

Right to Migrant Domestic Workers under Italian and South African Domestic Legislation

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Abstract: ILO, *Global and Regional Estimates on Domestic Workers 2011* shows that at least 52.6 million women and men above the age of 15 are domestic workers in their main job representing 3.6 % of global wage employment. Women comprise the overwhelming majority of domestic workers: 43.6 million that means some 83% but there is no specific enforced instrument to women migrant domestic workers although they are suffering from lots of harassments. In 2000, there were approximately 1.2 million women domestic workers in Italy comprising 46%, almost half of the total number of domestic workers, but only 18 percent were employed legally. Legislative Decree no. 286 of 25 July 1998 provides the legal framework regarding immigration regulations and work conditions for foreign citizens in Italy. In September 2006, there were 886,000 domestic workers in South Africa, accounting for 7% of the total employment in the country. The figure shows that 96.6 percent of the domestic workers were women. Domestic workers are covered by the labour laws of South Africa under the Basic Conditions of Employment Act No.75 of 1997 which establishes the basic conditions of employment. Countries like Italy, South Africa and Hong Kong Special Administrative Region (SAR) have formulated standard legislation for migrant domestic workers.

Introduction

Migrant domestic workers especially women workers have to face lots of harassments and abuses comparing with other migrant workers because they live in close contact with the employers, they are foreigners and they are women. Beyond this most of them are not well educated; they don't have any forum to share their problems. My study shows that migrant domestic workers are facing various problems like alteration of employment contract; over charged by the agencies; works beyond household affairs; confiscation of passport and employment contract; restriction in communications and movement; under payment and delay in payment; insufficient food; lack of accommodation; physical, verbal and sexual abuse; absence of legal recognition and access to justice, etc. Thus host countries require standard legal framework to reduce the vulnerabilities of migrant domestic workers. Italy and South Africa are among the pioneers in this regard.

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2. Background of the Study:

ILO has established around 50 conventions out of 189 addressing discrimination, gender-based violence, nationality, ethnicity, employment terms and conditions, etc. Regional organizations are also on the move to establish mechanism to reduce the vulnerabilities. For example, ASEAN's Declaration on the Protection and Promotion of the Rights of Migrant Workers emphasizes the obligation of countries of employment and the origin in terms of access to justice and social welfare services, decent working and living conditions, access to legal and judicial system, regulation of recruitment agencies, repatriation and reintegration, and adoption of employment contracts. Council of Europe focuses on the link between domestic work and slavery and provision for a domestic worker to file a complaint before the European Court of Human Rights if a state has not effectively protected her rights under the European Convention on Human Rights. European Commission for Human Rights conducts dialogues with governments regarding human rights issues. Inter American Commission on Human Rights has established the Special Rapporteurship on Migrant Workers and their families. Inter-American Court of Human Rights has emphasised that States must not allow private employers to violate the rights of workers or the contractual relationship. The Protocol on the Rights of Women in Africa requires State Parties to protect women from exploitation by their employers and to establish a system of protection and social insurance for women working in the informal sector.

Article 34(2) of the Revised Arab Charter on Human Rights adopted 22 May 2004 recognises the right of every worker including migrants to enjoy just and favourable conditions of work "which ensure appropriate remuneration to meet his essential needs and those of his family and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work." Unfortunately the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution adopted by SAARC does not cover migrant domestic workers. However, countries like Italy, South Africa, Hong Kong SAR, Jordan, etc have formulated favourable legal framework for migrant domestic workers. But many countries like Saudi Arabia, United Arab Emirates, Kuwait, Lebanon, Bahrain, etc have not yet formulated special legal mechanism to establish the rights of migrant domestic workers and those countries may follow the Italian and South African domestic legislation.

3. Rights Of Migrant Workers Under National Legislation Of Italy

3.1 National labour legislation of Italy

In general, laws in Italy are required to be approved by the two chambers in the legislative branch, the Senate and the Camera. Less important laws may be approved by Commissions of both chambers, without the plenary assembly. Collective agreements, which are concluded between main trade union confederations and relevant employer' association, are also binding on all employers and employees in the specified sector, regardless of whether they have been directly or indirectly involved in drafting and ratification of the agreement (ILO Profile of National Legislation). Its provisions may be enforced by the courts.

