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**Report IV(1)**

# **Decent work for domestic workers**

**Fourth item on the agenda**

**International Labour Office Geneva**

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## INTRODUCTION

At its 301st Session (March 2008), the ILO Governing Body decided to place an item on decent work for domestic workers on the agenda of the 99th Session (2010) of the International Labour Conference with a view to the setting of labour standards. In accordance with section 5.1.4 of the Standing Orders of the Governing Body, the question has been referred to the Conference with a view to a double discussion.

In accordance with paragraph 1 of article 39 of the Standing Orders of the Conference, which concerns the preparatory stages of the double discussion procedure, the Office drew up a preliminary report on decent work for domestic workers.<sup>1</sup> That report contained a questionnaire related to the issues discussed and was communicated to the governments of the member States of the International Labour Organization, which were invited to send their replies not later than 30 August 2009. Based on the replies received, the Office prepared a further report,<sup>2</sup> which was thereafter communicated to governments. These two reports formed the basis for the first discussion of the item by the Conference, in June 2010.

On 16 June 2010, the International Labour Conference, meeting in Geneva in its 99th Session, adopted the following resolution:<sup>3</sup>

The General Conference of the International Labour Organization,

Having adopted the report of the Committee appointed to consider the fourth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a comprehensive standard (a Convention supplemented by a Recommendation) concerning decent work for domestic workers,

Decides that an item entitled “Decent work for domestic workers” shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a comprehensive standard (a Convention supplemented by a Recommendation).

In the light of this resolution and in conformity with article 39, paragraph 6, of the Standing Orders of the Conference, the Office has prepared the texts of a proposed Convention and Recommendation. The texts are formulated on the basis of the first discussion by the Conference and take into account the replies received to the questionnaire contained in the preliminary report. Pursuant to article 39, paragraph 6, of the Standing Orders, these texts are now to be communicated to governments and should reach them not later than two months from the closing of the 99th Session of the Conference. The purpose of the present report is to transmit the proposed Convention and Recommendation to governments in accordance with the Standing Orders.

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<sup>1</sup> ILO: *Decent work for domestic workers*, Report IV(1), International Labour Conference, 99th Session, Geneva, 2010.

<sup>2</sup> ILO: *Decent work for domestic workers*, Report IV(2), International Labour Conference, 99th Session, Geneva, 2010.

<sup>3</sup> ILO: *Report of the Committee on Domestic Workers*, in *Provisional Record* No. 12, International Labour Conference, 99th Session, Geneva, 2010.

Governments are hereby asked to inform the Office within three months from receipt of this report, and after consulting the most representative organizations of employers and workers, whether they have any amendments to suggest or comments to make. Pursuant to article 39, paragraph 6, of the Standing Orders of the Conference, the replies should be communicated to the Office in Geneva as soon as possible and in any case not later than **18 November 2010**.

Governments are further requested to inform the Office by the same date whether they consider that the proposed texts provide a satisfactory basis for the second discussion by the Conference at its 100th Session, in June 2011. Governments are also requested to indicate which organizations of employers and workers they consulted before they finalized their replies, pursuant to article 39, paragraph 6, of the Standing Orders. It should be noted that such consultations are also required by Article 5(1)(a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), for countries that have ratified this Convention. The results of the consultations should be reflected in the governments' replies.

## OFFICE COMMENTARY ON THE PROPOSED TEXTS

The texts of a proposed Convention and Recommendation concerning decent work for domestic workers are based on the Conclusions adopted by the International Labour Conference following its first discussion of the item at its 99th Session, in June 2010 (“the Conclusions”).

In accordance with the practice established in 1988, the report of the Committee on Domestic Workers (“the Committee”) appointed by the Conference to consider this item is being sent to member States in its entirety, together with the record of the discussion held in plenary sitting of the Conference.<sup>1</sup>

A number of drafting changes have been incorporated in the text of the proposed instruments in the interests of greater clarity and in order to bring the two official language versions of the texts into better alignment with one another, harmonize certain provisions and avoid possible inconsistencies with terminology used in other ILO instruments.

