International Labour Review, Vol. 150 (2011), No. 3–4

New ILO standards on decent work for domestic workers: A summary of the issues and discussions

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Abstract. *The world's millions of domestic workers are mostly excluded from national labour laws because they work in private homes, in employment relationships with special characteristics. They are highly vulnerable to exploitation and abuse – often overworked, underpaid and subjected to violence. Adopted in June 2011, the ILO's Domestic Workers Convention, 2011 (No. 189), and its accompanying Recommendation (No. 201) embody the resolve of governments and workers' and employers' organizations worldwide to remedy this situation. The authors of this paper, who were closely associated with the preparations and tripartite negotiations that led to the adoption of these instruments, review their contents and highlights of the underlying debates.*

Domestic workers are often excluded from the protection of existing labour law because they work in private households, rather than in more conventional workplaces such as factories or offices. As a result, they typically face poor working conditions and risk being subjected to various forms of abuse by unscrupulous employers. Many "live-in" domestic workers – i.e. those who live

* Conditions of Work and Employment Programme, ILO. This paper draws on the reports of the International Labour Conference's Committee on Domestic Workers, which met first in June 2010 and, again, in June 2011. Authored by Patrick Belser and John Myers on the basis of detailed inputs from Laura Addati, Lawrence Egulu, Amelita King-Dejardin, Malte Lüebker, Susanna Walker and Erlien Wubs, the two reports also benefited from corrections and advice provided by Sangheon Lee (Deputy Representative of the Secretary-General of the Conference), and Martin Oelz, technical adviser to the Representative of the Secretary-General (Manuela Tomei). The reports are available at: http://www.ilo.org/ilc/ILCSessions/99thSession/pr/WCMS_141770/lang--en/index.htm and http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/WCMS_157696/lang--en/index.htm.

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with their employer – suffer from excruciatingly long hours of work, insufficient rest, and poverty wages. Conversely, part-time domestic workers – who work for multiple employers or households, devoting a few hours per week to each – may suffer from underemployment with erratic hours of work, long commutes, and meagre and unstable earnings. Migrant domestic workers are particularly fearful of unscrupulous private employment agencies, some of which charge exorbitant fees that can lead to debt bondage and forced labour, and sometimes to confusion as to who the real employer is. The confiscation of domestic workers' identity papers by employers has also been reported.

In addition to decent treatment, pay and hours of work, domestic workers are asking for better social security coverage so that they can benefit – to the same extent as other workers – from existing pensions schemes, unemployment benefits, or provisions for maternity leave.

In June 2011, at its 100th International Labour Conference, the ILO adopted a landmark Convention, supplemented by a Recommendation, to protect the rights of domestic workers.[1] This breakthrough represents the culmination of years of debate since a meeting of experts was first held in the ILO in 1951. It also marks the extension of ILO standards into a largely unregulated and unprotected sector of the economy, in which female workers prevail. According to recent ILO estimates, there are 43.6 million female domestic workers worldwide, accounting for some 83 per cent of global domestic employment.[2] The ILO started addressing the challenges associated with the growth of highly feminized, precarious and low-paid employment in the mid-1990s, with the adoption of the Part-Time Work Convention, 1994 (No. 175), and the Home Work Convention, 1996 (No. 177). But the Organization's Decent Work Agenda, with its focus on decent work for all workers, has given further impetus to these concerns in recent years.

The Domestic Workers Convention, 2011 (No. 189), is a legally binding international treaty open to ratification by member States, while its accompanying Recommendation (No. 201) is a non-binding instrument which complements the Convention with more detailed guidance on its implementation. Both are based on the key principles that domestic workers deserve protection and rights that are no less favourable than those enjoyed by other workers (Articles 6, 10 and 14) and that effective measures must be taken to ensure they enjoy these rights, including protection against abuse, harassment and violence (Article 5). The purpose of these provisions is to contribute progressively to the elimination of the exploitation of domestic workers and of discrimination against them.

Both instruments recognize that the delivery of decent work to domestic workers calls for action at different governance levels, involving very different

[1] The full texts of the Domestic Workers Convention, 2011 (No. 189), and the Domestic Workers Recommendation, 2011 (No. 201), are reproduced in the "Documents and communications" section of this issue of the *International Labour Review* (see below).

