

International Campaign for the Rights and Recognition of Domestic Workers

Highlights of the 2010 International Labour Conference and the ILO Brown Report

Introduction

The 99th Session of the International Labour Conference (ILC) was successfully held from 2 to 18 June 2010 in Geneva, Switzerland. For domestic workers and advocates, it was a momentous and victorious event because ILO Member States finally approved in principle to adopt a comprehensive standard for domestic workers in the form of a Convention supplemented by a Recommendation. At the end of the Conference, it was resolved that an item entitled “Decent Work for Domestic Workers” shall be included in the agenda of its next ordinary session for second discussion in June 2011 where the final decision will be made.

The ILC had a seven-point agenda divided into two categories: (1) standing items and (2) items placed on the agenda by the Conference or the Governing Body. The Decent Work for Domestic Workers (standard setting with a view to the possible adoption of a Convention supplemented by a Recommendation) was tabled under Item IV with the Committee on Domestic Work put in charge of the discussions.

The Committee had 21 sittings, which began on 2 June 2010. On 4 June, the third day of sittings, the form of the instrument was put to a vote. The government of India proposed an amendment to replace the words “Convention supplemented by a Recommendation” with “Recommendation” only, but this was not supported by majority of the governments and the workers’ group. A record vote of 62 governments rejected the amendment; 13 voted for the amendment, 4 abstained, and 30 did not register a reply.

Seven out of the 26 Asian governments voted against the amendment and stressed the need for a Convention supplemented by a Recommendation. These governments include China, Lebanon, Maldives, Philippines, Sri Lanka, Syrian Arab Republic and Thailand. Meanwhile, 11 Asian governments that voted for only a Recommendation were Saudi Arabia, Bahrain, Bangladesh, United Arab Emirates, India, Indonesia, Iran, Kuwait, Malaysia, Oman and Qatar. The two Asian governments that abstained were Israel and Japan. The six Asian governments that did not register a reply were Afghanistan, Cambodia, Iraq, Jordan, Pakistan and Papua New Guinea.

Following the deliberations at the ILC and in conformity with article 39, Paragraph 6, of the Standing Orders of the Conference, the ILO Office has prepared the 3rd Report (Brown Report), which contains the draft texts of the proposed Convention and Recommendation. The Report also contains ILO’s commentaries on the texts for the purpose of clarity, readability and consistency to the existing ILO international standards. Pursuant to Article 39, the draft texts are communicated to the governments and they are requested to reply after consulting the most representative organizations of employers and workers for any amendment to suggest or comments to make. The deadline for the submission of replies is 18 November 2010.

The succeeding sections provide a quick glance at the Brown Report to introduce what each article focuses on and the full texts of the draft Convention supplemented by a Recommendation.

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The Proposed Convention supplemented by a Recommendation at a Glance

Convention

- Article 1- Definitions of domestic work and domestic worker
- Article 2- Scope and exclusionary Clause
- Article 3- Human rights and labour rights of domestic workers
- Article 4- Minimum age
- Article 5- Working conditions and respect for privacy of domestic workers
- Articles 6-7- Employment contract
- Article 8- Protection against all forms of abuse and harassment
- Article 9- Housing and privacy
- Article 10- Working Hours, Weekly rest, and stand by time
- Article 11- Minimum Wage
- Article 12- Mode of payment
- Article 13- Occupational safety and health; social security protection
- Article 14- Access to courts, tribunals and other dispute resolution concerning procedures
- Article 15- Compliance with national law
- Article 16- Legal liability of employment agencies
- Article 17- Implementation of the convention
- Article 18- Consistency with other international labour standards

