers’ organisations concerned, where such organisations exist”.<sup>193</sup> In addition, Article 5(1) of the Convention provides that measures “shall be taken to promote the participation of nursing personnel in the planning of nursing services and consultation with such personnel on decisions concerning them, in a manner appropriate to national conditions”.

121. The ILO Joint Meeting on Social Dialogue in the Health Services: Institutions, Capacity and Effectiveness, held in 2002, recognized the great potential of social dialogue to contribute positively to the development and reforms of health services by enabling governments and employers’ and workers’ organizations to draw upon their knowledge and experience.<sup>194</sup> The conclusions of the Joint Meeting indicate that the social partners to be consulted in health services are in principle public authorities as regulators or as employers, private employers’ and workers’ organizations in the health sector. However, the conclusions recall that the organizations or institutions which represent the groups in the health sector have changed over the past two decades, and a greater variety of government levels are also involved, and new private employers have entered the health sector and related services.<sup>195</sup>

122. The successful implementation of the national policy on nursing services and nursing personnel depends largely on the robust engagement of employers’ and workers’ organizations throughout the process of policy development and implementation. ***The Committee recalls that, when seeking advice and inputs on policy issues, the social partners are often in the best position to contribute practical advice based on their lived experience.***<sup>196</sup> ***Successful implementation of the national policy also depends on the strength of inter-sectoral engagement and the action of the social partners, including nurses’ representatives and other concerned stakeholders.***

123. With regard to the participation of nursing personnel, as early as 1973, the ILO-WHO Joint Meeting on Conditions of Work and Life of Nursing Personnel, emphasized that special attention should be given to the right and responsibility of nurses to provide leadership and to participate in the workforce planning process.<sup>197</sup> It added that all nursing personnel should be involved in decision-making and the implementation of services.<sup>198</sup> The Joint Meeting highlighted the importance of appointing sufficient numbers of appropriately qualified nurses to leadership positions, with a corresponding level of decision-making authority.<sup>199</sup>

124. The Committee notes the large volume of evidence that the involvement of nurses in leading and shaping the delivery of care and health services not only improves patient outcomes, but also drives innovation and leads to better recruitment and retention of nursing personnel.<sup>200</sup> The national policy on nursing personnel and nursing services should ensure

193 See also Recommendation No. 157, Para. 4(d).

194 ILO (2002). Joint Meeting on Social Dialogue in the Health Services: Institutions, Capacity and Effectiveness (Geneva, 21–25 October 2002), [Note on the proceedings](#), JMHS/2002/11, Conclusions, para. 1. See also ILO (2005). [“Social dialogue in the health services: A tool for practical guidance: The handbook for practitioners”](#), Geneva, which was developed on the basis of the Conclusions of the Joint Meeting.

195 ILO (2002). Joint Meeting on Social Dialogue in the Health Services, op. cit., para. 6.

196 European Observatory on Health Systems and Policies (2016). [Strengthening health system governance: Better policies, stronger performance](#), Open University Press, p. xi.

197 ILO-WHO (1973). Joint Meeting on Conditions of Work and Life of Nursing Personnel, Geneva, 19–30 Nov., Report, Annex II, JMNP/1973/II, pp. 1–24.

198 WHO (1974). “Community health nursing”, Report of a WHO Expert Committee, WHO Technical Reports Series No. 558, Geneva, p. 28.

199 ILO-WHO (1973). Joint Meeting on Conditions of Work and Life of Nursing Personnel, op. cit., para. 21.

200 All-Party Parliamentary Group on Global Health (APPG) (2016). [Triple Impact -- How developing nursing will improve health, promote gender equality and support economic growth](#), London, p. 18.

that nurses are represented at all levels of decision-making and have a voice in influencing key health system decisions and public health policies.<sup>201</sup> Nurses are on the front line of health provision and have first-hand experience of the healthcare system at all levels.<sup>202</sup> Greater engagement of nurses in policymaking will improve the quality of care, which will benefit patients and society as a whole.<sup>203</sup> The importance of nurses' participation as stakeholders in care delivery is highlighted by the WHO Global strategic directions for strengthening nursing and midwifery 2021–2025.<sup>204</sup>

In *Argentina*, the General Confederation of Labour of the Argentine Republic (CGT-RA) refers to section 3 of National Decree no. 2. 497/1993, which attributes to nursing personnel the competence to participate in various areas of national policy such as: planning, implementing and evaluating health programmes, together with the interdisciplinary team at national and local levels; participating in the development of appropriate technology for healthcare; planning, organizing, coordinating, developing and evaluating educational programmes for nursing training at different levels and modalities; and elaborating the standards for the functioning of nursing services in their different modalities of care as well as auditing their compliance.

**125.** The Committee notes that nurses typically participate in the development and implementation of national health and nursing sector policies through their associations, and in some cases through unions.<sup>205</sup>

*Colombia* – Participants in the development of the National Nursing Plan 2020–30 included representatives of the National Nursing Technical Council, the National Association of Nurses of Colombia, the Colombian Association of Nursing Faculties and Schools, the Collegial Nursing Organization, the National Ethical Nursing Tribunal and the Ministry of Health and Social Protection (MSPS).

*Latvia* – The Latvian Nurses Association is systematically involved in the development of national policies concerning healthcare services, levels of care and integrated approaches to patient care.

201 WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., para. 171.

202 APPG (2016). *Triple Impact*, op. cit., p. 20. See also W. Kunaviktikul (2014). "Moving towards the greater involvement of nurses in policy development", Nursing and Health Policy Perspectives, *International Nursing Review*, Vol. 61(1), p. 1.

203 W. Kunaviktikul. "Moving towards the greater involvement of nurses in policy development", op. cit., p. 1.

204 WHO (2021). *Global strategic directions for strengthening nursing and midwifery 2021-2025*, op. cit., p. 6.

205 In some cases, professional associations are a hybrid organization also being recognized as a union. For instance, the Royal College of Nursing (RCN) in *United Kingdom*.

In *New Zealand*, the New Zealand Council of Trade Unions (NZCTU) refers to the Health Sector Relationship Agreement (HSRA) Steering Group, which is a tripartite forum consisting of representatives from unions, including the NZCTU and the New Zealand Nurses Organization (NZNO), district health boards (DHBs) and the Ministry of Health. The parties meet regularly and hold annual forums to discuss and coordinate strategic leadership on issues affecting the healthcare workforce, including nursing staff.<sup>206</sup>

126. The Committee notes, however, that some workers' organizations express concern in their observations at the lack of participation of nurses in national policies concerning nursing.

In *Japan*, the Japanese Trade Union Confederation (JTUC-RENGO) observes that there are no representatives of nurses in the Medical Ethics Council of Public Health Nurses, Midwives, and Nurses Subcommittee, which is the venue for deliberation of major policies regarding nursing.

127. Nurses, along with other health workers, have played a key role in policymaking in response to the COVID-19 pandemic. National Nursing Associations (NNA) have taken on leadership roles related to COVID-19 in health policy, public and patient safety and the containment of the virus. They have also played a critical advocacy role on behalf of the nursing workforce worldwide to ensure their support and protection.<sup>207</sup>

In *Japan*, the Japanese Nursing Association (JNA) played a leadership role in the response to COVID-19. It called on nurses to return to the profession and provided free job placement support in response to surging needs for nurses in healthcare facilities. As a result, as of 25 August 2020, 1,520 nurses had returned to the profession. The JNA also took measures to support frontline nurses, including providing consultation services and information on risks, stress and infection control, and the distribution of personal protective equipment (PPE).<sup>208</sup>

In *Taiwan*, the Taiwan Nurses Association (TWNA) provided vital leadership in the pandemic response, advocating the safety, health and well-being of nurses, highlighting their contribution and value, and enhancing their professional image and status.<sup>209</sup>

**128. The Committee considers that, to ensure that the national policy is comprehensive, it is important for other relevant actors, and particularly nursing professionals, their professional institutions and the recipients of nursing services, to be consulted and participate actively throughout the process of developing and implementing the national policy in order to ensure that the views and concerns of all relevant actors are taken into account. The active participation of all relevant actors also helps to foster ownership and support for the policy and its implementation.**

<sup>206</sup> New Zealand, Ministry of Health. "[Health Sector Relationship Agreement Steering Group](#)".

<sup>207</sup> For further information on the role of national nursing associations during the pandemic see ICN. "[ICN COVID-19 Update: Strong National Nursing Associations providing vital lead during COVID-19 crisis](#)", 13 March 2020.

<sup>208</sup> JNA. "[Leadership of the Japanese Nursing Association \(JNA\) in response to Coronavirus disease \(COVID-19\) pandemic: Collaboration with Government and impact on media](#)", JNA News Release, Sep. 2020, Vol. 31.

<sup>209</sup> S.-F. Chen, et al. (2020). "[The Key Role of Taiwanese Nurses in Combating COVID-19 Pandemic](#)", Hu Li Za Zhi, June, Vol. 67(3), pp. 84–89 (in Chinese).



CEACR – In its comments concerning *Iraq*, the Committee noted with interest the adoption of the first Iraqi National Health Policy (NHP), developed in collaboration with the WHO, relevant ministries and key health stakeholders. The NHP envisages the adoption of measures to review the conditions of service of health workers (such as salary, housing, professional advancement, involvement in decision-making and incentives). The Committee also noted the adoption of a national nursing and midwifery strategy.<sup>210</sup>

CEACR – In its comments concerning *Malawi*, the Committee noted with interest the range of policy initiatives adopted by the Government in relation to nursing services and nursing personnel. These policies were developed following consultations with and through the active participation of the relevant stakeholders, including the private sector, health training institutions, regulatory bodies and civil society organizations.<sup>211</sup>

129. Consultations may be carried out through permanent consultative bodies.

*Argentina* – The Standing National Nursing Advisory provides advice on issues related to the training and exercise of nursing with a view to federal harmonization and taking into consideration the legislation in each jurisdiction, with representatives of the Federal Health Council and of public and private bodies with appropriate capacity for the management of public policies for the achievement of the objective.<sup>212</sup> In accordance with the rules of the Commission, nursing associations and federations, among other stakeholders, shall be invited to participate.<sup>213</sup>

*Spain* – The Framework Body for Social Dialogue established the environment for dialogue and information on labour matters. It includes representatives of the most representative unions in the health sector. The content of the basic standards respecting the statutory personnel of health services is negotiated in the Framework Body.<sup>214</sup>

130. The Committee notes that tripartite consultative bodies have been established in some countries in the context of the process of developing a national health or nursing policy in order to steer its formulation, implementation, monitoring and revision. These bodies often include stakeholders outside the traditional tripartite actors. Some of them are consultative and information bodies, while others are empowered to adopt binding agreements. In some countries, the Government first holds broad informal consultations before establishing a formal body.<sup>215</sup>

210 CEACR – *Iraq*, C.149, direct request, 2020.

211 CEACR – *Malawi*, C.149, observation, 2020.

212 *Argentina*, Resolución de 34/2019 por la que se crea la Comisión Nacional Permanente Asesora en Enfermería.

213 *ibid.*, Annex I, section 4.

214 *Spain*, Ley 55/2003, de 16 de diciembre, del Estatuto Marco del personal estatutario de los servicios de salud, section 11.

215 ILO (2005). *Social dialogue in the health services*, op. cit., pp. 6 and 35.

*Costa Rica* – The National Nursing Plan was developed through a participatory process, led by a working group known as the Ad Hoc Commission, composed of the coordinators of the respective commissions and tribunals and representatives of the Executive Board of the Nursing College of Costa Rica.<sup>216</sup>

*Norway* – An Action Plan on increasing the effectiveness and attraction of nursing care has been prepared by a national nursing steering group set up by the Ministry of Social Affairs and Health. The steering group consisted of nurses representing the government, social and health services, education and research, as well as patient and professional organizations.

**131.** International and regional bodies can also play a key role in facilitating national social dialogue to identify solutions with a view to improving working conditions for healthcare workers, including nursing personnel.

The European Sectoral Social Dialogue Committee for the Hospital and Healthcare Sector, established in 2006, includes the European Federation of Public Service Unions (EPSU) and the European Hospital and Healthcare Employers' Association (HOSPEEM). The Committee focuses on, among other issues, influencing policies at the level of the European Union by monitoring and engaging in consultation and legislative processes.<sup>217</sup>

<sup>216</sup> *Costa Rica*, [National Nursing Plan 2011–21](#), Nursing College of Costa Rica, pp. 7 and 65.

<sup>217</sup> European Commission. "[Sectoral social dialogue – Hospitals and healthcare](#)", Employment, Social Affairs and Inclusion.

## ► V. The different stages in the national nursing policy process

132. Pursuant to Article 2(1) of the Convention, the national policy should address both nursing services and the nursing workforce. Both service planning and workforce planning are components of an integrated and iterative process, as the service plan articulates the goals to be implemented by workforce plans. Nursing service planning defines the core services to be delivered by nursing personnel in conjunction with the necessary ancillary or support services.<sup>218</sup>

Figure 3.1

### Service planning and workforce planning: An integrated approach



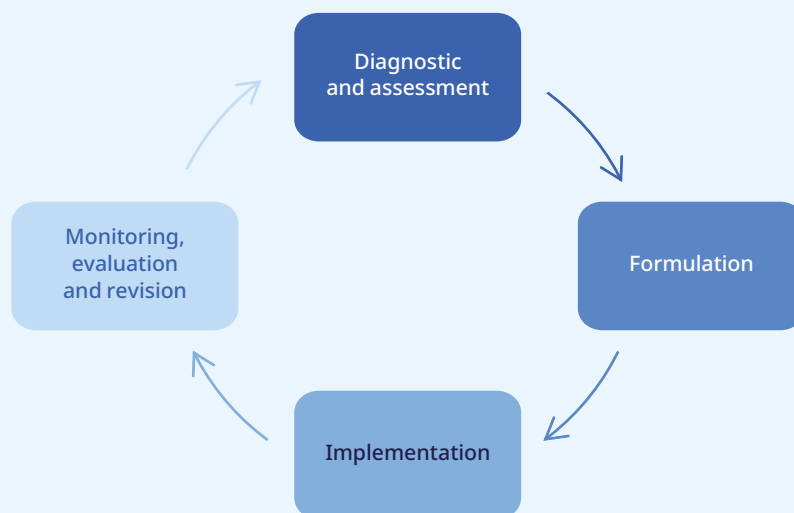
Source: WHO (2010). *Guidelines: Nursing and midwifery workforce planning*, p. 14.

133. The Committee considers it useful to describe the approaches adopted to the development, implementation and revision of the national policy on nursing services and nursing personnel in various countries as a guide to good practice. It observes that each method used for the development and implementation of the national policy has advantages and drawbacks. Nevertheless, all the methods used are based on a systematic process with at least four elements in common: (1) procedures to assess the national situation in the nursing sector, establish baselines and assess current and future needs; (2) procedures to design and formulate the strategies and objectives to be contained in the policy; (3) provisions to ensure effective implementation; and (4) monitoring, evaluation and revision procedures and systems.

218 WHO (2010). *Guidelines: Nursing and midwifery workforce planning*, Regional Office for South Asia, New Delhi, p. 13.

Figure 3.2

### Stages in the development of a national nursing policy



## 1. Diagnostic and assessment

**134.** The Committee notes that the national policy on nursing services and nursing personnel cannot exist in a vacuum. The often complex network of interrelated factors affecting the supply and demand for nurses has to be identified and taken into consideration when formulating the policy. The first step of the process is to carry out a diagnostic and assessment of the situation of the nursing workforce to establish the relevant baselines and identify the factors, both internal and external, that may influence the delivery of nursing services in both the short and long-term.<sup>219</sup>

**135.** Paragraph 2(2) of the Annex to Recommendation No. 157 provides guidelines on measures that governments could take to identify such factors and ensure the effective planning of nursing services. It indicates that nursing services should be programmed on the basis of: (a) information obtained from studies and research which are of a continuing nature and permit adequate evaluation of the problems arising and of the needs and available resources; and (b) technical standards appropriate to changing needs and national and local conditions. Studies and evaluations of the situation of the nursing workforce have been carried out in a number of countries to identify challenges and design evidence-based policies to address them.

*Austria* – With a view to planning a national health strategy at the federal level, the National Public Health Institute was commissioned by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection to conduct a country-wide study of the demand for nursing personnel. The study was designed to obtain a holistic picture of the current situation based on the available data and information from the federal states as a basis for drawing evidence-based conclusions and making recommendations on future demand with a view to develop strategies jointly with the federal states. The study estimated that there is a need for 75,700 nursing personnel by 2030.<sup>220</sup>

<sup>219</sup> *ibid.*

<sup>220</sup> Federal Ministry of Labour, Social Affairs, Health and Consumer Protection (2019). *Nursing staff demand forecast for Austria*, Austrian National Public Health Institute (GmbH).

*United Kingdom of Great Britain and Northern Ireland* – An inquiry carried out by the National Audit Office into the National Health Service (NHS) nursing workforce, published in 2020, found that, despite overall increases in the numbers of nurses over the past 10 years, the NHS does not have the nurses it needs. It now has around 40,000 nursing vacancies, representing 12 per cent of posts.<sup>221</sup>

### **(a) Factors affecting the demand for nursing personnel and nursing services**

**136.** Ensuring an accurate assessment of the future demand for nursing personnel is the main challenge of nursing planning. There is a high level of uncertainty surrounding many of the factors that affect the current and future demand for health services, and therefore for nursing personnel.<sup>222</sup> The COVID-19 pandemic is a clear example of rapidly changing scenarios and the high level of uncertainty in anticipating the demand for health workers in general, and nursing personnel in particular. During the pandemic, the demand for nursing services grew exponentially, at times also waxing and waning unpredictably.

**137.** To achieve the objective of the Convention of ensuring the quantity and quality of nursing personnel necessary to attain the highest possible standard of health for the population (Article 2(1)), it is critical to take action to anticipate and address current and projected workforce shortages, taking into account a range of factors that are already transforming work in the healthcare sector. These include: demographic trends; rapid developments in population health needs, including in preparation for and response to public health emergencies; advances in medical science and technology; migration flows; gender dynamics; and changing employment relationships in the sector. These megatrends and drivers will have a major bearing on the future of work in the sector, although their impact will also depend on health service design and service delivery.<sup>223</sup> The Committee examines the nature and potential impact of some of these drivers and their relevance to the development and implementation of the national policy on nursing personnel and nursing services in the following sections.

#### **(i) Demographic and epidemiological changes**

**138.** Demographic changes, and particularly population growth, have a major influence on the healthcare sector, and therefore on the nursing workforce. The global population, which numbered 7.7 billion in mid-2019, is expected to reach 8.5 billion by 2030 and 9.7 billion by 2050.<sup>224</sup> Increases in the overall population necessarily increase the demand for healthcare, and ultimately for nursing personnel. Ageing populations in many countries are also expected to have a major impact on demand for nursing services. The proportion and absolute numbers of older people in populations worldwide are increasing dramatically.<sup>225</sup> Moreover, global healthy life expectancy has risen continuously over the past two decades. In 2019, there were 703 million persons aged 65 years or over worldwide, and this figure

<sup>221</sup> National Audit Office (2020). [“The NHS nursing workforce”](#), Department of Health and Social Care, House of Commons, London.

<sup>222</sup> T. Ono, G. LaFortune, and M. Schoenstein (2013). [“Health workforce planning in OECD countries: A review of 26 projection models from 18 countries”](#), OECD Health working papers No. 62, Paris, p. 45.

<sup>223</sup> ILO (2019). [“The future of work in the health sector”](#), Working paper No. 325, Geneva, p. 11.

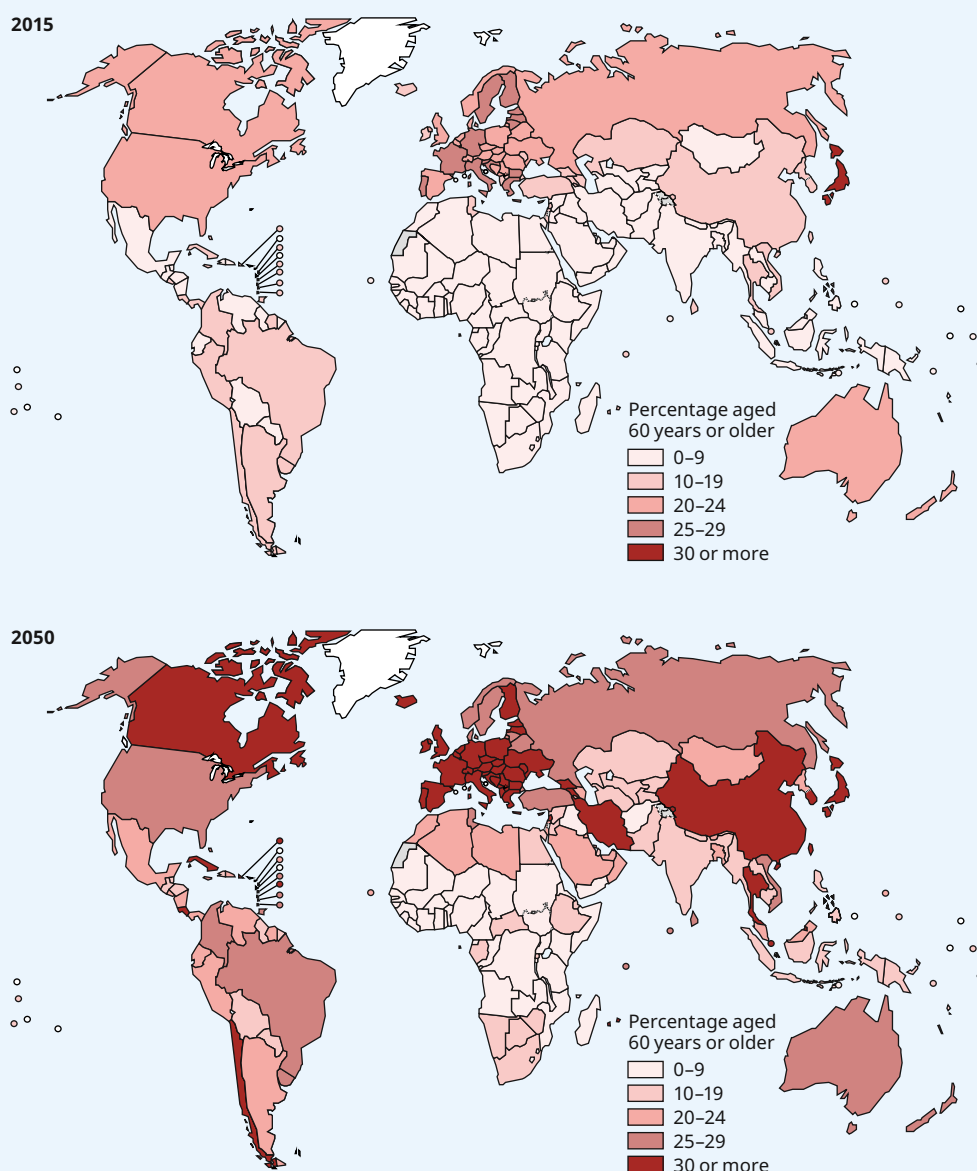
<sup>224</sup> United Nations (2019). [World Population Prospects 2019: Highlights](#), Department of Economic and Social Affairs, New York, p. 5.

<sup>225</sup> WHO (2015). [World report on ageing and health](#), Geneva, p. 43.

is expected to double by 2050 to 1.5 billion.<sup>226</sup> All regions will see an increase in their older populations between 2019 and 2050.<sup>227</sup> Nonetheless, recent studies have shown that the COVID-19 pandemic has substantially lowered life expectancy.<sup>228</sup>

Figure 3.3

**Proportion of population aged 60 years and older, by country (2015–50)**



Source: WHO (2015). *World report on ageing and health*, p. 44.

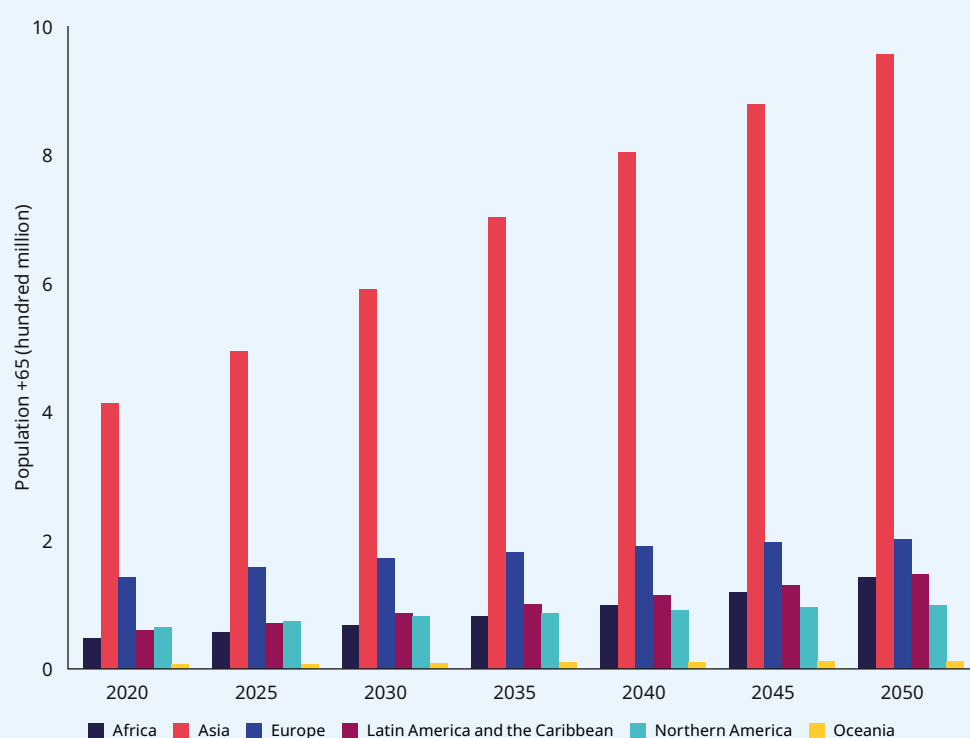
226 United Nations (2019). [World Population Ageing 2019: Highlights](#), Department of Economic and Social Affairs, New York, p. 1.

227 *ibid.*, p. 5.

228 See for instance: N. Islam et al (2021). “Effects of covid-19 pandemic on life expectancy and premature mortality in 2020: time series analysis in 37 countries”, *British Medical Journal*.

Figure 3.4

**Projections of the population + 65 (both sexes) by region (2020–2050)**



Source: United Nations (2019). *World population prospects 2019*, New York.

139. The health and social needs of ageing populations are complex and long-term, spanning a range of areas that fluctuate over time.<sup>229</sup> These changing needs will necessitate a shift towards care-based and end-of-life services.<sup>230</sup> Long-term care services are particularly labour-intensive and will require the optimization of the skill-mixes and scopes of practice of current health workers, including nursing personnel, and exploration of the need for more and new categories of health workers, such as geriatric nurses, who specialize in promoting healthy ageing and care for the growing numbers of people living with chronic conditions.<sup>231</sup>

Public Services International (PSI) observes that half of all elderly people worldwide lack access to long-term care. Demographic and social trends, including an ageing population, reduced availability of traditional unpaid care, combined with shortages in long-term care services, are exacerbating this crisis. According to the latest OECD projections, an additional 13.5 million long-term care workers will be needed by 2040 across all OECD countries. PSI stresses that the COVID-19 pandemic will likely increase the number of workers needed. PSI also maintains that the lack of well-established, evidence-based national aged and disability care policies has resulted in the growth of an insecure, undervalued and often informal workforce.

<sup>229</sup> WHO (2015). *World report on ageing and health*, op. cit., p. 93.

<sup>230</sup> ILO (2019). "The future of work in the health sector", op. cit., p. 3.

<sup>231</sup> WHO (2016). *Working for health and growth*, op. cit., pp. 23 and 24.

140. The Committee notes that in OECD countries the health workforce is also ageing, with a “baby boomer” generation of nurses reaching retirement age, which can contribute to nursing shortages.<sup>232</sup> The Committee also notes that, according to WHO statistical information, there are important variations among the regions: in the Eastern Mediterranean Region there are 14 young nurses for every one approaching retirement; by contrast, in the Americas this ratio is 1.2:1, and in Europe and Africa it is 1.9:1.<sup>233</sup>

141. Epidemiological developments pose an additional challenge.<sup>234</sup> The risk of non-communicable health conditions increases with age.<sup>235</sup> While people in most countries are living longer, many are developing health impairments and disabilities, with higher rates for women than men.<sup>236</sup> These complex dynamics require approaches that differ from those needed to address more acute problems. The management of non-communicable diseases requires the adaptation of health systems to changing health needs and rising demand.<sup>237</sup> This includes not only engaging in treatment and the provision of care but also in health promotion and prevention of non-communicable diseases. ***The Committee encourages countries to take comprehensive and coordinated measures to adapt the nursing workforce to demographic realities by taking future trends into account in their national policies and workforce planning.***

142. Communicable diseases represent one of the greatest challenges for the public health sector. Increasing urbanization and globalization significantly enhance the risk of a local outbreak developing into an epidemic, with the risk of a pandemic if countermeasures are not taken immediately.<sup>238</sup> Recent epidemics have shown that infectious diseases know no barriers and cross international borders with impunity.<sup>239</sup> The 2014 Ebola epidemic in West Africa, the 2016 Zika epidemic and the COVID-19 pandemic have shown the profound impact that infectious diseases can have on the working conditions and well-being of health workers, and on populations and economies generally. The health systems in many countries are not adequately prepared to respond to global epidemics caused by emerging pathogens.<sup>240</sup>

143. In countries where health systems are already fragile and access to healthcare is limited even in normal circumstances, sudden crises, such as Ebola and COVID-19, can be devastating.<sup>241</sup> Ensuring international health security requires appropriate investments in health, including nursing personnel and nursing services. The Committee highlights that sustainable investments in health systems and emergency preparedness are the cornerstone of global health security today and in the future.

## (ii) Globalization of healthcare provision

144. The migration patterns of nursing personnel have a significant impact on both the demand for and supply of nurses at the national level. The Committee notes that the international mobility of the nursing workforce is increasing due to demographic, epidemiological, financial and health policy trends, making the equitable distribution and retention of nurses

232 E. Graham, and C. Duffel (2010). “[An ageing nursing workforce](#)”, *Australian Health Review*, 34, pp. 44–48.

233 WHO (2020). *State of the world’s nursing 2020*, op. cit., p. 40.

234 ILO (2019). “The future of work in the health sector”, op. cit., p. 4.

235 WHO (2015). *World report on ageing and health*, op. cit., p. 93.

236 WHO et al. (2011). *World report on disability*, p. 31.

237 ILO (2019). “The future of work in the health sector”, op. cit., p. 3.

238 S.H.E. Kaufmann, (2016). “Lessons learned from Ebola to Zika”, *The Yearbook 2016*, World Health Summit, Geneva, pp. 42–43.

239 The M8 Alliance Declaration emphasized at the 2020 World Health Summit that the Coronavirus has highlighted the fault lines in health systems around the world. It added that health professionals, most of them women, have paid a high price. See: [M8 Alliance Declaration](#), World Health Summit, 27 October 2020.

240 S. Kumar, (2016). “Flipping the access model to innovation”, *The Yearbook 2016*, op. cit., p. 44.

241 Y. Daccord, (2016). “Lessons learned: From Syria to Ebola”, *The Yearbook 2016*, op. cit., pp. 48 and 49.



a nearly universal challenge.<sup>242</sup> Unequal distribution of the global nursing workforce may assuage the health systems workforce shortages in some countries<sup>243</sup>, while resulting in pressing health workforce needs in others<sup>244</sup>. According to the State of the World's Nursing Report 2020, based on a total of 86 reporting countries, in 2018 one out of every eight nurses was practicing in a country other than the one in which they were born or trained (Chapter 11).<sup>245</sup>

### (iii) Technological advances

**145.** Technology is increasingly seen as a means of addressing today's health challenges, providing opportunities for job creation and improving the working conditions of nursing personnel. Tasks, such as taking vital signs, administering medication and the performance of certain personalized nursing interventions can be delegated to machines, enabling nurses to attend to more complex aspects of patient care. New technologies can also lead to the development of new roles for nurses.

**146.** The health technology landscape is continually changing, with innovation moving in new directions, including artificial intelligence, robotics, "big data", 3D printing, mobile health applications<sup>246</sup> and remote sensors. Technology is playing an increasing role in both the education and practice of the nursing workforce.<sup>247</sup> A growing number of the daily tasks of nurses can be carried out by machines or using artificial intelligence (AI).<sup>248</sup> Technology can be harnessed to access clinical decision support, conduct provider-to-client telemedicine, and receive provider-to-provider training and consultation in ways that can enhance access, enable remote care, improve primary healthcare delivery and empower patients.<sup>249</sup> The combination of AI advanced analytics with the experience, knowledge and critical thinking of nurses can result in better clinical reasoning and decision-making.<sup>250</sup>

*Japan* – In 2015, the Ministry of Economy, Trade and Industry adopted the Robot Strategy to meet the increase in care needs by 2020 due to the ageing of the population. The objective is not to replace the care provided by nurses, but to reduce their workload and create a better working environment through the use of robotic nursing equipment. The Strategy also envisages the use of technology to provide support for older persons who need care to continue living independently.<sup>251</sup>

**147.** However, the Committee notes that new technologies can give rise to challenges that need to be taken into consideration by all health stakeholders, including those responsible for designing and formulating the national policy on nursing personnel and nursing services.

<sup>242</sup> WHO (2020). *State of the world's nursing 2020*, op. cit., p. xvi.

<sup>243</sup> The number of foreign-trained nurses working in OECD countries increased by 20 per cent over the five-year period from 2011 to 2016, outpacing doctors to reach nearly 550, 000. The vastly improved data indicate a blurring of traditionally recognized "source" and "destination" countries. See: WHO (2020). *State of the world's nursing 2020*, p. 27.

<sup>244</sup> In the framework of the WHO Global Code of Practice on the International Recruitment of Health Personnel, a report is published periodically, identifying the countries with the most pressing UHC-related health workforce needs. The [2020 list, adopted in February 2021](#), identifies 33 countries in the African region, 6 in the Eastern Mediterranean Region, 5 in the Western Pacific region and 1 in the region of the Americas.

<sup>245</sup> WHO (2020). *State of the world's nursing 2020*, op. cit.

<sup>246</sup> It is estimated that over 165,000 health apps were available in 2015, a figure that had doubled since 2013. OECD (2017). *New health technologies: Managing access, value and sustainability*, Paris, p. 23.

<sup>247</sup> WHO (2020). *State of the world's nursing 2020*, op. cit., p. 73.

<sup>248</sup> N. Maalouf et al. (2018). "Robotics in nursing: A scoping review", *Journal of Nursing Scholarship*, 50(6), Nov., pp. 590–600.

<sup>249</sup> WHO (2020). *State of the world's nursing 2020*, op. cit., p. 73.

<sup>250</sup> D.B. Neil, (2013). "Using artificial intelligence to improve hospital inpatient care", *IEEE Intelligent Systems*, March/April.

<sup>251</sup> *Japan*, The Headquarters for Japan's Economic Revitalization. "New robot Strategy: Japan's Robot Strategy: Vision, Strategy, Action Plan", 2015.

For example, technology and automation are expected to lead to the elimination of a range of low-skilled jobs, including the transport of materials in hospitals, as well as highly technology-based specialized jobs, such as medical radiology.<sup>252</sup> The introduction of these new technologies into healthcare systems may therefore have a disruptive effect on processes, relationships and resourcing, and may pose additional demands and challenges in terms of the need to reskill or upskill nursing personnel.<sup>253</sup> The use of emerging new technologies, such as digital healthcare platforms, may also increase the responsibilities of nursing personnel, who may need to be on call through use of technology even while off-duty. In some instances, these digital platforms may increase outsourcing with adverse effects on quality of care and the retention of regular nurses.

In the *Republic of Korea*, the Korean Federation of Public Services and Transportation Workers' Unions (KPTU) expresses concern regarding the digitalization of healthcare services. The KPTU indicates that the second Health and Medical Care Plan announced by the Government in April 2021 paves the way for the use of technologies and data to generate profit and industrialize the health sector.

PSI observes that technological innovation in the health sector is generally driven by advances in medical science and gives rise to many benefits for patients and workers. It expresses concern, however, at the increase in platform work in the healthcare sector. Furthermore, additional and related implications of digital technologies include issues of who has access to technology, and concerns about privacy and digital rights that affect the working conditions of health workers.

**148. The Committee considers that steps need to be taken to ensure that the development and adoption of new technologies contributes to the improvement of the working conditions of nursing personnel, as well as the health and well-being of the population. Emphasis needs to be given to ensuring equitable access to these technologies and the sustainability of healthcare systems.<sup>254</sup> The Committee emphasizes that nursing personnel should be at the table when technologies are developed, adopted and implemented,<sup>255</sup> which will not only contribute to their effective implementation, but will also help to ensure that the technology is adapted to the needs of patients and health workers.**

#### (iv) Environmental and geopolitical developments

**149.** The Committee notes that environmental factors and armed conflicts also have a high impact on the demand for nursing personnel. Climate change will affect the health of large swathes of the world's population in the coming decades and put the lives and well-being of billions of people at increased risk.<sup>256</sup> Several aspects of climate change are related to adverse health outcomes: changing patterns of disease and mortality; food, water and sanitation; poor air quality; shelter and human settlements; extreme events; and population and

<sup>252</sup> ILO (2019). "The future of work in the health sector", op. cit., p. 11.

<sup>253</sup> *ibid.*, p. 8.

<sup>254</sup> OECD (2017). *New Health Technologies*, op. cit., p. 19.

<sup>255</sup> National Academy of Medicine (NAM), "[The Future of Nursing 2030](#)", University of Washington School of Nursing in Seattle, Event, 7 Aug. 2019 (recordings available).

<sup>256</sup> A.M de L. Costello, et al. (2009). "[Managing the health effects of climate change: Lancet and University College London Institute for Global Health Commission](#)", *The Lancet*, 373, pp. 1693-1733; M8 Alliance (2019). "[M8 Alliance Statement: Beyond Silos](#)", Berlin Declaration, World Health Summit, Berlin, 29 October.

migration.<sup>257</sup> There is strong scientific consensus that climate change will have profoundly adverse effects on food, air and water, which are some of the most fundamental determinants of health. Higher temperatures will change the distribution and increase the burden of various vector-borne, food-borne and waterborne infectious diseases.<sup>258</sup> However, the Committee notes that, although the reach and death toll of vector-borne diseases will expand due to heatwaves, especially among the elderly, the indirect effects of climate change on water and food security, and extreme climatic events, are likely to have the greatest effect on global health.<sup>259</sup> According to WHO estimates, between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths a year.<sup>260</sup> The Committee observes that, combined with the ageing of the population, climate change is likely to further increase the demand for nurses capable of caring for increasing populations of people with progressive debilitating non-communicable diseases.<sup>261</sup>

150. The Committee emphasizes that policymakers should also take the possibility of armed conflict into account when analysing the demand for nursing personnel. Armed conflict poses a threat to security and health, as well as to the lives of health workers.<sup>262</sup> Direct attacks on healthcare facilities and ambulances, which kill or wound patients and health workers, including nursing personnel, have compounded humanitarian crises in many countries.<sup>263</sup>

#### (v) The impact of health service delivery models

151. The national health service delivery model, including nursing care, is another of the main factors affecting the demand for nursing personnel. Health service delivery models govern the manner in which nursing work is organized and the roles and responsibilities of the various healthcare providers engaged in primary care, hospital and long-term care. Different organizational models involve varying numbers and mixes of healthcare providers. For instance, the priority given in many countries to re-orienting care away from hospitals by strengthening primary care, home based care and long-term care in institutions (when so required) are having an impact on the number and mix of the providers required in the different settings.<sup>264</sup> In addition, reimbursement systems might have an effect on staffing levels and delivery of nursing services.<sup>265</sup>

152. The Convention does not prescribe any particular health service delivery model. In some countries, the system is more hospital-centred, which may require more medical specialists and hospital nurses. In others, the health system has moved towards a more primary care-centred delivery model, which may require more general practitioners and primary care nurses, with their number and mix being affected by the scope of practice of the various practitioners.<sup>266</sup> These factors need to be taken into account when developing and implementing nursing policy. Moreover, the Committee observes that health service delivery models are becoming increasingly complex, characterized by greater reliance on interdisciplinary teams, which is leading to more overlapping between the roles and responsibilities of healthcare providers.<sup>267</sup>

257 Costello et al. (2009). "Managing the health effects of climate change", op. cit.

258 WHO. "Put health at the center of the climate agreement: [Did you know? ... by taking action on climate change you can strengthen your national public health system](#)".

259 Costello et al. (2009). "Managing the health effects of climate change", op. cit.

260 WHO (2018). "[Climate change and health](#)", Fact sheet, Geneva, 1 February.

261 ICN (2018). "[Position statement: Nurses, climate change and health](#)", Geneva, adopted in 2008, revised in 2018.

262 ILO (2019). "The future of work in the health sector", op. cit., p. 10.

263 Y. Daccord, (2016). "Lessons learned: From Syria to Ebola", op. cit., p. 48.

264 T. Ono, Lafortune and Schoenstein (2013). *Health Workforce Planning in OECD countries*, op. cit., para. 79.

265 See: N. Eisenmenger (2021): [The aG-DRG system. Complex, logical... and fair?](#), Reimbursement Institute (in German).

266 *ibid.*, para. 27.

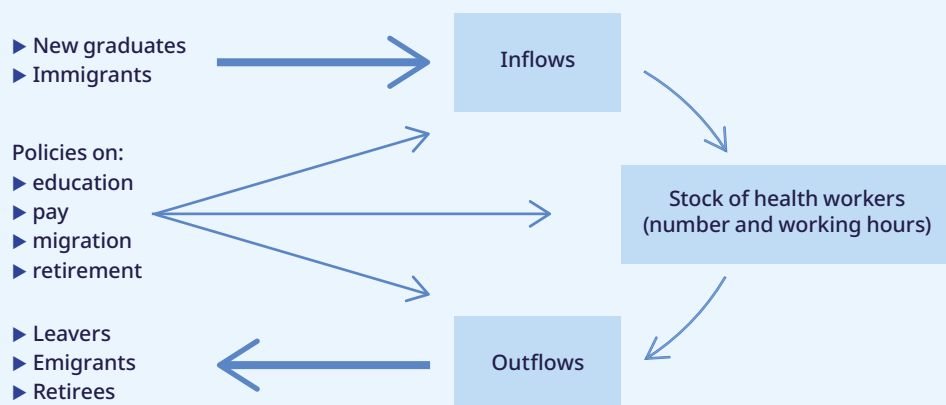
267 *ibid.*, para. 4.

## (b) Factors affecting the supply of nursing personnel

153. The Committee observes that the current and future supply of nurses is primarily affected by “inflows” (those entering the profession) and “outflows” (those leaving the profession), as well as the activity rates of the “stock” of nurses (working hours). To counter persistent shortages of qualified nursing personnel, Article 2(2) of the Convention calls for the adoption of policy measures to provide nursing personnel with: (a) education and training appropriate to the exercise of their functions; and (b) employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it.

Figure 3.5

### Key factors affecting the supply of health workers



Source: OECD (2016). *Health Workforce Policies in OECD Countries: Right jobs, right skills, right places*, OECD Health Policy Studies, Paris, p. 31.

### (i) Inflows

154. Article 2(2) of the Convention calls for the adoption of the necessary measures to attract persons to the nursing profession. The Committee notes that “inflows” of nursing personnel include graduates from nursing education and training programmes, immigrant foreign-trained nurses and nurses returning to work following a temporary absence from the workforce.

155. In most countries, the national education system is the most important driver of the supply of health workers in general, and nurses in particular. A variety of policy measures relating to admission to nursing education programmes have been taken at the national level to influence the supply of nursing personnel, including subsidies for these programmes and the establishment of quotas on the number of students admitted each year.<sup>268</sup>

156. The Committee notes that immigration is an important source of nursing personnel in some countries. In this respect, the Committee refers to the 2010 WHO Global Code of Practice on the International Recruitment of Health Personnel, which recognizes that the international

<sup>268</sup> See Ono, Lafortune and Schoenstein (2013). *Health workforce planning in OECD countries*, op. cit., p. 13.

migration of health personnel, including nursing personnel, can make a sound contribution to the development and strengthening of health systems, if recruitment is properly managed. It calls for measures to be taken to strengthen health systems worldwide equitably, mitigate the negative effects of the migration of health personnel on the health systems of developing countries (preventing the ‘brain drain’) and safeguard the rights of nursing personnel.<sup>269</sup> The Committee points out that the international migration of skilled nursing personnel raises serious concerns in countries where it exacerbates already acute shortages of nurses, and particularly in lower-income countries.<sup>270</sup> The 2010 WHO Global Code of Practice on the International Recruitment of Health Personnel indicates that countries “should strive, to the extent possible, to create a sustainable health workforce and work towards establishing effective health workforce planning, education and training, and retention strategies that will reduce their need to recruit migrant health personnel.”<sup>271</sup> The HEEG Commission also urges countries losing health workers to do more to retain their health workforce, and destination countries to do more to achieve greater self-sufficiency and sustainability in their domestic supply.<sup>272</sup> The goal is not necessarily to achieve self-sufficiency, but to avoid relying systematically on other countries to meet domestic needs for nursing personnel (see Chapter 12).

**157.** Other measures adopted by governments with a view to adjusting the future supply of nurses include regulations on the (re-)licensing and (re-)registration of nurses, as well as measures to influence the geographical distribution of nurses (including both financial incentives and regulations concerning the choice of practice location).<sup>273</sup>

## (ii) Outflows

**158.** Article 2(2) of the Convention calls for measures to retain nurses in the nursing workforce. The Committee notes that “outflows” include nurses who leave nursing to work in other sectors, who emigrate, and who retire. A large number of nurses tend to leave the profession before the normal retirement age.<sup>274</sup>

**159.** While one of the most significant factors contributing to difficulties in both recruiting and retaining nurses is the lack of decent working conditions, other significant factors include lack of motivation due to limited professional development and career progression opportunities, non-participation in decision-making processes and the undervaluation of the profession.<sup>275</sup> The Committee therefore recalls that decent working conditions, meaningful and valued professional roles, improved opportunities for personal career development and improved leadership and management are all key factors in retaining nurses in the profession (see Chapter 6).

**160.** Nurses leave the workforce to retire. They may also leave temporarily or permanently due to family responsibilities, career changes or emigration. Steps need to be taken at the national level to fill the resulting gaps. For instance, in OECD countries, there is concern regarding the imminent retirement of the “baby-boom” generation of nurses. In a number of countries, their retirement has been anticipated by increasing the number of students admitted to nursing education programmes over the past decade.<sup>276</sup>

<sup>269</sup> WHO Global code of practice on the international recruitment of health personnel, Sixty-third World Health Assembly, WHA63.16, Geneva, 2010, Art. 3(2).

<sup>270</sup> OECD (2016). *Health workforce policies in OECD countries, Right jobs, right skills, right places*, Paris, p. 27.

<sup>271</sup> [WHO Global code of practice on the international recruitment of health personnel](#), op. cit., Art. 3(6).

<sup>272</sup> WHO (2016). *Working for health and growth*, op. cit., p. 49.

<sup>273</sup> Ono, Lafortune and Schoenstein (2013). *Health workforce planning in OECD countries*, op. cit., p. 13.

<sup>274</sup> *ibid.*, pp. 9 and 18.

<sup>275</sup> APPG (2016). *Triple Impact*, op. cit., p. 19.

<sup>276</sup> For instance, Australia. See D.J. Schofield, (2007). “[Replacing the projected retiring baby boomer nursing cohort 2001–2026](#)”, *BMC Health Services Research*, 7(87).

161. The Committee also notes that pension reforms have been introduced in some countries raising the retirement age, as well as other initiatives to increase the retention rates of nurses in the profession.<sup>277</sup>

162. The supply of nurses is not only determined by the number of nurses working in a country, but also by their working hours, or activity rates.<sup>278</sup> The Committee notes that the “stock” of nurses can best be measured in terms of full-time equivalents (FTE),<sup>279</sup> which take into account working hours and part-time work.<sup>280</sup>

### (c) Anticipating the number and profiles of the required nursing personnel

163. Paragraph 2(2)(a) of the Annex to the Recommendation provides that nursing services should be programmed on the basis of information obtained from studies and research which are of a continuing nature and permit adequate evaluation of the problems arising and of the needs and available resources. To determine the overall number of nursing personnel that will be needed in the future, including the different categories of nurses and skill mix sets, it is necessary, at a minimum, to identify: (1) the overall number of nursing personnel needed in the future; (2) those areas where nursing shortages are currently most evident (geographically or by service/specialty) and those where shortages are most likely to occur in future; and (3) the type of staff or skill sets that are most urgently needed for the effective delivery of nursing care.

164. Different projection models are used at the national level, such as needs-based approaches, utilization-based approaches, health workforce-to-population ratios, service target-based approaches, adjusted service target-based approaches and facilities-based approaches.<sup>281</sup> The Committee considers that the approach used should be applicable to the particular circumstances, the stock of qualified nursing personnel and the financial resources available in each country.

165. The Committee notes that the health workforce planning models used in most countries are focused on “replacement needs”, using information on student intake and graduation rates and assuming that all nurses retire at a given age. These models estimate whether future inflows of nurses are likely to be sufficient to replace projected outflows. However, many of the models have encountered difficulties in dealing with fluctuations in retention rates.<sup>282</sup>

166. Nursing workforce projection models are developed by various agencies and actors. In some countries, workforce planning is carried out by health workforce planning agencies,<sup>283</sup> while in others *ad hoc* commissions develop one-off reports to guide policy development at a particular point in time.<sup>284</sup> In other countries, existing agencies, such as national statistical offices, national boards of health or health observatories, or divisions of health ministries, have been given responsibility for developing projection models.<sup>285</sup>

<sup>277</sup> OECD (2016). *Health workforce policies in OECD countries*, op. cit., p. 13.

<sup>278</sup> *ibid.*, p. 31.

<sup>279</sup> The full-time equivalent (FTE) consists of the total number of hours worked by the cohort of nurses, divided by the average number of hours worked by a full-time nurse in total. WHO (2010). *Guidelines: Nursing and midwifery workforce planning*, op. cit., p. 16.

<sup>280</sup> OECD (2016). *Health workforce policies in OECD countries*, op. cit., p. 9.

<sup>281</sup> WHO (2010). *Guidelines: Nursing and midwifery workforce planning*, op. cit., p. 21.

<sup>282</sup> Ono, Lafortune and Schoenstein (2013). *Health Workforce Planning in OECD countries*, op. cit., p. 9.

<sup>283</sup> For instance, *Australia* and *United Kingdom*.

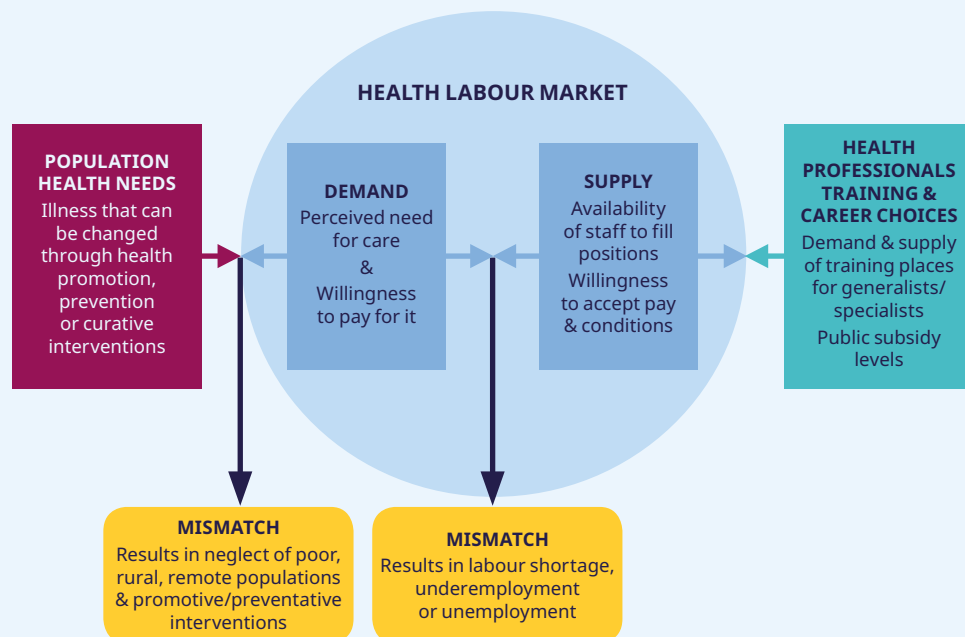
<sup>284</sup> For instance, *Japan*.

<sup>285</sup> For instance, *Denmark, France, Germany* and *Switzerland*.

The European Observatory on Health Systems and Policies supports and promotes evidence-based health policymaking through comprehensive and rigorous analysis of health systems in Europe. It brings together a wide range of policymakers, academics and practitioners to analyse trends in health reform, drawing on experience from across Europe to illuminate policy issues.<sup>286</sup>

Figure 3.6

### Analysis of national health workforce policies using an evidence-based approach



Source: WHO (2017). [Health Employment and Economic Growth: An Evidence Base, Geneva](#), p. 263.

167. The mere numerical availability of the nursing workforce is not sufficient, as it must be equitably distributed, accessible to the population and possess the required competencies and motivation to deliver quality care that is appropriate and acceptable in the socio-cultural context and in light of the expectations of the population.<sup>287</sup> ***The Committee considers that the national policy should not only address short-term problems, but should also seek to contribute to the long-term goal of achieving a sustainable, trained and motivated nursing workforce. To achieve this goal in the long-term, it is crucial for the policy to be based on accurate and comprehensive data.***

<sup>286</sup> [European Observatory on Health Systems and Policies](#).

<sup>287</sup> WHO (2016). *Global strategic directions for strengthening nursing and midwifery 2016–2020*, op. cit., p. 8.



## 2. Design and formulation of the policy

168. Once the challenges to ensuring an adequate nursing workforce and optimal delivery of nursing services have been identified, the tripartite constituents are better equipped to develop effective and informed strategies to achieve the objective of providing the quantity and quality of nursing care necessary to attain the highest possible level of health for the population. For instance, if a future shortage of nurses in a specific region or area (such as rural or remote areas) is identified, tailored measures can be developed and implemented to address the problem effectively.

In *South Africa*, the Public Servants Association of South Africa (PSA) indicates that the most effective policy interventions to attract nurses to a rural job were the introduction of a financial rural incentive and the provision of preferential access to specialist nursing training. The National Department of Health is trying to stem this flow from rural underserved areas through such measures as a progressive bursary scheme, compulsory community service (for two years) for trained health professionals, and occupation-specific dispensation (the setting of salary levels higher for scarce health professional staff).

169. Effective policies and strategic actions need to be practical, deliverable and have tangible and identifiable outcomes.<sup>288</sup> The Committee emphasizes in this regard the importance of establishing clear time frames and formulating adequate indicators<sup>289</sup> to measure the achievement of national nursing policy outcomes. However, the implementation of the national nursing personnel policy is often dependent on factors that are beyond the complete control of constituents and ongoing adjustments of the measures and strategies embedded in the national policy may be necessary.<sup>290</sup>

### (a) The importance of reliable health labour market information systems

170. The Committee considers that the formulation of effective national policies and plans on nursing personnel and services with a view to achieving health development objectives requires sound information and evidence,<sup>291</sup> based on robust analysis of the health labour market, the health economy and population needs.<sup>292</sup> Strategic planning, based on the collection and monitoring of data and indicators, contributes to the effective education and training, recruitment, deployment, retention and management of the nursing workforce on the basis of the current and future trends that influence the demand for and supply of nurses, including nurses providing services in workplaces.

171. The importance of reliable information systems has been emphasized at the global level.<sup>293</sup> The ILO Tripartite Meeting on Improving Employment and Working Conditions in Health Services noted that more and reliable data is needed on trends in healthcare work

288 WHO (2010). *Guidelines: Nursing and midwifery workforce planning*, op. cit., p. 25.

289 On possible indicators, see WHO (2017). *National health workforce accounts: A handbook*, Geneva.

290 ILO (2005). *Social dialogue in the health services*, op. cit., p. 37.

291 WHO (2016). *Global strategic directions for strengthening nursing and midwifery 2016–2020*, op. cit., p. 20.

292 See WHO (2016). *Working for Health and Growth. Investing in the health workforce*, op. cit., p. 52.

293 The HEEG Commission recommended that countries should undertake “robust research and analysis of health labour markets, using harmonized metrics and methodologies, to strengthen evidence, accountability and action”. See WHO (2016). *Working for health and growth*, op. cit., p. 53. See WHO (2016). *Global strategy on human resources for health*, op. cit., p. 8.



and the application of health workforce planning and forecasting tools.<sup>294</sup> The WHO Global Strategic Directions for Nursing and Midwifery 2021–2025 emphasize that data on stock and distribution, as well as on education (applicants, faculties and graduates) and employment (vacancies, turnover and migration) is essential to develop effective health workforce policies and to forecast and plan for future needs.<sup>295</sup> The strength of the data architecture depends on the active engagement of communities and health workers, including nursing personnel, employers, training institutions and professional and regulatory bodies.<sup>296</sup>

172. In its comments on the application of the nursing personnel instruments, the Committee has consistently requested governments to provide updated and detailed statistical information disaggregated by sex, age and region on the ratio of nursing personnel to the population, the number of persons enrolled in nursing schools, the number of men and women nurses who enter and leave the profession each year, the organization and operation of all institutions that provide healthcare, as well as official studies, surveys and reports addressing human resources issues in the health sector.<sup>297</sup>

### (b) Allocation of adequate resources

173. Article 2(1) of the Convention calls for the national policy to be formulated and implemented “within the resources available for health care as a whole”. Paragraph 1 of the Annex to the Recommendation adds that sufficient budgetary provision should be made to permit the attainment of the objectives of the national policy.

174. The 2017 ILO Tripartite Meeting on Improving Employment and Working Conditions in Health emphasized that universal healthcare, “with a focus on primary and preventative care, should be ensured through adequate public funding. Private investment can supplement public funding and health service delivery (...).”<sup>298</sup> However, the Committee notes that investment in the health workforce, including in the nursing and midwifery workforce, is lower in global terms than is often assumed, reducing the sustainability of the workforce and health systems. The already limited public funding for healthcare systems has been further reduced in many countries in recent years due to the economic downturn.<sup>299</sup>

PSI points out that, as healthcare is highly labour-intensive, inadequate levels of funding usually translate into pressure on health workers – in the form of low wages and understaffing. In the short term, recruitment and retention of healthcare staff is reduced and the quality of service provision suffers. In the longer-term, a weak healthcare system leads to poorer health outcomes for the population and increased susceptibility to disease. PSI highlights that the global pandemic has demonstrated the urgent need to increase investment in public health. It expresses deep concern regarding reports from its various affiliates maintaining that, rather than increasing funding, governments are making additional budget cuts. PSI observes that these cuts further undermine the capacity of the public health system, translating into greater job insecurity and workforce shortages, placing greater stress on remaining staff.

<sup>294</sup> ILO (2017). *Conclusions on improving employment and working conditions in health services*, op. cit., para. 4.

<sup>295</sup> WHO (2021). *WHO Global Strategic Directions for Nursing and Midwifery 2021-2025*, p. 10.

<sup>296</sup> WHO (2016). *Working for health and growth*, op. cit., p. 57.

<sup>297</sup> CEACR – Azerbaijan, C.149, direct request, 2019.

<sup>298</sup> ILO (2017). *Conclusions on improving employment and working conditions in health services*, op. cit., para. 10.

<sup>299</sup> *ibid.*, para. 2.

175. The Committee notes that the COVID-19 pandemic has severely impacted the health workforce, highlighting the need to invest in all occupations engaged in preparedness and response capacity, public health functions and essential health services, such as nursing. Many of the challenges seen during the pandemic are the result of decades of underinvestment. Addressing the root causes of these challenges will require countries to sustainably invest in the health workforce, including in nurses and midwives, through a holistic approach developed through consultation with all stakeholders and integrating appropriate policy and management responses.<sup>300</sup>

**176. The Committee highlights that achieving and maintaining a qualified and motivated nursing workforce requires governments to invest in more and better education, including lifelong learning, improve working conditions and the creation of decent jobs that provide opportunities for advancement. Only through adequate investment can countries attain universal health coverage and ensure strengthened health systems with the capacity and resilience to meet present and future health challenges.**

### 3. Implementation

177. The Convention leaves it to Member States to decide on the methods and mechanisms for the implementation of the national policy, in accordance with national conditions. In most countries, implementation includes as a minimum: mapping out the steps to implement the various strategies and measures envisaged; establishing target dates; planning a strategy for the consultation of stakeholders; and identifying key outcomes.

178. Formal political commitment is also important to promote the necessary engagement of all the actors concerned, for example, through the establishment of a task force (or national coordinating mechanism) to implement the policy and a steering committee (advisory body) for its oversight.<sup>301</sup> **The Committee highlights the importance of engagement at the highest level, as well as a sound governance structure in which particular weight is given to process and participation, including by the private sector. Clear enforcement provisions, backed up by appropriately resourced and well-governed agencies (such as labour inspectorates and human rights commissions), contribute to effective implementation.**<sup>302</sup>

179. The Committee notes that, where planning is a governmental function, responsibility for planning nursing in most countries lies with the nursing unit of the Ministry of Health or its equivalent.<sup>303</sup> The Ministry of Health may also ask an outside group (the national nurses' association, the nursing council or a specially appointed group of nurses and other health and community leaders) to provide information and recommendations.<sup>304</sup> The organization of the planning group for nursing varies widely. National health administrations should include highly competent nurses with the authority to assist in the planning of health services, define the role of nursing services and determine nursing personnel requirements.<sup>305</sup>

300 WHO (2021). *Global strategic directions for nursing and midwifery 2021–2025*, op. cit., p. 2.

301 WHO (2010). *Models and tools for health workforce planning and projections*, Geneva, p. 13.

302 V. Magar et al. (2016). "[Women's contributions to sustainable development through work in health: Using a gender lens to advance a transformative 2030 agenda](#)", *Health Employment and Economic Growth: An Evidence Base*, WHO, Geneva, p. 46.

303 For instance, *Algeria, Israel, Kazakhstan and Lithuania*.

304 For instance, *Cyprus* (Council of Nursing and Midwifery of Cyprus), *Pakistan* (the Pakistan Nursing Council (PCN)), *Philippines* (Congressional Commission on Health (HEALTHCOM), composed of members of the House of Representatives) and *United Kingdom* (National Social Partnership Forum (SPF), composed of different actors of the national health system).

305 WHO (1950). Expert Committee on Nursing, Report on the First Session, Technical Report Series No. 24, Geneva, p. 22.

180. In view of the wide range of elements addressed by national nursing personnel policies (education, working conditions, health workforce planning), their implementation normally requires the participation of other ministries or bodies, which should be assigned specific roles and responsibilities.

## 4. Monitoring, evaluation and revision

181. Monitoring and evaluation mechanisms are required for the effective assessment of the implementation of the national policy. The Committee considers that, to be successful, the policy process needs to be active, ongoing and dynamic, and to be continually monitored and adjusted to respond to the changing needs of the population. Evaluation criteria should be developed for the specific objectives of each workforce planning initiative. Evaluation is most effective when it is built into the policy process from the beginning.<sup>306</sup> Effective evaluation provides opportunities for reflection on the strategies and measures implemented within the framework of the policy, as well as to review the quality of the outcomes.

182. Paragraph 2(1) of the Annex to the Recommendation indicates that the programming of nursing services should be a continuing process at all levels of general health programming. Health systems have to adapt continually to an ever-changing environment, which demands ongoing adjustments in the delivery of health services, including nursing and midwifery. All these underlying determinants have the potential to change and drive further changes in how nursing is delivered, as well as the demand for nurses. The policy should therefore be reviewed on an ongoing basis and revised as needed to meet the national need for nursing personnel at any particular point in time. The policy should also contribute to the long-term development of an adequate and sustainable nursing workforce.

*Costa Rica* – Biennial monitoring and evaluation is undertaken of the National Nursing Plan 2011–21 developed by the National Nursing Council. The proposed organizational structure for the management of the monitoring and evaluation system includes the Executive Board of the Nursing College and representatives of the various nursing bodies of public and private teaching and service institutions.<sup>307</sup>

*Mali* – The Government indicates that the revision of the national policy on human resources development in the Health, Social Development and Family Promotion Sector is based on continuing consultation with the various actors involved in human resources management. The Human Resources Department of the Health and Social Development Sector is in consultation with technical and financial partners and civil society throughout the process, from design to adoption.

306 Australia, State Government of Victoria States Services Authority (2006). [Workforce planning toolkit: A guide for workforce planning in small to medium sized Victorian public sector organisations](#), Melbourne, p. 37.

307 Costa Rica, *Plan Nacional de Enfermería 2011–2021*, Costa Rica Nursing College, pp. 7 and 65.

## ► VI. Coordination with other healthcare policies and programmes and other categories of health workers

183. Article 2(1) of the Convention calls for the national policy to be designed “within the framework of a general health programme, where such a programme exists, and within the resources available for health care as a whole”.<sup>308</sup> Article 2(4) provides that the policy “shall be co-ordinated with policies relating to other aspects of health care and to other workers in the field of health, in consultation with the employers’ and workers’ organisations concerned”.<sup>309</sup>

***The Committee considers in this respect that the national policy on nursing services and nursing personnel should not constitute a separate system from the policy on health services and healthcare workers as a whole.<sup>310</sup> Nursing forms part of broader health policy and cannot be developed in isolation from other health professions. It is intimately related to and affected by developments in the health sector as a whole.<sup>311</sup> The Committee therefore emphasizes that the nursing personnel system should be developed as an integral part of the national health system and should be aligned with national health priorities and workforce plans. Moreover, health workforce planning should be broad in scope and take into account the entire health workforce.<sup>312</sup> This approach can help to ensure that countries have the right type of health workforce in the right place and in adequate numbers.<sup>313</sup>***

184. The Committee notes that, to be effective, the nursing services and nursing personnel policy needs to be aligned and integrated with national and regional health priorities and related agendas. The effective implementation of a national nursing workforce agenda requires coherent and effective policy action coordinated across the finance, education, health, social welfare, labour and foreign affairs branches of government through inter-ministerial structures, coordination mechanisms and policy dialogue.<sup>314</sup> This requires the establishment of national governance and policy dialogue mechanisms, structures and processes which include the social partners, in accordance with Article 2(4) of the Convention. The Committee notes that inter-ministerial structures and coordination mechanisms have been established in some countries.

*Latvia* – The national policy on nursing services and personnel is coordinated with other aspects of healthcare and other categories of health workers and is discussed by the National Tripartite Cooperation Council in the Sub-Council on Health and the Strategic Council on Health.

*Spain* – The Government reports the establishment of a human resources commission, which includes representatives of the State, the autonomous administrations and the corresponding national commissions for the various health specializations. It is mandated to contribute to the planning and design of training policies and programmes for health professionals.

308 See also Para. 4(2)(a) of the Recommendation.

309 See also Para. 4(1) of the Recommendation.

310 ILO (1976). *Employment and conditions of work and life of nursing personnel*, Report VII(2), International Labour Conference, 61st Session, Geneva, p. 66.

311 APPG (2016). *Triple Impact*, op. cit., p. 13.

312 L. O’Brien-Pallas et al. (2001). “[Integrating workforce planning, human resources and service planning](#)”, Workshop on Global Health Workforce Strategy (Annecy, 9–12 December 2000), WHO, pp. 1–3.

313 ILO (1976). *Employment and conditions of work and life of nursing personnel*, Report VII (1), International Labour Conference, 61st Session, Geneva, p. 11.

314 WHO (2016). *Working for health and growth*, op. cit., p. 49.

185. A nursing workforce unit has been established in some countries to negotiate and co-ordinate inter-sectoral relationships with other line ministries and stakeholders.

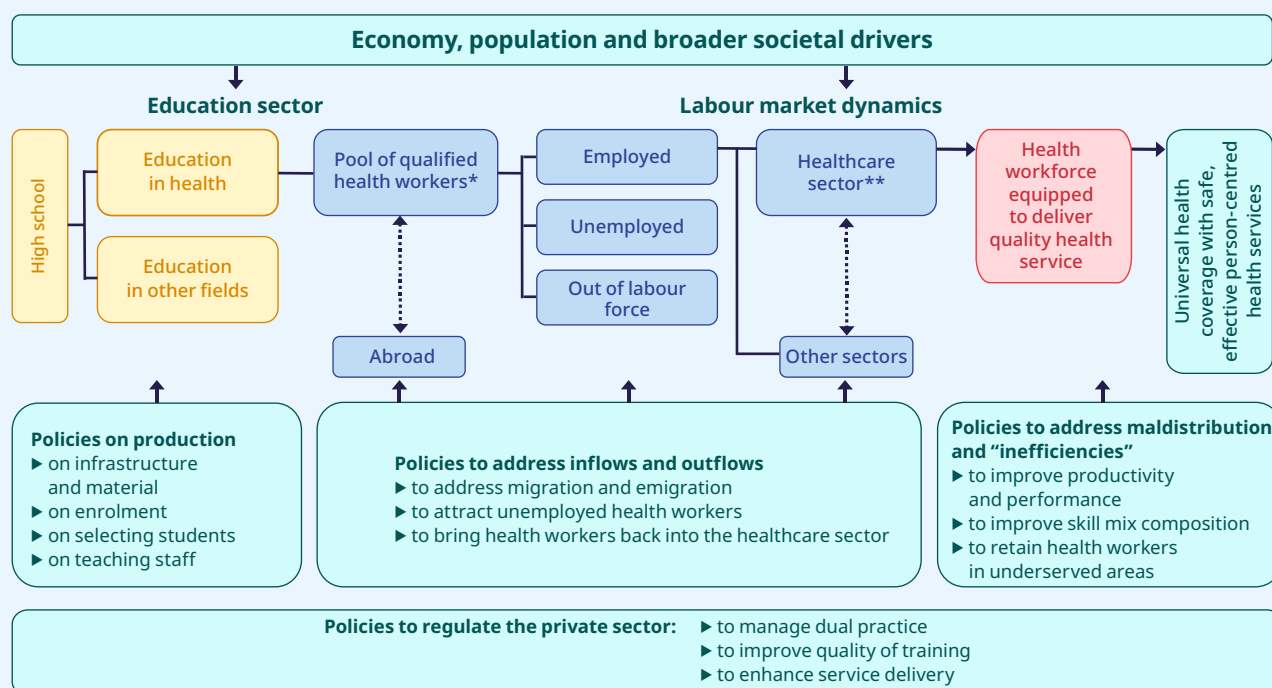
*Cuba* – The National Department of Nursing of the Ministry of Public Health (MINSAP) is an organizational unit responsible for standards, methodology and monitoring in response to the missions of the system, and sets priorities in its work in accordance with its specific missions.

*Ireland* – The Office of the Nursing and Midwifery Services Director (ONMSD), an integral part of the Office of the Chief Clinical Officer (CCO), acts as a focal point for nursing and midwifery in the public health system, and provides expertise that is pivotal to the analysis, application, implementation and evaluation of legislation and health policy, identifying the key action necessary for policy implementation in all the locations and services in which care is delivered.<sup>315</sup>

186. The figure below shows the various elements and links that are formed when a coordinated approach is adopted to national health workforces.

Figure 3.7

### Public policy levers that shape health labour markets



\* Supply of qualified health and social workforce willing to work.

\*\* Demand for health and social workforce in the health and health-related social care sectors.

Source: A. Sousa et al. (2013). "A comprehensive health labour market framework for universal health coverage", *Bulletin of the World Health Organization*, Vol. 91, pp. 892-4.

## ► VII. Content of the national policy

**187.** To achieve the objective of the Convention, the national policy on nursing personnel and nursing services needs to be based on at least three coordinated axes: (1) coordination of nursing workforce planning with other health workforce planning; (2) adequate education and training, including lifelong learning opportunities; and (3) decent working conditions.

**188.** All three axes are crucial to ensure the availability of sufficient numbers of adequately trained and motivated nurses when and where they are needed. Moreover, the national policy needs to offer employment and career opportunities, adequate and equitable remuneration, safe and healthy working conditions, appropriate education and training, continuing professional development, equality of opportunity and treatment at work and access to social protection. This section will focus on nursing workforce planning, while the other two axes will be addressed in Chapters 4 and 6, respectively.

In the *Republic of South Korea*, the Korean Federation of Public Services and Transportation Workers' Unions (KPTU) indicates that, despite a steady increase in the number of nursing graduates (twice the OECD average), nurse shortages remain. In 2019, 51.9 per cent of all licenced nursing graduates and 26 per cent of nurse assistants were not working in the profession. A survey conducted by the KPTU and other healthcare-related associations revealed that understaffing is due to poor working conditions in health sector, including low wages, and high labour intensity. The KPTU therefore adds that it is not enough to ensure adequate workforce planning and quality education; to address the problem of nursing personnel shortages, it is also necessary to ensure substantive improvement of their working conditions.

### 1. Strategic workforce planning: The benefits of an iterative and integrated approach

“Workforce planning refers to the process by which an organization, system or agency determines the workforce it needs to deliver its services – both now and in the future, and develops strategies that balance those workforce needs with the available workforce supply. It can be simply defined as ensuring the right practitioners are in the right place at the right time with the right skills to deliver the care required.”<sup>316</sup>

**189.** Strategic workforce planning plays a key role in improving the working conditions and well-being of nursing personnel by contributing to the development of a positive working environment, meaningful and valued professional roles, improved opportunities for personal and career development, and improved leadership and management opportunities.<sup>317</sup> Strategic planning can also contribute to the effective education, recruitment, deployment, retention and management of the nursing workforce, as well as its equitable distribution. A planned and well-structured personnel situation in nursing can prevent role confusion and support the development of a personnel system that offers a satisfactory division of work responsibilities and career opportunities.<sup>318</sup>

<sup>316</sup> WHO (2010): *Guidelines: Nursing and midwifery workforce planning*, op. cit., p. 4.

<sup>317</sup> *ibid.* p. 6.

<sup>318</sup> WHO (1969). “Methods of estimating health manpower”, Report on a Symposium, Budapest, 15–19 October 1968, WHO, Regional Office for Europe, Copenhagen, pp. 29–31 and 127–131.

## 2. Establishing a rational system of nursing personnel

190. The Committee recalls that, at the time of the adoption of the Convention, with the massive expansion of nursing care, the improvement in quality while meeting the demand for more nurses was a growing problem. The Recommendation therefore envisages the establishment of a national nursing personnel system that would provide a rational structure for the employment of nursing personnel in each country.<sup>319</sup> This serves to ensure the preparation and deployment of the mix of nursing personnel required to deliver the specific types of nursing services needed by individuals, families and communities.

191. Paragraph 5(1) of the Recommendation calls on countries to take measures, in consultation with the employers' and workers' organizations concerned, to establish a rational nursing personnel structure, by classifying nursing personnel into a limited number of categories determined by reference to education and training, level of functions and authorization to practice.

192. The Committee notes that, in consultation with the social partners and nurses' associations, most governments have established a rational nursing personnel structure classifying nursing personnel into a limited number of categories.<sup>320</sup> In some countries, these categories are established by law.

*Czechia* – Nursing personnel participate through their union representatives in the process of creating a rational structure for them in the national healthcare system. Under the current legislation, the term “nursing personnel” includes general nurses, practical nurses, carers, hospital attendants and midwives. Nursing personnel are divided into categories according to their level of education, vocational training and other specialized qualifications.

*New Zealand* – The Nursing Council defines scopes of practice for each category of nursing personnel: registered nurses, enrolled nurses and nurse practitioners. These scopes of practice include education and training requirements and the level of functions and authorizations to practice. The Council consults key stakeholders, including the social partners, and the New Zealand Nurses Organisation (*Tōpūtanga Tapuhi Kaitiaki o Aotearoa (NZNO)*), in developing these scopes of practice.

193. In some countries, different categories of nursing personnel are established for purposes of fixing varying levels of remuneration through collective agreements based on such criteria as education and qualifications, responsibilities, duties and experience.

319 Para. 5 of the Recommendation. ILO (1976). *Employment and conditions of work and life of nursing personnel*, Report VII(1), op. cit., p. 9.

320 For instance, *Australia, Canada, Czechia, Denmark, Germany, Republic of Korea, Mali, Mauritius, Morocco, New Zealand, Paraguay, Spain and Zimbabwe*.



*Australia* – Nurses employed by New South Wales Health are covered by the Public Health System Nurses' and Midwives' (State) Award 2021, which establishes a limited number of nursing classifications and qualification requirements.<sup>321</sup> In South Australia, the social partners participate in the negotiation of Awards and Enterprise Agreements, which classify positions, levels and skills. In Western Australia, different categories of nursing personnel are also established in the relevant industrial agreements.<sup>322</sup>

*Denmark* – The Government indicates that the main collective agreement of 2018 governing the remuneration of nursing personnel sets remuneration levels based on level of education and number of years of work experience, particularly for nurses registered in hospitals and municipalities, specialized nurses (for example, in oncology, anaesthetics and psychiatry), nurses with a Master's degree and nurses in leadership positions.

194. Some governments report that, in view of the increased responsibilities of nurses, steps are being taken to establish a rational structure for nursing personnel.

*Kazakhstan* – The Government indicates that, in view of the expanding functions of nurses in practice, road maps and conceptual frameworks are being implemented jointly with consultants from Finnish universities to establish a rational nursing personnel structure which classifies nursing personnel by level of education and training.

*Latvia* – The "Concept on the future development of the nursing profession" was adopted in 2019 with a view to reducing the shortage of nurses, persuading nurses working in other sectors to return to the profession and promoting the development of the nursing profession in accordance with the changing demands of the labour market. Drawn up in cooperation with the Latvian Nursing Association, the Concept provides, inter alia, for the development of a new standard of nurse (general care nurse) which includes new and improves existing competencies, thereby expanding the scope of practice.

321 *Australia*, New South Wales, Public Health System Nurses' and Midwives' (State) Award 2021.

322 *Australia*, Western Australia Health System; Australian Nursing Federation; Registered Nurses, Midwives, Enrolled (Mental Health) and Enrolled (Mothercraft) Nurses; Industrial Agreement 2020, and Western Australia Health System – United Workers Union (WA); Enrolled Nurses, Assistants in Nursing, Aboriginal and Ethnic Health Workers Industrial Agreement 2020.

**195.** The guidance contained in Paragraph 5(2) of the Recommendation envisages at least three broad categories of nursing personnel.

“Such a structure may include the following categories, in accordance with national practice:

1. professional nurses, having the education and training recognised as necessary for assuming highly complex and responsible functions, and authorised to perform them;
2. auxiliary nurses, having at least the education and training recognised as necessary for assuming less complex functions, under the supervision of a professional nurse as appropriate, and authorized to perform them;
3. Nursing aides, having prior education and/or on-the-job training enabling them to perform specified tasks under the supervision of a professional or auxiliary nurse.”

**196.** The categorization of personnel within the national nursing system is at the discretion of the tripartite constituents at the national level in accordance with the local situation and the national development plan for the health workforce. However, the Committee notes that, in the vast majority of countries, the structure of nursing personnel includes at least the three categories outlined in the Recommendation. The further development of such categories is found to a greater or lesser extent in many countries, based on national circumstances and capacities (see below).

**197.** Paragraph 2(3) of the Annex to the Recommendation provides guidance on the programming of nursing services through measures to: “(a) establish adequate nursing standards; (b) specify the nursing functions called for by the recognised needs; (c) determine the staffing standards for the adequate composition of nursing teams as regards the number of persons and qualifications required at the various levels and in the various categories; (d) determine on that basis the categories, number and level of personnel required for the development of nursing services as a whole and for the effective utilisation of personnel; and (e) determine, in consultation with the representatives of those concerned, the relationship between nursing personnel and other categories of health personnel”.

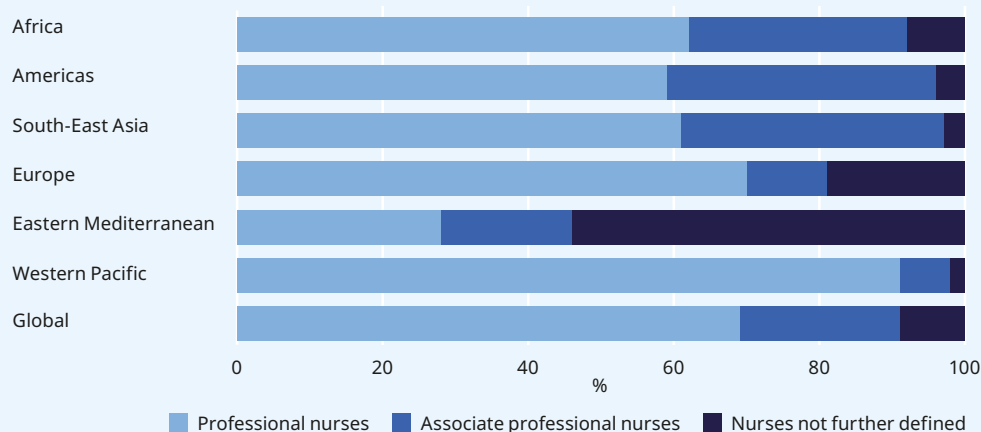
**198.** The Committee notes that the categorization of nurses varies between countries. In some countries, there are two categories of nurses: professional nurses performing complex or highly complex functions, and auxiliary nurses who perform less complex functions under the supervision of a professional nurse.<sup>323</sup> In other countries, there are three or more categories of nurses, often including nursing aides or another function as the third category.<sup>324</sup> Governments report that nursing personnel are also classified by field of specialization, including mental healthcare, operating room care, anaesthesia, paediatric care, emergency and intensive care.

<sup>323</sup> For instance, *Algeria, Argentina, Estonia, Ghana, Indonesia, Mali, Namibia, Spain and Trinidad and Tobago*.

<sup>324</sup> For instance, *Belgium, Brazil, Bulgaria, Cabo Verde, Denmark, Dominican Republic, Finland, Guatemala, New Zealand, Peru, Senegal, South Africa, Switzerland, Tunisia, Turkey and Bolivarian Republic of Venezuela*.

Figure 3.8

**Proportion of nursing headcount within each occupation group, by WHO region**



Source: WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., p. 41.

199. Most governments report that midwives are covered by the national legislation and/or policy on nursing personnel.<sup>325</sup> In certain countries, midwives are governed by separate specific laws or regulations.<sup>326</sup> In others, community health nurses are classified as a separate and distinct category from community health workers.<sup>327</sup>

*Bahamas* – The Government indicates that community nursing includes many areas of patient care, including preventive health and care for people who are ill at home, high-risk elderly persons, persons with physical and mental disabilities or social issues, at-risk families, homes for senior citizens and schools.

200. In some countries, new categories of workers providing nursing care are emerging to address the increasing demand for care workers (see Chapter 1). In some cases, these workers are authorized to provide nursing services outside the recognized structure and scope of practice of nursing personnel in the country.

325 For instance, *Algeria, Australia, Belarus, Brazil, Bulgaria, Cambodia, Czechia, Finland, Ghana, India, Islamic Republic of Iran, Ireland, Latvia, Lithuania, Mali, Slovenia, Togo, Tonga, Trinidad and Tobago, United Kingdom and Bolivarian Republic of Venezuela*.

326 For instance, *Argentina, Belgium, Chile, Switzerland and Spain*.

327 For instance, *Bahamas* (community nurse), *Bosnia and Herzegovina* (community nurse), *Guatemala* (auxiliary community nurse), *Saint Kitts and Nevis* (community nurse) and *Solomon Islands* (community health nurse).

CEACR – In its comments concerning *Greece*, the Committee noted that shortages in qualified nursing personnel have given rise to certain practices, including recourse to so-called “exclusive” nurses, who are normally women migrant workers employed in a quasi-nursing capacity by patients’ families. These workers, who often provide informal hospital services, are increasingly tolerated by public establishments. In its observations, the Greek General Confederation of Labour (GSEE) expresses concern at this form of atypical work.<sup>328</sup>

PSI indicates that the number of nursing aides has increased considerably over the past 40 years due to the expansion of residential and home-based aged care and disability care. Registered and enrolled nurses make up a smaller percentage of the workforce in these settings.

**201.** Paragraph 6(1) of the Recommendation indicates that the functions of nursing personnel should be classified according to the level of judgement required, the authority to take decisions, the complexity of the relationship with other functions, the level of technical skill required and the level of responsibility for the nursing services provided. Paragraph 6(2) indicates that the resulting classification “should be used to ensure greater uniformity of employment structure in the various establishments, areas and sectors employing nursing personnel”. In this respect, Paragraph 3 of the Annex to the Recommendation identifies at least four types of nursing functions that should be developed: direct and supportive nursing care; the administration of nursing services; nursing education; and research and development in the field of nursing. Paragraph 5 of the Annex indicates that the classification of functions should be based on an analysis of jobs and an evaluation of functions made in consultation with the employers’ and workers’ organizations concerned, in order to ensure a systematic analysis of the different types of nursing personnel needed.<sup>329</sup>

**202.** The Committee notes that nursing personnel of a given category should not be used as substitutes for nursing personnel of a higher category, except in case of special emergency, on a provisional basis, and on condition that they have adequate training or experience and are given appropriate compensation (Paragraph 6(3) of the Recommendation). This provision respects the status of nursing personnel in relation to their level of recruitment, remuneration, promotion and other factors. Paragraph 15(2) of the Recommendation indicates that, in the event that individuals are already employed on work for which they are not qualified, they should be trained as quickly as possible to obtain the necessary qualifications. The Committee emphasizes that any such substitution should only be made on a provisional basis, and on condition that the nursing personnel concerned have adequate training or experience and are given appropriate compensation.

**203.** In some countries, in recognition that certain nurses have been performing higher-level tasks for a number of years, remedial measures have been taken to recognize the on-the-job experience acquired.

<sup>328</sup> CEACR – *Greece*, C.149, observation, 2020.

<sup>329</sup> Para. 2(3) of the Annex to the Recommendation.

*Slovenia* – In 2017, due to the shortage of registered nurses in the country, section 38 of the Health Services Act permitted nurses and medical technicians with secondary education to work as registered nurses. Nurses and medical technicians who had completed their education in the secondary vocational nursing education programme (who were last enrolled in the 1980/1981 academic year) and who, for at least 12 of the past 15 years, had performed the tasks and exercised the competencies of registered nurses at least 50 per cent of the time, could be considered as belonging to the category of registered nurse and obtain the relevant licence.

**204.** The Committee notes that, with a view to addressing the impact of nursing shortages during the COVID-19 pandemic and ensuring the provision of sufficient nurses during the crisis, emergency measures were adopted in many countries, including the urgent registration of newly graduated nurses, and calling on the assistance of nursing students, volunteers and retired nurses.

*Luxembourg* – The Ministerial Order of 1 April 2020 determining the students of the Technical High School for the Health Professions who are authorized to exercise on a temporary basis certain care functions provides, in sections 1, 2 and 4, that third-year care students undergoing initial training aged 18 years and over; third- and fourth-year nursing students; first-, second- and third-year midwifery students, shall be authorized on a temporary basis ... to exercise the functions of their profession of carers as set out in the regulations respecting the exercise of such professions.<sup>330</sup>

**205.** The Recommendation adds that the practical work of nursing students should in no case be used as a means of meeting normal staffing requirements.<sup>331</sup> During their practical work, nursing students should only be assigned tasks which correspond to their level of preparation.<sup>332</sup>

<sup>330</sup> *Luxembourg*, Arrêté ministériel du 1<sup>er</sup> avril 2020 déterminant les élèves du lycée technique pour professions de santé qui sont autorisés à exercer temporairement certaines attributions de la profession d'aide-soignant. Mémorial A n° 249 de 2020.

<sup>331</sup> Para. 60(1).

<sup>332</sup> Para. 60(2).

## ► VIII. The need for a gender-responsive nursing personnel policy

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206. While the number of women in the health sector has increased over the past few decades, nursing has always been a highly feminized profession.<sup>333</sup> Approximately 89 per cent of nurses are women. According to WHO data, the share of women in nursing is highest (95 per cent) in the Western Pacific, and lowest (76 per cent) in Africa.<sup>334</sup> Nurses constitute the largest occupational group in healthcare, accounting for approximately 59 per cent of the global health workforce.<sup>335</sup>

207. Recent global health policies and workforce strategies have highlighted the crucial importance of addressing the gender dimension of the health workforce as a key element in achieving UHC and promoting economic growth, as well as women's economic empowerment and participation. Moreover, a number of studies have demonstrated the positive impact of investments that promote gender equality in the nursing workforce.<sup>336</sup>

208. The international framework also calls on countries to take urgent steps to ensure gender equality in nursing. For instance, the HEEG Commission calls on countries to maximize "women's economic participation and foster their empowerment through institutionalizing their leadership, addressing gender biases and inequities in education and the health labour market, and tackling gender concerns in health reform processes".<sup>337</sup> The Five-Year Action Plan to implement the HEEG's recommendations urges countries to "strengthen and use sex-disaggregated data; undertake gender analysis as an integral part of labour market analysis; and develop and strengthen national health workforce strategies, policies and investments that address identified gender biases and inequalities, including gender-sensitive considerations regarding women's security, working conditions and mobility."<sup>338</sup>

209. Many forms of gender discrimination affect women in nursing, including direct discrimination and indirect discrimination, sexual harassment, vertical and horizontal occupational segregation, wage gaps and discrimination in relation to working conditions. ***The Committee urges countries to include targeted measures in their national nursing personnel policies aimed at eliminating discriminatory practices in these areas in support of an empowered and motivated nursing workforce with a view to ensuring equality of opportunity and treatment for all nurses.***

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333 OECD (2015). *Health at a Glance 2015: OECD indicators*, Paris, p. 83.

334 Of 194 WHO Member States, 132 provided data disaggregated by sex. See WHO, ICN and Nursing Now (2020). *State of the World's Nursing 2020*, op. cit., p. 40.

335 ibid., p. 39.

336 Several reports have also shown the impact of investments in the health workforce in terms of promoting economic growth and gender equality, including: M. Boniol et al. (2019). "[Gender equity in the health workforce: Analysis of 104 countries](#)", Health Workforce Working paper 1, WHO, Geneva; and APPG (2016). *Triple Impact*, op. cit.

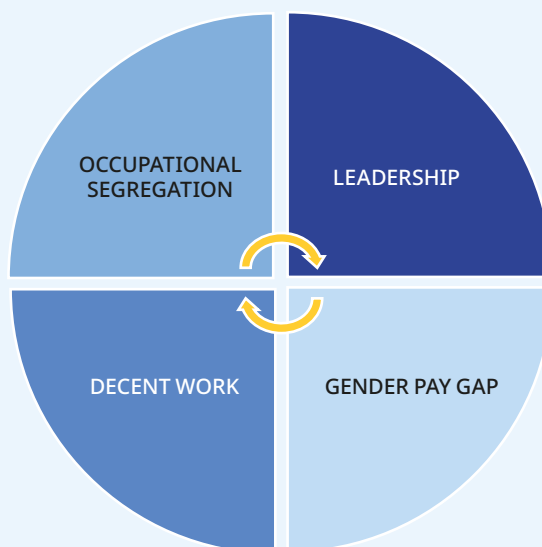
337 WHO (2016). *Working for health and growth*, op. cit., p. 11.

338 WHO-ILO-OECD (2018). *Five-year action plan for health employment and inclusive economic growth (2017–2021)*, Geneva, p. 10. See also the recommendations in WHO (2016). *Global strategy on human resources for health: Workforce 2030*, Geneva, para. 39.

In *Argentina*, the CGT-RA affirms that there are significant differences in working conditions between men and women working in the health sector. Such differences include a gender pay gap and a higher number of men in senior positions. In addition, 20.4 per cent of women in the health sector are in informal employment (14.7 per cent of men). This greater informality implies less access to essential protection mechanisms (such as accident and occupational disease protection), including in the context of the COVID-19 pandemic. The CGT-RA denounces that women are also more exposed to the risk of infection, stress and other occupational risks that may be exacerbated in the current context of the health crisis. This difference can be explained, among other factors, by the greater presence of women in front-line occupations in the health sector, such as nurses, nursing assistants, technicians, assistants or gerontologists. Despite this, only 40.2 per cent of women workers in the health sector have the necessary personal protective equipment (PPE) to carry out their work (57.1 per cent in the case of men).

Figure 3.9

**Key areas in which gender discrimination affects women nurses**



Source: WHO (2019). *Delivered by women, led by men: a gender and equity analysis of the global health and social workforce*, p. 43.

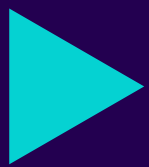


**210. The Committee emphasizes that the national policy on nursing services and nursing personnel should be based on a gender-based analysis that supports a comprehensive understanding of gender-related trends and dynamics in the nursing workforce, with a view to creating new jobs that attract and retain women workers.<sup>339</sup> The development and effective implementation of a gender-responsive nursing policy will strengthen national efforts to address nursing personnel shortages now and in future by enhancing equitable recruitment, education, training, working conditions, motivation and the retention of both women and men in the nursing sector.**

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339 WHO (2019). Delivered by women, led by men: a gender and equity analysis of the global health and social workforce, p. 5.





# 4

## Education and training

## ► I. Quality healthcare education and training is essential to build and maintain effective and resilient national healthcare systems

211. The ILO and the WHO have jointly emphasized the importance of providing quality education and training for nursing personnel as a foundation for achieving the highest standards of health worldwide.<sup>340</sup> As demand for healthcare services, including nursing services, continues to increase, the need to prioritize health education and employment becomes ever more apparent. To meet requirements for health services in the future, there is an urgent need to increase effective investment in quality education, training and lifelong learning for nursing personnel and other health workers.<sup>341</sup> Investment in education can also create jobs. The High-Level Commission on Health Employment and Economic Growth (HEEG) has noted that additional investment in health education could increase overall employment rates, particularly for women and young people.<sup>342</sup>

212. Countries at all levels of socio-economic development face challenges in ensuring relevant quality education and training to enable their nursing workforce to provide optimal care services. Chronic underinvestment in the education and training of nursing personnel and other healthcare workers in many countries, coupled with mismatches between education and employment strategies in relation to health systems and population needs, are contributing to persistent nursing workforce shortages.<sup>343</sup>

While nurses and midwives make up more than half of the global health workforce, spending on nursing and midwifery education amounts to around a quarter of global expenditure on health worker education generally. More and better data on nursing and midwifery graduates, and the cost of their education and training, is needed to guide investment to meet estimated shortages by 2030.<sup>344</sup>

213. There is an urgent need to develop quality nursing and midwifery education programmes capable of producing sufficient numbers of competent practitioners to meet both current and future health needs.<sup>345</sup> The State of the world's nursing 2020 report urges "governments and all relevant stakeholders to: invest in the massive acceleration of nursing education – faculty, infrastructure and students – to address global needs, meet domestic demand, and respond to changing technologies and advancing models of integrated health and social care".<sup>346</sup> It emphasizes the need for policy interventions that can enable nursing personnel to develop and exercise their full potential by optimizing their scope of practice and leadership capacities, coupled with accelerated investment in their education, skills and the creation of decent jobs.<sup>347</sup> Moreover, the State of the World's Midwifery 2021 report urges governments to increase investment in the education and training of midwives, midwife-led service delivery, and midwifery leadership and governance.<sup>348</sup> The HEEG Commission also calls on countries

340 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), International Labour Conference, 61st Session, Geneva, p. 2.

341 WHO (2016). *Working for health and growth: Investing in the health workforce*, Report of the HEEG Commission, Geneva, p. 16.

342 *ibid.*, p. 25.

343 WHO. "Health workforce, Overview".

344 WHO (2020). *State of the world's nursing 2020: Investing in education, jobs and leadership*, p. 22, Geneva, box 4.2.

345 WHO (2016). *Global strategic directions for strengthening nursing and midwifery 2016–2020*, Geneva, p. 10.

346 WHO (2020). *State of the world's nursing 2020*, op. cit., p. vii.

347 *ibid.*, p. xii.

348 UNFPA, ICM and WHO (2021). *The State of the World's Midwifery 2021*, Geneva, pp. v–vi, 13 and 59–60.

to prioritize investment in education and scale up opportunities for high-quality education, training and lifelong learning.<sup>349</sup> In its Five-Year Action Plan, the HEEG Commission recalls that “health workforce investments coupled with the right policy action could unleash enormous socio-economic gains in quality education, gender equality, decent work, inclusive economic growth, and health”.<sup>350</sup>

The ITUC observes that there is an urgent need to invest in professionalization, certification, education and training opportunities for workers across the health and care sectors.

## 1. National health education strategies and plans for the healthcare workforce

214. The Committee notes that most countries have developed national or local policies or strategies on nursing personnel education and training.<sup>351</sup>

In *South Africa*, the South African Nursing Council (SANC) has developed comprehensive global standards for the initial education of professional nurses and midwives that are intended to serve as a benchmark for moving education and learning systems forward to produce common competency –based outcomes. These standards aim to enable nurses to give and support high quality area in a rapidly changing working environment.<sup>352</sup> In addition, the National Skills Development Strategy (NSDS) for *South Africa* has been designed as an overarching strategic instrument aimed at supporting and reinforcing skills development nationally, including for nursing personnel.<sup>353</sup>

215. Assessments of the nature and extent of shortfalls in the nursing education system enable policy-makers to make informed decisions on the design and development of efficient national nursing education and training policies, programmes and curricula. The Committee notes that assessments have been undertaken in a number of countries to determine the current and future needs of the health workforce<sup>354</sup> and healthcare facilities.<sup>355</sup>

349 WHO (2016). *Working for health and growth*, op. cit., pp. 11 and 34.

350 ILO, OECD and WHO (2016). [Health Employment and Economic Growth: A Five-Year Action Plan \(2017–21\)](#), op. cit., p. 3. See also WHO (2021). *The State of the World's Midwifery 2021*, op. cit., p. 49.

351 For instance, *Algeria, Australia, Austria, Bahamas, Bahrain, Belarus, China, Cook Islands, Croatia, France, India, Iraq, Japan, Kazakhstan, Latvia, Luxembourg, Madagascar, Morocco, Myanmar, New Zealand, Philippines, Poland, Saudi Arabia, Senegal, South Africa, Spain, Switzerland, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, United Kingdom of Great Britain and Northern Ireland, Uruguay, Bolivarian Republic of Venezuela, Zambia and Zimbabwe*.

352 *South Africa*, South African Nursing Council (SANC). [Nursing education and training standards](#).

353 *South Africa*, [Skills Supply and Demand in South Africa. Labour Market Intelligence Programme, Development Policy Research Unit](#), University of Cape Town, 2020.

354 For instance, *Austria, Belarus, Germany, Mali, Switzerland, Turkey and United Kingdom*.

355 For instance, *Saudi Arabia*.

## 2. Strengthening and expanding the national network of educational institutions and clinical sites

**216.** The Committee notes that, to keep pace with ongoing changes in the nursing sector, educational institutions and clinical sites must have the capacity to ensure quality education and training of an adequate number of nursing students, to meet the health needs of the population in quantitative, qualitative and distributive terms.<sup>356</sup> It is clear that a lack of general education facilities and of well-developed and well-staffed nursing schools impairs national capacity to effectively educate and train the number of nursing personnel required.<sup>357</sup> Shortages of nursing educational facilities and teaching staff are generally attributable to a cluster of interrelated factors, including lack of infrastructure for pre-nursing education as a result of inadequate education policies or lack of financial resources.

*Italy* – The Government reports that the number of places for nursing students has increased by only 619 places in two years, stating that this was what was realistically possible given the limited teaching capacity in the various universities.

In *Fiji*, the Fiji Nursing Association observes that, in spite of recent reforms in relation to the education and training of nurses, there are still significant challenges with regard to limited space, a limited number of nursing courses and scholarships for postgraduate nursing programmes, slow development of nursing curricula in institutions and a lack of opportunities for PhDs in nursing.

**217.** The Committee notes that investment should also be made in secondary education, particularly in low-income countries, to accelerate completion rates and expand the pool of students eligible for nursing and midwifery programmes, as well as other areas of healthcare education. Investment is also needed to support the massive scaling up of professional, technical and vocational education and training required in low-income countries where universal health care (UHC) is least likely to be achieved.<sup>358</sup>

**218.** The State of the world's nursing 2020 report also highlights the considerable variety in capacity constraints at the national level and concludes that nursing education institutions "should strengthen their capacity by addressing inadequacies in faculty numbers or competencies, infrastructure limitations and the availability of appropriate clinical practice sites .... In order to increase training posts while preserving quality, investment in faculty development programmes may be needed".<sup>359</sup>

<sup>356</sup> WHO (2016). *Working for health and growth*, op. cit., p. 57.

<sup>357</sup> ILO (1976). *Employment and conditions of work and life of nursing personnel*, op. cit., p. 14.

<sup>358</sup> *ibid.*

<sup>359</sup> WHO (2020). *State of the world's nursing 2020*, op. cit., p. 75.

### 3. Ensuring the equitable geographical distribution of education institutions and training facilities

219. The Committee notes that attention should be paid to developing an education and skills development infrastructure in rural and remote areas as a means of attracting and retaining a local healthcare workforce. Technological innovations can contribute to the delivery of healthcare in these areas, creating new employment opportunities, such as in telemedicine or mobile clinics.<sup>360</sup> However, the Committee notes that the provision of health services remotely raises concerns regarding quality assurance, confidentiality, data protection and cybersecurity. Nursing personnel and other healthcare workers using such digital tools will require training and education to help them adapt to the changing work environment.<sup>361</sup>

220. In many countries, demographic changes constitute an ongoing challenge to efforts to ensure an equitable geographical distribution of education institutions and training facilities.<sup>362</sup> The capacity, structural levels, accreditation rules and distribution of existing education institutions vary greatly within and between countries. In some countries, there is no shortage of students, but only limited educational and training infrastructure outside the major cities, thereby preventing many potential students from entering nursing or other health-related occupations.

*United States of America* – The Government indicates that a number of states have been experiencing a growing shortage of healthcare personnel for years, with even greater shortages on the horizon as an ageing health workforce approaches retirement. While there is no shortage of students in Louisiana interested in becoming nurses, the difficulty lies in finding enough clinical teaching staff and placements to ensure the necessary practical experience in existing nursing programmes, with around 1,500 qualified applicants a year being turned away from nursing colleges in the state due to limited capacity.<sup>363</sup>

221. Measures have been taken in a number of countries to promote access to education and employment for nursing students and personnel in rural areas and remote communities.<sup>364</sup>

360 ILO (2017). “[Conclusions on improving employment and working conditions in health services](#)”, Tripartite Meeting on Improving Employment and Working Conditions in Health Services (24–28 April 2017), Geneva, TMIEWHS/2017/9, paras 4–5.

361 ILO (2019). “[The future of work in the health sector](#)”, Sectoral Policies Department, Working Paper No. 325, pp. 7–9.

362 For instance, *Australia, Saudi Arabia and United States of America*.

363 T. Tetlow and W. Thomas, “[Loyola and Ochsner leaders: Joining forces to address nursing shortage](#)”, *The Advocate*, 27 January 2021.

364 For instance, *Australia, Ghana, New Zealand, Republic of Korea and United States*.



*Australia* – A series of measures have been taken in the Commonwealth, New South Wales and South Australia to support inclusive access to quality education and jobs in rural areas and remote communities.

The Commonwealth funds Rural Workforce Agencies in each state and the Northern Territory to administer the Health Workforce Scholarship Program, which provides scholarships and bursaries to upskill existing rural health professionals, including nursing personnel. The Rural Health Multidisciplinary Training (RHMT) Program provides funding to 21 universities for placements in rural areas for medical, nursing and allied health students. With a view to expanding the rural workforce, the programme provides opportunities for students from rural areas to train in their local communities and for metropolitan students to gain rural training experience.

In New South Wales, scholarships are available to support rural or regional nursing and midwifery students and employed nurses and midwives, and some are specifically targeted at those living and working in rural or regional areas in order to develop the local nursing and midwifery workforce.

In Western Australia, incentives are available through industrial agreements to support education and training for nurses and midwives serving in rural and remote areas.<sup>365</sup> The Western Australia Country Health Service (WACHS) TRAVEL Program also offers 12 months of experiential learning by assigning novice practitioners for four-month periods in each of three regions.

In South Australia, the Rural Health Workforce Strategy has invested in supporting rural health through technological innovations for the remote delivery of nursing services and training, including through the Digital Telehealth Network (DTN), which expands the access of health practitioners to patients in rural areas and remote communities.

## 4. Enhancing faculty capacity and improving tools and materials

222. Building stronger educational institutions is essential to secure the numbers and quality of health workers required by national health systems.<sup>366</sup> Investments in education should aim to upgrade the qualifications and skills of teaching staff and make appropriate learning tools and materials available. The Committee notes that education and training institutions must keep pace with new technologies, tools, machines and procedures, and other evolving demands in the health sector to ensure that the education and training provided is fit for purpose. There is also a growing shift towards interdisciplinary team-based care models that optimize the scope of practice of the various healthcare providers, taking full advantage of the opportunities offered by new technologies. Education programmes will therefore have to pay increased attention to team-based training and problem-based learning to overcome current gaps between the skills acquired in nursing schools and workplace requirements.<sup>367</sup>

365 *Australia*, [Western Australia Health System – Australian Nursing Federation – Registered Nurses, Midwives, Enrolled \(Mental Health\) and Enrolled \(Mothercraft\) Nurses – Industrial Agreement 2018](#), Western Australian Industrial Relations Commission (2019 WAIRC 00185); and [Western Australia Health System – United Voice – Enrolled Nurses, Assistants in Nursing, Aboriginal and Ethnic Health Workers Industrial Agreement 2018](#) (2019 WAIRC 00362).

366 WHO (2006). [Working together for health: The World Health Report 2006](#), Geneva, p. 150.

367 OECD (2016). [Health Workforce Policies in OECD Countries: Right Jobs, Right Skills, Right Places](#), Health Policy Studies, Paris, p. 23.

223. Critical shortages of qualified nursing and midwifery teachers, coaches and mentors negatively affect the quality of nursing and midwifery education and practice at the national level.<sup>368</sup> The Committee emphasizes that, while adequate funding can provide immediate short-term solutions for the shortage of training materials and tools, long-term solutions are nevertheless required to address shortages of qualified teaching staff.

*Myanmar* – The Human Resources for Health Strategy indicates that, across all health education institutions, teaching capacity is limited by inadequate numbers of well-qualified teachers and learning materials. Student intake is often not aligned with the capacity of institutions to provide quality education, resulting in excessive numbers of students, insufficient teaching staff, limited space and limited opportunities for clinical practice.<sup>369</sup>

## 5. Introducing innovative learning methods (e-learning, distance learning and mixed or blended methods)

224. The Committee considers that to deliver quality state-of-the-art instruction, nursing and midwifery education and training programmes must take into account constant changes in practice and technological advances. The use of information and communication technologies (ICT) should be promoted in the delivery of quality education, training and lifelong learning opportunities for nursing and midwifery students and practitioners, particularly in rural and remote areas.<sup>370</sup>

*Australia* – As a coordinated investment, the Digital Health Agency, which is responsible for all national digital health services and systems, in addition to rolling out a digital health services infrastructure, also provides on-demand training for healthcare organizations through a range of software demonstrations and training platforms for healthcare workers to facilitate self-paced training.<sup>371</sup>

225. The Committee notes that new technologies have had a positive impact on nursing education, with e-learning proving to be at least as efficient as traditional learning methods. At the same time, the use of new technologies can help to address shortages of trainers and reach a wider audience. Innovative methods, including web-based network learning and simulation exercises, can improve inter-professional and team-based learning.<sup>372</sup> E-learning has been incorporated into the nursing education system in a number of countries.<sup>373</sup>

368 WHO (2016). *Three-Year Regional Prototype Pre-Service Competency-Based Nursing Curriculum, 2016*, Brazzaville, p. iv.

369 Myanmar, *Human Resources for Health Strategy (2018–2021)*, p. 13.

370 WHO (2016). *Global strategic directions for strengthening nursing and midwifery 2016–2020*, op. cit., p. 11. G. Rouleau et al. (2019). “Effects of E-Learning in a Continuing Education Context on Nursing Care: Systematic Review of Systematic Qualitative, Quantitative, and Mixed-Studies Reviews”, *Journal of Medical Internet Research*, Vol. 21(10); and N. Al-Shorbaji et al. (eds.) (2015). *eLearning for undergraduate health professional education: A systematic review informing a radical transformation of health workforce development* (Geneva, WHO).

371 K. Socha-Dietrich (2019). *Health in the 21st Century: Putting Data to Work for Stronger Health Systems*, OECD iLibrary.

372 ILO (2017). “Improving employment and working conditions in health services”, op. cit., para. 122. See Al-Shorbaji et al. (2015). *eLearning for undergraduate health professional education*, op. cit.

373 For instance, Austria, Morocco, Oman, Paraguay, United Kingdom and United States.

*Oman* – The Government reports that the nursing education system provides for multiple modes of programme delivery, including face-to-face teaching, e-learning and distance education designed to prepare nurses and midwives to become self-directed learners capable of maintaining their knowledge and competence.<sup>374</sup>

*Morocco* – The Government indicates that its Health Plan 2025 envisages several approaches to the improvement of nursing services and personnel, including the establishment and equipment of a national e-learning reference centre in the National School of Public Health (ENSP).

226. Innovative nursing education programmes using ICT to promote and support distance learning have been developed in several countries to reach rural and remote areas.<sup>375</sup>

*United Kingdom of Great Britain and Northern Ireland* – The Government reports that Health Education England (HEE) has developed a Blended Learning Nursing Degree, which offers flexibility to enable students to fit their studies around their work and personal lives. It primarily uses digital technology, while still including practical hands-on experience. The Degree seeks to attract a larger and more diverse student population to the profession, including people living in remote areas and rural and coastal communities.

*United States* – The Government refers to the Simulation Education Training (SET) programme, which enhances public health nursing education and practice using simulation-based technology to advance the health of patients, families and communities in rural and medically underserved areas.

227. The Committee nevertheless notes that specific challenges may arise with respect to the use of ICT, particularly in rural areas and remote communities in certain regions where internet connectivity is sparse. ***In such cases, the Committee encourages countries to take all possible measures to close the digital divide, including addressing the lack of basic infrastructure, where this exists, with a view to eliminating inequalities in access to education as well as employment opportunities.***

In *Nepal*, Public Services International (PSI) indicates that its affiliates, Female Community Health Volunteer (FCHV) workers and nursing personnel face challenges, exacerbated by the COVID-19 pandemic, in accessing nursing education due to lack of internet connectivity and equipment.

<sup>374</sup> *Oman*, Ministry of Health, [Directorate of Nursing and Midwifery Affairs](#).

<sup>375</sup> For instance, *Islamic Republic of Iran, Oman, Paraguay, Sweden, United Kingdom and United States*.

## ► II. Establishing minimum educational and training requirements

228. Article 2(2)(a) of the Nursing Personnel Convention, 1977 (No. 149), requires Members to take measures to provide nursing personnel with education and training appropriate to the exercise of their functions which are likely to attract persons to the profession and retain them in it. Article 3(1) and (2) of the Convention provides that the “basic requirements regarding nursing education and training and the supervision of such education and training shall be laid down by national laws or regulations or by the competent authority or competent professional bodies, empowered by such laws or regulations to do so” and that nursing education and training “shall be coordinated with the education and training of other workers in the field of health”.

229. Taking into account the dynamic nature of the nursing profession and the need for resilient systems that can accommodate future needs, Paragraph 4(2)(b) of the Nursing Personnel Recommendation, 1977 (No. 157), calls for the adoption of laws or regulations concerning education and training for the practice of the nursing profession to be adapted to “developments in the qualifications and responsibilities required of nursing personnel to meet all calls for nursing services”.

### 1. Basic requirements for the education and training of nursing personnel

230. In most countries, nursing education and training is regulated by laws and regulations,<sup>376</sup> while in others they are covered by collective agreements.<sup>377</sup> In many countries, nursing boards or councils are empowered to issue quality standards setting education and training requirements, including the accreditation of education and training institutions.<sup>378</sup> Nursing councils, through their interpretation and implementation of the legislation, generally establish policies and procedures that inform both the profession and the public of the expected standards of education, practice, conduct and registration.<sup>379</sup>

*New Zealand* – The Nursing Council sets the standards for education and training for a prescribed scope of practice. It accredits education providers and evaluates them against the relevant education standards, for example to ensure that undergraduate programmes meet the clinical hour and programme length requirements for nurses. It also sets standards for recertification programmes and ongoing competence requirements.

*Trinidad and Tobago* – The Minister of Health, in collaboration with the Nursing Council of Trinidad and Tobago, sets standards for the education and practice of nursing personnel, in consultation with the Accreditation Council of Trinidad and Tobago, and determines the qualifications necessary for the registration, enrolment, certification or licensing of nursing personnel.

376 For instance, *Algeria, Armenia, Australia, Austria, Belarus, Canada, Cuba, Czechia, Germany, Hungary, Ireland, Israel, Italy, New Zealand, Nicaragua, Portugal, Slovenia, Trinidad and Tobago, United Kingdom and United States.*

377 For instance, *Canada, Croatia and Slovenia.*

378 For instance, *Canada, Finland, Hungary, Israel, Lao People's Democratic Republic, Latvia, Mauritius, New Zealand and Solomon Islands.*

379 For instance, *Australia, New Zealand and Trinidad and Tobago.*

## 2. Placing nursing education within the general education framework

**231.** Paragraph 7(2) of the Recommendation indicates that basic nursing education should be conducted in educational institutions within the framework of the general education system of the country at a level similar to that of comparable professional groups. The conclusions of the ILO–WHO Joint Meeting on Conditions of Work and Life of Nursing Personnel considered it essential to ensure that nurses who have been prepared for education and training should control the planning and implementation of the respective programmes.<sup>380</sup>

**232.** In most countries, university departments, faculties,<sup>381</sup> nursing schools<sup>382</sup> or specialized training institutions<sup>383</sup> provide different types and levels of nursing and midwifery education. In other countries, nursing and midwifery education is based on both university and vocational qualifications.<sup>384</sup>

**233.** In some countries, initiatives have been or are currently being taken to begin offering university-based educational programmes for professional nursing or midwifery qualifications.<sup>385</sup>

*Austria* – Measures to guarantee the quality of nursing and residential care have recently been adopted (the 2016 amendment to the Care Allowance Act), raising training requirements for qualified healthcare workers or nurses to the tertiary level, in line with international standards.

*Germany* – In the past, midwifery training was predominantly provided in technical colleges. Pursuant to the new Midwifery Act and its related regulations, midwifery training was modernized and made completely academic with a view to further developing the midwifery profession, making it more attractive and improving the quality of training so that midwives can adapt to the challenges of an increasingly complex health system and strengthen their collaboration with other health professionals.

**234.** Although the number of education institutions and the range of professional education offered varies widely, in most countries, public nursing and midwifery universities are part of the regular education system and are subject to the requirements of the education sector.<sup>386</sup>

<sup>380</sup> ILO (1976). *Employment and conditions of work and life of nursing personnel*, Report VII (1), op. cit., Annex I, para. 46.

<sup>381</sup> For instance, *Chile, Cuba, Thailand and United States*.

<sup>382</sup> For instance, *Algeria, Benin, Burkina Faso, Estonia, Islamic Republic of Iran, Germany, Mali, Mauritius, Morocco, Niger, Pakistan, Switzerland, Togo and Tonga*.

<sup>383</sup> For instance, *India, Niger and Slovenia*.

<sup>384</sup> For instance, *Armenia, Australia, Belarus, Bulgaria, Croatia, Finland, Germany and Hungary*.

<sup>385</sup> For instance, *Austria and Germany*.

<sup>386</sup> For instance, *Italy*.

### 3. Setting educational standards

235. The WHO has emphasized that educational standards for the health professions should serve to promote the progressive nature of education and lifelong learning and ensure the employment of practitioners who are competent and who, by providing quality care, promote positive health outcomes in the populations that they serve.<sup>387</sup> The importance of standards for nursing and midwifery education has been emphasized at the international level, for example in the WHO Global standards for the initial education of professional nurses and midwives, which outline the essential components of nursing education.<sup>388</sup> The role of international standards in setting national requirements is acknowledged by some reporting countries.<sup>389</sup>

236. Legislation has been adopted in most reporting countries to create mechanisms or special institutions<sup>390</sup> mandated to develop standards on nursing education and training.<sup>391</sup> However, in a few countries, there are no standards or specific legislation<sup>392</sup> on the education and training of nursing personnel.<sup>393</sup>

### 4. Supervising nursing education and training

237. Governmental regulatory bodies at the national,<sup>394</sup> state or regional levels<sup>395</sup> regulate and supervise nursing education in most countries. However, in a few countries, non-governmental bodies regulate<sup>396</sup> or supervise<sup>397</sup> the tertiary-level education of nurses and midwives.

*Canada* – The Canadian Association of Schools of Nursing (CASN) is the national association for nursing education and the accrediting agency for university nursing programmes. The provincial regulatory authorities are responsible for establishing the education and practice standards for entry into practice in these professions, although registrants are also required to pass national exams, which are designed to ensure standardized concepts and competencies across all jurisdictions.

387 WHO (2015). *A guide to nursing and midwifery education standards*, WHO Regional Publications, Eastern Mediterranean Series No. 37, Cairo, p. 5.

388 WHO (2009). *Global standards for the initial education of professional nurses and midwives*, Geneva. The term “initial education”, as used by the WHO, refers to the “planned educational programme that provides a broad and sound foundation for the safe autonomous practice of nursing or midwifery and a basis for continuing professional education. In simpler terms, ‘initial education’ refers to the first programme of education required for a person to qualify as a professional nurse or midwife”, p. 36.

389 For instance, *Austria* and *Oman*.

390 For instance, *Australia* and *United Arab Emirates*.

391 For instance, *Australia, Belarus, Bulgaria, Canada, Germany, Ghana, Indonesia, Ireland, Italy, New Zealand, Pakistan, Poland, South Africa, Tonga, Trinidad and Tobago, United Arab Emirates, United Kingdom* and *Zimbabwe*.

392 For instance, *Georgia*.

393 For instance, *Benin, Burkina Faso* and *Senegal*.

394 For instance, *Canada, Croatia, Czechia, Finland, Guatemala, Indonesia, Islamic Republic of Iran, Israel, Japan, Nicaragua, Niger, Norway, Panama, Peru, Saudi Arabia, Solomon Islands, Trinidad and Tobago, United Kingdom, Uruguay* and *Bolivarian Republic of Venezuela*.

395 In the *United States*, accreditation is the process of evaluating nursing programmes to ascertain that they meet specific state and national standards. See K. Gaines (2019). “[Why Nursing School Accreditation Matters](#)”, nurse.org (13 November 2019).

396 For example, *Canada*, where the professional association of nurses in each province regulates the content of nursing education. In British Columbia, Ontario and Nova Scotia, all categories of nurses are regulated by a single college. In all other provinces and territories, each nursing category has its own regulatory body. See Canadian Nurses Association, [Regulatory bodies](#).

397 For example, *Switzerland*, where the Swiss Red Cross is responsible for tertiary-level professional qualifications of nurses and midwives.

**238.** In most countries, the supervision of nursing education and training is closely linked to the accreditation process,<sup>398</sup> through which education institutions are assessed against predefined standards for the delivery of education.

*Czechia* – Compliance with education requirements is monitored by the Ministry of Education, Youth and Sports, in cooperation with the Ministry of Health and the Accreditation Committee.

**239.** While education accreditation is primarily an accountability mechanism to ensure that institutions meet quality standards, accreditation findings can also serve to determine where investments should be made, for example in the recruitment, retention and development of educational personnel. Accreditation standards should also reflect emerging trends in health services that are expected to influence future health practice.<sup>399</sup>

**240.** In most countries, the national legislation sets standards for the establishment and accreditation of educational and training institutions for nurses and/or midwives.<sup>400</sup> Accreditation requirements normally include compliance with national nursing and midwifery education standards,<sup>401</sup> approval of nursing education and training programmes by the nursing regulatory body,<sup>402</sup> or the accreditation of institutions by external agencies.<sup>403</sup>

*United Arab Emirates* – The Commission for Academic Accreditation (CAA) in higher education of the Ministry of Education has issued unified Standards for Institutional Licensure and Programme Accreditation, which include academic nursing programmes at the undergraduate, postgraduate and doctoral levels.

**241.** Standards and accreditation cycles should keep pace with changes in healthcare science and service delivery models. Some countries are currently revising existing accreditation standards or developing new standards for nursing and midwifery education and training.<sup>404</sup> In some countries, standards are required to rectify programme deficiencies<sup>405</sup> or, in extreme cases, discontinue programmes that cannot be brought up to acceptable standards.<sup>406</sup>

398 See R. Roemer (1968). “[Legal systems regulating health personnel: A comparative analysis](#)”, *The Milbank Memorial Fund Quarterly*, Vol. 46(4), pp. 455–456.

399 WHO (2021). [Global strategic directions for nursing and midwifery 2021–2025](#), op. cit., pp. 8–9.

400 For instance, *Australia, Bahamas, Chile, Canada, Czechia, Dominican Republic, Ecuador, Finland, Germany, Hungary, Ireland, Israel, Latvia, Morocco, Myanmar, New Zealand, Nigeria, Oman, Portugal, Saudi Arabia, Slovenia, Switzerland, Togo, United Arab Emirates and United States*.

401 For instance, *Australia and Slovenia*.

402 For instance, *Chile* (National Accreditation Commission), *Ireland* (Nursing and Midwifery Board of Ireland – NMBI), *New Zealand* (Nursing Council) and *Tonga* (Tonga National Qualifications and Accreditation Board).

403 For example, *United States* (the Council for Higher Education Accreditation (CHEA) is a private non-profit organization that coordinates accreditation activities).

404 For instance, *Belarus, Germany, Hungary, Ireland, Kazakhstan and Myanmar*.

405 For instance, *Mali and Nigeria*.

406 WHO (2020). *State of the world's nursing 2020*, op. cit., para. 68.



*Nigeria* – Of the total of 89 nursing schools recorded in 2009, only 76 received accreditation in 2012, meaning that 13 schools of nursing and midwifery lost accreditation between 2009 and 2012 due to lack of appropriate infrastructure and under-qualified tutors, which bears witness to the decline in the quality of training available for health workers in the country.<sup>407</sup>

## 5. Access to education: Admission requirements

242. While the number of years of schooling required for admission to nursing education varies from country to country, the completion of at least secondary education is required for admission to a nursing school.<sup>408</sup> In most countries, 10 to 12 years of general school education is required for admittance into a nursing and midwifery programme.<sup>409</sup> In some countries, the preliminary education requirement for entering “auxiliary nursing occupations” is nine or ten years.<sup>410</sup>

*Germany* – Under the Nursing Professions Act (2020), completion of ten years of general secondary education is required for access to general nursing training. Under the Midwife Act (2019), the access requirement for the dual-study course in midwifery is completion of at least 12 years of general school education or a vocational training certificate in general or paediatric nursing. Admission to post-basic nursing studies is determined by the regulations of the states (*Länder*) on admission to higher education. Equivalent achievements can be credited to the post-basic nursing studies. A successfully completed vocational nursing training shall shorten the nursing studies by half.

