

SOCIAL JUSTICE
DECENT WORK

Policy Advocacy Brief:

Towards ratification of the

Domestic Workers Convention in Myanmar



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Domestic Workers Convention in Myanmar



International Labour Organization
ILO Liaison Officer for Myanmar

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First published (2018)

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Title: Policy Advocacy Brief: Towards Ratification of the Domestic Workers Convention in Myanmar

English edition

ISBN: 978-92-2-132770-7 (print)

978-92-2-132771-4 (web pdf)

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This advocacy brief was prepared by Kay K Soe, Consultant. Illustrations by Liz Cameron.

Printed in Yangon, Myanmar

Acknowledgements

We thank the European Union and governments of Australia, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Sweden, Switzerland, the United Kingdom and the United States of America for their kind contributions to improving the livelihoods and food security of rural people in Myanmar. We would also like to thank the Mitsubishi Corporation, as a private sector donor.

Disclaimer

This document is supported with financial assistance from Australia, Denmark, the European Union, France, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Sweden, Switzerland, the United Kingdom, the United States of America, and the Mitsubishi Corporation. The views expressed herein are not to be taken to reflect the official opinion of any of the LIFT donors.

Table of Contents

Acknowledgements	iii
Disclaimer	iii
Figures, tables, and boxes	v
Abbreviations and acronyms	vi
1. Introduction	1
2. Growing a Convention: Convention No. 189 is born	3
3. What is the difference between a Convention and a Recommendation?	7
4. Monitoring the application of a ratified Convention	8
4.1 Complaints procedure	9
5. Ratification of Convention No. 189: Different perspectives	10
5.1 Governments	10
5.2 Employers' and workers' organizations	10
5.3 Workers' organizations, including domestic workers groups and civil society	10
5.4 The gender perspective	11
5.5 The labour perspective	11
5.6 The employer perspective	12
5.7 The economic perspective	12
6. How an International Convention is ratified in Myanmar	13
7. How a national law is promulgated in Myanmar	15
8. Recommendations	17
Bibliography	18
Annex I. Convention No. 189 and Recommendation No. 201:	
Key articles and provisions	20
Basic definitions	20
Basic rights of domestic workers	20
Information on terms and conditions of employment	21
Hours of work	21
Remuneration	22
Occupational safety and health	23
Social security	23
Standards concerning child domestic workers	24
Standards concerning live-in workers	25
Standards concerning migrant domestic workers	25
Private employment agencies	26
Dispute settlement, complaints, and compliance	27
Annex II. Examples from CEACR reports on the application of Convention No. 189	28
Philippines – Direct request (CEACR)	28
Germany – Direct request (CEACR)	28
Argentina – Direct request (CEACR)	29
Nicaragua – Direct request (CEACR)	30
Costa Rica – Direct request (CEACR)	30

Figures, tables, and boxes

Box 1.	Who are the policy influencers?.....	1
Box 2.	Who are the policy-makers?	1
Box 3.	In brief: Steps to Ratify a Convention in Myanmar	2
Box 4.	Question to member States regarding potential international instrument of domestic work and summary of responses	5
Box 5.	Ecuador case study	6
Figure 1.	The ILO process to develop a Convention	4
Table 1.	Countries that have ratified Convention No. 189 (as of November 2018)	7

Abbreviations and acronyms

APMM	Asia Pacific Mission for Migrants
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DGB	German Trade Union Confederation
ILO	International Labour Organization
ILC	International Labour Conference
MP	Member of Parliament

1. Introduction

This policy advocacy brief is intended to be used by policy makers and policy influencers who are searching for ways to improve the situation of domestic workers through the ratification of the Domestic Workers Convention, 2011 (No. 189). However the brief should also be useful for policy makers and influencers seeking to use International Conventions to advance social justice in other areas including forced labour, migration and worst forms of child labour.

This brief provides a short explanation on how international standards are developed through the International Labour Organization (ILO) system and explores in particular the process that led to the adoption of Convention No. 189 and Recommendation 201.

Box 2. Who are the policy-makers?

Parliamentarians, ministers at union and state and regional levels, and local municipalities, commissions. Labour organizations/trade unions are natural stakeholders in employment policy making (ILO, 2015)

The policy brief discusses the benefits of ratifying Convention No. 189, and examines why international labour standards for domestic workers matter to Myanmar. It explores the implications of ratifying in terms of the employment relationship between employers and domestic workers and how the Convention would provide a new format to better safeguard both workers and employers. It explains the obligations of countries that have ratified Conventions, as well as the monitoring procedures, and provides examples from other countries. It also presents the process of ratification in Myanmar. As an easy reference, Annex I outlines by topic the key articles of Convention No. 189 as well as the supporting details provided in the accompanying Domestic Workers Recommendation, 2011 (No. 201). Annex II provides excerpts from the Convention Committee reports to countries that have ratified the Convention which may be useful for Myanmar.

Box 1. Who are the policy influencers?

Domestic workers, This policy brief should be shared with domestic workers, and be adapted as necessary to ensure domestic workers can play a role in influencing policy.

Employers of domestic workers who are also at risk without legal protections in place. Standards give clarity and guidance to employers and provide peace of mind.

Labour organizations/trade unions play a major role in influencing policy and ensuring representation domestic workers.

Civil society groups who support domestic workers may include women's groups, religious groups, and educational groups, human rights bodies.

Civil servants are also instrumental in influencing the shaping of policies, particularly their implementation.

Academics and researchers influence policy by providing empirical evidence in support of particular recommendations.

The amount of **media** attention to an issue can influence the level of interest at the policy level. The media's approach to the issue can influence public opinion, which then in turn can influence policy-makers.

Social media, unlike mass media, has no duty of neutrality or impartiality. Voices on social media can amplify quickly and can have fairly dramatic influence on public opinion, both positively and negatively.

The Domestic Workers Convention, 2011 (No. 189) was developed through the ILO tripartite mechanisms involving representatives of member governments, employers' associations and trade unions and with participation from domestic workers and their support groups. It was adopted at the International labour conference and set new international standards for domestic workers, ensuring that domestic



workers can exercise their labour rights and their work can be valued and respected, and that employers and policy makers have a set of standards that can guide their employment practices and the development of legal frameworks.

Convention No. 189 and Recommendation No. 201 set out basic principles and minimum labour standards for domestic work, while recognizing its specific nature, the varied employment arrangements in which domestic workers are employed, and the differing legal regimes and socio-economic circumstances of member States (ILO, 2012a).

It is critical that policy-makers and policy influencers understand the labour standards set in the Convention, including the fundamental principles and rights at work; protection against abuse, harassment, and violence; standards for living conditions of domestic workers; working times and remuneration; rest periods; and protection for young workers; with the aim of adopting such standards within national practice and legislation.

Box 3. In brief: Steps to Ratify a Convention in Myanmar

The Ministry of Labour, Immigration and Population (MOLIP) or Members of Parliament (MPs) may propose Convention No.189 for ratification.

In the following step by step process, MOLIP is the primary sponsor for the ratification process.

Step 1.

MOLIP expresses interest in ratifying the Convention to the Director-General of the ILO.

Step 2.

MOLIP approaches the Commission for the Assessment of Legal Affairs and Special Issues (CALASI) of the Amyotha Hluttaw (Upper House) to scrutinize the Convention. Other relevant Ministries are also asked to comment, in particular the Ministry of Foreign Affairs and the Ministry of Home Affairs.

Step 3.

MOLIP requests a date for deliberation by the Pyidaungsu Hluttaw (Assembly of the Union).

Step 4.

Materials are circulated to MPs for review 7 days before the discussion in Parliament.

Step 5.

MPs who plan to participate submit their names to the Parliament Chairperson 3 days in advance

Step 6.

On the date set MOLIP presents the Convention with explanations at the Pyidaungsu Hluttaw and answers MPs questions.

Step 7.

The decision of the Parliament is transmitted to the President

Step 8.

