

IMPLEMENTATION OF INTERNATIONAL LABOUR STANDARDS FOR DOMESTIC WORKERS

There are approximately 67 million domestic workers worldwide, the clear majority of whom (80 per cent) are women. Many domestic workers, if not most, come from disadvantaged social groups, making them particularly vulnerable to discrimination and abuse at work.¹ In 2011, to address these concerns, the International Labour Organization (ILO) adopted the Domestic Workers Convention, 2011 (No. 189) and Recommendation, 2011 (No. 201). These instruments seek to ensure that the fundamental protections afforded to other workers are also extended to domestic workers.

Key findings

- Among the 67 million estimated domestic workers globally, approximately 80 per cent are women. In addition, approximately 11.5 million are international migrants. Most these domestic workers are from disadvantaged groups and many lack adequate access to basic protection.
- Since the adoption of Convention No. 189, over 70 ILO member States have acted to ensure decent working conditions for domestic workers. Of these, 24 have ratified Convention No. 189, another 30 have undertaken law and policy reforms, and at least another 18 are engaged in extending protections to domestic workers.
- There remain many challenges in making decent work a reality for all domestic workers, but member States are implementing innovative and effective measures to ensure that domestic workers' fundamental rights are respected. These measures address the specific characteristics of domestic work, and include effective labour inspection, industry-specific campaigns to raise awareness on the rights of domestic workers, accessible and affordable legal aid for all domestic workers.

Research question

This brief examines how ILO member States have been improving the protection of domestic workers through the implementation of Convention No. 189 and Recommendation No. 201 (box 1).

Box 1. Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation (No. 201)

The Domestic Workers Convention and Recommendation are the first international labour standards specifically devoted to recognizing domestic workers as workers and to guaranteeing their labour rights and protections.

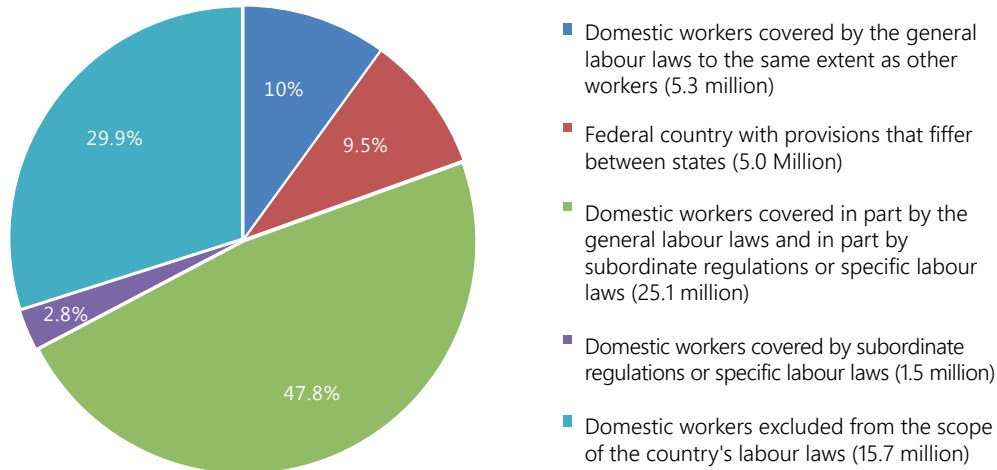
Convention No. 189 and Recommendation No. 201 call for the labour protections available to other workers to be extended to cover domestic workers. These include both fundamental rights – such as the right of freedom of association, collective bargaining rights, equality of opportunity and treatment, and freedom from child labour and forced labour – and protection at work, including wage and working time protections, occupational safety and health coverage, and access to social protection.

¹ International Labour Office: *Effective protection for domestic workers: A guide to designing labour laws* (Geneva, ILO, 2012).

As of 2010, only 10 per cent of domestic workers globally enjoyed the same level of labour protection as other workers (figure 1). Although a substantial number of men work in the domestic work sector – often as security guards, gardeners or drivers – the sector remains highly feminized. Historically, female domestic workers have not been considered as “workers” (who would be entitled to labour rights and social protection), but

rather as “helpers” or as “part of the family”. Domestic work is typically undervalued and domestic workers may be subjected to low wages, excessive working hours, insufficient weekly rest periods and, even, confiscation of identity papers or travel documents. Many domestic workers are highly dependent on their employers, while some experience abuse, exploitation, isolation and, possibly, forced confinement.

Figure 1. Coverage of domestic workers by national legislation, 2010 (percentages)



What works?

