

THE RIGHT TO UNITE

ἘΠΙΣΤΗΜΟΝΙΚΟ ΠΡΟΓΡΑΜΜΑ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ
ΣΧΟΛΗΣ ΚΑΤΑ ΤΗΝ ΕΡΓΑΤΙΚΗ ΑΝΕΞΙΣΤΗΜΟΤΗΤΑ
ΟΥΡΟΧΩΡΩΝ ΕΡΓΑΖΟΜΕΝΩΝ ΤΟΥ ΟΡΓΑΝΙΣΜΟΥ
ΥΠΕΡ ΤΩΝ ΟΥΡΟΧΩΡΩΝ ΕΡΓΑΖΟΜΕΝΩΝ

ANALYSIS OF THE INTERNATIONAL LABOUR ORGANISATION PROPOSED CONVENTION AND RECOMMENDATION ON DOMESTIC WORK

Background Comments:

In 2008, after a number of years of advocacy by civil society groups, the International Labour Organisation (ILO) Governing Body put the issue of decent work for domestic workers on the agenda for the 2010 session of the ILO conference.¹ The aim was to set an international standard to protect a group of workers who are commonly excluded from national labour laws. The drafting of an instrument had wide support at the conference, with the committee meeting on domestic workers having such a large number of trade unions, employers' organisations, NGOs and governments present that the meeting room needed to be changed. The support for a Convention and Recommendation came mainly from the workers' organisations, the United States of America, Kenya and Uruguay, with quiet support also coming from China, the Maldives, Sri Lanka and Thailand. Those in opposition, who called for a Recommendation, included Bangladesh, India and employers' organisations. The result of the vote was for a Convention and Recommendation, the proposed draft was released in August 2010 to be discussed further and to be put up for adoption at the ILC in 2011.

Vote: ¹⁰⁸	Convention and recommendation	Recommendation only	No vote / abstained
Bangladesh		✓	
(Hong Kong - SAR) China	✓		
India		✓	
Indonesia		✓	
Japan			✓
Malaysia		✓	
Philippines	✓		
Sri Lanka	✓		
Taiwan			✓
Thailand	✓		

The Convention is comprehensive and its articles on the whole reflect strong arguments at the ILC towards a comprehensive protective standard for domestic workers. The following comments reflect concerns identified by civil society groups with a particular focus on the promotion and protection of migrant domestic worker rights. We call on delegates to the 2011 ILC to strengthen the proposed instruments by making the following changes:

¹ International Labour Office, 'Decent Work For Domestic Workers Report IV(1)' International Labour Organisation (10 August 2010) ILC.100/IV/1, p1.



The Proposed Domestic Workers Convention 2011:

Preamble

The preamble should include recognition of the abuse of domestic workers and the historical lack of recognition of domestic work as work.

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.²*

In reflection of the commitment of the committee to make the definition as wide as possible, article one encompasses all forms of work done within the household without limitations, from cleaning to caring for children and the elderly, as well as work performed outside of, or for the household, such as gardening or chauffeur work. The use of the word ‘households’ in the definition is to include those who work for several household employers, but needs to be further defined. The use of the term ‘employment relationship’ is wide enough to cover those employed by the household, as well as those employed directly by employment agencies and other intermediaries.³ The terms employer, employment agency or intermediary are not defined in the proposed Convention. Part (c) is worded so as not to exclude part time or temporary workers, but to exclude, for example, the occasional or irregular babysitter.⁴ There is still debate about the wording ‘not on an occupational basis’, which has not been used before in any other ILO instruments, the International Labour Office has instead suggested the words ‘not as a means of earning a living’ and is asking for comments.⁵

Recommendation: To ensure all domestic worker rights are protect by the instruments the definition should be expansive and the expression ‘not on an occupational basis’ should be removed. The expression may be utilised by employers where a culture of viewing domestic workers as ‘helpers’ who receive only lodgings and board exists.

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 Ibid, p12.

³ International Labour Office ‘Committee on Domestic Workers Draft Report’ International Labour Conference 99th Session, Geneva, (June 2010) C.T.D./D.227. “Responding to the question raised by the Government member of Japan, the representative of the Secretary-General explained that work performed within an employment relationship included both domestic workers directly recruited by the household and also domestic workers recruited by a third party to provide services to a household.” p47, 55. Also see the Employment Relationship Recommendation, 2006 (No. 198).

⁴ Committee on Domestic Workers Draft Report, p50.