The Office wishes to draw the attention of member States to some issues arising in connection with some of the provisions adopted during the discussion at the 99th Session of the Conference. The Office considers it important to mention these, so that comments may be submitted for inclusion in Report IV(2A), which the Office is required to prepare in accordance with article 39, paragraph 7, of the Standing Orders of the Conference.

### PROPOSED CONVENTION

#### *Preamble (Point 4 of the Conclusions)*

The Office has established a standard preambular text. In the fourth preambular paragraph (point 4(c) of the Conclusions), the Office has modified the text so as to avoid any discriminatory characterization of women as inherently “vulnerable”, and to make it clear that discrimination in respect of conditions of employment and work is one of the human rights abuses to which domestic workers are particularly exposed.

For similar reasons, the Office has omitted the words “and vulnerable” from the fifth preambular paragraph (point 4(d) of the Conclusions) to avoid any discriminatory stereotyping of this predominantly female category as being passive rather than active agents capable of taking initiatives to improve their working and living conditions, despite marginalization. The words “high rates of unemployment” were replaced by the words “scarce opportunities for formal employment”, because unemployment is normally not the best indicator of the situation prevailing in most developing countries,

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<sup>1</sup> ILO, *Provisional Record* No. 12, International Labour Conference, 99th Session, Geneva, 2010; and *Provisional Record* No. 19, International Labour Conference, 99th Session, Geneva, 2010.

where underemployment and low-income, unproductive and precarious jobs mean that many women and men workers remain poor, despite working.

In the seventh preambular paragraph (point 4(f) of the Conclusions), the Office has simplified the language, taking into consideration that the preceding paragraph states that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided.

In reference to the eighth preambular paragraph (point 4(g) of the Conclusions), the Office notes that the Committee did not discuss the notion of privacy at any length. Given the significance of the topic, the Office wishes to draw attention to the current use of language relating to privacy in international labour standards. The word “privacy” appears in 16 ILO instruments.<sup>2</sup> Most references arise in respect of maritime labour standards, and most relate to specific circumstances in which privacy may be invaded. For example, the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185), provides that the biometric of the holder of a seafarer’s identity document “can be captured without any invasion of privacy of the persons concerned, discomfort to them, risk to their health or offence against their dignity”.<sup>3</sup> The Work in Fishing Convention, 2007 (No. 188), addresses privacy in respect of sleeping accommodation and sanitary facilities.<sup>4</sup> A specific reference to the right to privacy is made in the Maritime Labour Convention, 2006, but only in relation to the protection of seafarers’ right to privacy in specific circumstances related to their personal data.<sup>5</sup> The Worst Forms of Child Labour Recommendation, 1999 (No. 190), also refers to the right to privacy in the context of the compilation and processing of information and data.<sup>6</sup> Arguably the reference that reflects the circumstances of domestic work most closely arises in the Home Work Recommendation, 1996 (No. 184), which provides in paragraph 8 that:

In so far as it is compatible with national law and practice concerning **respect for privacy**, labour inspectors or other officials entrusted with enforcing provisions applicable to home work should be allowed to enter the parts of the home or other private premises in which the work is carried out. [Emphasis added.]

Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide protection against “arbitrary interference” with privacy, family, home or correspondence and provide for “the right to the protection of the law against such interference”.<sup>7</sup> In the light of the above, the Office proposes that, in the eighth preambular paragraph, the phrase “taking into account the right to privacy that each domestic worker and each household enjoys” be replaced by the phrase “taking into account respect for privacy”. The Office invites comments on whether this proposed wording might provide the basis for a text that is consistent with existing international law.

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<sup>2</sup> Conventions Nos 75, 92, 126, 179, 181, 185 and 188, and the Maritime Labour Convention; Recommendations Nos 115, 120, 171, 184, 186, 190, 199 and 200.

