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# DECENT WORK FOR MIGRANT DOMESTIC WORKERS: MOVING THE AGENDA FORWARD



# DECENT WORK FOR MIGRANT DOMESTIC WORKERS: MOVING THE AGENDA FORWARD

Marie-José Tayah

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First published 2016

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*Decent work for migrant domestic workers: Moving the agenda forward* / Marie-José Tayah  
International Labour Office, Conditions of Work and Equality Department. – Geneva: ILO, 2016.

ISBN 978-92-2-131275-8 (print)

ISBN 978-92-2-131276-5 (web pdf)

International Labour Office. Conditions of Work and Equality Department.

decent work / migrant worker / domestic work / labour migration / workers rights / role of ILO

13.01.1

*ILO Cataloguing in Publication Data*

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This publication was produced by the Document and Publications Production,  
Printing and Distribution Branch (PRODOC) of the ILO.

*Graphic and typographic design, layout and composition,  
proofreading, printing, electronic publishing and distribution.*

PRODOC endeavours to use paper sourced from forests managed  
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Code: BIP-WEI-REP

# Foreword

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Migration for work is becoming increasingly feminized. Almost half of migrant workers globally are women. While only 13 per cent of women migrant workers find employment in the domestic worker sector today, an active policy of encouraging women to integrate the labour market, demographic transformations and the downsizing of the welfare system are combining to fuel the demand for home-paid care and domestic workers in many countries.

The International Labour Organization (ILO) has a growing portfolio providing technical assistance and advice to governments on protecting domestic workers. The report “Achieving decent work for migrant domestic workers: Moving the agenda forward” is part of a broader ILO strategy to promote decent work for all domestic workers.

The report builds on knowledge generated in the context of the European Union-funded Action Programme on Migrant Domestic Workers and their Families (2013–2016), a partnership bringing together the ILO, the International Trade Union Confederation (ITUC), the International Domestic Workers’ Federation (IDWF), UN Women, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Confederation of Indonesia Prosperity Trade Unions (KSBSI).

The programme undertook policy-oriented research and pilot-tested national capacity building approaches to promote rights-based policies and regulations in ten countries through five main migration corridors consisting of Ukraine-Poland, Zimbabwe-South Africa (Lesotho was added in 2014), Indonesia-Malaysia, Nepal-Lebanon, and Paraguay-Argentina.

While the short term objective of the report is to offer key guidance and recommendations for improving migration policies, awareness raising campaigns and capacity building programmes for domestic workers, its longer-term objective is to leverage better working conditions for migrant domestic workers with a view to realizing the 2030 Sustainable Development Goals (SDGs). The sector’s significance in sustaining reproductive labour and enabling the integration of women in lucrative employment across the world, makes it a lynchpin to achieving the SDGs.

The report is intended for governments, workers’ and employers’ organizations as well as international partners striving to improve gender equality for sustainable development and growth. Its findings will inform ILO’s Women at Work Centenary Initiative which was introduced by ILO’s Director-General at the International Labour Conference in 2015 to survey the place and conditions of women in the world of work and engage tripartite constituents in concrete action to realize equality of opportunity and treatment.

These findings will contribute further to ILO’s development of a global strategy to address the needs of migrant workers in the wider care economy.

**Michelle Leighton**, Chief  
Labour Migration Branch



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# Acknowledgements

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This report was written by Marie-José Tayah (ILO Geneva). Chapter 5 was written in collaboration with Leanne Melnyk (ILO Geneva) with input from Igor Bosc (ILO New Delhi). Special thanks go to the team of ILO's EC-funded Global Action Programme on Migrant Domestic Workers and their Families in Geneva – namely; Maria Elena Valenzuela for overall guidance, Ivon Garcia for coordinating the editing, design, and layout, and Jared Bloch for coordinating the communication and media outreach.

We are grateful to all those who have reviewed the report. This includes Manuela Tomei, Michelle Leighton, Maria Gallotti, Claire Hobden, and Laura Addati (ILO Geneva), Igor Bosc (ILO New Delhi), Emanuela Pozzan (ILO Beirut), Marieke Koning (ITUC Brussels), Elizabeth Tang and Fish Ip (IDWF), Inkeri Von Hase and Ines Finchelstein (UN Women New York), Aurelia Segatti, Myriam Vandenbroucke and Vani Saraswathi. The following individuals reviewed chapters or elements of the report: Natalia Popova (ILO Geneva) and Parvati Raghuram (The Open University).

Special thanks go to the editor (Fiona Paterson) and to all those who have provided important research contributions, including Hadi Assaf (statistics), Aurelia Segatti and Ito Peng (regional reports), Giuseppe Messina, Patricio Dobré, Clyde Soto, Myriam González, Zaheera Jinnah, Pamhidzai Bamu, Michael L. Mhlanga, Marta Kindler, Anna Kordasiewicz, Monika Szulecka, Nicola Piper, Alice Nah, Olena Malynovska, Ana Liz Rodriguez, Rola Abimourched, Shireen Mazen, Reem Aslan, Jebli Shresta and Eleanor Taylor-Nicholson, Sawsan Abdulrahim, Zeinab Cherri, Sapana Malla, Victor Imas, Adamnesh Atnafu, Olena Vaszinska, Elisa Menegatti, Anna Torriente, Lin Lean Lim, Leanne Melnyk, Swairee Rupasinghe and Mariela Acuña (background papers).

We thank Roxani Roushas, Giuliana DeRosa, and Ayat Mohammed for their valuable research assistance.

Funding for this publication was provided by the European Union (Project GLO/12/28/EEC). This publication does not necessarily reflect the views or policies of the EU, nor does mention of trade names, commercial products, or organizations imply endorsement by the European Union.

# Executive summary

This report is part of a broader ILO strategy to promote Decent Work for Domestic Workers. It is informed by knowledge generated in the context of ILO's EC-funded Action Programme on Migrant Domestic Workers and their Families (2013-2016) – namely; 11 law and policy country profiles, three surveys on employers' knowledge, attitudes, and practices, a number of thematic studies, global and regional estimates on migrant domestic workers, and numerous project interventions.

The short-term objective of the report is to offer key guidance and recommendations for improving migration policies, awareness raising campaigns and capacity building programmes for domestic workers.

The longer term objective of this report is to leverage better working conditions for migrant domestic workers with a view to realizing the 2030 Sustainable Development Goals (SDGs).

## Migration for domestic work: A global and regional overview

Globally, there are 67.1 million domestic workers, of whom 11.5 million are international migrants. Around 8.5 million (73.4 per cent) of all migrant domestic workers are women. South-East Asia and the Pacific host the largest number of women migrant domestic workers (24 per cent), followed by Northern, Southern and Western Europe (22.1 per cent) and the Arab States (19 per cent) (ILO, 2015a).

The majority of domestic workers who migrate do so to **neighboring countries** (e.g. in Latin America from Peru to Chile, from Paraguay to Argentina and from Nicaragua to Costa Rica; in Africa from Lesotho and Zimbabwe to South Africa and from Somalia and Uganda to Kenya; and in Europe from Ukraine to Poland, from Moldova to Italy and from the Russian Federation and the Baltic States to Finland). This is followed by migration **between subregions** (from South Asia to East Asia and South-East Asia), and, finally, by **interregional flows** (from Asia and Africa to the Arab States; and from Latin America, Africa and Asia to Europe and to North America).

With varying regional differences, **the demand for home-based paid care and domestic work is linked to a number of interacting patterns:** (a) an increase in women's employment and the subsequent transformation from single to dual wage-earning families; (b) rapid population ageing, increasing life expectancy and lower fertility rates; (c) tight fiscal policies and social policy budgets, weakened public care services, and government delegation of care services to families.

The Domestic Workers Convention, 2011 (No. 189) defines domestic work as **“work performed in or for a household or households”**. This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family, even taking care of household pets.

The integration of women into the labour market and an emerging middle class in urban centres have generated a greater demand for domestic workers in **Africa** (Segatti, 2016).

Ageing, incentives to integrate women into the labour force and the collapse of the extended family care model have combined to increase the demand for domestic workers in **Asia**. Variations in the cultural acceptance of outsourcing elderly care to the private sector (whether delivered in an institution or at home) or to private individuals have led to different migration outcomes for women workers in this sector in East Asia (Peng, 2016).

In the **Gulf States**, the rentier economy and a culture that frowns upon placing ageing relatives in elderly care institutions is driving the demand for domestic workers. In the **Levant**, migrant domestic workers are hired by Lebanese families to provide mostly care to elderly household members. This enables younger Lebanese to emigrate and maintain remittance flows into the country, an important source of foreign currency reserves and household consumption (Tayah, 2014).

An active policy of encouraging women to integrate into the labour market, ageing, longevity, and the downsizing of the welfare system combine to drive the demand for migrant domestic workers in **Europe**. Variations in the welfare system in Europe (familialistic or publicly funded) produce a variety of migration outcomes (Marchetti and Triandafyllidou, 2015).

A history of familialistic social care management and tight public funding (as a result of structural adjustment programmes) create a demand for migrant domestic workers in **Latin America**. Geographic proximity, the availability of large networks and regional agreements encourage the mobility and circulation of domestic workers. Labour reforms, especially in Chile and Argentina, are attracting large numbers of women migrants into the sector (Soto et al., 2016).

- A variety of regimes govern the migration of women for domestic work. These range from temporary (e.g., to the Arab States and to Asia) to free mobility schemes (e.g., within Latin America and the Caribbean and Europe). Certain contexts fall outside this spectrum altogether.
- The persistence of temporary migration schemes for migrant domestic workers where the demand for their services is significant, can lead to irregular migration.

## Protecting domestic workers along the migration cycle: What role for governments?

All States have the sovereign right to develop their own policies on labour migration. International labour standards and other international instruments, as well as non-binding guidelines, play an important role in shaping policies that are fair, effective and coherent.

Domestic workers and migrants are covered by ILO's international labour standards, unless otherwise specified. The most important ILO Convention with respect to domestic workers is the Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation 201.

Significant progress was noted in national law and practice five years after the adoption of the Convention. At the same time, domestic workers remain excluded, in total or in part, from the coverage of labour law, and hence are particularly vulnerable to exploitation and abuse. Additional law and policy challenges relate to the situation of migrant domestic workers, as the latter are at the cross roads of two sovereign countries which often have divergent interests and policy objectives. Addressing these challenges requires targeted legislative and policy initiatives by both countries of origin and destination for migrant domestic workers.

**Countries of origin** develop foreign employment policies to protect their nationals who are working abroad, to facilitate their migration, employment in foreign countries, and their return (Abella, 1997). Governments use a variety of institutional arrangements to actualize the principles and stipulations enshrined in their foreign employment policies. These include setting up labour desks at international airports, introducing complaint mechanisms, appointing labour attachés and establishing pre-departure training, welfare funds, rehabilitation centers and employment offices for returnees.

These arrangements are sometimes ineffective owing to budgetary constraints that restrict the ability of countries of origin to set up consular representations abroad with the capacity to follow through on the policy, lack of coherence among line ministries responsible of different aspects of migration such as between ministries of foreign affairs and ministries of foreign employment, the absence of bilateral labour agreements (BLAs) or memoranda of understanding (MoUs) to extend the application of these policies to a foreign country, and a general focus on placement rather than protection. Where BLAs and MoUs are in place, they facilitate labour market access rather than provide protection to workers (Wickramasekara, 2015). Also, BLAs do not specifically consider gender, use gender-neutral terminology or address the specific vulnerability of female migrant workers (Lim, 2016). Bilateral agreements frequently include a model employment contract which regulates some aspects of employment (e.g. contract period, travel expenses, wages, accommodation, medical care and annual leave) but these typically fall short of international labour standards and do not necessarily have the force of the law (Wickramasekara, 2015). Model contracts are negotiated with particular countries of origin, each resulting in a different wage level. This creates wage gaps and discrimination in treatment between workers of different nationalities.

Adequate institutional capacity and inter-ministerial coordination (especially between the ministry of labour and the ministry responsible for foreign employment) is essential to protect citizens working abroad (Baruah and Cholewinski, 2007). To facilitate coordination between these two ministries

and other relevant stakeholders, migration is mainstreamed into the work of national committees on human trafficking (e.g. in Nepal), or national women's commissions (e.g. the Comisión Nacional Tripartita para Examinar y Promover la Igualdad de Participación de la Mujer en el Trabajo in Paraguay). These commissions are policy platforms bringing together all the relevant stakeholders to identify policy problems and corresponding solutions in a concerted manner. These mechanisms are only effective to the extent that they reflect the priorities of migrant domestic workers. The participation of workers' organizations in these platforms is instrumental in channelling those priorities.

**Countries of destination** employ a number of measures to extend rights and protection to migrant domestic workers. These initiatives include extending labour rights to migrant domestic workers, introducing written contracts (model contracts or SUCs) to formalize the employment relationship, developing migration policies that take labour market needs for domestic workers into account, instituting national coordination mechanisms and action plans to implement migration policies, launching information and regularization campaigns, and setting up effective complaints and redress mechanisms.

*Extending the reach of labour law* to domestic workers can facilitate worker-employer relations by providing a binding reference point, thus lowering transaction costs and addressing the power imbalance between the parties (ILO, 2012). Protection gaps are greater in contexts where labour laws do not extend to domestic workers, even when subordinate regulations, specific labour laws, bilateral agreements and standard contracts are in effect. Important working conditions for migrant domestic workers include wage legislation, working time provisions and maternity protection. Minimum wage policies are critical because domestic work is perceived as unskilled and unproductive work (wages are independent of productivity and profit margins are low), and therefore not worthy of monetary reward. Working time policies are also critical because of the number of live-in domestic workers and their heightened exposure to long and unpredictable working hours. Finally, maternity protection is important because this is a women-dominated sector, mostly poor, who are in dire need of substitution for their wages as they are on maternity (ILO, 2013).

*Written employment contracts* play an important role in levelling the playing field between domestic workers and their employers. A contract proves the existence of the employment relationship and clarifies its terms should a dispute arise between the parties. Some countries make model contracts available to facilitate compliance (ILO, 2012).

It is very important for countries of destination to *introduce policies that take into account the demand for domestic workers*, and the extent to which shortages in the sector should be filled by foreign labour. In addition to migration policies, countries of destination need to consider migrant-friendly post-admission policies like regulating the labour market, ensuring the protection of workers, facilitating social cohesion, supporting community welfare and making social security provision (Baruah and Cholewinski, 2007).

Restrictions on mobility, like temporary migration schemes and limitations on the employment and physical mobility of workers at destination, prompt irregular migration and heighten migrants' vulnerability to exploitation. They push migrants into the informal economy and create an invisible industry that operates outside the legislative framework.

*Regularization* is one effective measure of addressing the extreme vulnerability of migrant workers and members of their families who are in an irregular situation,<sup>1</sup> especially those who have lived in a country for a long time, or who came as infants, or who are working and thus contributing to the society in which they live (OHCHR, 2015). To ensure that both migrant domestic workers and employers respond to regularization campaigns requires clear eligibility rules, a wide-reaching and strategic publicity campaign, involving workers' organizations and non-governmental organizations trusted by the migrants (Bohning, 1996).

**Countries of origin and destination have a shared responsibility** in developing and implementing fair and effective labour migration policies. The absence of bilateral, regional, and interregional policy frameworks to govern the migration and work of low-skilled workers is a hindrance to the realization of migrant domestic workers' rights, even where significant legislative improvements have occurred at the national level, creating major policy gaps and generally weak compliance structures.

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1. United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, Geneva, 2013 (Geneva), paragraph 16.

Cooperation takes place at the bilateral, intraregional, regional and interregional levels. It develops between civil society organizations, trade unions, employers' organizations, governments and labour recruiters. It may take the form of, for example, a union-to-union agreement, a bilateral agreement between two governments, a public-private partnership between a government and a syndicate of recruitment agencies, a regional agreement or a multi-stakeholder initiative. Cooperation can be binding or non-binding.

- Cooperation serves to promote coordination between different national and international legal systems, especially as regards the international labour recruitment industry where employers and placement agencies exist in one country while recruitment agencies and workers' families are in another.
- Cooperation also gives effect to the protective measures of foreign employment policies at destination, promotes free circulation of workers, social security entitlements and the accreditation of qualifications and skills, especially in the context of regional integration processes.
- Cooperation prevents a race to the bottom between countries of origin in the working conditions of domestic workers.

## Gaining insight into the compliance gap: The Limits of awareness raising

Over the past three years, the ILO has conducted surveys, focus group discussions and in-depth interviews with migrant domestic workers and their employers in Argentina, Poland, South Africa, Kuwait, Jordan, Lebanon, Ukraine, Malaysia, and India.<sup>2</sup> The surveys and focus groups with employers aimed to explore employers' behaviour relative to their knowledge of domestic workers' rights. The surveys and focus groups with domestic workers aimed to assess workers' satisfaction with their working and living conditions relative to their knowledge of those same rights and obligations. **Gaining insight into how employers' and workers' perceptions contribute to the protection gap can inform effective advocacy and awareness programmes for employers as well as information campaigns for domestic workers.**

According to the research, **employers' perceptions of domestic work and domestic workers** are mediated by employers' ethnicity or nationality, their income and education levels (including household characteristics that are determined by these factors), the degree to which the worker is "considered" a worker or a family member, and the worker's occupational profile (e.g. housework, elderly care, child care, etc.). The worker's nationality is also a determining factor in shaping employers' views about the value of the work performed.

Respectively, **workers' level of dissatisfaction with the employment relationship, and thus their motivation to seek legal redress** in the event of abuse, is mediated by the extent of their knowledge about their rights, the perception that their working conditions at destination are better than they would be at origin, and the number of years that they have spent in the country of destination. The extent to which awareness of rights is a determining factor is in turn influenced by the availability of other work options, the ability of workers to overcome language barriers, the reach of awareness and mobilization efforts, and the perceived profitability of legal recourse.

Employers' and workers' behaviours are nested within broader social and gender structures, **the legacy of social, racial, class and caste hierarchies** that characterize the localities and generations from which they emerge. Socialization processes survive legal reforms. For example, indigenous and tribal hierarchies shape the experience of domestic workers in and from Nepal, race shapes the experience of domestic workers in South Africa, age shapes the experience of migrant domestic workers in Lebanon, and class shapes the experience of domestic workers in Poland.

Overall, the perception that domestic work is women's work, a labour of love, and therefore unworthy of pecuniary reward, continues to shape the low value that employers, including women employers, attach to domestic work irrespective of context and social hierarchies.

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2. In the context of four ILO projects: the ILO Action Programme on Promoting the Rights of Women Migrant Domestic Workers (2011-2014) funded by the European Union; the Global Action Programme on Migrant Domestic Workers and their Families funded by the European Union; the Work in Freedom Programme funded by the UK Department for International Development; and the Migration and Governance Network funded by the Swiss Agency for Development and Cooperation.

- It is vital for domestic workers to be protected by institutional policies and adequate regulations, but given the significance of perceptions and the persistence of social hierarchies beyond legislative reform, it is just as important for these policies and regulations to be reflected in employers' and workers' practices.
- It is crucial here to recognize that while labour standards are universal in their application, implementation is fragmented at the national level as a result of the mosaic of social, cultural and economic attributes that make up each of the “employers” and “workers” cohorts. These cohorts are not monolithic. Bringing their practice closer to universal standards and national legislation requires a surgical approach to awareness raising and capacity building that takes into account the diversity of these groups.
- Bridging knowledge-practice gaps, however, should only be seen as reinforcing to institutional efforts aimed at increasing the scope of labour and social protections for migrant domestic workers and eliminating the laws, policies and income differences that sustain the abysmal working conditions of women in this sector.
- Further, knowledge in itself does not necessarily translate into assertiveness unless the migrant is empowered and her voice is channeled through relevant policy platforms. This can only happen by building strong and representative workers' organizations to give strength to individual workers' claims.

## Unseen, Uncosted, and Unwaged: The importance of skills' development and recognition for domestic workers across borders

There is a prevailing assumption that domestic work is unskilled. This is because (i) domestic work is perceived as an extension of women's natural household functions and therefore not worthy of pecuniary reward; and (ii) the integration of women into the labour market has shifted the burden of care onto women from poorer countries or to historically disadvantaged groups – such as minority ethnic groups, indigenous peoples, low-caste and low-income groups – who are willing to accept lower wages.

Skills' programmes for domestic workers play an important role in reinforcing the view among both workers and employers that domestic work is real and professional work.

Skills and vocational training programmes range from short pre- or post-departure orientation training informing migrants about the lifestyle and their rights and obligations in the country of destination, to longer and more holistic vocational trainings. Research and practice suggest that, irrespective of the form they take, these programmes face a variety of challenges.

Some programmes **do not recognize variations in skill level and specialization** within the domestic work sector even though people employed in this sector are expected to multitask, juggling tasks of limited complexity, such as ironing and cooking, with highly complex tasks such as taking care of the sick, the elderly and the disabled. With population ageing and longevity and the resultant growing number of people in need of long-term care, out-patient care in homes has taken primacy over service provisioning in hospitals, with migrant domestic workers taking on the role of unregulated nurses (Kofman and Raghuram, 2013, p. 113), administering drugs, bathing patients and taking patients' blood pressure. *Skills development programmes must account for the increasing complexity of the domestic work sector with the need to see skills for domestic work in the broader context of the care economy. For instance, more opportunities for (migrant) domestic workers to access formal and better paid jobs will be available if governments are more willing to invest in quality care jobs in the public sector. Correspondingly, wage percentage increases above the minimum wage should be tied to education and skill categories.*

Some programmes are reductionist in the sense that they **only capture the technical/vocational dimension of domestic work**, such as learning how to operate household appliances and using detergents. Because domestic work is largely relational, research carried out by the ILO demonstrates that transversal skills (such as communication and organizational capacity) are more in demand by employers than vocational skills. Nonetheless, transversal skills are rarely factored into skills building programmes and when they are, they tend to focus on “soft skills” while avoiding the labour dimension of communication skills – which includes negotiating working and living terms and conditions with employers – and the psychosocial dimension (e.g., coping with, and building resilience to, the frustration and aggressiveness that people with chronic ailments being cared for exhibit). *Transversal skills should be recognized and certified through professionalization programmes. Failure to recognize these competencies contributes to the under valuation of domestic work overall with implications for employee wages and the quality of care administered to employers.*

Further, and related to the previous point, employers have exhibited a demonstrated need for attitudinal skills<sup>3</sup> (i.e., predisposition toward work) that reflect their **preference for obedient and docile workers who are willing to accept multifunctional work arrangements** and respond to their requests at all times of the day. Therefore, *in addition to embedding labour rights and bargaining skills, there is also a need to embed a women empowerment dimension in orientation and skills' programmes. Skills' programmes should be grounded in fundamental principles and rights at work, rather than teaching docility, and receive the support of public institutions or the social partners to ensure compliance with rights-based curricula.*

**Programmes are not linked to effective labour matching mechanisms at origin or destination, or between origin and destination.** A skills' mismatch leads to a care drain in their home countries and to deskilling of migrants in countries of destination. Both a care drain and deskilling result in labour market deficiencies and reduce the sector's capacity to foster the development of migrants and that of countries of origin and destination. Further, the absence of skills' recognition frameworks in the sector leads to information asymmetries between employers who have no way of being sure of the competencies of the worker whom they are paying and workers who are either not equipped to perform the tasks required of them or have the potential to perform much more complicated tasks. This mismatch irrefutably results in frustrations which ultimately transform into labour disputes. *Effective labour matching must be undertaken to prevent "care drain" and the "deskilling" of migrant women, which effectively reduce the development potential of migrants, and of countries of origin and destination.*

**The growth in the interregional migration of domestic workers, as seen in Asia, Latin America and Africa, is not matched by regional model competency standards (RMCS)** that recognize the skills of men and women in this sector. In addition to facilitating mobility, *these standards can capture and recognize their upward progression within the sector and contribute to their ability to find employment in higher complexity occupations within and outside the sector on returning in their countries of origin. These RMCS need to be reflected in the national legal systems and should be complementary to national social cohesion plans for reintegrating returnees and to plans on promoting productive employment to avoid the returnees' deskilling.*

- Skills' programmes should strike the right balance between leveraging and recognizing existing skills, on the one hand, and skilling, on the other. Leveraging existing skills will reinforce workers' and employers' recognition of the professional value of the work performed by women in households broadly.
- Compliance is reinforced when skills' programmes are grounded in fundamental principles and rights at work, and receive the support of public institutions or the social partners.

## Reducing the costs of labour migration through fair recruitment practices

Labour recruiters are part of an increasingly powerful migration industry that has grown in size and profitability since the mid-1990s (Jones, 2015, p. 9). In 2013, 60.9 million people gained access to the labour market in one way or another through the employment and recruitment industry (CIETT 2015). Labour recruiters assist families and workers in navigating the complex immigration and employment laws and procedures in the relevant jurisdictions.

While the recruitment model in the domestic work sector varies significantly depending on the country and/or individual context, the most common involves cooperation between labour recruiters in countries of origin and destination.

This cross-border industry for recruiting and placing migrant women in the domestic work sector encompasses small and micro-enterprises, public-private enterprises, mega-recruitment agencies and multinationals. In countries of origin, domestic work seems to be concentrated in family-owned enterprises with a small staff, limited financial capital and a local client base (Jones, 2015, p. 15). Labour recruiters in countries of origin contract out to sub-agents in villages and rural areas. While many recruiters are formal and subject to both legal and industry standards, sub-agents may be unregistered and have limited accountability.

At destination, placement is performed via cooperatives, government authorities with a corporate identity, small and medium-size enterprises (PEAs or cleaning companies) and mega-recruitment agencies.

3. Attitudinal skills are a subset of transversal skills. These "skills" capture a worker's predisposition towards work (e.g., motivation, initiative, responsiveness, etc.).

Where migration is intraregional or between neighbouring countries, job matching and placement are facilitated by social and informal networks, sometimes in conjunction with labour recruiters. Placement can also be governed by a simple procedure that allows the direct recruitment of a migrant domestic worker by her/his employer.

The fragmented nature of recruitment combined with the political power that labour recruiters wield in origin and destination countries acts to the detriment of migrants causing excessive fees, working conditions akin to forced labour, contract substitution, visa trading and ineffective complaint and grievance procedures. Excessive recruitment fees are transferred onto workers in the form of direct payments, large loans requiring repayment at extremely high interest rates or salary deduction schemes.

While many allegations and reports of abuse persist, countries of origin and destination are devising strategies to regulate and monitor PEAs. These strategies include agreements, joint liability schemes, BLAs, MOUs, inspections, fines, and black lists, etc.

One of the key challenges to regulating the international labour recruitment industry in the domestic work sector is coordinating regulation and enforcement between different national and international legal systems; Employers and placement agencies are in one country while recruitment agencies and workers' families are in another.

- For recruitment to lead to decent work, a number of conditions have to be met. Discrimination in the mobility of workers (e.g., bans on the deployment of women workers) should be eliminated to limit the power of informal recruiters and to ensure the transparency of the recruitment process.
- Further, the accountability of labour recruiters across the supply chain needs to be ensured through proper regulation and effective monitoring and enforcement systems.<sup>4</sup> BLAs that are grounded in International Labour Standards are important in this regard.

## Domestic workers organizing across borders and winning rights

The organizing of migrant domestic workers is important in affording workers labour protections. Workers' organizations have campaigned for domestic workers' right to labour protections, raised awareness to workers' rights, supported individual workers and employers in their contract negotiations, and called on authorities to address labour abuses. Collective bargaining between domestic workers' and employers' organizations ensures that working terms and conditions are satisfactory to all and increase compliance which can greatly improve working conditions and the quality of the work performed by domestic workers (Hobden, 2015, 2).

In the years leading up to adoption of the Domestic Workers Convention, 2011 (No. 189), the domestic workers' movement picked up further momentum, as domestic workers' organizations around the world began consolidating their efforts, progressively forming the International Domestic Workers' Network (IDWN). In 2013, the IDWN held its founding congress and became the International Domestic Workers' Federation (IDWF), an affiliate of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

In December 2011, the ITUC launched the "12 by 12" campaign in partnership with the IDWF. The campaign aimed for the ratification of the Domestic Workers Convention, 2011 (No. 189), by 12 countries by the end of 2012.<sup>5</sup> Twenty-two countries have already ratified Convention No. 189 and over 30 countries have adopted law and policy reforms and at least another 18 have embarked on labour reforms. Moreover, an estimated 100,000 domestic workers joined a union. Around 30 million domestic workers now enjoy more rights and protection in labour law, including the right to a minimum wage or higher wage, access to social protection, regulation of working time and written contracts. A second phase of the "12 by 12" campaign was launched at the ITUC's Third World Congress in May 2014, dubbed "12+12", aiming at 12 plus 12 ratifications and the organization of 100,000 more domestic workers by 2018.

4. Report of ILO's Interregional Knowledge Sharing Forum: good practices and lessons learned on promoting international cooperation and partnerships to realize a fair migration agenda for migrant domestic workers in Africa, the Arab States and Asia, (5-7, May 2016), Antananarivo, Madagascar (see presentation by Bosc, I.).

5. The European Trade Union Confederation, Public Services International, Human Rights Watch, Amnesty International, Anti-Slavery International, Migrant Forum in Asia, SOLIDAR and Caritas joined the campaign, lending more strength to the national advocacy and organizing campaigns.

At country level, these organizations have overcome significant challenges to organizing and advocating for the protection of migrant domestic workers. Organizing domestic workers involves significant challenges, due to the dispersion of the workforce, the long working hours of domestic workers, and the fear they face of losing their jobs (Hobden, 2015, 1). Where there is a high concentration of migrant domestic workers, additional challenges arise around the worker's right to freedom of association, language barriers, cultural differences, and freedom of movement.

Domestic workers seeking to organize in the context of a union face numerous challenges in law and practice. **Legally**, domestic workers are sometimes excluded from the right to freedom of association and therefore cannot form or join trade unions. **Operationally**, the workplace isolation of domestic workers does not fit into the traditional model of workplace organizing as in the case of construction and factory workers. From an **organizational culture** perspective, the female composition of the domestic workforce stands in contradiction with the overwhelmingly male composition of unions.

The challenges are exacerbated when it comes to **migrant** domestic workers. In some cases, migrant domestic workers are specifically excluded from the right to join or form unions, or to hold elected positions within the unions. If domestic workers are in *irregular situation*, the task of organizing them is complicated further due to the fear of not only losing their jobs, but also being deported. *Language barriers* and cultural differences are another operational constraint to building organizations based on worker identity, rather than on nationality, ethnicity or language group. This may be particularly true where there are both local and migrant domestic workers.

In this context, unions have configured new ways to recruit members to work around these barriers. Unions have adopted a community-based model versus the traditional workplace model of organizing or adopted a service-oriented approach to advocacy in order to attract new members. Unions have also developed strategies or political campaigns that target the structural sources of exploitation of this group of workers (Ally, 2005, pp. 184-207).

In the case of migrant domestic workers, organizations in countries of origin enter into bilateral and multilateral agreements with trade unions in countries of destination providing for the exchange of information and transfers of membership. Some organizations have also opened branches in countries of destination.

There are various forms of domestic workers' organization. Domestic workers can set up or join trade unions, revert to the association model of organizing (e.g. community-based organizations and cooperatives), and/or experiment with arrangements straddling the association and union models. Many of these organizations consolidate horizontally (in national federations of domestic workers' unions and/or organizations, union federations or mixed alliances) and vertically (in regional confederations of domestic workers' organizations and/or organizations for domestic workers and global networks of domestic workers' organizations and/or organizations for domestic workers) in order to increase their power base, gain wider recognition and visibility and lobby to gain access to those in power at higher levels (Bonner, 2010, pp. 10-15). *Context (i.e., legal framework and the practical barriers) is important in determining forms of organizing among migrant domestic workers.*

As workers' organizations build their capacity the next step is to bargain collectively with employers to ensure decent working conditions. Conceptualizing and institutionalizing employment contracts and collective bargaining agreements between domestic workers and their employers is complicated. Employers may be from any class and from any of the social partner groups in the ILO tripartite system – worker, employer or government. Second, although there are some employers' organizations, most private employers of domestic workers are not organized. Furthermore, the "third-party" agency that contracts domestic workers may be a public sector, private sector, or non-profit agency (Chen, 2011, pp. 167-184).

Employer structures also depend on the way domestic work is institutionalized and regulated in the country. For example, public sector institutions in the United States broker the relationship between homecare clients, providers and the public sector that funds homecare. A number of European Governments, such as those of France, Belgium, and Switzerland (e.g., Geneva and Vaud) require employers to purchase service vouchers, the cost of which includes contributions to all mandatory taxes and insurance funds (Chen, 2011, pp. 173-174).

- Collective bargaining at national level in the sector needs to be supported by social dialogue involving countries of origin, transit and destination as well as RECs when relevant. This is because challenges relating to migrant domestic workers need to be addressed across borders and along the care chains that produce domestic work and the conditions that characterize the sector. The global recruitment industry that supports migration for domestic work is a key piece of this global dimension.

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# Acronyms

# A

- AUC** African Union Commission
- ArabTUC** Arab Trade Union Confederation
- ASEAN** Association of Southeast Asian Nations
- ATUC** Association of Southeast Asian Nations' Trade Union Council
- BLA** Bilateral labour agreement
- CASEN** National Socioeconomic Characterization Survey. Chile.
- CEACR** ILO Committee of Experts on the Application of Conventions and Recommendations
- CIETT** International Confederation of Private Employment Services
- CONLACTRAHO** Latin American and Caribbean Confederation of Domestic Workers
- ECA** United Nations Economic Commission for Africa (ECA)
- ENAHO** National Household Survey. Costa Rica.
- EU** European Union
- EIU** Economist Intelligence Unit
- FENASOL** National Federation of Workers and Employees Trade Unions in Lebanon
- GAP-MDW** Global Action Programme on Migrant Domestic Workers and Members of Their Families
- GAATW** Global Alliance Against Traffic in Women
- GCC** Gulf Cooperation Council
- GDP** Gross Domestic Product
- ICLS** International Conference of Labour Statisticians
- IDWF** International Domestic Workers Federation
- IDWN** International Domestic Workers Network (previous name for IDWF, above)
- ILC** International Labour Conference
- ILO** International Labour Organization
- INEC** National Institute of Statistics and Census. Costa Rica.
- IOM** International Organization for Migration
- ITUC** International Trade Union Confederation
- IUF** International Union of Food and Allied Workers
- JLMP** Joint Labour Migration Programme
- KOPUBMI** Consortium for defending Indonesian Migrant Workers
- LAC** Latin America and the Caribbean
- LFS** Labour Force Survey
- Mercosur** Mercado Común del Sur. Sub-regional bloc. Full members: Argentina, Brazil, Paraguay, Uruguay and Venezuela
- MFA** Migrant Forum in Asia
- MoU** Memorandum of Understanding
- MP** Member of Parliament
- MRA** Mutual recognition agreement
- MRA<sub>s</sub>** Mega-Recruitment Agencies
- MTEySS** Ministry of Labour, Employment and Social Security in Argentina
- NGO** Non-governmental organization

**ODI** Overseas Development Institute  
**OEA** Organización de los Estados Americanos  
**OECD** Organization for the Economic Cooperation and Development  
**OSCE** Organization for Security and Cooperation in Europe  
**PEA** Private employment agency  
**RECs** Regional Economic Communities  
**SAARC** South Asian Association of Regional Cooperation  
**SADC** Southern African Development Community  
**SADSAWU** South African Domestic Service and Allied Workers Union  
**SARTUC** South Asian Regional Trade Union Council  
**SEWA** Self-Employed Women's Association  
**SUC** Standard unified contract  
**TESDA** Technical Education and Skills Development Authority. Philippines.  
**UAE** United Arab Emirates  
**UPACP-OSPAC** Escuela de Capacitación para Personal del Servicio Domestico. Argentina.  
**UN** United Nations  
**UNDESA** United Nations, Department of Economic and Social Affairs  
**UNRISD** United Nations Research Institute for Development  
**WIEGO** Women in Informal Employment Globalising and Organising  
**ZIMSTAT** National Statistics Institute of Zimbabwe

# Introduction

This report is part of a broader ILO strategy to promote Decent Work for Domestic Workers and seeks to contribute to the effective implementation of the principles enshrined in the ILO Convention on Domestic Workers, 2011 (No. 189). “Decent work for migrant domestic workers: Moving the agenda forward” addresses the specific challenges faced by migrant domestic workers in the context of a rights-based and employment-centred framework.

**This report aims to achieve two objectives.** The short-term objective of the report is to promote practical knowledge on migrant domestic workers with a view to strengthening the capacity of policymakers, workers’ and employers’ organizations and civil society in developing fair and effective migration policies for women migrants in this sector, rights-based capacity building programmes, and targeted awareness-raising campaigns.

The longer term objective of this report is to leverage better working conditions for migrant women in this sector with a view to realizing the 2030 Sustainable Development Goals (SDGs). Migration for domestic work is important for the development of societies and women migrant workers.<sup>1</sup> When the necessary protections are in place, migrant domestic workers make significant financial (e.g., money transfers), political (e.g., building representative workers’ organizations), and knowledge (e.g., new languages and skills) transfers to their home countries. The work of domestic workers has a societal value that goes beyond the immediate monetary gains as they prepare employers’ children for the future and maintain the capabilities of the elderly and the disabled. The sector’s significance in sustaining reproductive labour and enabling the integration of women in lucrative employment across the world, makes it a lynchpin to achieving the SDGs, especially goals one (ending poverty), five (achieve gender equality and empower women and girls), eight (promote decent work and economic growth), and ten (reducing inequalities).

**The report builds on knowledge generated in the context of ILO’s EC-funded Action Programme on Migrant Domestic Workers and their Families (2013-2016)**, a partnership bringing together the ILO, the European Commission, the International Trade Union Confederation (ITUC), the International Domestic Workers’ Federation (IDWF), UN Women, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Confederation of Indonesia Prosperity Trade Unions (KSBSI).<sup>2</sup> The project undertook policy-oriented research and pilot-tested national capacity building approaches to promote rights-based policies and regulations in ten countries through five main migration corridors consisting of Ukraine-Poland, Zimbabwe-South Africa (Lesotho was added in 2014), Indonesia-Malaysia, Nepal-Lebanon, and Paraguay-Argentina.

All five corridors have in common a high incidence of migration for domestic work. Nonetheless, they represent different characteristics and regions. In the cases of the Paraguay-Argentina, Zimbabwe-Lesotho-South Africa, Ukraine-Poland, and Indonesia-Malaysia corridors, domestic workers migrate to neighbouring countries. In the case of the Nepal-Lebanon corridor, migration for domestic work is interregional. By focusing on both countries of origin and destination from varied regions, the project aimed to produce contextualized lessons and practical guidelines for action corresponding to all stages of the migration cycle.

Different initiatives were tested in different migration corridors depending on the priorities identified by the bi-national constituents. For example, pre-departure skills programmes for prospective migrant domestic workers were implemented in Nepal and on-arrival skills’ programmes were implemented in Argentina (see chapter 4). Information guides were developed in each of the Zimbabwe-South Africa and the Argentina-Paraguay corridors. A code of conduct for employers was developed in Malaysia and a code of conduct for bank employees with migrant domestic workers in their employ was under consideration in Lebanon (see chapter 3). Bilateral agreements were concluded between trade unions in each of the Paraguay-Argentina, Zimbabwe-Lesotho-South Africa, Indonesia-Malaysia,

1. UNDP: Human development report 2015: Work for human development (2015), available at <http://report.hdr.undp.org/> [accessed on 26 April 2016], p. 4.