Domestic work is covered by the following laws and regulations: Articles 2240 to 2246 of Section II of the Civil Code' Law 339 of 2 April 1958' Law 1403 of 31 December 1971, on insurance, and the national collective agreement for domestic workers. Law 339 of 2 April 1958 applies exclusively to domestic workers who provide continuous services for at least four continuous hours per day to the same employer and who are remunerated in money or in kind. Below this minimum number of hours, the Civil Code applies.

Under law 339 of 2 April 1958, a domestic workers is someone who "provides his/her services for the functioning of family life, whether the persons concerned have specific skills or are assigned to generic tasks." It distinguishes between workers with 'white collar' tasks (tutors, instructors, housekeepers, qualified nannies, butlers, companions) and specialist and generic manual workers (cooks, gardeners, wet nurses, linen maids, nursemaids, housemaids, general maids, caretakers, private porters, labours, grooms, washerwomen).

3.2 National collective agreement 2007 for domestic workers

On 13 February 2007, sectoral trade union organizations and employer organizations signed a new national collective agreement for domestic workers, which is binding on all workers and employers. The 2007 national collective agreement on domestic workers created a bilateral body to monitor the employment of domestic workers. The body, which is composed of representatives of employers and workers, is tasked with studying and providing analysis of trends in domestic work and promoting measures regarding training and professional qualifications

(Rinolfi 2007). The 2007 national collective agreement for domestic workers provides comprehensive terms and conditions of employment for domestic workers, including migrant domestic workers, in Italy.

3.3 Minimum age and wage

Act no. 345/99 established the minimum age for employment as 15 years. Law 39 of 2 April 1958 allows children to be employed as domestic workers as long as the employer obtains written consent from the parents or legal guardians signed by the Mayor of the place of residence of the child worker. Under the 2007 national collective agreement for domestic workers, children aged 16 and above may be employed for domestic work subject to certain conditions. There is no national minimum wage rate in Italy, but domestic workers are covered by the minimum wage established under the 2007 national collective agreement for domestic workers. The minimum wage varies according to the category of work performed by domestic workers. The minimum wage per month for live-in-domestic workers who perform general housework is EUR550 (USD743) which is reviewed yearly (Article 33).

The 2007 national collective agreement for domestic workers also classified domestic workers into categories, depending on their skills. Domestic workers with less than 12 months of professional experience, security guards, laundry persons, common labourers, and animal caretakers belong to the first category; domestic workers with the necessary experience and who perform specific duties, such as waiters, gardeners, caretakers of private rooms, belong to the second category; the third category refers to domestic workers who perform specific skills and operate with complete autonomy and skills, such as cook and assistants to persons who are not self-sufficient; the fourth category refers to domestic workers with specific diploma or professional certificate and whose functions are characterized by responsibility, autonomy and coordination.¹⁵ The distinction is relevant in determining the applicable minimum wage rate.

3.4 Standard employment contract

The 2007 national collective agreement for domestic workers requires an employment contract between the employer and worker with the following provisions (Article 6).

- a. Starting date of employment

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- a. Starting date of employment

- b. Job category and seniority in this category
- c. Duration of the trial period
- d. Whether employment is live-in or not
- e. Residence of the employee
- f. Number and distribution of working hours
- g. Working uniform to be provided by employer
- h. Provision of half-day off per week in addition to Sunday (or some other day agreed upon).
- i. Wages agreed upon
- j. Statement of any temporary moves for holidays or other family reasons
- k. Period of annual holiday
- l. Presence of adequate space where the worker can store personal effects
- m. Other terms

The 2007 national collective agreement for domestic workers provides the minimum terms and conditions for the protection of domestic workers. The employment contract cannot provide for terms and benefits which is less than what is provided under the national collective agreement (Maraya).

