

Decent Work for Domestic Workers

07 June 2011, Room VIII

Palais des Nations

Organized by:

Friedrich-Ebert-Stiftung (FES)

Migrants' Rights International (MRI)

International Domestic Workers' Network (IDWN)

International Union of Food, Farm and Hotel Workers (IUF)

Background

The concept of Decent Work has transcended the realm of labor rights and has become a mainstream goal of the United Nations. Yet, there are groups for whom decent work remains a distant aspiration. Precarious work situations are endemic in the employment of migrant workers and domestic workers; additionally a clear gender gap is apparent. This results in dual discrimination against migrant domestic workers, most of whom are women.

It is only in the recent past that the idea of a standard contract between domestic workers and their employers came to govern their relationship, which had always been considered private. Groups working with domestic workers have also made efforts to produce fair model contracts. A major change brought about by a contractual relationship is the inclusion of domestic workers into social security schemes. This will be further strengthened by the current elaboration of standards of work for domestic workers in the International Labour Organization Convention on Decent Work for Domestic Workers.

Social security is a human right. Thus, unequal treatment of migrants vis-à-vis nationals of host countries, low levels of compliance among the employers of domestic workers, and, if they are undocumented, a complete lack of social security coverage can amount to human rights violations.

Using the coincidence of the sessions of the Human Rights Council (HRC) and the International Labour Conference (ILC), Friedrich Ebert Stiftung (FES) and Migrants Rights International (MRI), jointly with the Domestic Workers Network (IDWN) and the union IUF, organized a side event entitled *Decent Work for Domestic Workers*, highlighting the importance of using tools developed by both the HRC and the ILC, and examining the potential impact of international agreements for the situation on the ground.

Speaking on the panel were representatives from NGOs, domestic workers groups, trade unions and the United Nations. To start the discussion, Matthes Buhbe of FES welcomed the participants and explained the objectives of the side event.

Panel Presentation

The Importance of Social Security for Migrant Domestic Workers

Fr. Peter O'Neill, Hsinchu Catholic Diocese Migrants and Immigrants Service Center

Fr. Peter has been working in Taiwan for 20 years, 18 of which assisting migrant construction workers, fishers, and domestic workers. He has found that social security is of utmost importance for domestic workers, and reflected on the state of social security in the context of Taiwan. He also emphasized that social security is a human right.

Migrant domestic workers, most of whom are women, are employed in the informal sector and are not seen as workers. They have no healthcare, maternity benefits, sick leave provisions, unemployment insurance, occupational health and safety protections, disability insurance, old age benefits, minimum wage, etc. In most ILO member states, they remain outside of state social security arrangements. They are normally confined to the house, and governments and employers generally consider their workplaces to be safe; if the home is safe for the family, it must be safe for the domestic worker.

However, domestic workers are subject to serious risks – bending/reaching/lifting can lead to chronic back pain, toxic chemicals are present in most household cleaning products, cleaning windows can be hazardous (some domestic workers have died falling from high-rise buildings while cleaning windows), etc. In Taiwan, some domestic workers are forced to work in family-owned factories that are not monitored by the government. In short, domestic workers are vulnerable to any number of occupational hazards and accidents. The Homework Convention was adopted in 1996 – over a decade ago. However, as long as the private household is not seen as a workplace, domestic workers will remain susceptible to these kinds of dangers.

Social security is a human right to which everyone should have access, including migrant domestic workers. They work hard, they contribute much, and they should be able to take advantage of these programs.

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICESCR) enshrine rights to social security in their provisions. Since 1919, the ILO has adopted 31 Conventions and 23 Recommendations in the area of extending social security to all.

Article 22 of the UDHR: “Everyone as a member of society, has the right to social security ...” Article 25 reads: “Everyone has the right to ... necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Article 9 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) reads: “The States Parties to the present Covenant recognize the right to everyone to social security, including social insurance.” “To date, 160 United Nations member States have ratified or acceded to Article 9 of the ICESCR and have thus committed themselves to guarantee for everyone the right to social security within their national boundaries.”¹

In Taiwan, all workers must be covered under the national healthcare system, and migrant workers are also able to avail of these services. However, under migrant worker contracts, should they be diagnosed with tuberculosis or a terminal illness, contracts are immediately terminated and the worker repatriated. The government wants young, healthy workers who will not strain the healthcare system.

Fr. Peter concluded his presentation by connecting the issue to the ongoing deliberations at the 100th Session of the International Labour Conference where on June 3 the Committee on Domestic Work adopted Article 3 which reads: “Each member shall take measures to ensure effective promotion and protection of the human rights of all domestic workers as set out in this Convention.”