2. The report builds on 11 law and policy country profiles, three survey on employers’ attitudes, needs and behaviours, a number of thematic studies, global and regional estimates on migrant domestic workers, and numerous project interventions.

and Ukraine-Poland corridors (see chapter 6). The project collaborated with ILO's Country Office for Zimbabwe, the National Statistics Institute of Zimbabwe (ZIMSTAT) and ILO's Statistics Department to develop a statistical module on Zimbabwean migrant workers, including migrant domestic workers, abroad (see chapter 2).

The report is couched in the context of the care crisis which is triggering a demand for household paid care and domestic work in higher income countries. A demand that, owing to a number of reasons (such as poverty, limited or no access to education, gender discrimination, inequalities in access to employment opportunities, violence, land dispossession, and conflict) is sustained by the migration of women from poorer countries. The report also examines how a number of units of analysis interact (i.e., the state: government institutions and policies; individual: workers' and employers' needs, behaviour and bargaining power; and, organizational: worker organizations and labour recruiters) to produce variations in the working conditions of migrant domestic workers.

This report is structured in six chapters:

**Chapter one: Migration for domestic work: Global and regional overview** provides information about the sector's size and composition, migration flows, push and pull factors, and migration regimes governing domestic work across a number of regions.

**Chapter two: Protecting domestic work along the migration cycle: What role for governments?** Provides a cursory review of the international legal framework governing domestic work and its monitoring, immigration and foreign employment policies and regulations, and examples of cooperation between countries of origin and destination.

**Chapter three: Gaining insight into the compliance gap: The Limits of awareness raising:** builds on survey and focus group data to explain how workers and employers mindsets affect their working relationship and compliance with the law.

**Chapter four: Unseen, Uncosted, and Unwaged: The importance of skills' development and recognition for domestic workers across borders** reviews the importance of skills' programmes for migrant domestic workers, their deficits, and identifies possible solutions to match labour market needs with workers' skills and rights.

**Chapter five: Reducing the costs of labour migration through fair recruitment practices** maps out the architecture of the recruitment industry, its decent work deficits, and suggests solutions and alternatives.

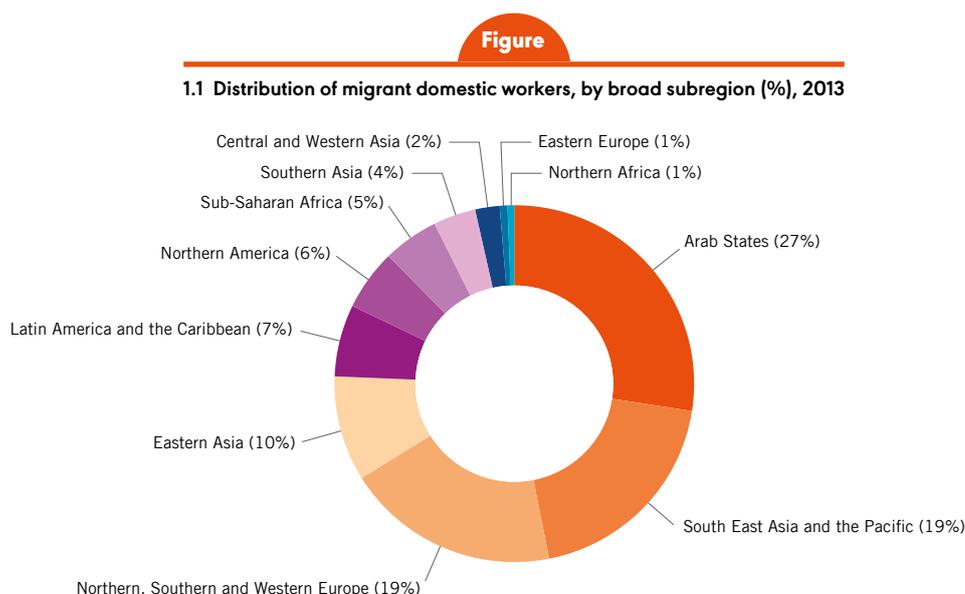
**Chapter six: Domestic workers organizing across borders and winning rights** argues in favour of organizing strategies that straddle the national, cross border, and global. It identifies the challenges of organizing across borders and good practices in overcoming those. It points to the importance of context (national legislation) in shaping organizing strategies and concludes with a note pointing to the importance of building the capacity of employers' organizations and the benefits of collective bargaining in the sector.

# Migration for domestic work: Global and regional overview

## 1. Size and composition of the domestic work sector globally

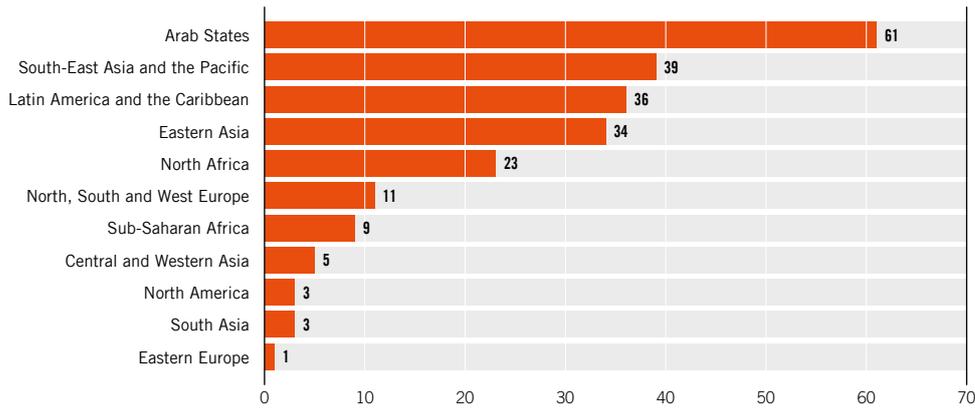
Income and gender inequalities between and within countries as well as demographic changes are interacting to produce an unprecedented growth in international migration. The number of international migrants reached 244 million in 2015, an increase of 71 million (41 per cent) compared to 2000 (UNDESA, 2015a). Migration is primarily characterized by flows from poorer countries with more youthful populations to richer, often ageing, economies with significant care demands. Almost 61.5 per cent (150.3 million) of international migrants are in the labour market, almost half of them (66.6 million) are women (ILO, 2015a).

Globally, there are 67.1 million domestic workers, of whom 11.5 million are international migrants. As such, migrants represent 17.2 per cent of all domestic workers and domestic workers represent 7.7 per cent of all migrant workers. However, these numbers represent significant underestimates owing to the concentration of domestic workers in informal employment and among migrants in irregular situation. Around 8.5 million (73.4 per cent) of all migrant domestic workers are women. The Arab States host the largest number of migrant domestic workers (27 per cent), followed by Northern, Southern and Western Europe (19 per cent) and South-East Asia and the Pacific (19 per cent) (ILO, 2015a).



Source: ILO, 2015a.

1.2 Women migrant domestic workers as a share of all women migrant workers, by broad subregion (%), 2013



Source: ILO, 2015a.

## 2. The global care crisis and international migration

The demand for home-based paid care and domestic work is linked to a number of interacting patterns:

- (i) With noteworthy regional differences, working families face difficulties in combining paid work with family responsibilities. This is the result of an increase in women's employment and the subsequent transformation from single to dual wage-earning families. The results are a gender gap in time use and deeper inequalities between rich and poor families.
- (ii) Rapid population ageing, increasing life expectancy and lower fertility rates are putting a strain on traditional care arrangements. Tight fiscal policies and social policy budgets have weakened public care services and governments have delegated care work to families via a variety of market services (including hiring home-based carers and domestic workers), some of them publicly funded.
- (iii) The increasing cost of living that results from structural adjustment programmes, segmented labour markets with limited employment opportunities for women, domestic violence against women, limited to no access to education for girls, land dispossession, climate change and conflict have left many women in countries of origin with no other option but to migrate. Many countries of origin also promote migration through a variety of policies and programmes.

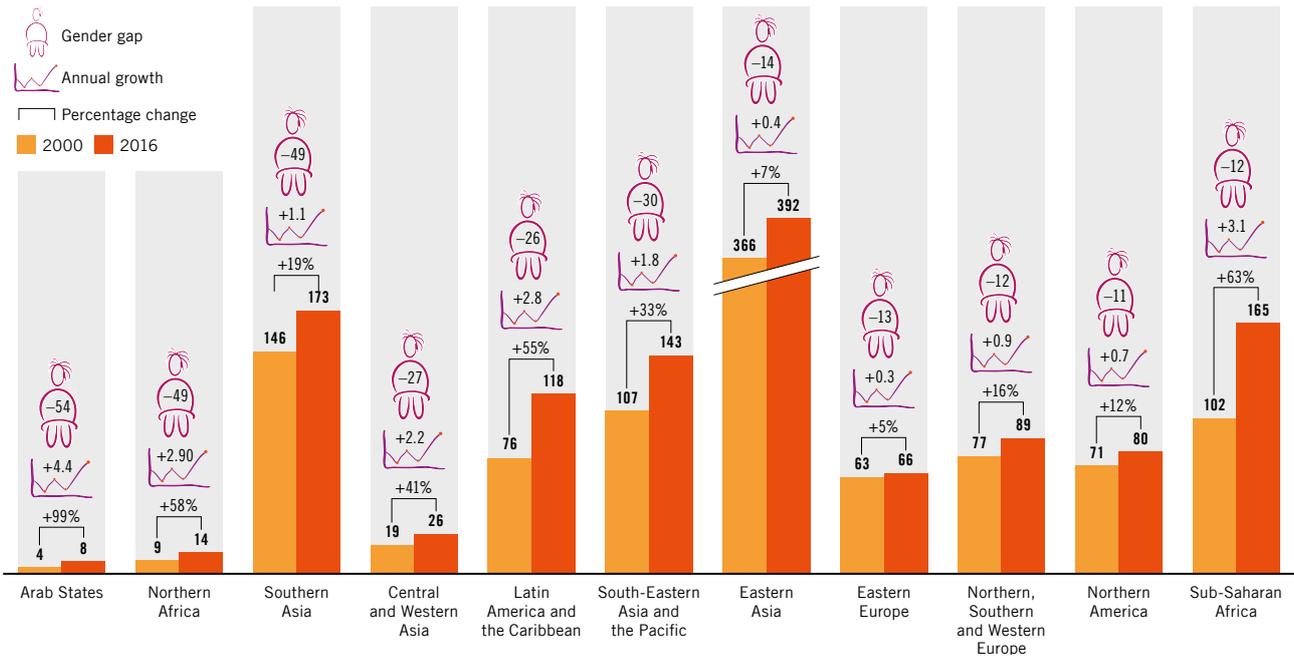
### 2.1 Women's labour force participation and unpaid home-based care and domestic work

There were 1.27 billion women in the labour market in 2015, 236 million more than in 2000. The labour force participation rate for women remains highly differentiated by region, with the highest rates in Northern, Southern and Western Europe and the lowest in the Arab States. Nonetheless, the global female labour force participation rate remains lower than men's (currently 26.5 percentage points lower) (ILO, 2015b).

The increased educational level and influx of women into the labour market has significantly improved countries' ability to generate wealth, enhanced the well-being of households and reduced poverty. However, time allocated by women and men to household and care work remains unequal. Time use surveys show that when women get a job, the intensity and total work time (on productive and reproductive tasks) increases while time allocated by men to household and care work does not change significantly.

Figure

1.3 Female employment (million) by region and gender gap by region, 2015



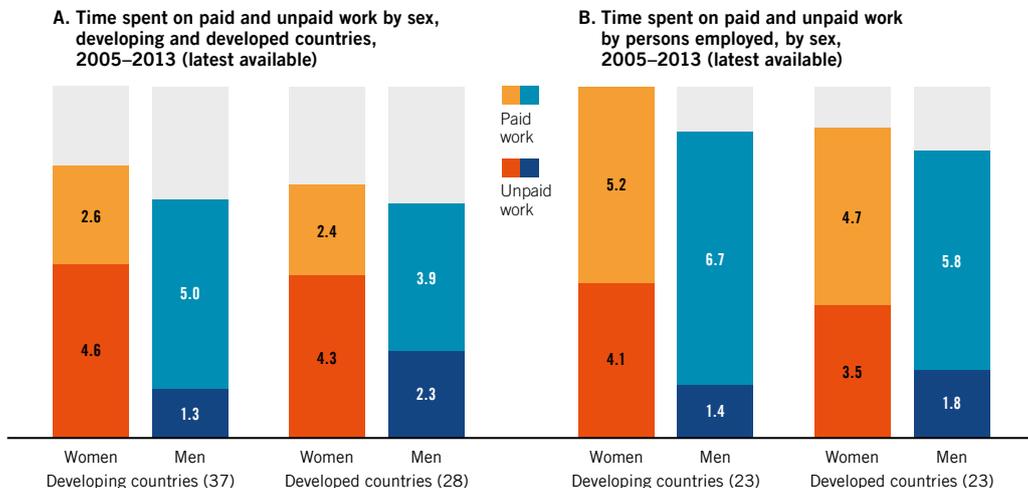
Source: ILO, 2015b.

In fact, women now spend two and half more time on unpaid work than men. In developing countries, women work on average 9 hours and 20 minutes per day compared to 8 hours and 7 minutes for men when unpaid work is taken into account. This is the equivalent of 2.8 times more time than men. In advanced economies, women work 8 hours and 9 minutes compared to 7 hours and 36 minutes for men. This places a considerable strain on the ability of women to focus on productive or paid employment opportunities. It furthers income inequalities between women and men and reduces opportunities for women's career growth relative to men (UNDESA, 2015c).

The additional time spent on unpaid work is also reflected in restrictions on time spent on leisure, education, political participation and self-care. Gender inequalities are greater in developing countries than in developed countries. Among other factors, this is the result of limited access to suitable infrastructure and labour-saving technology, which makes the tasks associated with unpaid care and domestic work time consuming and arduous (UNRISD, 2010).

Figure

1.4 Daily time spent on paid and unpaid work in developing and developed countries



Source: UNDESA, 2015c.

A time deficit is also likely to occur when the number of hours required for personal care, domestic work and income-generating activities exceed the number of hours available in a day. A study conducted in Argentina, Mexico and Chile showed that most children live in households where at least one member, mostly women, has a time deficit (80 per cent of children in Argentina, 74 per cent in Mexico and 70 per cent in Chile) (Zacharias et al, 2012). Also, according to data collected from 53 developing countries, 35.5 million children under the age of five were left without adult supervision for at least an hour weekly (ODI, 2016).

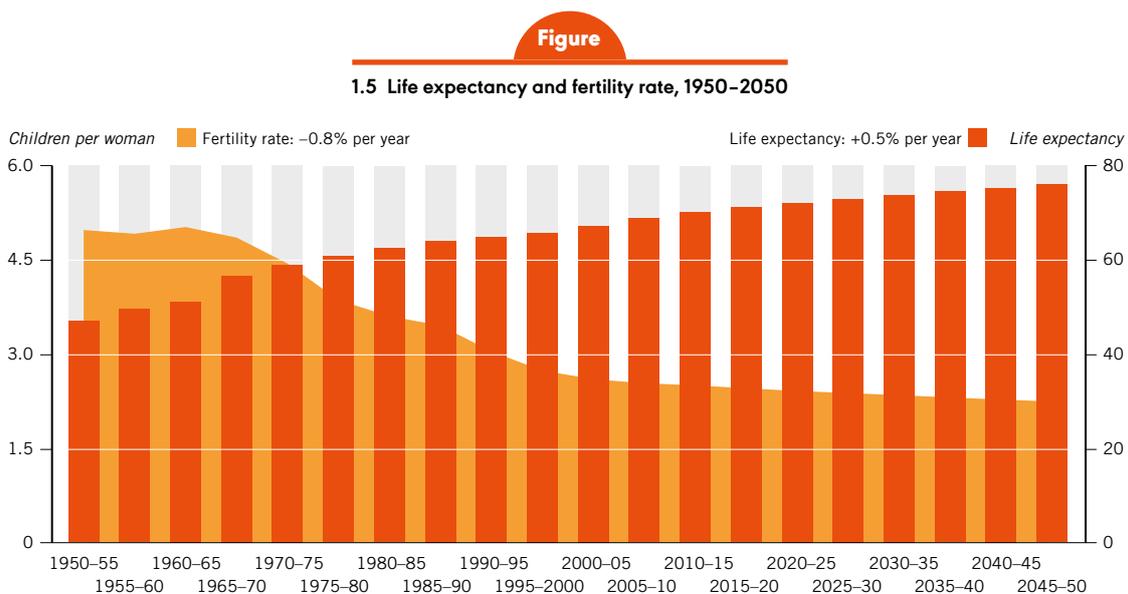
The impact of the child care crisis is greater in developing countries. A survey from 31 developing countries found that only four per cent of women had access to an organized child care or nursery arrangement (UN WOMEN, 2015).

With no other childcare options, poor families often cope by leaving children home alone or taking their children to their workplace. Parents also rely on unexperienced care workers, like younger siblings or older relatives, for providing childcare. In rural parts of Ethiopia, for example, more than 50 per cent of girls between five and eight provide unpaid care work on daily basis (ODI, 2016). This has direct repercussions on the health and development of the children being cared for and on the educational and employment prospects of the young girls who leave school to care for family members (ILO, 2009).

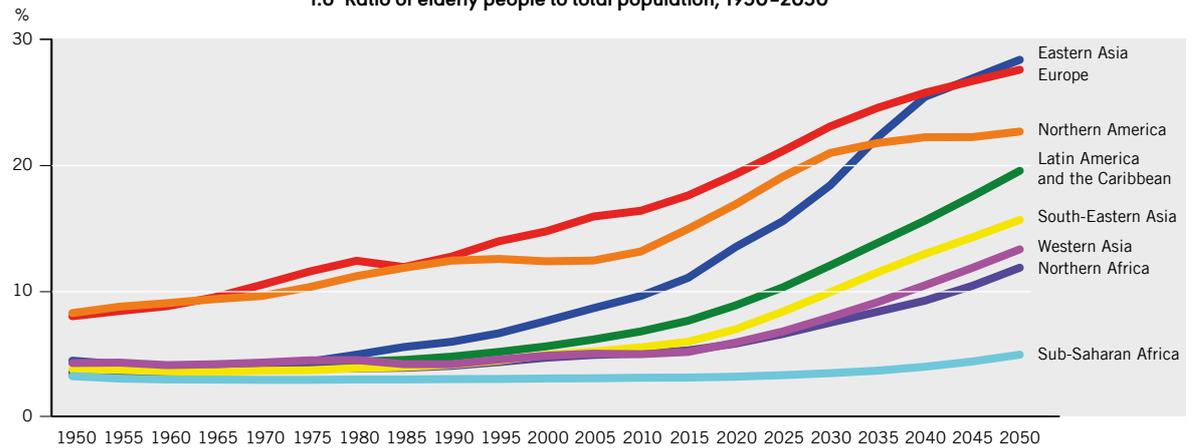
## 2.2 Ageing, life expectancy, fertility rates and social policies

The situation is further compounded by global population ageing, longer life expectancy, changing morbidity patterns and decreasing fertility rates. These patterns pose new challenges to the traditional model of unpaid care provided by women and to national care and social protection policies.

In the 1980s there were 50 young people for every 100 adults globally. Since then, the youth-to-adult ratio has declined steadily and is expected to reach 22 per cent (20 young people for every 100 adults) by 2050. East Asia and Europe are expected to record the lowest youth-to-adult population ratio (11.8 and 13.6 per cent respectively), followed by North America where the ratio is expected to reach 16.8 per cent, and Latin America and the Caribbean with 17.2 per cent. In the future, the growth rate in the number of elderly people (65+) will be 12 times faster than that of children (UNDESA, 2015b). In consequence, there is an increasing need for care for the elderly while the availability of family-provided care is decreasing, not only because women are in the labour market but because the share of the group aged between 45 and 69 years old (who typically take care of the elderly and contribute to social security systems) is rapidly decreasing.



1.6 Ratio of elderly people to total population, 1950–2050



Source: UNDESA, 2015b.

Life expectancy at birth is also increasing globally. The share of the world's population aged over 65 will increase from 8 per cent today to nearly 16 per cent by 2050 (UNDESA, 2015b). Most people born today in a number of European countries, including Switzerland, France, Germany and Austria, will live to the age of 100, compared to 68 in 1950 (EIU 2016). This also implies that the number of people in need of long-term care will also significantly increase between 2000 and 2050: by 127 per cent in Germany, 102 per cent in Spain, 107 per cent in Italy and 87 per cent in the United Kingdom (Comas-Herrera et al., 2003).

These trends have significant implications for social protection policy (and its components related to care provision) and its ability to withstand this growing demand without furthering inequalities in care delivery or placing downward pressure on care workers' working conditions. Almost 39 per cent of the population worldwide is living without access to universal health coverage. In low-income countries, more than 90 per cent of the population do not have health coverage and around half (48 per cent) of all pension-age people do not receive a pension (ILO, 2014a).

## 2.3 Women migrating in search of better opportunities

In 2015, a total of 586 million women were own-account workers or contributing family members. These figures are particularly high in Sub-Saharan Africa and Southern Asia, the two main regions of origin among migrant domestic workers. In Sub-Saharan Africa, 34.9 per cent of women work as contributing family members while 42.5 per cent are own-account workers. The figures for East Asia are 31.8 per cent and 47.7 per cent. Informal employment is the greatest source of employment for women and it represents over 80 per cent of non-agricultural employment in Southern Asia (ILO, 2016a).

The lack of employment opportunities in their countries of origin and expectations of higher earnings in destination countries drive women's migration. While domestic work may not be their first choice, they end up in this sector as there is an increasing demand for (low-cost) home-based care and domestic work in higher income countries. Barriers to entry into the domestic work sector are also very low, as no particular certification or degrees are required.

### 3. Migration regimes for domestic workers across regions

The majority of domestic workers who migrate do so to **neighboring countries** (e.g. in Latin America from Peru to Chile, from Paraguay to Argentina and from Nicaragua to Costa Rica; in Africa from Lesotho and Zimbabwe to South Africa and from Somalia and Uganda to Kenya; and in Europe from Ukraine to Poland, from Moldova to Italy and from the Russian Federation and the Baltic States to Finland). This is followed by migration **between subregions** (from South Asia to East Asia and South-East Asia), and, finally, by **interregional flows** (from Asia and Africa to the Arab States; and from Latin America, Africa and Asia to Europe and to North America).

The integration of women into the labour market and an emerging middle class in urban centres have generated a greater demand for domestic workers in **Africa** (Segatti, 2016). Ageing, incentives to integrate women into the labour force and the collapse of the extended family care model have combined to increase the demand for domestic workers in **Asia**. Variations in the cultural acceptance of outsourcing elderly care to the private sector (whether delivered in an institution or at home) or to private individuals have led to different migration outcomes in East Asia. South Korea has imposed more stringent conditions on the migration of domestic and care workers, and instead has expanded publicly supported child and elderly care services. Taiwan, Singapore and Hong Kong and Malaysia, on the other hand, have implemented financial support measures, tax incentives and immigration policy reforms to allow families to purchase care services (Peng, 2016).

In the **Gulf States**, the rentier economy and a culture that frowns upon placing ageing relatives in elderly care institutions are driving the demand for domestic workers. In Lebanon, migrant domestic workers are hired to provide mostly care to elderly household members. This enables younger Lebanese to emigrate and maintain remittance flows into the country, an important source of foreign currency reserves and household consumption (Tayah, 2014). An active policy of encouraging women to integrate the labour market, ageing, longevity, and the downsizing of the welfare system combine to create the demand for migrant domestic workers in **Europe**. Variations in the welfare system in Europe produce a variety of migration outcomes. Familialistic care regimes generate greater demand for migrant domestic workers in Italy and Spain. Limited public care services create greater demand for migrant domestic workers in Austria and Germany (Marchetti and Triandafyllidou, 2015).

A history of familialistic social care management and tight public funding (as a result of structural adjustment programmes) produce a demand for domestic workers in Latin America. Geographic proximity, the availability of large networks and regional agreements encourage the mobility and circulation of domestic workers in **Latin America**. The labour protection measures on which some countries have embarked, especially in Chile and Argentina, are attracting large numbers of women to enter the domestic work sector (Soto et al., 2016).

A variety of regimes govern the migration of women for domestic work. These range from temporary (e.g., to the Arab States and to Asia) to free mobility schemes (e.g., within Latin America and the Caribbean and Europe). Certain contexts fall outside this spectrum altogether; the intra-regional migration for domestic work within Africa, for example, most often takes place in a law and policy vacuum and is largely regulated by ad hoc measures. The persistence of temporary migration schemes for migrant domestic workers where the demand for their services is significant, can produce “longer term” migration under conditions of irregularity and inequality.

### 3.1 Migrant domestic workers in Africa<sup>1</sup>

Only 650,000 of the 9.3 million domestic workers in Africa are migrants. They account for 5.6 per cent of the world's total 11.5 million migrant domestic workers (ILO, 2015a). Five per cent are in Sub-Saharan Africa and 0.6 per cent in Northern Africa. Some 300,000, a little under half of all migrant domestic workers, were employed in one country: South Africa (ILO, 2014f).

Most migration corridors are internal to one country and operate between poorer and richer provinces. Examples of internal migration corridors are Limpopo to Gauteng in South Africa, Jendouba and Bizerte to Sfax, Sousse and Tunis in Tunisia, and Grand Kru country in Liberia to Abidjan in Côte-d'Ivoire.

International movements of domestic workers within the region are the result of (i) structural and gender changes in subregional employment (e.g. Lesotho, Malawi, Mozambique and Zimbabwe to South Africa); (ii) new political crises (e.g. Somali and Uganda to Kenya); and (iii) the revival of older corridors dating back to the nineteenth century (e.g. Senegal to Morocco and Burkina Faso to Côte-d'Ivoire (Segatti, 2016). At continental level, men (290,000) and women (360,000) migrants are almost equally represented in this sector (ILO, 2015a, 20). Significant variations at subregional level can be noted however; in sub-Saharan Africa, male migrant domestic workers make up 13 per cent of the total male domestic worker population, whereas female migrant domestic workers make up almost five per cent of all women employed in this sector (ILO, 2015, p. 17). In northern Africa, male migrants make up 5.3 per cent of all male domestic workers whereas women migrants constitute 9.8 per cent of all women in the sector (ILO, 2015a). Placement continues to be largely facilitated by informal kinship, ethnic and other social ties rather than by formal recruiters (Segatti, 2016).

A shift from employing live-in permanent domestic workers to live-out temporary and casual workers – particularly in large urban centres such as Abidjan, Tunis, Nairobi and Johannesburg – accompanied changes in lifestyles and the emergence of an African middle class in the 1980s. This shift coexists with live-in arrangements, especially in the case of young girls (e.g. in Abidjan and Tunis) (Jacquemin, 2012; Ally, 2009; Tajine, 2014).

Internationally, the flow of migrant domestic workers has three main regions of destination, Europe, the Arab States, and to a lesser extent, South-East Asia (e.g., Hong Kong SAR). It is estimated that 200,000 women leave Ethiopia annually to work as domestic workers in the Arab States. The Government of Ethiopia imposed a total ban on the deployment of Ethiopian domestic workers abroad in 2013. For travel, migrant women rely on informal networks of traders and informal financial services (Fernandez, 2011). Unlicensed brokers operate over land via Somalia, Djibouti and Somaliland and over sea to Yemen and then to Saudi Arabia. This has resulted in the mass deportation from Saudi Arabia of Ethiopians, including women domestic workers, who were accused of crossing into Saudi Arabia illegally through its southern border with Yemen.

Other international migration corridors for domestic workers include Congo, Cameroun, Madagascar and Kenya to Lebanon, Kenya to Jordan, Mauritania<sup>2</sup> and Uganda to Saudi Arabia.

Whether intra- or extraregional, many of these international flows take place in a policy vacuum and are regulated by ad hoc measures. The remaining flows are regulated by bilateral labour agreements (BLAs) that are poorly aligned with international labour standards, particularly on issues of gender and protection for precarious workers, and have limited input from workers' and employers' organizations (Wickramasekara, 2015). Lastly, staff in ministries of labour have little training on BLAs, international labour standards and negotiation techniques (Segatti, 2016). Uganda and Saudi Arabia have signed a MoU to facilitate the access of one million college-level men and women graduates into Saudi Arabia's domestic work sector over five years. The BLA was soon after put on hold.

This situation leaves a great deal of discretion to PEAs in countries of origin and destination. Recruitment is coordinated by private labour recruiters (formal and informal) as opposed to the state or large corporate operators that play a major role in the mining and plantations sectors.

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1. This section is adapted from a report on the situation of migrant domestic workers in Africa by A. Segatti. The report was commissioned by the EC-funded Global Action Programme on Migrant Domestic Workers and their Families.

2. The International Trade Union Confederation (ITUC) received reports of 900 Mauritanian women who were trafficked into Saudi Arabia in 2015. The women were recruited for nursing and teaching jobs but were forced to work as domestic workers on arrival in Saudi Arabia (ITUC 2015).

## 3.2 Migrant domestic workers in the Arab States

According to national statistical sources, the Arab States host the largest number of migrant domestic workers in the world, estimated at 1.6 million and accounting for 17.9 per cent of all migrant workers in the region (ILO, 2015a). Human Rights Watch (2010), however, estimates that there are 1.5 million migrant domestic workers in Saudi Arabia alone and 700,000 in Kuwait (Fernandez, 2014). The International Trade Union Confederation (ITUC) places the number of migrant domestic workers in the Gulf States at 2.5 million (ITUC, 2014). The overwhelming majority (82 per cent) of domestic workers in the Arab States are migrants. The region (primarily Saudi Arabia and the Gulf States) also hosts the largest numbers of male migrant domestic workers with 50.8 per cent of the global share of male migrant domestic workers (ILO, 2015a).

Men perform gardening, driving and security-related functions whereas women perform cooking, cleaning and care functions in the households that employ them. Migrant domestic workers from the Philippines, Indonesia, Sri Lanka, India and Ethiopia dominate this sector, although more recently, Nepal, Bangladesh and Madagascar have emerged as new (and more affordable) countries of origin.

The demand for migrant domestic workers in the Arab States is only partially driven by the dual wage earners economy. Overall, the Arab region exhibits low female labour force participation rates with only one in four Arab women in the labour force (26 per cent) compared to a world average of 51 per cent.<sup>3</sup> Although many Arab national women are not in the labour force today, partly because they are attending school or university, the number of national women in the labour force is expected to grow, and with it the demand for migrant domestic workers. ITUC (2014, 7) estimates that the number of domestic workers in Saudi Arabia has increased by 40 per cent since the beginning of the decade and 66 per cent in Kuwait since 1995. Also according to the ITUC (2014), households generally employ more than one domestic worker. Each household in the UAE, for example, employs on average three domestic workers.<sup>4</sup>

Employing a domestic worker reflects employers' aspirations to a higher social status (Licuanan, 1994). The decision to employ a domestic worker is also motivated by the Arab culture, which frowns on placing an ageing relative in an elderly care institution. In Kuwait, for example, 28 per cent of households with men above 70 years of age and 58 per cent of households with women above the age of 70 hired a migrant domestic worker (Shah et al., 2012).

The admission, stay and exit of migrant domestic workers (along with the employer-migrant worker relationship) are governed by the *Kafala*, a private sponsorship scheme for migrant workers. The *Kafala* results in situations where employers have unchecked control over migrant domestic workers, exposing them to greater risk of exploitation and abuse.

Even when improvements in the overall situation of migrant workers were noted in the Arab States, they seldom extend to migrant domestic workers. The latter are typically excluded from the scope of national labour laws with the argument that domestic work cannot be regulated in the same manner as other work without violating the privacy of the employer's household and the honour of his/her family.

Arab States have supported the adoption of the Domestic Workers Convention, 2011 (No. 189), but none have ratified it so far. The labour ministers of the Gulf States have discussed a draft standard unified contract (SUC) for migrant domestic workers. These discussions were brought to a halt in 2015. Instead, the National Assembly of Kuwait passed a national law on domestic workers. In June 2015, Bahrain, Lebanon and Jordan<sup>5</sup> have adopted SUCs for domestic workers, and Kuwait, Oman, Qatar and the UAE have developed draft SUCs for migrant domestic workers. It is worth noting here that a unified contract does not substitute for inclusive labour laws or resolve recruitment-related concerns and limitations on access to justice (Gallotti, 2015, 8).

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3. Even when students are excluded from the working age population.

4. ILO, Domestic Workers Across the World, supra fn 8, p. 33.

5. Jordan also issued Regulation No. 90 on Domestic Workers, Cooks, Gardeners and Similar Occupational Categories in 2009, with provisions relating to working hours, paid leave and working conditions. It has also passed Regulation 12 of 2015 regarding the recruitment of non-Jordanian domestic workers.

## 1.1 Coverage of migrant domestic workers by national legislation in the Arab States

	Labour law coverage	Specific legislation for domestic workers	Compulsory SUC	Regulation of private employment agencies (PEAs)
<b>Bahrain</b>	Revisions to the Labour Law for the Private Sector, No. 36 of 2012 granting domestic workers the right to a written contract, wage regulations (although not minimum wage), paid annual leave, exemption of legal costs of labour cases, and indemnity at termination of employment. Employers are subject to fines when they do not sign a written contract with the worker	Ministry of Labour Decree No. 8 of 2005 with Respect to a Model Form of Contract for Domestic Help and Similar Persons	Yes	No
<b>Kuwait</b>	Total exclusion pursuant to Art. 5 of the New Private Sector Labour Law, No. 6 of 2010	Legislation on domestic work was adopted in 2015 but falls short of international labour standards	Yes	Decision No. 1182, 2010: the Ministry of Labour requires PEAs to execute the SUC with prospective workers and employers but this may be difficult to enforce in practice
<b>Oman</b>	Total exclusion pursuant to Art. 2(3) of the Labour Law 2003 (Royal Decree No. 35)	No	No	No
<b>Qatar</b>	Total exclusion pursuant to Art. 3(4) of the Labour Law No. 14 of 2004	Draft legislation under consideration. See also Decree No. 8 of 2005	No	Decree No. 8 of 2005 of the Ministry of Civil Service and Housing Affairs: Agencies may lose their licence if they present false information when applying for or renewing their licence, accept fees from workers or repeatedly breach the contract reached with employers. Decree No. 8 of 2005 also requires agencies to provide workers with contracts prior to placing them (including salary, nature of work and length of contract); ensure that the contract is signed by the worker; and cover the expenses of repatriation when the conditions or terms of employment do not map onto those that are stipulated in the contract
<b>Saudi Arabia</b>	Total exclusion pursuant to Art. 7(2) of the Labour Law 2006 (Royal Decree No. M/51)	Resolution No. 310 of 2013 "Household Regulation on Services Workers and Similar Occupational Categories"	No	No
<b>UAE</b>	Total exclusion pursuant to Art. 3(c) of the Labour Law, No. 8 of 2007	Draft regulations under consideration	Yes	Ordinance regulating PEAs, January 2011: The Ministry of Labour requires PEAs to execute the standard-form contract with prospective workers and employers but does not ensure that adequate machinery and procedures exist for investigating complaints and alleged abuses
<b>Jordan</b>	Labour Law, No. 8 (1996), covers all workers. Nonetheless, article 3(a) defers agricultural workers, domestic workers, gardeners and cooks to Regulation No. 90	Regulation No. 90 of 2009 on Domestic Workers, Cooks, Gardeners and Similar Occupational Categories sets out the respective obligations of workers and employers  Regulation No. 11 of 2013 limits working days to eight hours  Regulation No. 12 of 2015 grants additional benefits including mobility, life, accident and medication insurance, and access to government safe house	Yes	Regulation 12/2015
<b>Lebanon</b>	Article 7(1) of the Lebanese Labour Code explicitly excludes domestic workers from the labour law	There is no legal instrument regulating the domestic work sector	Yes	Decree No. 8 (1977) prohibits the establishment of private employment offices as this is the duty of the National Employment Office

Adapted from Fernandez (2014), Kerbage and Esim (2011) and ITUC (2014).

BLAs on migrant domestic workers and the resulting employment contracts that are established bilaterally by destination and origin countries are common practice in the other Gulf States. These agreements establish areas of mutual cooperation, including recruitment,<sup>6</sup> and support the use of employment contracts which are accepted by both countries. These BLAs are negotiated without input from employers' and workers' organizations (where trade unions are not outlawed) and are criticized for reinforcing inequalities among workers. This leads to nationality-based wage differentials that strengthen biases about workers from these countries. For a general assessment of BLAs on labour migration, including for domestic work, see P. Wickramasekara 2015 and L. Lim 2016.

### 3.3 Migrant domestic workers in Asia<sup>7</sup>

Asia is the fastest growing migration hub in the world, with 26 million more international migrants arriving between 2000 and 2015. In 2015, intraregional migration in Asia accounted for 60 per cent (62 million) of its international migration stock. In addition to the 62 million intraregional migrants, Asia registered 20 million out-migrants to Europe and 17 million to North America (there are 8 million immigrants from Europe in Asia) (UNDESA, 2015b).

Of the 67 million domestic workers around the world, 23.7 million (35.4 per cent) work in the Asia and Pacific regions. Among them 3.34 million (14.1 per cent) are migrant domestic workers and over 80 per cent are women. In China alone, there are 13 million domestic workers (ILO, 2015a), although most of them are internal migrants moving from rural to urban areas.

Women from South and South East Asia find employment in the care economies of wealthier countries in the region. The four main destinations for migrant domestic and care workers in the region are Taiwan (China), Hong Kong SAR, Singapore and Malaysia while the key source countries are the Philippines, Indonesia, Bangladesh, India, Nepal, Sri Lanka and more recently Vietnam. Thailand is also increasingly hosting migrant domestic workers from neighbouring countries.

The migration of domestic workers and home-based carers in East and South-East Asia is the result of a combination of structural, cultural, and policy transformations relating to the role of women in Asian countries of origin and destination, namely: (i) rapid demographic ageing and low fertility, and increased women's labour market participation in richer countries; (ii) growing cultural acceptance of outsourcing care of family members to non-family caregivers; (iii) increased economic imperatives and incentives for women from South-East Asia to find employment abroad; and (iv) changes in the social, economic and immigration policies of countries of origin and destination that combine to facilitate the migration of women to find employment in the domestic work and home-based care sectors (Peng, 2016).

Variations in the acceptability of migrant domestic workers in East and South-East Asia are shaped by pre-existing employment regimes and ideas about national identity. Broadly, Japan and South Korea have placed more stringent conditions on the migration of domestic and care workers, and instead have opted to expand publicly supported childcare and elder care services to address their citizens' care needs. This has resulted in a limited intake of migrant care workers in these countries. In contrast, Singapore, Hong Kong SAR, Taiwan (China) and Malaysia have implemented financial support measures, tax incentives and immigration policy reforms to help families employ migrant domestic and care workers. This has led to a large intake of migrant domestic and care workers. Child and elder care policy reforms since the 1990s in China have fuelled a rapid expansion of private care services that is in turn drawing a large number of rural women into employment in this sector. It is worth noting that Japan is slowly moving away from restrictive regimes (Peng, 2016). In 2015, the Government of Japan passed the Act (now Programme) for Accepting Foreign Domestic Helpers in National Strategic Special Zones (NSSZ). The prefectures of Kanagawa and Osaka have begun implementing the scheme. Meanwhile, Tokyo Metropolitan is planning to introduce it in 2016.

Both Singapore and Hong Kong SAR have had long histories of employing migrant workers to fill labour shortages. In addition, all four countries share a similar official national rhetoric of the multi-ethnic and multicultural society and therefore have little or no resistance to admitting migrant

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6. Abolishing recruitment fees paid by the worker, going through licensed recruiters and taking legal action against unlicensed recruiters, etc.

