Suggestions for comments and replies to the questionnaire

Questionnaire

At its 301st Session (March 2008), the Governing Body decided to put on the agenda of the 99th Session (2010) of the International Labour Conference an item on decent work for domestic workers for a double discussion leading to the possible adoption of a Convention supplemented by a Recommendation.

The purpose of the questionnaire is to request the views of member States on the scope and content of the proposed instruments, after consultation with the most representative organizations of employers and workers. Replies received should enable the Office to prepare a report for the Conference.

I. Form of the international instrument or instruments

1. Should the International Labour Conference adopt an instrument or instruments concerning decent work for domestic workers?

Comments: Yes

2. If so, should the instrument or instruments take the form of:

(a) a Convention ☐
(b) a Recommendation ☐
(c) a Convention supplemented by a Recommendation ☒
(d) a Convention comprising binding and non-binding provisions?

Comments: The instrument should take the form of a Convention supplemented by a Recommendation.

Many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation and to inadequate attention on key aspects of their situation in international law and national legislation, including in existing ILO Conventions. Quite a number of ILO Conventions permit the exclusion of this category of workers from the scope of their provisions. The particular vulnerability of domestic workers to abuses of basic human rights, including fundamental principles and rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances. The development of international standards is therefore meant to fill an important gap in the promotion of decent work for all.
II. Preamble

3. Should the preamble of the instrument or instruments recall that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided?
Comment: Yes

4. Should the preamble of the instrument or instruments refer to the special conditions in which domestic work is carried out that make it desirable to supplement the general standards by standards specific to domestic workers, to enable them to enjoy their rights fully?
Comments:
Yes. Many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation. Their particular vulnerability to abuses of basic human rights, including fundamental rights at work, as well as the differences in employment arrangements, methods of remuneration, working time and other aspects of their working conditions warrant separate consideration and standards adapted to their circumstances.

5. Should other considerations be included in the preamble? Please specify.
Comments:
Yes. Attention should be drawn to inadequate attention on key aspects of the situation of domestic workers in international law and national legislation. In fact, in too many countries domestic workers are not covered by labour legislation. Reference should therefore be made in the preamble to the relevance of the Employment Relationship Recommendation (No 198). The preamble should recognize the significant contribution of domestic workers to the global economy and highlight that domestic workers overwhelmingly comprise women from historically disadvantaged communities and regions, who often suffer social exclusion and work informally, beyond the scope and protection of national labour laws and enforcement mechanisms. The preamble should also mention that any standards that apply to those who perform care work for pay should be seen in relation to the Workers' with Family Responsibilities Convention and Recommendation, 1981 that provides for the adoption of a national policy to promote the development of accessible and quality child care and other personal care services with a view to promoting work-life balance for families. As domestic workers predominantly comprise migrant domestic workers, the preamble should also make reference to the principles of equality of treatment and opportunity contained in Conventions 97 and 143 on migrant workers.

III. Definitions

6. For the purposes of the instrument or instruments,
(a) should the term “domestic work” mean work performed in and for a household and include housekeeping, child care and other personal care?
Comments: Yes

(b) should the term “domestic worker” mean any person who undertakes domestic work, whether on a full-time or part-time basis, for remuneration?
Comments: Yes
(c) should the term “standby” mean periods during which a domestic worker is not free to dispose of time as the worker pleases?

Comments: Yes

(d) should the term “employer” include intermediaries?

Comments:

Yes. It should be stressed that fee-charging private agencies acting as brokers between migrant domestic labour from countries of origin and employers in countries of destination should be included in the definition of employers. Companies and agencies that hire workers to perform home help activities for a user individual at home or for his/her home should also be considered to be an employer.

(e) should any other terms be defined by the instrument or instruments? If yes, please provide particulars.

Comments: This question should be left open for the moment.

IV. Scope

7. Should the instrument or instruments apply to all domestic workers?

Comments: Yes

8. Should the instrument or instruments provide for the possible exclusion of limited categories of domestic workers and, if so, under what circumstances? Please specify.

Comments:

No. It should be recalled that one of the main reasons for the decent work deficits affecting domestic workers is related to their exclusion from many of the provisions of international labour standards.

