



Rights **E**quality **S**olidarity **P**ower **E**urope **C**o-operation **T**oday

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

De Wittenstraat 25, 1052 AK Amsterdam, NL ; Tel: 00-31-20-6646927; email : eurespect@gmail.com; www.respectnetwork.eu

Part 1 - Introduction and Key Recommendations for an ILO Convention on Domestic Work

Submitted by

**R.E.S.P.E.C.T Network
Campaigning for the Rights of Migrant Domestic Workers
in Europe and Internationally**

Amsterdam, May 2009

Introduction - Towards an ILO Domestic Work Convention

In May 2009, the RESPECT Network held its General Assembly (GA) and took the ILO Law and Practice Report and the proposed Domestic Work Convention as an important topic for its agenda and planning. Besides the decision to launch a campaign to participate in the ILO process as a network of domestic workers rights organisations, the RESPECT GA undertook to discuss and develop its responses to the (ILO) Questionnaire to actively promote the participation of MDWs in the process and project their voice in the development of proposals and perspectives.

The Responses to the ILO Questionnaire reflects the discussion of the 50 participants from 18 organisations across different European countries and which included MDWs from Africa, Latin America and Asia.

The struggles for the rights and protection of domestic workers has a long history globally, incorporating the structures of racism, slavery, discrimination as well as the stereotyping of women's work. In recent decades however, domestic workers globally, including migrant domestic workers have achieved visibility and have raised their demands in the political arena – on the agenda of trade unions and governments and with policy makers at the United Nations.

Despite the fact that millions of workers are engaged in domestic work, which the ILO estimates to be as many as 10% in some countries, this important work remains for the most part excluded from the existing International instruments for the protection of workers rights.

In this context, RESPECT welcomes and strongly supports the ILO commitment to develop a Domestic Work Convention – with a timeline of preparation up to June 2011. *RESPECT, a Europe-wide network of domestic workers self-organisations, trade unions and domestic workers rights organisations in 11 countries in Europe takes this opportunity to promote the participation and voice of Domestic Workers in the ILO process and preparation of the Convention and to join their voices with Domestic workers around the world.*

Context in Europe - Domestic Work and Domestic Workers in Europe

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 from Africa, Latin America and Asia. In Europe, this also includes workers from countries of the former Eastern Europe and Soviet Union. 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. Besides, 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 sector of domestic workers - undocumented migrant domestic workers. This is a status which both employers and workers want to change.

In the European context therefore, RESPECT highlights the following key considerations in preparing the proposed ILO Instruments:

- 1) **The recognition of Domestic work: The 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 workforce with 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 and 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 instruments** 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. Domestic work is not a category for migration in most European countries. Therefore while migrant workers are on the one hand delivering an enormous contribution – economically and socially - to needed and important work in

European societies, on the other hand they are vulnerable to exploitation (such as long hours of work, low payment and to personal abuse by members of the families) as a consequence of the separation of juridical residence and work permit.

- 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. Specific mechanisms should be put in place ensuring a judicial process in relation to diplomats who are responsible for abusing their domestic workers.
- 6) **Effective protection for 'au pairs':** This is a particularly vulnerable sector of people who work in the private home. It has been a practice to accept that au pairs undertake "light household work" as exchange for accommodation while undertaking a cultural exchange. However there is increasing evidence that this framework is exploited to access a flexible and cheap source of domestic workers. 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.

Part 11- Specific Recommendations and Comments to ILO Members regarding the Law and Practice Report and Questionnaire on the proposed ILO DW Convention May 2009

I. Form of the international instrument or instruments

1. Should the International Labour Conference adopt an instrument or instruments concerning decent work for domestic workers?

RESPECT Comments:

YES

An instrument should be adopted:

- There is an urgent need that Domestic Work be recognized as decent work.
- Domestic workers labour rights should be protected.
- Domestic work in the private household should be recognized as proper work and be included in national employment legislation.

2. If so, should the instrument or instruments take the form of:

- a) *a Convention*
- b) *a Recommendation*
- c) *a Convention supplemented by a Recommendation or*

RESPECT Comments:

A binding Convention together with a Recommendation – this should be adopted to be binding and effective among parties covered by the instrument

- d) *A Convention comprising binding and non-binding provisions?*

II. Preamble

3. Should the preamble of the instrument or instruments recall that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided?

RESPECT Comments:

YES – The general principles and specific conditions should be applied to *all* domestic workers working in the private household, women and men, live in- and live out, working in diplomatic services, and including local domestic workers as well as Transnational Migrant Domestic Workers.

4. Should the preamble of the instrument or instruments refer to the special conditions in which domestic work is carried out that make it desirable to

supplement the general standards by standards specific to domestic workers, to enable them to enjoy their rights fully?

RESPECT comments:

YES – The preamble should have general principle and specific conditions applied to all domestic workers. Domestic work is not recognized as proper work therefore domestic workers are vulnerable to exploitation and abuse of their rights in the workplace – the private household. The specific conditions of domestic work should be identified so that specific standards can be applied to remedy these conditions.

5. Should other considerations be included in the preamble? Please specify.

RESPECT comments: Migrant receiving countries where migrants are working as domestic workers in the private household should provide the possibility to migrate as domestic workers in order to avoid vulnerability to human rights abuse i.e. violation of human and labour rights, trafficking of persons, human smuggling, etc...

III. Definitions

6. For the purposes of the instrument or instruments;
(a) *Should the term “domestic work” mean work performed in and for a household and include housekeeping, child care and other personal care? –*

RESPECT comments:

For the purpose of the Instrument the definition of Domestic Work should be comprehensive and inclusive; the current definition is too narrow. Country definitions of domestic work will vary. It should also include other categories such as housekeeping, childcare, caring for elderly, caring for animals, gardening, driving, fetching children, house setting, serving a table, etc.

Domestic work is remunerated work in the principal domicile/household/address where the family resides; such work may be performed by women or men hired for the purpose and primarily involves housekeeping (cooking, serving at table, cleaning, laundry, ironing, general house maintenance). This may include gardening, childcare, sick care, elderly care, securing the house (not requiring specialised license) and any other specialised work provided domestic workers are given additional payment for services not included in the agreement with the employer.

Domicile refers to the stated address in the contract where the family physically resides, excluding other family houses and those that are used for commercial purposes.

(b) *Should the term “domestic worker” mean any person who undertakes domestic work, whether on a full-time or part-time basis, for remuneration?--*

RESPECT comments:

YES – This definition should be applicable to those with multiple employers. All persons doing work as described in question (6.a.) should have remuneration. In-kind payment is unacceptable.

Full-time, part-time, live-in or live-out local and transnational migrant domestic workers (women and men) hired with a contract. Limitations (working hours and continuous sleep) should be defined for those workers who are on a full-time and/or live-in status.

(c) *Should the term “standby” mean periods during which a domestic worker is not free to dispose of time as the worker pleases?*

RESPECT comments: The term “standby” is not clear. Does it mean to be on call? Standby might mean free time/day – which should be given to full-time and/or live-in domestic workers. And also it might mean that if the worker is required to do work outside of the agreed working hours, additional remuneration should be given in proportion to the wage she/he is receiving. Whatever it means, it should be made in writing to be effective and binding for both parties.

(d) *Should the term “employer” include intermediaries? NO-*

RESPECT comments: The term “employer” should not include intermediaries. The contract should primarily be between worker and employer, and intermediaries should be excluded. ‘Intermediary’ should be defined (Agency? Government in destination country?).