7. This section is adapted from a report on the situation of migrant domestic workers in Asia by I. Peng. The report was commissioned in the context of a MoU between the EC-funded Global Action Programme on Migrant Domestic Workers and their Families and the research project "Gender, migration and the work of care" of the Centre for Global Social Policy of the University of Toronto.

1.2 Total number of migrant domestic/care workers in East/South-East Asia (2014)

Country	Total number of migrant domestic/care workers	Total number of households (million)	Total population (million)	Ratio of migrant domestic/care workers to households
Malaysia	400000 <sup>1</sup>	6.60	29.90	1/16.5
Singapore	231500	1.17	5.47	1/5.1
Hong Kong	320000	2.40	7.19	1/7.5
Taiwan	224356	8.19	23.40	1/36.5
Japan	1211 <sup>2</sup>	51.84	126.95	1/42807.6
South Korea	70000 <sup>1</sup>	18.50	50.50	1/264.3

<sup>1</sup> These estimates include undocumented migrant domestic workers. <sup>2</sup> Based on the number of nurses and care workers residing and working in Japan under Economic Partnership Agreements as of 2014.

domestic workers, as long as they do not become long-term residents. In Taiwan (China), for example, South Asian care workers are preferred over co-ethnic Chinese care workers from the mainland (Peng, 2016).

Although Confucian cultural teachings in Hong Kong SAR, Singapore, and Taiwan (China) prescribe care as a family obligation, significant changes to demographic and family structures and gender relations in these countries have led to an increased acceptance of outsourcing and socializing care. The prevalence of multi-generational households has also declined in many parts of East and South-East Asia as a result of urbanization and the spread of middle-class western ideals. Fewer younger people are taking primary responsibility for their ageing parents, while fewer older people expect to depend on their children in their old age (Peng, 2016).

The demand is filled by migrant women from countries where the importance of remittances for the families and national economies cannot be underestimated. The Philippines, Indonesia, Bangladesh, Nepal, India and Sri Lanka are among the top remittance-receiving countries in the world: in 2015, the Philippines was the third largest remittance-receiving country in the world, after India and China. The Philippines received US\$29.7 billion or 10 per cent of its country's GDP in remittances from its citizens working abroad, and Indonesia (fourteenth) US\$10.5 billion (World Bank, 2016). This is unquestionably a huge boon for the national economy and an important source of foreign currency. Sending country governments are thus incentivized to develop institutional structures to mobilize, train and dispatch their citizens to work abroad.

In South Asia, particularly in India and Bangladesh, domestic work is a domestic phenomenon. In India, women migrate from Jharkhand, Chhattisgarh, Odisha, West Bengal and North East to work in Delhi's and Mumbai's domestic work sector. Different national statistical sources<sup>8</sup> place domestic workers between 3.9 million and 10 million (ILO, 2015n, 4). Women migrate from rural to urban metros for lack of employment avenues, poverty, lack of quality education, changing family structures, and armed and ethnic conflicts (ILO, 2015n, 14).

Since 2004, a number of Indian states have extended rights and protections to domestic workers. Domestic workers are now entitled to minimum wages in 13 states, and in one union territory. Two state governments have included domestic work under the scheduled list of employment, three have extended health insurance benefits, and three others have established Statutory Welfare Boards. Trade unions were registered in more than 13 states and placement agencies now fall under the Shops and Establishment Act. A draft national policy on domestic workers is under discussion (ILO, 2015n, 7).

There are almost 2 million domestic workers in Bangladesh, many of whom are children. A joint 2007 baseline survey by the ILO and the United Nations International Children's Emergency Fund (UNICEF) accounted for 420,000 child domestic workers in Bangladesh.<sup>9</sup> Bangladesh's Cabinet adopted the Domestic Workers Protection and Welfare Policy in 2015 (Grihakarmi Surakkha and Kalyan Neeti, 2015). The policy is the outcome of nine years of advocacy by the Domestic Workers' Rights Network (DWRN) which comprises trade unions, human rights organisations and NGOs. The Policy sets 14 years as the minimum age of employment for "light works" relative to 18 years for

8. The National Sample Survey Organization's 68th Round of Employment and Unemployment Survey (2011-2012) estimates that 3.9 million men and women are employed as domestic workers in India, whereas the Labour Bureau's Employment and Unemployment Survey (2009-2010) places domestic workers at 10 million.

9. ILO-UNICEF 2007 baseline survey accounted for 420,000 child domestic workers in Bangladesh.

1.3 Coverage of migrant domestic workers by national legislation in selected Asian countries

	Labour law coverage	Specific legislation for domestic workers	Compulsory SUC	Regulation of private employment agencies (PEAs)
<b>Thailand</b>	Partial exclusion pursuant to Ministerial Regulation 14 (2012), which amended near complete exclusion under previous Ministerial Regulation B.E. 2541 (1998)	Ministerial Regulation No. 14 (2012) extends some limited labour rights to domestic workers, including the right to a weekly rest day, traditional public holidays and paid sick leave	No	The Recruitment and Job-Seekers Protection Act (1968, amended in 1985, 1994 and 2001) requires PEAs to be licenced by the Department of Employment. The Act was designed for protecting outbound Thai migrant workers and so contains no specific provisions related to the protection of inbound migrant workers. It is inadequately enforced
<b>Malaysia</b>	Included in the Employment Act of 1955, but excluded by the section titled "First schedule" from all benefits except for the right to an appropriate notice period upon termination of employment	No	Yes	The Private Employment Agencies Act 1981 (No. 246) requires that PEAs have a licence certified by the Ministry of Human Resources (MOHR). The Act was designed for protecting outbound Malaysian migrant workers and is expected to be subsumed by the Private Employment Agencies Bill, which MOHR has said will extend legislation to cover the recruitment of foreign workers, including domestic workers
<b>Singapore</b>	Total exclusion from Employment Act pursuant part I, section 2	No	No	The Employment Agencies Act (1958, amended 1985 and 2012) regulates the application, renewal and revocation of licenses of PEAs. It also contains provisions proscribing overcharging, deception and trafficking
<b>Japan</b>	The Act (now Programme) for Accepting Foreign Domestic Helpers in National Strategic Special Zones (NSSZ) extends labour law coverage to migrant domestic workers employed by a domestic service agency based on a service contract concluded between the agency and an individual household are covered	The Long-Term Care Insurance system, introduced in 2000, contains regulations concerning domestic work provided by home-based elderly care workers  The care insurance agency assigns minimum and maximum work hours to be performed for each elderly person	No. However, following the establishment of the Act for Accepting Foreign Domestic Helpers in NSSZ, the Ministry of Economy and Industry has formulated a model hire contract to be signed by the agency and the worker	The Employment Security Law (hereafter, ESL 1947, Act 141) <sup>1</sup>
<b>Hong Kong<sup>2</sup></b>	Included <sup>3</sup> in the Employment Ordinance (Cap 57)  Trade Unions Ordinance (Cap 332)  Employees' Compensation Ordinance, (Cap 282)  Occupational Safety and Health Ordinance, (Cap 509)  Live-in domestic workers are excluded from the Minimum Wage Ordinance, (Cap 608)  All domestic workers are excluded from the Mandatory Provident Fund Schemes Ordinance (Cap 485)	No	Yes, for migrant domestic workers <sup>4</sup>	Employment Agency Regulations (Cap 57A)
<b>Taiwan</b>	n/a	No	No	
<b>Macao</b>	Yes. Included in Labour Relations Law and Law on Employment of Non-resident Workers <sup>5</sup>	No	No. but the government provides a model contract for migrant domestic workers <sup>6</sup> as reference	Decree-Law 32/94/M, Licensing approval system for employment agencies <sup>7</sup>

<sup>1</sup> English translation is provided here: <http://www.japaneselawtranslation.go.jp/law/detail/?id=10&vm=04&re=01> <sup>2</sup> Hong Kong government website on migrant domestic workers: <http://www.fdh.labour.gov.hk/> <sup>3</sup> Full legislation text here: <http://www.legislation.gov.hk/eng/home.htm> <sup>4</sup> Hong Kong Standard Contract for migrant domestic workers, available at: [http://www.labour.gov.hk/eng/public/wcp/SEC\\_Eng.pdf](http://www.labour.gov.hk/eng/public/wcp/SEC_Eng.pdf) <sup>5</sup> [http://www.dsal.gov.mo/zh\\_tw/standard/dsallawc.html](http://www.dsal.gov.mo/zh_tw/standard/dsallawc.html) <sup>6</sup> [http://www.dsal.gov.mo/en/standard/download\\_labourlawtemp.html](http://www.dsal.gov.mo/en/standard/download_labourlawtemp.html) <sup>7</sup> <http://bo.io.gov.mo/bo/i/94/27/declei32.asp>

domestic workers with more physically demanding tasks. The policy allows the appointment of 12 year-olds when a third party witness is present and where the responsibilities, leaves, accommodation, diet and clothing allowance are specified in the contract.

The Arab States are host to large numbers of women migrant domestic workers from the Philippines, Indonesia, Nepal and Bangladesh.

### 3.4. Migrant domestic workers in Europe

Northern, Southern and Western Europe account for 19 per cent of the total migrant domestic worker population. In total, there are 2.2 million migrant domestic workers living in Europe. These data are significantly underestimated due to the informal nature of the sector, irregular migration and the unclear boundary between domestic and care work as a result of migration-specific regulations such as those covering au pair schemes and the staff of diplomatic households (Gallotti and Mertens, 2013). In Germany, for example, household surveys indicate that there are almost one million domestic workers, although in 2009 only 217,000 domestic workers were in formal employment and far fewer, only 36,056, had an employment relationship for which social security contributions were paid. Italy counts 1.5 million domestic workers of whom only 875,000 are registered (ETUC, 2012).

Women migrants constitute the majority of those working in the domestic work and home-based care sectors in Europe, especially in Spain and Italy where they are concentrated in metropolitan areas. Recently arrived women migrants (19 per cent) are more likely than settled migrants (7 per cent) to work in the sector (Gallotti and Mertens, 2013). Men migrants tend to view the sector as a door into the European labour market. The share of men in the sector in Italy, for example, peaked during regularization campaigns targeting the domestic work sector (Castagnone, Salis and Premazzi, 2013).

Studies in Belgium, France, Italy and Spain indicate that migrant domestic workers are generally older (40 and often over 50). They have higher levels of education than nationals employed in the sector but the non-recognition of qualifications and professional skills, together with language barriers, are key obstacles to their labour market integration (Gallotti and Mertens, 2013).

The sector is disaggregated differently in each of the European countries. France distinguishes between workers who offer services to dependent/disabled household members, those who perform household chores, and those who care for the children. The national voucher system in Belgium covers the largest share of migrant domestic workers. Spain does not create professional categories for domestic work (Gallotti and Mertens, 2013). In Denmark, domestic workers usually operate under an au pair scheme.

Geographic and historical relations determine the main migration corridors for domestic workers. Latin American women seek employment in the Spanish and Portuguese domestic work sector, while Russian and Baltic women tend to find employment in Finland. East-West migration within the EU is a key characteristic of this sector except for in Ireland, Denmark and Sweden where it attracts non-Europeans. It is worth noting here that Ukraine and the Philippines are significant countries of origin for domestic workers in Europe. Domestic work continues to be unattractive to European nationals (Gallotti and Mertens, 2013), but the economic crisis has more recently had the effect of attracting nationals to the sector, especially in Spain and Portugal (ETUC, 2012).

Five factors combine to create the demand for migrant domestic workers in Europe: the growing participation of women in the labour market,<sup>10</sup> the ageing of European societies (fewer adults to look after the sick and the elderly), the longevity revolution characterized by the creation of a fourth generation,<sup>11</sup> and the downsizing of the welfare system conjointly with the commodification and marketization of care work.

In the central and south-western parts of the European Union (EU), domestic work is most frequently regulated by specific laws and/or collective bargaining agreements. In contrast, in the central eastern Member States where migration has been studied, it is mostly regulated by general labour law. Other regulatory issues facing this area are the regularization of informal employment and migration policy.

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10. Europe's 2020 growth strategy aims to increase the employment rate for all men and women between the ages of 20 and 64 to 75 per cent.

11. Life expectancy at birth in a number of European countries, including Switzerland, France, Germany and Austria, is high and most people born today will live to the age of 100 (EIU, 2016).

1.4 Labour and migration policy concerning the employment of migrant domestic workers

Country	Specific labour legislation on domestic workers	Application of general labour law	Collective bargaining agreements for domestic workers	Other collective bargaining agreements	Possibility of hiring domestic workers from non-EU countries	Au pairs as main recruitment channel	Service checks
Austria	×		×		×		×
Belgium	×		×		×	×	×
Denmark		×				×	
Finland	×					×	
France	×		×		×		×
Germany	×		×				
Greece					×		
Hungary	×				×		
Ireland	×			×			
				<i>(code of practice signed by social partners)</i>			
Italy	×		×		×		
Netherlands	×			×		×	
				<i>(concerning the cleaning sector)</i>			
Poland <sup>1</sup>					×		
Portugal	×				×		
Spain	×			×	×		
				<i>(concerning agency work)</i>			
Sweden	×		×		×	×	
UK		×			×		

<sup>1</sup> Domestic work in Poland falls under civil law as it is based on a contract for services.

Source: Adapted from Marchetti and Triandafyllidou, 2015, p. 229.

Only Belgium, France, Germany and Italy have negotiated collective bargaining agreements for domestic workers (Gallotti and Mertens, 2013). General labour law is the only source of regulation for domestic work in Bulgaria, Latvia, Lithuania, Romania, Denmark and the UK. It is worth noting that enforcement is a significant problem that applies to all types of regulation (ETUC, 2012) and is further aggravated by the fact that domestic work is characterized by a high level of informality.

The result is that working conditions are generally poor with a prevalence of long working hours, no sick or annual leave, underpayment and lack of maternity protection. Apart from the generally low wages, migrant domestic workers are often only covered to a limited extent by social security schemes (if at all) and regulations on working time are more flexible in this sector. The prevalence of migrants in an irregular situation in this sector makes it difficult not only for workers to claim their rights but also for trade unions to act (ETUC, 2012).

In order to formalize employment relationships (and also to help women manage their professional and family lives) some countries allocate cash transfers to households for care provision on the condition that employers register an employment contract (Gallotti and Mertens, 2013). Service vouchers grant employers reduced social security contributions and tax incentives, and the registration procedure is simplified. Other countries have introduced cash-for-care programmes, which may be linked to voucher systems in the elderly and long-term care sector (EFFAT, 2015a).

Different welfare systems lead to different types of migration and care arrangements in Europe. The latter may range from the informal hiring of a migrant domestic worker (live-in or live-out) in the home (e.g. in Italy, Spain and Greece), to the hiring of a domestic worker through formal care schemes managed by the State or by private agencies (e.g. in the United Kingdom) or to the provision of services by the State (e.g. in Sweden and the Netherlands). Arrangements are a factor of the public expenditure on formal care services, the extent to which cash-for-care programmes are monitored and the availability or lack of an informal care economy combined (Marchetti and Triandafyllidou, 2015).

1.5 A comparison of the voucher systems across EU countries

Voucher system	Fiscal or other incentives	Services covered	Social security benefits covered	Public subsidies	Institutions involved
Belgium: <i>Titre-service</i>	30 per cent tax deduction for the final user (voucher is purchased at €7.50, final cost after tax deduction is €5.25)	<i>Services de proximité:</i> (i) Inside the household: non-care related functions; and, (ii) Outside the household: shopping, transport assistance for people with disability, and ironing	General health care workers' compensation for employment injuries, retirement pension, maternity protection, unemployment insurance	Yes – fully subsidized	Workers, service users and licensed enterprises – public, social, and for-profit
France: <i>Chèque Emploi Service Universel</i> (CESU)	Tax and social security contributions' rebate for both final users and the institutions involved	<i>Service à la personne:</i> (i) Inside the household: housework, gardening, bricolage, childcare, school support, assistance to people with care needs (i.e., elderly, sick, and people with disability), and, administrative assistance; and, (ii) Outside the household: childcare, deliveries of food, shopping, and laundry, and, transport assistance for people with care needs	General health care, workers' compensation for employment injuries, retirement pension, maternity protection, unemployment insurance	Yes, but on a cost-sharing basis with the institutions involved	<i>Direct employment:</i> workers, employer  <i>Mode prestataire:</i> employer, broker and worker  <i>Mode mandataire:</i> licensed enterprise, employee, service user
Canton of Geneva: <i>Chèque service</i>	No	Only inside the household (i.e., childcare, gardening, housework, and, elderly care)	Compensation for non-employment injuries (if working more than 8 hours per week), compensation for employment injuries, retirement pension, maternity protection, family allowances, unemployment insurance	No	Individual employer, workers, not-for-profit organizations and public bodies

Source: Tomei, 2011, pp. 266-267.

1.6 Welfare systems and migration outcomes in Europe: A typology

Country	Welfare system, state monitoring capacity, presence or absence of informal market for care	Migration outcome
<b>Italy</b> <b>Spain</b>	– Familialistic care regime: cash allowances to families – No monitoring of how cash is spent – Undocumented migrants	– “Migrant in the family” model of care – Informal work arrangements
<b>United Kingdom</b>	– Cash payments (Attendance Allowance) to less affluent families – State control over spending of the attendance allowance	– Families spend the attendance allowance on side costs and rely on family members to provide care – Affluent families resort to private agency care market – Employers are unable to recruit migrants whose situation is irregular due to state control – Migrants and nationals are reluctant to take up these jobs due to low pay and night shifts – Turnover is high as private providers compete by providing better pay
<b>Austria</b> <b>Germany</b>	– Limited public care services and cash for care programmes – Segregation of migrants in low paid jobs	– “Migrant in the family” care model
<b>France</b> <b>Netherlands</b> <b>Norway</b> <b>Sweden</b>	– Absence of uncontrolled cash benefits and of a large informal economy	– “Migrant in the formal care sector” model

Source: adapted from Marchetti and Triandafyllidou, 2015, pp. 232-235.

### 3.5 Migrant domestic workers in Latin America

There are about 18 million domestic workers in Latin America and the Caribbean (LAC), the majority of whom are women (15.7 million). Most domestic workers are internal migrants, hailing from rural communities or small villages (Anderson, 2012; Soto et al., 2015). Only 750,000 domestic workers are international migrants (4.2 percent of all domestic workers) from neighbouring countries in the LAC region where domestic work represents an important source of employment for women (12.2 per cent of women in employment work as domestic workers). Intraregional migration for domestic work is growing. Between 2000 and 2010, intraregional migration increased at a rate of 3.5 percent annually. It now represents one quarter (24 percent) of LAC migration flows, second only to the United States (51 per cent). Spain (13 percent) is the third most common destination country for LAC migrants.

The United States is the main country of destination for migrant workers from LAC. In North America, domestic work and home-based care employ less than one million workers, the majority of whom are migrants (70.8 per cent) and women. A survey of domestic workers in 14 metropolitan areas in the United States showed that 76 percent were foreign-born, and that 59 per cent were “Latinas”. Almost half (47 per cent) were undocumented. A significant proportion (41 per cent) did not speak English, and 40 per cent did not graduate from high school (Burnham and Theodore, 2012). Latina child-carers receive lower wages than other nationalities and ethnicities.

Spain represents the second largest country of destination for LAC migrants, after the United States and outside the LAC. In 2009, there were 2.5 million registered migrants from the LAC, representing one third of all registered migrants in Spain. By country of birth, the largest communities came from Ecuador, Colombia and Argentina. LAC migration to Spain is female-dominated (80 men for every 100 women in 2010) and concentrated in the domestic and home-based care sector. The language factor is a key determinant of the decision to migrate and also of Spanish demand for LAC domestic and care workers.

Social care management, including housework, is predominantly familialistic in most Latin American countries. Household reproduction depends largely on private arrangements. This situation has cultural roots but is also a political problem since there are still insufficient public initiatives that would spread reproductive work more equitably (care centres, for example), while other social services that could ease this burden have suffered the effects of structural adjustment programmes or have limited opportunities for expansion due to a lack of public funding and weak tax systems.

In a number of countries where rural population density is high, such as in Paraguay, Honduras, Nicaragua and El Salvador, migration corridors are primarily internal (rural to urban). In some cases, this is the first step, followed by migration that is cross-border (e.g. from Paraguay and Nicaragua) or extraregional (from Honduras and El Salvador). Moreover, there is a strong concentration of migration flows between neighbouring countries (e.g., migration from Peru to Chile, from Nicaragua to Costa Rica, and from Paraguay and Bolivia to Argentina) where the proportion of migrants who come from a neighbouring territory exceeds 90 per cent of all migration inflows (OEA and OECD, 2015).

There are three main intraregional migration corridors for domestic work in the LAC: Paraguay to Argentina; Nicaragua to Costa Rica; and Peru to Chile.

Migrant domestic workers in all three corridors are between 25 and 44 years old. Education levels differ significantly from one corridor to the next with Paraguayan women having the lowest educational attainment (completed primary education).

In addition to economic and demographic asymmetries, three factors interact to enable the migration of domestic workers along the three corridors: better legal protection at destination, territorial proximity and open migration regimes.

Argentina, Chile and Costa Rica have put in place labour reforms granting domestic workers (including migrants) the same rights as workers in other sectors, while domestic workers continue to be partially excluded from the scope of the labour law in Nicaragua and Peru. Paraguay only recently (in October 2015) passed a new law extending equal labour protection to domestic workers (except for the minimum wage).

In 2006, 79.7 per cent of Peruvian domestic workers living in Chile had signed an employment contract and 71.7 per cent were registered with the social security system (Arriagada and Todaro, 2012). Both figures were higher for Peruvian domestic workers than for nationals in this sector. The proportion of migrant domestic workers who are registered with the Ministry of Labour, Employment and Social Security (MTEySS) in Argentina has also increased in recent years at a rate higher than that for national domestic workers. In practice, domestic workers' wages can be as much as three times higher in Costa Rica than in Nicaragua and twice more in Argentina and Chile than in Paraguay

1.7 Migrants in selected corridors by gender

	Paraguayans in Argentina (2010)	%	Peruvians in Chile (2011)	%	Nicaraguans in Costa Rica (2014)	%
Men	244279	44.4	40981	41.9	139863	45.7
Women	306434	55.6	56733	58.1	165978	54.3
<b>Total</b>	<b>550713</b>	<b>100</b>	<b>97714</b>	<b>100</b>	<b>305841</b>	<b>100</b>

Sources: CASEN, 2011; ENAHO, 2014; INEC, 2010.

and Peru respectively. Essential public services such as education and health are also more available and affordable in the three corridors' countries of destination.

Geographical proximity has its own advantages. Proximity promotes ease of mobility and reduces migration costs. Additional favourable elements are a common language and the existence of a dense network of family and community members at destination who can provide the information needed to facilitate migration and integration into the host society. For example, sixty per cent of migrants in Costa Rica received pre-departure information from family members and 33 per cent from friends (Acuña González, 2010).

Relatives often host migrants on arrival until they are able to relocate to an employer's home or save enough money to rent their own place. Placement is also facilitated by kinship networks. The downside of this informal placement system is that job options are quite limited for newcomers, contributing to the concentration of certain nationalities in certain occupations.

Geographical proximity also makes it easier for migrant domestic workers to travel back and forth to their home country according to the circumstances. The relative proximity, low transport costs and the porosity of the border facilitate the mobilization of migrants when a member of the family is ill or in the case of holidays. Family reunification is also made easier as a result of this proximity.

Free mobility regimes and open migration policies are perhaps the primary enabling factors. The only requirement to cross the border into Argentina and Chile are a Paraguayan or Peruvian national identity card. Paraguayans and Peruvians are immediately granted temporary residence and work permits on arrival in Argentina and Chile. From a country of destination perspective, these policies do not seem to have a negative impact on the functioning of labour markets.

Regional agreements are crucial in ensuring the portability of entitlements and benefits for migrants in the sector. Paraguay and Peru are party to the Multilateral Ibero-American Social Security Agreement which qualifies migrants, including domestic workers, who have worked in multiple countries to old-age, survivors', disability, and work injury benefits based on their combined contributions across participating countries either from their native or residence country (van Ginneken, 2013). They have also signed the Agreement on Residence for Citizens of the States Parties of Mercosur and Associated States (Act No. 3565/2008), whereby nationals of Argentina, Brazil, Chile, Paraguay, Uruguay, Bolivia, Colombia, Venezuela and Peru have the right to request and obtain temporary residence or standing in these countries in order to engage in remunerative activities under the same conditions as those afforded to the nationals of the countries of destination.

Seventy-seven per cent of domestic workers in Latin America were living under conditions of informality in 2013 (ILO, 2015m). There are significant gaps between labour laws and migration policies in their application to migrant domestic workers. Most countries continue to allow verbal employment contracts. Immigration laws, on the other hand, require a written contract as a basis for regularizing the legal status of domestic workers (Milano-Mijangos and García-Domínguez 2012, 32). Domestic workers often work for a number of employers simultaneously, but immigration policies require migrant domestic workers to work with the same employer for a specified period of time (Milano-Mijangos and García-Domínguez 2012, 33). Legal reforms have recently promoted domestic workers' (migrants and nationals) access to social security, income security, labour inspection, incentives, and collective bargaining coverage (ILO 2015m, 57). We outline them in tables 1.8 and 1.9.

Table

1.8 Formal recognition of domestic workers (including migrant domestic workers) in Latin America and the Caribbean

Right	Conditions	Countries
<b>Working days and hours</b>	40-48 weekly working hours on average (comparable to other sectors)	<b>Argentina, Bolivia</b> (48-hour working weeks and 8 hour working days for pensionable workers relative to 60-hour working weeks and 10-hour working days for non-pensionable workers, Law 2.450, Art. 11), <b>Columbia</b> (8-hour working days for pensionable workers relative to 10-hour working days for non-pensionable workers, Case C -372 of 1998 of the Constitutional Court), <b>Costa Rica, Peru, Guyana, Paraguay</b> (48-hour working weeks for pensionable workers, Law n. 5.407/2015, art. 13), <b>Chile</b> (45-hour working weeks for pensionable workers. The number of working hours is not specified for non-pensionable workers although they are entitled to at least 12 hours of daily rest, Law 20786, art. 149), <b>Brazil, Trinidad and Tobago, Uruguay, Ecuador, Jamaica and Venezuela</b> .
	9-12 daily rest hours Not established	El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá and the Dominican Republic.
	Longer working days for live-in workers	Bolivia, Chile and Columbia.
<b>Contract</b>	Written contract is compulsory	Argentina, Brazil, Chile, Costa Rica, Ecuador, México, Paraguay, and Bolivia (a written contract is only mandatory when the employment relationship exceeds one year, Law 2.450, Art. 3).
	Verbal contract is allowed	Columbia, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Nicaragua, Panama, Peru, Dominican Republic, Trinidad and Tobago, Uruguay, and Venezuela.
<b>Minimum wage</b>	Minimum wage is set for domestic workers or the general minimum wage applies to domestic workers	Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Ecuador, Guatemala, Guyana, Jamaica, México, Nicaragua, Panama, Paraguay, Trinidad and Tobago, Uruguay, Venezuela.
	No minimum wage is set for domestic workers	El Salvador, Honduras, Peru, Dominican Republic.
	Payments in kind as part of the minimum wage is allowed	Columbia, Costa Rica, El Salvador, Guatemala, Honduras, México, Nicaragua, Panama, Peru, Dominican Republic and Uruguay.
<b>Social security</b>	Mandatory affiliation	Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Ecuador, Guatemala, Guyana, Jamaica, Nicaragua, Panama, Peru, Dominican Republic, Trinidad and Tobago, Uruguay, and Venezuela.
	Voluntary affiliation	El Salvador, Honduras, and México.
	Special scheme with reduced coverage	El Salvador, Guatemala, Honduras and México.

Source: ILO 2015m, 56.

Table

1.9 Promoting the formalization of the domestic work sector in Latin America and the Caribbean

	Regulation	Social security	Income security	Inspection	Incentives	Collective bargaining
<b>Uruguay</b>	Law 18.065 (2006)	Legal recognition of social security rights governing private activity	Creation of the <i>Salary Group n. 21 – Domestic Work</i> in the context of the Wages Council since 2008	Modality: inspection without entering the employers' household	Embedding the insurance policy of the State Insurance Bank in the invoice of the Social Security Bank. Discount applied in payments	Collective bargaining between the Domestic Workers' Union (SUTD) and the League of Housewives, Consumers and Users
<b>Chile</b>	Law 20.786 (2014)	Covered by the general scheme that applies to the rest of the workers	Progressive equalisation of wages with the general minimum wage through Law 20.279 (2008)	Mandatory registration with the Labour Inspectorate. Modality: inspection without entering the employers' household		
<b>Ecuador</b>	Labour Law (2005) extends to domestic workers	Employers who do not register domestic workers with social security are liable to imprisonment (Revised Penal Code, 2014)	Progressive equalisation of wages with the general minimum wage between 2007 and 2010	Inspections have increased in the framework of ILO's programme "Decent Work for Domestic Workers" (2010)		
<b>Argentina</b>	Law 26.844 of the Special Contract Law for Domestic Workers (2013)	Reform to allow affiliation for part-time workers and other incentives	Setting of a wage-setting committee	Mandatory registration of working permits	Reduction in social security contributions. Tax incentives	Collective bargaining with a variety of employers' and workers' organizations

Source: ILO 2015m, 57.

# Protecting domestic workers along the migration cycle: What role for governments?

## 1. The international legal framework governing domestic work and its monitoring

All States have the sovereign right to develop their own policies on labour migration. International labour standards and other international instruments, as well as non-binding guidelines, play an important role in shaping policies that are fair, effective and coherent.

### 1.1 International labour standards

Domestic workers and migrants are covered by the ILO's international labour standards, unless otherwise specified. International labour standards lay out basic principles, articulate the rights and duties of employers and workers, establish policy objectives and provide guidance on means and procedures to be employed. They are designed to promote decent work for workers of all nationalities, irrespective of migration status. International labour standards can be (i) Conventions, which are legally binding international treaties that may be ratified by Member States; (ii) Protocols, which are supplementary instruments often used to amend or implement previous frameworks; or (iii) Recommendations, which serve as non-binding guidelines for the implementation of Conventions. All three – Conventions, Protocols and Recommendations – are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference.

The most important ILO Convention with respect to domestic workers is the *Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation 201*. Convention No. 189 promotes decent hiring, working, and living conditions for all domestic workers, including migrants. Taking into account the specific challenges that migrant domestic workers face, the Convention advocates the use of written contracts that are enforceable in the host country, the establishment by Members of clear conditions under which migrant domestic workers are entitled to repatriation, and the institution of safeguards against the abusive practices of PEAs operating across borders. Moreover, Convention No. 189 urges sending and receiving countries to cooperate with a view to the effective implementation of the Convention's provisions. Relevant provisions of Convention 189 are highlighted in box 2.1.

Convention No. 189 reaffirms the rights of domestic workers across many policy areas. In Particular, it reiterates the applicability of other key ILO instruments (see box 2.2), such as the *ILO Declaration on Fundamental Principles and Rights at Work, 1998*, which commits Member States to respect and promote universal principles and rights, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

In addition to Convention No. 189, Recommendation No. 201, and the fundamental rights conventions, the widely ratified ILO conventions of general application – such as those dealing with labour inspection, protection of wages, social security, and safety and health at work – are particularly relevant to this group of workers.

## 2.1 ILO Domestic Workers Convention, 2011 (No. 189)



International Domestic Workers Day 2016 rally, Hong Kong © IDWF.

**Information**

Art. 7: requires that domestic workers are informed of their terms and conditions of employment (such as their usual workplace, remuneration, normal hours of work and periods of daily and weekly rest), in an appropriate, verifiable and easily understandable manner and preferably through a written contract.

**Migrant domestic workers**

Art. 8 (1): requires Members to ensure that migrant domestic workers receive a written contract enforceable in the country of employment, or a written job offer, prior to travelling to the country of employment (does not apply to migrant domestic workers who are already within the territory of the country of employment or who have moved within a regional integration area).

Art. 8 (4): requires States to specify the conditions under which domestic workers are entitled to repatriation at the end of their employment.

**Live-in workers**

Art. 6: requires States to take measures to ensure decent living conditions that respect workers' privacy.

Art. 9: establishes (a) freedom to reach agreement with employers on whether or not to reside in the household; (b) the right not to remain in the household or with its members during periods of daily and weekly rest or leave; and (c) the right to keep their identity and travel documents in their possession.

**Decent working conditions and non-discrimination**

Art. 6: ensures that domestic workers enjoy fair terms of employment.

Art. 10(1): ensures equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave. The weekly rest period must be for a minimum of 24 consecutive hours.

Art. 11: ensures that remuneration is established without discrimination based on sex and minimum wage protection.

Art. 12 (1): regulates arrangements for payment:

- (i) directly to the domestic worker, as opposed to a third party;
- (ii) in cash;
- (iii) at regular intervals but at least once a month.

**Health and social security protection**

Art. 13: establishes the right to a safe and healthy working environment ("in accordance with national laws, regulations and practice").

Art. 14: requires Members to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including as regards maternity benefits. These measures are to be taken "in accordance with national laws and regulations" and "with due regard to the specific characteristics of domestic work".

**Protection from abuse, harassment and violence**

Art. 5: requires Members to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

**Freedom of association**

Art. 3(3): protects the right of freedom of association and the effective recognition of the right to collective bargaining.

**Private employment agencies**

Art. 15: obliges Members to ensure adequate machinery for the investigation of complaints by domestic workers; adopt measures to adequately protect domestic workers and prevent abuses, including laws or regulations specifying the respective responsibilities of the recruitment agency and the household and providing for penalties; consider concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices; ensure that fees charged by agencies are not deducted from the remuneration of domestic workers.

**Compliance and enforcement**

Art. 16: guarantees that domestic workers will have effective access to courts, tribunals or other dispute settlement mechanisms.

Art. 17(2): requires Members to develop and implement measures for labour inspection, enforcement and penalties, in accordance with national laws and regulations.

## 2.2 Eight fundamental ILO Conventions

- No. 87: Freedom of Association and Protection of the Right to Organize Convention, 1948
- No. 98: Right to Organize and Collective Bargaining Convention, 1949
- No. 29: Forced Labour Convention, 1930 (and its Protocol, 2014)
- No. 105: Abolition of Forced Labour Convention, 1957
- No. 138: Minimum Age Convention, 1973
- No. 182: Worst Forms of Child Labour Convention, 1999
- No. 100: Equal Remuneration Convention, 1951
- No. 111: Discrimination (Employment and Occupation) Convention, 1958

The ILO has repeatedly taken the position that, unless a Convention or Recommendation expressly excludes domestic workers, these workers are included in the instrument's scope (ILO, 2010a). For example, ILO Conventions that do not explicitly refer to domestic workers but that apply to them include:

- The *Migration for Employment Convention (Revised), 1949 (No. 97)*, protects regular migrant workers from discrimination and exploitation, ensuring equality of treatment between regular migrant workers and national workers with respect to hours of work, rest period and holidays.
- The *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*, entitles migrant workers who are in an irregular situation to equality of treatment in working conditions and in respect of rights arising out of their past employment. Equality of treatment extends to social security, trade union and cultural rights.
- The *Equality of Treatment (Social Security) Convention, 1962 (No. 118)*, and the *Maintenance of Social Security Rights Convention, 1982 (No. 157)*, aim to ensure the equal treatment of migrant workers with national workers with regard to all nine branches of social security.
- The *Private Employment Agencies Convention, 1997 (No. 181)*, encourages States to enter into bilateral agreements to prevent abuses and fraudulent practices. It prohibits the denial of workers' rights to freedom of association and collective bargaining; the practice of discrimination against workers; and the charging of fees to workers.
- The *Maternity Protection Convention, 2000 (No. 183)*, applies to all employed women, including those in atypical forms of dependent work (Art. 2).

Finally, a number of ILO standards contain specific provisions covering domestic workers and migrant workers. For example, the *Sickness Insurance (Industry) Convention, 1927 (No. 24)*, and the *Medical Examination of Young Persons Recommendation, 1946 (No. 79)*, specifically stipulate that they apply to domestic workers.

## 1.2 Relevant ILO non-binding principles and guidelines

ILO instruments containing non-binding principles include the *Domestic Workers Recommendation, 2011 (No. 201)*, which accompanies the *Domestic Workers' Convention, 2011 (No. 189)*. The Recommendation guides Member States in their implementation of the principles of the Convention. Regarding migrants in this sector, the Recommendation contains valuable guidance on a range of measures that may be taken such as hotlines, interpretation services, emergency housing, consular assistance, provision of information in their languages, and measures to ensure migrant workers' ability to pursue criminal and civil remedies and to use legal and social services (para. 21).

They also include the *Multilateral Framework on Labour Migration, 2006*, which guides the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices with a view to improving the governance, promotion and protection of migrant rights. Most importantly, it includes two principles that reference domestic workers explicitly: *Principle 9.8* advocates "adopting measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers including domestic workers and other vulnerable groups..." and *Principle 11.2* recommends "intensifying measures aimed at detecting and identifying abusive practices against migrant workers [...] particularly in those sectors [...] such as domestic work".

The Labour Migration Branch of the ILO designed an *online database* offering access to good practices on labour migration policies and programmes. The database was designed to provide up-to-date and easily accessible examples to national constituents in their application of the principles and guidelines outlined in the *Multilateral Framework on Labour Migration*. The database now includes

more than 20 good practices on migrant domestic workers linked to a number of thematic areas, including protection and the strengthening of workers' and employers' organizations.

The ILO is now *developing guidance and piloting fair recruitment intervention models* across migration corridors in the context of its “Fair Recruitment Initiative”, a multi-stakeholder initiative to: (i) help prevent human trafficking and forced labour; (ii) protect workers, including migrant domestic workers, from abusive and fraudulent practices during the recruitment and placement process (including during their pre-selection, selection, transportation, placement and safe return); and (iii) reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination (ILO, 2015c).

### 1.3 The complementarity of international instruments and the regular monitoring of ILO Conventions

Countries submit reports every three years identifying the steps they have taken in their application of the eight fundamental and four governance Conventions. For all other Conventions, reports are submitted every five years. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may provide feedback to their government or send their comments directly to the ILO. Countries that have ratified Convention No. 189 also have reporting requirements, one year after the ratification and every five years thereafter. The Committee of Experts on the Application of Conventions and Recommendations makes observations (on fundamental questions raised by the application) or direct requests (relating to more technical questions or requests for further information). The Committee on the Freedom of Association ensures compliance with Conventions Nos. 87 and 98 on freedom of association and collective bargaining (ILO, 2014p).

#### Box

##### 2.3 Freedom of Association for domestic workers in Malaysia

The Malaysian Trades Union Congress (MTUC) submitted Case No 2637 (Malaysia) on 10 April 2008 alleging that the Government is refusing to allow migrant domestic workers to establish organizations to defend their interests. In October 2015 [report No. 376, October 2015], the Committee reiterated its recommendation at its November 2012 meeting [see 365th Report, paras 101–104] that the Government urgently take the necessary measures, including legislative, to ensure in law and in practice that domestic workers, including contract workers, whether foreign or local, may all effectively enjoy the right to establish and join organizations of their own choosing.

A number of United Nations conventions and their treaty bodies promote the implementation of international norms and standards that guarantee the civil, political, economic, social and cultural rights of migrant domestic workers, promote fair recruitment practices and decent living and working conditions for them, as well as provide them with adequate, accessible and affordable means of legal redress.