The Parliament, through the President's Office inform the Director-General of the ILO of the agreement to ratify the Convention.

(The full process is documented in Section 5.)



2. Growing a Convention: Convention No. 189 is born

The first step towards developing a Convention is for a problem to be identified. In the case of domestic work, the problem was identified a long time ago. As far back as 1948, the ILO adopted a resolution regarding the conditions of employment of domestic workers (ILO, 2010a). Then in 1965 the ILO called for normative action on domestic work (ILO, 2010a) and drew attention to the urgent need to establish living standards compatible with self-respect and human dignity. (ILO, 2011a). In 1970 the ILO conducted a survey that showed that domestic workers are “particularly devoid of legal and social protection” and “singularly subject to exploitation”, and that their interests and welfare had long been neglected (ILO, 1970, as cited in ILO, 2010a, p. 12).

Although no dedicated instrument was developed as a result of these recommendations, domestic workers were covered by international labour standards in many key areas, notably those that relate to fundamental principles and rights at work. Some Conventions and Recommendations, such as the Sickness Insurance (Industry) Convention, 1927 (No. 24) and the Medical Examination of Young Persons Recommendation, 1946 (No. 79), specifically stipulate that they apply to domestic workers. The ILO has repeatedly taken the position that, unless a Convention or Recommendation explicitly excludes domestic workers, they are included in the international instrument’s scope (Office of the Legal Adviser, Legal Opinion of 29th July, 2002 as cited in ILO, 2010a, para 56) Furthermore, the ILO’s supervisory bodies have called for labour protection to be extended to domestic workers in a meaningful way, “and have maintained that the specific nature of domestic work is not an adequate reason to exclude such workers from the protection of international labour standards”. (ILO, 2010a, para 57)

The ILO Multilateral Framework on Labour Migration, 2006, addresses the special needs of migrant domestic workers. Article 9.8 calls upon States “to adopt measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers, including domestic workers and other vulnerable groups, in particular in the areas of employment, maternity protection, wages, occupational safety and health and other conditions of work”.

The need for a legal framework to protect domestic workers was highlighted again by the mounting pressure from domestic workers groups from the early 2000s as well as increasing public concern regarding the levels of abuse being experienced by domestic workers. Additionally, the developed world was worrying about how to cope with the shortage of care workers for ever-increasing numbers of elderly people. At the same time, individual countries and cities including Jordan, New York City (United States), the Philippines, and Zambia were taking legislative and policy initiatives on domestic work. The accumulative pressure of all these factors resulted in the Governing Body putting the topic of domestic work on the agenda of the 99th Session of the International Labour Conference (ILC) in June 2010 with a view to setting an international labour standard on decent work.



Figure 1. The ILO process to develop a Convention

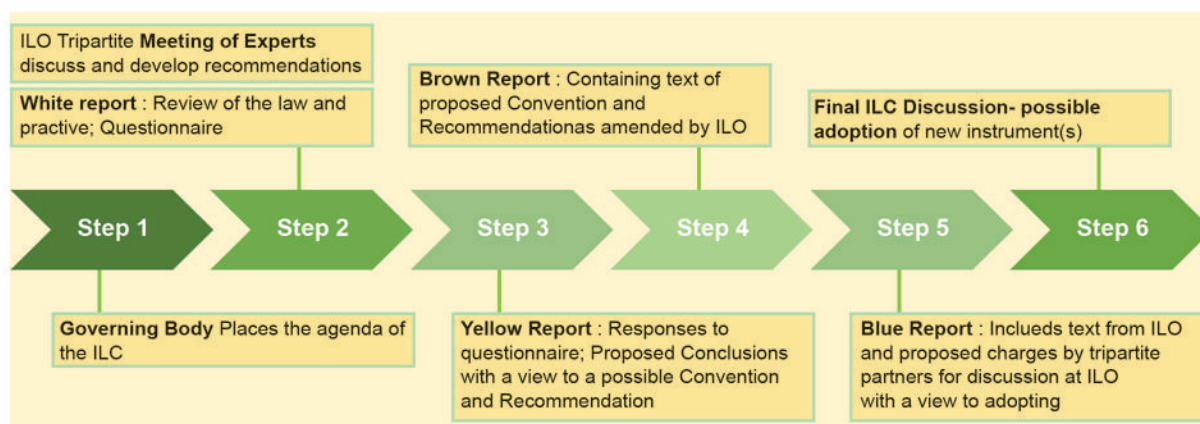


Figure 1 above illustrates the generic process by which the ILO develops a Labour Convention. In line with ILO procedures for developing a Convention, once the problem has been identified and the issue tabled for the agenda of the ILC, the International Labour Office prepares a report on the topic. This report provides content for a possible new standard, and includes a questionnaire for the governments of member States to complete and return to the Office. In relation to the development of the Convention on Domestic Work, this report contained examples of good laws and practices across the world. In the background to the report, the ILO noted:

Domestic work ... is rooted in the global history of slavery, colonialism and other forms of servitude. In contemporary society, care work at home is vital for the economy outside the household to function. In the past two decades demand for care work has been on the rise everywhere. The massive incorporation of women in the labour force, the ageing of societies, the intensification of work and the frequent lack or inadequacy of policy measures to facilitate the reconciliation of family life and work underpin this trend. Today, domestic workers make up a large portion of the workforce, especially in developing countries, and their number has been increasing – even in the industrialized world.

Domestic work, nonetheless, is undervalued and poorly regulated, and many domestic workers remain overworked, underpaid and unprotected. Accounts of maltreatment and abuse, especially of live-in and migrant domestic workers, are regularly denounced in the media. In many countries, domestic work is very largely performed by child labourers (ILO, 2010a, p. 1).

All member State governments were sent the report and requested to complete and return the questionnaire to the Office by a certain date. Governments were reminded that they were expected to consult the most representative organisations of workers and employers before finalizing their replies, and that the result of these consultations should be reflected in the governments' replies. Governments were also requested to indicate which organizations were consulted.

For the Domestic Workers Convention, the Office received replies from constituents from 103 member States, including the governments of 75 member States, one of which was the Government of Myanmar. Of the governments that responded, 46 stated that they had consulted with employers' and workers' organizations, in some cases through national tripartite meetings. Some countries carried out extensive nationwide consultations involving civil society organizations that worked with domestic workers and other women. For Cambodia and the Philippines, the views of these groups were reflected in joint replies by trade unions (ILO, 2010b). Written



submissions were also received from various national domestic workers organizations and from other stakeholders, such as regional and global civil society organizations including Human Rights Watch, Anti-Slavery International, the Migrant Forum in Asia, the Asian Migrant Domestic Workers Alliance, and the RESPECT Network, as well as some national domestic workers' associations. The replies of these groups were taken into consideration, but were not included in the ILO report.

For each question from the questionnaire, the International Labour Office collated the responses of the governments, employers, and workers and provided the total number of responses, the details of the respondent (country, affiliation). The Office also reprinted some of the comments provided. For example, Question 2 asked what form a domestic worker instrument should take (box 1).

Those issues where there was a wide variance in the answers, and which therefore needed to be discussed in detail at the ILC, included: the definition and scope of domestic work, working time, occupational safety and health, employment agencies, payment in kind, and right to privacy.

An updated report that included all the responses was then used as the basis for discussion at the 100th Session of the ILC. Included at the back of the report was a proposal for a Convention and Recommendation (ILO, 2011a).

At the 100th Session of the ILC, in addition to the traditional tripartite delegates – that is, two government, one employer, and one worker delegate for each of the 183 member States – domestic worker support groups were present and able to join in the discussions and to lobby constituents. They were, however, not able to cast votes themselves.