3.5 Terms and conditions of employment

3.5.1 Accommodation and food

Under Article 2242 of the Civil Code, employers are required to provide live-in domestic workers with wage, food and board, and in case of short periods of illness, medical treatment. Law 339 of 2 April 1958 requires employers to provide the worker with accommodation that does not damage the worker's health and morals, and provide the worker with sufficient and healthy food, in case food and board are to be provided under the contract. The 2007 national collective agreement for domestic workers requires a meal break for domestic workers who need to work for six hours or more. The cost of the meal is reimbursed by the employer in case he or she does not provide food. The duration for the meal break, which is unpaid, is determined by agreement of the employer and domestic worker (Article 15).

2.5.2 Working hours

The Civil code and Law 339 of 2 April 1958 do not specify the maximum working hours for domestic work. The 2007 national collective agreement for domestic workers specifies the following maximum working hours for domestic workers: ten non-consecutive hours per day with a total of 54 a week for those providing live-in assistance to a family member who is self-sufficient, eight non-consecutive hours per day with a total of 40 hours a week for live-out assistance; 30 hours a week for part-time, live-in assistance to self-sufficient individuals (Rinolfi).

3.5.3 Overtime work

The 2007 national collective agreement provides the following rates, in addition to the regular rate, for work performed in excess of the daily maximum working hours: 25 percent for work performed between 6.00 am to 10.00 pm; 50 percent for work between 10.00 pm to 6.00 am and 60 percent for work on Sundays and public holidays (Article 6).

3.5.4 Night work

The 2007 national collective agreement for domestic workers defines night work as those performed between 10.00 pm. and 6.00 am and is paid the normal hourly rate plus 20 percent (Article 15).

3.5.5 Rest and leisure

Article 2243 of the Civil Code recognized the right of domestic workers to customary weekly time off. Law 339 of 2 April 1958 recognizes the right of domestic workers to a 'convenient break' during the day and at least eight hours of rest per night. It also specifies the right to a whole day off per week, usually on a Sunday, or two half-days off, one of which is a Sunday. The 2007 national collective agreement requires live-in domestic workers to have at least 11 consecutive hours of rest during the same day and one and a half days off during the week (Article 14 & 15).

3.5.6 Holidays with pay

Legislative Decree no.66 of 8 April 2003 guarantee workers the right to an annual paid holiday for a minimum of four weeks, without prejudice to more favorable condition under national collective agreements. The 2007 national collective agreement guarantees the right of domestic workers to 26 working days of paid vacation for every year of service provided to the same employer. The right to vacation may not be waived

and the schedule has to be agreed upon by the employer and worker. Each vacation day consumed is paid the amount equivalent to 1/26 of the monthly salary (Article 18).

3.5.7 Thirteenth month pay

Both Law 339/58 and the 2007 national collective agreement guarantee the right of domestic workers to 13th month pay, which is a payment for an additional month given in December. If the domestic worker has worked for less than a year, the payment is given pro-rata in accordance with the actual months worked (Article 37).

3.5.8 Marriage leave

Law 339/58 provides for 15 consecutive days leave in case of marriage. Article 23 of the 2007 national collective agreement also provides domestic workers a paid leave of 15 calendar days in case of marriage.

3.5.9 Maternity protection

The Consolidated Act on Maternity (Art. 62 of Law 151/01) recognizes the right of domestic workers to maternity and paternity leave. The maternity leave is paid with an amount equal to 80 percent of the worker's salary. Article 24 of the 2007 national collective agreement prohibits women domestic workers from working two months prior to the presumed date of delivery and three months following the date of birth. The 2007 national collective agreement also prohibits the termination of employment contracts during the pregnancy of domestic workers (Rinolfi 2007).

3.6 Other benefits

Law 1403 of 30 December 1971 provides that domestic workers, regardless of the length of work performed, are entitled to insurance against invalidity; old age; and involuntary unemployment. They are also entitled to family allowances; maternity insurance; insurance under the National Health Service; and insurance against industrial accidents and occupational diseases.

3.6.1 Family reunification

Migrant domestic workers are also covered by the family reunification program where they can petition their spouse, children and parents to join them in Italy. Under certain conditions elderly parents are allowed to

avail of the program if they are dependent on their child and they have no other children. Spouses of migrant workers are also allowed to work (CIPS¹, 2004).

