

Report of the Day of General Discussion on Migrant Domestic Workers

I. Introduction

1. On 14 October 2009, the Committee on Migrant Workers (CMW) held a Day of General Discussion on the topic of Migrant Domestic Workers. The Day aimed inter alia at providing input specific to domestic workers who are *migrants* to the debate at the 99th session of the International Labour Conference in 2010 which will discuss ‘Decent Work for Domestic Workers’ and consider the adoption of a new ILO instrument on domestic workers by 2011. More generally, the Committee intended to promote greater awareness of the particular situation and rights of migrant domestic workers, including at international fora such as the Global Forum on Migration and Development.

2. The day of discussion was attended by around 50 participants, the majority from civil society groups, national (from Bahrain, Israel, Italy, Lebanon, the Netherlands and Senegal), regional (Africa, Asia) and international. International organizations and representatives from permanent missions to the United Nations Office at Geneva also participated.

3. Written reports for the day of discussion were solicited by the Committee and submitted in advance from civil society groups in Cameroun, Costa Rica, El Salvador, Israel, Italy, Lebanon, Malaysia, the Netherlands, Nigeria and the Philippines, and were posted on the Committee’s webpage.

4. The following panellists made presentations during the morning of the day of general discussion (in speaking order):

- Mr. Abdelhamid El Jamri, chairperson, CMW
- Mr. Bacre Ndiaye, Director, Human Rights Council and Treaties Division, Office of the High Commissioner on Human Rights (OHCHR)

- Ms. Manuela Tomei, Chief TRAVAIL, International Labour Office (ILO)
- Ms. Martina Liebsch, Advocacy Coordinator Migration, Trafficking and Gender, Caritas Internationalis
- Ms. Lucie Detsi (Associazioni Cristiane Lavoratori Italiani Colf/Italy)
- Ms. Ana Elizabeth Cubias, member, CMW
- Mr. Ibrahim Salama, Chief, Human Rights Treaties Branch, OHCHR
- Ms. Violet Awori, member, Committee on the Elimination of Discrimination against Women (CEDAW)
- Ms. Katerine Landuyt, NORMES, ILO.

5. The participants divided into two working groups in the afternoon. Working group one on Recruitment and Employment of migrant domestic workers was chaired by CMW vice-chairperson Mr. José Brillantes; its rapporteur was Mr. John Bingham from the International Catholic Migration Commission. Working Group two on Effective protection of migrant domestic workers was chaired by CMW vice-chairperson Anamaria Dieguez; its rapporteur was Ms. Martina Liebsch from Caritas Internationalis.

6. The present report groups the discussions under specific themes and does not attribute ideas and comments to specific participants.

II. Main points raised by the panel presentations

7. Panellists raised several issues related to the protection of rights of migrant domestic workers. One of the main factors rendering it difficult to protect the rights of migrant domestic workers is that domestic work is broadly not perceived as real work, and is thus almost universally excluded from labour legislation and regulations and not subject to labour inspections. Migrant domestic workers suffer discrimination, not only because they belong to a group with low status in society but also because they are non-nationals. Often they are engaged in irregular work without a contract; employers don't usually pay social security contributions for their workers and sometimes salaries are withheld. Conditions of work are often difficult, with excessively long working hours. The irregular migration status of many migrant domestic

workers makes them more vulnerable to abuse, including sexual abuse. Employers very often confiscate the identity documents of migrant domestic workers. It was remarked that women, who constitute the majority of migrant domestic workers, suffer a further vulnerability to abuse and have often no access to justice or other forms of assistance. It was also observed that migrant domestic workers filled a gap in modern society that had not yet been filled by the so-called “work-life balance” approach.

8. Panellists outlined the relevance of the existing international human rights and labour instruments for migrant domestic workers. First of all, it was recalled that across the board and as a general rule, basic international human rights standards apply to migrants, including irregular migrants. States have an obligation to protect the human rights of domestic migrant workers, regardless of their immigration status or lack of documents. In their review of reports by States parties, multiple United Nations treaty bodies, in particular CEDAW and the CMW, have issued recommendations to States on the situation of migrant domestic workers. Moreover, the special procedures of the Human Rights Council, including the Special Rapporteur on trafficking in persons, have paid attention to their plight. Although there are no ILO standards specifically covering migrant domestic workers, most existing ILO instruments are applicable to them, unless otherwise specified. The most relevant among these are the fundamental ILO conventions, related to freedom of association and collective bargaining, forced labour, non-discrimination and child labour. The fundamental ILO conventions apply also to workers in an irregular situation. ILO Conventions No. 97 and No. 143 on migrant workers also apply fully to migrant domestic workers.

