

**Day of General Discussion on Migrant Domestic Workers
14 October 2009**

Background Note and General Invitation

1. Introduction

On Wednesday 14 October 2009, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families will hold a Day of General Discussion in Geneva focusing on “Protecting the Rights of Migrant Domestic Workers”.

The full day of discussion will take place during the eleventh session of the Committee at the United Nations Office at Geneva (Palais Wilson) and is a public meeting at which government representatives, UN bodies and specialised agencies, intergovernmental organisations and non-governmental organisations are invited to participate. Guidelines for participation are available on the website of the Office of the High Commissioner for Human Rights, at http://www2.ohchr.org/english/bodies/cmw/docs/Guidelines_for_participants_14oct09.doc.

The discussion is oriented towards four outcomes:

- (1) to assist the Committee in adopting a general comment on migrant domestic workers (MDW);
- (2) to assist the Committee in developing concrete recommendations in relation to the protection of the rights of migrant domestic workers, when examining reports of States Parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);
- (3) to provide input specific to domestic workers who are *migrants* to the debate at the 99th session of the ILO’s International Labour Conference in 2010 which will discuss ‘Decent Work for Domestic Workers’ and consider the adoption of a new international instrument on domestic workers by 2011;
- (4) to promote greater consideration of the particular situation and rights of MDWs among participants in the multiple processes of the Global Forum on Migration and Development, including at its third convening in Athens the first week of November 2009.

2. The context

a) Definitions

As defined by the ICRMW, the term “migrant worker” refers to any person who “is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (Article 2).

“Domestic work” however, is less clearly defined; there is in fact no universally accepted definition. Nonetheless, a 2003 survey by the ILO of national legislation in various countries suggests at least certain elements that are common to domestic work, and in particular:

- the workplace is a private home
- the worker performs some service for the household
- the direct employer is the householder
- the employer does not derive direct financial gain from the activity of the worker
- the work is done on a regular basis and in a continuous manner, even if it is part-time in nature
- the work is performed for payment, in cash or in kind.

b) The extent of migrant domestic work in the world

Large numbers of migrant women, men and children are engaged in domestic work all over the world: ILO estimates several tens of millions. In many places, migrants—whether in regular, documented status or not—are a significant, if not the principal component of the domestic labour force.

Indeed, the ILO reports that in several regions of the world, including Europe, the Gulf countries and the Middle East, the majority of domestic workers today are migrants, within which a further majority are women. In the USA, women migrants from Mexico and Latin America make up most of the domestic workforce. In Latin America, up to 60 per cent of internal and cross border migrants are domestic workers, among them young women who migrate from the less economically developed countries, for example Bolivia and Peru to work in the more developed countries, such as Argentina and Chile.

Given the largely unregulated, unregistered nature of domestic work worldwide, and that many of the migrants engaged in domestic work fall even further outside systems of regulation and registration, exact numbers are hard to come by. Extrapolation however, is often possible using general migration statistics and certain labour migration processes as a basis. For example, in Asia, the UN Population Fund (UNFPA) recently estimated that there were some 6.3 million Asian migrants working and residing with legal status primarily in the more developed countries of that region. Most were from Indonesia, the Philippines and Sri Lanka where women, mostly domestic workers, make up 60-80 per cent of migrants registered for such work. Related estimates suggest that among at least another 1.2 million undocumented migrants in the region, many are also working as domestic workers.

c) Existing international norms relevant to migrant domestic workers

There are at present no international instruments that apply exclusively to domestic workers, whether the workers are nationals or migrants. This is especially important

to note in that, at regional and national levels, domestic workers have been commonly and quite categorically excluded from the purview of frameworks of labour law, rights and protection.

Domestic workers are however, covered in a number of key areas by broad international rights and labour standards, such as ILO Conventions that elucidate rights pertaining to freedom of association (ILO Convention 87), equality and non-discrimination (ILO Convention 100) and forced labour (ILO Conventions 29 and 105).

With respect to migrant workers, ILO Conventions 97 and 143 and the ICRMW enshrine the equal treatment of migrant workers with nationals of the country concerned.