243. In some countries, access to nursing or midwifery education may be subject to additional requirements,<sup>411</sup> such as an aptitude test<sup>412</sup> or admission exams.<sup>413</sup>

## 6. Content and duration of the curriculum

244. Paragraph 8 of the Recommendation indicates that nursing education and training should include both theory and practice, in conformity with a programme officially recognized by the competent authorities. Moreover, practical training should be given in approved preventive, curative and rehabilitation services, under the supervision of qualified nurses.

245. Paragraph 9 of the Recommendation indicates that the duration of basic nursing education and training should be related to the minimum educational requirements for entry to training and the purposes of the training. It adds that there should be two levels of approved basic education and training. Students applying to train as professional nurses should have the background of general education required for entry to university, while those applying to

407 *Nigeria*, [National Health Policy 2016: Promoting the Health of Nigerians to Accelerate Socio-economic Development](#), Federal Ministry of Health.

408 For instance, *Bosnia and Herzegovina*, *Croatia* and *Germany*.

409 For instance, 12 years in *Belarus*, *Cyprus*, *Denmark*, *France* and *Sweden*, and 10 years in *Armenia*, *Austria* and *Germany*.

410 For instance, in *Austria*, Ordinance No. 87/2016 sets the entry requirements (nine years of school education for an auxiliary nurse and ten years for a specialist auxiliary nurse).

411 For instance, *Belgium*, *Brazil*, *India*, *Pakistan*, *Saudi Arabia* and *Tunisia*.

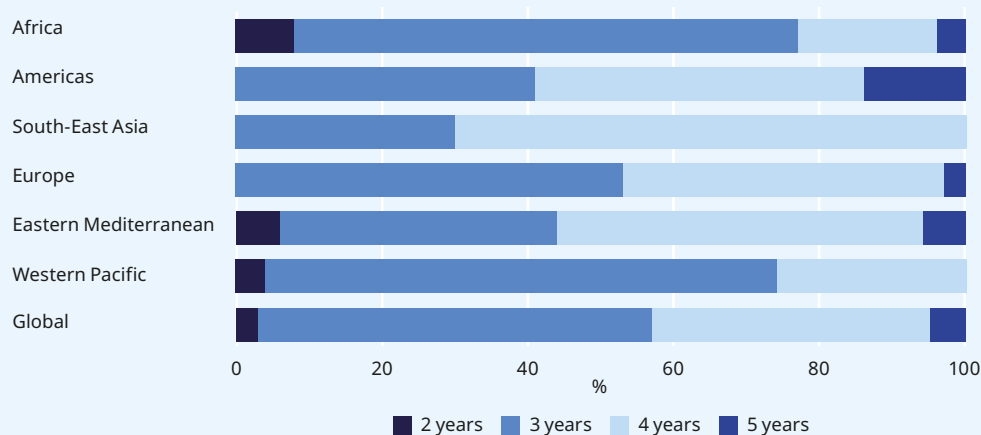
412 For instance, *Austria*.

413 For instance, *Niger* and *Philippines*.

train as auxiliary nurses should have a proportionate educational background, and theoretical and practical training should be provided to “nursing aides” that is appropriate to their functions (Paragraph 11).

**Figure 4.1**

**Average duration (years) of education for nursing professionals, by WHO region**



Source: WHO, ICN and Nursing Now (2020). *State of the world's nursing 2020*, op. cit., p. 55.

246. Paragraph 6 of the Annex to the Recommendation indicates that: “Where the educational possibilities of large sections of the population are limited, measures should be taken within the programmes of nursing education and training to supplement the general education of students who have not attained the level required in accordance with Paragraph 9 of the Recommendation.”

*Barbados* – The Barbados Community College offers a one-year full-time programme (a certificate in pre-health science) to raise the level of education of applicants who do not meet the normal entry requirements for professional programmes.<sup>414</sup>

247. The planning of basic nursing and midwifery education programmes should be based on the needs of the community and the resources available in the country, and should be co-ordinated with programmes for other health personnel.<sup>415</sup> Programmes should be competency-based, apply effective learning methods, meet quality standards and leverage appropriate technology.<sup>416</sup> Moreover, curricula should be aligned with the scope of practice of graduating students and national health priorities, as well as emerging global needs.<sup>417</sup> The Committee notes that most countries have established competency-based curricula to guide the basic education of nursing and midwifery personnel.<sup>418</sup>

414 Barbados Community College (BCC), [Certificate in Pre-Health Science \(Full-Time\)](#).

415 WHO (1974). [Report of the Joint ILO/WHO Meeting on Conditions of Work and Life of Nursing Personnel](#), Executive Board, 54th Session, Geneva, Annex II, Conclusions, paras 51–53.

416 WHO (2021). *Global strategic directions for nursing and midwifery 2021–2025*, op. cit., p. 6.

417 WHO (2020). *State of the world's nursing 2020*, op. cit., p. xix.

418 For instance, *Indonesia, Malaysia, Peru and United Kingdom*.

248. In addition, measures have been taken in a few countries to develop research or evidence-based practice<sup>419</sup> and higher education curricula.<sup>420</sup>

*Finland* – Targets for the development of nursing services and nursing personnel are defined as part of a national development programme, the Future Social and Health Centre, one of the targets of which concerns the development of evidence-based practices and the integration of research-based development into the work of nursing professionals.

249. Changes in the relationship between patients and health workers driven by technological advances are also having an impact on nursing education and training. Traditional boundaries between professions are likely to become blurred as new job profiles and work patterns emerge, leading to an increased need for interdisciplinary training.<sup>421</sup> As teaching methods will also need to be supplemented by the digital provision of educational and training content, it will be crucial to ensure that students acquire a minimum level of digital skill. Curriculum design will therefore have to use relevant digital and telehealth learning and the necessary institutional and infrastructure resources will need to be available to bridge the digital divide.<sup>422</sup>

## 7. Examinations and licensing

250. In most countries, the supervision of nursing education and training is closely related to licensing.<sup>423</sup> One aspect of supervision is the holding of licensing examinations or, alternatively, the recognition of nursing school examinations as sufficient for nursing registration.<sup>424</sup> In some countries, the national licensing examination is distinct from graduation exams.<sup>425</sup> In a few countries, successful graduation alone is sufficient for registration (See Chapter 5).<sup>426</sup>

*Denmark* – The standard and quality of nursing education is assured by common rules and guidelines (curricula) specifying the aims, content and duration of programmes and individual subjects, as well as the testing and examination system, which uses external examiners. Only those who meet the educational requirements obtain authorization.

419 For instance, *Canada, Finland, Malaysia and United States*.

420 For instance, *Malaysia and United States*.

421 ILO (2019). "The future of work in the health sector", op. cit., p. 16.

422 WHO (2020). *State of the world's nursing 2020*, op. cit., p. xix.

423 Roemer (1968). "Legal systems regulating health personnel", op. cit., pp. 455–456.

424 WHO (1986). *Regulatory mechanisms for nursing training and practice: meeting primary health needs*, WHO Technical Report Series No. 738, p. 25.

425 For instance, *Germany, Japan, Philippines, United Kingdom and United States*.

426 For instance, *France*.

### ► III. Ensuring access of nursing personnel to education and training appropriate to the exercise of their functions

251. Lack of educational opportunities and resources, as well as a range of other factors, including gender norms and negative perceptions of the healthcare profession, may prevent both women and men from pursuing nursing and midwifery education and training.

#### 1. Addressing potential barriers to nursing and midwifery education and training

252. In some countries, traditional gender attitudes may prevent women and girls from undertaking essential general education<sup>427</sup> or from working outside the home.<sup>428</sup> Men also face challenges in some countries, including negative gender stereotypes of male nurses and barriers to men entering the profession.<sup>429</sup> For example, until 1985, men in Taiwan (*China*), did not have access to formal nursing education.<sup>430</sup> Proactive measures have been taken in a number of countries to attract both men and women to the nursing profession.<sup>431</sup>

*Trinidad and Tobago* – Midwifery training has been opened to male nurses, who are also included in the District Health Visitor Programme and work in community centres in urban and rural areas. Health visitors are qualified nurses or midwives trained in community health who focus on prevention and health promotion and provide care and support to families with young children.

253. Measures have been taken in some countries to attract new candidates to a career in nursing by ensuring greater flexibility for nursing personnel to reconcile their professional and family responsibilities.<sup>432</sup>

#### 2. Financial assistance and scholarships

254. In many countries, economic factors, either due to local economic conditions or personal financial circumstances, prevent potential candidates from entering nursing schools.<sup>433</sup> This has resulted in the adoption of measures in some countries to encourage candidates to begin or continue their education in nursing or midwifery through the provision of scholarships,<sup>434</sup> loans and financial rewards.<sup>435</sup> ***To meet the increasing demand for nurses, the Committee encourages countries to consider the provision of scholarships, student loans<sup>436</sup> and other types of financial support for nursing students.***

427 Office of the High Commissioner for Human Rights (OHCHR). [Realisation of the equal enjoyment of the right to education by every girl](#); and UNICEF (2020). [Addressing the learning crisis: An urgent need to better finance education for the poorest children](#).

428 For example, there are still laws in 104 economies preventing women from working in specific jobs, and in 18 economies, husbands can legally prevent their wives from working. World Bank (2018). [Women, Business and the Law 2018](#), Washington, DC, p. vi.

429 D. Stanley et al (2014). [Profile and perceptions of men in nursing in Western Australia: Research Report 2014](#), UWA Print, Perth.

430 C.-I. Yang, et al (2017). "There is nothing wrong with being a nurse: The experiences of male nursing students in Taiwan", *Japan Journal of Nursing Science*, 14(4), pp. 332–340.

431 For instance, *Australia, Oman, Saudi Arabia and United Arab Emirates*.

432 For instance, *Austria and Saudi Arabia*.

433 WHO (1950). [Expert Committee on Nursing. Report on the First Session](#), Geneva, 20–26 February 1950, Technical Report Series, No. 24, pp. 6–7.

434 For instance, *Australia, Canada, Ghana, Kiribati, United Arab Emirates, United Kingdom and United States*.

435 For instance, *Australia and Canada*.

436 For instance, *United Kingdom (Wales) and United States*.

In *Austria*, the Federal Chamber of Labour (BAK) indicates that, to meet the increasing demand for care and health workers, the Public Employment Service (AMS) makes training courses in nursing available to jobseekers who are already in employment or are returning to work. Educational leave and a part-time work allowance are also available to enable people in employment to participate in training and further education courses in nursing. Where greater demand exists in the health and nursing sector, federal states (*Länder*) have established schemes in collaboration with the AMS, through which they provide training for specific future jobs, as well as a trainee subsistence allowance or higher rate of unemployment benefit. Care institutions can also receive financial support for their nursing personnel to obtain higher qualifications. For example, the AMS bears 60 per cent of the course and personnel costs when an auxiliary nurse trains to become a qualified nurse.

*Republic of Korea* – The Government is currently introducing a programme under which scholarships, including tuition fees and living expenses, will be provided to nursing school students if they work in the public health sector after graduation for periods corresponding to the duration of their scholarship.

255. Targeted measures have been adopted in some countries, including scholarships in support of specific groups or geographical areas.<sup>437</sup>

*Ghana* – The measures taken to promote the education and employment of nursing personnel in rural and remote communities include incentives. For example, two years' service in a rural area entitles workers (usually auxiliaries) to a study leave with pay for a post-basic programme. Nursing personnel working in rural communities are eligible for promotion after three years' service, compared with five years for their counterparts in urban areas.

*United States* – The Nursing Workforce Diversity (NWD) programme provides grants to increase nursing education opportunities for persons from disadvantaged backgrounds, including racial and ethnic minorities who are under-represented in the nursing workforce.

### 3. Attracting and retaining nursing students

#### (a) Raising awareness of opportunities

256. Paragraph 7(1) of the Recommendation recognizes the importance of providing information and guidance to persons wishing to take up nursing as a career. Measures to address nursing shortages could include ensuring access to information and vocational guidance, identifying and addressing potential barriers that might hinder or deter access to nursing education, investment in nursing faculties, ensuring the availability of sufficient clinical placement sites and attractive programmes to draw in a diverse body of students.

<sup>437</sup> For instance, *Australia*, *Ghana*, *New Zealand*, and *United States*.

257. Most governments have established online websites to provide information and guidance on the various aspects of the profession and the different nursing education and training courses available.<sup>438</sup> Awareness campaigns have been launched in some countries to provide information and vocational guidance to students considering a career in nursing.<sup>439</sup>

*Belarus* – Career guidance is provided to secondary school leavers seeking to motivate them to enter higher and intermediate vocational education in healthcare or pharmacy and to sign “targeted training agreements”, which guarantee graduates employment in their first post as intermediate health workers for a minimum of three years. The number of targeted training agreements signed doubled in 2019.

## (b) Improving the public image of the healthcare professions

258. Certain social or cultural attitudes may discourage applicants from seeking education and training in the healthcare sector, where workers, including nurses and midwives, are not always accorded recognition and status commensurate to their responsibilities. Their working conditions may also expose them to risks not normally present in other occupations.<sup>440</sup> A recent survey conducted in *Turkey* on perceptions of the nursing profession concluded that the majority of the students surveyed held a negative view of nursing.<sup>441</sup>

259. Several countries report that measures have been taken to enhance the public image of the nursing profession.<sup>442</sup>

*United Arab Emirates* – The Ministry of Health and Prevention has introduced an initiative to enhance the attractiveness of the nursing profession. The initiative includes an academic extension programme to attract high school students by providing information on the quality of academic programmes, professional track options and incentives, and the availability of scholarships for the undergraduate nursing programme.

260. The number of people enrolling in nursing education programmes is affected by the public image of the profession. However, a survey conducted by the International Council of Nurses (ICN) in 2020 reported an increase in the number of applicants in some countries, including more nurses undertaking post-doctoral studies.<sup>443</sup> The rise in enrolments is attributed to the COVID-19 pandemic, partly due to positive depictions of the essential role of nursing personnel in tackling the crisis, and partly to the perception of the continuing need for nurses.

438 For instance, *Canada, New Zealand, Norway and United Kingdom*.

439 For instance, *Belarus and Canada*.

440 For example, in the case of *Israel*, see M. Ben Natan and F. Becker (2010). “[Israelis’ perceived motivation for choosing a nursing career](#)”, *Nurse Education Today*, 30, pp. 308-13.

441 E. Elibol and A.K. Harmanci Seren (2017). “[Reasons nursing students choose the nursing profession and their nursing image perceptions: A survey study](#)”, *Nursing Practice Today*, Vol. 4 (2), pp. 67-78.

442 For instance, *Austria and United Arab Emirates*.

443 ICN (2021). *Nurses: A Voice to Lead – A Vision for Future Healthcare*, Geneva.

## ► IV. Access to lifelong learning

261. In most countries, nursing personnel are required to maintain and update their knowledge and skills throughout their careers, for example through upskilling and reskilling, mandatory or voluntary training,<sup>444</sup> professional workshops, conferences and meetings, and in-service training.<sup>445</sup> Paragraph 12 of the Recommendation indicates that continuing education and training should be an integral part of nursing education and training programmes. Continuing nursing education and training should also be provided to nursing aides and auxiliary nurses and should include provision for programmes which would facilitate re-entry into nursing after a period of absence.

*Indonesia* – Regulation No. 67 of 2019 on the Management of Health Personnel requires nurses to improve and develop their qualifications on an ongoing basis through continuing education and training.

262. In some countries, employers are required to ensure the continuous training of nursing personnel and to provide teaching staff and facilities for in-service training at the workplace.<sup>446</sup>

*Finland* – Employers of healthcare professionals are required to monitor their professional development and provide opportunities for them to participate in further training.

263. Institutions have been established in some countries to oversee and provide continuous skills development for nursing personnel.<sup>447</sup>

*Ghana* – Part Three of the Health Professions Regulatory Bodies Act, 2013, mandates the Nursing and Midwifery Council of Ghana to secure the highest standards of training and practice for nursing and midwifery by: establishing standards and providing guidelines for the development of curricula for the training of nurse assistants, nurses and midwives and registering and maintaining a register of practitioners.

*Malaysia* – The Malaysian Nursing Board and the Malaysian Midwives Board regulate all practicing nurses and midwives and set the professional standards and guidelines for all levels of nursing education, nursing-practice management and research. The Ministry of Health provides education and training for its staff, for example through short courses, workshops, conferences and lectures, with continuous professional development points being awarded.

<sup>444</sup> For instance, *Czechia*.

<sup>445</sup> For instance, *Armenia, Bosnia and Herzegovina* and *United States* (Massachusetts).

<sup>446</sup> For instance, *Hungary*.

<sup>447</sup> For instance, *Bahamas* and *Bulgaria*.



## ► V. Career prospects and opportunities

264. Article 2(2)(b) of the Convention requires ratifying States to take measures to provide nursing personnel with, inter alia, career prospects likely to attract them to the profession and retain them in it. Paragraph 21(1) of the Recommendation emphasizes the importance of offering nursing personnel reasonable career prospects by providing for “a sufficiently varied and open range of possibilities of professional advancement, leadership positions in direct and supportive nursing care, the administration of nursing services, nursing education, and research and development in the field of nursing, and a grading and a remuneration structure recognising the acceptance of functions involving increased responsibility, and requiring greater technical skill and professional judgement”.

265. Steps have been taken in a number of reporting countries to establish grading structures,<sup>448</sup> together with corresponding systems for career advancement,<sup>449</sup> promotion<sup>450</sup> and transfer,<sup>451</sup> and pay scales<sup>452</sup> that provide nursing personnel and midwives with opportunities for career advancement.<sup>453</sup>

### 1. Higher education opportunities

266. Paragraph 10 of the Recommendation indicates that there should be programmes of higher nursing education to prepare nursing personnel for the highest responsibilities in direct and supportive nursing care, in the administration of nursing services, in nursing education and in research and development in the field of nursing.

267. Post-basic and postgraduate programmes for nurses should be incorporated into the higher education system and should each be developed in line with the national culture, education system and specific needs.<sup>454</sup>

*Malaysia* – Nurses are encouraged to pursue higher education in nursing, such as Bachelor’s, Master’s and doctorate degrees, including through government scholarships.

268. Higher education programmes (Master’s degrees or PhD programmes) are available for nurses and midwives in most countries.<sup>455</sup>

448 For instance, *Algeria, Cameroon, Chile, Malaysia, Mali, Mauritius and Tunisia*.

449 For instance, *Australia* (Capital Territory), *Bahamas, Bosnia and Herzegovina, Canada, Mozambique* (in the public services), *Saint Kitts and Nevis* (in the public sector), *Thailand, Tonga* (in the public sector) and *United States*.

450 For instance, *Algeria, Australia, Bahamas, Cabo Verde, Chile, Costa Rica, Ecuador, Guatemala, Islamic Republic of Iran, Ireland, Malaysia, Mauritius, Morocco, Saint Kitts and Nevis and Tunisia*.

451 For instance, *Germany* and *Saint Kitts and Nevis*.

452 For example, in *Australia*, see the Western Australia health system public sector industrial instruments provide for incremental salaries and classifications under: the WA Health System – Australian Nursing Federation, op. cit., 2019 WAIRC 00185, Part 4, Salaries and allowances; and the WA Health System – United Voice, op. cit., 2019 WAIRC 00362, Part 5, Rates of pay.

453 For example, in *Saint Kitts and Nevis*, the Public Service Act (Recruitment and Appointment of Officers) Code, SRO, 2014 (PART II, Appointment on Recruitment, Promotion and Transfers) provides a detailed outline of the process established for the advancement and upward mobility of nursing personnel employed in the public service.

454 WHO (1966). *Expert Committee on Nursing, Fifth Report*, Technical Report Series, No. 347; Geneva, pp. 24–25.

455 For instance, *Belarus, Bosnia and Herzegovina, Bulgaria, Chile, Croatia, Cuba, Cyprus, Czechia, Denmark, Estonia, Finland, France, Greece, Iceland, India, Ireland, Italy, Kazakhstan, Republic of Korea, Lithuania, Malaysia, Morocco, Mozambique, Norway, Panama, Philippines, Poland, Portugal, Romania, Saudi Arabia, Slovenia, Sweden, Switzerland, Thailand, Turkey, Ukraine, United Arab Emirates and United Kingdom*.

*Ireland* – A wide range of career development opportunities has been developed for nursing personnel structured around the branches of nursing education and research, clinical nursing and healthcare/nursing management. The well-established education structure supports career development, from continuous professional development to a full range of courses across higher education institutes, with access to some study leave and funding for courses.

*Kazakhstan* – Nursing education has been introduced at almost every level, including applied and academic Bachelor's and Master's programmes in nursing. There are also plans to launch a PhD programme in nursing in September 2020.

## 2. Leadership and management development opportunities

269. New managerial or leadership positions have been created in health facilities in many reporting countries<sup>456</sup> to provide nursing personnel with career advancement opportunities. Measures have also been taken in most countries to expand and develop the career paths of nurses by offering academic programmes in education and research,<sup>457</sup> offering them the possibility of enrolling in specialized<sup>458</sup> or higher education,<sup>459</sup> such as postgraduate studies,<sup>460</sup> Master's degrees,<sup>461</sup> doctorates<sup>462</sup> and other specializations.<sup>463</sup>

*Australia* – The TIER Leadership and Management Program in South Australia is an 11-month training programme intended to develop Nursing and Midwifery Unit Managers and build the leadership and managerial capacities of those in leadership positions.

*New Zealand* – The Ministry of Health oversees the Ngā Manukura o Āpōpō ("Tomorrow's Clinical Leaders") programme, launched in 2009 with the objective of increasing the number of Māori nursing and midwifery clinical leaders in response to the need for culturally appropriate workforce initiatives that promote the participation, retention and achievement of Māori nurses and midwives.<sup>464</sup>

456 For instance, *Australia, Belarus, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Chile, Czechia, Guatemala, India, Islamic Republic of Iran, Nepal and United Arab Emirates.*

457 For instance, *Cambodia, Israel, Malaysia and Bolivarian Republic of Venezuela.*

458 For instance, *Israel, Japan, Republic of Korea and Oman.*

459 For instance, *Australia, Bahamas and Belarus.*

460 For instance, *Australia, New Zealand, Norway, Oman, Panama and Trinidad and Tobago.*

461 For instance, *Cyprus, Denmark, Dominican Republic, Germany, Honduras, Hungary, Kazakhstan, Latvia, Morocco, Norway, Oman and Panama.*

462 For instance, *Ghana and Slovenia.*

463 For instance, *Canada, Israel and Republic of Korea.*

464 See the [Ngā Manukura o Āpōpō programme](#).

### 3. Guidance on career prospects and returning to nursing

270. Paragraph 22 of the Recommendation calls for measures to be taken to provide nursing personnel with guidance on career prospects and, as appropriate, re-entry into nursing after a period of interruption.

*Myanmar* – The Myanmar Nurse and Midwife Council is in the process of formulating a competency-based assessment for out-of-practice midwives and nurses to facilitate their relicensing and re-entry into the workforce.<sup>465</sup>

### 4. Support for continuing education

271. Paragraph 24 of the Recommendation indicates that nursing personnel wishing to participate in continuing education and training and capable of doing so should be given the necessary facilities, which may consist of the grant of paid or unpaid educational leave, adaptation of hours of work, and payment of study or training costs. Wherever possible, nursing personnel should be granted paid educational leave in accordance with the Paid Educational Leave Convention, 1974 (No. 140), and employers should provide staff and facilities for in-service training of nursing personnel, preferably at the workplace.

272. A variety of measures have been adopted in some countries for the provision of paid<sup>466</sup> and unpaid educational leave,<sup>467</sup> education grants, fellowships or training at the workplace.

*Canada* – The Nursing Education Initiative in Ontario supports the continuing education and professional development of nurses by funding education grants, fellowships and research projects.

*Ghana* – The University of Ghana (Legon) offers a doctorate programme in nursing. Employers provide an annual list of recommended study programmes that match the needs of nurses and midwives and guaranteed study leave with pay for nursing personnel wishing to pursue these programmes.

<sup>465</sup> Myanmar, [Human Resources for Health Strategy \(2018–2021\)](#), op. cit., p. 13.

<sup>466</sup> For instance, *Ghana* and *Islamic Republic of Iran*.

<sup>467</sup> For instance, *Austria*.

273. In a few countries, scholarships or funding are available to support the further education and training of nursing personnel.<sup>468</sup>

*Australia* – In South Australia, the Premier’s Nursing and Midwifery Scholarships are open to all nurses and midwives in the public, private and aged care sectors. The scholarships are available for nurses and midwives for overseas observational study tours to explore best practices and translate evidence into sustainable outcomes.

274. The Committee notes that government responses demonstrate the diversity of the measures and policies designed or implemented to facilitate the career development of nursing personnel. While various clinical career prospects are available in most countries, including research, specialization, management and leadership positions, supplementary measures have been adopted in some countries to provide additional career opportunities, including in the field of Advanced Practice Nursing (APN).<sup>469</sup>

*United Kingdom* – The Chief Nursing Officer (CNO) in Scotland has undertaken to maximize the contribution of the Nursing, Midwifery and Health Professions (NMaHP) workforce and push the traditional boundaries of professional roles. The Transforming Roles Programme aims to ensure nationally consistent, sustainable and progressive roles, education and career pathways. The Scottish Government provided funding for the training of 500 healthcare workers in Advanced Practice Nursing in 2020.

468 For instance, *Australia* (South Australia and Western Australia), *Austria*, *Guatemala*, *New Zealand*, *Sweden*, *Trinidad and Tobago*, *United Arab Emirates* and *United Kingdom*.

469 According to the ICN, “an Advanced Practice Nurse (APN) is one who has acquired, through additional education, the expert knowledge base, complex decision-making skills and clinical competencies for expanded nursing practice, the characteristics of which are shaped by the context in which they are credentialed to practice”. ICN (2020). *Guidelines on Advanced Practice Nursing 2020*, Geneva, p. 9.

## ► VI. Coordination of nursing education and training with that of other health workers and collaborative practices

275. Article 3(2) provides that nursing education and training shall be co-ordinated with the education and training of other workers in the field of health.<sup>470</sup> To achieve greater alignment between education institutions and health services, much greater cooperation and coordination is required between the education and health sectors at many levels, including between ministries of education and health, and other relevant ministries, such as finance and labour. The process also needs to include the professional associations representing doctors, nurses and midwives, and other health professionals, and the bodies that play a role in the regulation and quality control of the professions.<sup>471</sup>

### 1. Coordination between health and education systems

276. Measures have been taken in some countries to ensure coordination between health and education systems with a view to increasing the number and retention of nursing personnel.<sup>472</sup>

*Kazakhstan* – The national policy on nursing services and personnel is coordinated with policies and programmes relating to other aspects of healthcare and other categories of health and medical education workers, as reflected in the National Healthcare Development Programme.

277. In some countries, reforms are needed to strengthen coordination between the various sectors to align health systems and workforce planning and create stronger links between education, communities and health service delivery.<sup>473</sup>

### 2. Inter-professional education and collaborative practice

278. A major challenge in many countries is that educational planning often takes place in education institutions, with an absence of coordination between nursing and midwifery schools and ministries of health. This fragmentation leads to skills mismatches, with some institutions producing highly skilled specialists, while the shortage of community practitioners means, for example, that mothers continue to die from obstructed labour during childbirth because no one is available to perform a caesarean section.<sup>474</sup> The WHO Framework for Action on Inter-professional Education and Collaborative Practice<sup>475</sup> seeks to promote stronger collaboration between the education and health sectors, other national authorities and the private sector, to reduce the fragmentation in health systems and improve the match between health education and health service delivery.<sup>476</sup>

279. Institutions and individuals in health and education systems can help to foster a supportive climate for inter-professional collaboration by developing collaborative practice. The WHO Global Strategic Directions for Nursing and Midwifery 2021-2025 emphasize the

<sup>470</sup> See also Recommendation No. 157, Paragraph 7(4).

<sup>471</sup> WHO (2011). *Transformative scale up of health professional education*, Geneva, p. 11.

<sup>472</sup> For instance, *Islamic Republic of Iran, Malaysia, Switzerland, Thailand, Trinidad and Tobago and United Kingdom*.

<sup>473</sup> WHO (2021). *Global strategic directions for nursing and midwifery 2021–2025*, op. cit., p. 8.

<sup>474</sup> WHO (2011). *Transformative scale up of health professional education*, op. cit., p. 9.

<sup>475</sup> WHO (2010). *Framework for Action on Inter-professional Education & Collaborative Practice*, Geneva.

<sup>476</sup> WHO (2011). *Transformative scale up of health professional education*, op. cit., p. 3.

importance of coordinating the education credentials of students with their responsibilities in the workplace and building “bridge” programmes for inter-professional education that prepare students for multidisciplinary teamwork.<sup>477</sup>

**280.** The provision of health services to address increasingly complex health issues requires a strong, flexible and collaborative health workforce. Evidence shows that, as health workers move through the system, opportunities for them to gain inter-professional experience help them learn the skills needed by a collaborative practice-ready health workforce. Once students understand how to work inter-professionally, they are ready to enter the workplace as a members of a collaborative practice team, which can meet local health needs while maximizing limited health resources.<sup>478</sup>

**281.** Mechanisms have been developed in certain reporting countries to strengthen national nursing and midwifery strategies for inter-professional education and collaborative practice.<sup>479</sup>

*United States* – The Nurse Education, Practice, Quality and Retention Program (NEPQR)<sup>480</sup> supports national nursing needs and strengthens capacity for basic nurse education and practice. In particular, the Inter-professional Collaborative Practice Program (IPCP): Behavioral Health Integration (BHI) addresses the significant unmet need for behavioural health services in community-based primary care settings by expanding evidence-based practices into nurse-led primary care teams.

The Health Resources and Services Administration (HRSA)<sup>481</sup> also funds several health-care workforce development programmes relevant to nurses that focus on inter-professional collaborative practice, including the Geriatrics Academic Career Awards (GACA) Program, which supports the career development of junior teaching staff in geriatrics at accredited schools of nursing.

**282.** The COVID-19 pandemic has shown that a strong, flexible and collaborative workforce is one of the best ways of confronting emerging health challenges. At the national level, inter-professional education provides health workers with the types of skills needed to coordinate the delivery of care when emergency situations arise. Moreover, collaborative practice enhances national capacity to deal effectively with global pandemics or disasters that place sudden and intense demands on the health system.

477 WHO (2021). *Global strategic directions for nursing and midwifery 2021–2025*, op. cit., p. 8.

478 WHO (2011). *Transformative scale up of health professional education*, op. cit.; and WHO (2010). *Framework for Action on Inter-professional Education & Collaborative Practice*, op. cit., pp. 14 and 18.

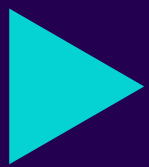
479 For instance, *Australia, Canada and United States*.

480 See, 42 US Code, Section 296p, [Nurse education, practice, quality, and retention grants](#).

481 *United States*, Health Resources and Services Administration, [About HRSA](#); and Government Accountability Office (GAO) (2015). “[Health Care Workforce: Comprehensive planning by HHS needed to meet national needs](#)”, GAO-16-17.







# 5

## Practice of the nursing profession

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## ► I. Regulating the practice of the nursing profession

283. The regulation of nursing began as a simple registry process to protect the nursing title, as well as public health.<sup>482</sup> Legislation regulating the practice of nursing typically establishes regulatory bodies responsible for setting standards of practice, together with codes of ethics and conduct, which protect the public and engender public confidence in the profession.<sup>483</sup> Authorization to practice (registration, certification or licensing) is granted on the basis of the individual meeting established requirements and therefore possessing the necessary competencies and qualifications.<sup>484</sup>

284. Article 4 of the Nursing Personnel Convention, 1977 (No. 149), requires ratifying States to ensure that national laws or regulations “specify the requirements for the practice of nursing and limit that practice to persons who meet these requirements”.<sup>485</sup> During the preparatory work for the instruments, it was emphasized that the purpose of these laws and regulations is to: (a) protect public health by restricting practice to nurses possessing the necessary knowledge and skills; (b) ensure the required competencies by requiring those who practice to be qualified in accordance with government-established standards; and (c) secure a recognized status for qualified nurses.<sup>486</sup> Nursing regulations define the profession and its members, determine the scope of practice, set standards for education and training, establish ethical and competent practice standards, and put in place systems of accountability.<sup>487</sup>

285. The Committee notes that there are well developed regulatory systems for nursing in some countries, while in others the systems are partial or consideration is only just beginning to be given to the development of nursing regulation systems. Moreover, diverse approaches have been taken to regulation.<sup>488</sup>

286. The Committee considers that, given the increasing number of different categories of nurses in all countries, it is becoming even more necessary to regulate the nursing profession. Moreover, nurses work in a dynamic healthcare environment in which their roles and functions are constantly evolving to meet patient needs and address service requirements, such as workforce shortages, skill mix challenges and budgetary constraints.<sup>489</sup> Nursing regulation is essential to establish the parameters within which nurses may practice to ensure that nursing practice can accommodate and respond to current needs.<sup>490</sup> To be fit for purpose, good regulatory systems need to be focused, flexible and enabling, with standards that are comprehensive, clear, visible and achievable.<sup>491</sup>

482 D.M. Flook (2003). “The professional nurse and regulation”, *Journal of Perianesthesia Nursing*. June, 18(3), pp. 160–7, p. 161.

483 International Council of Nurses (ICN) (2012). “[The ICN Code of ethics for nurses](#)”, adopted in 1953 and revised in 2012, p. 3.

484 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), International Labour Conference, 61st Session, Geneva, p. 22.

485 See also Para. 13(b) of the Recommendation.

486 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 22.

487 M.M. Styles and F.A. Affara (1997). *ICN on regulation: Towards 21st century models*, Geneva, ICN, p. 2.

488 The ICN has identified four main regulatory models: the ministry of health model, the state led model arm’s length body model, the professionally led model and the professionally established model. See in this regard: ICN (2014). [Regulatory Board Governance Toolkit](#), Geneva, pp. 9 and 10.

489 ICN (2010). [Scope of nursing practice and decision-making framework toolkit](#), ICN Regulation Series, Geneva, p. 5.

490 *ibid.*

491 WHO (2002). [Nursing and midwifery: A guide to professional regulation](#), WHO Regional Office for the Eastern Mediterranean, Regional Office for Europe, Cairo, p. 11.

**287.** Professional regulation involves: (a) establishing the requirements for the initial recognition of the title of “nurse” (registered, or registered and licensed), which could include a licensure examination; (b) the requirements for re-enrolment, registration or licensure, which could include a requirement for continued professional development; (c) setting the scope of practice for nurses and the code of conduct and ethics; and (d) facilitating the investigation of and potential disciplinary action against nurses.<sup>492</sup>

**288.** The Committee notes that current global policies relevant to nursing services and nursing personnel highlight the importance of establishing a regulatory framework for the nursing profession that guarantees the required competencies, outlines the scope of practice and promotes continued learning and professional development.

The WHO Global strategy on human resources for health: Workforce 2030 calls on governments to collaborate with professional councils and other regulatory authorities to adopt regulation aimed at meeting the population’s needs. It calls on regulatory bodies to play a central role in ensuring that public and private sector professionals are competent, sufficiently experienced and adhere to agreed standards relative to the scope of practice and competency enshrined in regulation and legislative norms.<sup>493</sup>

The WHO Global strategic directions for nursing and midwifery 2021–2025 prioritize the review and strengthening of professional regulatory systems and support to building the capacity of regulators, where needed. They recommend that countries adopt a set of measures, such as updating legislation and regulations with respect to nursing education and optimized roles in practice settings; appropriately differentiating the scopes of practice for midwives and nurses to avoid potential mismanagement or inappropriate deployment; maintaining active registries of those who are “fit to practice” by requiring midwives and nurses to periodically renew their registration or licenses and requiring demonstration of continuing competency or continued professional development (CPD); considering harmonizing regulations across countries and mutual recognition agreements. These arrangements should be supported by a “live” registry that is interoperable across the health system and other regulators.<sup>494</sup>

**289.** The need for a regulatory framework has also been recognized by various regional policies.

The Strategic Directions for Nursing in the Region of the Americas of the Pan American Health Organization (PAHO) recall that regulation of practice “is important, since health care delivery systems have become more complex in response to changing population needs and epidemiological and demographic transitions. In some countries, the lack of regulations governing the scope of practice has led to widespread job dissatisfaction and attrition. Therefore, country-specific regulation of practice needs to be implemented and enforced”.<sup>495</sup>

<sup>492</sup> WHO (2020). *State of the world’s nursing 2020: Investing in education, jobs and leadership*, Geneva, p. 33.

<sup>493</sup> WHO (2016). *Global strategy on human resources for health: Workforce 2030*, Geneva, para. 33.

<sup>494</sup> WHO (2021). *Global strategic directions for nursing and midwifery 2021–2025*, p. 18.

<sup>495</sup> Pan American Health Organization (PAHO) (2019). *Strategic directions for nursing in the Region of the Americas*, Washington, DC, p. 11.

The European strategic directions for strengthening nursing and midwifery towards Health 2020 goals<sup>496</sup> emphasizes that “[r]egulation in nursing and midwifery should be in place for public protection, and needs to encompass entry to practice, scope of practice and professional conduct”. It is also important that the scope and authority of regulatory bodies extends to nurses and midwives working in enhanced roles, as specialists and advanced practitioners.<sup>497</sup>

## 1. From legislation to regulation

290. A number of different mechanisms may be used to regulate the nursing profession. The Government’s primary role in relation to regulation of professional nursing is to establish an appropriate legal and regulatory framework.<sup>498</sup> The structure of the regulatory system is normally underpinned by primary legislation, which is the source of the regulatory body’s standard-setting authority.<sup>499</sup> Secondary legislation in the form of rules, regulations, statutory instruments and/or orders can provide detailed guidance on interpretation and implementation.<sup>500</sup>

*Panama* – Section 4 of Act No. 1 of 6 January 1954 regulating the nursing career and providing for stability and retirement establishes the National Nursing Committee as the body responsible for all matters relating to the nursing profession.<sup>501</sup> Executive Decree No. 589 of 28 December 2005 authorizes the National Nursing Committee to recommend standards, procedures and technical and administrative processes for the exercise of nursing and its regulation.<sup>502</sup>

*Saint Kitts and Nevis* – Section 3(2)(a) of the Nurses and Midwives (Registration) Act (No. 18 of 2005) establishes the Nursing Council as the authority responsible for regulating the education, qualification, training, practice and conduct of nurses, midwives, nursing assistants and any other category of persons involved in nursing care.<sup>503</sup>

496 Health 2020 is the European policy framework for health and well-being adopted by the 53 WHO Member States of the Region in 2012. It seeks to improve the health and well-being of populations, reduce health inequalities, strengthen public health and ensure people-centred health systems that are universal, equitable, sustainable and of high quality. WHO (2015). [European strategic directions for strengthening nursing and midwifery towards Health 2020 goals](#), Regional Office for Europe, Copenhagen, p. 6.

497 *ibid.*, p. 15.

498 ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 8.

499 WHO (2002). *Nursing and midwifery: A guide to professional regulation*, op. cit., p. 21.

500 ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 8.

501 *Panama*, [Ley No. 1 de 6 de enero de 1954 por la cual se reglamenta la carrera de enfermera](#).

502 *Panama*, [Decreto Ejecutivo núm. 589 de 28 de diciembre de 2005](#).

503 *Saint Kitts and Nevis*, [Nurses and Midwives \(Registration\) Act](#) (No. 18 of 2005, as revised at 31 December 2017, CAP.9:17).

## 2. The need for regular review

291. Paragraph 13(c) of the Nursing Personnel Recommendation, 1977 (No. 157), indicates that laws and regulations respecting the practice of the nursing profession should be reviewed and updated, as necessary, in accordance with current advances and practices in the profession. The Committee emphasizes the importance of adapting the registration or enrolment of trained nursing personnel as the profession grows in accordance with the needs of the population and advances in the profession. The legislation should therefore incorporate flexible devices to ensure regular revision in order to enable the sector to respond to innovations, as well as changes in practice and in the delivery of care. This is particularly important as nursing skills become more transferable, nurses become ever more mobile and the international movement of nurses increases.<sup>504</sup> The Committee observes that when laws and regulations governing the practice of nursing are reviewed regularly, they are more likely to ensure adequate regulation and oversight of nursing training and practice as the workforce changes and practices evolve. The Committee notes that laws and regulations governing the nursing profession have been adopted in most countries.<sup>505</sup>

292. The principle-based approach to developing and applying nursing regulation has become more prevalent in the broader professional and economic environment over the past decade. A number of governments have adopted this approach in seeking to balance protection of the public while reducing bureaucracy and stimulating efficiency and competition.<sup>506</sup>

293. The International Council of Nurses (ICN) has developed a set of principles offering guidance for the development and evaluation of regulatory systems governing nursing personnel, which are applicable across the various regulatory models.

### ICN Principles of Professional Regulation

1. *Principle of purposefulness.* Regulation should be directed towards an explicit purpose that reflects a focus on initial and on-going safe, competent and ethical practice.
2. *Principle of definition.* Regulatory standards should be based upon clear definitions of professional scope and accountability.
3. *Principle of professional ultimacy.* Regulatory definitions and standards should promote the fullest development of the profession commensurate with its potential social contribution.
4. *Principle of collaboration.* Regulatory systems should recognize the legitimate roles and responsibilities of interested parties – public, profession and its members, government, employers and other professions – consult with these parties, and incorporate their perspectives in aspects of standard-setting and administration.
5. *Principle of representational balance.* The design of the regulatory system should acknowledge and appropriately balance interdependent interests.
6. *Principle of optimacy.* Regulatory systems should provide and be limited to those proportionate controls and restrictions necessary to achieve their objectives.

504 WHO (2002). *Nursing and midwifery: A guide to professional regulation*, op. cit., p. 16.

505 For instance, Austria, Bahamas, Canada (Nunavut), China, Croatia, Eswatini, Fiji, Germany, Ireland, Jamaica, Republic of Korea, New Zealand, Philippines, Saint Kitts and Nevis, Seychelles, South Africa, Trinidad and Tobago, Turkey and Zambia. See S.H.B. Cassiani et al. (2020). “[Regulation of nursing practice in the Region of the Americas](#)”, *Revista Panamericana de Salud Pública*, 44(e93), p. 2; N. Fujita et al. (2019). “[Regulation of nursing professionals in Cambodia and Vietnam: A review of the evolution and key influences](#)”, *Human Resources for Health*, 17(48).

506 For instance, the Productivity Commission in Australia and the Better Regulation Taskforce in the United Kingdom of Great Britain and Northern Ireland have all developed principles for regulation. See: ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., pp. 10–11.



7. *Principle of flexibility.* Standards and processes of regulation should be sufficiently broad, flexible and permissive to achieve their objectives while at the same time permitting freedom for innovation, growth, and change.
8. *Principle of efficiency.* Regulatory systems should operate in the most efficient manner ensuring coherence and coordination among their parts so as to be sustainable and optimize resources used to achieve the stated explicit purpose.
9. *Principle of universality.* Regulatory systems should promote universal standards of performance and foster professional identity and mobility to the fullest extent compatible with local needs and circumstances.
10. *Principle of natural justice.* Regulatory processes should provide just and honest treatment for all parties involved.
11. *Principle of transparency.* Regulatory agencies must be open and transparent in their processes and communicate using clear language, support lay involvement and make the maximum amount of information publicly available so all interested parties can make informed choices.
12. *Principle of accountability.* Regulatory agencies and those they regulate must be accountable for their actions and be open to scrutiny and challenge.
13. *Principle of effectiveness.* In order to maintain public, governmental and professional trust regulatory systems must be effective.<sup>507</sup>

### 3. Defining the scope of nursing practice

294. The scope of nursing practice is defined within a legislative and regulatory framework and describes the competencies (knowledge, skills and judgement), professional accountability and responsibilities of the nurse. It provides the basis for establishing standards of nursing practice, nursing education and training, nursing roles and responsibilities. A clearly defined scope of practice communicates to all stakeholders the roles, competencies, professional accountabilities and responsibilities attributed to the nurse, while also accommodating change.<sup>508</sup>

The ICN indicates that “the scope of nursing practice is not limited to specific tasks, functions or responsibilities, but is a combination of knowledge, judgement and skill that allows the nurse to perform direct care giving and evaluate its impact, advocate for patients and for health, supervise and delegate to others, lead, manage, teach, undertake research and develop health policy for health care systems.”<sup>509</sup>

295. The Committee notes that the scope of nursing practice varies markedly from one country to another. Moreover, the use of terminology differs, for example in relation to the terms describing “expanded, advanced and specialist” nursing practice. Although the lack of consistency in the regulation of the scope of nursing practice is in part due to differing

507 ICN (2013). “[Position statement: Nursing regulation](#)”, adopted in 1985, reviewed and revised in 2013, pp. 1 and 2. For a more detailed explanation of the principles, see: ICN (2009). “Regulation 2020: Exploration of the present, vision for the future”, Geneva.

508 ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 16.

509 ICN. “[Position statement: Scope of nursing practice](#)”, adopted in 1998, reviewed and revised in 2004 and 2013, op. cit., p. 1.

legal traditions, it is important for all stakeholders across jurisdictions to have a common understanding of regulatory terminology to ensure greater coherence with regard to scope of practice.<sup>510</sup>

**296.** A range of factors shape and influence the legal scope of nursing practice, including contextual factors, such as the increasing specialization and diversity of practice settings. The range of work environments in which nurses perform their tasks, ranging from private households to hospitals, creates an additional level of complexity and poses challenges to regulation and licensing. The competencies expected both across and within health professions have also blurred understanding of traditional roles.<sup>511</sup>

**297.** Another factor influencing the scope of nursing practice in many countries is the shortage of health workers. Understaffing may compel nurses to undertake activities that they have not been trained to perform and for which their competency has not been assessed against any agreed standard. In some cases, these activities may lie outside the scope of nursing practice under the relevant legislation and may be unlawful.<sup>512</sup>

**298.** The scope of nursing practice is also affected by measures to optimize the skills mix (often referred to as “task-shifting”). The Committee observes in this respect that, due to the rapidly changing and high-cost healthcare environment, there is much overlapping between health and social care roles. This trend is expected to increase in view of the ageing of the population and the increased incidence of chronic disease. Task-shifting is due not only to staff shortages, but is also motivated by pressure to reduce costs. The result has been to use less skilled workers, with tasks shifting from more skilled to less skilled workers, from specialists to generalists.<sup>513</sup> The Committee also notes that this trend is leading to an increase in the casualization of the regulated nursing workforce and the number of unregulated healthcare workers. ***The Committee considers that regulations are needed to cover these health workers and task shifting which clearly identify who is responsible for their supervision and redefine the legal accountability of workers and employers.***<sup>514</sup>

Public Services International (PSI) indicates that, according to the study carried out by the Australian Royal Commission into Aged Care Quality and Safety, aged care in *Australia* is understaffed, and the workforce underpaid and undertrained.<sup>515</sup> For some years there has been a decline in the proportion of nurses in the residential aged care workforce and a corresponding increase in the number of personal care workers. The proportion of registered nurses in the residential direct care workforce fell from 21 per cent in 2003 to 14.6 per cent in 2016, and that of enrolled nurses fell from 13.1 per cent to 10.2 per cent. During the same period, the proportion of personal care workers increased from 58.5 per cent to 70.3 per cent.<sup>516</sup>

<sup>510</sup> *ibid.*, p. 15.

<sup>511</sup> Australian Health Ministers’ Advisory Council (2005). “[Scopes of practice commentary paper](#)”, National Nursing and Nursing Education Taskforce, Melbourne.

<sup>512</sup> ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 19.

<sup>513</sup> Paragraph 15(1) of Recommendation No. 157 indicates that nursing personnel “should not be assigned to work which goes beyond their qualifications and competence”.

<sup>514</sup> ILO (2017). “[Improving employment and working conditions in health services](#)”, Report for discussion by the Tripartite Meeting on Improving Employment and Working Conditions in Health Services, Geneva, 24–28 April 2017, para. 82; ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 20.

<sup>515</sup> *Australia*, Royal Commission into Aged Care Quality and Safety (2019). [Interim report: Neglect](#), Vol. I, 31 Oct. 2019.

<sup>516</sup> *Australia*, Royal Commission into Aged Care Quality and Safety (2021). [Final report: Care, dignity and respect](#), Vol 1, 26 Feb. 2021, Recommendation 86, p. 263.



In *Finland*, the Union of Health and Social Care Professionals (Tehy), together with PSI, observe that understaffing has been a continuous and increasing problem in the social care sector. Following a crisis in the aged care sector due to a lack of nurses, Bill 4/2020 was adopted in February 2020, establishing nurse–patient ratios in intensive residential care and long-term institutional care units. As of 1 October 2020, the nurse–patient ratio (including practical nurses, care and nursing assistants and physiotherapists) must be 0.5 nurses per patient, increasing to 0.7 by 1 April 2023. There must also be additional staff employed to carry out non-care tasks such as cleaning and preparing food.<sup>517</sup>

In *Japan*, the Japan Health Care Workers' Union (JHCWU) reports that nursing aides are being used to replace professional nurses, particularly in private medical institutions, to reduce labour costs. It indicates that the jobs that nursing aides are performing currently were done by professional nurses in the past. This reliance on nursing aides is also due to the shortage of professional nurses who have left the profession due to precarious working conditions (including low salaries), leading to the practice of task-shifting. Nurses' organizations have urged private medical institutions to cease this practice. Moreover, the JHCWU indicates that no qualifications or certifications are established for the category of nursing aide. The JHCWU calls for the establishment of a new system which provides educational opportunities for this category of nurses, ensuring better pay for those who complete their education.

299. The ICN position on the scope of nursing practice emphasizes that governments “have a responsibility to provide legislation which recognizes the distinctive and autonomous nature of nursing practice including a defined scope of practice that is reflective of nurses’ capabilities as well as being flexible and responsive to the dynamic nature of health care delivery and the public’s health care needs”. National nurses’ associations (NNAs) and national regulatory authorities should seek support for such legislation and help nurses understand their defined scope of practice.<sup>518</sup>

## 4. Restrictive and permissive approaches to regulatory systems

300. The scope of nursing practice in each country is influenced by whether the approach adopted is restrictive or permissive.<sup>519</sup> The Committee notes that in some countries a restrictive approach has been adopted with the imposition of limitations on aspects of practice, such as the establishment of a list of activities that may only be performed by nurses, or that nurses must be licensed to perform.

301. In other countries, the more permissive approaches adopted place fewer boundaries around the scope of nursing practice. This approach transfers responsibility and accountability for professional practice from the regulatory body to individual practitioners and their employers, and facilitates the evolution of practice.<sup>520</sup>

517 L. Kalliomaa-Puha and O. Kangas (2021). “[Finland to improve the quality of long-term care by increasing the number of nurses per patient](#)”, European Commission, European Social Policy Network, Jan. 2021.

518 ICN. “Position statement: Scope of nursing practice”, op. cit., p. 1.

519 ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 15.

520 *ibid.*, pp. 13 and 14.

302. The Committee observes an increasing tendency to expand the scope of nursing practice. As systems adapt to the evolving demand for healthcare services, new opportunities are emerging for nurses, especially for Advanced Practice Nurses (APNs).<sup>521</sup> Advanced Practice Nursing consists of enhanced and expanded healthcare services and interventions provided by qualified nurses that influence clinical healthcare outcomes and include direct healthcare services for individuals, families and communities. The Committee notes that many countries are in different stages of developing the role of APNs and integrating this category of nurse into the nursing workforce. Moreover, many APN positions have developed on an ad-hoc basis with varying responsibilities, roles and nomenclature. The scope of practice of APNs often differs across regions. Pathways to entry and practice boundaries can be blurred, poorly understood and sometimes contested. This has led to confusion amongst policymakers, health professionals and the public at large.<sup>522</sup> ***The Committee considers that, to optimize the opportunities and services offered by APNs, it is crucial for regulatory systems to provide clear guidance and direction on this scope of practice.***

#### ICN Guidelines on Advanced Practice Nursing 2020

The purpose of the guidelines is to facilitate a common understanding of Advanced Practice Nursing and the Advanced Practice Nurse (APN). The objective is to provide support to key stakeholders (such as policymakers, nursing professionals and educators) to develop policies, frameworks and strategies supportive of an APN initiative. In addition, those countries that have implemented the APN role can review their current state of Advanced Practice Nursing against these recommended guidelines. This will support consistency and clarity of Advanced Practice Nursing internationally and enable further development of APN roles to meet the healthcare needs of individuals and communities. The guidelines define diverse elements such as assumptions and core components of the APN.<sup>523</sup>

## 5. Requirements for the practice of the nursing profession

303. Paragraph 13(a) of Recommendation No. 157 indicates that the laws or regulations concerning the practice of the nursing profession should specify the requirements for the practice of the nursing profession in the categories of professional or auxiliary nurse. Paragraph 13(b) adds that such laws and regulations should limit the practice of the profession to duly authorized persons, while Paragraph 14 indicates that the standards concerning nursing practice should be coordinated with those concerning the practice of other health professions.

304. The Committee notes that the information provided by governments reveals striking differences in national requirements regarding nursing education and professional registration.

<sup>521</sup> An APN is referred to as a generalist or specialised nurse who has acquired, through additional graduate education of at least a master's degree, the expert knowledge base, complex decision-making skills and clinical competencies for Advanced Nursing Practice. The most commonly identified categories of APNs internationally are: Clinical Nurse Specialist (CNS) and Nurse Practitioner (NP).

<sup>522</sup> ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., p. 7.

<sup>523</sup> ICN (2020). *Guidelines on Advanced Practice Nursing 2020*, Geneva, p. 8.

## (a) Education standards

**305.** The Committee observes that education regulations governing the nursing profession normally encompass the setting by the nursing regulatory body of national standards for nursing education, the approval of nursing education and training programmes, and the accreditation of institutions by external agencies (see Chapter 4).<sup>524</sup> Standards and accreditation cycles need to keep pace with changes in healthcare science and delivery models, and must also be affordable or cost neutral for institutions.<sup>525</sup>

**306.** In most countries, the standards established for nursing education specify minimum competencies and a minimum number of clinical hours that must be completed.<sup>526</sup> The standards for nursing education are often specific to an individual jurisdiction (such as a country, state or other area).<sup>527</sup>

*Burkina Faso* – Nursing personnel are recruited on the basis of diplomas: the baccalaureat for State qualified nurses, State birth attendants and midwives and the first cycle diploma for nurses with the brevet diploma, mobile community health and safety agents, and health auxiliaries. These diplomas allow participation in the competition to enter the National Public Health School (ENSP) and registration in the various public and private health schools. Upon completion of their training in these schools, a professional diploma is issued to the students to enable them to work as nurses.

*Costa Rica* – The Basic Act on the Nursing School of Costa Rica, No. 2343 of 4 May 1959, its regulations (Executive Decree No. 37286-S of 19 April 2012) and the Regulation on the recruitment of nursing professionals establish the requirements to work as a professional nurse or a nursing assistant. Section 40 of the General Health Act, No. 5395 of 30 October 1973, provides that a professional nurse shall as a minimum have a nursing degree. When the minimum requirements have been met, the College issues a license for the professional nurse that must be maintained up to date. In the case of a nursing auxiliary, the licence has to be renewed every two years.

*Germany* – In accordance with the Midwifery Act and the Nursing Professions Act, authorization to use the respective professional titles is granted by the responsible departmental authorities once they have established that the relevant requirements have been met. This authorization is linked to successful completion of the training or course of study and passing the relevant examination, as well as other general requirements. The responsible authorities also check, as appropriate, whether the requirements for the authorization are (or continue to be) met, and may suspend or withdraw authorization if this is not the case.

<sup>524</sup> WHO (2020). *State of the world's nursing 2020*, op. cit., para. 68; ICN (2005). "[Regulation terminology](#)", Nov. 2005, p. 3.

<sup>525</sup> *ibid.*

<sup>526</sup> For instance, *Chile* (section 112 of the Chilean Health Code), *Guatemala* (section 3 of the Act regulating the practice of nursing, Decree No. 07-2007) and *Spain* (section 3 of Act No. 44/2005 of 21 Dec., regulating the healthcare professions).

<sup>527</sup> WHO (2020). *State of the world's nursing 2020*, op. cit., para. 70.

## (b) Registration and licensure requirements

307. According to the ICN, registration usually refers to the process of granting authority to use an exclusive title to those persons entered on a register,<sup>528</sup> while licensure is a document issued by the body empowered to determine eligibility for the practice of a specified profession or field of a profession. It is generally used in a regulatory system that prohibits practicing without a licence.<sup>529</sup> Licensing systems ensure that persons engaged in the practice of nursing have met the minimum requirements in such areas as education, the completion of the required examinations and conduct.<sup>530</sup>

*United States of America* – The National Council of State Boards of Nursing (NCSBN) defines “license” as the current legal authority to practice as a registered nurse, licensed practical nurse or advanced practice registered nurse.<sup>531</sup>

308. In some countries, registration and licensure are equivalent terms, while in others the exercise of the nursing profession is limited to registered nurses.<sup>532</sup>

*Panama* – Section 3 of Act No. 1 of 6 January 1954 prohibits persons who are not duly registered as professional nurses from practicing or offering such services and from using the respective title or uniform.<sup>533</sup>

309. In some countries, competency requirements have been established for the professional registration of new nurses. In a number of countries, applicants are required to undergo competency exams.<sup>534</sup> According to the NCSBN Global Regulatory Atlas, there is a licensure examination in over 60 per cent of countries to assess and enforce a minimum level of initial knowledge or “fitness for practice” of nursing graduates before they are authorized to practice.<sup>535</sup>

310. Other requirements for initial professional registration often include personal and academic information and the payment of registration fees. Judicial information (such as criminal background checks), exams evaluating knowledge of nursing laws and scope of practice, supplementary courses and compulsory social service are also required in some countries.

528 ICN (2005). “Regulation terminology”, op. cit., p. 31.

529 *ibid.*, p. 20.

530 Flook (2003). “The professional nurse and regulation”, op. cit., p. 161.

531 The NCSBN is a US not-for-profit organization of which the membership comprises the boards of nursing of the 50 US states and the District of Columbia, and of Samoa, Guam, Northern Mariana Islands and the Virgin Islands.

532 For instance, *Panama* and *Sweden*.

533 *Panama*, [Ley No. 1 de 6 de enero de 1954](#).

534 For instance, competency exams are required for professional registration in *Canada*, the Caribbean countries (with the exception of the *Dominican Republic* and *Suriname*), and the *United States*. See: Cassiani et al. (2020). “Regulation of nursing practice in the Region of the Americas”, op. cit., p. 3.

535 NCSBN. [Global Regulatory Atlas](#).

*Honduras* – The practice of nursing is regulated in Honduras by Decree No. 90-99 issuing the Act on the status of professional nursing personnel in Honduras, and its Regulations, Decree No. 673 of September 1999. For the practice of nursing, it is necessary to be affiliated with the College of Nursing Professionals of Honduras and to exercise full union, professional and civil rights. It is also a basic requirement for the practice of nursing to obtain a Bachelor's university degree or a nursing degree at the Autonomous University of Honduras (UNAH) and the title of professional nurse in a school recognized by the State and authorized by UNAH. Another important requirement is to have completed the compulsory social service established by Decree No. 533 of 15 August 2000, approving the cooperation agreement between the Secretariat of Health and UNAH regulating compulsory social service for graduates of the university and of other universities, both national and foreign, in the various health sciences.

*Lithuania* – The Act on Nursing and Obstetrics Practice establishes that the main requirements are: a valid professional healthcare licence, the exercise of the activity in a licensed organization, the correspondence of the duties with the professional qualifications acquired and the completion of the continuing mandatory training required to maintain professional qualifications (not less than 60 hours every five years).

*Bolivarian Republic of Venezuela* – Section 5 of the Act on the professional practice of nursing and the Ethical Code, No. 38.263 of 1 September 2005, provides that for the exercise of the nursing profession persons are required to have completed technical or higher education, and to have obtained a series of diplomas established by the Act; registration of the corresponding diploma with the competent public authorities and registration with the Ministry responsible for health, and compliance with all the provisions of the Act and its Regulations.<sup>536</sup>

311. Paragraph 8 of the Annex to Recommendation No. 157 indicates that the renewal of an authorization to practice the nursing profession may be required under certain conditions and may be “made subject to requirements of continuing education and training, where this is considered necessary to ensure that authorized nursing personnel remain fully qualified.” The Committee notes that, as recognition has increased of the importance of regulation for public safety, many systems require both initial licensure or registration, and periodic renewal.<sup>537</sup> These systems may also require payment and the provision of academic information by the applicant, including proof of completion of continuing education hours and a certain number of clinical practice hours.<sup>538</sup> ***The Committee considers that the initial review of credentials during registration, the periodic renewal of professional registration, competency exams and continuing education are all important safeguards against the unqualified or unethical practice of the nursing profession.***

536 Bolivarian Republic of Venezuela, [Ley del Ejercicio Profesional de la Enfermería y Código Deontológico](#) núm. 38.263, 1 September 2005.

537 For instance, *Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Brazil, Canada, Costa Rica, Dominica, Grenada, Guyana, Honduras, Jamaica, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and United States.*

538 Cassiani et al. (2020). “Regulation of nursing practice in the Region of the Americas”, op. cit., pp. 3 and 4.

*Thailand* – In accordance with section 29 of the Nursing and Midwifery Profession Act, B.E. 2528 (1985), once registered, the licence of nurses and midwives lasts for five years. Renewal of the licence is compulsory and at least 50 Continuing Nursing Education Units must be completed during each renewal period.<sup>539</sup>

### (c) Regional harmonization of education standards and licensure examinations

312. The Committee observes that the regulation of nursing practice and education is not harmonized. It notes, however, that there are certain subregional mutual recognition arrangements.<sup>540</sup> Mutual recognition agreements and harmonized education requirements increase standardization and the safe and efficient mobility of practitioners.<sup>541</sup>

The Regional Nursing Body of the Caribbean Community (CARICOM) was created in 1972. It coordinates the regional examination, which is based on mutually agreed competencies required for a registered nurse to practise. The examination allows for the standardization and improvement of nursing education, as well as reciprocity and ease of movement for registered nurses among the CARICOM countries. Governance of the Regional Nursing Body is shared between the chief or principal nursing officers, nurse tutors, and nursing council of each country, as well as educators from the universities of the sub-region.<sup>542</sup>

*Cyprus* – The Nursing and Midwifery Act 1988 – 2017 is fully aligned with the basic training requirements set out in Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications and the subsequent amending Directive 2013/55/EU.

539 *Thailand*, [Professional Nursing and Midwifery Act](#), B.E. 2528 (1985).

540 The Caribbean Regional Examination for Nurse Registration, EU professional Directives, the Association of Southeast Asian Nations agreement and the Trans-Tasman agreement.

541 See also the Trans-Tasman Mutual Recognition Act 1997, which provides for the recognition in *New Zealand* of regulatory standards adopted in *Australia*. WHO (2020). *State of the world's nursing 2020*, op. cit., para. 70.

542 WHO (2020). *State of the world's nursing 2020*, op. cit., p. 33.

In its professional regulatory framework for nursing and midwifery for the African region, the WHO notes great variation in regulatory systems for health workers between French, Portuguese and English-speaking countries in the region. In some countries, there are well-developed regulatory frameworks for nursing and midwifery, while the frameworks are partial or less developed in others, and in still others they are in the initial phase of discussion and implementation. The WHO advocates the development of a regional professional regulatory framework to create a common regional approach to improving the quality of education and practice of nurses and midwives through the use of commonly developed and agreed competencies, and educational and practice standards.<sup>543</sup>

## 6. Codes of conduct and ethics

**313.** Standards of practice also include codes of conduct and/or ethics. Such codes often have binding force and establish the ethical and legal obligations of nurses in respect of their patients and communities. Codes of practice or ethics also serve to inform the public of the ethical and moral principles that nursing practitioners have to observe in the performance of their duties.

*South Africa* – The Code of ethics for nursing practitioners in South Africa requires practitioners to refer to the relevant legislative frameworks, standards for practice, competency framework and scope of practice of the profession. The Code is binding upon all practitioners and is enforced by the Professional Conduct Committee. Failure to adhere to the provisions of the Code, or violations of the Code, result in the same sanctions as for non-adherence to the regulations/rules regarding acts and omissions and may bring into question the nursing practitioner's fitness to practice and endanger his/her registration.<sup>544</sup>

The ICN Code of ethics for nurses affirms that nurses have four fundamental responsibilities: to promote health; to prevent illness; to restore health; and to alleviate suffering. It sets out four elements that apply to nurses as practitioners and managers, as educators and researchers, and to National Nurses Associations (NNAs). The four elements relate to the responsibilities of nurses in relation to people, practice, the profession and co-workers. The Code calls for the establishment of standards of care and a work setting that promotes quality care. Moreover, nurses must provide care that respects human rights and is sensitive to the values, customs and beliefs of people.<sup>545</sup>

<sup>543</sup> WHO (2016), *The regional professional regulatory framework for nursing and midwifery: Creating a common approach to regulation, educational preparation and practice – Future direction for nursing & midwifery development in the African Region*, Regional Office for Africa, Brazzaville, pp. viii and 4.

<sup>544</sup> South African Nursing Council, *Code of ethics for nursing practitioners in South Africa*, May 2013, p. 8.

<sup>545</sup> ICN (2012), "The ICN code of ethics for nurses", op. cit., pp. 3–7.



## 7. Regulatory bodies

314. Paragraph 13(a) of Recommendation No. 157 indicates that, where the possession of certificates attesting to the attainment of the required level of education and training does not automatically imply the right to practice the profession, a body including representatives of nursing personnel should be empowered to grant licenses.

315. The bodies that regulate the nursing profession may take different forms at the national level, ranging from bodies led by the profession to others that are state-embedded or controlled.<sup>546</sup> In the great majority of countries, the regulatory body is a council/board of nurses.<sup>547</sup> In some countries, there has been a move towards umbrella style regulation incorporating all the health professions. In such cases, the regulatory body may be a council or board of health workers, while in others it may be the Ministry of Health.<sup>548</sup>

316. The ICN's position statement on nursing regulation emphasizes that profession-led nursing regulation contributes to public protection and quality patient outcomes by establishing, promoting and enforcing standards of practice.<sup>549</sup> The Committee notes that legislation has been adopted in many countries establishing professional-led regulatory bodies and according to them the powers necessary to govern their own profession and ensure the quality of professional competence and conduct. The regulations must be applied and the regulatory body is accountable to the public.<sup>550</sup> The governance of nursing by nurses is in the public interest.<sup>551</sup>

317. The Committee observes that most nursing regulatory bodies are empowered to: issue licences to qualified individuals; establish standards for education; issue codes of conduct and/or ethics; determine the scope of nursing practice; and deal with complaints.<sup>552</sup>

546 ICN (2009). "Regulation 2020: Exploration of the present, vision for the future", op. cit.

547 For instance, *Angola* (Ordem dos Enfermeiros de Angola), *Antigua and Barbuda* (Nursing Council of Antigua and Barbuda), *Brunei Darussalam* (Nursing Board of Brunei), *Cambodia* (Cambodian Council of Nurses), *Cook Islands* (Cook Islands Nursing Council), *Croatia* (Croatian Nursing Council), *Eswatini* (Swaziland Nursing Council), *Guatemala* (Colegio Profesional de Enfermería de Guatemala), *India* (Indian Nursing Council), *Jordan* (Jordanian Nursing Council), *Kenya* (Nursing Council of Kenya), *Lesotho* (Lesotho Nursing Council), *Liberia* (Liberian Board for Nursing and Midwifery), *Malaysia* (Malaysia Nursing Board), *Mauritius* (Nursing Council of Mauritius), *Pakistan* (Pakistan Nursing Council), *Paraguay* (Asociación Paraguaya de Enfermería), *Peru* (Colegio de Enfermeros del Perú), *Portugal* (Ordem dos Enfermeiros), *Rwanda* (National Council of Nurses and Midwives), *Spain* (Consejo General de Colegios Oficiales de Enfermería de España), *Uganda* (Uganda Nurses and Midwives Council), *United Arab Emirates* (UAE Nursing and Midwifery Council), *United Kingdom* (Nursing and Midwifery Council), *Zambia* (General Nursing Council of Zambia) and *Zimbabwe* (Nursing Council of Zimbabwe).

548 For instance, *Austria*, *Bhutan*, *Botswana*, *Czechia*, *Germany*, *Israel*, *Japan*, *Kuwait*, *Lao People's Democratic Republic*, *Luxembourg*, *Netherlands*, *Oman* and *Viet Nam*.

549 ICN (2013). "Position statement: Nursing regulation", op. cit.

550 The Canadian Network of Agencies for Regulation (CNAR) is a federation of national organizations of which the provincial and territorial members are identified in law as being responsible for protecting the public through the self-regulation of professions and occupations. The CNAR connects Canada's provincial and national regulators, licensing boards, accreditation agencies, examining bodies and government officials at all levels to discuss challenges, share ideas and develop best practices on a wide range of issues relevant to organizations engaged in the self-regulation of professions and occupations.

551 ICN (2010). *Scope of nursing practice and decision-making framework toolkit*, op. cit., pp. 10 and 11.

552 For instance, *Argentina* (section 22 of the [Act of the City of Buenos Aires on the practice of nursing](#), No. 298 of 1999) and *Solomon Islands* (section 5 of the [Nursing Council Act 1987](#) (No. 13)).



*Pakistan* – The functions of the Pakistan Nursing Council include: establishing the curriculum for the education of nurses, midwives, lady health visitors (LHVs) and auxiliary nurses; inspecting educational institutions; providing registration (a licence) to practice; maintaining standards of education and practice; working closely with the four provincial Nursing Examination Boards (NEBs); playing an advisory role for the overall benefit of nurses, midwives, LHVs and auxiliary nurses in the country; maintaining an advisory role for the Federal and Provincial Government regarding nursing education and nursing services; communicating policy decisions regarding nursing education and the welfare of nurses adopted in Council meetings to governments, nursing institutions, NEBs and the armed forces nursing services for implementation. The Council also prescribes penalties for fraudulent registration and is empowered to remove individuals from the register for professional misconduct.

**318.** The Committee notes that regulatory bodies are also increasingly given the mandate and responsibility of maintaining an up-to-date registry of the active nursing workforce.<sup>553</sup>

*Solomon Islands* – Section 6 of the Nursing Council Act 1987 provides that: “(1) The Council shall keep and maintain a register (to be known as the ‘Register of Nurses’) which shall be opened to inspection by any member of the public at all reasonable times. (2) The register shall contain such particulars as the Council deems necessary. (3) No entry or deletion in the registry ... shall be made except on the directions of the Council”.<sup>554</sup>

## 8. Protecting the title of nurse

**319.** One of the most significant advantages of a statutory regulatory system is that it can protect the use of the title of nurse,<sup>555</sup> thereby allowing the public to distinguish between legally qualified nurses and other healthcare providers.<sup>556</sup>

**320.** The ICN Model Nursing Act indicates that the title of nurse should be protected by law, and should be applied to and used only by those legally authorized to represent themselves as nurses and to practice nursing.<sup>557</sup> According to the ICN Model Act, the unlawful use of the title “nurse” should result in criminal, civil and/or administrative action against the person concerned and anyone who assists them.<sup>558</sup>

*Chile* – Section 313(a) of the Penal Code establishes penalties for the unlawful exercise of the nursing profession. It accordingly guarantees that those exercising the nursing profession are in compliance with the respective requirements.

<sup>553</sup> WHO (2020). *State of the world’s nursing 2020*, op. cit., para. 71.

<sup>554</sup> *Solomon Islands*, Nursing Council Act 1987.

<sup>555</sup> ICN (2007). Model Nursing Act, Geneva.

<sup>556</sup> Styles and Affara (1997). *ICN on Regulation: Towards 21st century models*, op. cit., p. 20.

<sup>557</sup> ICN. “[Position statement: Protection of the title ‘Nurse’](#)”, adopted in 1998 and reviewed and revised in 2004 and 2012, Geneva, p. 1.

<sup>558</sup> For instance, *Argentina* (section 6 of the Act of the City of Buenos Aires on the practice of nursing, No. 298 of 1999), *Norway* (Health Personnel Act); *Solomon Islands* (section 18(1) and (2) of the Nursing Council Act 1987), *South Africa* (section 53 of the Nursing Act No. 33 of 2005) and *Sweden* (Patient Safety Act (2010: 659)).

*Japan* – In accordance with the Act on Public Health Nurses, Midwives and Nurses, if a person who is not a public health nurse, nurse or assistant nurse performs their respective tasks using similar titles, that person can be penalized.<sup>559</sup>

*Trinidad and Tobago* – Section 19 of the Nursing Personnel Act (Act No. 33 of 1960, Cap 29:53), provides that a person commits an offence who, not being registered or enrolled, or who during any period when his certificate of registration or enrolment has been suspended or cancelled, or is deemed to have been suspended, takes or uses the name or title of “advanced practice nurse”, “registered nurse”, “nurse” or “nurse intern”, whether alone or in combination with any other words or letters, or any name, title, addition, description, uniform or badge implying or calculated to convey the impression that he is registered or enrolled under this Part, or is recognized by law as an advanced practice nurse, a registered nurse, a nurse or a nurse intern. The person is liable on summary conviction to a fine of TTD 10,000 and imprisonment for two years.

## ► II. Issues arising from the exercise of nursing duties

### 1. The civil liability of nurses

321. As professional nursing practice has evolved, legal issues have arisen. With increased professional status has come expanded liability.<sup>560</sup> Depending on the circumstances, nurses can be held to account not only by their employer, but also by third parties, and may even face criminal prosecution. Paragraph 16 of Recommendation No. 157 indicates that consideration should be given to measures that may be called for by the problem of civil liability of nursing personnel arising from the exercise of their functions.

322. During the preparatory work, a proposal was made to delete the term “civil” in order to make the provision applicable to all types of liability, including civil, penal and administrative liability. The Office indicated that the proposed text was intended to cover civil liability, as a survey carried out by the Office in 1976 had shown that the risk of being subject to civil liability was particularly great for health workers. In contrast, it did not seem that any citizen could be exempted from or protected against penal liability.<sup>561</sup> The proposed text on civil liability was adopted without change. The present section therefore focuses on the issue of the civil liability of nurses, with their administrative or disciplinary liability being addressed in section (b) below.

<sup>559</sup> *Japan*, [Public Health Nurses, Midwives, and Nurses](#) (Act No. 203 of 30 July 1948).

<sup>560</sup> G.C. Barbee (1954). “[When is the nurse held liable?](#)”, *The American Journal of Nursing*, 54(11), p. 1343.

<sup>561</sup> ILO (1977). [Employment and Conditions of Work and Life of Nursing Personnel, Report VI\(1\)](#), International Labour Conference, 63rd Session, Geneva, paras 119–120.

### (a) Standards of care in the nursing profession

**323.** Standards of care in the nursing profession are those against which the quality of practice, service or education provided can be evaluated.<sup>562</sup> They describe the minimal requirements that define an “acceptable level of care”, which is to exercise ordinary and reasonable care to see that no unnecessary harm comes to a patient. They are implemented daily in all aspects of healthcare delivery and in all practice settings, forming the basis for high quality healthcare delivery. Increasingly, standards of care are the critical aspect that determines the outcome of lawsuits in multiple clinical settings.<sup>563</sup>

*United States – King v. State of Louisiana (1999)* defined standards of care thus: “legal duty of care or standards of care means a nurse must have and use the knowledge and skill ordinarily possessed and used by nurses actively practicing in the nurse’s speciality area”.<sup>564</sup>

**324.** Standards of nursing care may be established by different types of institutions. The Committee notes that, in some countries, councils or state boards of nursing publish accepted standards in their rules on the practice of nursing, or in rules and regulations promulgated to enforce the legislation. Where they exist, national courts typically assess whether these agreed standards have been met on the basis on the evidence presented.<sup>565</sup>

### (b) Standards of practice

**325.** Nurses may also be held liable for failure to adhere to established standards of practice.

The American Nurses Association (ANA) has established a set of standards applicable to all nurses, irrespective of their clinical speciality. A number of required competencies are established under each standard for registered nurses, as well as additional competencies for graduate-level registered nurses.<sup>566</sup>

**326.** Nurses may be held accountable for any deviation from applicable standards of care and practice and must be able to justify their actions or omissions.<sup>567</sup>

<sup>562</sup> American Nurses Association (2015). *Nursing: Scope and standards of practice*, 3rd Edition, Maryland, pp. 53–66.

<sup>563</sup> G.W. Guido (2020). *Legal and ethical issues in nursing*, Seventh edition, Pearson, New York, Part III, Ch. 5.

<sup>564</sup> *King v. State of Louisiana*, 1999.

<sup>565</sup> For instance, *Australia* (Nursing and Midwifery Board (NMBA)), *Canada* (Ontario, College of Nurses of Ontario) *Kenya* (Nursing Council of Kenya (NCK)) and *United States* (California Board of Registered Nursing (BRN)).

<sup>566</sup> ANA (2015). *Nursing: Scope and standards of practice*, op. cit., pp. 53–66.

<sup>567</sup> For instance, *Australia* (Nursing and Midwifery Board of Australia (NMBA) (2018). *Code of conduct for nurses*, Melbourne, p. 4) and *New Zealand* (section 2(1) of the *Nurses Act 1977* (1977 No. 53)). See: M. Cornock (2011). “Legal definitions of responsibility, accountability and liability”, *Nursing Children and Young People*, 23(3), pp. 25–26.

*Saudi Arabia* – Royal Decree No. M/59 4/11/1426 H, of 6 December 2005, provides that: “Any health-care professional who commits malpractice causing harm to a patient shall be liable for indemnification. The Sharia Medical Panel provided for in this Law shall determine the amount of such indemnification. The following shall be deemed malpractice: error in treatment or inadequate follow-up; lack of knowledge and skills that could be expected of others in the profession; performing experimental and unprecedented surgery on a person, in violation of relevant rules; conducting experiments or scientifically unestablished research on patients; administering medications to patients on an experimental basis; using medical instruments or equipment without adequate knowledge of their use; and failure to provide adequate monitoring or supervision.” It adds that “any provision limiting the liability of a health-care professional shall be deemed invalid.”

*United Kingdom* – The Nursing and Midwifery Council Code on professional standards of practice and behaviour for nurses, midwives and nursing associates establishes a mandatory framework of professional standards of practice. Nurses, midwives and nursing associates must act in line with the Code, whether they are providing direct care to individuals, groups or communities or bringing their professional knowledge to bear on nursing and midwifery practice in other roles, such as leadership, education or research. The values and principles set out in the Code can be applied in a range of different practice settings, but are not negotiable or discretionary.<sup>568</sup>

327. The Committee notes that different concepts and methods are applied at the national level to determine the liability of nursing personnel. Differences in legal systems can translate into differences in how a complaint is investigated and handled, the standards of proof required, the action that can be imposed and the different elements that need to be proven to establish liability. For instance, national courts have established different elements that must be proven to establish civil liability on the part of the nurse. These elements include the nature and extent of the duty owed to the patient, whether there has been a breach of the duty owed, whether the harm was reasonably foreseeable, whether there is a causal link between the nurse’s act or omission and the harm, injury and damages.<sup>569</sup>

*Canada* – The Code of ethics of nurses of Quebec provides that: “A nurse may not be released from personal civil liability in the practice of her or his profession. In particular, a nurse is prohibited from inserting any clause directly or indirectly excluding such liability, in whole or in part, or from being a party to a contract for professional services containing any such clause.”<sup>570</sup>

**328. The Committee considers that States should seek to develop and apply a consistent legal standard of care and a theory of liability with the aim of ensuring appropriate redress for injured persons where the fault of the nurse is proven, as well as protecting nurses from malpractice judgments based on inappropriate standards.**

568 Nursing and Midwifery Council. [The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates](#), published in 2015 and updated in 2018, p. 3.

569 For further information see: Guido (2020). *Legal and ethical issues in nursing*, op. cit., pp. 69–80.

570 Canada, Quebec, [Code of ethics of nurses](#), updated on 1 Sep. 2020, Ch. I, Division I, para. 9.

## 2. Ensuring fair and transparent disciplinary procedures with the participation of the nursing sector

329. Paragraph 17 of Recommendation No. 157 indicates that any disciplinary rules applicable to nursing personnel should be determined with the participation of representatives of nursing personnel. The Committee emphasizes that the primary purpose of disciplinary proceedings in nursing is to protect the public by maintaining professional standards, protecting the public from unsafe or incompetent nursing practitioners, and maintaining confidence in the profession and its reputation.<sup>571</sup> Moreover, without an efficient complaints management system, the regulatory body will not be able to identify effectively registrants who are no longer competent or fit to practice.<sup>572</sup>

330. Paragraph 10(2) of the Annex to Recommendation No. 157 indicates that any disciplinary rules applicable to nursing personnel “should be laid down in the framework of rules applicable to health personnel as a whole or, where there are no such rules, should take due account of rules applicable to other categories of health personnel.” The Committee notes that disciplinary rules may be laid down in laws,<sup>573</sup> regulations<sup>574</sup> and collective agreements,<sup>575</sup> or through disciplinary policies or mechanisms.<sup>576</sup>

### (a) Complaints management systems

331. The role of a robust and effective complaints management system is to maintain professional standards and therefore public confidence in the nursing profession. The objective of such a system is not to punish the practitioner, although the outcome of a review may result in a restriction of the scope of practice or revocation of the licence to practice. Professional regulation should ensure fairness to both patients and professionals.<sup>577</sup>

332. Complaints against nurses may originate from a number of sources, including patients, co-workers, members of the public or employers. The process of dealing with complaints varies depending on the different jurisdictions and legal traditions. In most countries, complaints against registered nurses are handled by committees or councils of the regulatory authority, which enjoy independent decision-making authority and legal support.<sup>578</sup>

571 R. Barned and J. Barry (2012). *Toolkit on complaints management*, ICN, Geneva, p. 23.

572 *ibid.*, p. 15.

573 For instance, *Bahamas, Finland, Indonesia, Lao People’s Democratic Republic, Latvia, New Zealand, Nigeria, Philippines, Saudi Arabia, Seychelles, South Africa, Sweden, Trinidad and Tobago and United Kingdom*.

574 For instance, in the *United States* there are 59 Nursing Regulatory Bodies (NRBs), which are the state and territorial governmental agencies responsible for the regulation of nursing. Each enforces a jurisdiction-specific Nurse Practice Act (NPA). Each NPA establishes a Board of Nursing with the authority to develop administrative rules or regulations.

575 For instance, *Italy* (Collective Agreement on the Health Sector, 2016–2018).

576 For instance, *United Kingdom*, Royal College of Nursing, Disciplinary policy and procedure, 2011.

577 Barned and Barry (2012). *Toolkit on complaints management*, op. cit., p. 8.

578 For instance, *Ireland, New Zealand, Saudi Arabia and South Africa*.

*United Kingdom* – Standing Order 5.5 of the Royal College of Nursing provides that: “Subject to a Member’s statutory rights, the Council shall have the power to discipline any Member (including power to order the removal of the Member from the Roll) who in the opinion of the Council has not met the standards of behaviour and conduct expected of them, provided that no Member’s name be removed (or suspended) from the Roll for this reason unless that Member shall have been given a reasonable opportunity of being heard by the Council or a committee established by Council in his or her own defence ....”<sup>579</sup>

333. Under the complaints management system in some countries, the nursing regulatory authority may refer more serious complaints (for instance, those that are likely to result in the cancellation or suspension of the licence) to independent tribunals. It is not uncommon for such tribunals to be chaired by a member of the judiciary and assisted by members of the nursing profession and a representative of patients.<sup>580</sup>

*Australia* – In New South Wales, the Health Care Complaints Commission is an independent body set up under the Health Care Complaints Act 1993. It protects public health and safety by receiving, investigating, prosecuting and resolving complaints against health services and health service providers, including health organizations, registered health practitioners (such as nurses) and unregistered health practitioners.<sup>581</sup>

*New Zealand* – The Health Practitioners Disciplinary Tribunal hears and determines disciplinary proceedings brought against registered health practitioners, including nurses. The Tribunal consists of a panel of registered health practitioners and lay members appointed by the Minister of Health.<sup>582</sup>

## (b) Disciplinary rules and procedures

334. Paragraph 17 of the Recommendation No. 157 indicates that any disciplinary rules applicable to nursing personnel should guarantee them “a fair judgement and adequate appeal procedures, including the right to be represented by persons of their choice at all levels of the proceedings, in a manner appropriate to national conditions”.<sup>583</sup>

<sup>579</sup> *United Kingdom*, Royal College of Nursing, Standing Orders, adopted on 20 October 2010.

<sup>580</sup> Barned and Barry (2012). *Toolkit on complaints management*, op. cit., p. 24.

<sup>581</sup> *Australia*, New South Wales, [Health Care Complaints Act 1993 No. 105](#), section 3(1).

<sup>582</sup> *New Zealand*, The Tribunal was created by the [Health Practitioners Competence Assurance Act 2003](#), section 84. See also New Zealand Health Practitioners Disciplinary Tribunal (2009). [A guide to disciplinary proceedings](#).

<sup>583</sup> It was indicated during the preparatory work that the reference to national conditions provides flexibility to take national systems into account. ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(2), op. cit., p. 31.

335. Nurses have the right to justice, which is recognized by the Universal Declaration of Human Rights and other international and regional instruments.<sup>584</sup> This implies that each party is entitled to a fair and impartial hearing. Both parties should have the opportunity to put their case and to be present when the other party is conducting its case.<sup>585</sup> ***The Committee considers that national legislation should establish the circumstances under which the regulator is required to refer a complaint to a tribunal or hearing. Where no such legislative provision exists, a written policy should address this circumstance.***

*Saint Kitts and Nevis* – Rule 25 of the Nurses Rules contained in the Nurses and Midwives (Registration) Act provides that: “(1) When in relation to a person registered as a nurse ... an allegation is made to the Council ... the Registrar, after making such further inquiries relative to the allegation as he or she thinks necessary, shall lay the matter before the Disciplinary Committee of the Council .... (3) Before reporting on a case to the Council the Committee shall give the respondent an opportunity to submit a written statement or explanation in relation to the case or have the person appear before the Committee to present his or her case.” The respondent may be represented by legal counsel.<sup>586</sup>

*United Kingdom* – The Disciplinary Policy and Procedure of the Royal College of Nursing provides that, where a complaint has been made and formal action is to be initiated, the registered nurse concerned “should be ... informed of the allegation(s) in writing and be informed in writing of his/her right to be accompanied or represented at all investigation meetings and at any disciplinary or appeal hearing ...”.<sup>587</sup>

336. However, there are some exceptions to the right of the accused nurse to be notified of allegations against him/her, such as in cases requiring urgent action by a nursing regulatory authority where the nurse is deemed to pose a serious and imminent risk to patient health and safety. The suspension of a licence to practice in these circumstances without first notifying the nurse may be authorized by the legislation.<sup>588</sup> The powers of the regulator to act without first holding a hearing often include the power to cancel, suspend or restrict a licence.

*New Zealand* – Section 93 of the Health Practitioners Competence Assurance Act 2003 establishes the situations in which the Health Practitioners Disciplinary Tribunal may order an interim suspension of registration or impose restrictions on practice. Section 93(1A) and (1B) provide that if, “in the opinion of the Tribunal held on reasonable grounds, the conduct in which the health practitioner is alleged to have engaged poses a risk of serious harm to the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the registration of the practitioner be suspended” or that “the health practitioner may practise as a health practitioner only in accordance with conditions stated in the order.”<sup>589</sup>

584 Universal Declaration of Human Rights, Arts 8 and 10, and International Covenant on Civil and Political Rights, Art. 2(3).

585 New Zealand Health Practitioners Disciplinary Tribunal (2009). *A guide to disciplinary proceedings*, op. cit., p. 8.

586 *Saint Kitts and Nevis*, [Nurses and Midwives \(Registration\) Act](#), (Cap. 9:17).

587 *United Kingdom*, Royal College of Nursing, Disciplinary Policy and Procedure, 2011, op. cit., section 4(3).

588 Barned and Barry (2012). *Toolkit on complaints management*, op. cit., p. 30.

589 *New Zealand*, [Health Practitioners Competence Assurance Act 2003](#), section 93.



337. Moreover, Paragraph 17 of Recommendation No. 157 provides that disciplinary rules should guarantee nursing personnel adequate procedures to appeal against a disciplinary decision.<sup>590</sup>

*Ireland* – Section 73 of the Nurses and Midwives Act 2011 establishes the right of registered nurses and midwives to appeal to the court against certain decisions of the Nursing and Midwifery Board of Ireland. Section 73(3) provides that the court may, on the hearing of an appeal, either confirm the decision that is the subject of the application, or quash that decision and substitute such other decision as the court considers appropriate, which may be a decision to impose a different sanction on the nurse or midwife, or to impose no sanction on the nurse or midwife. The court may also give the Board directions and direct how the costs of the appeal are to be borne.<sup>591</sup>

*Solomon Islands* – Section 15(2) of the Nursing Council Act 1987 provides that any person “who is aggrieved by the decision of the Council may appeal to the High Court on a point of law, and the Council shall, if the Court so orders, withdraw the cancellation or suspension, as the case may be”.<sup>592</sup>

### (c) Causes of disciplinary action and disciplinary outcomes

338. Paragraph 10(1)(a) of the Annex to Recommendation No. 157 indicates that any disciplinary rules applicable to nursing personnel should include “a definition of breach of professional conduct taking account of the nature of the profession and of such standards of professional ethics as may be applicable thereto”. Although the grounds on which a nurse may be disciplined vary between countries, most complaints concern allegations of professional misconduct, unprofessional conduct, unsafe practices or illegal or unethical behaviour.

*Ireland* – Section 55(1) of the Nurses and Midwives Act 2011 provides that “a person (including the Board) may make a complaint to the Preliminary Proceedings Committee concerning a registered nurse or registered midwife on grounds including: professional misconduct, poor professional performance, non-compliance with a code of professional conduct, a relevant medical disability, a failure to comply with a relevant condition, an irregularity in relation to the custody, prescription or supply of a controlled drug under the Misuse of Drugs Acts 1977 and 1984 or another drug that is likely to be abused”.<sup>593</sup>

590 Other countries that have regulated the right of nurses to appeal against a disciplinary procedure include *New Zealand* (section 106 of the Health Practitioners Competence Assurance Act 2003) and *Norway* (Norwegian Appeal Board for Health Personnel).

591 *Ireland*, [Nurses and Midwives Act 2011](#) (No. 41).

592 *Solomon Islands*, [Nursing Council Act 1987](#) (No. 13).

593 *Ireland*, [Nurses and Midwives Act 2011](#).

*New Zealand* – Section 42(1) of the Nurses Act 1977, on the disciplinary powers of the Nursing Council, provides that it may impose a penalty if any registered or enrolled nurse: “(a) Is convicted by any Court in New Zealand of any offence for which the maximum punishment is not less than 2 years’ imprisonment; or (b) After due inquiry is found by the Council to have been guilty of professional misconduct ...”.<sup>594</sup>

**339.** Paragraph 10(1)(b) of the Annex to Recommendation No. 157 provides that any disciplinary rules applicable to nursing personnel should include “an indication of the sanctions applicable, which should be proportional to the gravity of the fault”.

**340.** The powers available to a regulatory authority and the circumstances in which they may be exercised vary between jurisdictions and include a range of disciplinary measures, including: a written warning, censure, mandated continuing education; a fine or civil penalty; mandatory community service; referral to an alternative-to-discipline programme; remediation; probation; practice restrictions; monitoring or supervision; and, in the most serious cases, suspension or revocation of the right to practice.<sup>595</sup> In some countries, alternative measures are envisaged, particularly if patients have not been harmed, with the aim of protecting the public and rehabilitating the nurse. Alternative measures may include peer assistance, professional assistance and diversion or intervention projects.<sup>596</sup>

*New Zealand* – The Health Practitioners Disciplinary Tribunal may order that: (a) the registration of the health practitioner be cancelled; (b) the registration be suspended for a period not exceeding three years; (c) the health practitioner may, after commencing practice following the date of the order, for a period not exceeding three years, practice his or her profession only in accordance with any conditions as to employment, supervision or otherwise that are specified in the order; (d) the health practitioner be censured; (e) the health practitioner pay a fine; (f) the health practitioner may pay part or all of the costs and expenses of the proceedings.<sup>597</sup>

*Saudi Arabia* – In accordance with Royal Decree No. M/59 4/11/1426 H, of 6 December 2005, disciplinary penalties for professional violations may include a warning, a fine not exceeding ten thousand riyals, revocation of the licence for the practice of health care and striking off the name from the registry of licensees. In the event of revocation of the licence, an application for a new licence may not be filed for two years from the date of revocation.

**341.** The Committee observes a trend in the last decade in some countries to introduce negotiated outcomes, where appropriate, in the event of complaints, which are variously referred to as alternatives to discipline, alternative dispute resolution and consensual complaints resolution.<sup>598</sup>

<sup>594</sup> *New Zealand*, [Nurses Act 1977](#) (No. 53).

<sup>595</sup> E. Brous (2012). “Professional licensure: Investigation and disciplinary action”, *American Journal of Nursing*, 112(11), pp. 53–60, p. 58.

<sup>596</sup> *ibid.*, p. 56.

<sup>597</sup> New Zealand Health Practitioners Disciplinary Tribunal (2009). *A guide to disciplinary procedures*, op. cit., pp. 10 and 11.

<sup>598</sup> For instance, *Canada* (Ontario and Yukon), *China* and *United States* (California and Texas). See in this regard: Barned and Barry (2012). *Toolkit on complaints management*, op. cit., p. 11; and Brous (2012). “Professional licensure: Investigation and disciplinary action”, op. cit., p. 56.

#### (d) Information concerning disciplinary procedures

342. An important responsibility of the nursing regulatory authority is to maintain a public register of licenced nurses. In most countries, if action is taken regarding a nurse's licence to practice, it is recorded in the public register of nurses, either at the time the decision is made or after the completion of any appeal process, and is published. Published decisions are also an educational tool for other nurses to inform them of practices that are considered below acceptable standards.<sup>599</sup>

*Australia* – Section 1(1)(b) of the Code of conduct for nurses provides that nurses must “inform the Australian Health Practitioner Regulation Agency (AHPRA) and their employer(s) if a legal or regulatory entity has imposed restrictions on their practice, including limitations, conditions, undertakings, suspension, cautions or reprimands, and recognise that a breach of any restriction would place the public at risk and may constitute unprofessional conduct or professional misconduct”.<sup>600</sup>

*Poland* – The competent district council of nurses and midwives or the Supreme Council of Nurses and Midwives is required to inform the relevant authorities or organization of a Member State of the European Union of pending or completed proceedings concerning the professional liability of nurses and midwives, the penalties imposed, criminal or protective measures adopted, or other circumstances that may be relevant for the practice of the nurse or midwife.

### 3. Exemptions from the obligation to perform specific nursing services for religious, moral or ethical reasons (conscience clauses)

343. Paragraph 18 of Recommendation No. 157 indicates that nursing personnel “should be able to claim exemption from performing specific duties, without being penalized, where performance would conflict with their religious, moral or ethical convictions and where they inform their supervisor in good time of their objection so as to allow the necessary alternative arrangements to be made to ensure that essential nursing care of patients is not affected”.

344. This provision was the subject of intense debate during the preparatory discussions. Some delegates emphasized that, while the religious, moral and ethical convictions of nurses should be respected, the needs of the patient must at all times come first. It was also noted that such immunity was not granted to other categories of public servants. Other delegates considered that the issue should be resolved by national legislation. The Worker members expressed the belief that people could not be asked to act against their consciences, and that the provision ensured that nursing care would be continued.<sup>601</sup>

599 Barned and Barry (2012). *Toolkit on complaints management*, op. cit., p. 18.

600 Nursing and Midwifery Board of Australia (2018). *Code of conduct for nurses*, op. cit.

601 ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(1), op. cit., paras 125 and 126. See also: ILO (1977). *Record of proceedings*, Plenary, Report of the Committee on Nursing Personnel, International Labour Conference, 63rd Session, Geneva, paras 79-80.

### (a) The right of nurses to exercise conscientious objection and the right of patients to access healthcare

345. Nursing personnel may seek to avail themselves of a conscientious objection where they have religious, moral or ethical concerns regarding participation in certain areas of practice. This is not to be confused with matters of mere opinion, but rather relates to an action that directly violates or creates a direct and real threat to a deeply held moral or ethical conviction.<sup>602</sup> Areas of conscientious objection in nursing may include the provision of assistance in relation to abortion, euthanasia, certain assisted reproductive techniques, stem cell research, and sterilization without medical indication or organ procurement surgery.<sup>603</sup> ***The Committee considers that the right of conscientious objection should be balanced with the right of patients to have access to legally approved medical procedures.***

*Spain* – In Judgments Nos 19/1985<sup>604</sup> and 120/1990,<sup>605</sup> the Spanish Constitutional Court found that the interest of the person who makes a conscientious objection is not to obstruct or hinder social compliance with the legal rule, but rather to garner legitimate respect for their own conscience. Conscientious objection is founded on respect for freedom of conscience. It is assumed that this freedom has internal and external projections. Thus, freedom of conscience implies not only the right to apply this judgment to matters of conscience, but also recognition of the freedom to act accordingly.<sup>606</sup>

346. In this context, the Committee notes that protection of conscience and freedom of religion are enshrined in the great majority of national constitutions,<sup>607</sup> as well as in international<sup>608</sup> and regional human rights treaties.<sup>609</sup> However, these rights may be limited by law, particularly where necessary to protect public safety and health, and the fundamental rights and freedoms of others.

### (b) Regulation of the right to exercise conscientious objection

347. The Committee notes that the legal notion of a conscience clause exists in many countries<sup>610</sup> and governs the procedure to be followed by nurses/physicians who wish to opt out of performing certain tasks and the scope of their duties in such cases.<sup>611</sup> Some authors consider that, even in the absence of an explicit conscience clause in the medical legal system, the right to conscientious objection should be protected as a fundamental human right,<sup>612</sup> although it may be subject to certain limitations.

602 B. Dobrowolska et al. (2020). “[Conscientious object in nursing: Regulations and practice in two European countries](#)”, *Nursing Ethics*, 27(1), pp. 168–183; and M. Eagen-Torko and A. Levi (2020). “[The ethical justification for conscience clauses in nurse-midwifery practice: Context, power, and a changing landscape](#)”, *Journal of Midwifery & Women's Health*, 65(6), pp. 759–766.

603 Dobrowolska et al. (2020). “Conscientious object in nursing”, op. cit., p. 170.

604 *Spain*, Constitutional Court, ruling No. 19/1985, of 13 February.

605 *Spain*, Constitutional Court, ruling No. 120/1990, of 27 June.

606 V.E. Cabal Escandon (2016). “[Objeción de conciencia en enfermería](#)”, *Revista Colombiana De Enfermería*, Vol. 12, pp. 4–14.

607 For instance, *Colombia* (Art. 18 of the Political Constitution), *Poland* (Art. 53(1) of the Constitution) and *Spain* (Art. 16(1) of the Constitution).

608 Art. 18 of the Universal Declaration of Human Rights and Art. 18(1) of the International Covenant on Civil and Political Rights.

609 For instance, Art. 9(1) of the European Convention on Human Rights.

610 See, for instance, P. Nieminen et al. (2015). “[Opinions on conscientious objection to induced abortion among Finnish medical and nursing students and professionals](#)”, *BMC Medical Ethics*, March, 16(17).

611 Dobrowolska et al. (2020). “Conscientious object in nursing”, op. cit., p. 170.

612 C. de La Hougue (2016). [The right to conscientious objection of medical practitioners](#), United Nations, Human Rights Council, Session 31, side event, 8 March.

348. The right to conscientious objection is generally supported by regulatory nursing bodies and professional codes of ethics.<sup>613</sup> While the regulations covering conscience clauses in some countries lean towards the rights of nursing personnel, in others they tend to lean towards patients' rights and require nurses to perform treatment as a condition of licensure.

*Poland* – The conscience clause for nurses and midwives is contained in Act No. 88 on the occupation of nurses and midwives, which provides in section 12(2) that nurses/midwives shall be permitted not to carry out the orders of a doctor or other medical procedures that are against their conscience or outside the scope of their qualifications. In such cases, nurses are required to follow certain rules, including stating the reason for their objection in writing. Patients or their legal representative should be informed of the objection and the possibility of receiving care from other nurses. The objection has to be recorded in medical documentation and conscientious objection does not include the refusal of procedures which could result in a sudden increase in risk for the patient (section 12.1). The 2003 Code of ethics for nurses and midwives provides that nurses and midwives have the right to refuse to participate in procedures and biomedical experiments that are contrary to their ethical standards.

*South Africa* – The Code of ethics for nursing practitioners contains a non-exhaustive list of examples of ethical dilemmas that confront nurses in their work environment, including termination of pregnancy, participation in and/or conducting clinical research, and euthanasia. It defines conscientious objection as "entitlement to consciously refuse to participate in activities and treatment that nurses believe, on religious or moral grounds, are unacceptable and/or questionable, ethically, morally and legally".<sup>614</sup>

349. The Committee notes that the definition of conscientious objection is broad in some countries and no specific procedures are referred to in the regulations,<sup>615</sup> while in other countries conscientious objection is limited to certain aspects of medicine and/or nursing care, such as aspects of reproductive health.<sup>616</sup>

#### **(i) Obligations for those who wish to avail themselves of conscientious objection**

350. In accordance with Paragraph 18 of Recommendation No. 157, nursing personnel should be able to claim exemption from performing specific duties "where they inform their supervisor in good time of their objection so as to allow the necessary alternative arrangements to be made to ensure that essential nursing care of patients is not affected". This provision places a responsibility on the supervisor to make alternative arrangements to ensure continued nursing care. In this context, the Committee notes that, in accordance with most national codes, the use by nurses of conscientious objection is conditional on them informing an appropriate authority.<sup>617</sup> Moreover, a standard practice in many countries that balances the freedom of conscience of nurses with the rights of patients is to establish requirements

613 For instance, *Colombia* (section 9 of Act No. 911 of 2004) and *Uruguay* (section 8(e) of the Regulations of Act No. 18.815).

614 South African Nursing Council (2013). [Code of ethics for nursing practitioners in South Africa](#), May, point 5.2.

615 For instance, *Poland*.

616 For instance, *United Kingdom*, where conscientious objection is limited to abortion and aspects of reproductive medicine.

617 For instance, *Australia*, *Poland* and *Seychelles*.

for those wishing to apply conscientious objection, including the requirement to share information with the patient involved, documentation of the objection and the need to inform the patient of the possibility of receiving care from other nurses.

*Australia* – The Code of conduct for nurses of the Nursing and Midwifery Board of Australia (NMBA) provides that: “To prevent conflicts of interest from compromising care, nurses must: ... responsibly use their right to not provide, or participate directly in, treatments to which they have a conscientious objection. In such a situation, nurses must respectfully inform the person, their employer and other relevant colleagues, of their objection and ensure the person has alternative care options.”<sup>618</sup> The NMBA Code of conduct for midwives establishes the same requirements for midwives.<sup>619</sup> In addition, the Policy on conscientious objection of the Australian Nursing and Midwifery Federation (ANMF) establishes that, in exercising their conscientious objection, “nurses, midwives and assistants in nursing must take all reasonable steps to ensure that the person’s preference, quality of care, safety, and advance care directives are not compromised”. They should also “express a desire not to participate in that procedure in advance, where possible”.<sup>620</sup>

*Seychelles* – The Nurses and Midwives Act provides in Part IV, section 13(2)(d), that: “every registered nurse or midwife shall ... (d) make known to the registrar any conscientious objection which may be relevant to the exercise and discharge of the professional duties, practices and procedures”.<sup>621</sup>

## (ii) Prohibitions against objecting under certain circumstances

**351.** The Committee notes that in many countries healthcare personnel, including nursing personnel, are prohibited from exercising conscientious objection rights in emergency situations, particularly where this would pose a threat to life.

*Australia* – The ANMF Policy on conscientious objection provides that: “Subject to their scope of practice, nurses and midwives in the course of their employment must not refuse to carry out urgent life-saving measures or procedures when there is no ability to safely hand over care.”<sup>622</sup>

*Poland* – Section 12(1) of the Act of 15 July 2011 on the occupation of nurses and midwives provides that they are required, in accordance with their professional qualifications, to provide assistance whenever a delay in granting it could cause an emergency health threat.<sup>623</sup>

618 Nursing and Midwifery Board of Australia (2018). [Code of conduct for nurses](#), op. cit., Principle 4: Professional behaviour, para. 4.4.

619 Nursing and Midwifery Board of Australia (2018). [Code of conduct for midwives](#), Melbourne, Principle 4: Professional behaviour, para. 4.4.

620 Australian Nursing and Midwifery Federation, [Policy on conscientious objection](#), endorsed in 1994 and reviewed most recently in 2020, paras 2 and 4.

621 *Seychelles*, [Nurses and Midwives Act](#), 1985.

622 Australian Nurses and Midwifery Federation. Policy on conscientious objection, op. cit., para. 3.

623 *Poland*, [Act of 15 July 2011 on the occupation of nurses and midwives](#) (in Polish).

### ► III. Ethical dilemmas faced by nursing personnel during the COVID-19 pandemic and their consequences for the health and well-being of nurses

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352. The COVID-19 pandemic has exacerbated many of the complex and difficult ethical issues that are typically faced by nurses in caring for patients, and has had a significant impact on the health and well-being of nursing personnel (see Chapter 6).<sup>624</sup>

353. The main ethical dilemmas encountered by nursing personnel during the pandemic have been related to the availability and management of health resources, the lack of the necessary protection, including personal protective equipment (PPE), the urgency and stress surrounding the need to take life or death decisions, the provision of end-of-life care, the use of information and communication technologies (ICTs), as well as their personal fear of contracting the virus and possibly exposing their families.<sup>625</sup> Nurses also report diminished care to patients due to their increased workload and a worsening of the working environment (lack of time, resources and medical equipment), as well as a lack of knowledge and skills for nurses with limited experience of treating infectious diseases.<sup>626</sup> Where nurses have perceived that patient safety and quality of care has been compromised during the pandemic, they have reported ethical stress, while the increased workload and difficult working environment have also affected their health and well-being.<sup>627</sup>

#### 1. The ethics of allocating scarce health resources in an overloaded system

354. In the unpredictable and rapidly evolving circumstances created by the pandemic, ethical decision-making has quickly become highly complex.<sup>628</sup> The scarcity of health resources has placed both nursing personnel and COVID-19 patients at risk, as well as delaying or impeding access to care for patients with other urgent needs, such as treatment for cancer, diabetes and heart disease, and safe birthing services for pregnant women.<sup>629</sup> The pandemic has also compounded the longstanding problem of nursing shortages. Even prior to the outbreak, health services in most countries were working at or near full capacity.<sup>630</sup>

355. Paragraph 2(4) of the Annex to Recommendation No. 157 indicates that “[a]ppropriate technical and material resources should be provided for the proper exercise of the tasks of nursing personnel.” However, the COVID-19 health crisis has revealed a lack of technical and material resources in many national health systems, where the number of ventilators,

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624 L.O. Gostin, E.A. Friedman and S.A. Wetter (2020). “[Responding to Covid-19: How to navigate a public health emergency legally and ethically](#)”, *Hastings Centre Report*, 50(2), pp. 8–12.

625 A. Falcó-Pegueroles et al. (2020). “[Ethical conflict during COVID-19 pandemic: The case of Spanish and Italian intensive care units](#)”, *International Nursing Review*, 68(2), pp. 181–188.

626 According to a study carried out on nurses working on designated units caring for COVID-19 patients in China, the major ethical challenges encountered by nurses related to patients, inequality, professional ethics and job competency. See: Y. Jia, et al. (2021). “[Nurses’ ethical challenges caring for people with COVID-19: A qualitative study](#)”, *Nursing Ethics*, 28(1), pp. 33–45.

627 L. Bergman et al. (2021). “[Registered nurses’ experience of working in the intensive care unit during the COVID-19 pandemic](#)”, *Nursing in Critical Care*, 26(6), pp. 467–475.

628 N. Pattinson (2020). “[End-of-life decisions and care in the midst of a global coronavirus \(COVID-19\) pandemic](#)”, *Intensive Critical Care Nursing*, 58, pp. 1–3.

629 Gostin, Friedman and Wetter (2020). “Responding to Covid-19”, op. cit., p. 1.

630 For instance, studies have shown that hospital nurses in the New York City area were burned out and worked in understaffed conditions in the weeks prior to the first wave of COVID-19 cases. See: K.B. Lasater et al. (2020). “[Chronic hospital nurse understaffing meets COVID-19: An observational study](#)”, *BMJ Quality & Safety*, 30(8).



essential medicines and intensive care unit (ICU) beds has rapidly proved to be insufficient and the inability to guarantee adequate care for all patients in need has created a major ethical dilemma.<sup>631</sup>

**356.** The Committee notes that many governments have taken urgent measures to address the dire lack of resources during the pandemic. The number of ICU beds has been increased and such areas such as resuscitation rooms and operating theatres have been adapted and equipped with ventilators. The number of beds for hospital admissions has also increased, with hospital areas previously dedicated to other uses being converted and sports centres and other facilities being turned into field hospitals.<sup>632</sup>

**357.** Nursing associations have issued contingency plans to address the care needs of patients who are critically ill with COVID-19, seeking to limit the spread of the virus and optimize the allocation of human resources in a rational and ethical manner. Some governments have called on retired nurses and doctors, as well as nursing and medical students, to provide urgent assistance during the pandemic.

**358. *The Committee considers that, in times of crisis, guidance should be provided to nursing personnel by the public authorities and professional bodies to assist them in making complex and often difficult decisions on how best to ensure optimal health outcomes and the fair distribution of healthcare resources. The development of ethical guidelines helps to ensure fair and ethical decisions.***<sup>633</sup> ***The Committee emphasizes that, to the extent possible, decision-making on the allocation of scarce resources should include the public and be made in advance. In addition, decision-making must be transparent and based on a clearly explained rationale founded on scientific evidence and other relevant considerations.***<sup>634</sup> ***Finally, social justice requires the necessary supplies and countermeasures to be distributed equitably, with steps taken to ensure that segments of the population who are traditionally left behind, including poorer and marginalized groups, receive a fair distribution of scarce resources.***

**359.** The Committee notes that triage guidelines have been issued in many countries to address the dilemmas raised by the pandemic.<sup>635</sup>

*Mexico* – In April 2020, the General Health Council published the Bioethical guide on scarce medical resource allocation in critical care medicine in emergency situations. The guide is based on the core principle of social justice that “all lives have the same value”.<sup>636</sup>

*United Kingdom* – Plans were adopted setting out explicit criteria for ICU admission, the initiation, maintenance and withdrawal of treatment and how the decision-making process should be carried out during the pandemic. In March 2020, the National Institute for Health and Care Excellence (NICE) published the “COVID-19 rapid guideline: Critical care in adults”.

<sup>631</sup> G. Morley et al. (2020). “Covid-19: Ethical challenges for nurses”, *Hastings Center Report*. 50(3), pp. 35–39.

<sup>632</sup> Falcó-Pegueroles et al. (2020). “Ethical conflict during COVID-19 pandemic”, op. cit.

<sup>633</sup> M.J. Medina-Arellano, C. Palacios-González and J.I. Santos-Preciado (2020). “Bioethics guide on scarce medical resource allocation in Mexico”, *Salud Publica de México*, 62(5), pp. 607–609.

<sup>634</sup> Gostin, Friedman and Wetter (2020). “Responding to Covid-19”, op. cit., p. 2.

<sup>635</sup> Medina-Arellano, Palacios-González and Santos-Preciado (2020). “Bioethics guide on scarce medical resource allocation in Mexico”, op. cit.

<sup>636</sup> *Mexico*, Consejo de Salubridad General (2020). Guía bioética para asignación de recursos limitados de medicina crítica en situación de emergencia.

## 2. Ensuring the safety of nurses: An ethical obligation

360. The Committee emphasizes that the safety of healthcare professionals is an ethical obligation during a pandemic.<sup>637</sup> Nurses and midwives provide care for those in need, even when doing so puts their own health and lives at risk (for example, when they work in war-torn or poverty-stricken areas and those with a high burden of disease, poor sanitation or other risks). Disasters and communicable disease outbreaks call for extraordinary efforts from all healthcare personnel, including nurses.<sup>638</sup> During the COVID-19 pandemic, the safety of nurses and other front-line healthcare workers has been a pressing ethical concern, as they are required to work under conditions that pose substantial and inadequately understood risks to their health and well-being.<sup>639</sup> In this respect, the Committee emphasizes first and foremost the need to protect healthcare workers who deliver care during the crisis, recognising their right to a safe and healthy workplace and acknowledging that without their extraordinary efforts the entire health system would collapse (See Chapter 6).

361. When nurses treat people suffering from contagious diseases, the ethical challenges include their fear of becoming infected or infecting their families and loved ones.<sup>640</sup> Inadequate protection of nurses across healthcare settings raises professional and ethical questions concerning the extent of their duty to care for patients, including the limits of that duty. Nurses have been asked to take on substantial but uncertain risks. These multiple, and even competing duties, place nurses, many of whom have conditions that make them more vulnerable to COVID-19, in a quandary. They must endeavour to balance their obligation of beneficence and duty to care for patients with the right and responsibility to address inadequacies in their healthcare systems in ways that are consistent with the right and duty to protect themselves and their loved ones.<sup>641</sup> ***In this regard, the Committee emphasizes that nurses have a duty to provide care. This means that they have the professional obligation to provide patients with safe, competent, compassionate and ethical care. However, as indicated with regard to conscientious objection, there may be some circumstances under which it is acceptable for a nurse to withdraw from or to refuse to provide care. An unreasonable burden is one of the circumstances under which nurses can withdraw from, or refuse to provide care. An unreasonable burden may exist when the ability of nurses to provide safe care and meet professional standards of practice is compromised by unreasonable expectations, lack of resources or ongoing threats to their personal and family well-being.***<sup>642</sup>

362. The Committee observes that in some countries specific guidelines for nurses providing care during a disaster or communicable disease outbreak were already in place prior to the COVID-19 pandemic.

637 Grupo de Trabajo de Bioética de la Sociedad Española de Medicina Intensiva, Crítica y Unidades Coronarias (SEMICYUC). [Recomendaciones éticas para la toma de decisiones en la situación excepcional de crisis por pandemia COVID-19 en las unidades de cuidados intensivos](#).

638 Canadian Nurses Association (CNA) (2017). [Code of ethics for registered nurses](#), 2017 edition, p. 38.

639 Morley et al. (2020). "Covid-19: Ethical Challenges for Nurses", op. cit.

640 Jia et al. (2021). "Nurses' ethical challenges caring for people with COVID-19", op. cit.

641 Morley et al. (2020). "Covid-19: Ethical Challenges for Nurses", op. cit.

642 British Columbia College of Nurses and Midwives. ["Duty to provide care: Practice Standard for registered nurses"](#).

*Canada* – The Code of ethics for registered nurses of the Canadian Nurses Association (CAN) states that: “During a natural or human-made disaster, including a communicable disease outbreak, nurses provide care using appropriate safety precautions in accordance with legislation, regulations and guidelines provided by government, regulatory bodies, employers, unions and professional associations.” The Code contains a set of ethical considerations for nurses in a natural or human-made disaster, when they should: refer to existing regulations and guidelines; help make the fairest decisions possible about the allocation of resources; help set priorities in as transparent a manner as possible; provide safe, compassionate, competent and ethical care, help determine if, when and how nurses may have to decline or withdraw from care; and advocate for the least restrictive measures possible when a person’s individual rights must be restricted.<sup>643</sup>

**363.** The Committee notes that a series of factors have exacerbated the risks to nursing personnel during the COVID-19 pandemic. These include: an alarming failure in the supply and distribution of PPE, scarcity of infection control systems, lack of training for COVID-19-related tasks that nursing personnel are asked to perform, job insecurity, excessive overtime, conditions of extremely high stress and insufficient breaks, together with unprecedented overwork linked to global staff shortages.<sup>644</sup> The lack of PPE in many countries has undoubtedly led to the high infection rates and at least some of the deaths among nurses, their colleagues and patients.<sup>645</sup> International and regional human rights bodies have issued statements expressing their concerns regarding the human rights situation of health workers in the context of the pandemic, particularly with regard to the shortage of adequate PPE for these workers.<sup>646</sup>

Public Services International (PSI) conducted a survey in 2020 of its members on the challenges that health workers have faced during the COVID-19 pandemic. The results are based on responses from 62 countries. Of the unions which responded, 57 per cent reported a lack of adequate PPE. There were significant variations at the regional level: 69.7 per cent of respondents indicated that health workers did not have adequate PPE in the Inter-Americas region, 53.7 per cent in Africa and Arab countries, 50 per cent in the Asia-Pacific region and 44.4 per cent in Europe.<sup>647</sup>

**364.** Vaccinations are one of the most effective measures to reduce the risks posed by COVID-19 to nursing personnel and should be made available to them as an important measure for personal protection. Some countries have put in place compulsory vaccination measures for health workers, including nurses.<sup>648</sup>

<sup>643</sup> Canadian Nurses Association (2017). Code of ethics for registered nurses, op. cit., pp. 38–40.

<sup>644</sup> A. Boluarte Carbajal et al (2020). “[Working conditions and emotional impact in healthcare workers during COVID-19 pandemic](#)”, *Journal of Healthcare Quality Research*, 35(6), pp. 401–408.

<sup>645</sup> UN News (2020). “[COVID-19 highlights nurses’ vulnerability as backbone to health services worldwide](#)”, 7 April 2020.

<sup>646</sup> United Nations Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (2020). “[COVID-19: Health care heroes need protection – UN expert](#)”, 27 March; United Nations Committee on Economic, Social and Cultural Rights (2020). “[Statement on the coronavirus disease \(COVID-19\) pandemic and economic, social and cultural rights](#)”, E/C.12/2020/1, 17 April; African Commission on Human and Peoples’ Rights (2020). “[Press release on the impact of the COVID-19 pandemic on economic, social and cultural rights in Africa](#)”, 4 June; Organization of American States (2020). “[IACHR and OSRESCER Urge States to Guarantee Comprehensive Protection for Human Rights and Public Health during the COVID-19 Pandemic](#)”, Press release 060/20, 20 March.

<sup>647</sup> PSI (2020). “[COVID-19 Union Response Survey Narrative Summary – Global](#)”, 11 May.

<sup>648</sup> For instance, *France, Greece and Italy*.

*Italy* – A legislative decree approved in March 2021 requires all health workers to be vaccinated against COVID-19. A worker's refusal to be vaccinated results in suspension without pay.<sup>649</sup>

**365.** In contrast, other countries have opted to encourage voluntary vaccination.<sup>650</sup> This may, however, give rise to an ethical dilemma for nursing personnel who do not wish to be vaccinated, voluntarily or otherwise, but also raises the question of responsibility to patients, colleagues and other third parties with whom they may come into contact while providing care services. Where nurses are infected with COVID-19, this also has a profoundly negative cascading effect, impairing care service provision, overburdening an already overstretched health system and adding to the existing problem of understaffing. Given the critical role that nurses play during pandemic responses, protecting them from infection safeguards not only their health and well-being, but also the functioning of the entire health system. ***Considering that many lower income countries are experiencing significant shortages of vaccines and PPE, the Committee encourages Governments to take steps to ensure that an adequate, reliable supply of vaccines, as well as PPE (including masks and protective clothing) are made available to nursing personnel free of charge and as a matter of priority to protect the life, health and well-being of nursing personnel and the population at large. The Committee urges governments to collaborate in efforts to overcome national and regional inequalities in access to vaccines and PPE.***

### (a) Circumstances surrounding decision-making

**366.** Time pressures during COVID-19 outbreaks have undermined ethical decision-making processes, which require exhaustive analysis of the options, the consideration of all those involved, respect for the wishes and rights of patients, and the search for maximum consensus, all in light of the ethical responsibility to restore health.<sup>651</sup> The ethical challenges faced by health workers have included decisions relating to the admission of patients to ICUs, knowing the wishes of critically ill patients who can quickly progress to an advanced or terminal phase of the disease, and the physical impossibility of close contact with the family to discuss the best therapeutic or palliative options.<sup>652</sup>

**367.** Recent studies have shown that the lack of the required knowledge and skills to adapt to the new work environment and job responsibilities has been one of the ethical challenges faced by nurses working in COVID-19 epicentres.<sup>653</sup> Due to their limited experience of treating infectious diseases, some nurses have faced challenges in relation to organizational skills and treatment capacity.<sup>654</sup> For instance, the fact that many ICUs have had to incorporate nurses who are not critical care specialists and are unfamiliar with ICU procedures has made it difficult for the entire multidisciplinary team to come together and agree on complex decisions.<sup>655</sup>

<sup>649</sup> *Italy* – Legislative [Decree No. 44 of 1 April 2021](#).

<sup>650</sup> For example, workers may be provided with education, resources and information on the safety, efficacy and any potential risks of vaccination.

<sup>651</sup> Falcó-Peguerols et al. (2020). "Ethical conflict during COVID-19 pandemic", op. cit., p. 5.

<sup>652</sup> *ibid.*

<sup>653</sup> *ibid.*; see also Jia et al. (2021). "Nurses' ethical challenges caring for people with COVID-19", op. cit.

<sup>654</sup> *ibid.*

<sup>655</sup> Falcó-Peguerols et al. (2020). "Ethical conflict during COVID-19 pandemic", op. cit., p. 5.

## **(b) The changing relationships of nursing personnel with patients and families during the pandemic**

**368.** Nursing personnel have an ethical responsibility to care for and accompany terminally ill patients and alleviate their suffering. Their ability to provide appropriate end-of-life care and ensure that a patient can die accompanied has been impaired by the restrictions imposed during the pandemic. These restrictions have included the prohibition or limitation of visits to dying patients, and limitations in relation to funerals.<sup>656</sup> Many nurses have reported that the impact of these restrictions on their ability to provide care and support to patients has caused them moral distress.<sup>657</sup>

**369.** The Committee notes that in some countries ICT has been used to facilitate communication between patients and their families, as well as among healthcare professionals, and the pandemic has shown the important role that ICT can play in the humanization of care. Medical teams have also relied on telephone or video calls on mobiles or tablets<sup>658</sup> to ensure daily exchanges of information within medical teams on patient progress.<sup>659</sup>

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<sup>656</sup> *ibid.*

<sup>657</sup> Jia et al. (2021). “Nurses’ ethical challenges caring for people with COVID-19”, *op. cit.*

<sup>658</sup> Nursing personnel have often used their own devices to facilitate communication, leading to patients having the private numbers of nurses, which raises privacy concerns.