Conventions are adopted by a two-thirds majority vote of the ILO's constituents. On the 16 June 2011 at the 100th Session of the ILC, the Domestic Workers' Convention received 396 votes in favour and only 16

Box 4. Question to member States regarding potential international instrument of domestic work and summary of responses

Question 2:

Should the instrument or instruments take the form of:

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

Responses to Question 2:

- Six governments, two employers' organizations, and eight workers' organizations replied in favour of a Convention.
- Twenty-six governments, 15 employers' organizations, and five workers' organizations preferred to have only a Recommendation. The Myanmar Government voted for this option with the comment: "A Recommendation should be adopted to establish the principles and rights of domestic workers and offer guidance on the regulation of domestic work."
- Thirty-five governments, two employers' organizations, and a massive 115 workers' organizations supported a Convention complimented by a Recommendation.
- Eight governments, one employer's organization, and eight workers' organizations supported a Convention with binding and not binding articles.

Source: ILO, 2010b

against; there were 63 abstentions. The Myanmar Government voted in favour; while the primary destination countries for Myanmar domestic workers – Thailand, Malaysia, and Singapore – all abstained. The Recommendation passed with an overwhelming 434 in favour, only 4 against, and 42 abstentions. In a press statement afterwards, Juan



Somavia, then ILO Director-General, said: “We are moving the standards system of the ILO into the informal economy for the first time, and this is a breakthrough of great significance. History is being made” (ILO, 2011b).

Once a Convention has been adopted at the ILC, member States are required to submit it to their parliament or equivalent national competent authority. This body should then consider enacting relevant legislation to conform to the standard, as well as considering other actions, including ratification of the

Convention. An adopted Convention normally comes into force 12 months after being ratified by two member States. Ratification is a formal procedure whereby a State accepts the Convention as a legally binding instrument. For Convention No. 189, Uruguay was the first to ratify, followed by the Philippines on 5 September 2012; so that one year later, on 5 September 2013, the Convention came into force. After a State has ratified a Convention, it is obliged to adapt its national laws or create new laws to comply with the standards set in the Convention. As of November 2018, a total of 25 countries have ratified the Convention.

Box 5. Ecuador case study

Adoption and adaptation of national laws to be consistent with Convention No. 189

On 18 December 2013, Ecuador ratified Convention No.189. The ratification by Ecuador made it the 11th ILO member State, and the fifth Latin American member State, to ratify this instrument that seeks to improve the working and living conditions of domestic workers worldwide.

According to labour estimates by labour organizations in Ecuador, there are approximately 300,000 persons employed in the domestic sector, 95 per cent of whom are women. Only one fourth of these workers benefit from social security coverage, while two out of five domestic workers are paid the minimum wage. Two years after ratifying Convention No. 189 the Ecuadorean National Assembly passed a historic new law called the Law for Labor Justice and Recognition of Work from Home that formally recognizes the labour of domestic workers.

The reforms also included expansion of the 1938 Labour Code to ensure that the rights of domestic workers are recognized under the new labour law. This allowed, for the first time in the country's history, for domestic workers to join in the social security system, benefiting upward of 1.5 million people. In June 2016, social organizations and workers' groups organized among themselves to create the National Union of Remunerated Domestic Workers, the first of its kind in the country. The role of the National Union is significant, as it is tasked to conduct inspections of workplaces to ensure domestic workers receive the pay and vacation to which they are entitled, as well as ensuring workers are affiliated with the country's social security system. One other noteworthy reform is that the Government raised and regulated the minimum wages of domestic workers in line with all workers. Regardless of whether the worker is a live-in domestic worker, overtime is paid after eight hours of work.



3. What is the difference between a Convention and a Recommendation?

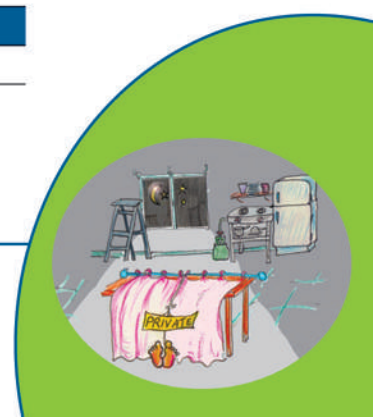
Conventions are open for ratification by member States and are legally binding. A country that ratifies a Convention has a legal obligation to adapt or create national laws to be in line with the Convention and to enable full implementation of the Convention.

Recommendations are not legally binding, but provide guidelines for all countries. Recommendations are not open for ratification. A Recommendation may supplement a Convention, providing more detailed guidance and information about how a Convention

should be implemented. This is the case with Convention No. 189, as it has the accompanying Recommendation No. 201. In other cases, a Recommendation may stand alone. As of November 2018, there are 189 Conventions, meaning that no Convention has been adopted since the Domestic Workers Convention, 2011. However, in 2018, the ILC provided comments on a proposed Convention on Ending Harassment and Violence in the World of Work. The proposed Convention will be discussed again at the ILC in 2019.

Table 1. Countries that have ratified Convention No. 189 (as of November 2018)

Country	Date of ratification	Status
Uruguay	14 Jun. 2012	In force
Philippines	5 Sep. 2012	In force
Mauritius	13 Sep. 2012	In force
Nicaragua	10 Jan. 2013	In force
Italy	22 Jan. 2013	In force
Bolivia	15 Apr. 2013	In force
Paraguay	07 May 2013	In force
South Africa	20 Jun. 2013	In force
Guyana	09 Aug. 2013	In force
Germany	20 Sep. 2013	In force
Ecuador	18 Dec. 2013	In force
Costa Rica	20 Jan. 2014	In force
Argentina	24 Mar. 2014	In force
Colombia	09 May 2014	In force
Ireland	28 Aug. 2014	In force
Switzerland	12 Nov. 2014	In force
Finland	08 Jan. 2015	In force
Dominican Republic	15 May 2015	In force
Belgium	10 Jun. 2015	In force
Chile	10 Jun. 2015	In force
Panama	11 Jun. 2015	In force
Portugal	17 Jul. 2015	In force
Jamaica	11 Oct. 2016	In force
Guinea	25 Apr. 2017	In force
Brazil	31 Jan. 2018	Will enter into force on 31 Jan. 2019
Total	25	

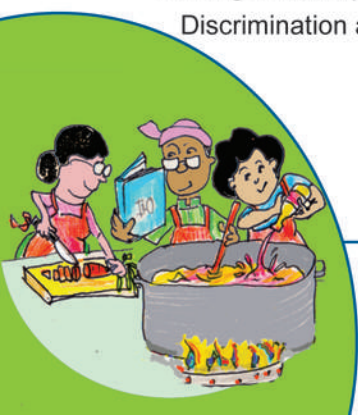


4. Monitoring the application of a ratified Convention

Ratifying countries commit themselves to applying the Convention in national law and practice and to reporting on its application at regular intervals, usually every five years, although reports on implementation may be requested at shorter intervals. Technical assistance is provided by the ILO if necessary. The standard Report Form for the Domestic Workers Convention, 2011 (No.189) of the International Labour Office, Geneva provides guidance on the format and content for the completion of the compliance report (ILO, 2011c). Governments are encouraged to consult with workers and employers organizations during the drafting of the report and are required to share copies of the final report with them. These organizations can comment on the government reports, and they can also send their respective comments on the application of the Conventions directly to the ILO.

The reports are first discussed in closed meetings by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR meets every November, and is composed of 20 independent legal experts. The CEACR comments are made in the form either of “observations”, which are published in the Committee’s Report on the Application of Conventions and Recommendations, or as “requests” dealing with more technical questions, which are addressed directly to the governments involved. These requests are not published. The CEACR’s report is then considered at the annual session of the International Labour Conference by a tripartite Conference Committee on the Application of Conventions and Recommendations (henceforth, the “Conference Committee”).