9. With regard to the ILO process to develop an international instrument dealing with domestic workers, it was explained that the 2010 International Labour Conference would discuss this question, following consultations among ILO stakeholders. Several possibilities existed: a convention, a recommendation, a convention supplemented by a recommendation, or a convention with binding and non-binding parts. The instrument would cover all domestic workers, whether engaged fulltime or part-time, with a single employer or with multiple employers, irrespective of nationality, and whether in documented or non-documented status.

10. The text of the panel contributions can be found on the Committee's webpage:

<http://www2.ohchr.org/english/bodies/cmw/dgd141009.htm> .

III. Summary of the discussion in Working Group 1: Recruitment and employment of migrant domestic workers

11. The working group on recruitment and employment of migrant domestic workers focused on the period from pre-departure to point-of-arrival for international migrants engaged in domestic work.

12. Many participants reiterated the point made by several members of the panel in the morning that including domestic work in national labour codes would ensure that every aspect of domestic work that migrants engage in, including recruitment processes, will fall under the purview of the law and governments.

13. Participants discussed the practice of recruitment agencies in many countries of levying exorbitant fees on the migrant domestic worker, not providing any written contract or forcing the worker to sign a different, disadvantageous contract upon arrival. Only in very few cases did protective bilateral agreements between Governments and standard binding recruitment contracts exist.

14. Participants also emphasised the importance of regularising the market for domestic labour, especially in Europe where domestic work and recruitment of domestic workers mainly occur through informal channels. In some regions of the world, recruitment of domestic workers is at times governed by cultural practices wherein young girls from poor, rural areas are offered food and shelter in exchange for their labour.

15. Singapore shared its practices and experiences in the area of monitoring recruitment of migrant domestic workers. In Singapore, all recruitment agencies are required to register with the

government and must be accredited within one year of having opened. In addition, Singapore has elaborated a de-merit system for recruitment agencies: if an agency accumulates a certain number of demerits it is forcibly shut down by the government. The position of each agency on the demerit scale is posted on a special website to encourage employers to utilise recruitment agencies with a good track record and avoid those with a high number of demerits.

16. Concerns were raised about the implications for immigration legislation of the *kafalah* system, whereby an employee's legal status in a destination country is dependent on the *kafil* (sponsor).

17. Lack of awareness of rights, both among migrant domestic workers and among employers, was also raised as a matter of concern. In this connection the point was raised that many employers who hire migrant domestic workers, especially the elderly and the disabled, do not have the financial resources to pay decent wages or to provide adequate conditions.

18. Several challenges were identified, such as how to monitor the recruitment and employment of migrant domestic workers outside the formal recruitment system; how to address the recruitment and employment by employers who objectively are unable to provide adequate wages or working and living conditions; and how to confront certain cultural differences in perceptions of domestic work.

IV. Summary of the discussion in Working Group 2: Effective protection of migrant domestic workers

19. Participants, especially from civil society organizations working with domestic migrant workers in Europe, reiterated critical issues brought up during the morning's panel discussions, namely that work in private households was commonly not recognized as work and therefore, the need to clarify the definition of work in the household. In participants' experience, the fact that workers immigrated from abroad and were often in an irregular migration status, made them especially vulnerable to violation of their rights.

20. Drawing on their own experiences, participants emphasized the importance of including a gender perspective within discussions on the drafting of a new ILO instrument. A gender perspective would aid in understanding how the migration cycle, abuses and their consequences were different for women.

21. Discrimination faced by migrant domestic workers throughout the migration cycle was highlighted, including discrimination against women, in particular pregnant women, visa restrictions and mandatory testing for HIV/AIDS with consequent deportation or refused entry. Concerning the restrictions on travel visas, participants commented that this often leads migrants to look for alternative ways and contributes to trafficking.