The *International Covenant on Civil and Political Rights, 1966* (ICCPR), prohibits slavery and the slave trade in all their forms as well as forced labour (Art. 8), establishes a procedure for the expulsion of aliens lawfully in the territory of a State Party to the Covenant (Art. 13), and establishes the right to freedom of association to all, including migrants.

The *International Covenant on Economic, Social and Cultural Rights, 1966* (ICESCR), recognizes the right of everyone to enjoy equal and satisfactory working conditions, to form trade unions and join them, and to benefit from social security, including social insurance and maternity leave (Arts. 7-10).

The UN *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (CEDAW), places all State Parties under the obligation to work for the elimination of discrimination against women in the field of employment (Art. 11). Its treaty body recommends taking into account the unremunerated domestic activities of women as a contribution to gross national product (General Recommendation No. 17) and that countries of destination ensure that migrant women workers enjoy the same rights as national women workers (General Recommendation No. 26). The treaty body overseeing implementation of the UN *International Convention on the Elimination of All Forms of Racial Discrimination, 1990* (ICERD), recommends removing any obstacle preventing “the enjoyment of economic, social and cultural rights by non-citizens” in the area of employment among

## 2.1 Convention No. 189 status of ratifications

Country	Date	Country	Date
Argentina	24 Mar 2014	Ireland	28 Aug 2014
Belgium	10 Jun 2015	Italy	22 Jan 2013
Bolivia, Plurinational State of	15 Apr 2013	Mauritius	13 Sep 2012
Chile	10 Jun 2015	Nicaragua	10 Jan 2013
Colombia	09 May 2014	Panama	11 Jun 2015
Costa Rica	20 Jan 2014	Paraguay	07 May 2013
Dominican Republic	15 May 2015	Philippines	05 Sep 2012
Ecuador	18 Dec 2013	Portugal	17 Jul 2015
Finland	08 Jan 2015	South Africa	20 Jun 2013
Germany	20 Sep 2013	Switzerland	12 Nov 2014
Guyana	09 Aug 2013	Uruguay	14 Jun 2012

others, and any discrimination “in relation to working conditions and work requirements” (General Recommendation No. 30).

The *UN Convention on the Rights of the Child, 1989* (CRC), recognizes the right of the child to be protected from economic exploitation and from performing any work (Art. 32).

The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990* (ICRMW), repeats provisions already included in the International Covenants and other core human rights treaties, although it establishes additional safeguards.

The *UN Convention against Transnational Organized Crime, 2000*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000*, and the *Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000*, are important instruments in the fight against the trafficking and smuggling of persons.

The wide array of norms and institutions “forms a polycentric structure in which various international bodies approach the problem encountered by domestic workers from multiple perspectives” (Mundlak and Shamir 2014). For example, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979, approaches domestic workers from the gender aspect, the Committee on the Elimination of Racial Discrimination (CERD) approaches them from a standpoint of ethnic or racial subordination and discrimination, the Committee on Migrant Workers focuses on the issue of migration, the Trafficking Protocol looks at exploitation and victimhood, and the ILO focuses on the labour perspective from recruitment to the termination of the employment relationship emphasizing equal treatment of domestic and other types of work throughout.

This “polycentric structure” – counting ILO’s supervisory mechanism and UN Treaty bodies and special procedures – becomes useful when a country has not ratified Convention No. 189. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) cited the concluding observations of the CEDAW Committee in March 2014 regarding the violence and exploitation experienced by women migrant domestic workers in Bahrain<sup>1</sup> as a basis for its recommendation that the Government of Bahrain ensure that “migrant workers, including migrant domestic workers, are fully protected from abusive practices and conditions of employment that amount to forced labour”<sup>2</sup> and relied on Convention No. 29 (which Bahrain ratified in 1981) to encourage the Government to ensure that migrant domestic workers are fully protected from abusive practices and conditions of employment that amount to forced labour.<sup>3</sup> Using Convention No. 29, which Oman ratified in 1998, the CEACR evaluated the clauses of the model contract for recruiting migrant domestic workers in Oman and requested the Government of Oman to “indicate the measures taken to facilitate the transfer of a migrant domestic worker’s services to a new employer, so that these workers can freely terminate their employment and so they do not fall into situations that could amount to forced labour”.<sup>4</sup>

1. United Nations Committee on the Elimination of Discrimination against Women: *Concluding observations on the third periodic report of Bahrain, CEDAW/C/BHR/CO/3*, Adopted by the Committee at its 57th Session (10–28 February 2014), Geneva, 2014 (Geneva), paragraph 39.

2. Direct Request (CEACR), Forced Labour Convention, 1930 (No. 29), adopted 2014, published 104th ILC session (2015).

3. Direct Request (CEACR), Forced Labour Convention, 1930 (No. 29), adopted 2014, published 104th ILC session (2015).

4. Observation (CEACR), Forced Labour Convention, 1930 (No. 29), adopted 2013, published 103rd ILC session (2014).

## 2. Protecting migrant domestic workers along the migration cycle: National laws and policies

The adoption of Convention No. 189 on 2011 is a major step forward in improving the working conditions of millions of workers across the world as it complements and reinforces the existing international legal framework of protection. Significant progress was noted in national law and practice five years after the adoption of the Convention.

At the same time, domestic workers remain excluded, in total or in part, from the coverage of labour law, and hence are particularly vulnerable to exploitation and abuse. Additional law and policy challenges relate to migrant domestic workers who stand at the cross roads of two sovereign countries with divergent interests and policy objectives.

Addressing these challenges requires targeted legislative and policy initiatives by both countries of origin and destination for migrant domestic workers. The following section highlights some examples of legislative and policies measures related to migrant domestic workers.

### Box

#### 2.4 Paraguay harmonizes its legislation with Convention No. 189

Paraguay ratified Convention No. 189 in 2013. Two years later, in 2015, a new law extending labour rights to domestic workers was adopted. This process was supported by evidence indicating that 60 per cent of Paraguayan domestic workers in Argentina were domestic workers in Paraguay, establishing a clear relationship between poor labour conditions of domestic workers and their decision to migrate.

### 2.1 Countries of origin: The opportunities and challenges of mainstreaming domestic workers in foreign employment policies

Countries develop foreign employment policies to protect their nationals who are working abroad, to facilitate their migration, employment in foreign countries, and their return. Ideally, they aim to enhance returns on public investment in education and training, utilize human resources optimally, and increase the positive impact of migration and remittances on growth and development (Abella, 1997).

There are a number of foreign employment policy regimes: the *laissez-faire approach* where the State leaves the market to decide “how and where labour is to be employed, and on what conditions”; the *regulated system* where the country of origin adopts laws and regulations to screen the jobs offered, regulates intermediation by recruiters, and sets minimum standards for employment contracts while leaving the allocation of labour to the market; and the *State-managed system* “where the State does not simply regulate foreign employment but sets up state enterprises to recruit and place workers abroad”. In a *state monopoly*, the State acts as the sole contractor for the services of its nationals (Abella, 1997). Different foreign employment regimes can co-exist.

Foreign employment policies are evaluated based on their consistency with the overall national development strategy, ability to protect the rights of migrants, their comprehensiveness, fairness and transparency, effectiveness and efficiency. The involvement of social partners in the design, implementation, and evaluation of these policies is important in these regards.

Because labour migration is becoming increasingly feminized, foreign employment policies should be also evaluated on the basis of their sensitivity to gender issues (Lim, 2016), especially in relation to the domestic work sector where 73 per cent of migrants are women. Women experience discrimination at all stages of the migration process due to lack of access and control over resources and to gender segregation in the labour market. These policies must afford protection to all migrant workers, while specifically targeting women migrant workers through, for example, the inclusion of provisions regarding maternity protection.

The following are selected examples of how countries of origin for domestic workers are attempting to mainstream domestic workers in their foreign employment policies, followed by a discussion of salient implementation challenges.

## ... Making headway in mainstreaming domestic work in foreign employment policies...

- **Nepal's Foreign Employment Act of 2007** prohibits discrimination between men and women when sending workers for employment abroad (ILO, 2014b). The **Thirteenth Three-Year Plan of the National Planning Commission** promotes cooperation between governments belonging to the South Asian Association for Regional Cooperation (SAARC) and countries of destination. It makes provision for loans to travelling workers, seeks to make foreign employment more inclusive and proposes skill-building programmes for women.<sup>5</sup> The **Foreign Employment Policy 2012**<sup>6</sup> proposes social and economic reintegration packages via, for example, the development of entrepreneurship, capital formation and investment, use of returnees as trainers for pre-departure and skills training, provision of psycho-social counselling and creation of rehabilitation centres. More recently, in 2015, Nepal issued new guidelines to regulate the recruitment of domestic workers overseas.
- In 2004, **Indonesia's Act No. 39 on the Placement and Protection of Indonesian Overseas Workers** was enacted by the House of Representatives. The Act was created as a result of advocacy efforts by community groups, primarily the Consortium for Defending Indonesian Migrant Workers (KOPBUMI). Additional government regulations and presidential degrees enacted between 2004 and 2009 provide the framework for the Act's implementation and enforcement.
- **Paraguay's Migration Act** covers both migration from and to Paraguay. The Act establishes a clear preference for retention or repatriation of the country's workers (Article 119) and with regard to established migration patterns, it places the Government under a duty to provide information and advice to Paraguayans pre-departure. This law expressly prohibits unlicensed agencies from facilitating the migration of Paraguayans (Article 23). Furthermore, Article 140 provides that the Government is to conclude bilateral agreements with countries of destination to ensure equality between Paraguayans and the nationals of these countries, especially in the area of social security (ILO, 2014c).
- In 2004, Ukraine adopted a programme to protect the rights and interests of citizens travelling abroad to seek employment. The programme includes provisions on ensuring coherence between relevant multilateral arrangements, concluding bilateral agreements, improving employment mediation services, and preventing irregular migration and human trafficking. Concerns about the social impact of migration led to the introduction of a voluntary pension insurance system for individuals working abroad. Since 2008 a simplified procedure for registering contracts has been in force (this can be done by phone, via the Internet or by post) (ILO, 2014d). In 2011, **Ukraine's Concept Paper on State Migration Policy** was approved. This concept paper sets out guidelines for the implementation of state migration policy, its strategic objectives, the principles and priorities for action by public authorities in the field of migration, areas of improvement for state migration policy's legislative and institutional framework and mechanisms for its implementation.<sup>7</sup>

## ... The challenges of actualizing foreign employment policies in their application to domestic workers...

Governments use a variety of institutional arrangements to actualize the principles and stipulations enshrined in their foreign employment policies. These include setting up labour desks at international airports, introducing complaint mechanisms, appointing labour attachés and establishing pre-departure training, welfare funds, rehabilitation centres and employment offices for returnees.

These arrangements are often ineffective owing to budgetary constraints that restrict the ability of countries of origin to set up consular representations abroad with the capacity to follow through on the policy, disagreements between heads of mission (affiliated to the ministry of foreign affairs) and labour attachés (affiliated to the ministry responsible for foreign employment), the absence of bilateral labour agreements (BLAs) or memoranda of understanding (MoUs) to extend the application of these policies to a foreign country, and a general focus on placement rather than protection. Where BLAs and MoUs are in place, they facilitate labour market access rather than provide protection to workers (Wickramasekara, 2015). Bilateral agreements frequently include a model employment contract which regulates some aspects of employment (e.g. contract period, travel expenses, wages, accommodation, medical care and annual leave) but these typically fall short of international labour standards and do not necessarily have the force of the law (Wickramasekara, 2015). Model contracts are often negotiated with particular countries of origin, each resulting in a different wage level. This

5. Government of Nepal, National Planning Commission, 13th Three-Year Plan, 2070–73.

6. Government of Nepal, Foreign Employment Policy 2012, No. 9.3.3.

7. Decree of the President of Ukraine, #622/2011 on the concept of State migration policy, available at [http://unhcr.org.ua/img/uploads/docs/Concept\\_State%20Migration\\_Policy-June-2011.pdf](http://unhcr.org.ua/img/uploads/docs/Concept_State%20Migration_Policy-June-2011.pdf) [accessed on 1 June 2016].

### 2.5 Sri Lanka's foreign employment policy: Mainstreaming domestic work across the migration cycle

The Policy was officially launched in 2008 and adopted in 2009. The development of the National Policy was guided by the ILO Multilateral Framework on Labour Migration. Following consultations with the ILO, three thematic working groups were established to work on each of three priority areas: good governance of labour migration, protection and empowerment of migrant workers and their families, and linkage of migration and development processes. The working groups operated in the context of a larger Tripartite National Steering Committee, chaired by the Minister of Foreign Employment Promotion and Welfare.

Since its adoption, a number of mechanisms, guidelines, training sessions and documents have been prepared to facilitate its implementation. For example, in 2013 an operational manual was produced to strengthen and streamline the services provided by Sri Lankan diplomatic missions in countries of destination, including assisting migrant workers with employment grievances (see *Operational Manual for Labour Sections of Sri Lankan Diplomatic Missions in Destination Countries: Ensuring the Protection and Welfare of Migrant Workers*).

The country's National Labour Migration Policy calls on the State to facilitate the return and reintegration of migrant workers by creating opportunities for "skills transfer, productive employment, and conflict-free social integration". The ILO supported the development of a sub-policy framework and a National Action Plan on Return and Reintegration. The policy primarily focuses on low-skilled workers, especially women domestic workers, who have limited capacity, knowledge and access to information and services. The National Action Plan was developed for the period 2016-2018 and consists of short-term, medium-term and long-term interventions in the core areas listed below. Each activity has a lead agency and support agencies as well as specific indicators and timelines.

#### Core area 1: Social reintegration of returnees

Objective: Ensure dignified and safe return of migrant workers and their efficient reintegration into a secure and responsive family and community.

#### Core area 2: Economic reintegration of returnees

Objective: Support migrant workers to acquire certified and employable skills, develop entrepreneurship and engage in employment and sustainable livelihoods.

#### Core area 3: Physical and psycho-social well-being of returnees and their families

Objective: Ensure the physical and mental health of migrant workers and their family members at all stages of the migration cycle: pre-departure, departure, in-service, return and reintegration.

#### Core area 4: Civil and political awareness of returnees

Objective: Support and empower migrant workers to influence policy decisions and practices to secure protection of their socio-economic and civil rights.

#### Core area 5: Effective management of return and reintegration process

Ensure effective return and reintegration phase of labour migration through multi-stakeholder participation. Strategies include: management of information on migration and dissemination at all levels, capacity building for all key stakeholders in the migration sector and intersectoral and interagency coordination for effective service provision (Ministry of Foreign Employment of the Government of Sri Lanka, S.d.).

Source: This entry is a contribution by Swairee Rupasinghe.

creates wage gaps and discrimination in treatment between workers of different nationalities. The following are some examples of implementation challenges for foreign employment policies targeting migrant domestic workers.

- **Nepal's Foreign Employment Act (FEA)** outlines the roles of Labour Attachés, the Labour Desk and the Foreign Employment Tribunal in monitoring the enforcement of migrant domestic workers' contracts abroad. While the Government of Nepal developed procedures in 2010 to ensure that the salaries and benefits accorded to migrant domestic workers are compliant with the amounts set by the embassies in the countries of destination, implementation is impossible in countries where Nepal does not have diplomatic representations, like Lebanon (ILO, 2014e). Only through bilateral negotiations can Nepal ensure that the minimum wage for its workers will be enforced in a destination country. BLAs are not possible where a deployment ban is in effect. Recruitment agencies are also known to circumvent the minimum wage by signing side agreements with workers travelling to countries where the minimum wage is lower (Share Sansar, 2013).

## 2.6 Bans on the deployment of women to migrate for domestic work



A number of countries in Asia and Africa require their citizens to acquire an exit permit prior to migrating for work abroad, usually not a requisite for “skilled workers”. Governments can establish deployment bans on the migration of women for work in certain occupations which are perceived as risky, such as domestic work. Bans take many forms with restrictions on age, educational profile, destination country, and/or family status. In Sri Lanka, it is mandatory for women migrant workers intending to work abroad as domestic workers to provide a Family Background Report (FBR), proving that they have no children who are less than five years old, and that alternative care arrangements are in place when the children are older than five.

A study conducted by the ILO on the effects of the age ban on women migrants from Nepal, found that bans are ineffective in preventing domestic workers from migrating as they do not address the compelling motives that prompt these women to migrate. Instead of protecting migrant women, bans tend to increase the complexity of the recruitment process and force many aspiring migrant

workers to use irregular migration channels. Moreover, destination countries do not routinely apply or enforce these prohibitions and furthermore, domestic workers who circumvent the ban are not entitled to repatriation assistance packages.

Since the publication of this study, Nepal has reopened migration channels for domestic work for women 24 years or older, establishing cost-free hiring for workers and restricting migration to registered recruitment agencies.

- **Indonesia’s Act No. 39/2004** does not make explicit reference to migrant workers and prioritizes “placement” over “protection”: from a total of 109 articles, only eight articles (Articles 77 to 84) regulate workers’ protection compared to 86 articles regulating the placement process. The Act also places responsibility for protection on recruitment agencies. More recently, Indonesia has adopted a more protective bent. Under its Domestic Worker Roadmap 2017, the Ministry of Manpower and Transmigration of Indonesia has announced its intention to allow the deployment of Indonesian workers abroad only when they are formally recognized as workers.

Adequate institutional capacity and inter-ministerial coordination (especially between the ministry of labour and the ministry responsible for foreign employment) is essential to protect citizens working abroad (Baruah and Cholewinski, 2007). To facilitate coordination between these two ministries and other relevant stakeholders, migration is often mainstreamed into the work of national committees on human trafficking (e.g. in Nepal), or national women’s commissions (e.g. the Comisión Nacional Tripartita para Examinar y Promover la Igualdad de Participación de la Mujer en el Trabajo in Paraguay). These commissions are policy platforms bringing together all the relevant stakeholders to identify policy problems and corresponding solutions in a concerted manner. These mechanisms are only effective to the extent that they reflect the priorities of migrant domestic workers. The participation of workers’ organizations in these platforms is instrumental in channeling those priorities.

## 2.2 Countries of destination: The long road to balancing labour rights and regular channels for migrant domestic workers

Countries of destination employ a number of measures to extend rights and protection to migrant domestic workers. These initiatives include extending labour rights to migrant domestic workers, developing written contracts (model contracts or SUCs) to formalize the employment relationship, developing migration policies that take migrant domestic workers into account, instituting national coordination mechanisms and action plans to implement migration policies, and launching information and regularization campaigns.

## Extending labour rights to migrant domestic workers

Extending the reach of labour law to domestic workers can facilitate worker-employer relations by providing a binding reference point, thus lowering transaction costs and addressing the power imbalance between the parties (ILO, 2012a). Domestic workers are often excluded from labour protections; the ILO found that in 2010, only 10 per cent of domestic workers globally enjoyed the labour protections afforded to other categories of workers (ILO, 2013e). Though comparable data have not been collected for migrant domestic workers, it is safe to assume that the latter enjoy fewer labour and social protections, particularly where restrictions on mobility are reflected in higher numbers of migrant domestic workers in irregular situation.

Protection gaps are greater in contexts where labour laws do not extend to domestic workers, even when subordinate regulations, specific labour laws, bilateral agreements and standard contracts are in effect. Important working conditions for domestic workers, include wage legislation, working time provisions and maternity protection. Minimum wage policies are critical because domestic work is perceived as unskilled and unproductive work (wages are independent of productivity and profit margins are low), and therefore not worthy of monetary reward. Working time policies are also critical because of the number of live-in domestic workers and their heightened exposure to long and unpredictable working hours. Finally, maternity protection is important because domestic work is a women-dominated sector, mostly poor, who are in dire need of substitution for their wages as they are on maternity (ILO, 2013).

As such, extending protection to all domestic workers – migrants and nationals – is important in improving working and living conditions in the sector. Bringing domestic workers, a large majority of whom are women, under the protection of labour legislation is also a matter of gender equality. Labour law reform in the sector requires particular attention to protection from abuse, harassment and violence, gender-based pay discrimination, maternity protection and measures to facilitate the balancing of work and family responsibilities. Other fields of law such as civil law, criminal law or human rights law cannot replace legislation more specifically addressing working conditions and social protection. International labour standards and recommendations play an important role in the design of labour laws for domestic workers (ILO, 2012a). Though their legislative and socio-economic backgrounds are very different, the countries below have taken steps to bring migrant domestic workers under the more protective coverage of national labour laws.

- **South Africa's Labour Relations Act (Act 66 of 1995)** and the **Basic Conditions of Employment (Act of 1997)** identified domestic work as a category of formal employment. In addition, the **Sectoral Determination for Domestic Workers Act of 2002** established minimum wages (separately for urban and non-urban areas) and hours of work, overtime pay, salary increases, deductions, and annual and sick leave.<sup>8</sup> All the general provisions of the Act apply to workers irrespective of nationality or status with the exception of the provision on the Unemployment Insurance Fund, which covers national domestic workers only (ILO, 2014f).
- **Argentina's Act No. 26.844** strengthens the protection of workers in areas such as working hours, wages (instituting a National Working Committee to fix a minimum wage for employees working in private homes in Title XIII of the Act), the supplementary annual salary and protection against dismissal. The law sets out five categories of domestic work with their corresponding minimum wage levels, prohibits child labour (under 16) and extends special protection to young workers (aged from 16 to 18), as part of which the employer must, among other things, ensure that these workers complete school (Title II of Act No. 26.844) (ILO, 2014h).

## Written contracts for migrant domestic workers

Written employment contracts play an important role in levelling the playing field between domestic workers and their employers. A contract proves the existence of the employment relationship and clarifies its terms should a dispute arise between the parties. Some countries make model contracts available to facilitate compliance (ILO, 2012a). Model contracts help employers to comply with statutory requirements regarding working conditions and entitlements and can assist the parties in discussing the organization of working time, remuneration, social benefits and other terms (ILO, 2012a).

Written contracts do not substitute for the inclusion of domestic work under labour laws. Contracts are based on the assumption that the two contractual parties have similar power whereas, in reality, access to remedy in case of breach of these contract could be very limited for migrant domestic workers where they are in irregular situation, where their visa and work permits are tied to their employers, and where they live and work in the household of the employer with limited access to the world outside without prior knowledge and approval by their employer. These contracts should be complementary to access to justice mechanism and to labour law coverage.

8. Labour Research Service, 2013.

## 2.7 What do Convention No. 189 and Recommendation No. 201 say about contracts?

### Domestic Workers Convention No. 189, Article 7

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular: (a) the name and address of the employer and of the worker; (b) the address of the usual workplace or workplaces; (c) the starting date and, where the contract is for a specified period of time, its duration; (d) the type of work to be performed; (e) the remuneration, method of calculation and periodicity of payments; (f) the normal hours of work; (g) paid annual leave, and daily and weekly rest periods; (h) the provision of food and accommodation, if applicable; (i) the period of probation or trial period, if applicable; (j) the terms of repatriation, if applicable; and (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

### Domestic Workers Recommendation, (No. 201) 2011, paragraph 6

(1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment. (2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include: (a) a job description; (b) sick leave and, if applicable, any other personal leave; (c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention; (d) any other payments to which the domestic worker is entitled; (e) any payments in kind and their monetary value; (f) details of any accommodation provided; and (g) any authorized deductions from the worker's remuneration.

- **A unified contract was adopted by Lebanon in 2009**, as an interim measure while discussions regarding new legislation continued. The standard contract should be signed by both parties before a work permit is issued. The contract is renewable for one year and includes a probationary period of three months. Among other entitlements, it provides the right to a salary paid at the end of each working month, medical care, sick leave for half a month with pay and half a month with half pay, and a travel ticket at the end of the contract. It entitles workers to communicate with their family at least once per month at the employer's expense, limits working hours to ten hours per day, and guarantees eight hours of rest at night as well as weekly rest of no less than 24 continuous hours (ILO, 2014e).
- **According to Polish regulations**, domestic work should be based either on an employment contract regulated by the general Labour Code or on a civil law contract (of mandate or task-specific), also known as "trash contracts". While the employment contract grants all labour rights (including minimum wage, paid vacations and social security), "civil law" contracts are task-specific and time-bound. These taxable contracts formalize the working relationship without granting workers access to labour rights. Workers operating under this type of contract are not entitled to paid leave, and must negotiate the number of working hours with their employers. While also subject to social taxes, the mandate contract includes access to health and social benefits (Kindler, Kordasiewics and Szuleka, 2016).

### Migration policies extending to migrant domestic work

It is very important for countries of destination to introduce policies that take into account the demand for domestic workers, and the extent to which shortages in the sector should be filled by foreign labour. In addition to migration policies, countries of destination need to consider migrant-friendly post-admission policies like ensuring the protection of workers, facilitating social cohesion, supporting community welfare and making social security provision (Baruah and Cholewinski, 2007).

- **Poland's migration policy and its guiding principles** were approved by the Polish Government in 2012.<sup>9</sup> Among other provisions, the document stresses that Poland's migration policy should be tailored to the needs of the Polish labour market. In the section on legal migration, the plan refers to foreign workers with qualifications that are in demand (1.1.3) and gives special admission rights to "nationals of Belarus, Georgia, Moldova, Russia or Ukraine carrying out care or housework for private households".

9. Polish migration policy, available at: <http://bip.msw.gov.pl/bip/polityka-migracyjna-po/19529,Polityka-migracyjna-Polski.html> [accessed on 15 April 2016].

- **Argentina's immigration policy, Act No. 25781**, in effect since January 2004, facilitates the regularization of migrant workers and in turn severely sanctions the informal employment of migrant workers. This law also governs the rights of migrant domestic workers, irrespective of migration status. The law emphasizes that in no case should migrants in an irregular situation be denied admission to educational establishments (Art. 7) or access to healthcare facilities and welfare programmes (Art. 8). The law establishes a comparatively favourable working environment for the citizens of Mercosur, including Paraguayan domestic workers working in the country. The law grants Mercosur nationals the right to apply for a temporary residence (of two years), after which they can apply for a permanent residence permit.<sup>10</sup>

When migration policies are restrictive, they prompt irregular migration and heighten migrants' vulnerability to exploitation. Restrictive migration practices have the effect of pushing migrants into the informal economy and creating an invisible industry that operates outside the legislative framework. Restrictions on mobility include **temporary migration schemes** and **restrictions on employment and physical mobility at destination**.

**Temporary migration schemes** are known to increase workers' vulnerability (ILO, 2013f, pp. 10-11). Ukrainian migrant domestic workers, for example, are admitted into the Polish labour market if they have a work permit or an employer's declaration of intention to hire a foreigner. The *declaration of intention to hire a foreigner* allows domestic workers to work without a permit for six months in one year. An unknown number decide to overstay out of fear of not being able to obtain another entry visa. They live in a "legal twilight" which exacerbates their precarious situation (Kindler, Kordasiewics and Szuleka, 2014). In addition, temporary domestic workers cannot join trade unions. Their access to services and voice mechanisms – that allow them (either individually or as a collective) to suggest solutions to employers about work and/or quality issues – is therefore considerably curtailed.

**Restrictions on human and labour mobility:** The *kafala* system in the Arab States is a clear example of restrictions on both human and labour mobility. It is based on a collection of customary practices that is not codified into law (Anti-Slavery International and Kafa, 2015). It is premised on five central restrictive principles: (i) entry into the country is tied to a specific employer (known as the migrant's "sponsor") through a work and residence visa; (ii) it is the sponsor's responsibility to renew the residence visa permitting the migrant worker to stay in the country; (iii) the sponsor's approval is needed to terminate the migrant's employment; (iv) the sponsor's approval is needed to transfer from one employer to another; and (v) exit from the country requires the sponsor's approval (ILO, 2015). The *Kafala* results in situations where employers have considerable control over migrant workers.

Like the foreign employment policies of countries of origin, migration policies require coordination between relevant ministries and agencies in countries of destination. This can take the form of national committees or national tripartite social dialogue platforms. Information campaigns are also instrumental in ensuring compliance with migration policies and regulations. The ILO's multilateral framework stresses that it is important for governments, in consultation with the social partners, to formulate and implement measures to prevent abusive practices, migrant smuggling, trafficking in persons and irregular labour migration (ILO, 2006a). These measures include information campaigns to raise the awareness of migrant workers of existing or new laws and regulations that have a bearing on their right to be present in the host country as well as their working and living conditions.

- **Lebanon's National Steering Committee on Women Migrant Domestic Workers** met between 2006 and 2011 with the aims of (i) drafting a standard unified contract; (ii) developing an information guide for migrant domestic workers; and (iii) drafting a decree to regulate the work of private employment agencies. Since 2015 the Steering Committee has been engaged in discussions to identify alternatives to the *Kafala* system. Lebanon also has a National Steering Committee against Trafficking, an initiative of the Institute for Human Rights of the Beirut Bar Association and whose members consist of the Ministry of Labour, the Ministry of Social Affairs, the Department of General Security and the Ministry of Justice.

10. Mercosur is a subregional bloc. Its full members are Argentina, Brazil, Paraguay, Uruguay and Venezuela, and its associate countries are Bolivia, Chile, Peru, Colombia, Ecuador and Suriname. People from Mercosur countries can only apply for a temporary residence for one year (renewable) if they prove that they meet any of the requirements established for each category of residence (education, labour, etc.). The special arrangements for Mercosur have tangibly improved the situation of irregular workers in the region. See: Centro de Estudios Legales y Sociales (CELS): Derechos humanos en Argentina: Informe 2007 (Buenos Aires, 2007).

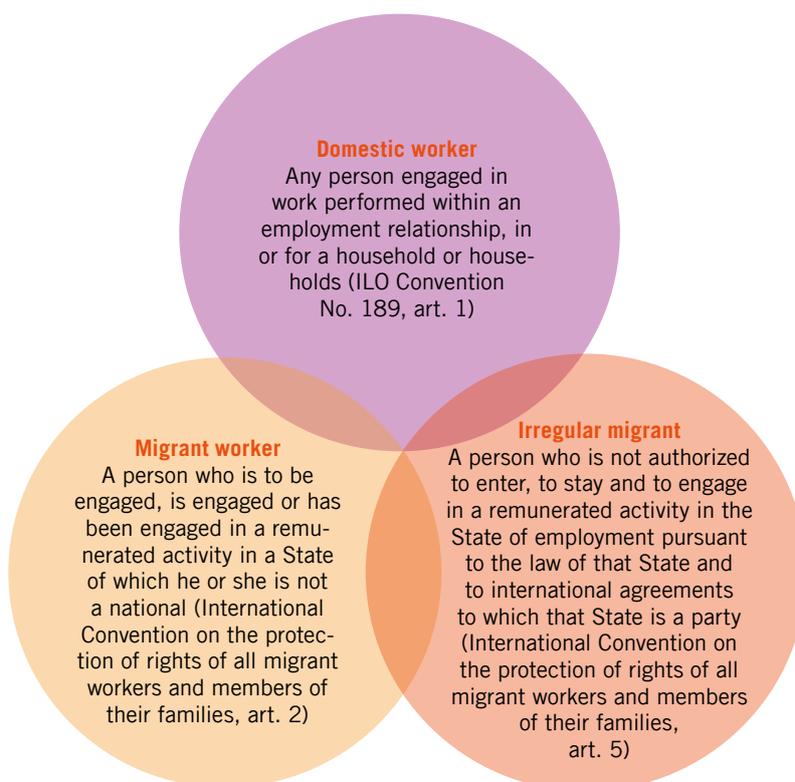
- **The Government of Poland has launched various information campaigns** in cooperation with non-governmental bodies or international organisations.<sup>11</sup> For example, the Office for Foreigners (supervised by the Ministry of Interior) embarked on a wide-ranging information campaign to disseminate information about the new Foreigners Act (of 2013). A multi-lingual website (including pages in Ukrainian) was designed to provide information about the rules of entry, residence and work in Poland. To curtail the fraudulent practices of informal/illegal intermediaries, the Ministry of Work and Social Affairs disseminated information pamphlets (also in multiple languages) for those who are interested in participating in Poland's temporary work programme under which foreigners can work in the country for up to six months without a permit on the basis of a declaration of intention by an employer to hire them. Another information pamphlet was targeted at employers to inform them about the consequences of hiring a foreigner without the proper documents.<sup>12</sup>

## Regularization campaigns

Around 10-15 per cent of all international migrants are in an irregular situation (OHCHR, 2015). Compared to other sectors, domestic work is easily accessible to migrants in an irregular situation and does not require specific qualifications (OHCHR, 2015). The majority of migrants in an irregular situation enter the host country lawfully but end up in an irregular situation due to restrictive or complicated immigration laws and procedures or the lack of regular migration channels for the purpose of domestic work. Labour market needs for this sector are often underestimated or considered to be easily filled by the national labour force. Other factors which contribute to the irregularity of migrant domestic workers include the employer failing to renew their labour or residence permit and deceptive recruitment practices on the part of the broker or recruiter (OHCHR, 2015).

### Figure

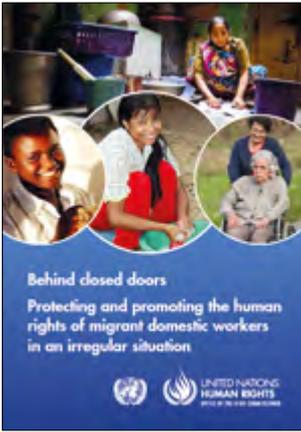
2.1 Who is a migrant domestic worker in an irregular situation?



Source: OHCHR, 2015.

11. For instance, the website migrant.info coordinated by IOM, within the project conducted in cooperation with the Ministry of Interior and the General Labour Inspectorate. See: <http://www.migrant.info.pl/> [accessed on 1 June 2016].

12. On the basis of the Act of 15 June 2012 on the effects of entrusting work to foreigners staying in the territory of Poland contrary to legal provisions, Journal of Laws of 2012, item 769.



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All migrant domestic workers in an irregular situation have the right to decent work and to just and favourable conditions of work, including fair and equal remuneration for equal work. They have the right to form and join trade unions and access justice mechanisms, including the right to equality before the courts, to an effective remedy and to procedural safeguards (OHCHR, 2015; ILO, 2006a).

Migrants in an irregular situation are “invisible” to the authorities in their countries of origin and destination, which makes it very difficult for them to claim and enjoy their rights. This is why bilateral, regional or multilateral agreements to provide social security coverage and benefits to migrant workers in an irregular situation should be encouraged (ILO, 2006a, 18). Women migrant domestic workers in an irregular situation are at increased risk of physical and sexual abuse during detention and must overcome financial and administrative obstacles before they can obtain psycho-social and legal support (OHCHR, 2015). Even if they can afford the cost of treatment and are able to produce the documents required (e.g. an insurance card or identification card), many avoid visits to public and private health facilities for fear of arrest and deportation (OHCHR, 2015).

Regularization is one effective measure of addressing the extreme vulnerability of migrant workers and members of their families in an irregular situation,<sup>13</sup> especially those who have lived in a country for a long time, or who came as infants, or who are working and thus contributing to the society in which they live (OHCHR, 2015).

To ensure that both migrant domestic workers and employers respond to regularization campaigns to the maximum extent requires clear eligibility rules, a wide-reaching and strategic publicity campaign, involving workers’ organizations and non-governmental organizations trusted by the migrants (Bohning, 1996).

- **Poland implemented a regularization programme**, targeting Ukrainian migrants among others, in 2012. A number of Ukrainian migrants had not applied for the correct documents since they expected problems under new regulations linked to Poland’s accession to the EU. The programme was preceded and accompanied by a large-scale information campaign, which included a multi-lingual website containing detailed information.
- **Argentina’s “Programa nacional de normalización documentaria migratoria” (Decree 836 of 2004)**, better known by the name of “**Patria Grande**”, was targeted at Mercosur nationals who entered the country before 2006. Under this programme, 98,539 permanent residence permits and 126,385 temporary permits were issued. This measure was part of the ratification process of the agreement on territorial mobility within the Mercosur signed at the Twelfth Meeting of Mercosur Interior Ministers. As a result, around 539,000 people of Paraguayan origin legalized their immigration status during that same period.

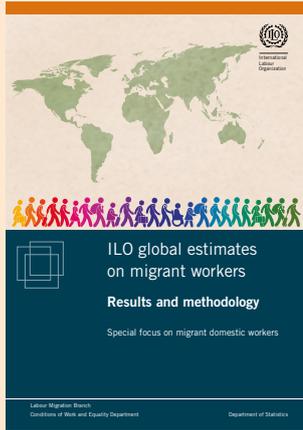
## 2.3 Protection is a shared responsibility

Countries of origin and destination have a shared responsibility in developing and implementing fair and effective labour migration policies. The absence of bilateral, regional, and interregional policy frameworks to govern the migration and work of low-skilled workers is a hindrance to the realization of migrant domestic workers’ rights, even where significant legislative improvements have occurred at the national level, creating major policy gaps and generally weak compliance structures.

Cooperation serves to promote coordination between different national and international legal systems, especially as regards the international labour recruitment industry where employers and placement agencies exist in one country while recruitment agencies and workers’ families are in another. It also gives effect to the protective measures of foreign employment policies at destination, promotes free circulation of workers, social security entitlements and the accreditation of qualifications and skills, especially in the context of regional integration processes; and, prevents a race to the bottom in the working conditions of domestic workers. An important challenge for countries of origin is to keep pressure to protect the rights of their nationals in destination countries, avoiding unhealthy competition.

13. United Nations, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, Geneva, 2013 (Geneva), paragraph 16.

## 2.8 ILO Global Estimates on Migrant Domestic Workers



The report *ILO Global Estimates of Migrant Workers and Migrant Domestic Workers* presents global and regional estimates of migrant workers disaggregated by sex and broad branch of economic activity, as well as the corresponding global and regional estimates of domestic workers and migrant domestic workers by sex. The reference year for all estimates is 2013. This report is part of a broader ILO effort to improve the collection and production of labour migration statistics at national, regional and global levels. These estimates will contribute to the implementation of Resolution IV concerning further work on labour migration statistics, adopted by the 19th International Conference of Labour Statisticians (ICLS) in 2013, which called upon the ILO to carry out preparatory work for defining international standards on labour migration statistics, in close consultation with interested countries, the social partners and civil society organizations. The results of this work will contribute to the next ICLS discussion in 2018 and the development of international concepts and standards on labour migration statistics agreed world-

wide. It is hoped that these estimates will help to advance the national and international debate on migration policy and governance.

Cooperation takes place at the bilateral, intraregional, regional and interregional levels. It develops between civil society organizations, trade unions, employers' organizations, governments and labour recruiters. It may take the form of, for example, a union-to-union agreement, a bilateral agreement between two governments, a public-private partnership between a government and a syndicate of recruitment agencies, a regional agreement or a multi-stakeholder initiative. Cooperation can be binding or non-binding.

National policies and cooperation should be premised on sound evidence. This underscores the importance of producing, analysing and disseminating reliable statistics on the care needs in countries of destination and on the drivers, magnitude, composition, and main characteristics of those employed in the sector. Data are also important to depict the scale of exploitation and abuse in the sector with a view to allowing women to make informed choices before taking up a job as a domestic worker in a destination country. Government capacity and willingness is central to this endeavour.

## 2.9 Improving labour migration data in the Africa region

The ILO together with national statistical agencies and labour migration focal points in ministries of labour has supported the integration of standard migration modules and reporting templates in Labour Force Surveys (LFS) in the SADC region. Insertion of these modules and standardisation of data collection, together with better use of existing data in other sources such as censuses and households surveys, have already yielded significant results.

Zimbabwe's 2014 Labour Force and Child Labour Survey (LFCLS) includes a module on the economic activity of Zimbabwean emigrants abroad, including those in the domestic work sector. Considering the important number of SADC countries with net emigration, this methodology is considered a step forward in the development of reliable statistics on migrant workers, including domestic workers.