The CEACR’s annual report consists of three parts: Part I contains a General Report, which includes comments about member States’ respect for their constitutional obligations; Part II contains the observations on the application of international labour standards; and Part III is a General Survey. The annual report of the CEACR, usually adopted in December, is submitted to the ILC the following June, where it is examined by the Conference Committee. The Conference Committee, made up of government, employer, and worker delegates, examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report. The reports of both the CEACR and the Conference Committee are publically available on the Internet. Governments and the social partners thus have an incentive to solve problems in the application of standards in order to avoid critical comments by these bodies or by the general public. Upon request by member States, the ILO provides substantial technical assistance in drafting and revising national legislation to ensure that it is in conformity with international labour standards. Annex II provides excerpts from CEACR reports related to Convention No. 189. The excerpts give an overview of the different issues of concern to the CEACR, and also demonstrate the linkages the CEACR makes with recommendations provided to these countries by Committees working on the application of other International Conventions, including the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention of the Rights of the Child (CRC).



4.1 Complaints procedure

In parallel with these regular supervisory mechanisms, there is a complaint procedure for governments and ILO delegates to examine allegations that the provisions of a ratified Convention are not effectively being observed in a particular country. A complaint may be filed against a member State for not complying with a ratified Convention by a delegate to the International Labour Conference for example a trade union delegate, or by another member State that has ratified the same Convention, or jointly or by the Governing Body in its own capacity.¹ Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO's highest-level investigative procedure; it is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 12 Commissions of Inquiry have been established. In 1997 a Commission of Inquiry was set up following repeated complaints about Myanmar's application of the Forced Labour Convention, 1930 (No. 29).

When a country refuses to fulfil the recommendations of a Commission of Inquiry, the Governing Body can invoke Article 33 of the ILO Constitution, whereby the Governing Body “may recommend to the [International Labour] Conference such actions as it may deem wise and expedient to secure compliance therewith”. The first time in ILO history this was done was in 2000, when the Governing Body asked the ILC to take measures to compel Myanmar to end the use of forced labour.

¹ Articles 26–34 of the ILO Constitution



5. Ratification of Convention No. 189: Different perspectives

5.1 Governments

Governments use international labour standards primarily as tools to draft and implement labour law and social policy in conformity with internationally accepted standards. Countries often go through a period of examining and, if necessary, revising their legislation and policies in order to achieve compliance with the instrument they wish to ratify. International labour standards thus serve as targets for harmonizing national law and practice in a particular field; the actual ratification might come further along the path of implementing the standard. Some countries decide not to ratify a Convention but bring their legislation in line with it regardless; such countries use ILO standards as models for drafting their law and policy. Others ratify ILO Conventions fairly quickly and then work to bring their national law and practice into line after ratification; the comments of the ILO's supervisory bodies and technical assistance can guide them in this process. In countries with common law, international laws, once ratified, can automatically become the law of the land and directly enforceable, but in countries with civil law, international laws need to be incorporated into national laws to be directly enforceable. Myanmar is in principle a hybrid of civil and common law systems, but civil law predominates, and therefore there is a need to develop national laws for ratified Conventions to be enforceable which is also responsive to the recent democratisation process of the country

5.2 Employers' and workers' organizations

At the global level employers' and workers' organizations participate in choosing subjects for new ILO standards and in drafting the texts of those new standards. Their votes also contribute to determining whether or not the ILC adopts a newly drafted standard. If a convention is adopted, employers and workers can encourage a government to ratify it.

Once ratified, Government reports must also be submitted to representative employers' and workers' organizations, who may add their comments, all of which are submitted to the ILO. Employers' and workers' organizations can also supply relevant information directly to the ILO. If workers or employers organisations have evidence that the government is violating certain aspects of a Convention they can make a representation to the ILO Governing Body in accordance with procedures under article 24 of the ILO Constitution.

5.3 Workers' organizations, including domestic workers groups and civil society

Civil society, and in particular, workers' organizations can make extensive use of Conventions and the ILO supervisory bodies' comments in their advocacy strategies and can use the standards to help develop national action plans and promote decent work legislation. (ILO, 2012a). Domestic workers who have organized unions or groups have been able to participate in these advocacy strategies and sit at the policy table. In Myanmar, local domestic workers have the right to form labour organizations, and overseas, migrant domestic workers can form associations or join local associations or unions. It will be difficult due to the isolated nature of their work, the lack of free time and their dependency on their employers not only for work but also for accommodation. Domestic workers may be reluctant to demand employment contracts or formalization of their work since they are aware that in any negotiations of the contents they are in the weaker position and are wary of formalizing and signing off on exploitation. It is important therefore that domestic workers can form groups to strengthen their negotiating power with employers and to have a collective voice in policy discussions on law. The support for the development of such domestic workers groups should become a priority for labour and civil society organizations.



The Government of Myanmar has ratified the CEDAW, the CRC, Forced labour Convention, 1930 (No.29) and the Worst Forms of Child Labour Convention, 1999 (No. 182). Convention No. 189 sits alongside these Conventions, and they strengthen each other. In this era of reform and transition, ratifying Convention No. 189 would demonstrate the Government's commitment to upholding human rights and especially women's rights beyond its obligation specifically under CEDAW.

Having ratified the CEDAW and CRC, the Government of Myanmar is obligated to end all forms of discrimination against women and uphold the rights of children, including protection of women and child domestic workers. In Myanmar, however, domestic workers are excluded from certain labour laws, which can have a discriminatory impact on women domestic workers.. Excluded from the Leave and Holidays Act, domestic workers have no entitlement to days off or paid holiday leave. They are also excluded from the Employment and Skills Development Law, resulting in long-lasting discriminatory consequences.

5.4 The gender perspective

Many societies perceive domestic work as an extension of household work, performed daily as a woman's duty and without the need for specific skills. This perception has contributed to the lack of value or respect attached to domestic work. Part of the advocacy work to promote decent work for domestic workers involves breaking down these traditional gender barriers. This includes challenging the persistent undermining of women's contributions to the household and economy, and showcasing the value of multiple skills needed to perform the wide variety of tasks included under the heading of "household work".

By recognizing domestic workers as workers and domestic work as work, Convention No. 189 creates a new labour framework for domestic workers which challenges the exclusion of women's work from labour and social protection. In the long term, the Convention can make a significant contribution to improving gender equality in the world of work.

Recognition and valuing of domestic work and all work traditionally designated as "women's work" will remove stigma and discrimination thus paving the way for men to perform the work too and for the work to be compensated. Domestic work, similar to other work, can have various levels of competency and skill, and domestic workers can be promoted through these levels via training and development. Domestic work can also become a career starter for work in the hospitality industry, nursing, and as care workers among others.

5.5 The labour perspective

Domestic work in many countries remains in the realm of family and personal relations and is not understood to be subject to formal public policies on labour and employment. This level of informality, based on oral agreements and traditional customs, creates uncertainties with regards to the employment relationship and the rights and responsibilities of employers and workers. The absence of legal standards and formal contractual arrangements makes the conditions of work dependent on individual employers and their goodwill. In case of disagreements over wages or other terms of employment, the domestic worker is in a weak position to negotiate and lacks the formal basis on which to raise and enforce any legal claims.

The development of model of Standard Contracts for Domestic Work is recommended in Recommendation 201, as a practical means of enabling better working conditions for domestic workers while providing clear guidance to employers and standards that the government can provide. A written contract is a strong manifestation of formality and a proof of existence of an employment relationship.



Convention No. 189 and Recommendation No. 201 clearly put forward a set of measures to facilitate the formalization of the employment relationship in the context of domestic work. The measures include labour and social legislation, as well as written employment contracts which lay down the key terms and conditions of employment (Article 7 of the Convention and Paragraph 6 of the Recommendation).

In migration corridors, ideally both the country of origin and destination will have ratified the Convention and incorporated the labour standards into national laws and policies, thus ensuring that domestic workers' labour rights are fully protected. In cases where only the country of origin has ratified the Convention, that country may be able to negotiate more comprehensive bilateral agreements since they have shown their own commitment to the labour rights of domestic workers, and where possible should include ratification of the Convention or implementation of equivalent standards as a condition for sending domestic workers in order to ensure rights of their nationals are protected. The number of countries of destination that have ratified the Convention is however very limited. Countries may then need to explore other avenues that provide opportunities. In terms of negotiating decent work conditions for domestic workers, Myanmar could monitor Thailand's implementation of Protocol 29 on Forced Labour in relation to domestic work and its obligations to educate employers and workers; increase labour inspections, address conditions which allow for trafficking and forced labour. Myanmar's position in such negotiations would be stronger if Myanmar had also ratified Protocol 29 or Convention 189.