V. Content of a Convention

A. Fundamental principles and rights

9. Should the Convention provide that each Member should take measures to ensure the enjoyment by domestic workers of the fundamental principles and rights at work, namely:

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

Comments: Yes

(b) the elimination of all forms of forced and compulsory labour;

Comments: Yes

(c) the effective abolition of child labour; and

Comments: Yes

(d) the elimination of discrimination in respect of employment and occupation?

Comments: Yes
10. Should the Convention stipulate a minimum age for admission to domestic work? Please specify.

Comments: Yes in line with conventions 138 and 182.

11. Should the Convention provide that the minimum age of employment for migrant domestic workers should be 18?

Comments:
Yes (this would ensure consistency with article 3, 1 of Convention 138 which envisages that the minimum age for admission to a work which can jeopardize the health, safety or morals of young people shall not be less than 18 years and article 3, d of Convention 182 which defines the worst forms of child labour as work which is likely to harm the health, safety or morals of children.

B. Working and living conditions and social security

12. Should the Convention provide that each Member should take measures to ensure that domestic workers, like all wage earners, have:

(a) fair terms of employment as well as decent working conditions and, where applicable, living conditions;

Comments: Yes. These terms should be further detailed in the Recommendation

(b) a safe and secure workplace; and

Comments: Yes

(c) social security, including maternity protection?

Comments:
Yes. While maternity protection is essential, all other aspects of social security are important for domestic workers. The Recommendation should provide for specific mechanisms to take account of the specific situation of many domestic workers working part-time for multiple employers and to ensure access of these workers to social security benefits. A positive step towards this goal is found in models aimed at guaranteeing the regular payment of fair wages and some social security entitlements to part-time and casual domestic workers like the “cheque-service” as developed in France or the “Titre Service Voucher” developed in Belgium.

13. Should the Convention provide that employers should inform domestic workers of their terms and conditions of employment, in particular:

(a) the name and address of the employer;

Comments: Yes

(b) the type of work to be performed;

Comments: Yes

(c) the rate of remuneration, method of calculation and pay interval;

Comments: Yes

(d) the normal hours of work;

Comments: Yes

(e) the duration of the contract;

Comments: Yes
(f) the provision of food and accommodation, if any;
Comments: Yes

(g) the period of probation, if applicable; and
Comments:
Yes. Attention should also be paid to the terms of the termination of employment, with particular reference to live-ins domestic workers. This question is dealt with in the recommendation (question 52) but basic principles should be laid down in the Convention to avoid situation of abuses.

(h) the terms of repatriation, if applicable?
Comments: Yes. (At no cost to the worker see question 28)

14. Should the Convention provide that each Member should take measures to ensure that domestic workers are protected against all forms of abuse and harassment, including physical, verbal, sexual and mental abuse and harassment?
Comments: Yes

15. Should the Convention provide that each Member should ensure that domestic workers enjoy minimum wage coverage where such coverage exists?
Comments:
Yes. In countries where minimum wages are set by occupation special measures should be taken to ensure that the skills and responsibilities associated with domestic work as well as conditions under which it is carried out are assessed without gender bias in light of the fact that experience shows that domestic work is often undervalued.

16. Should the Convention provide that all domestic workers should be paid for their work at no greater than monthly intervals?
Comments: Yes

17. Should the Convention allow partial payment of wages in kind? If so, please specify any circumstances and limits, in particular whether a domestic worker can refuse such in kind payments.
Comments:
Payment of wages in kind should be strictly limited and regulated and the value attributed to the allowances should be fair and reasonable. In this connection, it should be recalled that Article 8, paragraph 1, of Convention 95 (much like Article 4, paragraph 1, regulating payments in kind) makes exclusive reference to national laws or regulations, collective agreements and arbitration awards as being the only valid legal bases for effecting deductions from wages. In both cases, the aim is clearly to exclude "private" arrangements which might involve unlawful or abusive deductions, or unsolicited payments in kind, to the detriment of the worker's earnings.