Recommendation

- Point 1- Introductory paragraph
- Point 2- Right of domestic workers to freedom of association and the effective recognition of the right to collective bargaining
- Article 3- Elimination of discrimination
- Point 4- Protection for young domestic workers
- Point 5- Supplementary provisions on Article 6 and establishment of model contract for migrant domestic workers
- Point 6- Overtime pay
- Point 7- Protection during stand by time
- Point 8- Appropriate financial compensation for domestic workers who work at night
- Point 9- Provision of daily break time
- Point 10- Weekly rest
- Point 11- Protection during rest day
- Point 12- Protections against work during holiday
- Point 13- In-kind payment
- Point 14- Provision of payslip
- Point 15- Workers' claims in time of insolvency
- Point 16- Accommodation and food
- Point 17- Termination of employment
- Point 18- Measures to identify, mitigate and prevent occupational hazards specific to domestic work
- Point 19- Payment of social security
- Point 20- Additional measures to ensure the effective protection of migrant domestic workers' rights
- Point 21- Repatriation at no cost to domestic workers
- Point 22- Establishment of policies and programmes deemed necessary for the continuing development of domestic workers and life-work balance and the development of appropriate indicators and measurement systems
- Point 23- Members' Cooperation at bilateral, regional and global levels

PROPOSED CONVENTION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on ... June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for men and women workers with family responsibilities, and

Considering that domestic work continues to be undervalued and invisible and is mostly carried out by women and girls, many of whom are migrants or members of historically disadvantaged communities and therefore particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that, in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949, the Migrant Workers (Supplementary Provisions) Convention, 1975, the Workers with Family Responsibilities Convention, 1981, the Private Employment Agencies Convention, 1997, the Employment Relationship Recommendation, 2006, and of the ILO Multilateral Framework on Labour Migration, and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers, to enable them to enjoy their rights fully, taking into account the right to privacy that each domestic worker and each household enjoys, and

Recalling other relevant international instruments, such as the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention

against Transnational Organized Crime and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, adopts this ... day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

Article 1

For the purpose of this Convention:

- (a) the term “domestic work” means work performed in or for a household or households;
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Article 2

1. The Convention applies to all domestic workers, provided that a Member which has ratified it may, after consulting representative employers’ and workers’ organizations, and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist, exclude wholly or partly from its scope:

- (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.

2. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned. Article 3

- 1. Each Member shall take measures to ensure effective protection of the human rights of all domestic workers.
- 2. Each Member shall take, in relation to domestic workers, measures to respect, promote and realize, in good faith and in accordance with the ILO Constitution, the fundamental principles

Asian governments that supported a Convention supplemented by a Recommendation

China
Lebanon
Maldives
Philippines
Sri Lanka
Syrian Arab Republic
Thailand

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.

Article 4

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973, and the Worst Forms of Child Labour Convention, 1999, and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall 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, or interfere with, their education or vocational training.

Article 5

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, where applicable, decent living conditions which respect their privacy.

Article 6

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment, in an appropriate, verifiable and easily understandable manner, preferably, where possible, through written contracts in accordance with national laws and regulations, in particular:

- (a) the name and address of the employer;
- (b) the type of work to be performed;
- (c) the remuneration, method of calculation and periodicity of

- (d) the normal hours of work;
- (e) the duration of the contract;
- (f) the provision of food and accommodation, if applicable;
- (g) the period of probation or trial period, if applicable;
- (h) the terms of repatriation, if applicable; and
- (i) terms and conditions concerning termination of employment.

Article 7

1. National laws and regulations shall require that migrant domestic workers receive a written job offer or contract of employment addressing the terms and conditions of employment referred to in Article 6 prior to crossing national borders for the purpose of taking up domestic work to which the offer or contract applies, without prejudice to equivalent or more favourable measures under regional, bilateral or multilateral agreements, or under rules pertaining to the operation of a regional economic integration area.

2. Members shall cooperate with each other to ensure the effective protection of migrant domestic workers under this Convention.

Article 8

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse and harassment.

Article 9

1. Each Member shall take measures to ensure that domestic workers:

- (a) are free to negotiate with their employer whether to reside in the household;
- (b) are not bound to remain in or with the household during the periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

2. In taking these measures, due respect shall be given to the right to privacy of both the domestic worker and the household.