## 2.10 The ILO promotes interregional cooperation to implement a fair migration agenda for migrant domestic workers

The African Union Commission (AUC) and the African Regional Economic Communities (RECs) recognized the importance of migration for the development of the African continent, first through the development of the Migration Policy Framework for Africa (2006) and, more recently in January 2015, with the validation of the Framework's implementation programme, the Joint Labour Migration Programme (JLMP). The JLMP identified the protection of migrant workers, facilitation of their mobility and easier recognition of their skills as priorities for the continent.

The Arab States have also become more engaged in regional and interregional labour migration policy dialogues with countries of origin in Asia. In 2008, the GCC countries launched the Abu Dhabi Dialogue as an interregional consultative process on labour migration among destination countries in the GCC and origin countries in South and Southeast Asia. The ministerial meeting of the Abu Dhabi Dialogue held in Kuwait in November 2014 adopted a Declaration that references the ILO Fair Migration Agenda, including its Fair Recruitment Initiative. The GCC countries also participate, as observers, in the meetings of the Colombo Process, which brings together 11 countries of origin in South and Southeast Asia

Collaboration between trade unions in Asia and the Arab States is also gaining traction. In 2013, the South Asian Regional Trade Union Council (SARTUC) and trade unions in Lebanon, Jordan and Bahrain adopted the Kathmandu Action Plan aiming to establish migrant workers' organizations and to promote equal treatment and better working conditions for South Asian migrants who are working in the Arab States.<sup>1</sup> More recently, the Arab Trade Union Confederation (ArabTUC), the Association of Southeast Asian Nations' Trade Union Council (ATUC) and SARTUC signed a memorandum of understanding on 1-3 August 2015 with a view to promoting the ratification of the Migrant Worker Conventions and other Conventions and instruments that make explicit reference to migrant workers,<sup>2</sup> establishing information centres for migrant workers and addressing occupational health and safety and housing concerns for migrants among other objectives. Following the founding of the domestic workers union in Lebanon in January 2015, the National Federation of Employees' and Workers' Unions in Lebanon (FENASOL) concluded a bilateral agreement with the Confederation of Ethiopian Trade Unions to extend greater protection to Ethiopian domestic workers in Lebanon.

Cooperation between African countries and the Gulf States is also proceeding as evidenced by the bilateral labour agreement (BLA) currently under consideration by the Government of Uganda which facilitates the placement of one million men and women in Saudi households over the next five years. Similar BLAs have already been signed by Kenya, Tanzania and Malawi, and Madagascar and the Republic of Comoros are holding discussions with the Gulf States. In addition, Ethiopia has also signed BLAs with Kuwait, Jordan and Qatar.

Despite the increase in workers' departures, the foundations for an interregional dialogue between the Africa region and Arab States region have not yet been laid. In May 2016, the ILO organized the first interregional knowledge sharing forum on migrant domestic workers bringing together constituents from three regions: Asia, Africa and the Arab States. The forum concluded by developing an action plan that identified the following practical measures:

1. Place domestic workers on the agenda of existing regional and interregional dialogues (e.g. the Abu Dhabi Dialogue and the Colombo Process), and extend participation to Africa;
2. Establish a common interregional network to share experience and build a common position across regions on domestic workers including migrants;
3. Increase the transparency of the recruitment practices and accountability of recruitment agencies and employers through concrete measures;
4. Promote the inclusion of domestic workers on equal footing with other workers covered by labour laws and enhanced enforcement capacities in countries of origin and destination;
5. Ensure the transparency and effective implementation of BLAs through social dialogue and the participation of social partners in the design, monitoring and evaluation of BLAs, assuring that they are in line with international labour standards;
6. Work toward agreeing on a common position among countries of origin on minimum rights and protection at work for migrant domestic workers;
7. Identify and implement occupational mobility mechanisms for domestic worker at source and destination, including skills development and certification; and
8. Cooperate on the development and recognition of domestic workers' skills across borders to promote their occupational mobility within and outside the sector.

1. ILO: Workshop on promoting trade union cooperation on labour migration in origin and destination countries, Summary Report of the workshop held in Kathmandu, Nepal on 16-19 September 2013 (Kathmandu, ILO/SARTUC). A follow-up inter-regional meeting was held in Beirut in 2015 where the participating trade unionists issued a joint declaration. 2. ILO Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Private Employment Agencies Convention, 1997 (No. 181); Domestic Workers Convention, 2011 (No. 189); and the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

# Gaining insight into the compliance gap: The limits of awareness raising

## 1. Introduction

Awareness and public information campaigns are instrumental in educating workers and employers about their rights and obligations, and consequently in improving the working conditions of migrant domestic workers. Practitioners working to improve the living and working conditions of migrant domestic workers have at least once in their career contributed to the development, implementation, and/or evaluation of awareness and information campaigns. These campaigns are premised on the assumption that a mismatch exists between **national laws/protections**, on the one hand, and **compliance** with these laws on the other. Correspondingly, **awareness** by employers and workers of their rights and obligations is expected to increase their compliance with the latter.

This chapter breaks new grounds by looking at the gap between **awareness** and **compliance** (see fig. 3.1). Over the past three years, the ILO has conducted surveys, focus group discussions and in-depth interviews with migrant domestic workers and their employers in Argentina, Paraguay, Poland, South Africa, Lesotho, Kuwait, Jordan, Lebanon, Ukraine, Malaysia and India.<sup>1</sup> The surveys and focus groups with employers aimed to explore employers' behaviour relative to their knowledge of domestic workers' rights. The surveys and focus groups with domestic workers aimed to assess workers' satisfaction with their working and living conditions relative to their knowledge of those same rights and obligations. The objective is to unpack – experimentally, because the focus is on selected countries only – which variables determine compliance with which particular right. Gaining insight into how employers' and workers' perceptions contribute to the protection gap will inform effective advocacy and awareness programmes for employers as well as information campaigns for domestic workers.

According to the research, employers' perceptions of domestic work and domestic workers are mediated by employers' understanding of gender roles, their ethnicity or nationality, their income and education levels (including household characteristics that are determined by these factors), the degree to which the worker is “considered” a worker or a family member, and the worker's occupational profile (e.g. housework, elderly care, child care, etc.). The worker's nationality is also a determining factor in shaping employers' views about the value of the work performed.

Respectively, workers' level of dissatisfaction with the employment relationship, and thus their motivation to seek legal redress in the event of abuse, is often mediated by the extent of their knowledge about their rights, the perception that their working conditions at destination are better than they would be at origin, and the number of years that they have spent in the country of destination. The extent to which awareness of rights is a determining factor is in turn influenced by the availability of other work options, the ability of workers to overcome language barriers, the reach of awareness and mobilization efforts, and the perceived profitability of legal recourse.

Employers' and workers' behaviours are nested within broader social and gender structures, the legacy of social, racial, class and caste hierarchies that characterize the localities and generations from which they emerge. Socialization processes often survive legal reforms. For example, indigenous and tribal hierarchies shape the experience of domestic workers in and from Nepal, race shapes

1. In the context of four ILO projects: the Global Action Programme on Migrant Domestic Workers and their Families funded by the European Union; the Action Programme on Promoting the Rights of Women Migrant Domestic Workers in Lebanon, funded by the European Union; the Work in Freedom Programme funded by the UK Department for International Development; and the Migration and Governance Network funded by the Swiss Agency for Development and Cooperation.

## 3.1 Expanding our understanding of the compliance gap



the experience of domestic workers in South Africa, age shapes the experience of migrant domestic workers in Lebanon, and class shapes the experience of domestic workers in Poland.

**Caste and indigeneity:** The gender, ethnicity/caste and indigeneity of Nepalese women combine to diminish their capabilities, further their social exclusion and limit their employment opportunities. As a result, indigenous women are more likely to seek employment as domestic workers (easy entry, perceived as socially undesirable job) than non-indigenous women in Nepal and abroad.

**Race:** In South Africa, domestic work has been above all a black institution, performed by black women for white households. Black women from neighbouring countries have replaced South African black women who have traditionally occupied this sector and who have now integrated into the labour market. Black employers report that they face disapproval from their own families and society when they hire domestic workers to perform domestic chores such as cleaning, washing, etc., still considered to be the duty of the woman in the family. On the other hand, black employers perceive that domestic workers are reluctant to work for them, do not respect or recognize them as employers and hence perform their tasks poorly. This emerged strongly in the narrative of one employer, a black woman interviewed in the suburbs of Johannesburg:

People, even the so-called high profile people, they would say, just because now I have a helper, a domestic worker, they're calling us divas. It's like now reverse apartheid, because who am I being black to have a helper? Helpers are for white people, "you think you're better". And it's like we supposed to take every nonsense that comes with it. If you don't, you are being called names, you are a diva, you think you're better, you're abusing this person. And it's not like that. What I'm saying is, you are expecting this person to behave in a certain way. This is my home, I've invited her to work in my home because she was looking for work, I expect one-two-three. If she doesn't and I complain or I reprimand her, it makes me a bad person (ILO, 2014f).

**Age:** Prior to 1975, geographical proximity enabled the direct placement, through relatives, of young Arab female children (from as young as eight years of age) in the households of Lebanese employers (Jureidini, 2009). It was common for a young female to live in the household and work until she was ready for marriage (Jureidini, 2009; Anti-Slavery International, 2006). Feelings of maternalism and paternalism continue to pervade the employment relationship today, with a number of employers claiming that the worker is "like their daughter" and feeling responsible for her moral behaviour, thus reinforcing their control over her (Abdulrahim, 2010).

**Class:** In Poland, "the socialist idea of a servant's job as a form of human exploitation" is still deeply rooted in the Polish (sub)conscious. It is therefore common for employers in Poland to experience a sense of guilt about hiring a domestic worker which stems from a lack of acceptance of the class gap between them and the worker (Kindler, Kordasiewicz and Szuleka, 2016).

Overall, the perception that domestic work is women's work, a labour of love, and therefore unworthy of pecuniary reward, continues to shape the low value that employers, including women employers, attach to domestic work irrespective of context and social hierarchies.

### 3.1 An explanation of the gap between knowledge and practices among employers and workers

Gender, racial, class, age and caste hierarchies	
Employers' compliance is determined by the following mediating variables	Workers' compliance is determined by the following mediating variables
<ul style="list-style-type: none"> <li>– Ethnicity or nationality and understanding of gender roles;</li> <li>– Income and education levels as well as household characteristics reflecting employers' capacity to afford employing a domestic worker;</li> <li>– The extent to which the employer considers the worker to be a "member of the family" or a "worker"; and</li> <li>– The care needs of the household (e.g. housework, elderly care, child care, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>– Extent (degree) of knowledge about rights and understanding of gender roles;</li> <li>– The number of years spent in the country of destination; and,</li> <li>– The extent to which awareness of rights is a determining factor is in turn influenced by the availability of better work options; the ability of workers to overcome language barriers; the existence of social support networks and reach of awareness and mobilization efforts; and the perceived profitability of legal recourse.</li> </ul>
Employers' and workers' attributes have combined to generate the following variations in the working conditions of migrant domestic workers	
<ul style="list-style-type: none"> <li>– In contexts (e.g., Lebanon and Malaysia) where migrants from different nationalities are employed in the domestic work sector, variations in the <b>average monthly wage</b> were attributable to positive or negative stereotypes about the value and quality of the work performed by workers of different nationalities, to differences in the bargaining position of countries of origin, and to the income level of employers (with employers in higher income brackets paying higher wages).</li> <li>– In countries with temporary migration schemes and limitations on the physical and occupational mobility of workers (e.g. Lebanon and Malaysia), employers in upper income brackets are more likely to respect a worker's right to a <b>full day of rest</b>. Higher income families with larger households were also more likely to grant domestic workers their <b>own sleeping quarters</b>.</li> <li>– Also in Lebanon and Malaysia, where live-in arrangements are legally or customarily a requirement, households with care needs – regardless of socio-economic background – were less likely to allow domestic workers to <b>leave the house during rest days or allow other leave types</b>.</li> <li>– In Lebanon, Malaysia and South Africa, when employers evoked notions of family ties with domestic workers – stating, for example, that a worker is "like their daughter" – as a basis for according <b>workers salary advances, abstaining from withholding their wages</b> in an attempt to guarantee that workers will complete their contracts, and <b>coaching workers</b> if their work is unsatisfactory in preference to terminating their contracts, workers almost always report <b>restrictions on their physical mobility and privacy</b>.</li> <li>– Across regions, irrespective of the restrictiveness or openness of migration regimes, migrant domestic workers expressed satisfaction with their employment relationships in spite of evidence to the contrary because (i) their working conditions in the country of destination were perceived as "a lesser evil" than the working conditions in the country of origin; (ii) language barriers and the limited penetration of awareness and mobilization efforts prevented migrant domestic workers from gaining full knowledge of their rights and how to assert them; and (iii) the lack of accessible, affordable and effective legal recourse discouraged them from seeking redress.</li> <li>– Also across regions and migration regimes, the number of years spent by migrant domestic workers in a country of destination influenced their working conditions. Positive changes consist in, for example, <b>wage increases</b>, the likelihood of employers granting workers more <b>freedom of movement</b> as well as a <b>full day of weekly rest</b> (Lebanon, Malaysia and South Africa), and the freedom to cook their own food (Malaysia and Lebanon). Negative changes consist in workers developing coping mechanisms rather than voicing dissatisfaction with practices like the <b>withholding of passports</b>.</li> <li>– Also across regions, migrant domestic workers have a tendency to take on multiple jobs during their first years of employment to save the maximum amount of money. This translates into <b>long and consecutive work-hours with little personal time</b>. Even where workers have been traditionally bound to one employer, like in Lebanon, they are increasingly seeking alternative employment arrangements that allow them to work for multiple employers.</li> </ul>	

## 2. Knowledge and practices of employers

### 2.1 Ethnicity or nationality of the employer

Research findings suggest that the employer's ethnicity and nationality determine certain aspects of the employment relationship. For example, expatriates from certain countries were more inclined to grant greater freedom of movement and association to the domestic workers in their employ in Lebanon and Malaysia.

Reasons why expats of certain nationalities treat migrant workers better than nationals may be attributed to their ability to sympathize with the dislocation that they both experience as foreign nationals, their familiarity with a normative framework that extends social and labour protections to domestic workers, their exposure to different socialization processes where domestic work is valued, and perhaps also their being compelled to comply with the codes of conduct of the foreign companies (e.g. international schools, international universities, international banks and businesses, and international organizations) that employ them in the countries of destination. It is worth noting, however, that a more favourable treatment of domestic workers by expatriates does not address the suboptimal employment terms and conditions stipulated for in a working contract and to which expatriates agree by hiring a domestic worker.

### 3.1 Encouraging expatriates to improve their treatment of migrant domestic workers

#### A code of conduct for the staff of the United Nations (UN) in Lebanon

The United Nations Country Team (UNCT) in Lebanon requires the staff of UN agencies in the country to abide by a code of conduct that contains 21 specific standards on the employment of people who care for families and households.<sup>1</sup>

#### The Office of the Amiable Compositeur in Geneva, Switzerland

The Office of the ‘Amiable Compositeur’ (OAC) is a mediation structure set up by the Geneva authorities to facilitate the resolution of labour disputes involving persons enjoying diplomatic or consular privileges and immunities. Its services are confidential and free of charge. Domestic workers reporting potential breaches of criminal law are provided with basic information on their rights and are referred to specialist organizations for further support and advice. The Office also has a small hardship fund to provide financial support or loans to domestic workers. An estimated 80 per cent of the OAC’s clients are employees, and the remaining 20 per cent are employers. The latter mostly contact the OAC to request legal advice on issues such as the length of statutory notice periods. Typically, disputes relate to payment of salaries, working conditions and illegal dismissals. Since its creation in 1995, the OAC has dealt with an average of 40-50 new cases per year, and the overall success rate of its mediations has been around 30-40 per cent.<sup>2</sup>

#### OSCE manual on preventing abuses in diplomatic households

In June 2012, the OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings took the lead in launching consultations with the heads of protocol and protocol officers from 43 OSCE participating States with the aim of producing a handbook that identifies relevant prevention and protection measures for domestic workers in diplomatic households across the OSCE region.<sup>3</sup>

#### Encouraging international companies in Qatar to develop a code of conduct for their staff

Shelter me, a joint initiative of the Netherlands-based HIVOS (an international organization that seeks new solutions to persistent global issues through its support for smart projects) and the Gulf Cooperation Council-based Migrants-Rights.org (a content-based advocacy forum that aims to advance the rights of migrant workers in the Middle East, and to encourage social action to address human rights abuses) are encouraging and supporting international companies in Qatar to use guidelines and develop a code of conduct for their staff, i.e. employers of domestic workers.

1. United Nations, “In Lebanon, UN staff to follow code of conduct to protect rights of domestic workers” in *UN News Centre*, 23 June 2011, available at: [http://www.un.org/apps/news/story.asp?NewsID=38830#.VrxHX\\_IrLIU](http://www.un.org/apps/news/story.asp?NewsID=38830#.VrxHX_IrLIU) [accessed on 18 April 2016]. 2. ILO. “The Office of the ‘Amiable Compositeur’”, in *Good practices database – Labour migration policies and programmes*, available at [http://www.ilo.org/dyn/migpractice/migmain.showPractice?p\\_lang=en&p\\_practice\\_id=122](http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=122) [accessed on 18 April 2016]. 3. OSCE (2014). *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers* (Vienna).

## 2.2 Nationality of the worker

Differences in treatment were noted based on the nationality of the worker. Differences in treatment exist between women migrant domestic workers of different nationalities, and between migrant and national domestic workers.<sup>2</sup>

For example, Filipina domestic workers in Malaysia receive higher wages and are less likely to be asked to forgo their leave days than workers of other nationalities (ILO, 2014g). Surveys in Lebanon also revealed significant differences in the number of days of work per week by nationality. Whereas 40 per cent of domestic workers from Sri Lanka and the Philippines work seven days a week, about 60 per cent of domestic workers from Ethiopia and Nepal work all week days (Abdulrahim, 2016).

These variations among nationalities can be attributed to employers’ positive or negative stereotypes about the value and quality of work performed by workers of different nationalities and also to the bargaining power of countries of origin and their ability to push for greater protection for their workers.

Interviews with Polish employers<sup>3</sup> and Ukrainian migrant domestic workers found that employers perceived Ukrainian domestic workers as more hard-working, honest, reliable, docile, “cheaper” and less prone to argue about their work than their Polish counterparts.

2. Wage differentials across nationalities were also noted in other contexts, particularly in the Gulf States (cf. ITUC 2014).

3. It is worth noting, however, that while differences do exist in the treatment of workers based on their nationality, according to Kordasiewicz, Polish employers can be divided into those who prefer to employ Polish workers, those who prefer to employ Ukrainian workers, and those for whom the nationality of the worker is irrelevant – the latter group being the majority. See Kordasiewicz, A (2010). *Etniczny wymiar funkcjonowania rynku usług domowych w Warszawie [The ethnic dimension of the market for domestic services in Warsaw]* (Warsaw, Instytut Spraw Publicznych).

The neighbour told me [a Ukrainian domestic worker] that a Pole would not stand it. And she told me whole story about a Polish woman she [my employer] had previously employed and who wanted two days off a week and made demands, the neighbour reported they quarrelled all the time, [...] she refused to clean because she said, I am a care worker, not a cleaner [...] And Ukrainians, they do everything, make no demands. They are more eager to work and more patient.

Those who preferred Polish workers over their Ukrainian counterparts pointed to the higher standard of cleaning by Polish cleaners who were more familiar with the newest cleaning appliances and detergents (Kordaziewicks, 2011). Some Polish employers avoided hiring Ukrainian women to care for their children due to the “bad accent problem” that can influence a child’s language development at a critical age, a motive already noted by other researchers,<sup>4</sup> or to care for the elderly from fear of introducing an additional difficulty (the communication problem) into an already challenging situation. The requirement to return to Ukraine every six months is another prohibitive factor for employers who seek stable care arrangements (Kindler, Kordasiewicz and Szuleka, 2016).

Positive and negative stereotypical images produce suboptimal working conditions and considerably lower remuneration for Ukrainian migrant domestic workers. Positive images like “docility” and “hard work” are often exploited by employers. A 33-year-old Ukrainian live-in childcare worker goes as far as saying that Ukrainians are treated as “an inferior class” and that Ukrainian workers are interchangeable, commoditized and not valued for their individual attributes by Polish employers:

[Researcher] And all in all, what treatment do you think Ukrainian women employed to do housework get?

[Interviewee] Well, they are treated as Ukrainian women.

[Researcher] What does that mean?

[Interviewee] Well, simply as an ordinary household help, if not this one, then another, as an inferior class.

[Researcher] And is there a difference between the attitude towards Ukrainian and Polish women working as domestic workers?

[Interviewee] I think that Polish women work on contracts.

[Researcher] And in human-to-human relations?

[Interviewee] Well you know, if one person is not fully legal, not in their own place, sometimes you get the feeling of not being in your own place, not knowing all the rules, not knowing what you can do, your rights, and you get different treatment even when you do the shopping...

[Researcher] And what do Poles think about Ukrainian women?

[Interviewee] That they work as cleaners. And that they cook well, are decent people who know how to look after children, take care of the family, get everything arranged and keep the house in good order (Kindler, Kordasiewicz and Szuleka, 2016).

The bargaining power of the countries of origin relative to that of countries of destination also explains why certain nationalities experience better working terms and conditions than workers from other nationalities. For example, the Philippines Government increased its minimum wage for Filipino/a domestic workers to approximately US\$400 in 2006. This means that Filipino/a domestic workers earn higher wages than other nationalities. As a result, migrant domestic workers in Lebanon earn an average monthly salary of around US\$180 with significant inter-nationality discrepancies but 40 per cent of Filipinas earn US\$400 or more (ILO, 2014j).

## 2.3 Income, education levels and household characteristics

In Malaysia, variations exist between employers in middle-income and higher-income brackets in their practice of giving rest days and respecting the worker’s right to a day off outside the household with higher income employers demonstrating better employment practices. The employers’ level of education in Lebanon is also important: 22 per cent of those who hold a university education or higher pay the worker US\$300 or more relative to a mere 6.6 per cent of those who have attained primary education only (Abdulrahim, 2016). The salaries of migrant domestic workers in Lebanon follow a sliding scale and depend on how much the employer can afford as opposed to a set scale of what the worker should earn.

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4. Kindler, M (2011). *A risky business? Ukrainian migrant women in Warsaw’s domestic work sector* (International Migration, Integration and Social Cohesion in Europe – IMISCOE). See also Krzyszkowski, J (2007). *Gotowość do podjęcia aktywności ekonomicznej wśród kobiet z terenów niskourbanizowanych* [Willingness to undertake economic activity among women from less urbanised areas] (Warsaw, Polskie Towarzystwo Polityki Społecznej – Polish Society for Social Policy) and Samoraj, B. (2007). *Raport: Przedsiębiorczość Kobiet na Polskim Rynku Pracy na Przykładzie Cudzoziemek Zatrudnionych Nielegalnie w Sektorze Usług Domowych* [Report: Entrepreneurship of women on the Polish labour market: Examples of illegally employed foreigners in the domestic sector services] (Warsaw, 2007).

In Lebanon, employers in upper income brackets are more likely to respect a worker's right to a full day of rest. Seventy per cent of employers in the highest income bracket (earning equal to or higher than US\$4,000) and 58.5 per cent in the highest educational attainment group respect this right compared to only 35.1 per cent of those in the lowest income bracket (earning equal to or less than US\$1000) and to 35.8 per cent in the lowest educational attainment group (Abdulrahim, 2016).

Because household size and the number of rooms often act as proxies for income level, it is not surprising that the share of Filipina domestic workers (who earn the highest monthly salaries) is highest in four- and five-bedroom apartments (42 per cent compared to 28 per cent in the overall sample).<sup>5</sup>

Using a similar logic, the likelihood of domestic workers having their own sleeping quarters is also linked to household size, and therefore to employers' income level. Around half of migrant domestic workers interviewed in Lebanon suffer from a complete lack of privacy. This share varies significantly among the various nationalities. Eighty per cent of Filipinas and Nepalese have their own sleeping quarters while only 38 per cent of Bangladeshis enjoy the same level of privacy. Those who do not have their own rooms sleep in the parlour (13 per cent), in the kitchen (11 per cent), or in a glass-enclosed veranda (11 per cent) (Abdulrahim, 2016).

## 2.4 The worker's occupational profile

Whether the worker is hired to fulfil care-related functions or functions of a more general type (like cleaning, cooking and ironing) also has significant implications for their working conditions. Households that required workers to undertake care duties in Malaysia, especially care of the elderly, were less likely to allow them to sleep during the day, leave the house on their rest days or allow other types of leave – except for sick leave – regardless of their socio-economic background.

Households with care needs tend to favour live-in arrangements. The perceived risks among employers of live-in domestic workers are higher than those with live-out domestic workers. Not only do these employers have greater household needs, they are also likely to have paid high recruitment fees as well as covered other costs such as medical insurance, food, utilities, and plane tickets. Should the domestic worker abscond, the employer cannot reclaim these fees and the process for recruiting a replacement is lengthy. Nonetheless, the high cost of recruiting a live-in worker and the employer's overreliance on her services are a disincentive to her arbitrary dismissal should the employer find her performance unsatisfactory (ILO, 2014i).

## 2.5 Member of the family or worker?

While being "part of the family" implies trust in workers and is often reflected in employers' inclination to grant them salary advances and abstain from withholding their wages (both material rights), it generally translates into restrictions on physical mobility and privacy. If we focus on romantic relationships (one aspect of a worker's privacy), for example, the majority of employers in Malaysia forbade workers in their employ from engaging in romantic relationships from fear that this would distract them and affect their performance, or that the domestic worker would become pregnant. Likewise, employers in Lebanon opposed the notion of workers engaging in romantic relationships or getting married, and expected the worker to be fully dedicated to them (Abdulrahim, 2016; ILO, 2014i).

As such, calling the worker a member of the family is merely symbolic and does not translate into meaningful family interaction. In fact, an ILO survey in Lebanon (2014) found that the relationship between the migrant domestic worker and the household is somewhat formal with few interactions registered outside the professional sphere. For examples, few employers watch TV with their workers or speak of private family matters in front of her. The same survey found that a significant number of employers considered the domestic worker a member of their family. Similar findings were recorded in Jordan where a rights-based discourse was used when discussing wages and physical abuse in contrast with a familial discourse to justify limitations on the mobility of the worker and an unwillingness to give her a weekly day of rest during which she could leave the household (ILO, 2014j).

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5. The average household size, according to the Central Administration for Statistics, *Household living conditions survey 2004* (Presidency of the Council of Ministers of Lebanese Republic, 2004), was 4.27.

### 3.2 Code of Conduct for the Employers of domestic workers in Malaysia

In Malaysia, the Ministry of Human Resources, in consultation with employers, recruitment agencies, and rights' advocates, developed guidelines for the employers of migrant domestic workers. The guidelines offer advice in recruiting and establishing a positive working relationship with domestic workers. They will be available in both the Bahasa and English languages on the Ministry's website.

This same dual discourse explains the divergence of views between workers and employers (ILO, 2014f) around the nature of the employment relationship in South Africa, with employers considering domestic workers to be part of their families and workers lamenting the informality that results from the broader racial, gendered and class-based inequalities and marginalization that they face in the relationship, which they continue to describe as a strictly “work relationship”. The following statement is evidence of this dual discourse.

Employer: I grew up in Durban, I had a maid or we had a nanny my entire life. **She was with my family for 47 years.** The sad thing is I don't know where she is today. So for 47 years she looked after my family and I don't even know to this day if she's dead or alive. That's sad. Very sad. **I don't even know her surname.**

## 3. Knowledge and practices of workers

The working conditions of migrant domestic workers are normally characterized by low wages and very little rest. In more extreme cases, domestic workers face limits on their freedom of movement, abuse, harassment and violence. While these conditions are shaped by the extent to which labour and social protections extend to them and by the willingness of employers to comply, they are also shaped by workers' knowledge and perception of their rights.

Research conducted in the framework of the GAP-MDW shows that workers' perception of their employment relationship is mediated by their experience with discrimination and poverty in their home country, the extent of their knowledge about their rights, barriers to accessing justice, and the number of years spent in the country of destination. These variables combined, influence their motivation and capacity to seek legal redress in the case of abuse.

### 3.1 Attitude of workers towards their working conditions

It is not uncommon for migrant domestic workers to express satisfaction with their working conditions, even when these are very poor. For example, migrant domestic workers in Lebanon were asked to rate a number of statements regarding their working and living conditions on a scale in which “1” reflected complete satisfaction and “4” complete dissatisfaction. Most ratings ranged between “1” (completely satisfied) and “2” (somewhat satisfied). Domestic workers expressed satisfaction with the services of the recruitment agency and their employer's general behaviour, with the type and amount of work, with the quantity and quality of their food, and with the health-related aspects of their jobs. A parallel survey of workers, also carried out by the ILO over the same time period, found that 40 per cent of employers do not pay their salaries at regular intervals and 57 per cent of workers work seven days a week (Abdulrahim, 2016), indicating a gap between domestic workers' valuation of their employment relationship on the one hand and the way they were actually being treated by their employers on the other.

This gap is the result of a number of interacting variables: (i) working conditions in the country of destination are perceived by the workers as “a lesser evil” than the working conditions in the country of origin; (ii) language barriers and the limited penetration of awareness and mobilization efforts prevent migrant domestic workers from gaining full knowledge of their rights; and (iii) the lack of accessible, affordable and effective legal recourse discourages workers from seeking redress.

### **(i) Working conditions in the country of destination are perceived as “a lesser evil” by the workers**

Most migrant domestic workers come from poor countries in which employment is scarce, wages are low and living conditions are difficult, producing low expectations regarding their working conditions (ILO, 2014j). In Paraguay, for example, 57 per cent of those earning below the legal minimum wage are domestic workers. The need among these women to find employment is so great that they are unconcerned with terms and conditions of work beyond the practical aspects like where they would arrange to live, the salary and how they would feed their children. Focus groups with Paraguayan domestic workers in Argentina indicated that when these workers referred to their rights, they were referring to how they were treated by their employer not to whether the formal terms and conditions of their employment were being met (ILO, 2014c). As such, the proportion of domestic workers who were unaware of provisions pertaining to minimum wages, health insurance and annual leave varied between 36 per cent and 43 per cent accordingly (ILO, 2014c).

Employers contribute to a worker’s “lesser of two evils” principle, fuelling the viciousness of the non-compliance cycle. Interviews with non-compliant employers in South Africa indicated that the latter would pay what they could afford on the assumption that lower wages were better for the employee than unemployment (ILO, 2014f).

### **(ii) Language barriers and the limited penetration of awareness efforts prevent migrant domestic workers from gaining full knowledge of their rights**

The majority of migrant domestic workers who signed an employment contract pre-departure had a varying ability to understand the contractual terms. For example, while 80 per cent of Filipina domestic workers in Lebanon were able to read and understand the contract, only 42 per cent of Sri Lankans and almost no Nepalis (2 per cent) were able to do so. Indeed, it seems that 90 per cent of Nepalese domestic workers in Lebanon are unaware of the terms of their contract. The large majority of migrant domestic workers signed employment contracts on arrival in Lebanon (88 per cent), but only around half of them read the contract, with Filipinas registering a higher than average rate of 69 per cent and Nepalis recording a dismal rate of 2 per cent (ILO, 2014j). A number of recruitment agencies take advantage of language barriers to replace the contracts that workers have signed pre-departure with contract that have poorer terms, a practice referred to as “contract substitution.”

A few questions were asked to gauge the penetration of outreach by NGOs in Lebanon. Only around 2 per cent (27 respondents) stated that they had received help from a local or international NGO (ILO, 2014j). An ILO mapping of NGOs services in Lebanon (2012) indicated that the overall human capacity of NGOs is reduced to a total pool of 250 individuals who are volunteers or part- or full-time staff and who work in various capacities (drivers, cooks, tutors, lawyers, psychologists, social workers, researchers, etc.) to plan and implement initiatives targeting migrant domestic workers in various areas of the country. As such, the capacity of these institutions to operate at the versatility level desired is very limited considering the growing population of migrant domestic workers (more than 250,000) and its corresponding needs (Tayah, 2012).

The absence of services and awareness-raising campaigns leaves a real information vacuum and migrants’ networks become the only source of information for migrant domestic workers.” Of all the Paraguayan women interviewed by the ILO in Argentina, for example, none reported having had contact with domestic workers’ organizations or general workers’ unions in either Paraguay or Argentina. Migrants are also known to use social media in their communication with friends and relatives in their homeland. The images and comments that they post on Twitter, Facebook, Instagram etc. evoke a glamorous, tourist-like existence and have very little to do with their everyday reality. These images convey a distorted, misleading message about their experience of migration and work despite workers’ good intentions when posting.

### 3.3 Real versus portrayed experiences: The uses of social networking among female Malagasy migrant domestic workers in Lebanon

Despite the domestic worker travel ban imposed by their Government in 2010, there are currently some 4,000 women from Madagascar working in Lebanon's domestic sector. The prohibition is based on accounts of migrant domestic worker exploitation in Lebanon ranging from lack of decent working conditions to instances of human trafficking. In spite of these risks, the number of female migrant domestic workers overall remains steady at around 250,000 individuals among a population of 4 million Lebanese.

#### Between reality and fiction

Malagasy women are typical of a large number of migrant domestic workers in Lebanon: many are virtually connected with their families and friends on a daily basis via Facebook, Whatsapp and Viber, which provide a free and easy way to stay in contact with people anywhere in the world.

However, a study carried out among twenty Malagasy workers in Lebanon showed that the overwhelming majority used Facebook to portray a reality that had very little to do with their everyday existence: almost all of the women had experienced unfair treatment related to their working conditions that ranged from not having one day of rest per week to being verbally or physically mistreated and/or having their salaries withheld.

The role of social media could be an important factor in explaining the ongoing flow of low-skilled workers into the country, given the challenges faced.

#### Laughter through tears

The following pictures taken from Facebook illustrate the way in which these women present themselves to their acquaintances. At first glance, all these pictures show a rather glamorous, tourist-like lifestyle that has almost nothing to do with their lives as migrant domestic workers in Lebanon.

No-one would ever know that one of the women in pictures 1 and 2 spent almost two weeks in prison because she was falsely accused of stealing by her employer's daughter, or that she must still negotiate for her one to three days off per month after three years of working for the family. *"I post the pictures so my family can see that I'm ok,"* says "Misina", who has two children who are being cared for by her mother.

"Salama", from picture number 3, tells another story of injustice hidden behind a happy photo. After leaving an abusive employer, an agency found her a home where she was decently treated. She does not have a day off, however, and has to negotiate each week to leave the house for a few hours to go to church. Salama accepts these conditions because she fears the placement agency will send her back to Madagascar if she complains.

"Falara" has two children whom she has visited only once since she came to the country six years ago.

All of the domestic workers interviewed agreed that their Facebook posts do not represent their daily lives.

#### Conclusion: The misleading gap

Given the influence of social media today, such representations of a care-free life led by domestic workers in Lebanon or elsewhere may very well convey a distorted and misleading message despite the workers' good intentions when posting. There are no mentions whatsoever of the *Kafala* system and the serious infringements of labour rights making domestic workers vulnerable to exploitation.

It is easy to understand how domestic workers might wish to paint a picture of success and wellbeing for friends and family at home. The down side of that picture is that it sadly erases the most poignant reality, one in which the rights of migrant domestic workers are routinely denied under a system that fails to protect the most vulnerable.



Source: Acuña, M (2016). *"Don't tell my kids I'm in Lebanon. They think I am in Dubai"*. Female domestic workers from Madagascar in Lebanon and the families they leave behind. Unpublished.

### **(iii) The lack of accessible, affordable, and effective legal recourse discourages workers from seeking redress**

Surveys in Lebanon found that employment disputes are rare with one quarter of the respondents disagreeing with their employers on occasion. The clear majority (75 per cent) either never have any disagreements (51 per cent) or have only rare disagreements (24 per cent). The isolation of migrant domestic workers explains why disagreements are so rare. Only 17 per cent reported contacting friends or relatives in Lebanon in cases of employment disputes, whereas only 11 per cent contacted the recruitment agency and the large majority (62 per cent) had no-one to turn to (ILO, 2014j). Domestic workers must overcome many barriers to access justice and remedies. In addition to workplace isolation, migrant domestic workers depend on their employers for their work and visa permits. They lack the language and cultural skills to navigate the judicial system, which in certain countries is tilted in the employer's favour. Cases of non-payment, labour rights violations or physical and sexual abuse can be difficult to prove without a witness and timely access to forensic medical examiners. While the right to a fair trial and respect for the rights of the defence may be guaranteed for nationals and non-nationals alike, trials are generally long, lasting two to three years (HRW, 2010). Migrant domestic workers who file complaints against their employers may also face charges of theft by employers aiming to discredit their former employees and absolve themselves of any financial responsibility for labour violations or abuse. With only limited and often ineffective formal avenues through which migrant domestic workers can obtain justice, disputes are usually settled out of court. In Malaysia, domestic workers cannot leave the country and are not allowed to work while they have an open case. This works as a powerful dissuasion to bringing cases against employers.

When legal recourse is available and accessible to migrants, like in Poland, domestic workers are very reluctant to report cases even when they are offered free legal advice (Kindler, Kordasiewicz and Szuleka, 2016). This is because migrant domestic workers most often work without declaring their employment to the authorities properly or signing contracts with their employers. Employers are rarely willing to sign a contract with domestic workers unless they can transfer the corresponding costs onto the workers. In these circumstances, a large number of domestic workers are compelled to engage in "falsely declared employment" (i.e. they claim to be part-time workers when in fact they are engaged in full-time employment).

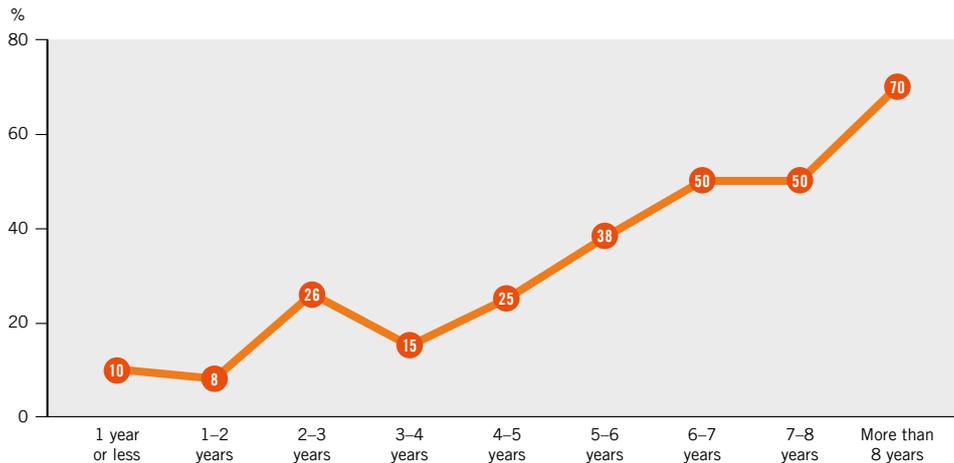
## **3.2 Lifecycle of a migrant domestic worker in the country of destination**

ILO surveys, focus groups and interviews indicated that the number of years spent by a migrant domestic worker in a country of destination influence (positively or negatively) their working conditions. Positive changes consist in, for example, wage increases, the likelihood of employers granting workers more freedom of movement and a full day of weekly rest, and the freedom to cook their own food. Experiencing less than optimal working and living conditions for a number of years, on the other hand, may lead to domestic workers developing coping mechanisms rather than voicing their frustration with malpractices.