<sup>3</sup> Article 3(8)(a).

<sup>4</sup> Annex III, para. 50.

<sup>5</sup> Guideline B1.4.1, paras 1(d) and 2(b).

<sup>6</sup> Para. 6.

<sup>7</sup> Article 12 of the Universal Declaration of Human Rights; Article 17 of the International Covenant on Civil and Political Rights.



*Article 1*  
*(Point 3 of the Conclusions)*

During the first discussion, the Committee decided to defer the decision as to whether to replace in the French text the term “travailleur domestique” by “travailleuse ou travailleur domestique”, where the term “domestic worker” is used in English. Likewise, the Committee decided to defer the decision as to whether to replace in the Spanish text the term “trabajador doméstico” by either “trabajadora o trabajador doméstico” or “trabajadora o trabajador del hogar”. In accordance with the Committee’s decisions, the respective alternative terms remain in brackets in Article 1 and elsewhere in the French and Spanish versions of the text where the reference is made to the term in the singular. However, it will be noted that, throughout the proposed texts, the term is mainly used in the plural. In these cases, the following alternative expressions have been introduced in brackets: in French, “travailleurs domestiques” and “travailleuses et travailleurs domestiques”; and in Spanish, “trabajadores domésticos” and “trabajadoras y trabajadores domésticos”.

As pointed out during the first discussion, the ILO is currently undergoing a review of its governance documents for the purpose of introducing gender-sensitive language. Certain changes already having been made to the Standing Orders of the Conference and the Standing Orders of the Governing Body, in November 2010 the Governing Body will consider proposals with a view to ensuring gender-inclusive language in the ILO Constitution. With the aim of ensuring that the wording of the Constitution is non-sexist and non-discriminatory, this exercise will identify references in the Constitution that are gender specific (that is, exclusive to either men or women), in order to determine whether they are consistent with the principle of gender equality.<sup>8</sup> The Office intends to reflect the outcome of this discussion in Report IV(2A), together with any comments received in response to the present report regarding the terms currently placed between brackets in the proposed texts.

With regard to Article 1(c) of the proposed Convention (point 3(c) of the Conclusions), the Office recalls that the wording “not on an occupational basis” was included to reflect the concern of the Committee to ensure that day labourers and similar precarious workers remain included in the definition of domestic worker. Mindful that the intention behind the provision is clear, the Office, however, believes that there is room for improving the current wording which is potentially ambiguous and difficult to understand. The wording “not on an occupational basis” has not previously been used in ILO instruments and the Office would propose replacing it by the phrase “not as a means of earning a living”, in the hope that this more clearly expresses the concerns of the Committee. The Office invites comments on whether this proposed wording should replace the current wording in Article 1(c).

*Article 2(1)*  
*(Point 5(1) of the Conclusions)*

The Office made a slight drafting change to the wording “organizations representing domestic workers and their employers” to provide in clear terms that reference is made to organizations representing domestic workers, on the one hand, and organizations of employers of domestic workers, on the other. The parallel wording in

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<sup>8</sup> ILO: *Constitution of the International Labour Organization: Preparation of proposals to introduce inclusive language for the purpose of promoting gender equality*, Governing Body, 307th Session, Geneva, Mar. 2010, GB.307/LILS/2/1.

Paragraphs 5(3), 6(2) and 22(1) of the proposed Recommendation was modified accordingly.

*Article 3*  
*(Points 6 and 7 of the Conclusions)*

This provision brings together points 6 and 7 of the Conclusions, both of which are concerned with domestic workers' human rights.