18. Should the Convention provide that each Member should ensure that domestic workers are not required by national law or regulation to reside in the home of the employer?
Comments:
Yes. Such requirement has been shown to lead to abusive conditions and should therefore be proscribed.
19. Should the Convention provide that, when accommodation and food are provided by the employer, the accommodation should be safe and decent, and should respect the worker’s privacy, and the meals should be of good quality and sufficient quantity?

Comments: Yes.

20. Should the Convention provide that each Member should ensure that domestic workers have normal hours of work, overtime compensation, periods of daily and weekly rest, and annual leave as determined by national laws and regulations, and which are not less favourable than those applicable to other wage earners?

Comments: Yes.

21. Should the Convention provide that each Member should ensure that domestic workers are not bound to remain in the household during the period of daily or weekly rest?

Comments: Yes. Attention also should be paid to the right of live-in domestic workers to receive the visit of relatives and friends.

22. Should the Convention provide that periods of standby should be regarded as hours of work to the extent determined by national laws and regulations, collective agreements or any other means consistent with national practice?

Comments: Yes.

23. Should the Convention provide that each Member should take measures to ensure that domestic workers enjoy at least 24 consecutive hours of rest in every seven-day period?

Comments: Yes.

24. Should the Convention provide that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of occupational safety and health? Should the Convention provide that such measures may be applied progressively? Please elaborate.

Comments:

The Convention should provide for equality of treatment between domestic workers and other wage earners in respect of occupational safety and health.

The right to a safe and healthy working environment is a key right for workers hence instead of a progressive application measures should be introduced combining protection of domestic workers’ health and safety, employers’ responsibility to protect the health and safety of domestic workers, awareness raising and training for domestic workers and those employing them on their respective rights/duties/responsibilities in the area of occupational safety and health, a regulatory frame providing meaningful protection as well as a system of monitoring and enforcement. On the latter one option worth exploring could be the system of roving safety representatives.

25. Should the Convention provide that each Member should take measures to ensure the application of social security schemes, including maternity protection, to domestic workers? Should the Convention provide that certain measures may be applied progressively? Please elaborate.

Comments:
Yes. Coverage in respect of pension, general health care including maternity protection, compensation for occupational injuries and diseases as well as unemployment benefits are particularly important for domestic workers. Progressive introduction of social security measures can only apply for higher social security provisions and provided that at the time of ratification a mechanism is introduced in terms of time frame and ways to achieve wider coverage of domestic workers by social security schemes.

C. Employment agencies

26. Should the Convention provide that each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, particularly migrant domestic workers, are effectively protected against abusive practices?

Comments: Yes

D. Migrant domestic workers

27. Should the Convention provide that national laws and regulations should require that migrant domestic workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders?

Comments: Yes

28. Should the Convention provide that migrant domestic workers should be entitled to repatriation at no cost on expiry or termination of the employment contract?

Comments:

Yes. But the Convention should also make provisions as follows, concerning expulsion, back pay and the rights of domestic workers who have lost their employment by no fault of their own, in particular:

- On condition that he/she has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.
- Accordingly, he/she shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.
- Domestic migrant workers who find themselves in irregular situation and whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.
- In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his/her case to a competent body, either him/herself or through a representative.

29. Should the Convention provide that each Member should prohibit employers from keeping in their possession domestic workers’ travel and identity documents?
Comments: Yes

30. Should the Convention provide that Members should cooperate with each other to ensure that migrant domestic workers enjoy benefits comparable with those of nationals?

Comments: Yes

E. Implementation and enforcement measures

31. Should the Convention provide that each Member should ensure that domestic workers have easy access to fair and effective dispute settlement procedures? Please specify.

Comments:

Yes. This should include access to court, the provision of free legal assistance and legal remedy in case of rights’ abuse. Similarly the Convention should make provisions for sanctions in case of abuse by the employer. Sanctions must be effective, dissuasive, appropriate and proportional to the seriousness of the offences committed.

32. Should the Convention provide that each Member should ensure that arrangements are in place to ensure compliance with national laws and regulations applicable to domestic workers, such as labour inspection services, with due regard to privacy? Please elaborate.

Comments: Yes

33. Should the Convention provide that its provisions should be applied by laws, regulations, collective agreements or other measures consistent with national practice, by extending existing measures to cover domestic workers, adapting them, where appropriate, and developing specific measures for domestic workers?

