



## 110<sup>th</sup> Session of the International Labour Conference (June 2022)

### Agenda item III

### Committee on the Application of Standards

### Briefing Note for Workers' Delegates

## 2022 General Survey: Securing decent work for nursing personnel and domestic workers, key actors in the care economy

### BACKGROUND

Under Article 19 of the ILO Constitution, Member States are required to report at regular intervals, at the request of the Governing Body, on the measures they have taken to give effect to any provision of certain conventions or recommendations, and to indicate any obstacles, which have prevented or delayed ratification of a particular convention. At its 334<sup>th</sup> Session (October-November 2018) the Governing Body decided that in 2022 the General Survey would examine the following four instruments:

- the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977; and
- the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011.

Convention No. 149 has been ratified by 41 Member States, while Convention No. 189 has been ratified by 35 Member States.

This is the first time that these instruments have been the subject of a General Survey. In total, 115 governments, 135 workers' organisations and 14 employers' organisations provided information and observations regarding these instruments.

The following briefing note aims at providing a short summary of the findings and conclusions of the Committee of Experts while offering a starting point for further discussion, at national level and during the dedicated session of the Committee on the Application including key considerations for the workers delegates in advance of the debate.

### 1. Care work and the care economy: challenges of today and of tomorrow and opportunities

The General Survey examines the instruments in the **broader context of care work**<sup>1</sup> noting that the latter is essential to ensure the health, education and well-being of the current and future workforce. In this respect, the General Survey highlights that domestic workers often provide both direct and indirect care for households and as such, they form part of the care economy.<sup>2</sup>

The Experts observe the acute **decent work deficits** which affect nursing personnel and domestic workers and underline that the **COVID-19 pandemic** has further exacerbated them. As regards nursing personnel, the Experts note that since 1977, many of the major constraints that led to the adoption of Convention 149 have persisted while new constraints have arisen (insecure jobs, difficult working conditions and the inequitable geographical distribution of nursing personnel). As for domestic workers, they are among the most vulnerable categories of workers and are at higher risk of abuse and exploitation, especially migrant domestic workers who are frequently in informal and precarious employment (*see section below on "working conditions of nursing personnel and domestic workers"*). Women make a majority of both categories of workers (*see section below on "gender dimension of care work"*).

<sup>1</sup> Care work may be broadly defined as the "activities and relations involved in meeting the physical, psychological and emotional needs of adults and children, old and young, frail and able-bodied." Care work may take the form of direct care (nursing services, child care" or personal care for ill persons or those with disabilities, as well as the elderly) or indirect care (which may include cooking, cleaning and other services). Both direct and indirect care services may be provided in a range of settings, including hospitals, clinics, long-term care facilities or other institutions, as well as in private households.

<sup>2</sup> See para. 36: The Committee notes the enormous contribution of domestic workers to the health and well-being of families and households, as well as to the participation of both women and men in the labour market. Domestic workers frequently provide personal care services in their employers' homes, thereby contributing to access to care and quasi-nursing services in many cases. The Committee further notes that, in countries where the qualifications of foreign nursing personnel are not recognized, migrant nurses often provide in-home care.

The Experts draw a **strong correlation between the poor conditions of employment and work of nursing personnel, low job satisfaction and persistent shortages of nurses.**

On the other hand, they observe a **growing labour demand** in the health care and domestic work sectors. At present, the global nursing workforce totals 27.9 million, however the demand for health workers is expected to almost double by 2030, leading to a **global shortfall of 13 million nurses.**

The report indicates that there are over 75.6 million domestic workers globally<sup>3</sup>. It further notes that the **demand for domestic work has continued to increase** in recent decades due to the ageing of populations in many countries, the growing participation of women in the labour force, changes in the organization of work and the intensification of work, substantial international migration of women in search of work, and inadequate policies to enable workers to reconcile paid work with family responsibilities.

The report identifies **factors of change** which have and will continue to have a significant impact on societies' needs for healthcare and on public policies in response to the changes. These are an **ageing population**, where all regions will see an increase in their older populations between 2019 and 2050; **climate change**, and particularly its adverse effect on food, air and water, which leads to changing patterns in (long-term) diseases and mortality; **migration** flows from lower- to higher-income regions which leaves entire regions with a significant shortage of health professionals (*see section below on "migration and labour supply"*); **technological advances** which may have a disruptive effect on processes, relationships and resourcing, and may pose additional demands and challenges in terms of the need to reskill or upskill nursing personnel.

The Experts refer to recent Declarations adopted by the ILC<sup>4</sup> which highlight the **potential of the care economy as a major source of employment and decent work opportunities, especially for women**, and the **need to invest in the care sector** to address understaffing and improve working conditions and to realise universal social protection.