*Article 4(2)*  
*(Point 8(2) of the Conclusions)*

The Office notes that this provision is concerned with access to education and vocational training of domestic workers under the age of 18 and above the minimum age of employment. It also notes that the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), do not exclude the possibility of persons within this age group engaging in domestic work, provided that it does not amount to hazardous work or another worst form of child labour. However, many of these children may have had no or only very limited access to education, often as a result of having become child domestic workers at a very young age. In this regard, the Office considers that a provision focusing on facilitating completion of compulsory schooling, rather than on education and vocational training more generally, would address the concerns of the Committee, while taking into account the varying realities and possibilities of member States. Mindful that the provision was the result of a lengthy amendment process, the Office has maintained the wording as adopted, but invites comments and suggestions on this matter.

*Article 6*  
*(Point 10 of the Conclusions)*

For the sake of greater clarity, the Office has added the words "take measures to" after "Each Member shall" in the chapeau of this provision. This change makes it clear that the requirement under the provision is the taking of measures to ensure that domestic workers are informed of their terms and conditions of employment. The phrase "including where possible, and preferably" was rearranged to enhance readability.

In subparagraph (c), the Office replaced the words "regularity of its payment" by "periodicity of payments" to align the wording with existing standards.<sup>9</sup> In the specific context of this provision, the term "periodicity" is correct, as the concern here is to ensure that workers receive information on the intervals between each payment. Read in conjunction with Article 12(1) of the proposed Convention, it is clear that these intervals must be regular. While Article 12(1) provides that payments have to be made at regular intervals but not less often than once a month, Article 6(c) is concerned with ensuring that the domestic worker in question is informed of the specific pay interval applicable in her or his case.

Subparagraph (i) was reformulated for the purposes of clarification and to align it with the structure of the preceding subparagraphs.

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<sup>9</sup> See Parts II and III of the Protection of Wages Recommendation, 1949 (No. 85).

*Article 7(1)*  
*(Point 17(1) of the Conclusions)*

This Article has been sequenced after Article 6 of the proposed Convention, as both provisions address similar matters. As the “minimum” terms and conditions of employment that should be set out in a written job offer or contract of employment are specified in Article 6, the Office has adapted the language accordingly.

The words “that must be agreed upon” have been omitted from the proposed text, which seeks to establish a written documentary basis for the terms and conditions of employment for migrant domestic workers. The Office seeks only to avoid redundancy and confusion to the extent that, generally in national law and practice, agreement to a valid job offer would result in the establishment of an employment contract.

The word “containing” has been replaced by “addressing”, to apply both to “job offer” and “contract of employment”; this wording is intended to ensure sufficient breadth and detail to ensure that the safeguards in Article 6 are satisfied.

In order to clarify that, in Article 7(1), the international standard provides a minimum threshold beneath which no derogation is permissible, the Office has removed the words “where applicable to migrant domestic workers” and, before the words “regional, bilateral or multilateral agreements, or under rules pertaining to the operation of a regional economic integration area”, has inserted the words “equivalent or more favourable measures under”. This wording was included on the understanding that the intention was not to adopt a provision that could be inconsistent with the Constitution of the ILO and with practice in respect of existing international labour standards.

When reflecting on the wording proposed by the Office, Members might in addition wish to offer comments on the following. First, the discussions in the Committee suggest that the regional, bilateral or multilateral agreements and rules in question, which pertain to the operation of a regional economic integration area, are binding international treaties, or rules derived from them. Members might wish to confirm that this provision is not meant to include agreements such as bilateral Memoranda of Understanding, possibly by replacing the word “agreements” with “treaties”. Second, it is the understanding of the Office that third-country migrants within a territory covered by equivalent or more favourable measures under the relevant agreements or rules, but who are not subject to them, would benefit from the requirement of a written job offer or contract of employment as stipulated in Article 7.

The Office invites comments on whether this provision might benefit from greater clarity.