<sup>659</sup> Falcó-Pegueroles et al. (2020). “Ethical conflict during COVID-19 pandemic”, *op. cit.*, p. 6.









# ▶ 6

**Employment and working conditions that attract persons to the nursing profession and retain them in it**

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## ► I. Ensuring working conditions for nursing personnel at least equivalent to those of other workers

### Article 6 of Convention No. 149

Nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned in the following fields: (a) hours of work, including regulation and compensation of overtime, inconvenient hours and shift work; (b) weekly rest; (c) paid annual holidays; (d) educational leave; (e) maternity leave; (f) sick leave; and (g) social security.

370. Article 6 reflects one of the core objectives of the Nursing Personnel Convention, 1977 (No. 149): ensuring that nursing personnel enjoy decent working conditions that are at least equivalent in most areas to those of other workers. As previously noted, Article 2(2)(b) of the Convention provides that governments should take measures to require the establishment of employment and working conditions for the nursing sector, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it. In addition, Article 7 of the Convention provides that countries should, if necessary, improve the occupational safety and health (OSH) legislative and regulatory framework, adapting it to the special nature of nursing work and the nursing workplace. The Nursing Personnel Recommendation, 1977 (No. 157), provides detailed guidance on specific measures that could be taken in areas such as remuneration, working time and rest periods, special employment arrangements, and social security, with a view to ensuring decent working conditions for nursing personnel.

## ► II. Remuneration

371. Pay is an important factor in the job satisfaction of nurses and the attractiveness of the nursing profession. While it is not the only incentive, and other factors, such as working conditions, career and education opportunities, flexible hours and participation in decision-making, are also significant sources of job satisfaction, remuneration is nonetheless a major and highly visible element of the terms and conditions of employment of nurses.<sup>660</sup>

372. The Committee notes that their remuneration is a reflection of the level of recognition and value that society attaches to the work of nurses.<sup>661</sup> Studies show that improved remuneration reduces turnover rates and improves both productivity and the quality of care.<sup>662</sup> Adequate remuneration also improves motivation and job satisfaction,<sup>663</sup> while attracting

660 Y. Nakata and J. Buchan (2010). "Editorial: Paying nurses: A cross-country comparison", *Journal of Clinical Nursing*, 20(1–2), pp. 1–3.

661 ILO (2017). *Improving employment and working conditions in health services*, Report for discussion at the Tripartite Meeting on Improving Employment and Working Conditions in Health Services (24–28 April 2017), Geneva, TMIEWHS/2017, para. 65.

662 See, for instance, J. Buchan and S. Black (2011). "The impact of pay increases on nurses' labour market: A review of evidence from four OECD countries", OECD Health Working Papers No. 57, Paris; and E.T. Kurtzman et al. (2011). "Performance-based payment incentives increase burden and blame for hospital nurses", *Health Affairs*, 30(2), pp. 211–218.

663 F. Bogossian, P. Winters-Chang, and A. Tuckett (2014). "The pure hard slog that nursing is ...: A qualitative analysis of nursing work", *Journal of Nursing Scholarship*, 46(5), pp. 377–88.

and retaining new personnel.<sup>664</sup> Conversely, inadequate remuneration lowers motivation and increases the number of nurses who leave the profession or emigrate, often leading to serious shortages of nursing personnel in their home countries.

**373.** The Committee notes that the remuneration of nurses varies widely between countries and regions, with inadequate remuneration remaining a serious problem in many countries. Factors that tend to lower remuneration for nurses include difficulties in classifying the various categories of nurses objectively, the over-representation of women in the profession, leading to the undervaluation of their work, and the inclusion of in-kind benefits when fixing pay rates.<sup>665</sup> In some countries, nurses earn much less than other workers on average,<sup>666</sup> often leading them to work multiple jobs, increased shifts and overtime.<sup>667</sup>

*Mali* – According to the Government, nursing personnel find little motivation in their remuneration, leading them to seek income supplements, for example through private practice, bonuses and higher paid work in other organizations.

In the *Russian Federation*, the Confederation of Labour of Russia (KTR) refers to Decree No. 597 of 7 May 2012, which provides that the salary of nursing staff must be 100 per cent of the average monthly earned income in the relevant region. The KTR refers to problems in the implementation of the Decree, noting that difficult working conditions, heavy workload and low wages are leading to high staff turnover and an outflow of workers from the healthcare sector, including nursing personnel.

**374.** The Committee has noted that wages may be so inadequate in some countries that the opportunity of additional informal payments becomes attractive to nurses and other health workers. This has negative implications for ensuring an equitable health system.

CEACR – In its comments concerning *Azerbaijan*, the Committee noted that, according to a report of the United Nations Special Rapporteur on the right to health, while health services are legally required to be free-of-charge in public health facilities, out-of-pocket payments, informal or so-called “envelope” payments are prevalent. In 2011, the average monthly salary of health workers was less than half that of other workers. To supplement their income, healthcare workers typically take informal payments from patients in return for health-related goods and services, resulting in an informal, unregulated fee-for-services system. The Government subsequently increased the remuneration of health workers by 10 per cent.<sup>668</sup>

664 G. George and B. Rhodes (2012). “[Is there really a pot of gold at the end of the rainbow? Has the Occupational Specific Dispensation, as a mechanism to attract and retain health workers in South Africa, leveled the playing field?](#)”, *BMC Public Health*, 12.

665 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), International Labour Conference, 61st Session, Geneva, p. 44.

666 For instance, *Latvia* and *Lithuania*.

667 ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 66.

668 CEACR – *Azerbaijan*, C.149, direct request, 2019.

375. However, in other countries, nursing personnel earn more on average than other workers.<sup>669</sup> Among OECD countries, the average remuneration of hospital nurses was slightly above the average wage of all workers in 2017, with nurses receiving substantial pay rises in recent years.<sup>670</sup> Country case studies show that the main drivers for raising nurses' pay include labour market concerns due to personnel shortages, pay equity issues, attempts to improve organizational productivity and quality of care, and international pay competitiveness.<sup>671</sup>

376. The Committee recalls that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations. In its 2012 General Survey, the Committee noted that there are multiple and complex links between the remuneration of men and women, and their position and status more generally in employment and society (see section IX(2) of this Chapter).<sup>672</sup>

## 1. Determination of nurses' remuneration

377. Article 2(2)(b) of Convention No. 149 calls on countries to take the necessary measures to provide nursing personnel with remuneration, which is likely to attract persons to the profession and retain them in it. In this regard, Part VII of Recommendation No. 157 provides guidance on the remuneration of nurses, and indicates in Paragraph 25(1) that the "remuneration of nursing personnel should be fixed at levels commensurate with their socio-economic needs, qualifications, responsibilities, duties and experience, which take account of the constraints and hazards inherent in the profession, and which are likely to attract persons to the profession and retain them in it".

### (a) Systems and methods

378. The Committee observes that the pay of nurses is determined using very different methods in different countries. It may be established by national laws or regulations,<sup>673</sup> legally established or recognized wage determination machinery, collective agreements, or a combination of these methods. In most countries, the remuneration of nursing personnel in the public sector is established by laws, regulations or collective agreements, and nurses in the private sector are covered by the general provisions of labour law and/or enterprise agreements.<sup>674</sup>

In *France*, the General Confederation of Labour – Force Ouvrière (CGT-FO) indicates that the remuneration of the various categories of nursing personnel is adjusted through collective agreements in the private sector and through wage scales following consultations with the unions in the public sector.

<sup>669</sup> For instance, *Chile, Israel, Luxembourg and Mexico*.

<sup>670</sup> For instance, in *Czechia* (nurses received a pay increase following protests by hospital workers in 2011), *Latvia* (from 1 January 2017, the minimum monthly wage was increased and the lowest wage echelons were raised) and *Slovakia* (nurses' remuneration increased by about 40 per cent between 2010 and 2017, and the Government announced a further 10 per cent increase in 2018). See OECD (2019). "[Health at a glance 2019: OECD Indicators](#)", Paris, p. 180.

<sup>671</sup> Buchan and Black (2011). *The impact of pay increases on nurses' labour market*, op. cit., p. 4.

<sup>672</sup> ILO (2012). [Giving globalization a human face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B), International Labour Conference, 101st Session, Geneva, Part V, Ch. 2.

<sup>673</sup> For instance, *Czechia, Mauritius and Morocco* (nurses in the public sector).

<sup>674</sup> For instance, *Australia* (national system employees), *Burkina Faso* and *Dominican Republic*.



379. In other countries, the principles and methods for determining the remuneration of nurses are regulated by specific legislation.<sup>675</sup> Nevertheless, the Committee notes that in many countries there is no coherent system for determining nurses' remuneration.

Public Services International (PSI) indicates that nursing personnel worldwide continue to experience low pay, poor working conditions and little recognition of their vital work. Due to the fragmented administration of many health systems, many countries lack a coherent and rational system for determining wages. Significant differences in pay and conditions of work are typically reported between regions, between public and private sectors, and even within various parts of the public health system itself. A considerable gap also exists between the remuneration of permanent and contract nurses. PSI reports that, in response to the COVID-19 emergency, pay increases have been implemented for nursing personnel in some countries, while in others, such measures have been partial or absent, and the pay and conditions of nursing personnel have continued to deteriorate.

## (b) Adequacy of remuneration

380. Many governments indicate in their reports that the remuneration of nurses is fixed at levels commensurate with their socio-economic needs, qualifications, duties and experience.<sup>676</sup>

*Australia* – In Queensland, the terms and conditions in the Nurses Award and Local Government Award are negotiated with the relevant unions and approved by the Queensland Industrial Relations Commission (an independent tribunal established under the Industrial Relations Act), which ensures that the remuneration of nursing personnel is fixed at levels commensurate with their socio-economic needs, qualifications, duties and experience.

381. Paragraph 25(4) of Recommendation No. 157 indicates that remuneration “should be adjusted from time to time to take into account variations in the cost of living and rises in the national standard of living”. The Committee notes that, under the laws and regulations or collective agreements in many countries, wages are adjusted in accordance with increases in the cost of living,<sup>677</sup> either automatically or at specified intervals.<sup>678</sup> In other countries, sectoral committees on health activities review salaries annually through tripartite dialogue.<sup>679</sup> However, the Committee observes that low rates of remuneration persist in some countries due to the inadequacy of the machinery for the adjustment of pay following increases in the cost of living.<sup>680</sup>

<sup>675</sup> For instance, *Costa Rica* and *Honduras*.

<sup>676</sup> For instance, *Australia*, *Austria* and *Honduras*.

<sup>677</sup> For instance, *Costa Rica*, *Honduras*, *New Zealand* and *Niger*.

<sup>678</sup> For instance, *Costa Rica* (salaries are adjusted every six months).

<sup>679</sup> For instance, *Ecuador*.

<sup>680</sup> For instance, *Guatemala* and *Madagascar*.

## 2. Comparing levels of remuneration

### (a) Comparison with other professions requiring similar or equivalent qualifications and carrying similar or equivalent responsibilities

**382.** Paragraph 25(2) of Recommendation No. 157 indicates that levels of remuneration should “bear comparison with those of other professions requiring similar or equivalent qualifications and carrying similar or equivalent responsibilities”. Paragraph 16 of the Annex to the Recommendation adds that “measures should be taken, where necessary, to bring remuneration as rapidly as possible to a level which is likely to attract nursing personnel to the profession and retain them in it”.

*Switzerland* – In the canton of Geneva, the Evaluation Review Commission allows staff members of State and public medical establishments, including nurses, to request a review of decisions relating to the evaluation of functions (ranking, grading and classification).<sup>681</sup>

### (b) Comparable remuneration for nurses with similar or equivalent duties and working in similar or equivalent conditions

**383.** Paragraph 25(3) of Recommendation No. 157 indicates that levels of remuneration “for nursing personnel having similar or equivalent duties and working in similar or equivalent conditions should be comparable, whatever the establishments, areas or sectors in which they work”. During the preparatory discussions, some delegates opposed this provision, pointing out that nurses working in different sectors often received different levels of remuneration, depending on the situation in each sector.<sup>682</sup> Moreover, levels of qualification and responsibility may vary broadly from one country to another, both for nurses and for workers in other occupations, and could be used as a basis for comparison, such as social workers and teachers, who are frequently compared with nursing personnel.

**384.** In some countries, measures have been adopted to ensure a rational pay structure with the aim of achieving equal pay for work of equal value.<sup>683</sup>

*United Kingdom of Great Britain and Northern Ireland* – The pay system is established in the National Health Service (NHS) Terms and Conditions of Service Handbook,<sup>684</sup> with pay levels being underpinned by a national job evaluation scheme, which determines the value of a job in relation to other jobs in an organization in order to establish a rational pay structure. The job evaluation scheme measures the knowledge, responsibility, skills and effort required for each job, as contemplated by section 65 of the Equality Act 2010.<sup>685</sup>

<sup>681</sup> *Switzerland*, [Règlement instituant une commission de réexamen en matière d'évaluation des fonctions](#), 4 September 2018.

<sup>682</sup> ILO (1977). [Employment and Conditions of Work and Life of Nursing Personnel](#), Report VI(1), International Labour Conference, 63rd Session, Geneva, para. 168.

<sup>683</sup> For instance, *Australia, Canada, Ghana and New Zealand*.

<sup>684</sup> *United Kingdom*, [NHS Terms and Conditions of Service Handbook](#), 29 July 2021.

<sup>685</sup> *United Kingdom*, [Equality Act 2010](#); [NHS Job Evaluation Handbook](#), 1 September 2018, paras 7.3 and 7.4.

385. The Committee notes, however, that a number of workers' organizations have expressed concern at the wage differences between nurses in similar or equivalent jobs, but who are in different sectors and under different contractual arrangements.

In *Bangladesh*, the Allied Health Professionals Federation (BAHPF), an affiliate of PSI, reports that there are wage differences between workers holding the same position in the health sector, including nurses. Those working in the public sector receive higher wages, as they are covered by the government pay scale, while those holding the same position in the private sector are paid much lower wages. The BAHPF indicates that these differences are due to the lack of a wage structure for workers in the private health sector and the absence of minimum wage policies. Therefore, pay levels are usually set at the discretion of employers. The BAHPF adds that there is also a gender pay gap in the health sector.

In *Peru*, the General Confederation of Workers of Peru (CGTP), the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), and the Single Confederation of Workers of Peru (CUT-Perú) maintain that there are inequalities in terms of remuneration between nursing personnel: (i) between private and public sector nursing personnel; (ii) between professional medical personnel and professional nursing personnel, due to gender-related occupational segregation; and (iii) in the public sector, between nursing personnel working under employment contracts and those that are on other types of contracts. These inequalities have been exacerbated by the COVID-19 crisis.

### 3. Remuneration structures and scales

386. The Committee emphasizes that the establishment of fair pay structures can be facilitated by the development of a rational nursing personnel system that takes into account functions and responsibilities, as well as career development.<sup>686</sup> Paragraph 21(1) of Recommendation No. 157 refers to reasonable career prospects for nurses, including "a grading and a remuneration structure recognising the acceptance of functions involving increased responsibility, and requiring greater technical skill and professional judgement".

387. The pay structure of nursing personnel is based on scales that are normally established through collective bargaining,<sup>687</sup> or by laws or regulations.<sup>688</sup>

*Ghana* – The remuneration of nurses and midwives is based on the Single Spine Salary Structure (SSSS) and adheres to the principle of equal pay for work of equal value without any discrimination. The levels of the SSSS are determined on the basis of socio-economic needs, qualifications, duties and experience at work, including levels of exposure to hazards, with annual adjustments determined through collective bargaining or tripartite consultation.

686 Para. 26 of Recommendation No. 157.

687 For instance, *Canada, Italy and Trinidad and Tobago*.

688 For instance, *Costa Rica* (Act No. 6836 of 1982 on incentives for medical science professionals and the Statute of Nursing Services, Act No. 7085 of 1987 and its amendments, and the corresponding regulations).



388. The Committee observes that there is little uniformity between countries in relation to salary differentials based on functions and levels of responsibility. There may even be differences within countries by region, sector (public or private), state (in federal States) and type of establishment.

In *Austria*, the Federal Chamber of Labour (BAK) indicates that staff working in acute in-patient care earn more than those in long-term care, although the difference is not objectively justified. Nor are higher qualifications and further education courses reflected in pay.

389. There is great diversity in pay structures, and particularly marked differences in the number, frequency or nature (automatic or non-automatic) of step increments within each grade. Moreover, nursing and nursing services are constantly changing and evolving. ***The Committee observes that, to ensure an objective and effective grading system, it is necessary to analyse the actual content of the work and establish a relation between the requirements of the work and the obligations, functions and qualifications of the various categories of nurses.***<sup>689</sup>

390. In certain countries, a specific body conducts ongoing evaluation of the many complex factors determining the distinctions between the various grades.

*Canada* – In Quebec, pay levels for the different categories of nursing personnel are set in their collective agreements. The different categories are evaluated based on a system of 17 subfactors, including autonomy and professional training, to establish a ranking linked to remuneration. Joint committees established by collective agreements are mandated to determine the ranking applicable to any new job title referred to them by the Ministry of Health and Social Services or any job title for which the Ministry modifies the educational requirements.

391. The Committee notes that a very small number of governments indicate in their reports that no system of classification or scale of remuneration has been established.<sup>690</sup>

*Slovenia* – The salaries of nurses are determined in a single payment system through a collective agreement. Further measures are required to establish systems of classification and scales of remuneration offering opportunities for professional advancement based on the classification of function levels, as envisaged in Paragraph 6 of Recommendation No. 157. Measures are being taken to correct wage disparities with a view to retaining nurses.

689 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 47.

690 For instance, *Mozambique*, *Myanmar* and *Slovenia*.

## 4. Composition of remuneration

392. The nursing personnel instruments do not specify the elements that make up the remuneration of nurses. The Committee observes that the remuneration of nurses usually consists of an average gross annual income, from which social security contributions and income taxes, inter alia, are deducted. It normally includes all additional formal payments, such as bonuses and shift and overtime payments. Paragraph 17(1) of the Annex to Recommendation No. 157 indicates that additions to salary and compensatory payments which are granted on a regular basis should be regarded as an integral part of remuneration for the calculation of holiday pay, pensions and other social benefits. Paragraph 17(2) adds that their amount “should be periodically reviewed in the light of changes in the cost of living”.

*Algeria* – Section 81 of Act No. 90-11 of 1990 provides that the salary shall include the basic salary determined through the employer’s job classification structure, allowances for seniority and compensation for overtime and specific working conditions, such as shift work, arduous work, on-call work, night work and bonuses linked to productivity.<sup>691</sup>

393. Recommendation No. 157 indicates that nurses who work in particularly arduous or unpleasant conditions, as well as those who are exposed to special risks, should receive additional financial compensation (Paragraphs 27 and 49(3)). In this regard, the Committee recalls that, as highlighted by the Office during the preparatory discussions, there are three different types of risks that nurses may face: (a) constraints and hazards inherent to the profession; (b) particularly arduous or unpleasant conditions; and (c) duties involving special risks.<sup>692</sup> Paragraph 25(1) of the Recommendation expresses the general principle that the remuneration of nurses should be fixed at levels “which take account of the constraints and hazards inherent in the profession”.

### (a) Financial compensation for nurses working in particularly arduous or unpleasant conditions

394. Paragraph 27 of Recommendation No. 157 indicates that nurses “who work in particularly arduous or unpleasant conditions should receive financial compensation for this”. The Committee notes that such compensation is provided in many countries.<sup>693</sup>

### (b) Financial compensation for exposure to special risks

395. Paragraph 49(3) of Recommendation No. 157 indicates that nurses who are exposed to special risks should receive financial compensation. Paragraph 24 of the Annex to the Recommendation adds that nurses exposed to special risks should include those regularly exposed to ionizing radiations or anaesthetic substances, and those in contact with infectious diseases or mental illness.

396. The Committee observes that a number of countries have added COVID-19 infection to the list of recognized work-related diseases.<sup>694</sup> Some of these countries have established a rebuttable presumption of a work-related illness for certain categories of workers, including

691 *Algeria*, loi 90-11 du 21 avril 1990, modifiée et complétée, relative aux relations de travail.

692 ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(2), International Labour Conference, 63rd Session, Geneva, p. 62.

693 For instance, *Slovenia* and *United Kingdom*.

694 For instance, *Argentina*, *Colombia*, *Dominican Republic*, *Lithuania* and *Uruguay*.

nurses and other health workers, who are particularly exposed to the risk of infection in the workplace. Nurses who contract COVID-19 as a result of work-related activities may be entitled to cash compensation and to medical and other necessary benefits. In some countries, nurses' family and dependants may be entitled to compensation and other forms of support in the event of the worker's death.

*Colombia* – Decree No. 676 of 2020 provides that COVID-19 is an occupational disease that is directly work-related in relation to workers in the health sector. It includes access to social security and to benefits provided in law. It also includes temporary disability benefits, up to 180 days, which may be extended under certain conditions. All medical care is covered and survivors' benefits are also provided.<sup>695</sup>

### (c) Other additional payments

397. The Committee notes that various special bonuses or salary supplements may be paid to nurses performing certain duties, such as those with increased responsibility.

*Croatia* – The collective agreement concluded in 2020 with the Croatian Professional Trade Union of Nurses-Medical Technicians and the Independent Trade Union of Health and Social Welfare of Croatia provides that nurses may receive, among other additional payments, an allowance for exceptional responsibility for human life.<sup>696</sup>

398. In other countries, nurses are entitled to long-service bonuses or performance-based bonuses<sup>697</sup> and special allowances for certain diplomas.<sup>698</sup> In a number of countries, wage supplements are offered as an incentive for nurses employed in rural and remote regions.<sup>699</sup> Retention allowances have been introduced in some countries with the aim of keeping nurses in the profession and persuading them not to emigrate.<sup>700</sup>

*Mauritius* – The High Power Committee<sup>701</sup> and the Pay Research Bureau (PRB) have made a series of recommendations on the retention of qualified nursing officers, including the provision of a monthly "retention allowance".<sup>702</sup> The 2008 report by the PRB found that the payment of the retention allowance had helped to curb the emigration of nursing personnel.

695 *Colombia*, [Decreto núm. 676 de 2020 por el cual se incorpora una enfermedad directa a la tabla de enfermedades laborales y se dictan otras disposiciones](#), 19 May 2020.

696 *Croatia*, Collective Agreement for Healthcare and Health Insurance Activities (*Official Gazette* No. 56/2020).

697 For instance, *Bulgaria*, *Guatemala*, *Honduras* and *Tajikistan*.

698 For instance, *Argentina* (collective labour agreement No. 122/75 provides for the payment of a supplement for a university degree for nursing personnel in the private sector).

699 For instance, *Cambodia*, *Guinea* and *Trinidad and Tobago*.

700 For instance, *Austria* and *Mauritius*.

701 *Mauritius*, "Report of the High Power Committee on problems affecting officers in the Nursing Group", 2005.

702 Pay Research Bureau (PRB) (2008). "[Review of Pay and Grading Structures and Conditions of Service in the Public Sector](#) (Civil Service, Parastatal and other Statutory Bodies, Local Authorities and Rodrigues Regional Assembly) and The Private Secondary Schools", Vol. II, Part I, Civil Service.

## 5. Forms of payment and in-kind benefits

### (a) Forms of payment

399. Paragraph 28(1) of Recommendation No. 157 indicates that remuneration “should be payable entirely in money”.<sup>703</sup> The Committee notes that, while in most countries the remuneration of nurses is paid entirely in money, there are still countries where nurses are provided with board and lodging at their workplace, or other in-kind benefits.<sup>704</sup>

400. Paragraph 28(2) of Recommendation No. 157 adds that deductions from wages should be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award. The objective of this provision, which is based on Article 8(1) of the Protection of Wages Convention, 1949 (No. 95), is to ensure that employers cannot make deductions from remuneration unilaterally, and to protect workers from being obliged to accept such deductions.<sup>705</sup> Paragraph 28(3) of the Recommendation further indicates that nursing personnel “should be free to decide whether or not to use the services provided by the employer”.

### (b) In-kind benefits

401. The most common types of in-kind benefits provided by the various countries are examined below.

#### Housing

402. The Committee observes that in most countries nurses are allowed to live out, except where special circumstances make this impossible. Some governments report that suitable housing facilities are made available to nurses.<sup>706</sup> Other forms of assistance are sometimes provided, such as loans or advances on wages, or the co-financing of housing loans.

*Croatia* – Bjelovar-Bilogora was the first county to introduce permanent support measures for the employment and retention of doctors and medical staff in healthcare institutions, including the co-financing of housing loans, tenancy costs and vocational training and further education.

403. Housing shortages can sometimes be one of the main reasons for a shortage of nurses in rural or underserved areas. Some governments report that nurses receive an allowance for accommodation expenses in remote and rural areas.<sup>707</sup> Housing issues may also arise for nursing personnel and other care workers providing home-based care services.

<sup>703</sup> Art. 4 of the Protection of Wages Convention, 1949 (No. 95), provides that payment in kind must only be partial and is subject to certain conditions.

<sup>704</sup> For instance, *Mauritius* and *Philippines*.

<sup>705</sup> Art. 8(1) of Convention No. 95 provides that “deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award”. See also: ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(1), op. cit., para. 178.

<sup>706</sup> For instance, *Mauritius* and *Philippines*.

<sup>707</sup> For instance, *Canada*, *Poland* and *Solomon Islands*.

*Solomon Islands* – The Nurses Scheme of Services, approved by the Nurses Association in 2015, notes that housing allowances are very low and emphasizes the lack of suitable accommodation in rural areas. The Scheme recommends the establishment of a Nurses' Housing Scheme for provincial capitals and rural areas.

### Other in-kind benefits

**404.** Paragraph 29 of Recommendation No. 157 indicates that “[w]ork clothing, medical kits, transport facilities and other supplies required by the employer or necessary for the performance of the work should be provided by the employer to nursing personnel and maintained free of charge”. During the preparatory discussions, the principle of the free provision and maintenance of working necessities or, in their absence, the compensation of their cost, was generally accepted, and it was agreed that the provision of accommodation should be kept separate from benefits connected with the work of nursing personnel, such as uniforms, medical kits and means of transport for nurses who have to travel for the performance of their duties.<sup>708</sup>

## 6. Participation of workers’ and employers’ organizations

**405.** Article 5(2) of Convention No. 149 provides that the “determination of conditions of employment and work shall preferably be made by negotiation between employers’ and workers’ organisations concerned”. Paragraph 25(5) of Recommendation No. 157 indicates that the “remuneration of nursing personnel should preferably be fixed by collective agreement”. In many countries, the remuneration of nurses is determined by collective agreement in both the private and public sectors.<sup>709</sup> Nurses may also be covered by multi-enterprise agreements.<sup>710</sup> In other countries, the remuneration of nurses in the public sector is determined by the public authorities after consultation with the social partners.<sup>711</sup>

*Mauritius* – Wage setting in the public sector occurs every five years, with wages being set by the Pay Research Bureau following thorough consultations with stakeholders.

<sup>708</sup> ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 52.

<sup>709</sup> For instance, *Malta* and *United Kingdom*.

<sup>710</sup> For instance, *Australia* and *New Zealand*.

<sup>711</sup> For instance, *Mauritius*.

### ► III. Working time and rest periods

406. Article 6 of Convention No. 149 provides that nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned, including with regard to normal hours of work, the regulation and compensation of overtime, inconvenient hours and shift work, weekly rest and paid annual holidays.<sup>712</sup> Part VIII of Recommendation No. 157 provides detailed guidance on the regulation of working time and rest periods for nursing personnel. For example, it envisages temporary exceptions in case of special emergency (Paragraphs 33(3) and 35) and compensation for overtime, work at inconvenient hours and shift work (Paragraphs 37 and 38). It also provides guidance on paid annual holidays (Paragraph 39) and the reduction of working time or increased rest periods for work in particularly arduous or unpleasant conditions (Paragraph 40). Paragraph 43 adds that decisions concerning the organization of work, working time and rest periods should be made through social dialogue.

#### 1. Normal hours of work<sup>713</sup> and rest periods

407. Recommendation No. 157 calls for minimum rest periods for nursing personnel. Paragraph 36(2) indicates that nursing personnel should have a weekly rest period of no less than 36 uninterrupted hours, while Paragraph 38(2) adds that nursing personnel assigned to shift work should have a period of continuous rest of at least 12 hours between shifts. Paragraph 33(2) envisages a maximum actual working day of 12 hours (eight normal hours plus four overtime hours), although this limit may be suspended temporarily in case of special emergency (Paragraph 33(3)).

408. With the exception of these restrictions, the Recommendation envisages a fairly flexible framework for the working time and rest periods of nursing personnel, with guidance on the definition of “normal” weekly and daily hours of work and restrictions on the “actual” daily hours of work. Thresholds are also recommended for weekly rest periods and paid annual holidays.

409. The Recommendation indicates that “normal working days” should be continuous, but should not exceed eight hours (Paragraph 33(1)). However, arrangements may be made for flexible daily hours or a compressed work week, where this is provided for in national laws or regulations, collective agreements, works rules or arbitration awards. Under such arrangements, the maximum weekly limit of 40 hours of “normal working hours” indicated in Paragraph 32(2) should be respected. While Paragraph 33(1) concerns “normal daily hours of work”, subparagraph 2 refers to “actual” daily working hours<sup>714</sup> (including normal hours and overtime), which should in no case exceed 12 hours.

410. In accordance with Article 6 of Convention No. 149, the Recommendation calls for nursing personnel to be entitled to the same normal weekly working hours and paid annual holidays as other workers. The Recommendation indicates precise thresholds that should be considered for nursing personnel, such as a 40-hour week<sup>715</sup> and four weeks of paid annual leave, which means that they may benefit from any more favourable conditions set by national law, while being covered by the thresholds set out in the Recommendation. Similarly, Paragraph 36(1) outlines a threshold of 48 hours of continuous weekly rest, which should be attained in countries where nursing personnel are entitled to a shorter weekly rest period. Paragraph 36(2) indicates that in no case should this weekly rest period be less than 36 uninterrupted hours.

<sup>712</sup> With respect to equivalent treatment, see Paras 32(1), 38(1) and 39(1) of Recommendation No. 157.

<sup>713</sup> “Normal hours of work” are the number of hours that may legally be worked during the day, week, month and/or year, excluding overtime. See: ILO (2018). *Ensuring decent working time for the future, General Survey concerning working-time instruments* (hereafter General Survey on working time), Report III (Part B), International Labour Conference, 107th Session, Geneva, para. 43.

<sup>714</sup> See ILO (1977). *Record of Proceedings*, Report of the Committee on Nursing Personnel, International Labour Conference, 63rd Session, Geneva, para. 163.

<sup>715</sup> The Forty-Hour Week Convention, 1935 (No. 47), and the Reduction of Hours of Work Recommendation, 1962 (No. 116), also apply to nursing personnel.

## 2. Hours of work of nursing personnel in Member States

411. The Committee notes that a “normal” eight-hour working day is the accepted standard in most countries. In certain countries, the legislation provides for shorter normal daily hours of work,<sup>716</sup> but longer normal working days are rare.<sup>717</sup> In certain countries, the law allows for the averaging of the eight-hour day over a period longer than one week.<sup>718</sup> In a number of countries, there is a 12-hour limit on the length of the “actual” working day,<sup>719</sup> although this limit varies slightly in other countries.

*Germany* – The working day of employees may not exceed eight hours. This may be extended to up to 10 hours only if, within six calendar months or within 24 weeks, an average of eight hours per working day is not exceeded.

*Norway* – The actual working day is limited to 13 hours, although the legislation envisages the possibility of agreeing to exceptions of up to 16 actual working hours in 24 hours.<sup>720</sup>

412. In a number of countries, the law provides for a mandatory rest period between two working days.<sup>721</sup> Many governments also report that the law limits “normal weekly hours of work”. The Committee notes that in most countries these limits range between 34.5 and 40 hours,<sup>722</sup> although they may be longer in some countries.<sup>723</sup>

## 3. Weekly rest periods

413. The Committee notes that in most countries the duration of the uninterrupted weekly rest period for nursing personnel varies between 24 and 36 hours,<sup>724</sup> while in others the maximum may be up to 64 hours.<sup>725</sup> In the majority of reporting countries, the length of paid annual holidays for nursing personnel is at least 20 leave days,<sup>726</sup> in accordance with Paragraph 39(2) of Recommendation No. 157, although it is longer in certain countries.<sup>727</sup>

716 For instance, *Australia* (7.6 hours) and *Poland* (7 hours, 35 minutes).

717 For instance, in *Norway*, where section 10-4 of the Act on the working environment, working hours and employment protection, etc. (the Working Environment Act) provides that normal hours of work must not exceed nine hours in 24 hours and 40 hours in seven days.

718 For instance, in *Germany*, the eight daily hours can be averaged over a period of up to 24 weeks, although the limit on “actual” daily hours is 10 hours.

719 For instance, *Guatemala*, *Saudi Arabia*, *Slovenia* and *Thailand*.

720 *Norway*, Working Environment Act, section 10-6(9).

721 A minimum 12 hours’ rest between two working days: *Argentina*, *Croatia* and *Georgia*; 11 hours’ rest between each shift: *Denmark*, *Germany*, *Norway*, *Poland* and *United Kingdom*.

722 For instance, *Argentina* (public sector), *Austria*, *Armenia*, *Bulgaria*, *Canada*, *Croatia*, *Cyprus*, *Ecuador*, *Finland*, *Kazakhstan*, *Mali*, *New Zealand*, *Poland*, *Thailand* and *Zimbabwe* (urban areas).

723 For instance, *Argentina* (private sector), *Bahrain*, *Burkina Faso*, *Cambodia*, *Germany*, *Georgia*, *Islamic Republic of Iran*, *Thailand*, *United Kingdom*, *Bolivarian Republic of Venezuela* (day work) and *Zimbabwe* (urban areas).

724 For instance, *Austria*, *Armenia*, *Guatemala*, *Kazakhstan*, *Norway* and *Poland*.

725 For instance, *Argentina* (private sector), *Denmark* (55–64 hours or two shorter periods of 35 hours each), *Ecuador* and *Bolivarian Republic of Venezuela*.

726 For instance, *Bulgaria*, *Croatia*, *Ireland* and *New Zealand*.

727 For instance, *Argentina* (30 days’ leave in Buenos Aires in the public sector,) and *Armenia* (24 days’ leave for those working six-day weeks, plus two additional days for nurses and medics).



## 4. Sufficient notice of working schedules

414. Paragraph 35 of Recommendation No. 157 indicates that nursing personnel “should have sufficient notice of working schedules to enable them to organise their personal and family life accordingly. Exceptions to these schedules should be authorised only in case of special emergency”. Paragraph 43 adds that the conditions in which exceptions to notified schedules can be authorized should be determined through social dialogue. Paragraph 20 of the Annex to the Recommendation recommends that notice of working schedules should be provided at least two weeks in advance. The Committee notes that advance notice of shift work is required in many countries.<sup>728</sup>

*Australia* – The Nurses Award 2010 requires rosters to be provided seven days in advance. Employers are required to consult on proposed changes to an employee’s regular roster and to give employees seven days’ notice of any changes.

In *Finland*, the Confederation of Finnish Industries (EK) indicates that work schedules have to be drafted at least three weeks in advance, and employees must be informed of the work schedule at least one week prior to the start of each period. Changes in shifts are agreed with employees.

## ► IV. Prevention of excessive hours of work

415. The prevention of excessive hours of work, which is the purpose of the regulation of working time in general, is achieved by defining “normal working time”. Work in excess of normal hours of work is normally permitted to a certain extent to allow some flexibility and accommodate urgent workplace needs. The Committee notes that, once “normal working hours” for nursing personnel have been determined, the main tool for preventing excessive hours of work is the restriction and regulation of overtime.

### 1. Definition of overtime

416. Overtime means the hours worked in excess of normal hours of work (Paragraph 30(b) of Recommendation No. 157).<sup>729</sup> Overtime is allowed, for example, to accommodate service requirements in times of emergency. However, its limitation and regulation is indispensable to prevent excessive hours of work.

### 2. Limits on overtime

417. The Recommendation indicates that there should be as little recourse to overtime as possible (Paragraph 37(1)) and sets the maximum length of an “actual” working day at 12 hours, which includes four hours of overtime in addition to the eight-hour normal daily working time (Paragraph 33(1) and (2)). Paragraph 19(1) of the Annex to the Recommendation adds that appropriate measures to limit the need for overtime should be taken in the organization of

<sup>728</sup> For instance, *Georgia, Kazakhstan, Latvia and Malaysia*.

<sup>729</sup> See also: ILO (2018). General Survey on working time, op. cit., para. 43.

work, in determining the number and use of staff and in scheduling hours of work. In particular, account should be taken of the need to replace nursing personnel during absences or leave to prevent the overburdening of the remaining staff. Furthermore, in organizing hours of work, every effort should be made, subject to the requirements of the service, to allocate overtime equitably between nursing personnel, and overtime should be worked on a voluntary basis, except when essential to ensure patient care and in the absence of sufficient volunteers (Annex, Paragraph 19(1) and (2)).

**418.** The Committee notes that there is a link between low rates of remuneration and excessive hours of work. Where nurses are not paid adequately, they may be under pressure to work excessive hours. This also has occupational safety and health impacts and may affect the quality of patient care.

**419.** The Committee notes that in certain countries the limits on overtime are regulated in detail, with daily, weekly and yearly limits being fixed. In a number of cases, this is done indirectly by fixing a limit on “total” or “actual” hours worked within a given period, including normal hours and overtime.<sup>730</sup> A number of countries report legal limits on the number of “actual” hours worked in a week,<sup>731</sup> ranging from 45 to 56 hours. Limits on weekly overtime, especially where this exists alongside a daily and yearly limit, can be an effective method of preventing excessive hours of work and facilitating the reasonable distribution of working time over the year. In other countries, the national legislation sets limits on overtime that may be worked over a specified period,<sup>732</sup> which allows the maximum amount of overtime to be distributed across a week, calendar month or year.<sup>733</sup>

### 3. Temporary exceptions to normal hours of work in case of special emergency

**420.** Paragraph 33(3) of Recommendation No. 157 indicates that only in case of special emergency should temporary exceptions to the provisions on “normal” and “actual” working hours be authorized.

**421.** The Committee recalls that undue facilitation of overtime, “for example, by not limiting the circumstances in which it may be permitted or by allowing relatively high maximums, could in the most egregious cases tend to defeat the ... objective of a social standard of a 40-hour week and make irrelevant the provisions as to normal working hours”.<sup>734</sup> The Committee considers that this observation applies, mutatis mutandis, to the objective of ensuring decent working time for nursing personnel. As indicated in Paragraph 14 of the Reduction of Hours of Work Recommendation, 1962 (No. 116), the competent authority or body in each country should determine the circumstances and limits in which exceptions to the normal hours of work may be permitted. Moreover, Paragraph 43(c) of Recommendation No. 157 adds that these circumstances should be defined in agreement or in consultation with the representatives of nursing personnel.

**422.** The Committee further recalls that ILO standards on working time provide that exceptions to normal hours of work may be permanent or temporary.<sup>735</sup> However, Recommendation

<sup>730</sup> ILO (2018). General Survey on working time, op. cit., para. 43.

<sup>731</sup> For instance, *Bulgaria, Croatia, Finland, Georgia, Norway and Thailand*.

<sup>732</sup> For instance, *Bulgaria, Czechia, Ecuador, Latvia and Norway*.

<sup>733</sup> For instance, *Bulgaria, Republic of Korea and Norway*.

<sup>734</sup> ILO (1984). *Working time: Reduction of hours of work, weekly rest and holidays with pay*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 70th Session, Geneva, para. 79; and the Resolution concerning the application of certain international labour standards to nursing personnel, International Labour Conference, 63rd Session, 1977, Geneva.

<sup>735</sup> See Recommendation No. 116, Para. 14; and ILO (2018). General Survey on working time, op. cit., paras 92 *et seq.*

No. 157 only envisages temporary exceptions to the normal hours of work of nursing personnel. Permanent exceptions apply when the need to extend hours of work beyond normal working hours is regular and may be regarded as part of normal conditions of work,<sup>736</sup> which should not be the case for nursing personnel. For instance, situations in which regular recourse to overtime is made to compensate for persistent nursing workforce shortages are not compatible with the protection afforded by the nursing personnel instruments.

In *Austria*, the Austrian Federal Chamber of Labour (BAK) indicates that no specific measures have been adopted for the protection of nursing personnel or to improve the situation in relation to work at inconvenient hours. The Vida trade union has launched the “Mehr von uns besser für alle!” (More of us, better for all!) campaign to highlight the problem of staff shortages.

In *France*, the General Confederation of Labour – Force Ouvrière (CGT-FO) indicates that in both the private and public sectors, the working hours, leave and rest of nursing personnel are regulated in line with the rules applicable to other workers. However, it is clear that the budgeted staffing levels in healthcare institutions and residential facilities for dependent elderly people (EHPADs) are not sufficient to cover the minimum needs defined, thus leading to systemic non-compliance with national regulations. FO complains of constantly disrupted schedules, staff being called upon to work during their rest periods, regular rejection of requests for leave, and changes in evening/morning shifts that do not allow for a daily rest period of 11 hours.

## 4. Compensation for overtime

423. Paragraph 37(2) of Recommendation No. 157 indicates that overtime should be compensated in time off and/or remuneration at a higher rate than the normal salary rate. The Committee notes that higher rates of pay for overtime exist in many countries,<sup>737</sup> and that in some countries the rate increases with the number of overtime hours worked.<sup>738</sup> In certain cases, workers’ organizations report that an important portion of overtime work is unpaid as the workers do not make overtime claims. In certain countries, employers and employees may agree to compensate overtime by granting time off.<sup>739</sup>

In *Japan*, the Japan Health Care Workers’ Union observes that in practice workers claim fewer than half of all the overtime hours that they work, and that over half of their overtime hours are not therefore paid.

In *France*, the General Confederation of Labour – Force Ouvrière (FO) indicates that overtime is not always compensated at the employee’s discretion (payment or leave time). Sometimes it has been observed that overtime is illegally capped even though it has been worked.

<sup>736</sup> *ibid.*, para. 92.

<sup>737</sup> For instance, *Australia, Canada, Denmark and Montenegro*.

<sup>738</sup> For instance, *Finland and Japan*.

<sup>739</sup> For instance, *Georgia, Norway and United Kingdom*.

## ► V. Regulation and compensation of inconvenient hours and shift work

424. Recommendation No. 157 contains provisions on the regulation of on-call duty, work at inconvenient hours and shift work, and indicates that, as with overtime, there should be as little recourse as possible to these forms of work.

### 1. Work at inconvenient hours

425. Paragraph 30(d) of the Recommendation indicates that the term “inconvenient hours” means “hours worked on other than the normal working days and at other than the normal working time of the country”. Paragraph 43(a) indicates that the hours to be regarded as inconvenient hours should be determined in agreement or consultation with representatives of nursing personnel. In a number of countries, special provisions are applicable to work by nursing personnel in the evening, at night, on weekends or during public holidays.<sup>740</sup>

### 2. Limitations on work at inconvenient hours

426. Some countries report that the number of normal working hours and overtime performed at night is lower than when performed during the day.

*Germany* – Daily hours of work for night workers should not exceed eight, but may be extended to ten provided that the average of eight hours a day is not exceeded within one calendar month or four weeks.

*Bolivarian Republic of Venezuela* – Normal hours of work at night, that is between 7 p.m. and 5 a.m., are shorter than normal working hours during the day (seven instead of eight hours). While normal weekly hours for day work are limited to 40, they should not exceed 35 for night work.

### 3. Compensation for work at inconvenient hours

427. The Committee notes that compensation for work at inconvenient hours is provided in the form of time off in a number of countries,<sup>741</sup> while in others a higher rate of remuneration is paid for work in the evening and at night, during weekends and public holidays.<sup>742</sup>

<sup>740</sup> See the Night Work Convention, 1990 (No. 171), and its accompanying Recommendation (No. 178).

<sup>741</sup> For instance, *Austria* and *Germany*.

<sup>742</sup> For instance, *Argentina* (private sector), *Australia*, *Bahrain*, *Bulgaria*, *Croatia*, *Denmark*, *Islamic Republic of Iran*, *Japan*, *Montenegro*, *United Kingdom* and *Zimbabwe*.

## 4. Shift work

428. As the Committee observed in its 2018 General Survey, the concept of shift work may be defined as “a method of organization of working time in which workers succeed one another at the workplace so that the establishment can operate longer than the hours of work of individual workers”. Shift systems can take a variety of forms, but generally consist of two basic patterns: fixed shift systems, in which a particular group of workers always works the same shift; and rotating shift systems, in which workers are assigned to work shifts that vary regularly over time and “rotate” progressively (for example, from morning to afternoon/evening to night). The most common shift systems are the two-shift fixed (morning/afternoon and afternoon/evening) and three-shift fixed (morning, afternoon/evening and night) systems.<sup>743</sup>

429. As health services often operate 24 hours a day and seven days a week, without a break on public holidays, their functioning frequently involves continuous shift work. An ILO report in 2017 observed that a trend, which had already been noted in 1998, from the three-shift (eight-hour shifts) to the two-shift system (12-hour shifts) as a result of health sector reforms intended to improve efficiency had since accelerated.<sup>744</sup>

430. Two provisions of Recommendation No. 157 are relevant to the organization of shift work: Paragraph 37(1), which indicates that there should be as little recourse to work at inconvenient hours as possible, and Paragraph 18(1) of the Annex to the Recommendation, which calls for shift work, overtime work and work at inconvenient hours to be allocated equitably between nursing personnel, and in particular between permanent and temporary and between full-time and part-time personnel. Paragraph 38(1) adds that shift work should be compensated by an increase in remuneration no less than that applicable to shift work in other employment in the country.

## 5. Limitations on shift work and rest periods between shifts

431. Paragraph 38 of Recommendation No. 157, which provides guidance on the regulation of shift work, does not set a limit to the length of a single shift, but indicates that split shifts should be avoided and calls for a mandatory continuous rest period of 12 hours between shifts. This means for example, that in a three-shift system, the same worker should not be allocated work in morning and night shifts on the same day, as the break between the two would only be eight hours. Although the Recommendation does not contain an explicit provision limiting the length of shifts, Recommendation No. 116 indicates in Paragraph 13 that provisions relating to continuous successions of shifts should be so formulated that normal hours of work as an average in continuous processes do not exceed in any case the normal hours of work fixed for the economic activity concerned. ***In view of the limits set for the daily and weekly working hours of nursing personnel in Recommendation No. 157, the Committee considers that the actual length of a shift for nursing personnel should not exceed the actual length of a working day, including overtime, namely 12 hours. Moreover, the normal working week of shift workers should remain within the limits of the normal working week of nursing personnel, which should not exceed 40 hours (Paragraph 32(2) of Recommendation No. 157). Shift work beyond this limit should be remunerated at overtime rates or form an exception to the recognized rules or custom of the establishment.***<sup>745</sup> ***In addition to the 12-hour rest period between shifts, the minimum 36-hour weekly rest period should apply to nursing personnel who work in shifts.***

<sup>743</sup> ILO (2018). General Survey on working time, op. cit., para. 669.

<sup>744</sup> ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 98.

<sup>745</sup> Reduction of Hours of Work Recommendation, 1962 (No. 116), Para. 11.

432. The Committee notes that time limits have been established in a number of countries for shift work by nursing personnel or a specific number of hours of rest is required between two shifts. In some countries, shift work is limited to a maximum number of working hours during a specified period, for example 36 hours (three 12-hour shifts), or a limit of 116 hours and 15 minutes over a three-week period.<sup>746</sup> The maximum daily hours for shift work normally range from eight<sup>747</sup> to 12 hours,<sup>748</sup> but may be in excess of 12 hours when set by local agreement.<sup>749</sup>

*Finland* – The collective agreement of the Confederation of Finnish Industries, applicable in the private sector, establishes a maximum shift duration of 10 hours. However, the night shift may be 12 hours, unless a local agreement is concluded permitting a maximum shift of 15 hours.

433. The Committee notes that there is a requirement in most countries for 11 or 12 hours of rest between shifts,<sup>750</sup> but that rest periods range from 20 to 48 hours in some other countries.<sup>751</sup>

*Croatia* – Twelve-hour shifts are worked in cycles of 12–24–12–48 (where the figures 24 and 48 indicate rest periods).

In the *Republic of Korea*, the Korean Confederation of Trade Unions indicates that in such workplaces as the Seoul National University Hospital, where the union is strong, 16 hours continuous rest time between shifts is guaranteed by collective agreement.

## 6. On-call duty<sup>752</sup>

434. Recommendation No. 157 contains a definition of on-call duty (Paragraph 30(c)) and indicates that there should be as little recourse to it as possible (Paragraph 37(1)). The conditions under which on-call duty should be counted as working time may be determined through consultation (Paragraph 43(b)). Nevertheless, Paragraph 21 of the Annex to the Recommendation indicates that any period of on-call duty during which nursing personnel are required to remain at the workplace, or the services of nursing personnel are actually used, should be fully regarded as working time and remunerated as such.<sup>753</sup>

<sup>746</sup> For instance, *Argentina* and *Georgia*.

<sup>747</sup> For instance, *Croatia* and *Ecuador*.

<sup>748</sup> For instance, *Argentina*, *Finland* and *Islamic Republic of Iran*.

<sup>749</sup> For instance, *Finland* and *Georgia*.

<sup>750</sup> For instance, *Argentina* (private sector), *Armenia*, *Denmark*, *Finland*, *Georgia*, *Japan*, *Norway*, *Poland* and *United Kingdom*.

<sup>751</sup> For instance, *Australia*, *Croatia* and *Republic of Korea*.

<sup>752</sup> “On-call duty” should be distinguished from “on-call work” or “on-call contracts”, which are non-standard forms of employment in which the employer does not guarantee any specific working hours during a calendar day or week.

<sup>753</sup> See ILO (2018). General Survey on working time, op. cit., para. 704: “At the level of the EU, the Working Time Directive provides that ‘working time’ means any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice’ [Article 2(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time]. The Court of Justice of the European Union (CJEU) has interpreted this provision in two landmark decisions regarding the situation of health professionals. It first held that ‘time spent on call by doctors in primary health care teams must be regarded in its entirety as working time and,

The Committee notes that this principle is applied in a number of countries,<sup>754</sup> although a different approach is adopted in others.

*Germany* – If nursing personnel are required to stay at a location determined by the employer, this constitutes on-call service, which under working time regulations counts as working time. Furthermore, if an employee can choose where he or she will be on call, but must be able to appear at the workplace within a short period if needed, this also counts as on-call time for the purposes of the working time regulations.

*Denmark* – On-call duty from home counts as one third of regular working hours. On-call duty from the hospital counts as three quarters of regular working hours.

In *Japan*, the All-Japan Prefectural and Municipal Workers Union reports that stand-by time during night shifts and on-call duties are often excluded from the working hours of nurses, even though they are actually at work.

## 7. Remuneration of on-call hours

435. When counted as working time, on-call hours are normally remunerated as working hours. However, in certain countries, while on-call hours are counted as working hours and included in the total number of hours worked, including hours that should be counted as overtime, they are paid at a lower rate.<sup>755</sup>

*Ireland* – A fixed payment is made for the designated period(s) for which employees make themselves available, such as a weekly stand-by payment.

*Montenegro* – The employer must pay the employee 10 per cent of the normal hourly rate for each hour of on-call duty at home.

*Poland* – Each hour of stand-by duty is payable at 50 per cent of the basic hourly rate.

where appropriate as overtime ... if they are required to be at the health centre'. On the other hand, if they 'must merely be contactable at all times when on call, only time linked to the actual provision of primary health care services must be regarded as working time.' In two recent decisions, both issued on 9 March 2021, the CJEU further examined the cited provision of the Directive. In one of the cases ([Case C-580/19](#)), the CJEU held that the period of time "(...) during which a worker must be able to reach the town boundary of his or her workplace within a 20-minute response time, in uniform, with the service vehicle made available to him or her by his or her employer, using traffic regulations privileges and rights of priority attached to that vehicle (...)" constitutes working time. In contrast, in its decision in [Case C-344/19](#), the CJEU held that the time "(...) during which the worker is only required to be contactable by telephone and able to return to his or her workplace, if necessary, within a time limit of one hour, while being able to stay in service accommodation made available to him or her by his or her employer at that workplace, without being required to remain there (...)" does not constitute working time.

754 For instance, *Armenia, Austria, Croatia, Finland, Germany, Panama and Thailand*.

755 For instance, *Bahamas, Finland, Ireland, Montenegro and Poland*.



## 8. Work in particularly arduous or unpleasant conditions

436. Recommendation No. 157 indicates that nursing personnel who work in particularly arduous or unpleasant conditions should benefit from a reduction of working hours and/or an increase in rest periods, without any decrease in total remuneration (Paragraph 40). This is given effect in a number of countries through the provision of special leave or reduced daily hours.<sup>756</sup> Paragraph 43 of the Recommendation indicates that the conditions to be considered as particularly arduous or unpleasant should be defined in agreement or consultation with the representatives of nursing personnel.

*Argentina* – Personnel engaged in mental care establishments in the private sector are entitled to special leave of seven days, irrespective of their seniority.<sup>757</sup>

*Bulgaria* – Midwives and nursing personnel working in surgery, anaesthetics and emergency care are entitled to a seven-hour working day.

## ► VI. Non-standard working arrangements

437. The Committee notes that, generally, a standard employment relationship is full-time, open-ended, permanent and with one-employer. Non-standard forms of employment (NSFE) are contractual arrangements that diverge from this model in one or more ways: they are temporary (fixed-term contracts or casual work); not full time (part-time, zero-hours contracts or on-call work); multi-party (temporary agency work or subcontracted labour) or take other forms, such as disguised employment, independent contractor work, freelance work, dependent self-employment, platform labour).

438. In recent years, health sector reforms carried out in response to cost and efficiency concerns have led to increased use of non-standard forms of employment.<sup>758</sup> A significant number of healthcare workers are in working arrangements such as fixed-term and casual work, temporary agency work, dependent self-employment and part-time work. Furthermore, in certain countries there is an increasing trend to use other non-standard arrangements, including outsourcing certain types of work, and zero-hours contracts.

439. The Committee notes that a number of workers' organizations have referred to the increasing use of non-standard forms of employment in the nursing sector, noting their adverse effect on the conditions of work and labour rights of nurses subject to such work arrangements.<sup>759</sup>

<sup>756</sup> For instance, *Argentina, Austria and Bulgaria*.

<sup>757</sup> *Argentina*, [collective labour agreement No. 122/75](#).

<sup>758</sup> ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 60.

<sup>759</sup> The concern has also been raised by PSI and the Hospital Authority Employees Alliance (HAEA) in Hong Kong (*China*).

PSI reports that, in the *Philippines*, a number of nurses are hired under service contracts or as job-order employees. These working arrangements are precarious and nurses in these arrangements do not have access to social protection benefits and are often not allowed to unionize. PSI also reports that in North America and parts of Europe, the platform work business model has expanded to the long-term care sector. Platform work in the care economy evades regulatory oversight, compromising both quality of care and workers' rights. Platform workers are often not considered to be employees and, as such, lack protection against dismissal, predictability in terms of working hours, income and social protection.

In *Norway*, the Norwegian Confederation of Unions for Professionals (UNIO) indicates that work in the healthcare sector is organized on the basis of part-time work positions, leading to a structure in which part-time work is the norm. It can be difficult for nurses to obtain a full-time position as employers have very few full-time positions. This is very different from other sectors in the country.

440. The Committee recalls that well-designed and regulated NSFE can help organizations to respond in a timely manner to changing demands, and temporarily replace absent workers. NSFE can also facilitate the participation of workers in the labour market, by allowing those who wish to freely choose part-time work arrangements that allow them to better reconcile work, life and family responsibilities.<sup>760</sup> However, workers in these kinds of arrangements tend to be more exposed to decent work deficits, including job insecurity, lower pay, gaps in access to social protection, higher occupational safety and health risks, and limited organizing and collective bargaining power.

441. Convention No. 149 does not contain any reference to non-standard forms of employment. Nevertheless, Article 1(2) provides that the Convention applies to all nursing personnel, wherever they work. Article 1(1) provides that, for purposes of the Convention, the term "nursing personnel" includes all categories of persons providing nursing care and nursing services, regardless of form of employment.

442. Paragraph 57 of Recommendation No. 157 encourages governments to take measures to make temporary and part-time employment possible in order to make the most effective use of available qualified nursing personnel and prevent the withdrawal of qualified persons from the profession. Paragraph 58 indicates that "the conditions of employment of temporary and part-time nursing personnel should be equivalent to those of permanent and full-time staff respectively, their entitlements being, as appropriate, calculated on a pro rata basis". ***The Committee considers that the principle of equivalence of employment conditions should apply to all persons providing nursing care and services, regardless of the form of employment. In addition, for purposes of establishing remuneration, comparisons should be made between nurses performing tasks of equal value regardless of whether they are in standard or non-standard forms of employment.***

443. NSFE are sometimes used to avoid the application of labour law. It is therefore essential that their use be appropriately regulated to prevent workers from being excluded from legal protections to which they are entitled. ***The Committee considers that Members should take the necessary measures to prevent and remedy the unlawful use of NFSE in the nursing sector.***

<sup>760</sup> ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 60.

## ► VII. Statutory social security and maternity protection benefits

**444.** Article 6(g) of Convention No. 149 provides that nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country in relation to social security. The Committee recalls that the human right to social security encompasses access to available, accessible, acceptable, quality healthcare without hardship, as well as to income security throughout the life cycle,<sup>761</sup> as reiterated by ILO social security standards, including the Social Security (Minimum Standards) Convention, 1952 (No. 102), and more recently the Social Protection Floors Recommendation, 2012 (No. 202). The Committee further recalls that universal social protection is included in the 2030 Agenda for Sustainable Development under targets 1.3 and 3.8.

**445.** The Committee notes that a large majority of countries report that all categories of persons providing nursing care and nursing services enjoy the same level of social security entitlement as workers in other professions.<sup>762</sup>

In *Slovenia*, the Confederation of Trade Unions of Slovenia (PERGAM) indicates that nursing personnel have the same rights as other workers in relation to sick leave and maternity, including maternity leave and benefits. This entitlement applies to all other workers, whether they are employees or self-employed.

**446.** The Committee observes that, while the protection afforded is generally equivalent to that enjoyed by similar categories of workers in other professions, there can be differences in scope, extent and adequacy of coverage between nationals and non-nationals, salaried workers and self-employed workers or those working under different contract arrangements, as well as between salaried workers employed in the public and private sectors.

In *Germany*, the German Confederation of Trade Unions (DGB) indicates that section 3 of the Maternity Protection Act regulates statutory protection periods prior to and after childbirth, which correspond to the requirements of maternity leave pursuant to Article 4 of the Maternity Protection Convention, 2000 (No. 183). The DGB adds that the provisions of the Act apply to persons who work in the care sector as employees (within the meaning of social security law) and, among others, to “quasi-employees”, with the exception that they are not entitled to maternity protection benefits.

In the *Philippines*, the Confederation of Independent Unions in the Public Sector (CIU), Philippine Government Employees Association (PGEA), Philippines Independent Public Sector Employees Association (PIPSEA) and Public Services Labor Independent Confederation (PSLINK) point out that nursing personnel hired under contracts of service and job order schemes do not enjoy the social security benefits afforded to regular nurses.

<sup>761</sup> Committee on Economic, Social and Cultural Rights. “General comment No. 19: The right to social security (Art. 9)”, Thirty-ninth session, 2007, E/C.12/GC/19.

<sup>762</sup> For instance, *Russian Federation, South Africa and Spain*.

PSI indicates that there are many examples of deficiencies in social security protection for nursing personnel, especially for those in precarious forms of employment. Exclusions of certain categories of workers from social security protections are reported by PSI affiliates: lack of access to maternity protection, a lack of access to sick leave, and a lack of access to medical and occupational health and safety services. A strong discrepancy in access to social security benefits is also reported in some countries between public and private sectors. There are many instances from both developing and developed countries where health workers providing vital care have not been given the means to isolate and have been compelled to keep working despite knowing they are infected with COVID-19.

**447.** The Committee observes that, in line with the Equality of Treatment (Social Security) Convention, 1962 (No. 118), many countries report that migrant nursing personnel benefit from equality of treatment with nationals in similar professions.<sup>763</sup> However, in a number of cases, national social security systems impose eligibility criteria linked to nationality, and migrant workers may be covered by separate arrangements under the direct responsibility of their employer, or may not be afforded coverage.<sup>764</sup> This is of particular relevance to the nursing profession in view of the high volume of migrant health and care workers in an increasingly globalized labour market. Some countries report that international social security agreements can play a central role in securing the portability of benefits and a continuum of protection across borders.<sup>765</sup> In others, different protection is afforded depending on the region or state concerned, which also affects the geographical mobility of nursing personnel.<sup>766</sup>

**448.** The Committee also observes that the fragmentation that often exists in national social security systems is reflected in the differences in social security coverage afforded to nursing personnel, depending on whether they are salaried, in the public or private health sector, or self-employed. Sometimes protection differs depending not only on the sector, but also on status and contractual arrangements, the sub-sector within the public sector in fragmented public health systems,<sup>767</sup> and occasionally excludes student nurses.<sup>768</sup> Most countries report differences in protection between the public and private sectors.<sup>769</sup> The Committee considers that such fragmentation and differences in the scope, extent and level of coverage can reinforce the difficulties in professional and geographical mobility faced by nursing personnel and create additional barriers to improving the geographical distribution of healthcare workers.

**449.** The Committee further observes that social protection coverage for the self-employed or those employed by a private employment agency remains a challenge. In some countries, access to coverage has been extended, with affiliation to the general social insurance system being made mandatory for the self-employed,<sup>770</sup> while in others dedicated schemes have been established, sometimes with similar eligibility conditions, level and duration,<sup>771</sup> but most often with different benefit parameters.<sup>772</sup> In some countries, access to social insurance

<sup>763</sup> For instance, *Algeria, Sweden and Uruguay*.

<sup>764</sup> For instance, *Bahrain and Oman*.

<sup>765</sup> For instance, *Finland and Senegal*.

<sup>766</sup> For instance, *Canada*.

<sup>767</sup> For instance, *Ecuador and Guatemala*.

<sup>768</sup> For instance, *United States*.

<sup>769</sup> For instance, *Algeria, Armenia, Cabo Verde, India, Malaysia, Morocco, Oman, Suriname, Togo and Tunisia*.

<sup>770</sup> For instance, *Belarus, Colombia and Costa Rica*.

<sup>771</sup> For instance, *Ghana*.

<sup>772</sup> For instance, *Algeria, Austria, Bahamas, Cameroon, Chile, Dominican Republic, Nepal and Thailand*.

systems is partially voluntary for self-employed workers, particularly for certain short-term benefits, such as sickness, maternity and unemployment.<sup>773</sup> In certain countries, particular emphasis has been placed on the provision of maternity benefit to self-employed women.<sup>774</sup>

***The Committee observes in this respect that the absence of mandatory coverage by short-term social protection benefits, in particular maternity benefit, is of particular concern as the nursing workforce is highly feminized. This lack of coverage could negatively affect career choices by nurses, especially by workers considering opportunities to practice in remote locations. The Committee considers that comprehensive and inclusive social protection policies are an important component of national strategies to plan healthcare staffing needs, distribution and retention on the path to universal health coverage.***

450. The Committee notes that in many countries social security mechanisms have been established that encompass both access to healthcare and income security throughout the life cycle. Nonetheless, a number of countries report that their national social protection systems are not comprehensive, and that some contingencies are not yet covered. This adversely affects the adequacy of the social security coverage of nursing personnel, and particularly of healthcare for private sector and self-employed workers,<sup>775</sup> sickness and maternity benefit for self-employed workers,<sup>776</sup> and unemployment protection.<sup>777</sup>

451. The Committee also notes that, in line with Paragraph 3(d) of Recommendation No. 202, countries have often put in place social security provisions for nursing personnel that are responsive to their specific needs. For instance, some countries recognize the hardships involved in the profession and therefore include it among those for which pension eligibility is granted at a lower age. Similarly, cognizant of the specific occupational risks faced by nursing personnel and in line with national and sector-specific occupational safety and health strategies, specific parameters have been introduced in other countries<sup>778</sup> for employment injury insurance coverage. In some cases, these special provisions apply to the entire nursing profession, and in others only to nursing personnel specifically identified as being exposed to hazardous work environments, such as those working for the armed forces.<sup>779</sup> Statutory social security provisions may also be supplemented and improved through collective bargaining.<sup>780</sup>

452. The Committee notes that, with a view to addressing the unpaid care work that nursing personnel and other categories of care workers may need to perform in caring for elderly persons in ageing societies, long-term care schemes have been introduced in certain countries which cover not only the cost of care, but also the caregiver's social security contributions.<sup>781</sup>

773 For instance, *Germany* and *Switzerland*.

774 For instance, *Cuba*, *Ecuador* and *Turkey*.

775 For instance, *Burkina Faso* and *Madagascar*.

776 For instance, *Cambodia* and *Morocco*.

777 For instance, *Spain*.

778 For instance, *Colombia*.

779 For instance, *Mexico*.

780 For instance, *New Zealand*, *Uruguay* and *Bolivarian Republic of Venezuela*.

781 For instance, *Germany*.

## ► VIII. Occupational safety and health

### 1. The special nature of nursing work

453. Many of the settings in which nursing personnel work, coupled with the broad range of tasks that they perform, pose potential threats to their physical and mental health and may put them at risk of work-related injuries, ill health and diseases. The hazards to which they may be exposed include: biological hazards (such as infections caused by needle-stick injuries and other communicable diseases); chemical hazards (including from drugs used in the treatment of cancer or from disinfectants); and physical hazards (such as from ionizing radiation) or ergonomic hazards (for example, due to lifting or handling patients). Nurses also face significant psychosocial hazards, such as violence and harassment, including on the bases of gender and psychological stress due to chronic understaffing and shift work.<sup>782</sup> Although these risks are not new, there is growing concern at their impact on the health and well-being of nursing personnel and other healthcare workers.<sup>783</sup> The Committee observes that, as nursing personnel also face a high risk of exposure to violence and harassment in the workplace, the combination of these risks makes healthcare a high-risk sector.<sup>784</sup>

454. New developments and trends in the health and social care sectors have given rise to new occupational safety and health (OSH) challenges, including: increasing shortages of nursing personnel, leading to chronic understaffing and creating excessive workloads; an ageing nursing workforce with insufficient new recruits to replace those who are retiring; the growing use of technologies requiring new skill mixes; and imbalances in skill levels and working patterns. Environmental factors, such as climate change and air pollution, also represent new risks to nurses, including the heightened risk of vector-borne diseases and extreme weather events.<sup>785</sup> These challenges have an impact on the working conditions and ultimately on the well-being and safety of nursing personnel and other healthcare workers.<sup>786</sup>

***The Committee emphasizes that, to protect the safety and health of nurses and maintain access to quality nursing services, Member States should adopt and implement measures to address these challenges proactively.***

In *New Zealand*, the New Zealand Public Service Association (PSA), an affiliate of PSI, indicates that health and safety is a concern across the health, care and community services and across occupations. Specific concerns in the district health boards (DHBs) relate to the lack of safe staffing levels, which leads to burnout, depression, fatigue and unsafe handling of patients (especially of severely mentally ill patients). Violence and harassment can be a result of unsafe staffing levels. Slips, trips and falls are also a common source of accidents and a health risk in this sector.

782 European Agency for Safety and Health at Work (EU-OSHA) (2014). *Current and emerging issues in the healthcare sector, including home and community care*, European Risk Observatory Report, Luxembourg, p. 6.

783 EU-OSHA (2007). *Expert forecast on emerging psychosocial risks related to occupational safety and health*, European Risk Observatory Report, Luxembourg, p. 93.

784 EU-OSHA (2014). *Current and emerging issues in the healthcare sector*, op. cit., p. 6.

785 ILO (2019). *"The future of work in the health sector"*, Working paper No. 325, Geneva, p. 9.

786 EU-OSHA (2014). *Current and emerging issues in the healthcare sector*, op. cit., p. 6.

PSI points out that the health sector is one of the most hazardous sectors for OSH. Nursing personnel are exposed to infectious diseases, musculoskeletal injuries and mental health impacts, including anxiety, depression and burnout, and face some of the highest rates of workplace violence and harassment. Long-standing structural deficiencies in health and safety protections, low pay, low staff to patient ratios, insecure work and hierarchical work environments have been further exacerbated by the hazards arising from the COVID-19 pandemic. PSI emphasizes that for health systems to function sustainably, improvements to OSH must be prioritized in a holistic way. This requires eliminating and mitigating immediate hazards, as well as addressing the underlying causes of unsafe work through improvements to employment conditions.

455. The Committee notes that in most countries the exposure of nursing personnel to OSH risks increases in proportion to the demand for nursing and healthcare services.

In *Finland*, the Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK) and the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) observe that workers in the social welfare and healthcare sectors are at increased risk of occupational hazards due, among other factors, to the prevalence of night work and the shortage of personnel. They do not have enough time to perform their work with sufficient quality, which is also frequently a reason why nursing personnel leave the profession.

CEACR – In its comments concerning *Greece*, the Committee noted the observations of the Greek General Confederation of Labour (GSEE) that the poor health and safety conditions under which nursing personnel work expose them to exhaustion and burnout. The GSEE indicated that irregular shifts, in combination with the very small number of nurses working during each shift, place a heavy burden on them. In particular, the GSEE pointed out that the morning shift was usually served by two to four nurses, whereas the afternoon and night shifts were served by only one nurse. The Committee noted that, in the context of the COVID-19 pandemic, the need for nursing personnel had increased, which could exacerbate the situation.<sup>787</sup>

456. The Committee observes that there are positive changes in the protection of nurses' safety and health at work, with more attention being paid to sharps injuries and psychosocial risk factors, more occupational health specialists in the healthcare sector in some countries, a strengthening of inspection bodies and increased awareness.<sup>788</sup> However, in many countries, while infection prevention and controls to ensure patient safety are incorporated in most health services, resources are primarily allocated to meet the needs of patients, often leaving the safety of staff and issues of work-life balance unaddressed. ***The Committee emphasizes that it is important to link nurses' safety with patient safety, as unsafe working conditions could lead to a higher error rate, which may in turn have serious implications for patients.***<sup>789</sup> ***In addition, the lack of attention to OSH concerns negatively influences the retention of nursing personnel and exacerbates the shortage of nurses.***<sup>790</sup>

<sup>787</sup> CEACR – *Greece*, observation, 2020.

<sup>788</sup> EU-OSHA (2014). *Current and emerging issues in the healthcare sector*, op. cit., p. 17.

<sup>789</sup> *ibid*, p. 21.

<sup>790</sup> ILO (2017). *Improving Employment and Working Conditions in Health Services*, op. cit., para. 103.



## 2. Occupational safety and health protection

### Article 7 of Convention No. 149

Each Member shall, if necessary, endeavour to improve existing laws and regulations on occupational health and safety by adapting them to the special nature of nursing work and of the environment in which it is carried out.<sup>791</sup>

457. As highlighted by the ILO Centenary Declaration on the Future of Work, safe and healthy working conditions are fundamental to decent work.<sup>792</sup> Nurses are no exception. Indeed, health and safety hazards are an issue of particular concern for nurses,<sup>793</sup> and Part IX of Recommendation No. 157 addresses various OSH issues affecting nursing personnel. Paragraph 46 of the Recommendation calls on Member States and the employers' and workers' organizations concerned to pay particular attention to the provisions of the Protection of Workers' Health Recommendation, 1953 (No. 97). The Committee recalls that all ILO instruments establishing general OSH principles apply to nursing personnel.

### ILO general OSH standards

- ▶ The Occupational Safety and Health Convention, 1981 (No. 155), and its accompanying Recommendation (No. 164);
- ▶ The Occupational Health Services Convention, 1985 (No. 161), and its accompanying Recommendation (No. 171);
- ▶ The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and its accompanying Recommendation (No. 197).<sup>794</sup>

458. Nursing personnel are also covered by other ILO instruments that address OSH in specific sectors, or relate to specific hazards.<sup>795</sup> A number of international guidelines have been adopted addressing the particular risks to which workers in the healthcare sector are exposed.

- ▶ Joint WHO-ILO-UNAIDS policy guidelines on improving health workers' access to HIV and tuberculosis prevention, treatment, care and support services, 2010.
- ▶ Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005.
- ▶ Joint ILO/ICN/WHO/PSI Framework guidelines for addressing workplace violence in the health sector, 2002.

<sup>791</sup> See also Para. 44 of Recommendation No. 157.

<sup>792</sup> ILO (2019). [ILO Centenary Declaration for the Future of Work](#), International Labour Conference, 108th Session, Geneva, Parts II(D) and III(B)(iv).

<sup>793</sup> ILO (1976). [Employment and Conditions of Work and Life of Nursing Personnel](#), Report VII(2), International Labour Conference, 61st Session, Geneva, p. 68.

<sup>794</sup> For further guidance on the content and application of these instruments, see ILO (2009). [ILO standards on occupational safety and health: Promoting a safe and healthy working environment](#), General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, International Labour Conference, 98th Session, Geneva (hereafter "General Survey on OSH instruments").

<sup>795</sup> The Radiation Protection Convention, 1960 (No. 115), and Recommendation (No. 114); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120), and Recommendation (No. 120); and the HIV and AIDS Recommendation, 2010 (No. 200).

**459.** The Conclusions of the ILO Tripartite Meeting on Improving Employment and Working Conditions in Health Services emphasize that: “In addition to dealing with the prevention of the transmission of diseases and sharps injuries, OSH measures and access to occupational health services should address the full range of hazards, including violence at work, musculoskeletal problems and communicable diseases, and provide for periodic medical examinations of health workers”.<sup>796</sup> The International Council of Nurses (ICN) affirms that “every nurse has the right to work in a healthy and safe environment without risk of injury or illness resulting from that work”.<sup>797</sup>

**460.** The Committee notes that in most countries general OSH laws and regulations ensure coverage of healthcare workers, including nursing personnel.<sup>798</sup> Some Governments report that nurses are covered by specific laws and regulations protecting workers against special risks, such as biological agents, chemical substances and radiation.<sup>799</sup> A number of countries report that the measures taken or envisaged under general OSH policies or strategies also apply to nurses.<sup>800</sup> Others report the adoption of special OSH policies for workers in healthcare settings, including nursing personnel. The form of these policy instruments is diverse and includes national programmes, plans of action, regulations and ministerial orders, collective agreements, national policy guidelines and standards, and accreditation systems.<sup>801</sup>

*Kenya* – The Occupational Safety and Health Policy Guidelines for the Health Sector adopted in 2014 include the objectives of providing a framework for implementing safe and healthy work practices in the health sector, and promoting a safe and healthy work environment, work practices and procedures for all health sector staff to minimize work-related injuries and occupational diseases.<sup>802</sup>

**461.** In addition, in some countries, given the special risks faced by health workers during the performance of their duties and in certain working environments, laws and regulations have been adopted addressing special risks in the health sector, such as sharps injuries. The Committee notes in this regard the conclusion of a framework agreement on the prevention of sharps injuries in the hospital and healthcare sector in July 2009 between the European Federation of Public Services Unions (EPSU) and the European Hospital and Healthcare Employers' Association (HOSPEEM). European Union Council Directive 2010/32/EU was adopted in 2010 on the basis of this agreement, and all European Union Member States were required to implement it by May 2013.<sup>803</sup> The Committee notes that ILO Member

<sup>796</sup> ILO (2017). “[Conclusions on improving employment and working conditions in health services](#)”, adopted by the Tripartite Meeting on Improving Employment and Working Conditions in Health Services (24–28 April 2017), Geneva, TMIEWHS/2017, para. 7.

<sup>797</sup> ICN. “[Position statement: Occupational health and safety for nurses](#)”, Geneva, adopted in 1987, latest revision 2017, Geneva, p. 1.

<sup>798</sup> For instance, *Algeria, Armenia, Australia, Austria, Bahamas, Bahrain, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cambodia, Canada, Chile, Croatia, Czechia, Denmark, Dominican Republic, Ecuador, Finland, Germany, Guatemala, Hungary, Indonesia, Israel, Japan, Kazakhstan, Latvia, Lithuania, Malaysia, Mauritius, Nepal, New Zealand, Peru, Portugal, Saudi Arabia, Slovenia, Switzerland, Thailand, Trinidad and Tobago, United Kingdom and Bolivarian Republic of Venezuela*.

<sup>799</sup> For instance, *Armenia, Australia, Cameroon, Croatia, Ecuador, Finland, Germany, Guatemala, Honduras, Hungary, Islamic Republic of Iran, Ireland, Italy, Latvia, Lithuania, Mauritius, Mozambique, Norway, Panama, Peru, Spain and Thailand*.

<sup>800</sup> For instance, *Australia* (Western Australia) and *Chile*.

<sup>801</sup> To date, more than 50 countries have developed and are implementing national policy instruments for protecting the health and safety of health workers. For instance, *Benin* and *Kenya*. See also WHO and ILO (2020). [Caring for those who care: National programmes for occupational health for health workers. Policy brief](#), p. 7.

<sup>802</sup> *Kenya*. [Occupational safety and health policy guidelines for the health sector in Kenya](#), Ministry of Health, 2014, p. 4.

<sup>803</sup> The same is true, in principle, for the countries of the European Economic Area (EEA), which have special arrangements with the European Union, and particularly Norway. T. Weber (2013). [Promotion and support of implementation of directive 2010/32/EU on the prevention of sharps injuries in the hospital and health care sector](#), Final report, HOSPEEM and EPSU, pp. 1 and 2.

States that are also Members of the European Union report the recent enactment of laws or regulations to protect workers against injuries from sharp medical instruments to give effect to the Directive.<sup>804</sup>

#### Council Directive 2010/32/EU

Council Directive 2010/32/EU has helped to ensure that European Union Member States implement specific preventive measures necessary to protect healthcare workers from injuries caused by needle-sticks in view of the risk of infection from serious blood-borne infections, such as hepatitis B and C and HIV. The Directive applies to all workers in the healthcare sector, including nurses. Employers and workers' representatives are required to work together to eliminate and prevent risks, protect workers' safety and health, and create a safe working environment following the hierarchy of general principles of prevention through information and consultation: avoiding risks; assessing the remaining risks; combating risks at source; adapting the work to the individual; adapting to technical progress; replacing the dangerous with the non-dangerous or less dangerous; developing an overall prevention policy; collective measures over individual methods; and instructions to workers.

462. A number of countries indicate that nursing personnel are also covered by special regulations enacted to address biological risks in the health sector.<sup>805</sup>

*Ecuador* – The Biosecurity Manual for Health Establishments indicates the measures that must be taken by workers to prevent and reduce the risk of accidents due to biological contact in all areas of health services and establishes mechanisms and actions for the immediate application of biosecurity measures.<sup>806</sup>

463. In some countries, collective agreements concluded in the healthcare sector also include special OSH provisions.<sup>807</sup>

*Croatia* – The Collective Agreement for Health Care and Health Insurance Activities, concluded by the Government, the Croatian Professional Trade Union of Nurses-Medical Technicians and the Independent Trade Union of Health and Social Welfare of Croatia in 2018, provides in clause 65 that employers and workers are required to comply with the provisions of the OSH legislation and the Basic Collective Agreement for Civil Servants. The Collective Agreement for Private Health Care Activities, concluded by the Association of Private Employers in Croatian Health Care and the Trade Union of Workers in 2014, establishes OSH-related requirements for employers, such as the provision of personal protective equipment (clause 249) and carrying out risk assessments (clause 250).

804 For instance, *Austria, Belgium, Finland and Slovenia*.

805 For instance, *Ecuador, Finland, Hungary, Islamic Republic of Iran, Mozambique, Norway, Panama, Peru and Spain*.

806 *Ecuador*, Acuerdo Ministerial MSP-2017-005, publicado en el Registro Oficial 972, de 23 de marzo de 2017, se aprueba y autoriza el "Manual de Bioseguridad para los establecimientos de salud".

807 For instance, *Canada*, Provincial Collective Agreement between the Health Employers Association of British Columbia (HEABC) and the Nurses' Bargaining Association (NBA) and *Croatia*.

464. Some governments indicate that new OSH legislation, regulations or policies applicable to nursing personnel are in the process of adoption.<sup>808</sup> Other governments report that existing OSH laws and regulations do not cover nursing personnel, or that where they do, their application is insufficient.<sup>809</sup>

465. While there have been some positive developments in most countries, laws and regulations in a number of countries still fail to provide adequate OSH protection for nurses. Moreover, as the COVID-19 pandemic has shown, despite the broad range of existing norms and guidance documents in some countries, the poor state of health protection for nurses globally, especially in resource-limited settings, suggests a gap between these norms and their implementation in practice.<sup>810</sup>

### (a) Access to occupational health services

466. Occupational safety and health is a very complex domain that draws on many scientific fields, medicine, social sciences and even economics.<sup>811</sup> As recalled by the Committee in its 2009 General Survey, employers have the choice between establishing their own services internally, sharing external services with other undertakings in their area of activity and, where this is not possible, making use of private services, which are usually certified by the competent authority.<sup>812</sup>

467. Recommendation No. 157 provides guidance on minimum requirements to ensure adequate OSH protection for nursing personnel, and indicates in Paragraph 45(1) that nursing personnel should have access to occupational health services operating in accordance with the provisions of the Occupational Health Services Recommendation, 1959 (No. 112). ***The Committee emphasises that, as Recommendation No. 112 has been replaced and superseded by the Occupational Health Services Recommendation, 1985 (No. 171), Paragraph 45(1) should therefore be read in conjunction with the provisions of Recommendation No. 171, which provides that OSH services should be essentially preventive and be adapted to the particular circumstances of the undertakings they serve.***

468. The Committee notes that occupational health services have been established in many countries by national legislation, collective agreement, or on a voluntary basis.<sup>813</sup> In some countries, regulations place the obligation of organizing occupational health services on the employer,<sup>814</sup> while in others they are organized under the national health system.<sup>815</sup>

469. As emphasized during the preparatory discussions, one of the essential functions of occupational health services is to ensure supervision of the state of health of nursing personnel. To this end, they are responsible for conducting medical examinations of nurses prior to and during their employment, or when they leave the profession. The Committee observes that, even if these services are primarily intended to be preventive, in many countries they are also required to provide care and treatment to the workers they cover.

808 For instance, *Iraq, Mali and Suriname*.

809 For instance, *Kiribati, Madagascar and Myanmar*.

810 U. Papkalla and J. Collison (2017). *International minimum requirements for health protection at the workplace*, Geneva, WHO, p. 35.

811 In accordance with Art. 9 of Convention No. 161, occupational health services should be multidisciplinary. See also ILO (2009). General Survey on OSH instruments, op. cit., paras 184 and 185.

812 *ibid.*, para. 187. See also Art. 7(2) of Convention No. 161.

813 For instance, *Bulgaria, Norway and Slovenia*.

814 For instance, *Algeria, Bosnia and Herzegovina, Croatia, Finland, Lithuania and Norway*.

815 For instance, *Armenia, Bahrain, Chile, Hungary, Kazakhstan, Malaysia and Saudi Arabia*.

470. The Committee recalls that there are situations, particularly in resource-limited settings, where suitable conditions for setting up occupational health services for hospital personnel are lacking.<sup>816</sup> Paragraph 45(2) of Recommendation No. 157 indicates that, where occupational health services have not yet been set up for all undertakings, “medical care establishments employing nursing personnel should be among the undertakings for which ... such services should be set up in the first instance”.

### (b) Medical examinations

471. Paragraph 47(1) of Recommendation No. 157 indicates that nursing personnel “should undergo medical examinations on taking up and terminating an appointment, and at regular intervals during their service”. The Committee notes that many governments refer in their reports to the requirement for all nurses to undergo medical examinations at regular intervals.<sup>817</sup>

472. Paragraph 47(2) of the Recommendation indicates that those nurses “regularly assigned to work in circumstances such that a definite risk to their health or to that of others around them exists or may be suspected should undergo regular medical examinations at intervals appropriate to the risk involved”. The Committee notes that in most countries nurses and other healthcare workers exposed to special risks are required to undergo medical examinations.<sup>818</sup>

473. In accordance with Paragraph 47(3) of the Recommendation, medical examinations should guarantee respect and confidentiality. Moreover, medical examinations “should not be carried out by doctors with whom the persons examined have a close working relationship”. The Committee further notes that medical examinations should respect the confidentiality of the worker’s personal medical data, as indicated in the ILO Code of practice on the protection of workers’ personal data.<sup>819</sup>

## 3. Special risks to which nurses may be exposed in the exercise of their profession

### (a) The determination of special risks

474. The constraints and hazards inherent in the nursing profession are referred to in general terms in Paragraph 25 of the Recommendation No. 157. There are also particularly arduous or unpleasant conditions of nursing work referred to in Paragraphs 27 and 40. Finally, there are nursing duties that involve special risks, addressed in Paragraphs 48 and 49, which call for protective measures and financial compensation for nursing personnel exposed to such risks.<sup>820</sup>

In *Spain*, the Confederation of Workers’ Commissions (CCOO) emphasizes that nursing personnel face different risks depending on the type of job they occupy and the conditions of the job. Therefore, the level of risk depends on a case-by-case evaluation of each position.

816 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII (1), op. cit., p. 65.

817 For instance, *Canada* (Provincial Collective Agreement between the Health Employers Association of British Columbia (HEABC) and the Nurses’ Bargaining Association, 2019–22), *Hungary* (Decree No. 40/2004 (IV. 26.) of the Minister of Health, Social and Family Affairs on the examination and certification of medical fitness required for performing healthcare activities) and *Philippines* (section 7.2.2 of the Revised Implementing Rules and Regulations on the Magna Carta for Public Health Workers (R.A. 7305)).

818 For instance, *Algeria*, *Armenia*, *Bosnia and Herzegovina*, *Bulgaria*, *Finland*, *Hungary*, *Islamic Republic of Iran*, *Philippines*, *Thailand* and *Slovenia*.

819 ILO (1997). *Code of practice on the Protection of workers’ personal data*, principle 6.7.

820 ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(2), op. cit., p. 62.

**475.** Paragraph 48(1) of the Recommendation indicates that studies should be undertaken and kept up to date to identify special risks to which nursing personnel may be exposed in the exercise of their profession. The need to adapt rapidly to technological and scientific advances, and the evolving needs and emerging risks in an ever-changing world of work require the establishment of specialized OSH bodies responsible for areas such as: risk assessment, medical surveillance, mechanical engineering, equipment testing, certification, technical standard-setting and information dissemination. Their role is essential, as they generate the knowledge without which no evidence-based policies, regulations or preventive and protective measures can be developed or implemented.<sup>821</sup> In many countries, specialized institutions, which may be governmental, university or private bodies, carry out research on new and emerging risks in the workplace, including in healthcare settings.<sup>822</sup> The reliability of this knowledge is generally ensured through international or regional cooperation and peer-review mechanisms. In addition, international<sup>823</sup> and regional specialized OSH institutions<sup>824</sup> conduct research on OSH issues in the healthcare sector. In other countries, research in OSH is mainly carried out by research groups at universities and technology centres, which often collaborate with universities.<sup>825</sup>

**476.** The Committee observes that regular exposure to ionizing radiations or anaesthetic substances, as well as regular contact with infectious diseases or mental illness, are often considered to constitute special risks in the nursing profession.<sup>826</sup> In addition, sharps injuries are of particular concern as a source of hepatitis B and C and HIV.<sup>827</sup> Other risks usually considered as special risks include delivering services directly to patients with highly contagious and communicable diseases.

*Honduras* – Section 11 of the Act on the Statute of Nursing Professionals provides that high-risk work includes: exposure to harmful chemical, toxic, corrosive, radioactive and carcinogenic substances; exposure to psychotropic substances; violence from patients suffering from mental disorders; environmental contamination; exposure to contagion from handling and cleaning medical or surgical equipment; continuous exposure to occupational stress; violence in rural communities and other facilities.<sup>828</sup>

*Panama* – Nurses face special risks in the course of their work, such as occupational HIV transmission and exposure to other infectious diseases, including hepatitis B and C and tuberculosis, workplace violence and harassment. Other special risks may include burnout or depression, or risks due to climate change, such as heat stress.

821 ILO (2009). General Survey on OSH instruments, op. cit., para. 141.

822 For instance, *France* (National Research and Safety Institute for the Prevention of Occupational Accidents and Diseases) and *Germany* (Federal Institute for Occupational Safety and Health).

823 The International Occupational Safety and Health Information Centre (CIS) is a global network of national specialized institutions covering all continents and engaged fully in OSH information and technical assistance exchange. In most cases, CIS national centres are government agencies with direct responsibility for labour affairs and strong links with labour inspectorates. Employers' and workers' organizations and independent institutes are also represented.

824 The European Agency for Safety and Health at Work (EU-OSHA) is a decentralized agency of the European Union set up in 1996 by Council Regulation (EC) No 2062/94, which collects, analyses and disseminates relevant information for people involved in safety and health at work, including in the health sector.

825 For instance, *Portugal*.

826 For instance, *Philippines*.

827 ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 103.

828 *Honduras*, En [fermería de Honduras](#), Decree No. 90-99 of 1999.



## (b) Notification requirements

477. Paragraph 48(2) of Recommendation No. 157 adds that, for the purpose of identifying the special risks that nurses may face at the workplace, cases of occupational accidents and cases of diseases should be notified to the competent authority in a manner to be prescribed by national laws or regulations.<sup>829</sup>

478. The Committee notes that many governments refer to the general obligation of employers to notify occupational accidents and diseases of all workers, including nurses, to competent authorities such as the labour ministry, social security or social insurance institutions, the labour inspectorate or statistical bodies. In some countries, responsibility for notification does not lie solely with employers and may be shared by other institutions.<sup>830</sup> Some governments also refer to the duty of employees to cooperate with regard to the notification of occupational accidents and diseases.<sup>831</sup>

## (c) Measures to avoid or reduce the exposure of nurses to special risks

479. In accordance with Paragraph 49(1) of the Recommendation, all possible steps should be taken to ensure that nursing personnel are not exposed to special risks. Where exposure to special risks is unavoidable, measures should be taken to minimize it. Paragraph 49(2) refers to measures such as the provision and use of protective clothing, immunization, shorter hours, more frequent rest breaks, temporary removal from the risk or longer annual holidays. This list of measures is neither restrictive nor compulsory, as highlighted during the preparatory work,<sup>832</sup> and it is up to constituents to decide the measures that should be adopted to protect nursing personnel from the special risks to which they may be exposed. ***Although Convention No. 149 nor Recommendation No. 157 do not specify this explicitly, the Committee considers that OSH measures should not involve any expenditure for nurses.***<sup>833</sup>

480. Paragraph 24 of the Annex to the Recommendation indicates that nurses regularly exposed to ionizing radiations or anaesthetic substances, and those in contact with infectious diseases or mental illness, are among those covered by the measures to be taken to avoid or reduce exposure to such risks, as envisaged by Paragraph 49 of the Recommendation). They should also undergo regular medical examinations at intervals appropriate to the risk involved (Paragraph 47(2)). Paragraph 25 of the Annex to the Recommendation adds that those regularly exposed to ionizing radiations should, in addition, enjoy the protection of the measures provided for in the Radiation Protection Convention, 1960 (No. 115), and its accompanying Recommendation No. 114.

481. The Committee notes that a combination of measures are applied in most countries. Many governments refer in their reports to the provision of personal protective equipment (PPE) and/or training on OSH and the correct use of PPE.<sup>834</sup> Immunization is also provided to nurses and other health workers to protect them from health risks that may arise from

829 See also Arts 2–5 of the Protocol of 2002 to the Occupational Safety and Health Convention, 1981.

830 For instance, *Croatia* (the report of an injury or occupational disease at work is submitted to the Croatian Health Insurance Institute) and *Ecuador* (employment accidents are notified to the Ministry of Labour). The Protocol of 2002 to the Occupational Safety and Health Convention, 1981, refers in Art. 4(b) to the notification of occupational accidents and occupational diseases by insurance institutions, occupational health services, medical practitioners and other bodies directly concerned. See also ILO (2009). General Survey on OSH instruments, op. cit., para. 255.

831 For instance, *Norway* (section 2-3(2)(e) of the [Working Environment Act](#)).

832 ILO (1977). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI (2), op. cit., p. 62.

833 Convention No. 155, Art. 21 provides that: “Occupational safety and health measures shall not involve any expenditure for the workers”.

834 For instance, *Belarus, Bosnia and Herzegovina, Burkina Faso, Cameroon, Norway and Senegal*.



biological agents,<sup>835</sup> and additional rest periods or vacation time may be granted to nurses and other healthcare workers exposed to special risks.<sup>836</sup>

**482.** Other special protective measures include the allocation of additional time for the personal hygiene of health workers in contact with biological risks.

*Spain* – The collective agreement for the personnel of the Community of Madrid 2018–20 provides that “in activities which involve a risk for the health or safety of personnel due to biological agents, they shall be granted during the day ten minutes for their personal hygiene before meals and another ten minutes before leaving work”.<sup>837</sup>

#### (d) Financial compensation for nurses exposed to special risks

**483.** Paragraph 49(3) of Recommendation No. 157 indicates that nurses who are exposed to special risks should receive financial compensation, which is a matter of particular concern for nurses, as highlighted by the Office during the preparatory discussions. Paragraph 49(3) is aligned with the wording of the Employment Injury Benefits Convention, 1964 (No. 121), Article 8(c).<sup>838</sup> During the preparatory discussions, it was noted that, while workers’ health is not a commodity and therefore has no price, there are nevertheless many situations in which protective measures are insufficient and that financial compensation in such cases is fully justified.<sup>839</sup> The Office clarified that nurses should be exposed to special risks only when this is unavoidable. The intent of the provision is that compensation should be given irrespective of the circumstances in which nurses are exposed to special risks, and not only when such exposure is unavoidable. It was emphasized that this provision can apply in all cases.<sup>840</sup> Most governments report that financial compensation is provided to nurses exposed to special risks.<sup>841</sup> Nonetheless, the Committee observes that a number of workers’ organizations report in their observations that such financial compensation is inadequate.

PSI points out that existing national laws and practices are largely inadequate in their coverage, monitoring and enforcement to protect the health and safety of nursing personnel. In many cases, financial compensation for loss of income and cost of treatment is inadequate, especially for nursing personnel exposed to “special risks”, including exposure to infectious diseases.

<sup>835</sup> For instance, *Armenia*, *Kiribati* and *Latvia*.

<sup>836</sup> For instance, *Hungary*.

<sup>837</sup> *Spain* (Community of Madrid), [Convenio colectivo para el personal laboral](#) 2018–20.

<sup>838</sup> ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., pp. 67 and 68.

<sup>839</sup> ILO (1977): *Employment and Conditions of Work and Life of Nursing Personnel*, Report VI(1), op. cit., para. 249.

<sup>840</sup> *ibid.*, p. 81.

<sup>841</sup> For instance, *Australia* (Tasmania) and *Philippines*.

### (e) Special measures to protect pregnant women and parents of young children

484. The wide range of occupational hazards in the health sector calls for particular attention to protect the health of pregnant women and the reproductive health of men and women.<sup>842</sup> Paragraph 50 of the Recommendation No. 157 indicates that pregnant women and parents of young children whose normal assignment could be prejudicial to their health or that of their child should be transferred, without loss of entitlements, to work appropriate to their situation. Paragraph 24 of the Annex to the Recommendation suggests that nurses regularly exposed to ionizing radiations or anaesthetic substances and those regularly in contact with infectious diseases or mental illness should be covered by the measures envisaged in Paragraph 50 of the Recommendation.

485. The Committee emphasizes that, among other measures to protect the health of women nurses, special attention should be paid to their occupational safety and health during pregnancy and breastfeeding. The resolution concerning the application of certain international labour standards to nursing personnel recalls that women nursing personnel are covered by the international labour standards on maternity protection.<sup>843</sup> Paragraph 26 of the Annex to the Recommendation provides guidance on the type of work to which pregnant women or mothers of young children should not be assigned.

486. The Committee notes that special measures have been adopted in many countries to protect the health of women nursing personnel.<sup>844</sup>

#### Council Directive 92/85/EEC

In the European Union, the protection of pregnant workers from biological and chemical agents is addressed by Council Directive 92/85/EEC, which establishes guidelines for assessing risks related to chemical, physical and biological agents, certain industrial processes, certain movements and postures and physical and mental stress. Measures must be taken with regard to the safety and health of pregnant workers and workers who have recently given birth or are breastfeeding. Employers are required to take any necessary measures to avoid exposure to physical, chemical and biological agents (adjusting working conditions and/or working hours). If this is impossible, they should move the worker to another job, and if this transfer is not feasible, the worker shall be granted leave in accordance with national law. These workers may under no circumstances be required to perform duties for which the assessment has revealed a risk of exposure.<sup>845</sup>

842 ILO (2017). *Improving employment and working conditions in health services*, op. cit., para. 103.

843 ILO (1977). Resolution concerning the application of certain international labour standards to nursing personnel, op. cit.

844 For instance, *Hungary*.

845 [Council Directive 92/85/EEC of 19 October 1992](#) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

## 4. Consultation and collaboration with nursing personnel and the organizations representing them

**487.** Cooperation between employers and workers is an essential principle of OSH, and one without which no tangible progress can be achieved.<sup>846</sup> Effective workplace cooperation is a tool to help ensure safe and productive workplaces, in a manner that respects collective bargaining and its outcomes and does not undermine the role of trade unions.<sup>847</sup> Article 5 of Convention No. 149 provides that measures shall be taken to promote the consultation of nurses on decisions concerning them, in a manner appropriate to national conditions, while Paragraph 51 of Recommendation No. 157 adds that the collaboration of “nursing personnel and of organisations representing them should be sought in ensuring the effective application of provisions concerning the protection of the health and safety of nursing personnel”.<sup>848</sup>

**488.** The Committee recalls that, during the first discussion of Convention No. 155, it was pointed out that, not only should the State and its services establish and supervise the implementation of the fundamental objectives and basic principles in the field of OSH, but that employers and workers have an even greater responsibility in this field.<sup>849</sup> The Committee further recalls that during the preparatory work for the adoption of Convention No. 149, it was emphasized that nurses should have the opportunity to express their opinion and to play their part in improving conditions in the establishments where they work and spend much of their lives.<sup>850</sup>

**489.** The Committee notes that, in some countries, the legislation requires the establishment of works safety committees, while in others they are not compulsory, but are encouraged by national OSH bodies. These committees bring together representatives of management and workers to consider the OSH problems that may arise in the workplace and recommend the most appropriate measures to eliminate the risk of occupational accidents or diseases. Safety committees are set up in the nursing sector, as well as in the healthcare sector more generally.<sup>851</sup>

*Guatemala* – Government Decision No. 229 of 2014 of the Ministry of Labour and Social Security, which applies to all public and private sector employees, including nursing personnel, provides in section 10 that “all workplaces shall have either an OSH committee composed of an equal number of worker and employer representatives, safety inspectors or special committees.”<sup>852</sup>

846 ILO (2009). General Survey on OSH instruments, op. cit., para. 205.

847 ILO (2019). ILO Centenary Declaration for the Future of Work, op. cit., Part II(C).

848 This provision is in line with Art. 20 of Convention No. 155.

849 ILO (1981). *Safety and Health and the Working Environment*, Report VI(1), International Labour Conference, 67th Session, Geneva, para. 20. See also: ILO (2009). General Survey on OSH instruments, op. cit., para. 205.

850 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 64.

851 For instance, *Costa Rica, Guatemala and New Zealand*.

852 *Guatemala*, [Acuerdo Gubernativo núm. 229](#) de 2014 del Ministerio de Trabajo y Previsión Social.

In *New Zealand*, BusinessNZ reports that one of the key requirements of the Health and Safety at Work Act 2015 is for the employer to maintain an effective system for workers' participation and representation in health and safety. District Health Boards (DHBs) and health unions, including the nurses' organization Tōpūtanga Tapuhi Kai-tiaki o Aotearoa (NZNO), have negotiated Worker Participation Agreements for health and safety based on a National Framework developed through tripartite discussions. Specific workplace hazards identified by NZNO include: violence and aggression; toxic exposure; and poor environmental design (including lack of protection from hazards such as chemical leaks, earthquakes, flooding and other natural disasters).

## 5. Measures to supervise the application of laws and regulations protecting the health and safety of nursing personnel

490. Paragraph 52 of the Recommendation No. 157 calls for the adoption of appropriate measures for the supervision of the application of the laws and regulations and other provisions concerning the protection of the health and safety of nursing personnel.<sup>853</sup> Although the term "appropriate measures" is not defined in the Convention No. 149, during the preparatory work it was noted that the Labour Inspection Convention, 1947 (No. 81), and its accompanying Recommendation, also cover nurses, as they concern all establishments in which respect of legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.<sup>854</sup> ***The Committee considers that the provisions of Convention No. 81 and Recommendation No. 81 should be taken into account when adopting or implementing measures to supervise the application of the laws and regulations and other provisions respecting OSH for nursing personnel.***

491. The Committee emphasizes that the enforcement of laws and regulations is one of the essential building blocks of a national OSH policy.<sup>855</sup> In its General Survey of 2006 on labour inspection, the Committee recalled that the functions of labour inspection are to secure the enforcement of legal provisions relating to conditions of work and the protection of workers.<sup>856</sup> The Committee recalls that labour inspection services need to be provided with the necessary material and human resources to ensure that they can function effectively and to ensure, as a minimum, that the workplaces under their supervision are inspected thoroughly and with sufficient frequency.<sup>857</sup>

*Brazil* – Regulatory Standard No. 32, which addresses OSH in health services and covers all professionals in the field, including nursing personnel, establishes basic guidelines for the implementation of OSH measures to prevent or minimize the occupational risks to which they are exposed. The labour inspectorate regularly conducts inspections of health services to verify the working conditions of health professionals and compliance with the related requirements.

853 See also Convention No. 155, Art. 9(1).

854 ILO (1976). *Employment and Conditions of Work and Life of Nursing Personnel*, Report VII(1), op. cit., p. 57.

855 ILO (2009). General Survey on OSH instruments, op. cit., para. 96.

856 ILO (2006). *Labour Inspection*, Report III (Part 1B), International Labour Conference, 95th Session, Geneva, paras 44-49.

857 ILO (2009). General Survey on OSH instruments, op. cit., paras. 369 and 370.

## 6. Violence and harassment at work

492. The health and social work sector has one of the highest levels of violence or the threat of violence at work.<sup>858</sup> Health workers, particularly nurses, are at the front line of care delivery, and often deal with people under stress.<sup>859</sup> The ILO recognized the increased risk of violence against health workers in 1998.<sup>860</sup> Studies confirm that workplace violence in the health sector is a worldwide phenomenon.<sup>861</sup> For instance, in the European Union, work-related stress, violence and harassment are recognized as major challenges to OSH in the health sector.<sup>862</sup> In *Rwanda*, a 2007 study found that 39 per cent of health workers had experienced some form of workplace violence in the previous year.<sup>863</sup>

493. Although these risks are not new, they are a growing concern<sup>864</sup> and have been confirmed by recent systematic reviews and meta-analysis.<sup>865</sup> Factors driving increased violence against health workers include cost-containment reforms, growing work pressures and stress, social instability and the deterioration of personal relations.<sup>866</sup>

494. Moreover, violence against health workers has increased dramatically during the COVID-19 pandemic. In 2020, the ICN, together with other organizations, including the International Committee of the Red Cross (ICRC), the World Medical Association (WMA) and the International Hospital Federation (IHF), issued a joint declaration labelling violence against health workers “an international emergency” that undermines the very foundations of health systems and impacts critically on patients’ health.<sup>867</sup> The organizations indicate that health workers have long been subject to many shocking forms of violence. During the pandemic, many have experienced harassment, stigmatization and physical violence. Some healthcare professionals and the people they were caring for have even been killed.<sup>868</sup>

In *Argentina*, the General Confederation of Labour of the Argentine Republic (CGT-RA) indicates that, due to the nature of the tasks they perform, health workers are at increased risk of exposure to situations of aggression or harassment – especially by patients or clients – compared to other occupations. This risk is greater for women. The trade union maintains that in the context of the pandemic, women health workers are at risk of multiple forms of violence (such as bullying, harassment and/or psychological abuse), which occurs in the workplace and on the streets, but also in their homes, due to stigmatization and unsupportive reactions that arise from the local community’s fear that health workers will expose them to the virus.

858 ILO (2018). [Ending violence and harassment against women and men in the world of work](#), Report V(1), International Labour Conference, 107th Session, para. 262.

859 R. Blanco Escribano, J. Beneit, and J.L. García, (2019). “[Violence in the workplace: Some critical issues looking at the health sector](#)”, *Heliyon*, 5(3), p. 5.

860 D. Chappel and V. Di Martino (1998). [Violence at work](#), ILO, Geneva.

861 S. Hahn et al. (2010). “[Factors associated with patient and visitor violence experienced by nurses in general hospitals in Switzerland: A cross-sectional survey](#)”, *Journal of Clinical Nursing*, 19 (23-24), pp. 3535–3546.

862 EU-OSHA (2014). *Current and emerging issues in the healthcare sector*, op. cit., p. 9.

863 C. Newman et al. (2011). “[Workplace violence and gender discrimination in Rwanda’s health workforce: Increasing safety and gender equality](#)”, *Human Resources for Health*, 9 (19).

864 EU-OSHA (2014). *Current and emerging issues in the healthcare sector*, op. cit., p. 16.

865 For a brief presentation of the various studies, see: S. Vento, F. Cainelli and A. Vallone (2020). “[Violence against healthcare workers: A worldwide phenomenon with serious consequences](#)”, *Front Public Health*, Vol. 8, pp. 2 and 3.

866 ILO/ICN/WHO/PSI Joint Programme on Workplace Violence in the Health Sector (2002). [Framework guidelines for addressing workplace violence in the health sector](#), Geneva, ILO.

867 WMA (2020). [73rd World Health Assembly, Agenda item 3: Covid-19 pandemic response](#).

868 ICN and International Committee of the Red Cross (ICRC). [Declaration by the health care in danger community of concern about the current situation of violence against health care](#), May 2020.

495. Nurses are the backbone of health systems, and yet as a professional group they are over-represented among those affected by physical, non-physical or verbal attacks.<sup>869</sup> Nurses are at an extremely high risk of workplace violence, partly due to their direct contact with patients.<sup>870</sup> Violence in the health sector against nurses often includes intentional verbal and physical action (verbal abuse, physical assaults, harassment, bullying, intimidation, threats and discrimination) while they are at work. It often directly affects their personal safety, well-being, mental and physical health and sense of security.<sup>871</sup> Studies show that the prevalence of workplace violence against nurses in hospital settings varies between 10 and 50 per cent, in one case rising to 87 per cent.<sup>872</sup> Violence against nurses may be initiated by patients, the public, co-workers or managers. Several studies have shown that cases of violence against nurses mostly involve patients and their relatives.<sup>873</sup> The organizational climate as defined by role relationships can either reduce the likelihood of violence or, on the contrary, instigate violent behaviour.<sup>874</sup> ***The Committee considers that nurses should be considered a priority group for risk assessment and that measures should be taken to ensure that processes and strategies are in place to reduce risk and protect them from all forms of violence and harassment.***<sup>875</sup>

496. Moreover, the Committee notes that a large percentage of women in the global health workforce face sexual harassment.<sup>876</sup> It emphasizes that sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers. It constitutes a serious manifestation of sex discrimination and a violation of human rights.<sup>877</sup> ***Given the gravity and serious repercussions of sexual harassment, the Committee recalls its general observations of 2003 and 2019, in which it emphasized the importance of taking effective measures to prevent and prohibit sexual harassment in employment and occupation, which constitutes a serious form of discrimination.***<sup>878</sup>

### (a) Situations that increase the risk of violence in healthcare settings

497. There are certain situations in which nurses and other health workers are at special risk of violence, including working alone or in private homes, working in contact with the public, with objects of value (such as drugs, needles and cash), working with people in distress, and working under conditions of special vulnerability (occasional and precarious employment).<sup>879</sup> The most at-risk services are emergency departments, mental health units, drug and alcohol clinics, ambulance services and remote health posts with insufficient security and a single

869 Spain, Ministry of Health (2020). [Informe de agresiones a profesionales del Sistema Nacional de Salud 2017-2018](#).

870 J. Rodwell and D. Demir (2012). “[Oppression and exposure as differentiating predictors of types of workplace violence for nurses](#)”, *Journal of Clinical Nursing*, 21(15), pp. 2296–2305.

871 Blanco Escribano, Beneit, and García, (2019). “Violence in the workplace: Some critical issues”, op. cit., p. 4.

872 T. Cheun and P.S.F. Yip (2017). “[Workplace violence towards nurses in Hong Kong: Prevalence and correlates](#)”, *BMC Public Health*, Vol. 17:196, p. 1.

873 *ibid.*, p. 4.

874 Blanco Escribano, Beneit, and García, (2019). “Violence in the workplace: Some critical issues”, op. cit., p. 1.

875 See in this regard: the Violence and Harassment at Work Recommendation, 2019 (No. 206). See also: ICN. “[Position statement: Prevention and management of workplace violence](#)”, Geneva, adopted in 2000, revised and reviewed in 2017, p. 2.

876 WHO (2019). [Delivered by women, led by men: A gender and equity analysis of the global health and social workforce](#), Geneva, p. 24.

877 ILO (2012). *Giving globalization a human face*, op. cit., para. 789.

878 CEACR – General Observation, Convention No. 111, 2003; CEACR – General Observation, Convention, No. 111, 2019.

879 ILO/ICN/WHO/PSI (2002). *Framework guidelines for addressing workplace violence in the health sector*, op. cit., pp. 15 and 16.

health worker. Working in remote healthcare areas, understaffing, exercising authority, working outside normal working hours, insufficient security and lack of preventive measures have also been identified as underlying factors.<sup>880</sup> Furthermore, front-line nurses are more susceptible to violence at work than charge nurses, as they are directly involved in patient care rather than managerial or administrative tasks.<sup>881</sup> Moreover, novice and student nurses are at higher risk of workplace violence and bullying.<sup>882</sup>

**498.** In some countries, targeted measures have been taken to protect nurses working in specific work environments or under certain working conditions, such as nurses working in remote areas, emergency departments or mental health units.

*Australia – The Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) (No 2) Variation Regulations 2019, more commonly referred to as “Gayle’s Law”, provide better protection for health practitioners working in remote areas of South Australia. The law was adopted in response to the tragic death of Gayle Woodford, a nurse, who was murdered while working in a remote community. Under Gayle’s Law, health service providers must put in place arrangements to ensure the security of nursing personnel working alone.*<sup>883</sup>

## (b) Consequences of workplace violence against nurses

**499.** Violence and harassment can leave obvious physical, but also emotional scars, requiring rehabilitation and counselling.<sup>884</sup> Violence in the workplace is also associated with increased mental disorder symptoms.<sup>885</sup> The Committee notes that there are growing concerns at the high prevalence rates among nurses of burnout, depression,<sup>886</sup> post-traumatic stress disorder (PTSD) and other mental disorders.<sup>887</sup>

<sup>880</sup> Vento, Cainelli and Vallone (2020). “Violence against healthcare workers”, op. cit., p. 2.

<sup>881</sup> Cheun and Yip (2017). “Workplace violence towards nurses in Hong Kong”, op. cit., p. 7.

<sup>882</sup> ICN. “Position statement: Prevention and management of workplace violence”, op. cit., p. 2. See also: W.C. Budin, et al. (2013). “[Verbal abuse from nurse colleagues and work environment of early career registered nurses](#)”, *Journal of Nursing Scholarship*, 45(3), pp. 308–316; P.A. Berry, et al. (2012). “[Novice nurse productivity after workplace bullying](#)”, *Journal of Nursing Scholarship*, 44 (1), pp. 80–87; and Cheun and Yip (2017). “Workplace violence towards nurses in Hong Kong”, op. cit., p. 4.

<sup>883</sup> *Australia, Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) (No. 2) Variation Regulations 2019*, No 239.

<sup>884</sup> ILO (2018). *Ending violence and harassment against women and men in the world of work*, Report V(1), op. cit., para. 104.

<sup>885</sup> N. Khamisa et al. (2016). “[Work-related stress, burnout, job satisfaction and general health of nurses: A follow up study](#)”, *International Journal of Nursing Practice*, 22(6), 538–545.

<sup>886</sup> For instance, in a study of 850 nurses in Hong Kong, nearly 75 per cent of those affected by workplace violence reported moderate to severe mental health impacts; Cheun and Yip (2017). “Workplace violence towards nurses in Hong Kong”, op. cit., p. 7. See also G. D’Ettorre, V. Pellicani and A. Vullo (2019). “[Workplace violence against healthcare workers in Emergency Departments: A case-control study](#)”, *Acta Biomedica*, 90(4), pp. 621–624.

<sup>887</sup> A.M. Stelnicki, R.N. Carleton and C. Reichert (2020). [Mental disorder symptoms among nurses in Canada](#), CFNU, Ottawa, p. 18.



*Canada* – In a national study of violence in the healthcare sector carried out in 2017 by the Canadian Federation of Nurses Unions (CFNU), 61 per cent of nurses reported a serious problem with violence over a recent 12-month period and two-thirds had considered leaving their job as a result. The number of violence-related lost-time claims for healthcare workers had increased by almost 66 per cent over a nine-year period, three times the rate of increase for police and correctional service officers combined.<sup>888</sup> In addition to physical injury, a 2020 study carried out by the CFNU revealed that workplace violence has a serious impact on workers' mental health. Physical assault was the traumatic event reported, affecting 92.7 per cent of nurses, with nearly half of all nurses (46.4 per cent) reporting being physically assaulted 11 or more times.<sup>889</sup>

**500.** In a number of countries, financial compensation is provided to nurses who suffer PTSD as a result of workplace violence. In some countries, a rebuttable presumption of occupational injury has been established for nurses diagnosed with PTSD following a workplace incident.<sup>890</sup>

*Canada* – Measures concerning PTSD have been taken in several provinces. For instance, in British Columbia (BC), the 2018 Workers Compensation Amendment Act<sup>891</sup> adds a mental health disorder presumption for correctional officers, emergency medical assistants, firefighters, police officers and sheriffs. To minimize the risk to nursing and emergency service personnel, a regulation was adopted in 2019 extending a presumption for workers' compensation coverage to nurses who encounter a traumatic event at work and are diagnosed with PTSD or another mental disorder. A nurse who is diagnosed with a mental disorder is therefore presumed to have developed it due to a work-related traumatic event (such as a violent incident), without having to specifically prove that the event was the cause, thereby making it easier to receive compensation.

*Ireland* – The insurance-based schemes for nurses employed in mental health services, emergency departments and emergency department assessment areas cover personal injury for nurses who are assaulted in the course of their duties.<sup>892</sup>

**501.** Psychological support and counselling is often provided to nurses who have been victims of violence and harassment at the workplace.

In *Denmark*, the Danish Trade Union Confederation (FH) and the Danish Nurses Organization (DNO) indicate that public workplaces offer psychological assistance to employees who have been exposed to traumatic events, violence or threats.

888 CFNU (2017). *Enough is enough: Putting a stop to violence in the health care sector*, Ottawa.

889 Stelnicki, Carleton and Reichert (2020). *Mental disorder symptoms among nurses in Canada*, op. cit.

890 For instance, *Australia, Canada* (British Columbia, Newfoundland, Labrador and Nova Scotia) and *Ireland*.

891 *Canada* (British Columbia), *Workers' Compensation Act*, [RSBC 1996] 2019.

892 *Ireland*, Health Service Executive (HSE) *HR Circular 002/2017*, Extension of Insurance Based Scheme and Insurance based Mechanism, to Nurses employed in Emergency Departments and Related Areas.

502. Some of the consequences of violence against nursing personnel include deaths and life-threatening injuries; reduced work interest, job dissatisfaction, absenteeism, impaired work functioning; and a decline in ethical values. These negative consequences have a serious impact on the delivery of healthcare services, which could lead to nurses leaving the profession, and consequently a reduction in the health services available to the general population and an increase in health costs.<sup>893</sup>

### (c) Protection of nurses against violence and harassment

503. The Committee recalls that ILO Member States made a commitment to a world free from violence and harassment in the ILO Centenary Declaration.<sup>894</sup> Workplace violence and harassment are recognized as a health and safety hazard. No matter what the cause, it is a requirement for employers to provide a healthy and safe workplace that is free from violence in all its forms.

504. The Committee notes that the Violence and Harassment Convention, 2019 (No. 190), and its accompanying Recommendation No. 206, apply to all nurses, including students and volunteers, working in both the public and private sectors, irrespective of their contractual status.<sup>895</sup> Moreover, under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), sexual harassment is considered to be a form of sex-based discrimination.

505. The ILO has developed non-binding frameworks to address violence and harassment at work in the health sector. In 2002, the ILO cooperated with the WHO, ICN and PSI to develop the Framework guidelines for addressing workplace violence in the health sector. The guidelines apply to all employers and workers, in the public, private and voluntary sectors, and all aspects of work, both formal and informal. They cover the key areas of the prevention, management and mitigation of workplace violence, and provide a general definition of workplace violence, which includes both physical and psychological violence.

#### (i) How to address work-related violence against nurses: Developing and promoting an inclusive, integrated and gender-responsive approach

506. Work-related violence is not an isolated individual issue, but a structural and strategic problem rooted in social, economic, organizational and cultural factors. It has multifactorial causes that go beyond the perpetrator or victim. “An approach should consequently be developed and promoted which would attack the problem at its roots, involve all parties concerned and take into account the special cultural and gender dimension of the problem”.<sup>896</sup> Moreover, this approach should be integrated, participative, cultural and gender sensitive, non-discriminatory and systematic, and the measures adopted should be articulated in a set of steps including violence recognition, risk assessment, intervention, monitoring and evaluation.<sup>897</sup>

507. The ICN position statement on the prevention and management of workplace violence calls for “a genuinely systems-wide approach” that includes: prevention strategies; education and training of healthcare professionals and staff; the creation of open and respectful rights-based organizational cultures; “facts not faults” investigation; leadership that models behaviours and both supports and encourages reporting of incidents of violence and bullying; the design of integrated person-centred healthcare systems and environments that promote clear and open communication; cooperation and partnerships with other organizations across both health and non-health sectors, and adequate resources.<sup>898</sup>

<sup>893</sup> ILO/ICN/WHO/PSI (2002). *Framework guidelines for addressing workplace violence in the health sector*, op. cit., p. 1.

<sup>894</sup> ILO (2019). ILO Centenary Declaration for the Future of Work, op. cit., Preamble.

<sup>895</sup> See Art. 2(1) and (2) of Convention No. 190.

<sup>896</sup> ILO/ICN/WHO/PSI (2000). *Framework guidelines for addressing workplace violence in the health sector*, op. cit., p. 9.

<sup>897</sup> *ibid.*

<sup>898</sup> ICN. “Position statement: Prevention and management of workplace violence,” op. cit., p. 2.

508. The Committee notes that responses vary between countries and there is no consistent approach to addressing violence and harassment at work against nurses and other healthcare personnel. Most governments have implemented a combination of protection and prevention measures, law enforcement and effective remedies and sanctions, as well as guidance, training and awareness-raising measures.

## (ii) Protection and prevention measures

509. In some countries, OSH legislation includes protection against violence.<sup>899</sup>

*Norway* – Nurses are covered by the Working Environment Act, which establishes a set of requirements in section 4-3 regarding the psychosocial working environment, including that “employees shall not be subjected to harassment or other improper conduct”, and that “employees shall, as far as possible, be protected against violence, threats and undesirable strain as a result of contact with other persons”.<sup>900</sup>

510. In other countries, additional stakeholders are identified who have responsibilities beyond employers and organizations, including line managers, supervisors and “persons in control of a workplace”.<sup>901</sup> Some governments indicate that specific laws, regulations or policies have been adopted on violence in the workplace that cover nurses.

*Australia* – The Public Sector Work Health, Safety and Wellbeing Strategy 2019–2022, launched in March 2019 in the Australian Capital Territory, includes a programme addressing occupational violence.<sup>902</sup>

*Canada* – The regimes in place to reduce workplace harassment and violence in most provinces and territories are often embedded in OSH legislation. In New Brunswick, the OSH regulations were amended in 2019 to prevent workplace violence and harassment. The changes addressed the concerns of the New Brunswick Nurses Union, among others, which wanted violence and harassment to be identified as OSH hazards.

511. Specific regulations addressing workplace violence and harassment in the health sector have been enacted in a number of countries.<sup>903</sup> These require the employer to take preventive measures, including establishing a violence prevention committee<sup>904</sup> and authorizing the removal of unruly parties from premises.<sup>905</sup>

899 For instance, *Australia, Austria, Bulgaria, Canada, Denmark, Finland, Ireland, Mauritius, New Zealand Norway, Switzerland, Tunisia and United Kingdom*.

900 *Norway*, Working Environment Act, op. cit.

901 C. Wiskow (2003). *Guidelines on workplace violence in the health sector: Comparison of major known national guidelines and strategies: United Kingdom, Australia, Sweden, USA (OSHA and California)*, ILO/ICN/WHO/PSI, Geneva, p. 11.

902 *Australia*, *Public Sector Work Health, Safety and Wellbeing Strategy 2019–2022*, Australian Capital Territory (ACT), p. 7.

903 For instance, *Israel, India* (Tamil Nadu), *Turkey* and *United States* (New Jersey).

904 *United States*, New Jersey Violence Prevention in Health Care Facilities Act, N.J. Revised Statutes section 26:2H-5.20 (2013).

905 For instance, *United Kingdom*, *Criminal Justice and Immigration Act 2008*.

*India* – The Tamil Nadu Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, No. 48 of 2008, prohibits “violence against Medicare service persons and damage or loss to property of Medicare service institutions and for matters connected therewith and incidental thereto”. It covers registered nurses as well as student nurses.<sup>906</sup>

*Israel* – A law adopted in 2010 to prevent violence against healthcare workers, which provides that patients or their relatives who are perpetrators of violence against nurses, doctors or other healthcare workers will be sentenced to five years in prison, is intended to establish the principle of zero tolerance. Physical and verbal violence, as well as threats, are considered as crimes under the law.<sup>907</sup>

### (iii) Enforcement and remedies

512. In most countries nurses have the same access as other workers to workplace complaint and investigation procedures, dispute resolution mechanisms and courts or tribunals, protection against retaliation and legal, social, medical and administrative support.<sup>908</sup> They also generally have access to remedies, such as the right to compensation in the event of constructive dismissal (for instance, where the nurse was compelled to leave the employment due to a hostile environment), reinstatement, damages, legal fees and costs, as appropriate.

513. In some countries, workers in particular sectors or occupations (such as first responders in emergencies) are protected against assault or interference in their work by specific legislation that imposes sanctions for such acts.<sup>909</sup>

*Ireland* – Employees who are absent from work as a result of a serious physical assault by a patient/client incurred in the course of their duties are covered by the Serious Physical Assault Scheme (Long Term Absence Benefit Scheme Guidelines) (2012).