### Workers' Group Recommendations

The Workers' Group may wish to note the **ever-growing size and importance of the care economy** and the **many decent work deficits** which affect care economy workers; highlight the severe hardships and impact caused by the **COVID-19 pandemic** to both nursing personnel and domestic workers as well as some country perspectives on the challenges for the future, including **demographic and migration trends.**

It would be equally important to stress the **considerable potential of the care economy as a major source of decent work and employment, especially for women workers**, and to refer to the **repeated commitments taken by the ILO constituents** to promote and invest in the care economy.

The Workers' Group could highlight that **adequate public investment in the care economy** would stimulate economic growth through the creation of millions of quality jobs. In this regard, reference could be made to research commissioned by the ITUC which shows how investing 2 percent of GDP in public care services can create millions of quality jobs, narrow the gender pay gap, reduce overall inequality, help redress the exclusion of women from decent jobs and contribute to inclusive economic growth.

## **2. Government intervention to give effect to the instruments**

The four instruments examined all stress the **responsibility and prominent role played by governments** in giving effect to their provisions, particularly by means of laws and national policies.

<sup>3</sup> See para 12 on page 19 of the report

<sup>4</sup> The **2019 ILO Global Commission on the Future of Work** highlighted the importance of the care economy, noting that it is a major source of employment, as well as a sector that is key to social and economic development and to public health and well-being. In adopting the **2019 Centenary Declaration for the Future of Work**, the tripartite constituents emphasized that, "in discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centred approach to the future of work", the ILO must direct its efforts to "achieving gender equality at work through a transformative agenda" that includes the promotion of investment in the care economy.

In adopting the **2021 ILO Global call to action for a human-centred recovery from the COVID-19 crisis** that is inclusive, sustainable and resilient, the ILO constituents once again underscored the significant decent work opportunities provided by the care economy, highlighting the need to invest in the care sector, to address understaffing and improve working conditions (Part I(B)(g)(iv)).

The **Conclusions concerning the second recurrent discussion on social protection** adopted by the International Labour Conference in **June 2021** promote universal social protection, including through "invest[ments] in the care economy to facilitate access to affordable and quality childcare and long-term care services as an integral part of social protection systems."

The Experts recall that under **Convention 149**, States are required to adopt and apply a **national policy concerning nursing services and nursing personnel** that ensures: education and training; attractive employment and working conditions; occupational safety and health; active participation of nursing personnel; negotiations with nursing personnel regarding their employment and working conditions and dispute settlement mechanisms and procedures. The Experts specifically stress the importance of ensuring that national policies are comprehensive and integral to the health system developed and implemented with the **full involvement and participation of nursing personnel and their representatives**.

As regards **domestic workers**, the Committee recalls that the **objective of Convention 189** is to guarantee to domestic workers the **same labour rights and working conditions** as those enjoyed by other workers. The Experts note that while progress has been made towards the regulation of domestic work and the legal coverage of domestic workers, important decent work deficits and gaps in implementation persist. It is still the case that **national laws and regulations, whether general or specific, do not always afford domestic workers the same rights and protection as other workers**. The Experts reiterate that excluding domestic workers from specific provisions or providing them with lower levels of coverage than other workers, is **not compatible with the provisions and spirit of the domestic work instruments**. They call for further efforts to ensure the full application at national level of the principles of the domestic work instruments.

### ***Workers' Group Recommendations***

The Workers' Group may wish to stress the **pivotal role that governments must play** in improving employment and working conditions of nursing personnel, highlighting the strong link between national policies on nursing personnel and countries' ability to respond to the increasing demand for care services and to establish and maintain resilient and sustainable health systems. The COVID-19 pandemic crisis has brought into stark light the deficiencies of public health systems. There is a **pressing need for comprehensive, long-term and proactive national policies on nursing services and nursing personnel** to improve their employment and working conditions and *in fine* attract and retain qualified nurses in the profession, as prescribed by Convention 149. Such policies should be fully integrated in broader policies on national health systems.

The Workers' Group may wish to highlight the relevance of **Convention 149 and Recommendation 157**, which provide a **strong and comprehensive framework** for governments and social partners to devise national policies. Nursing personnel and their representatives must be fully involved and participate in the formulation, implementation, monitoring and evaluation of these national policies.

Regarding domestic workers, the Workers' Group may wish to emphasize that **the objective of Convention 189 and Recommendation 201** is to ensure that domestic workers, one of the most vulnerable categories of workers, **enjoy the same labour rights and working conditions as those of other workers**. However, in practice most national legislations are failing domestic workers. **Corrective measures are long overdue** to ensure that their rights are fully recognized and protected. Therefore, the Workers' Group may wish to call on governments to adopt **legislative provisions** guaranteeing equal rights and protections to domestic workers and given the gaps in practice, to ensure the application of this principle through stronger **enforcement measures**. The Group could also highlight the crucial role of **collective bargaining** to improve working conditions and, in the context of domestic work, the need to increase efforts to ensure that domestic workers can exercise their rights to form and join unions and to collectively bargain (*see section below on "freedom of association and collective bargaining"*).

Finally, the Workers' Group may wish to call on member states to **ratify Conventions 149 and 189** and on the Office to undertake ratification campaigns including through technical assistance.