In an effort to understand how countries have improved the protection of domestic workers, a close examination of the comments of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to Convention No. 189 were undertaken. The CEACR provides, each year, an impartial and technical evaluation of the state of application of international labour standards in law and practice (box 2).

Box 2. Committee of Experts on the Application of Conventions and Recommendations

The CEACR is composed of 20 eminent independent jurists from around the world. It reviews reports submitted by governments on the implementation of ratified Conventions and provides guidance.

Once a country has ratified an ILO Convention, it is obligated to report regularly on the measures it has taken to implement it. Governments are also required to submit copies of their reports to employers’ and workers’ organizations, so they can comment on the reports; such organizations may also send comments on the application of Conventions directly to the ILO. When examining the application of international labour standards, the CEACR makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular convention by a state. These observations are published in the CEACR’s annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the annual report, but are communicated directly to the governments concerned. Even where a country has not ratified a convention, it may decide to bring its legislation into conformity with it. Member States also regularly review the CEACR’s comments on the application of a Convention in other countries and may nonetheless amend their own legislation and practice, either to avoid similar issues in the application of a standard or to adopt good practice.

The CEACR’s interventions facilitate social dialogue, by requiring governments to review the application of a Convention and to share their findings with their social partners.

2 Office of the United Nations High Commissioner for Human Rights (OHCHR): *Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation* (New York and Geneva, 2015).

Convention No. 189 may be implemented by extending or adapting existing laws and regulations or other measures, or by developing new and specific measures for protecting the rights of domestic workers, for example through national policies. A review of the first reports submitted by member States that have ratified Convention No. 189 indicates that, while challenges in implementation remain, a considerable number of countries are in the process of developing and adopting innovative practices to ensure that decent work becomes a reality for domestic workers.

Policy considerations³

Scope and definition of domestic workers and domestic work

Convention No. 189 calls on member States to take steps to ensure that national legislation covers all categories of domestic workers. There are some interesting cases of how governments have approached this. For example, in defining domestic workers, the Government of Italy has expressly included non-Italians, stateless persons and persons employed to provide a range of services directed at specific aspects of family life, such as gardeners and private secretaries. Similarly, the Government of Ecuador took an inclusive approach in its definition of a domestic worker by including domestic workers engaged under continuous or discontinuous casual contracts, occasional contracts and seasonal contracts.

Labour inspection and access to justice

Where national employment laws do cover domestic workers, the characteristics of the domestic workplace and the need to respect the privacy of households mean that it can be difficult for an enforcing authority to ensure compliance. For domestic workers, factors such as lack of financial resources, language fluency, immigration status or awareness of legal rights could limit their access to justice in the event of labour rights violations. Therefore, national legislators should take into account the specific needs of domestic workers when designing complaints procedures and the mechanisms and provisions for effective labour inspection, to ensure access to justice.

As domestic work is typically carried out at the residence of the employer, labour inspection in this sector must be conducted with due respect for privacy, but monitoring must also be effective. An interesting case is Mauritius, where the Occupational Safety and Health (Employees' Lodging Accommodation) Regulations 2011 authorize the Permanent Secretary of the Ministry of Labour to enter premises used solely for residential purposes to conduct labour inspections and investigations with or without the permission of the occupier. It is also recommended that governments collaborate with employers', workers' and civil society organizations in carrying out labour inspections and raising awareness of the labour rights of domestic workers. In 2011, the Government of Ecuador,

through its Ministry of Labour, worked closely with the Association of Paid Domestic Workers of Guayaquil to conduct 14,000 home inspections in middle- and upper-class urban areas.

As with other mechanisms, access to legal redress should be available for all domestic workers and their employers regardless of a worker's immigration status. Legal advisory services should, as much as possible, be available free of charge and procedures should be designed to be as simple as possible. For example, in Argentina, the Buenos Aires Domestic Work Tribunal functions as a court of first instance for employers and domestic workers. Its procedures are clear and simple, favouring verbal accounts and conciliation. The Tribunal also has a specific mandate to provide advice and raise awareness.

Domestic workers should also be given the option of settling individual disputes consensually with their employers through accessible systems of conciliation and mediation. In the Philippines, an alternative, expeditious and less-expensive mechanism for settling individual labour disputes – the Single Entry Approach – has been established.

Freedom of association and the right to collective bargaining

The atomization of the domestic work sector (i.e. there being only one or a few workers in each workplace) and the isolation and dependence of domestic workers on their employers are factors that inhibit the exercise by domestic workers of their freedom of association and collective bargaining rights.⁴ Both Mauritius and South Africa grant constitutional and national statutory rights of freedom of association and collective bargaining that apply to domestic workers, including the right to form or join a trade union of their choosing and to take part in trade union activities.