*Spain* – In Castilla la Mancha, Circular No. 1/2017 establishes measures to facilitate access to legal assistance for all health personnel in the autonomous region in legal proceedings following acts or omissions directly related to the exercise of their functions. The legal assistance includes prior advice in cases of alleged physical or verbal aggression.<sup>910</sup>

906 *India*, [Tamil Nadu Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage or Loss to Property\) Act, No. 48 of 2008](#).

907 B. Kaplan, et al. (2013). “[Violence against health care workers](#)”, *Medical Journal of Islamic World Academy of Sciences*, 21(1), pp. 4–10.

908 For instance, *Bulgaria*.

909 For instance, *Ireland* ([Long Term Absence Benefit Schemes Guidelines December 2012](#)), *Spain* and *United Kingdom* ([Assaults on Emergency Workers \(Offences\) Act, 2018](#)).

910 *Spain*, Castilla la Mancha, Circular 1/2017, [Asistencia jurídica a trabajadores del Sescam](#).

#### (iv) Guidance, training and awareness-raising

514. The Committee notes that national guidelines and strategies have been adopted in a number of countries to prevent and manage violence in the healthcare sector. In others, general guidelines on workplace violence apply to healthcare workers. ***The Committee emphasizes in this regard the importance of raising awareness of these guidelines.***

*Canada* – The Canadian Federation of Nurses Union (CFNU) refers its members to the “Guide to preventing violence and harassment in the workplace” launched in 2018 by the Canadian Union of Public Employees (CUPE).<sup>911</sup> The Guide focuses primarily on prevention, the risk factors and consequences of violence, employers’ legal obligations and how workers, unions, and health and safety committees can work together to prevent workplace violence.<sup>912</sup>

515. In some countries, OSH bodies offer workplace violence prevention training for nursing personnel.

*United States* – The Centers for Disease Control Prevention (CDC) has developed an e-learning platform which offers courses on workplace violence prevention for nurses to enable them to: identify institutional, environmental and policy risk factors for workplace violence; recognize behavioural warning signs of violence in individuals; employ communication and teamwork skills to prevent and manage violence; identify appropriate resources to support injured healthcare workers; and take steps to implement a comprehensive workplace violence prevention programme.<sup>913</sup>

516. Workers’ and employers’ organizations, as well as national nurses’ associations, have also launched awareness-raising campaigns in some countries.

*United States* – The Emergency Nurses Association and the American College of Emergency Physicians launched the “[No Silence on ED Violence Campaign](#)” in 2019 to raise awareness of the dangers faced in emergency departments (EDs).<sup>914</sup>

#### (v) Barriers to the development and implementation of effective violence prevention and management strategies

517. The Committee notes that studies on violence and harassment against nurses and other health workers have been carried out recently in several countries<sup>915</sup> with the aim of collecting statistical information on the number of reported incidents of occupational violence and harassment, identifying the factors that increase the risk of violence, as well as good practices, and formulating recommendations to tackle violence and harassment against health workers.

911 CFNU, [Workplace Violence Toolkit](#).

912 Canadian Union of Public Employees (CUPE) (2018). [Preventing violence and harassment in the workplace](#).

913 Centers for Disease Control Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH). [“Workplace Violence Prevention for Nurses”](#).

914 Emergency Nurses Association and American College of Emergency Physicians. [“No Silence on ED Violence Campaign”](#).

915 For instance, *Australia*, *Canada* (the House of Commons Standing Committee on Health conducted its first ever study into violence against healthcare workers in 2019) and *Spain*.

Violence against nurses is often under-reported, which has hampered the development and implementation of effective prevention and management strategies.<sup>916</sup> Barriers include the fact that violence and abuse are viewed as a part of the job and are often linked to patients' medical conditions (such as dementia), under-reporting due to stigmatisation and lack of monitoring systems.<sup>917</sup> There may also be concerns about retaliation if the nurse reports the incident.

*Australia* – The Occupational Violence Prevention in Queensland Health's Hospital and Health Services Taskforce Report, published in 2016,<sup>918</sup> contains recommendations to reduce occupational violence against health staff. The recommendations were accepted by the government of Queensland and their implementation is now being driven by the Queensland Occupational Violence Strategy Unit (QOVSU), which is composed of 20 representatives from across Queensland, including from the Queensland Nurses' and Midwives' Union.<sup>919</sup>

*Spain* – In 2020, the Ministry of Health published a report on attacks on professional staff of the National Health System (SNS) in 2017–18. The report was prepared in response to a request by the Senate in 2012 for the establishment of a working group to develop the basis for the compilation of data on attacks against SNS professional staff. The situation analysis is intended to provide an overview of attacks in the health sector, assess the results obtained and the measures to be adopted to prevent and respond to such attacks.<sup>920</sup>

## (vi) Violence in emergency and humanitarian settings

518. Healthcare workers are essential to the delivery of health services in conflict areas and in rebuilding health systems following conflict.<sup>921</sup> In 2016, in the face of relentless attacks on healthcare workers in conflict areas, the United Nations Security Council adopted resolution 2286, which calls on Member States to take action to prevent attacks on health services and ensure the accountability of the perpetrators. However, armed conflicts around the world continue to pose a threat to the security, health and lives of healthcare workers. Over 4,000 attacks were reported worldwide between 2016 and 2020, resulting in 700 deaths, 400 kidnappings and 1,500 injuries to healthcare workers, although, as the reporting of such incidents is limited in many countries, the actual numbers are likely to be much higher. Violence contributes to health workforce attrition in conflict areas.<sup>922</sup>

916 Cheun and Yip (2017). "Workplace violence towards nurses in Hong Kong", op. cit., p. 8.

917 ICN. "Position statement: Prevention and management of workplace violence", op. cit., p. 2. See also: EU-OSHA (2014). *Current and emerging issues in the healthcare sector*, op. cit., p. 86; and ILO (2018). *Ending violence and harassment against women and men in the world of work*, Report V(1), op. cit., para. 295.

918 Australia, Queensland Health (2016). *Occupational Violence Prevention in Queensland Health's Hospital and Health Services: Taskforce Report*, Brisbane.

919 Queensland Health, *Preventing Occupational Violence in Queensland's Public Hospitals*, initiative, 2018.

920 Spain, Ministerio de Sanidad (2020). *Informe de agresiones a profesionales del Sistema Nacional de Salud 2017-2018*, p. 1.

921 L. Bou-Karroum et al. (2020). "Health care workers in conflict and post-conflict settings: Systematic mapping of the evidence", PLoS ONE, 15(5).

922 Safeguarding Health in Conflict Coalition (SHCC) and Insecurity Insight (2021). *Ineffective past, uncertain future: The UN Security Council's resolution on the protection of health care: A five-year review of ongoing violence and inaction to stop it*, Geneva.

*Pakistan* – The Khyber Pakhtunkhwa Healthcare Service Providers and Facilities (Prevention of Violence and Damage to Property) Act, 2020,<sup>923</sup> seeks to: ensure the protection and security of healthcare workers and institutions; prevent violence against healthcare personnel, patients and their attendants; prevent damage or loss to property and equipment in healthcare facilities; and ensure the uninterrupted provision of health services.<sup>924</sup> The Act affords protection to health care workers inside health care facilities and in the field. It establishes prohibitions, such as prohibitions against the obstruction and disruption of healthcare services and the entry of unauthorized weapons inside health care facilities. The law was the result of the efforts of the International Committee of the Red Cross (ICRC) and the Health Department.<sup>925</sup>

## ► IX. Equality of opportunity and treatment

519. The Conference reaffirmed in 1977, and recalled in the Preamble to Convention No. 149, that nursing personnel are covered by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), as well as their accompanying Recommendations.<sup>926</sup>

520. Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all women and men are entitled, in all countries and in all societies.<sup>927</sup> Gender inequality and discrimination against nursing personnel affect the enjoyment of all their other labour rights and have practical consequences for the nursing workforce.<sup>928</sup> If gender bias within the health workforce is not addressed, it creates inefficiencies in health systems, negatively affecting the recruitment, deployment and retention of women workers, and contributing to distribution imbalances between the formal and informal health workforce, as well as between the public and private sectors.<sup>929</sup> Gender discrimination affects women nurses in four key areas: occupational segregation, lack of access to decent work, the gender pay gap and absence of leadership opportunities (see also Chapter 3).

923 ICRC. [Pakistan: New law to prevent violence against health-care workers, facilities and patients in Khyber Pakhtunkhwa](#), 17 March 2021.

924 *Pakistan, Khyber Pakhtunkhwa Healthcare Service Providers and Facilities (Prevention of Violence and Damage to Property) Act, 2020*.

925 ICRC. (2021). [Pakistan: New law to prevent violence against health-care workers, facilities and patients in Khyber Pakhtunkhwa](#), op. cit.

926 ILO (1977). Resolution concerning the application of certain international labour standards to nursing personnel, op. cit.

927 ILO (2012). *Giving globalization a human face*, op. cit., para. 649.

928 V. Magar et al. (2017). "Women's contributions to sustainable development through work in health: Using a gender lens to advance a transformative 2030 agenda", in J. Buchan, I.S. Dhillon and J. Campbell (eds): [Health employment and economic growth: An evidence base](#), Geneva, WHO.

929 C. Newman (2014). "[Time to address gender discrimination and inequalities in the health workforce](#)", *Human Resources for Health*, Vol. 12.



## 1. The undervaluation of nursing

521. The predominance of women nurses is a result of labour market segregation, which leads to women and men tending to be grouped in different occupations or economic sectors due to gendered perceptions of their strengths and weaknesses.

522. The Committee notes that, despite the important contribution of women to the health workforce, especially nursing personnel, women's employment in healthcare-related work tends not to be appropriately measured and valued.<sup>930</sup> Although there have been important advances in recent decades, the contribution of nurses remains largely undervalued in many countries, which prevents them from contributing to their full potential.<sup>931</sup> The Committee notes that occupational segregation is an established source of gender inequality which reinforces stereotypes associated with men's and women's gender roles, working styles and competencies.<sup>932</sup>

523. Different factors contribute to the undervaluation of nursing, including socio-cultural norms, beliefs and stereotypes surrounding the role of women and men.<sup>933</sup> Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs, such as nursing or midwifery, are held predominantly or exclusively by women.<sup>934</sup> Traditionally, women have been portrayed as the "caregivers", and society and labour markets continue to function largely on this assumption.<sup>935</sup> The undervaluation of women's unpaid care work results in the pervasive undervaluation of paid care work, including in the nursing sector (see Chapter 1). The Committee notes that, despite the increasing professionalization of nursing, stereotypes that have traditionally associated the ability to provide care with skills and inclinations that are "inherently" female persist<sup>936</sup> and that the gendered nature of care work is therefore the root cause of its economic undervaluation.<sup>937</sup> The Committee further notes that the self-perceived low status of nurses in the health workforce has been documented in several countries.<sup>938</sup>

524. The Committee observes that, in the majority of countries, there is strong horizontal gender segregation in the nursing profession, as well as clear vertical occupational segregation of women nurses into lower-level positions, without training and promotion opportunities, and with limited opportunities to exercise authority.<sup>939</sup> The Committee observes that occupational segregation can lead to a loss of talent from the nursing workforce. It represents one of the major reasons for the distribution of workers across occupations, including nursing, and across the different categories of workers within occupations, as women tend to be concentrated in roles seen as caring and nurturing, while men are often concentrated in technical or managerial positions. ***The Committee therefore emphasizes that, in order to help address the projected shortage of nursing personnel, proactive measures are needed to eliminate the perception of nursing as "women's work" and address gender segregation in the profession.***

930 WHO (2016). *Working for health and growth: Investing in the health workforce*, Report of the High-Level Commission on Health Employment and Economic Growth (HEEG), Geneva, p. 25.

931 All-Party Parliamentary Group on Global Health (APPG) (2016). *Triple Impact: How developing nursing will improve health, promote gender equality and support economic growth*, London, p. 18.

932 See in this regard: ILO (2012). *Giving globalization a human face*, op. cit., paras. 673 and 678. See also: WHO (2019). *Delivered by women, led by men: A gender and equity analysis of the global health and social workforce*, Human Resources for Health Observer Series No. 24, Geneva, p. 22.

933 Nursing Now (2019). *Investing in the power of nurse leadership: What will it take?* p. 13.

934 ILO (2012). *Giving globalization a human face*, op. cit., para. 673.

935 ILO (2019). *A quantum leap for gender equality: For a better future of work for all*, Geneva, p. 13.

936 ILO (2018). *Care work and care jobs for the future of decent work*, Geneva, p. 179.

937 *ibid.*, p. 2.

938 For instance, *Argentina, Australia and United States*. See ILO (2018). *Care work and care jobs for the future of decent work*, op. cit., p. 179.

939 WHO (2019). *Delivered by women, led by men*, op. cit., p. 14.

525. Social stigma also attaches to men who enter female-dominated professions.<sup>940</sup> The Committee notes that men are entering female-dominated occupations, such as nursing, at a slower rate than women are entering male-dominated professions.<sup>941</sup> However, while women face gender-based discrimination and the “glass ceiling” in male-dominated occupations, men who enter female-dominated professions have advantages that may speed their promotion, sometimes referred to as the “glass escalator”. For example, in many countries, men are over-represented in senior leadership positions in nursing.<sup>942</sup> ***The Committee considers that the promotion of gender equality and non-discrimination in national nursing policies should address gender stereotypes, including in education and vocational training and guidance that may be preventing men from entering the profession.***

## 2. Gender pay gap

526. The Committee recalls that Member States should respect the principle of equal remuneration for men and women workers for work of equal value.<sup>943</sup> The application of Convention No. 100 involves the examination of equality at two levels: first, at the level of the job (is the work of equal value?), and then at the level of the remuneration received (is the remuneration equal?).<sup>944</sup> The Committee recalls that wage gaps are associated with occupational gender segregation<sup>945</sup> and that occupations and sectors traditionally dominated by women pay less in part because the workforce is predominately female. In addition, given that the tasks of nursing personnel are evolving and their responsibilities are increasing (see Chapter 2), it may be useful to rely on objective job descriptions to prevent comparison with lower paid jobs in fixing remuneration.

527. The Committee notes some evidence of a gender-based pay gap, as well as other forms of gender-based discrimination, in the work environment of nurses.<sup>946</sup> The gender pay gap, estimated at an average of over 20 per cent globally, is even wider in the health and social work sectors, reaching an average of 26 per cent in high-income countries and 29 per cent in upper-middle-income countries.<sup>947</sup> Among nurses and midwives, the pay gap in hourly wages is 12 per cent.<sup>948</sup> Factors that contribute to the gender pay gap include: individual factors (such as differences in education, training and skills, differences in work experience, differences in the number of hours worked, including part-time versus full-time work) and institutional factors (occupational segregation, discrimination, workplace authority, hiring and promotion, collective bargaining and union membership).<sup>949</sup> However, the Committee notes that the gender pay gap exists even after controlling for differences in education, skills and training because of discrimination. Indeed, the gap widens for women at higher levels of education<sup>950</sup> and seniority.<sup>951</sup>

940 *ibid.*, p. 22.

941 For instance, *United States*, where, despite the steady increase in the share of men in nursing over the past 50 years, men still represent fewer than 10 per cent of all registered nurses. See US Census Bureau (2013). “[Men in nursing occupations](#)”, *American Community Survey Highlight Report*.

942 For example, according to a recent study in the *United Kingdom*, while men represented only 11.3 per cent of the nursing workforce, they held 17 per cent of senior leadership positions. See Nursing Now (2019). *Investing in the power of nurse leadership*, *op. cit.*, p. 24.

943 Art. 2(1) of Convention No. 100. See the Preamble to Convention No. 149.

944 ILO (2012). *Giving globalization a human face*, *op. cit.*, para. 657.

945 *ibid.*, para. 712.

946 WHO (2020). *State of the world's nursing 2020*, *op. cit.*, Geneva, p. xvii.

947 ILO (2017). *Improving employment and working conditions in health services*, *op. cit.*, para. 71.

948 WHO (2019). *Delivered by women, led by men*, *op. cit.*, p. 4.

949 *ibid.*, p. 34.

950 See, for instance, N. Vecchio et al. (2013). “[Differences in wage rates for males and females in the health sector: A consideration of unpaid overtime to decompose the gender wage gap](#)”, *Human Resources for Health*, 11(9).

951 WHO (2019). *Delivered by women, led by men*, *op. cit.*, p. 34.

In *Japan*, the Japan Health Care Workers' Union (JHCW) reports that nurses and personal care jobs have been seen as women's jobs in Japan, and there is a perception in Japanese society that low wages should be acceptable to women. Thus, the wages for nurses and personal care workers are set lower than male dominated professions. Moreover, management positions are too few, so opportunities for higher wages are lacking.

In *Norway*, the Confederation of Unions for Professionals (UNIO) points out that the 20 per cent gender pay gap is one of the most persistent challenges to gender equality in the country, and nurses are among the professions most affected. According to the Equal Pay Commission, the main explanation for the gender pay gap is the gender-segregated labour market and the systematic devaluation of work performed predominately by women. The Equal Pay Commission has also found that the Norwegian system for wage formation and negotiations maintains this gender pay gap. The UNIO maintains that no measures are being taken to close this gap.

### 3. Addressing gender inequalities

**528.** Gender discrimination and inequality are key barriers to the entry, re-entry and retention of nursing personnel. The Committee notes that gender discrimination and gender inequality within organizations are linked to low morale, low self-esteem and lower productivity. They also affect mental and physical health, giving rise to health system inefficiencies that impair the supply of qualified and skilled healthcare workers, create recruitment challenges and lead to absenteeism, attrition and poor distribution of the health workforce.<sup>952</sup> In its conclusions, the ILO Tripartite Meeting on Improving Employment and Working Conditions in Health Services emphasized that the prevailing decent work deficits in the health sector often reflect overall gender inequalities and prejudice in societies.<sup>953</sup>

**529.** Women nursing personnel may experience many forms of gender discrimination in the workplace, including both direct and indirect discrimination,<sup>954</sup> sexual harassment, vertical and horizontal occupational segregation, wage gaps and discrimination in benefits and working conditions. However, the Committee notes that women nurses may be subject not only to sex-based discrimination, but also to intersectional discrimination based on more than one prohibited ground. Many women experience increased discrimination due to their race, national extraction, culture, religion or social origin. The Committee recalls that sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction, social origin or religion, as well as age, migrant status, disability or health. Addressing multiple or intersectional discrimination, including through legislation, remains a challenge.<sup>955</sup>

**530.** Studies have found that women often face discrimination related to maternity and family responsibilities in their health careers, which are then used as a rationale to bypass them for leadership positions. The Committee notes that the impact on career opportunities of the time constraints resulting from household and family commitments has been demonstrated

<sup>952</sup> *ibid.*, p. 25.

<sup>953</sup> ILO (2017). "Conclusions on improving employment and working conditions in health services", *op. cit.*, para. 2.

<sup>954</sup> For further information on what constitutes direct and indirect discrimination, see ILO (2012). *Giving globalization a human face*, *op. cit.*, paras 744-745.

<sup>955</sup> *ibid.*, para. 748.

by a study undertaken within the framework of the Nursing Now campaign.<sup>956</sup> ***The Committee considers that distinctions in employment and occupation based on pregnancy or maternity are discriminatory by definition, as they can only affect women. Measures to assist workers with family responsibilities should be available to men and women on an equal footing.***<sup>957</sup>

531. The Committee observes that policies for the provision of paid leave to allow caregivers to care for children, the elderly and other dependants, nursing breaks/spaces and childcare services help to retain women in the nursing workforce.<sup>958</sup>

## 4. Leadership

532. Despite representing 70 per cent of the global health workforce, women occupy only 25 per cent of leadership roles in the health sector.<sup>959</sup> Addressing the gender-related barriers to leadership that exist within and outside the nursing profession is critical to ensuring the sustainable delivery of essential health services and primary healthcare to all communities.<sup>960</sup> Nurse leadership skills in clinical nursing are associated with better staff retention and improved patient outcomes (reductions in mortality and adverse patient events).<sup>961</sup>

533. The Committee notes the study carried out within the framework of the Nursing Now campaign to identify key barriers to and facilitators of nursing leadership.<sup>962</sup> According to the study, nurses exercise limited decision-making authority irrespective of gender. However, biases were observed between women and men nurses once they entered leadership positions.<sup>963</sup> Barriers to women advancing within their profession and attaining leadership positions include traditional gender norms, bullying and sexual harassment, and lack of recognition and respect.<sup>964</sup> The Committee notes that interventions to address obstacles and assist women in gaining access to leadership positions in the nursing sector can include national equal opportunities and gender equality policies, systems for reporting and remedying gender discrimination or harassment, gender-specific leadership training and peer mentoring.<sup>965</sup>

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956 Nursing Now (2019). *Investing in the power of nurse leadership*, op. cit., p. 28.

957 ILO (2012). *Giving globalization a human face*, op. cit., para. 786.

958 For instance, *Australia, Canada (Alberta), Hungary and New Zealand*.

959 WHO (2019). *Delivered by women, led by men*, op. cit., p. 37.

960 Nursing Now (2019). *Investing in the power of nurse leadership*, op. cit., p. 18.

961 *ibid.*, p. 27.

962 The study was carried out between September 2018 and March 2019 with a total of 2,537 current or former nurses from 117 countries providing responses.

963 Nursing Now (2019). *Investing in the power of nurse leadership*, op. cit., p. 6.

964 WHO (2019). *Delivered by women, led by men*, op. cit., p. 40.

965 Nursing Now (2019). *Investing in the power of nurse leadership*, op. cit., p. 26.





## 7 Domestic workers: Definitions and scope of application



## ► I. Background

**534.** The ILO has recognized the need to improve the conditions of domestic workers since its earliest days.<sup>966</sup> In 1948, the International Labour Conference (Conference) adopted a resolution concerning the conditions of employment of domestic workers in which it requested the Governing Body to consider placing on the agenda of an early session of the Conference the question of the status and employment of domestic workers.<sup>967</sup> In 1965, in another resolution on the conditions of employment of domestic workers, the Conference noted the urgent need to provide them with the basic elements of protection to assure a minimum standard of living, and once again called for normative action.<sup>968</sup> In 1970, the ILO carried out the first worldwide survey on domestic workers, which concluded that domestic workers were “particularly devoid of legal and social protection”.<sup>969</sup>

**535.** In 2003, an ILO research paper confirmed that domestic work is mainly performed by women, the use of child labour in the domestic sector is widespread and migrant workers make up a significant proportion of the domestic workforce. The paper emphasized that child domestic workers and migrants are particularly vulnerable to abuse and exploitation.<sup>970</sup> The need to protect migrant domestic workers was again highlighted by the Conference in 2004 in its conclusions on migrant workers.<sup>971</sup> The principles enumerated in the non-binding Multilateral Framework on Migration adopted by the Governing Body in March 2006 make specific reference to the need to ensure equality of treatment and protection from harassment and abuse for migrant domestic workers.<sup>972</sup>

**536.** In 2008, the Governing Body decided to place a standard-setting item on decent work for domestic workers on the agenda of the Conference for a double discussion.<sup>973</sup> In so doing, it noted that, while instruments “dealing with the fundamental principles and rights at work do apply to all workers, including domestic workers, decent work deficits are obvious: too often, domestic workers are denied the right to form trade unions; in numerous countries domestic workers are trapped in situations of forced labour, and ... many migrant domestic workers work under precarious and difficult conditions and are particularly vulnerable to abuses of their fundamental rights”. It also noted the exclusion of domestic workers from the coverage of a number of ILO Conventions, including those on wages, maternity protection and occupational safety and health.<sup>974</sup> It recalled the long-standing commitment of the ILO,

<sup>966</sup> In 1936, the Conference, noting that the draft Convention on annual holidays with pay (later the Holidays with Pay Convention, 1936 (No. 52)) did not apply to domestic workers, requested the Governing Body to place the issue on the agenda of an early future session (ILO, Record of proceedings, International Labour Conference, 20th Session, 1936, Appendix XVI: Resolutions adopted by the Conference, p. 740). In 1945, in a resolution on the protection of children and young workers, the Conference noted that “[a]ttention should be given to regulating the admission of a child to domestic service outside of his own family in the same way as to other non-industrial occupations” (ILO, Record of proceedings, International Labour Conference, 27th Session, 1945, Appendix XIII: Resolutions adopted by the Conference, p. 456, para. 19(4)). See also: ILO (2008). [Date, place and agenda of the 99th Session \(2010\) of the International Labour Conference](#), Governing Body, 301st Session, 7 Feb. 2008, GB.301/2, paras 52–54.

<sup>967</sup> The International Labour Conference expressed the view that “the time has now arrived for a full discussion upon this important subject”. ILO. Record of proceedings, International Labour Conference, 31st Session, 1948, Appendix XVIII: Resolutions adopted by the Conference, pp. 545–546.

<sup>968</sup> The Conference invited the Governing Body to consider placing on the agenda of an early session of the Conference the question of conditions of employment of domestic workers with a view to the adoption of an international instrument. ILO. *Official Bulletin*, Vol. XLVIII, No. 3, Supplement I, Geneva, July 1965, pp. 20–21.

<sup>969</sup> ILO (1970). “[The employment and conditions of domestic workers in private households: An ILO survey](#)”, *International Labour Review*, Vol. 102, No. 4, pp. 391–401. See also A. Blackett (1998). “[Making domestic work visible: The case for specific regulation](#)”, ILO, Labour Law and Labour Relations Programme, Working paper No. 2.

<sup>970</sup> J.M. Ramirez-Machado, (2003). *Domestic work, conditions of work and employment: A legal perspective*, ILO, Conditions of Work and Employment Series No. 7, pp. 1, 44 and 69.

<sup>971</sup> ILO (2004). [Conclusions on a fair deal for migrant workers in a global economy](#), *Provisional Record No. 22*, International Labour Conference, 92nd Session, Geneva.

<sup>972</sup> ILO (2006). [ILO Multilateral framework on labour migration: Non-binding principles and guidelines for a rights-based approach to labour migration](#), Geneva.

<sup>973</sup> ILO. [Date, place and agenda of the 99th Session \(2010\) of the International Labour Conference](#), op. cit., para. 45.

<sup>974</sup> *ibid.*, para. 46.



including in the form of Conference resolutions, to address the situation of domestic workers,<sup>975</sup> and observed that many of the problems faced by domestic workers could be attributed to the “specificity and nature of their occupation and to inadequate attention on key aspects of their situation in international law and national legislation”, concluding that their situation warranted separate consideration and standards adapted to their circumstances.<sup>976</sup>

## ► II. Rationale for the domestic workers instruments

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537. Domestic work is the main occupation of millions of women and men throughout the world. According to the most recent ILO estimates, in 2019, at least 75.6 million men and women aged 15 or over were employed as domestic workers worldwide.<sup>977</sup> The demand for domestic work has continued to increase in recent decades for reasons including: the ageing of populations in many countries, the growing participation of women in the labour force, changes in the organization of work and the intensification of work, substantial international migration of women in search of work, and inadequate policies to enable workers to reconcile paid work with family responsibilities.<sup>978</sup>

538. The share of domestic work in employment varies across regions. Domestic work represents the largest share of employment in the Arab States (14.8 per cent), followed by Latin America and the Caribbean (8.4 per cent), Africa (7.3 per cent) and Asia and the Pacific (4.6 per cent). In Europe and Central Asia, domestic work represents only 1 per cent of employees.<sup>979</sup>

539. Domestic work is an important source of employment for women in many countries, employing a total of 57 million women globally, who account for 76.3 per cent of all domestic workers. Women outnumber men in domestic work in virtually all countries and all regions, except the Arab States, where men predominate. The domestic sector is thus an important source of employment for women, representing some 4.5 per cent of total female employment worldwide.<sup>980</sup>

540. Recent decades have seen a substantial increase in the number of migrant domestic workers, of whom women make up the overwhelming majority.<sup>981</sup> In this respect, the Committee notes that these workers are at particular risk of certain forms of exploitation and abuse (see Chapter 8). Isolation and dependence are at the heart of their vulnerability, due to their lack of familiarity with the destination country, its language, labour laws and the lack of support systems, as well as their dependence on the job and the employer, which may include migration-related debt and the need to send remittances to family members back home. Women migrant domestic workers face additional risks related to their gender,

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975 *ibid.*, para. 51.

976 *ibid.*, para. 48.

977 ILO (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Geneva, p. xviii.

978 ILO (2010). *Provisional Record No. 12, Report of the Committee on Domestic Workers*, International Labour Conference, 99th Session, Geneva, para. 10.

979 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. xviii

980 *ibid.*

981 United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, *General comment No. 1 on migrant domestic workers*, CMW/C/GC/1, 23 Feb. 2011, para. 1.

including violence and harassment.<sup>982</sup> These risks are compounded for migrant domestic workers who are undocumented or in an irregular situation, who are at particular risk of exploitation, ill-treatment and isolation, and their irregular situation often deters them from seeking help to escape abusive situations (see Chapter 11).<sup>983</sup> Another phenomenon observed in certain countries, particularly in South America and among the industrialized countries, is the continued growth in the proportion of domestic workers who work for more than one employer, or who work for just one employer but do not live in the household.<sup>984</sup> Moreover, service providers are playing a growing role. According to the most recent ILO estimates, the number of digital labour platforms in the domestic work sector rose from 28 in 2010 to 224 in 2020.<sup>985</sup>

**541.** Domestic work is generally undervalued and poorly regulated, resulting in millions of domestic workers being overworked, underpaid and unprotected.<sup>986</sup> Historically, domestic work has been characterized by a relationship of submission and isolation, linked to the master-servant relationship and other forms of servitude. The tasks performed are generally carried out in the employer's home or premises for the benefit of the household and are considered to be personal services of no productive or commercial value.<sup>987</sup> Domestic work was traditionally considered by law to fall within the sphere of the family and was therefore often governed exclusively by civil law. The situating of domestic work in the home led to its exclusion from the scope of labour law.<sup>988</sup> Even today, domestic work often perpetuates hierarchies based on race, ethnicity, indigenous status, caste and nationality.<sup>989</sup>

**542.** As a result of its social and economic invisibility<sup>990</sup>, domestic work is often considered to be an occupation of low social status, requiring no particular skills or training to perform tasks traditionally carried out by women on an unpaid basis, which has led to consistently poor remuneration. Domestic workers may cook, clean, take care of children, the elderly or persons with disabilities, in tasks that may not be specified at the outset and may vary widely over time. Moreover, domestic work tends to be perceived as something other than regular employment, and accordingly as an activity that does not fit within the general framework of existing labour laws. Much national labour legislation therefore fails to address the domestic employment relationship, making domestic workers particularly vulnerable to unequal, unfair and often abusive treatment.<sup>991</sup>

**543.** Paid domestic work remains virtually invisible as a form of employment in many countries, as it is frequently carried out in private households. Domestic workers typically do not work alongside other co-workers, but in isolation behind closed doors. Those who live with their employers, especially if they are in an irregular situation or in cases where identity or travel documents have been confiscated, are at particular risk of isolation and abuse.<sup>992</sup>

982 *ibid.*, para. 7.

983 *ibid.*; see also Office of the United Nations High Commissioner for Human Rights (OHCHR) (2015). [\*Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation\*](#), New York and Geneva, p. 29.

984 ILO (2010). *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, p. 7, para. 21.

985 ILO (2021). *Making decent work a reality for domestic workers*, *op. cit.*, p. xviii.

986 ILO (2012). *Provisional Record* No. 12, *op. cit.*, para. 10.

987 ILO (2010). *Decent work for domestic workers*, *op. cit.*, para. 38.

988 Ramirez-Machado (2003). *Domestic work, conditions of work and employment*, *op. cit.*, pp. 3 and 7.

989 ILO (2010). *Decent work for domestic workers*, *op. cit.*, para. 18.

990 Domestic work has been generally excluded from economic measurement using the argument that domestic work has little or no effect on most micro and all macro economic activity. See in this regard: Waring, M. (1997). [\*"The Invisibility of Women's Work"\*](#). *Canadian Woman Studies*, 17(2).

991 *ibid.*, para. 4.

992 OHCHR (2015). *Behind closed doors*, *op. cit.*, p. 18.

The enforcement of labour laws in the domestic work sector poses significant challenges in many countries where the exercise of workplace rights and the need for labour inspection comes into conflict with the principle of the privacy of the household.<sup>993</sup>

**544.** The preparatory discussions on the instruments recognized the urgency of addressing the many inequalities faced by domestic workers with a view to achieving decent work for all workers and gender equality at work.<sup>994</sup> It was emphasized that domestic workers are workers, whether they work in a family, are placed in a private household by an agency or are employed in public or private institutions. Domestic work requires specific laws and regulations which acknowledge the personal character of the work and the context in which it is undertaken, while reaffirming its compatibility with the employment relationship. It was therefore emphasized that domestic work “must be treated both as work like any other, and as work like no other”.<sup>995</sup>

**545.** The adoption by the Conference of the domestic work instruments sent a clear message that “domestic workers, like other workers, have the right to decent working and living conditions”.<sup>996</sup> To ensure that domestic workers enjoy the same rights as those of other workers, the instruments recall that fundamental principles and rights at work apply to all workers, including domestic workers, and emphasize the importance of equality of treatment between domestic workers and other workers with respect to their working and living conditions and access to social security, including maternity protection. The instruments also identify and address the particular conditions in which domestic work is carried out, which make it desirable to supplement general standards with standards specific to domestic workers to enable them to enjoy their rights fully.<sup>997</sup>

### ► III. Scope of application of the instruments

#### 1. Definition of domestic work and domestic workers

**546.** The Domestic Workers Convention, 2011 (No. 189), defines the terms “domestic work” and “domestic worker”. It does not, however, provide a definition of the term “employer”. The wide range of different practices at the national level made it challenging to reach consensus on these definitions. Accordingly, during the first discussion on the instruments, a tripartite working party was set up to develop concise definitions that encompass the broad variety of practices in relation to domestic work. The definitions were the outcome of intense tripartite discussion and negotiation in the working party,<sup>998</sup> and were ultimately adopted with broad support.

**547.** The term “domestic work” does not include “home-based work” or “home work”, which is covered by the Home Work Convention, 1996 (No. 177).<sup>999</sup>

<sup>993</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 248.

<sup>994</sup> *ibid.*, para. 324.

<sup>995</sup> *ibid.*, para. 47.

<sup>996</sup> ILO (2011). *Decent work for domestic workers: Convention 189 & Recommendation 201 at a glance*, Geneva, p. 6. See also A. Blackett (2012). “[The Decent Work for Domestic Workers Convention and Recommendation, 2011](#),” *American Journal of International Law*, vol. 106 (4), October 2012, pp. 778-794.

<sup>997</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., paras 330 and 331.

<sup>998</sup> ILO (2010). *Provisional Record No. 12*, op. cit., paras 159–170.

<sup>999</sup> Article 1 (a) of Convention No. 177 defines “home work” as “work carried out by a person, to be referred to as a homemaker, (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer; (ii) for remuneration; (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions.” For further information on “home work”, see: ILO (2021). “2020 General Survey on employment and decent work”, op. cit., pp. 195-236.

548. The Committee notes that the legislation in many countries does not include a definition of domestic work or domestic worker.<sup>1000</sup> In such cases, domestic workers are encompassed by the general definition of “worker” or “employee” set out in the legislation. Nonetheless, the Committee notes that in some cases there are no precise definitions of such terms either, which creates legal uncertainty.

The Confederation of Independent Trade Unions in Bulgaria (CITUB) indicates that Bulgarian labour legislation does not provide a definition of “domestic worker”, or of the terms “worker” and “employee”. As a result, domestic workers in private homes, who are usually women, often work without being covered by the existing regulations on working time, and without having an entitlement to weekends and holidays. The CITUB emphasizes the need to introduce definitions of “domestic worker” and “domestic work” in the national legislation to clarify the rights and obligations of this category of workers.

549. In other countries, although there are no legal definitions of “domestic worker” or “domestic work”, de facto definitions exist in practice.<sup>1001</sup>

*Japan* – The Government reports that, although the term “domestic worker” is not defined in the national legislation, it is generally understood that a domestic worker is: (i) a person who is employed by a person contracting domestic work in a private household as a business, and those who engage in domestic work under their direction; or (ii) a person who is engaged in general domestic work under the direction of a family in a private household, where this is their main work.

550. The Committee has noted that, due to the particular characteristics of domestic work, specific attention should be given to establishing a definition of “domestic work” and “domestic worker” in national legislation. It has therefore invited certain governments to consider incorporating in national legislation or collective agreements definitions of “domestic work” and “domestic worker” that take into account their specific characteristics.<sup>1002</sup>

CEACR – In its comments concerning *Ireland*, the Committee has noted the Government’s indication that Irish employment law does not treat domestic workers as a separate category and that the employment rights legislation applies to all workers working under a contract of employment, including legally employed domestic workers, who are defined in the Code of Practice for Protecting Persons Employed in Other People’s Homes.<sup>1003</sup>

1000 For instance, *Algeria, Armenia, Australia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Georgia, Iraq, Kiribati, Latvia, Lithuania, New Zealand, Niger, Norway, Poland, Saint Kitts and Nevis and Tonga*.

1001 For instance, *Bosnia and Herzegovina, Japan, Luxembourg, Malta, Moldova and Trinidad and Tobago*.

1002 CEACR – *Germany*, C.189, direct request, 2020.

1003 CEACR – *Ireland*, C.189, direct request, 2019.

551. In most countries where there are legal definitions of the terms “domestic work” and “domestic worker”, they are contained in specific legislation on domestic work.<sup>1004</sup> In some countries, the definitions are in the Labour Code,<sup>1005</sup> while in others they are defined in collective agreements covering the domestic work sector.<sup>1006</sup>

552. In a few countries, the terms “domestic work” and “domestic worker” are defined in model contracts established for use in the sector.

CEACR – In its comments concerning *Switzerland*, the Committee has noted the Government’s indication that section 2(1) of the Ordinance of 20 October 2010 on the model employment contract for workers in the domestic work sector specifies that domestic work “consists of employment relations between, on the one hand, workers who carry out domestic activities in a private household and, on the other, their employers”.<sup>1007</sup>

553. In other countries, the definitions are included in wage regulations.<sup>1008</sup>

*Suriname* – The Minimum Wage Act (No. 112 of 2014) refers to the definitions set out in Convention No. 189.

*Trinidad and Tobago* – The Industrial Relations Act does not define “domestic worker” or “domestic work”. However, the Minimum Wages (Household Assistants) Order includes a definition of “household assistant” and of “household duties”. Clause 2 of the Order defines “household assistant” as “a full-time or part-time household assistant employed in the carrying out of any or all household duties”. Household duties are defined as “all those duties that are inherent in the normal functioning of a household, such as cooking, cleaning, washing or ironing”.<sup>1009</sup>

554. The Committee observes that legal definitions and provisions delineating the scope of the legislation applicable to domestic workers, or parts thereof, may be more or less detailed depending on the specific regulatory context. In defining domestic work, domestic workers or the domestic work employment relationship, provisions may rely on various elements, including: the place of work (the household), the beneficiaries of the services provided (household members), the type of work performed (described either generically or through an illustrative list of tasks or occupations); the non-profit-making nature of domestic work (that is, it does not generate direct profits for the household); elements clarifying the existence of and parties to the employment relationship; the types of employer (private individuals or organizations); and clauses excluding specified forms of domestic work that are covered by different laws and regulations.<sup>1010</sup>

1004 For instance, *Bangladesh* (section 2(a) of The Domestic Servants Registration Ordinance, 1961), *South Africa* (SD No. 7 and Clause 1, Ch. 1 of the Basic Conditions of Employment Act, 1997), and *Sudan* (The Domestic Servants Act of 1955).

1005 For instance, *Bahrain*, *Belarus*, *Dominican Republic*, *Ecuador*, *Ghana*, *Guatemala*, *Honduras*, *Lao People’s Democratic Republic*, *Mali*, *Panama*, *Solomon Islands*, *Thailand*, *Turkmenistan* and *Bolivarian Republic of Venezuela*.

1006 For instance, *Italy*.

1007 CEACR – *Switzerland*, C.189, direct request, 2017. [Ordonnance sur le contrat-type de travail pour les travailleurs de l’économie domestique \(CTT économie domestique\)](#), 20 Oct. 2010.

1008 For instance, *Suriname* ([Minimum Wage Act \(Act No. 112 of 2014\)](#)), *Trinidad and Tobago* and *Zambia*.

1009 *Trinidad and Tobago*, [Minimum Wages \(Household Assistants\) Order](#) (LN 160/1991).

1010 ILO (2012). [Effective protection for domestic workers: A guide to designing labour laws](#), Conditions of Work and Employment Programme, Geneva, pp. 11 and 12.

**555. The Committee emphasizes that, to ensure effective protection of the rights of domestic workers, the relevant legislation should ensure clarity with respect to legal terminology, the definition of terms and the scope of the specific laws and regulations governing domestic work.<sup>1011</sup> It also notes that ILO Members, in consultation with their representative employers' and workers' organizations, are free to determine the terminology most suited to their local context. The objective should be to ensure that all workers who perform domestic work on an occupational basis benefit effectively from the protections afforded by the instruments, unless the decision is taken under Article 2 of the Convention, after consultation with the social partners, to exclude certain categories who are otherwise provided with equivalent protection.<sup>1012</sup>**

#### The use of the term "domestic worker"

The language surrounding domestic work has varied greatly over time and in light of the geographical and cultural context.<sup>1013</sup> For instance, terms such as "maid"<sup>1014</sup> and "servant"<sup>1015</sup> are still used in some countries, perpetuating the perception of domestic work as "women's work", as well as the element of subservience.

During the preparatory discussions, a number of delegates suggested using terms other than "domestic work",<sup>1016</sup> as the adjective "domestic" could be perceived by workers as pejorative and offensive. Alternatives proposed included "private household worker", "household worker", "paid household worker" and "worker in domestic service".<sup>1017</sup> It was ultimately decided that the instruments should adhere to the Governing Body decision to refer to "decent work for domestic workers", in keeping with usage in the comments of the ILO supervisory bodies and other ILO reports.<sup>1018</sup>

The shift to the term "worker" is particularly significant for the ILO, in view of its mandate to improve the living and working conditions of all workers.

1011 *ibid.*, p. 11.

1012 ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., p. 15.

1013 *ibid.*

1014 For instance, in *Malta*, the [Domestic Service Wages Council Wage Regulation Order](#) covers "maids", among other categories of domestic workers.

1015 For instance, *Bahrain* (Order No. 4 of 2014 of the Chairman of the Board of Directors of the Labour Market Regulatory Authority (LMRA) and the Labour Law for the Private Sector, 1976), *Malaysia* (section 2 of the Employment Act 1955 (Act 265)), *Solomon Islands* (section 2 of Labour Law 1996) and *Sudan* (Domestic Servants Act of 1955).

1016 Some suggestions were made to replace the term "domestic work" by "private household work", "paid household work" or simply "household work". Other suggestions included using the wording "in and for the needs of a household", "in or for a household" or "mainly in and for the household", instead of "in and for a household". See ILO (2010). [Decent work for domestic workers, Report IV\(2\)](#), International Labour Conference, 99th Session, Geneva, p. 385.

1017 *ibid.*, p. 386.

1018 ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., p. 15. See also ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 387.

## (a) Domestic work

556. The Convention defines “domestic work” as “work performed in or for a household or households” (Article 1(a)), and therefore identifies domestic workers with reference to their place of work in or for a private household, rather than the type of work they perform.<sup>1019</sup>

### (i) Place of work: In or for a household or several households

557. The instruments consider domestic work to be work performed either *in* or *for* a household. However, the Convention adds that work may take place both in or for one or more households, a formulation that ensures a broad scope of application in two ways: first, by taking into account that the services of domestic workers may be provided outside the household on a full-time or occasional basis (taking children to school, chauffeuring, gardening or guarding the premises); and, second, by extending coverage to those providing domestic services to households through intermediaries, which may include digital platforms. The reference to “a household or households” takes into account the situation of the many domestic workers who work for multiple employers, or who are employed by temporary work agencies and outsourced to perform domestic work in numerous households.<sup>1020</sup>

558. The Committee observes that the definitions of domestic work adopted in a number of countries extend beyond the private household to cover related activities.

*Pakistan* – Section 2(g) of the Punjab Domestic Workers’ Act of 2019 defines domestic work as “any work which takes place within or for the household and includes childcare, old age care, sick care or natal/post-natal care and the matters ancillary thereto”.<sup>1021</sup>

*Malta* – The Domestic Service Wages Council Wage Regulation Order applies to employees in private households engaged in domestic duties “such as servants, maids, housekeepers, cooks, butlers, valets, handymen, cleaners, charwomen, washerwomen, babysitters, nursemaids, and other persons employed in related work, including chauffeurs, gardeners and similar occupations connected with the household”. The explanatory note to the Order indicates that the term “private households” includes charitable institutions, monasteries and convents, but does not include any hospital, clinic, nursing home, institute of medico-surgical treatment, maternity home or hydropathic establishment, home for aged persons or schools run by any such households”.<sup>1022</sup>

559. The Committee observes that, in order to distinguish domestic work from home work and home-based work, the definition of domestic work in many countries excludes assistance with “commercial” or “professional” activities that may be performed within the home.<sup>1023</sup> This type of exclusion is normally intended to capture the non-lucrative nature of domestic work.<sup>1024</sup>

<sup>1019</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 149.

<sup>1020</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 11.

<sup>1021</sup> *Pakistan*, [Punjab Domestic Workers’ Act 2019](#) (Act II of 2019).

<sup>1022</sup> *Malta*, Domestic Service Wages Council Wage Regulation Order, op. cit., Explanatory note.

<sup>1023</sup> See also *Costa Rica* (section 101 of the Labour Code); *Dominican Republic* (section 258 of the Labour Code); and *Malaysia* (section 2(1) of the Employment Act 1955 (Act No. 265)).

<sup>1024</sup> For further information on home work, see: ILO (2020). [Promoting employment and decent work in a changing landscape](#), Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part B), International Labour Conference, 109th Session, Geneva (hereinafter “2020 General Survey on employment and decent work”), Ch. 4.



CEACR – In its comments concerning the *Plurinational State of Bolivia*, the Committee noted that section 1(3) of Act No. 2450 of 9 April 2003 regulating waged domestic work provides that “work performed in service or commercial premises, even if it is carried out in private houses, shall not be considered waged domestic work”. The Committee noted the Government’s indication that this provision is intended to prevent commercial activities (such as kitchen work in establishments that sell food and where the employer also resides) from being disguised as waged domestic work.<sup>1025</sup>

*Tunisia* – Act No. 65-25 of 1 July 1965 respecting the situation of household employees provides that a household employee “shall be deemed to be any employee engaged in service in the home, irrespective of the means and period of retribution, and habitually engaged in household work for one or more employers and who does not undertake such work for lucrative purposes”.<sup>1026</sup>

560. In a very few countries, assistance with minor commercial activities is included in the definition of domestic work.

*Ghana* – Regulation 22 (c) of the Labour (Domestic Workers) Regulations, 2020 (L.I 2408) includes in its definition of domestic work assistance in petty commercial activity.<sup>1027</sup>

## (ii) Type of work performed

561. The Convention does not specify the tasks that may be deemed to constitute domestic work. During the preparatory discussions, the delegates noted that a wide variety of different tasks may constitute domestic work in different countries.<sup>1028</sup> With a view to ensuring the inclusiveness and continuing relevance of the definition, Article 1(a) of the Convention does not therefore make reference to particular kinds of work.<sup>1029</sup>

562. The tasks of domestic workers may vary between countries and over time. The Committee notes in this regard that domestic work usually involves tasks such as cooking, cleaning, washing and ironing, general housework, looking after family members, including children, the elderly or persons with disabilities, maintaining the garden, guarding the employer’s house and premises, and driving the family car for the household, for example, chauffeuring members of the family, shopping for groceries or running family-related errands.<sup>1030</sup> However, in some countries, additional services are explicitly included in the term “domestic work”. For

<sup>1025</sup> CEACR – *Plurinational State of Bolivia*, C.189, direct request, 2019.

<sup>1026</sup> *Tunisia*, [Loi n. 65-25 du 1<sup>er</sup> juillet 1965 relative à la situation des employés de maison](#).

<sup>1027</sup> *Ghana*, [Labour \(Domestic Workers\) Regulations, 2020 \(L.I. 2408\)](#).

<sup>1028</sup> During the preparatory work, in their responses to the Office questionnaire, a vast majority of governments and employers’ organizations, and all but one workers’ organization, agreed that the term “domestic work” should mean work performed in and for a household, and include housekeeping, childcare and other personal care. In many instances, it was suggested that the definition should include activities of gardeners, personal drivers, guards and other household-related activities, such as car washing and shopping. Some governments suggested that different types of domestic work should be specified in a non-exhaustive list. However, others warned against an excessive level of detail. ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 385.

<sup>1029</sup> *ibid.*, p. 387.

<sup>1030</sup> CEACR – *Italy*, C.189, direct request, 2016.

instance, private tutors, private nurses and private secretaries are often considered to be domestic workers.<sup>1031</sup> During the preparatory discussions, it was noted that new or different types of domestic work might emerge with the improvement of living standards and social development. The definition of occupational categories and tasks is therefore far from airtight, and one of the characteristics of domestic work in many parts of the world is that the jobs performed in private households are difficult to delineate.<sup>1032</sup>

#### Domestic work according to the ISCO

Under ISCO-88 and ISCO-08, several occupations could qualify as domestic work, including both direct and indirect care services and other forms of domestic work. ISCO-08 recognizes domestic work under two broad classification groupings (5 and 9) and identifies associated tasks and the corresponding skill levels.

Classification 5 covers work carried out in commercial establishments, institutions and private households and includes categories of workers providing indirect care – domestic housekeepers (5152) and cooks (5120) – and categories of workers providing direct care – home-based personal care workers (5322), childcare workers (5311) and companions and valets (5162). In addition, Classification 9 covers elementary occupations, which involve the performance of simple and routine tasks, which may require the use of hand-held tools and considerable physical effort. It includes categories of workers providing indirect care – domestic cleaners and helpers (9111).<sup>1033</sup>

**563.** A broad approach has been adopted in most countries to define the nature of domestic work. The Committee observes that some definitions include a non-exhaustive list of tasks that domestic workers may undertake, without breaking them down into separate occupational categories. The list may include tasks attributable to other occupations, provided that they are performed in or for a household, such as home repair or para-nursing activities.

*Colombia* – The Constitutional Court, in ruling C-871 of 2014, defined domestic work as including all activities that a person provides in a family home, including cleaning of the space and its furniture and possessions, the preparation of food, washing and ironing clothes, gardening and driving services, and the care of family members or animals living in family homes.<sup>1034</sup>

*Kazakhstan* – Domestic work includes housework, gardening, caring for sick or elderly people or young children, and constructing and repairing bathhouses, holiday homes and houses.

<sup>1031</sup> For instance, in *Italy*, private secretaries are considered to be domestic workers as long as their services are related to individual aspects of family life. In the *United Arab Emirates*, the Annex to Federal Law No. 10 of 2017 includes private teachers and private nurses among the categories of domestic workers.

<sup>1032</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 108.

<sup>1033</sup> ILO (2012). [Resolution concerning updating the International Standard Classification of Occupations](#).

<sup>1034</sup> *Colombia*, Constitutional Court, [ruling No. C-871/14](#).

564. In some countries, a distinction is drawn between different categories of domestic workers.

*Italy* – The 2020 National Collective Labour Agreement on the regulation of the domestic work relationship (CCNL), concluded between the Italian Federation of Domestic Work Employers (FIDALDO) and the National Association of Employers of Domestic Workers (DOMINA), provides in clause 1(1) that “the contract applies to family assistants (home helps, carers, babysitters and other professional profiles referred to in the CCNL), also of non-Italian nationality or stateless persons, who are paid, employed in the functioning of family life and family structured cohabitation, taking into account certain fundamental characteristics of the relationship”.<sup>1035</sup>

### (iii) Exclusion of occasional or sporadic work not performed on an occupational basis

565. The Convention specifies that a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker (Article 1(c)).<sup>1036</sup> The expression “and not on an occupational basis” is intended to ensure the inclusion in the definition of “domestic worker” of day labourers and similar precarious workers.<sup>1037</sup>

566. The Committee notes that work performed on a temporary or occasional basis is still excluded from the definition of domestic work in many countries, and that in some countries domestic work has to be undertaken “on a regular basis” and/or be “continuous”.

*Cameroon* – The Government reports that, under the terms of section 1(1) of Decree No. 68-DF-253 of 10 July 1968 determining the general conditions of employment of domestic and household employees, as amended, a “domestic worker is defined as any worker employed in the service of a home and continuously engaged in housework”.<sup>1038</sup>

*Jamaica* – The Government indicates that, in consultation with the Jamaica Employers’ Federation, the Jamaica Confederation of Trade Unions and the Jamaica Household Workers Union, domestic workers employed as day workers have been excluded from the application of the Convention on the basis that they would not be working on a continuous basis for an employer, nor would they be working a 40-hour work week. In some cases, these workers work for multiple employers during the course of a week. The difficulty lies in determining whether the work is undertaken on an occupational basis, as many of these workers are engaged in the large informal economy in the country.

<sup>1035</sup> *Italy*, [Contratto Collettivo Nazionale del Lavoro Domestico](#), 8 Sep. 2020.

<sup>1036</sup> During the first discussion on the instruments at the Conference, the representative of the Director-General explained that a similar issue had emerged in relation to the Home Work Convention, 1996 (No. 177), and had been addressed by including in the definition of home work, in Art. 1(b): “persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces”. ILO (2010). *Provisional Record* No. 12, op. cit., para. 142.

<sup>1037</sup> CEACR- *Chile*, C.189, direct request, 2018; CEACR- *Costa Rica*, C.189, direct request, 2017; CEACR- *Dominican Republic*, C.189, direct request, 2018; CEACR- *Paraguay*, C.189, direct request, 2019. See also: ILO (2011). *Decent work for domestic workers*, op. cit., p. 5.

<sup>1038</sup> *Cameroon*, [Décret no. 68/df-253 du 10 juillet 1968 fixant les conditions générales d’emploi des domestiques et employés de maison](#). See also : [Décret no. 76/162 du 22 avril 1976](#).

567. In some countries, a worker has to be employed by the same employer for a minimum number of hours or days a week to be considered a domestic worker.

*Benin* – Occasional workers engaged for a short duration not exceeding 20 hours a week are excluded from the scope of Order No. 026/MFPTRA/DC/SGM/DT/SRT of 14 April 1998, which determines the general conditions of employment of household employees and are covered by the clauses agreed by the parties.<sup>1039</sup>

*Norway* – The Housework Regulation does not apply when the duration of the employment relationship is less than one month, or when the weekly working time is less than eight hours.

In *Brazil*, the National Federation of Domestic Workers (FENATRAD) and the International Domestic Workers Federation (IDWF), reports that those domestic workers who provide services up to two days a week for one person or family are classified as “daily” workers. These workers are considered autonomous workers and are excluded from the protection afforded under Supplementary Law No. 150 2015 of 1 June (LC 150/2015), which regulates the rights of domestic workers.

568. When examining the definitions adopted in ratifying Member States, the Committee has noted that “discontinuous” or “sporadic” domestic work is explicitly or implicitly excluded in some countries. The Committee has recalled in this regard that, irrespective of the type of contract covering workers who provide domestic services, the definition of domestic worker set out in Article 1 of the Convention only excludes persons who perform domestic work occasionally or sporadically and not on an occupational basis.<sup>1040</sup>

CEACR – In its comments concerning *Panama*, the Committee noted that section 230 of the Labour Code provides that “domestic workers are workers who perform, in a habitual and continuous manner, the services of cleaning, assistance or other household tasks for a person or the members of a family”. Section 1(31) of Act No. 51 of 2005 amending the Basic Act of the Social Security Fund and issuing other provisions, defines a domestic worker as “an employee who is engaged in a habitual and continuous manner in household work, such as cleaning, assistance, cooking, washing and services in private residences, which do not give rise to financial or commercial benefit for the employer”.<sup>1041</sup>

1039 *Benin*, Arrêté n° 026/MFPTRA/DC/SGM/DT/SRT du 14 avril 1998 fixant les conditions générales d'emploi des employés de maison en République du Bénin.

1040 CEACR – *Plurinational State of Bolivia*, C.189, direct request, 2017; and CEACR – *Ecuador*, C.189, direct request, 2020.

1041 CEACR – *Panama*, direct request, 2018. *Labour Code*, section 230; *Ley N° 51 de 27 de diciembre de 2005 que reforma la Ley Orgánica de la Caja de Seguro Social y dicta otras disposiciones*, Artículo 1(31).

## (b) Domestic worker

569. A “domestic worker” is defined in the Convention as “any person engaged in domestic work within an employment relationship” (Article 1(b)). This definition includes domestic workers engaged on a part-time basis and those working for multiple employers, nationals and non-nationals, as well as both live-in and live-out domestic workers. Self-employed persons and independent contractors are not considered “domestic workers” within the meaning of the Convention. The broad approach adopted by the Convention allows Member States to include within the scope of the instruments the categories of workers who are considered to provide domestic work according to their national circumstances, on condition that the work is performed in or for a household or households and within an employment relationship.

### (i) Domestic work and the employment relationship

570. One of the particularities of domestic work is that it is often perceived to be something “other” than work. Households frequently characterize domestic workers as being “like one of the family”. As noted during the preparatory discussions, this characterization can “divert attention from the existence of an employment relationship, in favour of a form of paternalism that is thought to justify domestic workers being asked to work harder and longer for a ‘considerate’ employer without material reward. In fact, these arrangements are the vestiges of the master-servant relationship, wherein domestic work is a ‘status’ which attaches to the person performing the work, defines him or her and limits all future options. ... By contrast, a framework focused on a decent work paradigm emphasizes a rights-based rather than a status-based employment relationship, while also recognizing the employee’s human dignity as a person worthy of appreciation and respect both from the employer and from society as a whole”.<sup>1042</sup>

571. As indicated during the preparatory discussions, the notion of employment relationship should be consistent with the Employment Relationship Recommendation, 2006 (No. 198), and should encompass employment both by a household and through an employment agency.<sup>1043</sup> The Preamble to Convention No. 189 explicitly emphasizes the “particular relevance for domestic workers” of Recommendation No. 198.<sup>1044</sup> The Committee notes the relevance of Paragraph 6(a) and (b) of Recommendation No. 198 to the domestic work sector, where the vast majority of workers are women. Paragraph 6(a) calls on Members to address effectively the gender dimension of the employment relationship, as “women workers predominate in certain occupations and sectors where there is a high proportion of disguised employment relationships, or where there is a lack of clarity” with regard to the existence of an employment relationship. In its 2020 General Survey on employment and decent work, the Committee recognizes the situation of domestic workers, who are predominately women and who often experience difficulty in demonstrating that they are working within an employment relationship.<sup>1045</sup>

572. The Committee notes that, in their observations, a number of workers’ organizations denounce situations in which the employment relationship is disguised and the domestic worker is left unprotected. This may involve concealing the identity of the workers or according them a status other than that of employee, with the intention of shielding the real employer from any involvement in the employment relationship, and above all from any responsibility towards the workers.<sup>1046</sup> This phenomenon is often linked with the rise of “gig” or “on-demand” services, through which domestic work is mediated through online web platforms or apps and includes dispatch and agency work.

<sup>1042</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., paras 45 and 46.

<sup>1043</sup> ILO (2010). *Provisional Record No. 12*, op. cit., para. 136.

<sup>1044</sup> ILO (2011). *Provisional Record No. 15*, International Labour Conference, 100th Session, Geneva, para. 119.

<sup>1045</sup> 2020 General Survey on employment and decent work, op. cit., para. 205.

<sup>1046</sup> *ibid*, para. 191.

In *Germany*, the German Confederation of Trade Unions (DGB) indicates that most domestic workers (approximately 80 to 90 per cent), who are primarily migrant live-in domestic workers providing 24-hour care, are hired as (bogus) self-employed workers, taking them outside the scope of labour and social law. These domestic workers are often employed by a domestic or foreign company under a temporary employment contract or as part of a posting. The 24-hour carers are placed in the households via various platforms but are subject to the instructions of the respective household, or receive their orders from agencies, which are regularly paid by the households. Moreover, the DGB denounces cases of Polish migrant domestic workers, who are placed directly with private households via Polish recruitment agencies on the basis of a special civil law contract structure (so-called “garbage contracts”). This means that the employees are only contractors, not employees and also not self-employed. These contracts are characterized by precariousness and low wages.

In *Spain*, the General Union of Workers (UGT) maintains that the specific labour relationship of service in the family home established in Royal Decree No. 1620 of 2011 is used in some cases to mask employment relationships that should in fact be qualified as relationships entered into by legal persons. The UGT denounces cases of fraudulent use of the special employment relationship by recruitment agencies and digital platforms, as in reality the employment relationship is between the agency or platform and the worker, and not between a private employer and the domestic worker.

**573.** The Committee notes that in countries with strong union movements and robust and flexible bargaining systems, legal and practical obstacles to negotiating agreements for platform workers are increasingly being overcome, often with the assistance of established unions.<sup>1047</sup> However, these are still rare in the domestic work sector. Additionally, the content of such collective agreements has been challenged in domestic courts.

In *Denmark*, the United Federation of Danish Workers (3F) signed a collective agreement in 2018 with Hilfr, a Danish-owned digital labour platform which facilitates cleaning in private households.<sup>1048</sup> The platform distinguished between two types of contracts: the “Freelancehilfr” independent contractor and the “Superhilfr”, that is the type of contract covered by the collective agreement. According to the agreement, any worker on the platform would automatically be converted from independent contractor status to employee after completing 100 hours of work. Having employee status ensures access to paid sick leave, holiday allowance and pension contribution. However, in August 2020, the Danish Competition and Consumer Authority (DCCA) considered that the agreement did not align with European Union (EU) competition law. It considered that Freelancehilfrs/Superhilfrs are most likely not Hilfr employees from the perspective of competition law. Similarly, the DCCA considered that Freelancehilfrs/Superhilfrs could not be characterized as Hilfr subcontractors or agents. This is primarily because Hilfr does not bear the financial risk arising from the work.<sup>1049</sup>

<sup>1047</sup> ILO (2021). *The role of digital labour platforms in transforming the world of work*, Geneva, p. 214, box 5.1.

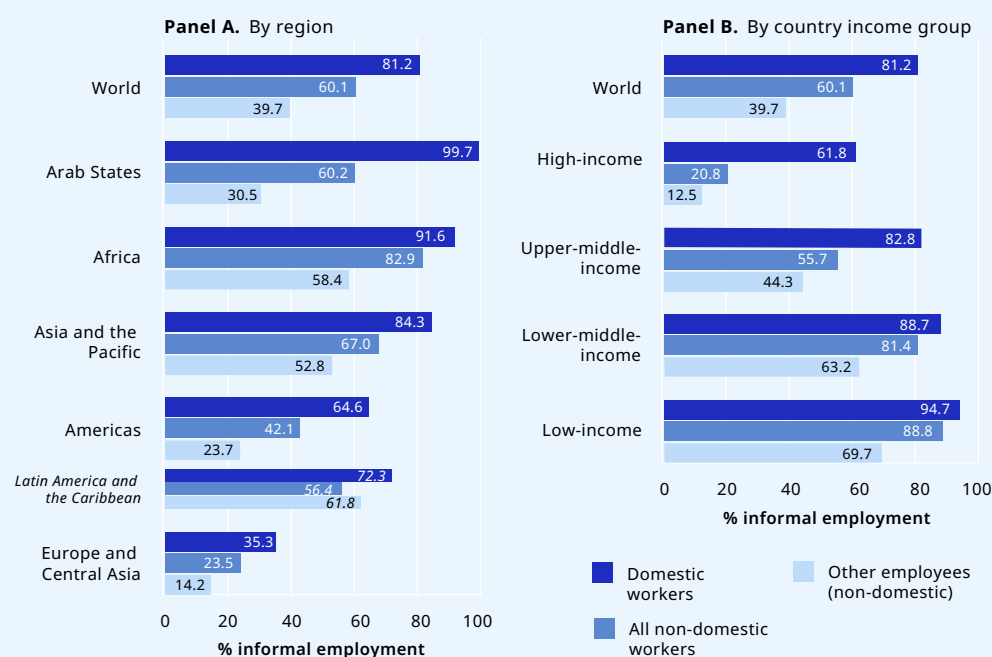
<sup>1048</sup> A. Ilsøe (2020). “*The Hilfr agreement: Negotiating the platform economy in Denmark*”, FAOS Research paper No. 176, Employment Relations Research Centre, Department of Sociology University of Copenhagen.

<sup>1049</sup> International Organisation of Employers (IOE) (2021). “*Danish Competition and Consumer Authority pronounces on the establishment of fees by collective agreement in a platform company*”, in *Industrial Relations and Labour Law, Newsletter*, Jan. 2021.

574. Informality is closely linked to the subject matter of Recommendation No. 198. Recognition of the existence of an employment relationship is critical for formalization and for workers and employers to gain access to regulation that protects their respective rights.<sup>1050</sup> According to the most recent ILO estimates, 61.4 million domestic workers (81.2 per cent of all domestic workers) remain in informal employment. This represents almost twice the share of informal employment of other employees (39.7 per cent).<sup>1051</sup>

Figure 7.1

**Share of informal employment among domestic workers and non-domestic workers by region and main income group of countries, 2019 (percentages)**



**Note:** ILO calculations based on 138 countries representing 91.7 per cent of global employment and 97.4 per cent of the global number of domestic workers. Estimates of informal employment follow the ILO harmonized definition. For China, estimates are based on the average proportion of domestic workers at the regional level in upper-middle-income countries. Detailed data sources are available in Annex 3.

**Source:** ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 190.

575. Domestic workers in the informal economy may have informal jobs, and therefore be unregistered or under-registered (for example, when they receive part of their earnings informally). They may be in disguised or ambiguous employment relationships. Domestic workers may also be in triangular relationships, in which it is not clear who the employer is. They may even be in special unrecognized and unregulated employment relationships.<sup>1052</sup>

<sup>1050</sup> 2020 General Survey on employment and decent work, op. cit., para. 422.

<sup>1051</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 189.

<sup>1052</sup> 2020 General Survey on employment and decent work, op. cit., para. 421.



The Committee emphasizes that the inclusion of domestic workers within the scope of national labour legislation can facilitate their transition from informal and often precarious work arrangements to a formalized employment relationship.<sup>1053</sup>

In *Indonesia*, the Jaringan Nasional Advokasi Pekerja Rumah Tangga (JALA PRT), affiliated to the IDWF, argues that most domestic workers are excluded from the general labour legislation due to the informal nature of the work. It refers to section 50 of the Employment Law No.13/2003, which provides that employment relations can only arise through a written contract. The JALA PRT adds that, as most domestic workers do not have any written contract in practice, there is no recognition of their employment relationship. Thus, they are excluded from basic labour protections, such as minimum wages, working hours, annual leaves, maternity leaves, collective bargaining and social security.

In *Paraguay*, the IDWF points out that, although domestic workers are not excluded from the general labour legislation, the domestic work sector is the sector with the highest level of informal employment. During the first quarter of 2021, the formalization rate was estimated at only 4.7 per cent.

576. The Committee observes that the definition of the employment relationship in most countries includes a reference to certain elements that help to clarify the existence of and the parties to the relationship.<sup>1054</sup> Many definitions refer to the criteria of subordination and/or economic dependency to determine the existence of an employment relationship.

*Greece* – The national legislation provides that domestic workers are individuals who, under a dependent contract of employment, provide the employer with their services primarily for the purpose of serving the domestic or personal needs of the employer, of his/her family members or of third persons.<sup>1055</sup> The employer is considered to be the person who is entitled to claim from the employee the provision of labour and is obliged to pay the worker's salary (section 648 of the Greek Civil Code).

*United Arab Emirates* – Section 1 of Federal Law No. 10 of 2017 on domestic workers defines a domestic worker as a "natural person performing a domestic service in return for a wage, under the employer's direction, supervision and guidance".<sup>1056</sup>

577. The Committee notes that the particular characteristics of domestic work, including the personal nature of the work and the context in which it is undertaken, have been taken into account in the labour legislation and case law in some countries in affirming its compatibility with the employment relationship. However, in some countries, certain aspects of the employment relationship have been considered as inapplicable to domestic work, thereby justifying separate and distinct regulation.

<sup>1053</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 15.

<sup>1054</sup> For further information on the different conditions and indicators determining the existence of an employment relationship, see the 2020 General Survey on employment and decent work, op. cit., pp. 107 and 113.

<sup>1055</sup> *Greece*, [Civil Code](#).

<sup>1056</sup> *United Arab Emirates*, [Federal Law No. 10 of 2017 on Domestic Workers](#) (unofficial translation).

*Italy* – The Constitutional Court, in Case No. 585 of 23 December 1987, found that “there is no doubt that the domestic work relationship due to its particular nature differs both in relation to the object and the subjects involved from any other work relationship”.<sup>1057</sup>

*Spain* – Section 2(1)(b) of the Act on the status of workers, as revised in 1995, considers service in the family home to be a labour relationship of a special nature. Royal Decree No. 1620 of 2011 regulates this special labour relationship and refers in its Preamble to the specific conditions under which services are performed by persons working in domestic service, which justify specific and different regulation. It primarily refers to the environment in which the work is performed, the family home which is so closely related to personal and family intimacy and completely different from the common denominator of work relationships, which are located in environments of productive activity subject to the principles of the market economy.<sup>1058</sup>

## (ii) Defining the live-in relationship

578. The Committee notes that the national legislation in many countries provides that domestic workers may either “live in” or “live out” of the employer’s household and regulates the distinct relationships accordingly (see Chapter 9).

*Argentina* – Section 1 of Act No. 26.844 establishing the special regime of the employment contract of personnel in private homes includes the following working arrangements: women/men workers who undertake work for the same employer and live in the house where the work is undertaken; women/men workers who carry out work for a single employer but do not live in the employer’s house; women/men workers who undertake work for several employers but do not live in their houses.<sup>1059</sup>

*Honduras* – Section 149 of the Labour Code provides that domestic work “is provided in return for remuneration to persons and not for lucrative purposes and who only wish to benefit, in their home, from the continuous service of the worker for the benefit of themselves or their family, irrespective of whether the domestic worker lives in or outside the employer’s house”.<sup>1060</sup>

<sup>1057</sup> *Italy*, Constitutional Court, [ruling No. 585](#) of 23 Dec. 1987.

<sup>1058</sup> *Spain*, [Real Decreto 1620/2011](#), de 14 de noviembre, por el que se regula la relación laboral de carácter especial del servicio del hogar familiar.

<sup>1059</sup> *Argentina*, [Ley núm. 26844](#) que dicta el Régimen Especial de contrato de trabajo para el personal de casas particulares.

<sup>1060</sup> *Honduras*, [Labour Code](#).

## 2. The employer

**579.** Although the Convention does not define the “employer” in relation to domestic work, some national laws and regulations do. As noted during the preparatory work, the objective was to ensure that the definition is sufficiently broad to cover all forms of domestic work, in view of the diverse nature of domestic work arrangements. It was also recalled that the employer may be a member of the household for which the work is performed, or an agency or enterprise that employs domestic workers and makes them available to households.<sup>1061</sup> The employer does not need to be a private employer, even when care is provided in a private home. For example, where the State provides support for the care of the elderly in the home, it may be the employment agency or other third party that is considered to be the employer.<sup>1062</sup>

**580.** As noted during the preparatory discussions, “work performed within an employment relationship include[s] both domestic workers directly recruited by the household and ... domestic workers recruited by a third party to provide services to a household”.<sup>1063</sup> There was an intense debate concerning the inclusion of domestic workers recruited by third parties in the definition.<sup>1064</sup> During the first discussion, the Employer members proposed that the workers to be covered by the Convention should only be those in an employment relationship with the household employer, and not with a third party, considering that other forms of domestic work were already covered by the Private Employment Agencies Convention, 1997 (No. 181).<sup>1065</sup> The Worker members considered that the definition should be broad enough to cover all forms of domestic work and pointed out that the Employers’ proposal would restrict coverage to those working in a single household, even though in many countries domestic workers were employed by multiple households. It would also exclude the millions who were employed by agencies, who needed the same protection as those hired directly by a household. They argued that Convention No. 181 lacked the specificity that would be provided by a separate Convention on domestic workers<sup>1066</sup> and that the same standards should apply to all domestic workers, whether they are employed by a household or an agency.<sup>1067</sup>

**581.** It was also acknowledged during the preparatory discussions that properly regulated employment agencies may provide the means to formalize the domestic work relationship and impose meaningful regulations that distribute costs equitably, rather than placing them all on the domestic worker, as well as ensuring proper monitoring and enforcement procedures (Chapter 9).<sup>1068</sup>

<sup>1061</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 117.

<sup>1062</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 26.

<sup>1063</sup> ILO (2010). *Provisional Record* No. 12, op. cit., paras. 117 and 150.

<sup>1064</sup> Most respondents, and particularly workers’ organizations, considered that both fee-charging private agencies, acting as brokers between migrant domestic workers from countries of origin and employers in destination countries, and agencies hiring workers to perform home-help activities for individual users at or for their home, qualify as employers. However, a considerable number of governments indicated that only agencies that employ domestic workers to perform domestic services for a third person, or that play the role of employers (being responsible directly or indirectly for the employment or payment of a domestic worker) were to be considered as employers (reference was made to Convention No. 181). For some governments, the majority of employers’ organizations and a few workers’ organizations, only brokering agencies qualified as intermediaries and, as such, had no employers’ responsibilities. See ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 386.

<sup>1065</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 114.

<sup>1066</sup> During the first discussion, the representative of the Secretary-General indicated that Art. 2(4)(b) of Convention No. 181 allowed Member States to “exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention”. Hence, while the Convention did not explicitly exclude domestic workers, an inbuilt flexibility clause allowed ratifying Member States to exclude them from its scope. ILO (2010). *Provisional Record* No. 12, op. cit., para. 122.

<sup>1067</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 115.

<sup>1068</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), para. 26.

**582.** The Committee notes that the domestic employer is defined in the legislation of some countries, with many of these laws specifying that the employer must be a “natural person”,<sup>1069</sup> while others include the entire family in the definition.<sup>1070</sup>

*Qatar* – Section 1 of Law No. 15 of 22 August 2017 concerning domestic workers defines the “employer” as “a natural person who employs the domestic worker”.<sup>1071</sup>

*Spain* – Section 1(3) of Royal Decree No. 1620/2011 regulating the specific labour relationship of service in the family home provides that “for the purposes of this specific labour relationship, the head of the family home shall be considered the employer, irrespective of whether she or he is the effective employer or merely the titular owner of the house or place of residence in which the domestic work is undertaken. In cases where work is undertaken for two or more persons who, without being a family or a legal person, live in the same household, the status of head of the family home shall be assumed by the person who displays the status of owner of the dwelling that they inhabit or acts as the representative of such persons, and may be assumed successively by each of them”.<sup>1072</sup>

**583.** In other countries, the national legislation provides a broad definition of the employer and refers to a wide range of actors.

*France* – The Government indicates that different types of employers are involved in domestic work: private persons, private enterprises and public associations or bodies (particularly communal and intercommunal social action centres).

*Pakistan* – In accordance with section 2 of the Punjab Domestic Workers Act, 2019, the term “employer” means: “(i) in relation to a person or a group of persons registered under the Act and [that employs] domestic workers [and is] collectively responsible for [the] employment of domestic workers; (ii) in relation to an establishment or agency, the owner(s) of the establishment or agency or a person registered under the Act and having the ultimate control over the affairs of the establishment or agency as well as any other person to whom the affairs of such establishment or agency are entrusted, whether such person is called an agent, a manager, an occupier or by any other name”.<sup>1073</sup>

**584.** The national legislation in a number of countries also explicitly provides that the employer may be a third party.<sup>1074</sup>

<sup>1069</sup> For instance, *Hungary*.

<sup>1070</sup> For instance, *Austria, Bahrain, Malaysia, Qatar, Saudi Arabia and United Arab Emirates*.

<sup>1071</sup> *Qatar*, Law No. 15 of 22 Aug. 2017, op. cit.

<sup>1072</sup> *Spain*, Real Decreto 1620/2011, op. cit.

<sup>1073</sup> *Pakistan*, Punjab Domestic Workers’ Act, 2019, op. cit.

<sup>1074</sup> See also *United Arab Emirates*, Section 1 of Federal Law No. 10 of 2017.

*Austria* – Section 1(3) of the Federal Act governing help and domestic employees includes in the definition of employer “households run by a corporate entity”, providing that: “no distinction shall be made based on whether the household is managed by a natural person or a legal person for its members or for a third party”.<sup>1075</sup>

*Barbados* – Section 2 of the Domestic Employees Act of 1 July 1961 defines a domestic employer as “any person employing one or more domestic employees [including] any agent, manager or representative of such person, who is responsible directly or indirectly for the payment, in whole or in part, of remuneration to a domestic employee”. It therefore recognizes that the employment relationship of the domestic worker may involve a private individual, an agent, or both.<sup>1076</sup>

585. In other countries, the definition of domestic work and/or domestic worker is broadly worded and does not specify the nature of the employer.<sup>1077</sup>

### 3. Exclusion of limited categories of workers

#### (a) Most commonly excluded categories of domestic workers

586. Article 2(1) of Convention No. 189 provides that the Convention “applies to all domestic workers”. During the preparatory discussions, there was broad agreement that the instruments should seek to ensure the broadest possible coverage.<sup>1078</sup> Article 2(2) of the Convention nevertheless allows the exclusion of certain categories of domestic workers from its scope. During the preparatory discussions, concern was expressed that this provision could be interpreted too broadly and used to exclude many categories of domestic workers.<sup>1079</sup> However, it was also acknowledged that the exclusion of domestic workers could sometimes be appropriate or practical. For instance, some categories of workers, such as care workers who visit residential homes for the elderly, may already be recognized and covered by specific legislation or collective agreements.<sup>1080</sup>

587. Article 2(2) of the Convention allows Member States to exclude wholly or partly, under certain conditions, certain limited categories of domestic workers. However, ratifying Members that decide to exclude wholly or partly certain categories of domestic workers first have to consult the most representative organizations of employers and workers and, where they exist, organizations representative of domestic workers and those representative of employers of domestic workers. Thus, it is up to governments, in consultation with the social partners, to decide which groups of workers could be excluded from the scope of the Convention.<sup>1081</sup>

<sup>1075</sup> *Austria*, Federal Act governing domestic help and domestic employees (DHEA), op. cit.

<sup>1076</sup> *Barbados*, [Domestic Employees Act](#) of 1 July 1961.

<sup>1077</sup> For instance, *Philippines* (section 3(f) of the [Implementing Rules and Regulations of Republic Act No. 10361](#)).

<sup>1078</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 387.

<sup>1079</sup> The Worker members indicated during the first discussion that it was important to make the Convention as workable as possible and to find constructive solutions taking account of national variations (such as the use of *au pairs*) which could lead to very different interpretations. However, allowing too many exclusions would make the Convention meaningless. ILO (2010). *Provisional Record* No. 12, op. cit., para. 139; and ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 387.

<sup>1080</sup> ILO (2011). [Decent work for domestic workers, Report IV\(2A\)](#), International Labour Conference, 100th Session, Geneva, 2011, p. 21.

<sup>1081</sup> ILO (2011). [Provisional Record No. 15, International Labour Conference](#), 100th Session, Geneva, op. cit., para. 180.

**588.** Article 2(2) of the Convention specifies that such exceptions may only be made with regard to: “(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”. The Committee observes that the objective of these requirements is twofold: (a) ensuring at least equivalent protection for all domestic workers; and (b) removing possible obstacles to the ratification of the Convention in certain countries.

**589.** Article 2(3) of the Convention requires ratifying Member States that wish to avail themselves of the possibility of excluding certain categories of domestic workers to indicate in their first report on the application of the Convention any particular category of workers excluded, as well as the reasons for such exclusion. They also have to specify in subsequent reports “any measures that may have been taken with a view to extending the application of the Convention to the workers concerned”. As highlighted during the preparatory work, this has the benefit of making known any exceptions made by Member States.<sup>1082</sup>

**590.** In their first reports on the application of Convention No. 189, several Member States have indicated the categories of domestic workers excluded by national legislation from the scope of application of the Convention.<sup>1083</sup>

CEACR – In its comments concerning *Italy*, the Committee noted the Government’s indication in its first report that the following workers cannot be considered to be domestic workers and are not therefore covered by the domestic work legislation: “office cleaners or stable hands, to the extent that they do not render personal or family services; ‘au pairs’, typically students, who render domestic work services in exchange for lodging; and relatives of the employer or those with ties of affection to the employer, who presumably render services without payment”.<sup>1084</sup>

**591.** The Committee notes that the categories of domestic workers excluded from the coverage of national laws or regulations on domestic work vary between countries, with the exclusion in some countries of workers whose primary task is caring for children (such as babysitters or nannies).

*France* – The Government indicates that maternal assistants employed by private individuals are governed by the specific provisions included by law in the Social Action and Families Code in relation to: their employment contract (sections L. 423-3, L. 423-17 to 27), remuneration, compensation and supplies (sections L. 423-4 and 5) and leave (sections L. 423-6 and 7).

<sup>1082</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 495.

<sup>1083</sup> For instance, *Argentina, Dominican Republic, Germany, Italy and Paraguay*.

<sup>1084</sup> CEACR – *Italy*, C.189, direct request, 2016.

*Poland* – The national legislation excludes the category of “nannies”. Pursuant to the Act of 4 February 2011 on the care of children under the age of 3, the terms and conditions of employment of nannies are established in a civil contract for the provision of services rather than an employment contract. Section 50(1) of the Act defines a “nanny” as “an individual providing childcare on the basis of a service agreement (rather than an employment contract) to which, in accordance with the Civil Code, the regulations relating to civil mandates shall apply”.<sup>1085</sup>

**592.** In some countries, “personal care workers” are excluded from the definition of domestic worker. These workers provide direct personal care to elderly persons, those with disabilities or others for day-to-day activities, such as feeding, bathing and carrying out basic health checks. They are particularly prevalent in long-term care provision, both in institutional settings and in home-based and community care. Both over-qualification and lack of qualifications are features of personal care workers (see Chapter 1).<sup>1086</sup> The Committee notes that in some countries personal care workers are covered by specific legislation<sup>1087</sup> or collective agreements.<sup>1088</sup>

CEACR – In its comments concerning *Germany*, the Committee has noted the Government’s indication that, based on section 18(1) (no. 3) of the Working Hours Act, caregivers, defined as “persons living in a common household with those who they are responsible for raising, looking after or caring for”, are excluded from the scope of application of the Act. The Government indicated that it was decided to exclude this category of workers from the application of the Convention because they are often required to stay with their employers for long periods and frequently reside with them for the purpose of assisting them on a 24-hour basis and it is not therefore possible to distinguish between their leisure and working time. In its observations, the German Confederation of Trade Unions (DGB) considered that it is not clear whether so-called “live-in-nurses and caregivers” are in fact excluded from the scope of the Convention. It referred to a 2011 parliamentary request for clarification, in response to which the Government indicated that a case-by-case approach should be taken. The DGB considered that 24-hour caregivers should be included in the definition of domestic workers, since they are neither employed nor paid as nurses. The DGB added that caregivers are often called upon to work excessive hours, as they are required to be on call around the clock. Migrant domestic workers are especially vulnerable to exploitation. According to the DGB, many of these workers do not have their own room in the employer’s household and are often expected to stay next to their patient at all hours, including throughout the night.<sup>1089</sup>

<sup>1085</sup> *Poland*, [Act of 4 February 2011 on care of children under 3 years of age](#).

<sup>1086</sup> ILO (2018). [Care work and care jobs for the future of decent work](#), Geneva, pp. 180–1.

<sup>1087</sup> For instance, *Australia, Austria, Canada* (Alberta) and *Malaysia*.

<sup>1088</sup> For instance, *Italy* and *Netherlands*.

<sup>1089</sup> CEACR – *Germany*, C.189, direct requests, 2016 and 2020.



CEACR – In its comments concerning *Paraguay*, the Committee has noted that section 3(h) of Act No. 5407 provides that “carers of the sick, elderly or disabled” are considered to be domestic workers. However, section 4(b) of the Act excludes from its scope of application workers who “perform both domestic work and specialized paramedical work of grooming, cleaning or caring for older adults and persons with disabilities and/or health problems”.<sup>1090</sup>

*Spain* – Section 2(1)(c) of Royal Decree No. 1620/2011 excludes from the scope of application of the special labour relationship of family home service “the relationship of professional carers under contract with public institutions or private entities, in accordance with Act No. 39/2006 of 14 December on the promotion of the personal autonomy and care of persons in a situation of dependence”. Section 2(1)(d) also excludes “the relationship of non-professional carers consisting of the care provided to dependent persons at home by members of the family or those close to them, not covered by a professional care service, in accordance with Act No. 39/2006”.<sup>1091</sup>

**593.** As noted in Chapter 1, personal care workers are often overqualified, particularly in the case of skilled migrant workers, for example nurses, who cannot validate their qualifications and are subject to unfair recruitment practices. In recognition that the provision of nursing services in the domestic sphere may overlap with other types of care work, it is specified in some countries that nurses providing personal care in private households are not domestic workers, as they have special qualifications and knowledge.<sup>1092</sup>

CEACR – In its comments concerning *Chile*, the Committee noted Supreme Court Case No. 3784-2003 and Valparaíso Appeal Court Case No. 372-2002, in which both courts found that the provisions on workers in private households do not apply to nursing auxiliaries engaged under contract to care for and assist a patient, in view of the technical and managerial knowledge that they had acquired for their profession.<sup>1093</sup>

**594.** Family members carrying out domestic work are often excluded from the definition of domestic worker.

*Finland* – The measures giving effect to the Convention in Finland do not cover persons caring for a family member, relative or any person close to them. Such carers are covered by the Act on Support for Informal Care (No. 937/2005).<sup>1094</sup>

<sup>1090</sup> CEACR – *Paraguay*, C.189, direct request, 2019.

<sup>1091</sup> *Spain*, Real Decreto 1620/2011, op. cit.

<sup>1092</sup> *Turkmenistan* (section 295 of the Labour Code).

<sup>1093</sup> CEACR – *Chile*, C.189, direct request, 2018.

<sup>1094</sup> *Finland*, Act on Support for Informal Care (No. 937/2005).

*Switzerland* – Labour relations between spouses, registered partners, direct ascendants or descendants, their spouses and registered partners, as well as cohabiting partners, are excluded from the Ordinance on the model contract for domestic economy workers (section 2(2)).<sup>1095</sup>

**595.** In some countries, domestic workers recruited by legal entities are excluded from the definition of domestic workers, as they are generally covered by the labour law provisions applicable to all workers.

CEACR – In its comments concerning *Argentina*, the Committee has noted that section 3 of Act No. 26844 of 2013 excludes seven categories of workers from its scope of application, including persons recruited by legal entities for the provision of domestic services (section 3(a)). The Committee has noted that, regarding the exclusion of persons recruited by such legal entities, the Government's indication that Act No. 26844 provides for, among other measures, the establishment of simplified procedures for the registration of domestic workers by private persons (family households), as such persons do not have the organizational structure that most employers (legal entities) have. The Government added that access to these simplified procedures is unnecessary in the case of legal entities that recruit domestic workers, as they possess the organizational structure of an enterprise. The Government indicated that these workers receive protection under the general regulations on labour contracts established in Act No. 20744.<sup>1096</sup>

*Spain* – Section 2(1) of Royal Decree No. 1620/2011 provides that this special labour relationship does not include: (a) relationships agreed upon by legal persons, of a civil or commercial nature, even where their purpose is the performance of domestic services or tasks, which shall be governed by the normal labour rules (the Workers' Statute).<sup>1097</sup>

**596.** The Committee also notes that domestic workers working in rural areas are not protected under the legislation of a number of countries.

CEACR – In its comments concerning *Uruguay*, the Committee has noted that Act No. 18065 of 26 November 2006 regarding domestic work does not exclude any category of workers from its scope of application. The Committee has nevertheless noted that, pursuant to section 2(b) of Decree No. 224/007, work carried out by rural domestic staff is not considered to be domestic work. The Committee therefore requested the Government to indicate the legal regime under which rural domestic workers are covered.<sup>1098</sup>

<sup>1095</sup> *Switzerland*, Ordonnance sur le contrat-type de travail pour les travailleurs de l'économie domestique, op. cit.

<sup>1096</sup> CEACR – *Argentina*, C.189, direct requests, 2017 and 2019.

<sup>1097</sup> *Spain*, Real Decreto 1620/2011, op. cit.

<sup>1098</sup> CEACR – *Uruguay*, C.189, direct request, 2014.

597. Domestic workers hired by private employment agencies are excluded from coverage in a number of countries.

*Morocco* – A worker made available to the employer by a temporary work agency subject to the provisions of Act No. 65–99 relating to the Labour Code is not considered to be a domestic worker.<sup>1099</sup>

598. In addition, domestic workers employed by diplomatic households are excluded from coverage in some countries. During the preparatory discussions, it was emphasized that, although the Convention and Recommendation address all domestic workers, it is important to “focus on domestic workers employed by the diplomatic community because protecting such workers from abusive practices present[s] a challenge”. It was noted that, while the Vienna Convention on Diplomatic Relations, 1961, obliges diplomats to comply with the national laws of their host countries, the problem lies in enforcing the laws while the diplomat is posted in the host country (see Chapter 8).

*Switzerland* – Under the terms of section 2(3) of the Ordinance on the model contract for domestic workers, the Ordinance does not apply to workers with a type E or F legitimization card issued by the Federal Department of Foreign Affairs (DFAE) who are engaged in the domestic service of a person benefiting from privileges and immunities. Nor does it apply to the private domestic workers of persons benefiting from privileges, immunities and facilities.<sup>1100</sup>

## (b) The au pair exception

599. As noted during the preparatory work, au pair programmes “allow young people to travel abroad and live with another family for a year or two, on what is often a first cross-cultural exchange”. They also offer them “an opportunity to learn a different language. But to earn their board, lodging and pocket money, au pairs also work, usually by providing assistance in childcare, caregiving and housekeeping.”<sup>1101</sup>

600. The Committee notes that in some countries, including several EU Member States, au pair schemes have become a private solution to the increasing demands in the context of the current care shortage, in which the demand for care is increasing and the supply of caregivers is decreasing. In other words, they are also a response to insufficient and non-affordable child- and elderly care, increased pressure on work-life balance and an unequal gender division of care and domestic work in private homes.<sup>1102</sup>

601. The Committee notes, however, that in some cases young women are effectively employed as domestic workers under the guise of au pairs.<sup>1103</sup> The immigration status of the au pair is generally linked to the host family<sup>1104</sup> and au pair schemes are often characterized by

1099 *Morocco*, [Dahir n°1-03-194 du 14 rejjeb](#) (11 Septembre 2003) portant promulgation de la loi n°65–99 relative au Code du Travail.

1100 *Switzerland*, Ordonnance sur le contrat-type de travail pour les travailleurs de l'économie domestique, op. cit.

1101 ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., p. 34, Box III.2.

1102 European Parliament (2011). *Abused domestic workers in Europe: The case of au pairs*, Committee on Women's Rights and Gender Equality, Directorate General for Internal Policies, Brussels, p. 21.

1103 *ibid.*

1104 For example, in the case of non-EU au pairs working in certain EU Member States, where they are excluded from protection as employees and are dependent for their residence permits solely on the host family or an agency, and through the live-in obligation are in a situation between a workplace and (someone else's) private home.

low remuneration, exclusion from labour protection, the obligation to live in and a structural dependency on the employer/host family. As a result, in cases of abuse and exploitation, it is difficult for au pairs to change employer, as their residence permits are closely tied to their employer. In some countries, where the work of au pairs has increasingly been criticized as cheap labour, the number of approved au pairs has been significantly reduced.<sup>1105</sup>

CEACR – In its comments concerning *Ireland*, the Committee has noted the concern expressed by the Irish Confederation of Trade Unions (ICTU) regarding the situation of au pairs in Ireland. While noting that au pairs are recognized as domestic workers, the ICTU indicates that they are incorrectly portrayed by au pair agencies as persons who do not have the status of workers and as a cheap childcare solution. The ICTU is calling for the Government to initiate a public information campaign to inform the public that au pairs are covered by Irish employment legislation.<sup>1106</sup>

**602.** Due to reported cases of the debt bondage and trafficking of au pairs by employers, agencies and other intermediaries, the Council of Europe adopted Recommendation 1663 (2004) providing guidance on the measures to be taken by countries in order to combat such practices.<sup>1107</sup>

In adopting Recommendation 1663 (2004) on domestic slavery: servitude, au pairs and mail-order brides, the Parliamentary Assembly of the Council of Europe indicated that the ILO's constituents "might appropriately turn their mind to whether, despite the distinct formal objective of an au pair programme associated with providing a cultural exchange experience to young people, it is still appropriate to treat the au pair relationship as an exception to the definition of domestic worker. [...] It might be fully compatible to consider au pairs as both workers and youth on a cultural exchange, and to regulate their working conditions appropriately. This might help to prevent the kind of exploitation of au pairs that is comparable to that of other categories of domestic workers."<sup>1108</sup>

**603.** The Committee notes that incidents of abuse and exploitation of au pairs have been reported during the COVID-19 pandemic.

*Belgium* – The Government has expressed concern that the COVID-19 pandemic, due to lockdowns and the inability of certain "mistreated" employees to leave the country, has increased the number of cases of economic exploitation of domestic workers and au pairs.

**604.** During the preparatory work, the Office noted that, given "the abuses that can occur against young people working 'au pair', the ILO's constituents may wish to consider 'au pairs' as both workers and young people on a cultural exchange, and to regulate their working conditions appropriately".<sup>1109</sup>

<sup>1105</sup> European Union (2020). Advancing Personal and Household Services (Ad-PHS), EU project, "[Country Report: Denmark](#)", p. 2.

<sup>1106</sup> CEACR – *Ireland*, C.189, direct request, 2020.

<sup>1107</sup> Parliamentary Assembly of the Council of Europe. [Recommendation 1663 \(2004\), Domestic slavery: Servitude, au pairs and mail-order brides](#).

<sup>1108</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., p. 34, Box III.2.

<sup>1109</sup> *ibid.*, para. 117.

605. The Committee notes that Article 2 (2) of the Convention leaves it up to Member States whether to cover au pairs as domestic workers or regulate them under another framework. It observes that countries have taken different approaches concerning au pairs. A few governments report that au pairs are covered by the laws and regulations respecting domestic work.<sup>1110</sup> However, some governments indicate that au pairs are excluded from the national legislation and/or regulations on domestic work.<sup>1111</sup>

*Finland* – The Government reports that the Convention is not applied to the family members of the employer or to au pair workers who are not in an employment relationship.

*Italy* – The Government reports that those employed as “au pairs” cannot be considered to be domestic workers and are therefore not covered by the national labour legislation. It adds that “au pairs” are typically students, who provide domestic work services in exchange for lodging.

CEACR – In its comments concerning *Ireland*, the Committee has noted that the employment legislation does not treat domestic workers as a separate category and that the employment rights legislation applies to all workers who are working under a contract of employment, including legally employed domestic workers, who are defined in the Code of Practice for Protecting Persons Employed in Other People's Homes. The Code of Practice refers to “employees” rather than to domestic workers or au pairs, and defines an “employee” as “a person who is employed in the home of another person” (section 2). In section 4 on General Principles, the Code of Practice indicates that it is applicable to all employees in other people's homes and to their employers, and adds that employees “in other people's homes have an equal entitlement to the employment rights and protections available to any other employee”.<sup>1112</sup> The Code was developed by the Irish Workplace Relations Committee (WRC) in consultation with the social partners. The WRC has also published a guide to the Employment Rights of Domestic Workers in Ireland which refers to au pairs. In its 2019 and 2020 comments concerning *Ireland*, the Committee examined the issue of au pairs placed by private employment agencies, which are subject to inspection by WRC inspectors. The Committee noted that, between 2016 and 2018, WRC inspectors carried out a compliance campaign targeting 97 identified agencies dealing with the placement of au pairs, which resulted in 16 of the agencies inspected obtaining Employment Agency Licences and 78 ceasing operation.

606. The Committee also notes that different strategies have been adopted in certain countries to protect au pairs, including the adoption of specific legislation to regulate au pair schemes.<sup>1113</sup>

<sup>1110</sup> For instance, *Ireland*.

<sup>1111</sup> For instance, *Finland, Italy, Spain* and *United Kingdom of Great Britain and Northern Ireland*.

<sup>1112</sup> *Ireland*, [Code of Practice for Protecting Persons Employed in Other People's Homes](#).

<sup>1113</sup> For instance, *Italy, Luxembourg, United Kingdom* and *United States*.

*Luxembourg* – Section 1(1) of the Act of 18 February 2013 defines the hosting of young au pairs as “the temporary stay in a family, in exchange for light everyday family tasks, of young persons from abroad with a view to improving their language skills and increasing their general culture through a better knowledge of the host country, by encouraging them to participate in the country’s cultural activities”. Section 1(2) provides that the “daily participation of the young au pair in common family tasks shall not be the main aim of the stay. The weekly duration of such work may not exceed five hours a day over a period of one week. The weekly duration may not exceed 30 hours on average over a period of a month or four weeks”, Section 1(3) indicates that “the provisions of the Labour Code do not apply to hosting an au pair.”<sup>1114</sup>

*United States of America* – Section 62.31 of the Code of Federal Regulations governing au pairs defines the au pair programme as “exchange visitor programs under which foreign nationals are afforded the opportunity to live with an American host family and participate directly in the home life of the host family. All au pair participants provide childcare services to the host family and attend a US post-secondary educational institution. Au pair participants provide up to forty-five hours of childcare services per week and pursue not less than six semester hours of academic credit or its equivalent during their year of program participation. Au pairs participating in the EduCare program provide up to thirty hours of childcare services per week and pursue not less than twelve semester hours of academic credit or its equivalent during their year of program participation.”<sup>1115</sup>

**607.** Other measures taken to protect au pairs include the adoption of ethical codes and codes of conduct for intermediaries and host families, and the establishment of hotlines and shelters for au pairs. The Committee notes the adoption in some countries of judicial decisions holding that au pairs are covered by employment legislation.

*Ireland* – In its first report on the application of the Convention, the Government indicated that persons working under the designation of “au-pair” were increasingly making complaints to the inspectorate and taking complaints to adjudication claiming that their placement was a domestic work situation and claiming rights as an employee. The Government added that, in 2016, a Workplace Relations Commission (WRC) adjudicator awarded €9,229 to an au pair after the family she worked for was found to have violated employment laws.<sup>1116</sup>

The International Au Pair Association (IAPA) has adopted a Code of Conduct for Au Pair Organisations and its corresponding Guidelines, which set standards for au pairing, including basic criteria for the selection of both au pairs and families, and establishes rules for the conduct of business between members, thereby allowing for practical cooperation between au pair organizations.<sup>1117</sup>

<sup>1114</sup> *Luxembourg*, [Loi du 18 février 2013 sur l'accueil de jeunes au pair](#).

<sup>1115</sup> *United States*, Code of Federal Regulations (e-CFR), revised as of 1 Apr. 2020, [Title 22, Foreign Relations, Vol. I](#).

<sup>1116</sup> This decision followed cases in the Labour Court (Bukola Eigbogba and Mariaam Bhatti Sithabile, MWD127) and the European Court of Justice ([Payir v Secretary of State for the Home Department, Case No. C-294/06](#)).

<sup>1117</sup> For instance, IAPA (2015). [Guidelines for au pair organisations](#), Munich.

## 4. Scope of application of labour laws: Ensuring effective legal coverage

608. Article 18 of the Convention leaves it to each State to decide the appropriate means to use and the measures to be adopted for the implementation of the provisions of the Convention. Article 18 provides for the consultation of the most representative employers' and workers' organizations on the implementation of the Convention, adding that its provisions can be implemented by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

609. The Committee observes that significant progress has been made in the regulation of domestic work since the adoption of the Convention. Many governments, often in consultation with workers' and employers' organizations, have made efforts to include domestic workers in the scope of national labour laws. According to ILO estimates, 88 per cent of countries included in a survey sample in 2020 ensure at least partial coverage of domestic workers. The estimates also show a growing tendency to cover domestic workers through both general and specific labour laws or subordinate regulations, resulting in 53.4 per cent of domestic workers being recognized wholly or partially by labour laws or regulations.<sup>1118</sup> The Committee notes that governments have used a range of legal instruments to include domestic workers in the scope of national labour laws. In some countries, domestic workers are included in the scope of general labour laws, while in others, specific labour laws or subordinate regulations have been adopted, and in yet others, governments have opted for both the general and the specific approach.<sup>1119</sup>

*Portugal* – Domestic service contracts are subject to a special regime, governed by Decree Law No. 235/92 of 24 October 1992, as well as by the general rules of the Labour Code where they are not incompatible with its specific nature (Article 9 of the Labour Code), given that domestic work is provided to households, and, therefore, gives rise to employment relationships of a marked personal nature, due to the relation of trust that must exist between the household employer and the worker.

610. The Committee observes that in most countries domestic workers have been included in the general labour law.<sup>1120</sup> ***The Committee emphasizes in this regard that, where general labour laws are intended to apply to domestic workers, it is important to ensure that the wording of the legislation does not implicitly exclude such workers from their scope. For example, definitions of terms such as "employer" or "workplace" may implicitly exclude domestic workers. Moreover, where certain aspects of the working conditions or labour protection of domestic workers or certain groups of domestic workers are regulated by specific laws or provisions, it is advisable to develop provisions that explicitly define their intended scope of application.***<sup>1121</sup>

611. While the Committee commends the significant efforts made by many ILO constituents at the national level to include domestic workers in the scope of national labour laws, it considers that further progress is required. The inclusion of domestic workers in the scope of general labour law does not necessarily guarantee the level of legal coverage that they

<sup>1118</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 58.

<sup>1119</sup> *ibid.*

<sup>1120</sup> For instance, *Algeria, Belarus, Benin, Bosnia and Herzegovina, Burkina Faso, Cabo Verde, Canada, Cuba, Czechia, Denmark, Dominican Republic, Ecuador, Finland, Guatemala, Islamic Republic of Iran, Ireland, Kazakhstan, Latvia, Lithuania, Malta, Montenegro, New Zealand, Niger, Nigeria, Panama, Poland, Senegal, Slovenia, South Africa, Saint Kitts and Nevis, Suriname, Togo, Tonga, United States and Zimbabwe.*

<sup>1121</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 11.



enjoy, but is simply an indicator of the extent to which the law is beginning to recognize domestic workers as workers with rights.<sup>1122</sup> There are often gaps in the legal coverage of domestic workers in terms of the limitation of working hours, minimum wages, inclusion in social security schemes and measures to ensure occupational safety and health.<sup>1123</sup> Even when they are included in specific provisions, they may have rights that are less favourable than those afforded to other workers. For instance, the normal weekly hours of work of domestic workers tend to be higher than for other workers (see Chapter 9).

In *Malaysia*, the Association of Indonesian Migrant Domestic Workers (PERTIMIG) and the Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas (AMMPO),<sup>1124</sup> and the IDWF, point out that the Employment Act 1955 refers to domestic workers as “domestic servants” and excludes them from most of the rights afforded to other workers in the legislation, such as entitlements to a rest day, annual leave, minimum wages, social security, holidays and maternity leave. The migrant domestic workers’ organizations claim that this exacerbates domestic workers’ vulnerability to exploitation, precarious work, gender-based violence and human trafficking.

**612.** In some countries, domestic workers are covered by the Labour Code, but are nevertheless excluded from specific provisions on working time or wages, which reduces their level of protection.

*Canada* – In Yukon, the Employment Standards General Exemption Regulation provides that “domestics” are exempted from the sections dealing with hours of work. In Alberta, domestic employees are excluded from the standard employment provisions on hours of work, notice of work times, overtime hours and overtime pay.

*United Kingdom* – The Government reports that, as a rule, domestic workers are entitled to the same employment rights as workers generally, including under the regulations on minimum wages and paid annual leave, unless they are treated as a member of the family. The Government adds that it would occasionally be inappropriate to treat domestic workers identically, and considers for example that it would not be practical to extend the Health and Safety at Work Act (1974) to cover domestic workers. Moreover, the Working Time Regulations (1998) treat “domestic servants” differently in some respects. For instance, they are not covered by the limits on average weekly working time.

**613.** In other countries, the provisions of the legislation regulating the working conditions of domestic workers may be less favourable than those covering other workers.<sup>1125</sup>

<sup>1122</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit.

<sup>1123</sup> For instance, with regard to access to social security, according to the most recent ILO estimates, only 6 per cent of domestic workers are covered by all social security branches, 46.5 per cent have no legal entitlement to maternity leave and 47.6 per cent have no right to maternity cash benefits. The largest gap in legal coverage is in unemployment insurance, with 71 per cent of domestic workers not being covered. ILO (2021). *Making decent work a reality for domestic workers*, op. cit., pp. 130 and 142.

<sup>1124</sup> AMMPO is an association of overseas Filipino workers in Malaysia, with the majority of members being domestic workers.

<sup>1125</sup> Honduras, *Labour Code, 1959*, as revised (Decree No. 189, of 15 July 1959).

CEACR – In its comments concerning the *Dominican Republic*, the Committee has noted that section 4 of the Labour Code establishes special regimes for specific categories of work, including domestic work. It has also noted that the fourth Chapter, Title IV, of the Labour Code, entitled “The work of domestics”, only contains eight sections regulating domestic work (sections 258 to 265). These sections establish conditions of work for domestic workers that are less favourable than those of other workers, for example in relation to hours of work, rest, annual leave, sick leave and remuneration. The Government reports that it has established a Special Commission for the Revision and Updating of the Labour Code, with the participation of the social partners in the revision process.<sup>1126</sup>

*Malaysia* – A “domestic servant” is defined in the Employment Act 1955 (Act 265) as a “person employed”. However, domestic servants are excluded from certain provisions, such as those in respect of notice of termination of contract (section 12), termination of contract for special reasons (section 14), limitation on advances to employees (section 22), duty to keep registers (section 61), duty to display notice boards (section 64) and maternity protection (Part IX). They are also excluded from the provisions of the Act relating to rest days, hours of work, holidays and other conditions of service (Part XII).<sup>1127</sup>

**614. The Committee recalls that the objective of the Convention is to guarantee domestic workers the same labour rights and working conditions as those enjoyed by other workers more generally.<sup>1128</sup> Excluding domestic workers from specific provisions, or providing them with lower levels of coverage than other workers, is not compatible with the provisions and spirit of the domestic work instruments.**

**615.** The effective regulation of the conditions of employment of domestic workers and the enforcement of their fundamental principles and rights at work require a proper understanding of the specific nature of the tasks they perform. Specific laws or statutory instruments have been adopted in some countries that are designed to address the particular nature of the employment conditions of domestic workers.<sup>1129</sup>

**616.** The Committee observes that domestic workers are covered in some countries by a combination of norms, as well as by the general labour law. When examining the application of the Convention by ratifying States, the Committee has noted that, in some cases, the provisions

<sup>1126</sup> CEACR – *Dominican Republic*, C.189, direct request, 2018.

<sup>1127</sup> *Malaysia*, [Employment Act, 1955](#) (Act 265), as amended up to 1 Jan. 2006.

<sup>1128</sup> CEACR – *Dominican Republic*, C.189, direct request, 2018.

<sup>1129</sup> For instance, *Argentina* (Act No. 26844 issuing the special regime governing the labour contract of personnel in private houses), *Austria* (Federal Act Governing Domestic Help and Domestic Employees, and Home Care Act), *Benin* (Arrêté n° 026/MFPTRA/DC/SGM/DT/SRT du 14 avril 1998 fixant les conditions générales d'emploi des employés de maison), *Plurinational State of Bolivia* (Act No. 2450 of 9 Apr. 2003, Act regulating household employment), *Cambodia* (Prakas No. 235 of 29 May 2018 on the working conditions of domestic workers), *Morocco* (Act No. 19-12 of 10 Aug. 2016 determining the conditions of work and employment of women and men domestic workers), *Philippines* (Implementing rules and regulations of Republic Act No. 10361), *Oman* (Ministerial Order No. 189 of 2004 concerning the rules and conditions on the employment of domestic workers), *Saudi Arabia* (Ministerial Decision No. 310 of 1434H, 2013 regulating the employment of domestic workers), *Senegal* (Arrêté ministériel n° 974/MFPT/DTSS du 23 janvier 1968 déterminant les conditions générales d'emploi des domestiques et gens de maison), *Spain* (Royal Decree No. 1620/2011, of 14 Nov. 2011 regulating the special labour relations of service in the family home), *Sweden* (Domestic Work Act, 1970), *Tunisia* (Act No. 2005-32 of 4 Apr. 2005 amending Act No. 65-25 of 1 July 1965 relating to the situation of household employees), *Qatar* (Law No. 15 of 22 Aug. 2017 relating to domestic workers), *United Arab Emirates* (Federal Law No. 10 of 2017 on domestic workers), *Uruguay* (Act No. 18065, of 26 Nov. 2006, on domestic work) and *Zimbabwe* (Labour Relations (Domestic Workers) Employment Regulations, 1992 (S.I. No. 377 of 1992)).

protecting domestic workers are dispersed across multiple laws and regulations.<sup>1130</sup> The Committee considers that this makes it more difficult for domestic workers to enjoy effective protection in practice, not least because they may not be familiar with the legal framework and may be unaware of their rights. ***The Committee considers that it is therefore important for domestic workers, particularly migrant domestic workers, to be afforded integrated, transparent and effective protection, equivalent to that enjoyed by other workers, through the inclusion of such protections in a general law, or in specific legislation. Accordingly, it wishes to stress that, in view of the particular characteristics of domestic work, which often include isolation, dependency on the employer, lack of representation and intermediation through private employment agencies, it is crucial for domestic workers to be able to know their rights so that they can exercise them effectively. In this regard, easily accessible information, awareness raising campaigns and training on relevant laws and regulations should be made available to domestic workers in a language and format they understand, so that they can know and exercise their rights (see Chapter 10).***

617. National or regional collective agreements covering the domestic work sector have been concluded in some countries.<sup>1131</sup> In such cases, elements of contract law generating obligations between the signatories are combined with regulatory mechanisms (usually in the form of decrees), thereby extending to domestic workers and their employers the standards established in the general labour legislation for other workers.<sup>1132</sup> In some cases, they establish working conditions for domestic workers that are more favourable than those contained in the general labour legislation.

*France* – The Government reports that domestic work is covered by three different national collective agreements: (1) the agreement for employees of private individuals, which covers domestic workers who are employed directly by households;<sup>1133</sup> (2) the agreement for personal service enterprises, which regulates the employment relationships of domestic workers employed by private enterprises;<sup>1134</sup> and (3) the agreement covering workers who work in private households for whom non-profit organizations act as intermediaries in placing domestic workers.<sup>1135</sup>

*Italy* – The employment conditions of domestic workers are governed by the social partners through a comprehensive national collective agreement (CCNL),<sup>1136</sup> concluded on 1 July 2013 and renewed on 8 September 2020, which covers virtually all aspects of the working conditions and employment relationship of domestic workers.

618. The Committee notes that specific legislation on domestic workers has recently been adopted in certain countries.<sup>1137</sup>

<sup>1130</sup> For instance, *Azerbaijan, Canada, Egypt and Georgia*.

<sup>1131</sup> For instance, *Argentina, Belgium, France, Italy and Uruguay*.

<sup>1132</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 95.

<sup>1133</sup> *France*, Clause 1 of the [National Collective Agreement for employees of private individuals](#) of 24 Nov. 1999 provides that: “An employee is any person, full time or part time, who performs all or part of the family or household tasks in the home”.

<sup>1134</sup> *France*, [National collective agreement for personal service enterprises](#) of 20 Sep. 2012.

<sup>1135</sup> *France*, [National collective agreement for the assistance, support, care and home services sector](#) of 21 May 2010.

<sup>1136</sup> *Italy*, Contratto Collettivo Nazionale del Lavoro Domestico, op. cit.

<sup>1137</sup> *Ghana*, (Labour (Domestic Workers) Regulations 2020 (L.I. 2408)); and *Seychelles* (Conditions of Employment of Domestic Workers Regulations, 2019).

*Ghana* – The Labour (Domestic Workers) Regulations, 2020 (L.I. 2408), came into force on 23 July 2020.

*Pakistan* – The Punjab Domestic Workers Act was adopted in 2019, following tripartite discussion, including in the Provincial Tripartite Consultation Committee (PTCC).<sup>1138</sup>

*Peru* – Act No. 31047 of 2020 on domestic workers,<sup>1139</sup> repealing Act No. 27986, has introduced improvements such as: the requirement to register employment contracts, prohibition of the remuneration of domestic workers being below the minimum wage (section 6), the recognition as working time of periods when the worker does not dispose freely of her or his time due to being in the home or workplace under the instructions of the employer. Presidential Decree No. 9-2021-TR of 17 April 2021 issued the regulations under the Act.<sup>1140</sup>

619. Some governments report legal initiatives to align national legislation more closely with the domestic work instruments.

*Algeria* – The Government reports that a draft executive decree determining the specific regime governing the labour relationship of domestic workers is currently being finalized. The draft decree is aligned with the domestic work instruments.

*Pakistan* – A draft law on domestic workers has been prepared in Sindh Province, following consultation with stakeholders, and has been submitted to the Provincial Assembly for approval. In Balochistan Province, discussions and consultations are still being held with key stakeholders on the promulgation of the Balochistan Domestic Workers Regulation Bill 2017. In Islamabad Capital Territory, the Domestic Workers (Employment and Rights) Bill (2013) is under consideration by Parliament.

620. Some governments have indicated that the national labour legislation explicitly excludes domestic workers.

*Sudan* – Section 3(f) of the Labour Code of 1997 excludes domestic workers from its scope of application.

621. The Committee notes that in some countries national labour regulations only cover domestic workers employed by private enterprises that provide services to private households, who only account for a small percentage of the total number of domestic workers.

<sup>1138</sup> *Pakistan*, Punjab Domestic Workers Act, 2019, op. cit.

<sup>1139</sup> *Peru*, [Ley núm. 31047 de las Trabajadoras y Trabajadores del Hogar](#).

<sup>1140</sup> *Peru*, [Decreto Supremo 9-2021-TR, por el que aprueba el Reglamento de la Ley 31047](#).

*China* – Workers who perform housework and other domestic services, referred to as “domestic service personnel”, generally enter into a service agreement with the family, which establishes a civil relationship. They are excluded from the coverage of labour laws, but are covered by civil laws and regulations, including the Guiding Recommendations on the Development of the Domestic Service Industry (No. 43 [2010] of the State Council).<sup>1141</sup> However, if they are recruited by enterprises and outsourced to perform domestic work in households, they are covered by the national labour legislation, which establishes protection for their employment, training, wages, working hours, rest and leave, social security and other rights.

*Japan* – Domestic workers are excluded from the scope of the Labour Standards Act<sup>1142</sup> and the Industrial Safety and Health Act.<sup>1143</sup> However, if they are employed by a business, they are covered by labour laws and regulations, including the Labour Standards Act.<sup>1144</sup> The Labour Contract Act of 2007 applies to all workers, including domestic workers.<sup>1145</sup>

*Republic of Korea* – In accordance with section 11(1) of the Labour Standards Act, the Act applies “to all businesses or workplaces in which five or more workers are ordinarily employed”. However, the Act does not apply to “any business or workplace which employs only relatives living together, or to a worker who is hired for domestic work”.<sup>1146</sup> On 21 May 2021, the National Assembly adopted the Act on the Employment Improvement, Etc. of Domestic Workers to protect the rights and interests of domestic workers and revive the domestic work sector. The Act only applies to domestic workers employed by an enterprise certified by the Ministry of Employment and Labour. Unincorporated institutions or centres that are not certified by the government, especially workers who provide housekeeping services through online platforms, are not covered under the Act.<sup>1147</sup>

**622.** The Committee notes that, while progress has been made towards the regulation of domestic work and the legal coverage of domestic workers, important decent work deficits and gaps in implementation persist. It is still the case that national laws and regulations, whether general or specific, do not always afford domestic workers the same rights and protection as other workers. ***The Committee therefore considers that further efforts are needed to ensure the full application at the national level of the principles of the domestic work instruments.***

<sup>1141</sup> The Guiding Recommendations on the Development of the Domestic Service Industry (No. 43 [2010] of the State Council) contains guiding opinions on such areas as: the development plan for the domestic service sector; policy support; the standardization of market order; the improvement of the professional skills of practitioners; the protection of the legitimate rights and interests of practitioners; and the strengthening of organization and leadership in the development of domestic service. See in this regard: M. Liu (2017). *Migrants and cities: Research report on recruitment, employment, and working conditions of domestic workers in China*, Conditions of Work and Employment Series No. 92, ILO and International Organization for Migration, Geneva, p. 7.

<sup>1142</sup> *Japan*, Art. 8 of the Labour Standards Act provides that it “applies to the enterprises and places of business listed in each of the items below; provided, however, that it does not apply to any enterprise or place of business employing only relatives living with the employer as family members nor to domestic employees”. *Labour Standards Law*, Law No. 49 of 7 Apr. 1947 as amended through Law No. 107 of 9 June 1995.

<sup>1143</sup> *Japan*, *Industrial Safety and Health Act*, Act No. 57 of 8 June 1972, as amended by Law No. 25 of 31 May 2006, Art. 2(ii).

<sup>1144</sup> *Japan*, *Labour Standards Law*, op. cit., Art. 9.

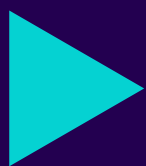
<sup>1145</sup> *Japan*, *Labour Contract Act*, Act No. 128 of 5 Dec. 2007, Arts 2 and 3.

<sup>1146</sup> *Republic of Korea*, *Labour Standards Act*, Act No. 5309, of 1997 (as amended).

<sup>1147</sup> *Republic of Korea*, Ministry of Employment and Labour. “*Laying the institutional foundation in guaranteeing labour rights for domestic workers: Act on the Employment Improvement, Etc. of Domestic Workers passed at a plenary session of the National Assembly*”, 25 May 2021.







# 8

## Fundamental principles and rights at work of domestic workers

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## ► I. Ensuring decent work for all domestic workers

**623.** Domestic workers are particularly vulnerable to human rights violations, including violations of their fundamental labour rights, in view of the historical links between domestic work and slavery, as well as other forms of servitude, the highly gendered nature of domestic work and the prevalence of informal work in the sector.<sup>1148</sup> These vulnerabilities are even greater for women domestic workers. The Preamble to the Domestic Workers Convention, 2011 (No. 189), explicitly recognizes that domestic work “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”.

**624.** The types of exploitation and abuse suffered by domestic workers include excessive or undefined working hours, insufficient rest, poor remuneration, the late payment or withholding of wages, and lack of access to social protection. Live-in domestic workers may also be subject to restrictions on leaving their employer’s premises during their rest or leave periods and excessive deductions for accommodation and food provided by the employer. Abuse often includes violence and harassment, to which women migrant domestic workers are particularly vulnerable.<sup>1149</sup> Child labour and forced labour are also common in the domestic work sector, particularly in the informal economy.<sup>1150</sup> Moreover, when domestic workers encounter exploitation and abuse, it is often difficult, if not impossible, for them to leave or report the situation to the authorities, largely due to the invisibility, isolation and dependence experienced by many workers, and particularly migrants, who work in the employer’s household. An additional challenge to enforcement is that domestic employers and workers are often unaware of their respective rights and responsibilities.

**625.** Taking these vulnerabilities into account, it was agreed during the preparatory discussions that the domestic work instruments should place strong focus on human rights.<sup>1151</sup> The Preamble to the Convention accordingly highlights the relevance to domestic work of international human rights instruments, including the Universal Declaration of Human Rights and other core United Nations human rights treaties. Article 3(1) of the Convention requires Members to take measures to ensure the effective promotion and protection of the human rights of all domestic workers, thereby implicitly recognizing that promoting and protecting human rights and ensuring decent working and living conditions for domestic workers are interrelated and mutually reinforcing objectives.

**626.** The Preamble to the Convention also highlights the importance of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization. Article 3(2) of the Convention requires Members, in relation to domestic workers, to take the measures set out in the instrument to respect, promote and realize the fundamental principles and rights at work, namely: (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.

**627.** Moreover, the Preamble to the Convention explicitly recalls that international labour standards, including the fundamental principles and rights at work, apply to all workers, including domestic workers. In this respect, the ILO supervisory bodies have consistently indicated that the specific nature of domestic work is not an adequate reason for excluding domestic workers from the protection of international labour standards.<sup>1152</sup>

<sup>1148</sup> ILO (2012). *Effective protection for domestic workers: A guide to designing labour laws*, Geneva, p. 25.

<sup>1149</sup> United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW) (2011). *General comment No. 1 on migrant domestic workers*, (CMW/C/GC/1), para. 13.

<sup>1150</sup> ILO (2013). *Snapshot: ILO in action – Domestic workers*, Geneva, p. 2.

<sup>1151</sup> ILO (2010). *Provisional Record No. 12*, International Labour Conference, 99th Session, Geneva, para. 273.

<sup>1152</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, para. 57.

*The Committee recalls that Member States have an obligation arising from the very fact of membership in the Organization to respect the fundamental principles and rights at work irrespective of whether they have ratified the Conventions concerned.<sup>1153</sup> In this regard, the Committee considers that legislative measures that ensure respect for and the full realization of the fundamental principles and rights at work in the context of domestic work are essential to ensuring decent work for domestic workers.*

## ► II. Freedom of association and the right to collective bargaining

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628. Domestic workers, particularly migrant domestic workers, may be precluded by national legislation from the fundamental right to establish and join organizations of their own choosing and to engage in collective bargaining. Due to the particular characteristics of domestic work, which often involve physical and social isolation in the employer's private household, practical obstacles make it more difficult for domestic workers and their employers to organize. Issues relating to the exercise of this fundamental right are addressed in Chapter 12.

## ► III. Eradication of forced labour

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629. Freedom from forced or compulsory labour is a cornerstone of decent work and constitutes one of the most basic human rights coming within the competence of the ILO.<sup>1154</sup> The Committee recalls that the prohibition of forced or compulsory labour in all its forms is an inalienable and fundamental human right from which no exceptions are permitted. It further recalls in this respect the relevance of the ILO Centenary Declaration for the Future of Work and target 8.7 of the Sustainable Development Goals (SDGs), which gives expression to the universal commitment to eradicate forced labour and child labour and end modern slavery and human trafficking.<sup>1155</sup>

630. Article 3(2)(b) of the Convention requires Members to take measures, in relation to domestic workers, to respect, promote and realize the elimination of all forms of forced and compulsory labour. The Convention and its accompanying Recommendation set out a number of specific measures aimed at preventing situations tantamount to forced or compulsory labour, such as ensuring: the provision of information to domestic workers on their terms and conditions of employment; protection from all forms of harassment, abuse and violence; the protection of wages; freedom to reach agreement with the employer on whether or not to reside in the household; the right of domestic workers to leave the employer's household during rest periods and leave and to keep their travel and identity documents in their possession; and protection against abusive or fraudulent practices by private employment agencies.