Employer refers to the person who pays the wages and benefits and signs the contract with the domestic worker. Intermediaries are discouraged because this will somehow create another problem like violation of the agreed remuneration and trafficking.

(e) *Should any other terms be defined by the instrument or instruments? If yes, please provide particulars. —*

RESPECT comments:

YES -The instrument should make applicable and binding to: terms and conditions of work including contracts, remuneration (in cash or in-kind), hours of work, rest period, privacy, stay-in and live-out, etc.

IV. Scope

7. Should the instrument or instruments apply to all domestic workers?

The instrument must (like the preamble) be applied to all domestic workers working in the private household, women and men, live in- and live out, working in diplomatic services, and including local domestic workers as well as Transnational Migrant Domestic Workers.

8. Should the instrument or instruments provide for the possible exclusion of limited categories of domestic workers and, if so, under what circumstances? Please specify.

RESPECT comments:

NO exclusions, - all workers should be entitled to their rights in this Convention. All workers (domestic and migrants) should be entitled to their rights under this Convention.

V. Content of a Convention

A. Fundamental principles and rights

9. Should the Convention provide that each Member should take measures to ensure the enjoyment by domestic workers of the fundamental principles and rights at work, namely:

a) *freedom of association and the effective recognition of the right to collective bargaining;*

RESPECT comment:

YES - We strongly recommend that there will be in each Member State own independent trade union of (migrant) domestic workers, based on self-organization.

b) *the elimination of all forms of forced and compulsory labour;* YES

c) *the effective abolition of child labour;* YES

and

d) *the elimination of discrimination in respect of employment and occupation* YES

10. Should the Convention stipulate a minimum age for admission to domestic work? Please specify.

RESPECT comment:

Yes, this should be 16 years of age to coincide with the obligatory requirement years at school.

11. Should the Convention provide that the minimum age of employment for migrant domestic workers should be 18? **Yes**

B. Working and living conditions and social security

12. Should the Convention provide that each Member should take measures to ensure that domestic workers, like all wage earners, have:

- a. *fair terms of employment as well as decent working conditions and, where applicable, living conditions; Yes*
- b. *a safe and secure workplace; Yes*
- c. *social security, including maternity protection?*

RESPECT comment:

Yes- There is a need to add here: the right to sick leave: payment while employers are on holidays; the need to facilitate access to social benefits for those in the specific conditions of working part-time and for multiple employers.

13. Should the Convention provide that employers should inform domestic workers of their terms and conditions of employment,

in particular: **YES from a-g**

- a) *the name and address of the employer;*
- b) *the type of work to be performed;*
- c) *the rate of remuneration, method of calculation and pay interval;*
- d) *the normal hours of work;*
- e) *the duration of the contract;*
- f) *the provision of food and accommodation, if any;*
- g) *the period of probation, if applicable; and*
- h) *the terms of repatriation, if applicable?*

RESPECT comment: In case of repatriation:

- The domestic worker should have the choice whether to repatriate or not.
- Both governments – country of origin and host country – should provide for adequate support for survival back in the country of origin. Encourage migrant domestic worker self-organisations to undergo orientation in country of destination to participate in reintegration programs, e.g. Migrant Savings for Alternative Investments (MSAI).

- Referrals to reliable partners whose programmes have a track record in support services that provide project feasibility and sustainability advice on the efforts of returning migrants to create new livelihoods in their country of origin.
- Encourage critical assessment of re-integration programmes, particularly those that offer financial incentives being offered both by country of destination and country of origin.

Re Withholding Passport: Special mention to be made that Domestic workers should never be obligated to surrender their passport (and other official documents) to their employer.

14. Should the Convention provide that each Member should take measures to ensure that domestic workers are protected against all forms of abuse and harassment, including physical, verbal, sexual and mental abuse and harassment?

RESPECT comment:

YES - The convention must provide that each Member State has to take measures to ensure that domestic workers are protected against all forms of abuse and harassment.

15. Should the Convention provide that each Member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists?

YES

16. Should the Convention provide that all domestic workers should be paid for their work at no greater than monthly intervals?

YES

17. Should the Convention allow partial payment of wages in kind? If so, please specify any circumstances and limits, in particular whether a domestic worker can refuse such in kind payments.

RESPECT comment:

NO-and the worker should have the right to refuse in-kind payments.

- The Domestic worker should have to right to decide in her/his own right.
- This convention aimed that Domestic work should be recognise as a “Decent Work” therefore such work should be paid with decent salary equivalent to her/his working hours.

18. Should the Convention provide that each Member should ensure that domestic workers are not required by national law or regulation to reside in the home of the employer?

RESPECT comment:

YES – it should not be a requirement but an option for the Domestic Worker to decide if she/he would take it or not.

19. Should the Convention provide that, when accommodation and food are provided by the employer, the accommodation should be safe and decent, and should respect the worker's privacy, and the meals should be of good quality and sufficient quantity?

RESPECT comment:

YES

The house (the working place) must be a secure and safe place to work. In no case should employers be allowed to keep their possession domestic workers' travel and/or identity documents.

20. Should the Convention provide that each Member should ensure that domestic workers have normal hours of work, overtime compensation, periods of daily and weekly rest, and annual leave as determined by national laws and regulations, and which are not less favourable than those applicable to other wage earners?

RESPECT Comment:

YES. Refer to previous sections

- International Labour Standards and Regulations should apply.
- The employer is responsible for fair terms of employment (in written contract) and decent working conditions and, where applicable, living conditions. The terms of employment provided in detail between employer and domestic worker. Additional work has to be additionally negotiated and additionally paid.

21. Should the Convention provide that each Member should ensure that domestic workers are not bound to remain in the household during the period of daily or weekly rest? **YES**

22. Should the Convention provide that periods of standby should be regarded as hours of work to the extent determined by national laws and regulations, collective agreements or any other means consistent with national practice?

RESPECT Comment:

YES - There should be no tolerance for "stand by" arrangements in the convention. In terms of collective agreement we strongly recommend that there will be in each Member State an independent trade union of (migrant) domestic workers, based on self-organization.

23. Should the Convention provide that each Member should take measures to ensure that domestic workers enjoy at least 24 consecutive hours of rest in every seven-day period? **YES**
24. Should the Convention provide that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of occupational safety and health? Should the Convention provide that such measures may be applied progressively? Please elaborate.

RESPECT Comment:

YES – The house (the working place) must be a secure and safe place to work.

- The employer is responsible for fair terms of employment (in written contract) and decent working conditions and, where applicable, living conditions.
- There must be a provision that health and liability insurance is mandatory and this insurance is not deducted from the salary.
- All Domestic workers must be included in a health insurance system in the country where he/she works.

25. Should the Convention provide that each Member should take measures to ensure the application of social security schemes, including maternity protection, to domestic workers? Should the convention provide that certain measures may be applied progressively? Please elaborate.

RESPECT Comment:

YES – The convention must comply with the UN declaration of Human Rights. Social security and maternity and reproductive protections must be treated as two separate issues. Social security must be based on established social security legislation; maternity and reproductive protections in accordance with CEDAW and CEDAW GR 26.

C. Employment agencies

26. *Should the Convention provide that each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, particularly migrant domestic workers, are effectively protected against abusive practices?*

RESPECT Comment:

YES – specific and joint liability should be defined but not limited to the withholding of documents, illegal work, and contract substitution, trafficking or bonded labour.

D. Migrant domestic workers

27. Should the Convention provide that national laws and regulations should require that migrant domestic workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders?