22. Another difficulty identified was not so much the inexistence of labour laws and regulations but rather the lack of enforcement of laws and mechanisms that existed even outside of labour law per se, such as the impossibility for migrant domestic workers to enforce basic contracts and to access adequate remedy mechanisms. All participants agreed that having a clear employment relationship was crucial and that contracts were one important element, but the challenge to obtain terms of contract that were meaningful and understood by both parties remained. Participants referred to the model contract of ILO and shared experiences with regard to drafting labour contracts, highlighting the work of the steering committee involved in drafting a unified contract in Lebanon. Having access to labour contracts was recognized as a way to empower migrant domestic workers.

23. Representatives from organizations working in the Middle East singled out the negative effects of having work permits attached to employers (*kafalah*) and said that this practice increased migrant domestic workers' vulnerability to exploitation by employers.

24. On the subject of recruitment agencies, it was generally agreed that these agencies tended to exploit migrant domestic workers. Based on experience, some participants were not only concerned about the role of recruitment agencies sending domestic workers abroad, but also, labour brokers within a country, who in most cases tended to disregard basic human rights.

However, the case of the Czech system of labour brokers in Belgium was cited as good experience.

25. On efficient complaint mechanisms, participants observed that labour inspection offices were not available everywhere; that most migrant domestic workers did not know to whom to address their labour problems and even if they did, were reluctant to go to the police or the labour authorities out of fear of deportation.

26. Some participants considered that not enjoying the right to social security or not having a social safety net were factors that increased the vulnerability of migrant domestic workers to trafficking. Participants were also concerned by the situation of migrant domestic workers in the diplomatic circle, which was often invisible.

27. Some good practices identified were advocacy and dissemination of knowledge on legislation and rights through theatre. Efforts to achieve regularization of migrant domestic workers often faced much difficulty, as migrants campaigning for their regularization risked being deported. Some participants spoke from experiences where temporary programs of work and temporary visas had served to prepare for regularization, with some participants identifying these programs as good practice if they included inherent follow-up mechanisms: involvement of consular authorities, labour inspections by an identified authority, control of labour and health among others. It was mentioned that in the agricultural sector, existing programs have given positive results which could be replicated in other areas. However, there was not enough evidence of good practice with respect to regularisation.

28. Concerning protection programmes, participants cited examples from their own experience including the provision of temporary shelters for migrant domestic workers who wish to leave an abusive employer, ensuring that travel documents and identity documents belonging to migrant domestic workers were not confiscated by employers, and policies and programmes for worker safety and security, including respect for the principle of non-refoulement. The creation of a domestic workers' ombudsman was also suggested.

29. The development of a new ILO instrument on migrant workers was found to be of significant value even for non-ratifying countries, inasmuch as it would serve as a reference instrument, on which national regulations could be based. Moreover, it could be used in conjunction with existing relevant instruments, notably the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, for which advocacy promoting ratification needs to continue.

30. Finally, participants stressed the importance of continuing to work together with migrant domestic workers in order to find adequate solutions. They underlined the need to understand the regional specificities of migration and learn from the difficulties faced when empowering and protecting people.

V Recommendations

General

- 1) Legal channels for migration must be modified and/or opened to more realistically match actual demand, deployment, movement and vulnerabilities of migrant domestic workers.
- 2) Using a gender perspective will facilitate understanding the specificities and gender-based discrimination that migrant domestic workers face throughout the migration process including, related to pregnancy, travel bans and restrictions, and mandatory HIV/AIDS testing.

Need to raise awareness

- 3) States—both those that promote emigration of nationals for work abroad and those that depend on immigrant labour—must support awareness-raising that recognises domestic work as work and domestic workers as human beings with fundamental human

and labour rights. Public education campaigns should focus on the broad rights and risks of migrant domestic workers.

- 4) For workers considering migrating for domestic work, more in-depth awareness-raising should include:
- information on different types and arrangements of domestic work
 - reports on actual country and employment conditions
 - basic knowledge of applicable national and trans-national legal frameworks
 - essential perspectives on:
 - migration-related fees and debt
 - the effects on family, e.g., separation, right to family visits or return, pregnancy during employment, etc.
 - other risks of migrating and domestic work
 - basic rights with respect to:
 - recruitment and employment agencies or other brokers
 - employer-employee contexts and actual employment.