Article 10

1. Each Member shall take measures to ensure that the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave of domestic workers are not less favourable than those provided for workers generally in accordance with national laws and regulations.

2. Weekly rest shall be at least 24 consecutive hours per each seven-day period.

3. 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 shall be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national practice.

Article 11

Each Member shall 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.

Article 12

1. Domestic workers shall be paid directly in legal tender at regular intervals but not less often than once a month. As appropriate under national law and practice and with the consent of the worker concerned, payment may be made by bank transfer, bank cheque, postal cheque or money order.

2. National laws or 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 allowances in kind, in conditions not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such allowances are agreed to by the worker, are appropriate for the personal use and benefit of the worker, and that the cash value attributed to them is fair and reasonable.

Article 13

1. Each Member shall take appropriate measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of:

- (a) occupational safety and health; and
- (b) social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively.

Asian governments that only supported a Recommendation

Saudi Arabia
Bahrain
Bangladesh
United Arab Emirates
India
Indonesia
Iran
Kuwait
Malaysia
Oman
Qatar

Article 14

Each Member shall take measures to ensure that all domestic workers, either by themselves or through a representative, have easy access to courts, tribunals or other dispute resolution procedures under conditions that are not less favourable than those available to workers generally.

Article 15

Each Member shall establish effective means of ensuring compliance with national laws and regulations for the protection of domestic workers.

Article 16

1. Each Member shall take measures to ensure that domestic workers recruited or placed by an employment agency, including migrant domestic workers, are effectively protected against abusive practices, including by establishing the respective legal liability of the household and the agency.

2. Each Member shall take measures to:

- (a) establish criteria for the registration and qualifications of employment agencies, including disclosure of information on any relevant past violations;
- (b) carry out regular inspections of employment agencies to ensure compliance with relevant laws and regulations, and provide for significant penalties for violations;
- (c) provide accessible complaint mechanisms for domestic workers to notify authorities of abusive practices; and
- (d) ensure that fees charged by employment agencies are not deducted from the remuneration of domestic workers.

Article 17

Each Member shall implement the provisions of this Convention, in consultation with representative employers' and workers' organizations, through laws and regulations, as well as through collective agreements or additional measures as consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Article 18

This Convention shall not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

PROPOSED RECOMMENDATION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on ... June 2011, and

Having adopted the Domestic Workers Convention, 2011, and Having decided upon the adoption of certain proposals with regard to decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Domestic Workers Convention, 2011, adopts this ... day of June of the year two thousand and eleven the following Recommendation, which may be cited as the Domestic Workers Recommendation, 2011.

1. The provisions of this Recommendation supplement those of the Domestic Workers Convention, 2011 ("the Convention"), and should be considered in conjunction with them.

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 choice and to the right of organizations of domestic workers to join workers' organizations, federations and confederations;
- (b) protect the right of employers of domestic workers to establish and join organizations, federations and confederations of employers of their choosing; and
- (c) take or support measures to strengthen the capacity of organizations of domestic workers to protect effectively the interests of their members.

3. In taking measures for the elimination of discrimination in respect of employment and occupation, Members should make sure, among other things, that work-related medical testing is consistent with international labour standards and respects the principle of the confidentiality of personal data and the privacy of domestic workers; Members should prevent any discrimination related to such testing.

4. 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, including in respect of working time and restrictions on undertaking certain types of domestic work.

5. (1) In communicating the terms and conditions of employment to the domestic workers, appropriate assistance should be provided, when necessary, to ensure that the domestic worker concerned has understood those terms and conditions.

(2) Further to Article 6 of the Convention, the terms and conditions of employment should include the following particulars:

- (a) the starting date of the employment;
- (b) a job description;
- (c) paid annual leave;
- (d) daily and weekly rest;
- (e) sick leave and any other personal leave;
- (f) the rate of pay for overtime work;
- (g) any other cash payments to which the domestic worker is entitled;
- (h) any allowances in kind and their cash value;
- (i) details of any accommodation provided;
- (j) any authorized deductions from the worker's wages; and
- (k) the period of notice required for termination by either the domestic worker or the employer.