RESPECT Comment:

YES – to all workers (National Domestic Workers and Migrant Domestic Workers) legal and binding contracts, recognised by government.

28. Should the Convention provide that migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract?

RESPECT Comment:

YES – Migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract.

29. Should the Convention provide that each Member should prohibit employers from keeping in their possession domestic workers' travel and identity documents?

RESPECT Comment:

YES – especially the passport and other official documents (birth certificate, visa etc) and the communication gadgets (mobile phone etc) of the domestic worker and other travel and/or identity documents.

30. Should the Convention provide that Members should cooperate with each other to ensure that migrant domestic workers enjoy benefits comparable with those of nationals?

RESPECT Comment:

YES - The convention must provide that each Member State has to take measures to ensure that domestic workers are protected against all forms of abuse and harassment and enjoy the same protections under the law as all other workers.

E. Implementation and enforcement measures

31. Should the Convention provide that each Member should ensure that domestic workers have easy access to fair and effective dispute settlement procedures? Please specify.

RESPECT Comment:

YES – it should also be accessible to the Migrant Domestic Workers and with strict observation of confidentiality; culturally- and gender-sensitive.

- Domestic Workers allowed to stay and earn while the process is in progress. (Undocumented) migrant domestic workers must have access to legal assistance and availability of translation services.
- Strengthen existing structures
- Assistance of governments and Civil Society Organization's partners

32. Should the Convention provide that each Member should ensure that arrangements are in place to ensure compliance with national laws and regulations applicable to domestic workers, such as labour inspection services, with due regard to privacy? Please elaborate.

RESPECT Comment:

YES – including immigration, labour laws and confidentiality.

33. Should the Convention provide that its provisions should be applied by laws, regulations, collective agreements or other measures consistent with national practice, by extending existing measures to cover domestic workers, adapting them, where appropriate, and developing specific measures for domestic workers?

RESPECT Comment:

YES – the Domestic Workers should be explicitly stated and appropriate repeal made of existing inconsistent Conventions and other national laws.

34. Should the Convention provide that, in implementing its provisions, each Member should consult the employers' and workers' organizations concerned?

RESPECT Comment:

YES – consultation must expand to include the Domestic Worker self-organisations and trade union sections of domestic workers and ensure the institutional participation of Domestic Workers' groups.

VI. Content of a Recommendation

A. Fundamental principles and rights

35. Should the Recommendation provide that the competent authority should take or support measures to promote capacity building for representative organizations of employers and domestic workers, including collective bargaining?

RESPECT Comment:

YES – Domestic workers should have their own independent trade union of (migrant) domestic workers, based on self-organization as it is their right, and this should be recognised by the government.

36. Should the Recommendation provide that, when regulating working and living conditions, Members should give special attention to the needs of young domestic workers, including in respect of working time and restrictions on undertaking certain types of domestic work? If yes, please specify.

RESPECT Comment:

YES – Governments should regulate child labour, and protect young people from being abused in the context of domestic work. Children and young adults' right to education and right to leisure and play should be protected.

B. Working and living conditions and social security

37. Should the Recommendation provide that the terms of employment should be provided in writing?

RESPECT Comment:

YES - The employer is responsible for fair terms of employment (in written contract) and decent working conditions and, where applicable, living conditions.

38. Should the Recommendation provide that additional particulars should be included in the terms of employment, such as:

- a) *the starting date of the employment* - **YES**
- b) *a detailed list of duties* - **YES** (must have the detailed list of work to be covered i.e. including multiple duties)
- c) *annual leave* - **YES**
- d) *daily and weekly rest* - **YES** (8 hours work per day, 40 hours a week)
- e) *sick leave and any other personal leave* - **YES**
- f) *the rate of pay for overtime work* - **YES**
- g) *any other cash payments to which the domestic worker is entitled* – **YES**

h) *any in-kind allowance and its cash value –*

RESPECT Comment:

NO (“in-kind” payment for the job should not be considered)

i) *details of any accommodation provided – YES*

j) *any authorized deductions – YES (deductions should be made clear to the domestic worker e.g., social security, tax deductions This item needs to be more specific.)*

k) *the period of notice required for termination –*

RESPECT Comment:

YES -This needs to be agreed in the contract.... And this section needs to include other items: on severance pay, cost of living annual wage increase, no deductions for working uniform or cleaning materials; right to compensation and medical care when domestic work has a work related accident.

39. Should the Recommendation provide for a model contract, for example prepared by each Member in consultation with organizations of employers and workers concerned?

RESPECT Comment:

YES – this will be effective to provide standard guidelines.

40. Should the Recommendation provide that any work-related medical testing should respect domestic workers’ right to privacy and should be free from discrimination, including on the basis of pregnancy and HIV status?

RESPECT Comment:

YES - In case of any work-related medical testing the domestic workers’ right to privacy must be respected and free from discrimination, including in case of pregnancy and HIV status. The domestic worker should have the right to refuse.

41. Should the Recommendation provide that domestic workers should be given at the time of each payment an easily understandable written account of the payments due and the amounts paid?

RESPECT Comment:

YES - At time of each payment the domestic worker must be given an - easily understandable - written account of the payments due and the amounts paid.

42. *Should the Recommendation provide that national laws and regulations concerning the protection of wages, including in the case of the employer's insolvency or death, apply to domestic workers?*

RESPECT Comment:

YES - Laws and regulations concerning the protection of wages, including in the case of the employer's insolvency or death, must be also apply to domestic workers.

43. Should the Recommendation provide that, consistent with national conditions, the accommodation when provided by the employer should:

(a) comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated;

RESPECT Comment:

YES – No discrimination should be allowed. Standards of Convention should prevail and be consistent with the national conditions and the accommodations should be provided by the employer i.e. comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated; include access to suitable sanitary facilities, shared or private; be adequately lit, and as appropriate heated and air-conditioned in keeping with prevailing conditions within the household.

(b) include access to suitable sanitary facilities, shared or private; YES
and

(c) be adequately lit, and as appropriate heated and air conditioned in keeping with prevailing conditions within the household? YES

44. Should the Recommendation provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer?

RESPECT Comment:

YES – Recommendation should provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer (this must be stipulated in the work contract).

45. Should the Recommendation provide that the hours of work and overtime should be accurately calculated and recorded by the employer and this information communicated to the domestic worker?

RESPECT Comment:

YES – Recommendation should provide that the hours of work and overtime should be accurately calculated and recorded by the employer and this information communicated to the domestic worker. This should also be confirmed by employer to the domestic worker.

46. Should the Recommendation provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day?

RESPECT Comment:

YES – Recommendation should provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day.

47. Should the Recommendation provide, with respect to standby work, that national laws and regulations or collective agreements should regulate:

(a) that standby hours should only apply to night hours as defined in national laws or regulations or collective agreements; -

RESPECT Comment:

NO (“Stand-by” is not acceptable. Extra hours should be negotiable and subject to proper payment, and should be stated in work contracts.)

(b) the maximum number of hours per week, month or year that an employer may require a domestic worker to be on ‘stand-by’; refer answer to Question 47 a

(c) the compensatory rest period if the normal period of rest is disturbed by standby; and ; refer answer to Question 47 a

(d) (d) the extent to which the standby hours should be remunerated according to normal or overtime wage rates refer answer to Question 47 a

48. Should the Recommendation provide that domestic workers whose normal duties are performed at night should be treated not less favourably than other wage earners performing night work?

RESPECT Comment:

YES – Recommendation should provide that domestic workers whose normal duties are performed at night should be treated not less favourably than other wage earners performing night work.