Almost half of migrant domestic workers in Lebanon receive monthly salaries of less than US\$200 during their first three years of work with the same employer. It is only after four years of work that half are paid a monthly salary in the range of US\$200-299 and a quarter are paid a monthly salary of more than US\$300 (Abdulrahim, 2016). A number of years has to elapse before they feel entitled to request that salary or they reach that amount through regular salary increases. These increases occur following the expiry of the initial three-year contract as an incentive for the worker to remain in the household's employ (ILO, 2014j).

*Domestic workers who have been exposed to rights' violations, like the withholding of passports, for a long time begin to ignore and cope with these practices.* When asked whether their passports and/or residency papers were withheld against their wishes, significant differences appeared with only around 40 per cent of Sri Lankan and Filipinas seeming upset by the practice, in contrast to around 90 per cent of Nepalese domestic workers. Nepalese nationals have only recently begun to engage in domestic work in Lebanon, whereas Filipina and Sri Lankan domestic workers, who have been in Lebanon the longest (between twenty and thirty years), expect to have their passports and papers withheld and are therefore no longer shocked by the practice (ILO, 2014j).

3.2 Distribution of Filipina domestic workers earning the mandated US\$400 by duration of stay in Lebanon



Source: ILO, 2014j.

Surveys also indicate that employers' acceptance of workers' eating and cultural habits increases with time. Only one quarter of the respondents in Lebanon were allowed to cook their own food, a share that increases to 31 per cent and 38 per cent among Sri Lankans and Filipinas respectively. Sri Lankans and Filipinas have been in Lebanon the longest and there is now wider acceptance of their eating habits in Lebanese households (ILO, 2014j).

Filipinas and Sri Lankan workers who have been in Lebanon the longest receive a full day of rest (67 and 66 per cent respectively) compared to domestic workers from other countries (around 30 per cent) (Abdulrahim, 2016). Whereas almost half of domestic workers who have been working for their current employer for less than one year (46.4 per cent) or 1-2 years (45.2 per cent) are sometimes or always locked inside, this happens to only 21.7 per cent of migrant workers who have been working for their current employer more than five years (Abdulrahim, 2016).

Progress in the situation of migrant domestic workers in Argentina can also be seen over time. On arrival in Argentina, Paraguayan domestic workers have a tendency to take on multiple jobs during their first years of employment to save the maximum amount of money. This translates into long and consecutive work-hours with little personal time. Years into their migration experience, on realizing that their migration is of a more permanent nature workers slow down the pace of their work and invest in making a life in Argentina (ILO, 2014c).

## 4. Conclusion

This chapter demonstrates that it is vital for domestic workers to be protected by institutional policies and adequate regulations, but given the significance of perceptions and the persistence of social hierarchies beyond legislative reform, it is just as important for these policies and regulations to be reflected in employers' and workers' practices. It is crucial here to recognize that while labour standards are universal in their application, implementation is fragmented at the national level as a result of the mosaic of social, cultural and economic attributes that make up each "employer" and "worker" cohort. These cohorts are not monolithic. Bringing their practice closer to universal standards and national legislation requires a surgical approach to awareness raising and capacity building that takes into account the diversity of these groups.

Bridging knowledge-compliance gaps, however, should only be seen as reinforcing to institutional efforts aimed at increasing the scope of labour and social protections for migrant domestic workers and eliminating the laws, policies and income differences that sustain the indecent working conditions of women in this sector. Further, knowledge in itself does not necessarily translate into assertiveness unless the migrant is empowered and her voice is channelled through relevant policy platforms. This can only happen by building strong and representative workers' organizations to give strength to individual workers' claims.

# Unseen, uncosted, and unwaged: The importance of skills' development and recognition for domestic workers across borders

## 1. Introduction

There is a prevailing assumption that domestic work is unskilled. This is because (i) domestic work is perceived as an extension of women's natural household functions and therefore not worthy of pecuniary reward; and (ii) the integration of women into the labour market has shifted the burden of care onto women from poorer countries or to historically disadvantaged groups – such as minority ethnic groups, indigenous peoples, low-caste and low-income groups – who are willing to accept lower wages. In caste-based societies, for example, domestic chores continue to be associated with traditional caste occupations like the *Dhobis* “washerwoman or man” in India and Pakistan and manual scavengers in South Asia. Washing and manual scavenging are considered social obligations to be provided by lower castes for upper castes and for which in-kind compensation for subsistence rather than professional remuneration is provided.

Skills' programmes for domestic workers play an important role in reinforcing the view among both workers and employers that domestic work is real and professional work. This chapter examines ways skills' programmes can be optimized to further this recognition, improve working conditions and employers' satisfaction, and empower domestic workers, including migrants in this sector.

A number of skills and vocational training programmes have been developed by government institutions, trade unions, recruitment and placement agencies, and private educational and training institutions in countries of origin and destination to prepare men and women for the tasks and functions that are expected of them as they enter the domestic work sector nationally or internationally. These programmes range from short pre- or post-departure orientation training informing migrants about the lifestyle and their rights and obligations in the country of destination, to longer and more holistic vocational trainings.

This chapter summarizes some of the most common deficiencies of skills programmes and then presents solutions in the form of good practices or emerging good practices.

1. Some programmes do not recognize variations in skill level and specialization within the domestic work sector even though people employed in this sector are expected to multitask – juggling tasks of limited complexity, such as ironing and cooking, with highly complex tasks such as taking care of the sick, the elderly and the disabled.
2. Some programmes are reductionist, only capturing the technical/vocational dimension of domestic work, such as learning how to operate household appliances and using detergents. Because domestic work is largely relational, research carried out by the ILO demonstrates that transversal skills (such as communication and organizational capacity) are also in demand by many employers. Transversal skills are rarely factored into programmes and when they are, they tend to focus on “soft skills” while avoiding the labour dimension of communication skills – which includes negotiating working and living terms and conditions with employers – and the psychosocial dimension (e.g., coping with, and building resilience to, the frustration and aggressiveness that people with chronic ailments being cared for exhibit).

3. Further, and related to the previous point, employers have expressed a need for attitudinal skills<sup>1</sup> (i.e., predisposition toward work) that reflect their “preference” for obedient and docile workers who are willing to accept multifunctional work arrangements and respond to their requests at all times of the day. Thus, in addition to embedding labour rights and bargaining skills, there is also a need to embedding a women empowerment dimension in orientation and skills’ programmes.
4. Programmes are not linked to effective labour matching mechanisms at origin or destination, or between origin and destination. A skills mismatch leads to a care drain in countries of origin and to deskilling of migrants in countries of destination. Both a care drain and deskilling result in labour market deficiencies and reduce the sector’s capacity to foster the development of migrants and that of countries of origin and destination.
5. The absence of skills’ recognition frameworks in the sector leads to information asymmetries between employers who have no way of being sure of the competencies of the worker whom they are paying and workers who are either not equipped to perform the tasks required of them or have the potential to perform much more complicated tasks. This mismatch irrefutably results in frustrations which ultimately transform into labour disputes.

The growth in the interregional migration of domestic workers, as seen in Asia, Latin America and Africa, is not matched by regional model competency standards that recognize the skills of men and women in this sector. In addition to facilitating mobility, these standards can capture and recognize their upward progression within the sector and contribute to their ability to find employment in higher complexity occupations within and outside the sector in their countries of origin.

The following will look into each of these points, presenting suggestions or pointing to possible areas which could be explored further with a view to optimizing these programmes.

## 2. Recognizing the expanding portfolio of migrant domestic workers by linking wage increases to skills’ level and complexity

Some programmes do not recognize variations in skill level and specialization within the domestic work sector even though people employed in this sector are expected to multitask – juggling tasks of limited complexity, such as ironing and cooking, with highly complex tasks such as taking care of the sick, the elderly and the disabled.

The growing share of the world’s population aged over 65 has created a spike in the number of people in need of long-term care. This increased demand coincides with cuts and/or under investment in quality public services. As a result, out-patient care in homes has taken primacy over service provisioning in hospitals. Site-shifting is leading to task-shifting, with migrant domestic workers taking on the role of unregulated nurses (Kofman and Raghuram, 2013, p. 113), administering drugs, bathing patients and taking their blood pressure.

As a result, domestic work is becoming increasingly complex. These emerging trends should be accorded due importance in skills development programmes pre-departure and on arrival, with the need to see skills for domestic work in the broader context of the care economy. For instance, more opportunities for (migrant) domestic workers to access formal and better paid jobs will be available if governments are more willing to invest in quality care jobs in the public sector.

The ILO Domestic Workers Convention, 2011 (No. 189), defines domestic work broadly as “work performed in or for a household or households”. This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, caring for the children, the elderly and/or the sick in the family, gardening, guarding the house, driving for the family, even taking care of household pets.

Considering the complex tasks and responsibilities assumed by many domestic workers, ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) questioned the classification of domestic work as “unskilled” work.<sup>2</sup> One way of overcoming this bias is

1. Attitudinal skills are a subset of transversal skills. These “skills” capture a worker’s predisposition towards work (e.g., motivation, initiative, responsiveness, etc.).

2. CEACR: Direct request, Costa Rica, Convention No. 100, 2011. See also: CEACR: Direct request, Haiti, Convention No. 100, 2011; CEACR: Direct request, Saint Vincent, Convention No. 100, 2011.

## 4.1 Key definitions

**Skills:** “Skills are defined as the ability to carry out the tasks and duties of a given job. On the labour market, they are the main asset of an individual and their value can be measured by the ability to find and retain work and by the level of earnings.” (ILO, 2006c).

**There are two dimensions to skills:** (i) *skill level* as a function of the complexity and range of the tasks and duties a worker can perform; and (ii) *skill specialization*: defined by the field of knowledge required, the tools and machinery used, the materials worked on or with, as well as the kinds of goods and services produced (ILO, 2014).

**Skills recognition:** “Acknowledgment of an individual’s skills and qualifications by employers, education/training institutions and national authorities.” (ILO, 2006c).

to link wage percentage increases – above the minimum wage – to education and skill categories (ILO, 2011a; see also Wage Indicator, 2016). In that regard, Argentina sets minimum rates for five categories of domestic work<sup>3</sup> with qualified domestic workers benefiting from rates above the level of the general national minimum. In 1974, the collective bargaining agreement for the domestic work sector in Italy introduced three occupational levels, according to vocational skills and specific tasks performed by the workers. In the latest collective agreement, adopted in 2007, workers are reclassified into eight categories reflecting the tasks performed, the degree of autonomy, and whether they are care workers assisting dependent persons (Castagnone et al, 2013).

A recent ILO study in India pointed to the importance of domestic workers’ organizations in linking skills to bargaining for better wages as otherwise employers would not be willing to pay higher wages in return for better skills (Rustagi, Singh Mehta, and Tayal, 2016). In Argentina, the domestic worker union played an important role in this regard. The union-affiliated training schools, including the “Escuela de Capacitación para Personal del Servicio Domestico UPACP-OSPAC”, were important in monitoring enforcement.

### 3. Developing and recognizing the vocational and transversal skills of domestic workers

Some programmes are reductionist, only capturing the technical/vocational dimension of domestic work, such as learning how to operate household appliances and using detergents. Because domestic work is largely relational, research demonstrates that transversal skills (such as communication, organizational capacity and predisposition towards work) are more in demand by employers than vocational skills. Transversal skills are rarely factored into skills building programmes.

Research carried out by the ILO on employers’ attitudes and behaviours in selected countries suggested employers’ tendency to seek domestic workers who possess a mix of transversal, and vocational or technical skills.<sup>4</sup> **Vocational skills** are specialized skills, knowledge or know-how needed to perform specific duties or tasks (ILO, 2013b, p. 2). Competencies for domestic work include cleaning the house, using various household appliances, taking care of the elderly, children, disabled people and pets without close supervision, and managing small budgets. **Transversal skills** are core employability skills and reflect a person’s ability to learn, communicate well, engage in constructive and healthy teamwork and demonstrate creativity and problem-solving aptitudes (ILO, 2013d, p. 2). In the case of domestic work, these skills usually involve a dimension of “trustworthiness”, which employers use to refer to workers’ reliability, and good communication skills. Transversal skills are hardly ever certified or formally recognized in vocational training programmes for domestic workers.

- ILO research demonstrates that employers attach a great value to communication skills. *Employers look for domestic workers who speak a certain language, often associating language proficiency with certain nationalities.* Jordanian employers, for example, consider Filipina workers to “have superior English language skills” (El-Rayyes, 2015, p. 8). Language is the basis for any communication between worker and employer, but it is also a significant point when employers consider the

3. These five categories are: cleaners, child-minders, non-medical carers, housekeepers and caretakers. See also “Cuáles son las categorías de las empleadas domésticas en Argentina”, <http://www.presupuestofamiliar.com.ar/como-quedan-nuevas-categorias-servicio-domestico/> [accessed 11 April 2016].

4. ILO surveys, interviews, and focus groups with recruitment agencies and employers (2013-2015).

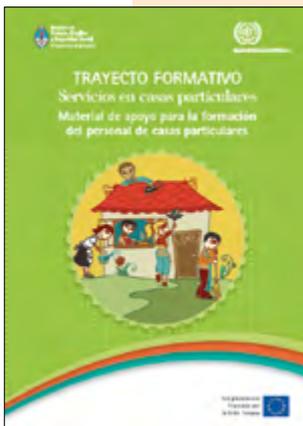
## 4.2 Argentina's vocational training for (migrant) domestic workers



Argentina's vocational training for domestic workers reflects the occupational profiles making up the sector as well as the vocational and transversal skills required by workers. The training is nested within a broader legislative context where qualified domestic workers are entitled to wage increases above the general minimum wage and where migrant domestic workers are organized in trade unions.

The programme was launched in 2006. It was developed and funded by the Minister of Labour, Employment and Social Security, and implemented by local government, NGOs and domestic worker union-affiliated training schools, including the UPACP-OSPAC. More than 19,000 domestic workers have been trained since the programme's establishment. Course participants have emphasized the importance of the training, explaining how they had become more organized in their workload management and professional in their performance. Moreover, participants declared gaining more confidence in their ability to find opportunities for upskilling.

The programme is structured according to three occupational fields: (i) domestic work; (ii) elderly care; and (iii) child care. The objective is for participants to acquire a combination of transversal and vocational skills as well as knowledge about their rights and the benefits of joining a union. The manuals used in the vocational programme were developed with the assistance of GAP-MDW.



– **This is a five-module manual consisting of 61 lessons (128 course hours).**

- The *first module* introduces participants to the basics of the domestic work sector, identifying its main characteristics, applicable labour standards and national regulations.
- The *second module* is focused on the development of transversal skills, such as communication and organizational skills.
- The *third and fourth modules* introduce participants to technical and vocational skills, a step-wise approach to cleaning, ironing and washing with corresponding home appliances, time management skills and safety and health standards.
- The *fifth module* prepares workers to design a personal occupational profile, including how to assess and present their skills and competencies to potential employers.

educational impact that interaction with the worker would have on their children. In this respect, Polish employers avoid hiring Ukrainian women to care for their children due to the “bad accent problem” that can influence a child’s language development at a critical age (Kindler, Kordasiewicz and Szuleka, 2016).

- *Trustworthiness is another transversal skill that is sought by employers*, particularly those who have young children. Trustworthiness is a subjective quality, a relational attribute, and is often used by employers to mean that the worker is “hard-working”, “honest”, and “reliable”. Linked,



- **This is a five-module manual consisting of 52 lessons (104 course hours).**
- The *first module* introduces the basics of the occupation of elderly care, identifying its main characteristics, applicable labour standards and national regulations.
- The *second module* focuses on the needs and rights of care beneficiaries, including a discussion of ageism and how it affects the elderly.
- The *third module* is an introduction to the health of the elderly. Course participants are trained to recognize symptoms of health improvement or deterioration, encourage care beneficiaries to become autonomous, handle emergencies and offer first aid.
- The *fourth module* trains participants to provide mental and physical care. Special attention is paid to hygiene, comfort, food preparation and the administration of medicine. Course participants are introduced to detecting and dealing with common illnesses like osteoporosis, diabetes, and claudication.
- The *fifth module* prepares workers to design a personal occupational profile, including how to assess and present their transversal and vocational skills and competencies to potential employers. Participants are trained to compile a curriculum vitae, to use the internet for job searches and to succeed at job interviews.



- **This is a five-module training manual consisting of 49 lessons (98 course hours).**
- The *first module* introduces the basics of the occupation of child care, identifying its main characteristics, applicable labour standards and national regulations. Next, participants are presented with a continuum of child care functions ranging from establishing an empathic connection with the child being cared for to more technical functions, like feeding the baby, identifying hazards and organizing educational and recreational activities.
- The *second module* promotes the development of transversal skills. The baby/child is recognized as a beneficiary who needs to establish an affective rapport with the caregiver for healthy mental and physical development.
- The *third and fourth modules* introduce course participants to the functions associated with the care of babies and children, such as nutrition, hygiene, recreation and education.
- The *fifth module* trains workers to design a personal occupational profile, including how to assess and present their transversal and occupational skills and competencies to potential employers. Participants are trained to compile a curriculum vitae, to use the internet for job searches, and to succeed at job interviews.

This experience is important not only because it operationalizes the vocational (instrumental dimension) and transversal (emotional dimension) skills of domestic work, but also because it emphasizes skills validation and upskilling, as well as embeds a component on labour rights in every training module.

even though remotely, to trustworthiness, is *the worker's religion*, which is cited as important by employers in Malaysia and Jordan to the extent that it has to do with the preparation of food or meals according to certain religious beliefs (ILO, 2014i).

Employers' narratives, therefore, suggest a general need for non-vocational skills among domestic workers. The need for these skills is reflective of the largely affective dimension of domestic work. Caring labour is a relational occupation (Adams and Sharp, 2015, pp. 100-121) with a dual function of activity and motivation (Himmelweit, 1999, pp. 126-135); that is to say, it requires the worker to attend to the emotional and physical care of the beneficiary. This is why Nancy Folbre (1995), in her seminal work *"Holding hands at midnight": The paradox of caring labor*, identifies reciprocity, altruism and responsibility as the three interrelated motivations that lie at the heart of the supply and valuation of caring labour, compared to neoclassical economists who follow the logic of the market where utility functions are only exogenous (Adams and Sharp, 2015, pp. 100-121).

Unless the importance of these affective, relational, and non-vocational skills, is acknowledged and taken into consideration by career development programmes, they will continue to constitute a dead-weight loss in any valuation of domestic work. This carries implications in terms of employee wages, the quality of care administered to employers, and also the workers' mental health – an aspect of the occupational safety and health of domestic workers that is often disregarded. Caring for people with chronic ailments, who often exhibit frustration and aggressiveness, without proper training can lead to compassion fatigue, also known as secondary traumatic stress, a condition characterized by a gradual lessening of compassion over time (Bauer and Osterle, 2013, pp. 461-473).

The affective dimension can also cripple a worker's ability to bargain for higher wages and better working conditions. Because domestic work is partially care work, there are different dimensions at play outside the traditional employment relationship. Domestic workers with caring responsibilities have difficulty commodifying their emotions towards the employer and his/her children and bargaining for better wages. They are said to be locked in a "prisoner of love framework" where they will continue to work even if they are not well paid (Folbre, 2001).

## 4. Labour rights are the cornerstone of orientation and skills' programmes

Employers often exhibit a need for attitudinal skills (i.e., predisposition toward work) that reflect their preference for obedient and docile workers who are willing to accept multifunctional work arrangements and respond to their requests at all times of the day. In addition to embedding labour rights and bargaining skills, there is also a need to embed a women empowerment dimension in orientation and skills' programmes.

**Research demonstrates employers' demand for another type of skills; attitudinal skills**, a subset of transversal skills. **In other sectors, attitudinal skills** indicate an individual's attitude towards work, such as his or her initiative, confidence, willingness, perseverance, determination, etc. In the case of domestic work, attitude towards work is often rewarded when it evokes time and functional flexibility in responding to employers' demands – both measures of subservience and docility. Previous ILO research focused on Belgium, France, Italy and Spain found that professionalization conflicted with employers' need for migrant domestic workers to perform a wide variety of tasks, suggesting over-specialization is not valued (Gallotti and Mertens, 2013).

More recent ILO research verifies employers' preference for multifunctionality over specialization in other, non-European, contexts. Migrant women, separated from their families, are available to become part of the employer's family, 24 hours a day if necessary, responding to needs that sometimes extend beyond the reach of the household, like supporting employers in running their private businesses (e.g., shops, restaurants) (KAFA, 2013).

A preference for domestic workers who are inclined to accept multifunctional work arrangements is tied to another preference (not skills-related) for live-in arrangements. Live-in arrangements ensure the worker's availability on time and all the time. Employers in Lebanon and South Africa described hourly waged workers as uncommitted workers who often arrive late, allow personal issues to affect their performance, and who are not fully dedicated to the employer (ILO, 2014j; ILO, 2014f). The top reason quoted by employers for employing live-in domestic workers was because there were household members requiring 24-hour care in Lebanon and Malaysia. Safety concerns were also mentioned as a top reason for not considering a live-out worker in both Lebanon and Malaysia (ILO, 2015e; ILO, 2014i).

Employers often look for "*mouldable workers*" with no pre-set ways of "*doing things*". For example, recruitment agencies in Jordan argue that employers prefer workers with no previous experience in the domestic work sector so that they can transfer particular skills relating to how they want their house cleaned, food cooked and children raised and societal norms relating to the workers' freedom to leave the house or to have a day off.

This tendency is reinforced by pre-departure orientation programmes that build the subservience of workers. Instead of addressing migrants' rights, pre-departure orientation programmes "attempt to regulate women's dispositions at work...as well as regulate their sexuality" by emphasizing "traits of self-sacrifice, hard-work, and religiosity" (Rodriguez and Schwenken 2013, p. 386; from Rodriguez 2010, p. 63). These trainings "communicate values of obedience and subservience to employers" to become the "ideal worker" who conforms to acceptable work, religious, and gender related norms at destination (Fernandez 2011, p. 445).

#### 4.3 Flexibility as a valued attitudinal skill: The intersection between a preference for multifunctionality and another for live-in arrangements

“The foreigner comes far to look for employment, she doesn’t really have a home in South Africa. So she’s getting a place to live, a lot of times there’s a dinner included and the money you get at the end of the month you’re able to save. You’ll get ladies who come here and they’ve got teaching qualifications, and they come here and they’ll happily be a nanny because they see it as their earning an income that they can send home to their kids. We just find that they’re more service-oriented. They acknowledge that they’re being paid for a service and they’re happy to deliver that service. They are very open; they are easy to communicate with. They will never say, ‘no, but why are you doing this like this, why can’t you do this like this, why is she paying me this amount of money?’ They never complain.” – Owner of placement agency in South Africa.

“The salary of someone who works by the hour is more expensive. But, in this case, you don’t have to pay [recruitment] fees upfront, and you don’t have to pay for the residency and work permit. So, [hiring a live-in or a freelancer] ends up costing the same at the end. Anyway, it is my choice [to hire a live-in worker], it has nothing to do with cost. I cannot rely on [a freelance migrant domestic worker] who may or may not show up. And, anyway, it would not work out because the freelancer works for different families, and she is not fully committed to me. Plus, three to four hours a day, two days a week, is not enough for me.” – Employer in Lebanon.

#### 4.4 A preference for “mouldable workers”

“Generally, they prefer them with no experience, which means that they have not served [as a domestic worker] in other countries. In this case, she will be raw material... You can teach them your own way of cleaning and dealing with the children. You know, each country has its own way of living. If the domestic worker has served in other countries, she will give us trouble here... For example, in our houses we bring the worker and we don’t like her to leave the house. The ones who served in Lebanon, for example, they are used to going out with the Madam. When the girl that comes is raw material, we can make her behave according to our wishes.” – Recruitment agency manager in Jordan.

“The ones that have experience, they want you to behave according to their wishes, instead of behaving according to yours.” – Employer in Jordan.

## 5. Improving skills’ matching in countries of origin and destination

Programmes are not linked to effective labour matching mechanisms at origin or destination, or between origin and destination. A skills mismatch leads to a care drain in countries of origin and to deskilling of migrants in countries of destination. Both a care drain and deskilling result in labour market deficiencies and reduce the sector’s capacity to foster the development of migrants and that of countries of origin and destination.

A lack of coherence between employment and labour migration policies can result in inefficiencies in the labour market. A care drain, the deskilling of migrant women through their integration into the domestic work sector, and the absence of a regional competency framework for domestic workers are evidence of these labour market deficiencies.

**Preventing a care drain in countries of origin:** Despite the significance of remittance earnings to countries of origin, the latter are growingly concerned about the potentially negative impact of migration on the country’s human capital development, generating a “brain drain”, a “care drain” and a “mismatch between skills and local jobs” (Mendoza, 2015, p. 2). Data from the Philippines’ Bureau of Data and Employment Statistics show that five out of the six most common occupational categories among Overseas Filipino Workers deployed in 2010-2014 are on the domestic hard-to-fill lists for the decade 2010-2020. Of these, vacancies for nursing professionals, char workers and cleaners, and caregivers are hardest to fill (Mendoza, 2015, p. 6, table 4).

To prevent a care drain from poor to rich countries in the nursing sector, the World Health Organization (WHO) developed a global code of practice on the international recruitment of health personnel in 2010. A similar code could be considered for the domestic work sector.

**Preventing the deskilling of women migrants:** Skilled and highly-skilled women migrants often end up in occupations that are not commensurate with their qualifications and experience, resulting in their “deskilling” or “brain waste”. Deskilling is prevalent among migrant women in the domestic sector and can be the source of a loss of self-confidence which can negatively impact their career choices and career advancement. For instance, almost 18 per cent of Ukrainian women domestic workers in Poland have a master’s degree while 25.3 per cent have a bachelor’s degree (ILO, 2014d). Zimbabwean women migrants in South Africa are also likely to work in low-skilled and low-paying jobs in the agricultural, security, hospitality and domestic work sectors although the majority have completed secondary and tertiary education (Crush et al., 2012; see also Rutherford, 2010, pp. 59-76). Deskilling can be curtailed via better job matching.

## 6. Developing and recognizing the skills of domestic workers across borders and promoting the upward mobility of returnees

The absence of skills’ recognition frameworks in the sector leads to information asymmetries between employers who have no way of being sure of the competencies of the worker whom they are paying and workers who are either not equipped to perform the tasks required of them or have the potential to perform much more complicated tasks. This mismatch irrefutably results in frustrations which ultimately transform into labour disputes.

The growth in the interregional migration of domestic workers, as seen in Asia, Latin America and Africa, is not matched by regional model competency standards that recognize the skills of men and women in this sector. In addition to facilitating mobility, these standards can capture and recognize workers upward progression within the sector and contribute to their ability to find employment in higher complexity occupations within and outside the sector in their countries of origin.

It is not uncommon for poor women from rural areas, with very limited exposure to modern electrical appliances and the variety of detergents and cleaning products used in a household, to be overwhelmed on arriving at the employer’s home.

“Cleaning the floor in my family’s home in Bangladesh meant sweeping it with a broom. I did not know what it meant to clean the parquet flooring of my employers’ house.” – Bangladeshi domestic worker in Lebanon.

“I felt ill with nausea and headaches every time I cleaned the bathroom at my employers’ house. Then I learned that mixing hot water with bleach was making me sick.” – Sri Lankan domestic worker in Lebanon.

It is also difficult for migrant workers who do participate in orientation and skills programmes to have their skills recognized both in destination countries, where their skills may not be certified, and upon returning to their home countries, where there is little chance that their newly acquired skills will be acknowledged. This situation generates “missed opportunities in capitalising on the wealth of new learning and skills the workers bring back”, impacting negatively on countries’ “capacity to build a skilled and qualified workforce” (ILO, 2014m, p. 1). The following is a brief overview of skills programmes pre-departure, at destination, and upon returning to the home country.

**Pre-departure orientation programmes** provide a taste of the work and life experience that prospective migrant workers can expect at their destination. If designed well, they can build a solid foundation for the empowerment and protection of migrant domestic workers throughout their journey. The Philippines, Sri Lanka, Nepal and Cambodia – four countries with the common goal of increasing migrant deployment levels – have different approaches to managing pre-departure programmes. Programmes in the Philippines and Sri Lanka are public-private partnerships while in Nepal and Cambodia they are run exclusively by recruitment agencies. The depth and breadth of pre-departure programmes also vary across countries, ranging from one to 21 days of training.

*The Philippines’ Pre-departure Orientation Seminar, held since 1983, benefits from a multi-stakeholder approach that includes the government (the Overseas Workers Welfare Administration and the Philippines Overseas Employment Administration) and about 260 accredited NGOs and private sector providers.* The programme consists in a six-hour seminar during which aspiring migrants are introduced to the basics of health and safety at work, the principles of financial literacy, the code of conduct for overseas Filipino workers, the destination country’s profile, employment contracts and

travel procedures. The training providers, whether governmental or non-governmental, cover the costs of the pre-departure training (Asis and Agunias, 2012, pp. 4-5). Another multi-stakeholder programme is Sri Lanka's pre-departure training. The training, facilitated by the Bureau of Foreign Employment, has been compulsory for all prospective migrant workers since 1994. Most well-known is the Bureau's 21-day orientation and skills training programme for women seeking employment as domestic workers in the Middle East. The Bureau offers programmes across Sri Lanka by collaborating with more than a dozen accredited training centres, which are in turn operated by PEAs licensed by the Bureau (Chaloff, 2015, p. 19).

*Nepal's pre-departure programme for domestic workers, mandatory since 2003, is managed by private training institutions.* The programme is a two-day orientation session introducing the country of destination, in particular its language, lifestyle, labour and human trafficking laws and regulations, and also covering health and communicable diseases, repatriation and financial literacy and a thirty-day skills training. Another country where recruitment agencies play a significant role in organizing pre-departure programmes is Cambodia. There, the Association of Cambodian Recruitment Agencies conducts pre-departure training programmes for migrant domestic workers in technical and soft skills to prepare them for working with families whose culture, religion and household appliances may be a departure from the familiar (ILO, 2010b).

The effectiveness of pre-departure programmes is often challenged on the basis of their management structure, their design and content, and geographical reach. The interests of recruitment agencies, which are often at the forefront of these programmes, are not necessarily in line with the interests of migrant workers. As a result, the programmes are less about upholding the rights of migrant domestic workers than they are about teaching workers to be docile in their interactions with employers. Moreover, coordination between government agencies at different levels is lacking (Asis and Agunias, 2012, p. 17). This results in gaps and overlaps in multi-stakeholder training programmes (ILO, 2014n). The programmes are often generic in design and their outreach is limited to urban centres, highlighting the need for training that is adapted to the context and tasks (care, cleaning, cooking, etc.) and has a wider outreach. Developing participatory and learner-centred training that targets migrants and their families and drawing up curricula that are more specific to destination countries could also be considered (Asis and Agunias, 2012, p. 6). Women trainers, a gender-sensitive curriculum and post-training support could be offered (ILO, 2015g). Coordination with consular services, government agencies and placement agencies in countries of destination on training and orientation programmes could be used to help support the integration of migrant workers into the society and labour market of host societies.

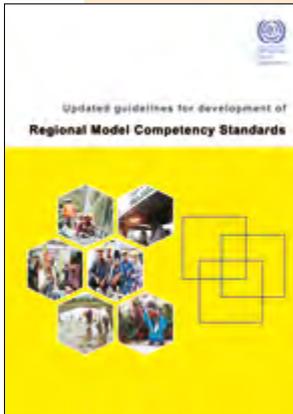
**At destination, migrant domestic workers benefit from skills programmes ranging from periodic exposure to civil society-run skills programmes to fully established vocational training programmes.** Attending events managed by civil society organizations is increasingly becoming a popular weekend activity among domestic workers. Civil society-run skills projects operate as a "social space" where women come together to meet their compatriots in similar employment (Yeoh and Annadurai, 2008). Labour organizing centres, like the Workplace Domestic Work Project, which was established in Long Island, New York, in 1997, utilize skills projects as an organizing tactic, urging domestic workers to develop their legal and communication skills through the centre as a precondition for their involvement in the organization's leadership structure (Gordon, 2001, p. 102).

Civil society organizations also leverage skills programmes as a capacity- and livelihood-building strategy for refugees who often find an occupational niche in the domestic work sector. Refugee Egypt provides a training and placement service for refugees in the domestic work sector. It runs intensive two-week cleaning courses and an orientation class. Almost 20 refugees graduate every month, and a certificate is delivered to each participant.

More established programmes include Argentina's training for household workers (see above) and Italy's regional training programme for family caregivers. This last programme aims to standardize training programmes at regional level to enable graduates to work in cities other than where they participated in the training (Solidar 2008, 21).

**Facilitating the intraregional mobility of domestic workers:** 80 per cent of intraregional migration flows are cross-border (Ratha and Shaw, 2007). The migration of domestic workers through the Indonesia-Malaysia, Ukraine-Poland, Zimbabwe-South Africa, and Argentina-Paraguay corridors (four of the five migration corridors for domestic workers that are covered by the GAP-MDW) is a case in point. Within Asia, the Association of Southeast Asian Nations (ASEAN) has put in place mutual recognition agreements (MRAs) to facilitate intraregional mobility by guiding the skills assessment and recognition at the national and regional level of engineers (2005), nurses (2006), surveying services (2007), architects (2008), accounting services (2008), medical practitioners (2008) and dental practitioners (2009) (Chaloff, 2015, p. 22, Box 2.2). Although intraregional mobility for domestic

#### 4.5 Regional Model Competency Standards for domestic workers in ASEAN



The ILO and relevant stakeholders from Bangladesh, Cambodia, Hong Kong (China), India, Indonesia, Philippines, Singapore and Thailand developed the Regional Model Competency Standards (RMCS) for domestic workers as a set of competency standards for skills development initiatives targeting domestic workers. They are also seen as essential in protecting migrant workers, their rights and their reintegration. The RMCS template is an adaptive tool, composed of six functional areas: (i) Core competencies; (ii) Domestic cleaning and basic housekeeping; (iii) Cooking and food handling; (iv) Caring for infants and children; (v) Caring for elderly people; and (vi) Caring for household pets and plants. Each functional area consists of competency standards identifying the key roles that the worker is expected to perform, which are then broken down into a number of “units of competence”; these are then further subdivided into “elements of competence”. For each element, “performance criteria” are defined which form the basis for assessment, with “range statements” provided for guidance (e.g. support requirements, cultural and religious needs, possible risks, equipment and aids, etc.).

workers is much higher than for skilled occupations, MRAs for the sector have not been established. Until these MRAs are recognized and reflected in the national legal systems, bilateral agreements between governments remain the “most reliable infrastructure for cross-border skills development in the short term” (Chaloff, 2015, p. 25).

**Promoting mobility within and outside the sector for returning migrants:** at destination, migrant workers acquire new skills and competencies, including languages, workplace skills and even entrepreneurial skills. The integration of returning migrants and the recognition of their work experience is important to increase their employment prospects while avoiding deskilling or employment in the national domestic work sector where wages are low and labour and social protection lacking. Support services are also important to aid migrants in their search for employment when they return to their home countries.

To help countries make the most of the skills of returning migrants, the ILO has drafted guidelines for skills recognition of returning migrants. The guidelines outline a process through which returning workers can: i) assemble data from their overseas employment, including any skills training, in a comprehensive portfolio; ii) map that data against identified national or international competency standards; iii) be assessed; and then iv) achieve formal recognition for their new skills and work experience. This process reflects a rights-based approach towards achieving the goal of decent employment or self-employment. These guidelines are for use by government agencies in countries of origin and destination, national agencies responsible for skills recognition, local agencies and non-governmental organizations, national employers and workers’ organizations and private employment services (ILO, 2010b).

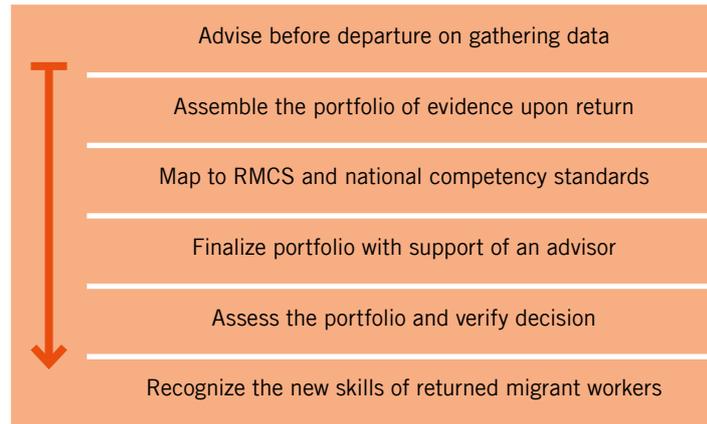
Skill competencies may be gained through a combination of formal or informal education and training, experience in the workplace and general life experience (ILO, 2014m, p. ix.). As a result, official documents to include in the return portfolio of evidence could include job descriptions, details of work and training history, and certificates from formal training courses. Supporting documents could include written statements attesting to work experience, photographs of work places, equipment used and products made by the migrant workers, and logs of work activities. Building portfolios for domestic workers should focus on documenting new skills acquired from working with modern household technology and living in a different cultural environment, perhaps for future employment in hospitality, food preparation or child care (ILO, 2010b).

Examples of how national authorities manage the skills development and reintegration of return migrants include the experience of the Technical Education and Skills Development Authority (TESDA) in the Philippines, and Sri Lanka’s Bureau of Foreign Employment.

In the Philippines, TESDA manages the assessment and certification of competencies of Filipino Overseas Workers, maintains a database to link the experience and competencies of returning migrants to prospective employers, and provides support services through the Permanent Returning Overseas Filipino Workers Network (ILO, 2010b).

Sri Lanka’s National Labour Migration Policy calls on the State to facilitate the return and reintegration of migrant workers by creating opportunities for “*skill transfer, productive employment, and conflict-free social integration*”. The ILO supported the development of a sub-policy framework and a

## 4.1 Stages of the proposed skills recognition process for return migrants



Source: ILO, 2010b.

National Action Plan on Return and Reintegration. The policy's main focus is on low-skilled workers, especially women domestic workers who have limited capacity, knowledge and access to information and services. The Sri Lanka Bureau of Foreign Employment is entrusted with providing services to prospective in-service and returnee migrants and their family members. The Bureau facilitates regular entrepreneurship training, provides assistance in finding re-employment and bridging skill gaps, and recognizes skills through the "Recognition of Prior Learning" scheme and certification.

## 7. Conclusion

This chapter argues that skills development programmes for domestic workers play an important role in reinforcing the view among both workers and employers that domestic work is real and professional work. Skills' programmes should strike the right balance between leveraging and recognizing existing skills, on the one hand, and skilling, on the other. Leveraging existing skills will reinforce workers' and employers' recognition of the professional value of the work performed by women in households broadly. Skills' programmes should be grounded in fundamental principles and rights at work, and receive the support of public institutions or the social partners to ensure compliance.

# Reducing the costs of labour migration through fair recruitment practices<sup>1</sup>

## 1. Introduction

Labour recruiters are part of an increasingly powerful migration industry that has grown in size and profitability since the mid-1990s (Jones, 2015, p. 9). In 2013, 60.9 million people gained access to the labour market in one way or another through the employment and recruitment industry (Ciett, 2015).