### **3. Working conditions of nursing personnel and domestic workers**

The General Survey provides a comprehensive analysis of the working conditions of nursing personnel and domestic workers, which too often do not meet the requirements set out in international labour standards. The Experts recall in that regard that **both Conventions 149 and 189 guarantee that nursing personnel and domestic workers shall have the same labour rights and working conditions as those enjoyed by other workers**.

The Report underlines the **excessive hours of work** for nursing personnel including shift work which in many cases is not aligned with Recommendation 157<sup>5</sup> and the serious problem with **inadequate remuneration** for nursing personnel in many countries. The Experts recognise the special nature of nursing work and the **specific risks** to their safety and health. They note that the **lack of attention to OSH concerns** negatively influences the retention of nursing personnel and exacerbates the shortage of nurses. The Experts recall that **cooperation between employers and workers is an essential principle of OSH**, and an indispensable tool to help ensure safe workplaces, in a manner that respects collective bargaining and its outcomes and does not undermine the role of trade unions. The Experts add that while Convention 149 and Recommendation 157 do not specify this explicitly, they consider that **OSH measures should not involve any expenditure for nurses**. And with regard to social protection, the report notes **differences in scope, extent and adequacy of coverage** between nationals and non-nationals, salaried workers and self-employed workers or those working under different contract arrangements, as well as between salaried workers employed in the public and private sectors. The Experts consider that comprehensive and **inclusive social protection policies are an important component of national strategies to plan healthcare staffing needs, distribution and retention on the path to universal health coverage**.

**Domestic work** notes as generally undervalued and poorly regulated, resulting in millions of domestic workers being overworked, underpaid and unprotected. Additionally, the enforcement of labour laws in the domestic work sector poses significant challenges. There are often **gaps in legal coverage** of domestic workers<sup>6</sup> including;

Hours of work: almost **half** of all domestic workers globally (48.9 percent) are **not covered by legal limits** on normal hours of work and the countries in which domestic workers are excluded from weekly rest are also those with the largest number of domestic workers.

Minimum wages: globally, **only 35 percent** of domestic workers (25.5 million) are **entitled to a minimum wage** that is at least equal to that of other workers. In this respect, the Experts note that an argument sometimes put forward in support of the exclusion of domestic workers is that the households that employ domestic workers cannot afford to pay minimum wage rates. However, ILO studies have shown that this argument is not well founded.<sup>7</sup> More generally, **remunerations** in the domestic work sector are **substantially lower** than in other sectors. Undervaluation of domestic work contribute to this situation (*see section below on “gender dimension of care work”*)

Occupational safety and health: the Experts consider that in the context of the **COVID-19 pandemic**, domestic workers are **frontline workers**. While in most countries domestic workers are covered by the general OSH legislation, the **mere application of general legislation to domestic workers is not sufficient** and measures must be adapted to the specific characteristics of domestic work and the domestic workplace.

Social security schemes: **effective social protection coverage of domestic workers is still rare**, particularly due to their prevalence in informal employment. Only 6 percent of domestic workers are covered by all social security branches. 46.5 percent have no legal entitlement to maternity leave. The largest gap in legal coverage is in unemployment insurance, with 71 percent of domestic workers not being covered. Domestic workers are often excluded from coverage because they do not meet the minimum number of hours or earning thresholds established. In this regard, the Experts list a number of measures that can be adopted to **ensure that domestic workers have access to social security schemes**:

- **abolition of minimum thresholds** to access social security schemes and benefits;
- **simplification of administrative procedures** (as domestic employers are primarily private households and many domestic workers work for more than one employer);
- achievement of **universal social protection**;
- **portability of social security contributions and benefits** (which is crucial for migrant workers for the recognition of contributory periods generated abroad);
- conclusion of **bilateral and multilateral social security agreements** that explicitly include domestic workers.

<sup>5</sup> The Experts consider that the actual length of a shift for nursing **personnel should not exceed** the actual length of a working day, including overtime, namely **12 hours**. Moreover, the normal working week of shift workers should remain within the limits of the normal working week of nursing personnel, which **should not exceed 40 hours**. Shift work beyond this limit should be remunerated at overtime rates or form an exception to the recognized rules or custom of the establishment. In addition to the **12-hour rest period between shifts, the minimum 36-hour weekly rest period should apply** to nursing personnel who work in shifts.

<sup>6</sup> 88 per cent of countries included in a survey sample in 2020 ensure at least partial coverage of domestic workers. The estimates also show a growing tendency to cover domestic workers through both general and specific labour laws or subordinate regulations, resulting in **53.4 percent of domestic workers being recognized wholly or partially by labour laws or regulations**.

<sup>7</sup> Para. 779.

The General Survey also focuses on the most egregious violations of rights and freedoms of domestic workers, particularly:

**Child labour:** **7.1 million children** are engaged in forms of domestic work worldwide. In view of the higher concentration of girls in the domestic sector, the Experts emphasize the need to **address gender norms and discrimination**, which increase the risk of child labour for **girls** in domestic work, particularly as child domestic labour is normally hidden from public view and is beyond the scope of labour inspectors, leaving children **especially vulnerable** to physical, verbal and sexual abuse.