5.6. The employer perspective

The common argument against introducing a formal employer–employee relationship is that it would destroy the more familial relationship under which domestic work is said to operate. A formal relationship with protection and rights in place in no way excludes a familial relationship. On the contrary, it provides a level of stability, security, and protection for both parties. Domestic workers would be entitled to social security and thus to health care and pensions, relieving the employer of such responsibilities, and the worker would be entitled to a living wage and thus be less dependent on their employer. Recognizing domestic workers as workers and formalizing the employer–employee relationship will help clarify the working relations and expectations of each party, leading to greater efficiency and reducing tensions in the workplace.

5.7 The economic perspective

International labour standards that have been agreed upon by governments, workers, and employers, laying down the basic minimum social standards agreed upon by all players in the global economy (ILO, 2014). An international legal framework on social standards ensures a level playing field in the global economy. As more people move to urban areas and live in smaller accommodation without the support of their extended families and with greater need for incomes from both the husband and the wife; and with more career options for women; the need for paid help in the household increases and should be factored into the economy of the country.

Studies on the productivity and well-being of workers suggest that happier and healthier workers are more productive and workplace performance increases (Lee et al., 2014). More satisfied domestic workers are also more likely to stay in the same employment thus reducing the high turnover rate and creating greater job stability. Fair treatment creates a virtuous cycle of workplace harmony, productivity, and return on labour investment (Better Work, 2015). Thus, the better working conditions that domestic workers have, the better they will be able to do their jobs.

Every Member State has its own domestic processes for ratifying Conventions; this section



6. How an International Convention is ratified in Myanmar

explains the step-by-step the process in Myanmar. The following process is relevant for any international accord, agreement, law, or Convention, but given the focus of this paper only Conventions will be mentioned.

Upon being introduced to an international Convention, a related ministry may propose the Convention of interest to the Union Government through Parliament for signing or ratification. The concerned ministry is responsible for presenting the Convention to the Parliament with justifications and recommendations for signing. Alternatively, the concerned ministry may approach a Member of Parliament (MPs) to sponsor the Convention by putting a motion in Parliament for discussion of the Convention. MPs may also propose adaptations or modifications to national laws that are in contravention with the international standards, so that the relevant national laws will be consistent with the international normative frameworks. In both scenarios, the endorsement by the Parliament, specifically Pyidaungsu Hluttaw [Assembly of the Union], must be sought. The Pyidaungsu Hluttaw is responsible for international laws and treaties (Egreteau, 2017). Under section 107 of the 2008 Constitution, the Pyidaungsu Hluttaw has the power to make resolutions on matters relating to ratifying, annulling, or revoking any international, regional, or bilateral treaties; or may confer authority to the President to conclude, annul, or revoke such agreements without approval from the Parliament (Win and Karim, 2013). With regard to the potential ratification of Convention No. 189, the concerned ministry would be the Ministry of Labour, Immigration and Population (MOLIP) and is thus named in the following outline of the steps towards ratification of Convention No. 189.

Step 1.

MOLIP expresses its interest in ratifying the Convention to the Director-General of the ILO. MOLIP then becomes the primary sponsor for the ratification process.

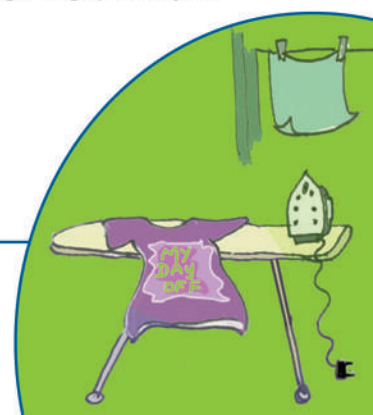
Step 2.

MOLIP approaches the Commission for the Assessment of Legal Affairs and Special Issues (CALASI) of the Amyotha Hluttaw (Upper House) to scrutinize the Convention. MOLIP may also ask the Parliamentary Committee on Local and Overseas Workers to review the Convention.² Therefore, MOLIP, as the likely lead ministry, would not be solely responsible for conducting the analysis of what the implications are for Myanmar upon ratification of Convention No. 189. Other relevant Ministries are also asked to comment, in particular the Ministry of Foreign Affairs and the Ministry of Home Affairs.

Step 3.

Once an agreement has been reached across the ministries, MOLIP can request a date for deliberation by the Pyidaungsu Hluttaw. It is the duty of the MOLIP minister or the deputy minister, to prepare answers to possible questions that might be raised by the MPs. Relevant international organizations with technical expertise on the particular issue, such as the ILO, can provide further assistance by developing a policy and legal gap analysis. The ILO Office, upon request, will assist in the examination of national law and practice in the light of the Convention and in the preparation of measures to overcome gaps identified through a gap analysis (ILO, 2012a).

² Interview with the Deputy Liaison Officer of ILO Yangon.



Step 4.

A process then begins to put the Convention before the Pyidaungsu Hluttaw for deliberation and a vote. This process is dictated in Chapter 15 of the Legal Rules of Procedures for Pyidaungsu Hluttaw, 2010:³

Matters related to international, regional, and bilateral treaties, agreements, and conventions 119. When the President through the Chairperson submit to Pyidaungsu Hluttaw for its approval/endorsement on the matters relating to ratifying, annulling, and revoking from international, regional or bilateral treaties, agreements, and conventions, the Chairperson shall act accordingly as followings:

- a) 7 days before presenting international, regional or bilateral treaties, agreements or conventions to Pyidaungsu Hluttaw, the necessary documents need to be circulated to MPs for review;
- b) A representative of a national level ministry or agency concerned will present the Convention and provide necessary explanations about the Convention at an assigned time on an approved date;
- c) MPs who plan to participate in the deliberations will submit their names to the Chairperson three days in advance;
- d) The names of the MPs who will participate in the deliberations and the date of deliberation shall be announced;
- e) With the permission of the Chairperson, the person who is a representative of Ministry/ Agency concerned shall be able to respond to the deliberations made by MPs on the matter and explain further if necessary;
- f) Upon proceeding according to the Rule of Procedures (e), it is needed to seek endorsement from Pyidaungsu Hluttaw;
- g) The decision of the Parliament shall be transmitted to the President.

During the deliberation, the MPs will discuss and raise questions on the Convention. With the permission of the Chairperson, the representative of the concerned ministry will answer all questions and respond with clarifications to concerns expressed by MPs.

Step 5.

Upon receiving an endorsement in Parliament and upon transmitting the decision of the Parliament to the President, the Parliament will, through the President's Office, convey to the Director-General of the ILO the agreement to ratify the Convention.

³ This section is based on an unofficial translation. The Legal Rules of Procedure were issued in Ordinance No. 113/2014: The Process of ratification, annulling and revoking of international, regional or bilateral laws (28-11-2014 &ufpGJyg trdefYaMumfjympmtrSwf (113/2014) jzifh xkwfjyefcJhaom jynfaxmifpkvTwfawmfqdkif&m enf;Oya'rsm; (2010 jynfhESpf? atmufwdkbmv 21 &uf)/, https://pyidaungsu.hluttaw.mm/uploads/pdf/pds_law_nilaw.pdf.



7. How a national law is promulgated in Myanmar

An international Convention such as the Convention No. 189 sets standards that are not included in current national laws. The legal gaps and analysis report conducted as part of the ratification process would highlight the areas where significant changes need to be made in the current laws and where a new law needs to be developed. Below is an outline of these procedures for Myanmar.

