

**RESPECT Network Campaigning for the
Rights of Migrant Domestic Workers
in Europe & Internationally**



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By

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Campaigning for the Rights of Undocumented Migrant (Domestic) Workers

in Europe and Internationally

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Introduction

RESPECT Network welcomes this initiative by the Committee on Migrant Workers – Day of General Discussion on the rights of migrant workers in an irregular situation and members of their families.

In this submission we focus on the situation of Migrant Domestic Workers who are forced to become undocumented due to a structural condition which in many governments in Europe do not recognise Domestic work as a proper work; do not have in place adequate legal labour protection and most importantly European immigration legislation does not recognise domestic work as a category for immigration.

The RESPECT Network is extremely concerned by the growing criminalisation of undocumented migrants workers in Europe - including MDWs, and the undue emphasis on security enforcement, militarization, detention, border controls and deportation, which have been aggravated with the EU Return Directive. We consider these practices are creating a situation which weakens and undermines the conditions for the protection of the human rights of all migrants.

RESPECT Network Europe is network of migrant domestic workers which aims to improve the social, economic and legal position of the growing number of migrant workers in the Netherlands, who work in the private domestic sphere as cleaners and/or caretakers.

RESPECT NL is a Dutch member organization of the RESPECT Network Europe a Europe-wide network of domestic worker organizations, trade unions and civil society groups.

Our overall objective is to improve and strengthen the social, economic and legal position of the growing number of migrant domestic workers (MDWs) who work in private households as cleaners and/or as caretakers, women and men, regardless of their immigration status.

In the last decades, MDWs in the private household in Europe and their living and working conditions have gained increasing attention – not only within migrant communities, but also from human right advocates, trade unions, women’s networks, scholars, media and policy makers.

Global and regional developments have contributed to this: the importance and consequences of the rapid globalization of economies worldwide; its impact on changing labour and social conditions in Europe and labour migration; and the unequal North-South divide and the continuing “demand” and “supply” dynamics between North and South on political and economic level. Furthermore, there is the double standard vis a vis labour migration in Europe, where on one hand there is a significant employment of MDWs in the private household, but on the other hand this is not duly acknowledged. In fact what we see is the denial of their labour and immigration rights, with the result that many migrant domestic workers are becoming “undocumented”.

But the higher level of attention for domestic work in the private household is also enforced by migrant domestic workers themselves. In the last decades successful campaigns have been undertaken in several European countries (as in case as in UK, Spain, Italy, Greece) by migrant domestic workers, together

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with migrant communities, trade unions and migrant right advocates. Those campaigns have successfully challenged the immigration legislation and gained recognition for the work in the private household as a category for migration. In the UK for example a lengthy campaign by KALAYAAN (member organization of RESPECT) and the Trade Union, brought changes to the immigration rules for migrant domestic workers in 1997. MDWs in the UK are now recognized as workers in the UK, with an independent immigration status and the right to change employers. Unfortunately because of the restrictive political climate in the EU member states regarding immigration today, some of these successes are put under pressure again.

It is even more important however to note that migrant domestic workers through these campaigns put their exploitative living and working conditions on the political and public agenda. They broke the wall of invisibility and they started to raise their demands in the political arena – to trade unions, to national governments, to the EU, the UN and most recently to the ILO.

In Europe as in other continents, we have witnessed significant restructuring and re-division of reproductive and caring labour. In Europe and in the US, as in other global regions women are increasingly participating in work outside the home, while work in the home is undertaken by live-in or live-out domestic workers, mainly migrant domestic workers. Many European households are increasingly dependent on such migrant domestic workers and without their “re-productive” work, European employers could not participate in the “productive” economy. In this way, the transnational, globalised economy is brought into the private home, not just in goods consumed there, but at its very core in the organising and delivery of “reproductive” labour. (B. Anderson 2000)

However the discourses arising from the feminisation of the workforce, a declining welfare system and the challenges of care provision tend to make somewhat invisible both the workers who are playing such a significant role in Europe’s economic and social life as well as marginalise the issue of establishing a regulatory regime to ensure the protection of domestic workers.