49. Should the Recommendation provide that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic worker of daily and weekly rest?

RESPECT Comment:

YES – Recommendation should provide that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic worker of daily and weekly rest.

50. Should the Recommendation provide that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation?

RESPECT Comment:

YES – Recommendation should provide that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation and any hours of work over eight hours should be paid.

51. Should the Recommendation provide that domestic workers should not be required to remain in or with the household during their annual leave, and that time spent accompanying the household on vacation is not considered annual leave?

RESPECT Comment:

YES – Recommendation should provide that domestic workers should not be required to remain in or with the household during their annual leave, and that time spent accompanying the household on vacation is not considered annual leave.

52. Should the Recommendation provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given:

RESPECT Comment:

YES – Recommendation should provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given: an extended period of notice during which they may continue living in the employer's home and) reasonable time off with pay during the notice period to enable them to seek new employment.

(a) an extended period of notice during which they may continue living in the employer's home; - YES

(b) reasonable time off with pay during the notice period to enable them to seek new employment? – YES

53. Should the Recommendation provide that Members should:

(a) identify, mitigate and prevent occupational hazards specific to domestic work; Yes

(b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work; Yes

(c) advise on occupational safety, health and hygiene as well as on ergonomics and protective equipment; Yes

(d) develop training programmes and disseminate guidelines on occupational safety and health requirements? Yes

54. Should the Recommendation provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment?

RESPECT Comment:

YES – The Recommendation should provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment.

C. Professional development

55. Should the Recommendation provide that Members should, in consultation with the employers' and workers' organizations concerned, establish policies and programmes for domestic workers to encourage ongoing development of their competencies and qualifications, including literacy training as appropriate, as well as to enhance their career and employment opportunities?

RESPECT Comment:

YES – It should include language training and it should be included in the contract as part of the working hours.

D. Migrant domestic workers

56. Should the Recommendation provide that regulation concerning repatriation of domestic workers should:

(a) ensure financial guarantees by those responsible for repatriation costs; Yes

(b) prohibit any payment by migrant domestic workers to cover repatriation costs; Yes

(c) *identify the time frame and circumstances for the exercise of the right to repatriation?*

RESPECT Comment:

Yes – the domestic worker should have the right to choose repatriation

Recommendation:

In case of repatriation:

- Both governments – country of origin and host country – should give adequate support to survive back in the country of origin. Encourage migrant domestic worker self-organisations to have orientation in country of destination to participate in reintegration programs e.g., Migrant Savings for Alternative Investment (MSAI).
- Referrals to reliable partners whose programmes have a track record in support services that provide project feasibility and sustainability advice on the efforts of returning migrants to create new livelihoods in their country of origin.
- Encourage critical assessment of re-integration programmes, particularly those that offer financial incentives being offered both by country of destination and country of origin.
- There is a need to clarify the implications, but a warning should be given as well as the justification for repatriation.

57. Should the Recommendation provide that Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:

(a) *the development of a network of safe emergency housing; and*

RESPECT Comment:

Yes – Independent of their legal status: access to safe emergency house should be ensured to undocumented Migrant Domestic Workers.

(b) *a placement visit of the household in which the migrant domestic worker will be employed*

RESPECT Comment:

Yes – Needs to be clarified: who is doing the placement visit? MDW should have the right to a placement visit. Useful, but a placement visit will not guarantee if a household will be safe to the migrant domestic worker after the visit.

58. Should the Recommendation provide that Members that are sending countries should assist in the effective protection of migrant domestic workers' rights, including by informing migrant domestic workers of their rights before

departure, establishing legal assistance funds, social services and specialized consular services and by any other additional measures? Please specify.

RESPECT Comment:

Yes - Legal assistance funds should be ensured.

E. Relationship to other national policies

59. *Should the Recommendation provide that Members should be encouraged to develop national policies that:*

(a) *promote accessible, collective measures for the delivery of child care and other personal care;*

RESPECT Comment:

Yes - Special measures should be also adopted to facilitate the childcare of DWs including MDWs. Needs to clarify the implications, but a warning should be given as well as the justification for repatriation.

(b) *promote work-life balance for families; or* **Yes**

(c) *promote the domestic workers' employment in occupational categories that match their education and skills?* **Yes**

F. International cooperation

60. Should the Recommendation provide that Members should be encouraged to continue improving protection of domestic workers, notably through cooperation at bilateral, regional and international levels? Please elaborate.

RESPECT Comment:

Yes, to protect the rights of all Domestic Workers including migrants working in the private household as Domestic Workers.

VII. Special problems

61. Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instruments?

RESPECT Comment:

Yes –

- There are unique features of national law (such as currently immigration laws in several countries and labour legislation which does not recognise domestic workers which will lead to practices that are liable to create difficulties in the practical application of the instrument.
- We recommend that there must be compatibility between national legislation and the instrument – both in migration law and in labour law.

62. (For federal States only) In the event of the instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?

RESPECT Comment:

All legislation protecting rights of domestic workers should be binding at whatever level.

63. Are there any other pertinent problems not covered by the present questionnaire that ought to be taken into consideration when drafting the instruments?

RESPECT Comment:

On effective protection for 'au pairs': The questionnaire does not particularly include this vulnerable sector who work in the private home. It has been a practice to accept that au pairs undertake "light household work" as exchange for accommodation while undertaking cultural exchange. However, there is increasing evidence that this framework is exploited to access a flexible and cheap source of domestic workers. The "au pair" framework should therefore be addressed in the questionnaire and be strongly regulated.

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.

Child labour: RESPECT also supports all instruments which will protect children and young persons from human rights violations and being exploited in domestic work.

Annex 1

ILO Questionnaire

Submitted by the Migrant Rights Centre Ireland – Aoife Smith

Questionnaire

At its 301st Session (March 2008), the Governing Body decided to put on the agenda of the 99th Session (2010) of the International Labour Conference an item on decent work for domestic workers for a double discussion leading to the possible adoption of a Convention supplemented by a Recommendation.

The purpose of the questionnaire is to request the views of member States on the scope and content of the proposed instruments, after consultation with the most representative organizations of employers and workers. Replies received should enable the Office to prepare a report for the Conference.

I. Form of the international instrument or instruments

1. Should the International Labour Conference adopt an instrument or instruments concerning decent work for domestic workers?

Comments: Yes

2. If so, should the instrument or instruments take the form of:

(a) a Convention

(b) a Recommendation

(c) a Convention supplemented by a Recommendation *xx*

(d) a Convention comprising binding and non-binding provisions?

Comments:

The instrument should take the form of a Convention supplemented by a Recommendation.

Many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation and to inadequate attention on key aspects of their situation in international law and national legislation, including in existing ILO Conventions. Quite a number of ILO Conventions permit the exclusion of this category of workers from the scope of their provisions. The particular vulnerability of domestic workers to abuses of basic human rights, including fundamental principles and rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances. The development of international standards is therefore meant to fill an important gap in the promotion of decent work for all.

Appendix 1

II. Preamble

3. *Should the preamble of the instrument or instruments recall that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided?*

Comment: **Yes**

4. *Should the preamble of the instrument or instruments refer to the special conditions in which domestic work is carried out that make it desirable to supplement the general standards by standards specific to domestic workers, tenable them to enjoy their rights fully?*

Comments:

Yes. Many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation. Their particular vulnerability to abuses of basic human rights, including fundamental rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances.