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<sup>1153</sup> ILO (1998). [ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up](#), International Labour Conference, 86th Session, Geneva, para. 2.

<sup>1154</sup> ILO (2012). [Giving globalization a human face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a fair Globalization, 2008, Report III (Part 1B), International Labour Conference, 101st Session, para. 252.

<sup>1155</sup> ILO (2019). [ILO Centenary Declaration for the Future of Work](#), International Labour Conference, 108th Session, Geneva; and ILO, [ILO contributions to achieve target 8.7 \(the 2030 Agenda for Sustainable Development\)](#).

**631.** The Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), which are the two fundamental ILO Conventions on forced labour, apply to all workers, including domestic workers,<sup>1156</sup> who are also covered by the Protocol of 2014 to Convention No. 29. These instruments seek to ensure that all human beings are free from forced or compulsory labour in law and practice, irrespective of the nature of the work or sector of activity in which they are engaged.<sup>1157</sup> Convention No. 29, in Article 2(1), defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>1158</sup> In examining the application of Convention No. 29, the Committee has repeatedly highlighted the vulnerability of domestic workers, especially migrant domestic workers, to the exaction of forced labour.<sup>1159</sup> The nature of their work makes domestic workers particularly vulnerable to economic exploitation, abuse and, in extreme cases, domestic servitude or domestic slavery.<sup>1160</sup>

**632.** According to ILO global estimates, in 2016 there were an estimated 16 million people in forced labour in the private economy, with domestic workers representing the largest share (24 per cent) of adults in forced labour, and with women and girls making up 71 per cent of victims of modern slavery, particularly in the private economy (including domestic work).<sup>1161</sup>

In *Brazil*, the National Federation of Domestic Workers (FENATRAD), affiliated to the International Domestic Workers Federation (IDWF), reports that, according to data from the secretariat of the Labour Inspectorate, between 2017 and 2020 there were 24 cases of domestic work in conditions analogous to slavery. FENATRAD denounces that in the first part of 2021, trade unions in the states of Bahia, Rio de Janeiro and São Paulo registered more than 100 cases of domestic workers in conditions analogous to slavery. The domestic workers were forced to live in their employer’s house without any time off and experienced increased workloads without pay increases. It also denounces cases equivalent to captivity, where domestic workers were not allowed to visit their families.

**633.** The Committee emphasizes that the adoption of adequate legislation is essential to provide effective protection for domestic workers against forced or compulsory labour practices. Protection against forced labour is generally embedded in the national constitution, labour code or other labour legislation, and compliance is most commonly ensured through criminal legislation.<sup>1162</sup> In some countries, laws and regulations specific to domestic workers refer to the prohibition of forced labour set out in the general legislation.<sup>1163</sup> In others, provisions have been adopted in criminal law establishing enhanced penalties for offences against domestic workers.

<sup>1156</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 261.

<sup>1157</sup> *ibid.*, para. 253.

<sup>1158</sup> Convention No. 29, Art. 2(1).

<sup>1159</sup> For instance, CEACR – *Guyana*, C.29, direct request, 2018; *Malaysia*, C.29, observation, 2018; *Nepal*, C.29, observation, 2018; *Oman*, C.29, observation, 2020; *Peru*, C.29, direct request, 2020; *Philippines*, C.29, observation, 2020; *Qatar*, C.29, observation, 2020; *Saudi Arabia*, C.29, observation, 2020; *Singapore*, C.29, direct request, 2019; and *United Arab Emirates*, C.29, observation, 2020.

<sup>1160</sup> CMW (2011). General comment No. 1 on migrant domestic workers, op. cit., paras 1, 7 and 53.

<sup>1161</sup> ILO, Walk Free Foundation and International Organization for Migration (IOM) (2017). *Global estimates of modern slavery: Forced labour and forced marriage*, Geneva, pp. 10, 11 and 22.

<sup>1162</sup> For instance, *Algeria, Armenia, Bahamas, Bahrain, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, Czechia, Egypt, France, Germany, Hungary, Islamic Republic of Iran, Iraq, Italy, Kiribati, Latvia, Lithuania, Malta, Norway, Slovenia and South Africa*.

<sup>1163</sup> For instance, *Morocco and Pakistan*.

*Singapore* – Section 73(1) of the Penal Code provides that: “Where an employer of a domestic worker, a member of the employer’s household or an employment agent of a domestic worker is convicted of an offence under this Code ... committed against that domestic worker, the court may sentence the person convicted to twice the maximum punishment that the court could, but for this section, impose for that offence.”<sup>1164</sup>

634. Some situations may amount to forced or compulsory labour, such as when employers prevent domestic workers from communicating with friends, family and others outside the workplace. These restrictions are likely to prevent them from having access to the resources and support necessary to enable them to leave abusive or exploitative employment situations.<sup>1165</sup> In this respect, the Committee observes that live-in domestic workers are at higher risk of violations of their right to personal liberty and freedom of movement than those who live-out. Consequently, Article 9 (b) of Convention No. 189 requires countries to take measures to ensure that live-in domestic workers are not obliged to remain in the household or with household members during their periods of daily and weekly rest or annual leave. Protecting the personal liberty and freedom of movement of domestic workers may require the adoption of effective legislative measures.<sup>1166</sup> ***The Committee therefore urges constituents to adopt legislative and regulatory measures that effectively protect the right of domestic workers to communicate with people and institutions outside the domestic workplace and prevent employers from wrongfully interfering with domestic workers’ right to seek help from an abusive relationship.***

635. The Committee notes that, despite the inclusion of protections against forced labour in the legislation of many countries, there is often a lack of effective compliance mechanisms to monitor and enforce the application of protections in the domestic work sector. Moreover, in their observations, some trade unions emphasize the need to adopt specific measures to address forced labour in the domestic work sector due to the special vulnerability of domestic workers.

In *Bangladesh*, the National Domestic Women Workers Union (NDWWU), the Domestic Workers Rights’ Network (DWRN) and the IDWF indicate that numerous policies and laws have been adopted to stop forced labour of migrant workers. They refer, among other measures, to the creation of a helpline for migrant domestic workers, measures to spread awareness about the “Domestic Workers’ Protection and Welfare Policy 2015”, and the provision of free legal aid for domestic workers. In addition, the adoption of labour inspection procedures for the domestic work sector is under consideration. Nonetheless, the domestic workers’ organizations maintain that these measures are flawed and ineffective. They indicate that Bangladeshi migrant domestic workers are frequently reported to be tortured and subjected to forced labour by their employers.

<sup>1164</sup> *Singapore*, [Penal Code](#) (as revised in 2008).

<sup>1165</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., pp. 30–31.

<sup>1166</sup> For instance, in *Singapore*, section 73 of the Criminal Code establishes as a punishable offence the “wrongful confinement” of a domestic worker. In some countries, such provisions may be included in model contracts, see for instance: The Memorandum Circular No. 07 Series of 2013 of the Philippine Overseas Employment Administration (POEA)- [Employment contract for non-Jordanian domestic workers](#) provides that: “The Employer, at his/her own expense, shall allow the worker to tele-communicate with his/her family once a month, while the worker shall be entitled to make a second call during the month at his/her own expense.”

In *Zimbabwe*, the Zimbabwe Domestic and Allied Workers Union (ZDAWU) indicates that forced labour is prohibited under section 4A of the Labour Act. However, there is a need to revise the Regulations on Domestic Work to include provisions that specifically protect domestic workers because of their vulnerability, particularly live-in domestic workers. In some cases, these workers work under conditions similar to forced labour. Their personal identity documents are retained by their employer and they are required to pay agency fees or the cost of their transport.

## 1. Domestic slavery and servitude

**636.** The specificities of domestic work that make domestic workers particularly vulnerable to domestic servitude and slavery include conditions under which they are exploited, wholly dependent on others and unable to end the relationship voluntarily.<sup>1167</sup> In situations of domestic slavery, the employer may claim to “own” the victim, and it is the exercise of “any or all of the powers attaching to right of ownership” that technically distinguishes slavery from servitude, although in practice the distinction is not very clear and depends on the degree of control and power exercised over the individual.<sup>1168</sup> The Committee notes in this regard the decision of the European Court of Human Rights (ECHR) in *Siliadin v. France*, in which it identified specific indicators of domestic servitude, including: the vulnerability of the person; limitations on personal freedom; violations of human dignity; excessive hours of work; no payment or disproportionate payment; and the worker’s perception of the situation as permanent. A number of regional international courts have held that countries have an obligation to protect domestic workers effectively from situations of servitude and slavery.

European Court of Human Rights (ECHR) – *Siliadin v. France*. The case involved a national of Togo who had served as an unpaid domestic servant for years as a minor and whose passport had been confiscated by her employer. The applicant, relying on Article 4 (prohibition of forced labour) of the European Convention on Human Rights, submitted that French criminal law did not afford her sufficient and effective protection against the “servitude” in which she had been held, or at the very least against the “forced and compulsory” labour she had been required to perform, which in practice had made her a domestic slave. The Court, citing the ILO forced labour Conventions, considered that the applicant had been subject to forced labour and held in servitude within the meaning of Article 4, but that it could not be considered that she had been held in slavery in the traditional sense of the concept, as the element of claimed ownership was not shown. As France, at the time, did not have specific criminal provisions on slavery and servitude that would have afforded the victim specific and effective protection, the ECHR found a violation of the applicant’s right not to be subject to domestic servitude.<sup>1169</sup>

<sup>1167</sup> United Nations (2010). [Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences](#), A/HRC/15/20, paras 17–18 and 23–26.

<sup>1168</sup> [Slavery Convention](#), 1926, Art. 1.

<sup>1169</sup> European Court of Human Rights, [Siliadin v. France, Judgment, 26 October 2005](#) (Application No. 73316/01).

Court of Justice of the Economic Community of West African States (ECOWAS) – *Hadijatou Mani Koraou v. The Republic of Niger*. In this case, the Court ordered the Government of Niger to pay compensation for a former domestic “slave” purported to be sold at the age of 12 to her “master”, a 46-year-old tribal chief in Niger. The sale was made under a practice in Niger called *wahiya*, under which young girls are forced into servile status, acting as both domestic servants and concubines. The applicant was subjected to rape, violence and forced labour for almost ten years. The Court ruled that the applicant had been a slave in accordance with the definition in Article 1(1) of the Slavery Convention, 1926, and that, in failing to convict her former “owner”, Niger had not upheld its legal responsibility under international law to protect her from domestic slavery.<sup>1170</sup>

637. The Committee further notes that the practice of debt bondage affects a significant number of domestic workers. It remains one of the most prevalent forms of modern slavery in all regions, despite being banned by international law and by most jurisdictions.<sup>1171</sup> Under debt bondage practices, labourers and their families are forced to work for an employer in order to pay off the debts they have incurred or inherited.<sup>1172</sup> In its comments on the application of Convention No. 29, the Committee has expressed concern at the vulnerability of domestic workers, particularly migrant domestic workers, to situations of debt bondage in which they may be compelled to assume a considerable debt to their employer or the agency organizing their recruitment and transport.<sup>1173</sup> Workers may have to repay their debts for months or years through direct deductions from their wages.<sup>1174</sup> The system creates a strong dependency on the employer and increases the risk of abuse and exploitation.<sup>1175</sup> In addition, the workers concerned may be prevented from returning to their home country because employers or recruitment agencies withhold their passports or return air tickets, and they are not allowed to leave before they have worked off their debt.<sup>1176</sup> The Committee has noted that, in such cases, migrant domestic workers are often subject to abusive practices by employers, such as non-payment of wages, deprivation of liberty, and physical and sexual abuse, which give rise to forced labour conditions.<sup>1177</sup>

638. The Committee further notes that, in some countries where the *kafala* “sponsorship” system is used, migrant domestic workers are unable to change employers, as their visa is tied to a particular household.<sup>1178</sup> Domestic workers are only allowed to change visa sponsor without the consent of their employer under exceptional conditions that are difficult to meet in practice. Live-in domestic workers who are dismissed can find themselves from one moment to the next in the street with no income, legal residence status, family support network, return air ticket or the right to seek another job.<sup>1179</sup>

1170 ECOWAS Community Court of Justice, *Hadijatou Mani Koraou v. The Republic of Niger*, 27 October 2008 (ECW/CCJ/APP/0808).

1171 United Nations (2016). *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, A/HRC/33/46, para. 29.

1172 ILO (2012). *Giving globalization a human face*, op. cit., para. 294.

1173 *ibid.*, para. 295.

1174 See the definition of “debt bondage” in the United Nations *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, 1956, Art. 1(a).

1175 United Nations (2018) *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, A/HRC/39/52, para. 44.

1176 United Nations (2010). A/HRC/15/20, op. cit., para. 33.

1177 For instance, CEACR – *Bahrain*, C.29, observation, 2017; *Malaysia*, C.29, observation, 2018; *Maldives*, C.29, direct request, 2020; and *Nepal*, C.29, observation, 2018. ILO (2012). *Giving globalization a human face*, op. cit., para. 295.

1178 For instance, CEACR – *Bahrain*, C.29, observation, 2017; *Lebanon*, C.29, observation, 2020; and *Saudi Arabia*, C.29, observation, 2019.

1179 United Nations (2010). A/HRC/15/20, op. cit., para. 54.



The International Trade Union Confederation (ITUC) points out that the use of visa schemes or systems such as the *kafala* system, that tie the worker to one employer, can expose domestic workers to forced or compulsory labour by preventing them from leaving abusive employment situations for fear of losing their right to remain in the destination country. Live-in domestic workers are particularly exposed to abuses, including the use of violence and harassment, denial of paid leave and periods of rest and being prevented from leaving the home where they work. Domestic workers in an irregular situation are particularly at risk of forced and compulsory labour due to fear of detection, detention, and deportation.

In *Jordan*, the Domestic Workers Solidarity Network of Jordan (DWSNJ), together with the IDWF, report that the *kafala* system (codified in Act No 24 of 1973) remains in force in the country. Migrant workers cannot enter the country without being sponsored by someone, who is often the employer. The domestic workers' organizations report that many domestic workers of various nationalities, including those from *Bangladesh, Sri Lanka, Indonesia, Uganda* and the *Philippines*, endure poor working conditions. They are subjected to passport confiscation by employers, their salaries are delayed or unpaid, and they are denied time off and encounter abuses that may even involve human trafficking. The situation is further exacerbated in the case of migrant domestic workers with no valid work permit or residency, as they are excluded from protections available under the legislation.

639. The Committee has consistently emphasized that the *kafala* system may be conducive to the exaction of forced labour and has requested the governments concerned to adopt legislative provisions to protect workers against abusive practices.<sup>1180</sup> Measures have recently been adopted in some countries for the elimination of the *kafala* system and to enhance the protection of migrant domestic workers.<sup>1181</sup>

CEACR – In its comments concerning *Qatar*, the Committee has noted the adoption of legislative amendments abolishing the *kafala* system. In accordance with the amendments introduced by Decree Law No.18 of 2020 and Decree Law No. 19 of 2020, migrant domestic workers may terminate their employment contract during their probationary period in order to transfer to another employer, on condition that they notify their current employer in writing of their intent to terminate the contract at least one month before the date of termination. The law further permits either party to terminate the employment contract after the probationary period. Decree No. 19 also permits migrant domestic workers to change employers after notifying the Ministry of Administrative Development, Labour and Social Affairs (MADLSA), on condition that their residence permit is valid or is within 90 days of the date of expiry, unless it has expired for reasons which are not within their control.<sup>1182</sup>

<sup>1180</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 295.

<sup>1181</sup> For instance, *Qatar* and *Saudi Arabia*.

<sup>1182</sup> CEACR – *Qatar*, C.29, observation, 2020.



*Saudi Arabia* – Ministerial Decision No. 605 of 15/05/1438 H. (12 February 2017) establishes the circumstances in which “men or women domestic workers and similar person can be transferred from one employer to another by decision of the Minister, or any other person authorized by him”. These circumstances include situations in which the domestic worker is assigned hazardous work or the employer or any of his family members have abused the worker.<sup>1183</sup>

640. The Committee further notes the need for measures to protect migrant workers from abusive or unethical practices by private employment agencies (see Chapter 11).<sup>1184</sup> Such practices may include: false information regarding the type of employment and the conditions to be expected in the destination country; illegal recruitment fees, which often lead migrants to incur large debts; the confiscation of identity documents; and threats, intimidation and the withholding of wages.<sup>1185</sup>

## 2. Trafficking in persons

641. Slavery, servitude and forced labour often occur within the context of human trafficking. The Committee recalls that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour contained in Article 2(1) of Convention No. 29.<sup>1186</sup>

642. The Committee observes that trafficking into domestic servitude usually takes place under cover of activities that appear legal on the surface. For instance, agents recruiting domestic workers may deliberately deceive their clients about the conditions of work or engage in illegal practices (such as withholding passports).<sup>1187</sup> The Committee has noted the adoption of national plans and other policy measures to prevent trafficking in persons and has sought information on their application in practice.<sup>1188</sup> In this context, the Committee has paid particular attention to the situation of persons in the most vulnerable situations, such as migrant and domestic workers.<sup>1189</sup>

<sup>1183</sup> *Saudi Arabia*, [Ministerial Decision No. 605](#), dated 15/5/1438 H, paras. (6) and (7) (12 February 2017).

<sup>1184</sup> For instance, CEACR – *Philippines*, C.189, direct request, 2015.

<sup>1185</sup> United Nations (2018). A/HRC/39/52, op. cit., para. 60.

<sup>1186</sup> ILO (2007). [Eradication of forced labour](#), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 1B), International Labour Conference, 96th Session, Geneva, para. 77.

<sup>1187</sup> United Nations (2010). A/HRC/15/20, op. cit., para. 60.

<sup>1188</sup> For instance, CEACR – *Costa Rica*, C.189, direct request, 2019.

<sup>1189</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 298.

CEACR – In its comments concerning the application of Convention No. 189 by the *Philippines*, the Committee referred to its comments under Convention No. 29 requesting information on the measures adopted to eliminate all forms of forced or compulsory labour in relation to domestic workers, particularly migrant domestic workers recruited by private employment agencies. The Committee referred to the 2016 concluding observations of the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), in which it noted with concern that the *Philippines* remained a source country for international and internal trafficking, including for domestic servitude. Moreover, the Committee recalled its 2012 comments on the application of the migration instruments,<sup>1190</sup> in which it noted that almost one-third of Filipino overseas workers in 2010 were engaged in domestic work, 98 per cent of whom were women migrant workers.<sup>1191</sup>

### 3. Enhanced risk of exploitation, abuse and forced labour of specific groups of domestic workers

643. The Committee notes that a range of social and economic conditions increases the vulnerability of domestic workers to exploitation and multiple types of abuse. Forced labour is very often linked to poverty and discrimination,<sup>1192</sup> particularly in the informal economy.<sup>1193</sup> Moreover, in cases where domestic workers belong to more than one disadvantaged group, multiple and intersectoral discrimination may compound their vulnerability to forced labour, increasing the risk of domestic servitude or slavery. For example, women migrant domestic workers may face discrimination on multiple grounds, placing them at a higher risk of discrimination due to a combination of characteristics, including sex, race, ethnicity, national origin and social status.<sup>1194</sup>

#### (a) The particular vulnerability of migrant domestic workers

644. Migrant domestic workers, the vast majority of whom are women and young persons, are at particular risk of certain forms of exploitation, abuse and slavery-like practices.<sup>1195</sup> Elements rendering migrant domestic workers especially vulnerable include: the isolation of life in a foreign country, far away from their families; the lack of basic support systems; and unfamiliarity with the local language and culture, as well as with national labour and migration laws. Other factors include their dependence on the job and employer because of migration-related debt, legal status and practices by employers that restrict their freedom to leave the workplace; dependency on the employer for food and housing; and the reliance of family members on remittances. These risks are aggravated for migrant domestic workers in an irregular situation, as fear of deportation may deter them from attempting to seek help from national authorities.<sup>1196</sup>

1190 The Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

1191 CEACR – *Philippines*, C.189, direct request, 2020.

1192 United Nations (2010). A/HRC/15/20, op. cit., para. 72.

1193 ILO (2012). *Giving globalization a human face*, op. cit., para. 258.

1194 United Nations (2018). A/HRC/39/52, op. cit., para. 32.

1195 ILO (2012). *Giving globalization a human face*, op. cit., para. 295.

1196 CMW (2011). General comment No. 1 on migrant domestic workers, op. cit., para. 7.

In *Kuwait*, the IDWF maintains that the majority of domestic workers in the country are migrant domestic workers who live in their employers' household. Their status as live-in workers make these domestic workers vulnerable to abuses, including no days off or rest time, excessive working hours, unpaid salaries, sexual harassment, maltreatment, and physical and psychological violence. The IDWF also reports cases of confiscation of domestic workers' employment contracts by their employers or their recruitment agency. The IDWF points out that domestic workers in irregular situations are particularly vulnerable to such abuses, as they are not covered by the national domestic worker legislation. It adds that undocumented domestic workers are often those who are abused by their employers and are ultimately forced to escape, as due to their migration status they are not able to file a complaint due to lack of information and available support.

645. The Committee has consistently noted that penalizing unlawful migration further increases the vulnerable situation of migrants and has therefore urged governments to adopt the necessary measures to protect migrant workers from the exaction of forced labour irrespective of their legal status.<sup>1197</sup> Moreover, the Committee emphasizes that the vulnerability of migrant domestic workers does not begin and end in the workplace, as they face risks throughout the migration cycle, with a number of factors exposing them to violations of their human rights (Chapter 11).<sup>1198</sup>

646. The domestic work instruments contain provisions aimed specifically at promoting and ensuring the rights of migrant domestic workers (Chapter 11). Moreover, the Committee recalls the emphasis placed in the Preamble to the Convention on the particular relevance of the migration for employment Conventions Nos 97 and 143 for domestic workers.

### (b) Specific risks faced by migrant women and girls

647. The migration of women for domestic work has grown rapidly and become one of the key factors in the ongoing feminization of migration.<sup>1199</sup> While migrant women face many of the same human rights violations as migrant men, they are also subject to additional risks because of their sex and cultural attitudes towards women and girls. These may include physical violence, sexual harassment and abuse (Chapter 11).<sup>1200</sup> The Committee notes that in some countries restrictions have been placed on the migration of women for domestic work as a means of preventing trafficking and exploitation.<sup>1201</sup> However, the Committee observes that, in practice, such restrictions may inadvertently push women to use irregular migration channels, thereby increasing their risk of sexual and gender-based violence, exploitation and abuse.<sup>1202</sup>

1197 For instance, CEACR – *Italy*, C.29, direct request, 2018; *Kazakhstan*, C.29, observation, 2018; and *Thailand*, C.29, observation, 2011.

1198 CMW (2011). General comment No. 1 on migrant domestic workers, op. cit., paras. 8–17.

1199 United Nations (2010). A/HRC/15/20, op. cit., para. 20.

1200 Office of the High Commissioner for Human Rights (OHCHR) (2015). *Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation*, New York and Geneva, p. 15.

1201 For instance, in *Nepal* in early 2017, the parliamentary International Relations and Labour Committee instructed the Government to temporarily stop women migrants from going to the countries of the Gulf Cooperation Council for domestic work. United Nations (2018). *Report of the Special Rapporteur on the human rights of migrants on his mission to Nepal*, A/HRC/38/41/Add.1, paras 77–80.

1202 *ibid.*, paras 77–78.

### (c) Domestic workers in diplomatic households

**648.** The Committee notes that, as indicated in Chapter 7, significant protection gaps exist with regard to domestic workers employed by diplomats and international civil servants who have diplomatic status. A number of cases have been reported in which diplomats have subjected domestic employees to servitude and related abuse.<sup>1203</sup> Migrant domestic workers employed by diplomatic households are particularly vulnerable, as their visa status normally depends on continued employment by the diplomatic household, and they are not free to change employers in the event of exploitation. In addition, access to justice may be difficult if diplomatic immunities and privileges shield diplomats from enforcement of national legislation.<sup>1204</sup> In some countries, the lack of prosecution hampers access to the assistance measures available, in particular when such support is conditional on the participation by the victim in criminal proceedings.<sup>1205</sup> Moreover, domestic workers hired by diplomatic households are excluded in many countries from the legislation and/or regulations respecting domestic work.

**649.** Paragraph 26(4) of the Domestic Workers Recommendation, 2011 (No. 201), indicates that, 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 bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers”. In this respect, the Committee notes that, although domestic workers working for diplomatic households in many instances have limited legal redress, the situation has evolved and it can no longer be said that diplomatic personnel can act with impunity. For instance, the efforts led by the Organization for Security and Co-operation in Europe (OSCE) to prevent domestic servitude in diplomatic households have resulted in regulatory changes in at least 16 OSCE countries.<sup>1206</sup> The Committee notes that measures have been taken in a number of countries to prevent and address abuse of domestic workers by diplomatic employers.<sup>1207</sup>

*Canada* – Global Affairs Canada (GAC) has implemented a series of measures to prevent, detect and respond to cases of human trafficking for domestic servitude in diplomatic households. It conducts interviews with potential employers before they conclude an employment contract to ensure they are aware of the rights of domestic workers and the consequences of breaches of Canadian law and policy. In addition, it conducts systematic outreach to domestic workers before they arrive (through a coordinated approach with Immigration, Refugees and Citizenship Canada) and throughout their stay in the country, with a focus on human trafficking. GAC also prevents and detects cases of abuse through compliance reviews and facilitates communication between the victim and support services or the police.

<sup>1203</sup> For instance, in *Belgium, Kuwait, Qatar, and Switzerland*.

<sup>1204</sup> Council of Europe (2001). [Recommendation 1523](#) (2001): Domestic slavery, para. 8. See also United Nations (2018). A/HRC/39/52, op. cit., para. 37.

<sup>1205</sup> Organization for Security and Co-operation in Europe (OSCE) (2014). Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. [How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers: Handbook](#), Vienna, p. 14.

<sup>1206</sup> United Nations (2018). A/HRC/39/52, op. cit., para. 37.

<sup>1207</sup> For instance, *Canada, Philippines, Switzerland and United States*.

*United States of America* – The Trafficking Victims Protection Act<sup>1208</sup> requires United States embassies and consulates worldwide to provide a “Know your rights” pamphlet to applicants for temporary work and exchange visitor visas, including visas for domestic workers employed by diplomats or officials of international organizations. The Department of State runs a domestic worker oversight programme for A-3 and G-5 visa holders employed by the personnel of foreign missions. During registration appointments, workers review their employment terms and are provided with information on their rights and responsibilities and on how to seek assistance. In addition, non-immigrant visas are provided to victims of certain crimes, including crimes against women (U visa) and victims of human trafficking (T visa).<sup>1209</sup>

#### 4. Rights and obligations in the domestic work sector regarding termination of employment

650. Domestic workers have the fundamental right to leave their employment relationships. Statutory provisions preventing them for terminating their employment by providing a notice of reasonable length have the effect of turning a contractual relationship based on the will of the parties into service by compulsion of law which, as the Committee recalled in its 2012 General Survey, is incompatible with Convention No. 29.<sup>1210</sup>

651. When examining the application of Convention No. 189, the Committee has expressed concern at the vulnerability of domestic workers, including migrant domestic workers, in relation to their freedom to terminate employment. It has requested the governments concerned to adopt provisions to ensure adequate protection of these workers with regard to termination of their employment relationship for faults that are not serious, including reasonable notice to enable them to seek new employment and/or accommodation.<sup>1211</sup>

652. With regard to the termination of employment at the initiative of the employer, Paragraph 18 of the Recommendation indicates that when this takes place “ (...) 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”. ***The Committee emphasizes that the consequences of dismissal are worse for live-in domestic workers than for other workers because of their dependence on the employer’s home.***<sup>1212</sup> ***In cases of termination at the initiative of the employer, given the unequal bargaining power between the parties, the Committee considers that countries should take measures to ensure that termination is not agreed under conditions of coercion or duress.***

<sup>1208</sup> *United States*, [Trafficking Victims Protection Act of 2000](#) (TVPA), as amended.

<sup>1209</sup> *United States*, Department of State. [Know your rights: An information pamphlet describing your rights while working in the United States](#).

<sup>1210</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 290.

<sup>1211</sup> For instance, CEACR – *Argentina*, C.189, direct request, 2019; *Colombia*, C.189, observation, 2020; and *Ecuador*, C.189, direct request, 2020.

<sup>1212</sup> ILO (2010). [Decent work for domestic workers](#), Report IV(2), International Labour Conference, 99th Session, Geneva, pp. 311 and 410.

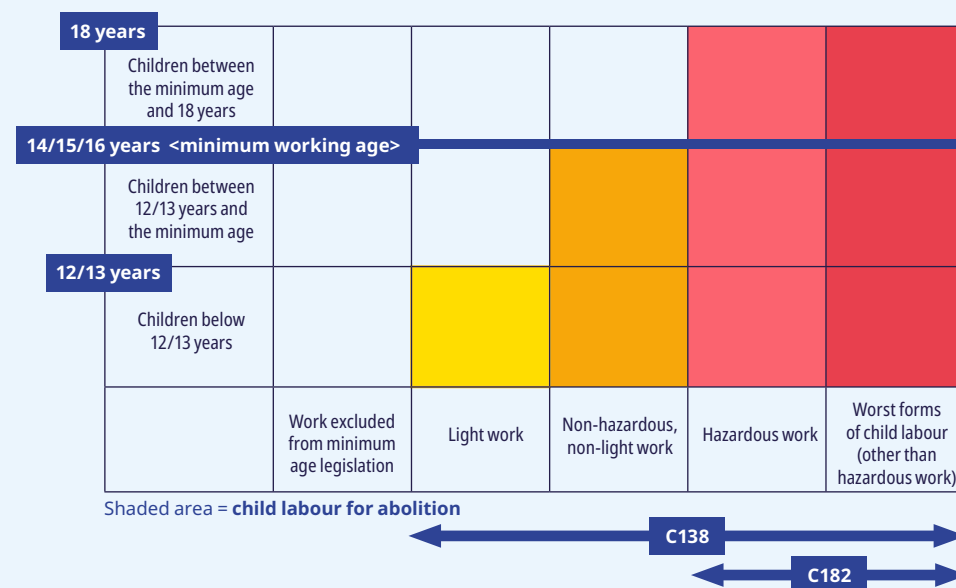
## ► IV. Effective abolition of child labour

653. Article 3(2) of the Convention provides that Members shall, in relation to domestic workers, take measures to respect, promote and realize the effective abolition of child labour. The two fundamental ILO Conventions on child labour are the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), which both apply to all domestic workers, including those in the informal economy.

654. In accordance with international law concerning the eradication of child labour, a child is defined as any person under the age of 18.<sup>1213</sup> However, the employment of persons under the age of 18 in domestic work is not per se inconsistent with international standards unless: first, it consists of work undertaken by a child below the minimum legal age for work or employment set by a country in accordance with Convention No. 138; or second, it is domestic work performed by a child below the age of 18 in situations that constitute a worst form of child labour, such as work in hazardous conditions or in slavery-like situations.<sup>1214</sup>

Figure 8.1

### Child labour to be abolished



Source: ILO (2017). *Practical guide to ending child labour and protecting young workers in domestic work*, op. cit., p. 13.

1213 Art. 2 of Convention No. 182 and Art. 1 of the United Nations Convention on the Rights of the Child, 1989.

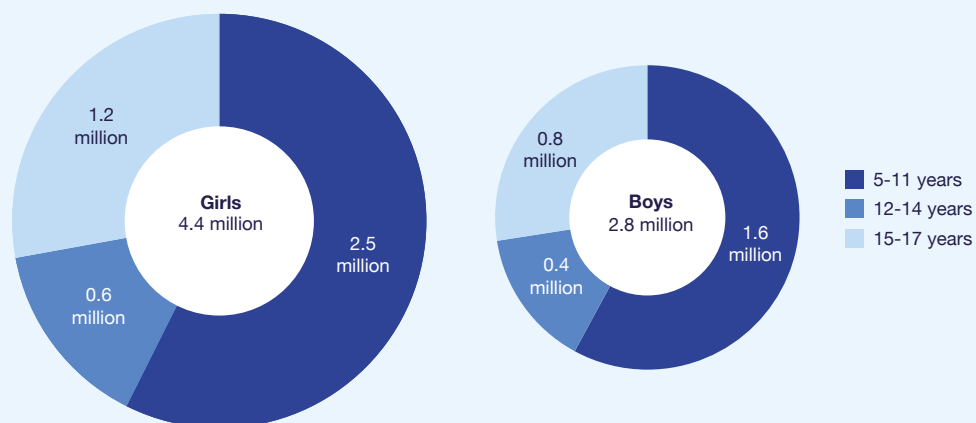
1214 ILO (2017). *Practical guide to ending child labour and protecting young workers in domestic work*, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), Geneva, p. 14.

655. The Committee observes that, according to the most recent ILO and UNICEF estimates, there are 7.1 million children aged 5 to 17 years engaged in domestic work, of whom 4.4 million are girls.<sup>1215</sup> ***In view of the higher concentration of girls in the domestic sector, the Committee emphasizes the need to address gender norms and discrimination, which increase the risk of child labour for girls in domestic work, particularly as child domestic labour is normally hidden from public view and is beyond the scope of labour inspectors, leaving children especially vulnerable to physical, verbal and sexual abuse.***<sup>1216</sup>

Figure 8.2

### Child labour in domestic work

**Worldwide, 7.1 million children are engaged in forms of domestic work that constitute child labour** (Number of children aged 5 to 17 years in child labour in domestic work, by age and sex)



**Note:** Due to rounding, age-specific numbers for girls do not add up to the total.

**Source:** ILO and UNICEF (2021). *Child labour: Global estimates 2020, trends and the road forward*, op. cit., p. 40.

656. The Committee notes that a number of the challenges that arise in protecting young domestic workers and combating child labour in domestic work have their origins in the specific characteristics of domestic work, including its setting and the strong traditions and social norms that structure relationships between employing householders, domestic workers, and the parents, families and communities of origin of domestic workers.<sup>1217</sup> In many cases, decisions by parents to place their children in domestic work appear to be influenced by extreme poverty and a lack of economic alternatives.<sup>1218</sup>

<sup>1215</sup> ILO and UNICEF (2021). *Child labour: Global estimates 2020, trends and the road forward*, Geneva, pp. 40 and 64.

<sup>1216</sup> CEACR – *Indonesia*, C.138, observation, 2011; and *Haiti*, C.138, observation, 2011. See also ILO (2012). *Giving globalization a human face*, op. cit., para. 554, note 1291.

<sup>1217</sup> ILO (2017). *Practical guide to ending child labour and protecting young workers in domestic work*, op. cit., p. 5.

<sup>1218</sup> For instance, CEACR – *Paraguay*, C.189, observation, 2019; and *Haiti*, C.182, observation, 2015.



CEACR – In its comments concerning *Paraguay*, the Committee has noted the practice of *criadazgo*, under which a child (usually a girl) from a poor rural household is sent to live with another family in an urban area, ostensibly to secure access to food and education. The child undertakes domestic work for the receiving family, normally without remuneration. Such children are often particularly vulnerable to violence and abuse, and there have been cases of extreme physical abuse of children by host families, including murder and sexual violence. The Committee noted information provided by the Government on its efforts to eliminate *criadazgo*, including a bill criminalizing the practice, which was pending discussion in the Senate.<sup>1219</sup>

In *Ecuador*, the Association of Paid Women Domestic Workers (TRH) submits that child domestic work often remains hidden and is difficult to address because of its links to existing social and cultural norms. It is not only socially and culturally accepted, but positively perceived as a non-stigmatized and preferred type of work over other forms of employment, particularly for girls.

*Nigeria* – The Government reports high rates of child labour across the country. In some areas it is common for children (especially boys) to drop out of school to work as domestic helpers, and cases of trafficking of children to work as domestic helpers have been reported.

657. In addition, even in countries where the national legislation includes provisions prohibiting child labour and protecting young workers, gaps remain in practice regarding effective implementation and enforcement of such provisions in the domestic work sector, particularly due to the hidden nature of the work in the private household.<sup>1220</sup>

In *Colombia*, the Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT) indicate that, while resolution 1677 of 2008 prohibits domestic work by minors under 18, the absence of reactive and preventive labour inspection has not allowed verification of whether this resolution is being fully enforced, especially in rural and remote areas. In such areas, the practice of hiring underage workers on farms for domestic work is still very common. They add that, according to a study, there are approximately 3,888 minors in such circumstances. However, the study warns that there is under-reporting, so these figures may be even higher. The workers' centres affirm that domestic work continues to be an occupation dominated by poor, low-income and mostly Afro-descendant workers.

<sup>1219</sup> CEACR – *Paraguay*, C.189, observation, 2019.

<sup>1220</sup> Gaps may include a low number of labour inspection orders issued to verify compliance with the regulations on child labour in the domestic work sector. See for instance: CEACR-*Peru*, C.182, observation, 2020. See also: ILO and Regional Initiative Latin America and the Caribbean Free of Child Labour (2020). [Analysis of the process of developing and enforcement on the hazardous labour lists in Latin America and the Caribbean: Case study in seven countries.](#)

## 1. Setting a minimum age for employment in domestic work

**658.** Article 4(1) of Convention No. 189 calls on Members to set a minimum age for domestic workers consistent with the provisions of Conventions Nos 138 and 182, and not lower than that established by national laws and regulations for workers generally. Article 4(2) of Convention No. 189 calls for 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.

**659.** Article 4 of the Convention has two major objectives: (a) the elimination of child labour in domestic work; and (b) the protection of the rights of young domestic workers of legal working age. In particular, it aims to protect the ability of young domestic workers to attend school and regulate the types of domestic work that are permissible for them. Paragraph 5 of Recommendation No. 201 provides specific guidance in this regard. The Committee recalls that Convention No. 138, in Article 2(3), requires Members to set a minimum age for admission to employment or work that is not lower than the age of completion of compulsory schooling, and in any case not less than 15 years. Article 3 of Convention No. 138 permits Member States to determine, in consultation with the social partners, the jobs that are considered to be hazardous and that should be therefore be prohibited to young persons less than 18 years of age. Articles 4 and 5 of Convention No. 138 permits countries to exclude certain limited categories of employment or work or particular branches of economic activity from the scope of the Convention. The Committee notes that domestic work is one of the categories of work most frequently excluded from the coverage of Convention No. 138.<sup>1221</sup> Another barrier to the protection of children in the domestic work sector under Convention No. 138 may arise, explicitly or implicitly, by how the terms “work”, “employment”, “worker” or “employee” are defined in law. There are national labour laws that define an employee or worker as a person engaged in a “trade” or occupation carried out “for profit” or “for purposes of gain”, which focus only on “enterprises”, and which therefore effectively exclude domestic workers from their scope.<sup>1222</sup>

*Japan* – Although section 56(1) of the Labour Standards Act prohibits the employment of children under the age of 15, the Act does not apply to domestic workers.

**660.** The Committee observes that in most countries domestic workers are covered by the general labour legislation and that the working age limitations established for all workers also apply to domestic workers.<sup>1223</sup> In other countries, the general labour legislation sets out a different legal minimum age for entry into domestic work as opposed to other types of work.<sup>1224</sup> In some countries in which domestic work is regulated by specific laws or regulations, the provisions respecting young domestic workers and child labour are supplemented by minimum age regulations.<sup>1225</sup> In others, separate child protection laws deal with young

<sup>1221</sup> For instance, *Cambodia, Iceland, and Japan*.

<sup>1222</sup> ILO (2017). *Practical guide to ending child labour and protecting young workers in domestic work*, op. cit., p. 99.

<sup>1223</sup> For instance, *Armenia, Belgium, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Croatia, Czechia, Estonia, Hungary, Islamic Republic of Iran, Iraq, Italy, Kazakhstan, Kiribati, Latvia, Mauritius, Nigeria, Senegal, Spain, Switzerland, United States, Uzbekistan and Zimbabwe*.

<sup>1224</sup> For instance, *Kuwait* (21 years old), *Malaysia* (16 years old), *Philippines* (15 years old), *South Africa* (15 years old), and *United Arab Emirates* (18 years old).

<sup>1225</sup> For instance, *Argentina, Indonesia, Kuwait, Morocco, Mozambique, Pakistan* (Punjab), *Qatar, Seychelles, South Africa and Uruguay*.

workers and child labour, including in the domestic sector.<sup>1226</sup> In a few countries, collective agreements are the main instruments that regulate the working conditions of young domestic workers.<sup>1227</sup> The Committee observes that in some countries the laws on child labour do not cover domestic work.<sup>1228</sup> Very few countries report that there is no legislated minimum age for admission to employment.<sup>1229</sup>

**661.** In some countries, the minimum age for the employment of migrant domestic workers is higher than for national domestic workers, as they are more vulnerable to trafficking, commercial sexual exploitation, forced labour and other abuses.<sup>1230</sup>

*Malaysia* – Although the minimum age for all employees, including domestic workers, is 16,<sup>1231</sup> under the terms established by the Immigration Department, migrant domestic workers must not be under 21 years of age to be able to work in *Malaysia*.

**662.** The Committee observes that in some countries, cases have been reported of private employment agencies producing false documents to enable underage girls to migrate as domestic workers.<sup>1232</sup>

In *Kuwait*, the Sandigan Kuwait Domestic Workers Association (SKDWA) and the IDWF report that the minimum age of domestic workers is 21. However, some illegal recruiters connected to recruitment agencies in sending countries are submitting false documents to be used by applicants who are minors.<sup>1233</sup>

## 2. Employment of children below the general minimum age in “light work” in domestic work

**663.** Convention No. 138 leaves open the possibility for national laws and regulations to permit persons over 13 and under 15 years of age, or over 12 and under 14, depending on national circumstances, to carry out so-called “light work”,<sup>1234</sup> that is, work that is not harmful to the child and does not interfere with the child’s education or capacity to benefit from education (Article 7(1)). Children who are at least 15 years of age, but have not yet completed compulsory schooling, may be also permitted to perform “light work” (Article 7(2)).<sup>1235</sup> **The Committee emphasizes that, where such light work is permitted, the respective legislative provisions should strictly limit the nature and duration of the work.**

<sup>1226</sup> For instance, *Austria, Plurinational State of Bolivia, Cabo Verde, Ecuador, Finland, Germany, Ireland, India, Israel, Nicaragua, Peru, Suriname, Trinidad and Tobago and United Kingdom of Great Britain and Northern Ireland*.

<sup>1227</sup> For instance, *France and Italy*.

<sup>1228</sup> For instance, *Egypt*.

<sup>1229</sup> For instance, *Myanmar and New Zealand*.

<sup>1230</sup> For instance, *Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia and United Arab Emirates*.

<sup>1231</sup> *Malaysia, Children and Young Persons (Employment) Act 1966* (Act No. 350).

<sup>1232</sup> Coordination of Action Research on AIDS and Mobility (CARAM Asia) (2011). *Reality check! Rights and legislation for migrant domestic workers across Asia*, p. 14.

<sup>1233</sup> The Domestic Workers Solidarity Network in Jordan (DWSNJ) and the IDWF report the existence of similar practices in *Jordan*.

<sup>1234</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 388.

<sup>1235</sup> See also Article 4 (1) of Convention No. 189.

664. In most countries, the provisions of the general labour legislation respecting “light work” apply to domestic workers.<sup>1236</sup> The Committee notes that the definition of “light work” varies between countries. In some countries, the provisions of Convention No. 138 have been adopted virtually word for word. In others, there are further qualifications, such as an absolute limit on the number of hours worked, or a limit on hours of work in a day or a week.<sup>1237</sup> In some countries, children may only be employed in an occupation included on a specific list, or alternatively there is a list of the types of work not considered “light”.<sup>1238</sup> The Committee notes that domestic work is frequently included among the types of light work that are permitted, including “light” domestic tasks such as kitchen assistant, assistant cook, houseboy or childminder, or errand runner.<sup>1239</sup>

*Pakistan* – Section 3 of the Punjab Domestic Workers’ Act, 2019, provides that no child “under the age of 15 years shall be allowed to work in a household in any capacity: Provided that no domestic worker under the age of 18 years shall be engaged in a domestic work except involving light work in a household”. Section 3 defines “light work” as “domestic work which is part-time in nature and is not likely to harm health, safety and education of a domestic worker”.<sup>1240</sup>

### 3. Prohibition of hazardous work for children, including forced child labour in domestic work

665. Paragraph 5(1) of Recommendation No. 201 indicates that, taking into account the provisions of Convention 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 work. The Recommendation reproduces the definition of “hazardous work” set out in the child labour instruments.<sup>1241</sup>

666. The Committee notes that domestic work, with the wide range of tasks that it encompasses, may indeed involve hazardous conditions incompatible with international standards on the abolition of child labour, including particularly difficult or strenuous conditions (long hours, night work, heavy lifting, the use of toxic chemicals or sharp knives, exposure to fire or hot stoves, confinement within the workplace and deprivation of education).<sup>1242</sup> In some countries, domestic work is therefore classified as “hazardous work” and prohibited for children.<sup>1243</sup> In others, certain types of domestic work are prohibited (such as care work<sup>1244</sup> and/or work involving the use of certain products or objects,<sup>1245</sup> or excessively demanding

<sup>1236</sup> For instance, *Austria, Belarus, Kiribati, Lithuania, Nigeria, Pakistan, Saint Kitts and Nevis and Suriname*.

<sup>1237</sup> For instance, in *Finland*, section 4 of the Young Workers Act provides that “During the school year, the daily working hours of a person of school age shall not exceed seven hours on days when there is no school and two hours on school days. The total length of the school day and working hours cannot, however, exceed eight hours or the weekly working hours 12 hours”.

<sup>1238</sup> ILO (2017). *Practical guide to ending child labour and protecting young workers in domestic work*, op. cit., p. 100.

<sup>1239</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 395(b).

<sup>1240</sup> *Pakistan, Punjab Domestic Workers Act 2019*.

<sup>1241</sup> Art. 3(d) of Convention No. 182 and Art. 3(1) of Convention No. 138.

<sup>1242</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 34.

<sup>1243</sup> For instance, *Brazil, Colombia, Côte d’Ivoire, Djibouti, Dominican Republic, Guatemala, Indonesia, Nigeria, Panama, Paraguay, Peru and Togo*.

<sup>1244</sup> For instance, *Costa Rica, Dominican Republic, Ecuador, Guatemala and Israel*.

<sup>1245</sup> For instance, *Benin*.

tasks),<sup>1246</sup> or domestic work performed in certain circumstances (working beyond normal working hours,<sup>1247</sup> sleeping in the workplace<sup>1248</sup> and/or domestic work performed in certain places, such as urban areas).<sup>1249</sup>

*Benin* – Decree No. 2011-029, establishing the list of hazardous types of work prohibited for children, identifies certain domestic work tasks as hazardous and sets the minimum age for access to them at 18 years. In particular, the prohibition covers the use of sharp objects, chemicals and inflammable products.<sup>1250</sup>

#### 4. Minimum safeguards to protect young domestic workers of legal working age from hazardous conditions

667. The Committee considers that, where young persons under the age of 18 are legally permitted to engage in domestic work, safeguards should be established to ensure appropriate protection. Legislative provisions protecting young domestic workers should aim to ensure that their working conditions and environment are suitable for their age, giving special consideration to their particular needs and vulnerabilities in light of the nature and characteristics of domestic work.<sup>1251</sup>

668. Paragraph 5(2) of the Recommendation indicates that, 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”. Such measures may include establishing limits on working hours, prohibiting night work, restricting excessively demanding work (whether physically or psychologically) and strengthening mechanisms to monitor their working and living conditions.

669. The legislation in some countries establishes a general obligation for employers of domestic workers below the age of 18 to safeguard their well-being and protect their health, safety and morals.<sup>1252</sup> In most countries, the legislation establishes certain requirements for the employment of young domestic workers under the age of 18, including prior and/or regular medical examinations<sup>1253</sup> and authorization by their parents or legal guardians,<sup>1254</sup> or the relevant public authority.<sup>1255</sup>

<sup>1246</sup> For instance, *Austria, Finland and France*.

<sup>1247</sup> For instance, *Costa Rica and Dominican Republic*.

<sup>1248</sup> For instance, *Costa Rica, Dominican Republic, Ecuador and Guatemala*.

<sup>1249</sup> For instance, *Côte d'Ivoire* (Order No. 009 MEMEASS/CAB of 19 January 2012).

<sup>1250</sup> *Benin*, [Décret No. 2011-029 du 31 janvier 2011 fixant la liste des travaux dangereux interdits aux enfants en République du Bénin](#).

<sup>1251</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 87.

<sup>1252</sup> For instance, *Austria, France and South Africa*.

<sup>1253</sup> For instance, *Austria, Belarus, Bosnia and Herzegovina, Hungary, Lithuania, Morocco, Solomon Islands and Bolivarian Republic of Venezuela*.

<sup>1254</sup> For instance, *Ecuador, Italy, Morocco and Spain*.

<sup>1255</sup> For instance, *Brazil, Colombia and United Kingdom (Scotland)*.

### (a) Limits on hours of work and prohibition of night work

670. Paragraph 5(2)(a) and (b) of the Recommendation indicates that Members should take measures to protect domestic workers under the age of 18 and above the minimum age of employment by “strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contact” and “prohibiting night work”. Excessive working hours have a particularly detrimental effect on domestic workers under the age of 18, who require sufficient rest for healthy physical growth and mental development. In addition to health concerns, working time restrictions also play a crucial role in ensuring the access of young workers to education and training.<sup>1256</sup> The Committee notes that limits have been established in the great majority of countries on the working time of young domestic workers, including the prohibition of night work, the limitation of weekly and daily hours, restrictions on overtime and the granting of additional rest periods and breaks.<sup>1257</sup>

*Argentina* – Act No. 26.844 on special arrangements for the employment contracts of personnel in private houses provides in section 11 that “the hours of work of young persons between 16 and 18 years of age shall not in any circumstances exceed six in the day and 36 in the week”.<sup>1258</sup>

*Thailand* – Ministerial Regulation No. 14 (B.E. 2555) establishes specific protection for young domestic workers under 18, including rest periods during the working day and the prohibition of night work. It also requires notification of labour inspectors of the employment of young domestic workers.<sup>1259</sup>

### (b) Restrictions on excessively demanding work

671. Paragraph 5(2)(c) of the Recommendation calls on Members to take measures to protect young domestic workers by placing restrictions on work that is excessively demanding, whether physically or psychologically. Measures have been introduced in this regard in most countries through the extension to domestic workers of the protection afforded by national legislation to other young workers.<sup>1260</sup> In other countries, specific restrictions for young domestic workers have been adopted in legislation or collective agreements.<sup>1261</sup>

*France* – The national collective agreement for employees of individual employers includes in clause 24 the prohibition of arduous types of work for young workers, through the prohibition against engaging young persons under 18 years of age in arduous work that exceeds their strength, or the handling of hazardous products.

<sup>1256</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 90.

<sup>1257</sup> For instance, *Argentina, Austria, Burkina Faso, Cambodia, Finland, Italy, Spain and Thailand*.

<sup>1258</sup> *Argentina*, [Ley 26.844 sobre el Régimen Especial de Contrato de Trabajo para el Personal de Casas Particulares](#), de 2013.

<sup>1259</sup> *Thailand*, [Ministerial Regulation No. 14 \(B.E. 2555\) \(2012\)](#), issued under the Labour Protection Act B.E. 2541 (1998).

<sup>1260</sup> For instance, *Cuba, Finland, Germany and Senegal*.

<sup>1261</sup> For instance, *France*.

### (c) Mechanisms to monitor the working and living conditions of young domestic workers

672. Paragraph 5(2)(d) of the Recommendation calls on Members to establish or strengthen mechanisms to monitor the working and living conditions of young domestic workers. In this regard, in many countries employers are required to keep records or submit a declaration to the competent authorities of the young persons they employ.<sup>1262</sup> Such requirements help to ensure that employers, state institutions and other interested parties have access to the information necessary to monitor and protect young domestic workers from employment that could jeopardize their health, safety or morals, or limit their capacity to participate in further education and training.<sup>1263</sup> Most governments report that the mechanisms established to monitor the working and living conditions of young workers also cover domestic workers. In some countries, targeted measures have been taken to address the specific characteristics of domestic work, including the provision of training to labour inspectors on the legislation in force respecting the protection of children and young persons in domestic work.<sup>1264</sup>

CEACR – In its comments concerning *Namibia*, the Committee noted the Government's indication that training was organized in 2016, with ILO support, for all labour inspectors in the country to build the capacities of labour inspectors and other stakeholders in relation to domestic work and child labour.<sup>1265</sup>

673. The Committee emphasizes the importance of organizing labour inspections in such a manner so as not to endanger the safety of child domestic workers. Some governments report that, when there is sufficient evidence of any of the worst forms of child labour, labour inspectors have the power to bring an immediate end to the situation and refer the case to institutions that can protect and assist the child concerned. Non-traditional monitoring mechanisms can also play an important role in addressing child domestic labour in the informal economy, such as the "child labour monitoring systems" (CLMS) created by the ILO to address inspection difficulties in the informal economy. CLMS act in partnership with the labour inspectorate to extend its eyes and ears through locally developed teams of monitors.<sup>1266</sup>

*Peru* – Act No. 31047 governing the employment relations of domestic workers provides in section 22 for the strengthening of the inspection authorities in cases of forced or child labour within the context of domestic work.<sup>1267</sup>

<sup>1262</sup> For instance, *Cambodia, Ecuador, Finland, Kiribati, Malta, Paraguay and South Africa*.

<sup>1263</sup> For instance, *Cambodia, Kiribati and South Africa*. See also ILO (2012). *Effective protection for domestic workers*, op. cit., p. 88.

<sup>1264</sup> For instance, CEACR – *Colombia*, C.189, direct request, 2019; and *Costa Rica*, C.189, direct request, 2019.

<sup>1265</sup> CEACR – *Namibia*, C.138, direct request, 2019.

<sup>1266</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 344.

<sup>1267</sup> *Peru*, [Ley núm. 31047 de las trabajadoras y trabajadores del hogar](#).



## ► V. Discrimination in employment and occupation

674. The Committee recalls that equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all women and men are entitled, and which affects the enjoyment of all other rights.<sup>1268</sup> This principle is set out in the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and applies to all domestic workers, including those in the informal economy.<sup>1269</sup> Article 3(2)(d) of Convention No. 189 requires Members to take measures in relation to domestic workers to respect, promote and realize the elimination of discrimination in respect of employment and occupation.

675. Domestic workers, whether national or migrant workers, often face discrimination in access to employment and terms and conditions of work, including access to education and training, social security and other benefits.<sup>1270</sup> In this regard, the Committee has noted that laws or measures designed to promote equality of opportunity and treatment in employment and occupation that exclude domestic workers from their scope are contrary to Convention No. 111.<sup>1271</sup>

676. Within the context of Convention No. 111, the Committee has drawn attention to the vulnerability of domestic workers, particularly migrant domestic workers,<sup>1272</sup> to multiple forms of discrimination and abuse and has urged Members to adopt laws and regulations that ensure effective protection against employment discrimination in domestic work.<sup>1273</sup> Moreover, the Committee emphasizes that where persons belong to more than one disadvantaged group, multiple and intersectional discrimination tend to compound and exacerbate existing inequalities.<sup>1274</sup> Intersections occur not only between different groups, such as migrant women, but also in relation to other characteristics, such as age, race, cultural background and socio-economic status. ***The Committee therefore considers that, when adopting legislation or other measures to address discrimination against domestic workers, it is necessary to take into account both multiple and intersecting forms of discrimination and inequalities, including pervasive gender inequality.***<sup>1275</sup>

CEACR – In its comments concerning the implementation of Convention No. 111 in Mexico, the Committee has noted the multiple forms of discrimination affecting Mexican indigenous women, Central American migrant workers and Mexican women of African descent, particularly those working in domestic service.<sup>1276</sup>

1268 ILO (2012). *Giving globalization a human face*, op. cit., para. 649.

1269 *ibid.*, paras 658 and 733.

1270 ILO (2012). *Giving globalization a human face*, op. cit., para. 795.

1271 CEACR – *Gambia*, C.111, direct request, 2020; and *Mauritius*, C.111, direct request, 2020.

1272 CEACR – *Kuwait*, C.111, direct request, 2020.

1273 CEACR – *Cabo Verde*, C.111, direct request, 2019; and *Guinea-Bissau*, C.111, observation, 2020.

1274 United Nations Committee on Economic, Social and Cultural Rights (CESCR) (2009). [General comment No. 20 on non-discrimination in economic, social and cultural rights](#).

1275 ILO (2012). *Giving globalization a human face*, op. cit., para. 748.

1276 CEACR – *Mexico*, C.111, direct request, 2020.

In *Brazil*, FENATRAD reports that in 2018, there were over 6.2 million domestic workers. Women represent more than 93 per cent of all domestic workers in Brazil, of which more than 63 per cent are black. It reports that domestic workers often face discrimination. In this regard, FENATRAD refers to a judgment issued on 21 October 2006 by the Inter-American Commission on Human Rights (IACHR). The plaintiff in that case was denied a job as a domestic worker on the basis that she was black and the employer preferred a white domestic worker. The IACHR found the Brazilian Government at fault for not having taken measures to punish the crime of racism suffered by the plaintiff.<sup>1277</sup> FENATRAD further indicates that, according to the Inter-Trade Union Department of Statistical and Socio-Economic Studies (DIEESE), in both 2019 and 2020, black female domestic workers earned less in every state of the country than non-black domestic workers.

In *Lebanon*, the IDWF observes that, according to migrant domestic workers group, domestic workers are excluded from coverage under the labour law and there are no effective measures taken to protect them against discrimination. The majority of domestic workers in the country are migrants, who are often subjected to various forms of discrimination. The organizations maintain that the racism experienced by these workers is institutionalized. For instance, there are private pools where domestic workers are not allowed to swim. They further indicate that there is no minimum wage and that domestic workers' wages are set according to their nationality.

In *Nepal*, the Home Workers Trade Union of Nepal (HUN), the General Federation of Nepalese Trade Unions (Gefont) and the IDWF indicate that there are provisions in the national legislation prohibiting discrimination, but that domestic workers, most of them women, still encounter discrimination in practice. In particular, they point out that, due to the caste system, Dalit domestic workers suffer the most serious forms of discrimination and abuse. Dalit domestic workers report not being able to use the toilets in their employers' homes and being forced to use separate makeshift and often unhygienic toilets set up outside.

**677.** The Committee notes that in some countries, there are significant inequalities among domestic workers' wages, depending on their nationality.

In *Qatar*, the Bayanihan Domestic Workers Association and the IDWF report that the majority of the domestic workers in the country are migrants from the *Philippines*, *Indonesia*, *India*, *Sri Lanka*, *Bangladesh*, *Ethiopia*, *Nepal* and *Kenya*. There are inequalities in terms of salary range, e.g., Filipino domestic workers have a minimum salary of USD 400.00 on the basis of a bilateral agreement between the governments of the *Philippines* and *Qatar*. In contrast, Kenyan and Bangladeshi domestic workers receive less than USD 200.00. The Association expresses the hope that, following the adoption of the new non-discriminatory minimum wage law that took effect in March 2021, all domestic workers will be paid in accordance with their qualifications, regardless of whether or not their countries of origin have concluded bilateral agreements with *Qatar*.

<sup>1277</sup> Inter-American Commission on Human Rights (IACHR) (2006). [Report no. 66/06, Case 12.001, Simone André Diniz v. Brazil](#), 21 Oct. 2006.

**678. The Committee recalls that the principle of equal remuneration for men and women workers for work of equal value, as set out in Convention No. 100, applies to domestic workers, irrespective of whether they are nationals or non-nationals. With regard to rates of remuneration, particular attention should be paid to ensuring that domestic work is not undervalued due to gender stereotyping (Chapter 9).**<sup>1278</sup>

## 1. Inclusive anti-discrimination and equality laws

679. The Committee notes that most national constitutions recognize the principle of equality and non-discrimination as a fundamental right.<sup>1279</sup> In some countries, detailed equal pay or anti-discrimination laws have been adopted, while in others equality and non-discrimination issues are addressed in the context of general labour or employment law.

680. Many governments report that domestic workers are covered by the provisions on equality and non-discrimination contained in general labour legislation.<sup>1280</sup> However, domestic workers are still excluded from the scope of labour law in a significant number of countries (Chapter 7), which often leads to difficulties in the application of Conventions Nos 100 and 111. Some governments report that domestic workers are covered by equal pay, anti-discrimination and gender equality laws.<sup>1281</sup> However, the Committee notes that in some countries domestic workers are still excluded from such laws, either explicitly or implicitly due to limitations on the scope of application linked to the requirement that the employer employs a minimum number of workers.<sup>1282</sup> **The Committee considers that such exemptions or exclusions are contrary to both fundamental Conventions.**<sup>1283</sup> **Moreover, the Committee recalls that, in countries where women and migrant workers constitute an important proportion of domestic workers, the exclusion of domestic workers could also constitute indirect discrimination.**<sup>1284</sup>

*Trinidad and Tobago* – The Equal Opportunity Act provides in section 13 that protection relating to discrimination in employment (sections 8 and 10) does not apply to “the employment of not more than three persons in domestic or personal services in or in relation to the home of the employer”.<sup>1285</sup>

<sup>1278</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 707.

<sup>1279</sup> For instance, *Burkina Faso* (Art. 19), *Cambodia* (Art. 31), *Ghana* (Art. 17), *India* (Art. 14), *Norway* (Art. 98), *Panama* (Arts 19 and 20), *Slovenia* (Art. 14), *Spain* (Art. 14) and *Bolivarian Republic of Venezuela* (Art. 21).

<sup>1280</sup> For instance, *Armenia*, *Bahamas*, *Belarus*, *Bosnia and Herzegovina*, *Burkina Faso*, *Colombia*, *Czechia*, *Ghana*, *Islamic Republic of Iran*, *Iraq*, *Kazakhstan*, *Kiribati*, *Latvia*, *Mali*, *Montenegro*, *Mozambique*, *Namibia*, *Niger*, *Panama*, *Seychelles*, *Tunisia*, *Uzbekistan* and *Zimbabwe*.

<sup>1281</sup> For instance, *Austria*, *Bulgaria*, *Denmark*, *Germany*, *Malta*, *Norway*, *South Africa* and *United Kingdom*.

<sup>1282</sup> For instance, *Canada* (Yukon), *Norway* and *Trinidad and Tobago*.

<sup>1283</sup> For instance, CEACR – *Guinea-Bissau*, C.100, direct request, 2020; *Jordan*, C.100, direct request, 2020; and *Lebanon*, C.100, direct request, 2018. See also ILO (2012). *Giving globalization a human face*, op. cit., para. 663.

<sup>1284</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 739.

<sup>1285</sup> *Trinidad and Tobago*, [Equal Opportunity Act](#), Act No. 69 of 2000, amended by Act No. 5 of 2001.

681. In some countries, employers are allowed to discriminate when hiring domestic workers to perform services in their place of residence.<sup>1286</sup> ***In this respect, the Committee has emphasized that respect for private and family life should not be construed as protecting conduct that impairs the fundamental right to equality of opportunity and treatment in employment and occupation, including conduct consisting of differential treatment of applicants for employment on the basis of any of the grounds covered by Convention No. 111 where this is not justified by the inherent requirements of the particular job.***<sup>1287</sup>

*New Zealand* – Section 27(2) of the Human Rights Act 1993 and section 106 of the Employment Relations Act 2000<sup>1288</sup> permit “different treatment based on sex, religious or ethical belief, disability, age, political opinion, or sexual orientation where the position is one of domestic employment in a private household”.

682. Specific provisions have been adopted in some countries to address discrimination in the legislation respecting domestic workers.<sup>1289</sup> In others, measures have also been taken to ensure equality and non-discrimination of domestic workers in practice.<sup>1290</sup>

*Peru* – Presidential Decree No. 004-2009-TR provides that any employer who makes it a condition for any man or woman working in his home to wear uniforms, aprons, smocks or any other identifiable or distinctive form of clothing in public places or establishments is committing an act of discrimination against women domestic workers. The Decree also provides for the implementation by the Ministry of Justice of an official or specific complaints system for reporting acts of discrimination. Finally, it provides for the implementation of information campaigns to inform domestic workers of their rights and institutional protection mechanisms.<sup>1291</sup>

## 2. The principle of non-discrimination and the right of domestic workers to privacy in medical testing

683. Paragraph 3 of Recommendation No. 201 indicates, in line with the HIV and AIDS Recommendation, 2010 (No. 200), that domestic workers should not be required to undergo HIV or pregnancy testing or to disclose their HIV or pregnancy status for employment purposes. Moreover, there should be no discrimination on the basis of the results of medical testing.<sup>1292</sup> During the first discussion on the adoption of Convention No. 189, it was emphasized that the purpose of this provision is to prevent the use of information gained through medical testing resulting in discrimination against the domestic worker.<sup>1293</sup> With regard to pregnancy

<sup>1286</sup> See also *Australia* (Part 4, section 24 of the Australian Capital Territory (ACT) Discrimination Act 1991) and *Ireland* (section 2 of the Employment Equality Act 1998 (as revised)).

<sup>1287</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 830.

<sup>1288</sup> *New Zealand*, [Human Rights Act 1993 No. 82](#) and [Employment Relations Act 2000](#) No. 24.

<sup>1289</sup> For instance, *Pakistan* (section 4(2) of the Punjab Domestic Workers Act) and *Uruguay* (section 16 of the 2008 Decree of the Wages Board for the domestic sector).

<sup>1290</sup> For instance, *Morocco* and *Norway*.

<sup>1291</sup> *Peru*, [Decreto Supremo núm. 004-2009-TR por el que se precisan actos de discriminación contra las trabajadoras del hogar](#).

<sup>1292</sup> ILO (2011). [Provisional Record No. 15](#), International Labour Conference, 100th Session, Geneva, para. 798.

<sup>1293</sup> ILO (2010). *Provisional Record No. 12*, op. cit., para. 911.

testing, the Committee notes that differential treatment in employment and occupation based on pregnancy or maternity are discriminatory, as they can only, by definition, affect women.<sup>1294</sup> The Committee notes that in most countries domestic workers are covered by the national legislation prohibiting discrimination relating to medical testing.<sup>1295</sup>

*Ecuador* – Ministerial Decision No. MDT-2017-0082, in section 5, prohibits specific demands or requirements in the selection of personnel, including pregnancy tests and/or the results of HIV tests.<sup>1296</sup>

**684.** The Committee has noted that mandatory medical testing, and particularly testing for pregnancy and HIV, can give rise to discrimination within the meaning of Convention No. 111. In particular, refusal of entry or repatriation on the grounds of HIV status or pregnancy constitutes an unacceptable form of discrimination if the worker is capable of performing the tasks for which he or she was recruited.<sup>1297</sup> The Committee notes that general testing requirements are frequently part of migrant worker schemes, but may also apply to locally recruited domestic workers who are required to provide a certificate of good health prior to employment or to take a pregnancy test.<sup>1298</sup> In the framework of the examination of the application of Convention No. 111, the Committee has urged governments to adopt specific measures to prohibit, prevent and penalize such testing.<sup>1299</sup>

*Jordan* – In accordance with the Regulation on Employment Agencies for the Recruitment of Non-Jordanian Domestic Workers No. 63 of 2020, domestic workers must undergo a medical test upon arrival in the country and upon renewal of the work permit (every year). If the worker is pregnant, the agency is responsible for her repatriation.<sup>1300</sup>

*Singapore* – Foreign domestic workers must undergo a pregnancy test every six months. A positive result leads to immediate repatriation.<sup>1301</sup>

**685.** Paragraph 4 of Recommendation No. 201 on domestic workers provides guidance on the types of measures that Members should consider in relation to medical testing for domestic workers and places emphasis on the provision of health information and the use of voluntary rather than compulsory testing for domestic workers.<sup>1302</sup>

<sup>1294</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 784.

<sup>1295</sup> For instance, *Ecuador* and *Republic of Korea*.

<sup>1296</sup> *Ecuador*, [Acuerdo Ministerial No. MDT-2017-0082](#).

<sup>1297</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 190.

<sup>1298</sup> For instance, *Jordan*, *Lebanon*, *Philippines* and *Singapore*.

<sup>1299</sup> For instance, CEACR – *Mexico*, C.111, observation, 2005; and CEACR – *Uruguay*, C.111, direct request, 2014.

<sup>1300</sup> *Jordan*, Regulation regulating Employment Agencies for the Recruitment of Non-Jordanian Domestic Workers No. 63 of 2020.

<sup>1301</sup> *Singapore*, Ministry of Manpower, [Six-monthly medical examination for migrant domestic workers](#).

<sup>1302</sup> ILO (2011). *Provisional Record* No. 15, op. cit., para. 797.

## ► VI. Related labour rights

### 1. Ensuring access to education for young domestic workers

686. Article 4(2) of the Convention requires Members to 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. As highlighted during the preparatory discussions, the purpose of this provision is to ensure that access to education and vocational training is not hampered by domestic work and is recognized as a basic right.<sup>1303</sup> However, in practice, long working hours often prevent young domestic workers from having access to education.

687. Paragraph 25(1)(a) of the Recommendation calls on Members to establish policies and programmes in consultation with the social partners to 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.<sup>1304</sup>

688. Most governments indicate that young domestic workers are afforded the protection established in the general legislation for other young workers to ensure that their work does not deprive them of access to compulsory education or interfere with their capacity to participate in further education or vocational training. Such provisions may be included in the labour code, child protection laws or legislation on education.<sup>1305</sup> In a number of countries, the specific legislation on domestic work requires persons employing young domestic workers to contribute to the realization of their right to education and personal development.<sup>1306</sup>

*Italy* – The right of workers to education is also recognized for domestic workers and is mainly regulated by collective bargaining in the sector. Employers are required to facilitate the attendance of domestic caregivers in courses for compulsory school or specific vocational qualifications. Study permits have to be agreed with the employer and be compatible with the needs of the household.

689. However, young domestic workers are often prevented from obtaining an education where their families are living in poverty and may not have any other option than to send their children to work. ***The Committee considers that government intervention is essential to address the root causes of these situations.***

In *India*, the Self Employed Women's Association (SEWA) indicates that, while education is compulsory for children until they reach the age of 15, poverty often drives adolescents into work. The SEWA reports that no official measures have been taken to address this situation.

1303 ILO (2010). *Provisional Record* No. 12, op. cit., para. 309.

1304 ILO (2011). *Provisional Record* No. 15, op. cit., paras 260 and 266.

1305 For instance, *Dominican Republic* (section 254 of the Labour Code), *Kazakhstan* (section 31 of the Labour Code) and *New Zealand* (section 30 of the Education Act 1989).

1306 *France* (clause 24 de la Convention Collective Nationale des salariés des particuliers employeurs).

## 2. Effective protection from abuse, harassment and violence

690. The absence of complaints mechanisms and opportunities to organize and exercise freedom of association make domestic workers, whether working in their home countries or abroad, more vulnerable to many forms of abuse, harassment and violence.<sup>1307</sup> Migrant domestic workers, particularly women and girls, are often even in a more vulnerable situation due to a number of factors, including lack of awareness of their rights, lack of support, gender discrimination, restrictive immigration rules that limit their rights and freedom of movement, and immigration status that is tied to the employer. Other factors that may exacerbate their vulnerability include discriminatory views concerning their ethnicity, nationality or migration status, language barriers and social exclusion. The intersection of discrimination and risk factors leads to greater exposure to violence and harassment.<sup>1308</sup>

691. The perpetrators of abuse, violence and harassment in the domestic work sector are often direct employers, including the head of the household. However, they may also be a relative of the employer, a friend or another domestic worker in the household. There have also been reports of abuse and harassment of domestic workers by intermediaries, such as private employment agencies and labour agents/brokers.<sup>1309</sup>

In *Indonesia*, Sisters For Change and Jarigan Nasional Advokasi Perkerja Rumah Tangga (JALA PRT) published the report *Unsafe to work in the home: Workplace exploitation and violence against women domestic workers in Indonesia in 2018*, based on a survey that found that one in two domestic workers who had experienced violence had suffered repeated violence over the past 12 months. The impact of violence in the workplace was significant, with 12 per cent of domestic workers being absent from work due to mistreatment or violence, while only 9 per cent of victims had reported cases of criminal violence to the police. The survey also found that the perpetrator had not been investigated in 73.4 per cent of the cases reported, not arrested in 72.8 per cent of cases and not prosecuted in 72.8 per cent of cases.<sup>1310</sup>

1307 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., Geneva, p. 178.

1308 *ibid.*

1309 International Domestic Workers Federation (IDWF) (2018). *Platform of demands: Violence and harassment against women and men in the world of work*, Geneva, p. 10.

1310 Sisters for Change and JALA PRT (2018). *Unsafe to work in the home: Workplace exploitation and violence against women domestic workers in Indonesia*.



692. Article 5 of the Convention calls for the effective protection of domestic workers against all forms of abuse, harassment and violence. In addition, domestic workers are covered by the ILO instruments on violence and harassment at work. The Committee notes that domestic workers are covered under the Violence and Harassment Convention, 2019 (No. 190), and its accompanying Recommendation No. 206.<sup>1311</sup> In particular, Paragraph 9 of Recommendation No. 206 calls on Members to adopt appropriate measures for sectors or occupations and work arrangements in which exposure to violence and harassment may be more likely, including domestic work.<sup>1312</sup>

693. Protection against sexual harassment<sup>1313</sup> and other forms of discriminatory harassment is particularly important for domestic workers in view of their physical proximity to household members, living arrangements that frequently fail to secure privacy, the isolation of the workplace and the absence of co-workers.<sup>1314</sup> ***The Committee emphasizes that sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers.***<sup>1315</sup> ***The Committee has consistently expressed the view that sexual harassment is a serious manifestation of sex discrimination and a violation of human rights. In view of the gravity and serious repercussions of sexual harassment, the Committee recalls its 2003 general observation on Convention No. 111, in which it highlights the importance of taking effective measures to prevent and prohibit sexual harassment at work. Such measures should address both quid pro quo and hostile environment sexual harassment.***

694. ***The Committee emphasizes that the words “effective protection” in Article 5 of Convention No. 189 include proactive remedies.***<sup>1316</sup> ***Member States should therefore not only ensure that domestic workers are covered by the relevant legislation, but should also take proactive measures to promote and guarantee in practice their right to a workplace free of abuse, harassment and violence. Paragraph 7 of Recommendation No. 201 provides further practical guidance on measures to prevent and address abuse and harassment, including through legislation and its enforcement.***

<sup>1311</sup> Violence and Harassment Convention, 2019 (No. 190), Art. 2(1).

<sup>1312</sup> In addition, ILO Meeting of Experts on Violence against Women and Men in the World of Work, held in 2016, concluded that the “world of work is considered to cover not only the traditional physical workplace, but also commuting to and from work, work-related social events, public spaces including for informal workers ... and the home, in particular for ... domestic workers”. ILO (2016). [Report of the Director-General: Fifth Supplementary Report – Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work](#), Governing Body, 328th Session, Geneva (GB.328/INS/17/5), Appendix I, Conclusions adopted by the Meeting, para. 5. The need to tackle violence and harassment in the domestic work sector is also addressed by the ILO Multilateral Framework on Labour Migration and the ILO General principles and operational guidelines for fair recruitment. ILO (2006). [ILO Multilateral framework on labour migration: Non-binding principles and guidelines for a rights-based approach to labour migration](#), Geneva, Guideline 11.2; and ILO (2019). [General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs](#), Geneva, Guideline 21.1.

<sup>1313</sup> Definitions of sexual harassment should contain the following elements: (1) (*quid pro quo*) any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; or (2) (hostile work environment) conduct that creates an intimidating, hostile or humiliating working environment for the recipient. [CEACR, general observation, Convention No. 111, 2003](#).

<sup>1314</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 37.

<sup>1315</sup> CEACR, general observation, Convention No. 111, 2003, op. cit.

<sup>1316</sup> ILO (2010). *Provisional Record No. 12*, op. cit., paras 447–451.

### (a) Legal protection of domestic workers against all forms of abuse, harassment and violence

695. The Committee notes that legal protection against violence, harassment and abuse in most countries is embedded in the labour code, occupational safety and health (OSH) legislation, equality and non-discrimination legislation, laws on violence against women, and criminal and civil legislation. Most governments report that no specific measures have been adopted for domestic workers in this respect, and that they are covered by the provisions in the general legislation on violence, abuse and harassment under the same terms as other workers.<sup>1317</sup> However, the Committee notes that, despite the widespread occurrence of violence in domestic work, domestic workers in some countries are still excluded from the coverage of these laws. While there is a trend for more inclusive labour laws, a major gap in the legislation regulating workplace violence and harassment relates to its scope, namely who is covered, and where and when they are covered.<sup>1318</sup> For instance, some governments report that domestic work, due to its specificities, is excluded from OSH legislation.<sup>1319</sup>

696. The Committee observes that criminal law usually addresses certain forms of abuse and violence to which domestic workers may be exposed, including through penalties for offences such as forced labour, confinement, bodily injury and sexual crimes. However, on occasion, abuse and harassment faced by domestic workers may not legally constitute criminal behaviour, but may nonetheless violate their dignity and create a hostile and intimidating working environment (for example, through verbal abuse and intimidation). This can often lead domestic workers to submit to violations of their labour rights or leave their positions.<sup>1320</sup>

697. The Committee notes that specific measures have been taken in some countries to ensure the legal coverage of domestic workers against abuse, harassment and violence.<sup>1321</sup>

*Mozambique* – The Domestic Work Regulations establish in section 10(d) the right of domestic workers to be treated with propriety and respect, while section 13(b) requires employers to treat workers with propriety.<sup>1322</sup>

*Uruguay* – The Decision of 10 November 2008 of the Wage Board for the domestic work sector (Group 21) provides that “both parties to the labour relationship shall ensure a working environment of dignity, free from moral and sexual harassment, respecting the right to intimacy and protecting their psycho-physical integrity in adequate conditions of hygiene” (tenth clause).<sup>1323</sup>

1317 For instance, *Australia, Belgium, Bosnia and Herzegovina, Croatia, Czechia, Estonia, Finland, France, Germany, Guatemala, Kiribati, Latvia, Lithuania, Luxembourg, Mali, Malta, New Zealand, Niger, Portugal, Slovenia, Spain, Suriname and Uruguay*.

1318 ILO (2018). *Ending violence and harassment against women and men in the world of work*, Report V(1), International Labour Conference, 107th Session, Geneva, para. 375.

1319 For instance, *Austria and United Kingdom*.

1320 ILO (2012). *Effective protection for domestic workers*, op. cit., p. 41.

1321 For instance, *Brazil, Indonesia, Morocco, Mozambique, Netherlands, Norway, Peru, Philippines and Uruguay*.

1322 *Mozambique*, [Decree 40/2008 of 26 November](#).

1323 *Uruguay*, Consejo de Salarios (Grupo 21 – Servicios Domésticos), [Decreto 670/008](#).

698. In an increasing number of countries, domestic workers have been included within the scope of application of domestic violence regulations.<sup>1324</sup>

*Ghana* – Domestic workers are covered by the Domestic Violence Act, 2007, which includes in the definition of the domestic relationship “a relationship in a domestic situation that exists or has existed between a complainant and a respondent” in which the complainant “is a house help in the household of the respondent” (section 2(I)).<sup>1325</sup>

*Indonesia* – Act No. 23 of 2004 on the Elimination of Violence in the Household provides in section 2(1)(c) that live-in domestic workers shall be considered members of the household for which they work and, as such, are protected against physical, psychological, sexual and economic domestic violence.<sup>1326</sup>

699. However, the Committee notes that, even when domestic workers are protected by labour law, they may not benefit from protection in practice when they are in informal employment.<sup>1327</sup>

In the *Netherlands*, the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) express concern that, because domestic work is often informal, domestic workers do not have access to effective remedies and do not enjoy effective protection against abuse, harassment and violence.

## (b) Mechanisms to protect domestic workers against abuse, harassment and violence

700. Paragraph 7 of the Recommendation outlines a number of measures that Members should consider taking to protect domestic workers from abuse, harassment and violence. Paragraph 21 of the Recommendation provides further guidance on measures to ensure the effective protection of domestic workers, and particularly migrant domestic workers (Chapter 10).

### (i) Accessible complaint mechanisms

701. Paragraph 7(a) of the Recommendation calls on Members to consider “establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence”. As domestic workers are often unaware of their rights, outreach mechanisms can promote greater awareness and help domestic workers exercise their rights.<sup>1328</sup> They can include existing mechanisms, such as judicial procedures.<sup>1329</sup> Paragraph 7(b) adds that Members should consider adopting measures to ensure that “all complaints of abuse,

<sup>1324</sup> For instance, *Brazil*, *Ghana*, *Indonesia* and *Slovenia* (only live-in domestic workers).

<sup>1325</sup> *Ghana*, [Domestic Violence Act, 2007](#) (Act No. 732).

<sup>1326</sup> *Indonesia*, [Act on the Elimination of Violence in the Household](#) (No. 23/2004).

<sup>1327</sup> ILO (2018). *Ending violence and harassment against women and men in the world of work*, Report V(1), op. cit., para. 270.

<sup>1328</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 1091.

<sup>1329</sup> ILO (2011). *Provisional Record* No. 15, op. cit., paras 962 and 963.

harassment and violence are investigated, and prosecuted, as appropriate”. The Committee recalls that Article 17 of the Convention establishes the requirement for appropriate and effective penalties (Chapter 10).

## (ii) Remedies and support for victims

**702.** In countries where neither the OSH nor the labour legislation comprehensively address workplace violence, the only recourse for victims is often to resign and seek compensation through the courts.<sup>1330</sup> The Committee considers that this situation does not afford victims sufficient protection and could dissuade them from reporting violence and seeking redress.<sup>1331</sup> Moreover, as most domestic workers are not engaged under formal working arrangements, they have no access to unemployment benefit if they resign.<sup>1332</sup> A further challenge is that the health consequences of work-related violence and harassment are only considered to be a compensable occupational illness under compensation insurance in a few countries.<sup>1333</sup>

**703.** Paragraph 7(c) of the Recommendation calls on Members to consider “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”. The development of safe emergency housing is particularly important when migrant domestic workers are not immediately placed in a household or when their contract terminates before repatriation.<sup>1334</sup> Paragraph 21(1)(c) of the Recommendation indicates that Members should consider developing a network of emergency housing for the effective protection of migrant domestic workers. The Committee notes that a number of countries have developed good practices in this respect that could serve as useful guidance for ensuring adequate protection for migrant domestic workers in emergency situations.

CEACR – In its comments on the implementation of Convention No. 29 by *Lebanon*, the Committee noted: the establishment of a shelter, Beit al Aman, for migrant domestic workers facing difficulties; the appointment of social assistants to look into the working conditions of migrant domestic workers; the training of labour inspectors on decent working conditions; and the conclusion of a series of memoranda of understanding (MoUs) with sending countries, including the *Philippines*, *Ethiopia* and *Sri Lanka*. The Government indicated that the Ministry of Labour has established a specialized office for complaints and a hotline to provide legal assistance to migrant domestic workers.<sup>1335</sup>

1330 ILO (2018). *Ending violence and harassment against women and men in the world of work*, Report V(1), op. cit., para. 386.

1331 ILO (2012). *Giving globalization a human face*, op. cit., para. 792.

1332 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 183.

1333 ILO (2018). *Ending violence and harassment against women and men in the world of work*, Report V(1), op. cit., para. 389.

1334 ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 413.

1335 CEACR – *Lebanon*, C.29, observation, 2017.

### (iii) Enforcement and monitoring mechanisms

**704.** In some countries, cases of violence against domestic workers are dealt with by specialized units or special police,<sup>1336</sup> which address the crisis needs of victims, provide information on the criminal justice system and community agencies that can provide assistance, and support and comfort victims by accompanying them to court.

*Ghana* – The Domestic Violence and Support Unit of the Ghana Police Service helps victims lodge complaints and protects domestic workers against abuse, harassment and violence in accordance with the Domestic Violence Act, 2007.

**705.** *The Committee emphasizes that the establishment of dispute resolution mechanisms and the simplification of procedures may also encourage reporting. Such mechanisms should be developed with the participation of the social partners, including domestic workers' organizations, and/or their support organizations.*<sup>1337</sup>

### (iv) Provision of guidance and information to workers and employers

**706.** Paragraph 21 of the Recommendation provides guidance on measures to raise awareness and provide information to domestic workers and employers to strengthen compliance with the applicable legislation (Chapter 10). In some countries, OSH authorities, in collaboration with the social partners, have adopted guidelines, launched awareness campaigns and delivered training to domestic workers.

CEACR – In its comments concerning *Argentina*, the Committee noted the development of the “Guide for women workers in private households”, which provides information on the hotlines available to domestic workers to report cases of gender-based violence, as well as preventive measures.<sup>1338</sup>

*Singapore* – The Ministry of Manpower has published the “Employer’s guide: Foreign domestic workers”, which indicates that employers convicted of abusing foreign domestic workers face severe penalties under the law and will be permanently banned from employing other foreign domestic workers.<sup>1339</sup> It adds that not only physical and sexual abuse are punished, but also mental and emotional abuse.<sup>1340</sup>

<sup>1336</sup> For instance, *Ghana* and *Trinidad and Tobago*.

<sup>1337</sup> IDWF (2018). *Platform of demands*, op. cit., p. 13.

<sup>1338</sup> CEACR – *Argentina*, C.189, direct request, 2019.

<sup>1339</sup> *Singapore*, Ministry of Manpower. [Employer's guide: Migrant domestic worker](#).

<sup>1340</sup> *Singapore*, Ministry of Manpower. [Does ill-treatment of a foreign employee include mental or emotional abuse?](#)

**707.** In a number of countries, domestic workers' organizations provide advice and assistance to domestic workers who are victims of violence, abuse or harassment, including through radio and social media to reach live-in domestic workers who may be otherwise isolated.

In 2015, the IDWF launched the "My Fair Home" campaign calling upon employers to commit to upholding the principles of Convention No. 189 by ensuring a work environment that is free from abuse, harassment and violence.<sup>1341</sup>

In *Mexico*, the National Union of Men and Women Domestic Workers (SINACTRAHO) indicates that a protocol has been developed adopting a legal approach to the gender perspective intended to channel domestic workers towards the appropriate bodies if they have suffered abuse, violence or harassment at work.

#### **(v) Training for public officials**

**708.** In some countries, training is provided to OSH inspectors, police officers, judges and other court professionals on how to recognize and deal effectively with violence and harassment, including in private households.

In *Bangladesh*, the National Domestic Women Workers Union (NDWWU) reports that, within the framework of the 2015 Domestic Workers Protection and Welfare Policy, a helpline has been created to help victims of violence and training has been provided to inspection teams to visit and evaluate domestic workplaces.

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<sup>1341</sup> IDWF. "My Fair Home".







# ▶ 9

**Ensuring fair terms  
of employment  
and decent working  
and living conditions  
for domestic workers**

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## ► I. Extending to domestic workers the protection afforded to other workers generally

### Article 6 of Convention No. 189

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.

**709.** The Committee considers that Article 6 reflects the core objective of Convention No. 189, which seeks to ensure that domestic workers enjoy decent working and living conditions and fair terms of employment in the same way as other workers. The other provisions of the Convention build on the principles of fairness and equality set out in Article 6 and establish rights and obligations governing the various aspects of the domestic work relationship for the effective implementation of these principles.<sup>1342</sup>

**710.** Since the adoption of the Convention in 2011, domestic workers have been included in the scope of the general labour legislation in a growing number of countries. In other countries, specific laws or regulations have been adopted on domestic workers, with the general and specific approaches being combined in a number of countries (see Chapter 7). The Committee observes that, in countries where domestic workers are included within the scope of national labour legislation, they should in principle enjoy fair terms of employment in the same way as other workers. In many countries, however, gaps exist in the coverage of domestic workers, including in relation to limitations on normal hours of work, minimum wages, access to social security and occupational safety and health (OSH).

In the *Republic of Korea*, the Korean Confederation of Trade Unions (KCTU) indicates that domestic workers are not protected under the Labour Standards Act like other workers, as they are excluded from its scope of application. As a result, domestic workers have less favourable conditions of work in respect of working hours, weekly holidays, annual holidays, minimum wage, protection from workplace bullying, and occupational safety, among others. The KCTU indicates that even those domestic workers affiliated with authorized domestic service institutions to whom the new 2021 Domestic Workers Act applies are subject to regulations on working hours, weekly holidays, and annual vacations that are less favourable than those stipulated in the Labour Standards Act for other workers.

<sup>1342</sup> ILO (2010). [Provisional Record No. 12](#), International Labour Conference, 99th Session, Geneva, paras 327–328.

In *Spain*, the General Workers' Union (UGT) considers that, while Royal Decree No. 1620/2011 on domestic work was a step forward, it was adopted only as a first step to be followed by further amendments. The UGT refers to the Second Additional Provision of the Royal Decree, which provided that the Ministry of Labour would proceed before 31 December 2012, after consultation with the social partners, to carry out an assessment of the impact of the Decree on the employment and working conditions of domestic workers. It also provided for the establishment of a tripartite expert group to report on, inter alia, the feasibility of applying the same termination of contract regime to domestic workers as that applied to workers in general and the possibility of establishing a system of unemployment protection for domestic workers. On the basis of these assessments, the Government was expected to take the necessary measures through a process of social dialogue. The UGT points out that ten years have passed, yet the Government has not undertaken such reforms. As a result, domestic workers continue to be denied access to unemployment benefits<sup>1343</sup> and are not afforded the same protections as other workers in relation to protection against termination of employment due to pregnancy. The UGT also observes that domestic workers are excluded from the Law on the Prevention of Occupational Risks. Moreover, the Regulation on night work does not apply to them.

**711.** In a number of countries, measures have been taken or are envisaged to ensure that the provisions of the national labour legislation do not afford less protection to domestic than to other workers.

CEACR – In its 2017 comments concerning *Colombia*, the Committee noted the observations by union confederations that sections 77 and 103 of the Substantive Labour Code provide different guarantees for domestic workers in relation to trial periods and notice of termination. While section 77(1) of the Labour Code provides that the trial period must be set out in writing for workers in general, section 77(2) provides that the trial period for domestic workers is presumed to be the first 15 days of service. In addition, under section 103 of the Labour Code, 30 days of advance written notice is required to terminate a fixed-term contract, but advance written notice of only seven days is required for domestic workers. The Committee requested the Government to amend these provisions to ensure that domestic workers have the same trial period, period of notice of termination and other guarantees as other workers. In its 2019 observation, the Committee noted with interest the ruling of the Constitutional Court of Colombia in Case No. C-028/19 finding section 77(2) of the Substantive Labour Code unconstitutional and noting the “differentiated treatment in respect of domestic work, which is undertaken mainly by women with few means and social protection deficits”. The Court found that the presumption of a trial period contravened the principles set out in section 53, which provides for equality of opportunities and the performance of work under decent and just conditions. The Committee reiterated its request for the Government to take the necessary measures to amend section 103 of the Labour Code to ensure that domestic workers enjoy the same guarantees as other workers.<sup>1344</sup>

<sup>1343</sup> See also in this regard: Court of Justice of the European Union (CJEU) (2021). [Domestic workers in Spain: According to Advocate General Szpunar, legislation which excludes them from unemployment benefits, where those workers are almost exclusively women, is contrary to EU law](#), Press release No. 168/21, Luxembourg, 30 Sep. 2021.

<sup>1344</sup> CEACR – *Colombia*, C.189, observations, 2017 and 2019.

*Brazil* – Article 7 of the national Constitution was amended in 2013 to establish equal labour rights for domestic workers compared with other urban and rural workers.<sup>1345</sup>

In *El Salvador*, the International Domestic Workers Federation (IDWF) indicates that the labour rights of domestic workers are regulated in a “special regime” for domestic work set out in sections 77 to 83 of the Labour Code. Under this regime, domestic workers do not have the right to a written contract, no minimum wage is established, social security is optional for each employer, and working hours are not established, being agreed between the employer and the worker. In this regard, the IDWF indicates that section 25(h) of the Law on Equality, Equity and Eradication of Discrimination against Women establishes that the State must apply a series of guidelines in its employment policies, including “the promotion of regulations aimed at regulating and standardising the working conditions of domestic workers so that they enjoy the benefits and employment benefits established in the Labour Code”.<sup>1346</sup>

## ► II. The specific situation of live-in domestic workers

**712.** The Committee notes that live-in arrangements are common in many countries and that millions of domestic workers throughout the world, and particularly migrant domestic workers, live in the households in which they work.<sup>1347</sup>

**713.** Building on Article 6 of Convention No. 189, Paragraph 17 of Recommendation No. 201 provides guidance on measures to be taken to protect the privacy of both live-in domestic workers and employers. The Convention and Recommendation also address other issues that may arise in the context of live-in arrangements. Article 9(a) of the Convention provides that domestic workers must be free to reach agreement with their employer on whether or not to reside in the household. Article 9(b) adds that live-in domestic workers must also be able to leave the household or household members during daily or weekly rest periods or annual leave, and Article 9(c) provides that domestic workers are entitled to keep in their possession their travel and identity documents. The Committee observes that ensuring the enjoyment of these rights through the adoption of adequate legislative provisions can help prevent situations of forced labour.<sup>1348</sup>

**714.** The Committee notes that some workers’ organizations express concern at the precarious working and living conditions of live-in domestic workers, particularly migrant domestic workers in irregular situations.

<sup>1345</sup> *Brazil*, [Constitutional amendment No. 72](#), of 2 Apr. 2013.

<sup>1346</sup> *El Salvador*, Law on Equality, Equity and Eradication of Discrimination against Women, 2011.

<sup>1347</sup> ILO (2010). [Decent work for domestic workers](#), Report IV(1), International Labour Conference, 99th Session, Geneva, para. 27.

<sup>1348</sup> ILO (2012). [Effective protection for domestic workers: A guide to designing labour laws](#), Geneva, p. 45.

In *Germany*, the German Confederation of Trade Unions (DGB) indicates that, despite the various measures adopted by the Federal Government, there is still a large proportion of live-in migrant domestic workers who work and live illegally in households. These workers are at the mercy of private households and are not protected by applicable German law. In addition, they are often recruited through precarious forms of employment by recruitment agencies in their respective home countries.

## 1. Freedom to reach agreement with the employer on whether to reside in the household

715. During the preparatory discussions, most constituents agreed that domestic workers should not be required by national laws or regulations to reside in the employer's household, primarily due to the risk of abuse, including in the form of excessive working hours, as well as the need to ensure a work-life balance.<sup>1349</sup> The objective of Article 9(a) is to ensure that domestic workers are free to negotiate whether or not to reside in the household, while recognizing a bargaining position more equal to that of other workers. At the same time, employers should not be prohibited from making live-in arrangements part of the terms and conditions of employment, as it may be unavoidable in certain circumstances, such as when domestic workers care for elderly or ill family members.<sup>1350</sup> It was also agreed that Article 9(a) encompasses the right of domestic workers to negotiate where they reside both before and after the establishment of an employment relationship.<sup>1351</sup>

716. Most governments indicate in their reports that domestic workers are free to decide whether or not to reside in the household where they work, referring to the principle of contractual freedom between the parties, as established in national legislation.<sup>1352</sup> The Committee considers, however, that it may be problematic to leave this issue up to the discretion of the parties, given the imbalance of power in the employment relationship. In this respect, the Committee notes that, in some countries with migrant worker schemes, migrant domestic workers are required to reside in the same dwelling as their employers.<sup>1353</sup> The Committee further notes that legislation has been adopted in some countries prohibiting certain categories of domestic workers from living in the household where they work, often due to their particular need for protection. For instance, in a number of countries, young domestic workers above the minimum age for work, but who are under 18 years of age, are prohibited from living in the household where they work.<sup>1354</sup> One government also reports that migrant domestic workers are prohibited from residing in the employer's household under certain circumstances.<sup>1355</sup>

1349 ILO (2010). *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th Session, Geneva, p. 394.

1350 ILO (2010). *Provisional Record* No. 12, op. cit., paras 464–467; and ILO (2011), *Provisional Record No. 15*, International Labour Conference, 100th Session, Geneva, paras 470–493.

1351 ILO (2011). *Provisional Record* No. 15, op. cit., paras 470–493.

1352 For instance, *Argentina, Australia, Belarus, Bulgaria, Burkina Faso, Cambodia, Canada, Croatia, Greece, Hungary, Islamic Republic of Iran, Latvia, Malta, Mozambique, New Zealand, Norway, Slovenia, Spain, Sweden, Uruguay, Zambia and Zimbabwe*.

1353 For instance, *Jordan and Lebanon*.

1354 For instance, *Costa Rica, Dominican Republic, Ecuador and Guatemala*.

1355 For instance, *Japan* (with regard to foreign nationals providing housekeeping services in National Strategic Special Zones).



## 2. Freedom to leave the household during daily or weekly rest periods or annual leave

**717.** In accordance with Article 9(b) of the Convention, domestic workers who have agreed to reside in the employer's household retain the right to dispose of their rest periods and annual leave as they see fit. This principle is reflected in the provisions of the domestic work instruments respecting hours of work, rest periods and standby hours.<sup>1356</sup> Freedom of movement is a fundamental right and facilitates the access of domestic workers to services, workers' associations, education and training. It also makes it possible for workers to visit families or friends and prevents them from being confined involuntarily and required to work during their rest periods or leave.<sup>1357</sup>

**718.** Most governments report that live-in domestic workers are free to leave the household during periods of daily and weekly rest or annual leave.<sup>1358</sup> Some indicate that, for rest periods to be calculated as rest and not as work under overtime provisions, domestic workers must be free to leave the employer's premises during such periods.<sup>1359</sup> In recognition that the particular circumstances of domestic work may increase the risk of violations of working time rules, explicit legislative provisions have been adopted in some countries providing that domestic workers must be free to leave the household during their periods of daily and weekly rest or annual leave.<sup>1360</sup>

*Argentina* – Act No. 26.844 provides in section 32 that live-in workers may decide to take annual holidays and leave the place of work, and that any allowances for accommodation and board provided by the employer must be replaced by payment of the equivalent sum in money.<sup>1361</sup>

*Switzerland* – In accordance with section 4.7.15.2 of the Directives of the Federal Act on Foreign Nationals (LEtr), the parties are free to agree whether or not domestic workers will live in. If domestic workers live in the employer's residence, they are not required to stay in the house during rest periods or holidays.<sup>1362</sup>

**719.** In some countries, explicit provision is also made for the right of domestic workers to communicate with family members, friends and others outside the workplace.<sup>1363</sup> Such provisions ensure that domestic workers have access to the necessary resources and support, especially in the event of abuse or exploitation.

<sup>1356</sup> ILO (2011). *Provisional Record* No. 15, op. cit., para. 499.

<sup>1357</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 395.

<sup>1358</sup> For instance, *Argentina, Austria, Canada, Croatia, Cyprus, Mali, Norway, Sweden and United States of America*.

<sup>1359</sup> For instance, *Austria, Canada (Manitoba), Norway and Sweden*.

<sup>1360</sup> For instance, *Argentina, Spain and Switzerland*.

<sup>1361</sup> *Argentina*, [Ley 26.844 de 2013, Régimen Especial de Contrato de Trabajo para el Personal de Casas Particulares](#).

<sup>1362</sup> *Switzerland*, [Directives et commentaires domaine des étrangers](#) (Directives LEtr).

<sup>1363</sup> For instance, *Jordan, Philippines and Seychelles*.

*Philippines* – Republic Act No. 10361 provides in section 8 that the “employer shall grant the domestic worker access to outside communication during free time: Provided, that in case of emergency, access to communication shall be granted even during work time. Should the domestic worker make use of the employer’s telephone or other communication facilities, the costs shall be borne by the domestic worker, unless such charges are waived by the employer”.<sup>1364</sup>

*Seychelles* – The Employment (Conditions of Employment of Domestic Workers) Regulations, 2019, (Regulation 36) provide that: “Live-in domestic workers shall be allowed to visit relatives and visitors outside the domestic worker’s working time at set times in and out of the accommodation as may be specified in the contract”.<sup>1365</sup>

### 3. Possession of travel and identity documents

720. Article 9(c) of the Convention requires Members to take measures to ensure that domestic workers are entitled to keep in their possession their travel and identity documents.<sup>1366</sup> This provision addresses a practice that is common in some countries of employers confiscating the documents of live-in migrant domestic workers to prevent them leaving the employment relationship, which has the effect of transforming the employment relationship into a situation tantamount to forced labour.<sup>1367</sup>

721. The Committee observes that in most countries employers are prohibited from confiscating the travel and identity documents of domestic workers (see Chapter 11). In some countries, this prohibition is set out in the criminal code<sup>1368</sup> or anti-trafficking legislation.<sup>1369</sup> In others, primarily in the Arab region, it has also been included in specific legislation and/or regulations (including model or standard unified contracts) on domestic work.<sup>1370</sup> In a number of countries where the practice is not explicitly prohibited by law, national court decisions have found that employers who confiscate the passports of domestic workers are in violation of basic rights guaranteed in international agreements.<sup>1371</sup>

<sup>1364</sup> *Philippines*, Republic Act No. 10361 instituting policies for the protection and welfare of domestic workers, 23 July 2012.

<sup>1365</sup> *Seychelles*, [Employment \(Conditions of Employment of Domestic Workers\) Regulations, 2019](#).

<sup>1366</sup> United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, Art. 21.

<sup>1367</sup> S. Kagan (2017). *Domestic workers and employers in the Arab States: Promising practices and innovative models for a productive working relationship*, ILO white paper, ILO Regional Office for Arab States, Beirut, p. 6.

<sup>1368</sup> For instance, *Austria, Denmark, Hungary and Sweden*.

<sup>1369</sup> For instance, *Thailand and Trinidad and Tobago*.

<sup>1370</sup> For instance, *Kuwait, Oman, Qatar, Switzerland and United Arab Emirates*.

<sup>1371</sup> For instance, in *Lebanon*, the legislation does not explicitly prohibit withholding a worker’s passport nor does the unified standard contract address this issue. However, court decisions in 2014 and 2015 found that employers who retain the passports of domestic workers are violating basic rights guaranteed in international agreements that *Lebanon* has ratified, particularly their right to freedom of movement within a country and the right to leave the country.



*Kuwait* – Law No. 68 of 2015 on the Employment of Domestic Workers provides in section 12 that “the employer is not allowed to keep in his possession any of the domestic worker’s personal identity documents, such as passport or civil status card, unless the domestic worker has agreed”.<sup>1372</sup>

*Qatar* – Act No. 21 of 2015, in section 8(3), prohibits the confiscation of passports and provides for a maximum fine of 25,000 Qatari riyals (US\$6,800) in the event of violation.<sup>1373</sup> The Government indicates that the worker’s residence permit is now issued in a separate document and not included in the passport. Ministerial Decree No. 18 of 2014 sets out the requirements and specifications of suitable accommodation for migrant workers, which enables them to keep their documents and personal belongings, including passports.<sup>1374</sup>

722. The Committee notes, however, that a number of workers’ organizations indicate that the practice of confiscating the personal documents and contracts of domestic workers, especially of migrant domestic workers, is widespread in some countries.

In *Malaysia*, the Association of Indonesian Migrant Domestic Workers (PERTIMIG), the Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas (AMMPO) and the International Domestic Workers Federation (IDWF) express concern that many employers and recruitment agencies withhold domestic workers’ identity documents, even though this is prohibited by national legislation. These workers live and work in private households and are often deprived of the right to communicate with anyone outside the employer’s home, so that they cannot easily seek help. This practice pushes domestic workers into situations that are tantamount to forced labour.

In *Qatar*, the Bayanihan Domestic Workers Association and the IDWF submit that there are no enforcement mechanisms in place to ensure compliance with national legislation prohibiting passport confiscation. According to estimates from the National Committee for Combatting Human Trafficking, seven out of ten employers still keep their domestic workers’ identity documents and employment contracts without their workers’ consent. Most of these employers have kept the workers’ passports for so long that they have expired or been misplaced. This leads to problems for domestic workers who wish to travel back home or change employer.

<sup>1372</sup> *Kuwait*, [Law No. 68 of 2015 on Employment of Domestic Workers](#).

<sup>1373</sup> *Qatar*, [Law No. 21 of 2015 regulating the entry and exit of expatriates and their residence](#).

<sup>1374</sup> *Qatar*, [Ministerial Decree No. 18 of 2014 determining the requirements and specifications of adequate housing for workers](#) (in Arabic).

In *Singapore*, the Ikatan Persaudaraan Pekerja Migran Indonesia (IP2MI), the AMMPO and the IDWF indicate that, pursuant to the Employment of Foreign Manpower Act, employers are prohibited from confiscating their employees' work permits. However, in many cases, employers retain their domestic workers' passports and work permits without consent. As a result, domestic workers may be isolated for years without having freedom of movement. Lack of access to complaint mechanisms also places domestic workers at high risk of abuse and exploitation.

## 4. Regulating employer-provided accommodation

723. During the preparatory discussions, it was noted that at least three issues common to live-in arrangements should be regulated. The first is whether employer-provided accommodation and board should be treated as a form of in-kind payment or as implicit in the nature of the live-in arrangement and should be covered by the employer. The second concerns the condition of the accommodation and the quality of the food provided, and the third, stemming from the specific nature of domestic work, relates to wages and working time.<sup>1375</sup>

### (a) Accommodation and board as a form of payment in kind

724. Where employer-provided accommodation and food form part of the domestic worker's remuneration, national legislation should also regulate how and to what extent such in-kind payments are permitted.<sup>1376</sup> Article 12(2) of the Convention provides that "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 that 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".

725. Paragraph 14(c) of the Recommendation indicates that Members should consider "limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation". Paragraph 14(d) adds 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".

726. The Committee observes that in some countries employers are prohibited from deducting food and accommodation from the wages of domestic workers.<sup>1377</sup> In other countries, such deductions are allowed under certain conditions set out in the legislation (such as, requiring the amount of the deduction to be included in the employment contract).<sup>1378</sup>

<sup>1375</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 153.

<sup>1376</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 46.

<sup>1377</sup> For instance, *Brazil, Canada (Quebec), Chile, Côte d'Ivoire, Jamaica, Morocco, Peru and United States* (for domestic workers holding A-3 and G-5 visas).

<sup>1378</sup> For instance, *Bahamas, Canada (Alberta, Manitoba and Nova Scotia), France, Italy, Mali, Montenegro, Mozambique, New Zealand, Senegal, Seychelles, South Africa and Uruguay*.

*Uruguay* – Decree No. 224/007 provides in section 11 that every employer who hires a live-in domestic worker shall provide food and accommodation. “The food shall be healthy and sufficient, and shall include at least breakfast, lunch and dinner, in accordance with the uses and customs of the household. The room shall be private, furnished and hygienic. Irrespective of the type of contract, if the worker receives board and accommodation, 20 per cent of the minimum wage may be deducted for these items. If only food is provided, the deduction may not exceed 10 per cent.”<sup>1379</sup>

## (b) Conditions of accommodation

**727.** When domestic workers reside in the household in which they work, they should enjoy decent living conditions.<sup>1380</sup> The Committee observes that, when accommodation and food are provided by the employer, the accommodation should be safe and healthy and protect the worker’s privacy, and the food provided should be of good quality and sufficient quantity.<sup>1381</sup> Moreover, in accordance with Article 7(h) of the Convention, accommodation and food form part of the terms and conditions of employment of which workers must be informed, where possible, through written contracts.

### Paragraph 17 of Recommendation No. 201

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
- (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.

**728.** The Committee notes that in many countries, employers are required to provide live-in domestic workers with adequate accommodation,<sup>1382</sup> normally defined as a separate private room for the worker’s personal use.<sup>1383</sup>

*Seychelles* – The Employment (Conditions of Employment of Domestic Workers) Regulations, 2019, provide in section 35 that where “a domestic worker is required to live at the place of his or her employment, the employer shall provide live-in accommodation without charge and with minimum amenities such as a lockable room with electricity, bed, mattress and beddings, access to potable water, toilet, bathing facilities and access to kitchen facilities for daily meals preparation”.<sup>1384</sup>

<sup>1379</sup> Uruguay, [Decreto No. 224/007, Reglamentación de la ley 18.065 sobre regulación del trabajo doméstico](#).

<sup>1380</sup> CEACR – Colombia, C.189, observation, 2019.

<sup>1381</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 394.

<sup>1382</sup> For instance, *Austria, Finland, Germany, Ghana, Kuwait, Malaysia, Norway, Saudi Arabia, Seychelles, Slovenia and Sweden*.

<sup>1383</sup> For instance, *Austria, Germany, Malaysia, Saudi Arabia, Seychelles, Sweden, United Arab Emirates and Uruguay*.

<sup>1384</sup> *Seychelles*, Employment (Conditions of Employment of Domestic Workers) Regulations, 2019, op. cit.

729. Nonetheless, in a number of countries, the legislation only establishes the obligation of the employer to provide “adequate” accommodation, without setting any specific requirements. In others, there are no provisions in the national legislation regarding domestic workers’ accommodation.

In *Jordan*, the Domestic Workers Solidarity Network (DWSNJ) and the IDWF point out that no regulation establishes minimum standards of accommodation, or requires employers to provide a certain level of living conditions for domestic workers. Some domestic workers do not have a private room and sleep on a mattress on the kitchen floor or living room. Labour inspectors are not allowed inside the private homes of employers so that, despite the existence of regulations governing domestic workers’ living conditions, no inspections may take place to ensure that these are being implemented.

In *Qatar*, the Bayanihan Domestic Workers Association, together with the IDWF indicate that section 7 of Act No. 15 of 2017 provides that an employer shall be responsible for the provision of suitable housing for the domestic worker. However, section 7 does not provide further specifics establishing what may be considered as “suitable” housing. The domestic workers’ organizations report that they have received complaints of domestic workers sleeping in the living room, in the kitchen beside the stove, in the children’s room where security cameras are installed, and even in container/storage-like boxes that are not properly insulated against the extreme temperatures in Doha.

## 5. Ensuring equality of conditions for live-in and live-out domestic workers

730. The Committee observes that the boundaries between work and home are often blurred for live-in domestic workers who, due to their particular situation in the employer’s household, do not always enjoy conditions equal to workers who live outside the employer’s home. Live-in workers tend to work significantly longer hours than those who live out, including working during rest periods, and are more likely to receive a portion of their pay in kind.<sup>1385</sup>

731. When examining the implementation of the provisions concerning working time set out in the Convention, the Committee has observed that in some countries discriminatory limits are placed on the normal weekly hours of live-in domestic workers, which affect their right to overtime compensation. ***In this respect, the Committee encourages governments to take the necessary measures to guarantee equality of treatment in relation to normal hours of work between live-in and live-out domestic workers.***<sup>1386</sup>

<sup>1385</sup> ILO (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Geneva, pp. xxiii, 244–245.

<sup>1386</sup> CEACR – *Chile*, C.189, direct request, 2019; and CEACR – *Colombia*, C.189, observation, 2019.

CEACR – In its comments concerning *Colombia*, the Committee noted the Government's indication that the ordinary maximum hours of work established by law for external or daily domestic workers are eight hours a day and 48 hours a week. All hours worked in addition to the maximum eight-hour day are paid as overtime. With regard to live-in domestic workers, the Government referred to Constitutional Court ruling No. C-372 of 1998, which held that live-in domestic workers may not work more than ten hours a day and that when live-in domestic workers exceed the ten-hour limit, the additional hours worked must be paid as overtime. However, the national trade union confederations observe that no measures have been taken to eliminate this discrimination in relation to live-in domestic workers with regard to maximum hours of work and overtime pay.<sup>1387</sup>

In *Panama*, the Union of Domestic and Similar Service Workers (SINGRETRADS) and the IDWF indicate that there are no measures in place to ensure that domestic workers enjoy decent employment and working conditions on a par with other workers, especially for those who live in. Such workers often work long hours without rest. The organizations point out that section 231(2) of the Labour Code establishes a maximum working day of 15 hours per day (domestic workers must rest at least between 9 p.m. and 6 a.m.). During the COVID-19 pandemic, female live-in domestic workers have worked up to 18 hours a day. In addition, they often lack privacy, especially where their tasks include taking care of children, as the children often sleep with them. The organizations express concern that domestic workers often do not have the freedom to reach an agreement with the employer on whether or not they will live in the employer's house. Instead, at the time of hiring, the employer is the one who decides whether or not the worker will sleep in the place where he or she works. It is an obligation imposed by the employer in exchange for the work.

In *Indonesia*, the Jaringan Nasional Advokasi Pekerja Rumah Tangga (JALA PRT), affiliated to the IDWF, carried out a survey which found that 82 per cent of live-in domestic workers worked more than 105 hours per week, as compared to live-out domestic workers, most of whom work some 50–60 hours per week. Employers often do not pay any financial compensation for overtime, weekly rest, or annual leave (more than 60 per cent of workers indicated that they did not receive any overtime compensation).

<sup>1387</sup> CEACR – *Colombia*, C.189, observation, 2019.

### ► III. Obligation to inform domestic workers of their terms and conditions of employment

**732.** Article 7 of Convention No. 189 requires Members to 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, domestic workers' contracts must set out: "(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; (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".

**733.** Paragraph 6(2) of the Recommendation provides additional guidance on the terms and conditions of employment of which domestic workers should be informed, which should also include: "(a) a job description; (b) sick leave and, if applicable, any other personal leave;<sup>1388</sup> (c) the rate of pay or compensation<sup>1389</sup> 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". Paragraph 6(1) indicates that: "Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment".

**734.** The Committee notes that different measures have been taken at the national level to assist domestic workers to understand their terms and conditions of employment. These range from legal and consulting services, awareness-raising publications in different languages, phone applications providing information on domestic workers' rights, distribution of brochures and pamphlets in public spaces, electronic platforms to facilitate the recruitment of domestic workers and the registration of their employment contracts, and awareness-raising events. These measures often include domestic workers and their organizations, as well as employers, their organizations and the general public.

*Ecuador* – The mobile application "TRH Unidas" (Domestic Workers United) provides information to workers and employers in the domestic work sector on their labour rights and obligations.

*Guatemala* – The Ministry of Labour and Social Security has taken measures to help inform domestic workers about their conditions of employment in an adequate, verifiable and easily understandable way in the various departments of the country. These measures include: legal advice on the filing of complaints related to domestic work and training for domestic workers and employers on their rights and obligations, including on issues such as methods for the payment of wages, rest days and holidays, and the establishment of the employment relationship.

<sup>1388</sup> The term "other personal leave" comprises a variety of arrangements, including emergency leave, and maternity, paternity and parental leave. See ILO (2011). *Provisional Record* No. 15, op. cit., para. 911.

<sup>1389</sup> *ibid.*, para. 926. The term "compensation" is intended to encompass both compensatory rest and pay.

## 1. Written contracts

735. The Committee notes that the use of a written contract can facilitate the formalization of the domestic work relationship, while putting the onus of responsibility on the party with greater bargaining power.<sup>1390</sup> It is also an important means of establishing the existence of an employment relationship and the agreed terms in the event of a dispute.<sup>1391</sup>

736. In most countries, the use of a written contract is required in the domestic work sector.<sup>1392</sup> In others, written contracts are mandatory only for certain categories of domestic workers, such as young domestic workers,<sup>1393</sup> migrant domestic workers,<sup>1394</sup> domestic workers with fixed-term contracts<sup>1395</sup> or those employed by private employment agencies or companies.<sup>1396</sup> The Committee further notes that the legislation in a number of countries, while not explicitly requiring a written contract, nevertheless requires the employer to provide domestic workers with a written statement or letter of appointment specifying their terms and conditions of employment.<sup>1397</sup>

*Italy* – Clause 6 of the National Collective Agreement for Domestic Workers (CCNL) requires the employer to provide the worker with a letter of employment setting out the particulars of the employment, such as the starting date, professional classification, place of work, remuneration and any other aspects relating to the employment relationship.<sup>1398</sup>

737. The Committee notes, however, that many workers' organizations indicate that most domestic workers still do not have written contracts, even in those countries where written contracts are required by law.

In *Mexico*, the National Union of Domestic Workers (SINACTRAHO) indicates that, under article 331 *ter* of the Federal Labour Law, the conclusion of a written contract that includes a series of minimum requirements is mandatory in the domestic sector. However, in practice, most domestic workers do not have a written employment contract and the employment relationship is not formalized. The burden of proving the existence of an employment relationship therefore rests on the domestic worker.

1390 ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 128.

1391 *ibid.*, para. 123.

1392 For instance, *Algeria, Bahrain, Belarus, Bosnia and Herzegovina, Canada, Cyprus, Czechia, France, Ghana, Hungary, Kazakhstan, Kuwait, Latvia, Luxembourg, Republic of Moldova, Mozambique, New Zealand, Niger, Norway, Oman, Philippines, Poland, Qatar, Saudi Arabia, Slovenia, Solomon Islands, South Africa, Sudan, Sweden, Togo, Turkmenistan and Viet Nam*.

1393 For instance, *Austria, Finland and Nigeria*.

1394 For instance, *Bangladesh, Belgium, Cabo Verde, Cook Islands, Finland, Malaysia, Oman, Portugal, Switzerland, Trinidad and Tobago, United Arab Emirates and United States*.

1395 For instance, *Belarus, Benin, Colombia, Portugal and Spain*.

1396 For instance, *China and Japan*.

1397 For instance, *Austria, Burkina Faso, Canada, Indonesia, Italy, Mali, South Africa, United Kingdom of Great Britain and Northern Ireland and Zimbabwe*.

1398 *Italy*, Contratto Collettivo Nazionale del Lavoro Domestico, 2020.



In *Indonesia*, the JALA PRT and the IDWF submit that national legislation establishes a set of minimum requirements that should be contained in the written contract. However, according to a survey carried out by JALA PRT in 2019 among its affiliates, only 28 per cent had a written contract, while 62 per cent had an oral contract. Among those who did not have a written contract, 23 per cent were not aware of it, 26 per cent were afraid to ask, and approximately 45 per cent considered that it was enough to have an oral agreement.

In *Zimbabwe*, the Zimbabwe Domestic and Allied Workers Union (ZDAWU) indicates that, pursuant to the domestic workers legislation, every domestic worker must be provided with a written contract. The legislation further establishes the minimum terms that the employment contract must include. The ZDAWU maintains, however, that 80 per cent of domestic workers do not have written contracts and that, when they do, the contracts are written in English, a language that domestic workers in *Zimbabwe* often do not understand.

**738. The Committee emphasizes that, in addition to promoting the use of written contracts or statements setting out their terms and conditions of employment, it is crucial to ensure that the contents of contracts are explained to domestic workers in a manner and language that they understand.**<sup>1399</sup> In some countries, assistance must be provided to workers in this regard, including to address barriers faced by workers who may be illiterate or unable to understand the language in which the contract is written.

*Burkina Faso* – Pursuant to section 3 of Order No. 2009-021/MTSS/SG/DGT/DER of 2009, the hiring of a domestic worker is subject to a letter of engagement. Section 10 of the Order sets out the procedures for drawing up contracts and the probationary period, and provides that if one of the parties cannot read and write, this shall be explicitly indicated in the contract and the person concerned must affix her fingerprint to the bottom of the contract, and may be assisted by at least one literate person.<sup>1400</sup>

*South Africa* – The Sectoral Determination on the Domestic Worker Sector, clause 9(1), provides that an employer must supply a domestic worker, when the worker starts work, with certain particulars in writing. Clause 9(2) provides that, if a domestic worker “is not able to understand the written particulars, the employer must ensure that they are explained to the domestic worker in a language and in a manner that the domestic worker understands”.<sup>1401</sup>

<sup>1399</sup> For instance, *Latvia, Philippines, South Africa and Suriname*.

<sup>1400</sup> *Burkina Faso*, Arrêté n° 2009/MTSS/SG/DGT/DER fixant les modalités d'établissement, les formes du contrat de travail et de l'engagement à l'essai, section 10.

<sup>1401</sup> *South Africa*, [Act No. 75 of 1997, Sectoral Determination 7: Domestic Worker Sector](#).

739. In some countries, the requirement of a written contract or statement of particulars is supplemented by the obligation to register the employment relationship with a competent authority.<sup>1402</sup>

*Chile* – The Labour Code (section 146 *ter*) requires the employer to register a copy of the contract of a domestic worker on the website of the Labour Inspectorate to facilitate verification of the existence of the employment relationship and the conditions of employment.<sup>1403</sup>

## 2. Model contracts

### Paragraph 6(3) of Recommendation No. 201

Members should consider establishing a model contract of employment for domestic work, 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.

### Paragraph 6(4) of Recommendation No. 201

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

740. Model contracts are templates containing standard clauses on terms and conditions of employment to be included in the employment contract. The parties may supplement or modify the clauses to reflect their agreement. ***The Committee considers that model contracts issued by public authorities can be helpful to domestic employers and workers in formalizing their work relationship in accordance with the statutory requirements respecting the working conditions and entitlements of domestic workers. They also assist the parties in discussing and reaching agreement on such elements as the organization of working time, remuneration, social benefits and other particulars, while clarifying the labour rights of domestic workers.***<sup>1404</sup>

741. Model contracts or written particulars have been adopted in a number of countries for the domestic work sector, which offer guidance, for example, on terms of employment.<sup>1405</sup>

CEACR – In its comments concerning *Switzerland*, the Committee noted that responsibility for preparing standard contracts lies with the cantons. For example, the Canton of Geneva has developed a model contract for full-time and part-time domestic workers. The provisions of cantonal model contracts can only be modified to the detriment of workers through a written agreement.<sup>1406</sup>

742. In many cases, such model contracts specifically address the recruitment of migrant domestic workers (see below).

<sup>1402</sup> For instance, *Belarus, Ecuador and Turkmenistan*.

<sup>1403</sup> *Chile, Labour Code*, promulgated on 31 July 2002 (most recently amended on 3 June 2021).

<sup>1404</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 20.

<sup>1405</sup> For instance, *Algeria, Austria, Bahrain, Plurinational State of Bolivia, Canada (Quebec), Ecuador, France, Oman, Paraguay, Qatar, Saudi Arabia and South Africa*.

<sup>1406</sup> CEACR – *Switzerland*, C.189, direct request, 2017.

### 3. Contractual requirements specific to migrant domestic workers

#### Article 8(1) of Convention No. 189

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.

