

Checklist¹ to Protect and Support Domestic Workers

Domestic workers are an integral part of the global labour force. Whether hired locally or internationally, they are employed in or for a household to perform work such as cleaning, cooking, washing and person care that is vital for the wider economy. There are currently estimated to be between 53 million and 100 million domestic workers worldwide, with women constituting 83 per cent of this workforce.² Men are also sometimes hired as domestic workers – drivers, security guards, gardeners, cooks and housekeepers – but, given the different nature of their jobs and their location in society, their vulnerabilities and needs tend to differ from those of women domestic workers.

Although domestic work contributes significantly to the economic and social development of all countries, it is hardly regulated. This is because it is invisible, mostly undertaken by women and conducted within the private space of the home, which is not defined as a 'workplace'. Based on traditional gender roles assigned to women, it also carries the low value accorded to women's unpaid care work, which is not defined as work because it is not perceived as producing value. Domestic work is in fact seen as a 'labour of love' because it involves the physical and emotional care giving that are perceived as women's innate attributes and therefore needing no special skills.³ The bonds of attachment that may develop between employers, workers and family members being cared for further complicate an understanding of domestic work as work that needs no regulation. Against this backdrop, it is not uncommon to find domestic workers who are 'adopted' by employers, paid only in kind or not paid at all.

However, there are several promising examples of provincial or national legislation and programmes that offer elements of a comprehensive gender-sensitive approach to protect, support and promote the rights of domestic workers, especially migrants. These cut across several policy fields – including labour, migration and social welfare – and are largely the same as for any other workers in an overseas contractual situation but with additional measures tailored to the unique features of domestic work. There have also been several recent advances in the international normative framework addressing domestic workers, such as ILO Convention No. 189 concerning decent work for domestic workers, 2011,⁴ and ILO Recommendation No. 201; the General Comment on migrant domestic workers adopted by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

(CMW) in 2010;⁵ and the Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 26 on women migrant workers, 2008 (which also addresses domestic workers).⁶ Domestic workers' organizations and their support groups have contributed strongly to the achievement of the above outcomes.

Regulating this sector and promoting and protecting the rights of migrant domestic workers at all stages of the migration process is an issue that is key to all development endeavours. It gives recognition to the economic and social contribution of domestic work to human development. It reduces the social and economic costs borne by domestic workers, families, communities and States and thus promotes human development and good governance. Any analysis of labour and migration legislation (and its implementation), aimed at promoting and protecting the rights of migrant domestic workers, should therefore be made with reference to these international standards and the good practices of national actors aligned with or surpassing these standards.

The following checklist was agreed upon by governments, civil society and UN agencies at the Global Forum on Migration and Development (GFMD) 2011 Global Meetings on Domestic Care Workers at the Interface of Migration & Development: Action to Expand Good Practice.⁷ It is based on international standards and good national practices to help policy makers formulate and implement national policies, laws and programmes that promote and protect the rights of domestic workers, both female and male, taking account of differences between women and men within the sector as well as interacting ethnic, nationality and other differences.

Checklist to Protect and Support Domestic Workers

1 RECOGNITION AS WORK

Does the relevant policy, legal and institutional architecture of the country acknowledge:

- the significance of the economic and social contribution of domestic workers?
- its undervaluation and invisibility?
- its performance largely by women and girls, many of whom are international migrants and/or members of disadvantaged communities and hence particularly vulnerable to social, economic, civil and labour market discrimination and other abuse?
- the special conditions under which domestic work is carried out, making it important to introduce appropriate measures to enable domestic workers to enjoy their rights fully?
- that domestic workers, like any other worker, need protection under labour legislation?

2 DEFINITION

- Is the relevant policy, law and institutional architecture of the country informed by and consistent with the definitions of 'domestic work' and 'domestic worker' as framed in ILO Convention No. 189 concerning decent work for domestic workers⁸ and of 'migrant worker' found in the General Comment of the Migrant Committee on migrant domestic workers?⁹

3 COVERAGE

- Does the relevant policy, law and institutional architecture of the country cover all domestic workers?
- Where categories of domestic workers are excluded by the relevant policy or law, are they provided with at least equivalent protection?