The importance of better training and preparation

- 5) Governments must require recruitment agencies to provide free pre-departure training and preparation for workers who have made the decision to migrate for domestic work. Such training should cover, *in every case*:
- basic language training
 - essentials of law and culture of countries of employment
 - types of work, including key job skills where appropriate

- “know your rights” curriculum, under both international and national frameworks, using the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as reference
 - “protect your rights” training, including issues of migration and work-related fees, debt and finance and basic methods of conflict resolution
 - emergency contact information and procedures
 - proper medical checks and counselling.
- 6) Governments should provide mandatory training for agencies and brokers engaged in the process of deploying migrant domestic workers, whether in countries of origin, transit or employment. Such training should cover, at a minimum:
- laws and limits on agency/broker fees, disclosure and training requirements
 - recording and reporting responsibilities, including complaints by workers regarding employers, access to justice, etc.
 - methods of conflict resolution and grievance procedures that are protection-sensitive to workers exposed or subject to abuse or exploitation.
- 7) For employers, mandatory training should include:
- “know your obligations” information, under both international and national human rights and labour law, as well as under valid employment contracts
 - Basic cultural sensitisation where appropriate
 - Methods or procedures for conflict resolution.

Regulations and licences

- 8) States of origin whose national policy encourages the movement of large numbers of nationals out of the country for domestic work should recognise their responsibility for the recruitment process. Likewise, States of employment of large numbers of migrant domestic workers should recognize their responsibility for the recruitment process.

- 9) States have a role in effectively controlling labour brokers and recruitment agencies and ensure that they contribute to the protection of rights of domestic workers. Agencies engaged in the movement of migrant domestic workers, whether in countries of origin, transit or employment, must be subject to formal, regular, transparent and State-regulated:
- licensing, possibly involving processes of accreditation
 - monitoring, inspection and evaluation
 - sanctions and penalties
 - systems of recording and reporting, including web-based formats that are widely and easily accessible to the public, with particular attention to:
 - fees and other charges to the workers
 - financial and other arrangements with other agencies, brokers, employers and government officials or institutions
 - instances of complaints and conflicts involving workers.
- 10) States of origin and employment should ensure:
- protection-sensitive and transparent frameworks and agreements, including bilateral agreements between States
 - the use of standard, unified and binding employment contracts, with fair, full and clear conditions and labour standards enforceable—and enforced—by systems of law in countries both of origin and employment
 - regular and public reporting of migrant domestic worker flows, employment, rights issues, training and other programmes, and issues of justice administration.

Employment

- 11) The rights of migrant domestic workers should be dealt with within the larger framework of decent work of domestic workers. Domestic work should be recognised as work, and thus be afforded the same protection as other types of work.

- 12) The new ILO instrument should clearly define and create different categories for the activities undertaken by domestic workers in households and their specificities, such as household service, care work, full time, live-in worker, part-time, living outside, among others. It should include specific reference to the situation of migrant domestic workers.
- 13) States should ensure that a specific contract exist and is enforceable, or in its absence that the existence of an employment relationship can be easily established, that labour inspections take place and, specifically within the scope of the new ILO instrument, that migrant domestic workers' contracts should neither tie workers to one employer nor should their legal status be tied to the employer.
- 14) States should ensure that travel documents and identity documents belonging to migrant domestic workers are not confiscated by employers.
- 15) States should criminalise the exploitation of migrant children for domestic work.

Protection

- 16) States of employment should identify a relevant judicial authority to which domestic workers can address their labour rights' concerns, independently of their legal status, such as a domestic workers Ombudsman. Moreover, migrant domestic workers, including those in an irregular status, should be able to access courts and other justice mechanisms without fear of being deported as a consequence.
- 17) The right to collective organising and action is essential for migrant domestic workers to express their needs and defend their rights, in particular within trade unions and labour organizations. The laws of countries of employment of migrant domestic workers should recognize their right to collective organizing, regardless of migration status.
- 18) Consulates of countries of origin that are present in countries in which migrant domestic workers are employed, must develop and/or strengthen mechanisms for:

- Receiving, recording and reporting information that can be included back home for awareness raising, training and licensing programmes, regarding:
 - i. actual country and employment conditions
 - ii. the on-the-ground effects of national and trans-national legal frameworks
 - iii. the experience of migrant domestic workers with respect to their migration, including travel and arrival, migration-related fees and debt, the effects on family, workplace conflicts, issues of rights and access to justice and other risks of migrating and domestic work
 - Independent worker counselling.
- 19) Regularisation programmes could be explored as the surest and most appropriate rule-of-law way of providing protection to migrant domestic workers in an irregular situation.
