

Migrant domestic workers: Prospects and process of the UN Committee on Migrant Workers General Comment

Introduction

Hope is moving, and picking up speed, on two fronts for the protection of domestic workers worldwide. Many of these workers have long laboured outside of the protection of basic labour and human rights standards, both at international and national levels. Many have been exploited.

One of the two fronts took a big step forward in June of 2009, when the International Labour Organization (ILO) voted to prepare an international instrument enumerating, for the first time, labour standards specifically for domestic workers. In June 2010, the ILO will vote further on whether that instrument should take the form of a convention, a recommendation, a convention supplemented by a recommendation or a convention with both binding and non-binding provisions. The following year will be devoted to the drafting of the instrument, with a formal vote of adoption in June 2011.

This paper, however, describes the second front, focused on addressing concerns and promoting the protection of basic rights evoked specifically in the situation of *migrant* domestic workers, who comprise the majority of domestic workers around the world.

Protecting migrant workers

As an overall framework for all migrant workers, i.e., whether engaged in domestic work or not, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention) was adopted by the UN General Assembly on 18 December 1990, entering into force in July 2003, to fill an acknowledged gap in the world's recognition of migrant workers' rights. One of the nine "core" international human rights treaties¹, the Convention is the distinct, universal codification of the rights of migrant workers and members of their families, and draws upon principles and standards included in the 1948 Universal Declaration of Human Rights, the human rights covenants and ILO conventions. There are currently 42 States parties to the Convention; an additional 16 have signed the Convention, which is an indication of their intention to ratify it.

The Convention also provides for the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Committee on Migrant Workers, or the Committee). The Committee is composed of fourteen independent experts, elected and charged with the task of monitoring the implementation of the Convention by the States that have ratified it. As provided in the Convention, all States parties are required to submit regular reports to the Committee on their implementation of the rights enumerated in the Convention. The Committee then examines the

¹ <http://www2.ohchr.org/english/law/index.htm#core>

reports and asserts its recommendations back to the States. In addition, the Committee has the capacity to organize “Days of general discussion” on specific topics under or relevant to the Convention, and adopt “General Comments” which serve as formal interpretations of the content of the Convention.

The Migrant Workers Convention is applicable to “all migrant workers and members of their families without distinction of any kind,” and defines the term “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”² Moreover, the Convention stipulates rights that apply to migrant workers not only with regular or documented status, but also to those with irregular or undocumented status as well.³

Protecting migrants who are domestic workers

Migrant domestic workers are indisputably entitled to all the rights provided for in the Convention. There are, however, no specific provisions that speak to the particular circumstances and concerns that arise in situations where migrants perform or are engaged to perform domestic work. This despite the fact that their situation differs greatly from most other migrant workers: migrant domestic workers are employed privately, work in or for private households and in settings that are almost universally isolated and/or hidden from view. Indeed, because of this unique employment dynamic, migrant domestic workers are disproportionately vulnerable to abuse and maltreatment.

In the course of reviewing reports by States parties over the six years since the Convention entered into force, the Committee and a number of non-governmental organizations (NGOs) and labour groups have perceived both the need and the opportunity for the Committee to offer practical guidance on protecting the Convention rights of migrants specifically engaged in domestic work.

Specific vulnerabilities of migrant domestic workers

Drawing upon the information provided in the ILO report, “Decent Work for Domestic Workers,”⁴ domestic work can be defined as work done in and/or for the private household, in return for remuneration and on a regular basis, including part-time. Domestic services provided most frequently include housekeeping, cleaning, child care, elderly and disabled care, gardening and driving.

The risks that migrant domestic workers face do not start or arise only at the workplace. Migrant domestic workers are vulnerable and face substantial risk of abuse throughout the entire migration cycle, beginning with recruitment in their home countries. Recruitment agencies and other intermediaries often charge excessive fees to those seeking employment, and fail to provide adequate information about the type or conditions of employment, the host country or the worker’s rights once they reach their destination. Reports often offer evidence of recruitment agencies deceiving workers into paying for non-existent employment and/or falsified visas.

² Migrant Workers Convention Article 2.