The Universal Declaration of Human Rights and the following eight core international human rights instruments articulate rights and provide protection to migrant domestic workers, even if their provisions do not specifically refer either to domestic workers or migrants *per se*:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)
- International Convention on the Protection of the Rights of All Migrant Worker and Members of their Families (ICRMW)
- International Convention on the Rights of Persons with Disabilities (ICRPD)

Many of the instruments contain provisions that pertain and have particular importance to migrant domestic workers. For example:

- Article 5 of ICERD which enunciates the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in the enjoyment of civil rights and economic, social and cultural rights;
- Articles 8 and 22 of ICCPR which prohibit slavery and forced labour and articulates the right to freedom of association;
- Articles 7 to 10 of ICESCR which recognise the rights of everyone to the enjoyment of just and favourable conditions of work; to form and join trade unions; to social security, including social insurance, and the right to maternity leave;
- Article 11 of CEDAW which enshrines equal rights of men and women in the field of employment;
- Article 32 of CRC which recognises the right of the child to be protected from economic exploitation.

Moreover, the UN committees monitoring each of these international human rights conventions have also articulated a body of important applications and recommendations that pertain to migrant workers broadly, inclusive of domestic workers, such as:

- CCPR General Comment No. 15: The Position of Aliens under the Covenant
- CERD General Recommendation No. 30: Discrimination Against Non-Citizens
- CEDAW General Recommendation No. 26 on Women Migrant Workers

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

The ICRMW is replete with provisions relevant to the situation of migrant domestic workers. The Convention constitutes the broadest framework in international law for the protection of the rights of migrant workers and members of their families and for guidance of States on how to develop labour migration policies while respecting the rights of migrants.

To begin with, the Convention applies to the entire migration process of migrant workers and members of their families, describing their rights and related protection at all stages of that process: during preparation, recruitment, departure and transit; stay in states of employment; and their return to or resettlement in countries of origin or states of residence.

One part of the Convention defines the human rights of *all* migrant workers and members of their families (Part III) and another part specifies other rights of the subset of migrant workers and members of their families who are documented or in a regular situation (Part IV). The human rights are applicable to all migrant workers and family members irrespective of their legal status, while the other rights are applicable only to migrant workers and family members who are documented or in a regular situation. Among the most pertinent provisions are:

- Article 11 which prohibits slavery, servitude, forced or compulsory labour;
- Article 20 which prohibits imprisonment on the ground of failure to fulfil a contractual obligation and which reads that no migrant worker shall be expelled merely on the ground of failure to fulfil an obligation arising out of a work contract;
- Article 21 which makes it unlawful for anyone other than a public official authorized by law to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry or stay, residence or establishment in the national territory or work permits;
- Article 23 which provides that all migrant workers have the right to recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin;
- Article 25 which provides that all migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration, other conditions of work and other terms of employment;

- Article 27 which articulates the right of all migrant workers and the members of their families to social security in the State of employment on a level equal to its nationals within the context of applicable legislation of that State and its treaties;
- Article 28 reiterating the human right of all migrant workers and members of their families, regardless of legal status of employment or residence, to urgent health care on a basis equal to nationals of the State concerned;
- Article 32 which describes the right of all migrant workers to transfer their earnings and savings;
- Article 33 which recognizes the right of all migrant workers to be informed concerning their rights and the conditions of their admission;
- Article 44 emphasising a duty for States to protect the unity of the families of migrant workers who are in a documented situation, and encouraging States to facilitate family reunification;
- Article 51 which provides that migrant workers in a documented or regular situation shall generally neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit.

Of additional importance given the global migration flows and markets within which migrant domestic workers move, the ICRMW contains numerous provisions that aim to improve and guide State engagement in labour markets and with other States in bilateral and multilateral activity, including:

- Article 64 requiring States Parties to consult and cooperate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families;
- Article 65 which lists a number of services that States Parties are obliged to provide for migrants, their families and employers, including information pre-departure and post-return and consular services;
- Article 66 which calls for agencies or others who recruit workers for employment abroad to be State operated or authorised.

3. Problems experienced by migrant domestic workers

The Committee on Migrant Workers has addressed issues related to migrant domestic workers during the examination of a number of States reports, such as the reports of Ecuador, Egypt, El Salvador, Mexico, the Philippines and the Syrian Arab Republic.