(3) Members should consider establishing a model contract for domestic work, in consultation with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist.

6. (1) Hours of work and overtime should be accurately calculated and recorded, and this information should be freely accessible to the domestic worker.

(2) Members should consider developing practical guidance in this respect, in consultation with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist.

7. With respect to 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 (commonly known as standby or on-call periods), national laws and regulations or collective agreements should 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 disturbed by standby; and
- (c) the rate at which standby hours should be remunerated.

8. Members should consider specific measures, including appropriate financial compensation, for domestic workers whose normal duties are performed at night, taking into account the constraints and consequences of night work.

9. Members should take measures to ensure that domestic

workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.

10. The day of weekly rest should be a fixed day in every period of seven days to be determined by agreement of the parties, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.

11. National laws and 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.

12. Time spent by domestic workers accompanying the household on holiday should not be counted as part of their annual leave.

13. When provision is made for the payment of a limited proportion of the remuneration in the form of allowances in kind, 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 cash remuneration necessary for the maintenance of domestic workers and their families;
- (b) calculating the cash value of allowances in kind by reference to objective criteria such as the market value, cost price or prices fixed by public authorities, as appropriate;
- (c) limiting allowances in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation; and
- (d) prohibiting allowances in kind that are directly related to the performance of work duties, such as uniforms, tools or protective equipment.

14. (1) Domestic workers should be given at the time of each payment an easily understandable written account of the payments due to them, the amounts paid 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.

15. Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of the employer's insolvency or death.

16. When provided, accommodation and food should, taking into account national conditions, include:

- (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 cultural and religious requirements, if any, of the domestic worker concerned.

17. In the event of termination of employment, 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.

18. Members should take measures to:

- (a) identify, mitigate and prevent occupational hazards specific to domestic work;
- (b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;
- (c) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and
- (d) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

19. Members should consider means to facilitate the payment of social security contributions by employers, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.

20. (1) Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:

- (a) providing for a system of visits to households in which migrant domestic workers will be employed;
 - (b) developing a network of emergency housing;
 - (c) establishing a national hotline with interpretation services for domestic workers who need assistance;
 - (d) raising employers' awareness of their obligations and of sanctions in case of violation;
 - (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
 - (f) providing 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, and to provide other pertinent information.
- (2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and any other appropriate measures.

21. Members should consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.

22. (1) Members should establish policies and programmes,

in consultation with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist, so as to:

- (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, so as to enhance their career and employment opportunities;
 - (b) address the work-life balance needs of domestic workers; and
 - (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.
- (2) Members should develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices and to effectively collect comprehensive data on domestic workers.

23. (1) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning social security, the monitoring of private employment agencies, the prevention of forced labour and human trafficking, the dissemination of good practices and the collection of statistics on domestic work.

(2) 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.

Other governments that supported a Convention supplemented by a Recommendation

Argentina, Australia, Austria, Barbados, Belgium, Botswana, Brazil, Burkina Faso, Chad, Chile, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Honduras, Hungary, Italy, Kenya, Lesotho, Mali, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Peru, Portugal, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, United Republic of Tanzania, Turkey, United Kingdom, United States, Uruguay, Vanuatu, Bolivarian Republic of Venezuela and Zimbabwe.

Countries that abstained from the vote

Congo, Estonia, Israel and Japan

Contact Us

Migrant Forum in Asia (MFA)
Asian Migrant Domestic Workers Alliance (ADWA) c/o MFA

MFA believes that migrants' rights are human rights. Documented or undocumented, irrespective of race, gender, class, age and religious belief, migrant workers' rights are guaranteed by the UN Declaration of Human Rights, the UN Convention on the Protection of Rights of All Migrant Workers and Members of their Families and other international conventions.

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