[2] See Yamila Simonovsky and Malte Luebker: *Domestic Work Policy Brief, No. 4: Global and regional estimates on domestic workers*, Geneva, ILO, 2011, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155951.pdf [accessed 30 September 2011].

institutions. Indeed, domestic work embodies both local and global dimensions: while it is performed by isolated workers in private homes, it also involves millions of women across the world who migrate to other countries, leaving their families behind in order to perform housekeeping duties for others and take care of their children or elderly. Accordingly, the new ILO instruments provide for a combination of measures ranging from bilateral agreements – against abuses by transnational employment agencies in both sending and recipient countries – to the establishment of safe houses for domestic workers who are victims of abuse by national governments.

While building upon the provisions of the Convention, the Recommendation also addresses issues not covered by the Convention, such as work–family reconciliation or skill-enhancement programmes for domestic workers. Although the Recommendation is thus meant to be read in conjunction with the Convention, the main focus of this paper will remain on the latter.

A Convention supplemented by a Recommendation

While the Governments and workers' and employers' organizations represented at the International Labour Conference (ILC) ultimately reached consensus on adopting both a Convention and a Recommendation, this decision was taken only after protracted negotiations. At the beginning of the first discussion at the ILC's 99th Session in 2010, the Employers' group was opposed to the adoption of a Convention on the grounds that several existing ILO standards were already applicable to domestic workers, arguing that a Recommendation would be sufficient to provide guidance on how those standards could be applied to them. The Workers' group, by contrast, considered that domestic workers were poorly protected by existing standards and that a Convention was necessary to address this "historic oversight". This divergence of views rapidly forced a vote in the Committee, which revealed that almost 80 per cent of the Governments represented in the room at the time supported the adoption of a Convention *and* a Recommendation.[3]

From the outset of the second discussion, in 2011, the Employers' group made it clear that they continued to prefer a Recommendation, but would accept the preference of the majority in a spirit of realism and pragmatism. All sides then recognized that the final text of the Convention must provide concrete protection to domestic workers, but be flexible enough to allow for its ratification by a large number of member States. Views, however, diverged on the specific content of the proposed Convention.

Definitions and scope

One question that gave rise to a difficult and lengthy debate was the definition of domestic work. The Employers' group initially sought to restrict it to "work regularly performed in or for a household within an employment relationship in

[3] Details of the vote are provided in the first report of the Committee on Domestic Workers, available at: http://www.ilo.org/ilc/ILCSessions/99thSession/pr/WCMS_141770/lang--en/index.htm [accessed 30 September 2011].

which the employer is the householder". The Workers' group found this definition too restrictive, however, as it would exclude the millions who are employed by employment agencies or other third parties. Most Governments sided with the Workers, but insisted that the Convention should not apply to people who work only occasionally or sporadically, such as babysitters or student au pairs, who rely on such work for pocket money rather than "on an occupational basis". The wording that was ultimately agreed now appears in Article 1. It is worth noting that this identifies domestic workers by their place of work – i.e. in or for one or several households – and not by their type of work. For example, cleaners working for hotels and guesthouses may do the same kind of work as domestic workers, but they are excluded from the definition.

Related issues that also elicited lively debate were the scope of the Convention and whether or not exclusions of particular categories of domestic workers were admissible. The workers' representatives insisted that any such exclusion be ruled out lest it should undermine the basic purpose of the proposed international labour standards – namely, to close the gaps in the legal protection extended to domestic workers. The Nordic countries, however, felt equally strongly about the need to exclude from the scope of the Convention some categories of domestic workers already enjoying equivalent or stronger protection under national law or collective agreements, such as municipal employees providing care services to patients in their homes. The employers' organizations and many other governments endorsed this view, as now reflected in the wording of Article 2, paragraph 2. Exclusions are also permissible for limited categories of workers posing "special problems of a substantial nature" (in respect of the application of the Convention). It is worth stressing, however, that in either case, exclusions can be made only after consultation with the most representative employers' and workers' organizations. The purpose of this condition is to prevent arbitrary decisions as to who enjoys protection under the Convention.