⁵ Decent Work For Domestic Workers Report IV(1), p5.

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.⁶

There is concern that part (b) allows for the exclusion of various types of domestic workers, while the main reasons for having an instrument addressing the specific situation of domestic workers is precisely because many of them are excluded from the scope of international labour standards and national labour legislation. The category of workers most likely to be excluded by members under the article is that of undocumented and irregular migrant workers. The article was formulated by a working group, but the representative of Bangladesh expressed concerns as to the language of ‘special problems of a substantial nature’ and it may be discussed further at the ILC in 2011.⁷

Recommendation: Article 2 (b) should be removed. The subsection may enable exploitation of the most vulnerable who are already considered ‘special problems’ i.e. domestic workers with disabilities, domestic workers who have been in servitude to a family all their lives, irregular workers, domestic workers of diplomats, etc.



Article 4 on the minimum age, should specifically mention the setting of a minimum age for migrant domestic workers, in that the minimum age should be, at least, no lower than that which applies to nationals, following the Migration for Employment Convention (Revised), 1949 (No. 97)⁸



Article 5 is central to the Convention and refers to the provision of decent work and living conditions for domestic workers. To strengthen this part of the text reference should be made to the specific situation of migrant domestic workers, live-in and young domestic workers as needing particular protection.



The terms and conditions of employment in **Article 6** should require specification of the address of the household(s) to prevent domestic workers from being forced to work in households not in the contract.



Article 6 states that ‘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’, and **Article 7** ‘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’,⁹ however the articles should also state that the contract is to be written in language understood by both the worker and their employer.



Under **Article 6** (g) one of the terms and conditions referred to is that of ‘the period of probation or trial period, if applicable’¹⁰, there is no further information or reference in the Convention or Recommendation on the terms and conditions or maximum length of a trial or probationary period. To remedy this omission, the trial or probationary period should be specified to be for no longer than three month, however, it would be preferred if probationary or trial periods were prohibited.

⁶ Ibid, p12.

⁷ Committee on Domestic Workers Draft Report, p78.

⁸ Some members suggested a higher minimum age for migrant workers for example Malaysia asked for minimum age of migrant workers to be 21. International Labour Office, ‘Decent Work For Domestic Workers Report IV(2)’ International Labour Organisation (03 March 2010) ILC 99 IV(2), p51.

⁹ Decent Work For Domestic Workers Report IV(1), p13.

¹⁰ Ibid, p13.



Article 7 requires that a written job offer or contract be received prior to crossing national borders, but the article should also clearly prohibit the common practice of contract substitution (when a different contract is given to the worker in the country of destination).



Article 7 should also express that the Convention and Recommendation set the minimum standards by which existing and future regional, bilateral and multilateral labour agreements must be measured.



Article 8 should be amended to reflect the wording proposed by workers representatives ; ‘Member States should adopt measures under national laws or regulations for the effective detection of the abusive use of domestic work, which includes all forms of child labour, forced labour, harassment and other abusive situations. Such measures should include appropriate remedies as well as the sanctioning of such abuses’.¹¹



Under **Article 9** (a), the mandatory live-in arrangement for domestic workers must be prohibited so that domestic workers are free to negotiate where they reside. Under 9 (c) domestic workers ‘are entitled to keep in their possession their travel and identity documents’,¹² this should include their contracts, other personal documentation and possessions.



Article 11 states that remuneration should be ‘established without discrimination based on sex’, nationality, race, religion, marital status, parental status, sexual orientation, social origin or other irrelevant characteristics should also be included. Domestic workers should also be entitled to the same minimum wage, annual wage increases and non-wage benefits as other workers under national laws and labour regulations.



Under **Article 13** concerning health, safety and social security, Article 13 (2) ‘The measures referred to in the preceding paragraph may be applied progressively’ should be deleted. The article should state that domestic workers are entitled to all protections detailed in the related ILO Convention No. 155.



Article 15 states that ‘Each Member shall establish effective means of ensuring compliance with national laws and regulations for the protection of domestic workers’,¹³ however there are no further details or suggestions as to monitoring and evaluation, which should be included in the Recommendations. A requirement that members enact national laws and regulations that comply with the standards of the convention should be included.



Although **Article 16** refers to protection against employment agencies, it does not mention intermediaries, private recruiters paid by the recruitment agencies, brokers, or training and holding facilities (which house migrant domestic workers before they depart or are deployed to a household), which may or may not be run by the employment agencies. Article 16 should also be strengthened with reference to ILO Convention No. 181 on Private Employment Agencies with a view to regulate and monitor recruitment agencies in order to prevent abuses.