Comments: Yes

34. Should the Convention provide that, in implementing its provisions, each Member should consult the employers’ and workers’ organizations concerned?

Comments: Yes

VI. Content of a Recommendation

A. Fundamental principles and rights

35. Should the Recommendation provide that the competent authority should take or support measures to promote capacity building for representative organizations of employers and domestic workers, including collective bargaining?

Comments: Yes

36. Should the Recommendation provide that, when regulating working and living conditions, Members should give special attention to the needs of young domestic workers, including in respect of working time and restrictions on undertaking certain types of domestic work? If yes, please specify.

Comments:

Yes. The needs of young domestic workers include access to education and training and this should be taken into account when regulating working and living conditions for this category of domestic workers.
B. Working and living conditions and social security

37. Should the Recommendation provide that the terms of employment should be provided in writing?
   Comments: Yes

38. Should the Recommendation provide that additional particulars should be included in the terms of employment, such as:
   (a) the starting date of the employment □
   (b) a detailed list of duties □
   (c) 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 in-kind allowance and its cash value □
   (i) details of any accommodation provided □
   (j) any authorized deductions □
   (k) the period of notice required for termination? □
   Comments: Yes

39. Should the Recommendation provide for a model contract, for example prepared by each Member in consultation with organizations of employers and workers concerned?
   Comments: Yes

40. Should the Recommendation provide that any work-related medical testing should respect domestic workers’ right to privacy and should be free from discrimination, including on the basis of pregnancy and HIV status?
   Comments:
   Yes. But this provision should be included in the Convention as it relates to fundamental labour rights (discrimination).

41. Should the Recommendation provide that domestic workers should be given at the time of each payment an easily understandable written account of the payments due and the amounts paid?
   Comments: Yes

42. Should the Recommendation provide that national laws and regulations concerning the protection of wages, including in the case of the employer’s insolvency or death, apply to domestic workers?
   Comments: Yes
43. **Should the Recommendation provide that, consistent with national conditions, the accommodation when provided by the employer should:**

   (a) comprise a separate, private room equipped with a lock and key provided to the domestic worker, that is suitably furnished and adequately ventilated;

   Comments: Yes

   (b) include access to suitable sanitary facilities, shared or private; and

   Comments: Yes

   (c) be adequately lit, and as appropriate heated and air conditioned in keeping with prevailing conditions within the household?

   Comments: Yes

44. **Should the Recommendation provide that no deduction should be made from the remuneration of a domestic worker with respect to accommodation provided by the employer?**

   Comments: Yes

45. **Should the Recommendation provide that the hours of work and overtime should be accurately calculated and recorded by the employer and this information communicated to the domestic worker?**

   Comments: Yes

46. **Should the Recommendation provide that domestic workers should be entitled to meal breaks of the same duration as other wage earners during the working day?**

   Comments: Yes

47. **Should the Recommendation provide, with respect to standby work, that national laws and regulations or collective agreements should regulate:**

   (a) that standby hours should only apply to night hours as defined in national laws or regulations or collective agreements;

   Comments: Yes

   (b) the maximum number of hours per week, month or year that an employer may require a domestic worker to be on standby;

   Comments: Yes

   (c) the compensatory rest period if the normal period of rest is disturbed by standby; and

   Comments: Yes

   (d) the extent to which the standby hours should be remunerated according to normal or overtime wage rates?

   Comments: Yes

48. **Should the Recommendation provide that domestic workers whose normal duties are performed at night should be treated not less favourably than other wage earners performing night work?**

   Comments: Yes

49. **Should the Recommendation provide that national laws and regulations, or collective agreements, should stipulate that ongoing needs of the household are not to be used to deprive the domestic worker of daily and weekly rest?**
Comments: Yes

50. Should the Recommendation provide that Members should give due consideration to establishing a fixed day of the week for rest, as well as compensatory rest and extra payment in the case of derogation?

Comments:

Yes. But while Members should establish the principle of a fixed day of the week for rest and ensure implementation, the choice and determination of this day should be left to the parties to the employment contract.