The Experts also recall that **Article 4(2) of Convention 189** requires Members to take measures to ensure that work performed by domestic workers who are between the minimum age and 18 years of age are not deprived of compulsory **education** or interfere with opportunities to participate in further education or vocational training.

**Forced labour:** According to ILO estimates, in 2016 there were an estimated **16 million people** in forced labour in the private economy, with **domestic workers representing the largest share** (24 per cent), and with women and girls making up 71 per cent of victims of modern slavery, particularly in the private economy (including domestic work). (*see also section below on “migration and labour supply”*)

The Committee of Experts expressed deep concern that many domestic workers, particularly migrant women domestic workers, are victims of different forms of forced labour. It also recalls that **all Member States**, regardless of whether or not they have ratified the ILO core Conventions, **have an obligation arising from the very fact of membership in the Organization to respect, promote and realize the fundamental principles and rights at work for all workers, including domestic workers**. The Experts therefore urge Member States to take measures, together with the social partners and other relevant actors, to **eliminate all forms of forced labour and ensure the effective abolition of child labour in the domestic work sector**. Such measures should include **addressing the root causes and factors** that heighten the risks of forced labour and child labour, as well as **strengthening the labour inspection services and other compliance mechanisms**.

### ***Workers’ Group Recommendations***

The Workers’ Group may wish to rely on the findings of the General Survey and on country examples to illustrate the **harsh working (and living) conditions** of both nursing personnel and domestic workers. A focus on the devastating impact of the **COVID-19 pandemic** on already strained working conditions could be helpful in demonstrating the urgent need for action. The Workers’ Group could echo the Committee of Experts’ comment by which ensuring the safety, health and well-being of nursing personnel should be accorded the **highest priority** in the development and implementation of any country’s strategic **health policy and crisis planning**.

The Workers Group could call on governments to **address, without delay, the many decent work deficits** which affect both professions and to **improve their employment and working conditions**, including: restrictions on hours of work and the provision of adequate rest periods, decent working time arrangements, adequate and equitable remuneration, measures to enforce the protection of wages (for domestic workers), specific protection for live-in domestic workers, OSH measures adapted to the specific risks and needs in both sectors (e.g. musculoskeletal injuries, personal protective equipment, working with cleaning chemicals and other hazardous substances, violence and harassment, including psychosocial risks and hazards), access to social security and to benefits that are adapted to the specific needs of both categories of workers (e.g. lower pension age, employment injury benefits, unemployment benefits, maternity protection, etc.). Governments should also adopt more proactive measures to **combat forced labour and child labour** in the domestic work sector.

#### **4. Gender dimension of care work**

There are 381 million care workers globally and around 70 percent of them are women. Among nursing personnel, this rate is even higher with women representing 89 per cent of the nursing workforce globally. Women domestic workers account for 76,3 percent of over 75,6 million domestic workers worldwide.

With a high majority of feminised workforce being women, employment and working conditions are characterised by **gender segregation and segmentation, undervaluation of the work, low remuneration and increased risk of violence and harassment at work**. The Report further underlines that one of the reasons for the undervaluation of paid care work (known as the “care pay penalty”) is the lack of recognition of unpaid care work, largely performed by women which contributes to lowering wages.

**In the healthcare sector**, gender discrimination affects women nurses in four key areas: occupational segregation, lack of access to decent work, the gender pay gap and absence of leadership opportunities. The **gender pay gap**

reaches an average of 26 percent in high-income countries and 29 per cent in upper-middle-income countries (the overall gender pay gap is estimated at 20 percent globally). The Experts underline that if gender bias within the health workforce is not addressed, it creates inefficiencies in health systems, negatively affecting the recruitment, deployment and retention of women workers, and contributing to distribution imbalances between the formal and informal health workforce, as well as between the public and private sectors.

The vast majority of **domestic work** globally is carried out by women and girls, with **traditional gender norms** in many countries contributing to the perception that domestic work is innately “women’s work” which requires no particular skills or qualifications. As a result, domestic work continues to be **invisible, undervalued and remains one of the most poorly remunerated occupations**: domestic workers globally earn 56.4 per cent of the average monthly wages of other workers and women domestic workers earn just half (51.1 per cent) of the average monthly wages of other employees, and significantly less than their male counterparts (for whom the rate is 67.3 per cent).

Nationality, age, race, ethnic or social origin, cultural background are also sources of discrimination and the Experts draw attention to the vulnerability of domestic workers, particularly migrant domestic workers, to **multiple and intersectional forms of discrimination** which exacerbate existing inequalities.

Finally, the Experts highlight the increased risk of **violence and harassment** for domestic workers and nursing personnel and recall the provisions of the Violence and Harassment Convention, 2019 (No. 190), and its accompanying Recommendation No. 206 which call on Members to adopt appropriate measures for sectors or occupations and work arrangements in which exposure to violence and harassment may be more likely, including domestic work (Paragraph 9).