In Europe, many countries do not recognise domestic work as work and therefore do not have in place adequate labour protection legislation for workers in the private household. This situation is also aggravated by the fact that the private household as well as domestic workers are not easily accessible to trade unions. Additionally, in countries where domestic work is not recognised as proper work, it is also not recognised as a category for immigration although significant numbers of domestic workers are migrants. This leads to an additionally vulnerable sectors of domestic workers - undocumented migrant domestic workers, which both employers and workers want to change.

Demand for migrant domestic work in Europe

Increasingly extra provisions for domestic and care work in the private households in Europe becomes more and more essential. A growing number of women are working outside the home. But there are not enough adequate provisions put in place to support the families to combine the work inside and outside the home. Also more and more elderly and disabled people who want to remain living independently in their own home are relying increasingly on the domestic and care work performed by migrant domestic workers. Previously, they received support from their – mostly female – relatives and from subsidized aid through the health care system. Today, most of their female relatives lack the time to support them.

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Besides as a result of the financial cuts in the health care system, it is more difficult to receive sufficient subsidized support. Therefore, today many European households are increasingly dependent on domestic workers and more and more families are paying for household services where previously they had relied on unpaid family labour. However, although more and more European households are dependent on domestic workers, there is a shortage of workers in the European states who can or are willing to do the job.

Governments are repeatedly stating that there are enough people available, either in the national state, or in one of the other EU states. For this reason governments are unwilling to change the immigration law in favour of non-EU migrant domestic workers.

Despite this, attempts to mobilize for example the long-term unemployed have failed – as research has showed, either because some unemployed refuse to do the work because of its low status, while others their contracts were terminated because their employers were dissatisfied with them. There is a longstanding misconception that domestic work is unskilled and everybody can perform it. But in fact, it requires considerable social skills, organizational talent and resourcefulness, especially if there are several employers involved.

So what we witness today in Europe is a significant restructuring and re-division of reproductive and care labour. However, this reality is not matched by the development of a coherent strategy in the EU states or from EU Member States around immigration and domestic work, childcare or eldercare. What we do see is that more and more employers are finding other solutions - for example mis-using the au-pair system, or hiring workers without a undocumented migrant workers.

Who are the MDW's

Because there is no coherent strategy developed around immigration and domestic and care work, migrant domestic workers have a wide range of immigration statuses. Some of them work as live-in, for example au-pairs or domestic workers working for diplomats or expats. MDWs are extremely dependent on their employers, because their immigration status is dependent on them. Also many migrants are also living-out and making a living by working for several employers.

Some MDWs have work permit that allows them to work as a domestic worker in private households, as in the case of UK, Spain and Italy. Others do have a residence permit, but officially not allowed to work, such is the case as of tourist visa holders or migrant students who working more hours in the week than is permitted.

And many of the domestic workers are undocumented. They came to Europe legally, but overstayed their temporary visa. Others lost their residence permit, as in case of women with a dependent residence permit who left their husbands – or were left by their husbands - before they could acquire an independent residence permit. Or they are refugees who were not granted a refugee permit, but stayed in Europe out of fear for their safety when they should return to their home country.

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Problems faced by MDWs in Europe

The work of domestic and care services in the private home is categorized mainly as “unskilled” and is therefore in many European countries not recognized as a category for immigration. Work in the private home is highly unregulated. In this context, the worker is faced with an unsustainable status as a worker and as a migrant. And because of this lack of legal security, it is notoriously open to abuse and to violation of basic human rights, as has been well documented.

The working and living conditions of MDWs are highly vulnerable and subject to systematic violation of their labour and human rights. Violations such as no written contracts, no social benefits, no health insurance, job insecurity, multiple part-time jobs when “live-out”, total availability when “live-in”, no work – no pay, total dependency on the employer’s goodwill, psychological, physical and even sexual harassment, fear to protest, and living in a constant fear of apprehension, detention and deportation. Also for documented migrant domestic workers there are structural reasons why they are vulnerable, particularly when their immigration status ties them to a particular employer.