The term “labour recruiter”<sup>2</sup> can refer to both private and public entities that offer labour recruitment services. Private entities can take many forms: **formal** (e.g. registered under commercial or other law) or **informal** (not registered, such as informal sub-agents), **profit-seeking** (e.g. fee-charging agencies) or **non-profit** (e.g. trade union hiring halls) (Andrees, Nasri and Swiniarski, 2015, p. viii). Today there are over 140,000 registered PEAs worldwide (ILO, 2014o, p. 15) providing one or more of the following labour market services:

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships that may arise therefrom;
- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) that assigns their tasks and supervises the execution of these tasks;
- (c) other services relating to job-seeking, determined by the competent authority after consulting the most representative employers and workers’ organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.” (Art. 1.1)<sup>3</sup>

In many countries, families are allowed to directly recruit a migrant domestic worker. Nonetheless, the majority pay hefty fees to labour recruiters for their services. This is because employers are families rather than businesses and as such are not familiar with managing complex recruitment processes. In many countries of origin, domestic workers are only authorized to migrate through a registered PEA.

Labour recruiters assist families and workers in navigating the complex immigration and employment laws and procedures in the relevant jurisdictions. Recruiters’ facilitation of the “end-to-end recruitment” is an attractive option for busy employers and first-time migrants. It may also speed up what can otherwise be a lengthy process with bureaucratic delays.

The services of labour recruiters do not end with the worker’s placement in the employer’s home. Most agencies provide “advice” to both employers and workers on topics such as rights and obligations and the employment relationship. In a highly personalized sector like domestic work, where the employer and the worker may be living together and are frequently from very different social strata and cultural background, there is a heightened risk that one of the parties will wish to terminate the employment relationship prematurely. In such instances, and under special circumstances, many labour recruiters will hire a replacement as well as identify a new home for the worker.<sup>4</sup>

1. This chapter was written by Leanne Melnyk and Marie-José Tayah.

2. Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

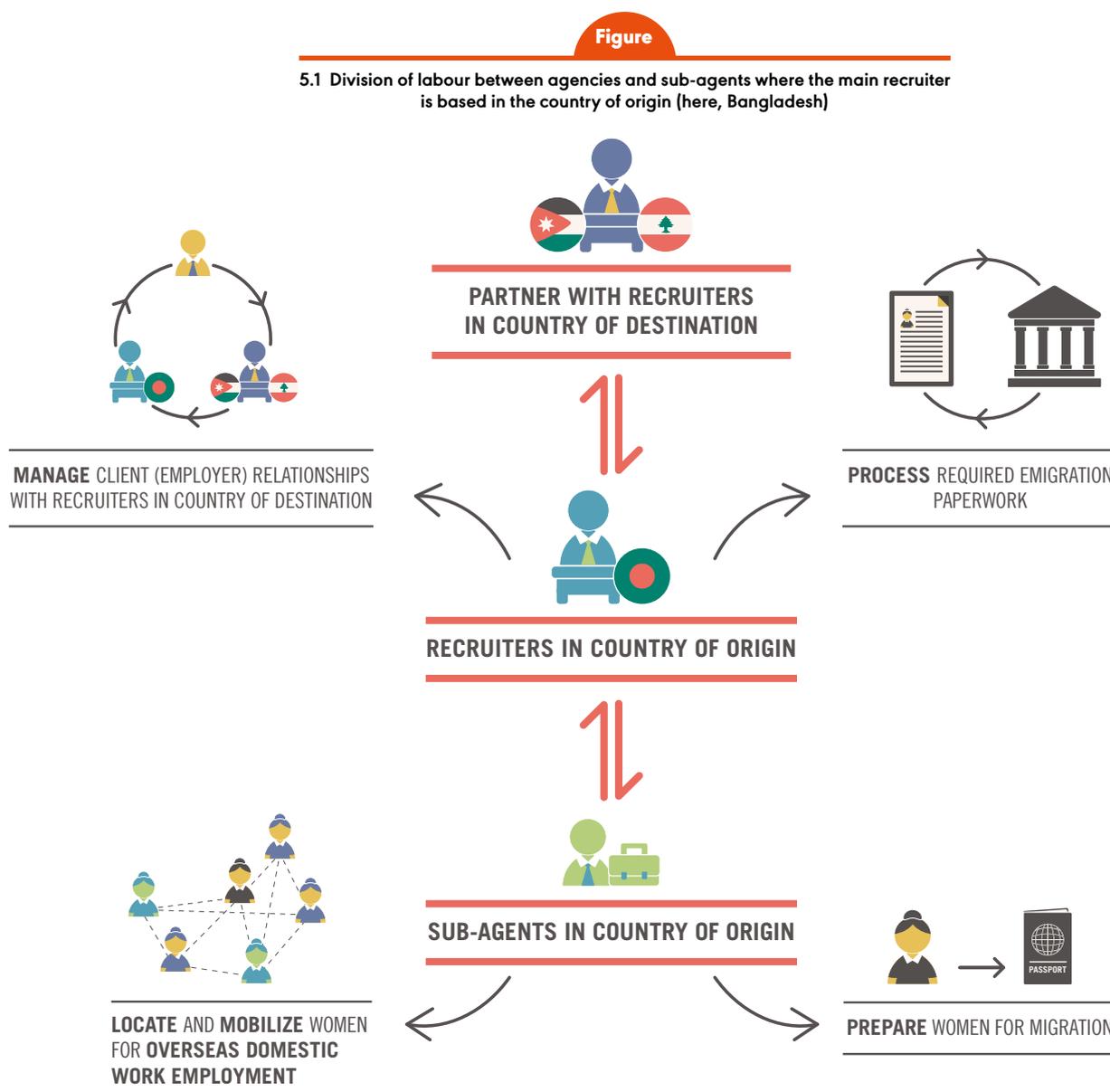
3. ILO Private Employment Agencies Convention, 1997 (No. 181).

4. In Jordan, Regulation No. 12 of 2015 on Recruiting Non-Jordanian House Workers states a recruiter must replace a worker who refuses to work or is found to be pregnant or unfit to work within a limited time period. Similar mandatory “replacement policies” exist in the Gulf Cooperation Council and Middle Eastern and North African countries. In many other countries recruitment agencies voluntarily provide this guarantee as a business strategy.

## 2. A diverse and fragmented recruitment industry

While the recruitment model in the domestic work sector varies significantly depending on the country and/or individual context, the most common involves cooperation between labour recruiters in countries of origin and destination (for example, to place migrants from Asia and Africa in Arab countries). This model eliminates the high transaction costs and administrative challenges associated with the operation of overseas branch offices, which in turn reduces recruitment fees. This model consists in a labour recruiter in the country of origin receiving job requests, screening potential workers, processing the necessary emigration documentation and preparing workers for departure. The labour recruiter in the country of destination (often referred to as a placement agency) manages relationships with prospective employers (families seeking domestic workers), assists with job matching and is responsible for processing the necessary immigration documentation (Jones, 2015, p. 20).

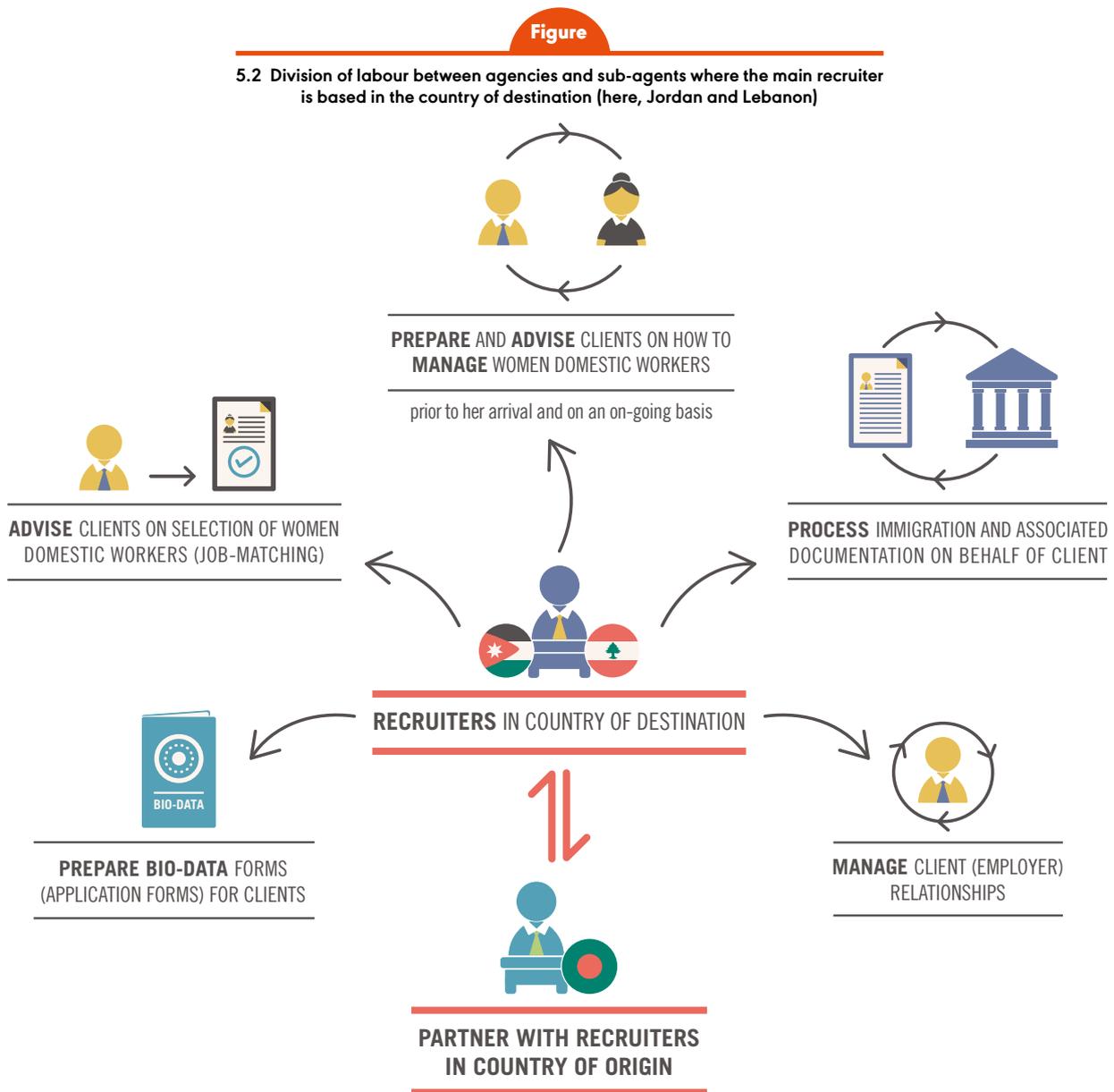
This cross-border industry for recruiting and placing migrant women in the domestic work sector encompasses small and micro-enterprises, public-private enterprises, mega-recruitment agencies and multinationals. In countries of origin, domestic work seems to be concentrated in family-owned enterprises with a small staff, limited financial capital and a local client base (Jones, 2015, p. 15). Nepal has licensed almost 800 labour recruiters to facilitate the migration and placement of the



Source: Jones, 2015, p. 21.

1,700 labour migrants who travel through Kathmandu airport each day (ILO, 2015d). Only 48 labour recruiters service migrant domestic workers. None of these recruiters are linked to a multinational recruitment agency and only two operate overseas branch offices. In general, Nepalese recruiters operate small and medium-sized enterprises, with most employing fewer than ten “permanent” staff in their head and branch offices and recruiting between 300 and 1,000 workers for overseas employment each year (Jones, 2015b).

*Labour recruiters in countries of origin contract out to sub-agents in villages and rural areas.* In Nepal, recruiters rely on between four and 50 freelance “brokers” to find and prepare recruits, with most working with less than ten regularly. Estimates of the total number of full- and part-time brokers working across Nepal range up to 50,000 (Jones, 2015b). It is worth noting here that it is not uncommon to find returning domestic workers who have themselves set up recruitment agencies or become brokers. For example, the first point of contact of Ethiopian women seeking employment abroad is usually *dalalas*, returning migrant domestic workers who have eventually become brokers (Fernandez, 2013, p. 826). While many recruiters are formal and subject to both legal and industry standards, sub-agents may be unregistered and have limited accountability. This is why some countries, such as Nepal, have taken steps to recognize sub-agents and ensure they register with a recruiter.<sup>5</sup>



Source: Jones, 2015, p. 21.

5. See Section 3.1 “Using agreements and joint and several liability schemes to prevent abuses” below for more details.

*Labour recruiters and sub-agents often have to integrate social norms and practices into their business model.* While the recruitment system is regulated in Indonesia, labour recruiters have to acquire a “village and family clearance” prior to recruiting a prospective domestic worker for employment abroad. The village head will confirm that a woman is eligible to migrate abroad for work, and a male member of the woman’s family (father, husband, brother) also gives written consent. Only then does the local authority process the request enabling the prospective migrant to sign a contract and to enrol in pre-departure training on local customs, language and expectations of work in the destination country (Morgan and Nolan, 2011).

*Finally, the proportion of recruiters in the domestic work sector is not geographically balanced.* The number of recruiters in operation is much higher in countries of origin with a high employment-driven emigration policy and countries of destination with a dependence on private caregiving services.

*At destination, placement is performed via cooperatives, government authorities with a corporate identity, small and medium-size enterprises (PEAs or cleaning companies) and mega-recruitment agencies.*

The majority of placement agencies in many countries of destination are small and medium sized enterprises. Increasingly, however, cooperatives of migrant domestic workers are facilitating job matching and placement in the domestic work sector. Cooperatives do not require job placement fees other than membership dues. Examples include Si Se Puede! Women’s Cleaning Cooperative in Brooklyn, New York and the Co-operativa Valenciana de Empleadas de Hogar de Levante, Spain.

### Box

#### 5.1 Si Se Puede! Women’s Cleaning Cooperative

Si Se Puede! Women’s Cleaning Cooperative, a women-owned, women-run worker cooperative for housecleaning services. Founded in 2006, it now has over 1,500 customers, and an annual group income of US\$600,000. One of the cooperative’s key principles is that every member receives 100 per cent of their pay – there are no job placement fees and no organizational middlemen. Si Se Puede! workers receive more than US\$20 an hour for their work. Like all cooperatives, membership of Si Se Puede! requires active participation by all workers in the day-to-day management and marketing of the business. For example, members must attend regular organizational meetings and spend three hours a month marketing the coop. This might mean staffing a table at a street fair, marketing the coop at neighbourhood meetings or handing out Si Se Puede! flyers door-to-door. Si Se Puede! receives the support of the Center for Family Life in Sunset Park, a nonprofit community-based organization. This Center provides cooperative members and their families with workplace-specific English language classes, family counselling and after-school programmes.

Source: ILO Good practice database on labour migration policies and programmes, available at: [http://www.ilo.org/dyn/migpractice/migmain.listPractices?p\\_theme=S11](http://www.ilo.org/dyn/migpractice/migmain.listPractices?p_theme=S11) [accessed on 28 June 2016].

Other emerging models include Bahrain’s Labour Market Regulatory Authority, a government entity with a corporate identity that is endowed with full financial and administrative independence, to regulate and control the issuance of work permits to migrant workers and the self-employed, in addition to managing employment transfers and issuing licenses to manpower and recruitment agencies. Saudi Arabia established Mega-Recruitment Agencies (MRAs), progressively channelling recruitment away from individual sponsors. MRAs cannot request direct payments from workers. Employers in Saudi Arabia are still able to employ migrants through a direct employment relationship via PEAs in countries of origin.

*Where migration is intraregional or between neighbouring countries, job matching and placement are often facilitated by social and informal networks, sometimes in conjunction with labour recruiters.* Bilateral labour and visa agreements exist between Zimbabwe and Lesotho as countries of origin and South Africa as a country of destination. Placement is largely facilitated by informal kinship, ethnic and other social ties, rather than by formal recruiters. It is also worth mentioning that Basotho and Zimbabwean women are often employed as domestic workers by better-off Zimbabwean or Basotho migrants residing in South Africa who prefer to hire co-nationals and sometimes go as far as paying for their trip to South Africa. Changes in employers or job seeking when a migrant is already in South Africa take place by word of mouth, through church networks, or through advertisements in supermarkets, etc. Recent years have witnessed the emergence of unlicensed labour recruiters who have identified a market niche in placing domestic workers in an irregular situation in suburbs and townships in South Africa for a commission (ILO, 2014f).

In Latin America, migrant domestic workers rely on family and personal connections rather than labour recruiters to find a job. This is facilitated by RECs that allow free movement of goods, people

and currency among Member States. In Brazil, the friends and family members of a Paraguayan domestic worker offer the same services as a labour recruiter: they provide information about Brazil, introduce her to the employer, assist her in finding accommodation, lend her money, help translate important documents, and help her navigate administrative procedures (Jones, 2015b). The migration of Paraguayan domestic workers to Argentina is also facilitated by Paraguayan diasporic networks in Argentina (ILO, 2014c). There are risks attached to relying solely on informal networks; profiteers are encouraged to tap into these networks and devise strategies to trap women into sex work and other forms of forced labour (ILO, 2014c).

*Migration between neighbouring countries should not provide a rationale for governments to shirk their obligation to regulate the recruitment and placement processes.* Even in Europe, where free mobility regimes govern the movement of workers between EU Member States, a directive was passed to regulate the placement and employment of EU nationals in countries other than their own.

Migration between neighbouring countries is often followed by subsequent waves of migrants from other non-neighbouring countries to meet growing care needs. Prior to 1975, geographical proximity enabled the direct placement, through relatives, of young Arab women in the households of Lebanese employers. The civil war ushered in the era of PEAs to facilitate the placement of women workers, first from Asia and later from Africa. These agencies were established during the regulatory vacuum caused by the war, thereby setting the tone for this sector's sometimes enduring malpractices (Tayah, 2012b). It is therefore best to prevent such a vacuum by laying a proper regulatory foundation from the outset.

*Sometimes, placement is governed by a simple procedure that allows the direct recruitment of a migrant domestic worker by her/his employer.* Ukrainian migrant domestic workers are admitted into the Polish labour market via an employer's declaration of intention to hire a foreigner. The employer applies for a *work permit*, which may be issued for up to three years. The *declaration of intention to hire a foreigner* allows domestic workers to work without a permit during six months within one year. The employer has to submit the employment offer to the county labour office, and a copy sent to the potential employee serves as a basis for a visa to be issued. The period between filing the application and getting the visa may vary between seven and thirty days. Ukrainians with ethnic or cultural ties to Poland can request a *Karta Polaka* or "*Polish Card*". This document allows them to study, work and undertake entrepreneurial activities in Poland (Kindler, Kordasiewicz and Szuleka, 2016).

### 3. The need to regulate labour recruiters

Labour recruiters operating in the domestic work sector are mostly found in Asia and the Middle East and more recently also in Africa. The recruitment model is usually based on obtaining an advance approval work permit, an admission visa and a temporary contract attached to an employer who is often legally and financially responsible for a migrant domestic worker, including for her repatriation.

Labour recruiters in countries of origin and destination forge agreements (in the case of government-to-government recruitment) or business relationships (in the case of private recruiters) to complete the end-to-end recruitment process. Agreements and partnerships are generally governed by bilateral labour agreements (BLAs) or memoranda of understanding (MoUs) between governments at origin and destination.

These BLAs and MoUs often facilitate labour market access rather than provide protection to workers. BLAs can include a model employment contract which regulates some aspects of the work (e.g. contract period, travel expenses, wages, accommodation, medical care and annual leave) but they typically fall short of international labour standards. Different model contracts negotiated with particular countries of origin create wage gaps and discrimination in treatment between workers of different nationalities. Qatar, for example, has signed 31 bilateral agreements with migrant-sending countries, each containing different provisions (Tayah and van de Glind, 2015). Only in rare situations are social partners consulted during the negotiation process. It does not help that existing BLAs and MoUs do not include provisions on consultation with social partners or civil society groups in the implementation or monitoring and follow up of agreements (Wickramasekara, 2015, p. 28). Both MoUs and BLAs lack implementation force and if their provisions do not map onto national legislation, the extent to which these agreements can provide protection is very limited.

MoUs between syndicates of recruitment agencies at origin and destination are not uncommon. The Philippine Manpower Agencies Deploying Labour Inc. and the Syndicate of the Owners of Recruitment

Agencies in Lebanon (SORAL) signed an MoU in 2012 agreeing to a minimum wage of US\$400 for Filipinas (the minimum wage in Lebanon is \$US450). SORAL acts a guarantor of this arrangement.

While labour recruiters, when properly regulated can provide important services, there have also been an increasing number of reports about the exploitation and abuse of migrant domestic workers by unscrupulous PEAs and informal agents. Exploitative practices include deception (primarily about working and living conditions and the type of employment); charging unauthorized fees to workers;<sup>6</sup> retention of identity documents with the aim of controlling jobseekers and workers; threats and intimidation including verbal and psychological abuse (often when a worker wants to leave her employment); wage retention; and interferences with domestic workers' privacy (ILO, 2015i, p. 10). These exploitative practices are compounded when workers find themselves in crisis situations, including in failed States and following disasters, where a shortage of decent jobs may make it even easier for unscrupulous labour recruiters to take advantage of their vulnerability (ILO, 2016b).

The fragmented nature of recruitment combined with the political power that these agents wield in origin and destination countries acts to the detriment of migrants causing excessive fees, working conditions akin to forced labour, contract substitution, visa trading and ineffective complaint and grievance procedures. Excessive recruitment fees are transferred onto workers in the form of direct payments, large loans requiring repayment at extremely high interest rates or salary deduction schemes. For example, members of the Association of Licensed Foreign Employment Agencies in Sri Lanka sit on the board of Sri Lanka's Bureau of Foreign Employment, the government body regulating foreign employment (Jureidini, 2014, pp. 4-5). At the receiving end in Kuwait, senior officials in the Ministries of Labour and Interior act as large-scale brokers of work visas for foreigners (Hertog, 2014, pp. 18-19).

## 4. Models for addressing key issues and challenges in the recruitment industry

The ILO Domestic Workers Convention (No. 189), 2011, and its accompanying recommendation 201 set out guidelines for regulating and monitoring PEAs. These measures include regulation of PEAs, mechanisms to investigate complaints and alleged abuses and fraudulent practices, the respective obligations of the PEA and the household, the conclusion of bilateral, regional or multilateral agreements, and measures to prevent wage deductions. Importantly, the Convention also calls for these measures to be taken in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and their employers.

The ILO Fair Migration Agenda draws attention to the need for fair recruitment and equal treatment of migrant workers to prevent exploitation.<sup>7</sup> ILO adopted the Fair Recruitment Initiative which aims to support the knowledge base for industry-led change. The 2014 Protocol to the Forced Labour Convention, 1930, and its accompanying recommendation (No. 203) create specific obligations for states to eliminate abusive and fraudulent recruitment practices including through the promotion of inter-state coordination to eliminate recruitment fees and to regulate, license and monitor labour recruiters and employment agencies.

While many allegations and reports of abuse persist, countries are devising strategies to regulate and monitor PEAs. These strategies include agreements, joint liability schemes, BLAs, MOUs, inspections, fines, and black lists, etc.

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6. Charging fees to workers is prohibited under the ILO Private Employment Agencies Convention, 1997 (No. 181).

7. ILO: *Fair migration: Setting an ILO agenda*, Report of the Director-General, I (Part B), International Labour Conference, 103rd Session, Geneva, 2014, p. 15.

### 5.2 Article 15 of the Domestic Workers Convention (No. 189)

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:
  - (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
  - (b) **ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices** concerning the activities of private employment agencies in relation to domestic workers;
  - (c) **adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;**
  - (d) consider, where domestic workers are recruited in one country for work in another, **concluding bilateral, regional or multilateral agreements** to prevent abuses and fraudulent practices in recruitment, placement and employment; and
  - (e) **take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.**
2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

### 5.3 ILO Fair Recruitment Initiative

The ILO's Fair Recruitment Initiative is a multi-stakeholder initiative which aims to: (i) help prevent human trafficking and forced labour; (ii) protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment and placement process (including pre-selection, selection, transportation, placement and safe return); and (iii) reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination (ILO, 2015c). In September 2016, a Tripartite Meeting of Experts adopted Guidelines on Fair Recruitment to be considered by ILO's Governing Body during its November 2016 session.<sup>1</sup> The guidance emphasizes that vulnerable segments of the population, including migrant workers, domestic workers and others, should be provided with augmented protection against abuses.

<sup>1</sup> The report of the tripartite discussion is available at: [http://www.ilo.org/global/topics/labour-migration/events-training/WCMS\\_508966/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_508966/lang--en/index.htm) [accessed on 4 October 2016].

## 4.1 Using agreements and joint and several liability schemes to prevent abuses

One of the key challenges to regulating the international labour recruitment industry in the domestic work sector is coordinating regulation and enforcement between different national and international legal systems.<sup>8</sup> Employers and placement agencies are in one country while recruitment agencies and workers' families are in another. Individual labour recruiters and other intermediaries (e.g. travel agents and representatives of insurance companies) may be present at both ends. Where "migration bans" are in place, workers will transit via a third country, adding further to a complex situation.<sup>9</sup> Institutionalized cooperation and harmonization of efforts at international level between countries of origin, transit where applicable, and destination and at national level between different ministries and levels of government are key factors in the effective regulation of international labour recruitment.

The Government of the Philippines, for example, has taken commendable steps to establish better cooperation with four provinces in Canada which have received Filipino domestic workers through Canada's Caregivers Programme.<sup>10</sup> In one province, British Columbia, the memorandum of understanding facilitated the alignment and incorporation of Canadian employment standards into the official Philippine guidelines on recruitment. These efforts have helped to mitigate the risk of Filipino workers being recruited for fraudulent jobs or otherwise exploited (Fudge and Parrot, 2014, pp. 79 and 85).

8. See for example the case of Canada where the Constitutional Division of Powers decentralizes most labour responsibilities to the provincial governments.

9. Many countries have bans or restrictions in place on the out-migration of domestic workers, including Indonesia, India, Nepal and the Philippines.

10. Provinces of British Columbia, Alberta, Saskatchewan and Manitoba.

In addition, in 2013 the Kingdom of Saudi Arabia and the Philippines signed a domestic worker agreement that contained specific provisions on joint regulation of PEAs. This included ensuring that workers were only sent through agencies accredited in both countries, and assurances that the domestic workers would not pay recruitment costs or placement fees (Wickramasekara, 2015, p. 26). The agreement was the first of its kind to be signed by a country of origin in Asia and a destination country in the Middle East.

Some countries and provinces have gone further by instituting legislation that allows recruiters and employers to be held jointly and severally liable.<sup>11</sup> This allows countries of origin to hold PEAs accountable for violations experienced by migrant domestic workers while in countries of destination. Joint and several liability provisions are, however, notoriously difficult to enforce because of the jurisdictional boundaries inherent in national legal systems. In addition, very few legal frameworks in countries of destination hold employers liable for abuses perpetrated by the recruitment agency. One exception is the Province of Manitoba, Canada, where the employer is held liable if the worker has paid any recruitment fees.<sup>12</sup> This helps employers to understand their potential financial liability, encouraging them to reflect carefully on whether to use a recruitment agency and if they do so, to ensure the agency is licensed and reputable.

## 4.2 Establishing procedures for the monitoring of recruiters and investigation of complaints, alleged abuses and fraudulent practices

One of the key lessons learned from enforcing laws and policies regulating the recruitment industry in the domestic work sector is the need to have a proactive mechanism for monitoring and investigation. In many countries, recruiters are only monitored and investigated when a complaint is received. Often this requires the domestic worker to take the initiative of submitting a complaint to the relevant authority or, in some cases, a civil society organization. The complaint-based mechanism rarely works in the case of migrant domestic workers because of their workplace isolation, their precarious status in the country and the difficulty of changing employers. Additional barriers such as language and finances mean that domestic workers will often try to negotiate a solution with the recruitment agency or leave the complaint unreported.

In Canada, the Province of Manitoba has dedicated resources to a Special Investigations Unit that identifies and investigates alleged violations of Manitoba's employment laws, including by PEAs. During 2014–15, the Unit conducted over 400 investigations and identified violations in 80 per cent of cases.<sup>13</sup>

While the primary responsibility for monitoring the activities of recruiters and enforcing laws and policies lies with the state, the social partners and other key stakeholders can also take an active role in promoting fair recruitment. Trade unions, for example, can prevent recruitment malpractices by alerting workers to their legal rights and maximum fees payable and by drawing attention to violations. However, trade unions' role is often constrained by restrictions on migrant workers' ability to form and join trade unions and the general absence of organization by migrant domestic workers in some destination countries (ILO, 2015j, p. 14).

The binational cooperation between the Alliance of Progressive Labor (APL) (now known as SENTRO) in the Philippines and the Progressive Labour Union of Domestic Workers in Hong Kong represents a best practice example of how trade unions can monitor recruitment activities. In 2013, the two trade unions surveyed 1,400 Filipino domestic workers in Hong Kong with a view to analysing recruitment problems, practices, policies, patterns and critical factors in the Philippines and Hong Kong (Varona, 2013). The report *License to exploit* was submitted to the Philippines Overseas Employment Administration, which looked into the claims and suspended or cancelled the licenses of the offending agencies.

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11. In the Philippines, the Philippine Overseas Employment Administration's Rules and regulations governing the recruitment and employment of land-based overseas workers, 2002, state that labour recruiters must provide a verified undertaking that they "[s]hall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations". See also, the Overseas Employment and Migrants Act 2013, Bangladesh: "For the purpose of the employment contract, the recruitment agent shall be deemed to be a representative of the overseas employer, and as regards liabilities arising from the contract, the said recruitment agent and the employer shall be liable jointly and severally."

12. Worker Recruitment and Protection Act, Province of Manitoba, 2009.

13. Correspondence with Jay Short, Manager, Special Investigations, Manitoba Labour and Immigration, in January 2016; see also "Wage abuse of foreign workers", available at: [https://www.gov.mb.ca/labour/standards/siu\\_wage\\_abuses\\_of\\_foreign\\_workers.html](https://www.gov.mb.ca/labour/standards/siu_wage_abuses_of_foreign_workers.html) [accessed on 13 April 2016].

## 5. Recommendations for protecting migrant domestic workers and preventing their abuse

There are three main bodies of law that govern international labour recruitment in the domestic work sector: **immigration law, labour law and law on labour recruiters**. In many countries, immigration is heavily regulated while less oversight and fewer resources are dedicated to regulating labour and the activities of recruiters. **Governments have a responsibility to ensure that there is sufficient legislation in all three spheres to provide adequate protection for domestic workers and prevent their abuse.**

### 5.1 Licensing requirements

One common method of preventing the abuse of migrant workers during the recruitment process is to restrict and carefully monitor who may act in the recruitment, introduction and placement of migrant domestic workers (Faraday, 2014, p. 50). Licensing implies that the government establishes special administrative procedures to set minimum standards for operation, maintains a list of licensed agencies, monitors the activity of licensed agencies and issues penalties in case of non-compliance (ILO, 2015i, p. 9). Requiring recruiters to pay bonds is one common licensing requirement.

In a number of countries, the licensing requirements are more stringent for recruiters who recruiting women in the domestic work sector. Other countries subject agencies recruiting foreign nationals to a more extensive vetting and supervision process than those recruiting nationals.<sup>14</sup> Some argue that this protection should be extended to national domestic workers as well.<sup>15</sup>

Most countries where recruiters are subject to stringent licensing see a decline of the number that are in operation (Fudge and Parrot, 2014, p. 89). Lower numbers of recruiters can make it easier for regulatory bodies to monitor their activities, but where no other alternatives for recruitment exist, it can also run the risk of increasing informal recruitment (ILO, 2015h).

### 5.2 Registration schemes

In a number of countries, agencies come under a general registration scheme. Registration becomes even more effective when coupled with strict monitoring and cooperation between the country of origin and destination. To combat unfair treatment of temporary foreign workers, the Province of Manitoba has passed the *Worker Recruitment and Protection Act* which requires both employers and foreign worker recruiters to be registered. In the case of Filipino workers, the Provincial Government cooperates with the PEA to ensure that contracts between employer families and domestic workers are also registered.

### 5.3 No fees charged to domestic workers

The fees charged for job placement services are of key concern in the area of international labour recruitment in the domestic work sector. The payment of high recruitment fees increases workers' vulnerability as they have to repay their debts over several months and even years. Many workers borrow money to pay the recruitment fee and incur extremely high and often illegal interest rates.

The ILO Convention on Private Employment Agencies, 1997 (No. 181), and Protocol of 2014 to the Forced Labour Convention, 1930, and its accompanying Recommendation (No. 203) 2014, place the onus on States to eliminate the charging of recruitment fees and costs to workers in the aim of preventing debt bondage and other forms of economic coercion.<sup>16</sup>

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14. See, for example, the Worker Recruitment and Protection Act, Province of Manitoba, 2009.

15. Interview with Reis Pagtakhan, an immigration lawyer, on the Worker Recruitment and Protection Act, Province of Manitoba, 2009, in January 2016.

16. Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), para. 4.

#### 5.4 Jordan's Comprehensive Insurance Scheme

The high cost of recruiting domestic workers in Jordan, with fees of up to US\$3,570 for Filipina workers (Jones, 2015), encourages employers to restrict the freedom of workers in their employ. If the domestic worker absconds, the employer cannot reclaim these fees and the process for recruiting a replacement is lengthy. Domestic workers are not able to terminate their contracts even for reasons such as home sickness, culture shock or conflict with the employer. This results in situations of forced labour as a domestic worker's freedom becomes dependent on her ability to reimburse the cost of recruitment, which is a major expense that most migrant domestic workers cannot afford.

A pilot insurance scheme was initiated in June 2014 by the Recruiting Agencies Association in response to a request made by the Ministry of Labour. The scheme, which was designed in close collaboration with the Jordan French Insurance Company, protects employers, recruiting agencies and migrant domestic workers from high recruitment costs. The comprehensive insurance scheme extends life, accident and health insurance to migrant domestic workers and reimburses employers if the worker leaves their employ. This arrangement incentivizes employers to cover the recruitment costs in full and limits their hold on the workers' mobility and freedom of movement. The employer bears the expense of purchasing life, accident and medical insurance policies and the recruiting agency bears the cost of insurance against a breach of contract.

Source: Aslan and Mazen, 2016.

Nonetheless, solutions need to be found to limit the incentives of workers to make payments, employers to transfer the responsibility of payments onto workers, and recruiters to find other means to subsidize their expensive and complicated bureaucratic procedures. Navigating complex policies, procedural requirements in fragile bureaucracies generates the need for assistance in brokering of mediation – a lot of which involves informal payments which employers in other countries are unlikely to pay. Moreover, prospective migrants continue to perceive payment to local agents (and the ability to withhold such payments) as a way of holding the latter, accountable for poor migration outcomes. Denying such payments, without putting other safeguards in place, can undermine migrants' agency.

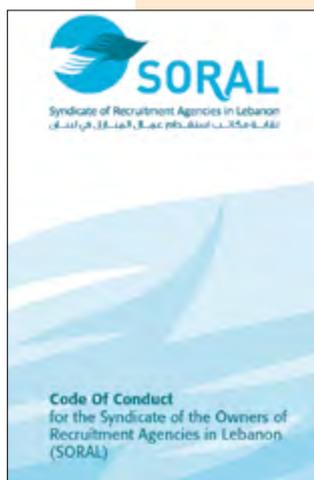
#### 5.4 Encourage good practices by PEAs in compliance with the Private Employment Agencies Convention and Recommendation

Employer organizations can also play a key role in overseeing the activities of their members. The organized recruitment industry is represented in part by the International Confederation of Private Employment Agencies (Ciett). It has taken a public stance on no fee-charging and the promotion of the ILO Private Employment Agencies Convention, 1997 (No. 181). Ciett has developed specific tools to ensure that quality standards and regulation (whether by law or collective bargaining) are being enforced: bipartite bodies are in place in France (the Commission Paritaire Professionnelle Nationale du Travail Temporaire), Belgium (the Conseil National du Travail) and the Netherlands (the Stichting Naleving CAO voor Uitzendkrachten and Stichting Normering Arbeid) to monitor and ensure compliance with existing regulation of agency work. In Belgium and Portugal, an Ombudsman has been established to deal with complaints from agency workers and to seek remedies (Ciett, 2012, p. 14). Unfortunately, Ciett does not represent many recruiters in the domestic work sector.

Some agencies specializing in the recruitment of domestic workers have also formed national associations, including in Lebanon, Nepal, Bangladesh, Canada, the United Kingdom and the United States.<sup>17</sup>

17. See, for example, the Association of Caregiver & Nanny Agencies Canada, available at <http://www.acnacanada.ca/>, the Association of Nanny Agencies in the United Kingdom, available at <http://www.anauk.org/> and the International Nanny Association in the United States, available at <http://nanny.org/> [accessed on 13 April 2016].

### 5.5 A code of conduct for the Syndicate of the Owners of Recruitment Agencies in Lebanon



There are currently over 500 licensed employment agencies in Lebanon, facilitating the recruitment and placement of migrant domestic workers from at least ten countries of origin in Africa and Asia. The Syndicate of the Owners of Recruitment Agencies in Lebanon (SORAL) was established in 2005 and today counts approximately 280 members. With technical support from the ILO and the Office of the United Nations High Commissioner for Human Rights, SORAL adopted a code of conduct in June 2013 aimed at improving their member agencies' performance and ensuring the rights of migrant domestic workers. According to SORAL, the absence of Lebanese legislation to regulate the domestic work sector prompted it to develop a code of conduct with the intention of distinguishing its member agencies from illegal and unregulated agencies, which often fail to commit to the ethics of the recruitment business. At the national level, SORAL also seeks to improve what it considers to be a "tarnished image of Lebanese society" that results from improper behaviour by a number of families and PEAs. Nonetheless, SORAL acknowledges that while a code of conduct may make some positive headway in regulating PEAs, an essential element for its effective implementation is the enactment of appropriate national legislation to effectively govern and monitor the domestic work sector. In its current form, SORAL's code of conduct is broadly aligned, although to a limited

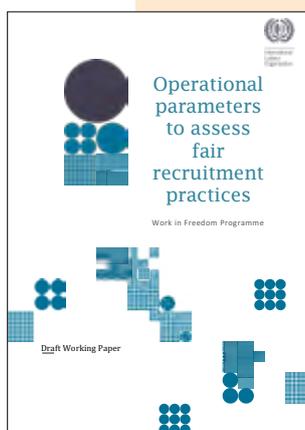
extent, with relevant national laws and international standards. To ensure greater transparency, a government and NGO labour inspection system is required, together with inspection by SORAL that goes beyond the current system relying heavily on self-regulation. Consideration might also be given to developing a system whereby the issuing of a government licence is contingent on whether a PEA signs the code of conduct.

Source: ILO, 2015k, p. 10.

## 5.5 Expanding fair models of recruitment beyond PEAs

New employment and placement arrangements are emerging outside of the PEA model. The potential of these arrangements to ensure fair recruitment and decent work conditions needs to be explored further. Cooperatives, for example, have been successful as labour intermediaries and have offered an alternative to PEAs. In South Korea, the National House Managers Cooperative matches its members with employers including through online services and also provides them with skills' trainings. The NIRMANA society in India has placed migrant tribal women as domestic workers in Delhi linking them with shelter, services, and skill training. SEWA has used job placement in conjunction with skill training courses.

### 5.6 ILO Work in Freedom operational parameters to assess recruitment practices by workers' cooperatives



- Identification of employers: How are good employers identified, ranked?
- Membership procedure: What is the procedure and requirement for new workers to join the cooperative?
- Voice and representation of workers: Do all workers participate in decision making of the cooperative? Are there examples of effective collective bargaining processes?
- Anti-corruption system: Are checks and balances in place to prevent other workers from taking informal fees to place fellow workers? What is the caste, class and origin diversity of the organization and do informal networks play a determining role in the placement of workers? How is remuneration managed?
- Capacity to manage legal requirement: Is the organization registered as a cooperative? Is the organization capable of sustainably managing legal accountability requirements demanded from cooperative organisations?