With regard to nursing personnel, the Committee notes that a large percentage of women in the global health workforce face sexual harassment and emphasize in this respect that sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers. For the Committee, **nurses should be considered a priority group for risk assessment** and measures should be taken to ensure that processes and strategies are in place to reduce risk and protect them from all forms of violence and harassment.

Furthermore, the Experts reiterate that **domestic workers**, and especially migrant domestic workers, are **particularly vulnerable to abuses**, particularly sexual harassment, maltreatment, and physical and psychological violence. They reiterate the provisions of Convention 189 which call for the **effective protection** of domestic workers against all forms of abuse, harassment and violence (Article 5) and insist on the **proactive nature of the measures** to be adopted. The Experts recall the 2003 general observation on Convention No. 111, in which they highlighted the importance of taking effective measures to prevent and prohibit sexual harassment at work. Such measures should **address both quid pro quo and hostile environment sexual harassment**.

### Workers’ Group Recommendations

The Workers’ Group may wish to stress the need for equality of treatment and non-discrimination highlighting the negative impact of **gendered perceptions of women’s roles in society** including **occupational segregation and the undervaluation** of the work that women perform.

**Domestic workers** are still largely **excluded** from national laws on equal pay and non-discrimination, either explicitly or implicitly. The Workers’ Group may wish to echo the Experts’ comment that particular attention should be paid to ensuring that domestic work is not undervalued due to **gender stereotyping**. Aside from the adoption of laws, ensuring the **collective representation of domestic workers** and **promoting collective bargaining in the sector** can help achieve this goal. The Group could add that when adopting legislation or other measures to address discrimination against domestic workers, it is necessary to take into account both **multiple and intersecting forms of discrimination and inequalities**, including pervasive gender inequality.

As to **nursing personnel**, the Group could point out that **women are over-represented in low-paying occupations** and remain under-represented in managerial and decision-making positions. Special measures should be adopted and implemented, including through collective bargaining, to ensure **anti-discrimination and equal treatment**; provide **maternity protection**; promote **work–family reconciliation**; and undertake objective, **gender-neutral job evaluations** in the setting of pay scales, pay transparency and other **equal pay** measures; as well as measures for **career progression**. These measures should address both vertical and horizontal gender occupational segregation.

Finally, the Workers’ Group may call for concrete and proactive measures to protect domestic workers and nursing personnel, in line with **Convention 190 and Recommendation 206 which provide a strong and more detailed framework of action** for governments and social partners. The ratification of Convention 190 and its implementation, together with Recommendation 206, should be an integral part of any strategy.

Given the increased vulnerability of domestic workers to abuses, violence and harassment, governments should **collect statistical data** on the number of complaints of harassment, abuse and violence received in the context of domestic work, their outcome, the penalties imposed on those responsible and the compensation granted.

For nursing personnel, the Workers' Group could stress that **measures adopted in relation to safety and health** should always address the issue of violence and harassment at work and that nursing personnel and their representatives should **fully participate** to the formulation of such measures.

## 5. Employment relationship and non-standard forms of employment

With regard to **nursing personnel**, the Experts observe that in recent years, health sector reforms carried out in response to cost and efficiency concerns have led to **increased use of non-standard forms of employment** (NSFE), such as fixed-term and casual work, temporary agency work, dependent self-employment and part-time work. In certain countries there is an increasing trend to use other non-standard arrangements, including outsourcing certain types of work, and zero-hours contracts. In addition, as the world of work is transformed by technological innovations, many nurses may provide services remotely from their home or other settings.

Workers in these kinds of arrangements tend to be **more exposed to decent work deficits**, including job insecurity, lower pay, gaps in access to social protection, higher occupational safety and health risks, and limited organizing and collective bargaining power.

The Experts recall that **Convention 149 and Recommendation 157 apply to all nursing personnel, wherever they work<sup>8</sup> and irrespective of their legal employment status** (workers in the private sector or civil servants, employees, NSFE, self-employed, agency workers or voluntary workers). Moreover, the Committee considers that the **principle of equivalence of employment conditions** should apply to all persons providing nursing care and services, regardless of the form of employment. Finally, the Experts note that NSFE are sometimes used to avoid the application of labour law. They stress the need to **appropriately regulate the use of NSFE** to prevent workers from being excluded from legal protections to which they are entitled.

**Most domestic workers are in informal employment** (81.2 percent of all domestic workers), representing almost twice the share of informal employment of other employees (39.7 percent). According to the ILO, **informality is one of the main causes of the decent work deficits** present in the domestic work sector.

Additionally, the Experts take note of the increasing use of online web platforms and apps to hire domestic workers (**gig** or **“on-demand” work**) and of the growing role of service providers as intermediaries. According to ILO estimates, the number of digital labour platforms in the domestic work sector rose from 28 in 2010 to 224 in 2020. Another phenomenon observed in certain countries, particularly in South America and among the industrialized countries, is the continued growth in the proportion of **domestic workers who work for more than one employer, or who work for just one employer but do not live in the household**.