He also made reference to Article 14 of the draft report on Domestic Workers which reads: “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 favorable than

¹ Report VI Social security for social justice and a fair globalization, ILC 100th Session, 2011.

those applicable to workers generally in respect of social security protection, including with respect to maternity.”

Fr. Peter called on governments to ensure that all migrant workers have unemployment protection where such benefits exist for local workers. They should not be deported when they become unemployed. He pointed out that if a national retirement scheme exists in the country where a migrant worker is employed, the employer should pay into the scheme and the fund should be portable. Upon completion of the contract, workers should be able to take the money home with them; otherwise the money should be transferred into a retirement scheme in the worker’s home country. This portability of social security operates for citizens of the EU. If there is to be no discrimination for migrant workers, then this should also operate for migrant workers while they are working in the EU. Such a system could also be replicated elsewhere.

Situation of domestic workers – How can international instruments strengthen their rights and contribute to decent work?

Marcelina Bautista

Confederación de Latinoamérica y el Caribe de las Trabajadoras del Hogar



Marcelina Bautista is a domestic worker and advocate for domestic worker rights. She started working at age 14 and only became aware of her rights later on. She emphasized that if domestic workers do not know their rights, they cannot claim them. Marcelina established her own organization to defend the rights of domestic workers, and has since joined the Latin American Confederation for Domestic Workers. The

Confederation has helped to set up workers’ organizations for domestic workers that are headed by domestic workers themselves. That way, the domestic workers can work to promote and protect their own rights.

Marcelina emphasized that domestic work goes largely unrecognized. She highlighted that in some contexts there are good laws that go unenforced. For domestic workers, time off is a problem, as is the fact that employers do not treat domestic workers with respect. Her organization is working towards finding ways to establish real work contracts, spelling out the rights and obligations of people employing domestic workers. They are also trying to ensure that the UDHR is applied. Domestic workers should not be excluded from the protection of laws that protect other workers. She strives to help domestic workers have a life of dignity with clear working conditions.

Why are employers profiting from internationally binding rules?”

Elizabeth McGee

Hand-in-Hand, an American Employers Organization

Elizabeth McGee is an employer who is working to sensitize those who employ domestic workers to the issues they face, and to help them to see the advantages of a Convention on Domestic Work for employers. When Elizabeth had small children, she employed a full-time domestic worker, and now she employs a part-time domestic worker. She is committed to providing the same conditions for the workers in her home as she enjoys in her workplace: fair wages, fair standards, etc. Her organization is called ‘Hand-in-Hand’, which seeks to connect domestic workers and their employers in working towards change. She wants to change the way that Americans think about domestic employment. HIH’s actions are grounded in public policies and cultural norms to allow domestic workers and their employers to build effective partnerships in the home. When implemented in practical ways, employers can establish relationships with their employees that are ethical.

Employers benefit from an ethical approach because care needs will be better met when there is an ethical/fair relationship; they will be able to see higher standards of care and workers will be able to charge affordable rates for their services.

This kind of relationship allows employers to keep a clear conscience by providing good jobs, honouring caregiving as an important occupation in a sector that has been traditionally undervalued because it is 'women's work'. Many American employers value those ideas, but there is no standard or transparency.

According to Elizabeth, a sound ILO Convention will serve as a basis for productive, efficient, and ethical working relations. The ILO Convention will create international standards and provide incentives to structure employment relationships that are appropriate for home-based workplaces, thereby contributing to the creation of more equitable societies.

"Implications of the General Comment on Domestic Workers for the Migrant Workers Convention"

Abdelhamid El Jamri
Chair of the Migrant Workers' Committee



Abdelhamid El Jamri congratulated the assembled on the status of the Domestic Workers Convention, reflecting on how much progress has been made since the debates last year. He noted that this marks a significant step forward for the protection of both migrant workers and domestic workers.

At the outset, El Jamri commented on the problem of recruitment practices and how workers are forced to accept conditions that go against what they had initially agreed to. In terms of social security, there are significant challenges for migrant workers to face upon return/reintegration when it comes to the transferability of social security provisions across borders – i.e. if the worker has contributed to a benefits system in their host country, there is no guarantee that they will be able to take advantage of those benefits once they are in their home country.

Migrant Domestic Workers face two problems: (1) they are often excluded from the labour code of their country of destination; (2) when they are not excluded; the labour code of the destination country often does not apply to them because the workplace is not a 'real workplace.' This question of non-applicability is in addition to other gaps related to the fact that their work is in the informal sector.

To combat these problems of access, increased awareness needs to be raised prior to departure, and there is a need for cooperation between sending and receiving states. Recruitment agencies must also be better regulated, as many of these agencies do not respect human rights norms. Domestic workers often do not have access to their rights.