(Source: Bosc, 2016, 14).

The effectiveness of cooperatives in cross border recruitment remains to be tested. Cooperatives providing labour intermediation services at origin can work with other relevant actors at destination, including with other cooperatives. ILO is testing the feasibility of cross border recruitment among national cooperatives providing labour intermediation services in the Philippines (In the context of the FAIR project) and in India (in the context of the Work in Freedom Programme). The Work in Freedom programme has developed “operational parameters to assess fair recruitment practices”, including for cooperative recruitment.

## 6. Conclusion

Labour recruiters are part of an increasingly powerful migration industry. While the recruitment model in the domestic work sector varies significantly depending on the country and/or individual context, the most common involves cooperation between labour recruiters in countries of origin and destinations, most of them small and micro-enterprises. New private employment and placement models, like cooperatives, are emerging and their scalability to cross-border recruitment warrants further exploration.

For recruitment to lead to decent work, a number of conditions have to be met. Discrimination in the mobility of workers (e.g., bans on the deployment of women workers) should be eliminated to limit the power of informal recruiters and to ensure the transparency of the recruitment process. Further, the accountability of labour recruiters across the supply chain needs to be ensured through proper regulation and effective monitoring and enforcement systems.<sup>18</sup> BLAs that are grounded in International Labour Standards are important in this regard.

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18. Report of ILO's Interregional Knowledge Sharing Forum: good practices and lessons learned on promoting international cooperation and partnerships to realize a fair migration agenda for migrant domestic workers in Africa, the Arab States and Asia, (5-7, May 2016), Antananarivo, Madagascar (see presentation by Bosc, I.).

# Domestic workers organizing across borders and winning rights

## 1. Introduction

Article three of the Domestic Workers' Convention, 2011 (No. 189) encourages Member States to protect the right of domestic workers and their employers to establish and to join organizations of their own choosing. Workers' organizations have campaigned for domestic workers' right to labour protections, raised awareness to their rights, supported individual domestic workers and their employers in their contract negotiations, and called on authorities to address labour abuses. Collective bargaining between domestic workers' and employers' organizations ensures that working terms and conditions are satisfactory to all, therefore improving working conditions and the quality of the work performed by domestic workers (Hobden, 2015, p. 2).

Ad hoc forms of solidarity among domestic workers are as old as the sector, with domestic workers routinely congregating in public spaces like churches, and business and transportation hubs on their day off (Lan, 2003, pp. 525-549). However, it was not until 30 years ago, in 1984, that the first domestic workers' union was formally established in South Africa.<sup>1</sup> Domestic workers' unions began their efforts to consolidate in 1988 when the first confederation of domestic workers, the Confederación Latinoamericana y del Caribe de Trabajadoras del Hogar (CONLACTRAHO), was established, spanning 23 organizations in 14 countries.

In the years leading up to adoption of the Domestic Workers Convention, 2011 (No. 189), the domestic workers' movement picked up further momentum, as domestic workers' organizations around the world began consolidating their efforts, progressively forming the International Domestic Workers' Network (IDWN). In 2013, the IDWN held its founding congress and became the International Domestic Workers' Federation (IDWF), an affiliate of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF).

In December 2011, the ITUC launched the "12 by 12" campaign in partnership with the IDWF. The campaign aimed for the ratification of the Domestic Workers Convention, 2011 (No. 189), by 12 countries by the end of 2012.<sup>2</sup> Twenty-two countries have already ratified Convention No. 189 and over 30 countries have adopted law and policy reforms and at least another 18 have embarked on labour reforms, including Brazil, Argentina, the Philippines, Spain, the United States (seven states), Chile, Uruguay, Vietnam, India, Singapore, Venezuela, Thailand, Ireland, Finland, Italy, Belgium, Germany and others. In addition, unions were formed in many countries (e.g. in Paraguay, Lesotho, Dominican Republic, Guatemala, Costa Rica, Sri Lanka, Columbia, Egypt, Angola, Swaziland, Pakistan, Angola, Brazil, Lebanon, Pakistan, Swaziland and Ghana) and an estimated 100,000 domestic workers joined a union. A second phase of the "12 by 12" campaign was launched at the ITUC's Third World Congress in May 2014, dubbed "12+12", aiming at 12 plus 12 ratifications and the organization of 100,000 more domestic workers by 2018.

1. Although South African domestic workers had begun organizing earlier, in 1977.

2. The European Trade Union Confederation, Public Services International, Human Rights Watch, Amnesty International, Anti-Slavery International, Migrant Forum in Asia, SOLIDAR and Caritas joined the campaign, lending more strength to the national advocacy and organizing campaigns.

At country level, these organizations have overcome significant challenges to organizing and advocating for the protection of migrant domestic workers. Organizing domestic workers involves significant challenges, due to the dispersion of the workforce, the long working hours of domestic workers, and the fear of losing their jobs (Hobden, 2015, p. i). Where there is a high concentration of migrant domestic workers, additional challenges arise regarding the worker's right to freedom of association, language barriers, cultural differences, and freedom of movement.

This chapter will discuss some of the forms of organizing which have emerged among domestic workers, especially migrant domestic workers, the rationale behind their emergence, and the organizing strategies they have used.

## 2. A typology of migrant domestic workers' organizations

There are various forms of domestic workers' organization. Domestic workers can set up or join trade unions, revert to the association model of organizing (e.g. community-based organizations), and/or experiment with arrangements straddling the association and union models. Many of these organizations consolidate horizontally (in national federations of domestic workers' unions and/or organizations, union federations or mixed alliances) and vertically (in regional confederations of domestic workers' organizations and/or organizations for domestic workers and global networks of domestic workers' organizations and/or organizations for domestic workers) in order to increase their power base, gain wider recognition and visibility and lobby to gain access to those in power at higher levels (Bonner, 2010, pp. 10-15).

*Context (i.e., legal framework and the practical barriers) is important in determining forms of organizing among migrant domestic workers.* Domestic workers are more likely to join or form trade unions where governments extend labour protection to them, where they enjoy the right to freedom of association, and where an employers' organization or a collective bargaining partner has been identified. Where it is illegal to form domestic workers' unions but legal to organize, domestic workers have established cooperatives and workers' centres (ILO, 2010a, p. 91). Finally, where freedom of association is lacking, domestic workers have joined faith-based institutions or formed cultural clubs (WIEGO, 2011, p. 3). Where the political space for self-organization is limited, migrants must rely on local unions and organizations to take up their concerns (Kabeer, 2015, p. 42). It is not unlikely for associational models of organizing to mature into traditional models of organizing over time (Bonner, 2010). *Transformation reflects changes in the political and legal environments.*

### 2.1 Women migrant domestic workers forming and joining trade unions

Domestic workers seeking to organize in the context of a union face numerous challenges in law and practice. **Legally**, domestic workers are sometimes excluded from the right to freedom of association and therefore cannot form or join trade unions. **Operationally**, the workplace isolation of domestic workers does not fit into the traditional model of workplace organizing as in the case of construction and factory workers. From an **organizational culture** perspective, the female composition of the domestic workforce stands in contradiction with the overwhelmingly male composition of unions.

The challenges are exacerbated when it comes to **migrant** domestic workers. In some cases, migrant domestic workers are specifically excluded from the right to join or form unions, or to hold elected positions within the unions. If domestic workers are in *irregular situation*, the task of organizing them is complicated further due to the fear of losing their jobs or being deported. *Language barriers* and cultural differences are another operational constraint to building mass organizations based on worker identity, rather than on nationality, ethnicity or language group. This may be particularly true where there are both local and migrant domestic workers.

In this context, unions have configured new ways to recruit members to work around these barriers, "necessitating new approaches to defining workplace, new organizing strategies, structures, communication tools, and due collection methods" (Bonner and Spooner, 2011, pp. 88-89). To overcome the isolation of working inside a private residence, unions have adopted a community-based model versus the traditional workplace model of organizing, sometimes even identifying

a neighbourhood organizer to liaise with live-in domestic workers through their chats with other workers across balconies and arranging to take the rubbish out at the same time. Live-in domestic workers in Lebanon, for example, use balconies for interacting with other live-ins (Pande, 2009, p. 207). Across-balcony alliances constitute a critical mode of information sharing (Pande, 2012, p. 392) by means of which domestic workers exchange tips on negotiating leave and time off with their employers (Pande, 2012, p. 393). In addition to these across-balcony alliances, arranging to take the rubbish out at the same time gives domestic workers a golden opportunity to exchange letters, money and items with other domestic workers (Pande, 2012, p. 393). Because domestic workers fall outside the ambit of labour protection, they often lack access to social and legal services (ILO, 2012c, p. 5). Unions have adopted a service-oriented approach to advocacy in order to attract new members (Ally, 2005, pp. 184-207). Unions have also developed strategies or political campaigns that target the structural sources of exploitation of this group of workers (Ally, 2005, pp. 184-207). The experience of South Africa's domestic workers' union in adapting its strategy to organizing migrant domestic workers is interesting in this regard. The South African Domestic Service and Allied Workers Union (SADSAWU) began to organize migrant domestic workers in South Africa in 2013, forming a special committee to plan and lead the organizing drive. By the end of 2015, over 500 Zimbabwean workers had become members.

### Box

#### 6.1 The pillars of SADSAWU's Plan of Action for Migrant Domestic Workers

1. Setting up a special organizing structure internal to the union for the recruitment of migrant domestic workers;
2. Working with new diaspora organisations;
3. Developing organizing, education and training materials for migrant domestic workers; and
4. Launching media campaigns to increase SADSAWU's visibility among migrants: (i) "Sisters and Brothers 4 Life"; (ii) "4,000 rand Living Wage for Domestic Work"; and (iii) "Social Security for Domestic Workers".

To extend maximum protection to migrant domestic workers, the ILO's Multilateral Framework on Labour Migration, published in 2006, calls on workers' organizations in countries of origin and destination to enter into bilateral and multilateral agreements providing for the exchange of information and transfers of membership. With the support of the ILO's Global Action Programme on Migrant Domestic Workers and Their Families (GAP-MDW), the ITUC and IDWF are collaborating to maximize the protection of migrant domestic workers along the Ukraine-Poland, Zimbabwe-South Africa, Indonesia-Malaysia and Paraguay-Argentina corridors. Some of the agreements concluded between unions in countries of origin and destination are explained in box 6.2.

Some migrant domestic workers organizations have also opened branches in countries of destination. The Domestic Workers' Association (ASTRADOMES) was established in Costa Rica in 1991 by Nicaraguan domestic workers. It is an affiliate of the Latin American and Caribbean Confederation of Domestic Workers (CONLACTRAHO) as well as of the International Domestic Workers Federation (IDWF). ASTRADOMES is dedicated to protecting and advocating for the rights of domestic workers, many of whom are migrants. Its current activities include the provision of advisory and support services, information about job vacancies, as well as information technology and literacy training. ASTRADOMES played an important role in the campaign for the ratification of the ILO's Domestic Workers Convention (No. 189) in Costa Rica and Nicaragua (2013) and later in the process of adapting national legislation to the Convention's provisions. In 2012 a branch of ASTRADOMES was established in Nicaragua (now operating in the cities of Granada and Chinatega), where it provides legal assistance and pre-departure training on labour and migration rights. In Costa Rica ASTRADOMES is campaigning for simplified and lower-cost migration procedures. A first outcome has been the decision of the government of Costa Rica to increase the validity of entry visas from 30 to 90 days, in order to provide workers enough time to apply for a work permit.<sup>3</sup>

3. ILO Good practice database on labour migration policies and programmes, available at: [http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p\\_lang=en&p\\_practice\\_id=35](http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=35) [accessed on 28 June 2016].

## 6.2 Bi-national trade union cooperation

### Paraguay – Argentina: Binational workers' agreement promoting decent work for migrant domestic workers

With support from GAP-MDW, a binational agreement promoting decent work for Paraguayan domestic workers in Argentina was concluded in Chile on 20-21 September 2014. It signatories (the Argentinian Confederación General del Trabajo (CGT), Central de Trabajadores de la Argentina (CTA), the Domestic Workers Union UPACP, the Paraguayan Central Unitaria de Trabajadores Autentica (CUT-A) and the Domestic Workers Unions SINTRADI, SINTRADOP and ADESP) developed a 15-month action plan to be implemented with the TUCA-CSAE and the IDWF with ILO's support. The action plan foresees an online network of workers and a communication strategy to promote migrant domestic workers' rights.

### Zimbabwe – Lesotho – South Africa: Tri-national workers' declaration promoting the labour and human rights of migrant domestic workers

With support from GAP-MDW, a declaration was signed by trade unions and domestic workers' organizations in South Africa on 10-11 October 2014. The declaration commits signatories (the Congress of South African Trade Unions, the Zimbabwe Domestic and Allied Workers Union, SADSAWU, the Federation of Unions of South Africa, the Lesotho Trade Union Congress and the Zimbabwe Congress of Trade Unions) to promote human and labour rights of migrant domestic workers along the South Africa, Lesotho and Zimbabwe corridor. A communication strategy was also designed, involving the creation of a platform for trade union organizations from the three countries to exchange information relating to national-level activities and campaigns.

### Indonesia – Malaysia: Memorandum of understanding between the K-SBSI and the MTUC

The Confederation of Indonesian Prosperity Trade Union (K-SBSI) and the Trade Union Congress of Malaysia (MTUC) concluded a memorandum of understanding (MoU) in 2009. The MoU envisages close collaboration in such areas as campaigns, social dialogue, capacity building and assistance for domestic workers. Further, K-SBSI and the MTUC established information centres for migrant workers in Indonesia and Malaysia. K-SBSI and MTUC are now revising the MoU, with support from GAP-MDW.

### Ukraine – Poland: Declaration of cooperation between the unions Volya and Solidarność

In 2014, the All Ukrainian Organization of Workers Solidarity (Volya) signed a declaration of cooperation with the Polish trade union Solidarność for the protection of migrant workers, including migrant domestic workers. More recently in 2016, GAP-MDW brought together the Trade Union of Education and Science Workers of Ukraine, Volya, the Confederation of Free Trade Unions of Ukraine, Solidarność, the All-Poland Alliance of Trade Unions (OPZZ) and the Trade Unions Forum (FZZ) to promote binational efforts relating to migrant domestic workers.

Source: ILO Good practice database on labour migration policies and programmes

## 2.2 The association model of organizing

The association model of representation emerged as a model for organizing domestic workers in contexts where unions did not have the capacity to respond to the particular characteristics of the domestic work sector and where the socio-legal environment was not favourable to unionizing efforts. Among other forms, these associations *can be migrant associations (membership-based requiring fee-paying such as in unions, and non-membership based), legal advocacy groups, feminist NGOs and cooperatives*. Given their history, membership, organizational culture and goals, these associations place greater emphasis on the migration and women dimensions of domestic workers than on the class or occupational dimensions (Ally, 2005, pp. 184–207).

The United Kingdom-based Kalayaan is an example of the association model of organizing where the emphasis is on **migration status**. Established in 1987, Kalayaan campaigned for the formal recognition of migrant domestic workers in the UK within the immigration rules.<sup>4</sup> Today, Kalayaan continues to lobby for changes to the immigration rules for migrant domestic workers, which tie the migrant domestic worker to the employer with whom she entered the UK. Since April 2012, migrant domestic workers have been prevented from changing employer or from renewing their visa beyond six months (Migrants' Rights Network, 2015).

4. Kalayaan website, available at: <http://www.kalayaan.org.uk/about-us/our-history/> [accessed on 12 April 2016].

Nari is a self-help group of Nepalese women working as domestic workers in Lebanon. Nari means “Women,” the affirmation of which in a patriarchal context given its connotation of “Feminist” and is an example of the association model of organizing where the emphasis is on **gender status**. Nari was established in 2012 in Beirut with the support of the NGO Kafa (Enough) Violence & Exploitation and in collaboration with the General Federation of Nepalese Trade Unions and Anti-Slavery International. Nari members have undergone intensive training on gender-based violence and use this training to advise their peers. In the absence of a diplomatic representation of the Government of Nepal, Nari gathers witness statements from other domestic workers and refers cases of abuse and exploitation to the relevant NGOs and support services in Lebanon.

Because of their extensive networks and access to communities at the grassroots level, feminist NGOs and migrant associations offer perspectives and evidence-based research that can encourage as well as inform the immigration policy debate. Although more women are joining trade unions, very few occupy union leadership positions. Women face unionists’ “deep-seated fraternal and masculine orientation”, further underlining the importance of the association model at least in the early stages of organizing. Women organizations allow women workers “to develop the ‘oppositional consciousness’” that is necessary to challenge inequalities and to identify their own priorities with a view to developing alternative strategies that are better suited to their distinctive experiences and constraints (Kabeer, 2015).

Although associations are adapting union characteristics, the system of representation generated under these groups is not sustainable beyond particular advocacy campaigns. Organizing on the basis of gender and migration reproduces the logic that domestic work is women’s work and the work of women of colour, ignoring labour and structural class dynamics. The individual legal advocacy supported by these organizations does not challenge the structural position of domestic workers. It constructs domestic workers as client recipients rather than building workers’ capacity to be “engines of their own organizing” (Ally, 2005).

*Associations are adopting union characteristics (i.e., paying membership fees etc.) without union powers. The ILO and the IDWF are supporting HomeNet to establish a Network of Domestic Workers in Thailand: based on the success it has had in organizing home-based workers in the lead up to the adoption of the Home Work Convention, 1996 (No. 177). The network now counts 450 members: 120 Burmese and 330 Thai domestic workers. All members are registered with the Ministry of Labour, but the network’s services are extended to documented and undocumented workers alike. All members are called to pay membership fees. Thai domestic workers pay 150 Thai Baht (equivalent to US\$4.35) and Burmese workers pay 120 Thai Baht (US\$3.48). This is because on average Thai workers earn higher wages than Burmese. A logo depicting a woman carrying a broom and sweeping the globe was designed and membership cards to reinforce solidarity among workers and affiliation with the network will soon be distributed to its 450 worker members. The network has recently realized that its engagement on labour issues is limited without affiliating with a union, which they continue to contemplate as the next stage in their organization’s strategy: “ You have to be part of the labour movement to understand labour issues... you cannot stay alone... we need to understand the tripartite system and be part of it,” said the network coordinator when discussing the importance of working with trade unions to achieve maximum protection for domestic workers (Tayah, 2016).*

## 2.3 Collaboration between the association and union models

Increasingly, the tension between the union versus association model is fading in favour of an integrated model of organizing that straddles associations, unions, international associations and international union federations. Perhaps the most successful outcome of such collaboration in recent years is the Hong Kong Federation of Asian Domestic Workers Union (FADWU). Other recent examples include Justice 4 Domestic Workers (a self-help grassroots organization) becoming affiliated with Unite the Union in the UK. There is also evidence of domestic workers coops collaborating with trade unions in Jamaica and India.

Domestic workers’ unions in Hong Kong formed the Hong Kong Federation of Asian Domestic Workers Unions (FADWU) in 2010 with the support and coordination effort of Asian Migrants Centre (AMC), the Hong Kong Confederation of Trade Unions (HKCTUs), and the Alliance of Progressive Labor (APL). FADWU organizes domestic workers of five different nationalities. It is affiliated to HKCTU and its current affiliates include the Hong Kong Domestic Workers General Union, the Thai Migrant Workers Union in Hong Kong (TMWU), the Union of Nepalese Domestic Workers in Hong Kong (UNDW), the Overseas Domestic Workers Union Hong Kong, and the Progressive Labor Union of Domestic Workers in Hong Kong.

### 6.3 Lebanon's Domestic Workers' Union: The first in the Arab States

In 2012, the ILO implemented a participatory action research (PAR) project with women migrant domestic workers, four NGOs (i.e. Nasawiya's Anti-Racism Movement, the Insan Association, Frontiers Ruwad and Kafa (Enough Violence & Exploitation)), the National Federation of Employees' and Workers' Unions in Lebanon (FENASOL) and the International Domestic Workers Federation (IDWF). The choice of local NGOs was based on the extent of their engagement with the different communities of migrant domestic workers and their ability to encourage migrant domestic workers to join the union. These NGOs had established bonds of trust with the domestic workers and their participation in the PAR as partners was instrumental. The PAR lasted between May 2012 and January 2014 (a total of 20 months) with three main objectives: (i) raising workers' consciousness among women migrant domestic workers in Lebanon to encourage their active participation in advocacy campaigns; (ii) encouraging collaboration between women migrant domestic workers, unions and NGOs over priorities and interventions; and (iii) creating synergies with the global domestic workers' movement (Tayah, 2014). The union was formally founded within the structure of FENASOL on 25 January 2015. It is yet to receive the formal recognition of the Lebanese Government.

The partners brought together leaders from the Philippine, Nepalese, Sri Lankan, Bangladeshi, Ethiopian, Cameroonian, Madagascan and Congolese communities. Workers met once a week to discuss the importance of organizing domestic workers and to communicate the importance of organizing to their compatriots. These meetings created synergies between the community leaders and solidarity around their identity as workers in the same sector rather than around nationality. These women recruited their compatriots, who in turn recruited others. The union, with around 500 members, held its founding congress in January 2015. Ever-growing national and international media attention around its creation prompted Lebanese employers to establish their own association six months after the union's founding, thereby setting social dialogue on migrant domestic workers in motion. More recently, FENASOL, which hosts the Domestic Workers' Union, has concluded an agreement with the Ethiopian trade union federation and the General Federation of Nepalese Trade Unions to extend greater protection to migrant domestic workers from Ethiopia and Nepal.

#### Interview to Julia Soanirina, member of the Domestic Workers' Union in Lebanon

Julia Soanirina is from Madagascar and has been working in Lebanon for almost 20 years as a domestic worker. In Madagascar, she studied for a bachelor's degree in science but gave this up to work in the textile industry to help support her family. Due to the poor wages at home, she eventually followed her sister to Lebanon to earn a living as a domestic worker.

*Q: What was the hardest part after arriving in Lebanon?*

"The change in culture and food was difficult and being away from family was hard," says Julia.

But the biggest change, she says, was the limitation on her freedom.

"When I arrived I was startled that my employer kept all my documents, I felt like a prisoner. In fact, I still have to ask permission to leave the house after 19 years working with the same family."

*Q: What is the biggest challenge for migrant domestic workers overall in Lebanon?*

"The Government needs to recognize the domestic workers' union, and needs to view our work as any other employment."

*Q: Why is the Domestic Workers Union important for migrant domestic workers in Lebanon?*

"The Union helps us to fight for our rights. We want equal rights and wages for all 254,000 domestic workers in Lebanon. That is not the case today when workers are paid according to which country they come from and depending on their employer."

In Julia's case, she says she is finally in a position to ask for her rights but this is still a struggle with her employer.

"I am still fighting to have national holidays off. I also have asked for a US\$10 increase in my salary, but my employer has refused this."

In spite of these challenges, Julia has worked for the same employer since she came to Lebanon in 1996, returning home only three times since.

"It is difficult to change employers here," she says, "and I don't want to risk another unknown family."

Julia, who left her home country when she was 21, has never married or had children. In Lebanon, she notes, domestic workers are prohibited from marrying or having children when residing with their employer – a condition stipulated by the Government.

Another example is Justice 4 Domestic Workers (J4DWs), a self-help grassroots organizations of migrant domestic workers established in the United Kingdom in 2009. J4DW, affiliated with Unite the Union a big sector union in the United Kingdom. J4DW campaigns for domestic workers' rights to be recognised under the UK employment law. J4DW is currently campaigning and lobbying on immigration law reform and Modern Slavery Bill to restore the Overseas Domestic Worker Visa. It collaborates with Kalayaan and with Anti-Slavery International.

*Collaboration between trade unions and domestic workers' cooperatives:*<sup>5</sup> Cooperatives represent another associational model of organizing. Because affordable private and public care institutions are becoming less available, cooperatives are emerging as significant players in the care sector, both as care providers and employers. An ILO (2016) survey of 182 respondents from the care sector and cooperative movements in North America, Europe, Sub-Saharan Africa, Asia and the Pacific suggests that cooperatives provide care for the elderly, people living with disabilities, people living with chronic illness, and children. Twenty-three percent of care cooperatives provide domestic work services, with almost 13 per cent of care providers being domestic workers. About 28 per cent of survey respondents directly affiliated with a care cooperative reported that their cooperative employed migrant workers, most often in the areas of domestic work (57 per cent), followed by home-based childcare (43 per cent), nursing (28 per cent), and centre-based childcare (28 per cent) (Matthew et al., 2016).

Trade unions and cooperatives have common origins and shared goals of “fostering economic security and industrial democracy”. Cooperatives associated with trade unions have emerged in a variety of countries as a response to the need to improve the bargaining power of independent workers (Laliberté, 2013, pp. 173–77). Examples of collaboration between domestic worker cooperatives and trade unions include: (i) cooperatives/associations as prelude to a trade union; (ii) unions providing cooperative services to their members; and (iii) cooperatives and unions operating through one platform (ILO, 2015I, p. 9).

For example, the Jamaican Household Workers Association was founded as a cooperative in 1991 and currently has over 1,600 members. The Association works closely with employers, governments and trade unions to ensure that their workers benefit from fair wages and ethical employment practices. On 18 March 2013 the Association was formally registered as a trade union, shifting the focus from largely serving the economic interests of their members to a greater emphasis on advocating their rights (ILO, 2015I, p. 9).

Another collaboration between cooperatives and trade union is the Self-Employed Women's Association (SEWA) in India. SEWA members are rural and urban poor women working in the informal sector, who have empowered themselves by organizing into a labour union to struggle for their rights, and into cooperatives to improve their economic security (Blaxall, 2004). SEWA counts a large number of domestic workers, with 4,300 in New Delhi alone.

## 2.4 International alliances and organizing

Activism by, with or on behalf of migrant workers is, by definition, transnational in nature (Piper, 2005) and, as a result, “does not fit easily into the analytical distinction between claims-making in the context of global value chains and claims-making in the context of national markets” (Kabeer, 2015, p. 40). Neither of these regimes have a strong incentive to protect migrants' rights as their value lies in the wages that they remit to their home countries and in their role as “cheap, unprotected and disposable pool of labour” for the destination country (Kabeer, 2015, p. 40).

Transnational networks active on behalf of migrant workers have evolved from the efforts of NGOs and migrant activists based in the Global South (Kabeer, 2015). Most prominent, in the case of domestic workers, are Migrant Forum in Asia (MFA) and the Global Alliance Against Traffic in Women (GAATW). These networks have succeeded in establishing a connection between the gender, migration and labour/class identities of workers. They have also succeeded in connecting the grassroots level to global policy platforms on migration, channelling workers' demands directly to the ears of governments, regionally through the Colombo Process and internationally through the Global Forum on Migration and Development.

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5. Examples of domestic workers' cooperatives include the Cooperative Home Care Associates, New York City; Ecomundo Cleaning Cooperative, New York City; Si Se Puede! Women's Cleaning Cooperative, New York City; and Co-operativa Valenciana de Empleadas de Hogar de Levante, Spain. Domestic workers' cooperatives operating independently may not be able to provide effective worker representation but when affiliated with a trade union they can.

#### 6.4 Migrant Forum in Asia – Supporting migrants' activism in Asia and in the Asia-Middle East corridor

Migrant Forum in Asia (MFA) is a regional network of non-governmental organizations, associations, trade unions and advocates working together to promote the protection and rights of migrant workers. MFA is active in key intergovernmental regional consultative processes (such as the Association of Southeast Asian Nations, the Colombo Process, the Abu Dhabi Dialogue and the South Asian Association for Regional Cooperation). At the global level, it engages with the UN Human Rights Mechanisms, Treaty Bodies and Special Mandates and the International Labour Conference to highlight migrants' rights concerns in the region. MFA has also been actively involved in the civil society activity surrounding the Global Forum on Migration and Development and has campaigned for the ratification of the Domestic Workers Convention, 2011 (No. 189). Some of its most important initiatives are highlighted below.

**Dialogue with Missions** – MFA's strategic engagement with diplomatic missions was conceived as a direct result of the grassroots work of MFA members and partners on the ground, who collaborate on a regular basis with embassy and consular officials in the destination countries. They work together to resolve challenging situations faced by migrant workers and members of their families. Civil society, migrant workers and the missions engage in dialogue to look at gaps and opportunities and adopt recommendations that could positively impact labour and human rights and the effective implementation of policies, programmes and services for migrant workers in destination countries. Dialogues with Missions were and are being held in Jordan, Lebanon, Oman, Qatar and the United Arab Emirates.

**Diplomacy Training Program** – for the promotion and protection of the rights of migrant workers and members of their families. The Diplomacy Training Program (DTP) is an independent Australian NGO committed to advancing human rights and empowering civil society in the Asia-Pacific region through quality education and training and the building of skills and capacity among non-governmental organizations, individual human rights defenders and community advocates. The DTP was founded in 1989 by Nobel Peace Laureate José Ramos-Horta. Since January 1990, the Program has provided practical human rights training to over 2,200 human rights defenders and community advocates in the Asia-Pacific Region. Its practical, participatory courses develop the knowledge, networks and skills of human rights defenders in Australia, Asia and the Pacific to help them be more effective in making a difference for human rights. The collaboration between MFA and the DTP since 2004 has focused on building the capacity of members of MFA's network, nurturing collaborative relationships between MFA, its members and others including trade unions, national human rights institutions, wider civil society and international institutions. MFA follows up on the training, working with participants to support them in applying the training in their subsequent advocacy for the rights of migrant workers.

**Inter-parliamentary Caucus on Labor Migration** – The Asian Inter-Parliamentary Caucus on Labor Migration was formalized in 2011 in Phnom Penh, Cambodia, through a resolution of the assembled MPs that aimed to foster collaboration and encourage a proactive role for parliamentarians in advancing the rights and welfare of migrant workers across Asia. MFA was designated as the Secretariat that would act as the primary coordinating body for the Caucus. Since 2007, MFA and network partners have facilitated a programme aimed at identifying the role of parliamentarians on the issues of labour migration and migrants' rights, enhancing participation of MPs in that role, and identifying key issues to take on.

**Lawyers Beyond Borders** – Lawyers Beyond Borders is a transnational network established by MFA in 2011 in response to the crucial needs for more fair and adequate legal redress mechanisms for migrants and increased coordination among legal practitioners in countries of origin and destination. Members of the network focus on migrant workers' rights violations in Asia (West Asia in particular), and they make efforts to apply impact litigation and policy advocacy to their work.

Source: ILO, Good Practice Database on Labour Migration Policies and Programmes.

**6.5 The Global Alliance Against Traffic in Women (GAATW):  
Human trafficking is embedded in the context of migration for employment**

GAATW is an alliance of more than 100 non-governmental organizations from Africa, Asia, Europe, Latin America and the Caribbean and North America. The GAATW International Secretariat is based in Bangkok, Thailand, and coordinates the Alliance's activities, collects and disseminates information, and advocates on behalf of the Alliance at regional and international levels.

Member organizations include migrant rights organizations; anti-trafficking organizations; self-organized groups of migrant workers, domestic workers and survivors of trafficking and sex workers; human rights and women's rights organizations; and direct service providers.

The GAATW sees the phenomenon of human trafficking as intrinsically embedded in the context of migration for employment. The GAATW therefore promotes and defends the human rights of all migrants and their families against the threat of an increasingly globalized labour market and calls for safeguards for migrant workers in the process of migration and in the formal and informal work sectors – such as garment and food processing, agriculture and farming, domestic work and sex work – where slavery-like conditions and practices exist.

The GAATW is committed to effecting change at the local level through its Members and allies, and internationally through the work of the International Secretariat and the GAATW's special consultative status to the Economic and Social Council of the United Nations.

The knowledge sharing that takes place in the context of international networks “provide[s] mutual support and creates voice and influence at the international level to re-exert pressure at the national” (Kabeer, 2015, p. 36). Information politics, through the WIEGO, the IDWF, Migrant Forum in Asia and the GAATW, support domestic workers' organizations with “research and statistics to strengthen their claims-making efforts in national policy processes [...] [and] to provide support to its members in building national federations and regional networks, lobbying at International Labour Conferences, linking its members with various international trade secretariats and influencing policy documents at national international levels” (Kabeer, 2015, pp. 36-37).

The IDWF has now grown to more than half a million members across the world (500,897) with 59 affiliates. Europe counts around seven affiliates with 54,512 members in four countries (Belgium, Germany, Ireland and Italy), more than 98 per cent of whom are women. In Asia there are around 12 affiliates with 311,587 members. India alone counts around 286,704 members under four affiliates, the largest Indian affiliate being the National Domestic Workers Movement with 200,000 members. Bangladesh has 16,000 female members under the “National Domestic Women Workers Union” affiliate. In Africa there are around 103,000 members across 20 affiliates. In the Americas, there are 114,483 members across 19 affiliates.<sup>6</sup>

As the network grows, the IDWF's thirst for good practices grows to meet the demands of its members. With the support of the ILO, an e-knowledge sharing platform was created to enable the members of the network to provide mutual support in real time. The platform allows members to post their organization's profile and share resources and campaign materials as well as news about their activities. By October 2015, there were over 10,000 registered members. Today the IDWF makes extensive use of its website and Facebook page to post updates on activities and achievements and provide resource material for its members. The next step will be to build a database of wages and working conditions of domestic workers, including migrants, in each country and territory.

6. IDWF membership survey 2015.

The adoption of Convention No. 189 was the culmination of years of coordinated international effort by domestic workers' organizations and their allies in the trade union and NGO movements. The timeline below indicates how regional and international networks of trade unions and NGOs interacted to grow into the present-day International Domestic Workers' Federation, dedicated to pushing for international and national reforms in the domestic work sector.

### Mobilizing internationally to win rights for domestic workers

- 1988** Domestic workers' organizations from different countries formed a regional organization CONACTRAHO (Confederación Latinoamericana y del Caribe de Trabajadoras del Hogar).
- 2005** CONACTRAHO played a leading role in organizing a meeting in Montevideo together with the regional Trade Union Women's Committee of the Americas. This meeting resulted in the Montevideo Declaration, whose signatories called on the ILO to adopt a Convention on domestic workers.
- 2006** At its annual conference, CONACTRAHO announced that it would work towards the ILO Convention to protect domestic workers' rights.
- Domestic workers in other regions – Africa, Asia, and North America – joined the call at the international conference in Amsterdam, hosted by the FNV Netherlands, on “Respect and Rights: Protection for Domestic/Household Workers”. The conference led to the founding of the International Domestic Workers Network (IDWN) and initiated plans – in cooperation with the International Trade Union Confederation (ITUC) and the International Union of Food and Allied Workers (IUF) – for a coordinated push for an ILO Convention on domestic work.
- Domestic workers' organizations began networking with the support of the IUF and Women in Informal Employment Globalising and Organizing (WIEGO), the ITUC, the Global Labour Institute (GLI) and the ILO.
- 2008** The ILO Governing Body approved a proposal by the Workers' Group to include a discussion on a standard-setting instrument on the agenda of the ILO's International Labour Conference (ILC). This followed a symposium which ILO's Bureau for Workers' Activities organized in 2002 on the informal economy, during which the workers' raised the point that there should be an instrument for domestic workers.
- 2009** Launch of the International Domestic Workers' Network at the Ninety-eighth ILC.
- 2010** The first discussion on “Decent Work for Domestic Workers” took place at the Ninety-ninth ILC.
- 2011** Convention No. 189 was adopted at the Hundredth ILC.
- On 12 December 2011, the ITUC launched the “12 by 12” campaign in partnership with the International Domestic Workers' Network (IDWN) and the (IUF). The campaign set the ambitious goals of 12 ratifications of Convention No. 189 by the end of 2012 while at the same time organizing and strengthening unions of domestic workers.
- International allies joined the “12 by 12” campaign, including the European Trade Union Confederation, PSI, Human Rights Watch, Amnesty International, Anti-Slavery International, Migrant Forum Asia, SOLIDAR and Caritas, which added significant strength to the national advocacy and organizing campaigns.
- 2012** Uruguay and the Philippines ratified Convention No. 189.
- 2013** The Steering Committee of IDWN decided to transform the network into a formal “federation” of domestic workers' organizations. The Founding Congress was held from 26 to 28 October 2013 and the IDWN became the International Domestic Workers Federation (IDWF). Forty-seven national and local domestic workers' membership-based organizations became formal members of the new Federation.
- 2015** Less than two years after its official founding, the IDWF had increased its number of affiliates from 47 to 58 and its membership from 282,737 to over 500,000.
- The IDWF developed a Five-Year Strategic Plan for 2016-2020. Goals included: to double current membership, to include 200,000 migrant domestic workers by the end of 2020; to campaign for the ratification of Convention No. 189; to work towards the enactment of domestic workers' legislation; to build women's capacity and train them for leadership; and to increase international representation of domestic workers.
- In 2015, the first ever domestic workers unions were founded in Ghana, Mexico, the Philippines and Lebanon, thanks to bottom-up organizing in collaboration with the IDWF, domestic workers leaders and trade unions in the countries. In places where there are multiple domestic workers' organizations, the IDWF encourages the formation of a national federation or network to foster unity. This has led to the merger of domestic workers' unions in Benin and Zambia. Elsewhere, in countries such as India and Peru, regional and national platforms have been formed to foster unity and common actions among various organizations.

### 3. Conclusion

As workers' organizations build their capacity the next step is to bargain collectively with employers to ensure decent working conditions. Article three of the Domestic Workers Convention calls on Member States to promote and realize the effective recognition of the right to collective bargaining.

Conceptualizing and institutionalizing employment contracts and collective bargaining agreements between domestic workers and their employers is complicated. Employers may be from any class and from any of the social partner groups in the ILO tripartite system – worker, employer or government. Second, although there are some employers' organizations, most private employers of domestic workers are not organized. Furthermore, the “third-party” agency that contracts domestic workers may be a public sector, private sector, or non-profit agency (Chen, 2011, pp. 167-184).

Employer structures also depend on the way domestic work is institutionalized and regulated in the country. For example, public sector institutions in the United States broker the relationship between homecare clients, providers and the public sector that funds homecare. A number of European Governments, such as those of France, Belgium, and Geneva and Vaud in Switzerland, require employers to purchase service vouchers, the cost of which includes contributions to all mandatory taxes and insurance funds (Chen, 2011, pp. 173-174).

Collective bargaining at national level in the sector needs to be supported by social dialogue involving countries of origin, transit and destination as well as RECs when relevant. This is because *challenges relating to migrant domestic workers need to be addressed across borders* and along the care chains that produce domestic work and the conditions that characterize the sector. The global recruitment industry that supports migration for domestic work is a key piece of this global dimension.

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## DECENT WORK FOR MIGRANT DOMESTIC WORKERS: MOVING THE AGENDA FORWARD

The report is based on primary and secondary data collected in the context of ILO's Global Action Programme on Migrant Domestic Workers and their Families. It analyses trends and patterns in the migration for domestic work at global, regional and corridor levels and presents good practices and lessons learned in the areas of skills development and recognition, recruitment, collective action and voice. The report points to key governance opportunities for the sector by examining how a number of units of analysis interact (i.e., the state: government institutions and policies; the individual: workers' and employers' needs, behaviour and bargaining power; and, the organizational: worker organizations and labour recruiters) to produce variations in the working conditions of migrant domestic workers.

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This publication has been produced with the financial assistance of the European Union.

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ISBN 978-92-2-131275-8



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