743. Article 8(1) places the obligation to protect migrant domestic workers on both countries of origin and destination.<sup>1407</sup> This requirement not only helps to prevent trafficking and abuse, but also contributes to the formalization of the employment relationship and makes it easier for workers to assert their rights.<sup>1408</sup>

744. During the preparatory discussions, it was agreed that there should be an exception to Article 8(1) in cases where the domestic worker already enjoys freedom of movement under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas. The objective of this exception is to ensure that freedom of movement for the purpose of employment is not limited, in recognition that workers may benefit from more favourable rights and protection under cross-border agreements.<sup>1409</sup>

745. The Committee notes that the legislation in a number of countries requires written contracts to be concluded before domestic workers cross national borders for employment.<sup>1410</sup> Provisions requiring a contract in writing are also included in some bilateral agreements covering migrant workers.<sup>1411</sup> In some of these countries, model contracts have also been adopted for the employment of migrant domestic workers.<sup>1412</sup>

*Qatar* – Act No. 15 of 2017 provides in section 3 that “a domestic worker may not be employed other than by virtue of a labour contract, which is written and certified by the department, in three copies. One copy shall be handed to each party, and the third copy shall be deposited with the department”. The Government reports that a model contract has been adopted containing all the terms and conditions of employment, a copy of which is provided in the worker’s native language.

<sup>1407</sup> ILO (2011). *Provisional Record* No. 15, op. cit., para. 412.

<sup>1408</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., pp. 398 and 399.

<sup>1409</sup> ILO (2011). *Decent work for domestic workers*, Report IV(2A), International Labour Conference, 100th Session, Geneva, p. 33.

<sup>1410</sup> For instance, *United Arab Emirates* and *United States*.

<sup>1411</sup> For instance, *Bahrain*, *Mauritius*, *Oman*, *Qatar* and *United Arab Emirates*.

<sup>1412</sup> For instance, *Kuwait*, *Niger*, *Oman*, *Qatar*, and *United Arab Emirates*.

*United Arab Emirates* – Federal Decree No. 10 of 2017 (1438) on Domestic Workers provides in section 6 that “the employer shall undertake to present to the worker an employment contract that is modelled on the unified standard contract mandated by the Ministry. The contract shall be in written form and produced in four signed copies: one to be surrendered to the worker, one to be kept by the employer, one to be deposited with the recruitment agency; and the fourth to be deposited with the Ministry (...).”<sup>1413</sup> Employers are required to send to workers in their country a job offer that includes all the terms of employment, which have to receive the workers’ consent prior to leaving their home country. No entry visa for work is issued to migrant workers until the employer has submitted a copy of the employment offer bearing the worker’s signature and fingerprint. A model standardized job offer and contract for all migrant workers has been adopted to prevent their exploitation. The job offer/employment contract must be issued in three languages (Arabic, English and the worker’s native language).

**746.** The Committee notes that instances of contract substitution have been reported in a number of countries. This practice consists of changing the terms of employment to which the worker originally agreed, whether this was in writing or verbally. Contract substitution occurs through a number of modalities. The most straightforward modality of contract substitution is when the domestic worker signs a contract in his/her country of origin, and on arrival in the country of destination the worker is asked, required or coerced by private employment agencies to sign a new contract.<sup>1414</sup>

In *Malaysia*, the PERTIMIG, the AMMPO and the IDWF express concern that domestic workers often face contract substitution. Usually, the contract is signed in the country of origin, but once the domestic worker arrives in *Malaysia*, the private employment agency has the domestic worker sign another contract that is not in the worker’s language and is different from the original contract. If the domestic worker refuses to sign the contract, the agency or employer may threaten to send the worker back home and force the worker to pay for all the travel and recruitment expenses incurred.<sup>1415</sup>

<sup>1413</sup> *United Arab Emirates*, [Federal Law No. 10 of 2017 on Domestic Workers](#).

<sup>1414</sup> For further information on the different modalities of contract substitution, see: Open Working Group on Labour Migration and Recruitment, “[Zero tolerance for contract substitution](#)”, Policy brief No. 4.

<sup>1415</sup> Cases of migrant domestic workers who experienced contract substitution when arriving for work to the country of destination are also highlighted by the Bayanihan Domestic Workers Association and the IDWF in *Qatar*, and by the Domestic Workers Solidarity Network in Jordan (DWSNJ) and the IDWF in *Jordan*.

## ► IV. Working time and rest periods

747. The Committee recalls that excessive hours of work are a significant concern in domestic work and that live-in domestic workers are the most affected, often working in isolated conditions where they may be expected to be available for up to 24 hours a day, seven days a week.<sup>1416</sup>

***The Committee emphasizes that domestic workers, in the same way as all workers generally, have the right to rest and reasonable limitations on their hours of work.<sup>1417</sup> Restrictions on hours of work and the provision of adequate rest periods are essential for the health and safety of domestic workers,<sup>1418</sup> and to prevent exploitation and ensure freedom of movement and the possibility to participate in trade union activities.<sup>1419</sup>***

748. Limiting working time to ensure adequate rest for workers has always been a key concern of the ILO, which has adopted a number of instruments covering specific aspects of working time, including hours of work, weekly rest, paid annual leave, night work and part-time work.<sup>1420</sup> However, the Committee notes that domestic workers are often excluded from the protection of legislation regulating working time.<sup>1421</sup> It further notes that, even in those countries where they are covered by such legislation, domestic workers often work long hours without being compensated, due to the workers and employers' lack of knowledge or awareness about their rights and obligations and the absence of enforcement mechanisms.

In *Nepal* – the Home Workers Union of Nepal (HUN), the General Federation of Nepalese Trade Unions (Gefont) and the IDWF maintain that domestic workers generally do not enjoy weekly rests, and that standby time is not counted as working time, especially for live-in domestic workers.

In *Zimbabwe*, the ZDAWU observes that national legislation provides that domestic workers, both live-in and live-out, should not work more than 49 hours per week. Any additional time worked by a domestic worker is considered as overtime and must be paid at one and one-half times the hourly rate of the domestic worker. Domestic workers are also entitled to one and one-half days off per week. In addition, any time worked by a live-in domestic worker after 7 p.m. is considered as overtime and shall be compensated accordingly. However, in practice, most employers do not respect these legal provisions and the majority of domestic workers complain that they are deprived of their rest time.

1416 ILO (2014). [Working around the clock? A manual for trainers to help live-in domestic workers count their working time](#), Geneva, p. 1.

1417 The Universal Declaration of Human Rights provides in Art. 24 that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

1418 ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 174.

1419 ILO (2012). *Effective protection for domestic workers*, op. cit., p. 49.

1420 For instance, on hours of work, the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Forty-Hour Week Convention, 1935 (No. 47), and the Reduction of Hours of Work Recommendation, 1962 (No. 116); on weekly rest, the Weekly Rest (Industry) Convention, 1921 (No. 14), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) and its accompanying Recommendation No. 103; on holidays with pay, the Holidays with Pay Convention (Revised), 1970 (No. 132) and its accompanying Recommendation No. 98; and on night work, the Night Work (Women) Convention (Revised), 1948 (No. 89) and its 1990 Protocol, the Night Work Convention, 1990 (No. 171); and on part-time work, the Part-Time Work Convention, 1994 (No. 175).

1421 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 70.

## 1. The principle of equal treatment between domestic workers and workers in general in relation to working time

749. Article 10(1) of the Convention requires Members to “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”. The Committee notes that the variety of tasks covered by domestic work and the fact that some tasks due to their nature may have to be performed outside and beyond regular hours of work make regulation in this area complex. ***The Committee considers that laws and regulations on working time should address these complexities in a clear and comprehensive manner with a view to effectively limiting the normal hours of work of domestic workers.***<sup>1422</sup>

750. The Committee observes that, while regulations have been adopted in most countries limiting normal weekly hours of work, defining standby periods and establishing overtime pay,<sup>1423</sup> in others the working time of live-in domestic workers is regulated through rest periods.<sup>1424</sup> ***The Committee considers that, while this approach may be seen as a simpler way of limiting working time by establishing blocks of daily, nightly and weekly rest periods, it can sometimes result in inequalities between domestic workers (for instance, between live-in and live-out domestic workers) and between domestic and other workers. The Committee therefore emphasizes the importance of ensuring equality of treatment with other workers when such an approach is adopted.***<sup>1425</sup>

## 2. Normal hours of work

751. The regulation of normal hours of work<sup>1426</sup> by establishing daily and weekly limits is the main method used to ensure that workers have reasonable working hours. Overtime rules apply to hours worked in excess of these limits.<sup>1427</sup> Since the adoption of Convention No. 189, the legislation has been modified in a number of countries to limit the hours of work of domestic workers and apply the same limits as for workers generally. According to recent ILO estimates, in half of 108 countries reviewed, the limits on normal weekly hours for domestic workers are at least equivalent to those of other workers.<sup>1428</sup>

*Cabo Verde – The Labour Code, in section 149, establishes a 48-hour working week for domestic workers, equivalent to that of other workers.*<sup>1429</sup>

<sup>1422</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 49.

<sup>1423</sup> For instance, *Austria, Belarus, Canada (Quebec), Ghana, Norway, Senegal, Seychelles, South Africa and Trinidad and Tobago*.

<sup>1424</sup> For instance, *Algeria, Austria, Belgium, Cambodia, Mali, Morocco, Mozambique, Philippines, Qatar, Saudi Arabia, Sudan, United Arab Emirates, United States and Zimbabwe*.

<sup>1425</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 71.

<sup>1426</sup> The notion of “normal working hours” refers to “the number of hours that may legally be worked during the day, week, month and/or year, excluding overtime”. ILO (2018). *Ensuring decent working time for the future*, General Survey concerning working-time instruments, Report III (Part B), International Labour Conference, 107th Session, Geneva, para. 43.

<sup>1427</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 50.

<sup>1428</sup> For instance, *Argentina, Brazil, Peru and Bolivarian Republic of Venezuela*.

<sup>1429</sup> Cabo Verde, *Labour Code, 2007 (amended by Legislative Decree No. 1/2016)*.

*Jordan* – Section 2 of Regulation No. 11 of 2013, which amends section 6(a) of Regulation No. 11 of 2009 respecting domestic workers, cooks, gardeners and similar categories, provides that “the total actual hours of domestic work shall be eight hours a day, excluding idle time and rest or meal breaks”. This limit is equivalent to that of other workers under the Labour Code.

**752.** In some countries, shorter limits have been established for domestic workers.<sup>1430</sup> In others, although maximum limits have been placed on the normal hours of work of domestic workers, these are higher than for other workers.<sup>1431</sup>

*Austria* – Section 5 of the Federal Act governing Domestic Help and Domestic Employees (DHEA) contains special provisions on working time that are less favourable than those in the general legislation for other employees. The Act provides that working hours in two calendar weeks shall not exceed 100 hours for live-in domestic workers and 86 hours for live-out domestic workers.<sup>1432</sup>

*Mauritania* – Ministerial Decree No. 797 of 2011 establishes a limit of 60 hours of work a week for domestic workers, while section 170 of the Labour Code establishes a limit of 40 hours a week for other workers.

**753.** However, the Committee notes that almost half of all domestic workers globally (48.9 per cent) are not covered by legal limits on normal hours of work and that they are clustered in 30 countries where there are large numbers of domestic workers.<sup>1433</sup>

<sup>1430</sup> For instance, in *Belgium*, a collective agreement concluded in the domestic work sector establishes a weekly 38-hour limit on working hours for domestic workers in comparison with the 40-hour limit established under general labour law. See: [Collective Labour Agreement of 3 June 2004, extended by Royal Decree of 23 September 2005](#).

<sup>1431</sup> For instance, *Austria, Plurinational State of Bolivia, Cameroon, Guyana, Jamaica, Kuwait, Mauritania, Mauritius, Morocco, Nicaragua, Portugal and Qatar*.

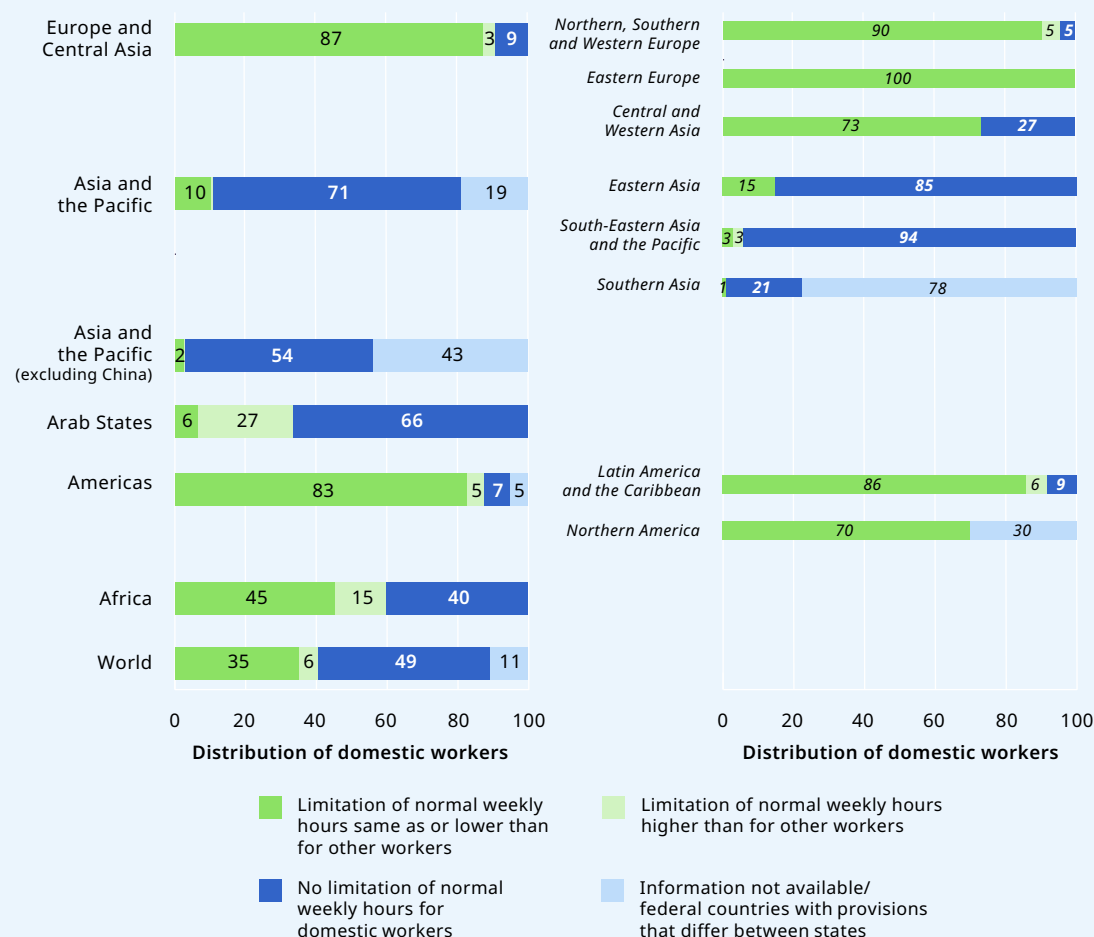
<sup>1432</sup> *Austria*, [Federal Act Governing Domestic Help and Domestic Employees](#) (DHEA).

<sup>1433</sup> For instance, *China* and *Saudi Arabia*. ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 73.



Figure 9.1

**Limitation of normal weekly hours of work for domestic workers by region, 2020 (percentages)**



Source: ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 74.

### 3. Overtime

#### (a) Limitations on overtime

754. The Committee observes that, in some countries, domestic workers are covered by the provisions of the general labour legislation on overtime, while in others overtime is governed by legislation specific to domestic work.<sup>1434</sup>

**Qatar** – The new standard employment contract for domestic workers adopted in 2021 provides for eight normal working hours and a maximum of two hours of overtime a day.

<sup>1434</sup> For instance, Qatar, Seychelles and South Africa.

*South Africa* – The Sectoral Determination on domestic work provides in clause 11 that an employer “may not require or permit a domestic worker – (a) to work overtime except in accordance with an agreement concluded by the employer and the domestic worker; (b) to work more than 15 hours overtime a week; or (c) to work more than 12 hours, including overtime, on any day”.

### (b) Overtime compensation

**755.** In addition to setting maximum limits on overtime, national legislation should also require overtime compensation. The Committee notes that in many countries overtime compensation schemes have been established which provide for higher rates of pay for overtime than those received for normal hours of work, for compensation in the form of time off, or a combination of time off and pay.<sup>1435</sup>

*Canada* – In Quebec, the normal working week for a live-in domestic worker is 40 hours. Hours worked in excess of this limit constitute overtime, which must be paid at a rate 50 per cent higher than the worker’s normal hourly wage. The employer may, at the worker’s request, compensate overtime with leave, which must be for a period equivalent to the overtime hours worked, plus 50 per cent. It must be taken within 12 months of the overtime worked and on a date agreed between the employer and the employee.

### (c) Keeping records of hours worked

**756.** Paragraph 8(1) of the Recommendation indicates that 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. Keeping records of the overtime hours of domestic workers is crucial to ensuring compliance with the overtime limits established by law and fair compensation for the overtime hours worked. Paragraph 8(2) of the Recommendation envisages the development of practical guidance in this respect, in consultation with representatives of domestic workers and their employers.<sup>1436</sup>

**757.** Time sheets, work schedules and payslips can be valuable tools in assisting domestic workers and employers to reach agreement on work schedules, time worked and wages paid. They also support effective compliance.<sup>1437</sup> The Committee observes that the legislation in some countries requires employers to keep records of the hours of work of domestic workers.<sup>1438</sup>

<sup>1435</sup> For instance, *Canada* (Quebec), *Senegal*, *Seychelles*, *Trinidad and Tobago* and *Zambia*.

<sup>1436</sup> The ILO has developed a tool to assist ILO constituents, and particularly domestic workers, to record their hours of work and rest. See: ILO (2014). *Working around the clock?*, op. cit., p. 5.

<sup>1437</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 53.

<sup>1438</sup> For instance, *Finland*, *Ireland* and *Peru*.

## 4. Periods of daily and weekly rest and breaks

758. The regulation of rest periods and breaks is also important in achieving decent working conditions for domestic workers.

### (a) Daily and weekly rest

759. Article 10(2) of the Convention and Paragraph 11(1) of the Recommendation call for a weekly rest period of at least 24 consecutive hours.<sup>1439</sup> The Committee recalls that, while a period of daily rest is an uninterrupted rest period occurring each 24-hour period, weekly rest is a longer uninterrupted rest period, to be enjoyed on a fixed day in every seven-day period.<sup>1440</sup> Paragraph 11(2) of the Recommendation indicates that a 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. Paragraph 11(3) calls for limits to be placed on the accumulation of weekly rest.<sup>1441</sup>

760. The Committee observes that, according to ILO estimates, in most countries (77.8 per cent of the 108 surveyed), the entitlement of domestic workers to weekly rest is at least equal to that of other workers,<sup>1442</sup> and is shorter than that of other workers in only a few countries.<sup>1443</sup> With few exceptions, domestic workers in Latin America and the Caribbean and in Europe and Central Asia are entitled to periods of weekly rest that are equal to, or more favourable than those of other workers.<sup>1444</sup> Significant advances have been made in the Arab region in this regard.<sup>1445</sup> However, in a number of countries, live-in domestic workers have less favourable entitlements to weekly rest than live-out domestic workers.<sup>1446</sup>

761. In the great majority of countries, the weekly rest period for domestic workers is at least 24 consecutive hours,<sup>1447</sup> while in others weekly rest ranges from 36<sup>1448</sup> to 48 hours.<sup>1449</sup> Moreover, the Committee notes that there are still some countries where domestic workers have no legal right to weekly rest.<sup>1450</sup>

*Israel* – The Government indicates in its report that domestic workers are excluded from the application of the Hours of Work and Rest Act on the basis that it is difficult to supervise their hours of work.

1439 These provisions are in line with the 24 hours of weekly rest required for workers in industrial undertakings, commerce and offices by international labour standards (Art. 2(1) of Convention No. 14 and Art. 6(1) of Convention No. 106).

1440 ILO (2012). *Effective protection for domestic workers*, op. cit., p. 54.

1441 ILO (2011). *Provisional Record* No. 15, op. cit., para. 1039.

1442 For instance, *Argentina, Bosnia and Herzegovina, Cabo Verde, Cambodia, Dominican Republic, Finland, Hungary, Islamic Republic of Iran, Iraq, Kuwait, Latvia, Mexico, Philippines, Qatar, Saudi Arabia, Senegal, Slovenia, Thailand, United Kingdom, Bolivarian Republic of Venezuela* and *Viet Nam*.

1443 For instance, *Ghana, Guatemala* and *Guyana*.

1444 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., pp. 80 and 82.

1445 For instance, *Kuwait, Qatar, Saudi Arabia* and *United Arab Emirates*.

1446 For instance, *Chile* and *Colombia*.

1447 For instance, *Algeria, Bosnia and Herzegovina, Burkina Faso, Cambodia, Croatia, Cyprus, Finland, France, Ghana, Guyana, Islamic Republic of Iran, Italy* (live-out domestic workers), *Kuwait, Malaysia, Mali, Morocco, Mozambique, Panama, Philippines, Portugal, Qatar, Saudi Arabia, Senegal, Seychelles, Slovenia, Thailand, Togo, Trinidad and Tobago, United Arab Emirates* and *Viet Nam*.

1448 For instance, *Dominican Republic, South Africa* and *Uruguay*.

1449 For instance, *Bulgaria, Chile* (live-out domestic workers), *Hungary* and *Italy* (live-in domestic workers).

1450 For instance, *Israel*.

762. The countries in which domestic workers are excluded from weekly rest are also those with the largest number of domestic workers.<sup>1451</sup> The Committee observes that in these countries only a small proportion of domestic workers, those who provide services to private households who are employed by private agencies, are granted weekly rest.<sup>1452</sup> In some circumstances, domestic workers may be expected to work 12 days in a row, before benefiting from two rest days. During the preparatory discussions, it was emphasized that there is a need for some flexibility to allow the accumulation of leave days over a two-week period.<sup>1453</sup> Accordingly, Paragraph 11(3) of the Recommendation indicates that, where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, this period should not exceed 14 days for domestic workers.<sup>1454</sup>

763. The Committee notes that the working time provisions applicable to domestic workers should establish the conditions under which they may exceptionally be required to work during daily and weekly rest periods. In this respect, Paragraph 12 of the Recommendation indicates that 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”. The Committee observes that the legislation in some countries permits exceptions from prescribed rest periods in special limited circumstances or by agreement between the parties, and provides for monetary compensation, compensatory time off, or both.<sup>1455</sup>

*Argentina* – Act No. 26.844 provides in section 15(a) that live-in domestic workers shall be entitled to: a daily rest period at night of at least nine consecutive hours, which may only be interrupted for serious and/or urgent reasons that cannot be delayed. In the event of interruption of daily rest, the hours of work shall be remunerated at a higher rate and entitle the worker to the appropriate compensatory rest.<sup>1456</sup>

## (b) Rest breaks

764. Legislative provisions respecting rest breaks during periods of work are also essential to ensure decent working conditions for domestic workers. The number and length of rest breaks should be determined taking into account the number of continuous hours worked. The purpose of breaks is not only for workers to take their meals, but also to ensure appropriate rest, which is particularly relevant in the case of overtime work (Paragraph 10 of the Recommendation).

<sup>1451</sup> For instance, *China, Japan and Republic of Korea*.

<sup>1452</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., pp. 81 and 86.

<sup>1453</sup> ILO (2010). *Provisional Record No. 12*, op. cit., paras 502 and 530.

<sup>1454</sup> ILO (2011). *Provisional Record No. 15*, op. cit., para. 534.

<sup>1455</sup> For instance, *Argentina and South Africa*.

<sup>1456</sup> *Argentina, Ley 26.844 de 2013*, op. cit.

## 5. Night work

**765.** A domestic worker may perform night work on an exceptional basis. These situations are usually addressed by allowing exceptions, under strict conditions, to the daily rest period. Where the normal duties of the domestic worker are performed at night, the worker should not be treated less favourably than other night workers.<sup>1457</sup> In this regard, Paragraph 9(2) of the Recommendation calls for measures comparable to those aimed at protecting workers from the negative effects of standby work, namely a maximum number of permitted hours of night work, as well as rules regarding compensation.

### (a) Limitations on night work

**766.** The Committee notes that in some countries specific legislation on domestic work establishes limits on night work. In some cases, the consent of the domestic worker is required<sup>1458</sup> or, where there is no such requirement, the law limits the circumstances in which such work may be imposed.<sup>1459</sup> The Committee refers in this respect to the Night Work Recommendation, 1990 (No. 178), which indicates in Paragraph 4(2) that night work should not normally exceed eight hours and should generally be shorter than the same work performed by day.

### (b) Compensation

**767.** The Committee recalls that Article 8 of the Night Work Convention, 1990 (No. 171), provides that: “Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work”. Provisions on night work applicable to domestic workers often envisage compensation specific to the assignment of night work, including monetary compensation, time off, or both.<sup>1460</sup>

## 6. Standby or on-call hours

**768.** The Committee notes that many domestic workers, especially live-in workers, are frequently asked to remain on standby outside their core working hours. In accordance with Article 10(3) of the Convention, periods of standby (also known as on-call periods) are 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”. As standby hours are characteristic of domestic work, the Committee considers that provisions establishing the compensation for such hours are required to ensure equality between domestic workers and other workers.<sup>1461</sup> The Convention leaves it to national laws, regulations, collective agreements or any other means consistent with national practice to determine the extent to which standby periods shall be regarded as hours of work, the modalities and standards governing standby duty, and the type and extent of compensation.<sup>1462</sup>

<sup>1457</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 408.

<sup>1458</sup> For instance, *Finland and South Africa*.

<sup>1459</sup> For instance, *Austria, New Zealand and South Africa*.

<sup>1460</sup> For instance, in *South Africa*, section 13 of Sectoral Determination No. 7 provides that night work means work performed after 18:00 and before 6:00 the next day. The domestic worker is compensated by the payment of an allowance agreed between the employer and the worker.

<sup>1461</sup> ILO (2010). *Provisional Record* No. 12, op. cit., para. 524.

<sup>1462</sup> The term “any other means consistent with national practice” includes arbitration awards, individual statutory agreements and custom. ILO (2011). *Provisional Record* No. 15, op. cit., paras 554–557.

769. Due to the nature of their work, domestic workers, and particularly live-in domestic workers, are likely to be asked to remain on standby outside their normal working hours, whether occasionally or regularly. During these periods, domestic workers are required to be available, if needed. Legislative provisions on standby periods for domestic workers protect them from abuse of this flexibility, which could result in “never-ending” hours of work, while acknowledging the need for the flexibility that is often a characteristic of domestic work.<sup>1463</sup> ***The Committee considers that it is crucial to establish limits in national legislation on standby hours and provide for compensation where appropriate in order to ensure that domestic workers enjoy working time protections comparable to those of other workers.***<sup>1464</sup>

770. Paragraph 9(1) of the Recommendation provides guidance on the regulation and compensation of standby hours, calling on Members to 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”. The Committee observes that in many countries standby hours are considered as working time,<sup>1465</sup> but that standby hours are explicitly excluded from working time in a few countries.<sup>1466</sup>

*Germany* – In its first report on the application of Convention No. 189, the Government indicated that standby periods during which workers must remain at a place determined by the employer so that they may, if necessary, begin an activity immediately are considered in their entirety (including the time of inaction) as working time under the Working Hours Act. In its observations, the German Confederation of Trade Unions (DGB) cited a judgment of the federal labour court holding that periods during which live-in workers are on call must be included in the calculation of working time and be remunerated.

*Ireland* – In its first report on the application of the Convention No. 189, the Government referred to section 18 of the Organisation of Working Time Act, 1997, which establishes rules for 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. Moreover, the Code of Practice on Domestic Work provides in section 5.4 that “where an employee accompanies an employer or member of the employer’s family on holiday, working time will be calculated in accordance with the Organisation of Working Time Act 1997 and, in those circumstances, time worked and rest breaks/days taken in accordance with that Act shall not be treated as annual leave”.

<sup>1463</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 61.

<sup>1464</sup> ILO (2018). General Survey concerning working-time instruments, op. cit., para. 702.

<sup>1465</sup> For instance, *Algeria, Azerbaijan, Belgium, Plurinational State of Bolivia, Czechia, Finland, France, Germany, Ireland, Kazakhstan, Republic of Korea, Senegal, South Africa and Spain*.

<sup>1466</sup> For instance, *United Arab Emirates and United States*.

**771.** However, the Committee notes that in some countries specific categories of domestic workers, particularly those providing care, are not covered by laws or regulations governing standby hours.<sup>1467</sup>

*Norway* – The House Work Regulations contain rules on “on-call supervision”, when domestic workers supervise children, the elderly or sick outside normal working hours. This type of on-call care is not considered as working time if it does not lead to active work. Conversely, any active work performed during this time is calculated as working time. The employer and worker may, subject to section 7 of the Regulations, agree that such on-call work may be performed during the worker’s rest time. Section 10(4) of the Working Environment Act (WEA) permits an extension of working hours of up to two hours a day and ten hours a week where the work is totally or mostly passive. Where standby hours are outside the workplace, at least one-seventh of such hours are generally included in normal hours of work. The Government indicates that legislative amendments are proposed that would repeal the on-call provisions in the Regulations and apply the WEA rules respecting passive work and standby.

In *Austria*, the Austrian Trade Union Federation (ÖGB) and the Federal Chamber of Labour (BAK) indicate that, under section 5(1) of the Act Governing Domestic Help and Domestic Employees, periods of standby are considered as working time. However, section 3(2) of the House Care Act provides that standby periods which, pursuant to the carer’s employment contract, the carer spends in his or her room or in the immediate domestic environment and during which the carer is otherwise able to dispose of his or her time freely, are not considered as working time for purposes of the Home Care Act.

## 7. Paid annual leave

**772.** The Committee recalls that the purpose of annual leave is to enable workers to rest and enjoy leisure time after a period of work.<sup>1468</sup> Annual leave also provides domestic workers with an opportunity to attend to family responsibilities and contributes to work-life balance. Periods of paid annual leave are particularly important for international and internal migrant domestic workers who are far from their families.<sup>1469</sup> In accordance with Article 10(1) of the Convention, the paid annual leave of domestic workers should not be less than the annual leave entitlements of other workers. Moreover, Paragraph 13 of the Recommendation indicates that time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.

**773.** The Committee observes that, according to recent ILO estimates, in the great majority of countries (77.8 per cent of those reviewed), paid annual leave for domestic workers is at least equal to that enjoyed by other workers.<sup>1470</sup> In Latin America and the Caribbean, Europe and Central Asia, almost all domestic workers are covered by the right to paid annual leave on an equal footing with other workers, while in the Africa region 60 per cent of domestic

<sup>1467</sup> For instance, *Austria* and *Norway*.

<sup>1468</sup> ILO (2018). General Survey concerning working-time instruments, op. cit., para. 322.

<sup>1469</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 64.

<sup>1470</sup> For instance, *Angola, Argentina, Bahrain, Bosnia and Herzegovina, Brazil, Morocco, Philippines, Qatar, Seychelles, Thailand, United Arab Emirates* and *Viet Nam*.



workers have the right to the same or longer periods of annual leave.<sup>1471</sup> The Committee notes important advances in the Arab region in this regard following the adoption of new domestic work legislation.<sup>1472</sup> The increasing number of countries in which paid annual leave for domestic workers is equal to that of other workers is reflected in the percentage of domestic workers who enjoy such coverage.<sup>1473</sup> In most countries, the period of paid annual leave varies between two,<sup>1474</sup> three<sup>1475</sup> and four weeks.<sup>1476</sup> In a few countries (6.5 per cent), although domestic workers are entitled to paid annual leave, the periods are shorter than for other workers.<sup>1477</sup> In 11 per cent of countries, domestic workers have no clear entitlement to paid annual leave.<sup>1478</sup>

## ► V. Remuneration

### 1. Minimum wage coverage

774. Article 11 of the Convention requires Members to “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”.<sup>1479</sup> The Committee observes that national practices concerning minimum wages vary considerably, reflecting the complexities of wage protection and minimum wage fixing in the domestic work sector. Two main approaches can nevertheless be identified: the inclusion of domestic workers in the generally applicable national minimum wage rate; and the establishment of a sectoral or occupational rate or rates for domestic work.<sup>1480</sup>

775. In most countries, domestic workers are covered by the statutory minimum wage established at the national level.<sup>1481</sup>

*Ghana – The Labour (Domestic Workers) Regulations, 2020, provide in regulation 6(1) that: “An employer of a domestic worker shall not pay the domestic worker a remuneration that is less than the National Daily Minimum Wage.”<sup>1482</sup>*

1471 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 90.

1472 For instance, *Bahrain, Qatar and United Arab Emirates*.

1473 According to ILO estimates, 42.9 per cent of domestic workers in the vast majority of countries benefit from paid annual leave equivalent to that of other workers. Nevertheless, over one-third (36.4 per cent) of domestic workers are clustered in a relatively small group of countries in which they have no entitlement to paid annual leave. ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 88.

1474 For instance, *Argentina, Mauritius and Trinidad and Tobago*.

1475 For instance, *Qatar*.

1476 For instance, *Bahrain, Brazil and United Arab Emirates*.

1477 For instance, *Mauritius and Saudi Arabia*. ILO (2021). *Making decent work a reality for domestic workers*, op. cit., pp. 88–89.

1478 For instance, *Yemen*.

1479 The Minimum Wage Fixing Convention, 1970 (No. 131), also applies to domestic workers.

1480 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 96.

1481 For instance, *Algeria, Azerbaijan, Bahamas, Plurinational State of Bolivia, Bosnia and Herzegovina (Republika Srpska), Bulgaria, Cabo Verde, Canada, Colombia, Croatia, Estonia, Germany, Ghana, Greece, India, Iraq, Israel, Latvia, Luxembourg, Montenegro, Nepal, New Zealand, Pakistan (Balochistan, Islamabad Capital Territory), Paraguay, Peru, Qatar, Slovenia, Solomon Islands, Spain, Suriname, Togo, Tunisia, Turkey, Bolivarian Republic of Venezuela and Viet Nam*.

1482 *Ghana, Labour (Domestic Workers) Regulations, 2020* (L.I.2408).

*Peru* – Act No. 31047 of 2020 provides in section 6 that “the amount of the remuneration of the domestic worker shall be established by agreement of the parties, but may not be less than the minimum living wage (RMV) for a full working day of 8 hours a day or 48 hours a week. The domestic worker who works by the hour or fraction thereof shall receive proportional remuneration. The minimum monetary unit of payment for such work shall be the minimum living wage”.<sup>1483</sup>

**776.** In other countries, specific minimum wage rates have been established for domestic work,<sup>1484</sup> which do not normally consist of a single minimum wage, but of wage scales that take into account factors such as years of experience, skills or the nature of the work.

*Cameroon* – The minimum wage rates for domestic work were set by Decree No. 68-df-253 of 10 July 1968 (as amended by the Decree No. 76/162 of 22 April 1976), which establishes the general conditions of employment of domestic servants and household employees. Section 4 of the Decree classifies domestic workers into eight occupational categories, taking into account local usage. Section 5 of the Decree provides that “the minimum wages for the above categories shall be fixed in relation to the guaranteed inter-occupational minimum wage and be adjusted in line with the latter”.<sup>1485</sup>

**777.** In a few countries, minimum wage rates are set through consultations with the representative organizations of workers and employers in the sector, in some cases through collective bargaining,<sup>1486</sup> and in others through tripartite social dialogue.<sup>1487</sup>

*Belgium* – Wages in the domestic work sector are determined by the collective labour agreement of 1 December 2015, which has been in force since 24 September 2019 and will remain in force until replaced by a new agreement.<sup>1488</sup>

*Uruguay* – Since 2008, minimum wages for domestic workers have been set by the tripartite Wages Council (Group 21) on a semi-annual or annual basis as a single amount for all domestic workers, without distinction between job categories. In recent years, the sector has benefited from higher increases than the national minimum wage (NMW) and the average for the private sector.

<sup>1483</sup> *Peru*, [Ley núm. 31047, Ley de las Trabajadoras y Trabajadores del Hogar](#), 2020.

<sup>1484</sup> For instance, *Austria, Burkina Faso, Cameroon, Kuwait, Mali, Malta, Pakistan (Punjab), Panama, Philippines, Saint Kitts and Nevis, Senegal, South Africa, Switzerland, Trinidad and Tobago and Zambia*.

<sup>1485</sup> *Cameroon*, [Décret n°68-DF-253 du 10 juillet 1968 fixant les conditions générales d'emploi des domestiques et employés de maison](#).

<sup>1486</sup> For instance, *Belgium, France and Italy*.

<sup>1487</sup> For instance, *Argentina and Uruguay*.

<sup>1488</sup> *Belgium*, [Convention collective de travail du 24 septembre 2019](#), Commission paritaire pour la gestion d'immeubles, les agents immobiliers et les travailleurs domestiques.

*Zimbabwe* – Minimum wage rates for domestic work are set by the Wages and Advisory Board of the Ministry of Public Service, Labour and Social Welfare. The Board includes a registered trade union representing the interests of domestic workers.

778. The Committee observes that, while domestic work requires specific skills, it is often classified as unskilled or low skill work in the context of setting the minimum wage. This practice reflects the frequent undervaluation of occupations, such as domestic work that are highly feminized.<sup>1489</sup>

779. Domestic workers are not covered by minimum wages in a number of countries, either because a national minimum wage has not been established,<sup>1490</sup> or because they are excluded from the national minimum wage.<sup>1491</sup> An argument sometimes put forward in support of their exclusion is that the households that employ domestic workers cannot afford to pay minimum wage rates.<sup>1492</sup> However, ILO studies have shown that this argument is not well-founded.<sup>1493</sup> In other countries, certain categories of domestic workers are excluded from minimum wage coverage.<sup>1494</sup>

In *Mozambique*, the National Union of Domestic Workers (SINED) indicates that there is no minimum wage established in the domestic work sector. Wages are negotiated between the domestic workers and their employers. Domestic workers' wages are very low and do not cover their basic needs. Their wages vary among regions (ranging from 500 Mozambique metical (US\$9) to 6,000 meticals (US\$105)).

780. The Committee notes that measures have recently been taken or are envisaged in a number of countries to ensure that domestic workers are covered by minimum wages, although in federal states this may vary across states and provinces.<sup>1495</sup> In addition, in some countries, minimum wages for migrant domestic workers have been established in bilateral agreements with countries of origin.<sup>1496</sup>

*Qatar* – On 20 March 2021, the non-discriminatory minimum wage came into force (1,000 Qatari riyals) for all workers of all nationalities, in all sectors, including domestic workers. The Minimum Wage Committee was also established with responsibility for periodically reviewing the impact and application of the minimum wage, including for domestic workers.<sup>1497</sup>

1489 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., pp. 155 and 156.

1490 For instance, *Norway, Sudan, Sweden and United Arab Emirates*.

1491 For instance, *Dominican Republic, El Salvador, Honduras, Mozambique, Myanmar and Sri Lanka*.

1492 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 153.

1493 For instance, the ILO developed a technical note with the aim of providing guidance to the social partners on the rate of potential minimum wages that align with the capacity of households to pay and with the needs of the domestic workers and their families. See: ILO. "[Technical note 1: Assessing economic factors in the domestic work sector](#)".

1494 For instance, *Canada* (in Yukon, sitters are excluded), *Japan* (domestic workers employed by private households are excluded), *Thailand* (domestic workers employed by private households are excluded) and *United Kingdom* (live-in domestic workers are excluded when they are treated as a family member: the Government indicates that to help ensure that the "family member exception" is not abused, it only applies where there is a close degree of integration with family life, including where accommodation and meals are provided, and tasks and leisure activities shared with the family).

1495 For instance, *Austria, Bulgaria, Italy, Nepal, Qatar and Uzbekistan*.

1496 For instance, *Saudi Arabia*.

1497 *Qatar*, Government Communications Office, "[In focus: Labour reform](#)".

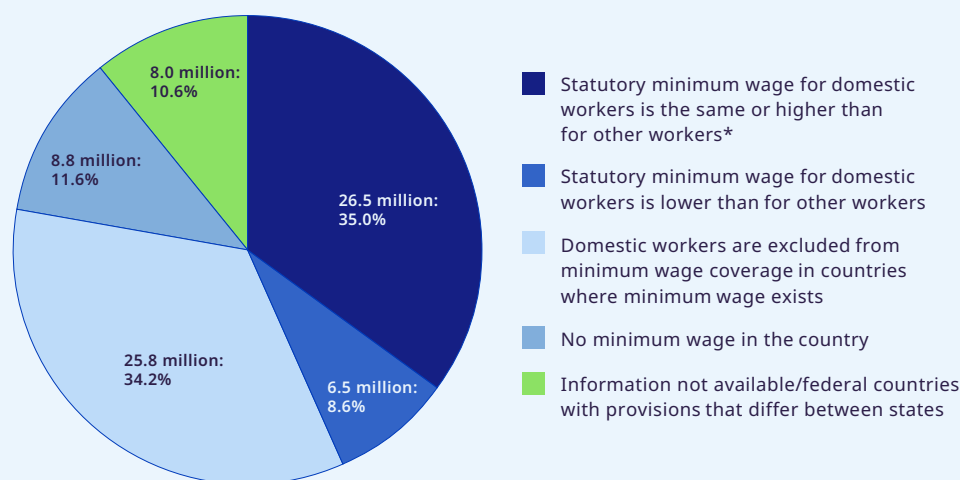
781. However, the Committee notes that, according to the most recent ILO estimates, countries in which the statutory minimum wage for domestic workers is the same as or higher than for other workers tend to employ fewer domestic workers. Globally, only 35 per cent of domestic workers (25.5 million) are entitled to a minimum wage that is at least equal to that of other workers.<sup>1498</sup> Moreover, even where domestic workers are entitled by law to a minimum wage, compliance may be problematic in practice.

CEACR – In its comments concerning *Ecuador*, the Committee noted that, under the terms of the Minimum Wage Act, the minimum wage of domestic workers has been brought into line with that of other employed persons since 2010. Between 2012 and 2018, the minimum wage was increased from US\$275 to US\$386 for 40 hours a week. In its observations, the Association of Paid Household Workers (ATRH) indicated that, while the law requires household workers to be paid the minimum wage, in practice it is necessary to provide guidance and education to employers and workers to ensure compliance.<sup>1499</sup>

In the *United Republic of Tanzania*, the Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (CHODAWU) reports that minimum wages were set for domestic workers in 2013. However, domestic workers' wages are still very low compared to other sectors and the economic situation and they have not been reviewed. The CHODAWU further indicates that the Minimum Wage Board for domestic workers does not meet regularly. It emphasizes that the Government should take measures to ensure that the wage bodies meet regularly and that the current minimum wage for domestic workers is revised.

Figure 9.2

#### Extent of minimum wage coverage of domestic workers, 2020



**Note:** \* This category includes cases for which comparison with a benchmark minimum wage is not possible.

**Source:** ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 100.

<sup>1498</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 100.

<sup>1499</sup> CEACR – *Ecuador*, C.189, direct request, 2020.

## 2. The undervaluation of domestic work and gender inequality

**782.** The Committee observes that domestic work remains one of the most poorly remunerated occupations. According to the most recent ILO estimates, domestic workers globally earn 56.4 per cent of the average monthly wages of other workers. Moreover, women, who make up the majority of domestic workers in most regions, earn just half (51.1 per cent) of the average monthly wages of other employees, and significantly less than their male counterparts (for whom the rate is 67.3 per cent).<sup>1500</sup>

**783.** The Preamble to Convention No. 189 recalls that domestic work continues to be undervalued and invisible and recognizes that it 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”. Article 11 of the Convention calls on Members to take measures to ensure that the remuneration of domestic workers is established without discrimination based on sex. This provision takes account of the fact that the vast majority of domestic work globally is carried out by women and girls, with traditional gender norms in many countries contributing to the perception that domestic work is innately “women’s work” which requires no particular skills or qualifications (Chapter 8).<sup>1501</sup> While factors such as race, ethnic or social origin are also sources of discrimination, Article 11 explicitly focuses on sex discrimination as low remuneration rates are closely linked to the gender-biased undervaluation of domestic work.<sup>1502</sup>

**784.** During the preparatory discussions, many constituents suggested that in countries where minimum wages are set by occupation, it is essential for special measures to be taken to ensure that the skills, responsibilities and working conditions associated with domestic work are assessed without gender discrimination in order to counter the undervaluation of domestic work due to gender bias. It was also noted that minimum wage rates for domestic workers, where they exist, are consistently lower than those for other workers, and that these rates should progressively be brought into line with national minimum wage rates or set at levels equivalent to those for similar types of work.<sup>1503</sup>

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<sup>1500</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 153.

<sup>1501</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 139.

<sup>1502</sup> ILO (2011). *Decent work for domestic workers*, Report IV(2A), op. cit., p. 44.

<sup>1503</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 392.

CEACR – In its 2017 comments concerning *Costa Rica*, the Committee noted that section 105(a) of the Labour Code provides that the wage of domestic workers must correspond to at least the statutory minimum wage for the category as established by the National Wage Council. Nevertheless, Decree No. 40022-MTSS fixing minimum wages for the private sector establishes a minimum wage for domestic workers that is below that of unskilled workers. The Committee also noted that, according to a study by the ILO on the proposed reform of the application of minimum wages to domestic work in *Costa Rica*, the minimum wage received by domestic workers was in no case sufficient to exceed the poverty or material deprivation thresholds.<sup>1504</sup> In its 2019 comments, the Committee noted the Government's indication that, pursuant to an agreement concluded between the Association of Domestic Workers (ASTRADOMES) and the Ministry of Labour in July 2014, additional increases had been applied to the minimum wage for domestic work in relation to that established for other private sector workers. The Committee noted with interest the approval on 24 June 2019 by the National Wage Council of resolution No. CNS-RG-2-2019 on closing the wage gap between domestic work and unskilled work. The resolution was approved following consultations with various stakeholders, including representatives of ASTRADOMES, employers of domestic workers and the Costa Rican Social Security Fund (CCSS). The resolution sets a daily minimum wage for domestic work that is 41.47 per cent of the wage established in the Decree on minimum wages for unskilled workers, but the gap will be eliminated within 15 years from 2020 through the introduction of 15 additional annual adjustments to the minimum wage for domestic work in addition to the general adjustments made by minimum wage decrees.<sup>1505</sup>

### 3. Protection of wages

#### (a) Regular, direct and full payment in monetary form

785. Article 12(1) of the Convention provides that domestic workers shall be paid directly in cash at regular intervals at least once a month. The Committee notes that in most countries domestic workers have to be paid regularly. This requirement is normally set out either in the wage protection provisions of the general labour legislation or in specific legislation on domestic workers. The intervals established for the payment of wages, whether daily, weekly, fortnightly or monthly, may vary depending on the frequency of the work performed. In most countries, domestic workers have to be paid at least monthly,<sup>1506</sup> although in some countries wages have to be paid at least twice a month.<sup>1507</sup> The Committee also notes that fines are imposed in a number of countries for the late payment of domestic workers' wages.

*Kuwait* – In accordance with section 27 of Law No. 68 of 2015, if the employer is late in paying the wages at the agreed time, the domestic worker is entitled to 10 Kuwaiti dinars for every month that the wages are not paid.<sup>1508</sup>

<sup>1504</sup> CEACR – *Costa Rica*, C.189, direct request, 2017.

<sup>1505</sup> CEACR – *Costa Rica*, C.189, observation, 2019.

<sup>1506</sup> For instance, *Armenia, Australia, Austria, Bahrain, Burkina Faso, Cabo Verde, Canada, Czechia, Dominican Republic, Ecuador, Ghana, Guatemala, Iraq, Israel, Kazakhstan, Kuwait, Luxembourg, Morocco, Norway, Peru, Saudi Arabia, Senegal, Seychelles, Sudan and Turkey*.

<sup>1507</sup> For instance, *Belarus, Belgium and Cambodia*.

<sup>1508</sup> *Kuwait*, [Law No. 68 of 2015 on Employment of Domestic Workers](#), op. cit.

In *Indonesia*, the JALA PRT and the IDWF observe that there are no regulations governing the payment of domestic workers' wages. A JALA PRT survey carried out in 2019 revealed that some 42 per cent of domestic workers experienced problems in receiving their salaries, including late payments, deductions from their salaries, and non-payments.

In *Mozambique*, the National Union of Domestic Workers (SINED) indicates that it has received 400 complaints from domestic workers who did not receive their salaries for up to four months. Moreover, there were situations in which payments were made in kind (such as in food and clothes), the cost of which was subtracted from the worker's wages.

786. With regard to the method of payment, Article 12(1) of the Convention establishes that, 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".<sup>1509</sup> The Committee notes that in most countries, domestic workers' wages have to be paid in monetary form. In some countries, they have to be paid in cash,<sup>1510</sup> while in others payment by bank transfer is required to prevent undeclared work and ensure that domestic workers are not forced to work in the informal economy.<sup>1511</sup> Whatever the required means of payment, simplification of the payment of wages can increase compliance with the applicable regulations. The Committee notes in this regard the practice of payment by service cheque or voucher in a number of European countries.<sup>1512</sup>

*Austria* – The Household Service Voucher (also known as the Service Employment Cheque) was adopted in 2006 to legalize work in private households and improve the social protection of domestic workers. Private employers can purchase service vouchers at post offices, tobacco shops or online and use them to pay household service providers (so-called marginal part-time employees) for such work as housekeeping, cleaning, child supervision or gardening.

## (b) Payments in kind

787. Although in-kind payments (normally accommodation and meals) have traditionally been considered part of the remuneration of domestic workers, they can be open to considerable abuse. Loss of monetary compensation when the employer replaces cash wages with goods or services can seriously undermine the capacity of domestic workers to provide for themselves and their families, particularly if the goods are not fairly valued or tailored to the domestic workers' personal needs.<sup>1513</sup> ***The Committee therefore emphasizes that payments in kind to domestic workers, if any, should only be allowed under strict conditions.***

<sup>1509</sup> ILO (2011). *Provisional Record* No. 15, op. cit., paras 567–587.

<sup>1510</sup> For instance, *Bahrain, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kiribati, Lithuania, Sudan and Zimbabwe*.

<sup>1511</sup> For instance, *Cyprus, Denmark, Islamic Republic of Iran and Nepal*.

<sup>1512</sup> For instance, *Austria, Belgium, France and Germany* (Baden-Württemberg).

<sup>1513</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 78.



788. As noted during the preparatory work, “in an employment model that seeks to foster domestic workers’ autonomy and ensure that their wages are sufficient for them to provide for themselves and for their family, payments in kind need to be analysed carefully to ensure that, if permitted by law, they do not undermine minimum wage provisions”.<sup>1514</sup> **The Committee considers that, before authorizing the payment in kind of a certain proportion of remuneration, governments “should carefully assess whether such a measure is reasonable based on its possible repercussions for the workers concerned”.**<sup>1515</sup> **International labour standards establish safeguards against abusive practices in relation to payments in kind, which are reflected in Article 12(2) of the Convention and further developed in Paragraph 14 of the Recommendation.**

#### Article 12(2) of Convention No. 189

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 that 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.

789. During the preparatory discussions, most constituents agreed that in-kind payments, where allowed, should be strictly limited and regulated to prevent abuses, noting that in-kind payments were likely to lead to exploitation, undermine wage provisions and make wage levels subject to variations in the value of goods.<sup>1517</sup> Article 12(2) of the Convention provides protection from possible abuses by requiring that the conditions for the payment of in-kind allowances to domestic workers are no less favourable than those applicable to other workers,<sup>1518</sup> and by setting three additional criteria to be met before payments in kind can be authorized: (1) the consent of the worker; (2) the allowances must be for the personal use and benefit of the worker;<sup>1519</sup> and (3) the monetary value attributed to them must be fair and reasonable.<sup>1520</sup> Paragraph 14 of the Recommendation provides additional guidance on protective measures in relation to in-kind payments.

#### Paragraph 14 of Recommendation No. 201

When provision is made for the payment in kind of a limited proportion of 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;

<sup>1514</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 148.

<sup>1515</sup> ILO (2003). *Protection of wages: Standards and safeguards relating to the payment of labour remuneration*, General Survey of the reports concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, Report III (Part 1B), International Labour Conference, 91st Session, Geneva, para. 118.

<sup>1516</sup> Protection of Wages Convention, 1949 (No. 95), Arts 4, 5 and 8.

<sup>1517</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 393.

<sup>1518</sup> ILO (2011). *Provisional Record* No. 15, op. cit., para. 620.

<sup>1519</sup> Convention No. 95, Art. 4(2)(a).

<sup>1520</sup> See Convention No. 95, Art. 4(2)(b).

- (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; and
- (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.

790. The Committee nevertheless observes that, in many countries, the payment of a limited proportion of the domestic workers' minimum wage in the form of in-kind payments is permitted.<sup>1521</sup>

*Senegal* – Accommodation and food are benefits in kind that are never obligatory for either the employer or the domestic worker. When they are provided in kind, their value can be deducted from wages. The value is fixed by agreement of the parties and must be within the limits of the rates established by regulation.

791. In other countries, the minimum wage of domestic workers can only be paid in cash.<sup>1522</sup> Part of their wage may also be paid in kind in these countries, on condition that the minimum wage is paid in cash.<sup>1523</sup>

*Spain* – In accordance with section 8 of Royal Decree No. 1620/2011, domestic workers are entitled to remuneration at least equivalent to the minimum wage (SMI) fixed for the corresponding annual period, in proportion to the length of the working day. Section 8(2) provides that the amount of the monthly SMI shall be paid in cash, either in legal tender or "by cheque or other similar means of payment through credit institutions, subject to prior agreement with the worker". The payment of wages in kind (in the form of accommodation or food, for example) may be agreed, although only to supplement the amount of the SMI, and may in no case exceed 30 per cent of that amount.<sup>1524</sup>

1521 For instance, *Angola, Belgium, Bosnia and Herzegovina, Colombia, Dominican Republic, El Salvador, Honduras, Indonesia* (no limitations), *Ireland, Mexico, Montenegro, Nicaragua, Portugal, Saudi Arabia, Senegal, South Africa, Switzerland, Thailand* (no limitations), *United Arab Emirates, United Republic of Tanzania, Uruguay and Viet Nam*.

1522 For instance, *Argentina* (payment in kind is not allowed), *Brazil* (food and accommodation, clothing and hygiene cannot be deducted), *Chile* (food and accommodation cannot be deducted), *Jamaica* (food and accommodation cannot be deducted), *Kuwait, Malta* (payment in kind is not allowed), *Morocco* (food and accommodation cannot be deducted), *Peru* (food and accommodation cannot be deducted), *Philippines* (payment in kind is prohibited), and *Qatar*.

1523 For instance, *Belgium, Bosnia and Herzegovina, Canada* (Quebec), *Montenegro, Mozambique and Spain*.

1524 *Spain, Real Decreto 1620/2011, de 14 de noviembre, por el que se regula la relación laboral de carácter especial del servicio del hogar familiar*.

### (c) Wage statements

#### Paragraph 15 of Recommendation No. 201

- (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.

**792.** Wage statements, in the same way as written contracts, play an important role in establishing the existence of employment relationships and the formalization of domestic work. They ensure that both the employer and the worker are aware of the extent to which the terms and conditions of employment are consistent with agreed terms and statutory requirements. Documentation is also essential to resolve any disputes that may arise.<sup>1525</sup> The Committee notes that in a number of countries payments have to be recorded on wage statements (payslips), which must be provided to the worker, and the employer is required to keep copies for a specified period of time.<sup>1526</sup>

*Philippines* – Section 26 of Republic Act No. 10361 provides that the employer “shall at all times provide the domestic worker with a copy of the pay slip containing the amount paid in cash every pay day, and indicating all deductions made, if any. The copies of the pay slip shall be kept by the employer for a period of three (3) years”.<sup>1527</sup>

CEACR – In its 2017 comments concerning the *Plurinational State of Bolivia*, the Committee noted that Ministerial Resolution No. 218/14 requires the keeping of a wage and occupational safety and health book to record the payment of wages of domestic workers.<sup>1528</sup>

<sup>1525</sup> ILO (2012). *Effective protection for domestic workers*, op. cit., p. 84.

<sup>1526</sup> For instance, *Luxembourg, Philippines* and *South Africa*.

<sup>1527</sup> *Philippines*, [Republic Act No. 10361](#).

<sup>1528</sup> CEACR – *Plurinational State of Bolivia*, C.189, direct request, 2017.

## ► VI. Occupational safety and health

### 1. The special nature of domestic work

793. Article 13(1) of the Convention provides that every domestic worker “has the right to a safe and healthy working environment”. The Occupational Safety and Health Convention, 1981 (No. 155), and its accompanying Recommendation No. 164, establish general principles for occupational safety and health (OSH) that apply to domestic workers<sup>1529</sup> and, as highlighted by the ILO Centenary Declaration for the Future of Work, safe and healthy working conditions are fundamental to decent work.<sup>1530</sup>

794. The Committee observes that domestic work is commonly perceived to be safe due to its association with normal household activities. However, in practice, domestic workers are exposed to multiple work-related risks, making it essential to ensure OSH protection in the domestic workplace.<sup>1531</sup> The occupational hazards encountered by domestic workers vary enormously depending on the workplace and the nature of the work, for example housekeeping services such as cooking, cleaning, ironing and laundry, caring for children, the elderly, ill or disabled family members, home security services (guarding the home), driving or gardening. The risks are compounded where domestic workers work in different households for multiple employers.<sup>1532</sup>

795. While the assessment of OSH risks encountered by domestic workers is often complex, due to the variety of tasks performed, certain work-related risks are common.<sup>1533</sup> Indeed, domestic workers tend to face many hazards similar to those in healthcare or service jobs.<sup>1534</sup> For instance, domestic work tends to involve a great deal of repetitive movements, bending and reaching, the lifting of heavy objects, exposure to extreme heat (cooking, ironing) or sharp objects (knives), the handling of potentially toxic cleaning products and prolonged exposure to dust or contagious diseases. Domestic workers work long hours and are often exposed to chemical, ergonomic and physical, as well as psychosocial hazards, which may include violence and harassment.<sup>1535</sup> In addition, isolated working conditions, lack of free time and little or no access to family or friends, particularly for migrant domestic workers,<sup>1536</sup> places them at increased risk of depression, mental fatigue and mental disorders.<sup>1537</sup> Typical occupational illnesses in domestic work include musculoskeletal disorders, allergies and eczema, respiratory problems, stress, burnout and depression.<sup>1538</sup>

796. The Committee notes that domestic workers are often excluded from OSH protection under national legislation. Moreover, a number of practical difficulties arise in promoting OSH in domestic work, as the sector is characterized by precarious employment in a privatized

1529 See Art. 3 of Convention No. 155.

1530 ILO (2019). [ILO Centenary Declaration for the Future of Work](#), International Labour Conference, 108th Session, Geneva, Parts II(D) and III(B)(iv).

1531 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 172.

1532 ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., pp. 396 and 397.

1533 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 172.

1534 For instance, according to a survey published in 2020 by the University of California (UCLA), together with the National Domestic Workers Alliance (NDWA) and the California Domestic Workers Coalition (CDWC), domestic workers encounter hazards similar to those found in other healthcare or service-sector jobs. A number of respondents were also sexually harassed or assaulted while working. See UCLA (2020). “[Hidden work, hidden pain: Injury experiences of domestic workers in California](#)”, Research brief, Labour Occupational Safety and Health Program, NDWA and CDWC, p. 1.

1535 ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., paras 216–221.

1536 Office of the High Commissioner for Human Rights (OHCHR) (2015). [Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation](#), pp. 21–22, 25.

1537 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 173.

1538 L. Alfes (2011). [Occupational health and safety and domestic work: A synthesis of research findings from Brazil and Tanzania](#), Women in Informal Employment Globalizing and Organizing (WIEGO), p. 12; and P. Vaes (2018). “Country experiences in the EU”, EC-ILO Joint Conference on Domestic Workers and OSH, Brussels, 12–13 Nov. 2018.

workplace where the workers have little or no bargaining power due to both practical and legal barriers to establishing and joining associations, and obstacles to accessing legal and support systems in case of exploitation, violence and harassment.<sup>1539</sup> Moreover, the nature and frequency of occupational injuries are frequently difficult to determine due to the hidden and often informal nature of domestic employment.

*South Africa* – In Constitutional Court Case No. CCT 306/19, the Court examined the issue of social protection for domestic workers. Ms Mahlangu was employed as a domestic worker in a private home at the time of her death and had been employed by the same family for 22 years. On 31 March 2012, Ms Mahlangu drowned in her employer's pool in the course of her duties. It was alleged that she was partially blind and could not swim. Following her mother's death, Ms Mahlangu's daughter, who was financially dependent on her mother, sought compensation from the Department of Labour under the Compensation for Occupational Injuries and Diseases Act (COIDA). As domestic workers are not covered by the COIDA, in contrast to all other employees, the claim was denied. The Constitutional Court struck down the exclusion of domestic workers from the COIDA as unconstitutional. This action was brought on behalf of the deceased worker and her daughter by the South African Domestic Service and Allied Workers Union (SADSAWU).<sup>1540</sup>

**797.** Moreover, domestic workers are rarely able to exercise control over how they perform their work, the tools they use, their working hours and thus their own safety,<sup>1541</sup> and they are also rarely trained in OSH standards. The Committee emphasizes that low awareness of OSH risks, lack of legal coverage and the difficulties inherent in inspecting private homes to enforce OSH standards all place domestic workers at increased risk of occupational accidents and illness.<sup>1542</sup> Moreover, certain social and cultural characteristics place domestic workers at even greater risk of work-related hazards. For instance, migrant domestic workers, particularly those in an irregular situation, are at greater risk, largely due to language, education and cultural barriers, social exclusion, confinement and isolation in the workplace, discrimination and lack of access to healthcare and social protection.<sup>1543</sup>

**798.** In the context of the COVID-19 pandemic, the Committee has emphasized the importance of taking the necessary measures to ensure the security and safety of domestic workers (Article 13 of the Convention), who are front-line workers likely to be called upon to care for ill family members.<sup>1544</sup> The pandemic has placed a spotlight on the poor occupational safety conditions of domestic workers and the importance of ensuring their access to social protection and health services. Moreover, they have been disproportionately affected by job losses and wage reductions, as well as by increased workloads and a greater risk of exposure to COVID-19 and other occupational diseases.<sup>1545</sup>

<sup>1539</sup> G. Bahn, A.R. Chowdhury and R. Mehra (2021). *State of occupational safety and health practices at workplace for domestic workers in COVID-19 and possibilities for action*, ILO, Geneva, p. 9

<sup>1540</sup> *South Africa*, Constitutional Court, Case CCT 306/19, *Sylvia Bongi Mahlangu and South African Domestic Service and Allied Workers Union v. Minister of Labour, et al.*, 19 November 2020.

<sup>1541</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 218.

<sup>1542</sup> *ibid.*, para. 216.

<sup>1543</sup> ILO (2016). *Migrant domestic workers: Promoting occupational safety and health*, Global Action Programme on Migrant Domestic Workers and their Families, Geneva, p. 1.

<sup>1544</sup> CEACR – *Ecuador*, C.189, direct request, 2020.

<sup>1545</sup> ILO (2021). *COVID-19: Guidance for occupational safety and health for employers and domestic workers*, ILO Country Office for Mexico and Cuba, Mexico, p. 3.

CEACR – In its comments in 2020 concerning *Ecuador*, the Committee noted the observations of the Association of Paid Household Workers (ATRH) that, in many instances, domestic workers are required to work without having access to personal protective equipment (PPE) to prevent possible exposure to COVID-19. The ATRH also emphasized the need for the Government to provide information on incidents of violence against domestic workers reported during the pandemic.<sup>1546</sup>

## 2. Occupational safety and health protection

799. Article 13(1) of the Convention requires Members to take, in accordance with national laws, regulations and practice, effective measures to ensure the occupational safety and health of domestic workers, having due regard for the specific characteristics of domestic work. Article 13(2), in recognition that countries may not be in a position to immediately ensure a healthy and safe working environment for domestic workers, allows for the progressive implementation of OSH measures in the domestic workplace. Such progressive implementation has to be decided through prior 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”. Paragraph 19 of the Recommendation provides guidance on the measures to be taken to protect the occupational safety and health of domestic workers. It calls for such measures to be taken 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.

800. The Committee notes that in most countries domestic workers are covered by the general OSH legislation.<sup>1547</sup> **However, the Committee considers that the mere application of general legislation to domestic workers is not sufficient for the effective implementation of the Convention, as the measures adopted need to be adapted to the specific characteristics of domestic work and the domestic workplace.**

CEACR – In its 2019 comments concerning the *Plurinational State of Bolivia*, the Committee noted the indication by the National Federation of Waged Domestic Workers of Bolivia (FENATRAHOB) that there are no specific regulations to mitigate the ever-present risks in the sector (such as handling electrical appliances, cooking food at high temperatures and performing tasks in unsanitary locations). Instead, the general OSH legislation on safety and health is applicable, which is intended for industrial and mining activities, including industrial activities involving polluting gases and unsanitary environments. The FENATRAHOB added that consultations have not been held with the social partners on the application in practice of Article 13 of the Convention.<sup>1548</sup>

<sup>1546</sup> CEACR – *Ecuador*, C.189, direct request, 2020.

<sup>1547</sup> For instance, *Australia, Benin, Plurinational State of Bolivia, Burkina Faso, Canada* (Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Quebec), *Colombia, Costa Rica, Cyprus, Dominican Republic, Ecuador, Finland, Guyana, Hungary, Ireland, Israel, Kazakhstan, Latvia, Mali, Malta, Mauritius, Montenegro, Nicaragua, Pakistan, Senegal, Seychelles, Slovenia, Thailand and Togo*.

<sup>1548</sup> CEACR – *Plurinational State of Bolivia*, C.189, direct request, 2019.

The International Trade Union Confederation (ITUC) emphasizes that specific measures are essential to protect domestic workers, including migrant domestic workers regardless of status, not only from unhealthy working conditions, including musculoskeletal injuries and working with cleaning chemicals and other hazardous substances, but also from abuses, violence and harassment, including those arising from psychosocial risks and hazards (in line with Convention No. 189 and Convention No. 190). In addition, governments should collect statistical data on the number of complaints of harassment, abuse and violence received in the context of domestic work, their outcome, the penalties imposed on those responsible and the compensation granted.

801. The Committee nevertheless observes that, in practice, domestic workers are often excluded from coverage under national OSH legislation. This is the case in some countries, where domestic workers are not covered under the general labour legislation,<sup>1549</sup> while in others they may be explicitly excluded from OSH legislation.<sup>1550</sup> The reasons often invoked for this exclusion include the practical difficulties of enforcing OSH legislation in the domestic workplace. **The Committee emphasizes that, where domestic workers are not covered by such provisions, this may have the effect of excluding them from workers' compensation and other social security schemes, thereby exacerbating their precarious and vulnerable situation.**<sup>1551</sup>

802. In some countries, specific legislation on domestic workers includes OSH provisions.<sup>1552</sup> In others, the social partners have adopted measures to improve OSH protection for domestic workers through collective agreements and joint committees.<sup>1553</sup>

### (a) Measures to prevent or reduce the exposure of domestic workers to work-related hazards and risks

803. Paragraph 19(a) of the Recommendation indicates that Members should take measures to 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". The Committee notes that specific legislation on domestic workers often includes a provision establishing the general duty of employers to ensure the safety and health of domestic workers.<sup>1554</sup> **However, the Committee considers that merely stating that the employer has this obligation, without providing a regulatory framework, including effective oversight and enforcement mechanisms, to give effect to the obligation, does not help either party engage meaningfully in accident prevention.**<sup>1555</sup>

<sup>1549</sup> For instance, *Bahrain* and *Republic of Korea*.

<sup>1550</sup> For instance, *Bahamas*, *Canada* (Ontario), *Denmark*, *Egypt*, *Spain*, *Sudan*, *Trinidad and Tobago*, *United Kingdom* and *United States*.

<sup>1551</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 174.

<sup>1552</sup> For instance, *Portugal* and *Spain*.

<sup>1553</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 175.

<sup>1554</sup> For instance, *Norway* (section 4 of the Housework Regulation), *Qatar* (section 7(3) of Law No. 15 of 2017), *Philippines* (art. IV, section 19 of Republic Act No. 10361), *Spain* (section 7.2 of Royal Decree No. 1620/2011) and *United Arab Emirates* (section 18 of Law No. 10 of 2017).

<sup>1555</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 220.



*Philippines* – In its first report on the application of the Convention, the Government indicated that Article IV, section 19, of Republic Act No. 10361 provides that the employer shall safeguard the health and safety of the domestic worker in accordance with laws, rules and regulations, with due consideration of the peculiar nature of domestic work.<sup>1556</sup> The Department of Labor and Employment (DOLE) had issued Department Advisory No. 01 Series of 2014 providing “Occupational Safety and Health Protection Tips for Kasambahays (domestic workers) and Employers (OSH Tips)”, which calls on employers to provide on-the-job guidance for domestic workers on the general layout of the house, the location of the nearest hospital, police and fire stations, barangay hall and DOLE office, emergency procedures and the proper use of fire protection equipment. They should also provide: appropriate personal protective equipment (PPE), such as masks, gloves and aprons, based on the nature of the work; humane sleeping quarters, adequate food, safe drinking water, first-aid medicine and access to hygiene facilities; and ensure that they do not work under conditions that endanger their health and safety. In addition, OSH tips are provided to domestic workers on carrying out certain tasks safely.<sup>1557</sup>

**804.** The Committee notes that in a number of countries the legislation on domestic work recognizes the right of domestic workers to refuse to provide domestic services or to end the labour contract if the working conditions pose a threat to their health, life or dignity.<sup>1558</sup>

*Qatar* – Law No. 15 of 2017 provides in section 17 that a worker may end the labour contract before its expiry while safeguarding his/her full right to the end of service bonus in the event of a serious danger which threatens the worker’s safety or health, provided that the employer was cognizant of the danger and had not sought to remove it.<sup>1559</sup>

**805.** With a view to promoting compliance, Paragraph 19(b) of the Recommendation calls on Members to “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”. The Committee observes that ensuring OSH protection for domestic workers is not possible unless the household is recognized as a workplace and recalls in this regard that, in accordance with the Occupational Safety and Health Convention, 1981 (No. 155), the term workplace covers “all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer” (Article 3(c)). This definition includes the domestic household.

**806.** The Committee notes the claim made by some workers’ organizations that, despite the existence of OSH provisions intended to protect domestic workers, these are not applied in practice due to the lack of monitoring and OSH training for domestic workers.<sup>1560</sup>

<sup>1556</sup> *Philippines*, Republic Act No. 10361.

<sup>1557</sup> *Philippines*, DOLE (2014). [Department Advisory No. 01-14 Occupational Safety and Health Protection Tips for Kasambahays and Employers \(OSH Tips\)](#).

<sup>1558</sup> For instance, *Saudi Arabia*, Regulation No. 310 AH on domestic workers and persons of similar status (section 7(1)).

<sup>1559</sup> *Qatar*, [Law No. 15 of 2017 relating to domestic workers](#).

<sup>1560</sup> For instance, *Austria* (Federal Chamber of Labour), *Bangladesh* (National Domestic Women Workers Union (NDWWU)), *Kuwait* (Sandigan Kuwait Domestic Workers Association (SKDWA)) and *Nepal* (Home Workers Union of Nepal (HUN)).

In *Austria*, the Federal Chamber of Labour (BAK) reports that working conditions in private households are not currently monitored by the labour inspectorate because it does not have the jurisdiction to do so due to privacy concerns.

In *Kuwait*, the Sandigan Kuwait Domestic Workers Association (SKDWA) indicates that the inspection of private households is prohibited. It reports OSH violations, including instances of domestic workers being forced to clean windows on roofs and working with electric appliances without protection.

## (b) Collecting and publishing statistics of accidents and diseases related to domestic work

**807.** Paragraph 19(c) of the Recommendation calls on Members to “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”. It was emphasized during the preparatory discussions that the collection of relevant statistics is an important means of preventing occupational hazards and informing targeted public policies.<sup>1561</sup>

**808.** The Committee notes that measures have been taken in a number of countries to collect data on domestic workers, including by requiring employers to notify cases of accidents in the workplace involving domestic workers and promoting cooperation between national institutions for the exchange of information on occupational accidents and illnesses sustained by domestic workers.<sup>1562</sup>

*Uruguay* – Pursuant to the agreement between the Social Insurance Bank (BPS) and the State Insurance Bank (BSE), when domestic workers are registered with the social security system, they are also affiliated to accident insurance. The BSE keeps a register of occupational accidents, which it shares with the Ministry of Labour and Social Security (MTSS). The MTSS, through the General Inspectorate of Labour and Social Security (IGTSS), carries out analyses, investigations and inspections, and/or establishes procedures to prevent accidents/illnesses in certain jobs or sectors; creates OSH protocols; raises safety awareness; and compiles statistics on occupational accidents. These procedures cover all sectors, including domestic work.

<sup>1561</sup> ILO (2010). *Decent work for domestic workers*, Report IV(2), op. cit., p. 411.

<sup>1562</sup> See also, *Pakistan* (Punjab Domestic Workers Act, 2019, section 12).

### (c) Guidance, awareness-raising and training

**809.** Paragraph 19(d) and (e) of the Recommendation calls on Members to provide OSH guidance, develop training programmes and disseminate guidelines on OSH that are specific to domestic work. The Committee notes that the national legislation in some countries requires employers to provide information on OSH risks to domestic workers.<sup>1563</sup> In a number of countries, OSH guidance for the domestic sector has been developed by the competent national authorities, particularly the Ministry of Labour, in collaboration with the social partners.<sup>1564</sup>

*Chile* – In 2016, the Labour Directorate, the Social Security Institute and the Under-secretary of Social Security, in collaboration with the ILO, issued a “Guide on occupational health and safety for domestic workers”. The Guide was prepared through a participatory process, to which domestic workers and their union leaders contributed through workshops on the main occupational risks to which they are exposed. The Guide aims to promote a bipartite culture of prevention and compliance and contains information on the rights and duties of both employers and domestic workers, the most common occupational hazards and the related prevention measures, as well as the various institutions that can provide more detailed information.<sup>1565</sup>

**810.** The Committee notes that OSH information may also be provided to domestic workers by trade unions, enterprises that employ or place domestic workers, and civil society organizations.<sup>1566</sup>

In 2021, the ILO and the IDWF launched “COVID-19: Guidance for occupational safety and health for employers and domestic workers”, based on collaboration with 29 unions and organizations of domestic workers from Latin American countries. The guide is aimed at both domestic workers and employers and its objectives include: providing guidance to domestic workers and their employers on preventive measures against COVID-19 and other risks associated with the pandemic, within the framework of the return to work due to the progressive lifting of restrictions and confinement measures; promoting social dialogue and negotiation on OSH between domestic workers and their employers; and providing guidance and promoting safe and healthy work practices, both physically and psychosocially, from a human and labour rights perspective for domestic workers.<sup>1567</sup>

<sup>1563</sup> For instance, *Belarus, Canada (Manitoba), Italy, Malaysia, Senegal, Slovenia, Spain and Turkmenistan*.

<sup>1564</sup> For instance, *Belgium, Plurinational State of Bolivia, Canada (Alberta), Chile, Ecuador and Peru*.

<sup>1565</sup> ILO (2016). *Guía de seguridad y salud en el trabajo para trabajadoras de casa particular*, Santiago, Chile.

<sup>1566</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 175.

<sup>1567</sup> ILO (2021). *COVID-19: Guidance for occupational safety and health for employers and domestic workers*, op. cit.

## ► VII. Statutory social security and maternity protection

**811.** Article 14(1) of the Convention calls on Members to take appropriate measures to ensure that domestic workers have access to social security protection in a manner that takes into account their specific characteristics and ensures conditions that are no less favourable than those applicable to workers generally, including with respect to maternity.<sup>1568</sup> It emphasizes the need for social protection to be implemented progressively through social dialogue. The Committee recalls that ILO social security standards provide guidance on the development of nationally defined, rights-based, sound and sustainable social protection systems, which may be progressively extended to cover domestic workers.<sup>1569</sup>

**812.** The Committee notes that, according to the most recent ILO estimates, statutory social security coverage exists in a relatively high number of countries for one or more of the nine branches of social security set out in the Social Security (Minimum Standards) Convention, 1952 (No. 102), namely medical care, sickness, unemployment, maternity, employment injury, family benefit, invalidity, survivors and old age.<sup>1570</sup> Of the 168 countries reviewed, coverage exists in 102 (60.7 per cent) in at least one social security branch, as a result of which almost half of all domestic workers (49.9 per cent) are covered in at least one branch.<sup>1571</sup> Nevertheless, comprehensive coverage for all nine branches remains rare, with only 6 per cent of domestic workers globally benefiting.

**813.** In at least half of the countries reviewed, protection in old age is the branch in which most domestic workers are covered (45.4 per cent), followed closely by medical care, maternity benefit and sickness benefit.<sup>1572</sup> However, the Committee observes that over half of all domestic workers are not covered by social protection in old age, when they fall ill or become pregnant. In the vast majority of cases, domestic workers do not benefit from statutory coverage in the event of employment accidents or diseases, unemployment, or for the maintenance of children, either because they are excluded from legal coverage or because such branches do not exist in the country.<sup>1573</sup> In this respect, the Committee notes that, in some countries, domestic workers are covered for all nine social security contingencies.<sup>1574</sup> It further notes the initiatives taken in some countries to extend the range of protected contingencies.<sup>1575</sup>

*South Africa* – Domestic workers have access to unemployment insurance benefit and efforts are being made to ensure they are also covered in the event of employment injury.

<sup>1568</sup> The Maternity Protection Convention, 2000, (No. 183) and Recommendation (No. 191) contain valuable guidance on the level of maternity protection that should be applicable to workers generally.

<sup>1569</sup> The Social Security (Minimum Standards) Convention, 1952 (No. 102), places on the State general responsibility for the proper administration of social security and the due provision of benefits and sets out the minimum levels of protection to be guaranteed. The Social Protection Floors Recommendation, 2012 (No. 202), provides guidance on closing social security gaps and achieving universal coverage through the progressive establishment and maintenance of comprehensive social security systems.

<sup>1570</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 122.

<sup>1571</sup> *ibid.*

<sup>1572</sup> *ibid.*, p. 124.

<sup>1573</sup> *ibid.*

<sup>1574</sup> For instance, *Canada, Lithuania, Luxembourg, Norway and Seychelles*.

<sup>1575</sup> For instance, *India, Malaysia and South Africa*.

814. The majority of governments report that domestic workers benefit from the same social security coverage as all other workers.<sup>1576</sup> In other countries, the labour or social security legislation makes specific provision for domestic workers.<sup>1577</sup> In certain cases, the Committee notes that, despite being integrated into general social protection systems, domestic workers are not always entitled to the same range of benefits as other employees.<sup>1578</sup>

*Cabo Verde* – Legislative Decree No. 49/2009 was intended to extend social protection coverage to domestic workers, including those working informally, and entitles them to protection in the event of illness, maternity, paternity, adoption, invalidity, old age or death, as well as the maintenance of children.<sup>1579</sup>

*Spain* – Since the adoption of Act No. 27/2011, domestic workers have been integrated into the general social security scheme for all branches except unemployment.<sup>1580</sup>

815. The Committee further notes that in a number of countries overarching legislation specific to domestic workers has been adopted which addresses, among other areas, access to social protection.<sup>1581</sup>

*Indonesia* – Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers, in section 11, requires employers to register domestic workers with social security programmes.

*Uruguay* – Act No. 18.065 of 2006 provides that the existing social security framework applies to the domestic sector and specifies that domestic workers are included under existing unemployment and sickness benefit mechanisms.

816. However, there are some countries where social security does not cover domestic workers.<sup>1582</sup> The Committee further notes that, instead of the integration of domestic workers into general or mainstream social security schemes, the decision has been taken in certain countries to create specific schemes for them.

*Guatemala* – A regulation adopted in 2020 establishes a special programme for private household workers (PRECAPI), which provides maternity protection, family benefit, medical care and invalidity benefit. Employers are required to register with the PRECAPI all domestic workers who work for them for at least three days a week.<sup>1583</sup>

<sup>1576</sup> For instance, *Belarus, Burkina Faso, Costa Rica and Ecuador*.

<sup>1577</sup> For instance, *Cabo Verde, Morocco, Nicaragua, Trinidad and Tobago and Spain*.

<sup>1578</sup> For instance, in *Cabo Verde*, domestic workers are not entitled to unemployment benefit.

<sup>1579</sup> *Cabo Verde*, [Decreto-Lei nº 49/2009](#) (in Portuguese).

<sup>1580</sup> *Spain*, [Ley 27/2011, de 1 de agosto, sobre actualización, adecuación y modernización del sistema de Seguridad Social](#).

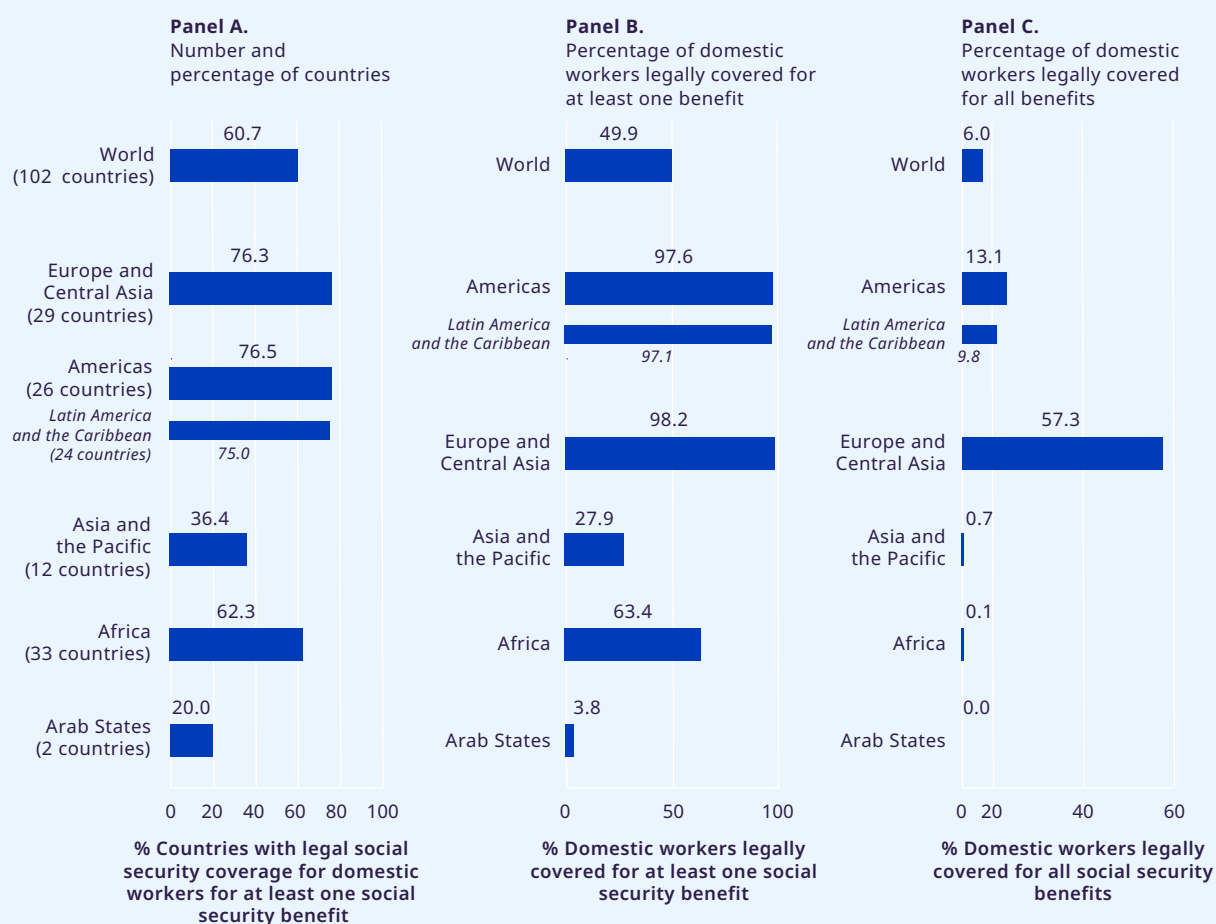
<sup>1581</sup> See also *Ghana* (Labour (Domestic Workers), Regulations, 2020, section 7(3)) and *Peru* (Ley núm. 27.986 de los Trabajadores del Hogar, artículo 18).

<sup>1582</sup> For example, *Qatar*, where Act No. 15 of 2017 does not include any provisions respecting social security.

<sup>1583</sup> *Guatemala*, [Acuerdo Núm. 1235, Reglamento del Programa Especial de Protección para Trabajadoras de Casa Particular](#).

Figure 9.3

### Number and percentage of countries with some legal social security coverage for domestic workers and percentage of domestic workers legally covered, 2020



**Note:** Panel A: Based on the review of 168 countries. Panels B and C: Global and regional estimates are based on 135 of the 168 countries for which information on the number of domestic workers is available, representing 97 per cent of global employment. Weighted by the total number of domestic workers.

**Source:** ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 123.

## 1. Maternity protection for domestic workers

**817.** The Committee notes that domestic workers are often entitled to maternity cash benefits equal to those of other workers.<sup>1584</sup> According to recent ILO estimates, domestic workers are entitled to maternity cash benefits to at least the same extent as other workers in 68.5 per cent of countries, but continue to be excluded from coverage in 23.1 per cent of countries.<sup>1585</sup> There are important regional disparities in these exclusions: in the Arab States, domestic workers are not entitled by law to maternity cash benefits, while in Europe and Central Asia they usually have the same rights as other workers.<sup>1586</sup> Most governments report that maternity benefits are delivered through the social security system, most commonly social insurance mechanisms based on workers' and/or employers' contributions. In certain cases, maternity benefits are provided through non-contributory or tax-financed mechanisms, in which case eligibility is often means-tested.

**818.** In a number of countries, employers are required to pay maternity benefits directly. In this regard, the Committee recalls that the ILO social security instruments only envisage schemes in which the cost of benefits and their administration are borne collectively, by way of insurance contributions, taxation, or a combination of both.<sup>1587</sup> Moreover, the Maternity Protection Convention, 2000 (No. 183), calls for the provision of maternity cash benefits through compulsory social insurance or public funds in order to protect the situation of women in the labour market.<sup>1588</sup> The Committee recalls in this respect that, in practice, in cases where employers are individually liable for the compensation of workers, particularly for maternity cash benefits, this often leads to discriminatory practices that impede the access of women to the labour market.<sup>1589</sup>

In *Bangladesh*, the National Domestic Women Workers Union (NDWWU), the Domestic Workers Rights Network (DWRN) and the IDWF indicate that a WIEGO-IDWF-NDWWU survey revealed that the vast majority of domestic workers interviewed did not have access to maternity leave or benefit (only 11 per cent had access to maternity leave, with 50 per cent having access to 16 weeks leave and 50 per cent receiving pay or a benefit from the Government).

In *Nepal*, the Homeworkers Union of Nepal (HUN) observes that, although the new Labour Act provides domestic workers with paid maternity leave from employers for three months irrespective of the number of days they work, part-time workers are frequently excluded because it is difficult to allocate liability for maternity pay to a specific employer. This has been confirmed by a study, which found that 68 per cent of the domestic workers surveyed did not have access to paid maternity leave.<sup>1590</sup>

<sup>1584</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 136.

<sup>1585</sup> *ibid.*

<sup>1586</sup> *ibid.*, p. 138.

<sup>1587</sup> Convention No. 102. Art. 71(1).

<sup>1588</sup> Convention No. 183 makes an exception for schemes that existed prior to the adoption of the Convention or those adopted subsequently with the agreement of the social partners. See Art. 6(8)(a) and (b).

<sup>1589</sup> Such measures also require employees to seek compensation directly from their employers, which represents an increased burden if they are in a precarious situation and do not have the necessary skills and capacities to assert their rights through legal proceedings.

<sup>1590</sup> WIEGO (2020). *Domestic workers, risk and social protection in Nepal*, WIEGO Policy brief No. 20, p. 6.



## 2. Challenges to ensuring social protection for domestic workers

819. Despite the increased number of countries in which social protection coverage is being extended to domestic workers on an equal footing with other employees, the Committee observes that numerous challenges remain in this area. In particular, mandatory coverage is sometimes restricted to certain categories of workers, such as those who work a minimum number of hours or meet a certain earnings threshold. The Committee observes that domestic workers are often excluded from coverage, as they do not meet the minimum number of hours or earning thresholds established.

*Australia* – Only workers earning at least 450 Australian dollars a month and working over 30 hours a week are mandatorily covered by the superannuation pension system (all residents are however covered by a tax-financed means-tested scheme). This is the case of domestic workers who are often in non-standard precarious work.

*Belgium* – Workers only benefit from mandatory coverage if they work more than four hours a day for the same employer and over 24 hours a week for one or more employers.

**820. The Committee considers that such minimum thresholds, which are prejudicial to the social security coverage of domestic workers in view of their specific working arrangements, contribute to their exclusion from coverage in practice, even in cases where they are not excluded by law as a specific category. It therefore calls on countries where this situation prevails to re-examine the issue in light of the impact of these requirements on the social protection of domestic workers.**

821. The Committee observes that, following the ratification of Convention No. 189, the legislation has been amended in certain countries to ensure that domestic workers benefit from the same conditions as other workers.

CEACR – In its comments concerning the *Philippines*, the Committee noted that Government had established a series of programs to extend social security coverage to domestic workers. The Government indicated that, under the Employee's Compensation (EC) Program, locally employed domestic workers are mandatorily covered under the purview of the Employee's Compensation Commission (ECC). Furthermore, domestic workers are entitled to benefits accorded through Presidential Decree No. 626 that include: medical benefits; rehabilitation services; disability benefits; death benefits; and other common income benefits. With regard to the issue of registration of domestic workers, under Republic Act No. 10361, the employer has the obligation to register the domestic worker, deduct, and remit the required Social Security System (SSS) premiums and contributions. The Committee noted that the SSS had instituted a series of programs for domestic workers to handle and streamline the registration process for household employers and domestic workers. With regard to the issue of extending social security coverage to domestic workers working for multiple employers, the Committee noted that, while, part-time domestic workers working for multiple employers were not covered under the EC Program, their coverage was already approved by the ECC.<sup>1591</sup>

<sup>1591</sup> CEACR-Philippines, C.189, direct request, 2020.

822. The Committee observes that, in certain cases, social security affiliation is voluntary, which leads to lower rates of coverage for domestic workers.

*Honduras* – A regulation adopted in 2008<sup>1592</sup> introduced a special voluntary scheme for domestic workers. However, a study has revealed that only 2.5 per cent of all respondents have registered their domestic employees with the scheme.<sup>1593</sup>

In *Colombia*, the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) indicate that only 18.7 per cent of domestic workers are insured, noting that this demonstrates a lack of compliance by employers, often as a result of lack of knowledge, or because they deem it unnecessary, costly or irrelevant when hiring domestic workers on a daily basis.

In *Paraguay*, the IDWF indicates that 95 per cent of domestic workers are not registered with the Social Welfare Institute (IPS) and there are no government campaigns or inspections to promote and inform workers and their employers about this entitlement. It also points out that the fines for non-compliance are low, so that many employers would rather pay the fine than the social security contributions.

823. In some countries, domestic workers are not considered to be workers and are not therefore entitled to social security coverage.<sup>1594</sup>

*Republic of Korea* – Domestic workers in the private sector are not recognized as workers and are therefore not eligible for social insurance. However, a new draft Domestic Workers Act is planned to change this situation.

*Hungary* – Act III of 1993 on Social Governance and Social Benefits does not consider domestic work to be a gainful activity. The resulting revenues are not therefore considered to be income, and domestic workers are not eligible for social security coverage and benefits.

824. The Committee wishes to emphasize in this respect that, as pointed out in various ILO reports, the possibility envisaged in the legislation of certain countries of voluntary social security coverage often does not result in coverage in practice and runs counter to the principle set out in Convention No. 189 of securing treatment for domestic workers that is not less favourable than that of other categories of workers in respect of social security. The Committee notes that restrictions on social security coverage also exist in relation to the types of services provided, and the number of employees.

1592 *Honduras*, [Acuerdo núm. 006-JD-2008, Reglamento del Régimen Especial y de Afiliación Progresiva de los\(as\) Trabajadores\(as\) Domésticos\(as\)](#).

1593 A.M. Tablada (2019). “[Situación de trabajo doméstico en Honduras: Estudio de percepción sobre el trabajo doméstico en Honduras](#)”, Cooperativa de Asistencia y Ayuda en todo el mundo (CARE) Honduras, p. 18.

1594 For instance, *Cuba*, *Hungary*, *Mozambique*, and *Republic of Korea*.

### 3. Additional challenges to the effective protection of migrant domestic workers

**825.** Recalling that domestic workers are also often migrant workers, the Committee wishes to draw particular attention to Paragraph 20(2) of the Recommendation, which calls on Members to consider concluding bilateral, regional or multilateral agreements to provide for “equality of treatment for migrant domestic workers in respect of social security, as well as access to and preservation or portability of social security entitlements”. Moreover, for guidance on the possible content of such agreements, the Committee refers to the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons included in the Annex to Migration for Employment Recommendation (Revised), 1949 (No. 86).

**826.** The Committee observes that migrant workers in general often face considerable difficulties in practice in benefiting from social protection, and that these difficulties are compounded when they are employed as domestic workers. In this context, the Committee notes that measures have been adopted in some countries to combat undeclared domestic work by authorizing migrant workers in this situation to apply independently for a personal work permit that is not attached to an employer, thereby giving them access to all aspects of legal care and protection, including social security, unemployment insurance, healthcare and other national schemes.<sup>1595</sup>

*Malaysia* – Both local and migrant domestic workers were previously excluded from the scope of labour and social security legislation. However, since 2021, they have been entitled to benefit from employment injury protection (as well as disability, in the case of local domestic workers).

According to the IDWF, migrant domestic workers do not generally benefit from access to social protection in the Middle East and North Africa. For instance, the IDWF indicates that in *Kuwait* migrant domestic workers are not covered by any social protection schemes or programmes. As a result, there are cases of migrant domestic workers in *Kuwait* who have worked for decades and find themselves poor, having no resources to enable them to return to their home countries when they become old, sick or injured. Some are sent back home by their employers when they become sick or are injured at work or in an accident, leaving the workers destitute.

**827.** Conversely, in other countries, migrant workers enjoy full equality with national workers in respect of labour and social security legislation.<sup>1596</sup>

*Canada (Quebec)* – The employment contract requires employers to contribute to the coverage of foreign workers under the Act on Industrial Accidents and Occupational Diseases, which protects them in the event of work-related accidents. The contract also requires employers to provide free health insurance coverage equivalent to that of the Régie de l'assurance maladie du Québec (RAMQ) for workers until they become entitled to RAMQ benefits.

<sup>1595</sup> For instance, *Bahrain*.

<sup>1596</sup> For instance, *Plurinational State of Bolivia* and *Canada (Quebec)*.

828. In some countries, mechanisms have been created that facilitate social security coverage for migrant workers, including domestic workers, through voluntary registration with the social security system,<sup>1597</sup> online enrolment and payment of contributions,<sup>1598</sup> the portability of benefits and other incentives to encourage workers to register with social security administrations and contribute to the system.<sup>1599</sup>

*Indonesia* – Migrant domestic workers are integrated into the national social security system (BPJS), which covers employment injury, life insurance and pensions. Registration is on a voluntary basis.

829. The Committee notes that, while migrant domestic workers often face challenges in accessing social security in the host country, they may also encounter difficulties in maintaining acquired social security rights and rights in course of acquisition when they return to their home countries. In the absence of portability, migrant workers may have little incentive to contribute to social security schemes in host countries, out of fear that contributions paid during their years abroad will not be recognized upon their return. ***The Committee stresses that the portability of social security contributions and benefits is crucial for migrant workers for the recognition of contributory periods generated abroad.***

830. Portability requires cooperation between social security institutions, generally established through bilateral or multilateral agreements. However, the number of social security agreements concluded globally remains low and covers fewer than one-fifth of international migrant workers, and primarily workers from high-income countries living in other high-income countries.<sup>1600</sup> ***The Committee therefore emphasizes the importance of facilitating social protection for migrant domestic workers through the conclusion of bilateral and multilateral social security agreements that explicitly include domestic work.***<sup>1601</sup>

*Switzerland* – The network of social security agreements covers 82 per cent of migrant workers in the country.

## 4. Effective coverage as the main obstacle to ensuring social protection for domestic workers

831. The Committee notes with concern that effective social protection coverage of domestic workers is still rare, particularly due to their prevalence in informal employment. According to the most recent ILO estimates, fewer than one in five (18.8 per cent) domestic workers enjoy effective employment-related social security coverage.<sup>1602</sup> In some cases, domestic workers may be able to fall back on non-contributory or tax-financed social protection, such as programmes providing income security for residents, often when their means of subsistence fall below a certain level. While, in line with Recommendation No. 202, such mechanisms should be an integral part of national social protection floors to ensure protection against poverty, vulnerability and social exclusion, Convention No. 189 calls for domestic workers to enjoy social security protection which is not less favourable than that available to workers generally.

<sup>1597</sup> For instance, *Costa Rica, India, Indonesia, Malaysia, Poland and Turkey.*

<sup>1598</sup> For instance, *Cambodia.*

<sup>1599</sup> For instance, *Colombia and Mexico.*

<sup>1600</sup> R. Holzmann (2016). “[Do bilateral social security agreements deliver on the portability of pensions and health care benefits? A summary policy paper on four migration corridors between EU and non-EU Member States](#)”, IZA Policy paper No. 111, Bonn.

<sup>1601</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 128. For instance, *Morocco and Spain.*

<sup>1602</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 165.

832. The Committee observes that the levels and range of social security benefits provided through non-contributory social protection mechanisms are often lower than those enjoyed by workers affiliated to contributory social insurance mechanisms. ***The Committee recalls that the achievement of universal social protection requires a combination of contributory mechanisms for all those with contributory capacity, which can be adapted to the special circumstances of categories of workers who are not covered, including domestic workers, with access to essential healthcare and basic income security being provided through tax-financed mechanisms.***

833. Many governments report that domestic workers do not enjoy effective social protection coverage, particularly under contributory mechanisms, due to: the lack of efficiency and accountability of social security institutions; practical difficulties in accessing benefits; insufficient or low levels of benefits; administrative barriers, such as the complexity of procedures or the length of time required to register or pay contributions; lack of awareness of rights and obligations; the inability to cover the direct and indirect costs of registration and the payment of contributions; and the resulting lack of confidence and willingness to register with social security schemes.

In *Argentina*, the IDWF indicates that, while a specific old-age pension scheme exists for domestic workers, it is very difficult for them to receive old-age benefits due to the high percentage of unregistered domestic workers who, despite being affiliated, have accumulated very few years of contributions when they reach retirement age.

In *Bangladesh*, the National Domestic Women Workers Union (NDWWU) reports that, while domestic workers have access to free public health services, out-of-pocket payments for consultants and medication can be significant, especially when workers turn to the largely unregulated private sector for urgent care. Domestic workers report spending an average of 1,250 Bangladeshi taka on their last medical visit (consultation, medicines, tests), or around 1.3 times their average weekly earnings, resulting in 67 per cent of those visiting a health facility having to take out a loan to cover the cost.

834. However, the Committee notes the adoption of specific laws and regulations in many countries explicitly requiring social protection coverage of domestic workers. ***The Committee considers that explicit legal recognition of the right of domestic workers to social security, through the Labour Code<sup>1603</sup> or specific sectoral laws, is essential to improve their social security coverage. However, the effective extension of contributory mechanisms to domestic workers also requires adaptations and supportive mechanisms to ensure their effectiveness, including the reduction of administrative barriers that may impede registration and the collection of contributions.***

835. In this respect, Paragraph 20(1) of the Recommendation calls on Members to “consider 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”. Paragraph 20(2) calls on Members to consider concluding bilateral, regional or multilateral agreements that provide for equality of treatment of workers and access to, preservation and portability of social security entitlements. Paragraph 20(3) adds that the monetary value of payments made in kind should be taken into account for social security purposes, including in respect of the contribution by employers and the entitlements of domestic workers.

<sup>1603</sup> For instance, *Nicaragua* and *Panama*.

**836. The Committee considers that registration is the crucial first step to ensuring domestic workers' access to social protection. The Committee highlights that consideration should be given to centralizing the registration and collection process in a single institution to increase both enrolment and compliance.<sup>1604</sup> Moreover, the Committee emphasizes that, as domestic employers are primarily private households, and many domestic workers work for more than one employer, the simplification of administrative procedures, wherever possible, is crucial to facilitating access to social protection.<sup>1605</sup>**

*Luxembourg* – A simplified administrative affiliation procedure is in place for private households that hire staff to help with cleaning or care for dependent persons. The declaration is completed by the employer and sent to the social security institution (Centre commun de la sécurité sociale (CCSS)), which registers affiliation and sends invoices for social security contributions, including any applicable tax deductions.

**837.** The Committee notes that the service voucher mechanisms introduced in a number of countries reduce the administrative burden of registration and transaction costs, provide fiscal incentives for employers to encourage registration and formalization, and can also be used to pay for services and wages.<sup>1606</sup>

*Switzerland* – A number of fee-based platforms act as intermediaries to facilitate the interaction of private households that employ staff for home care, housework, gardening and other personal services with social insurance institutions by simplifying mandatory registration and contribution payments to the various social insurance schemes.<sup>1607</sup>

**838.** The Committee notes the growing use of digital technologies to facilitate the social security affiliation of domestic workers and the payment of contributions.

*Turkey* – Even domestic workers who work fewer than ten days a month are covered in the event of employment injury. Households can register domestic workers and pay contributions through banks, the internet or simply by sending messages from their mobile phones to the Social Security Institution (SSI).

*Uruguay* – Since the adoption of the Domestic Workers Act, the Ministry of Labour and the Social Security Fund have carried out intensive awareness-raising campaigns on the rights and obligations of domestic workers and employers in the area of social security, focusing on the legal obligations of employers. These measures have reduced contribution evasion, with contributions from domestic workers increasing by 76.77 per cent during the period 2006–19. Over the past 30 years, the number of domestic workers registered with the fund has more than doubled.

<sup>1604</sup> F. Duran-Valverde (2012). "Articulando los programas de protección social en el contexto de la construcción de los pisos de protección social", International Social Security Association (ISSA).

<sup>1605</sup> For instance, *Guatemala, Luxembourg, Paraguay and Spain*.

<sup>1606</sup> For instance, *Belgium and France*.

<sup>1607</sup> *Switzerland*, [quitt.ch](https://quitt.ch) – l'unique plateforme 100% en ligne pour déclarer sone employé-e de maison.

**839.** In addition to simplifying registration and contribution procedures, the Committee observes that coverage has been increased in a number of countries through measures to address financial barriers to affiliation with social insurance mechanisms, often in the form of flexible contribution collection mechanisms.<sup>1608</sup> Government subsidies also play an important role, particularly in addressing low contributory capacity in the sector.<sup>1609</sup>

*Belgium* – With a view to promoting the social protection of domestic workers, the level of the employers' social contributions has been reduced. In Wallonia, a service voucher system has been introduced for households that employ domestic workers through authorized companies. As a result of partial funding by the public authorities, individuals only pay limited contributions for work covered by the service voucher, which promotes local jobs and reduces undeclared work.<sup>1610</sup>

*France* – Through a multipurpose universal digital employment service voucher (CESU), created in 1993 and reformed in 2006, employers can pay both the services provided by domestic workers and their social security contributions. Once registered, employers are given the option of declaring workers' wages through a coupon payment book or a website. The CESU grants employers the right to a tax credit of 50 per cent of annual remuneration below a certain threshold (€12,000 in 2021, or higher in certain circumstances). As a result, two-thirds of CESU users have declared a previously undeclared employee.<sup>1611</sup>

*Mauritius* – Since January 2012, domestic workers earning less than 3,000 Mauritius rupees a month in aggregate wages have been exempt from paying their part of contributions to the pensions scheme, with the Government paying their contributions. In other cases, fiscal advantages are offered to encourage the formalization of domestic workers and their affiliation with social insurance schemes.

**840.** The Committee notes that the enforcement of social security legislation, including through inspection mechanisms, represents an additional challenge in the domestic work sector. In some countries, this challenge has been addressed by allowing labour and social security inspectors to enter homes to carry out inspections (Chapter 10).

*Nicaragua* – The Ministry of Labour and the Social Security Institute are authorized to carry out joint inspections to verify compliance with the requirement for employers to register domestic workers with the social security institute.<sup>1612</sup>

<sup>1608</sup> For instance, in *Argentina* and *Italy*, contributions are calculated on the basis of hourly wages.

<sup>1609</sup> For instance, *Belgium*, *Dominican Republic*, *Finland*, *France* and *Mauritius*.

<sup>1610</sup> *Belgium* (Wallonie), [Bénéficiaire de l'aide d'un travailleur titres-services](#).

<sup>1611</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 167.

<sup>1612</sup> *Nicaragua*, [Labour Code, Title I, Ch. I, on domestic services](#).



841. In addition to establishing an adequate and appropriate inspection mechanism, the Committee notes that, as required by Article 17 of the Convention, the enforcement of social security rights and obligations should be accompanied by strong and effective complaint and appeal mechanisms (Chapter 10). A significant number of governments refer to the application of sanctions in the event of non-compliance with the requirement to register domestic workers with the social security system. ***The Committee observes that the objectives of social security and labour inspection services are complementary and mutually supportive. Accordingly, the enforcement of labour and social security legislation should go hand in hand. Coordination between the two systems is crucial, including through the development of a legal framework to secure systematic exchanges of information on cases and conditions, especially where resources are limited.***<sup>1613</sup>

*Bahamas* – If employees discover, upon examining payroll records and copies of payments and receipts, that employers have not paid contributions, they can report them to the National Insurance Board, which then takes action to collect the contributions.<sup>1614</sup>

*Colombia* – When employers do not register domestic workers, they are required to pay the cost of treatment and their benefits in the event of medical care, pensions and employment injury.

842. Finally, the Committee observes that domestic workers and households often lack information on social security rights and obligations, which is a barrier to coverage. There is evidence of a trend to make information on social security more accessible, including by developing a culture of social security through the education system or awareness-raising campaigns. Information campaigns specifically targeting the domestic sector have been undertaken in a number of countries.<sup>1615</sup>

*Panama* – The Ministry of Labour (MITRADEL), together with the Social Security Fund, periodically organize social security registration and affiliation days for domestic workers in order to ensure compliance with the relevant legislation.

*Luxembourg* – Domestic workers affiliated to the social security system are members of the Chamber of Employees, which provides a wide range of information on the rights and duties of employees.<sup>1616</sup>

<sup>1613</sup> ILO (2011). *Social security and the rule of law, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, para. 348.

<sup>1614</sup> *Bahamas*, National Insurance Board, [Contributions](#).

<sup>1615</sup> For instance, *Cabo Verde, Colombia, Luxembourg*, Panama and *Zambia*.

<sup>1616</sup> *Luxembourg*, Chambre des salariés, [Vos droits](#).

*Cabo Verde* – Following the adoption of the Decree No. 49/2009 extending the social protection system for employees to domestic workers<sup>1617</sup>, the National Social Insurance Institute (INPS) used radio, television and social media to broadcast information on the advantages of enrolment.

*Zambia* – An awareness-raising programme launched in 2018 targeted employers of domestic workers, many of whom were unaware of their obligation to register domestic workers with the National Pension Scheme Authority (NAPSA).<sup>1618</sup>

**843.** The Committee recalls in this regard that collaboration with employers' and workers' organizations is key to designing effective awareness-raising campaigns and disseminating information.

In *Indonesia*, the JALA PRT indicates that, through advocacy efforts, it has been able to mobilize over 1,400 members in a voluntary social security scheme. It persuaded the social security office in Jakarta to reach out to domestic workers and facilitate a collective registration mechanism, and to issue a letter encouraging employers to pay social security contributions.

In *Mexico*, the National Union of Domestic Workers (SINACTRAHO) indicates that it provides assistance with registration and the calculation of contributions.

## 5. Social protection for domestic workers during the COVID-19 pandemic

**844.** The Committee observes that the COVID-19 pandemic has exacerbated the often already poor working conditions of domestic workers, and particularly their lack of social protection. Most domestic workers lost their incomes during the pandemic due to termination or imposed unpaid leave, and often had no social security benefits to fall back on. The majority of domestic workers who contracted COVID, including through work, did not have access to medical care or sickness benefits.<sup>1619</sup> Continuing to work was, in most cases, the only way to secure their livelihoods and those of their families, which in turn exposed them to an increased risk of infection at work or when commuting to or from work.

<sup>1617</sup> *Cabo Verde*, [Decreto-Lei n° 49/2009](#) (in Portuguese).

<sup>1618</sup> *Zambia*, National Pension Scheme Authority (NAPSA), "[Give your domestic workers a NAPSA pension today](#)", 8 May 2018.

<sup>1619</sup> Recent ILO statistical information shows a low percentage of domestic workers legally covered by medical care and sickness benefits in all regions: Africa (15 per cent and 5 per cent, respectively), Americas (19 per cent and 16 per cent), Latin America and the Caribbean (17 per cent and 15 per cent), Arab States (no coverage), Asia and the Pacific (10 per cent and 7 per cent), and Europe and Central Asia (26 per cent and 28 per cent). ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 124.

**845.** In its Conclusions concerning the second recurrent discussion on social protection (social security), adopted in 2021, the International Labour Conference emphasizes that, despite the progress made over the last decade, the pandemic and its socio-economic consequences have revealed significant social protection coverage and financing gaps. It emphasizes that considerable additional efforts are urgently needed to extend coverage and guarantee universal access to comprehensive, adequate and sustainable social protection for all, with a particular focus on those who are unprotected and in a vulnerable situation, such as domestic workers, women, migrant workers and persons in the informal economy. In this regard, it highlights that, in supporting constituents to achieve the effective realization of the right to social security, the ILO should support Member States in strengthening access to social protection for informal workers and domestic workers by promoting the ratification and implementation of Convention No. 189 and the effective implementation of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).<sup>1620</sup>

**846.** The Committee notes that measures were taken in a number of countries during the pandemic to provide access to medical care and income security for workers, including domestic workers.<sup>1621</sup> Generalized income support measures were extended to workers in the informal economy, including domestic workers, particularly where sickness benefits were not in place.

*Argentina* – A generalized one-off cash benefit was introduced through the agency responsible for family benefits, covering both formal and informal workers. Domestic workers were also included among those workers.<sup>1622</sup>

**847.** However, the social partners indicate that in many countries no special measures were taken to protect the income and livelihoods of workers left vulnerable by the crisis, including domestic workers and members of their families.<sup>1623</sup> The Committee observes that ensuring comprehensive social protection for domestic workers benefits society, including the families and households where they work. Conversely, when domestic workers lack social protection, including sickness benefits, they may be compelled to work when they are ill, thereby posing a potential threat to public health, while increasing economic and health risks for themselves and their families.<sup>1624</sup>

The International Trade Union Confederation (ITUC) observes that the pandemic has clearly underlined the centrality of health and care for well-being and the functioning of societies and economies. The need for adequate investment in equitable quality public health and care systems is more apparent and urgent than ever, and would create millions of health and care jobs, secure decent working conditions and equal pay for work of equal value, and expand rights and protections, including access to social protection for all care workers.

<sup>1620</sup> ILO (2021). [Conclusions concerning the second recurrent discussion on social protection \(social security\)](#), International Labour Conference, 109th Session, Geneva, paras 8 and 20.

<sup>1621</sup> For instance, *Argentina, Italy and Spain*. ILO (2021). *Addendum to the General Survey: Promoting employment and decent work in a changing landscape*, op. cit., para. 268.

<sup>1622</sup> ILO (2021). [“Sickness benefits during sick leave and quarantine: Country responses and policy considerations in the context of COVID-19”](#), Social Protection Spotlight, ILO brief, p. 4.

<sup>1623</sup> For instance, *Bangladesh, Kuwait, Malaysia, Nepal, Singapore, Sri Lanka and Trinidad and Tobago*.

<sup>1624</sup> ILO (2021). [Sickness benefits during sick leave and quarantine: Country responses and policy considerations in the context of COVID-19](#), Social Protection Spotlight, ILO brief, p. 2.

## ► VIII. The role of private employment agencies in the domestic work sector

**848.** The most recent ILO estimates indicate that the demand for migrant domestic workers is continuing to grow (see Chapter 1).<sup>1625</sup> The Committee notes that private employment agencies (PEAs) are playing an increasingly important role in the recruitment of domestic workers, particularly in a cross-border context. PEAs can range from multinationals to small and medium-sized (SME) and even family-owned businesses, sometimes founded by former domestic workers.<sup>1626</sup> The use of digital platforms by domestic workers to secure employment is also increasing (see Chapter 7).

**849.** Convention No. 189 contains specific provisions aimed at protecting this category of workers from potential abuses and unethical practices of PEAs. The Committee further notes that agency work (where the domestic worker is employed directly by the PEA) may raise issues concerning the existence of an employment relationship and the rights that attach to it. Workers in such triangular relationships may not be aware of who their employer is in the event of a dispute. These issues are compounded where the agency is international, which may raise jurisdictional problems.<sup>1627</sup>

### 1. What is a private employment agency?

**850.** Article 1(1) of the Private Employment Agencies Convention, 1997 (No. 181) provides that the term “private employment agency” means “any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks; (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment”.

**851.** Many PEAs provide services through which they connect employers with suitable job-seekers, without forming any part of the resulting employment relationship. However, as envisaged in Article 1(1)(b) of Convention No. 181, some PEAs employ workers in order to assign them to an individual or enterprise that has concluded a contract with the PEA, thereby creating what is also referred to as a “triangular relationship”.<sup>1628</sup> Both forms of PEAs may be active in placing care economy workers, whether they are healthcare workers, domestic workers or workers who perform tasks that fall somewhere in between.

<sup>1625</sup> ILO (2016). “[Regulating international labour recruitment in the domestic work sector: A review of key issues, challenges and opportunities](#)”, Research Series, Geneva, pp. 18 to 19.

<sup>1626</sup> *ibid.*, p. 2.

<sup>1627</sup> See in this regard: 2020 General Survey on employment and decent work, *op. cit.*, Chapter 2, pp. 81-146.

<sup>1628</sup> The term “triangular relationship” is not defined in any ILO instrument, but was considered by the International Labour Conference at its 95th Session in 2006. See ILO (2010). [Provisional Record No. 12](#), International Labour Conference, 99th Session, Geneva, para. 818.

## 2. The particular relevance of PEAs to domestic work

852. Paragraph 23 of the Domestic Workers Recommendation, 2011 (No. 201), emphasizes the link between Conventions Nos 189 and 181, recognizing the positive role that PEAs can play in safeguarding the rights of domestic workers and calling for Members to promote good practices in this respect.

### Paragraph 23 of Recommendation No. 201

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 [Convention No. 181], and the Private Employment Agencies Recommendation, 1997 (No. 188).

*Cambodia* – The Government reports that training was provided in 2014 for PEAs on the new regulations on sending Cambodian nationals to work abroad. The training was hosted by the Association of Cambodian Recruitment Agencies (ACRA) and supported by the ILO. In 2020, ACRA and the Manpower Association of Cambodia adopted a Code of Conduct for Cambodian Private Recruitment Agencies with the support of the Ministry of Labour and Vocational Training and the ILO. The Code of Conduct outlines a self-commitment framework for migrant workers recruited in the country. It indicates that contracts are to be in writing and either in Khmer, the language of the receiving country, or English, or should be explained clearly and made available in advance of the worker's departure from Cambodia.

853. Article 15 of Convention No. 189 reflects the objectives that led to the adoption of Convention No. 181 and its accompanying Recommendation No. 188 in implicitly recognizing the significant role that PEAs play in the recruitment and placement of domestic workers, while also highlighting the need to protect this vulnerable category of workers from potential abuses. Article 15(1) of Convention No. 189 requires ratifying States to establish a framework specific to domestic work with the objective of ensuring that both national and migrant domestic workers are afforded effective protection against abusive or unethical practices by PEAs.<sup>1629</sup> Article 15(2) requires Members to consult the most representative organizations of employers and workers and, where they exist, organizations representative of domestic workers and those representative of employers of domestic workers in giving effect to the respective measures.

### Article 15 of Convention No. 189

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;

<sup>1629</sup> ILO (2010). *Provisional Record* No. 12, op. cit., paras 46 and 115.

- (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.

### 3. Measures to protect domestic workers from abusive practices

#### (a) Conditions governing the operation of PEAs that recruit or place domestic workers

**854.** The Committee notes that, in most countries where PEAs are authorized to operate,<sup>1630</sup> they are regulated by legislation that applies to all workers generally, including domestic workers. This is the case even in countries in which there are PEAs that are dedicated solely to the placement of domestic workers.<sup>1631</sup> On the other hand, in some countries, there are specific regulations governing PEAs that recruit or place domestic workers.<sup>1632</sup>

*Indonesia* – Ministry of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers is the main text governing the recruitment and placement of domestic workers by PEAs, referred to as “Domestic Workers Agencies”. The licence required by PEAs to operate in the domestic sector is valid for five years and allows an unlimited number of branch offices.

**855.** The Committee notes that in some countries PEAs are not allowed to recruit domestic workers for the purpose of assigning them to a third party.

<sup>1630</sup> For example, *Canada, Colombia, Costa Rica, Croatia, Dominican Republic, Ecuador, Finland, Ghana, Montenegro, New Zealand, Nicaragua, Solomon Islands, Spain and Trinidad and Tobago*.

<sup>1631</sup> For instance, *Spain*.

<sup>1632</sup> For instance, *Cambodia, Indonesia and United Arab Emirates*.

CEACR – In its comments concerning *Chile*, the Committee noted that, under Order No. 3169/062 of 5 August 2011, private employment agencies are not permitted to subcontract a domestic worker to a third party in view of the special nature of the contract of employment for workers in private households, which must be concluded between two physical persons. The Government notes that the employer may be an institution only where it is a welfare institution that provides care for persons with special needs through household work.<sup>1633</sup>

**856.** In a few countries, other types of entities act as intermediaries in relation to domestic workers.<sup>1634</sup>

*India* – In addition to PEAs, a prominent agency in the domestic work sector is the Self Employed Women's Association (SEWA), a trade union registered in 1972 which operates as a workers' cooperative with a membership base, in 2018, of over 1.5 million poor self-employed women workers from the informal economy across 16 states.<sup>1635</sup> In addition to self-employment, SEWA also supplies women domestic workers by acting as an intermediary with user enterprises, which conclude a remunerated contract with SEWA for a fixed period. SEWA assigns women from its register for the respective period. The women are charged a nominal membership fee, but pay no other fees for the services provided.<sup>1636</sup>

## (b) Adequate investigative mechanisms and procedures

**857.** Article 15(1)(b) of Convention No. 189 requires Members to ensure the existence of adequate machinery and procedures for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of PEAs in relation to domestic workers.<sup>1637</sup> The Committee wishes to emphasize that such investigative mechanisms and machinery do not require the introduction of new systems, as existing systems can be used to investigate the activities of PEAs in the domestic sector.<sup>1638</sup> Nevertheless, the Committee considers that such mechanisms should take into account the particular circumstances of domestic workers placed by PEAs, especially where they are in triangular employment relationships. In the latter case, domestic workers may face additional challenges in determining the party to which a complaint should be directed, as the allocation of responsibility between the PEA and the user enterprise may not be clear.<sup>1639</sup>

<sup>1633</sup> CEACR – *Chile*, C.189, direct request, 2018.

<sup>1634</sup> For instance, *India*.

<sup>1635</sup> *India*, [Self Employed Women's Association \(SEWA\)](#).

<sup>1636</sup> ILO (2017). "[Good practices in using partnerships for effective and efficient delivery of employment services in India](#)", Employment Working Paper No. 233, Geneva, p. 50.

<sup>1637</sup> For an overview of irregularities faced by migrant domestic workers, see, for example: ILO (2004). [Gender and migration in Arab States: The case of domestic workers](#), Beirut, pp. 20-21.

<sup>1638</sup> ILO (2011). [Provisional Record No. 15](#), International Labour Conference, 100th Session, Geneva, paras 735 and 963.

<sup>1639</sup> ILO (2006). [The employment relationship](#), Report V (1), International Labour Conference, 95th Session, Geneva, para. 54.



**858.** Additional obstacles that domestic workers may encounter in seeking to bring a complaint against a PEA for abusive or unethical treatment include the inability to locate the PEA once the placement has been made, as some PEAs do not have physical offices and operate online. If workers seek employment through digital platforms, they may be exposed to additional risks, including the charging of fees, even in the case of social outsourcing platforms for disadvantaged groups, such as refugees and marginalized young persons.

#### Social enterprises acting as PEAs

“Currently, even the most supportive and impact-oriented platforms and social enterprises largely mirror the indecency and precarity that define the platform economy at large. Social enterprises and aid-funded initiatives that match digital refugee workers with buyers of such work must find ways to become financially sustainable without burdening workers with commission fees as high as 30 to 50 per cent. If the business model of social impact platforms that support and incubate refugee workers is only viable through financing [their] operational costs by taking a major cut from workers’ earnings, then these businesses effectively act as a private agency that contravenes the ILO’s Private Employment Agencies Convention, which stipulates that agencies shall not charge ‘directly or indirectly, in whole or in part, any fees or costs to workers’”.<sup>1640</sup>

**859.** The Committee notes that the general labour inspectorate or public employment services are responsible in several countries<sup>1641</sup> for investigating complaints, alleged abuses and fraudulent practices of PEAs operating in the domestic work sector. In other countries,<sup>1642</sup> where no explicit mechanisms exist for the investigation of complaints relating to PEAs active in the domestic work sector, labour inspections are carried out by the public authorities responsible for inspecting PEAs in general. However, the Committee notes that in some countries<sup>1643</sup> there is no dedicated inspection service for PEAs, and responsibility for their inspection lies with the labour inspection regime applicable to all private enterprises.

CEACR – In its comments regarding *Ireland*, the Committee noted that PEAs are subject to inspection by Workplace Relations Commission (WRC) inspectors. Domestic workers can pursue a complaint against both the PEA and the household employing the domestic worker. The Committee noted that the WRC carried out five domestic work inspections in 2018, one of which was found to be non-compliant and wage arrears were recovered. In 2019, the WRC carried out four domestic work inspections and recovered wage arrears for the workers concerned.<sup>1644</sup>

<sup>1640</sup> ILO (2021). *Towards decent work for young refugees and host communities in the digital platform economy in Africa: Kenya, Uganda, Egypt*, Geneva, p. 90.

<sup>1641</sup> For instance, *Albania, Jamaica, Latvia and Mauritius*.

<sup>1642</sup> For instance, *Hungary and Nicaragua*.

<sup>1643</sup> For instance, *Gambia, Niger and Slovakia*.

<sup>1644</sup> CEACR – *Ireland*, C.189, direct request, 2020.

### (c) Measures taken to provide protection for and prevent abuses of national and migrant domestic workers

**860.** Article 15(1)(c) of the Convention calls on Members to adopt all necessary and appropriate measures, including in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by PEAs. Such measures shall include laws or regulations that specify the respective obligations of the PEAs and households towards domestic workers and provide for penalties, including the prohibition of PEAs that engage in fraudulent practices and abuses.