*Article 7(2)*  
*(Point 17(2) of the Conclusions)*

The reference to “rights” has been removed from the proposed text, as the Committee in its discussions was understood to be in favour of a provision ensuring that migrant domestic workers achieve equality despite their distinct situation. With a view also to promoting cooperation in respect of migrant domestic workers, who exercise agency by deciding to cross international borders but who face special risks, Members might wish to consider the following alternative wording for this provision:

Members shall cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

*Article 9(2)*  
*(Point 12(2) of the Conclusions)*

In keeping with the explanation provided in respect of the Preamble, the Office considers that there is a need to examine this provision with a view to ensuring consistency with existing international law. In this regard, the Office invites comments on the following wording, which would replace the current text:

In taking these measures, Members shall ensure effective protection against arbitrary interference with the privacy of domestic workers and household members.

*Article 10(2)*  
*(Point 13(2) of the Conclusions)*

In relation to this provision, it may be recalled that the Committee accepted an amendment to replace in point 12(2) of the Office text the words “in every” by “per each” (see paragraphs 497–506 of the Committee report). A related amendment which was not accepted by the Committee would have provided that, in relation to this rest period, “each Member may lay down a maximum reference period stipulated in national law and collective agreements”. Although the provision, as adopted during the first discussion, refers to “weekly rest”, its current formulation does not require that domestic workers actually enjoy this rest period in every seven-day period. This is a matter which requires serious consideration, also bearing in mind the wide support for an entitlement of domestic workers to a day off every week, which was expressed both in the replies to the questionnaire and during the first discussion. The Office invites Members to consider reverting to the expression “in every seven-day period”, it being understood that domestic workers may exceptionally be required to work during the period of weekly rest under conditions to be defined by national laws and regulations, or collective agreements. This possibility is recognized in Paragraph 10 of the proposed Recommendation.

*Article 12*  
*(Point 15 of the Conclusions)*

Taking into account the discussions in the Committee as to whether paragraph 1 of this provision would allow for the payment of wages by means of bank cheques or bank transfers, the Office considered it appropriate to draw up a clause clarifying this matter. The additional language included in Article 12(1) of the proposed Convention clarifies that payment may be made by bank transfer, bank cheque, postal cheque or money order, as appropriate under national law and practice and with the consent of the worker concerned.

At the beginning of Article 12(2) of the proposed Convention, the Office omitted the words “Taking into consideration”, which are redundant. Bearing in mind the deliberations of the Committee during the first discussion, the Office considers that Article 12(1) of the proposed Convention clearly requires that payments are to be made in legal tender, while Article 12(2) provides for an exception. The word “generally” was moved to before the expression “applicable to other categories of workers” for the sake of greater clarity. At the end of Article 12(2), the Office reintroduced the words “, and the cash value attributed to them is fair and reasonable”, which, according to the records, the Committee intended to maintain, but appear to have been omitted from the Conclusions inadvertently.<sup>10</sup>

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<sup>10</sup> This would also be in line with the wording of Article 4 of the Protection of Wages Convention, 1949 (No. 95), which Article 12(2) basically reproduces.

*Article 16(2)*  
*(Point 20(1) of the Conclusions)*

The Office made a number of drafting changes to enhance clarity of these provisions. The language included in subparagraph 2(a) of the proposed Convention is aimed at addressing ambiguity in the language adopted during the first discussion (point 20(2)(a) of the Conclusions). The proposed wording seeks to clarify that the information on past violations is meant to inform decisions on whether registration is granted.

*Article 17*  
*(Point 21 of the Conclusions)*

With the aim of improving clarity and readability, the Office made a number of drafting changes to this provision.

PROPOSED RECOMMENDATION

*Preamble*

The Office has established a standard preambular text. Point 23 of the Conclusions was included as Paragraph 1 of the proposed Recommendation, in line with usual drafting practice.