Fundamental rights and the right to information

The ILC proceedings generally reflected little controversy over the need for better protection of the human rights of domestic workers and promotion of the ILO's fundamental principles and rights at work, namely freedom of association and collective bargaining, the elimination of forced labour, the abolition of child labour, and the elimination of discrimination in employment and occupation (Article 3). There was also broad consensus on the need to ensure that the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), apply to domestic work, and that young domestic workers above the minimum age of employment fully benefit from their right to education and vocational training (Article 4).

More intensely debated, however, was the extent to which there should be specific requirements as to the type of information that must be provided to domestic workers before they enter an employment relationship. While the employers' organizations and a minority of governments considered that the word-

ing of the Convention on this point should remain sufficiently general to facilitate ratification, the workers' organizations and a majority of governments insisted on the need to be specific about information on terms and conditions of employment, which should be communicated to domestic workers in a "verifiable and easily understandable" way. This issue, they argued, was crucial because poor information was a key factor of domestic workers' vulnerability, especially in the case of migrant workers. So it was ultimately agreed that member States would be required to take such measures as would ensure that domestic workers were informed about the name and address of the employer, the place of work, the type of work to be performed, their wages, normal hours of work, paid annual leave, daily and weekly rest periods, the duration of the employment, the period of probation, and the terms and conditions of termination and repatriation if applicable (Article 7). For migrant domestic workers recruited in one country for employment in another, this information should be provided before they cross national borders on their way to work (Article 8).

Conditions of work and employment

Excessive hours of work and round-the-clock availability are often the lot of live-in domestic workers, especially those employed to look after children, the elderly or handicapped members of the family. Yet, working time and remuneration lie at the heart of the employment relationship, and their regulation is crucial to the recognition of domestic workers as employees in a position of dependency and subordination relative to their employers. Across the world, however, domestic workers are typically either excluded from the scope of national laws on working time or provided with less favourable treatment than other categories of workers. Hence the lively and prolonged debates that took place on these issues at the ILC, both in 2010 and in 2011.

The main issue of contention centred on the alleged difficulty – both conceptual and practical – of measuring the hours actually worked by domestic workers, owing to the varying intensity of domestic work in the course of the day, the unpredictability of domestic workers' work schedules due to the volatility of households' needs, and the impracticability of keeping track of hours worked. The Committee eventually agreed that, in respect of "normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave", member States must take measures aimed at ensuring equal treatment between domestic workers and other workers, "taking into account the special characteristics of domestic work" (Article 10, paragraph 1).

While the principle of affording domestic workers a weekly rest of at least 24 consecutive hours enjoyed broad agreement, controversy arose as to whether such rest was to be taken "in every seven-day period" or "per every seven-day period". A large number of governments and the workers' organizations favoured the former formulation, while some governments, mainly from the European Union, preferred the latter, arguing that the expression "per every seven-day period" allowed for some flexibility as it would permit domestic workers to

accumulate weekly rest periods, say, over 14 days. Similar arrangements, they pointed out, were already provided for in the national law of a number of European countries, and failure to permit them under the Convention would prove a serious obstacle to its ratification. The compromise wording that was finally adopted resolved the impasse by entitling domestic workers to a weekly rest of at least 24 consecutive hours, without specifying the period within which such rest was to be taken (Article 10, paragraph 2).

Another controversial issue related to working time was the wording of the provision concerning stand-by duty, which compelled several employer and government representatives either to vote against the Convention or to abstain from voting in the ILC plenary.[4] This provision, now Article 10, paragraph 3, leaves it up to national laws or regulations or collective agreements to determine "the extent" to which stand-by hours – "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" – are to be regarded as hours of work. The same goes for the form and amount of compensation due for stand-by duty.