1. Bills can be drafted by concerned ministries, MPs, technical working groups, non-governmental organizations or individuals. Bills introduced are classified as public or private bills. Union-level organizations such as ministries and agencies as well as MPs can sponsor public bills, whereas private bills are sponsored by members of Hluttaws and MPs.
2. To initiate a public bill, the ministry or MPs concerned have to study and analyze the political, administrative, financial, economic, and social implications of the proposal. The opinions of legal and constitutional experts are obtained through the Union Attorney-General's Office. Here it will be scrutinized to check whether it is in line with the Constitution, whether it is in conflict with other laws and for further legal refinement. Technical expertise from the ILO may be sought, as may opinions from the general public or concerned groups. The ILO recommends tripartite plus civil society consultations are held to include perspectives from all affected by the bill. If the bill is developed within a ministry, it will also be shared with other relevant ministries for comments and amendments. It will also go through a reading at the concerned Ministry to further refine the draft. Ministry officials may also seek input and support from members of the relevant Parliamentary committee.
3. Afterwards, a memorandum is submitted to the Cabinet for approval. The proposal is then officially converted into a bill.
4. Bills need to be discussed in both houses – the Pyithu Hluttaw (Lower house) and Amyotha Hluttaw (Upper House) – but can initially be submitted to either house. If MPs submit bills, they must submit them directly to the house in which they sit. Normally, the bill to be introduced shall be submitted 30 days before the session commences. Certain bills are prescribed in the Constitution to be discussed and resolved exclusively at the Pyidaungsu Hluttaw (Win and Karin, 2013). Section 100(b) of the Constitution specifies that bills relating to national plans, annual budgets, and taxation, which are to be submitted exclusively by the Union Government, shall be discussed and resolved at the Pyidaungsu Hluttaw in accord with the respective procedures (Maung, H. 2016).
5. The Bill at this stage may be sent to the Commission for the Assessment of Legal Affairs and Special Issues (CALASI) for review and amendment before being resubmitted to the Hluttaw.
6. Once in the Hluttaw, the bill is reviewed by the Bill Committee of that House to ensure it aligns with the constitution, current laws and issues of national interest and security. A report is then submitted to the Speaker within seven days.
7. The Speaker may determine that the Bill is not ready to be debated in the house. Whoever submitted the bill may go to the most representative Parliamentarian Committee for further input. The bill may be withdrawn at this point, if it is considered that it lacks any chance of being passed.
8. If the Speaker approves the Bill for debate, it has to be published or gazetted publically for a certain period of at least two weeks. It is then debated in the Hluttaw to which it was first submitted. This Hluttaw may propose amendments and send the bill back to a Committee or the Office of the Attorney General for further amendments. When the Hluttaw is satisfied with the amendments it will vote on the Bill.
9. The Bill is then passed to the other Hluttaw where it is debated. If amendments are



made, it is returned to the original Hluttaw for these amendments to be discussed. This process can continue for a long time if the Houses are not in agreement.

10. If both houses vote against the bill, the bill is withdrawn.
11. If both houses cannot agree, either on whether to pass the bill or on particular amendments to the bill, it is sent to Pyidaungsu Hluttaw for a final decision.
12. If both of the houses or the Pyidaungsu Hluttaw are in favour of the bill, it is passed to the President. The President signs the bill within 14 days of receiving the bill and promulgates it as law. Within the prescribed period the President can also return the bill to the Pyidaungsu Hluttaw for further consideration. The Pyidaungsu Hluttaw, after discussion of the President's comments, may accept the comments and resolve to amend the bill, or it may approve the bill as is, without accepting the President's comments. Upon the receiving the bill back, the President will sign the bill and promulgate it as law within the period of seven days. If the bill is not signed by the President within that timeframe, it will become law as if they had signed it on the last day of the prescribed period (Pyidaungsu Hluttaw, n.d.).



8. Recommendations

This policy brief echoes the call for governments to move forwards in ratifying Convention No. 189 which was made in the recommendations of the 10th ASEAN Forum on Migrant Labour, 25th – 26th October, 2017, in Manila, Philippines:

1. Recognize domestic workers as workers and remove outdated terminologies that diminish the dignity of domestic workers. Towards this end, ASEAN Member States should progressively move towards inclusion of domestic workers in their labour and social legislations;
2. Adopt progressive national plans which include feasibility study and gap analysis to support the ratification process of the ILO Conventions No. 189 (domestic workers), 97 (migration for employment), 143 (migrant workers (supplementary provision)), 181 (private employment agencies), and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and subsequently ensure effective implementation and monitoring of the compliance of the ratified Conventions;
3. Align national laws and policies with international instruments related to labour migration and domestic work, taking into account different contexts of ASEAN Member States;

Key processes which will support the move forward to ratification include:

1. Supporting domestic workers to form unions or groups and including these groups in policy discussions.
2. Making the contents of Convention No. 189 and Recommendation No. 201 familiar to the general public as well as policy makers.
3. Enabling domestic workers to exercise their rights under current laws which include them (Labour organization law, Social Security, Minimum wages Act) and amending laws to include domestic workers (Leave and Holidays Act).
4. Labour Organizations reaching out to their members to raise awareness on the labour rights of domestic workers and support for the ratification of Convention No.189.



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Annex I. Convention No. 189 and Recommendation No. 201: Key articles and provisions

Basic definitions

The definition of domestic work

According to Convention No. 189, Article 1(a), “the term ‘domestic work’ means work performed in or for a household or households”. This work may include, but is not limited to, activities such as housekeeping, cooking, food preparation, doing laundry and ironing, taking care of family members, gardening, housesitting, driving family members of the employer, taking care of household pets, and doing grocery shopping for the employer.

Who is a domestic worker?

According to Convention No. 189, Article 1(b), “the term ‘domestic worker’ means any person engaged in domestic work within an employment relationship”. A domestic worker may work full or part time on an occupational basis; may be employed by a household or households; may be in a live-in or live-out arrangement; and may work in a country of which they are not a national. Under the Convention “a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker” (Article 1(c)).

Basic rights of domestic workers

Convention No. 189

Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers (Article 3). This includes:

- Respecting and protecting the fundamental principles and rights at work, namely:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) elimination of all forms of forced or compulsory labour;
 - (c) abolition of child labour; and
 - (d) elimination of discrimination in respect of employment and occupation (Articles 3, 4, 9, and 11).
- Effective protection against all forms of abuse, harassment, and violence (Article 5).
- Fair terms of employment, decent working conditions, and (if they are live-in workers) decent living conditions (Article 6).

Recommendation No. 201

2. In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:
 - (a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing and to the right of organizations of domestic workers to join workers' organizations, federations and confederations. (Paragraph 2)
3. In taking measures to eliminate discrimination in respect of employment and occupation, Members should ...
 - (a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers ...
 - (c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status (Paragraph 3).

Information on terms and conditions of employment

Convention No. 189

Domestic workers must be “informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably ... through written contracts” (Article 7).

Recommendation No. 201

6.

- (1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.
- (2) [T]he terms and conditions of employment should also include:
 - (a) a job description;
 - (b) sick leave and, if applicable, any other personal leave;
 - (c) the rate of pay or compensation for overtime and standby as per Article 10(3) of the Convention;
 - (d) any other payments to which the domestic worker is entitled;
 - (e) any payments in kind and their monetary value;
 - (f) details of any accommodation provided; and
 - (g) any authorized deductions from the worker’s remuneration.
- (3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.
- (4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public (Paragraph 6).

Hours of work

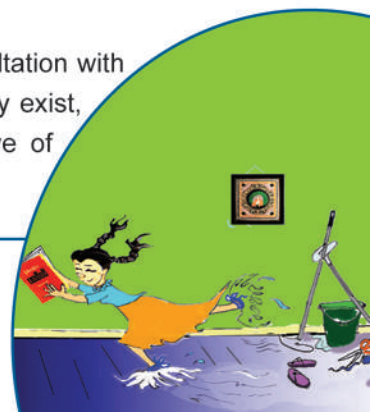
Convention No. 189

1. Each Member shall take measures aimed at ensuring equal treatment between domestic workers and workers generally with respect to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave. ...
2. Weekly rest period of at least 24 consecutive hours.
3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls [i.e., standby hours] shall be regarded as hours of work (Article 10).