Under **Article 16** (2) should be amended to ensure that each member should also take measures against the practice of charging high placement, legal, bureaucratic processing and other employment related fees, the fees should be set, regulated and paid by the employers.

¹¹ Committee on Domestic Workers Draft Report, p103-4.

¹² Decent Work For Domestic Workers Report IV(1), p14.

¹³ Ibid, p15.

The Proposed Domestic Workers Recommendation 2011



Article 2 (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'*¹⁴ should also clearly include the elimination of any restrictions or limitations on migrants holding union office or membership, including any visa or work permit restrictions. This important clause should be moved to the convention.



Under **Article 3** concerning medical testing, specific reference should be made to HIV/Aids and pregnancy testing, it should be clearly expressed that these should not be made mandatory and rights to privacy of medical information should be maintained. The knowledge of any such medical conditions should not be used as grounds upon which to terminate employment contracts.



The terms and conditions of employment in **Article 5 (2)** should also include provisions with regards to medical assistance and insurance, and also provide details such as the number of family members, the number of children and/or elderly occupants and the number of rooms in the house. In **Article 5 (3)** a standard contract rather than model contract should be established.



Under **Article 17** on termination, reference should be made to Migrant Workers (Supplementary Provisions) Convention, 1975 (No 143) according to which migrant workers having resided legally in a country for the purpose of employment should not have their authorisation of residence or work permit automatically withdrawn in case of termination of employment.

In Addition, the Draft Instruments failed to properly address the following issues that should be included:



The right of workers to change their employers and in the case of migrant workers, to change the employment agency and or intermediaries they are employed through, must be specifically protected.



The ability of migrant domestic workers to be hired directly by an employer in the country of destination without any intermediary should be included, especially for migrant domestic workers.



The issue of the migrant domestic workers' family is not included, further reference should be made to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families



A more comprehensive approach to maternity and pregnancy protection for domestic workers should be considered with a separate article in the Convention to address the issues.



The right to residency being no less favourable than that of other migrant workers is not included.



The ability of migrant workers to remain in the country of destination and to be employed during legal proceedings against their employers, employment agency, or other intermediaries, is not included. Migrant workers should also be exempted from immigration fees to extend their stay in destination country pending the solution of any such legal proceedings.



For the purposes of clarity, the Convention and Recommendation should explicitly state that all domestic workers are covered regardless of their migration status.

¹⁴ Decent Work For Domestic Workers Report IV(1), p16.

UFDWR – Who we are:

United for Foreign Domestic Workers' Rights (UFDWRs), a coalition working towards the increased protection and promotion of foreign domestic workers' rights. The overarching message of our campaign:

“Recognise domestic work as work”.

The UFDWR core committee comprises five regional and international civil society organisations that work directly with domestic workers and domestic worker organisations in the Asia Pacific region. Each organisation has its own focus, from organising and migrant action to research and policy analysis, creating a strong platform for advocacy. We are the:

- Asia Pacific Forum on Women, Law and Development (APWLD)
- Asia Pacific Mission for Migrants (APMM)
- Coordination of Action Research on AIDS and Mobility in Asia (CARAM Asia)
- Mekong Migration Network (MMN)
- Global Alliance Against Trafficking in Women (GAATW)

Presently the coalition is co-hosted by APWLD and CARAM Asia.

Asia Pacific Forum on Women, Law and Development

APWLD is Asia Pacific's leading feminist, membership driven network. We hold consultative status with the Economic and Social Council of the United Nations. Our 180 members represent groups of diverse women from 25 countries in the region. For nearly 25 years APWLD has been empowering women to use law as an instrument of change for equality, justice, peace and development. We use research, training, advocacy and activism to claim and strengthen women's human rights.

Coordination of Action Research on AIDS and Mobility in Asia

CARAM Asia is a regional network working on migration and health issues. Formed in 1997, it has developed into a network of members spread across South East Asia, North East Asia, the Gulf and Middle East. CARAM Asia advocates for better access to health care, sexual and reproductive health and rights, and the mental and physical well-being at all stages of migration. CARAM –Asia believes that all people have the right to stay or move and live and work in dignity with equal rights in a society, where their quality of life is ensured.



APWLD



Global Alliance Against Traffic in Women

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