4 NATURE OF RIGHTS PROTECTED

- Does the relevant policy, law and institutional architecture of the country promote and protect the human rights and freedoms of domestic workers – including undocumented domestic workers¹⁰ – and include provisions against all forms of abuse, harassment and violence?¹¹
- Does the relevant policy, law and institutional architecture of the country guarantee the fundamental principles and rights at work, including freedom of association and right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour, elimination of discrimination in employment and occupation, and protection of the rights of domestic workers, including migrant workers and their employers, to establish and join organizations, federations and confederations of their choosing?¹²

- Does the relevant policy, law and institutional architecture of the country provide for fair employment terms, decent working and living conditions, a minimum wage if it exists for other workers, an employment contract reflecting this, and for migrant domestic workers to receive their employment agreements before departure to the country of employment – unless covered by bilateral and multilateral agreements allowing free movement of persons?¹³
- Does the relevant policy, law and institutional architecture of the country provide for social security protections, such as access to health services, health insurance, maternity protections, etc?¹⁴

5 NATURE OF RIGHTS GOVERNING CONDITIONS OF EXIT, ENTRY AND RESIDENCE

- Is the relevant policy, law and institutional architecture of the country free from sex-specific bans and restrictions on women's migration based on age, marital status, disability, pregnancy or maternity status, or restrictions requiring permission from spouses or male guardians to travel and obtain travel documents?¹⁵
- Is the relevant policy, law and institutional architecture of the country free from provisions restricting women's employment in job categories dominated by men or excluding certain female-dominated occupations from visa schemes?¹⁶
- Is the relevant policy, law and institutional architecture of the country free from provisions making the immigration status of migrant workers conditional on the sponsorship or guardianship of a specific employer? (Such arrangements may restrict the liberty of movement of migrant domestic workers and increase their vulnerability to exploitation and abuse, including conditions of forced labour and servitude.)¹⁷
- Is the relevant policy, law and institutional architecture of the country free from bans on migrant domestic workers marrying nationals or permanent residents?¹⁸
- Is the relevant policy, law and institutional architecture of the country free from provisions (a) resulting in loss or denial of work visas based on HIV-positive or maternity status and (b) calling for mandatory medical testing of migrant domestic workers for HIV or pregnancy?¹⁹
- Does the law prohibit withholding of passports or identity documents by the employer or recruiting agency?²⁰

6 SERVICES AT ALL STAGES OF MIGRATION, INCLUDING TO STRENGTHEN ACCESS TO JUSTICE

- Do policies, laws and institutional architectures in countries of origin, transit and destination, as applicable, provide for gender-sensitive human rights-based pre-departure, on-site and on-return services (socio-economic, information dissemination, health and legal services, emergency shelter, etc.) that promote (a) the use of legal migration channels, (b) decent work and integration, (c) protection against abuse and victim support, (d) access to justice and (e) reintegration on return?²¹

- Do policies, laws and institutional architectures in countries of origin and destination, as applicable, provide for gender-sensitive services for efficient remittance transfers and their productive investment?²²
- Do policies, laws and institutional architectures in countries of origin and destination, as applicable, provide for gender-sensitive pre-departure, on-site and on-return information dissemination, awareness raising and training for domestic workers on (a) labour and immigration laws and employment contracts, (b) skills enhancement, (c) how to access socio-economic and legal services and (d) how to access complaints and redress mechanisms, at all stages of migration?²³
- Do policies, laws and institutional architectures in countries of origin and destination, as applicable, facilitate worker contact with families and family support services back home or provide for dependant services in countries of destination?²⁴

7 UNDOCUMENTED MIGRATION, SMUGGLING AND TRAFFICKING

- Do policies, laws and institutional architectures of the country ensure that migrant domestic workers have effective access to regular channels of migration based on actual demand, to prevent undocumented migration, smuggling and human trafficking?²⁵
- Do policies, laws and institutional architectures in countries of origin, transit and destination protect the human rights of undocumented domestic workers and their children, regardless of the parents' immigration status, including providing for gender-sensitive regularization programmes to avoid or address situations in which migrant domestic workers are undocumented or are at risk of becoming undocumented?²⁶