Under legislation adopted by the Government of Uruguay, the Wages Council of Uruguay created a tripartite wage board to negotiate wages and other conditions for domestic workers. Members of the domestic work sector group signed a collective agreement covering January 2013

³ Much of the material presented in this section stems from the country-level comments of the CEACR.

⁴ C. Hobden: *Domestic work voice and representation through organizing*, Domestic Work Policy Brief no. 8 (Geneva, ILO, 2015).

to December 2015 that benefited the country's more than 120,000 domestic workers. The agreement raised the minimum wage for domestic workers and set adjustment rates according to three salary bands.

Working time

Adequate regulation of working time is essential for protecting the safety and health of domestic workers and for ensuring fair compensation for work performed, especially for live-in workers. Working time regulation requires the establishment of standards on hours of work, overtime, weekly rest and standby periods. The Government of South Africa limits the number of hours per day and the number of days per week that can be worked by domestic workers and sets permissible overtime hours. Similarly, section 2 of Uruguay's Act No. 18.065 limits working hours for domestic workers to 8 hours a day and 44 hours a week.

Migrant domestic workers

Migrant domestic workers are at heightened risk of certain forms of exploitation and abuse. At the heart of their vulnerability are isolation and a high dependency on their employers. Factors that lead to this situation include migration-related debt, irregular legal status and confiscation of identity and travel papers.

Article 9 of Convention No. 189 calls for States to take measures to ensure that domestic workers are entitled to keep their identity and travel documents in their possession. To protect the rights of its citizens, the Government of Philippines now advises emigrant Filipino workers on their right to keep possession of their documents and provides guidance on how to report violations.

Migration creates additional health-related risks for migrant domestic workers, especially females, such as heightened risk of sexual violence, increased risk of HIV infection and difficulty in accessing health-related information and services. These risks are compounded in the case of irregular migrants. Recommendation No. 201 contains specific provisions aimed at protecting migrant domestic workers from health-related (particularly HIV and AIDS) discrimination. In South Africa, this protection

is incorporated into the Labour Relations Act 2005, which protects workers against discrimination on the basis of HIV status and prohibits unfair dismissal because of HIV-positive status.

Finally, cooperation between States is critical for ending the exploitative recruitment of domestic workers in major sending and receiving regions. In response to this need, the Government of the Philippines has initiated cooperation programmes with other member States – through bilateral, regional and global agreements – to ensure the effective application of Convention No. 189 in matters concerning the prevention of forced labour and trafficking of persons.

Bringing about change

A range of measures have been taken by member States to improve protection for domestic workers. These actions take many forms. In some countries, they have been based on the independent will of government to extend protections. For example, in Bolivia, the government improved protection of domestic workers through its 2003 Household Worker Law, which introduced a minimum wage for domestic workers and prohibits in-kind payments (which can short-change workers), and in 2010 it extended pension laws to apply to domestic workers. In some other States, change is being driven by the advocacy and awareness-raising campaigns of civil society groups and/or trade unions. In Ecuador, for example, civil society groups, such as the domestic workers' association in Guayaquil, south-east Ecuador, are tackling the problem of exploitative work conditions in the domestic work sector by helping workers organize themselves at the grassroots level. The association informs workers of their rights and provides legal, practical and psychosocial support.

An effective way to bring about change is to extend the scope of labour legislation so that it covers domestic workers. Member States have demonstrated that extending coverage in this way is indeed feasible. An increasing number of countries are investing in labour inspection and enforcement in the domestic work sector and in the provision of accessible, affordable and effective legal redress where exploitation and violation of rights occur.

Further reading

International Labour Office. 2013. *Domestic workers across the world: Global and regional statistics and the extent of legal protection* (Geneva, ILO).

Torriente, A. 2016. *Migrant domestic workers, health and HIV* (Geneva, ILO).

Hobden C.; Goldberg, H. 2015. *Improving working conditions for domestic workers: Organizing, coordinated action and bargaining* (Geneva, International Labour Office).

Tayah, M-J. 2016. *Decent work for migrant domestic workers: Moving the agenda forward* (Geneva, ILO).

A range of other policy resources and tools for making decent work a reality for domestic workers can be found online at http://www.ilo.org/global/topics/domestic-workers/WCMS_429114/lang--en/index.htm

This brief was prepared in the context of the Global Technical Team for Research. For more information on this particular brief please contact Anna Torriente (torriente@ilo.org).