5. *Should other considerations be included in the preamble? Please specify.*

Comments:

Yes. Attention should be drawn to inadequate attention on key aspects of the situation of domestic workers in international law and national legislation. In fact, in too many countries domestic workers are not covered by labour legislation. Reference should therefore be made in the preamble to the relevance of the Employment Relationship Recommendation (No 198). The preamble should recognize the significant contribution of domestic workers to the global economy and highlight that domestic workers overwhelmingly comprise women from historically disadvantaged communities and regions, who often suffer social exclusion and work informally, beyond the scope and protection of national labour laws and enforcement mechanisms. The preamble should also mention that any standards that apply to those who perform care work for pay should be seen in relation to the Workers' with Family Responsibilities Convention and Recommendation, 1981 that provides for the adoption of a national policy to promote the development of accessible and quality child care and other personal care services with a view to promoting work-life balance for families. As domestic workers predominantly comprise migrant domestic workers, the preamble should also make reference to the principles of equality of treatment and opportunity contained in Conventions 97 and 143 on migrant workers.

III. Definitions

6. *For the purposes of the instrument or instruments,*

(a) should the term "domestic work" mean work performed in and for a household and include housekeeping, child care and other personal care?

Comments: **Yes**

(b) should the term "domestic worker" mean any person who undertakes domestic work, whether on a full-time or part-time basis, for remuneration?

Comments: **Yes**

(c) should the term "standby" mean periods during which a domestic worker is not free to dispose of time as the worker pleases?

Comments: **Yes**

(d) should the term “employer” include intermediaries?

Comments:

Yes. It should be stressed that fee-charging private agencies acting as brokers between migrant domestic labour from countries of origin and employers in countries of destination should be included in the definition of employers. Companies and agencies that hire workers to perform home help activities for a user individual at home or for his/her home should also be considered to be an employer.

(e) should any other terms be defined by the instrument or instruments? If yes, please provide particulars.

Comments:

IV. Scope

7. Should the instrument or instruments apply to all domestic workers?

Comments: **Yes**

8. Should the instrument or instruments provide for the possible exclusion of limited categories of domestic workers and, if so, under what circumstances? Please specify.

Comments:

No. It should be recalled that one of the main reasons for the decent work deficit affecting domestic workers is related to their exclusion from many provisions in international labour standards.

V. Content of a Convention

A. Fundamental principles and rights

9. Should the Convention provide that each Member should take measures to ensure the enjoyment by domestic workers of the fundamental principles and rights at work, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

Comments: **Yes, however collective bargaining does not apply in Ireland**

(b) the elimination of all forms of forced and compulsory labour;

Comments: **Yes**

(c) the effective abolition of child labour; and

Comments: **Yes**

(d) the elimination of discrimination in respect of employment and occupation?

Comments: **Yes**

10. Should the Convention stipulate a minimum age for admission to domestic work?

Please specify.

Comments: **Yes in line with conventions 138 and 182.**

11. *Should the Convention provide that the minimum age of employment for migrant domestic workers should be 18?*

Comments: **Yes**

B. Working and living conditions and social security

12. *Should the Convention provide that each Member should take measures to ensure that domestic workers, like all wage earners, have:*

(a) fair terms of employment as well as decent working conditions and, where applicable, living conditions;

Comments: **Yes. These terms should be further detailed in the Recommendation**

(b) a safe and secure workplace; and

Comments: **Yes**

(c) social security, including maternity protection?

Comments:

Yes. While maternity protection is essential, all other aspects of social security are important for domestic workers. The Recommendation should provide for specific mechanisms to take account of the specific situation of many domestic workers working part-time for multiple employers and to ensure access of these workers to social security benefits. A positive step towards this goal is found in models aimed at guaranteeing the regular payment of fair wages and some social security entitlements to part-time and casual domestic workers like the "chequeservice" as developed in France or the "Titre Service Voucher" developed in Belgium.

13. *Should the Convention provide that employers should inform domestic workers of their terms and conditions of employment, in particular:*

(a) the name and address of the employer;

Comments: **Yes**

(b) the type of work to be performed;

Comments: **Yes**

(c) the rate of remuneration, method of calculation and pay interval;

Comments: **Yes**

(d) the normal hours of work;

Comments: **Yes**

(e) the duration of the contract;

Comments: **Yes**

(f) the provision of food and accommodation, if any;

Comments: **Yes**

(g) the period of probation, if applicable; and

Comments:

Yes. Attention should also be paid to the terms of the termination of employment, with particular reference to live-ins domestic workers. This question is dealt with in the recommendation (question 52) but basic principles should be laid down in the Convention to avoid situation of abuses.

(h) the terms of repatriation, if applicable?

Comments: Yes. (At no cost to the worker see question 28)

14. Should the Convention provide that each Member should take measures to ensure that domestic workers are protected against all forms of abuse and harassment, including physical, verbal, sexual and mental abuse and harassment?

Comments: Yes

15. Should the Convention provide that each Member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists?

Comments:

Yes. In countries where minimum wages are set by occupation special measures should be taken to ensure that the skills and responsibilities associated with domestic work as well as conditions under which it is carried out are assessed without gender bias in light of the fact that experience shows that domestic work is often undervalued.

16. Should the Convention provide that all domestic workers should be paid for their work at no greater than monthly intervals?

Comments: Yes

17. Should the Convention allow partial payment of wages in kind? If so, please specify any circumstances and limits, in particular whether a domestic worker can refuse such in kind payments.

Comments:

Payment of wages in kind should be strictly limited and regulated and the value attributed to the allowances should be fair and reasonable. In this connection, it should be recalled that Article 8, paragraph 1, of Convention 95 (much like Article 4, paragraph 1, regulating payments in kind) makes exclusive referent to national laws or regulations, collective agreements and arbitration awards as being the only valid legal bases for effecting deductions from wages. In both cases, the aim is clearly to exclude "private" arrangements which might involve unlawful or abusive deductions, or unsolicited payments in kind, to the detriment of the worker's earnings.

18. Should the Convention provide that each Member should ensure that domestic workers are not required by national law or regulation to reside in the home of the employer?

Comments:

Yes. Such requirement has been shown to lead to abusive conditions and should therefore be proscribed.

19. Should the Convention provide that, when accommodation and food are provided by the employer, the accommodation should be safe and decent, and should respect the worker's privacy, and the meals should be of good quality and sufficient quantity?

Comments: Yes.

20. *Should the Convention provide that each Member should ensure that domestic workers have normal hours of work, overtime compensation, periods of daily and weekly rest, and annual leave as determined by national laws and regulations, and which are not less favourable than those applicable to other wage earners?*

Comments: **Yes**

21. *Should the Convention provide that each Member should ensure that domestic workers are not bound to remain in the household during the period of daily or weekly rest?*

Comments: **Yes. Attention also should be paid to the right of live-in domestic workers to receive the visit of relatives and friends.**

22. *Should the Convention provide that periods of standby should be regarded as hours of work to the extent determined by national laws and regulations, collective agreements or any other means consistent with national practice?*

Comments: **Yes**

23. *Should the Convention provide that each Member should take measures to ensure that domestic workers enjoy at least 24 consecutive hours of rest in every seven dayperiod?*

Comments: **Yes**

24. *Should the Convention provide that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of occupational safety and health? Should the Convention provide that such measures may be applied progressively? Please elaborate.*

Comments:

The Convention should provide for equality of treatment between domestic workers and other wage earners in respect of occupational safety and health. The right to a safe and healthy working environment is a key right for workers hence instead of a progressive application measures should be introduced combining protection of domestic workers' health and safety, employers' responsibility to protect the health and safety of domestic workers, awareness raising and training for domestic workers and those employing them on their respective rights/duties/responsibilities in the area of occupational safety and health, a regulatory frame providing meaningful protection as well as a system of monitoring and enforcement. On the latter one option worth exploring could be the system of roving safety representatives

25. *Should the Convention provide that each Member should take measures to ensure the application of social security schemes, including maternity protection, to domestic workers? Should the Convention provide that certain measures may be applied progressively? Please elaborate.*

Comments:

Yes. Coverage in respect of pension, general health care including maternity protection, compensation for occupational injuries and diseases as well as unemployment benefits are particularly important for domestic workers. Progressive introduction of social security measures can only apply for higher social security provisions and provided that at the time of ratification a mechanism is introduced in terms of time frame and ways to achieve wider coverage of domestic workers by social security schemes.