*Paragraph 3*  
*(Point 25 of the Conclusions)*

The Committee may recall that this provision was not discussed in detail during the first discussion. However, at its 2010 session, the Conference adopted the Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), which applies to domestic workers and provides that “no workers should be required to undertake an HIV test or disclose their HIV status”. Having considered the language in point 25 of the Conclusions in the light of this significant development, the Office found it appropriate to include the words “consistent with international labour standards” in this provision to avoid any possibility of this provision being understood as referring to medical testing contrary to Recommendation No. 200. Other relevant standards are the Maternity Protection Convention, 2000 (No. 183), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in respect to which the ILO supervisory bodies are consistently alerted to discriminatory pregnancy testing. As an alternative to the wording that currently appears in the proposed text, consideration could be given to focusing the provision more clearly on the key issues affecting domestic workers, by rewording it as follows:

In taking measures to ensure the elimination of discrimination in respect of employment and occupation, Members should ensure that no domestic workers are required to undertake HIV or pregnancy testing, or to disclose their HIV or pregnancy status.

*Paragraph 5(1)*  
*(Point 27(1) of the Conclusions)*

In modifying this provision, the Office has sought to avoid the repetition of language that is identical to that used in Article 6 of the proposed Convention.

*Paragraph 20(1)*  
*(Point 43(1) of the Conclusions)*

A number of drafting changes were made to this provision in order to clarify and streamline the text that was adopted during the first discussion.

*Paragraph 21*  
*(Points 27(4) and 42 of the Conclusions)*

In examining points 27(4) and 42 of the Conclusions, the Office found merit in merging these two provisions, as they deal substantively with the same matter. The resulting provision is contained in Paragraph 21 of the proposed Recommendation.

## **PROPOSED TEXTS**

### **PROPOSED CONVENTION CONCERNING DECENT WORK FOR DOMESTIC WORKERS**

The General Conference of the International Labour Organization,  
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on ... June 2011, and  
Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and  
Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for men and women workers with family responsibilities, and  
Considering that domestic work continues to be undervalued and invisible and is mostly carried out by women and girls, many of whom are migrants or members of historically disadvantaged communities and therefore particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and  
Considering also that, in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and  
Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and  
Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949, the Migrant Workers (Supplementary Provisions) Convention, 1975, the Workers with Family Responsibilities Convention, 1981, the Private Employment Agencies Convention, 1997, the Employment Relationship Recommendation, 2006, and of the ILO Multilateral Framework on Labour Migration, and  
Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers, to enable them to enjoy their rights fully, taking into account the right to privacy that each domestic worker and each household enjoys, and  
Recalling other relevant international instruments, such as the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime and in particular

its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this ... day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

#### *Article 1*

For the purpose of this Convention:

- (a) the term “domestic work” means work performed in or for a household or households;
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

#### *Article 2*

1. The Convention applies to all domestic workers, provided that a Member which has ratified it may, after consulting representative employers’ and workers’ organizations, and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist, exclude wholly or partly from its scope:

- (a) categories of workers who are otherwise provided with at least equivalent protection;
- (b) limited categories of workers in respect of which special problems of a substantial nature arise.

2. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

#### *Article 3*

1. Each Member shall take measures to ensure effective protection of the human rights of all domestic workers.

2. Each Member shall take, in relation to domestic workers, measures to respect, promote and realize, in good faith and in accordance with the ILO Constitution, the fundamental principles and rights at work, namely:

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



- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

#### *Article 4*

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973, and the Worst Forms of Child Labour Convention, 1999, and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of, or interfere with, their education or vocational training.

#### *Article 5*

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, where applicable, decent living conditions which respect their privacy.

#### *Article 6*

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, preferably, where possible, through written contracts in accordance with national laws and regulations, in particular:

- (a) the name and address of the employer;
- (b) the type of work to be performed;
- (c) the remuneration, method of calculation and periodicity of payments;
- (d) the normal hours of work;
- (e) the duration of the contract;
- (f) the provision of food and accommodation, if applicable;
- (g) the period of probation or trial period, if applicable;
- (h) the terms of repatriation, if applicable; and
- (i) terms and conditions concerning termination of employment.

#### *Article 7*

1. National laws and regulations shall require that migrant domestic workers receive a written job offer or contract of employment addressing the terms and conditions of employment referred to in Article 6 prior to crossing national borders for the purpose of taking up domestic work to which the offer or contract applies, without prejudice to equivalent or more favourable measures under regional, bilateral or multilateral agreements, or under rules pertaining to the operation of a regional economic integration area.