**861.** The Committee notes that, in some countries, restrictions have been placed or special conditions imposed on the activities of PEAs with the aim of preventing abuses of migrant workers.<sup>1645</sup>

*Algeria* – Under Act No. 04-19 of 25 December 2004 on the placement of workers and the supervision of work and Decree No. 07-123 of 24 April 2007, PEAs are not allowed to offer cross-border mediation services.

*Japan* – The Labour Standards Act, in section 6, establishes special requirements for PEAs that provide services to migrant domestic workers, including foreign domestic work support personnel in special zones. Restrictions include the prohibition of security deposits or the management of the money and other property of persons with a close relationship with foreign housework support personnel, such as their families.

*Turkey* – To prevent abuse, PEAs are not authorized to apply for a work permit for domestic workers or sign employment contracts with migrant domestic workers. Only the employers of migrant domestic workers can apply for work permits.

**862.** In a few countries, special procedures have been established to resolve employment disputes in the domestic sector. National courts have also made reference to the Convention in relation to violations of the labour rights of domestic workers.

*Qatar* – A fast track procedure has been established for employment disputes to facilitate the access of domestic workers to justice within seven days of submitting a case.<sup>1646</sup>

*Germany* – In 2020, the Higher Labour Court of Berlin-Brandenburg<sup>1647</sup> examined the case of a care worker recruited by a Bulgarian PEA. The Court applied Convention No. 189 directly, awarding the worker the minimum wage and overtime payments for standby duty.

<sup>1645</sup> For instance, *Algeria, Ethiopia, Japan, Lao People's Democratic Republic and Turkey*.

<sup>1646</sup> For instance, *Germany and Qatar*.

<sup>1647</sup> T. Knäbe (2021). "Häusliche Arbeit im Prisma nationalen, europäischen und internationalen Arbeitsrechts Besprechung von LAG Berlin-Brandenburg Urt. v. 17.8.2020 – 21 Sa 1900/19", *Neue Juristische Onlinezeitschrift*, 5/2021, p. 97.

**863.** In some countries, training is provided for PEAs, which are required to follow codes of conduct.<sup>1648</sup> In others, PEAs that are active in the domestic sector are required to provide specific services for domestic workers.<sup>1649</sup>

*Colombia* – PEAs are required to comply with the principles of the public employment service in order to provide management and placement services. They are also required to establish rules regulating the provision of services and inform users of the rules, and to provide basic employment management and placement services free of charge for workers. If they fail to comply with these requirements, the penalties include fines and the suspension or withdrawal of their authorization to operate.<sup>1650</sup>

*Republic of Korea* – PEAs that recruit or place domestic workers in the public sector must provide them with safety education programmes. The PEAs are vetted by local governments to prevent abuses.

**864.** In a number of countries, PEAs are required to inform migrant domestic workers of the terms and conditions of their contracts.<sup>1651</sup>

*Greece* – PEAs are required to provide jobseekers with full details of the exact content and terms of employment contracts for which they have acted as intermediaries before the conclusion of the contract.

**865.** The Committee notes that penalties have been established in many countries in the event of abusive or unethical practices by PEAs.<sup>1652</sup>

*Australia* – The Labour Hire Licensing Compliance Unit in Queensland works closely with other public agencies, including the Fair Work Ombudsman, the Australian Taxation Office and the Australian Border Force, to identify and follow-up non-compliant PEAs. Contraventions of the legal framework governing PEAs in the state may result in criminal prosecutions.

In the Australian Capital Territory, the Agents Act 2003 establishes a penalty of 100 penalty units<sup>1653</sup> and imprisonment for one year for the operation of a PEA without the required licence.

<sup>1648</sup> For instance, *Cambodia* and *Colombia*.

<sup>1649</sup> For instance, *Republic of Korea*.

<sup>1650</sup> CEACR – *Colombia*, C.189, direct request, 2019.

<sup>1651</sup> For instance, *Greece* and *Malaysia*.

<sup>1652</sup> For instance, *Australia* (Queensland), *Burkina Faso*, *Ethiopia* and *Kiribati*.

<sup>1653</sup> The value of a penalty unit for an offence under the Act is 160 Australian dollars for an individual and 810 dollars for a corporation.

*Ethiopia* – The Employment Exchange Services Proclamation No. 632/2009 provides in section 27 for the suspension and revocation of the licence of PEAs, for example when they fail to protect the rights, safety and dignity of nationals they send abroad. They are also prohibited from charging fees, withholding travel documents without the worker's consent and providing false information.<sup>1654</sup>

**866.** In addition to fines and criminal sanctions, in accordance with Article 15(1)(c) of the Convention, PEAs in a number of countries are prohibited from engaging in fraudulent or unethical practices.<sup>1655</sup>

*Cyprus* – The Department of Labour of the Ministry of Labour, Welfare and Social Insurance is responsible for inspecting PEAs at least once a year. In 2019, 126 PEAs were inspected and the licences of 13 agencies were revoked. Administrative fines were imposed on three agencies for fraudulent practices.

*Israel* – Inspectors are authorized to investigate complaints of alleged abuses and fraudulent practices by PEAs and to carry out both criminal and administrative investigations of suspected abuses. Where abuses are identified, criminal charges may be filed in addition to administrative procedures to revoke or restrict the PEA's permit. Complaints may be lodged through a telephone hotline, foreign consulates or NGOs.<sup>1656</sup>

**867.** The Member States of the European Union are required to give effect to Directive 96/71/EC as amended by Directive (EU) 2018/957,<sup>1657</sup> as well as Directive 2014/67/EU, which establishes provisions, measures and control mechanisms aiming to ensure a better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC.<sup>1658</sup> Directive 2018/957 aims to strike a balance between promoting the freedom to provide services and protecting the rights of posted workers. Another important objective is ensuring a level playing field in the European Union through the uniform application of the rules to achieve genuine social convergence. Directive 2018/957 also requires Member States to assign responsibilities to PEAs and companies using their services, and to take into account collective agreements applicable to the sectors in which workers are recruited or placed. It calls on Member States to foster cooperation between the competent authorities responsible for monitoring the terms and conditions of posted employment to tackle manifest abuses or possible cases of unlawful activities, such as transnational cases of undeclared work and false self-employment linked to the posting of workers. In conjunction with Directive 2014/67/EU, Directive 2018/957 establishes fines for violations.

<sup>1654</sup> ILO (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Geneva, p. 182.

<sup>1655</sup> For instance, *Cyprus, Indonesia and Poland*.

<sup>1656</sup> CEACR – *Israel*, C.181, direct request, 2015.

<sup>1657</sup> Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

<sup>1658</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("the IMI Regulation").

**868.** The Committee further notes that equal and fair working conditions for domestic workers are a priority for the European Labour Authority, a European Union agency established in 2019 to support concerted and joint (cross-border) labour inspections and the enforcement in a fair, simple and effective manner of European Union rules on labour mobility and social security coordination.<sup>1659</sup>

**869.** The Committee notes, nonetheless, that in their observations, a number of workers' organizations report that in some countries, cases of abuse and maltreatment against domestic workers committed by PEAs are frequent, including the confiscation of passports and employment contracts, human trafficking and violence (See also Chapter 8).

The International Domestic Workers Federation (IDWF) indicates that most migrant domestic workers in the MENA region are highly dependent on PEAs to access employment. However, the IDWF expresses concern regarding the abuses committed by PEAs, including the confiscation of domestic workers' passports and contracts. It maintains that PEAs also subject domestic workers to inhumane living conditions, physical abuse and sexual harassment.

In *Kuwait*, the Sandigan Kuwait Domestic Workers Association (SKDWA) and the IDWF report that there are many cases of abuse and maltreatment of domestic workers at the hands of private recruitment agencies. The agencies subject domestic workers to forced labour conditions and human trafficking. The domestic workers' organizations indicate that some of the recruitment agencies do not accept complaints from workers, and most of the agencies are either unfamiliar with or do not respect the rights of domestic workers. The organizations refer to cases of domestic workers who have committed suicide due to the severity of the abuses suffered.

**870.** In addition, workers' organizations report that domestic workers often encounter discriminatory practices in dealing with PEAs.

In *Spain*, the General Workers' Union (UGT) stresses the need to adopt measures to regulate employment agencies dealing with domestic workers. It expresses concern at discriminatory practices in which such agencies engage, such as offering certain jobs only to people of a certain nationality and using inappropriate language, especially in relation to migrant workers. The UGT maintains that measures must be taken to put a halt to the operations of unauthorized or irregular placement agencies.

<sup>1659</sup> European Labour Authority (2020). *Work Programme 2021*, Brussels, p. 10.

#### (d) Bilateral, regional or multilateral agreements protecting domestic workers

871. Article 15 (1) (d) of Convention No. 189 calls on Members to consider concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices by PEAs in recruitment, placement and employment in a cross-border context. The Committee notes that a number of countries have concluded agreements aimed at preventing and addressing such practices by PEAs when domestic workers work abroad.<sup>1660</sup> In a few countries, PEAs are not allowed to recruit migrant domestic workers to work in their territory.<sup>1661</sup>

CEACR – In its comments concerning *South Africa*, the Committee noted that the Government had concluded an agreement with *Lesotho* providing that migrant domestic workers are to be issued with a written job offer before they cross national borders for the purpose of taking up domestic work. The job offers have to contain a provision requiring, upon termination of employment or resignation, the repatriation of domestic workers at the expense of the employer.<sup>1662</sup>

*Germany* – The Social Insurance Code XI excludes PEAs from the recruitment of foreign domestic workers from outside the European Union, who may only enter the country if they have been placed through a procedural arrangement between the Federal Employment Agency and the labour administration of the country of origin. The Government indicates that, in light of existing protection measures, there is no need for special bilateral agreements between the Agency and labour administrations in third countries. Workers from European Union Member States must be treated on an equal footing with German workers in relation to employment, remuneration and other working conditions.<sup>1663</sup>

<sup>1660</sup> For instance, *Argentina, Plurinational State of Bolivia, Chile, Lesotho, Mauritius, Morocco, Nicaragua and South Africa*.

<sup>1661</sup> For instance, *Germany*.

<sup>1662</sup> CEACR – *South Africa*, C.189, direct request, 2019.

<sup>1663</sup> CEACR – *Germany*, C.189, direct request, 2020.

### (e) Measures to ensure that fees charged by PEAs are not deducted from the pay of domestic workers

872. Article 15(1)(e) of Convention No. 189 requires Members to take measures to prevent PEA fees from being deducted from the remuneration of domestic workers.<sup>1664</sup> ***The Committee recalls that, when determining recruitment fees and related costs, consideration should be given to the guidance provided in international labour standards and the 2019 General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs,***<sup>1665</sup> ***which define “recruitment fees” or “related costs” as “any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection”.*** ***In this regard, the Committee also draws attention to two recent ILO studies on recruitment fees and related costs in the Americas***<sup>1666</sup> ***and in Asia.***<sup>1667</sup>

873. The Committee notes that in a number of countries PEAs are prohibited from charging fees or receiving compensation from workers in general, including domestic workers.<sup>1668</sup>

*Philippines* – Republic Act No. 10361 provides in sections 13 to 15 that any cost relating to the recruitment or placement of a domestic worker shall be borne by the prospective employer or agency. Moreover, regardless of whether the domestic worker was hired through a PEA or a third party, no share of the recruitment or finder’s fees may be borne by the domestic worker.

*United Arab Emirates* – Under section 15(11) of Federal Act No. 10 of 2017 on domestic workers, the standard contract for domestic workers requires the employer to cover the recruitment and placement fees and expenses, including fees for the worker’s identity card and those charged by Tadbeer service centres (facilities established by the Ministry of Human Resources and Emiratization to supply, train and recruit domestic workers). PEAs that are in violation of the Act can be fined between 50,000 and 100,000 Emirati dirhams, and the fine is doubled if the offence is repeated within a year.

874. In some countries, the legislation allows PEAs to charge fees to domestic workers.<sup>1669</sup>

*India* – PEAs in the country provide placement and recruitment services. In the latter case, they act as quasi-employers, partly assuming the functions of the employer and usually charging fees to both the employer and the employee.<sup>1670</sup>

<sup>1664</sup> See, for example, the [Migration Data Portal](#).

<sup>1665</sup> ILO (2019). *General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs*, Geneva, Part 2(II)(6).

<sup>1666</sup> ILO (2020). *Regional study on defining recruitment fees and related costs: The Americas*, Geneva.

<sup>1667</sup> ILO (2020). *Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic and Myanmar pay to work in Thailand*, Bangkok.

<sup>1668</sup> For instance, *Australia* (Queensland), *Bulgaria*, *Burkina Faso*, *Cambodia*, *Cyprus*, *Estonia*, *Finland*, *Hungary*, *Indonesia*, *Italy*, *Jamaica*, *Latvia*, *Malta*, *Morocco*, *Nicaragua*, *Philippines* and *Qatar*.

<sup>1669</sup> For instance, *India*, *Malaysia*, *Republic of Korea* and *Switzerland*.

<sup>1670</sup> ILO (2017). *Good practices in using partnerships*, op. cit., p. 50.



In *Malaysia*, the Association of Indonesian Migrant Domestic Workers (PERTIMIG), the Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas (AMMPO) and the IDWF indicate that the functioning and responsibilities of PEAs are regulated under the Private Employment Agencies Act, 1981. According to the Act, PEAs are allowed to deduct up to 25 per cent of the initial months' salary of an overseas recruited worker.<sup>1671</sup> The domestic workers' organizations claim that in practice many agencies deduct migrant domestic workers' full salaries for three months.

**875.** In some countries, there are exceptions from the prohibition on charging domestic workers fees in certain circumstances.<sup>1672</sup>

*Japan* – PEAs are not in principle allowed to charge workers fees for their services. However, if a housekeeper hires an agency specializing in searching for housekeeping jobs, section 4 of the Employment Security Law Enforcement Regulations permits a gross fee of 710 Japanese yen in each case, up to a total equivalent of three cases a month.

**876.** In a number of countries, measures have been taken to ensure that PEAs do not charge fees directly or indirectly to migrant domestic workers, either through the PEA or the employer.<sup>1673</sup>

CEACR – In its comments concerning the *Philippines*, the Committee noted that the Philippines Overseas Employment Administration inspects recruitment and placement agencies which place household service workers overseas. The inspection verifies the posting in the agency of the prohibition of placement fees for household service workers and examines the work contracts of all workers placed by the agency.<sup>1674</sup>

*United States* – The H-2B visa programme, which permits foreign workers to be temporarily employed as domestic workers, prohibits employers from transferring recruitment costs to workers. Employers are required to contractually prohibit in writing any agent or recruiter from seeking or receiving payments or other compensation from prospective workers.

<sup>1671</sup> *Malaysia* – Act No. 246 of 1981 (as amended on 1 Jan. 2006).

<sup>1672</sup> For instance, *Japan*.

<sup>1673</sup> For instance, *Philippines* and *United States*.

<sup>1674</sup> CEACR – *Philippines*, C.189, direct request, 2020.





# ▶ 10 Monitoring, compliance and enforcement in the domestic work sector

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877. The Committee notes that, while progress has been achieved with regard to the legal coverage of domestic workers, there are still many domestic workers who remain excluded from labour legislation (see Chapter 7). Moreover, even when they are covered by the legislation, domestic workers often experience poor working conditions and exploitation, where important gaps in the implementation of the legislation remain. The specificities of domestic work, as outlined in previous chapters, give rise to challenges in ensuring full compliance with labour legislation in the sector. The Committee therefore considers that compliance in the domestic work sector requires a combination of prevention and enforcement measures. In addition to adopting and enforcing clear and adequate legislation and taking measures to promote the awareness of employers and workers of the respective legal provisions, Members need to develop and maintain a transparent and effective complaints system, including access to effective dispute resolution mechanisms.

878. The Committee notes that there are still many obstacles in both law and practice to achieving decent work for domestic workers. However, innovative and effective measures are being implemented in many countries to ensure respect for the fundamental rights of domestic workers. These measures need to be adapted to the specific characteristics of domestic work, and include accessible and affordable legal aid for all domestic workers, effective labour inspection and industry-specific campaigns to raise public awareness of the situation and rights of domestic workers.

## ► I. Access to the courts and to appropriate, speedy, inexpensive, fair and efficient dispute resolution mechanisms

879. The right to justice is recognized by the Universal Declaration of Human Rights and other international and regional instruments.<sup>1675</sup> Article 16 of Convention No. 189 requires Members to “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”. ***The Committee emphasizes that the obligation set out in Article 16 to ensure access to fair and effective dispute resolution mechanisms encompasses all domestic workers, including migrant domestic workers. This may require special measures that take into account the barriers that domestic workers often encounter when seeking redress for violations of their rights. In addition, the institution of criminal procedures is a necessary part of ensuring decent work for domestic workers, particularly in cases of physical and sexual abuse, trafficking and forced labour (see Chapter 8).***<sup>1676</sup>

### 1. Dispute resolution mechanisms

880. Dispute resolution mechanisms include access to the courts and labour dispute settlement committees and bodies, as well as special bodies handling disputes involving domestic workers. The Committee notes that domestic workers in most countries have access to courts and tribunals in the same way as other workers.<sup>1677</sup> In addition, in a number of countries,

<sup>1675</sup> Universal Declaration of Human Rights, Arts 8 and 10, and International Covenant on Civil and Political Rights, Art. 2(3).

<sup>1676</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, para. 257.

<sup>1677</sup> For instance, Bahrain, Plurinational State of Bolivia, Bulgaria, Canada, Chile, Costa Rica, Ecuador, Finland, Germany, Ghana, Guyana, Ireland, Latvia, New Zealand, Morocco, Oman, Paraguay, Slovenia, Thailand and Trinidad and Tobago.

domestic workers also have access to the conciliation<sup>1678</sup> and mediation systems established for workers in general.<sup>1679</sup> This gives them the option of settling individual disputes with their employers informally on a voluntary basis before resorting to litigation or other enforcement measures. ***The Committee considers that domestic workers should have the possibility of settling individual disputes consensually with employers through accessible independent systems of conciliation and mediation.***

*Greece* – All domestic workers have access to the Labour Inspectorate (SEPE) labour dispute resolution mechanism,<sup>1680</sup> irrespective of their employment status (even when they are in undeclared or under-declared employment). In the context of the conciliation procedure, the SEPE may refer complaints to the relevant public prosecutor or impose administrative sanctions in cases where, after considering all the evidence, it finds a violation of the labour law.

**881.** Special bodies have been established in a number of countries to examine employment-related complaints brought by domestic workers.<sup>1681</sup>

*CEACR* – In its comments concerning *Argentina*, the Committee noted the establishment of a labour court for private household employees in the Autonomous City of Buenos Aires. The Confederation of Workers of Argentina (CTA Autonomous) indicated that domestic workers in Buenos Aires are excluded from the jurisdiction of the labour courts and are required to settle their disputes through the above court, which is administrative in nature. The Government indicated that domestic workers filing complaints outside Buenos Aires have to go through the ordinary labour courts.<sup>1682</sup>

**882.** The Committee notes that in some countries complaints mechanisms are not available to domestic workers, nor have systems been established for the mediation or conciliation of individual disputes in the sector. This often amounts to denial of justice, as access to the courts requires legal assistance and proceedings may be protracted and costly.<sup>1683</sup> ***The Committee considers that in such cases legal advice should be available free of charge and procedures should be as simple as possible.***

*CEACR* – In its comments concerning *Costa Rica*, the Committee noted that the amended Code of Labour Procedure establishes a labour unit staffed by social assistance lawyers affiliated with the Public Defence Service with the objective of providing free legal advice and ensuring effective access to justice for persons in a vulnerable situation, including domestic workers.<sup>1684</sup>

<sup>1678</sup> For instance, *Argentina, Colombia, Costa Rica, Italy, Panama and Senegal*.

<sup>1679</sup> For instance, *Plurinational State of Bolivia, Ecuador, Greece, Ireland, Lebanon, Paraguay, Philippines, Saudi Arabia, South Africa and United States of America (Massachusetts)*.

<sup>1680</sup> *Greece*, Law No. 4144/13, section 23(6).

<sup>1681</sup> For instance, *Bahrain, Pakistan and Saudi Arabia*.

<sup>1682</sup> *CEACR – Argentina*, C.189, direct request, 2019.

<sup>1683</sup> ILO (2015). *Labour inspection and other compliance mechanisms in the domestic work sector: Introductory guide*, Geneva, p. 17.

<sup>1684</sup> *CEACR – Costa Rica*, C.189, direct request, 2019.

## 2. Measures to ensure effective access to dispute resolution

883. The Committee notes that the access of domestic workers to dispute resolution mechanisms is limited in most countries. Where domestic workers are excluded from the general labour legislation (see Chapter 7), this has a direct impact on their ability to seek and obtain redress, as it significantly limits the rights that they can invoke before the courts.<sup>1685</sup> In addition, domestic workers often face many practical barriers. For example, even when such mechanisms are in place, enforcement may depend on the domestic worker filing an individual complaint. Under-reporting is common, largely because domestic workers, and particularly migrant domestic workers, are often unaware of their rights and the remedies available to them.

884. Other obstacles include costs, delays, representation, standing and the burden of proof. Placing the burden of proof on the domestic worker may amount to an insurmountable obstacle, particularly when the information and documentation necessary to establish a prima facie case are in the hands of the employer, as often occurs in cases of denial of access to employment or unfair dismissal. In recognition of this difficulty, international labour standards on termination of employment, the protection of workers' representatives and maternity protection call for at least the initial burden of proof to be placed on the employer.<sup>1686</sup> Moreover, in the case of live-in domestic workers, attempts to assert their entitlements can jeopardize both their jobs and their accommodation.<sup>1687</sup>

885. For migrant domestic workers, such obstacles are often compounded by their fear of jeopardizing their migration status. This fear is exacerbated when they are undocumented, undeclared and/or dependent on their employers for their immigration status. In such cases, they may not report abuse out of fear of arrest, detention or deportation. In some countries, domestic workers who bring a formal complaint against their employer cannot seek alternative employment while the case is before the courts, or cannot leave the country for the duration of the litigation. ***The Committee emphasizes that access to the courts and other mechanisms should be an option for all domestic workers and their employers, irrespective of their migration status.***

886. Other obstacles that may make it difficult for migrant domestic workers to claim their rights and seek redress in the event of violations include language barriers and lack of knowledge of local dispute resolution procedures. These workers often do not know who to turn to for assistance, or may be reluctant to contact the police or labour authorities for fear of deportation. These barriers, and the lengthy periods that may be needed for cases to be resolved, often result in domestic workers choosing not to file complaints or withdrawing their cases in order to return home more quickly.<sup>1688</sup>

887. The Committee observes that, in their observations, a number of workers' organizations express concern at the practical barriers that domestic workers, particularly migrant domestic workers, often face in accessing dispute resolution mechanisms, thereby jeopardizing their access to justice.

<sup>1685</sup> A. Nasri and W. Tannous (2014). *Access to justice of migrant domestic workers in Lebanon*, ILO, Geneva, p. 85.

<sup>1686</sup> For instance, the Termination of Employment Convention, 1982 (No. 158), Art. 9(2), and the Maternity Protection Convention, 2000 (No. 183), Art. 8. See ILO (2015). *HIV and AIDS and labour rights: A handbook for judges and legal professionals*, Geneva, pp. 126 and 127.

<sup>1687</sup> ILO (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)*, Geneva, p. 120.

<sup>1688</sup> United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW) (2011). General comment No. 1 on migrant domestic workers, (CMW/C/GC/1), para. 27.



In *Kuwait*, the International Domestic Workers Federation (IDWF) indicates that the law on domestic work lacks clear implementing guidelines to address disputes and to ensure strong penalties for those who breach it. One of the challenges is the absence of a domestic workers' department office to deal with workers' complaints. The IDWF maintains that, despite there being some 680,000 domestic workers in the country, there is only one office responsible for dealing with their complaints.

In *Qatar*, the Bayanihan Domestic Workers Association Qatar and the IDWF indicate that domestic workers can submit complaints to the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) through the "Amerni Qatar" mobile application. However, the application requires access to smart phones, internet connection, as well as a Qatar ID and mobile phone number registered under the name of the worker, to which not all domestic workers have access. Moreover, domestic workers can also file a complaint with the MADLSA or the National Human Rights Committee (NHRC) through their hotline number, via SMS, online form, e-mail, self-service kiosks and in person. Nonetheless, the domestic workers' organizations maintain that, according to the feedback received from domestic workers, more often than not, the hotline just rings and no one answers, very few receive callbacks, and e-mail responses take a long time. Furthermore, the domestic workers' organizations indicate that it is very rare for a dispute between an employer and a domestic worker to reach the courts. Court hearings take months and the cases drag on to the point where domestic workers are no longer able to support themselves; hence, they opt to settle with the employer.

In *Singapore*, the Ikatan Persaudaraan Pekerja Migran Indonesia (IP2MI), the Asosasyon ng mga Makabayang Manggagawang Pilipino Overseas (AMMPO) and the IDWF indicate that domestic workers who are victims of abuse can submit a complaint directly to the Ministry of Manpower or the police. However, the process of dispute resolution (mediation) is not equal as the employer may post feedback on the worker, while there is no option for workers to do the same. In many cases, this deters domestic workers from bringing a complaint out of fear that they may be blacklisted by their employer. In cases where mediation does not lead to a resolution of the dispute, the workers may go to the state court. Nonetheless, the process is lengthy, meaning that domestic workers lose their income for months or years. Moreover, the workers' organizations note that domestic workers often do not have access to free legal assistance.

**888.** Paragraph 21(1) of the Domestic Workers Recommendation, 2011 (No. 201), indicates that Members should consider additional measures to ensure the effective protection of domestic workers, and particularly migrant domestic workers. Paragraph 21(1)(a) encourages Members to consider establishing a national hotline with interpretation services for domestic workers who need assistance, and Paragraph 21(1)(e) calls for domestic workers to have access to complaint mechanisms and the ability to pursue legal civil and criminal remedies, both during and after employment. Paragraph 21(1)(f) calls on Members to provide 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.



***The Committee emphasizes that dispute resolution procedures and remedies should be freely available to all migrant domestic workers and encourages Members to take steps to ensure that these workers have the right to voice grievances without fear of intimidation or retaliation and that they enjoy access to legal aid. Moreover, destination countries should be aware of and promote the right of migrant workers to file complaints and seek redress in the event of violations.***<sup>1689</sup>

889. The Committee notes that a broad range of measures have been adopted at the national level to address the challenges that domestic workers, and particularly migrant domestic workers, may encounter in seeking access to justice. Such measures include establishing call centres<sup>1690</sup> and providing consultation and complaint services in the respective languages,<sup>1691</sup> adopting standard contracts (see Chapter 9), excluding domestic workers from the payment of litigation fees<sup>1692</sup> and establishing shelters (see Chapter 8).<sup>1693</sup>

890. In some countries, human rights associations and other bodies are allowed to denounce violations and assist domestic workers during judicial procedures. In others, special protection or a temporary residence permit are granted to domestic workers in an irregular situation.<sup>1694</sup> In a number of countries, sanctions are imposed against authorities that do not follow up complaints related to forced labour of domestic workers.<sup>1695</sup>

*Austria* – The victim support organization LEFÖ-IBF provides legal and social support in cases of human rights violations against domestic workers. It provides anonymous and first language counselling and, in emergencies, safe accommodation in a shelter.

*Myanmar* – The Department of Social Welfare has established “One Stop Women Support Centres” in various cities for women and girl victims of violence, including domestic workers. These centres provide shelter, healthcare, legal aid and psychosocial and financial support. A 24-hour help line for violence against women was launched in November 2016.

<sup>1689</sup> Nasri and Tannous (2014). *Access to justice of migrant domestic workers in Lebanon*, op. cit., p. 28.

<sup>1690</sup> For instance, *Bahrain, Oman, Saudi Arabia and Thailand*.

<sup>1691</sup> For instance, *Thailand*.

<sup>1692</sup> For instance, *Bahrain and Morocco*.

<sup>1693</sup> For instance, *Bahrain and Saudi Arabia*.

<sup>1694</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 183.

<sup>1695</sup> CEACR – *Belgium*, C.29, direct request, 2009; *Portugal*, C.29, direct request, 2009.

## ► II. Labour administration and inspection

**891.** A well-functioning labour administration and inspection system aligned with international labour standards is a key element of the effective and efficient governance of labour law. In most countries, labour inspection is the sole public function devoted specifically to the protection of workers' rights, and also advises employers on compliance with the law. Labour inspection services use a range of approaches, including prevention, information and sanctions.<sup>1696</sup>

**892.** The specificities of domestic work, including the diversity of the parties in the employment relationship, constitute a challenge when developing compliance policies, which require a detailed knowledge of the characteristics of the sector. The employer may be a member of the household for which the work is performed, or an agency or enterprise that employs domestic workers and makes them available to households. Measures that work in one case do not necessarily work in others.<sup>1697</sup> In addition, there are still countries in which domestic workers are excluded from the scope of the general labour legislation, or where they are afforded less protection under the law (see Chapter 7). In such cases, labour inspectors are not empowered to provide appropriate protection to workers. Nevertheless, even in countries where the labour legislation applies to domestic workers, the sector may not fall under the authority of labour inspectors, whose mandate may be limited to industry and commerce, may not extend to the informal economy, or may only cover employers with over a certain number of employees.<sup>1698</sup> Moreover, the Committee notes that, even where their inspection mandate covers all workers, inspection services may lack enforcement capacity and, in practice, be limited to providing advice.<sup>1699</sup>

**893.** Article 17(1) of Convention No. 189 calls on Members to establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

CEACR – In its comments concerning *Qatar*, the Committee noted the Government's indication that access to the complaints mechanism is free of charge and the related information is available in 11 languages. The Committee further noted the establishment of Labour Dispute Settlement Committees, which cover all disputes related to the provisions of the law or the work contract. Where a dispute arises, the worker or employer concerned first has to submit the case to the Labour Relations Department, which takes the necessary measures to settle the dispute amicably. If the dispute is not settled, or the worker or employer refuses the settlement, it is referred to the Labour Disputes Settlement Committee, the decision of which is subject to appeal through an expedited procedure. In addition, a protocol has been agreed upon between the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) and the ILO allowing workers to submit complaints with the facilitation of the ILO Office in Doha.<sup>1700</sup>

<sup>1696</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 244.

<sup>1697</sup> ILO (2015). *Labour inspection and other compliance mechanisms*, op. cit., p. 16.

<sup>1698</sup> *ibid.*, p. 17.

<sup>1699</sup> *ibid.*

<sup>1700</sup> CEACR – *Qatar*, C.29, observation, 2020.

*Saudi Arabia* – The Government reports that labour offices are competent to receive complaints and control violations by either domestic workers or employers. In addition, 39 committees have been established throughout the country to deal with complaints from domestic workers and disputes concerning non-criminal violations of the Regulation on domestic work within a period of ten days.<sup>1701</sup> The “Your Labour Consultant” service is available in Arabic and English to respond to enquiries relating to the legislation on domestic workers. The Ministry of Labour call centre also handles enquiries, complaints and reports.

**894.** Article 17(2) of the Convention provides that 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”. Arrangements to ensure compliance need to be adapted to the special circumstances of domestic work and take into consideration the needs of domestic workers and households, particularly regarding privacy. Taking into consideration the differences in labour inspection and enforcement procedures in the various countries, the Committee notes that the Convention does not prescribe the type of inspection or enforcement arrangements that should be adopted.<sup>1702</sup>

**895.** The Labour Inspection Convention, 1947 (No. 81), its 1995 Protocol (which extends the labour inspection system to non-commercial services), and its accompanying Recommendation No. 81, the Labour Administration Convention, 1978 (No. 150), and its accompanying Recommendation No. 158, establish the basic regulatory framework for labour inspection. These instruments set out the principles governing the organization of the system, inter-agency action and the functions, prerogatives and ethical duties of labour inspectors. Three key elements of these instruments are particularly relevant for the effective enforcement of the rights of domestic workers, as they set out the role of labour inspection in: (i) providing technical information and advice to ensure compliance, while promoting preventive measures; (ii) promoting effective cooperation between inspection services and other government services and public or private institutions, as well as collaboration between officials of the labour inspectorate and employers and workers or their organizations; and (iii) ensuring enforcement of legal provisions, for instance through inspection visits.<sup>1703</sup>

**896.** The Committee observes that, in some countries, the labour inspectorate is also responsible for verifying the legality of workers’ immigration status. Most countries hold only the employer accountable where illegal work is detected. However, when the workers concerned are migrants in an irregular situation, they face losing their job as well as the possibility of deportation. The Committee recalls that, in such circumstances, if the inspector’s function is to be compatible with the objective of labour inspection, verification of the legality of employment should have as its corollary the reinstatement of workers’ statutory rights. This objective can only be met if these workers are convinced that the primary duty of the inspector is to enforce the legal provisions relating to conditions of work and protection of workers. In this respect, the Committee recalls that the primary duty of labour inspectors is to protect workers rather than to enforce immigration law.<sup>1704</sup>

<sup>1701</sup> *Saudi Arabia*, Regulations on domestic work, sections 20 and 21.

<sup>1702</sup> ILO (2011). *Decent work for domestic workers*, Report IV(2A), International Labour Conference, 100th Session, Geneva, p. 50. Recommendation No. 201 provides additional guidance in this regard.

<sup>1703</sup> ILO (2010). *Decent work for domestic workers*, Report IV(1), op. cit., para. 245.

<sup>1704</sup> ILO (2006). *Labour inspection*, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) (hereinafter General Survey on labour inspection), International Labour Conference, Report III (Part 1B), 95th Session, Geneva, para. 78.

897. Differences between national labour inspection systems may also influence the level of protection of the rights of domestic workers. The Committee notes that in most countries the mandate of the labour inspectorate covers all workers, including domestic workers.<sup>1705</sup> However, some of the working conditions of domestic workers may not be covered by labour inspection. In a number of countries, special labour inspection services have been established for domestic work.<sup>1706</sup> In others, the labour inspectorate has no competence to monitor compliance in the domestic work sector.<sup>1707</sup>

898. In some countries, the labour inspectorate has launched specific campaigns to raise awareness of the rights of domestic workers.

*Spain* – The main aim of the inspection campaign undertaken in 2021 in the family service sector is action to combat the irregular economy, with priority being given to: complaints and communications received by the labour and social security inspection services, technical assistance and awareness-raising, for both employers and workers in the sector; and the regularization of wages below the inter-occupational minimum wage and the corresponding regularization of social security contributions.

899. Various different approaches to securing compliance are adopted by labour inspection services, including the provision of technical information and advice, cooperation with the respective actors, and enforcement measures and penalties, where appropriate.

## 1. Provision of technical information and advice

900. The Committee notes that in most countries the labour inspectorate has the legal mandate to provide technical information and advice to employers, workers and their organizations.<sup>1708</sup> It observes that different approaches have been adopted to ensuring the access of domestic workers and employers to information. In some countries, the labour inspectorate has developed booklets with information on rights and obligations in different languages. Other measures include awareness-raising campaigns on domestic workers' rights, the establishment of a national day for domestic work and websites with relevant information.

901. The Committee considers that it is important to involve labour inspection services in the provision of information to domestic workers before they enter into an employment relationship. In some countries, inspectors provide information materials or participate in awareness-raising campaigns on the legal rights and obligations of domestic workers before they accept a position.<sup>1709</sup>

<sup>1705</sup> For instance, *Bulgaria, Cyprus, Finland, France, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, South Africa, Spain and Sweden*.

<sup>1706</sup> For instance, *Ghana* (Domestic Servant Service Policy), *Jordan* (Directorate for the Protection of Domestic Workers), *Saudi Arabia* and *Uruguay*.

<sup>1707</sup> For instance, *Austria, Germany, United Kingdom* and *Yemen*.

<sup>1708</sup> For instance, *Benin, Plurinational State of Bolivia, Brazil, Burkina Faso, Chile, Ecuador, Gabon, Guatemala, Mexico, Morocco, Mozambique, Niger, Slovenia, Spain and Tunisia*.

<sup>1709</sup> ILO. "Module 16: Labour inspection in domestic work", *ITC-ILO Curriculum on Building modern and effective labour inspection systems*, p. 30.

## 2. Promoting effective cooperation

902. Labour inspectors may be required to deal with a broad range of issues in the domestic work sector. It is therefore useful for them to cooperate regularly with other government agencies. For instance, action to combat child labour in the domestic work sector requires cooperation between different ministries and government agencies in the fields of labour, education and social services (see Chapter 8). Moreover, as the respective objectives of social security and labour inspection services are complementary, strengthened coordination is required, which may include the systematic communication of information on cases and conditions, especially where resources are limited.<sup>1710</sup>

903. Cooperation with organizations of domestic employers and workers, as well as civil society organizations, can also be valuable in reaching out to domestic workers, sharing information and facilitating inspection. ***The Committee considers that collaboration with the social partners and effective social dialogue are prerequisites for efficient labour inspection.***<sup>1711</sup>

*Ecuador* – The Ministry of Labour has collaborated with the Association of Paid Domestic Workers of Guayaquil in conducting 14,000 home inspections in middle- and upper-class urban areas.<sup>1712</sup>

## 3. Law enforcement

904. In most countries, the labour inspectorate is the primary agency responsible for the monitoring and enforcement of labour legislation, and the methods adopted include inspection visits. However, the Committee notes that labour inspectors may be prohibited by law from effectively monitoring compliance with the legal obligations and rights in the domestic work relationship where monitoring involves entry into private homes. Article 12(1)(a) and (b) of Convention No. 81 provides that labour inspectors “provided with proper credentials shall be empowered: (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection; (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection”. However, in the case of domestic work, this mandate may conflict with the privacy of the employer and the household.<sup>1713</sup> ***The Committee recommends a balance in this respect. For example, respect for privacy does not need to include an absolute ban on inspection visits. The Committee considers in this regard that the consent of the employer or occupant of a household, or prior authorization by a judicial authority, ensures respect for the principle of privacy, while balancing this with workplace rights.***<sup>1714</sup>

905. Article 17(3) of Convention No. 189 provides that: “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.” Taking into account

1710 ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 169.

1711 ILO (2015). *Labour inspection and other compliance mechanisms*, op. cit., pp. 37 and 38.

1712 ILO (2017). “[Implementation of international labour standards for domestic workers](#)”, What Works, Research brief No. 9, p. 3.

1713 Universal Declaration of Human Rights, Art. 12, and International Covenant on Civil and Political Rights, Art. 17. A similar situation arises with regard to home work. The fact that it is carried out in the worker's house or in a place of her or his choice makes control by the public authorities and the employer more difficult, as there is a need to balance the exercise of control with the right to the worker's privacy. See: 2020 General Survey on employment and decent work, op. cit., para. 562.

1714 ILO (2006). General Survey on labour inspection, op. cit., para. 264.

the particular vulnerability of migrant domestic workers, Paragraph 24 of Recommendation No. 201 indicates that: “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.”<sup>1715</sup>

906. The Committee notes that in most countries inspections of private homes are only allowed with the prior consent of the homeowner or occupier, or with prior judicial authorization.<sup>1716</sup> Accordingly, the ability of inspectors to carry out routine inspections is often restricted as, in many cases, it is necessary to show a reasonable presumption of non-compliance to obtain judicial authorization for inspection.<sup>1717</sup> ***The Committee considers that it may be useful to promote capacity-building for labour and social security inspectors to reinforce their ability to fulfil the legal requirements for household inspections in appropriate circumstances.***<sup>1718</sup> ***In addition, awareness-raising activities could be undertaken for the judiciary on international and national standards on domestic work and the circumstances in which inspections of private households may be permitted for enforcement purposes, while respecting privacy.***<sup>1719</sup>

907. The Committee observes that a growing number of countries have taken proactive measures to enhance labour inspection and enforcement mechanisms in the domestic work sector.

CEACR – In its comments concerning *Uruguay*, the Committee noted with interest that the methodology used by the labour inspectorate in the domestic work sector is based on: specific complaints, routine inspections, operations covering broad sectors of workers at a particular time, and coordinated inspections with an integrated approach (that is, involving action with other bodies with competence in related areas, for example covering migrant workers, the work of young persons or human trafficking for labour exploitation). The Government indicated that there is a protocol for complaints under which, in the event that informal domestic work is suspected, the household concerned is automatically inspected, together with other households in the area. This meets the dual objective of conducting inspections in a large number of households, while preventing the complainant from being exposed. Since 2013, the number of complaints received has increased and a special scheme is being developed to detect domestic work undertaken by foreign nationals. The Committee also noted a report highlighting a qualitative increase in inspections in the sector through such measures as the reinforcement of training for labour inspectors on legislation covering domestic work. According to the report, many cases of non-compliance identified during inspections consist of infringements regarding wages and situations of vulnerability of foreign workers mainly originating from *Plurinational State of Bolivia, Brazil, the Dominican Republic, Paraguay and Peru*. The Government indicated that it has received requests from other Latin American countries to share good inspection practices in the domestic work sector.<sup>1720</sup>

<sup>1715</sup> Para. 21(1)(b) of Recommendation No. 201 indicates that, consistent with Art. 17 of the Convention, Members should consider “providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed”.

<sup>1716</sup> For instance, *Canada* (Manitoba), *Croatia*, *Czechia*, *France*, *Honduras*, *Ireland*, *Luxembourg*, *Montenegro*, *New Zealand*, *Pakistan*, *Panama*, *Spain*, *Tunisia*, *United Arab Emirates* and *Uruguay*.

<sup>1717</sup> L. Lexartza, M.J. Chaves and A. Carcedo (2016). *Políticas de formalización del trabajo doméstico remunerado en América Latina y el Caribe*, ILO, Lima, p. 30.

<sup>1718</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 168.

<sup>1719</sup> ILO. “Labour inspection in domestic work”, ITC-ILO Curriculum, op. cit., pp. 33 and 34; and ILO (2015). *Labour inspection and other compliance mechanisms*, op. cit., p. 33.

<sup>1720</sup> CEACR – *Uruguay*, C.189, observation, 2018.

*Ireland* – The Irish labour inspectorate uses employer data from a variety of sources, including revenue, social protection and other State bodies, to conduct proactive inspections. Inspectors require the permission of owners to enter domestic premises. To limit the risk of refusal, inspectors issue a standard appointment letter which is combined with a code of practice on employment in other people's homes and a leaflet on domestic work. The approach has proved to be successful in securing access to domestic premises (it is estimated that between 70 and 80 per cent of requests for entry were granted during the period 2011–16) and in informing both employers and employees of labour law requirements in the domestic setting.<sup>1721</sup>

**908.** In other countries, labour inspectors do not have the authority to enter private households.<sup>1722</sup> In such cases, access to private households may be granted to the police through a judicial warrant in the event of suspected violations, such as forced labour or human trafficking.<sup>1723</sup> In some cases, the inviolability of the home is limited in the event of specific risks to the health and development of underage domestic workers.<sup>1724</sup> In certain countries, enforcement agents are entitled to carry out inspections of private employment agencies that place domestic workers.<sup>1725</sup>

In *Peru*, the National Federation of Domestic Workers of Peru (FENTTRAHOP) stresses the importance of sections 22 to 25 of Act No. 31.047, which establish that: (i) in cases of forced labour or child labour in domestic work, the labour inspectorate may adopt provisional measures to ensure the effectiveness of the final resolution of the procedure; (ii) when the employer refuses to give a statement or grant facilities to verify compliance with workers' rights, the labour inspector shall draw up a report setting out the complainant's version of the facts, which shall be presumed to be true for all legal purposes; (iii) in case of risk to the physical or psychological health of the domestic worker, as an urgent protective measure, the authorities may order the protection of these rights without the need for judicial authorization; and (iv) the truth of the assertions made by the domestic worker will be deemed conclusive in the event of the material impossibility of obtaining evidence due to obstruction, negligence or bad faith by the employer of the domestic worker.<sup>1726</sup>

<sup>1721</sup> T. Hastings (2018). "Best practice fiche: Inspections of private households as places of employment: Ireland" (The European Platform tackling undeclared work), European Commission.

<sup>1722</sup> For instance, *Austria, Cabo Verde, China, Dominican Republic, Estonia, Germany, Greece, Guatemala, Norway, Poland, Senegal, Togo, Trinidad and Tobago, United Kingdom and United States*.

<sup>1723</sup> For instance, *Estonia and United Kingdom*.

<sup>1724</sup> For instance, *Germany* (Working Hours Act, section 17(5), and Youth Employment Protection Act for the prevention of urgent risks to public safety and order, section 51(2)).

<sup>1725</sup> For instance, *Kuwait* (Law No. 68 of 2015, section 44) and *United Arab Emirates* (Federal Decree No. 10 of 2017 (1438) on domestic workers, section 19(3)).

<sup>1726</sup> *Peru*, [Act No. 31.047 of 2020 on household workers](#).



In *Singapore*, the domestic workers' organizations IP2MI and the AMMPO and the IDWF indicate that, under the Employment of Foreign Manpower Act, the labour inspector is responsible for monitoring and inspecting the private household to ensure the well-being of migrant domestic workers. The inspector will randomly visit houses to check and interview migrant domestic workers to ensure their well-being in the workplace. However, the domestic workers' organizations claim that these measures have not stopped abuse and exploitation of domestic workers, as it is very difficult for domestic workers to file complaints when they are being abused. In addition, the workers' organizations maintain that many domestic workers are not allowed to take their rest day, their passports and permits are retained and their wages are not paid for months.

909. Due to the complexity of labour inspection in the domestic work sector in relation to the principle of the inviolability of the home, a number of Member States have requested ILO technical assistance to address the issue.<sup>1727</sup>

## 4. Penalties

910. Article 17(2) of Convention No. 189 calls on Members to develop and implement penalties for violations of the legal provisions respecting domestic workers, with due regard to the special characteristics of domestic work.<sup>1728</sup> The Committee notes that, in most countries, the sanctions imposed by the labour inspectorate in the domestic work sector include fines, terms of imprisonment, or a combination of both. In countries where most domestic workers are migrants, the labour inspectorate or other competent authorities can prevent non-compliant employers from obtaining visas for migrant workers<sup>1729</sup> and/or prohibit them from employing migrant domestic workers for a certain period of time.<sup>1730</sup>

*Kuwait* – Act No. 68 of 2015 on the Employment of Domestic Workers provides in section 30 that “in the event a complaint is proved against the employer before the Department of Domestic Labour, no further entry visas will be issued for that employer for a period defined in the executive regulations of this law”.

911. In a number of countries, with the aim of increasing deterrence, joint and several liability schemes have been established in law which hold private employment agencies or companies that provide domestic work to households liable in the event of violations (see Chapter 9).<sup>1731</sup>

1727 For instance, CEACR – *Costa Rica*, C.189, direct request, 2019; *Ecuador*, C.189, direct request, 2020; *Panama*, C.189, direct request, 2018.

1728 See also Convention No. 81, Art. 18.

1729 For instance, *Jordan* and *United Arab Emirates*.

1730 For instance, *Saudi Arabia*.

1731 For instance, *South Africa*.

## 5. Other measures

912. Although the right to household privacy prevails in all jurisdictions, with exemptions normally requiring judicial authorization or the consent of the owners and/or occupants, the Committee notes that surveillance by labour inspection services of compliance with labour legislation does not necessarily require actual workplace visits. A number of new inspection methods have been developed for the enforcement of the rights of domestic workers which do not involve entering private households. These methods include reviewing contracts and interviewing domestic workers and employers at the door.<sup>1732</sup>

### (a) Registers of domestic workers

913. The Committee notes the absence of official registers of domestic workers and their employers in most countries, as domestic workers often enter the labour market through informal arrangements, which contributes to difficulties of detection and regulation.<sup>1733</sup> However, in some countries, a requirement has been introduced to register domestic workers with an appropriate authority,<sup>1734</sup> and in some of these cases a specific register has been established for this purpose (see also Chapter 9).<sup>1735</sup>

### (b) Interviews with employers, workers and third parties outside the workplace

914. In some countries, the employer may be summoned to the labour inspection offices and interviewed to ensure compliance with minimum occupational safety and health and other labour rights in the domestic workplace.<sup>1736</sup>

*Dominican Republic* – When irregularities occur in the context of domestic work, the labour inspectorate invites the parties to come to the offices of the Ministry of Labour to seek a consensual solution, thereby complying with Article 44 of the Constitution respecting the inviolability of the home.

### (c) Checking of documents

915. In some countries, documentation of compulsory registration or social security affiliation is requested from the employer<sup>1737</sup> and verified without entering the household, unless the employer's consent for entry has been obtained.

*Chile* – The Labour Code provides in section 146 *ter* that an employer who is requested by a labour inspector to allow access to the household may permit the inspector to enter the household. Alternatively, the employer may request an appointment to go to the premises of the labour inspectorate to provide the required documentation.

<sup>1732</sup> Lexartza, Chaves and Carcedo (2016). *Políticas de formalización del trabajo doméstico*, op. cit., pp. 31–34.

<sup>1733</sup> ILO (2021). *Making decent work a reality for domestic workers*, op. cit., p. 165.

<sup>1734</sup> For instance, *Argentina, Plurinational State of Bolivia, Brazil, Chile and Peru*.

<sup>1735</sup> For instance, *Peru*.

<sup>1736</sup> For instance, *Saudi Arabia and Spain*.

<sup>1737</sup> For instance, *France and New Zealand*.

### ► III. Information, awareness-raising and training for employers, workers and the general public

916. A key measure for ensuring compliance is to make information on laws and regulations on domestic work available to employers and workers, and to the public in general. Lack of knowledge by domestic workers and their employers of their legal obligations and rights is a major reason for non-compliance in most countries.<sup>1738</sup> In some countries, the labour inspection services have undertaken awareness-raising campaigns and set up hotlines or call centres to provide information on domestic workers' rights. ***The Committee recalls that special attention should be paid in such initiatives to factors of relevance to the domestic work sector, such as language and literacy barriers, confidence in public services and access to the media.***<sup>1739</sup>

*Zimbabwe* – In 2016, with ILO support, the Ministry of Public Service, Labour and Social Welfare produced a handbook for potential migrant and national domestic workers on their rights and obligations.<sup>1740</sup>

917. The Committee notes that the awareness-raising and information dissemination activities undertaken by governments and the social partners rely on a range of different media, including printed materials, television, internet and radio broadcasts.

*Ecuador* – The Interinstitutional Forum to Support the Rights of Paid Women Household Workers, established in 2019, has undertaken activities for women domestic workers involving a broad range of actors, including organizations representing women domestic workers. The activities have included the publication of a booklet "Paths of support for paid women domestic workers in cases of violations of their rights, harassment and violence at work", as a tool to provide information on the support available from the penal and labour authorities. The booklet is available on the website of the Ministry of Labour and has been distributed at events organized by the unions of paid women domestic workers.

In *Argentina*, the General Confederation of Labour of the Argentine Republic (CGT-RA) indicates that the Government has taken measures to promote the formalization of domestic work through providing tax incentives for employers. The Government has also promoted domestic workers' rights through awareness-raising campaigns and inspections in the domestic work sector authorized by the police or the courts. It also refers to the UN Women campaign #CuidarEsTrabajo (#CaringIsWork). This initiative aims to reclaim the voice of women health workers, caregivers and community leaders in the context of the COVID-19 pandemic and to reinforce the message that the work they do is socially useful work that should be valued and remunerated.<sup>1741</sup>

<sup>1738</sup> ILO. "Labour inspection in domestic work", ITC-ILO Curriculum, op. cit., p. 30.

<sup>1739</sup> *ibid.*

<sup>1740</sup> Ministry of Public Service, Labour and Social Welfare of Zimbabwe (2016). *Domestic workers in Zimbabwe: Know your rights and obligations – An information guide for domestic workers in Zimbabwe*.

<sup>1741</sup> UN Women (2020). Coronavirus: #CuidarEsTrabajo, la campaña que muestra que las mujeres son mayoría en el sector del cuidado y la salud, Latin America and the Caribbean, 8 May 2020.

In *Kuwait*, the Sandigan Kuwait Domestic Workers Association and the IDWF indicate that, before 2010, no one was talking about domestic workers' issues and cases of abuse and ill treatment suffered by domestic workers were normalized and hidden behind closed doors. The domestic workers' organizations indicate that they have been adopting measures to promote and protect domestic workers' rights, including holding forums and focus group discussions with domestic workers. Sandigan Kuwait indicates that it was rescuing 10 to 20 domestic workers a day, and spearheaded activities to advocate for domestic workers' rights in collaboration with, among other actors, local and international advocates, non-governmental organizations and the ILO. It also organizes other activities, such as a yearly campaign for International Domestic Workers Day that recognizes model employers and domestic workers from different nationalities who have remained with the same employer for 20 years or more.

**918.** Paragraph 21 of Recommendation No. 201 provides guidance on the measures that can be taken to ensure the effective protection of migrant domestic workers, and particularly information and awareness-raising measures. Paragraph 21(d) calls on Members to consider raising employers' awareness of their obligations by providing information on good practices in the employment of domestic workers, the requirements of employment and immigration law respecting migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers.

*Ireland* – The Workplace Relations Commission has published a leaflet on the employment rights of domestic workers, which contains information on minimum wages, rules on working hours and complaints mechanisms. It is available online in various languages.<sup>1742</sup>

**919.** Paragraph 21(2) of the Recommendation indicates that Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, including by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services.

*Indonesia* – The Government has taken measures to protect Indonesian domestic workers before they go abroad, while working abroad and after returning, including: the provision of information; improving the quality of prospective migrant workers through work education and training; establishing the Anti-human Trafficking (TPPO) Task Force to prevent criminal acts of trafficking in persons; concluding bilateral agreements with destination countries for the protection of migrant workers; and extending the functions of labour attachés in countries of destination (including services such as mediating in disputes between Indonesian migrant workers and employers in the destination country).

<sup>1742</sup> *Ireland*, Workplace Relations Commission (WRC). [Employment rights of domestic workers in Ireland](#).

920. Other preventive action to address some of these challenges includes the establishment of incentives and tools for employers to help them meet their legal obligations, such as tax deductions for domestic workers<sup>1743</sup> and service employment vouchers.<sup>1744</sup>

921. The Committee also notes that social dialogue platforms and special working groups in the domestic work sector have been set up in some countries to promote the enforcement of domestic workers' rights.

In *Bangladesh*, the National Domestic Women Workers Union (NDWWU) indicates that the Government has adopted a set of measures aimed at promoting domestic workers' rights, including establishing a Central Monitoring Cell (CMC), a body formed by the Ministry of Labour and Employment to support the implementation of the Domestic Workers Protection and Welfare Policy (2015). Trade unions and non-governmental organizations are represented in the CMC. The Government is also carrying out awareness-raising campaigns on the Policy using the mass media. In addition, free legal support and financial help is provided to domestic workers who are victims of abuse. However, the NDWWU maintains that, despite the Policy provisions, there is no visible action by the Government.

In *Peru*, the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), the General Confederation of Workers of Peru (CGTP) and the Single Confederation of Workers of Peru (CUT-Peru) indicate that Act No. 31.047 establishes two mechanisms to ensure compliance with its provisions. First, the Act provides for the creation of a working group that provides a space for social dialogue. The working group is composed of, among others, representatives of the Ministry of Labour and Employment Promotion, the Ministry of Women and Vulnerable Populations and the trade union organizations representing domestic workers. The working group will meet once a month with the aim of promoting respect for the rights of domestic workers. Second, the Act provides for an accountability mechanism, consisting of a publication and an annual report on compliance with the Act. The purpose of this report is to provide detailed information on compliance and, eventually, to flag the need to issue supplementary or amending regulations.<sup>1745</sup>

<sup>1743</sup> For instance, *Finland, Luxembourg, Republic of Korea and Sweden*.

<sup>1744</sup> For instance, *France and Belgium*.

<sup>1745</sup> On 27 Oct. 2021, Ministerial Resolution No. 208-2021-TR was adopted, creating the multi-sectoral working group "Working Group to promote compliance with the rights of domestic workers".





# ▶ 11 The migration of nursing personnel and domestic workers

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## ► I. The importance of gender in the migration context

922. Migrant workers are employed in a wide range of care jobs at varying skill levels, and include health professionals who are employed as nurses, midwives or care aides, as well as domestic workers. The care workplace ranges from home-based care or domestic work to institution-based care. The vast majority of these migrant workers are women (see Chapter 1). They have a broad range of profiles and take different migration pathways from countries of origin to those of destination.<sup>1746</sup> Migration has a major impact on the lives of millions of care economy workers. This chapter addresses the impact of migration in relation to both nursing personnel and domestic workers.

923. While migration offers opportunities for better living and working conditions for many workers, and the possibility of sending money home to their families, it can also present significant risks. Migration begins with departure from a country of origin and travel to a country of destination. The journey often includes transit through one or more countries. These different steps may expose migrants, particularly female migrants, to risks of exploitation, harassment or abuse (see Chapter 8). In addition, migration can take both regular and irregular routes. Not infrequently, migrant workers enter their host country as “regular” migrants, only to fall into irregular situations once their work visas expire, thereby exacerbating their already vulnerable situation.

924. Once they arrive in the country of destination, the migrant nurse or domestic worker may settle and remain in the country of destination indefinitely. However, if and when migrant workers return to the country of origin, they may encounter a variety of challenges in reintegrating into the workforce and into local society. Moreover, the COVID-19 pandemic has interrupted the migration cycle, causing immobility and system disruption. It has also exacerbated the unique vulnerabilities of migrant care workers across the globe.

925. The Committee recalls that both nursing personnel and domestic workers are protected by the labour migration instruments, namely the Migration for Employment Convention (Revised), 1949 (No. 97), and its accompanying Recommendation No. 86, as well as the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and its accompanying Recommendation No. 151. These instruments provide protections for workers from the moment of departure from the country of origin, during transit through other countries and arrival in the country of destination, as well as providing for repatriation.<sup>1747</sup> In addition, the Committee recalls that the United Nations 2030 Agenda for Sustainable Development highlights the importance of labour migration globally, drawing attention to the need to protect migrant workers.<sup>1748</sup>

926. The Committee notes that the migration pathways of nursing personnel and domestic workers frequently intersect, but that the high entry and regulatory requirements for trained nurses distinguish the two occupational groups. In some cases, however, migrant nurses whose foreign qualifications are not recognized in the destination country may decide to accept jobs that do not require formal qualifications, such as in the domestic work sector,

1746 A. King-Dejardin (2019). *The social construction of migrant care work: At the intersection of care, migration and gender*. Geneva, ILO, p. 1.

1747 ILO (2016). *Promoting fair migration: General Survey concerning the migrant workers instruments*, International Labour Conference, 105<sup>th</sup> Session, para. 83 (hereinafter 2016 General Survey concerning the migrant workers instruments). See also: *United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990.

1748 In this respect, target 8.8 calls on governments to “protect labour rights and promote secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”. In addition, target 10.7 calls for governments to develop and implement policies to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”. See: United Nations General Assembly, resolution 70/1: *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (2015).

that require them to perform tasks, such as cooking and cleaning in addition to nursing care.<sup>1749</sup> Accordingly, in some countries along the migration pathway, migrant nurses may accept employment as caregivers or domestic workers in order to remain in a country, regardless of their education and occupational background.<sup>1750</sup>

#### Nurse and domestic worker migration

The Canada Caregiver Program (CCP) introduced in 2014 (replacing the Live-in Caregiver Program (LCP) in place from 1992 to 2014), illustrates the link between nursing and domestic work migration frameworks. The programme was designed to fill a specific labour shortage in the country, namely the shortage of people willing to reside in private households to provide care to members of these households. The CCP enables caregivers (including health professionals, nannies and low-skilled caregivers) to migrate to Canada to provide childcare or care to individuals with medical needs. While the CCP provides two main pathways to permanent residency – healthcare (including elder care) and childcare, each pathway is capped at 2,750 places per year. Caregivers who migrate through this programme can choose to live in or out of the employer's household. They may become eligible for permanent residency after a minimum of two years of work in Canada. However, while CCP workers were increasingly caring for persons with complex care needs, the programme has also contributed to the deskilling of nursing personnel (going from registered nurse to registered nanny).<sup>1751</sup>

#### The risk of deskilling for migrant nurses

Many highly-skilled migrant women, including nurses and midwives, who migrate to advance their careers and livelihoods and secure a better standard of living, may end up being deskilled as care workers. A study of migrant women in the social care industry in England found that nurses may emigrate, only to encounter institutional barriers that prevent the conversion of their qualifications, leaving them in poorly remunerated occupations where they are not able to use their education or skills. The study interviewed 54 carers, many of whom were former healthcare professionals (nurses, midwives and physical and occupational therapists) in their countries of origin. In their jobs as carers in the country of destination, they found themselves providing care for elderly persons with personal physical needs, including helping them to dress, eat, go to the toilet and manage other daily routines, such as cleaning and cooking. They reported that they were not using their former professional skills and expertise and that they were being deskilled as carers.<sup>1752</sup> Some reported having been misled by recruiters, such as a former nurse who believed her recruitment agency when she was told she was migrating to become a nurse in England, only to become a cleaner and carer instead.<sup>1753</sup>

<sup>1749</sup> For instance, as in the example of the Canadian Caregiver Program (CCP) in *Canada*.

<sup>1750</sup> M.-J. Tayah (2016). *Decent work for migrant domestic workers: Moving the agenda forward*, Geneva, ILO.

<sup>1751</sup> King-Dejardin (2019). *The social construction of migrant care work*, op. cit., pp. 79–82. See also I.L. Bourgeault et al. (2009). *The role of immigrant care workers in an ageing society: The Canadian context and experience*, McMaster University, University of Ottawa, and Queen's University.

<sup>1752</sup> International Organization for Migration (IOM) (2012). *Crushed hopes: Underemployment and deskilling among skilled migrant women*, pp. 37–51.

<sup>1753</sup> *ibid.*, at p. 55. See also G. Pratt (1999). "From registered nurse to registered nanny: Discursive geographies of Filipina domestic workers in Vancouver, B.C.", *Economic Geography*, 75(3) (July 1999), pp. 215–236.

## ► II. International migration of nurses

927. Migrant healthcare workers, including all categories of nursing personnel, make up a significant percentage of the migrant workforce. According to the 2020 State of the world's nursing report, 3.7 million nurses (13 per cent of all nursing personnel) were born or trained in a country other than the one in which they practice.<sup>1754</sup> Similarly, a 2020 report of the Organisation for Economic Co-operation and Development (OECD) concludes that 16 per cent of the nursing workforce in OECD countries are migrants.<sup>1755</sup>

928. There are a number of “push-pull” factors that influence a nurse’s decision to migrate. Nursing personnel may be pushed to migrate to escape poor working conditions, lack of education or career opportunities or difficult national conditions, such as conflict or environmental concerns. They may be motivated to migrate by “pull” factors, such as better pay and working conditions, the need to send money home to their families, as well as to secure improved career prospects and quality of life opportunities.<sup>1756</sup> Private employment agencies may offer significant financial and transition incentives to encourage nurses to migrate; however, these sometimes fail to materialize once the nurse arrives in the host country. Upon arrival, some migrant nurses may be forced to work in less attractive areas, accept cuts in pay and even shoulder responsibility for the procedures and expenses associated with obtaining registration or licensure in the host country.<sup>1757</sup>

929. The Committee notes that the top OECD destination countries for foreign-trained migrant nurses, based on their share in the nursing labour force, ranges from *New Zealand* (26 per cent), *Switzerland* (25 per cent), *Australia* (18 per cent), the *United Kingdom of Great Britain and Northern Ireland* (15 per cent), *Canada* (8 per cent), *Germany* (8 per cent) and *United States of America* (6 per cent).<sup>1758</sup> The most recent OECD average for nurses noted that “the number of foreign-born nurses increased by 20 per cent between 2010/11 and 2015/16, while the overall increase in nurses was about 10 per cent, so the share of foreign-born nurses increased by an average of 1.5 percentage points to 16.2 per cent”.<sup>1759</sup> The OECD indicates that the proportions of foreign-born doctors and nurses are highest in the main countries of destination<sup>1760</sup> and European countries such as *Luxembourg* and *Switzerland*, where large numbers of migrants head.<sup>1761</sup> It notes that, for all foreign-born nurses who practice in OECD countries, the *United States* remains the primary country of destination, with 45 per cent, followed by *Germany* (15 per cent) and the *United Kingdom* (11 per cent).<sup>1762</sup>

930. Migration patterns also vary significantly in terms of the countries of origin and destination of migrant nursing personnel. Across all OECD countries, the *Philippines* and *India* figure prominently as countries of origin of migrant nurses, occupying first and second place, respectively.<sup>1763</sup> For instance, migrant nurses from the *Philippines* accounted for 28 per cent of foreign-born nurses in the *United States*, followed by *India* at 6 per cent and *Nigeria* at 5 per cent.

1754 WHO (2020). *State of the world's nursing 2020: Investing in education, jobs and leadership*, Geneva, p. 47.

1755 OECD (2020). *Contribution of migrant doctors and nurses to tackling COVID-19 crisis in OECD countries*, Paris, p. 2.

1756 M. Kingma (2006). *Nurses on the move: Migration and the global health care economy*, London, Cornell University Press; E. Castro-Palaganas et al. (2017). “An examination of the causes, consequences, and policy responses to the migration of highly trained health personnel from the Philippines: The high cost of living/leaving – A mixed method study”, *Human Resources for Health*, 15(25); M. Walton-Roberts et al. (2017). “Causes, consequences, and policy responses to the migration of health workers: Key findings from India”, *Human Resources for Health*, 15(1:28); R. Labonté et al. (2015). “Health worker migration from South Africa: Causes, consequences and policy responses”, *Human Resources for Health*, 13(1:92).

1757 J. Connell and B. Stilwell (2006). “Merchants of medical care: Recruiting agencies in the global health care chain”, in C. Kuptsch (ed.). *Merchants of labour*, Geneva, International Institute for Labour Studies, pp. 239–253.

1758 OECD (2020). *Contribution of migrant doctors and nurses to tackling COVID-19 crisis in OECD countries*, op. cit., p. 3.

1759 OECD (2019). *Recent trends in international migration of doctors, nurses and medical students*, Paris, p. 19.

1760 For instance, *Australia*, *Canada* and *Israel*.

1761 OECD (2019). *Recent trends in international migration of doctors, nurses and medical students*, op. cit., pp. 16–17.

1762 *ibid.*, p. 17.

1763 OECD (2020). *Contribution of migrant doctors and nurses to tackling COVID-19 crisis in OECD countries*, op. cit., p. 6.

931. Migration corridors for nursing personnel are shifting, with the European Union (EU) experiencing an increase in east-to-west migration flows among its Member States, for example from *Poland* to *Germany*.<sup>1764</sup> Increased South–South migration flows are also apparent, from South and South-East Asia to West Asia and within Africa.<sup>1765</sup> More complex patterns of mobility have also emerged, not only in terms of geography, but also in terms of temporality (contract duration) and directionality (circular and two-step migration).<sup>1766</sup>

932. The number of intermediaries involved in the migration of nursing personnel and other care economy workers has also increased. Moreover, a number of countries have increased their recourse to temporary agency workers. For instance, in the *United Kingdom*, the National Health Service (NHS) has increased its recourse to temporary agency workers, with 34 per cent of NHS agency workers being migrants, compared to 17 per cent of non-agency workers. These workers, supplied by private employment agencies, include migrant nursing personnel.<sup>1767</sup>

933. Nursing personnel recruited through private employment agencies may encounter instances of contract substitution.

In *Fiji*, the Fiji Nursing Association (FNA-FI) observes that nursing migration to other countries has increased significantly in recent years. The FNA expresses grave concern that nurses recruited by agencies in *Fiji* in 2020 and 2021 to work in Dubai, in the *United Arab Emirates*, were initially informed of their terms and conditions of employment by the agencies, but found that upon their arrival in Dubai, the conditions of their contracts had changed. The FNA stresses that there is a need to have policies in place to regulate the activities of such agencies in *Fiji*.

934. Another factor that should be considered when developing and implementing migration policies affecting nursing personnel is the emerging phenomenon of “chain or two-step migration”, in which migrant healthcare workers transit through one or more countries on their way to their eventual country of destination.<sup>1768</sup> Adding to this complexity is the fact that some countries are at the same time countries of origin and of destination.<sup>1769</sup> The Committee therefore highlights that migration streams are increasing in complexity beyond the notion of source and destination countries and varying significantly from an earlier understanding of a limited South to North migration.<sup>1770</sup>

935. While the Nursing Personnel Convention, 1977 (No. 149), does not explicitly address the issue of migration, Part XIII of the Nursing Personnel Recommendation, 1977 (No. 157), on international cooperation provides guidance on a number of issues relevant to the migration of nursing personnel, including education or training abroad, recognition of qualifications, recruitment, repatriation and social security (Paragraphs 62-69).

1764 R. Szpakowski et al. (2016). “[Labour migration of Polish nurses: A questionnaire survey conducted with the computer assisted web interview technique](#)”, *Human Resources for Health*, 14(1: 24).

1765 L. Izaguirre and M. Walsham (2021). “[South–South migration from a gender and intersectional perspective: An overview](#)”, Working paper, Migration for Diversity and Equality (MIDEQ).

1766 M. Percot (2006). “[Indian nurses in the Gulf: Two generations of female migration](#)”, *South Asia Research*, 26(1), pp. 41–62; and WHO (2017). [A dynamic understanding of health worker migration](#).

1767 J. Runge, N. Hudson-Sharp and H. Rolfe (eds) (2017). [Use of agency workers in the public sector: Report to OME](#), National Institute of Economic and Social Research (NIESR).

1768 2016 General Survey concerning the migrant workers instruments, op. cit., para. 94. For instance, leaving their countries of origin, such as *India* and the *Philippines*, migrant healthcare workers typically move through Gulf States such as *Saudi Arabia* on their way to *Canada*, *United Kingdom* and *United States*. See also Percot (2006). “[Indian nurses in the Gulf: Two generations of female migration](#)”, op. cit; and J. Connell (2010). [Migration and the globalisation of health care: The health worker exodus?](#) Edward Elgar, Cheltenham.

1769 For instance, *Canada* and *South Africa* experience outflows of nursing personnel, while also benefiting from inflows from other countries. Labonté et al. (2015). “[Health worker migration from South Africa: Causes, consequences and policy responses](#)”, op. cit.

1770 Connell (2010). [Migration and the globalisation of health care: The health worker exodus?](#), op. cit.; Izaguirre and Walsham (2021). [South–South migration from a gender and intersectional perspective](#), op. cit.

## 1. Promoting exchanges of nursing personnel, ideas and knowledge

**936.** Paragraph 62 of Recommendation No. 157 encourages nursing exchanges, providing that, “in order to promote exchanges of personnel, ideas and knowledge, and thereby improve nursing care, Members should endeavour, in particular by multilateral or bilateral arrangements, to: (a) harmonise education and training for the nursing profession without lowering standards; (b) lay down the conditions of mutual recognition of qualifications acquired abroad; (c) harmonise the requirements for authorisation to practice; and (d) organise nursing personnel exchange programmes”.

### (a) Harmonization of nursing education and training

**937.** A number of governments refer in their reports to measures aimed at harmonizing their education and training programmes for nursing personnel, often according to regional standards, such as in West Africa (see Chapter 4).

*Burkina Faso* – The Government refers to the P10 programme on human resources in the health sector, created by the West African Health Organization (WAHO), a specialized institution of the Economic Community of West African States (ECOWAS). The P10 programme aims to facilitate the training, use and free movement of health professionals in the ECOWAS region. Any national of the ECOWAS community area can train and practice in their country of choice, subject to registration with the professional order of the ECOWAS host country.

*Mali* – The Government reports that education and training programmes are harmonized through WAHO.

*Niger* – The Government indicates that, as part of the harmonization of training curricula, students from the ECOWAS region receive the same training programmes and training for licenses, masters and doctorates.

### (b) Cross-border recognition of nursing qualifications and skills

**938.** Barriers to the free movement of healthcare workers, including nursing personnel, include lack of harmonization of qualification standards and recognition of credentials. These are complex issues, given that professional standards for nursing personnel typically demand: (a) pre-entry qualification and (b) approval and accreditation from some kind of recognized quality council. Graduates generally need to pass licensure or registration exams to enter the profession and these standards are typically geographically differentiated, both within or between national units.

939. The promotion of cross-border professional mobility in the nursing sector is embedded in a number of regional agreements (see Chapter 5).<sup>1771</sup> These regional agreements provide for mutual recognition of the qualifications and skills acquired by nursing personnel, whether they are acquired in the country of origin, the country of destination or a third country. The agreements establish minimum competencies that allow for, and encourage, professional mobility within regions.

#### **Directive 2005/36/EC on the recognition of professional qualifications**

European integration illustrates how increased regionalization influences the migration of highly-skilled workers. Enhanced employment and educational options are central to these regional development plans, driven by an emphasis on the harmonization of training and credential assessment. The Bologna Process (1999) established the framework for the European Higher Education Area (EHEA), officially launched in March 2010. The creation of the EHEA depended on a “tuning” process for the alignment of education systems and competencies across the region. The tuning process aimed to make educational competencies and outcomes comparable, compatible and transparent. Directive 2005/36/EC of the European Parliament and the Council on the recognition of professional qualifications consolidated a system of mutual recognition that provides for automatic recognition of a limited number of professions based on harmonised minimum training requirements (sectoral professions), a general system for the recognition of evidence of training and automatic recognition of professional experience. Under this Directive, automatic recognition applies to seven sectoral professions, including that of general care nurse.<sup>1772</sup>

#### **Mutual Recognition Agreements covering nursing personnel in the ASEAN region**

In 2006, all ASEAN Members signed the ASEAN Mutual Recognition Arrangements (MRAs) on Nursing Services. Under the MRAs, individual Members may recognize the licenses of other Members. Nurses in one ASEAN Member State may apply to be registered in another if they meet certain criteria, including evidence of a minimum qualification (Bachelor’s degree in nursing), registration in a Member State, evidence of three years of safe practice, and ethical and other criteria. There is no intention to create a regional professional register for nurses. Instead, each of the ASEAN Member States uses different procedures to facilitate foreign nurse registration. The objective is to facilitate the free movement of professionals in the region and strengthen professional capabilities by promoting the flow of information, and permitting the exchange of experiences and expertise.

*Armenia* – The Government indicates that graduates of its state medical colleges are granted diplomas, which are recognized in the countries of the Commonwealth of Independent States, *United States* and a number of European countries. The medical training designates English as the language of instruction to promote international recognition and mobility.

<sup>1771</sup> For instance, the Trans-Tasman Mutual Recognition Act 1997 concluded between *Australia* and *New Zealand*.

<sup>1772</sup> [Directive 2005/36/EC of the European Parliament and the Council on the recognition of professional qualifications](#), 7 Sep. 2005.



*United Arab Emirates* – The Government reports that it has entered into bilateral arrangements to facilitate the recognition of academic qualifications acquired outside the country, whereby registered nurses and licensed midwives from *Australia, Canada, Ireland, New Zealand, United Kingdom* and *United States* are exempt from all stages of the assessment required by health authorities, on condition that the certificate of registration is valid and a good standing certificate (GSC) status from the home country is provided at the time of application.

**940.** Some countries report that they have established a specific agency or mechanism responsible for managing the approval of foreign nursing credentials.

*Israel* – The Government reports that support and guidance is provided to nurses who are admitted to practice in the country after they complete the process of confirming their professional status. These processes take place in cooperation with the relevant authorities, including the Ministry of Immigrant Absorption.

*New Zealand* – The Government indicates that the Nursing Council of New Zealand establishes the qualifications required for Internationally Qualified Nurses (IQNs). Each IQN is assessed individually and is required to possess qualifications comparable to those in *New Zealand*. The Nursing Council sets the standards for competence assessment programmes and accredits and monitors these programmes to assess the competence of international nurses, as well as of nurses returning to the workforce after an absence of over five years.

### (c) Harmonization of the requirements for authorization to practice

**941.** Paragraph 66(1) of Recommendation No. 157 indicates that foreign nurses “should have qualifications recognised by the competent authority as appropriate for the posts to be filled and satisfy all other conditions for the practice of the profession in the country of employment”. It adds that “foreign personnel participating in organised exchange programmes may be exempted from the latter requirement”. Paragraph 66(2) adds that foreign nurses should meet any language requirements established for the vacant positions.

**942.** The Committee notes that most governments report that migrant nursing personnel must have the relevant approvals to be authorized to work.<sup>1773</sup> Some governments report the adoption of subregional mutual recognition agreements and harmonized education requirements (see Chapter 5).

<sup>1773</sup> For instance, *Algeria, Bahamas, Bosnia and Herzegovina, Cabo Verde, Canada, Chile, Croatia, Cyprus, Germany, Guatemala, India, Indonesia, Islamic Republic of Iran, Israel, Italy, Kiribati, Republic of Korea, Mexico, Montenegro, Mozambique, Namibia, Pakistan, Peru, Qatar, Saudi Arabia, Thailand, Trinidad and Tobago, United Kingdom* and *Uzbekistan*.



The Trans-Tasman Mutual Recognition Act 1997 provides for the recognition in *New Zealand* of regulatory standards adopted in *Australia*. Section 15(1) of the Act establishes the Trans-Tasman mutual recognition principle in relation to occupations, providing that under “this Act, an individual who is registered in an Australian jurisdiction for an occupation is entitled, after giving notice to the local registration authority for the equivalent occupation: (a) to be registered in New Zealand for the equivalent occupation; and (b) pending such registration, to carry on the equivalent occupation in New Zealand”.<sup>1774</sup>

In *New Zealand*, the New Zealand Confederation of Trade Unions (NZCTU) indicates that the Trans-Tasman Mutual Recognition Act 1997 provides for mobility between *New Zealand* and *Australia* for nurses. However, the NZCTU points out that, in contrast to Australian nurses, who are able to register as IQNs under the Act, the requirements for IQN registration have created barriers for nurses from the Pacific islands, meaning that their qualifications are not recognized. Consequently, many Pacific IQNs are currently working in *New Zealand* as caregivers despite their qualifications.

#### (d) Training exchanges for nursing personnel

943. While Paragraph 63(1) of Recommendation No. 157 calls for nurses to be encouraged to avail themselves of the opportunities for education and training available in their own country, Paragraph 63(2) indicates that “where necessary or desirable, they should have the possibility of education and training abroad, as far as possible by way of organised exchange programmes”. Paragraphs 64 and 65 provide further guidance on measures to be taken to promote training exchanges for nursing personnel, such as the granting of appropriate financial aid in certain cases and establishing guarantees of employment upon returning to their country of origin.

944. The Committee notes that a number of governments report on exchange programmes offered to health workers, including nursing personnel, with the aim of promoting exchanges of knowledge and expertise between countries.<sup>1775</sup>

*Armenia* – The Government indicates that the *United States* has partnered with *Armenia* and the *Russian Federation* in the Magnet Recognition Programme to promote and strengthen healthcare quality, and that nurses have moved between the *United States* and other countries to build the knowledge base.

*Slovenia* – The Government refers to the European Hospital and Healthcare Federation (HOPE) Exchange Programme, the main objective of which is to promote exchanges of knowledge and expertise within the European Union and provide training and experience for healthcare professionals. The Programme seeks to enhance understanding of the functioning of healthcare and hospital systems within the European Union and neighbouring countries by facilitating cooperation and exchanges of best practices.<sup>1776</sup>

<sup>1774</sup> [Trans-Tasman Mutual Recognition Act 1997: Public Act 1997 No. 60.](#)

<sup>1775</sup> For instance, *Malaysia*, *Mexico*, *Peru* and *Slovenia*.

<sup>1776</sup> European Union, [HOPE Exchange Programme](#).

## 2. Equality of treatment between national and migrant nursing personnel

**945.** Conventions Nos 97 and 143 call on Member States to adopt measures to promote and guarantee equality of opportunity and treatment in respect of employment conditions, including social security, for migrant workers.<sup>1777</sup> In this respect, Paragraph 66(3) of Recommendation No. 157 calls for equality of treatment for migrant nursing personnel, indicating that “foreign nursing personnel with equivalent qualifications should have conditions of employment which are as favourable as those of national personnel in posts involving the same duties and responsibilities”.

**946.** Most governments report that foreign nursing personnel are covered by the same labour laws as national personnel.<sup>1778</sup> The Committee notes, however, that many Member States report differentiated treatment in relation to immigration law and practice between highly skilled categories of migrant workers and those who undertake low-skilled work.<sup>1779</sup> Some governments indicate that nurses are covered under specific legislation enacted to protect the rights of their citizens who migrate abroad, as well as the rights of migrant workers employed in their territories.

*Indonesia* – The Government indicates that Law No. 18 of 2017 provides for the protection of Indonesian and migrant personnel. This law provides end-to-end protection for overseas workers, including protection before, during and after recruitment, a social security system for migrant workers, integrated services, skills improvement and measures to promote ethical recruitment.

**947.** Many countries have concluded multilateral and bilateral agreements explicitly providing for equality of opportunity and treatment for migrant nursing personnel and specific protection of their labour rights.<sup>1780</sup>

*Ghana* – The Government refers to a bilateral agreement with *Barbados*, which has put in place safeguards governing the conditions of service of Ghanaian nurses working in *Barbados* to ensure that they are treated as favourably as their Barbadian nursing colleagues.

*Mali* – The Government reports that it has concluded bilateral and multilateral agreements with certain countries within the framework of the Conférence Interafricaine de la Prevoyance Social (C.I.PRE.S) to ensure reciprocity for migrant workers, including nurses, in matters of employment, work and social security.

<sup>1777</sup> Art. 6 of Convention No. 97 and Part II of Convention No. 143.

<sup>1778</sup> For instance, *Australia* and *Oman*.

<sup>1779</sup> For instance, *Algeria*, *Ethiopia*, *Indonesia*, *Mauritius*, *New Zealand*, *United Kingdom* and *United States*. See 2016 General Survey concerning the migrant workers instruments, op. cit., para. 105.

<sup>1780</sup> [Annex to Recommendation No. 86](#) on a Model Agreement on Temporary and Permanent Migration for Employment. For instance, *Argentina*, *Brazil*, *Canada*, *Chile*, *Colombia*, *Ecuador*, *Ghana*, *Indonesia*, *Japan*, *Mali*, *Mauritius*, *Peru*, *Philippines*, *Poland*, *Qatar*, *Slovenia*, *Tunisia*, *Uruguay*, *Viet Nam* and *Zimbabwe*.

948. In contrast, a number of countries have reported that less favourable protections are afforded to migrant nurses in comparison with national nurses, particularly in the absence of bilateral agreements.

*Finland* – The Government indicates that there have been shortcomings in the working conditions and terms of employment of migrant nurses as compared to national nurses with the same level of education. Moreover, some migrant nurses have been employed at a salary different from that proposed when the employment relationship was agreed.

*India* – The Government reports that migrant nursing personnel are barred from certain activities. They are only allowed to work in research and education or in charitable non-governmental organizations.

*Malaysia* – The Government indicates that its legislation establishes different employment conditions for migrant nursing personnel compared to those of national nursing personnel. For instance, employment criteria for foreign-trained nurses in the country specifies age and practice limitations, denies them the right to hold the highest-level nursing positions, imposes quotas (these must not exceed 40 per cent of nurses in a facility) and time limits (five-year contracts broken by three-month contract breaks).

949. In line with the ILO standards on migrant workers, Paragraph 69(a) of Recommendation No. 157 provides that the principle of equality of treatment for migrant nursing personnel compared with national nursing personnel should extend to social security protection.<sup>1781</sup> In this respect, Paragraph 69(b) calls on Members to “participate in bilateral or multilateral arrangements designed to ensure the maintenance of acquired rights or rights in the course of acquisition, as well as the provision of benefits abroad”.

950. The Committee observes that some countries refer to the conclusion of agreements on portable social protection rights, which apply to nursing personnel.

*Turkey* – The Government indicates that it has signed general bilateral social security agreements with 35 countries.

951. A number of governments also refer in their reports to the establishment and implementation of mechanisms through which protection is provided to nationals who migrate abroad, including nursing personnel. These mechanisms may include consular services<sup>1782</sup> and migration registries.

*Thailand* – The Government reports that nationals, including nursing personnel, who wish to travel abroad for employment must first register with the Department of Employment of the Ministry of Labour to ensure that they are not deceived or exposed to exploitation.

<sup>1781</sup> For instance, Art. 6(1)(b) of Convention No. 97 and Art. 10 of Convention No. 143.

<sup>1782</sup> For instance, *Belarus* and *India* both report that their consular services assist citizens who work overseas.

### 3. Repatriation

952. Paragraph 68 of Recommendation No. 157 indicates that nursing personnel who are employed or in training abroad should be given all necessary facilities when they wish to be repatriated. The Committee notes that in some countries there are mechanisms that provide for the recognition of qualifications acquired abroad by nursing personnel when they return to their country of origin.

*Saudi Arabia* – The Government reports that the Saudi Commission for Health Specialties recognizes the qualifications and skills of all categories of nursing personnel, both national and foreign, as well as the qualifications and skills of national nursing personnel who have acquired their qualifications and skills abroad.

### 4. The global shortage of nursing personnel and the “brain drain”

953. The Committee notes that, according to the 2020 State of the world’s nursing report, foreign-born or foreign-trained nursing personnel are primarily located in high-income countries (15.2 per cent compared to fewer than 2 per cent in countries of other income groups).<sup>1783</sup> As noted earlier, nursing personnel have a legitimate right and interest in migrating in search of better living and working opportunities. At the same time, the Committee notes that international migration of nursing personnel has further reduced the nursing workforce in countries already suffering from acute shortages, particularly low-income countries.<sup>1784</sup>

954. In this context, Recommendation No. 157 indicates that Members should take steps to limit recruitment of migrant nursing personnel. In particular, Paragraph 67(1) of the Recommendation suggests that “recruitment of foreign nursing personnel for employment should be authorised only: (a) if there is a lack of qualified personnel for the posts to be filled in the country of employment; (b) if there is no shortage of nursing personnel with the qualifications sought in the country of origin”. Moreover, Paragraph 67(2) indicates that, where the recruitment of migrant nursing personnel is authorized, this should be done in accordance with the relevant provisions of Convention No. 97 and its accompanying Recommendation.

955. The Committee notes that a number of countries refer in their reports to the guidance set out in the WHO Global Code of Practice on the International Recruitment of Health Personnel.<sup>1785</sup> The Code’s objectives include: the establishment of voluntary principles and practices for the ethical international recruitment of health personnel; and the provision of guidance for the formulation and implementation of bilateral agreements and other international legal agreements in this area.<sup>1786</sup> It calls on countries to “strive, to the extent possible, to create a sustainable health workforce and work towards establishing effective health workforce planning, education and training, and retention strategies that will reduce their need to recruit migrant health personnel”.<sup>1787</sup> **The Committee emphasizes that the Code calls for a balancing**

<sup>1783</sup> WHO (2020). *State of the world’s nursing 2020*, op. cit., p. 47.

<sup>1784</sup> OECD (2016). *Health workforce policies in OECD countries: Right jobs, right skills, right places*, OECD Health Policy Studies, Paris, p. 27.

<sup>1785</sup> For instance, *Portugal* and *Trinidad and Tobago*.

<sup>1786</sup> Art. 1 of the [WHO Global Code of Practice on the International Recruitment of Health Personnel](#), Sixty-third World Health Assembly (WHA63), Geneva, 16 May 2010.

<sup>1787</sup> *ibid.*, Art. 3(6).

***of rights and interests and recognizes that nursing personnel should have the freedom to migrate to countries that wish to admit and employ them. At the same time, countries should take into account the right to the highest attainable standard of health of the populations of countries of origin and the impact of migration on health systems.***<sup>1788</sup>

956. Moreover, the High-Level Commission on Health Employment and Economic Growth (HEEG Commission) urged those countries losing health workers to do more to retain their health workforce, and destination countries to do more to achieve greater self-sufficiency and sustainability in their domestic supply.<sup>1789</sup> The goal is not necessarily to achieve self-sufficiency, but to avoid relying systematically on other countries to meet their domestic needs for nursing personnel by adequately training a sufficient number of nurses at the national level.

*Portugal* – The Government refers in its report to the conclusion of several administrative agreements concerning the movement of health professionals, including nursing personnel, with *Cuba, Colombia, Costa Rica* and *Uruguay*, providing for the free movement of health professionals. The Government indicates that these agreements respect the guiding principles set out in the WHO Global Code of Practice.

## 5. Disruptions to the international supply of nursing personnel during the COVID-19 pandemic

957. The COVID-19 pandemic has exacerbated the existing shortage of health workers, including nursing personnel. It has exposed the vulnerabilities of nursing supply flows, domestically and internationally. Its impact at country level has been to highlight further any existing nursing supply gaps and the effect of staffing shortages. Internationally, its short-term impact has been to disrupt international supply as borders close, travel is interrupted and some countries restrict outflow.<sup>1790</sup>

958. The Committee observes that a recent International Council of Nurses (ICN) report highlights the intensification of the pre-existing shortage of nursing personnel as a result of the staffing demands and trauma imposed by the pandemic, and the need for all nations to invest in and improve their domestic training and retention policies in order to promote greater self-reliance. The report indicates that a coordinated approach is needed to address international nurse supply through enhanced training and retention at the country level, while at the international level, there needs to be a greater commitment to the WHO Code, ethical recruitment and effective monitoring of the international migration of nurses.<sup>1791</sup> The OECD has also examined the contribution made by migrant nurses and doctors during the COVID-19 pandemic, revealing the reliance of OECD nations healthcare systems on international migrants,

<sup>1788</sup> *ibid.*, Art. 3.4. See also Paragraph 21(a) of the Human Resources Development Recommendation, 2004 (No. 195), which indicates that: “International and technical cooperation in human resources development, education, training and lifelong learning should: (a) develop mechanisms that mitigate the adverse impact on developing countries of the loss of skilled people through migration, including strategies to strengthen the human resources development systems in the countries of origin, recognizing that creating enabling conditions for economic growth, investment, creation of decent jobs and human development will have a positive effect on retaining skilled labour”.

<sup>1789</sup> WHO (2016). *Working for health and growth: Investing in the health workforce, Report of the HEEG Commission*, 2016, p. 49.

<sup>1790</sup> J. Buchan and H. Catton (2020). *COVID-19 and the international supply of nurses: Report for the International Council of Nurses*, Geneva, ICN, p. 3.

<sup>1791</sup> *ibid.*

and has provided various examples of measures introduced during the pandemic to enable migrant health workers to help meet the surge in demand for healthcare, often taking the form of facilitating work authorizations, international mobility and recognition of foreign qualifications.<sup>1792</sup> For example, in April 2020, the European Commission called on “Member States to facilitate the smooth border crossing for health professionals and allow them unhindered access to work in a healthcare facility in another Member State.”<sup>1793</sup> A number of OECD countries have taken measures to expedite pending applications for the recognition of foreign qualifications of health professionals.<sup>1794</sup>

### ► III. International migration of domestic workers

#### 1. Obstacles encountered by migrant domestic workers

**959.** According to ILO estimates, in 2013, of the 67 million domestic workers, over 11 million were international migrants.<sup>1795</sup> The number of migrant domestic workers has continued to increase over the last decade due to, among other factors, the growing labour demand in the care economy.<sup>1796</sup> A high proportion of migrant workers are domestic workers employed in the Arab States, Asia and the Pacific, and Latin America and the Caribbean.<sup>1797</sup>

**960.** The Committee observes that, according to the most recent ILO estimates, the South-East Asia and Pacific regions host the greatest proportion of migrant domestic workers in the world, where 24.7 per cent of domestic workers are international migrants. This could be explained by the presence of some of the world's most important labour migration corridors, from the *Philippines* and *Indonesia* to *Malaysia* and Hong Kong (*China*).<sup>1798</sup> For instance, approximately 250,000 migrant domestic workers, primarily from *Indonesia*, *Philippines* and *Cambodia* are legally registered in *Malaysia*; although 10,000 others are undocumented.<sup>1799</sup> The Committee notes that some governments in the region promote the hiring of migrant domestic workers through tax incentives and financial support.<sup>1800</sup>

**961.** As noted in Chapter 8, migrant domestic workers are particularly at risk of abuse and decent work deficits, especially when they reside with their employers. For instance, in some countries, there have been incidents of employers who restrict migrant domestic workers' freedom to leave the house during their rest time due to the perception that they may become pregnant, as their work permits are contingent upon negative pregnancy tests.<sup>1801</sup> Moreover,

<sup>1792</sup> OECD (2020). *Contribution of migrant doctors and nurses to tackling COVID-19 crisis in OECD countries*, op. cit., p. 2.

<sup>1793</sup> European Commission (2020). [Guidelines on EU emergency assistance in cross-border cooperation in healthcare related to the COVID-19 crisis](#), Communication from the Commission, C (2020) 2153 final, 3 Apr. 2020.

<sup>1794</sup> OECD (2020). *Contribution of migrant doctors and nurses to tackling COVID-19 crisis in OECD countries*, op. cit.

<sup>1795</sup> ILO (2015). [ILO global estimates on migrant workers and migrant domestic workers: Results and methodology](#), Geneva, p. 5.

<sup>1796</sup> *ibid.*, p. 8.

<sup>1797</sup> King-Dejardin (2019). *The social construction of migrant care work*, op. cit., p. 33.

<sup>1798</sup> ILO (2021). [Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 \(No. 189\)](#), Geneva, p. 27.

<sup>1799</sup> W.C. Au et al. (2019). [“The work-life experiences of an invisible workforce: The case of live-in women migrant domestic workers in Malaysia”](#), *Equality, Diversity and Inclusion: An International Journal*, 39(5), pp. 567–583.

<sup>1800</sup> For instance, Hong Kong (*China*) and Singapore.

<sup>1801</sup> Au et al. (2019). [“The work-life experiences of an invisible workforce”](#), op. cit.; and Pau Khan Khup Hangzo and A.D.B. Cook (2012). [“The Domestic Workers Convention 2011: Implications for migrant domestic workers in Southeast Asia”](#), Working Paper, eSocialSciences.

some employers may forbid migrant domestic workers from taking their rest day during their first year of employment out of fear that other migrant domestic workers might encourage them to file complaints.<sup>1802</sup> In addition, domestic workers in some countries may be required to be on-call 24 hours a day<sup>1803</sup> and may not be provided with a private room or bed.<sup>1804</sup> Some migrant live-in domestic workers may experience food insecurity and may be provided with insufficient and/or inappropriate food, such as expired food or table scraps.<sup>1805</sup> Moreover, in those countries where migration status is linked to the domestic workers' employer, the risk of abuse is compounded.

According to the United Nations Human Rights Council, the Government of the *United Kingdom* introduced restrictive visa conditions for migrant domestic workers in 2012. These changes, which removed the workers' right to change employers while in the country and imposed further restrictions on the length of their stay, have been strongly opposed by migrant domestic worker advocates and anti-trafficking/slavery campaigners. In response to the significant increase in reported abuses which followed these modifications, additional changes were introduced to the Overseas Domestic Worker visa programme. With the adoption of the Immigration Act of 2016, migrant domestic workers have been able to change employers, but only for the remainder of their six-month visa, which is non-renewable. The legislative amendments have also granted migrant domestic workers found to be victims of trafficking or slavery the possibility of applying for authorization to remain in the country for up to two years, to work as a domestic worker. However, migrant domestic workers not found to have been victims of these practices were not granted the right to extend their visa. The legislative changes made in 2012 and 2016 have been the subject of repeated calls for reform by numerous international organizations, civil society organizations and trade unions.<sup>1806</sup>

962. Domestic workers, particularly live-in migrant workers, face multiple challenges to forming and joining unions due to factors such as the private and individualized nature of the work, low wages and an irregular migration situation (see Chapter 12).<sup>1807</sup> In certain countries, only nationals are allowed to organize, and in some countries migrant domestic workers are not allowed to join or hold positions in a workers' organization.<sup>1808</sup>

1802 L.A. Lumayag (2018). "[Contesting disciplinary power: Transnational domestic labour in the Global South](#)", *Asian Studies Review*, 42(1), pp. 161–177.

1803 For instance, *Malaysia and Thailand*. ILO (2018). "[Towards achieving decent work for domestic workers in ASEAN+](#)", Thematic background paper for the 10th ASEAN Forum on Migrant Labour (AFML), Manila, Philippines, 25–26 Oct. 2017, p. 9.

1804 *ibid.*

1805 J. Ham and A. Ceradoy (2021). "["God blessed me with employers who don't starve their helpers": Food insecurity and dehumanization in domestic work](#)", *Gender, Work & Organization*, pp. 1–16; D.L. Spitzer (2020). "Precarious lives, fertile resistance: Migrant domestic workers, gender, citizenship, and well-being", in G. Caliskan (ed.). *Gendering globalization, globalizing gender: Postcolonial perspectives*, New York, OUP.

1806 Letter to the *United Kingdom* under the communication procedure of the Special Procedures of the United Nations Human Rights Council, 27 May 2021 ([AL GBR 6/2021](#)).

1807 ILO (2021). [Making decent work a reality for domestic workers: Progress and prospects in Asia and the Pacific ten years after the adoption of the Domestic Workers Convention, 2011 \(No. 189\)](#), Bangkok, ILO Regional Office for Asia and the Pacific.

1808 For instance, *Malaysia and Thailand*. ILO (2018). *Towards achieving decent work for domestic workers in ASEAN*, op. cit.



The International Domestic Workers Federation (IDWF) observes that in *Lebanon*, according to a migrant domestic workers' group, since most domestic workers are migrants, they are not allowed to join or lead unions or organizations. There are nevertheless informal groups of domestic workers that have come together and organized to try and advocate for better conditions for this sector. The Federation of Worker and Employee Trade Unions in Lebanon (FENASOL) has a domestic worker section. However, domestic workers themselves do not have any actual decision-making power or influence in the Federation. When the section was established, many domestic workers joined it; however, they soon realized that they do not have an actual voice. Some of the more vocal domestic worker leaders were deported. As a result, many domestic workers as well as organizations refuse to be part of or even work with FENASOL.

**963.** Migrant domestic workers are also at increased risk of forced labour (see Chapter 8), particularly if they are charged recruitment fees and costs. As a result, they often commence their employment in debt to private employment agencies (see Chapter 9), loan sharks, or family members for placement fees, transportation and visa costs. These charges have a significant impact on the ability of migrant domestic workers to send remittances to their families. These issues are addressed in the ILO's Fair Recruitment Initiative and Fair Migration Agenda.<sup>1809</sup>

## 2. Measures to promote and ensure migrant domestic workers' rights

**964.** The Domestic Workers Convention, 2011 (No. 189), and its accompanying Recommendation No. 201 contain provisions aimed at promoting and ensuring migrant domestic workers' rights.<sup>1810</sup> Moreover, the Committee recalls, as highlighted in the Preamble to Convention No. 189, the particular relevance for domestic workers of Conventions Nos 97 and 143.

**965.** A number of countries offer services and procedures designed to mitigate the risks and vulnerabilities faced by migrant domestic workers during the migration cycle. In accordance with Paragraph 21 of Recommendation No. 201, some have taken additional measures to ensure effective protection for migrant domestic workers.

*India* – The Government reports that a multilingual helpline available 24/7 has been established in New Delhi, which provides information and advice pertaining to the overseas employment of Indian nationals. Indian embassies in Gulf countries have also established 24/7 toll-free helplines for the benefit of Indian workers in the region.

<sup>1809</sup> ILO (2019). *General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs*, Geneva.; and *ILO Fair Migration Agenda*.

<sup>1810</sup> For instance, States are required to ensure that before departure, migrant domestic workers have written contracts that they can understand and that are enforceable in the country of employment (Art. 8(1) of Convention No. 189). States parties are encouraged to collaborate to ensure the effective application of the Convention to migrant domestic workers (Art. 8(3)). See also Paras 20–23 of Recommendation No. 201.

966. Recognizing that their nationals may find themselves in precarious situations in the host country, some countries have implemented age thresholds or outright bans on emigration to certain destination countries.<sup>1811</sup> The Committee notes, however, that these restrictions have not reduced migration, but instead have encouraged migrant workers to use irregular channels (see Chapter 8). Although migrant domestic workers in an irregular situation are at increased risk of abuse and exploitation, they often refrain from seeking formal assistance out of fear of losing their jobs and being deported.<sup>1812</sup>

*Indonesia* – The Government reports that, in response to a number of highly public cases of abuse of Indonesian migrant domestic workers, it imposed a moratorium in June 2009 on sending domestic workers to *Malaysia*. Subsequently, a Memorandum of Understanding signed between *Indonesia* and *Malaysia* in 2011 committed *Malaysia* to guaranteeing a rest day and improved working conditions. However, the Malaysian Government insisted that the market would determine wages. Indonesian migrant domestic worker still earn less and are treated differently than their Filipino counterparts. Indonesian nationals caring for the elderly are most likely to be confined to the house unless ill, and despite reminders that workers are entitled to a 24-hour continuous rest period, officials also acknowledge that some employers may be uncomfortable allowing migrant domestic workers to leave the house for personal matters or to communicate frequently with family members.

*Spain* – Emergency housing and police protection are available to migrant women, including those in irregular situations, if they report a complaint of physical abuse.

### (a) Cooperation between countries of origin, transit and destination

967. Article 8(3) of Convention No. 189 calls on countries to cooperate with each other to ensure the effective application of the provisions of the Convention to migrant domestic workers.<sup>1813</sup> Paragraph 26(2) of Recommendation No. 201 indicates that “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.”<sup>1814</sup>

968. Paragraph 26(3) of Recommendation No. 201 also indicates that “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.” The Committee notes that some governments report having adopted multilateral, bilateral and regional agreements relevant to the migration of domestic workers, although a few indicate

1811 For instance, *Cambodia, Indonesia and Philippines*. King-Dejardin (2019). *The social construction of migrant care work*, op. cit., p. 127.

1812 N. Piper and S. Lee (2013). “[Contributions of migrant domestic workers to sustainable development: Policy paper for the pre-GFMD VI High-Level Regional Meeting on Migrant Domestic Workers at the Interface of Migration and Development](#)”, Bangkok, UN Women.

1813 See also Para. 26(1) of Recommendation No. 201.

1814 See also the [Annex to Recommendation No. 86](#) on a Model Agreement on Temporary and Permanent Migration for Employment.

that they have no specific legislation or regulations in place focusing on migrant domestic workers.<sup>1815</sup> In Asian and Gulf Cooperation Council (GCC) countries,<sup>1816</sup> Memoranda of Understanding are more commonly used, while more bilateral agreements have been implemented in other parts of the world.<sup>1817</sup>

**969.** ASEAN has also issued the Cebu Declaration that calls for the promotion of decent, humane, dignified and remunerative labour (paragraph 15), access to decent accommodation and working experiences, and fair recruitment practices.<sup>1818</sup> Furthermore, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2018) promotes the full potential of migrant workers in a climate of freedom and dignity and fair treatment regardless of gender or nationality.<sup>1819</sup> Moreover, migrant workers have the right to: be visited by families in line with national regulations; keep possession of their travel and identity documents (such as their passports); adequate accommodation; and join trade unions. The receiving State is also responsible for the protection of employment rights during repatriation.

**970.** Paragraph 3(c) of Recommendation No. 201 safeguards the privacy of domestic workers' personal medical information and calls on States to take measures to prohibit employers from requiring mandatory pregnancy and HIV tests. Nevertheless, in *Malaysia* and *Singapore* migrant domestic workers are required to undergo pregnancy tests annually and biannually, respectively, and their work permits are revoked if they become pregnant (see Chapter 8).<sup>1820</sup>

In 2015, the GCC States undertook to develop a standard contract for migrant domestic workers. However, no consensus was reached with regard to a mandatory rest day or limits on the number of working hours. Bilateral agreements between GCC countries, developed without input from employers or workers, set out guidelines for recruitment practices and a standard contract that entrenches differential wages based on national origin.

**971.** Other countries have implemented various regulations to promote the labour rights and dignity of migrant domestic workers.

Since 2004, *Argentina* has promoted the rights of migrant domestic workers, ensuring their access to healthcare, social services and education irrespective of migration status.<sup>1821</sup> In addition, a bilateral agreement between domestic workers' organizations and trade unions in *Argentina* and *Paraguay* has been signed to promote decent work for migrant domestic workers.

A joint declaration between migrant domestic workers and trade unions in *Lesotho*, *South Africa* and *Zimbabwe* has been signed with the aim of promoting decent work for migrant domestic workers in these countries.<sup>1822</sup>

<sup>1815</sup> For instance, *Bahamas, Benin, Bosnia and Herzegovina, Cabo Verde, Czechia, Denmark, Ecuador, Estonia, Honduras, Islamic Republic of Iran, Montenegro, Nepal, Saint Kitts and Nevis, Seychelles, Solomon Islands, Tonga, Tunisia* and *Zimbabwe*.

<sup>1816</sup> The GCC countries are: *Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia* and *United Arab Emirates*.

<sup>1817</sup> King-Dejardin (2019). *The social construction of migrant care work*, op. cit., p. 119.

<sup>1818</sup> ILO (2018). *Towards achieving decent work for domestic workers in ASEAN*, op. cit.

<sup>1819</sup> [ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, 2017](#).

<sup>1820</sup> ILO (2018). *Towards achieving decent work for domestic workers in ASEAN*, op. cit.

<sup>1821</sup> Tayah (2016). *Decent work for migrant domestic workers: Moving the agenda forward*, op. cit.

<sup>1822</sup> King-Dejardin (2019). *The social construction of migrant care work*, op. cit., pp. 130–131.

## (b) Requirement of a written contract prior to migration

972. Contract substitution upon the migrant domestic worker's arrival in the host country is widespread, despite laws and protocols in many countries outlining the use of standard contracts.<sup>1823</sup> When migrant domestic workers are indebted to private employment agencies or others, or in situations where their family's property is held as collateral,<sup>1824</sup> they are unlikely or unable to refuse to work under new, inferior conditions.

973. Article 8 of Convention No. 189 requires migrant domestic workers to receive a written contract prior to leaving their country of origin to take up a position in the host country. As noted in Chapter 9, many countries require written contracts for migrant domestic workers, and a number of countries have also adopted model contracts in this regard.<sup>1825</sup>

*Mauritius* – The employment contract of a migrant worker is examined and vetted by the Special Migrant Workers' Unit of the Ministry of Labour, Industrial Relations and Employment prior to the worker's arrival in the country to ensure that it does not contain abusive clauses and is in full conformity with the prevailing labour legislation.

*Germany* – An employment contract is required prior to entry into the country.

*India* – Bilateral agreements and MoUs have been signed to safeguard the interests, and ensure the welfare, of Indian migrant domestic workers in GCC countries. These agreements include clauses on standard employment contracts with Indian workers that articulate the rights and responsibilities of employers and employees and detail the employment period, salary, compensation, and benefits.

*Sweden* – Prospective migrants must provide evidence of a job offer that includes information about the work, wages, insurance coverage and other terms of employment to ensure that they are in conformity with Swedish collective agreements or practice within the relevant sector prior to obtaining a work permit.

974. In some countries there is a requirement for the employment contract or job offer to be in a language that the domestic worker understands.<sup>1826</sup> Poor literacy skills and the receipt of written contracts in an unfamiliar language leaves migrant domestic workers open to contract substitution.<sup>1827</sup>

1823 Lumayag (2018). "[Contesting disciplinary power: Transnational domestic labour in the Global South](#)", op. cit., pp. 161–177.

1824 J. Lindquist (2010). "[Labour recruitment, circuits of capital and gendered mobility: Reconceptualizing the Indonesian migration industry](#)", *Pacific Affairs*, 83(1), pp. 115–32; and D. Rudnykyj (2004). "[Technologies of servitude: Governmentality and Indonesian transnational labor migration](#)", *Anthropological Quarterly*, 77(3), pp. 407–34.

1825 For instance, *Belgium, Plurinational State of Bolivia, Germany, India, Mauritius, Thailand, Sweden, Switzerland, United Arab Emirates and United Kingdom*.

1826 For instance, *Canada, Guatemala, Malta, New Zealand, Spain, Sweden, Thailand, United Arab Emirates and United Kingdom*.

1827 Tayah (2016). *Decent work for migrant domestic workers: Moving the agenda forward*, op. cit.

*Malta* – The Government indicates that it is in the process of concluding agreements with certain countries to issue contracts to temporary migrant workers in their national language.

*United Arab Emirates* – Contracts for migrant domestic workers have to be available in Arabic, English and the worker's native language.

*New Zealand* – The onus is on the migrant worker to be able to understand the terms and conditions set out in the contract or offer. Workers migrating to *New Zealand* must possess basic English language skills sufficient to understand the terms and conditions of the employment contract they receive prior to emigration.

### (c) Conditions of repatriation

975. Article 8(4) of Convention No. 189 provides that: "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." Repatriation is the legal responsibility of the employer in many countries, whatever the reason for the failure or interruption of the work.<sup>1828</sup> In some countries, however, leave repatriation entitlements are left to collective agreements or to the contractual agreement between the employer and the worker.<sup>1829</sup>

*Estonia* – Migrant workers are required to leave the country upon expiry or termination of the employment contract. Repatriation costs and who pays for these costs depend on the nature of the contract with the employer in accordance with national law.

*New Zealand* – Entitlements to repatriation are subject to agreement between the employer and employee. The national legislation does not regulate these matters.

*Seychelles* – Where a grievance is registered by a domestic worker against a termination on disciplinary grounds, the law specifies that the employer must provide air tickets to the worker to return to the country of origin at the end of the proceeding (Paragraph 1 of Part IIA of Schedule 1 of the Employment Act 1995).

*Bolivarian Republic of Venezuela* – A bond or a bank deposit has to be made by the employer or recruitment agency in a Venezuelan bank in favour of the worker for repatriation and transfer to the last place of residence.

<sup>1828</sup> For instance, *Armenia, Belgium, Cameroon, Colombia, Costa Rica, Ghana, Seychelles, Saudi Arabia, Senegal* and the *Bolivarian Republic of Venezuela*.

<sup>1829</sup> For instance, *Estonia, New Zealand* and *Sweden*.

976. In a number of countries, the national legislation guarantees the right of all nationals and foreign nationals resident in the country to leave the country.<sup>1830</sup> There may however be limitations on this right for the purpose of safeguarding legal proceedings or for the enforcement of penalties, where necessary.<sup>1831</sup>

977. In some cases, responsibility for the health and welfare of migrant domestic workers is assumed by country-of-origin authorities. In circumstances such as war, natural disaster, disease outbreak and deportation, country of-origin authorities may be involved in the repatriation of migrant workers. Migrant workers who experience specific difficulties may also be assisted by country-of-origin authorities.<sup>1832</sup>

978. Most governments report that repatriation entitlements, where they exist, apply to all workers, including migrant domestic workers. Other governments indicate that there is no legislation on the repatriation of migrant domestic workers.<sup>1833</sup>

### 3. The impact of the COVID-19 pandemic on migrant domestic workers

979. The COVID-19 pandemic has highlighted the need for greater attention to the working and living conditions of migrant domestic workers, including repatriation entitlement and access to healthcare and transportation.

Hong Kong Special Administrative Region (*China*) – Migrant domestic workers have reported working longer hours and confinement to their employers' homes during rest days.<sup>1834</sup> Furthermore, mandatory testing and vaccination of migrant domestic workers, along with media stories that insinuate they are carriers of the virus, have contributed to their stigmatization.<sup>1835</sup>

980. Migrant domestic workers have often been unable to socially distance during the pandemic due to the nature of their work, and many have not been provided with PPE. Some have lost their jobs because their employers either lost their employment or worked from home and no longer need or want their assistance. Moreover, some migrant domestic workers who have lost their jobs have not been allowed to return home due to travel restrictions.<sup>1836</sup>

Hong Kong Special Administrative Region (*China*) – Some migrant domestic workers were stranded when attempting to return to work as the pandemic was being declared and were placed in quarantine for two weeks without wages or adequate provisions, turning to local advocacy organizations, which organized food deliveries for them during this period.<sup>1837</sup>

1830 For instance, *Guatemala* and *Norway*.

1831 For instance, *Finland*.

1832 For instance, *Indonesia* and *Thailand*.

1833 For instance, *Nepal*.

1834 Human Rights Working Group (2020). *Repression and resilience: COVID-19 response measures and migrant workers' rights in major East and Southeast Asian destinations*, Jakarta.

1835 Asian Migrants' Coordinating Body-International Migrants Alliance (AMCB-IMA) (2021). "[AMCB-IMA Asian Migrants Coordinating Body/International Migrants Alliance](#)".

1836 *ibid.*

1837 S. Rao et al. (2021). "[Human mobility, COVID-19, and policy responses: The rights and claims-making of migrant domestic workers](#)", *Feminist Economics*, 27(1–2), pp. 254–70.







# ▶ 12

## Freedom of association and collective bargaining for care economy workers

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## ► I. Ensuring decent work for care economy workers through freedom of association, collective bargaining and social dialogue

**981.** The Nursing Personnel Convention, 1977 (No. 149), and the Domestic Workers Convention, 2011 (No. 189), both highlight the importance of freedom of association and collective bargaining for the attainment of decent work.

### Preamble to Convention No. 149

“The General Conference of the International Labour Organisation, ... Recalling that nursing personnel are covered by many international labour Conventions and Recommendations laying down general standards concerning employment and conditions of work, such as instruments on discrimination, on freedom of association and the right to bargain collectively, on voluntary conciliation and arbitration ...”.

### Article 3 of Convention No. 189

“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: (a) freedom of association and the effective recognition of the right to collective bargaining; ...

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.”

**982.** Pursuant to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, all ILO Members, even if they have not ratified the Freedom of Association and Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), “have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution”, the principles of freedom of association and the effective recognition of the right to collective bargaining (Paragraph 2(a)). The ILO Declaration on Social Justice for a Fair Globalization, 2008, further emphasizes the importance of freedom of association and collective bargaining, not only as an essential component of the fundamental principles and rights at work, but also as particularly important for the attainment of the four strategic objectives of the ILO Decent Work Agenda (Part I(A)(iv)).<sup>1838</sup> The Committee emphasizes in this respect that the existence of strong, independent and representative employers’ and workers’ organizations and the effective recognition of the right to collective bargaining are preconditions for sound social dialogue for all workers, including care economy workers and their employers.

<sup>1838</sup> The four strategic objectives are: (i) promoting employment by creating a sustainable institutional and economic environment; (ii) developing and enhancing measures of social protection which are sustainable and adapted to national circumstances; (iii) promoting social dialogue and tripartism; and (iv) respecting, promoting and realizing the fundamental principles and rights at work.

983. *Noting that the instruments examined in this General Survey refer to social dialogue as a crucial means for the effective implementation of their provisions,*<sup>1839</sup> *the Committee considers that the importance of freedom of association and collective bargaining cannot be overstated as the cornerstone of decent work for care economy workers. In its examination of the application of Conventions Nos 87 and 98, the Committee has drawn attention to the fact that both of these fundamental Conventions apply to all domestic workers and nursing personnel.*<sup>1840</sup>

## ► II. Freedom of association, collective bargaining and social dialogue for nursing personnel

984. Convention No. 149 and Recommendation No. 157 call for the participation of nursing personnel in the planning of nursing services at all levels, and in the planning and implementation of national health policy and principles, including with respect to education and training and the practice of the profession. Moreover, preference is to be given to negotiation for the determination of their conditions of employment and work.

### Article 5 of Convention No. 149

1. Measures shall be taken to promote the participation of nursing personnel in the planning of nursing services and consultation with such personnel on decisions concerning them, in a manner appropriate to national conditions.
2. The determination of conditions of employment and work shall preferably be made by negotiation between employers' and workers' organizations concerned.
3. The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought through negotiations between the parties or, in such a manner as to ensure the confidence of the parties involved, through independent and impartial machinery such as mediation, conciliation and voluntary arbitration.

<sup>1839</sup> Arts 1(3), 2(3), 5 and 8 of Convention No. 149 and Arts 3 and 18 of Convention No. 189.

<sup>1840</sup> For instance, CEACR – *Canada*, C.87, observation, 2011 and 2020; *Bangladesh*, C.87, observation, 2020; *Eritrea*, C.98, observation, 2020. See also ILO (2012). *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B), International Labour Conference, 101st Session, Geneva, paras 71, 73 and 168. In one case, while following up on the recommendations made by the Committee on Freedom of Association in cases Nos. 2333 and 2314, the Committee emphasized the right of workers in social, health and childcare services to freedom of association. The cases concerned persons who provided care services for children and adults, mostly in their own homes: CEACR – *Canada*, C. 87, observation, 2007 and 2009.

#### Article 8 of Convention No. 189

The provisions of this Convention, insofar as they are not otherwise made effective by means of collective agreements, works rules, arbitration awards, court decisions, or in such other manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations.

985. These provisions highlight the central importance of social dialogue in establishing all aspects of the conditions of employment and work of nursing personnel. Social dialogue takes the form of consultation with representatives of nursing personnel in the process of decision-making at all levels, the determination of conditions of employment through collective bargaining and the settlement of collective disputes through negotiation or voluntary recourse to independent and impartial machinery that has the confidence of the parties. The existence of free, independent and representative workers' and employers' organizations is a precondition for the effective implementation of these provisions and is dependent on the effective recognition of the right to organize of nursing personnel, as highlighted in the Preamble to the Convention.

### 1. Freedom to establish and join organizations of their own choosing

986. The right of nursing personnel to establish and join organizations of their own choosing and to bargain collectively are generally recognized in the same way as for other workers. However, the Committee notes that nursing personnel in some countries have been at least partially excluded from full legislative protection of their right to freedom of association.

*Canada* – In Alberta, nursing practitioners were deprived of the right to establish and join organizations of their own choosing by the Labour Relations (Regional Health Authorities Restructuring) Amendment Act. However, in November 2019, the Alberta Labour Relations Board ruled that the exclusion of nursing practitioners from the right to associate was unconstitutional under the Canadian Charter of Rights and Freedoms. In July 2020, the Restoring Balance in Alberta's Workplaces Act removed the exclusion of nursing practitioners.<sup>1841</sup>

*United States of America* – The Government reports that, pursuant to the National Labour Relations Act, registered nurses employed as supervisors are not entitled to unionize.

<sup>1841</sup> See CEACR – *Canada*, C.87, observations, 2011 and 2020.

987. While examples of the exclusion of nurses in law from the right to organize are rare, anti-union discrimination and the absence of effective sanctions may, in practice, deter nurses from organizing, particularly in the private sector.

In *India*, Public Services International (PSI) refers to the general hostility and reprisals by employers against nursing sector workers who join trade unions. PSI reports that the denial of the right of nurses to organize and join unions is endemic in the private healthcare sector, largely due to the widespread use of fixed-term contracts which prohibit union participation. PSI adds that there is a significant aspect of gender discrimination in such denial, with some employers declining to employ male nurses due to the belief that they are more active than women nurses in unions and advocacy for improved working conditions through collective bargaining. PSI reports that, in the *Philippines*, despite full recognition of the right to organize and collective bargaining, health unions (including nurses) face constant challenges to the exercise of the right to organize in the private sector. It adds that most health workers in *Bangladesh* are not organized due to the general hostility of employers to unions, which makes organizing extremely difficult. Certain employment practices, including outsourcing, precarious forms of employment and recourse to “service contracts”, have a “chilling” effect on the effective exercise of freedom of association by nursing personnel in both the public and private sectors.

In *Colombia*, the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) indicate that it is difficult for health sector workers to establish unions, particularly due to the massive outsourcing of nursing services and frequent recourse to precarious contracts, known as “service orders”. They report that 70 per cent of nursing personnel in the country are hired under such contracts which, under the national labour legislation, give rise to a civil law relationship rather than an employment relationship. These civil law contracts are short-term, with a duration of between three and six months, which raises the ever-present threat of non-renewal. They observe that this practice discourages nursing personnel from joining or establishing unions, resulting in an extremely low unionization rate of only 3 per cent in the nursing sector.

## 2. Participation in collective bargaining processes and other forms of social dialogue

988. In many countries, organizations representing nursing personnel participate in collective bargaining processes with employers or employers’ organizations and conclude collective agreements that determine various aspects of their employment relationship and working conditions.<sup>1842</sup> However, the unionization rate of nursing personnel and the coverage of collective agreements in the public and private sectors, as well as the material scope of the agreements concluded, vary between countries.

<sup>1842</sup> With regard to the material scope of collective bargaining, see Committee on Freedom of Association, Case No. 1897, Report No. 308, November 1997, para. 473. The complainant, Japan National Hospital Workers’ Union, alleged that certain matters were excluded from collective bargaining. The CFA concluded in this regard that it considered “like the Committee of Experts on the Application of Conventions and Recommendations, that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with Convention No. 98”.

989. The Committee notes that collective bargaining in the nursing sector takes place at the national sectoral level in many countries.<sup>1843</sup> In a few cases in the public sector, bargaining takes place at the local level.<sup>1844</sup> In a few countries, bargaining in the nursing sector occurs at the enterprise level.<sup>1845</sup> Several governments report that the material scope of collective agreements in the sector broadly covers employment and working conditions,<sup>1846</sup> while a number of governments indicate that remuneration is set by collective agreement.<sup>1847</sup>

CEACR – In its comments concerning *Greece*, the Committee notes that collective agreements have governed the fixing of wages of nursing personnel in the private sector for a number of years. However, the last collective agreement concluded in 2014 has now expired and no agreement is currently in force in the country. In its 2020 observation, the Committee noted the observations of the Greek General Confederation of Labour (GSEE) that “there are important difficulties concerning the procedure for collective bargaining and the conclusion of new sectoral collective agreements, which were aggravated by the expiry of former collective agreements enabling employers to pay nursing personnel in private hospitals on the basis of the minimum wage”.<sup>1848</sup>

In *Israel*, the General Federation of Labour (Histadrut) organizes and represents nursing personnel in negotiations with employers, including in relation to wage agreements and additional terms of employment. Histadrut is currently engaged in negotiating a collective agreement for the nursing sector.

### 3. Participation of nursing personnel in the formulation and implementation of policies and principles

990. The Committee notes that representatives of nursing personnel participate in the formulation and implementation of policies and principles governing their profession through interaction with public authorities in a number of different ways (Chapter 3). Several governments report the participation of representatives of nursing personnel in permanent bodies with a mandate to submit opinions to public health authorities on matters relating to the regulation of the nursing profession and the planning of nursing services.<sup>1849</sup> In a number of countries, a position has been created in the Ministry of Health with responsibility for liaising with representatives of nursing personnel.<sup>1850</sup> Many governments also report that decision-making and the development of policy, laws and regulations concerning the nursing profession are always undertaken in consultation with the relevant professional associations representing nursing personnel.<sup>1851</sup>

1843 For instance, *Belgium* (public and private sectors), *Cameroon* (public sector), *Finland* (public and private sectors), *France* (private sector), *Israel* (bargaining is currently ongoing), *Italy* (public and private sectors), *Tunisia* (public and private sectors), *United Kingdom of Great Britain and Northern Ireland* (public sector) and *Uruguay*.

1844 For instance, *Australia* (Queensland) and *Canada* (Québec).

1845 For instance, *Australia*, *Switzerland* and *United States*. In *Bulgaria* (Sofia), there is a sectoral agreement, as well as enterprise level agreements, which are to be concluded under the terms of the sectoral agreement.