C. Employment agencies

26. *Should the Convention provide that each Member should take measures to ensure that domestic*

workers recruited or placed by employment agencies, particularly migrant domestic workers, are effectively protected against abusive practices?

Comments: **Yes**

D. Migrant domestic workers

27. *Should the Convention provide that national laws and regulations should require that migrant domestic workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders?*

Comments: **Yes**

28. *Should the Convention provide that migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract?*

Comments:

Yes. But the Convention should also make provisions as follows, concerning expulsion, back pay and the rights of domestic workers who have lost their employment by no fault of their own, in particular:

- ***On condition that he/she has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.***
- ***Accordingly, he/she shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.***
- ***Domestic migrant workers who find themselves in irregular situation and whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.***
- ***In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his/her case to a competent body, either him/herself or through a representative.***

29. *Should the Convention provide that each Member should prohibit employers from keeping in their possession domestic workers' travel and identity documents?*

Comments: **Yes**

30. *Should the Convention provide that Members should cooperate with each other to ensure that migrant domestic workers enjoy benefits comparable with those of nationals?*

Comments: **Yes**

E. Implementation and enforcement measures

31. *Should the Convention provide that each Member should ensure that domestic workers have easy access to fair and effective dispute settlement procedures?*

Please specify.

Comments:

Yes. This should include access to court, the provision of free legal assistance and legal remedy in case of rights' abuse. Similarly the Convention should make provisions for sanctions in case of abuse by the employer. Sanctions must be effective, dissuasive, appropriate and proportional to the seriousness of the offences committed.

32. Should the Convention provide that each Member should ensure that arrangements are in place to ensure compliance with national laws and regulations applicable to domestic workers, such as labour inspection services, with due regard to privacy? Please elaborate.

Comments: **Yes**

33. Should the Convention provide that its provisions should be applied by laws, regulations, collective agreements or other measures consistent with national practice, by extending existing measures to cover domestic workers, adapting them, where appropriate, and developing specific measures for domestic workers?

Comments: **Yes**

34. Should the Convention provide that, in implementing its provisions, each Member should consult the employers' and workers' organizations concerned?

Comments: **Yes**

VI. Content of a Recommendation

A. Fundamental principles and rights

35. Should the Recommendation provide that the competent authority should take or support measures to promote capacity building for representative organizations of employers and domestic workers, including collective bargaining?

Comments: **Yes**

36. Should the Recommendation provide that, when regulating working and living conditions, Members should give special attention to the needs of young domestic workers, including in respect of working time and restrictions on undertaking certain types of domestic work? If yes, please specify.

Comments:

Yes. The needs of young domestic workers include access to education and training and this should be taken into account when regulating working and living conditions for this category of domestic workers.

B. Working and living conditions and social security

37. Should the Recommendation provide that the terms of employment should be provided in writing?

Comments: **Yes**

38. Should the Recommendation provide that additional particulars should be included in the terms of employment, such as:

(a) the starting date of the employment

(b) a detailed list of duties

(c) 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 in-kind allowance and its cash value
- (i) details of any accommodation provided
- (j) any authorized deductions
- (k) the period of notice required for termination?

Comments: **Yes**

39. Should the Recommendation provide for a model contract, for example prepared by each Member in consultation with organizations of employers and workers concerned?

Comments: **Yes**

40. Should the Recommendation provide that any work-related medical testing should respect domestic workers' right to privacy and should be free from discrimination, including on the basis of pregnancy and HIV status?

Comments:

Yes. But this provision should be included in the Convention as it relates to fundamental labour rights (discrimination).

41. Should the Recommendation provide that domestic workers should be given at the time of each payment an easily understandable written account of the payments due and the amounts paid?

Comments: **Yes**

42. Should the Recommendation provide that national laws and regulations concerning the protection of wages, including in the case of the employer's insolvency or death, apply to domestic workers?

Comments: **Yes**

43. Should the Recommendation provide that, consistent with national conditions, the accommodation when provided by the employer should:

(a) comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated;

Comments: **Yes**

(b) include access to suitable sanitary facilities, shared or private; and

Comments: **Yes**

(c) be adequately lit, and as appropriate heated and air conditioned in keeping with prevailing conditions within the household?

Comments: **Yes**

44. Should the Recommendation provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer?

Comments: **Yes**

45. Should the Recommendation provide that the hours of work and overtime should be accurately calculated and recorded by the employer and this information communicated to the domestic worker?

Comments: **Yes**

46. Should the Recommendation provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day?

Comments: **Yes**

47. Should the Recommendation provide, with respect to standby work, that nacional laws and regulations or collective agreements should regulate:

(a) that standby hours should only apply to night hours as defined in nacional laws or regulations or collective agreements;

Comments: **Yes**

(b) the maximum number of hours per week, month or year that an employer may require a domestic worker to be on standby;

Comments: **Yes**

(c) the compensatory rest period if the normal period of rest is disturbed by standby; and

Comments: **Yes**

(d) the extent to which the standby hours should be remunerated according to normal or overtime wage rates?

Comments: **Yes**

48. Should the Recommendation provide that domestic workers whose normal duties are performed at night should be treated not less favourably than other wage earners performing night work?

Comments: **Yes**

49. Should the Recommendation provide that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic worker of daily and weekly rest?

Comments: **Yes**

50. Should the Recommendation provide that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation?

Comments:

Yes. But while Members should establish the principle of a fixed day of the week for rest and ensure implementation, the choice and determination of this day should be left to the parties to the employment contract.

51. Should the Recommendation provide that domestic workers should not be required to remain in or with the household during their annual leave, and that time spent accompanying the household on vacation is not considered annual leave?

Comments: **Yes**

52. Should the Recommendation provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given:

(a) an extended period of notice during which they may continue living in the employer's home;

Comments: **Yes**

(b) reasonable time off with pay during the notice period to enable them to sep new employment?

Comments: **Yes**

53. Should the Recommendation provide that Members should: (a) identify, mitigate and prevent occupational hazards specific to domestic work;

Comments: **Yes**

(b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;

Comments: **Yes**

(c) advise on occupational safety, health and hygiene as well as on ergonomics and protective equipment; and

Comments: **Yes**

(d) develop training programmes and disseminate guidelines on occupational safety and health requirements?

Comments: **Yes**

54. Should the Recommendation provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment?

Comments:

Yes. Special efforts should also be made towards ensuring that domestic workers working part-time or on an occasional basis for multiple employers have access to social security benefits.

C. Professional development

55. Should the Recommendation provide that Members should, in consultation with the employers' and workers' organizations concerned, establish policies and programmes for domestic workers to encourage ongoing development of their competencies and qualifications, including literacy training as appropriate, as well as to enhance their career and employment opportunities?