3.7 Regulation of employment agencies

Migrant domestic workers in Italy are hired directly by employers and do not go through employment agencies. As such, there are no regulations for employment agencies which recruit migrant domestic workers.

3.8 Immigration policies

A decree from the President of the Council of Ministers specifies maximum annual quotas for migrant workers for the following year, including domestic workers (Pizarro, 2005). A visa for subordinate employment, which covers migrant domestic workers, is issued by the Italian embassy in the countries of origin pending issuance of entry clearance which is requested by the employer. The Unified Immigration Desk in Italy then issues the entry clearance. On 6 September 2002, a decree regularized the status of illegal migrant workers employed as domestic workers. Those who registered received a residence permit valid for the duration of their employment contract, but for a maximum term of two years.

3.8.1 Right to change employers

The Civil Code and Law 339 of 2 April 1958 specify a period of notice for the resignation of the domestic worker or dismissal by the employer ranging from eight days to 30 days, depending on seniority. Indemnity is paid in case either party fails to give notice, unless the grounds are so serious as to make it impossible to continue the employment relationship. Article 38 of the 2007 national collective agreement provides for a period ranging from 15 to 60 days, depending on the seniority of the worker. The work permit for migrant workers, including domestic workers, allows the worker to look for another job in case they lose their initial employment. The migrant worker is given a six-month grace period to find a new job otherwise the permit cannot be renewed (Pastore as incited in UNIFEM 2009).

3.9 Available redress

According to the Philippine Embassy, they receive very few complaints from the estimated 28,000 documented Filipino domestic workers in

¹ Centre for International Policy Studies

Italy. In the event that there are complaints, they usually involve non-payment of overtime pay, pay-in-lieu of notice in case of termination and holiday pay (Maraya 2007).

3.10 Conciliation

Article 45 of the 2007 national collective agreement for domestic workers provides that in case of disputes, conciliation will be attempted before judicial action is resorted to. Conciliation is conducted by the appropriate territorial Commission of Conciliation, which is composed of the representatives of labour organizations and the association of employers.

3.11 Right to work while case is pending

The legal status of migrant domestic workers is not dependent upon the employment relationship with a particular employer. The worker may legally stay in Italy and work for another employer in case a complaint is filed against the previous employer.

4. Migrant Domestic Workers' Legislation Of South Africa

Domestic work is recognized by the labor laws of South Africa. In 2002, the Department of Labor approved Sectoral Determination No.7, the law which provides for the basic conditions of employment for domestic workers. The minimum wage of workers depends on the number of hours worked per week and the areas of employment. It is adjusted every year, depending on the inflation rate. An employment contract signed by the employer and worker is required by the law before the start of employment. Maximum working hours of domestic workers per week is 45 hours. Employers are required to provide domestic workers with a daily rest period of at least twelve consecutive hours. Women domestic workers are entitled to four months of unpaid maternity leave. Domestic workers are covered by the Unemployment Insurance Fund which provides relief in cases of dismissal, retrenchment or illness. Although no statistics are available, reports show the presence of migrant domestic workers in South Africa from Lesotho, Zimbabwe, Mozambique, Botswana, Swaziland, Malawi and Zambia (Pederby 2005).

4.1 National labour legislation

Labour law in South Africa is derived from legislation, judicial precedents, including arbitration awards; collective agreements; common law; and custom and legal writings. In general, employers and workers

are not allowed to contract out of employment protection provided by the labour law, unless the law itself permits such (Bhoola 2002). Domestic workers are covered by the labour laws of South Africa. The Basic Conditions of Employment Act No.75 of 1997 is the major legislation which establishes the basic conditions of employment in South Africa. A domestic worker is defined as in section 1:

An employee who performs domestic work in the home of his or her employer and includes

- (a) a gardener;
- (b) a persons employed by a household as driver of a motor vehicle;
and
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker;

Domestic workers are also covered by the Labour Relations Act No.66 of 1995. The Act aims to promote orderly collective bargaining; collective bargaining at sectoral level; employee participation in decision-making in the workplace; and the effective resolution of labour disputes.