Among the problems that migrant domestic workers face are:

- ***Irregularities in recruitment***
 - exorbitant and inappropriate fees
 - entrapment in debt arrangements
 - lack of or fraudulent recruitment and employment contracts
- ***Vulnerabilities and abuses involving the employer***

- lack of or fraudulent employment contracts (including substitution of contracts upon arrival; contracts in languages not understood by the worker; misrepresentation of material terms of the contract; compelled signing, etc.)
 - dependence on employer (e.g., employer control of passport, employment and identity papers; employee's legal status linked to specific employer; employer abuse of immigration law and procedures)
 - employer restrictions on movement, often amounting to virtual imprisonment
 - withholding or diversion of pay
 - long working hours with little to no break, rest time or days off
 - physical and emotional maltreatment, including abusive threats of imprisonment and/or deportation
- ***Protection gaps in national laws and procedures***
 - labour legislation often does not apply to domestic work
 - no agreed minimum wages for domestic work
 - no overtime pay
 - no coverage by social security schemes
 - lack of access to complaint mechanisms and due process
 - cultural and procedural biases against migrants and/or domestic workers.

4. Further reading

- The International Convention on Migrant Workers and its Committee; OHCHR Human Rights Fact Sheet No. 24 (rev.1).
- International Labour Conference, 99th session, report IV(1): Decent work for domestic workers; ILO, 2009.
- UNFPA, State of World Population 2006: Women and International Migration.
- Commission on Human Rights: Report of the Special Rapporteur on the human rights of migrants: the human rights of migrant domestic workers, E/CN.4/2004/76.
- Commission on Human Rights: report of the Special Rapporteur on Trafficking in Persons, especially Women and Children, Mission to Lebanon, E/CN.4/2006/62/Add.3.
- Steering Committee Guide on Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2009
<http://www.migrantsrights.org/documents/SCRatificationGuide4-2009Final.pdf>
- ICMC: Strengthening Protection of Migrant Workers and their Families with international Human Rights Treaties – A Do-it.yourself-Kit
- Caritas Internationalis: Needed and exploited - the invisible suffering of Migrant Domestic Workers". Compilation of experiences, March/April 2009.

5. Format

After a general introduction, the discussions will take place in two working groups, each focusing on a different theme: **Recruitment and Employment**, and **Effective protection of the rights of migrant domestic workers**. Participants are requested to reflect upon the following questions, among others:

Working group one: Recruitment and employment

- How to establish effective control over recruitment agencies?
- How to avoid irregular emigration and/or irregular migrant status of migrant domestic workers?
- How to ensure that the work contract provides minimum standards?
- How to ensure the enforcement of minimum standards?
- How to ensure that the MDWs are aware of their rights?
 - o When signing a contract
 - o During their employment
 - o When being repatriated
- How can MDWs enjoy social benefits similar to nationals?
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Working group two: Effective protection of MDWs rights

- How can MDWs be empowered?
- What can be done before MDWs leave their country of origin to assist them in preparing for their employment?
- How to establish effective complaint mechanisms for MDWs?
- How to avoid situations of abuse and forced labour?
- What should be the role of the countries of origin of the MDWs in providing effective protection from abuse?
- How can the family unity of MDWs be protected?
- How to address the recurring situation of the recruitment agency or employer confiscating the documents of MDWs?

6. General Invitation

The Day of General Discussion is a public meeting in which government representatives, United Nations bodies and specialized agencies, intergovernmental organisations, non-governmental organisations and individual experts are welcome to participate. The meeting will be held during the eleventh session of the Committee, at the Office of the UN High Commissioner for Human Rights (Palais Wilson, Geneva) on Wednesday 14 October 2009.

The format of the discussion day is designed to enable participants to exchange views in a frank and open dialogue. The Committee therefore asks participants to avoid presenting formal statements during the discussion day. Interpretation will be provided in English, French and Spanish during the plenary discussions and at the discussion in working group one; working group two will be without interpretation.

Written contributions are invited on the issues and topics mentioned, within the framework outlined above. The Committee is especially interested in receiving information about best practices. Please refer to the guidelines for participants for information on how to register for participation in the discussion day and for submission of contributions:
http://www2.ohchr.org/english/bodies/cmw/docs/Guidelines_for_participants_14oct09.doc.

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