Comments **Yes**

D. Migrant domestic workers

56. Should the Recommendation provide that regulation concerning repatriation of domestic workers should:

(a) ensure financial guarantees by those responsible for repatriation costs;

Comments: **Yes**

(b) prohibit any payment by migrant domestic workers to cover repatriation costs;

Comments: **Yes**

(c) identify the time frame and circumstances for the exercise of the right to repatriation?

Comments: **Yes**

57. Should the Recommendation provide that Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:

(a) the development of a network of safe emergency housing; and

Comments: **Yes**

(b) a placement visit of the household in which the migrant domestic worker will be employed?

Comments: **Yes**

58. Should the Recommendation provide that Members that are sending countries should assist in the effective protection of migrant domestic workers' rights, including by informing migrant domestic workers of their rights before departure, establishing legal assistance funds, social services and specialized consular services and by any other additional measures? Please specify.

Comments: **Yes. But the instrument should also make provisions for cooperation between countries of origin and countries of destination of migrant domestic workers, namely:**

- *Cooperation between countries of origin of domestic migrant workers and their countries of destination to enhance governance of migration, in the fields of the establishment of legal avenues for labour migration, strengthening of labour inspection, legal cooperation in case of trafficking and abusive situations, issues of maintenance of social security entitlements and the strict supervision and control of activities by recruitment and employment agencies (in conformity with ILO Convention No. 181 on Private Employment Agencies), and subcontractors, as well as the elimination of abuse of sponsorship schemes.*
- *Development of joint measures, including legal support, for immediate action to prevent abusive practices and to find solutions to them through legal remedies or other available dispute-resolution mechanisms.*

E. Relationship to other national policies

59. *Should the Recommendation provide that Members should be encouraged to develop national policies that:*

(a) *promote accessible, collective measures for the delivery of child care and other personal care;*

Comments: **Yes**

(b) *promote work-life balance for families; or*

Comments: **Yes**

(c) *promote the domestic workers' employment in occupational categories that match their education and skills?*

Comments: **Yes**

F. International cooperation

60. *Should the Recommendation provide that Members should be encouraged to continue improving protection of domestic workers, notably through cooperation at bilateral, regional and international levels? Please elaborate.*

Comments: **Yes (see comments to question 58)**

VII. Special problems

61. *Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instruments?*

Comments: *Yes, in Ireland Work Permits for migrant domestic workers from outside the EU EEA are tied to employers, not the domestic sector. This creates difficulties for workers to assert their rights as they risk becoming undocumented.*

62. (For federal States only) *In the event of the instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?*

Comments:

63. *Are there any other pertinent problems not covered by the present questionnaire that ought to be taken into consideration when drafting the instruments?*

Comments: At present, there is a lack of statistics on domestic workers, and migrant domestic workers. Consideration should therefore be given in the instruments on the adoption of appropriate measures so that labour statistics include, to the extent possible, domestic workers and migrant domestic workers. Without adequate statistics domestic work will remain invisible and hence vulnerable.

The issue of the diplomatic sector and immunity is absent in this paper. How do domestic workers take redress and access their rights when working in the diplomatic sector?

Annex 2



Campaign Network for the Rights of Migrant Domestic Workers in Europe & Internationally

For Information:
De Wittenstraat 25,1052 AK
Amsterdam, NL
Tel: 00-31-20-6646927; 00-
31- ++31-634204226
email : eurespect@gmail.com;
www.respectnetworkeu.org

Migrant Domestic Workers aim for a strong rights-based ILO Convention on Domestic Work

ROUNDTABLE Discussion

Date: 21 August 2009 Friday,

Time: from 13.00 hrs.

Venue: De Wittenstraat 25, 1052AK Amsterdam

The ILO proposal to develop a *Convention on Domestic Workers* provides the RESPECT Network in Europe and in the Netherlands new opportunities to place the rights of MDWs on the political agenda and to interact with the ILO process internationally and to expand understanding and analysis on the intersection between migration, labour and gender.

This National Consultation brings together Migrant Domestic Workers and Trade Unions to exchange the outcomes from the various consultations with MDWs in different cities in the Netherlands and present an overview of the responses and recommendations on the ILO questionnaire.

The Consultation will also explore the possibilities for campaigning together for the achievement of a strong rights based ILO Convention on Domestic Work.

During this National Consultation MDWs will use Forum Theatre as a medium in putting forward key political messages in the campaign for their rights: Domestic work as proper work; Protection of labour rights for MDWs; Possibility to migrate as MDWs; Regularisation of undocumented MDWs; Ensure the inclusion of MDWs in the ILO Convention.

Draft Programme:

Acting Together for a strong Rights based ILO Convention for Domestic Workers

- 13.00 Arrival of Guests & Coffee
Welcome & Introduction
- 13.30 Forum Theatre Performance
Audience inter-action with Drama (Drama facilitator)

short break

14. 30 **Roundtable:** Acting Together in the ILO process
Moderator: Brid Brennan RESPECT/TNI
- Ms Lorie Matulay - MDW Representative – MDW Proposals (RESPECT NL, TRUSTED Chairperson, Representative of MDWs in Cleaners Board)
 - Karin Pape – European Coordinator – Wiego
 - Ellen Dekkers - FNV Bondgenoten - General Secretary
 - Wilma Roos – FNV Mondial (Policy officer)
 - Margreet Vrielings – CNV
 - Dutch Parliamentarian (to be invited)
- 16.00 RESPECT Network ILO DW Campaign Perspectives & Challenges:
- 16.30 Discussion
- 17.00 Snacks & Drinks

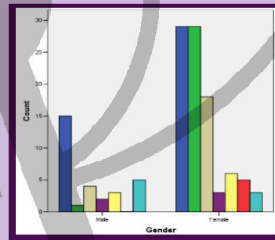
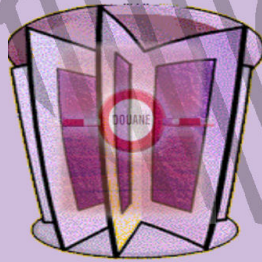
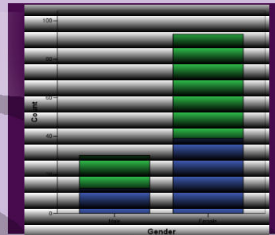
**Organised by:
RESPECT NL**

For Information: De Wittenstraat 25, 1052 AK Amsterdam, NL, Tel: 00-31-20-6646927; 00-31- ++31-634204226; email : eurespect@gmail.com

How to reach De Wittenstraat 25 - Bus, Tram & Halte: Form CS -Bus 22 direction Spaarndammerbuurt, get off at BusHalte - Nasauplein, From City Centrum - Tram 3 direction Zoutkeetsgracht - get off at Tramhalte - Haarlemmerplein. Walk towards a pink and white building, side street is De Wittenstraat 25



MDWs Visible and Making a Difference



Types of employment in the private household

- cleaning
- ironing & cleaning
- baby sitting, ironing, cleaning
- cleaning plus gardening
- cleaning plus animal care
- household work in general
- restaurant(cooking)

Problem experienced

- yes
- no

CFMW Research Report on
Migrant Domestic Workers (MDWs)
in the Netherlands
December 2005



Summary of the Report MDWs Visible and Making a Difference!