³ Part III of the Convention enumerates the rights that belong to all migrant workers regardless of status, and their family members; Part IV further enumerates rights specifically granted to migrant workers with regular or documented status and members of their families.

⁴ “Decent Work for Domestic Workers” can be accessed on line at:

file://localhost/<http://www.ilo.org/global/What_we_do/Officialmeetings/ilc/LCSessions/98thSession/ReportsubmittedtotheConference/lang--en:docName--WCMS_104700:index.htm>

Upon arrival in the country of employment, the vulnerability of migrant domestic workers increases almost categorically. While some may have signed contracts pre-departure, many are forced to sign new contracts with terms of employment far worse than those to which they had originally agreed. Workers are often over-worked, under-paid and restricted to the confines of the household in which they work. Many are virtually imprisoned. Indeed, employers and intermediaries frequently confiscate workers' travel and identity documents, rendering the workers completely under the control of the employer. Contract violations, labour exploitation and verbal, physical and sexual abuse is widespread once the migrant domestic worker has begun employment. Domestic workers are "overwhelmingly women," which opens the gateway for additional abuse and discrimination.⁵

Widespread gaps in national legislation further increase migrant domestic workers' vulnerability. In many countries, domestic work is not legally recognized as "work," and domestic employers are not legally recognized as "employers." This almost invariably results in the exclusion of domestic workers from protection under national and local labor laws. Migrant domestic workers are often excluded from social security laws as well, leaving them without basic employment and pension benefits, including access to health care. Immigration law can also deepen the vulnerability of migrant domestic workers. A number of countries tie a migrant worker's migration status to a specific employer. For example, the *kafala* system, used in several Middle Eastern countries, requires that foreign workers obtain permission from the national who employs them in order for him or her to legally enter, work in or leave the country. In the event that a migrant worker were to take action against his/her employer, s/he would likely fall out of legal immigration status, thereby risking arrest and/or deportation back to his/her country of origin. Given that many migrants and their family members (either with them or back home) are dependent on the earnings from that work, many migrant domestic workers in such situations feel no choice other than to keep silent when being exploited or abused.

In theory migrant domestic workers' rights are covered by broad frameworks of international human rights law⁶, yet there is an unfortunate lack in express references to their extreme vulnerability. In order to address this gap, and in direct response to the advocacy of the International Catholic Migration Commission (ICMC), Caritas Internationalis, and the International NGO Platform on the Migrant Workers Convention (NGO Platform)⁷, the Committee on Migrant Workers agreed in 2009 to take two affirmative steps: first to organize a Day of General Discussion to examine closely the issue of

⁵ "Decent Work for Domestic Workers" *ibid.* 1 (§4)

⁶ For example, the core international human rights treaties all contain standards and safeguards which are of broad relevance to the protection of migrant domestic workers, e.g., rights that migrant domestic workers have as human beings. In addition to the Committee on Migrant Workers, several of the UN committees that monitor compliance by States with these other human rights treaties have also raised concern on the specific situation of migrant domestic workers, including the Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 (2008) *Women Migrant Workers*; the Committee on Economic and Social Rights, General Comment No. 18 (2005), *The right to work*; and the Committee on the Rights of the Child, General Comment No. 6 (2005), *Treatment of unaccompanied and separated children outside their country of origin*.

⁷ The International NGO Platform on the Migrant Workers Convention is an association of 21 members committed to promoting the implementation of the MWC; currently Action Canada for Population & Development, Amnesty International (active observer status), Anti-Slavery International, December 18, The English International Association of Lund, International Federation for Human Rights, Franciscans International, Human Rights Watch, International Catholic Migration Commission, International Centre for Migration, Health & Development, International Movement Against All Forms of Discrimination and Racism, Jesuit Refugee Service, Kav LaOved, Migrant Care, Migrants Rights International, National Employment Law Project, Nepal Institute of Development Studies, World Organisation Against Torture, Public Services International, WARBE Development Foundation and the World Council of Churches. At its annual General Assembly, 21 April 2009, the Platform unanimously approved the proposal by ICMC and Caritas Internationalis to work with the UN Committee towards a Day of General Discussion and a General Comment. See <http://www.ipmwc.net>.

migrant domestic worker protection; and second, to initiate the formal drafting and adoption of a General Comment interpreting the rights and protections of the Migrant Workers Convention specifically for migrant domestic workers.