Recommendation No. 201

8.

- (1) Hours of work, including overtime, and periods of standby consistent with Article 10(3) of the Convention, should be accurately recorded, and this information should be freely available to the domestic worker.
- (2) Members should consider developing practical guidance in this respect, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers (Paragraph 8).



9.

- (1) With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:
 - (a) the maximum number of hours per week, month, or year that a domestic worker might be required to be on standby, and the ways they might be measured;
 - (b) the compensatory rest period to which a domestic worker is entitled to if the normal period of rest is interrupted by standby; and
 - (c) the rate at which standby hours are remunerated.
- (2) With regard to domestic workers whose normal duties are performed at night, and taking into account the constraints of night work, Members should consider measures equal to those specified in subparagraph 9(1) (Paragraph 9).

Remuneration

Convention No. 189

Domestic workers are to enjoy minimum wage coverage, if a minimum wage exists for other workers (Article 11).

Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned (Article 12(1)).

In-kind payment is allowable under four conditions: (1) such in kind payments are agreed to by the domestic worker; (2) in kind payments represent only a limited proportion of total remuneration; (3) the monetary value of such in kind payments is fair and reasonable; and (4) the items or services given as in-kind payment are for the personal use and benefit of the worker. This means that uniforms or protective equipment are not to be regarded as payment in kind, but rather as tools that the employer must provide to the workers at no cost to the worker for the performance of their duties (Article 12(2)).

Recommendation No. 201

14. When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:
 - (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish the remuneration necessary for the maintenance of domestic workers and their families.
 - (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate.
 - (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodations.
 - (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the payment with respect to that accommodation, unless otherwise agreed to by the worker; and

- (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker (Paragraph 14).

15.

- (1) Domestic workers should be given at the time of each payment an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which have been made.
- (2) Upon termination of employment, any outstanding payments should be made promptly (Paragraph 15).

Occupational safety and health

Convention No. 189

Every domestic worker as the right to a safe and healthy working environment (Article 13(1)).

Each Member shall take ... effective measures ... to ensure the occupational safety and health of domestic workers (Article 13(1)).

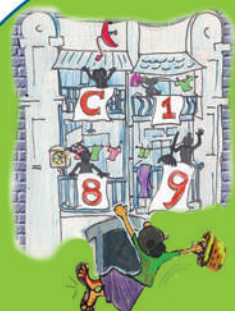
Recommendation No. 201

- 19. Members, in consultation with most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representatives of employers of domestic workers, should take measures to:
 - (a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injury, diseases and deaths and promote occupational safety and health in the household workplace.
 - (b) provide an adequate and appropriate system of inspection, consistent with Article 17 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;
 - (c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;
 - (d) advise on occupational safety and health, including ergonomic aspects and protective equipment; and
 - (e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work (Paragraph 19).

Social security

Convention No. 189

Each Member shall take appropriate measures ... to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to (Article 14).



Recommendation No. 201

20.

- (1) Members should consider, in accordance with national laws and regulations, means to facilitate the payment of social security contributions, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.
- (2) Members should consider concluding bilateral, regional, or multiple agreements to provide, for migrant domestic workers covered by such agreements, equality of treatment with respect to social security, as well as access to and preservation or portability of social security entitlements.
- (3) The monetary value of payments in kind should be duly considered for social security purposes, including in respect of the contribution by the employers and the entitlements of the domestic workers (Paragraph 20).

Standards concerning child domestic workers

Convention No. 189

Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally (Article 4(1)).

Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment [currently 15 years] does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training (Article 4(2)).

Recommendation No. 201

5.

- (1) Taking into account the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety, or morals of children, and should also prohibit and eliminate such child labour.
- (2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under 18 and above the minimum age of employment [currently 15 years] as defined by national laws and regulations, and take measures to protect them, including by:
 - (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
 - (b) prohibiting night work;
 - (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
 - (d) establishing or strengthening mechanisms to monitor their working and living conditions (Paragraph 5).



Standards concerning live-in workers

Convention No. 189

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy. (Article 6).

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents (Article 9).

Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls [i.e., standby hours] shall be regarded as hours of work (Article 10(3)).

Recommendation No. 201

- 14. When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:
 - (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker (Paragraph 14(d)).

Standards concerning migrant domestic workers

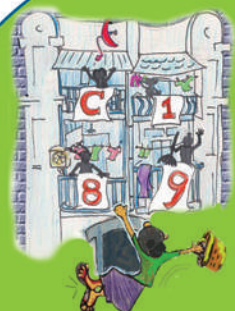
Convention No. 189

National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies (Article 8(1)).

Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited (Article 8(4)).

Members should “effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices” (Article 15). This is elaborated on further in the next section below on private employment agencies.

Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers (Article 8(3)).



Recommendation No. 201

21.

- (1) Members should consider additional measures to ensure the effective protection of domestic workers, and in particular, migrant domestic workers, such as:
 - (a) establishing a national hotline with interpretation services for domestic workers who need assistance;
 - (b) consistent with Article 17 of the Convention, providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed;
 - (c) developing a network of emergency housing;
 - (d) raising employer awareness of their obligations by providing information on good practices in the employment of domestic workers, employment and immigration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violations, and assistance services available to domestic workers and their employers.
 - (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
 - (f) providing for a public outreach services to inform domestic workers, in language understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons, and deprivation of liberty, and to provide any other pertinent information they may require.
- (2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and special consular services, and any other appropriate measures (Paragraph 21).

Private employment agencies

Convention No. 189

To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

- (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
- (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
- (c) adopt all necessary and appropriate measures ... to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;



- (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and
- (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers (Article 15).

Recommendation No. 201

- 23. Members should promote good practices by private employment agencies in relation to domestic workers, including migrant domestic workers, taking into account the principles and approaches in the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188) (Paragraph 23).
- 26.
 - (2) Members should cooperate at bilateral, regional, and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning the prevention of forced labour and trafficking in persons, the access to social security, the monitoring of the activities of private employment agencies recruiting persons to work as domestic workers in another country, the dissemination of good practices and the collection of statistics on domestic work (Paragraph 26(2)).

Dispute settlement, complaints, and compliance

Convention No. 189

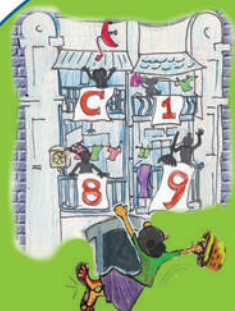
Each Member shall take measures to ensure ... that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally (Article 16).

Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations (Article 17(2)).

In so far as compatible with national laws and regulations, such [labour inspection] measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy (Article 17(3)).

Recommendation No. 201

- 24. In so far as compatible with national laws and practices concerning respect for privacy, Members may consider conditions under which labour inspectors, or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter the premises in which the work is carried out (Paragraph 24).



Annex II. Examples from CEACR reports on the application of Convention No. 189

The following examples are excerpts from CEACR reports published online by the ILO relating to monitoring of the application of Convention No. 189. The selection has been chosen to provide an overview of the different issues of concern to the CEACR, and to show the linkages the CEACR makes to reports on different Conventions and from different committees, including the committees on CEDAW and the CRC. All emphasis is in the original texts.