The above issues are also addressed in the General Comment (GC) adopted by the UN Committee on Migrant Workers in December 2010. The GC has two principal sections: [1] Pre-departure and [2] post arrival. It also covers good practices and generates several recommendations, with an emphasis on strengthening the cooperation of sending, transit, and destination countries.

With respect to the potential impact of the Domestic Workers' Convention, this has been assessed with CSOs, UN, ILO, IOM, etc., all of which made significant contributions to the draft text and/or the debates. El Jamri reiterated that calling for the rights of migrant domestic workers is a win-win situation – it's good for employers and employees alike, and for countries of origin and of destination.

"How would an ILO Convention and Recommendation on Domestic Workers facilitate access to social security?"

Barbro Budin, IUF



Barbro Budin briefly shared the key issues of the Convention related to social security. One of the key issues of the Convention is Article 6, which stipulates the right to a labour contract that is easily understandable and available in an accessible language. Without article 6, many domestic workers would remain outside the reach of social security. Another important social security clause is that social security should be extended fully to all domestic workers. It is hoped that provisions for labour inspections will also be included in the Convention texts.

She also shared that a number of countries have already included social security provisions for domestic workers in their labour legislation – Australia, Brazil, South Africa, Sweden (for example) – demonstrating that it can be done. In terms of provisions for labour inspections, which are strongly opposed by the employers and some governments because domestic work takes place in what is considered to be a ‘private sphere’, Barbara emphasized that creative and innovative approaches should be attempted. Perhaps commissioning domestic workers to carry out inspections would be a good start, rather than bringing in inspectors who are unaware of the hazards associated with domestic work. Health and safety aspects of domestic work should be given paramount importance in labor inspections. Inspections of recruitment agencies are also necessary.

The initial discussions on the ILO Convention were revealing for many governments who now engage very proactively and progressively on the issue (e.g. Kenya, Zambia, Argentina, Tanzania etc.). The challenge now is securing ratifications and monitoring the implementation of the Convention, hence, Barbro emphasized the need for mutual support among CSOs, trade unions and governments.

Open Forum

Good practices in various countries

Workshop participants shared existing practices in other countries that refute the claims of employers that the Convention will be difficult to implement. Advocates can make reference to these practices in their campaigns.

The example of Kenya was highlighted, where, under Protection Act Article 5, all domestic workers are protected, and labour inspectors are allowed to enter the homes of employers. In the USA, home inspections are warranted to enter private homes under some circumstances, e.g. when foster children are living on the premises or when there is a suspicion of domestic violence. As such, the entry of inspectors into private homes is not unprecedented. A significant hurdle is that employers view inspections as invasions of their privacy.



Problems associated with communication

One trend among female migrant domestic workers is the overall problem of communication. Many domestic workers are illiterate, and this makes it difficult for them to live in their country of destination.

Relegation of public duty to private sectors

Another trend is that the responsibility for social protection is being passed on to the private sector. Some states have implemented compulsory insurance for all those going overseas, but the costs for these plans are borne by the workers. This is how the state does *not* take on the obligation of care.

In Taiwan, the government runs the healthcare scheme – 30% is paid by the worker (local or migrant), 60% by the employer, and 10% by the government. However, migrant domestic workers are not covered by labor standards. As of now, migrant workers do not become unemployed either they finish their contracts or the contracts are terminated and they are sent home. In the case that migrant workers need to switch employers, they have 60 days to do so. During that period, they are technically unemployed, and as such should be covered by the insurance scheme as they pay into the unemployment fund.

Enhancing the visibility of domestic work is fundamental.

Employers easily forget that when they hire someone to come into their home they are now *employers*. If employers can understand this, it will become possible to engage in a proper working relationship.



Enforcing migrants' rights where the locals have no rights?

There are countries in the world where there is no social protection for anyone. This poses a huge concern for migrants' advocates. In cases where there is social protection available for migrant workers, they often cannot transfer their social security benefits. One challenge is traceability: often recruitment agencies are unable to locate the migrant workers / beneficiaries of social security once they return home. The trend worldwide is to lower social security coverage. There is pressure, especially in the EU, to lower levels of social protection in an attempt to lower working costs. This means a move towards irregular work. The categories assigned to workers are deliberate choices; this is what our economic system is doing today, and it is badly affecting all workers, especially migrant workers.

Ratification and Implementation of the Convention

Domestic workers groups, NGOs, trade unions and other key players should be prepared as the real battle starts in lobbying for ratification and implementation of the Convention.

This report was produced by Migrant Forum Asia.

MFA is a regional network of grassroots non-government organizations, associations, trade unions, and individual advocates in Asia who are committed to protecting and promoting the rights and welfare of migrant workers and members of their families. MFA currently has more than 200 members in 16 countries in Asia.

www.mfasia.org