8 CO-OPERATION BETWEEN STATES, INCLUDING BILATERAL, REGIONAL AND MULTILATERAL FRAMEWORKS AND AGREEMENTS

- Does the policy, law and institutional architecture of the country provide for co-operation among States, including bilateral and multilateral co-operation between countries that promotes, supports and protects the rights of migrant domestic workers?²⁷

9 REGULATIONS FOR RECRUITING AGENCIES, EMPLOYERS, NATURE OF REMEDIES, MONITORING, COMPLAINT, REDRESS AND ACCOUNTABILITY MECHANISMS

- Does the country have laws, regulations or practices governing the operation of (a) private employment agencies recruiting or placing domestic workers and (b) employers of domestic workers to protect domestic workers from abuse (e.g., obligations of private recruiting agencies and employers towards domestic workers, etc.)?²⁸
- Does the policy, law and institutional architecture of the country ensure that adequate machinery and procedures – including labour inspections with due respect for the privacy of households

– exist to monitor employers, employment agencies and agents and to investigate complaints, alleged abuses and fraudulent practices by private recruiting agencies and employers against domestic workers?²⁹

- Does the policy, law and institutional architecture of the country provide for a mix of civil and criminal remedies?
- Does the policy, law and institutional architecture of the country have effective and accessible complaint and redress mechanisms (courts, tribunals or other dispute resolution procedures) that are not less favourable than those available to workers generally, including for migrant domestic workers and their families?³⁰
- Does the law have provisions for penalizing employers, employment agencies, agents and public officials who abuse domestic workers?³¹

10 CO-ORDINATED MULTI-SECTOR CONSULTATIONS AND PARTNERSHIPS, INCLUDING PARTICIPATION OF DOMESTIC WORKERS' ORGANIZATIONS AT ALL STAGES OF THE POLICY PROCESS

- Does the policy, law and institutional architecture of the country provide for the co-ordinated multi-sector response of key government agencies, sustained participation of domestic workers' organizations and their support groups, employment agencies, agents and others at all stages of the policy process – formulation, implementation, monitoring and evaluation of the law?

11 TRAINING AND AWARENESS RAISING FOR PUBLIC OFFICIALS, RECRUITING AGENCIES AND EMPLOYERS

- Does the relevant policy, law and institutional architecture of the country mandate the government to provide (a) regular training and education for police officers, prosecutors, the judiciary, social workers and other public officials, (b) targeted awareness raising for recruiting agencies and employers and (c) public awareness raising to promote and protect the rights of domestic workers?³²

12 RESEARCH, DATA COLLECTION AND ANALYSIS

- Does the relevant policy, law and institutional architecture of the country mandate governments to conduct and support research, data collection and analysis on the concerns of domestic workers, including migrant domestic workers, for (a) effective policy formulation and implementation and (b) policy impact assessments?³³



13 MONITORING AND EVALUATION

- Is monitoring and evaluation of effectiveness and impact built into the relevant policy, law and institutional architecture of the country?
- Does the relevant policy, law and institutional architecture of the country have provisions placing specific responsibility on agencies to compile data on complaints, cases of exploitation or abuse and relief measures?

14 RESOURCE ALLOCATION

- Does the relevant policy, law and institutional architecture of the country provide for sufficient financial and capacitated human resources to be allocated by governments for effective implementation of policies and programmes that promote and protect the rights of domestic workers?