1846 For instance, *Cameroon*, *Finland*, *Italy*, *Tunisia*, *United Kingdom* and *Uruguay*.

1847 For instance, *Australia*, *Belgium*, *France* (private sector), *Switzerland*, *United Kingdom* and *United States*.

1848 CEACR – *Greece*, C.149, observation, 2020.

1849 For instance, la Commission technique de l'art infirmier (*Belgium*), the Joint Provincial Nursing Committee (*Canada*, Ontario), le Haut conseil des professions paramédicales (*France*), the Long-term Care Quality Committee (*Germany*) and the Clinical Commissioning Groups (*United Kingdom*).

1850 For instance, the National Director of Nursing in *Chile*, the Deputy Nursing Advisor in *India* and the National Administrator of Nursing Services in *Togo*.

1851 For instance, *Chile*, *Estonia*, *Germany*, *Guatemala*, *India*, *Switzerland*, *Togo*, *United Arab Emirates* and *United Kingdom*.



## 4. Participation of nursing personnel in decisions relating to their professional life at the establishment level

991. Many governments provide information on bipartite structures created in public and private health establishments through which representatives of nursing personnel are able to participate in deliberation and decision-making on issues relating to the nursing profession and the organization of services in the establishment.<sup>1852</sup>

*Algeria* – In public health establishments, representatives of nurses participate in joint administrative boards, including appeal boards. Some boards focus on issues relating to career management, while a number of technical boards deal with general conditions of work, including safety, health and security.

## 5. Articulation between the various sources and levels of regulation

992. Some governments report that the principle of the “most favourable rule” is applied, under which the parties to collective bargaining cannot negotiate clauses less favourable than those provided for in law or in a higher-level collective agreement.<sup>1853</sup> This may also be the case with respect to the contractual relationship between employees and employers.

*Argentina* – The Act on labour contracts provides in section 7 that parties to the labour contract cannot agree conditions that are less favourable to the worker than those established in law or collective agreements. Moreover, collective agreements prevail over individual contracts where they contain conditions that are more favourable to the worker. The Government refers to clauses of collective agreements applicable to nursing personnel in the private sector which improve on the minimum standards of the general regime of labour contracts respecting, inter alia, compensation for the performance of associated tasks, wage adjustments, working hours and overtime, and leave.

*Canada* – Clauses in collective agreements negotiated with the unions representing nurses must either meet or exceed employment standards in the provinces, such as the standards on maternity protection in British Columbia. In Quebec, while the legal limit on weekly working time is 40 hours, the collective agreements for nursing personnel fix maximum weekly working hours at between 35 and 37.5 hours.

<sup>1852</sup> For instance, *Algeria, Austria, Bosnia and Herzegovina, Chile, France and Turkmenistan*.

<sup>1853</sup> For instance, *Federation of Bosnia and Herzegovina*.



### ► III. Freedom of association, collective bargaining and social dialogue for domestic workers

993. Despite the protection set out in Convention No. 189, domestic workers in many countries are still excluded from coverage by national labour legislation (Chapter 7), and therefore from recognition of their right to organize. They are also frequently faced with a range of practical obstacles that impede the full realization of their right to freedom of association and collective bargaining.

#### 1. The right to organize of domestic workers

994. In addition to the basic recognition of the right to organize of domestic workers provided by the standards and principles of freedom of association, Paragraph 2 of Recommendation No. 201 explicitly calls on Members to identify and eliminate any legislative or administrative restrictions or other obstacles to the effective exercise by domestic workers of their fundamental right to establish their own organizations or to join organizations of their own choosing, and to take or support measures to strengthen the capacity of organizations representing domestic workers and those of their employers to promote effectively the interests of their members.

##### (a) Inclusion of domestic workers within the scope of the general labour legislation

995. The Committee notes that different approaches have been adopted at the national level to ensure the freedom of association and collective bargaining rights of domestic workers. In some countries, domestic workers and their employers are covered by the general labour legislation, which guarantees workers the right to organize and bargain collectively.<sup>1854</sup>

*Algeria* – The general guarantee of the right to establish and join organizations covers domestic workers and their employers.

*Burkina Faso* – The Government indicates that domestic workers are entitled to exercise their fundamental labour rights in the same way as all other workers, including freedom of association and the effective recognition of the right to collective bargaining.

996. In contrast, in certain countries, a specific regime has been established for domestic workers within the general labour legislation respecting certain aspects of their employment, such as labour contracts and hours of work, on the understanding that general provisions, including those respecting freedom of association, remain applicable.

*El Salvador* – A specific chapter of the Labour Code covers the conditions of work of domestic workers, while their collective labour rights are covered by the general provisions of the Labour Code applicable to all workers.

<sup>1854</sup> For instance, *Algeria, Belgium and Burkina Faso*.

*Guatemala* – Despite the existence of a number of specific provisions in the Labour Code respecting domestic workers, they are covered by the general legislation, including the provisions on freedom of association.

997. However, in a number of countries, the general labour legislation excludes domestic workers and/or their employers from its scope of application. In many such cases, separate laws establish a specific regime governing various aspects of the relationship between domestic workers and their employers. The legislation on domestic workers in some countries contains specific provisions guaranteeing the right of domestic workers and their employers to establish and join organizations of their own choosing.

*Plurinational State of Bolivia* – The Act on waged domestic work establishes the right to organize of domestic workers.<sup>1855</sup>

*Peru* – The new Act on domestic workers and its regulations both contain a chapter on freedom of association establishing the right of domestic workers to organize and bargain collectively and recognizing the application of the general provisions on freedom of association.<sup>1856</sup>

*Egypt* – The labour legislation is currently under review; however, the present legislation and the draft Labour Code both exclude domestic workers.<sup>1857</sup> Notwithstanding, the Government indicates that the Trade Union Act of 2017 establishes in section 2(7) that “the provisions of this Act shall apply to domestic workers”.

998. There are also countries where domestic workers are excluded from the scope of the general labour legislation, but are able to establish and join organizations of their own choosing on the basis of the principle of freedom of association and the provisions governing trade unions contained in the national constitution.

*Argentina* – Act No. 23551 guarantees freedom of association and the right of workers to organize and engage in union activity.<sup>1858</sup> Although the employment contract of domestic workers is not subject to the general provisions of labour law and is instead governed by a specific regime established under Act No. 26844, their right to freedom of association is protected by the general labour legislation.

1855 *Plurinational State of Bolivia*, [Ley No. 2450 de 9 abril de 2003, Ley de regulacion del trabajo asalariado del hogar](#), Artículo 8 (derechos).

1856 *Peru*, [Ley No. 31047, Ley de las Trabajadoras y Trabajadores del Hogar \(2020\)](#).

1857 CEACR – *Egypt*, C.87, observation, 2020.

1858 CEACR – *Argentina*, C.189, direct request, 2017.

*France* – Only a limited number of provisions of the Labour Code are applicable to domestic workers employed directly by private householders.<sup>1859</sup> However, their constitutional right to freedom of association is recognized and exercised in practice, and their working conditions are determined through collective bargaining.

*Morocco* – The Labour Code provides that the employment and working conditions of domestic workers shall be the subject of separate specific legislation,<sup>1860</sup> but the right of domestic workers to freedom of association and collective bargaining is established by the general legislation.<sup>1861</sup>

In *Trinidad and Tobago*, the National Union of Domestic Employees (NUDE) indicates that, although domestic workers are excluded from the definition of “worker” contained in the Industrial Relations Act,<sup>1862</sup> in practice they are able to register their organizations under the Trade Union Act.

## **(b) Exclusion of domestic workers and/or their employers from the right to establish and join organizations of their own choosing**

**999.** Domestic workers are excluded from the right to establish and join organizations of their own choosing in a number of countries. These exclusions may take different forms.

**1000.** First, in countries where no general guarantee of freedom of association exists, domestic workers and their employers, as is the case for other workers and employers in general, are effectively denied the right to establish and join organizations. As a result, in the absence of a general legal guarantee recognizing their right to establish and join organizations of their own choosing, domestic workers are effectively denied the right to freedom of association.

*Saudi Arabia* – The Government has adopted a specific regulation that recognizes and protects certain rights of domestic workers; however, the regulation is silent with regard to domestic workers’ freedom of association rights.

*United States* – The National Labour Relations Act, which provides the overarching country-wide legislative framework for freedom of association excludes work “in the domestic service of any family or person at his or her home”.

<sup>1859</sup> *France*, Labour Code, section L. 7221-2. However, the French *Cour de cassation* has considered that the list set out in this section is not exhaustive and has extended the application of other provisions of general law to domestic workers.

<sup>1860</sup> *Morocco*, Loi No. 19-12 fixant les conditions de travail et d’emploi des travailleuses et travailleurs domestiques, 2016.

<sup>1861</sup> *Morocco*, Loi No. 75-00 réglementant le droit d’association.

<sup>1862</sup> CEACR – *Trinidad and Tobago*, C.98, observation, 2019.

**1001.** Second, in countries where the general labour legislation contains a separate chapter on collective labour relations and freedom of association, the exclusion of domestic workers from the scope of the general legislation implies that they are also excluded from the rights set out in the special chapter. Separate laws or regulations on domestic work in some of these countries provide domestic workers with various rights, in particular regarding hours of work, rest and leave, as well as protection respecting their labour contracts. However, in many cases, these specific regimes do not provide for the right to establish and join organizations to defend their collective occupational interests, nor do they contain any reference to the rules of the general legislation in this regard. Consequently, in these countries, domestic workers are excluded from the right to freedom of association, even though they may enjoy certain other labour rights under the special regime .

*Bahrain* – Domestic workers are excluded from the scope of the Labour Act for the private sector,<sup>1863</sup> and there is no separate law on domestic workers. As the Workers' Trade Union Act only applies to workers covered by the Labour Act for the private sector, domestic workers have no legal right to organize.<sup>1864</sup>

*Jordan* – The Labour Code has been amended to replace the explicit exclusion of domestic workers from its scope by a provision indicating that regulations governing the employment conditions of domestic workers will be adopted at a later stage.<sup>1865</sup> These regulations have now been adopted,<sup>1866</sup> but contain no provisions respecting the right to freedom of association.<sup>1867</sup>

*Kuwait* – Domestic workers are excluded from the scope of the Labour Code. While certain aspects of the employment of domestic workers are governed by a separate law,<sup>1868</sup> it does not address their right to freedom of association.<sup>1869</sup>

In *Bangladesh*, the National Domestic Women Workers Union (NDWWU) indicates that, since domestic workers are excluded from the scope of the Labour Law, they do not enjoy the right to form trade unions, federations or confederations. The NDWWU is the only workers' organization in *Bangladesh* in which domestic workers participate. It runs advocacy campaigns and lobbies the Government to enact labour legislation protecting domestic workers. The NDWWU organizes domestic workers from various areas and launches awareness campaigns through its "area committees". The NDWWU is a member of the "Central Monitoring Cell", a body formed by the Government to properly implement the "Domestic Workers' Protection & Welfare Policy 2015". Nevertheless, the NDWWU has been unable to register as a trade union due to the exclusion of domestic workers from the scope of the Labour Law.

<sup>1863</sup> *Bahrain*, Act No. 36 of 2012, section 2(b).

<sup>1864</sup> See also *Kuwait* and *Lebanon*.

<sup>1865</sup> CEACR – *Jordan*, C.98, observation, 2017

<sup>1866</sup> *Jordan*, Regulation No. 90/2009 on domestic workers, cooks, gardeners and similar categories.

<sup>1867</sup> CEACR – *Jordan*, C.98, observation, 2017.

<sup>1868</sup> *Kuwait*, Law No. 68 of 2015.

<sup>1869</sup> CEACR – *Kuwait*, C.87, observation, 2017.

In *Jordan*, the Domestic Workers' Solidarity Network (DWSNJ) indicates that the Government does not allow the unionization of domestic workers and that, even where informal organizations of domestic workers exist, they cannot operate openly.

In *Kuwait*, the International Domestic Workers Federation (IDWF) indicates that forming trade unions for domestic workers is not possible, but that domestic workers can organize and register as non-governmental organizations. Workers are therefore forming non-official organizations to disseminate information on domestic workers' rights. For example, the Sandigan Kuwait Domestic Workers Association (SKDWA), while it is not a registered trade union, nevertheless provides regular trainings on capacity development, skills enhancement, leadership, labour rights and other activities in support of domestic workers.

**1002. *The Committee considers that the exclusion of domestic workers from the effective recognition of their right to freedom of association and collective bargaining is incompatible with Article 3 of Convention No. 189 and Paragraph 2 of Recommendation No. 201 and encourages Governments to take steps to ensure that domestic workers enjoy legal protections for the exercise of these fundamental rights.***

**1003.** The Committee notes that in certain countries where recognition of collective labour rights is restricted to employees, domestic workers and their employers are implicitly excluded from these rights because the national legislation does not recognize the relationship between a householder and a domestic worker as an employment relationship.

*Malaysia* – The Government indicates that the Employment Act draws a distinction between “employees” and “domestic servants”,<sup>1870</sup> who are not included in its scope. Moreover, the Act defines “employer” as “any person who has entered into a contract of service to employ any other person as an employee”,<sup>1871</sup> which implies that the relationship between the “domestic servant” and the private householder is not considered to constitute an “employment relationship”. Although the Government indicates that existing laws do not prohibit domestic workers from joining trade unions, the Trade Union Act and the Industrial Relations Act define “union” as an association of “employers” or “workmen”, and do not refer to “domestic servants”.<sup>1872</sup>

<sup>1870</sup> *Malaysia*, Act No. 265 (Employment Act 1955), section 2: “‘domestic servant’ means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use”.

<sup>1871</sup> *ibid.*

<sup>1872</sup> *Malaysia*, Act No. 262 (Trade Unions Act 1959) and Act No. 177 (Industrial Relations Act 1967). See also in this regard Committee on Freedom of Association Case No. 2637, Report No. 392, October 2020, para. 90: “The Committee also recalls that in its previous examination of the case it noted the Government’s indication that domestic workers could join existing unions to defend their interests, but observed that the organizations referred to by the Government in this respect were associations of employment agencies”. The case concerns the refusal of registration of an organisation of migrant domestic workers in Malaysia.

In *Indonesia*, the Jaringan Nasional Advokasi Pekerja Rumah Tangga (JALA PRT) and the IDWF indicate that domestic workers are generally not covered by labour law because they lack written contracts, which are required by article 50 of the Manpower Act in order to establish an employment relationship. Domestic workers are organized under independent unions and are not yet formally affiliated with the national trade union centres. The JALA PRT is the only organization in *Indonesia* organizing domestic workers. It has more than 13,000 members nationally, which still represents a very small proportion (0.003 per cent) of the total of 4 million domestic workers in the country.

**1004.** The national legislation in several countries recognizes persons employed by temporary work agencies to provide domestic services to private households as “workers” with the right to organize, but excludes from this right persons hired directly by individual households to provide the same or similar domestic services.<sup>1873</sup>

*Cambodia* – Domestic workers are excluded from the scope of application of the Labour Code, except for its provisions on freedom of union.<sup>1874</sup> The Government indicates that the right of national and migrant domestic workers to establish and join organizations, federations and confederations is set out in the Law on Trade Unions (LTU), which applies to enterprises or establishments and all persons working for the enterprises or establishments under the provisions of the Labour Law. In its report on the application of Convention No. 87, the Government previously indicated that domestic workers who do not meet the requirements of the LTU can form organizations under the Law on Associations and Non-Governmental Organisations (LANGO).<sup>1875</sup> The Government’s report, read together with the relevant legislation, means that only domestic workers employed by enterprises to provide domestic services to households are entitled by law to organize and bargain collectively. In contrast, domestic workers directly recruited by householders can form associations, but not workers’ organizations within the meaning of the Labour Code.<sup>1876</sup>

**1005.** Another implicit mechanism that excludes domestic workers from the right to organize or bargain collectively derives from the legal requirements for the establishment of trade unions, which are often very difficult or impossible to fulfil for organizations representing domestic workers. For this reason, in certain countries, although the right of domestic workers to freedom of association is recognized in law, it cannot be exercised in practice. For example, in countries where the law establishes an enterprise-centred trade union model, and where there are no legal provisions envisaging the creation of branch or sectoral unions, it may be difficult or impossible to establish organizations of domestic workers who are employed directly by private householders, even though these workers are entitled in principle to exercise their right to freedom of association.

<sup>1873</sup> For instance, *Cambodia, China, Japan and Republic of Korea*.

<sup>1874</sup> *Cambodia*, Kram dated 13 Mar. 1997 on the Labor Law, article 1: “This law shall not apply to: ... (e) domestics or household servants, unless otherwise expressly specified under this law. These domestics or household servants are entitled to apply the provisions on freedom of union under this law.” In 2018, the Ministry of Labour issued Prakas No. 235 on the Working Conditions of Domestic Workers, which recognizes certain labour rights for domestic workers. The Association of Domestic Workers indicates that Prakas No. 235 remains unenforced as the Government has not adopted any dissemination or implementation measures.

<sup>1875</sup> CEACR – *Cambodia*, C.87, observation, 2017.

<sup>1876</sup> *Cambodia*, the Association of Domestic Workers (ADW) indicates that, in the absence of legal protection for domestic workers, ADW can usually only resolve cases and disputes of domestic workers through direct negotiation with employers.

*Chile* – The provisions of the Labour Code on the right to organize and collective bargaining cover domestic workers. However, the Government reports that it is necessary to adopt specific measures to facilitate the trade union membership of such workers. In particular, the legislation makes the exercise of the right to collective bargaining very complex in practice for workers in private households,<sup>1877</sup> as the labour legislation primarily envisages the establishment of company and inter-company workers' organizations.

*Ecuador* – The Government indicates that domestic workers are covered by the general labour legislation,<sup>1878</sup> including the provisions on freedom of association. Section 443 of the Labour Code sets at 30 the minimum number of founding members of a workers' organization, while section 449 requires the organization's officers to be employed in the company in which the organization is created. In its examination of application of the Convention in *Ecuador*, the Committee has noted the observations of a domestic workers' organization that these provisions prevent most domestic workers who work in separate private homes and not for the same undertaking from establishing unions.<sup>1879</sup> The Government indicates that four domestic workers' organizations are legally registered in the country.<sup>1880</sup> In practice, there appears to be an exception for domestic workers, who are allowed to establish primary-level sectoral organizations despite the legal restrictions on branch unions.<sup>1881</sup>

**1006.** This situation illustrates how systems that focus on primary-level organizations in relation to companies or enterprises are likely to hinder the establishment of unions of domestic workers who are employed directly by households, as well as those who work as independent service providers. ***The Committee considers that one means of addressing these obstacles could be by recognizing the right to freedom of association in relation to the type of work performed, without linking the establishment of organizations to employment in a company or enterprise. Similarly, with a view to identifying and eliminating practical obstacles to the establishment of sectoral unions, minimum threshold requirements should take into account the specific challenges of outreach to domestic workers in individual households.***

<sup>1877</sup> CEACR – *Chile*, C.189, direct request, 2018.

<sup>1878</sup> *Ecuador*, the Labour Code, in sections 262-270, sets out the specific rules applicable to certain aspects of domestic work. For all other aspects, the general rules apply.

<sup>1879</sup> CEACR – *Ecuador*, C.189, direct request, 2020.

<sup>1880</sup> *Ecuador*, the Government refers to the following organizations: the National Union of Remunerated Domestic Workers (SINUTRHE); the National Association of Paid Domestic Workers (ASONATH); the Association of Paid Domestic Workers of Machala; and the Association of Paid Domestic Workers.

<sup>1881</sup> See Committee on Freedom of Association, Case No. 3148, Report No. 381, March 2107. The case concerns the refusal to register a trade union of banana plantation workers bringing together workers from various companies in the sector, whereas a sectoral trade union of domestic workers (SINUTRHE) has been registered (para. 424). The Government distinguishes its position by indication that "the authorization of the establishment of SINUTRHE is a direct response to and implements the Domestic Workers Convention, 2011 (No. 189), which has been ratified by Ecuador and which stipulates that the State must take measures to ensure the effective promotion and protection of the human rights of all domestic workers, inter alia, freedom of association and the effective recognition of the right to collective bargaining" (para. 427).



## 2. Effective recognition of the right of domestic workers to bargain collectively

**1007.** Article 3 of Convention No. 189, supplemented by Paragraph 2 of Recommendation No. 201, requires Members to take measures for the effective recognition of the right to collective bargaining of domestic workers. Convention No. 98 and the Collective Bargaining Convention (No. 154) and Recommendation (No. 163), 1981, further specify the measures to be taken to promote effective recognition of the right to collective bargaining for domestic workers.

### Paragraph 2 of Recommendation No. 201

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.

**1008.** The "establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations"<sup>1882</sup> is an indispensable prerequisite for the effective recognition of the right to collective bargaining. Beyond the mere removal of legal obstacles, as called for in Recommendation No. 201, active measures need to be taken to encourage and support the establishment of organizations of domestic workers and employers, while ensuring the protection of their independence and autonomy. ***In this regard, the Committee considers that, in view of the specificities of domestic work, it is of particular importance to remove any legal or administrative obstacles that hinder individual householders from establishing organizations to represent their interests and to take measures to encourage their engagement in social dialogue on matters of interest to them.***

In France, the Fédération des particuliers employeurs de France (FEPEM)<sup>1883</sup> was formed in 1948. It represents 3.3 million householders who employ more than 1.4 million domestic workers. The FEPEM is the employer party to the Convention collective nationale des salariés du particulier employeur dated 24 November 1999 as well as to the new collective agreement in the sector that will be applicable as of 1 January 2022.

<sup>1882</sup> The Collective Bargaining Recommendation, 1981 (No. 163), Para. 2.

<sup>1883</sup> [Rôle et Missions | Fédération des Particuliers Employeurs de France \(fepem.fr\)](https://www.fepem.fr)

In *Argentina*, householder employers of domestic workers are represented in the National Commission on Private Household Labour (CNTCP), the tripartite body in charge of regulating the sector. The CNTCP has most recently defined wages for the workers in the sector in a Resolution dated 26 October 2021.<sup>1884</sup>

**1009.** Private households that employ domestic workers in many countries are not included in the legal definition of “employer” and cannot therefore establish or join occupational organizations and bargain collectively. Thus, even in systems where the right to freedom of association of domestic workers is fully recognized, collective bargaining may not be possible due to the absence of or limitations on employers’ organizations and the practical hurdles that they encounter in forming a representative, collective voice for employers.

*Austria* – No collective agreement can be concluded in the domestic work sector due to the absence of an organization representing employers.

In *Peru*, the FENTTRAHOP affirms that the National Confederation of Private Enterprise Institutions (CONFIEP) has assumed the role of representing employers in social dialogue bodies, but the lack of representation of employers in the domestic sector makes collective bargaining difficult.

In *Bolivia*, The National Federation of Salaried Domestic Workers of Bolivia (FENATRAHOB) indicates that, although the right to freedom of association of domestic workers and their employers is recognized, the Association of Householders, which represents employers of domestic workers, does not participate in social or political affairs and does not act as an interlocutor for either the State or workers’ organizations.<sup>1885</sup>

In *Panama*, the IDWF indicates that the right to collective bargaining cannot be exercised in the domestic work sector, since domestic employers are not organized. Employers’ organizations represented at tripartite negotiating tables have declared that they are unable to include or take on board the concerns of domestic workers because these issues do not concern the branches of economy that they represent. Therefore, the IDWF calls on the Government to encourage domestic employers and private employment agencies to assume their role in social dialogue processes.

<sup>1884</sup> *Argentina*- [Comisión Nacional de Trabajo en Casas Particulares, Resolución núm. 4/2021](#).

<sup>1885</sup> See also CEACR – *Plurinational State of Bolivia*, C.189, direct request, 2019.

1010. Once established, representative workers' and employers' organizations should be recognized for purposes of collective bargaining. ***The Committee recalls that procedures for determining the organizations entitled to bargain, where they exist, should be based on pre-established and objective criteria with regard to the organization's representative character.<sup>1886</sup> Where such rules do not exist or are inadequate in view of the specificities of the domestic work sector, such as the isolated nature of the activity, the legislative and administrative authorities, in consultation with workers and employers' organizations, should enact adequate rules to facilitate and encourage the development of collective bargaining in the sector.***

1011. While recognizing that model contracts negotiated at national level may not be a substitute for full collective bargaining, the Committee considers that they may provide an important stepping stone towards collective regulation of the sector. In full consultation with the social partners concerned, different types of collective bargaining machinery and procedures may be adopted, taking into account the specific challenges faced. ***In this regard, the Committee recalls that the "first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement under the best possible conditions".<sup>1887</sup> With regard to any disputes that may arise during the bargaining process or in connection with the interpretation and application of collective agreements, settlement procedures should assist the parties to find a solution themselves,<sup>1888</sup> or through free and voluntary recourse to an independent, neutral third party in which all the parties have confidence,<sup>1889</sup> for example through voluntary conciliation and arbitration.<sup>1890</sup>***

1012. ***With regard to the personal scope of the right to collective bargaining, the Committee highlights that all domestic workers and their employers, without distinction, should be able to exercise their right to collective bargaining.***

1013. As noted above, in many countries where the right to organize of domestic workers is recognized at least to a certain extent, the law may still not recognize the right of domestic workers who are employed directly by households, or of their employers, to establish or join workers' or employers' organizations and to engage in collective bargaining. Independent domestic workers also face challenges in cases where employment by a service provider is a prerequisite to enjoy the right to organize and bargain collectively. ***The Committee considers that these distinctions between different categories of domestic workers are not compatible with the requirement for the effective recognition of the right of all domestic workers to bargain collectively and should be removed. Migrant domestic workers should also be able to participate in collective bargaining processes and be covered by collective agreements.***

1014. With regard to the material scope of the right to collective bargaining, the Committee recalls that collective agreements are one of the means of implementation envisaged in Article 18 of Convention No. 189. ***Therefore, the Committee considers that, subject to international and national law, and consistent with national practice, domestic workers should be entitled to negotiate collectively all the aspects of their employment covered by the Convention, including minimum age requirements, protection against violence, harassment and abuse, terms and conditions of employment, contracts, the situation of live-in domestic workers, hours of work, rest and leave, wages, occupational safety and health, and access to justice, including dispute resolution mechanisms.***

<sup>1886</sup> Recommendation No. 163, Para. 3.

<sup>1887</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 242.

<sup>1888</sup> Recommendation No. 163, Para. 8.

<sup>1889</sup> ILO (2012). *Giving globalization a human face*, op. cit., para. 243.

<sup>1890</sup> See the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92).

*Italy* – Section 2068 of the Civil Code used to prohibit the regulation of domestic work by collective agreement until the Constitutional Court found this prohibition unconstitutional and struck it down.<sup>1891</sup> Collective agreements are now the main instruments that determine and govern all aspects of domestic work in the country.

**1015.** With regard to the geographical and occupational scope of the right of domestic workers to bargain collectively, Recommendation No. 163 indicates in Paragraph 4 that collective bargaining should be possible at any level. Bargaining at the level of the establishment or the undertaking can be envisaged in the case of domestic workers employed by service provider enterprises. However, the law should also allow collective bargaining at the level of the branch of activity or the industry at the local, regional or national levels in order to ensure the coverage of domestic workers employed directly by households and independent domestic workers. Numerous factors contribute to the challenges faced by domestic workers and their household employers to organize and engage in collective bargaining, including the isolated nature of the work, the lack of commonality across households, and language barriers, among others.

**1016.** Such challenges highlight the importance of Paragraph 2 (b) of Recommendation No. 201, which indicates that Members should give consideration to taking or supporting measures to strengthen the capacity of organizations representing domestic workers and their employers to enable them to promote effectively and protect the interests of their members. These could include, as envisaged in Recommendation No. 163, Paragraph 5, measures for the parties to collective bargaining to obtain appropriate training. In view of the challenges already faced by domestic workers in organizing and exercising their right to collective bargaining in many countries, training in negotiation skills would be particularly useful.<sup>1892</sup>

### 3. Social dialogue and collective bargaining for domestic workers: Specific issues

Convention No. 189 and Recommendation No. 201 both refer to two main vehicles for social dialogue, namely collective bargaining between workers' and employers' organizations, and consultation between public authorities and workers' and employers' organizations.

<sup>1891</sup> *Italy*, Constitutional Court, [ruling No. 68](#), 1969.

<sup>1892</sup> Recommendation No. 163, Para. 5.

**1017.** In addition to Article 18 of Convention No. 189, which emphasizes the importance of social dialogue in the overall implementation of the Convention, the following provisions explicitly require consultations 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” in relation to various aspects of domestic work:

- ▶ identification of categories of workers to be excluded from the scope of the Convention (Article 2(2));
- ▶ progressive application of measures to ensure the occupational safety and health of domestic workers (Article 13(2));
- ▶ progressive application of social security measures (Article 14(2)); and
- ▶ measures to protect domestic workers, including migrant domestic workers, from abusive or unethical practices by private employment agencies (Article 15(2)).

**1018.** In addition, Recommendation No. 201 calls on Members to consult workers’ and employers’ organizations in relation to:

- ▶ the establishment of a model contract of employment (Paragraph 6(3));
- ▶ the development of practical guidance on the recording of hours of work, including overtime and standby hours, and making this information accessible to the domestic worker (Paragraph 8(2));
- ▶ measures to:
  - ▶ eliminate or minimize work-related hazards and risks
  - ▶ provide a system of inspection and penalties for violation of OSH laws and regulations
  - ▶ establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work
  - ▶ advise on OSH
  - ▶ develop training programmes and disseminate guidelines on OSH requirements specific to domestic workers (Paragraph 19);
- ▶ legislative, regulatory or other measures specifying the conditions under which migrant domestic workers are entitled to repatriation (Paragraph 22);
- ▶ establishing policies and programmes, so as to:
  - ▶ encourage the continuing development of the competencies and qualifications of domestic workers
  - ▶ address their work-life balance needs
  - ▶ ensure that their concerns and rights are taken into account in the context of more general efforts to reconcile work and family responsibilities (Paragraph 25).

## 4. Examples of good practices of collective bargaining and social dialogue in the domestic work sector

**1019.** The Committee notes that effective consultations, tripartite decision-making and collective bargaining have been held in a number of countries for the development and adoption of the measures outlined above.

*Belgium* – Different legal provisions apply to the employment of three separate categories of domestic workers, each of which is covered by collective agreements concluded within the framework of a joint committee.<sup>1893</sup> The category referred to as “domestic workers” in the labour legislation<sup>1894</sup> is represented in Joint Committee No. 323, and is covered by all the collective agreements adopted by that Committee.<sup>1895</sup> Domestic workers employed through the voucher service system<sup>1896</sup> are covered by collective agreements concluded in Joint Committee No. 322.01.<sup>1897</sup> Workers employed mainly or exclusively to perform gardening for households are covered by Joint Committee No. 145.<sup>1898</sup> All other domestic workers are covered by the collective agreements concluded in Joint Committee No. 337.<sup>1899</sup> The material scope of these collective agreements is broad and includes, inter alia, wages, social security, vocational and trade union training and working time. One collective agreement concluded by Joint Committee No. 323 concerning working time has been declared universally applicable by royal decree.<sup>1900</sup> The joint committees also play a role in tripartite social dialogue, as they advise the Government, the National Labour Council and the Central Economic Council in matters related to the sector that they cover. They also contribute to the prevention and settlement of industrial disputes.

<sup>1893</sup> Joint committees (*commissions paritaires*) are structures created under Belgian law for collective bargaining in the various economic sectors. All collective agreements concluded by joint committees can be viewed at the Service public fédéral Emploi, Travail et Concertation sociale, [Recherche CCT](#).

<sup>1894</sup> “Domestic workers” in *Belgium* are workers who are employed directly by households, who perform “manual household work” for the employer or family. The Act on labour contracts contains a specific chapter on the “domestic work contract” that covers this category of workers, which does not include household personnel who do not perform “manual work”, such as drivers, governesses, gardeners and persons providing care for the sick. The latter are employed under an employee or worker labour contract and are covered by all the rules applicable to waged workers.

<sup>1895</sup> *Belgium*, Joint Committee No. 323 for Condominium Management, Estate Agents and Domestic Workers.

<sup>1896</sup> The Government reports that a significant proportion of domestic work is performed through the voucher system (*titres service*). These workers are employed by a company and sent to private households to carry out domestic work.

<sup>1897</sup> *Belgium*, Joint Subcommittee No. 322.01 for approved enterprises providing local work or services.

<sup>1898</sup> *Belgium*, Joint Committee No. 145 for Horticultural Enterprises.

<sup>1899</sup> *Belgium*, Auxiliary Joint Committee No. 337 for the non-commercial sector.

<sup>1900</sup> *Belgium*, [Collective Labour Agreement of 3 June 2004, extended by the Royal Decree of 23 Sep. 2005](#).

*Italy* – The Government indicates that a collective agreement regulating all aspects of domestic work is concluded at the national level and covers all domestic work relations in which the employer is a member of one of the employers' organizations that is party to the agreement or has signed a contract referring to it. The national collective labour agreement on domestic work relationships was last renewed in September 2020.<sup>1901</sup> Among the various changes introduced, domestic workers, domestic helpers, caregivers and babysitters are now known as family assistants and are classified at different levels depending on their skills and duties, especially taking into account the work of caring for children and dependent persons. The agreement applies to family assistants, including those of non-Italian nationality or stateless persons, however they are paid, and covers practically all aspects of employment conditions and relations, including wages, occupational safety and health, hours of work and rest, leave, training and upskilling.

## 5. Recourse to consultation mechanisms and tripartite decision-making

In *Argentina*, the General Confederation of Labour of the Argentine Republic (CGT-RA) played an active role, together with other trade unions in the sector, in the consultations that preceded the adoption of the new regulatory framework for domestic work and in the first collective bargaining process in 2015, which resulted in increased wages.<sup>1902</sup> In 2018, the tripartite National Commission on Private Household Labour (CNTCP) was created which: defines hourly and monthly wages in the sector; formulates rules on the minimum obligations of employers concerning the food and accommodation provided to domestic workers; promotes occupational safety and health standards; and organizes training programmes for workers' and employers' representatives in the CNTCP.<sup>1903</sup> In 2018, the CNTCP adopted a resolution defining hourly and monthly wages for workers in the domestic sector which apply the principle of equal remuneration.<sup>1904</sup>

*Republic of Korea* – In accordance with section 20 of the new Act on the Employment Improvement, etc. of Domestic Workers, policies related to the rights and interests of domestic workers are to be deliberated in the tripartite Employment Policy Council.

1901 *Italy*, [Contratto Collettivo Nazionale del Lavoro Domestico \(ASSINDATCOLF\)](#).

1902 CEACR – *Argentina*, C.189, direct request, 2017.

1903 *Argentina*, [Ley núm. 26.844 que dicta el Régimen Especial de contrato de trabajo para el personal de casas particulares](#), Artículo 67.

1904 CEACR – *Argentina*, C.189, direct request, 2019.



1020. The Committee notes that the process of decision-making in tripartite bodies relies on strong social dialogue and its outcome offers the potential advantage of universal coverage. Collective agreements are based on free and voluntary negotiations between workers' and employers' organizations without interference by third parties, although their coverage is in principle restricted to the members of the contracting parties. As the level of unionization in the domestic work sector is generally low, even in countries where there are no legal obstacles to the exercise by domestic workers of the right to organize, the extension of the coverage of collective agreements throughout the sector may be an effective means of countering low levels of organization.<sup>1905</sup>

*France* – The three national collective agreements covering various segments of the sector have been extended to all workers and employers in the sector.

In *Germany*, the German Confederation of Trade Unions (DGB) indicates that the existing collective agreements on domestic work only apply to the few employers that are bound by them. Most domestic work is carried out informally, and most private households and domestic workers are not members of organizations that are parties to the collective agreements. Moreover, the agreements have not been declared generally applicable and are therefore very limited in their application. The DGB accordingly considers that, if more workers and employers join organizations and the application of collective agreements is extended, the rights of domestic workers will be enhanced.<sup>1906</sup>

**1021. The Committee considers that further measures to promote broad coverage of domestic work by collective agreements could include the adoption of specific rules for collective bargaining machinery in the sector (including representativeness thresholds) and the promotion of model individual domestic work contracts that contain clauses referring to the collective agreements in force, national charters or other means of universal coverage.**

<sup>1905</sup> See the Collective Agreements Recommendation, 1951 (No. 91), Para. 5.

<sup>1906</sup> In *Germany*, the organization representing households, DGB Netzwerk Haushalt, indicates that 90 per cent of domestic work in households is informal. The DGB calls for the federal collective agreement to be declared generally binding and for measures to be taken to raise awareness and ensure compliance with its provisions, thereby creating an incentive for domestic workers to organize.







# 13

Achieving  
the potential  
of the instruments

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## ► I. Measures to give further effect to the instruments

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**1022.** The report form for this General Survey requested constituents to provide information regarding the implementation and impact of the four instruments under examination:

- Nursing Personnel Convention, 1977 (No. 149)
- Domestic Workers Convention, 2011 (No. 189)
- Nursing Personnel Recommendation, 1977 (No. 157)
- Domestic Workers Recommendation, 2011 (No. 201).

**1023.** Governments were requested to report on any modifications made or envisaged to national law or practice, or any measures taken or contemplated, including ratification, to give effect to the provisions of the instruments, as well as any challenges that might prevent or delay ratification.

## ► II. Taking account of the instruments in the design of national legislation, policies and programmes

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**1024.** A number of governments referred in their reports to initiatives to give effect to the provisions of the instruments under examination. Some governments reported on relevant amendments to legislation that have been made or are under way, while others indicate that a range of relevant measures have been taken. For example, in *Switzerland*, the Federal Act on the Health Professions and its accompanying regulations entered into force on 1 February 2020. The Act seeks to promote public health by enhancing the quality of training and practice for health professionals, including nursing personnel. In the *Philippines*, in 2018–19, a number of landmark laws were adopted to protect the rights of Filipino workers, such as health industry and domestic workers, including the introduction of an unemployment insurance scheme in the revised charter of the Philippine Social Security System<sup>1907</sup> and the adoption of the Universal Health Care Law, which expands access to health services by automatically enrolling all Filipino citizens in the National Health Insurance Program.<sup>1908</sup> In *Mexico*, a proposal is under consideration to amend Part IV, section 64, of the General Health Act to provide training to strengthen the technical competencies of traditional midwives, which calls for them to receive a decent wage in recognition of their work.

**1025.** In some countries, including *Australia*, *Germany*, *Lithuania*, the *United Kingdom of Great Britain and Northern Ireland*, the *United States of America* and the *Bolivarian Republic of Venezuela*, no modifications to the legislation are currently under consideration relevant to the instruments under examination.

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<sup>1907</sup> *Philippines*, Republic Act No. 11199.

<sup>1908</sup> *Philippines*, Republic Act No. 11223.

## 1. Convention No. 149 and Recommendation No. 157

**1026.** A number of governments report that measures are being taken to give effect to all or some of the provisions of Convention No. 149 and Recommendation No. 157.

### (a) Government comments on relevant modifications made or envisaged to national laws, regulations or practice

**1027.** In *Costa Rica*, the Committee on Act No. 2343 of the College of Nurses of Costa Rica is undertaking a review of the Organic Act of the College of Nurses to address issues of importance to the College relating to professional activities.<sup>1909</sup>

**1028.** In *Guatemala*, the Ministry of Public Health and Social Assistance is currently updating the regulations relevant to nursing personnel and is making additional proposals to improve their working conditions.

**1029.** In *Hungary*, with a view to attracting recruits to the medical profession, a career programme for healthcare professionals is being developed which contains four major directions and 12 packages of measures addressing: the vocational education and further education system; the development of a salary system and allowances; and the improvement of working and living conditions. The career programme is being developed with the participation of representatives of professional organizations representing employers and workers in the healthcare sector.

**1030.** In *Morocco*, an extensive legislative reform has been undertaken to give effect to all or part of the provisions of Convention No. 149. In this context, the Government refers to: Act No. 43-13 on nursing personnel (dahir No. 1-16-82 of 22 June 2016); Act No. 44-13 on midwifery (dahir No. 1-16-83 of 22 June 2016); and Act No. 45-13 relating to health workers in the field of rehabilitation (dahir No. 1-19-119 of 9 August 2019).

### (b) Observations of the social partners on modifications to national laws, regulations or practice relevant to the nursing instruments

**1031.** In *Israel*, the social partners (Histadut) report that two years ago the Government decided to improve the status of nursing personnel. It gave a mandate to the Prime Minister's Office and the Joint Distribution Committee (JDC Israel) to establish a committee to examine all aspects of the status of nurses. The committee, which consists of representatives of JDC Israel, the Ministry of Finance, the Prime Minister's Office, the Nursing Companies Union and the National Insurance Institute, is currently nearing the end of the procedure and submitting its recommendations.

**1032.** In its observations, the Federation of Korean Trade Unions (FKTU) refers to the Act on Healthcare and Medical Personnel Support, which came into force on 24 October 2019. The Act addresses not only qualifications, training and education for existing nursing personnel, but also human resources policy.

**1033.** The New Zealand Council of Trade Unions (NZCTU) indicates that the Government has made no modifications to the legal or regulatory framework to implement the provisions of Convention No. 149. Business New Zealand (BusinessNZ) indicates that the employment law covers all workers in the country, but that working conditions for nurses and aged care workers are specifically addressed in relevant collective agreements.

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<sup>1909</sup> *Costa Rica*, Ley No. 2343 "Ley Orgánica del Colegio de Enfermeros" and Ley No. 7085 "Estatuto de Servicios de Enfermería".

## 2. Convention No. 189 and Recommendation No. 201

**1034.** Many governments report that modifications to their legislative framework are under consideration or have already been adopted. For example, in *Peru*, new legislation and implementing regulations on domestic workers have been adopted.<sup>1910</sup> In *Ghana*, the Labour (Domestic Workers) Regulations came into force on 23 July 2020.<sup>1911</sup> In *Sudan*, the national legislation, including the Domestic Servants Act of 1955, is currently being amended with the aim of implementing the provisions of the instruments under examination. In *Norway*, the Housework Regulation was amended prior to the ratification of Convention No. 189 on 8 July 2021. In 2017, an Act was adopted in the *United Arab Emirates*<sup>1912</sup> to strengthen protection for domestic workers.

**1035.** In *Uzbekistan*, a draft Labour Code and a draft Employment Act have been developed to guarantee the labour rights of domestic workers. In *Canada*, a technical review is being undertaken of Convention No. 189 to determine whether the existing legislation, policy and programmes are compliant with the Convention's provisions and identify any gaps in law and practice.

### (a) Government comments on relevant modifications made or envisaged to national laws, regulations or practice

**1036.** In *Belarus*, amendments to the Occupational Safety and Health Act adopted in 2019 introduced provisions on the occupational health and safety of domestic workers (section 16-2). The amendments came into force on 28 June 2020.<sup>1913</sup>

**1037.** In *Guatemala*, the Department of Labour Mobility is working on measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

**1038.** In *Honduras*, a draft Domestic Work Act is currently before the National Congress for approval.

**1039.** In the *Republic of Korea*, the Domestic Worker Act was adopted by the National Assembly on 21 May 2021 and will enter into force on 16 June 2022. Its objective is to protect the rights and interests of domestic workers and revive the domestic service sector.

**1040.** In *Montenegro*, the Act on Occupational Safety and Health has been amended to extend coverage to domestic workers.<sup>1914</sup>

**1041.** In *Nigeria*, it is intended to develop a National Policy on Domestic Workers and ILO technical assistance has been requested for this purpose.

**1042.** A number of governments report that their legislation has been amended to bring it into accordance with the provisions of Convention No. 189. For instance, in *Qatar*, Law No. 15 of 2017 on domestic workers has been modified to bring its provisions into accordance with those of Convention No. 189. In *Thailand*, Ministerial Regulation No. 14 is currently under review to improve the protection afforded to domestic workers and align it more closely with the provisions of Convention No. 189. In the *United Arab Emirates*, a gap analysis was conducted during the drafting of Federal Act No. 10 of 2017 on domestic workers to ensure

<sup>1910</sup> *Peru*, [Ley de las Trabajadoras y Trabajadores del Hogar, \(Ley No. 31047\) \(2021\)](#) and its implementing regulations ([Decreto Supremo No. 009-2021-TR](#)).

<sup>1911</sup> *Ghana*, the Labour (Domestic Workers) Regulations, 2020 (L.I 2408).

<sup>1912</sup> *United Arab Emirates*, [Federal Act No. 10 of 2017](#).

<sup>1913</sup> *Belarus*, Act No. 274-3 amending the Act on Occupational Safety and Health, 2019.

<sup>1914</sup> *Montenegro*, Act on Occupational Safety and Health, No. 34/14.



its conformity with the Convention. In *Zambia*, the legislation, including the Workers' Compensation (Domestic Workers) Regulations, 2021, has been modified to give effect to some of the provisions of the instruments under examination.

**1043.** The Committee notes that some national courts have instructed governments to modify the legislation on domestic workers.

*Bangladesh* – The High Court Division of the Bangladesh Supreme Court issued directions to the Government in the case of *Bangladesh National Woman Lawyers Association (BNWLA) v. the Cabinet Division*.<sup>1915</sup> In its ruling, the High Court directed the Government to take a series of measures to: prohibit the employment of children aged 12 and under, including in the domestic sector; include domestic workers in the definition of “worker” in the Labour Act, 2006; and implement all the beneficial provisions of the draft Domestic Workers Protection and Welfare Policy, 2010. In addition, the High Court observed that violence against domestic workers must be monitored and prosecution of the perpetrators must be ensured by the Government. The Court also directed the Government to ensure mandatory registration of all domestic workers by employers, and to strengthen the legal framework to ensure all the benefits of regulated working hours, rest periods, wages and other employment-related benefits.

**1044.** In *Trinidad and Tobago*, the National Tripartite Advisory Council (NTAC), under the purview of the Ministry of Labour and Small Enterprise Development, has constituted a tripartite Labour Legislation Reform Working Group to review the inclusion of domestic workers in the definition of “worker” in section 2(1) of the Industrial Relations Act, Chapter 88:01. The consultations carried out through the Working Group included representatives of employers and workers, as well as organizations that represent domestic workers, such as the National Union of Domestic Employees (NUDE).

**1045.** In *Australia* (Western Australia), the key reforms proposed in the Final Report of the Ministerial Review of the State Industrial Relations System, submitted to Parliament in 2019, include modifying the definition of “employee” in the Industrial Relations Act and the Minimum Conditions of Employment Act to ensure coverage of domestic workers engaged in private homes.

**1046.** The Governments of *Latvia* and *New Zealand* report that they have made no special modifications to national law or practice to give effect to all or some of the provisions of Convention No. 189.

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<sup>1915</sup> *Bangladesh*, [Writ Petition No. 3598 of 2010](#), reported in 31 BLD 265.

## (b) Observations of the social partners on modifications made or envisaged to national laws, regulations or practice

**1047.** A number of workers' organizations referred in their observations to a lack of or delayed action by governments in relation to domestic workers. For example, the NUDE of *Trinidad and Tobago* observes that no laws affecting domestic workers have been adopted for the past ten years, despite its lobbying efforts.

In *Indonesia*, the International Domestic Workers Federation (IDWF), in its observations concerning Indonesia, submitted together with the Jaringan Nasional Advokasi Pekerja Rumah Tangga (JALA PRT),<sup>1916</sup> indicates that the submission of the Domestic Workers' Bill to the plenary session of the Parliament Legislative Body was significantly delayed. After 17 years, the Bill was submitted and has become a priority for Parliament.<sup>1917</sup>

**1048.** A number of social partners referred to the need to amend national legislation. In *Pakistan*, the All Sindh Lady Health Workers and Employees Union (ASLHWEU) emphasizes the importance of developing and implementing relevant legislation to address the challenges faced by health sector workers, and particularly community health workers. In *Peru*, the General Confederation of Workers of Peru (CGTP) highlights the need to amend the new implementing regulations of Act No. 31047. The CGTP also calls for the development of regulations on safety and health at work and on migrant domestic workers. In their observations concerning *Malaysia*, the IDWF, the Association of Patriotic Overseas Filipino Workers in Malaysia (AMMPO) and the Association of Indonesian Migrant Domestic Workers (PERTIMIG), indicate that they are lobbying for labour law reform on the basis of Convention No. 189 with the aim of amending the Employment Act of 1955.<sup>1918</sup>

<sup>1916</sup> The JALA PRT is an alliance dedicated to the protection of domestic workers in *Indonesia*.

<sup>1917</sup> ILO. "[Legal protection is urgently needed to protect domestic workers](#)", Jakarta, 17 June 2021.

<sup>1918</sup> *Malaysia*, the Employment Act of 1955 refers to domestic workers as "domestic servants". The Act does not cover domestic workers in relation to working hours, minimum wages, rest days, annual leave or social security. However, the Government has announced that it intends to extend social security coverage to domestic workers. See IDWF. "[Malaysia: AMMPO and PERTIMIG welcome Government's move to cover some social security of domestic workers](#)", 3 May 2021.

## ► III. Ratification of ILO Conventions Nos 149 and 189

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**1049.** A number of governments report that they have ratified one of the two Conventions examined in this General Survey. Only 13 Governments have to date ratified both Conventions: *Belgium, Ecuador, Finland, Guinea, Guyana, Italy, Jamaica, Malta, Norway, Philippines, Portugal, Sweden and Uruguay.*

### 1. Prospects for ratification

**1050.** A number of governments indicate that they have taken or envisage taking measures relating to the possible ratification of one or both of the Conventions examined in the General Survey. For instance, the Government of *Turkmenistan* indicates that, following an examination of national laws and regulations and, taking into account the results of a survey conducted on the employment of domestic workers, it is now in a position to consider the possibility of ratifying Conventions Nos 149 and 189 in the framework of tripartite consultations with the social partners and taking into account the recommendations of the ILO.

**1051.** The Government of *China* indicates that many of the provisions of the Conventions under examination are reflected in national labour laws and regulations as well as in criminal laws. It reports that the Chinese trade unions currently cooperate with and give support to the Ministry of Human Resources and Social Security in organizing activities, such as seminars on international labour standards for nursing personnel and domestic workers, deepening their understanding of relevant Conventions and intensifying their research in related fields, with a view to accelerating the alignment of national labour legislation, law enforcement measures and judicial practices with the Conventions.

**1052.** A number of governments, including those of *Germany, Hungary, the Islamic Republic of Iran, the Solomon Islands, Trinidad and Tobago and Uzbekistan*, indicate that, while the prospects for ratification are not strong at present, the ratification of one or both Conventions may be considered in the future.

**1053.** Some governments, including those of *Australia, Azerbaijan, the Bahamas, Cabo Verde, Estonia, Honduras, Latvia, New Zealand, Suriname* and the *United Kingdom*, indicate that consideration is not being given to ratifying either Convention, without providing additional information. The Government of *Cuba* indicates that it does not envisage ratifying either Convention No. 149 or Convention No. 189, despite considering that there are no difficulties or obstacles impeding ratification. The Government of the *United States* reports that the Conventions have not undergone the necessary tripartite analysis to enable it to determine the feasibility of ratification.

#### (a) Prospects for the ratification of Convention No. 149

**1054.** Convention No. 149 has to date been ratified by 41 Member States. Moreover, the Government of *Colombia* reports that a draft bill for the ratification of the Convention has been agreed and will be submitted to the Congress of the Republic for consideration. The Governments of *Georgia, Mauritius, Mexico, Nepal* and *Uzbekistan* also indicated their interest in considering the eventual ratification of the instrument. In *Trinidad and Tobago*, work is ongoing on a complete gap analysis of Convention No. 149, which will contribute to the implementation of the provisions of the Convention.

**1055.** A few governments, including those of *Argentina, Australia, Austria, Bosnia and Herzegovina, Cambodia, Canada, Estonia, Niger, Suriname, Switzerland* and the *United States*, report merely that the ratification of Convention No. 149 is not currently contemplated. The Government of *Costa Rica* indicates that the Convention was submitted to the Legislative Assembly, but its ratification was not approved.

## (b) Prospects for the ratification of Convention No. 189

**1056.** Convention No. 189 has been ratified by 35 countries to date, most recently by the governments of *Antigua and Barbuda, Malta, Namibia, Norway* and *Sierra Leone*. The importance of Convention No. 189 was highlighted on 28 and 29 June 2021 during an online conference organized by the ILO, the European Commission and trade unions and employers' organizations to celebrate the 10th anniversary of the Convention.<sup>1919</sup>

**1057.** The Committee notes that a number of governments are currently taking firm steps towards the ratification of Convention No. 189. For example, the Governments of *Cyprus* and *Guatemala* report that Bills for the ratification of the Convention are awaiting approval by the competent authorities, while the Government of *Burkina Faso* reports that the tripartite Advisory Committee on International Labour Standards (CCNIT) has examined the Convention and has given a favourable opinion for its ratification on condition that a preliminary study is carried out to properly identify the sector. The Government of *Cambodia* reports that it expects to ratify the Convention in 2025.

**1058.** In addition, other ILO Member States, including *Benin, Cameroon, Canada, Ghana*, the *Islamic Republic of Iran, Qatar* and *Tunisia*, are examining the possibility of ratification. In this regard, the Government of *Thailand* reports that it is currently examining the results of a gap analysis conducted by the ILO regarding Convention No. 189, which found that challenges remain in legislation and enforcement.

**1059.** In *Croatia*, the submission procedure for Convention No. 189 is currently being prepared and additional information will be provided on the possibility of ratification once this process has been completed.

**1060.** In *Guatemala*, the Directorate of Legislative Studies and Research of the Congress of the Republic indicates that Bill No. 4981, which provides for the approval of Convention No. 189, had its second reading on 27 June 2016 and is awaiting a third reading.

**1061.** A few Governments, including those of *Australia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cambodia, Estonia, Greece, Latvia, Lithuania, Mali, Niger, Poland, Slovenia, Suriname* and the *United States*, indicate that the ratification of Convention No. 189 is currently not envisaged.

## 2. Potential challenges preventing or impeding ratification

### (a) Convention No. 149

**1062.** Certain governments refer to difficulties in the application of the provisions of Convention No. 149 as a potential impediment to its ratification. For instance, the Government of the *Republic of Korea* reports that, as the employment and working conditions covered by Articles 5(2) and 6 of the Convention are prescribed in a labour management agreement in each health establishment, it is difficult for the Government to formulate a separate agreement to be applied across the health sector. The Government of *Switzerland* refers to the country's federalist structure and the fact that responsibility for public health is delegated to the local (cantonal) authorities. A few governments express the view that the ratification of Convention No. 149 is not necessary. For instance, the Government of *Germany* indicates that its national legislation is already largely compliant with the provisions of the Convention. The Government of *Estonia* also considers that ratification is not necessary.

<sup>1919</sup> ILO (2021). [European event to mark 10th anniversary of the ILO Domestic Workers Convention](#).

## (b) Convention No. 189

**1063.** With respect to Convention No. 189, the governments of some countries, including those of *Denmark*, *Hungary*, *Lithuania* and *Slovenia*, indicate that they have not ratified the Convention because their national legislation largely meets its requirements. Moreover, the Government of *Denmark* indicates that the ratification of Convention No. 189 would require legislative measures that would have unintended implications on the collective agreements that already ensure decent work for domestic workers.

**1064.** A number of governments refer to current legislation as posing a challenge to ratification.<sup>1920</sup> For instance, the Government of *Greece* indicates that the exclusion of live-in domestic workers from the national legislation on weekly rest, rest on Sundays and holidays, combined with difficulties in carrying out labour inspection in the domestic work sector, pose challenges to ratification. The Government of *Japan* reports that some domestic workers, as defined in Article 1(b) of the Convention, are exempt from the application of the Labour Standards Act, resulting in an inconsistency between the provisions of the Convention and national legislation. The Government of *Poland* indicates that the Ministry of Labour and Social Policy carried out a gap analysis in 2013 which showed that Polish law and practice are not in compliance with the provisions of the Convention. It adds that the Trade Union Act was amended in 2018 to enable domestic workers to establish and join trade unions. The Government of *India* reports that ILO Conventions are ratified only when it is satisfied that existing laws and practices are in full conformity with the provisions of the instrument.

**1065.** In addition, the Government of *Mozambique* indicates that ratification of the Convention could be problematic in view of its potential impact on job creation in the sector. The Government of *Algeria* emphasizes that a gap analysis is still required to determine the feasibility of ratifying the Convention. The Government of *Bosnia and Herzegovina* reports that the legal and political conditions for ratifying both Conventions are not yet in place. The Government of the *Solomon Islands* indicates that it is necessary to put in place an inclusion policy or specific laws for the protection of domestic workers. It adds that, at present, ratification may require a review of the entire labour law to determine the feasibility of giving effect to such requirements of the Convention as the payment of minimum wages. The Government indicates that a thorough discussion of the possibility of ratification is necessary.

## 3. The role of the social partners in promoting ratification

**1066.** The NZCTU expresses support for the ratification of both Conventions Nos 149 and 189.

**1067.** With respect to Convention No. 149, Public Services International (PSI) regrets that some States have not ratified the Convention even though their legislation already meets or exceeds many of its requirements. It encourages increased engagement with the process of ratification. In *Fiji*, the Fiji Nursing Association (FNA-FI) calls for a combined effort by the Ministry of Health and all nursing bodies to pursue ratification.

**1068.** In relation to Convention No. 189, the IDWF indicates that domestic workers' organizations in many countries, including *Jordan*, *Kuwait*, *Lebanon* and *Malaysia*, are keen for the Convention to be ratified and are organizing activities to inform workers and lobby for ratification.

**1069.** In *Mozambique*, the National Trade Union of Domestic Workers (SINED) reports that, since the adoption of Convention No. 189 in 2011, it has been carrying out activities, such as campaigns, workshops and demonstrations in the streets, as well as lobbying the Ministry of Labour, Employment and Social Security, for its ratification.

**1070.** The French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE–CGC) indicates that it has called for *France* to ratify Convention No. 189 in order to ensure adequate rights for workers in the sector. Moreover, it considers that ratification would also contribute to achieving gender equality, as women represent over 80 per cent of domestic workers around the world.

<sup>1920</sup> The Governments of *Greece*, *Japan*, *Mali*, *Niger*, *Poland* and *Solomon Islands*.

## ► IV. Proposals for ILO action

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### 1. Requests for technical assistance

**1071.** The Committee notes that, while most Governments report that they have not requested ILO technical assistance in relation to the instruments under examination, several indicate that they may avail themselves of ILO technical assistance in future to support their efforts to ensure the effective promotion of decent work for care economy workers. The Government of *Trinidad and Tobago* refers to the possibility of technical assistance for capacity-building for labour inspectors. The Government of *Zimbabwe* reports the need to enhance the knowledge and understanding of labour officers and the social partners in relation to Conventions Nos 149 and 189. In addition, the Governments of *Burkina Faso* and *Cambodia* indicate in their reports that they are considering requesting ILO assistance for the collection and processing of statistical data.

**1072.** Other governments indicate that ILO technical support could be useful in relation to legislative matters. The Government of *Algeria* expresses interest in receiving a technical opinion from the ILO on the content of its draft executive decree establishing the specific labour relations regime for domestic workers. The Government of *India* indicates that a gap analysis of its national legislation and the provisions of Conventions Nos 149 and 189 could be undertaken by the ILO. Similarly, the Government of *Uzbekistan* indicates that it may request ILO technical assistance in future to carry out an analysis and evaluation of the impact of the ratification of Conventions Nos 149 and 189.

**1073.** The Government of *Benin* has requested ILO technical support for the ratification of Convention No. 149.

**1074.** With regard to Convention No. 189, certain governments report that they have received ILO technical assistance to enable them to give effect to all or some of the provisions of the Convention. Technical assistance has been provided in some countries following requests directly related to the ratification of Convention No. 189. For example, the Government of *Burkina Faso* requested ILO technical support to carry out a study in the domestic work sector with a view to the possible ratification of the Convention. The Government of *Togo* also indicates that a comparative study of national law and practice with the provisions of Convention No. 189 was commissioned with ILO support and led to a tripartite workshop, which resulted in a call for the launching of the internal constitutional ratification process.

**1075.** In other countries, technical assistance has been requested for educational purposes, for example for the organization of seminars and training sessions on the Convention involving the social partners in *Egypt* and awareness-raising workshops on Convention No. 189 in *Niger*. In certain cases, the technical assistance was provided to meet specific objectives.

### 2. Need for standards-related action

#### (a) Comments by governments

**1076.** Although most governments did not refer in their reports to any gaps or inconsistencies that they consider should be addressed by future standard-setting discussions regarding the instruments under examination, a few put forward specific suggestions.

**1077.** The Government of *Honduras* considers that there are a number of gaps that could be addressed through ILO standards-related discussions, including in relation to the occupational safety and health of nurses, international recognition of their title, protection standards and the inclusion of nursing personnel in social dialogue.

**1078.** The Government of *Trinidad and Tobago* reports a general comment made in the context of the work of the ILO 144 Tripartite Consultative Committee concerning the need to consider social and cultural appropriateness in standard-setting discussions. Other issues that could be considered include whether domestic workers should receive monetary consideration for years of service and the manner in which such payments should be calculated and taxed.

### (b) Comments by the social partners

**1079.** With respect to Convention No. 149, the International Trade Union Confederation (ITUC) considers that important legislative and policy gaps and non-compliance issues remain, leading to severe decent work deficits for health and care workers. It believes that more efforts are needed to ensure universal ratification and effective implementation of the four instruments and that the ILO should carry out promotional activities to that end. The ITUC suggests that governments should take measures and the ILO should provide technical assistance to ensure the coverage of domestic workers by national labour laws, regulations and policies. It considers that policies should also provide for equal treatment between national and migrant workers. It also recalls the importance of addressing all forms of abuse, harassment and violence against domestic workers, with reference to the requirements of Convention No. 189 and the framework of action for governments and the social partners set out in the Violence and Harassment Convention (No. 190) and Recommendation (No 206), 2019.

**1080.** Public Services International (PSI) and its affiliates consider that precarious work is a threat to public health, resulting in poorer recruitment and retention and adverse effects on the quality of healthcare provision. They highlight the significant gender inequality dimensions of precarious employment, as women are more likely to be employed on insecure contracts. Public sector union confederations in the *Philippines*<sup>1921</sup> consider that the Convention does not address the issue of informal jobs and insecurity and they refer to persons engaged in the public sector who do not enjoy an employee–employer relationship. Similarly, the Nepal Health Workers and Employees Union (NHWEU) observes that the contractual nature of employment under special circumstances in the form of volunteering is encouraged by Convention No. 149. It considers that it is necessary to address the informalization of jobs and the contractualization of the workforce, which have led to increased precarity.

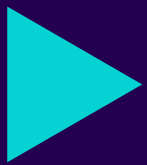
**1081.** The IDWF and its affiliates, the Domestic Workers Solidarity Network in Jordan and the Sandigan Kuwait Domestic Workers Association, observe that, while the current normative framework in *Kuwait* and *Jordan* may be adequate, considerably more efforts are needed for the ratification and implementation of Convention No. 189. The IDWF adds that greater efforts must be made to ensure compliance with Convention No. 189 and Recommendation No. 201.

**1082.** In its observations, the General Confederation of Workers of Peru (CGTP) emphasizes the importance of developing standards that cover part-time and multi-employer domestic workers. It suggests establishing the co-responsibility of the State in care work so that compliance with social and labour standards and occupational safety and health does not fall solely on employers.

<sup>1921</sup> *Philippines*, The Confederation of Independent Unions in the Public Sector (CIU), the Philippine Government Employees Association (PGEA), the Philippine Independent Public Sector Employees Association (PIPSEA) and the Public Services Labor Independent Confederation (PSLINK).







## Concluding remarks

**1083.** The Committee welcomes this opportunity to examine the two Conventions and two Recommendations selected by the Governing Body as the subject of this General Survey, as the basis for an examination of the situation of different categories of care economy workers. The choice of instruments has enabled the Committee to examine the employment and working conditions of care economy workers across all regions.

**1084.** The Committee wishes to highlight and acknowledge the high response rate and substantive quality of many of the responses received to the questionnaire from both governments and the social partners, as well as the important contributions received through collaboration with the World Health Organization (WHO) as well as the International Council of Nurses (ICN), among others. Moreover, the Committee expresses the hope that the General Survey will provide a useful overview of the current situation in ILO Member States in relation to the application of the instruments under examination as well as the situation of different categories of care economy workers more broadly. The General Survey examines and clarifies specific provisions of the instruments, with a view to optimizing their effective application at national and regional levels. In addition, it has identified potential gaps in the coverage of the international labour standards examined that the Governing Body may consider addressing in future. The Committee has also taken note of certain legal or practical obstacles to the ratification or implementation of one or more of the instruments examined, as expressed in a number of reports received from the tripartite constituents.

**1085.** In light of the discussion in the Governing Body, the Committee has examined the objective of employment and decent work for care economy workers in the context of a rapidly changing economy, taking account of structural and technological changes affecting the care workplace. The General Survey examines the various categories of care workers covered by the four instruments, who may be found in both the formal and informal economies. Their activities may take the form of direct care (nursing services, childcare or personal care for ill persons or those with disabilities, as well as the elderly) or indirect care (which may include cooking, cleaning and other services). Both direct and indirect care services may be provided in a range of settings, including hospitals, clinics, and *in* or *for* private households. In this respect, the Committee notes that direct or indirect care work provided in or for a private household or households can fall within the scope of the definition of domestic work as per Convention No. 189. In addition, special attention is paid to the gender dimension of these forms of work, given the strong feminization of the care economy.

**1086.** This is the first time that the nursing personnel and domestic workers instruments have been the subject of a General Survey and, as noted in the Introduction, the choice of these important instruments is particularly timely. As noted in the ILO report on care work and care jobs for the future of decent work, 2018, the size and importance of the care economy continues to grow, due to multiple factors that have given rise to an ever-increasing demand for care services. At the same time, the need to safeguard the labour rights of all categories of care economy workers – who are overwhelmingly women and often encounter decent work challenges – has also become increasingly evident. In 2019, the ILO Global Commission on the Future of Work highlighted the importance of the care economy, noting that it is a major source of employment, as well as a sector that is key to social and economic development and to public health and well-being. Moreover, in adopting the 2019 Centenary Declaration for the Future of Work during the 108th Session of the International Labour Conference, the tripartite constituents emphasized that, “in discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centred approach to the future of work”, the ILO must direct its efforts to “achieving gender equality at work through a transformative agenda” that includes the promotion of investment in the care economy. Subsequently, in adopting the ILO Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient at the 109th Session of the International Labour Conference in 2021, the ILO constituents once again underscored the significant decent work opportunities provided by the care economy, highlighting the need to invest in the care sector, to address understaffing and improve working conditions (Part I(B)(g)(iv)).

**1087.** In early 2020, the outbreak of the COVID-19 pandemic focused increased global attention on the vital role played by nursing personnel and domestic workers, who were and continue to be among those at the front lines of the pandemic. In particular, the Committee notes that a number of factors linked to the pandemic have exacerbated nurses' already difficult working conditions. These include: unprecedented working hours and insufficient rest periods linked to global health workforce shortages; alarming failures in the global supply of personal protective equipment (PPE) leading to lack of access to PPE; and infection control systems (including COVID tests) for nursing personnel and other healthcare workers. In addition, due to the exponential increase in demand for COVID-related services, many nurses were called upon to carry out new pandemic-related tasks for which they had not received training. These tasks often required them to take urgent life-or-death decisions, often at a moment's notice. At the same time, nursing personnel have faced heightened risk of exposure to the virus and of exposing their families and loved ones. These multiple stressors have resulted in depression, anxiety, post-traumatic stress disorder and burnout for thousands in the nursing workforce. The Committee observes that many constituents have expressed concerns in their reports regarding the severe impact of the pandemic on nurses' mental health and well-being. It is anticipated that this phenomenon will have long-lasting effects on the retention of many in the nursing workforce and may discourage the entry of new nurses into the profession, further exacerbating existing shortages.

**1088.** Moreover, during the pandemic, nursing personnel and other healthcare workers have encountered high levels of stigma and discrimination, as well as verbal and physical harassment and violence, often due to popular perception that they may be vectors for transmission of the COVID-19 virus.

**1089.** The Committee observes that, despite facing immense challenges during the pandemic, nursing personnel and other healthcare workers have continued to provide direct care and attention to patients, saving lives and providing support to patients and their families. They have also coordinated and delivered prevention interventions in their communities. Many have also participated in policy development and decision-making processes in response to the pandemic.

**1090.** While the Committee acknowledges that many countries have taken extraordinary measures to protect nursing personnel during the pandemic, such as tackling PPE shortages and providing financial support to health facilities for the costs of implementing occupational safety and health (OSH) measures, these measures have often proven insufficient due to the magnitude and extremely rapid evolution of the pandemic. In some countries, nursing personnel have reported having to procure PPE and pay for it themselves. In others, nurses and other healthcare workers have been compelled to reuse PPE or use items such as garbage bags and raincoats to protect themselves at work. Many nurses and healthcare workers have been infected with COVID-19 in their workplaces, and many of them have lost their lives.

**1091.** The well-being of nurses should be promoted by providing PPE, as well as by ensuring that infected colleagues are promptly tested and isolated. Mass testing of health care workers is important to mitigate workforce depletion by unnecessary quarantine, reduce the spread of the virus, and protect the health workforce. The Committee notes, however, that the global approach to COVID-19 testing has not been uniform. In some countries, testing has been extensive, while others have initially limited it to individuals with severe symptoms, or those at high risk of developing them. Other effective measures to minimising hazards and preventing nurses from becoming ill or dying as a result of COVID-19 include immunization. The Committee notes that some countries have established compulsory vaccination for health workers, including nursing personnel, while others have opted for encouraging vaccination without making it mandatory.

**1092.** *Taking into account the enhanced risk that nurses face of contracting COVID-19, the Committee considers that governments should ensure that nurses have timely access to voluntary testing services for COVID-19, and form part of the priority groups for testing and*

***for receiving vaccines. Noting that compulsory vaccination measures for nurses may give rise to an ethical dilemma, the Committee considers that several elements need to be taken into account before adopting such a requirement, including being informed by science and led by considerations of life and health for patients, colleagues and other third parties with whom they may come in contact when providing services. It also considers that, in line with OSH standards, particularly the Occupational Safety and Health Convention, 1981 (No. 155), such measures should not involve any expenditure for nurses and the social partners should be involved in all relevant stages of the process.***

***1093. Noting the critical role that nurses play during pandemic responses and other public health emergencies, the Committee highlights that protecting nurses from infection as well as from other occupational hazards is crucial, not only for their health and well-being, but also to ensure the effective functioning of the entire health system and the provision of quality care services for the public health. Protecting nurses' health has a cascading effect on their patients, their families and their communities. The Committee therefore considers that ensuring the safety, health and well-being of nursing personnel should be accorded the highest priority in the development and implementation of any country's strategic health policy and crisis planning. In this respect, the Committee recalls that ILO standards and tools offer valuable guidance for the development and implementation of measures to be taken to safeguard the safety, health and well-being of nursing personnel in the context of the current pandemic, as well as in the event of future crises and emergency situations.***

**1094.** The Committee notes that domestic workers have also played a crucial role in supporting the care needs of households during the pandemic; however, they have also been among the hardest-hit. The COVID-19 jobs crisis has worsened their already precarious working and living conditions and underscored the damaging consequences of informality, in many cases threatening their subsistence and livelihoods. Domestic workers have experienced more job losses and reduced working hours than workers in other sectors, while also typically lacking access to healthcare services, unemployment and social protection benefits. Containment measures and in particular the closure of schools and childcare facilities have increased the burden of care in households. Those domestic workers remaining in employment during the pandemic have frequently been required to work excessive hours without adequate rest periods, often caring for ill family members without being provided with PPE. Their exclusion from coverage under national legislation in many countries has increased their risk of abusive working conditions and caused many to fall back into poverty. Their mental health and well-being has also been affected due to fear of exposure to the virus, as well as to the fear of losing their employment during the pandemic.

**1095.** The situation of migrant domestic workers has been particularly affected by the COVID-19 pandemic. Non-payment of wages and the closure of remittance services have left migrant domestic workers' families, who rely on their pay, at risk of poverty and hunger. Moreover, fear of exposure to the COVID-19 virus has led to increasing xenophobia and abuse against migrant domestic workers, including abrupt termination of their contracts. Some domestic workers have been found living on the streets, after being dismissed by their employers for fear of catching the virus, putting them at risk of trafficking. The situation of live-in migrant domestic workers is further aggravated when their travel and identity documents are confiscated, and they therefore face obstacles to leaving an abusive employer. Pandemic-related restrictions on international mobility have also prevented these workers from returning home to their families.



1096. Many countries have adopted far-reaching measures to curtail job losses and protect incomes, with some expanding protections to domestic workers for the first time. Moreover, in a number of countries, employers and workers' organizations have taken measures to ensure the inclusion of domestic workers in emergency assistance programmes. ***The Committee considers that as countries formulate and implement response and recovery measures that promote employment and decent work now and in the future, domestic workers should not be forgotten or excluded. Indeed, their employment and conditions of work should be brought into conformity with those enjoyed by other workers generally.***

1097. In this context, the Committee wishes to raise a number of specific points in relation to ensuring the effective application of the instruments in national law and practice.

## ► I. Care economy workers

(a) The Committee notes that care work is broadly defined to include the activities and relations involved in meeting the physical, psychological and emotional needs of adults and children, whether they are able-bodied, ill, infirm or living with a disability. The vast spectrum of care needs that may arise during an individual's life cycle means that there are a wide range of activities that may constitute care work. Nursing personnel, domestic workers, educators and therapists all provide different care services, although in some instances these services may overlap. There are, however, commonalities. The vast majority of care workers are women, and many are migrant workers. Their situation as workers in the care economy is consistent with that of women workers around the world, characterized by vertical and horizontal gender segregation, poor working conditions, extremely long working hours, gender pay gaps and increased risk of violence and harassment. Their work is demanding, typically requiring long hours, including at night, and involving hazardous conditions, whether these are due to exposure to contagious diseases, abuse and harassment, or other risks. Care work is often undervalued and remunerated poorly or not at all. In particular, the Committee expresses its concern in relation to the situation of certain categories of care workers, such as personal care workers and community health workers. The former are subject to poor working conditions, including poor remuneration and precarious employment, while the latter are often characterized as "volunteers", receiving little or no training, inadequate or non-existent remuneration or employment-related benefits, including healthcare, unemployment and social security. ***The Committee considers that it may be useful for the Office to undertake studies regarding the situation of these categories of workers that, while they are undoubtedly covered by the fundamental rights and principles at work, may not always be afforded the protections envisaged under Conventions Nos 149 or 189, to determine the measures that might be feasible to afford them access to decent work.***

(b) The Committee wishes to emphasize the importance of effectively protecting all care economy workers against anti-union discrimination, which has a significant chilling effect on the exercise of their fundamental freedom of association rights. The Committee notes that this is particularly the case in the nursing sector, where precarious forms of employment are prevalent and where reprisals frequently take the form of non-renewal of fixed-term contracts. Domestic workers are also particularly vulnerable to anti-union discrimination in view of the isolated nature of their activities. ***The Committee wishes to emphasize the importance of freedom of association, collective bargaining and social dialogue for the effective protection of the labour rights of all care economy workers, as well as for the effective application of the principles set out in Conventions Nos 149***

*and 189. In particular, it stresses the importance of not only removing all legislative and practical obstacles that prevent domestic workers and their employers from exercising their right to establish and join organizations, but also taking active measures to encourage and support the establishment of organizations of domestic workers and employers in the domestic work sector. Furthermore, the Committee urges governments to take positive measures to recognize organizations of domestic workers and their employers, to enable them to regulate conditions of domestic work through free and voluntary negotiation, for example through the adoption of specific rules governing collective bargaining machinery in the sector.*

- (c) *The Committee recalls that the compilation and dissemination of reliable, comparable labour statistics in relation to the situation of specific categories of care economy workers are essential to enable the development, effective implementation, monitoring and revision of comprehensive, inclusive, gender-responsive and evidence-informed policies aimed at improving working conditions in this sector. More and reliable data are needed on trends in healthcare work and also on the application of health workforce planning and forecasting tools, as well as on trends in the domestic work sector, including in relation to the informal economy and changes in migration patterns. In this context, the Committee highlights the importance of compiling and disseminating reliable, up-to-date disaggregated statistical data on employment trends, particularly in the aftermath of the pandemic, to assess the impact of response and recovery measures on care economy workers, in both the formal and informal economies. The Committee recommends that governments consider improving standardization and use of uniform terminology to enable the compilation and dissemination of comparable data across countries. The Committee notes, as it did in its 2020 General Survey, that the 2018 resolution of the International Conference of Labour Statisticians (ICLS) on statistics relevant to the employment relationship and status in employment provides new statistical definitions that take account of new and emerging forms of employment and that necessitate follow-up at the national level.*

## ► II. Nursing personnel

- (d) As acknowledged by the UN High-Level Commission on Health Employment and Economic Growth (HEEG Commission) and the ILO constituents during the 2017 Tripartite Meeting on Improving Employment and Working Conditions in Health Services, the health sector is a key economic sector that provides an increasing number of decent work opportunities, particularly for women and young persons. In this regard, the Committee notes that the demand for health workers is expected to increase in the coming years, with around 40 million new health worker jobs created by 2030, particularly in high- and middle-income countries. In addition, it observes that achieving universal health coverage urgently requires thousands more healthcare workers, particularly nursing personnel, to meet anticipated demand. Nevertheless, the Committee notes the persistent health workforce shortage worldwide, of which nurses make up the largest component in most countries. ICN estimates a global shortfall of 13 million nurses by 2030, compounded by an ageing workforce and the impact of the COVID-19 pandemic. While there has been continued progress in the development of a qualified nursing workforce and the improvement of working conditions since the adoption of Convention No. 149 in 1977, most of the major concerns that led to the adoption of the Convention persist, while new challenges and constraints have arisen. As highlighted by the 2017 ILO Tripartite Meeting on Improving



Employment and Working Conditions, urgent steps must be taken to ensure decent work for workers in the health sector, including nursing personnel, to effectively address these persistent shortages of healthcare workers by attracting more women and men to the profession, thus helping to ensure equal access to quality healthcare. Long hours, understaffed workplaces, precarious contracts, lack of training and career advancement opportunities, high rates of violence and harassment and poor remuneration are factors that impact negatively on nurses' working conditions and well-being in all regions. In addition, the inequitable geographical distribution of nursing personnel, largely due to migration flows from lower- to higher-income countries contributes to less resilient health systems and services in low-income countries, affecting the quality of care provided. ***The Committee urges ILO Member States to take coordinated action, in collaboration with the social partners and in consultation with other relevant stakeholders, to address the current and projected shortages of nursing personnel at the national, regional and global levels. Such actions should take into account relevant international labour standards, including fundamental principles and rights at work, as well as guidance and tools developed by the ILO and other international and regional organizations.***

- (e) ***In this context, the Committee emphasizes that, to achieve the principal objective of Convention No. 149, of ensuring the availability of sufficient numbers of adequately trained and motivated nurses when and where they are needed, national policies on nursing services and nursing personnel should be developed and implemented around three coordinated axes:***
  - (i) *nursing workforce planning that is coordinated with other health workforce planning at all levels;*
  - (ii) *the provision of adequate education and training, including lifelong learning opportunities; and*
  - (iii) *decent working conditions.*
- (f) ***With regard to the first axis, the Committee considers that, to design a comprehensive, evidence-based national policy on nursing services and nursing personnel, it is necessary to first carry out an assessment, in consultation with the social partners and representatives of nursing personnel and other key stakeholders, of the nursing workforce needed – both now and in the future – to deliver quality nursing services across all regions. This assessment should take into consideration demographic and epidemiological trends, globalization, advances in medical science and technology, and environmental and geopolitical developments. In addition, countries should take account of current and future trends in nursing education and nursing migration flows, to anticipate and ensure sufficient institutional and teaching capacity to meet anticipated needs. The results of the assessment will provide an evidence base for strategic workforce planning that can enable the effective education, recruitment, deployment, retention and management of the nursing workforce, as well as its equitable distribution within and across countries.***
- (g) With respect to the second axis on education and training (Article 2(2)(a) of Convention No. 149), the Committee has noted significant disparities among countries with regard to the educational and training policies and systems currently in place around the world. These include a lack of standardized curricula, differences in accreditation systems, authorities and regulatory institutions in charge of controlling and reinforcing quality of nursing personnel education and practice, inadequate training and practice facilities (infrastructure, training sites, educational tools and teaching staff) and gaps between theory and practice. These are all factors that contribute to the chronic shortage of adequately trained nurses. ***The Committee therefore encourages countries to take measures to ensure optimal education and training for nursing personnel, by expanding opportunities to access high quality education and lifelong learning across all categories of nursing.***

- (h) ***Turning to the third axis of the policy, the Committee recalls that, according to Article 2 (2) (b) of Convention No. 149, to attract and retain nursing personnel in the profession, the national policy must promote access to decent employment and career advancement opportunities that provide adequate and equitable remuneration, safe and healthy working conditions, continuing professional development, access to social protection and equality of opportunity and treatment. Moreover, ensuring decent working time arrangements that balance personnel needs and well-being with health service provision is crucial, given that long working hours and shift work at inconvenient hours are issues of concern in the health sector.***
- (i) In its examination of the application of the nursing personnel instruments, the Committee has taken into consideration structural changes to the nursing workplace brought about by demographic and epidemiological changes, globalization, and technological innovations that have transformed nursing practice. For instance, technology may supplement and contribute to the delivery of healthcare to rural and remote areas and open up new employment paths, such as in telemedicine and mobile clinics. It has also taken note of health sector reforms in recent years, which have included budget cuts to address cost and efficiency concerns. These changes have led to increased recourse to non-standard forms of employment (NSFE) in the health sector, such as part-time work, fixed-term work, temporary and agency work and dependent self-employment. Moreover, working arrangements in which workers are not guaranteed a minimum number of working hours, such as zero hours contracts, are on the rise. While the use of non-standard working arrangements may also provide needed flexibility to address changing demands, the nursing personnel concerned often experience increased precariousness, job insecurity, lower pay, increased OSH risks and gaps in social protection coverage. In addition, these nurses often face practical obstacles to forming and joining unions and exercising their collective bargaining rights. These challenges have been compounded during the COVID-19 pandemic. ***The Committee considers that, given the increasing use of diverse forms of working arrangements, some of which are significantly more precarious and disadvantageous than traditional full-time open-ended working arrangements, further in-depth tripartite consultations on these ongoing changes and their impacts on nurses' working conditions would be of great value in identifying appropriate means of action to improve the working conditions of nursing personnel, with a view to attracting and retaining them in the profession.***
- (j) ***The Committee wishes to stress the importance of involving nursing personnel in all stages of development, implementation and monitoring of the national policy on nursing, as well as in decision-making processes at all levels, so that they may play an active role in influencing key health system decisions and public health policies (Articles 2(3) and 5(1) of Convention No. 149). The active participation of the relevant stakeholders should also be encouraged. In addition, to ensure effective and quality health systems and services, the nursing personnel policy should be coordinated with the policy on health services and healthcare workers as a whole. Intersectoral collaboration between sectors at national, regional and international levels should be promoted with a view to ensuring policy coherence and good governance. The Committee recalls that policy development should be an ongoing process that is continually monitored and adjusted to respond to changing needs in both the healthcare sector and the communities it serves.***
- (k) The critical need for increased investment in the health workforce, including nursing personnel, has been highlighted by a number of recent global policy initiatives. The Committee emphasizes, as noted by the HEEG Commission, that investments in the health sector should be regarded as a driving force for economic growth rather than as a resource drain on national economies. ***The Committee therefore emphasizes that, to ensure resilient and sustainable health systems, it is crucial to make appropriate public***

**and private investments in all health systems so that they can recruit, deploy and retain sufficient numbers of well-trained, supported and motivated nursing personnel.**

- (l) The Committee points out that nursing is the most feminized healthcare occupation in most countries, with women representing approximately 89 per cent of the global nursing workforce. Many forms of gender discrimination affect women in nursing, including direct and indirect discrimination, sexual harassment, vertical and horizontal occupational segregation and gender pay gaps. Moreover, employment-related discrimination is compounded where intersectional or multiple grounds of discrimination are present, such as sex, age, race and national origin. **The Committee urges governments to address the gender dimension of nursing as well as discrimination on additional grounds, by taking steps to mainstream gender equality, diversity and inclusiveness in their national policies on nursing services and nursing personnel. These measures will strengthen national efforts to address current and future nursing personnel shortages by enhancing equitable recruitment, education, training, working conditions and motivation, and encourage the recruitment and retention of both women and men in the nursing sector.**

### ► III. Domestic workers

- (m) Domestic workers are an essential part of the care workforce. They provide personal and household services in private homes. The number of domestic workers has grown significantly in the last decades, reaching 75.6 million domestic workers over the age of 15. This increase is due to a number of demographic, social and employment trends, including the ageing of the population, the growing participation of women in the labour market, the lack of adequate work-family reconciliation policies and a reduction in support from family networks. Domestic work is a job-rich sector that, due to the rising demand for care services, has enormous potential to provide decent jobs that can contribute to the economic recovery from the pandemic, on condition that the labour rights of domestic workers are effectively protected and enforced. Women make up 76.3 per cent of domestic workers, with the sector employing 57 million women worldwide. In 2021, the ILO launched the in-depth report Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189), to mark the 10th anniversary of the adoption of the Convention. While the report acknowledges the important progress made in the last ten years in increasing the number of domestic workers who are covered by national labour and social protection laws, it nevertheless emphasizes that a large number of domestic workers remain wholly excluded. The report points out that, even when domestic workers are covered under the national labour legislation, important gaps remain in implementation. For example, only one in five domestic workers enjoy employment-related social protection coverage.
- (n) The Committee notes from the reports examined that Member States have adopted a range of legal instruments, often in consultation with employers' and workers' organizations, to include domestic workers in the scope of national labour legislation. Some Member States have opted to include domestic workers in the scope of the general labour laws, while others have adopted specific legislation regulating domestic work. Still others have opted for a mixed approach. The Committee notes, however, that in those countries where domestic workers are included under the general labour legislation, they often remain excluded from certain provisions, or are provided with lower levels of protection than other workers, for instance in relation to working time, wages, access to social security and OSH. The Committee recalls that the main objective of Convention No. 189 is

to extend to domestic workers at least the same labour rights and working conditions as those enjoyed by other workers generally. ***In this regard, the Committee considers that countries should take measures to ensure that domestic workers are not excluded from specific provisions, or that they are afforded at least equivalent protections in comparison with other workers.***

- (o) Moreover, while the Committee considers that domestic work must be treated as work like any other, it should be treated also as work like no other, taking into account the particular circumstances and characteristics of domestic work. In this regard, the Committee notes that in some countries, domestic workers are covered under the general labour legislation; however, the particularities of domestic work are not addressed. For instance, domestic workers may be covered under the general OSH legislation, but there is no attention paid to the specific risks workers may face when performing domestic work. ***The Committee encourages Member States to take measures, in consultation with employers and workers organizations, to ensure that domestic work legislation takes into account the personal character of the work and the context in which it is undertaken, while reaffirming its compatibility with the employment relationship.***
- (p) Most domestic workers are in informal employment (81.2 per cent of all domestic workers), representing almost twice the share of informal employment of other employees (39.7 per cent). Informality is one of the main causes of the decent work deficits present in the domestic work sector. Domestic workers in the informal economy are not recognized or protected under the legal and regulatory framework and do not benefit from its effective implementation. This gives rise to a high degree of vulnerability. These workers face serious difficulties in organizing effectively, are rarely unionized and thus have no voice to advocate for or claim their rights. Moreover, while not all domestic workers in the informal economy are poor, there is a strong overlap between informality and poverty. As the Committee has noted in the General Survey, while the domestic work sector is characterized by a high degree of informality, countries have also increased their efforts to promote formalization in the sector, including awareness-raising campaigns, simplification of procedures for registration and payment of contributions to social security through digital platforms and the provision of fiscal incentives to employers, such as tax breaks or subsidies. ***Recalling that formalization is both a means of, and a necessary condition for, achieving decent work and living conditions, the Committee calls on Member States to take the necessary measures, in consultation with the social partners, to address the negative consequences of informality, as well as its root causes. It recalls the guidance provided by the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which highlights the need to pay special attention to those who are especially vulnerable to the most serious decent work deficits in the informal economy, including domestic workers.***
- (q) The high proportion of disguised employment relationships has also been a growing concern in recent years in relation to the rise of “gig” or “on-demand” work, with the services of domestic workers being retained through online web platforms or apps. According to recent estimates, the number of digital platforms in the domestic work sector increased from 28 in 2010 to 224 in 2020. The Committee observes that, in those cases where the employment relationship is not clearly defined, domestic workers remain unprotected and in conditions of informal employment. While platform workers in other sectors have concluded collective agreements with the support of established unions, in the domestic work sector these are still very rare. ***In this respect, the Committee recalls that the domestic work instruments cover direct employment by a household as well as by an employment agency, or through online web platforms or apps. The Committee highlights, as it did in its 2020 General Survey on employment, that any evolution of the employment relationship should not result in a reduction of the scope of application of the labour law***

***or in a reduction of workers' labour protections. It considers that measures are urgently needed to enhance predictability and income stability for domestic workers, clarifying the allocation of responsibilities between employers and workers, and informing them of their rights and obligations in the employment context. The Committee recalls that the Employment Relationship Recommendation, 2006 (No. 198), whose importance is underscored in the Preamble to Convention No. 189, provides guidance in this regard.***

- (r) Domestic workers are among those workers most vulnerable to human rights violations, including violations of their fundamental labour rights. This is due to a number of factors, including the fact that domestic workers typically work in isolation behind closed doors and are often excluded from labour and social protections. It is also due to the historical links between domestic work and slavery, the high rates of informality, the feminization of the domestic work sector and the lack of adequate monitoring and enforcement mechanisms. The Committee notes that certain social and economic conditions increase the vulnerability of domestic workers to exploitation and multiple types of abuse. As noted in the General Survey, these conditions disproportionately affect women, particularly those from communities that already face discrimination in society, particularly on grounds prohibited in international labour standards, such as race, colour, sex, religion, political opinion, national extraction or social origin, among others. ***The Committee considers that, when developing and adopting measures to improve the situation of domestic workers, countries should take into account the situation of specific groups that are in disadvantaged situations and address the impact of intersectional or multiple discrimination, as people who are subject to multiple forms of discrimination are more likely to be working under precarious and often abusive conditions.***
- (s) The Committee observes that, where domestic workers belong to more than one disadvantaged group, multiple and intersectional discrimination may compound their vulnerability to forced labour and child labour, increasing the risk of domestic servitude or slavery, or domestic child labour. The Committee expresses ***deep concern*** that many domestic workers, particularly migrant women domestic workers, are victims of different forms of forced labour. In addition, according to the most recent ILO and UNICEF estimates, there are still 7.1 million children aged 5 to 17 years engaged in domestic work, of whom 4.4 million are girls. ***The Committee recalls in this regard that all Member States, regardless of whether or not they have ratified the Conventions expressing and developing the fundamental principles and rights at work, nevertheless have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize such principles for all workers, including domestic workers. This is further recalled in Article 3 of Convention No. 189. The Committee urges Members States to take measures, together with the social partners and other relevant actors, and in line with the relevant ILO Conventions, to eliminate all forms of forced labour and ensure the effective abolition of child labour in the domestic work sector. Such measures should include addressing the root causes and factors that heighten the risks of forced labour and child labour, as well as strengthening the labour inspection services and other compliance mechanisms.***
- (t) Moreover, despite the important contribution of domestic workers to national economies and societies, they continue to experience some of the poorest working conditions across the care workforce, including excessive or undefined working hours and insufficient rest (particularly for live-in domestic workers), inadequate OSH protections, and lack of access to social protection. These conditions have been further exacerbated during the COVID-19 pandemic. ***The Committee calls on countries to take the necessary measures to effectively prevent and prohibit excessive working hours for all domestic workers, including live-in domestic workers, through the establishment of periods of daily rest and the regulation of overtime pay and compensatory rest periods. In this respect, the Committee notes that many domestic workers, especially live-in workers, are frequently***



***asked to remain on standby outside of their regular working hours. The Committee therefore encourages countries to take measures to uphold domestic workers' right to adequate rest, by ensuring that they are free to dispose of their time as they please during their rest periods (Article 10(3) of Convention No. 189), including their right to leave the household during rest periods.***

- (u) Domestic work is typically poorly remunerated, and late payments, withheld wages and excessive deductions of payments in kind are common. According to recent ILO estimates, domestic workers earn just 56.4 per cent of the average monthly wages of other employees. The Committee notes that an increasing number of countries are extending minimum wage coverage to domestic workers through two main approaches: the inclusion of domestic workers in minimum wage provisions applicable to all workers and the establishment of a sectoral or occupational rate or rates for domestic work. Even when domestic work is covered by the minimum wage regulations, the minimum wage level may be set too low. Among the reasons for this undervaluation (known as the "care pay penalty") is the lack of recognition of unpaid care work, which extends to the undervaluation of paid care work and can contribute to lowering wages. ***The Committee considers that in those countries where minimum wages are set by occupation, special measures should be taken to ensure that the skills, responsibilities and working conditions associated with domestic workers are assessed without gender discrimination, to address the undervaluation of domestic work due to gender bias. The Committee recalls that the Equal Remuneration Convention, 1951 (No. 100) provides guidance in this regard. In a growing number of countries, domestic workers' wages are being set through consultation with employers' and workers' organizations in the sector, either via collective bargaining or tripartite social dialogue. The Committee considers that this emerging practice could contribute significantly to setting adequate wage levels in the sector that take into account the particularities of domestic work.***
- (v) Domestic workers are also highly vulnerable to violence and harassment, to which women migrant domestic workers, particularly those in irregular situations, are especially vulnerable. The Committee notes that in most countries domestic workers are covered by the general legislation addressing violence and harassment. However, there are still cases where domestic workers are excluded from labour and social security laws, and equality and non-discrimination laws affording protection to victims of violence. The Committee observes that there has been a significant increase in domestic violence during periods of lockdown, which has affected thousands of women, including domestic workers. Working in a private household is in itself a risk factor, which has been particularly aggravated where live-in domestic workers have been required to quarantine in their employers' home. In addition, domestic workers, particularly migrant domestic workers in irregular situations, often face obstacles to effectively access dispute resolution mechanisms. ***The Committee therefore calls on countries to take measures, in line with Article 5 of Convention No. 189, to ensure effective protection of domestic workers against abuse, harassment and violence, such as: establishing accessible complaint mechanisms and national hotlines, remedies and support for victims; ensuring effective enforcement and monitoring mechanisms; providing free legal aid; exempting domestic workers from the payment of litigation fees; establishing shelters; and providing guidance and information to domestic workers and employers. It recalls that Paragraph 21 of Recommendation No. 201 as well as the Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation provide valuable guidance in this regard.***
- (w) With increased globalization and international mobility, private employment agencies are playing an increasingly important role in the recruitment (and direct employment) of care economy workers. According to the WHO State of the World's Nursing 2020 report, one nurse out of every eight (13 per cent) works in a country other than that in which they

were born or trained. As for domestic workers, a large proportion of the global domestic workforce is composed of migrants. While well-regulated private employment agencies, in collaboration with public employment services, contribute significantly to well-functioning national labour markets, migrant nurses and other healthcare workers, as well as migrant domestic workers and other care economy workers, are often at greater risk of exploitation and abuse by private employment agencies. There have been incidents reported of nursing personnel who, upon being mediated for employment abroad, arrive in the host country to discover that their employment and working conditions are inferior to those depicted by the agency. Domestic workers mediated abroad are also at greatly increased risk of abuse, given the characteristics of their work, which include isolation in the family's household, frequent exclusion from protection under labour legislation and unfamiliarity with the local languages or remedies that may be available. In addition, private employment agencies may charge fees to care economy workers for their services, which lead them in many cases to incur significant debts. ***In this context, the Committee considers that governments should take measures to prohibit fee-charging and other possible abuses by private employment agencies, as envisaged by Article 15 of Convention No. 189, Article 7 of the Private Employment Agencies Convention, 1997 (No. 181), as well as by the ILO General Principles and Operational Guidelines for Fair Recruitment, which call on governments to take measures to protect workers against human rights abuses in the recruitment context, including measures to eliminate the charging of recruitment fees and related costs to workers and jobseekers (Guideline 6).***

- (x) There has been a steady increase in the number of migrant domestic workers in recent decades, who represent a significant proportion of the domestic workforce. Migrant domestic workers, the vast majority of whom are women, are at a particular risk of exploitation, abuse and slavery-like practices. As examined in the General Survey, there are a number of factors that make migrant domestic workers particularly vulnerable, such as unfamiliarity with the local language and culture and national labour and migration laws. Other factors include their dependence on the job and employer where their migration status is linked to the employer (such in the case of domestic workers working for diplomats or those employed under the “*kafala*” system), migration-related debt, practices by employers and private employment agencies that restrict their freedom to leave the workplace, dependency on the employer for food and lodging and the reliance of family members on remittances. These risks are further exacerbated when migrant domestic workers are undocumented or in an irregular situation, as fear of deportation may deter them from attempting to seek help from national authorities. ***The Committee encourages countries to scale up measures at the national, regional and global levels aimed at detecting, identifying and addressing abusive practices against migrant workers: such as physical and sexual harassment or violence; debt bondage; forced labour; withholding, late payment or underpayment of wages and benefits; confiscation of identity documents and labour contracts; and the threat of denunciation to national authorities. Noting that migrant domestic workers remain excluded from labour and social protections in many countries, the Committee urges countries to take measures, in line with relevant ILO instruments on migrant workers, to ensure that national labour legislation and social laws cover all migrant domestic workers and that they benefit from equality of treatment with national workers, in particular with regard to wages, OSH protection, social protection and other conditions of work.***

- (y) The Committee stresses that to effectively ensure decent work for domestic workers, laws and regulations must not only cover domestic workers, but must also be implemented fully. The Committee notes that, while constituents have adopted innovative and effective measures in many countries, nonetheless, implementation gaps remain. Measures are needed to build the capacity of public institutions to monitor and enforce compliance in



the domestic work sector in line with relevant international labour standards. It notes that, in some countries, the mandate of the labour inspectorate may conflict with the legal right to privacy of the employer and household. However, many countries have established a set of conditions under which access to household premises may be granted, while respecting the right to privacy, such as the consent of the employer or occupant of a household, or prior authorization by a judicial authority. In addition, a growing number of countries are implementing other monitoring and enforcement methods apart from inspection visits of the household, often with the help of new technologies, such as: establishing a register of domestic workers and employers; conducting interviews of employers, workers and third parties outside of the workplace; and verification of relevant documents. Moreover, the Committee observes that gaps in implementation are often driven by domestic workers' and employers' lack of knowledge or awareness of their rights and obligations. ***The Committee therefore encourages countries to take measures, in collaboration with the social partners, to ensure that domestic workers and employers are familiar with their rights and obligations. In this regard, it emphasizes that measures such as: the development of model contracts in the domestic work sector in line with Article 7 of Convention No. 189; public awareness-raising campaigns; and access to free counselling services and publications in different languages can serve as important first steps towards promoting decent work for domestic workers.***

- (z) In sum, the Committee takes note of the changes taking place in the care economy due to: demographic trends; rapid developments in population health and care needs, including in preparation for and in response to public health emergencies, such as the COVID-19 pandemic and climate change; science and technology; evolving migration and gender dynamics; and changing employment relationships in the sector. It notes the impact of such changes on care workers, particularly nursing personnel and domestic workers. ***Taking into account the guidance provided by the 2019 Centenary Declaration and the ILO Global call to action for a human-centred recovery from the COVID-19 crisis, as well as the goals established under the 2030 Agenda for Sustainable Development, the Committee considers that the ILO tripartite constituents have a key role to play in promoting decent work for all care economy workers. To ensure that no one is left behind, the Committee considers that countries should take steps to expand social protection in accordance with the principles of the Social Protection Floors Recommendation, 2012 (No. 202). The Committee expresses the hope that this General Survey will constitute a useful contribution to the recurrent item discussion on labour protection in a transforming world of work planned for 2023. It is also hoped that the Survey will support the ongoing work of the Tripartite Working Group of the Standards Review Mechanism of the ILO Governing Body.***







## Appendices

## ► Appendix I. Ratification status (Conventions Nos 149 and 189)

Members	Convention No. 149	Convention No. 189
Afghanistan	—	—
Albania	—	—
Algeria	—	—
Angola	—	—
Antigua and Barbuda	—	Ratified 28/07/2021
Argentina	—	Ratified 24/03/2014
Armenia	—	—
Australia	—	—
Austria	—	—
Azerbaijan	Ratified 19/05/1992	—
Bahamas	—	—
Bahrain	—	—
Bangladesh	Ratified 17/04/1979	—
Barbados	—	—
Belarus	Ratified 03/05/1979	—
Belgium	Ratified 29/03/1988	Ratified 10/06/2015
Belize	—	—
Benin	—	—
Bolivia (Plurinational State of)	—	Ratified 15/04/2013
Bosnia and Herzegovina	—	—
Botswana	—	—
Brazil	—	Ratified 31/01/2018
Brunei Darussalam	—	—
Bulgaria	—	—
Burkina Faso	—	—
Burundi	—	—
Cabo Verde	—	—
Cambodia	—	—
Cameroon	—	—
Canada	—	—
Central African Republic	—	—
Chad	—	—
Chile	—	Ratified 10/06/2015
China	—	—
Colombia	—	Ratified 09/05/2014

Members	Convention No. 149	Convention No. 189
Comoros	—	—
Congo	Ratified 24/06/1986	—
Cook Islands	—	—
Costa Rica	—	Ratified 20/01/2014
Côte d'Ivoire	—	—
Croatia	—	—
Cuba	—	—
Cyprus	—	—
Czechia	—	—
Democratic Republic of the Congo	—	—
Denmark	Ratified 05/06/1981	—
Djibouti	—	—
Dominica	—	—
Dominican Republic	—	Ratified 15/05/2015
Ecuador	Ratified 11/07/1978	Ratified 18/12/2013
Egypt	Ratified 03/11/1982	—
El Salvador	Ratified 30/01/2013	—
Equatorial Guinea	—	—
Eritrea	—	—
Estonia	—	—
Eswatini	—	—
Ethiopia	—	—
Fiji	Ratified 28/05/2008	—
Finland	Ratified 08/06/1979	Ratified 08/01/2015
France	Ratified 10/09/1984	—
Gabon	—	—
Gambia	—	—
Georgia	—	—
Germany	—	Ratified 20/09/2013
Ghana	Ratified 27/05/1986	—
Greece	Ratified 17/03/1987	—
Grenada	—	Ratified 12/11/2018
Guatemala	Ratified 09/05/1995	—
Guinea	Ratified 08/06/1982	Ratified 25/04/2017
Guinea - Bissau	—	—
Guyana	Ratified 10/01/1983	Ratified 09/08/2013
Haiti	—	—
Honduras	—	—
Hungary	—	—

Members	Convention No. 149	Convention No. 189
Iceland	—	—
India	—	—
Indonesia	—	—
Iran (Islamic Republic of)	—	—
Iraq	Ratified 04/06/1980	—
Ireland	—	Ratified 28/08/2014
Israel	—	—
Italy	Ratified 28/02/1985	Ratified 22/01/2013
Jamaica	Ratified 04/06/1984	Ratified 11/10/2016
Japan	—	—
Jordan	—	—
Kazakhstan	—	—
Kenya	Ratified 06/06/1990	—
Kiribati	—	—
Kuwait	—	—
Kyrgyzstan	Ratified 31/03/1992	—
Lao People's Democratic Republic	—	—
Latvia	Ratified 08/03/1993	—
Lebanon	—	—
Lesotho	—	—
Liberia	—	—
Libya	—	—
Lithuania	Ratified 12/06/2007	—
Luxembourg	Ratified 08/04/2008	—
Madagascar	—	Ratified 11/06/2019
Malawi	Ratified 01/10/1986	—
Malaysia	—	—
Maldives	—	—
Mali	—	—
Malta	Ratified 18/05/1990	Ratified 14/05/2021
Marshall Islands	—	—
Mauritania	—	—
Mauritius	—	Ratified 13/09/2012
Mexico	—	Ratified 03/07/2020
Mongolia	—	—
Montenegro	—	—
Morocco	—	—
Mozambique	—	—
Myanmar	—	—



Members	Convention No. 149	Convention No. 189
Namibia	—	Ratified 09/12/2020
Nepal	—	—
Netherlands	—	—
New Zealand	—	—
Nicaragua	—	Ratified 10/01/2013
Niger	—	—
Nigeria	—	—
North Macedonia	—	—
Norway	Ratified 05/07/1989	Ratified 08/07/2021
Oman	—	—
Pakistan	—	—
Palau	—	—
Panama	—	Ratified 11/06/2015
Papua New Guinea	—	—
Paraguay	—	Ratified 07/05/2013
Peru	—	Ratified 26/11/2018
Philippines	Ratified 18/06/1979	Ratified 05/09/2012
Poland	Ratified 04/11/1980	—
Portugal	Ratified 28/05/1985	Ratified 17/07/2015
Qatar	—	—
Republic of Korea	—	—
Republic of Moldova	—	—
Romania	—	—
Russian Federation	Ratified 03/05/1979	—
Rwanda	—	—
Saint Kitts and Nevis	—	—
Saint Lucia	—	—
Saint Vincent and the Grenadines	—	—
Samoa	—	—
San Marino	—	—
Sao Tome and Principe	—	—
Saudi Arabia	—	—
Senegal	—	—
Serbia	—	—
Seychelles	Ratified 12/10/1993	—
Sierra Leone	—	Ratified 25/08/2021
Singapore	—	—
Slovakia	—	—
Slovenia	Ratified 30/01/2003	—

Members	Convention No. 149	Convention No. 189
Solomon Islands	—	—
Somalia	—	—
South Africa	—	Ratified 20/06/2013
South Sudan	—	—
Spain	—	—
Sri Lanka	—	—
Sudan	—	—
Suriname	—	—
Sweden	Ratified 10/07/1978	Ratified 04/04/2019
Switzerland	—	Ratified 12/11/2014
Syrian Arab Republic	—	—
Tajikistan	Ratified 26/11/1993	—
Thailand	—	—
Timor-Leste	—	—
Togo	—	—
Tonga	—	—
Trinidad and Tobago	—	—
Tunisia	—	—
Turkey	—	—
Turkmenistan	—	—
Tuvalu	—	—
Uganda	—	—
Ukraine	Ratified 03/05/1979	—
United Arab Emirates	—	—
United Kingdom of Great Britain and Northern Ireland	—	—
United Republic of Tanzania	Ratified 30/05/1983	—
United States of America	—	—
Uruguay	Ratified 31/07/1980	Ratified 14/06/2012
Uzbekistan	—	—
Vanuatu	—	—
Venezuela (Bolivarian Republic of)	Ratified 17/08/1983	—
Viet Nam	—	—
Yemen	—	—
Zambia	Ratified 19/08/1980	—
Zimbabwe	—	—

## ► Appendix II. Governments that provided reports

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- |                          |                                    |  |
|--------------------------|------------------------------------|--|
| ► Algeria                | ► Ghana                            | ► Pakistan   |
| ► Argentina              | ► Greece                           | ► Panama   |
| ► Armenia                | ► Guatemala                        | ► Paraguay   |
| ► Australia              | ► Honduras                         | ► Peru   |
| ► Austria                | ► Hungary                          | ► Philippines  |
| ► Azerbaijan             | ► India                            | ► Poland   |
| ► Bahamas                | ► Indonesia                        | ► Portugal   |
| ► Bahrain                | ► Iran (Islamic Republic of)       | ► Qatar  |
| ► Bangladesh             | ► Iraq                             | ► Republic of Korea                                    |
| ► Belarus                | ► Ireland                          | ► Republic of Moldova                                  |
| ► Belgium                | ► Israel                           | ► Saint Kitts and Nevis                                |
| ► Benin                  | ► Italy                            | ► Saudi Arabia   |
| ► Bosnia and Herzegovina | ► Japan                            | ► Senegal  |
| ► Brazil                 | ► Kazakhstan                       | ► Seychelles   |
| ► Bulgaria               | ► Kiribati                         | ► Slovenia   |
| ► Burkina Faso           | ► Lao People's Democratic Republic | ► Solomon Islands                                      |
| ► Cabo Verde             | ► Latvia                           | ► South Africa   |
| ► Cambodia               | ► Lithuania                        | ► Spain  |
| ► Cameroon               | ► Luxembourg                       | ► Sudan  |
| ► Canada                 | ► Madagascar                       | ► Suriname   |
| ► Chile                  | ► Malaysia                         | ► Sweden   |
| ► China                  | ► Mali                             | ► Switzerland  |
| ► Colombia               | ► Malta                            | ► Thailand   |
| ► Cook Islands           | ► Mauritius                        | ► Togo   |
| ► Costa Rica             | ► Mexico                           | ► Tonga  |
| ► Croatia                | ► Montenegro                       | ► Trinidad and Tobago                                  |
| ► Cuba                   | ► Morocco                          | ► Tunisia  |
| ► Cyprus                 | ► Mozambique                       | ► Turkey   |
| ► Czechia                | ► Myanmar                          | ► Turkmenistan   |
| ► Denmark                | ► Namibia                          | ► United Arab Emirates                                 |
| ► Dominican Republic     | ► Nepal                            | ► United Kingdom of Great Britain and Northern Ireland |
| ► Ecuador                | ► Netherlands                      | ► United Republic of Tanzania                          |
| ► Egypt                  | ► New Zealand                      | ► United States of America                             |
| ► Estonia                | ► Nicaragua                        | ► Uruguay  |
| ► Eswatini               | ► Niger                            | ► Uzbekistan   |
| ► Finland                | ► Nigeria                          | ► Venezuela (Bolivarian Republic of)                   |
| ► France                 | ► Norway                           | ► Zambia   |
| ► Georgia                | ► Oman                             | ► Zimbabwe   |

## ► Appendix III. Workers' and employers' organizations that provided reports

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### Workers' organizations

#### Argentina

- General Confederation of Labour of the Argentine Republic (CGT RA)

#### Australia

- Australian Council of Trade Unions (ACTU)

#### Austria

- Federal Chamber of Labour (BAK)
- Austrian Trade Union Federation (ÖGB)
- Youinunion Die Daseinsgewerkschaft

#### Bangladesh

- Bangladesh Federation of Government Workers (BOSCF)

#### Bolivia (Plurinational State of)

- National Federation of Salaried Domestic Workers of Bolivia (FENATRAHOB)

#### Brazil

- National Federation of Women Domestic Workers (FENATRAD)
- Single Confederation of Workers (CUT)

#### Bulgaria

- Confederation of Independent Trade Unions in Bulgaria (CITUB)

#### Colombia

- Single Confederation of Workers of Colombia (CUT)
- Confederation of Workers of Colombia (CTC)
- General Confederation of Labour (CGT)

#### Denmark

- Danish Trade Union Confederation (FH)
- Danish Nurses Organization (DNO)

#### Dominican Republic

- National Confederation of Trade Union Unity (CNUS)

#### Ecuador

- Association of Paid Household Workers (ATRH)

#### Finland

- Central Organization of Finnish Trade Unions (SAK)
- Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)

## **France**

- ▶ General Confederation of Labour – Force ouvrière (CGT-FO)
- ▶ French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE – CGC)

## **Germany**

- ▶ German Confederation of Trade Unions (DGB)

## **India**

- ▶ Self Employed Women's Association (SEWA)

## **Israel**

- ▶ General Federation of Labour in Israel (HISTADRUT)

## **Japan**

- ▶ Japanese Trade Union Confederation (JTUC-RENGO)

## **Kenya**

- ▶ Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA)

## **Latvia**

- ▶ Free Trade Union Confederation of Latvia (FTUCL)

## **Luxembourg**

- ▶ Confederation of Christian Trade Unions of Luxembourg (LCGB)

## **Madagascar**

- ▶ Trade Union of Nurses and Midwives of Madagascar (SISFM)

## **Mexico**

- ▶ Autonomous Confederation of Workers and Employees of Mexico (CATEM)
- ▶ International Confederation of Workers (CIT)
- ▶ National Union of Domestic Workers (SINACTRAHO)

## **Mozambique**

- ▶ National Union of Domestic Workers (SINED)

## **Netherlands**

- ▶ National Federation of Christian Trade Unions (CNV)
- ▶ Netherlands Trade Union Confederation (FNV)

## **New Zealand**

- ▶ New Zealand Council of Trade Unions (NZCTU)

## **Norway**

- ▶ Confederation of Unions for Professionals (Unio)

## **Peru**

- ▶ General Confederation of Workers of Peru (CGTP)
- ▶ National Federation of Domestic Workers of Peru (FENTTRAHOP)
- ▶ Autonomous Workers' Confederation of Peru (CATP)
- ▶ Single Confederation of Workers of Peru (CUT-Perú)
- ▶ Confederation of Workers of Peru (CTP)

## **Poland**

- ▶ Independent and Self-Governing Trade Union "Solidarnosc"

## **Portugal**

- ▶ General Workers' Union (UGT)
- ▶ Portuguese Nurses' Union (SEP)

## **Republic of Korea**

- ▶ Korean Confederation of Trade Unions (KCTU)
- ▶ Federation of Korean Trade Unions (FKTU)

## **Russian Federation**

- ▶ Confederation of Labour of Russia (KTR)

## **Slovenia**

- ▶ Confederation of Trade Unions of Slovenia (PERGAM)

## **South Africa**

- ▶ Congress of South African Trade Unions (COSATU)

## **Spain**

- ▶ Trade Union Confederation of Workers' Commissions (CCOO)
- ▶ General Union of Workers (UGT)

## **Sri LankaDomestic Workers Union (DWU)**

- ▶ Public Services United Nurses' Union (PSUNU)
- ▶ Confederation of Public Service Independent Trade Unions (COPSITU)

## **Trinidad and Tobago**

- National Union of Domestic Employees (NUDE)

## **United Republic of Tanzania**

- ▶ The Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU)

## **Zimbabwe**

- ▶ Zimbabwe Domestic & Allied Workers Union (ZDAWU)

## International Workers' Organization

- ▶ International Trade Union Confederation (ITUC)
- ▶ Public Services International (PSI)
- ▶ International Domestic Workers Federation (IDWF)

PSI submitted four separate observations in relation to the situation of nursing personnel and community health workers at the international level:

- ▶ On behalf of Community Health Workers (CHWs) in India, Nepal, Pakistan, Philippines, Malawi, South Africa and Zambia
- ▶ PSI Response to ILO General Survey on Decent Work for Care Economy Workers
- ▶ PSI Response to ILO General Survey on Decent work deficit in the Social Care Workforce – a response to the General Survey
- ▶ PSI Response to ILO General Survey for the Southern Cone subregion – Argentina, Chile and Paraguay

In addition, PSI submitted observations on its own behalf or on behalf of its affiliates at the national level in the following countries:

### PSI – Argentina

- ▶ Trade Union Federation of Health Professionals of the Argentine Republic (FESPROSA)

### PSI – Bangladesh

- ▶ Bangladesh Sarkari Sramik Karmachari Songjukta Federation (BSSKSF)
- ▶ Bangladesh Allied Health Professionals Federation (BAHPF)

### PSI – Chile

- ▶ National Confederation of Municipal Health Officials (CONFUSAM)
- ▶ National Federation of University Professionals in the Health Service (FENPRUSS)

### PSI – China (Hong Kong Special Administrative Region)

- ▶ Hospital Authority Employees Association (HAEA)

### PSI – Colombia

- ▶ San Ignacio University Hospital Workers Union (SINTRASANIGNACIO)

### PSI – Ecuador

- ▶ National Confederation of Civil Servants of Ecuador (CONASEP)

### PSI – Fiji

- ▶ Fiji Nursing Association (FNA-FI)



### **PSI – India**

- ▶ United Nurses Association (UNA)
- ▶ Nagpur Municipal Corporation Employees Union (NMCEU)
- ▶ Hind Mahila Sabha (HMS)
- ▶ Indian National Municipal and Local Bodies Workers Federation (INMLBWF)
- ▶ Karnataka State Government Employees Association (KSGEA)
- ▶ Mumbai Mahanaga Karmachari Mahasangh (MMKM)
- ▶ National Organisation of Government Employees (NOGE)
- ▶ Tamilnadu Government Officials Union (TNGOU)

### **PSI – Jamaica**

- ▶ Jamaica Civil Service Association (JCSA)

### **PSI – Japan**

- ▶ All Japan Prefectural and Municipal Workers Union (JICHIRO)
- ▶ Japan Health Care Workers' Union (JHCWU)

### **PSI – Nepal**

- ▶ Female Community Health Volunteers (FCHV)
- ▶ Nepal Health Volunteers Association (NEVA)
- ▶ Health Volunteers Organisation of Nepal (HEVON)
- ▶ Nepal Health Workers and Employees Union (NHWEU)

### **PSI – New Zealand**

- ▶ Public Service Association (PSA)

### **PSI – Pakistan**

- ▶ All Sindh Lady Health Workers and Employees Union (ASLHWA)
- ▶ All Sindh Lady Health Workers Association Employees Union (ASLHWAEU)

### **PSI – Paraguay**

- ▶ Paraguayan Nursing Association (APE)

### **PSI – Philippines**

- ▶ Public Services Labor Independent Confederation (PSLINK)
- ▶ Philippine Independent Public Sector Employees Association (PIPSEA)
- ▶ Philippine Government Employees' Association (PGEA)
- ▶ Confederation of Independent Unions in the Public Sector (CIU)
- ▶ Alliance of Filipino Workers (AFW)

### **PSI – Republic of Korea**

- ▶ Korean Public Service and Transport Workers' Union (KPTU)

### **PSI – South Africa**

- ▶ Public Servants Association of South Africa (PSA)

### **PSI – United States of America**

- ▶ AFT Nurses and Health Professionals

### **PSI – Venezuela (Bolivarian Republic of)**

- ▶ Single National Union of Public Employees, Professional, Technical and Administrative Staff of the Ministry of Health and Social Development (SUNEP-SAS)

### **PSI – Zambia**

- ▶ On its own behalf

### **PSI –**

- ▶ On behalf of the Ditmanson Medical Foundation Chia-Yi Christian Hospital Corporate Workers Union (DMFCYCHCU) in Taiwan

## **International Domestic Workers Federation (IDWF)**

The IDWF transmitted observations on its own behalf and/or on behalf of its affiliates in the following countries:

### **IDWF – Argentina**

- ▶ On its own behalf and on behalf of the Union of Private Household Auxiliary Personnel (UPACP)

### **IDWF – Bangladesh**

- ▶ Domestic Workers Rights Network (DWRN)
- ▶ National Domestic Women Workers Union (NDWWU)

### **IDWF – Cambodia**

- ▶ Association of Domestic Workers (ADW)

### **IDWF – El Salvador**

- ▶ On its own behalf and on behalf of the Union of Salvadoran Paid Domestic Workers Women's Union (SIMUTHRES)

### **IDWF – Ethiopia**

- ▶ Mulu Tesfa Domestic Workers Association (MTDWA)

### **IDWF – Indonesia**

- ▶ National Network for Domestic Worker Advocacy (JALA PRT)

### **IDWF – Jordan**

- ▶ Domestic Workers Solidarity Network in Jordan (DWSNJ)

### **IDWF – Kuwait**

- ▶ Sandigan Kuwait Domestic Workers Association (SKDWA)

### **IDWF – Lebanon**

- ▶ On behalf of certain groups of migrant workers in Lebanon

### **IDWF – Malawi**

- ▶ On its own behalf and on behalf of the Commercial Industrial & Allied Workers Union (CIAWU)

### **IDWF – Malaysia**

- ▶ Filipino Overseas Patriotic Workers Association – Malaysia (AMMPO)
- ▶ Indonesian Migrant Domestic Workers Association in Malaysia (PERTIMIG)

### **IDWF – Nepal**

- ▶ Home Workers Trade Union of Nepal (HUN)
- ▶ General Federation of Nepalese Trade Unions (Gefont)

### **IDWF – Nicaragua**

- ▶ On its own behalf and on behalf of the:
- ▶ Federation of Women Domestic Workers and Miscellaneous Trades “Julia Herrera de Pomares” (FETRADOMOV)
- ▶ Trade Union of Women Domestic Workers of Granada Department “Claudia Chamorro” (SINTRADOMGRA)

### **IDWF – Panama**

- ▶ On its own behalf and on behalf of the Sectoral Union of Domestic and Similar Service Workers (SINGRETRADS)

### **IDWF – Paraguay**

- ▶ On its own behalf and on behalf of the:
- ▶ Union of Domestic and Allied Workers of Itapúa (SINTRADI)
- ▶ Union of Women Domestic Service Workers of Paraguay (SINTRADESPY)
- ▶ Union of Women Domestic Workers of Paraguay—Legitimate (SINTRADOP-L)

### **IDWF – Peru**

- ▶ On its own behalf and on behalf of the:

### **Institute for the Promotion and Training of Household Workers (IPROFOTH)**

- ▶ Union of Domestic Workers of the Lima Region (SINTTRAHOL)
- ▶ Training Centre for Domestic Workers (CCTH)
- ▶ Federation of Paid Household Workers of Peru (FENTRAHOGARP)

### **IDWF – Qatar**

- ▶ Bayanihan Domestic Workers Association

### **IDWF – Republic of Korea**

- ▶ Korea National House Managers Cooperative (NHMC)
- ▶ Korean Women Workers Association (KWWA)

### **IDWF – Singapore**

- ▶ Filipino Overseas Patriotic Workers Association – Singapore (AMMPO)
- ▶ Ikatan Persaudaraan Pekerja Migran Indonesia (IP2MI)

### **IDWF – Thailand**

- ▶ Network of Domestic Workers in Thailand (NDWT)
- ▶ Foundation for Labour and Employment Promotion (FLEP)
- ▶ Homenet Thailand

### **IDWF – Uganda**

- ▶ Uganda Hotels, Food, Tourism, Supermarkets and Allied Workers Union (HTS-UNION)

## Employers' organizations

### Austria

- ▶ Austrian Federal Economic Chamber (WKÖ)
- ▶ Federation of Austrian Industries (IV)

### Finland

- ▶ Commission for Local Authority Employers (KT)
- ▶ Confederation of Finnish Industries (EK)
- ▶ Federation of Finnish Enterprises
- ▶ State Employer's Office (VTML)

### Honduras

- ▶ Honduran National Business Council (COHEP)

### Mexico

- ▶ Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)
- ▶ Confederation of Employers of the Mexican Republic (COPARMEX)

### New Zealand

- ▶ Business New Zealand (BusinessNZ)

### Portugal

- ▶ Confederation of Portuguese Industry (CIP)
- ▶ Confederation of Trade and Services of Portugal (CCSP)

### Republic of Korea

- ▶ Korea Employers Federation (KEF)

International Employers' organization

- ▶ International Organisation of Employers (IOE)