To some extent domestic work is included in labour laws and legislation and in most countries the labour laws are in principle for every worker, regardless of immigration status. But only a few of the migrant domestic workers will take advantage of their labour rights, because of fear of deportation. All these factors combine to make migrant domestic workers – documented and undocumented - a particularly vulnerable group of migrants.

The measures necessary to protect migrant domestic rights are no secret. These include extending equal protection under labour laws, adopting and enforcing standard employment contracts for migrant domestic workers, removing restrictive and discriminating immigration and labour laws, a decoupling between labour inspections and immigration control, and last but not least creating local employment opportunities in the countries of origin, so that domestic workers migrate out of choice and not out of desperation. But much of these assume that governments recognize and value domestic work as work.

Conclusion

Globally, migrant Domestic Workers are the least protected workers. This is even worsened by the hypocrisy of the host governments that ignore and deny their accountability to guarantee the protection of the basic human rights of all workers including migrant domestic workers. This hypocrisy of the host governments is evident in the enforcement of labour migration policies which deny migrant workers their labour rights and human rights. Furthermore this hypocrisy is also shown in their refusal to ratify and implement the ILO Convention 189 and the UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (*included in the General comment no. 1, on the situation of Migrant domestic workers adopted by the Committee on the Protection of the Rights of all Migrant Workers, and Members of their Families, Thirteenth session - Geneva, 23 November – 3 December 2010*)

Year of campaigning for the rights of Domestic Workers by the workers themselves, Trade Unions and other civil society organisations has culminated in the agreement last July 2011 in Geneva of the ILO Convention 189 on Decent Domestic Work. This is a historic achievement – but a first major step in the recognition of domestic work as work and the fundamental rights of Domestic workers which will now go into a Ratification process.

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Despite this, and until the ILO Convention 189 is ratified, the fate and dignity of the migrant domestic workers around the world remains in a serious and uncertain condition. They have to deal continuously with a series of blows to their human rights as workers, despite their valuable contribution in the economy of the host and home country. They are vulnerable to multiple types of abuse, discrimination, oppression and exploitation from their employers.

On this occasion of the *United Nations Human Rights Council (UNHRC) Day of General Discussion on Migrant Workers*, from the perspective of the RESPECT NL and other members of our Network in Europe, we urgently call your attention to the prevailing situation of widespread violation of the rights of undocumented migrant workers in Europe and internationally. We seek the support of the office of the UN Committee on Migrant Workers in addressing the root causes of this systematic abuse of undocumented migrant workers rights and bring to your attention the following recommendations:

1. **Recognition of Domestic work as proper work** and the inclusion of all domestic workers (women and men, young or old, national citizen or migrant, live-in or live-out) as an integral part of the work force, and an immigration status that recognises migrant domestic workers.
2. **Comprehensive legal protections:** Labour legislation that applies to all other workers to be applied to the domestic workers to ensure equal protection under the law – related to written contracts, agreed wages, hours of work and rest, health insurance and other social benefits, freedom of mobility and to form self-organisations and join trade unions, freedom to change employers, as well as provisions covering the unique circumstance of live-in domestic workers regarding living conditions and privacy.
3. **Effective mechanisms of enforcement of labour legislation:** This should include protection against unjust termination; against the risks of homelessness of live-in domestic workers; paid holidays and sick leave days.
4. **Effective protection for migrant domestic workers:** Migrant domestic workers should have a work permit independent of their employer to ensure avoidance of abuse and violation of rights regularly experienced in 'tied' employment.
5. **Effective protection for Domestic Workers in the employment of the Diplomatic corps:** Domestic workers in the employment of the Diplomatic corps should be protected by existing and new labour legislation and be able to access legal redress in the case of unjust or abusive treatment. Diplomats currently invoke diplomatic immunity.
6. **Effective protection for 'au pairs':** This is a particularly vulnerable sector of people who work in the private home. The 'au pair' framework should therefore be strongly regulated.
7. **Provisions to protect domestic workers against physical, sexual and psychological violence:** These provisions include access to immediate and confidential redress as well as support for and access to legal redress.
8. **To end to social exclusion and discrimination** based on immigration status, race, ethnicity, gender, class, religion, and national origin as well as to stop the national security framing of migration and to the criminalization of migrants.