Compensation for Occupational injuries and Diseases Act No.190 of 1993 excludes domestic workers from the definition of employees covered.? However, domestic workers are covered under the Occupational Health and Safety Act No.85 of 1993 as amended.

4.2 Basic conditions of employment for domestic workers

Section 51 of the Basic Conditions of employment Act No. 75 of 1997, the main labour law in South Africa, authorizes the Minister of Labour to establish basic conditions of employment for employees in a particular sector. On 1 September 2002, the basic conditions of employment for domestic workers under sectoral Determination No. 7 Domestic Worker Sector became effective (Regulation 1068). It was later amended on 11 November 2005 (Regulation 1104). This subsidiary legislation issued by the Minister of Labour is binding and covers employment of all domestic workers in South Africa, including domestic workers employed or supplied by employment agencies and those employed as independent contractors (Section 1, Sectoral Determination). But Sectoral Determination No.7 does not regulate transport allowances; bonuses, increases; probationary periods; right of entry to the employers premises;

premises; afternoons off; weekends off and pension schemes; medical aid schemes; training/school fees; funeral benefits and savings account. The aforementioned may be negotiated between the parties and included in the contract of employment.

4.3 Minimum age and wage

The Basic Conditions of Employment Act No. 25 of 1997 provides that no child under the age of 15 may be employed. The government requires employers to verify the age of the domestic worker by requesting a copy of the identity document or birth certificate. The minimum wage for domestic workers has been in effect since 1 November 2002. The wage depends on the number of hours worked per week and the areas of employment. A higher minimum wage is provided to domestic workers who work 27 hours or less per week and to those who work in rural areas. The minimum wage is automatically adjusted every year, depending on the inflation rates. Some reports suggest that there is "substantial apparent non-compliance" with minimum wage for domestic workers (Hertz 2004).

Permissible and impermissible deductions from the wages of domestic workers are also enumerated under the law. Permissible reductions mean and include medical insurance; savings; pension fund; trade union subscription; order of account payment to a financial institution; rentals; loan or advance (not more than 10% of total wage). Impossible deductions include: amount greater than the actual remuneration received; breakages (crochery, electrical appliances); damages (ironing); meals provided during working time; clothing and work equipment. The accommodation of domestic workers may be deducted from the wages provided it complies with the minimum standards set by the law. The Congress of South African Trade Unions objects to deducting accommodation from the wages of domestic workers as it "...ignores the inconveniences to domestics and convenience to employers, of workers living in. If anything, employers should be charged a premium for this."

4.4 Standard employment contract

Sectoral Determination No.7: Domestic Worker Sector requires the following information and terms to be included in the employment contract.

- a. The full name and address of the employer

- b. The name and occupation of the domestic worker, or a brief description of the work for which he/she is employed.
- c. The place of work, and where he/she is required or permitted to work
- d. Date of employment
- e. The domestic worker's ordinary hours of work and days of work
- f. The domestic worker's wage or rate and method of payment
- g. The rate of pay for overtime work
- h. Any other cash payment he/she is entitled to
- i. Any payment in kind he/she is entitled to and the value of payment in kind
- j. How frequently to be made from wages
- k. Any deductions to be made from wages
- l. The leave he/she is entitled to
- m. The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.

As previously stated, Sectoral Determination No.7 requires the execution of an employment contract between the employer and domestic worker. The Ministry of Labour provides a sample employment contract, which includes a detailed job description, free of charge (APPENDIX H). The employer and worker may decide to draft their own employment contract as long as it contains the minimum terms and conditions of work under Sectoral Determination No.7. A contract of employment may be terminated upon four week's notice if domestic worker has been employed for six months or more or one week's notice if domestic worker has been employed for six month or more or one week's notice if employment is for six weeks or less.

4.5 Terms and conditions of employment

The employment contract is required to incorporate the following minimum terms and conditions of work under Sectoral Determination No.7

4.5.1 Working hours

Domestic workers can work up to a maximum of nine hours per day if he or she works five days a week and eight hours per day if work is more than five days per week. Sectoral Determination No.7 limits the total number of hours worked per week to 45 hours. Domestic workers may work beyond abovementioned limit provided they are paid overtime pay. However, the overtime should not exceed three hours in a day or 15 hours per weeks. In effect, the maximum number of working hours per day is 12 hours if the domestic worker works five days a week and 11 hours if work is more than five days per week. The maximum number of working hours per week, including overtime, is 60 hours.