The Committee notes, in this regard, that many trade unions denounced situations in which the employment relationship is disguised and the domestic worker is left unprotected. The Experts clearly state that the objective of the domestic work instruments is to ensure that **all workers who perform domestic work on an occupational basis benefit effectively from the protections afforded by the instruments**.

The report notes the definition of “domestic worker” under article 1(b) of Convention 189 as “any person engaged in domestic work within an employment relationship”. In explaining further this definition, the report indicates that *“Self-employed persons and independent contractors are not considered “domestic workers” within the meaning of the Convention.”* The report however emphasises that the only exclusion provided under article 1 of the Convention are **persons who perform domestic work occasionally or sporadically and not on an occupational basis** including day labourers and similar precarious workers<sup>9</sup>. The Report also notes the importance of the use of the term “worker”

<sup>8</sup> This provision encompasses the entirety of the nursing profession, whether nurses work in hospitals, clinics, community services, or in any of a vast range of other settings, including factories, schools, private households, residential homes for people with dementia and long-term conditions, hospices, prisons, on the streets with homeless people and sex workers, in the armed forces in conflict zones, or in humanitarian organizations caring for victims of conflicts, refugees and internally displaced people, and those affected by human and humanitarian disasters.

<sup>9</sup> See paras 565 and 568 of the report. See also the CEARC comments noting “The [Irish] Code [...] establishes a set of criteria to determine whenever a worker should be considered as an employee or as self-employed. The Committee observes that there is no definition of domestic work established in Irish legislation. It notes that because of the particular characteristics of domestic work, specific attention should be given to providing a definition of

and its particular significance to the ILO's "mandate to improve the living and working conditions of all workers"<sup>10</sup>. Therefore, the express exclusion of self-employed and independent contractors in the Report would need further clarification by the Experts to clear any potential confusion regarding the scope of article 1 of Convention 189.

### **Workers' Group Recommendations**

The Workers' Group could take note of the **increasing use of non-standard forms of working arrangements** in the **healthcare sector**, some of which are significantly more precarious and disadvantageous than traditional full-time open-ended working arrangements. The Group could emphasize, as did the Experts, that **Article 1(1) of Convention 149 provides that the term "nursing personnel" includes all categories of persons providing nursing care and nursing services, regardless of form of employment.**

The Group could also support the Experts' **call for further in-depth tripartite consultations** on these ongoing changes and their impact on nurses' working conditions to identify appropriate means of action to improve the working conditions of nursing personnel. The Workers' Group could also support the Experts' recommendation that **Members should take the necessary measures to prevent and remedy the unlawful use of NFSE in the nursing sector.**

With regard to **domestic workers**, the Workers' Group may wish to note the vulnerabilities and precarity associated with the work of domestic workers and reaffirm that **domestic work instruments apply to all domestic workers regardless of their employment status.** Emphasis should be placed on the high rates of informality and the prevalence of disguised employment, dependent self-employment and multiparty employment in the sector<sup>11</sup> leading to a heightened risk of **misclassification of domestic workers** excluding one of the most vulnerable categories of workers from labour protections.

In addition, the Workers' Group could recall the conclusions adopted on the 2020 General Survey on employment and decent work (June 2021) which called on the ILO to "**support governments in strengthening the institutions of work to ensure the protection of all workers and reaffirming the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers**" (point 19). Governments should therefore take measures to **prevent and remedy the unlawful use of NSFE, including disguised employment and dependent self-employment in the domestic work sector.**

Finally, the Workers' Group could recall that **formalization** is both a means of, and a necessary condition for, achieving decent work and living conditions for domestic workers. Echoing the Experts, the Group could call on governments to take the necessary measures, in collaboration with the social partners, to address the negative consequences of informality, as well as its root causes, in line with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

## **6. Freedom of association and right to collective bargaining**

**Both Conventions 149 and 189 highlight the importance of freedom of association and collective bargaining** for the attainment of decent work and refer to social dialogue as a crucial means for the effective implementation of their provisions. The Experts consider that the importance of **freedom of association and collective bargaining** cannot be overstated as the **cornerstone of decent work** for care economy workers and reiterate that **both Conventions 87 and 98 apply to all domestic workers and nursing personnel.** The Experts also recall that Member States have an obligation arising from the very fact of membership in the Organization to respect the fundamental principles and rights at work irrespective of whether they have ratified Conventions 87 and 98.

However, the Experts identify a number of **obstacles** which prevent nursing personnel and domestic workers from fully exercising these rights.