Global Context of Migrant Domestic Workers

Migrant domestic workers (MDWs) in the private household and their living and working conditions have gained increasing importance within migrant communities as well as from human rights advocates, trade unions, women's networks, academe, media, and policy makers. A number of inter-related factors contribute to this:

- Rapid globalisation of economies worldwide and its impact on changing labour conditions, labour migration, including the feminisation of migration
- The “North-South divide” in terms of intensification of unequal trade, debt and impoverishment of developing economies of the South, with resultant widespread unemployment and increasing out-migration
- Continuing ‘demand’ and ‘supply’ - the relationship between immigration and the need for cheap third world labour in the North and how governments of receiving and sending countries ‘push’ and ‘pull’ respectively while encouraging or controlling the migration of labour according to the needs of the labour market
- Personal and national factors operating on the individual’s decision to migrate to find work overseas
- Double standards vis a vis labour migration – in Europe, there is significant employment of MDWs in the private household either as ‘live-in’ or “live-out” workers, without due acknowledgement and in fact denial of their labour and immigration rights, resulting in the process of many MDWs becoming “undocumented”
- Campaigns in several European countries (UK, Spain, Italy, Greece) by migrant communities, trade unionists and migrant rights advocates have been successful in changing the immigration legislation and current on-going campaigns are putting the issue on the international political agenda

In Europe

Many European households are increasingly dependent on ‘live-in’ or ‘live-out’ workers and without them their employers could not go out to work 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)

In the Netherlands

Changes in the labour market in Europe have resulted in a significant increase of women working outside the home. This trend is also observable in the Netherlands, although high social and moral value is still given to a strong ‘motherhood vision’ – which expects women parents to stay at home to take care of their young children. While in many instances men share the parenting and care of children with their woman partner, in practice as well as in public discourse, childcare still remains a predominantly female responsibility. Despite this, a number of other factors are impacting on women's choice to work outside the home – commitment to a professional career; feminisation of the labour market; higher costs of living and availability of a supply of cheap ‘buy in’ labour for domestic work. These factors result in many more women participating in the labour market outside the home. Some statistics indicate that as many as 50% of women are participating in the labour market – these statistics are mainly referring to those in part-time work.

Participatory Research – Resourcing MDWs

It is in this context therefore that this Participatory Research project was initiated as a method of resourcing and empowering of MDWs of all nationalities and to begin to establish a common profile of MDWs in the Netherlands. The project is developed and implemented together with TRUSTED Migrants - a migrant domestic workers' self-organisation based in Amsterdam and the RESPECT NL Working Group campaigning for the rights of MDWs.

The Tools of the Research included:

A *Questionnaire* which was implemented with 123 MDWs – 61 Filipinos; 26 Ghanaians; 27 Nigerians; 6 Indonesians; 1 Korean, 1 Colombian and 1 Surinam. From the total respondents, 93 were women and 30 were men.

- *Focus Group Discussions* – CFMW conducted two Focus Group Discussions. The first was conducted on October 22, 2005 when 10 Filipino MDWs were interviewed - 6 women and 4 men. The second Group interview was conducted on November 6, 2005 when 4 MDWs were interviewed – 2 from Ghana and 2 from Nigeria. All were male MDWs.
- *In-depth 1 to 1 Interviews* – The in-depth 1 to 1 interviews were conducted with 20 MDWs.
- *Forum Theatre Session Consultation* – This Consultation in a Forum Theatre Session was held with 25 MDWs in September 2004.

Key Issues focused in the Research

The Research focused on the following key issues:

- MDW- Working Conditions
- MDW- Living Conditions
- MDW - Health & Well-being
- Human and Social Costs
- Racism and Discrimination
- Unequal Power relations with Employers
- MDWs - Being Undocumented

From Violations of Rights to Protection of Human Rights

The Research findings reveal, the working and living conditions of MDWs as extremely difficult and show MDW lives that are completely vulnerable and open to violations of their rights. Their wages vary considerably between MDWs who 'live-in' (earning between 500-800 euro per month) and those who live-out (earning up to 1,944 per month based on an average of 9 euro per hour and working 9 hours per day during 6 days a week).

Emerging issues reveal a widespread range of violations of rights, which include the following:

Working Conditions

- No written contracts between family employers and worker
- Work without social benefits, access to health care and education
- Insecurity of job - options for terminating employment are frequently unilateral on the side of the employer
- Multiple part-time jobs when 'live-out', including work at weekends
- Total availability when 'live-in' - can be called on to work at any time and frequently the agreed 'day-off' is cancelled or changed by employer

- When employer is on holiday, or worker is ill, a practice of 'No work – no pay' applies
- MDWs are expected to be 'always on the job' – they experience reprimands or threats to lose their job even when they have legitimate reasons for absence such as illness or personal/family emergency
- Most find it difficult to negotiate even a small change in their working conditions – and feel they are 'totally dependent on the goodwill of employer'

Living Conditions

- MDWs who live-in are constantly negotiating a dividing line between being a 'worker' and being 'part of the family'; their accommodation is often in cramped conditions
- MDWs who live-out are faced with frequent sub-letting, high rents and unscrupulous landlords
- ALL MDWs interviewed do not have access to public health care and are therefore not able to benefit from preventative health care services; a few choose to pay a private health insurance
- Fatigue and stress are common health complaints among MDWs

Other Experiences common to all MDWs

- Most are fearful to protest violations of their rights or experiences of abuse and threats, since the consequences of losing their job(s) are very high – MDW families in their home countries literally depend on their daily work
- All MDWs interviewed report experiences of racism in different forms: racist remarks and stereotyping; racist put-down
- African MDWs report discrimination on availability of work and exploitation in the wages paid to them as compared to MDWs of other nationalities
- Although not widespread among those interviewed, some MDWs reported experiences of sexual harassment; withholding of passport by the employer and threats to be reported to the police.

MDWs Being Undocumented

While the demand for workers in the private household has increased significantly in the Netherlands and throughout Europe, there is no adequate provision for the protection of the rights of MDWs.

Underlying the unequal power relation with the employer is the fact that many MDWs are undocumented. Many employers value the work of MDWs and freely admit that that they perform a very important function towards Dutch family and social life (employers participating at the Women Inc. Conference Amsterdam, September 2005). Some employers advocate regularisation of the status of MDWs and want to pay proper wages. MDWs likewise are very willing to pay their taxes.

However, the fact that work in the private household is not recognised as a proper work and not currently accepted as a category for immigration creates the situation that MDWs become undocumented when their original visa expires. MDWs regularly describe their situation like this:

"Circumstances force us to become undocumented – we have no choice".

Or as another MDW, Allan expresses it:

“Now we are in a situation as if “our human rights are being privatised and depending on the good will of our employer...we are not criminal – why are we denied our human rights? We are workers – contributing to the Dutch society and to our home country. Why can't we be treated as workers and be given our rights?”.

MDWs Demands

MDWs in the Netherlands have established their own self-organisation TRUSTED Migrants and have identified the following campaign demands:

- to recognise work in the private household as proper work
- to ensure the protection of the rights of MDWs as workers
- to put in place an immigration status related to their work as migrant domestic workers
- to continue to give special attention to the rights of MDWs as a particularly vulnerable sector of migrants, and to raise this as a central concern of the UN Human Rights agenda

The Profile of MDWs emerging from the Research provides an initial basis for information and campaigning strategies. It is a starting point to make new connections between MDWs and a range of civil society organisations in the Netherlands – human rights and migrant rights advocates, the churches, trade unions and women's organisations.

This Report *MDWs Visible and Making a Difference!* brings the voice of MDWs themselves directly into the policy arena and it documents MDWs as transnational social actors taking initiative to campaign for their rights as workers and as migrants.