51. Should the Recommendation provide that domestic workers should not be required to remain in or with the household during their annual leave, and that time spent accompanying the household on vacation is not considered annual leave?

Comments: Yes

52. Should the Recommendation provide that, in the event of termination of employment, domestic workers who live in employer-provided accommodation are given:

(a) an extended period of notice during which they may continue living in the employer’s home;

Comments: Yes

(b) reasonable time off with pay during the notice period to enable them to seek new employment?

Comments: Yes

53. Should the Recommendation provide that Members should:

(a) identify, mitigate and prevent occupational hazards specific to domestic work;

Comments: Yes

(b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;

Comments: Yes

(c) advise on occupational safety, health and hygiene as well as on ergonomics and protective equipment; and

Comments: Yes

(d) develop training programmes and disseminate guidelines on occupational safety and health requirements?

Comments: Yes

54. Should the Recommendation provide that Members should consider means to facilitate the payment of social security contributions by employers, such as a system of simplified payment?

Comments:

Yes. Special efforts should also be made towards ensuring that domestic workers working part-time or on an occasional basis for multiple employers have access to social security benefits.
C. Professional development

55. Should the Recommendation provide that Members should, in consultation with the employers’ and workers’ organizations concerned, establish policies and programmes for domestic workers to encourage ongoing development of their competencies and qualifications, including literacy training as appropriate, as well as to enhance their career and employment opportunities?

Comments: Yes

D. Migrant domestic workers

56. Should the Recommendation provide that regulation concerning repatriation of domestic workers should:

(a) ensure financial guarantees by those responsible for repatriation costs;

Comments: Yes

(b) prohibit any payment by migrant domestic workers to cover repatriation costs;

Comments: Yes

(c) identify the time frame and circumstances for the exercise of the right to repatriation?

Comments: Yes

57. Should the Recommendation provide that Members should consider additional measures to ensure the effective protection of migrant domestic workers’ rights, such as:

(a) the development of a network of safe emergency housing; and

Comments: Yes

(b) a placement visit of the household in which the migrant domestic worker will be employed?

Comments: Yes

58. Should the Recommendation provide that Members that are sending countries should assist in the effective protection of migrant domestic workers’ rights, including by informing migrant domestic workers of their rights before departure, establishing legal assistance funds, social services and specialized consular services and by any other additional measures? Please specify.

Comments: Yes. But the instrument should also make provisions for cooperation between countries of origin and countries of destination of migrant domestic workers, namely:

- Cooperation between countries of origin of domestic migrant workers and their countries of destination to enhance governance of migration, in the fields of the establishment of legal avenues for labour migration, strengthening of labour inspection, legal cooperation in case of trafficking and abusive situations, issues of maintenance of social security entitlements and the strict supervision and control of activities by recruitment and employment agencies (in conformity with ILO Convention No. 181 on
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Private Employment Agencies), and subcontractors, as well as the elimination of abuse of sponsorship schemes.

- Development of joint measures, including legal support, for immediate action to prevent abusive practices and to find solutions to them through legal remedies or other available dispute-resolution mechanisms.

E. Relationship to other national policies

59. Should the Recommendation provide that Members should be encouraged to develop national policies that:

(a) promote accessible, collective measures for the delivery of child care and other personal care;
Comments: Yes

(b) promote work-life balance for families; or
Comments: Yes

(c) promote the domestic workers’ employment in occupational categories that match their education and skills?
Comments: Yes

F. International cooperation

60. Should the Recommendation provide that Members should be encouraged to continue improving protection of domestic workers, notably through cooperation at bilateral, regional and international levels? Please elaborate.
Comments: Yes (see comments to question 58)

VII. Special problems

61. Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instruments?
Comments:

62. (For federal States only) In the event of the instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?
Comments:

63. Are there any other pertinent problems not covered by the present questionnaire that ought to be taken into consideration when drafting the instruments?
Comments: At present, there is a lack of statistics on domestic workers. Consideration should therefore be given in the instruments on the adoption of appropriate measures so that labour statistics include, to the extent possible, domestic workers. Without adequate statistics domestic work will remain invisible and hence vulnerable.