Another provision which generated considerable debate was the one concerned with the safety and health of domestic workers. Across the world, domestic workers are often excluded from the scope of occupational safety and health legislation – an exclusion that mirrors the perception that a private home is not a workplace. While there was broad tripartite agreement that domestic workers, like any other workers, were entitled to a healthy and safe working environment, views diverged on how to put such protection into effect. A majority of governments and the employers' organizations considered it impossible to ensure equality of treatment between domestic workers and workers subject to general labour law. They argued that private homes were typically designed to accommodate families, not to conform to occupational safety and health standards, and that the priorities of household members might come into conflict with those of domestic workers (who may aspire to greater functionality and safety, over which household members may prioritize their autonomy and privacy). A majority therefore demanded flexibility in the choice of occupational safety and health measures, calling for due consideration to be given to the specific circumstances of domestic work and some scope for progressive implementation. The wording that was finally adopted reflects this stance (Article 13).

Private employment agencies

Private employment agencies are important players in the labour market for domestic workers. They may act as intermediaries to facilitate the matching of demand and supply within and/or between countries, or they may employ workers

[4] For a detailed record of the final vote, see ILO: *Provisional Record No. 30*, International Labour Conference, 100th Session, Geneva, 2011, available at: http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/WCMS_158275/lang--en/index.htm.

directly and make them available to private households that solicit their services as end-users. If properly governed, these agencies can help "professionalize" the sector and thereby ensure better-quality services, prevent abusive labour practices and ensure compliance with the law. The available evidence shows, however, that unscrupulous private agencies, especially those dealing with migrant domestic labour, may engage in fraudulent practices that result in the serious mistreatment of domestic workers, sometimes forcing them into bonded labour. Despite tripartite agreement on the need to prevent and sanction these egregious practices generally, views diverged as to whether the proposed new standards on domestic work should address this issue at all and, if so, whether the Recommendation would not be better suited to this purpose than the Convention. Ancillary questions concerned the appropriate degree of detail to be introduced in any new provision on this matter in view of the diversity of applicable legal regimes across the world; and the need to ensure consistency with the thrust and content of the Private Employment Agencies Convention, 1997 (No. 181).

The employers' organizations, in particular, were concerned that the inclusion of an article aimed at protecting domestic workers from abusive practices by private employment agencies could entail the risk of "demonizing" such agencies, while also creating a disincentive for member States to ratify Convention No. 181. After a protracted debate, the Committee managed to agree upon fairly elaborate wording which establishes inter alia: (a) that member States must provide adequate machinery and procedures for the investigation of complaints by domestic workers; (b) that private employment agencies must not deduct their fees from the remuneration due to domestic workers; and (c) that the protection of domestic workers from abuses must be ensured – if necessary in cooperation with other member States – by the adoption of laws or regulations specifying the respective obligations of the agency and the household, and providing for penalties (Article 15).

Monitoring and inspection

Working for pay in someone else's private home raises a number of challenges regarding the enforcement of labour law. Domestic work imposes restrictions on the privacy of both the employer and the worker, especially when the latter lives in the employer's household. In the absence of clear safeguards, the freedom of these workers may indeed be severely constrained (e.g. isolation from friends and relatives, especially for live-in workers, with negative implications for their health and safety). From the employer's viewpoint, the right to privacy of household members may conflict with workers' rights when inspection visits are required to verify compliance with labour laws. The inviolability of the privacy of the home is a principle enshrined in the Constitutions of many countries, and some have enacted legislation that explicitly forbids labour inspection in private homes as they are not regarded as workplaces. After much debate, the Committee succeeded in striking a balance between workers' right to protection and the right to privacy of household members by stipulating that, subject to national

laws and regulations, member States can make special arrangements allowing for the inspection of private homes under clearly specified conditions (Article 17).

Concluding remarks

There are millions of domestic workers worldwide, mainly women and girls, employed in developing and industrialized countries alike. Domestic work embodies a combination of local conditions and very distinct global dimensions, as many domestic workers leave their own families behind to look after the homes and families of others abroad in order to make a living. Despite their significant contributions to the global economy, they are often unorganized, overworked, underpaid and abused. The new ILO instruments on decent work for domestic workers state unambiguously that these workers *are workers* and, as such, are entitled to respect, dignity, and decent work and lives. The Convention and Recommendation of 2011 recognize the special nature of their employment relationships and set specific standards aimed at ensuring that they effectively enjoy the same rights as other workers.