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domestic work in the national legislation. It further notes that the Government does not indicate whether a person who performs domestic work on an occupational basis, but does so only occasionally or sporadically is considered as a domestic worker. **The Committee recalls that, regardless of the type of contract held by workers providing domestic services, the definition of domestic worker laid down in Article 1 of the Convention excludes only persons who perform domestic work occasionally or sporadically and not on an occupational basis.** The Committee requests the Government to indicate any measures taken or envisaged to incorporate a definition of domestic work in national legislation or collective agreements that is compatible with the Convention. It also requests the Government to indicate in what manner it ensures that persons who perform domestic work occasionally or sporadically but do so on an occupational basis are covered by the guarantees established in the Convention." CEACR, Ireland, Convention 189 (2018).

<sup>10</sup> See box on "the use of the term "domestic worker" on page 218 of the report

<sup>11</sup> For examples, see box on Brazil under para. 567 and box on Germany under para. 572.



They note that freedom of action of **nursing personnel** is limited by the fact that nursing is considered a **vital public service** and nurses and other health workers are covered by special obligations to ensure uninterrupted care services. While examples of the exclusion of nurses in law from the right to organize are rare, the Experts note that **anti-union discrimination** and the absence of effective sanctions may, in practice, deter nurses from organizing, particularly in the private sector.

**Domestic workers** in many countries are still **excluded from coverage** by national labour legislation and therefore from recognition of their right to organize. In certain countries where recognition of collective labour rights is restricted to employees, domestic workers are implicitly excluded from these rights because the national legislation does not recognize the relationship between a householder and a domestic worker as an employment relationship (*see above section on “employment relationship and non-standard forms of employment”*). Another implicit mechanism that excludes domestic workers from the right to organize or bargain collectively derives from the legal requirements for the establishment of trade unions, which are often very difficult or impossible to fulfil for organizations representing domestic workers.

The Experts explicitly recall that the **exclusion of domestic workers from the effective recognition of their right to freedom of association and collective bargaining is incompatible with Article 3 of Convention 189 and Paragraph 2 of Recommendation 201**<sup>12</sup> and encourage governments to take steps to ensure that domestic workers enjoy legal protections for the exercise of these fundamental rights.

They stress the importance of not only **removing all legislative and practical obstacles** that prevent domestic workers from exercising their right to establish and join organizations, but also taking active measures to encourage and support the establishment of organizations of domestic workers in the domestic work sector. Ways of addressing these obstacles could include recognizing the right to freedom of association in relation to the type of work performed, without linking the establishment of organizations to employment in a company or enterprise, to avoid the implicit exclusion of domestic workers employed directly by households. Similarly, minimum threshold requirements (e.g., at the sectoral level) should take into account the specific challenges of outreach to domestic workers in individual households. Additionally, in view of the specificities of domestic work, it is of particular importance to remove any legal or administrative obstacles that hinder individual householders from establishing organizations to represent their interests and to take measures to encourage their engagement in social dialogue on matters of interest to them.

With regard to the personal scope of the right to collective bargaining, the Experts highlight that **all domestic workers should be able to exercise their right to collective bargaining, without distinction and regardless of their nationality** (migrant domestic workers) **or employment status** (independent domestic workers).

### Workers’ Group Recommendations

The Workers’ Group could assert once again that the **right to form and join trade unions and the right to collective bargaining must be guaranteed to all workers without distinction and irrespective of their employment status or nationality**. The Workers’ Group may wish to support the suggestion of the Committee of Experts for the Office to undertake **studies regarding the situation of nursing personnel and domestic workers** who, while undoubtedly covered by fundamental rights and principles at work, may not always be afforded the protections envisaged under Conventions 149 or 189, with a view to determining the measures that might be feasible to afford them access to decent work.

In view of the many **legal and practical obstacles** to the full enjoyment of these rights by **domestic workers**, due attention should be paid to their **specific needs and targeted measures**, including those outlined by the Experts, should be implemented.

As regards **nursing personnel**, the Workers’ Group may wish to illustrate the obstacles encountered by nurses in exercising their rights to freedom of association and collective bargaining. The Group could also recall that while nursing services are considered essential services for which a **minimum operational service** can be required, the definition and organisation of such service should be the subject of a **negotiation between employers and workers**.

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<sup>12</sup> Paragraph 2 of Recommendation No. 201 explicitly calls on Members to identify and eliminate any legislative or administrative restrictions or other obstacles to the effective exercise by domestic workers of their fundamental right to establish their own organizations or to join organizations of their own choosing, and to take or support measures to strengthen the capacity of organizations representing domestic workers and those of their employers to promote effectively the interests of their members.

## 7. Migration and labour supply

The General Survey emphasizes the migration aspects of the care economy. 3.7 million nurses (13 per cent of all nursing personnel) were born or trained in a country other than the one in which they practice, while according to ILO estimates, over 11 million domestic workers are international migrants. The vast majority of migrant workers in the care sector are women.

The Experts stress that while migration offers opportunities for better living and working conditions for many workers, it can also present significant risks. The various migration steps may expose migrants, particularly female migrants, to risks of exploitation, harassment or abuse.<sup>13</sup>

The Committee recalls that both nursing personnel and domestic workers are protected by the labour migration instruments, that is **Convention 97 and Recommendation 86, as well as Convention 143 and Recommendation 151**. These instruments provide protections for workers from the moment of departure from the country of origin, during transit through other countries and arrival in the country of destination, as well as repatriation.