2. Members shall cooperate with each other to ensure the effective protection of migrant domestic workers under this Convention.

*Article 8*

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse and harassment.

*Article 9*

1. Each Member shall take measures to ensure that domestic workers:
  - (a) are free to negotiate with their employer whether to reside in the household;
  - (b) are not bound to remain in or with the household during the periods of daily and weekly rest or annual leave; and
  - (c) are entitled to keep in their possession their travel and identity documents.
2. In taking these measures, due respect shall be given to the right to privacy of both the domestic worker and the household.

*Article 10*

1. Each Member shall take measures to ensure that the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave of domestic workers are not less favourable than those provided for workers generally in accordance with national laws and regulations.
2. Weekly rest shall be at least 24 consecutive hours per each seven-day period.
3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national practice.

*Article 11*

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

*Article 12*

1. Domestic workers shall be paid directly in legal tender at regular intervals but not less often than once a month. As appropriate under national law and practice and with the consent of the worker concerned, payment may be made by bank transfer, bank cheque, postal cheque or money order.
2. National laws or regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of allowances in kind, in conditions not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such allowances are agreed to by the worker, are appropriate for the personal use and benefit of the worker, and that the cash value attributed to them is fair and reasonable.

*Article 13*

1. Each Member shall take appropriate measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of:

- (a) occupational safety and health; and
- (b) social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively.

#### *Article 14*

Each Member shall take measures to ensure that all domestic workers, either by themselves or through a representative, have easy access to courts, tribunals or other dispute resolution procedures under conditions that are not less favourable than those available to workers generally.

#### *Article 15*

Each Member shall establish effective means of ensuring compliance with national laws and regulations for the protection of domestic workers.

#### *Article 16*

1. Each Member shall take measures to ensure that domestic workers recruited or placed by an employment agency, including migrant domestic workers, are effectively protected against abusive practices, including by establishing the respective legal liability of the household and the agency.

2. Each Member shall take measures to:

- (a) establish criteria for the registration and qualifications of employment agencies, including disclosure of information on any relevant past violations;
- (b) carry out regular inspections of employment agencies to ensure compliance with relevant laws and regulations, and provide for significant penalties for violations;
- (c) provide accessible complaint mechanisms for domestic workers to notify authorities of abusive practices; and
- (d) ensure that fees charged by employment agencies are not deducted from the remuneration of domestic workers.

#### *Article 17*

Each Member shall implement the provisions of this Convention, in consultation with representative employers' and workers' organizations, through laws and regulations, as well as through collective agreements or additional measures as consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

#### *Article 18*

This Convention shall not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

## PROPOSED RECOMMENDATION CONCERNING DECENT WORK FOR DOMESTIC WORKERS

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on ... June 2011, and

Having adopted the Domestic Workers Convention, 2011, and

Having decided upon the adoption of certain proposals with regard to decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Domestic Workers Convention, 2011,

adopts this ... day of June of the year two thousand and eleven the following Recommendation, which may be cited as the Domestic Workers Recommendation, 2011.

1. The provisions of this Recommendation supplement those of the Domestic Workers Convention, 2011 (“the Convention”), and should be considered in conjunction with them.

2. In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:

- (a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers’ organizations of their choice and to the right of organizations of domestic workers to join workers’ organizations, federations and confederations;
- (b) protect the right of employers of domestic workers to establish and join organizations, federations and confederations of employers of their choosing; and
- (c) take or support measures to strengthen the capacity of organizations of domestic workers to protect effectively the interests of their members.

3. In taking measures for the elimination of discrimination in respect of employment and occupation, Members should make sure, among other things, that work-related medical testing is consistent with international labour standards and respects the principle of the confidentiality of personal data and the privacy of domestic workers; Members should prevent any discrimination related to such testing.