4.5.2 Overtime pay

Overtime pay is equivalent to one and a half times the hourly wage. Night work standby and meal intervals are also regulated by Sectoral Determination No.7

4.5.3 Night work

Night work is defined as work performed after 18:00 and before 06:00 the next day. It is allowed under Sectoral Determination No.7 provided that there is an agreement in writing; the domestic worker is compensated by an allowance agreed upon by the employer and worker; and the worker resides at the workplace or transportation is available between the worker's place of residence and the workplace at the beginning and end of the working shift (Section 13).

4.5.4 Standby

Standby is defined as any period between 20:00 and 06:00 the next day when a domestic worker is required to be at the workplace and is permitted to rest or sleep but is available to work. A domestic worker is allowed by law to be on standby if it is agreed in writing; the domestic worker is compensated by the payment of an allowance of at least ZAR20 (USD2) per shift; and the number of standby does not exceed five times per month or 50 days per year.

4.5.5 Meal intervals

An employer is required to provide a domestic worker who works continuously for more than five hours a meal interval of at least one continuous hour. If the domestic worker is required to be available for

work during meal intervals, he or she must be paid. The meal interval may be reduced to less than 30 minutes provided there is an agreement in writing between the employer and worker.

4.5.6 Rest and leisure

An employer is required to grant a domestic worker a daily rest period of at least 12 consecutive hours between ending work and starting work the next day and a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed upon, must include a Sunday (Section 16).

4.5.7 Severance pay

The domestic worker is also entitled to the severance pay under Sectoral Determination No.7 subject to certain requirements: severance pay which is equivalent to at least one week of pay for every completed 12 months of continuous service is paid when the domestic worker is dismissed due to the operational requirements of the employer. Operational requirements refer to the requirements based on the economic, technological, structural or similar needs of an employer.

4.5.8 Other benefits

Since 1 April 2003, domestic workers have been covered by the unemployment insurance fund. The fund provides relief to contributors who become partially or fully unemployed through dismissal, retrenchment or illness. Maternity, adoption and dependant's benefits are also covered by the unemployment of fines or imprisonment according to the Unemployment Insurance Act, 2001. Employers and domestic workers contribute one percent each of the monthly salary to the fund.

4.5.9 Available redress

A study of domestic workers in Johannesburg, reports that there are domestic workers who experience long working hours are paid below the minimum wage; live in shacks; and have no access to a bathroom with running water (Pederby). Another challenge faced by domestic workers is dismissal because of ill-health, including HIV. There are also employers who are reluctant to employ workers with HIV some employers even add a provision in the employment contract requiring domestic workers to undergo HIV tests (Witbooi 2007). The inspectors of the Department of Labour handle violations of the sectoral determination and they have the power to issue compliance orders in case of violations. If still unresolved,

the case will be filed to labour courts. Cases referred to the labour courts may have to wait six to 12 months before it is heard and delays are increasing.

4.6 Conciliation

A dismissed employee or an employee alleging the unfair labour practice may refer the dispute in writing to a bargaining council, which is composed of representatives from trade union and employers organizations and tasked with handling labour-related disputes; or if there is no council, the Commission for Conciliation, Mediation and Arbitration has jurisdiction. The council or the Commission first attempts to resolve the dispute through conciliation. In case the dispute remains unresolved, the employee may elect to request the council or commission for Conciliation, Mediation and Arbitration to arbitrate or to refer the case the labour Court for adjudication.

In the December 2006 report of the Commission for Conciliation Mediation and Arbitration, referrals from the domestic sector constitute nine percent of the total referrals, the fourth highest among seven employment sectors covered. One advantage of the Commission for Conciliation Mediation and Arbitration process is that the domestic workers are able to express their complaints and situation unhampered by strict legal proceedings. The most common complaint of domestic workers involve unjust dismissal by employers and due to the nature of their relationship, reinstatement is difficult to order by the Commission for Conciliation Mediation and Arbitration. Also, there are still employers who plead ignorance of the provisions of the law applicable to domestic workers.