Philippines – Direct request (CEACR) – adopted 2015, published 105th ILC session (2016)

The Committee ... notes the comprehensive measures taken by the [Philippines] Government to implement the Convention. The Government indicates that the following categories of workers are excluded from the application of legislation: service providers; family drivers; children under foster family arrangement; and any person who performs work occasionally or sporadically and not on an occupational basis (section I(4)(d) of RA10361 and Rule I(3)(e) of the IRR). The Government indicates that the exclusions of family drivers and children under foster family arrangements were thoroughly discussed during the Bicameral Conference Committee. The Committee notes that the Government provides no information on consultations with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of domestic workers with regard to the exclusions of categories of workers from the scope of application of the Convention (Article 2(2) of the Convention). ***The Committee requests the Government to provide information in this regard. It further requests the Government to provide information on the consultations held with the concerned social partners in the implementation of the Convention, including with regard to measures taken to protect domestic workers recruited or placed by private employment agencies, against abusive practices (Articles 15(2) and 18 of the Convention).***

Germany – Direct request (CEACR) – adopted 2016, published 106th ILC session (2017)

Article 1 of the Convention. Definitions. The Government indicates that German law contains no special definition of domestic workers, and that household employees are considered as workers within the meaning of German labour law. The Committee notes that because of the specific characteristics of domestic work, specific attention should be given to a definition of domestic workers and domestic work in relevant national legal instruments. ***The Committee therefore requests the Government to indicate any measures taken or envisaged to incorporate the definitions of domestic work and domestic worker in national legislation or collective agreements.***

Article 2. Exclusions The Government indicates that, based on section 18(1)(3) of the Working Hours Act, caregivers – defined as persons living in a common household with those for whom they are responsible to raise, look after or care for – are excluded from the Act's scope of application. The Government adds that, because caregivers are often required to stay with their employers for long periods and often reside with them for the purpose of assisting them on a 24-hour basis, it is not possible to distinguish between their leisure and working time. The Government indicates that for this reason it decided to exclude this category of workers from the application of the Convention. ... ***The Committee requests the Government to provide further information explaining in detail the reasons for the exclusion of caregivers from the application of the Convention. It also requests the Government to provide information on prior consultations held with the most representative organizations of employers and workers.***

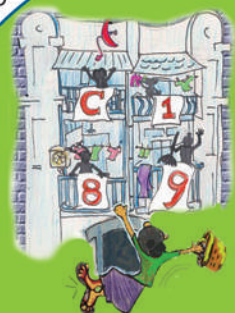


Article 8(1) and (3). Migrant domestic workers. The Government states that, based on the Social Code, Book XI, foreign domestic workers from outside the European Union (EU) may enter Germany only if their placement is based on a procedural arrangement between the Federal Employment Agency and the relevant labour administration body of the country of origin. These workers may not be placed through private employment agencies and may be hired for three years; however, there are currently no bilateral arrangements in place governing these relationships. The Government provides no information on the enforceability of a foreign worker's employment contract in Germany, where the contract has been concluded between the worker and a foreign temporary work agency. German placement agencies are the point of contact for households receiving domestic workers. In this arrangement, the DGB [German Trade Union Confederation] indicates that foreign domestic workers are hired through the foreign agency by the households contracting with the migrant domestic worker. The DGB indicates that in the process of placement of foreign domestic workers to Germany, while they cooperate with foreign employment agencies, German placement agencies are the point of contact for the households receiving the domestic worker. German agencies do not get involved in the legal relationships based on which these workers are placed, since the household concludes the placement contract directly with the foreign agency. According to the DGB, working conditions under these arrangements do not comply with German labour law, particularly in regard to remuneration and working time. ***The Committee requests the Government to indicate the manner in which it is ensured that migrant domestic workers recruited in one country for domestic work in another receive a written job offer or contract of employment prior to crossing the border that is enforceable in the country in which the work is to be performed, which sets out the terms and conditions of employment in accordance with Article 7 of the Convention.***

Article 14(1). Social security protection. The [German] Government states that domestic workers are protected through comparable provisions available to workers in general in regard to health, pension, accident, nursing and unemployment insurance (employment promotion). As all other women workers, female domestic workers are entitled to an allowance as part of their pregnancy and maternity benefits (section 24(c) to 24(i) of Book V of the Social Code) during the period provided by law. Parental allowance and parental leave are also provided, subject to the prerequisites specified in sections 1 and 15 of the Parental Allowance and Parental Leave Act. ***Recalling the DGB's comments concerning the prevalence of undeclared work in the domestic work sector, the Committee requests the Government to indicate the measures taken and their impact in practice to ensure that domestic workers enjoy conditions that are not less favorable than those applied to workers generally in respect of social security protection, including with respect to maternity benefits. The Government is also requested to provide information on prior consultations held with employers' and workers' organizations as well as organizations representative of domestic workers and organizations representative of employers of domestic workers in respect of such measures.***

Argentina – Direct request (CEACR) – adopted 2017, published 107th ILC session (2018)

Article 17(2) and (3). Complaint mechanisms. Labour inspection. Access to household premises. The Committee observes that the Government's report does not contain any information on measures taken relating to labour inspection, the application of standards and penalties, and access to household premises. The Committee notes the concluding observations of 2016 of the CEDAW inviting the Government to implement a system for the regular inspection of private households to ensure observance of the regulations governing the working conditions of domestic workers. The Committee recalls the comments it made on this subject in 2014 in the context of the Forced Labour Convention, 1930



(No. 29), in which it encouraged the Government to continue taking steps to reinforce the capacity for action of the labour inspectorate, particularly in the domestic work sector. ***The Committee requests the Government to provide information on the measures taken relating to labour inspection and the implementation of a monitoring mechanism to protect the rights of domestic workers.***

Nicaragua – Direct request (CEACR) – adopted 2017, published 107th ILC session (2018)

Article 3(2)(c). Abolition of child labour. The Committee notes that article 84 of the Constitution prohibits the engagement of young persons in work likely to affect their normal development or their compulsory school attendance. It also notes that sections 73–75 of the Children and Young Persons Code prohibit work by children under 14 years of age, in unhealthy places which pose a risk to the life, health or physical integrity of young persons. The Committee refers to its comments on the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Minimum Age Convention, 1973 (No. 138), in particular with regard to inspections conducted in premises where children and young persons work as domestic employees. ***The Committee requests the Government to provide information on the range of measures taken to ensure the effective promotion and protection of domestic workers by abolishing child labour, including the number of inspections conducted in households where young persons are engaged in domestic work, the number of offences reported and the penalties imposed.***

Costa Rica – Direct request (CEACR) – adopted 2017, published 107th ILC session (2018)

Article 5. Protection against abuse, harassment and violence. The Government reports that domestic workers are protected by Act No. 7476 against sexual harassment in employment and teaching, of 30 January 1995, the objective of which is to prevent, prohibit and penalize sexual harassment in work and education. However, the Committee notes that the CTRN highlights that, despite the protection provided against sexual harassment in the national legal system, it is insufficient as it does not cover the particular circumstances of domestic work and there is a lack of knowledge of domestic workers concerning their rights, especially in the case of migrant domestic workers. ***The Committee requests the Government to provide statistical data, disaggregated by sex, on the number and type of complaints of harassment, abuse and violence received and referred to the relevant bodies, the outcome of these complaints, the penalties imposed and the compensation granted.***



The Policy Advocacy Brief: Towards ratification of the Domestic Workers Convention in Myanmar is intended to be used by policy-makers and policy influencers who are searching for ways to improve the situation of domestic workers through ratification of the Domestic Workers Convention, 2011 (No. 189). It discusses the benefits and challenges of ratification and outlines the process for ratification in Myanmar. Annex 1 outlines by topic the key articles of the Convention with corresponding details from Recommendation 201. Annex II gives examples of how the Convention Committee monitors countries that have already ratified the Convention.

The Brief is produced by the ILO Yangon under the under the Developing Internal and International Labour Migration Governance (DIILM) project funded by the Livelihood and Food Security Trust Fund (LIFT). Other tools in this series include: Getting Organized: Reducing Stigma and Promoting Rights of Domestic Workers (Myanmar) and Convention 189 by Cartoons (Myanmar).



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ISBN: 978-92-2-132770-7