With respect to **nursing personnel**, the Experts observe that international migration has further reduced the nursing workforce in countries already suffering from acute shortages, particularly lower-income countries. For instance, the average number of nurses per 10,000 population in the African region is 8.7, compared to 83.4 in the Americas. Migration corridors for nursing personnel are shifting, with the European Union experiencing an increase in east-to-west migration flows among its Member States. Increased South–South migration flows are also apparent, from South and South-East Asia to West Asia and within Africa.

**The inequitable geographical distribution of nursing personnel contributes to less resilient health systems and services in lower-income countries, affecting the quality of care provided.** The Experts recommend that governments take coordinated action, in collaboration with the social partners and in consultation with other relevant stakeholders, to address the current and projected shortages of nursing personnel at the national, regional and global levels. The Experts also stress the need to apply and guarantee **equality of treatment** with nationals in similar professions, as required by **Convention 118**. They note that in practice, a number of national social security systems impose eligibility criteria linked to nationality, and migrant workers may be covered by separate arrangements under the direct responsibility of their employer or may not be afforded coverage. The Experts highlight that international social security agreements can play a central role in securing the portability of benefits and a continuum of protection across borders.

The General Survey outlines the **many factors that make migrant domestic workers particularly vulnerable**, such as: unfamiliarity with the local language and culture and national labour and migration laws, their dependence on the job and employer where their migration status is linked to the employer (e.g. “kafala” system), migration-related debt, practices by employers and private employment agencies that restrict their freedom to leave the workplace, dependency on the employer for food and lodging and the reliance of family members on remittances. These risks are further exacerbated when migrant domestic workers are undocumented or in an irregular situation, as fear of deportation may deter them from attempting to seek help from national authorities.

The Experts recommend that countries **scale up measures at the national, regional and global levels aimed at detecting, identifying and addressing abusive practices against migrant workers**, such as physical and sexual harassment or violence; debt bondage; forced labour; withholding, late payment or underpayment of wages and benefits; confiscation of identity documents and labour contracts; and the threat of denunciation to national authorities.

Noting that migrant domestic workers remain **excluded from labour and social protections** in many countries, the Committee urges countries to take measures, in line with relevant ILO instruments on migrant workers, to **ensure that national labour legislation and social laws cover all migrant domestic workers** and that they benefit from equality of treatment with national workers, in particular with regard to wages, OSH protection, social protection and other conditions of work.

On **private employment agencies (PEAs)**, the Experts note that domestic workers hired by private employment agencies are excluded from coverage in a number of countries and stress the need for measures to protect migrant

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<sup>13</sup> The Experts also underline that the migration pathways of nursing personnel and domestic workers frequently intersect, but that the high entry and regulatory requirements for trained nurses distinguish the two occupational groups. In some cases, however, migrant nurses whose foreign qualifications are not recognized in the destination country may decide to accept jobs that do not require formal qualifications, such as in the domestic work sector.

workers from abusive or unethical practices by PEAs. Such practices may include: false information regarding the type of employment and the conditions to be expected in the destination country; illegal recruitment fees, which often lead migrants to incur large debts; the confiscation of identity documents; and threats, intimidation and the withholding of wages.

They recall that **Convention 189 contains specific provisions** aimed at protecting this category of workers from potential abuses and unethical practices of PEAs (Article 15) and that Recommendation 201 (Paragraph 23) emphasizes the link between Convention 189 and **Convention 181** on PEAs.

### ***Workers' Group Recommendations***

The Workers' Group may wish to provide examples illustrating the difficulties in migrating and harsh working and living conditions of migrant domestic workers in order to stress the **urgent need for measures to ensure safe migration** paths; to provide them **protection under national labour legislation and social laws**; to detect, identify and address abusive practices against migrant workers, especially forced labour and child labour, and to detect and address **unethical and abusive practices** by private employment agencies. States should collaborate at the regional and global levels to achieve these goals.

The Workers' Group may also wish to support the Committee of Experts' recommendation that government should assess, in consultation with the social partners and representatives of nursing personnel and other key stakeholders, the **nursing workforce needed** – both now and in the future – to deliver quality nursing services across all regions. The results of the assessment will provide an evidence base for strategic workforce planning that can enable the effective education, recruitment, deployment, retention and management of the nursing workforce, as well as its equitable distribution within and across countries. The Group could also support measures aimed at **enhancing mobility**, including through the harmonisation of nursing education and training and of the requirement for authorisation to practice, cross-border recognition of qualifications and promotion of training exchanges.

To strengthen countries' engagement towards **safe migration and equal treatment** between migrant workers and nationals, the Workers' Group could call on ILO member states to **ratify Conventions 97 and 143 and Convention 118** (equality of treatment – social security).

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