4. When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, including in respect of working time and restrictions on undertaking certain types of domestic work.

5. (1) In communicating the terms and conditions of employment to the domestic workers, appropriate assistance should be provided, when necessary, to ensure that the domestic worker concerned has understood those terms and conditions.

(2) Further to Article 6 of the Convention, the terms and conditions of employment should include the following particulars:

- (a) the starting date of the employment;
- (b) a job description;
- (c) paid annual leave;
- (d) daily and weekly rest;
- (e) sick leave and any other personal leave;
- (f) the rate of pay for overtime work;
- (g) any other cash payments to which the domestic worker is entitled;
- (h) any allowances in kind and their cash value;
- (i) details of any accommodation provided;
- (j) any authorized deductions from the worker's wages; and
- (k) the period of notice required for termination by either the domestic worker or the employer.

(3) Members should consider establishing a model contract for domestic work, in consultation with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist.

6. (1) Hours of work and overtime should be accurately calculated and recorded, and this information should be freely accessible to the domestic worker.

(2) Members should consider developing practical guidance in this respect, in consultation with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist.

7. With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (commonly known as standby or on-call periods), national laws and regulations or collective agreements should regulate:

- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;
- (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is disturbed by standby; and
- (c) the rate at which standby hours should be remunerated.

8. Members should consider specific measures, including appropriate financial compensation, for domestic workers whose normal duties are performed at night, taking into account the constraints and consequences of night work.

9. Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.

10. The day of weekly rest should be a fixed day in every period of seven days to be determined by agreement of the parties, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.

11. National laws and regulations, or collective agreements, should define the grounds on which domestic workers may be required to work during the period of daily

or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.

12. Time spent by domestic workers accompanying the household on holiday should not be counted as part of their annual leave.

13. When provision is made for the payment of a limited proportion of the remuneration in the form of allowances in kind, Members should consider:

- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the cash remuneration necessary for the maintenance of domestic workers and their families;
- (b) calculating the cash value of allowances in kind by reference to objective criteria such as the market value, cost price or prices fixed by public authorities, as appropriate;
- (c) limiting allowances in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation; and
- (d) prohibiting allowances in kind that are directly related to the performance of work duties, such as uniforms, tools or protective equipment.

14. (1) Domestic workers should be given at the time of each payment an easily understandable written account of the payments due to them, the amounts paid and the specific amount and purpose of any deductions which may have been made.

(2) Upon termination of employment, any outstanding payments should be made promptly.

15. Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of the employer's insolvency or death.

16. When provided, accommodation and food should, taking into account national conditions, include:

- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
- (b) access to suitable sanitary facilities, shared or private;
- (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and
- (d) meals of good quality and sufficient quantity, adapted to the cultural and religious requirements, if any, of the domestic worker concerned.

17. In the event of termination of employment, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.

18. Members should take measures to:

- (a) identify, mitigate and prevent occupational hazards specific to domestic work;
- (b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;
- (c) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and

- (d) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

19. Members should consider means to facilitate the payment of social security contributions by employers, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.

20. (1) Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:

- (a) providing for a system of visits to households in which migrant domestic workers will be employed;
- (b) developing a network of emergency housing;
- (c) establishing a national hotline with interpretation services for domestic workers who need assistance;
- (d) raising employers' awareness of their obligations and of sanctions in case of violation;
- (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
- (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, and to provide other pertinent information.

(2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and any other appropriate measures.

21. Members should consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.

22. (1) Members should establish policies and programmes, in consultation with representative employers' and workers' organizations and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist, so as to:

- (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, so as to enhance their career and employment opportunities;
- (b) address the work-life balance needs of domestic workers; and
- (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.

(2) Members should develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices and to effectively collect comprehensive data on domestic workers.

23. (1) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters

concerning social security, the monitoring of private employment agencies, the prevention of forced labour and human trafficking, the dissemination of good practices and the collection of statistics on domestic work.

(2) Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.