Day of General Discussion on migrant domestic workers

Together with ICMC (acting also as chair of the NGO Platform) and Caritas Internationalis, the Committee organized and devoted a full and formal one-day meeting of the Committee's 11th Session as a Day of General Discussion on the situation of migrant domestic workers. Held at the Palais Wilson in Geneva on 14 October 2009, there were some 50 participants, the majority of whom represented civil society groups, along with a number of representatives from international organizations and from Geneva-based permanent missions of States. National groups from Bahrain, Israel, Italy, Lebanon, the Netherlands and Senegal, and regional groups from Africa and Asia participated as well. Additionally, consideration was given to written reports submitted in advance from civil society groups in Cameroun, Costa Rica, El Salvador, Israel, Italy, Lebanon, Malaysia, the Netherlands, Nigeria and the Philippines. The broad and varied geographic representation of the participants added to the depth and value of the discussion.

Participants discussed the problems faced by migrant domestic workers, and the need for international frameworks and applications that address their particular situation and rights. The morning session consisted of plenary presentations by the Committee Chair, officials of UN human rights bodies, the ILO and civil society representatives, including a migrant domestic worker, and related discussion. In the afternoon session, participants divided into two working groups: one on "recruitment and employment of migrant domestic workers," and the other on "effective protection of migrant domestic workers." ICMC, acting also for the NGO Platform, and Caritas Internationalis served as the rapporteurs for the working groups. A summary of the working groups' discussion and subsequent recommendations was compiled into a report and submitted to the Committee for review.⁸ Underscoring the pressing need for the greater protection of migrant domestic workers worldwide, the Committee, upon receiving the report and discussing the outcomes of the discourse, resolved to write, and at a future session adopt, a General Comment concerning the rights of migrant domestic workers.

Preparing the General Comment

At the chair's invitation, two members of the Committee on Migrant Workers then volunteered to guide the drafting process, assisted by the Committee's secretary from the Office of the High Commissioner for Human Rights (OHCHR). Throughout the period between the October 2009 and April 2010 Committee sessions, and with continued participation by ICMC and Caritas Internationalis, an initial draft of the Comment was prepared, drawing heavily on the input and practical recommendations gathered at the Day of General Discussion. It was also expected that, notwithstanding its focus specifically on migrant domestic workers, the draft would take into consideration—and ideally contribute expertise within—the process concurrently underway at the ILO of developing its instrument pertaining more broadly to all domestic workers. The Committee committed to a first full review of the draft Comment during its April session (26-30 April 2010), with an aim to releasing a first public draft during its final day of session Friday 30 April 2010.

⁸ The report of the discussion and all inputs, other materials and relevant links related to the discussion programme may be found at www2.ohchr.org/english/bodies/cmw/dgd141009.htm.

The road to adoption?

ICMC, Caritas Internationalis, and the NGO Platform all look forward to an organized series of open and inclusive consultations with the Committee on its draft. Among other things, it is expected that OHCHR will issue an online invitation for further worldwide input and engagement. This will encourage civil society—and other migration actors—to make further suggestions and communicate valuable information to the Committee, which may then decide to make subsequent changes to the draft.

ICMC, Caritas Internationalis and the NGO Platform will conduct further consultations with members, other NGOs and labour groups. For example, on 7 June, in the margins of the annual ILO conference in Geneva, ICMC and Caritas will join with Kolping International/the German Commission for Justice and Peace in a special side event tentatively planned to feature a presentation of the draft of the General Comment to ILO Conference attendees and others.

It is expected that the Committee on Migrant Workers will revise and then formally adopt the General Comment on migrant domestic workers at its next session in November (22 November—3 December 2010). This will be the first General Comment to be adopted as a formal interpretation of the Migrant Workers Convention; a welcome beacon of hope for migrant domestic workers everywhere and the protection of their rights.

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30 April 2010