ENDNOTES

1 The checklist is based on International Labour Organization (ILO) Convention No. 189 concerning decent work for domestic workers, 2011, and its Recommendation No. 201; the General Comment on migrant domestic workers adopted by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), 2010; and General Recommendation No. 26 of the Committee on the Elimination of Discrimination against Women (CEDAW) on women migrant workers, 2008 (which also addresses domestic workers). It was agreed upon by governments, civil society and UN agencies at the GFMD 2011 Global Thematic Workshops on Domestic Care Workers at the Interface of Migration & Development: Action to Expand Good Practice, organized in the Caribbean and Africa by the Governments of Jamaica (7–8 September 2011) and Ghana (20–21 September 2011). These workshops were convened in partnership with the Government of Switzerland (the Chair-in-Office), UN Women, the International Organization for Migration (IOM), the Migration Policy Institute and the Mac Arthur Foundation – and at the GFMD Concluding Debate in Switzerland, December, 2011. Technical assistance to this checklist by UN Women, ILO, IOM, OHCHR and the Policy Research Institute, Institute for the Study of International Migration, Georgetown University, Washington, DC is gratefully acknowledged.

8 The term 'domestic work' means work performed in or for a household or households; the term 'domestic worker' means any person engaged in domestic work within an employment relationship; a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker (Art 1 (a, b, c), ILO Convention on Domestic Workers).

9 The General Comment of the Migrant Committee on migrant domestic workers refers to Art 2, Para 2 of the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families, which defines the term 'migrant worker' as any person who "is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". Art 3 (d) of the Convention excludes from its scope of application a number of categories of workers, including certain employees of international organizations and of States; investors residing outside of their State of origin, whose status are regulated by general international law or specific agreements; students and trainees; and seafarers and workers on offshore installations who have not been admitted to take up residence and engage in a remunerated activity in the States of employment. Moreover, refugees and Stateless persons are only included under the Convention if such application is provided in national legislation.

10 Para 43 and 44 of the General Comment of the Migrant Committee on migrant domestic workers; Para 26 (i, j, l) of the CEDAW General Recommendation on women migrant workers.

11 Art 5 of the ILO Convention on Domestic Workers; ILO Recommendation No. 201 concerning decent work for domestic workers; Para 26 (d, l, j) of the CEDAW General Recommendation on women migrant workers.

12 Art 3 (1, 2 (a, b, c), 3) of the ILO Convention on Domestic Workers; Para 38, 45, 46 of the General Comment of the Migrant Committee on migrant domestic workers; Para 26 (b, d) of the CEDAW General Recommendation on women migrant workers.

19 Para 61 of the General Comment of the Migrant Committee on migrant domestic workers; Para 3 of ILO Recommendation No. 201 concerning decent work for domestic workers; ILO Recommendation No. 201 on HIV/AIDS in the world of work.

20 Art 9 (c) of the ILO Convention on Domestic Workers; Para 26 (d) of the CEDAW General Recommendation on women migrant workers.

21 Para 38, 42, 43, 44 of the General Comment of the Migrant Committee on migrant domestic workers; Para 24 b (d-j) of the CEDAW General Recommendation on women migrant workers.

22 Para 24 (g) of the CEDAW General Recommendation on women migrant workers; Para 29 (d) of the General Comment of the Migrant Committee on migrant domestic workers.

23 Para 28 (a-c (i), (ii), (iii)), 29 (a-f), 30 (a-c) of the General Comment of the Migrant Committee on migrant domestic workers; Art 24 (b (i-iii, v)) of the CEDAW General Recommendation on women migrant workers.

24 Para 54, 55, 56, 57, 58, 59 of the General Comment of the Migrant Committee on migrant domestic workers; Para 26 (e) of the CEDAW General Recommendation on women migrant workers.

25 Para 51 of the General Comment of the Migrant Committee on migrant domestic workers.

26 Para 52 of the General Comment of the Migrant Committee on migrant domestic workers; Para 26 (l) of the CEDAW General Recommendation on women migrant workers.

27 Para 27 (a, b (i), (ii)) of the CEDAW General Recommendation on women migrant workers; Para 31, 32 (a, b, c) of the General Comment of the Migrant Committee on migrant domestic workers.

28 Art 15 (a, c) of the ILO Convention on Domestic Workers; Para 33, 34 (a), 35, 36 of the General Comment of the

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