Undocumented migrant domestic workers have also referred employment disputes to the Commission for Conciliation Mediation and Arbitration although the latter is without jurisdiction to handle the disputes due to the status of the worker as migrants. In instances where employers agree, efforts are still undertaken to mediate the case. However, even through immigrant domestic workers are protected, they would rather not avail of the available remedies due to lack of understanding of the laws which contribute to their fear of being deported.

5. Conclusion and Recommendation

5.1 Conclusion

Migrant domestic workers have to face so many hazards in their recruitment policies and practices. They are also the victim of illegal recruitment, trafficking, servitude and forced labour due to the absence of a written contract of employment and lack of legal recognition of domestic work. But from the socio-economic point of view migrant workers are the part and parcel of both country of origin and the host country. That's why legal recognition to the work done by migrant workers or migrant domestic workers is a must, and both the countries should develop access to information, reporting and protection mechanisms for migrant workers.

The overall study of the legal instruments of Italy and South Africa shows that migrant domestic workers are covered by the main labour laws of the country; minimum age for migrant domestic workers is 15 years; written contract with the approval of the concerned ministry or department is required; social security is covered by laws; right to change employer is effective; freedom of movement is noticeable and finally migrant domestic workers can stay in Italy and South Africa while their case is pending or under trial in the Court. But most of these mechanisms are absent in the case of country like Bahrain, Jordan, Lebanon, Malaysia and Singapore. Protection mechanism of Filipinos is more explicitly described in their national legal instrument than those of Bangladesh although both the countries have ratified almost similar number (Philippines 34 and Bangladesh 33) of ILO Conventions.

5.2 Recommendations

The protection of the rights of the migrant domestic workers requires a sound legal foundation based on international law and standards, as well as active cooperation among governments, employers' organisations, workers' organisations and civil society including the media. Governments may ratify and fully implement concerned international legal instruments that promote human, labour and gender equality rights of migrant workers, in particular ILO Conventions No. 97 and No. 143; the eight fundamental Conventions, and the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. To prevent illegal migration and to ensure rights of migrant domestic workers countries of origin and the host countries should:

- (i) launch campaigns against illegal migration which might include awareness building regarding the risks of illegal migration and providing information about legal migration channels. Involvement of embassies and consulates from countries of employment in such campaigns is considered effective;
- (ii) take initiatives to avoid indebtedness of migrant domestic workers, including the adoption of agreements which provide that their recruitment costs be covered by the employer and/or recruitment agencies, and State credit programs for migrant workers should be ensured like Bangladesh;
- (iii) arrange training programs for migrant domestic workers prior to their departure which includes basic lessons in the language of the country of employment and practical tips on communication technologies and how to transfer remittances;
- (iv) ensure that workers' migrant status does not depend directly on the employment relationship with an employer and that, under certain circumstances and conditions, workers may change employers;
- (v) develop mechanisms to monitor the work of recruitment agencies; specific rules governing fees should be established and its enforcement should be monitored; recruiting agencies should have to renew their licenses periodically and watchdog arrangements should be established to ensure that only those agencies which observe specific criteria relating to migrant domestic workers' rights can continue to operate;
- (vi) take monthly periodic feedback from the domestic workers and arrange programmes to reduce vulnerabilities;
- (vii) ensure affordable equal protection based on the terms of the contract of employment, including working hours, wages, boarding and lodging.
- (viii) require a written contract, giving particulars of the employer and employee and details of the employee's monthly wages, duties and working hours, free time and vacations, board, lodging, medical insurance, transport to the country employment, conditions for terminating the contract, complaint procedures and provision for the eventuality of the employee's death or illness; when the contract is signed in the language of the country of employment, a translation should be required for the benefit of the migrant domestic worker.
- (ix) provide shelter to women fleeing from abusive employers and to provide them with assistance in filing complaints against the employers

and finally ensure their stay in the host country to deal with cases as necessary.

Most of the above recommendations are covered by laws in countries like Italy and South Africa but the question of effective implementation especially for South Africa like the Italian instrument.

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