

# RIGHTS OF **MIGRANT DOMESTIC WORKERS** IN EUROPE



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## I Acknowledgements

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## II Executive Summary

In Europe, the trend in recent years has been towards an increase in migrants among domestic workers, the overwhelming majority of whom are women. These workers are exposed to exploitation and abuse due to several factors, including the lack of recognition of their work as a proper job (as a result of gender stereotyping), their heavy dependence on the employer (especially if they live in the employer's house), but also due to a lack of clear legal protection. Furthermore, many migrant domestic workers are particularly vulnerable because of their irregular situation or the undeclared nature of their work. However, even those whose stay and employment are fully legal are vulnerable because general legislation is not adapted to their needs, and specific legislation, where it exists, often provides them with less protection than other categories of workers. Indeed, some of their problems are caused by legislation which restricts their access to a range of economic and social rights that are available to other workers or restricts their possibility of changing an abusive employer. Moreover, there is often a mismatch between the realities of the job market on the one hand and migration policies and legislation on the other.

The United Nations High Commissioner for Human Rights, Navi Pillay, has included migration as one of the six thematic global priorities to guide the work of her Office (OHCHR) for the biennium 2010-2011. Protecting human rights in the context of migration is one of the focus areas of work for the OHCHR Regional Office for Europe in Brussels (ROE). The ROE convened an International Legal Colloquium in Brussels from 25 to 26 May 2010 with the objective of exploring the applicability of existing international human rights standards to the situation of migrant domestic workers in Europe and of sharing good practices in addressing the human rights challenges which migrant domestic workers face. The Colloquium identified several possible ways of taking up these issues. On the international level, the adoption of a new International Labour Organization (ILO) instrument (a Convention accompanied by a Recommendation) appears to be essential for providing general guarantees such as availability of information on terms and conditions of employment, working-time provisions (including rest and freedom of movement during rest periods), choice (but not requirement) of residing in the home of the employer, provisions against child labour, prohibiting employers from keeping domestic workers' documents, and protection against abuse and harassment.

On the national level, the participants highlighted the need for legislation that provides the same standard of rights for domestic workers as for other categories of workers. It might be necessary to address some of their specific vulnerabilities in legislation (e.g. specific ways of inspecting working conditions where the workplace is not generally accessible), without these specific points being used as an excuse to restrict the rights of these workers. Above all, the Colloquium identified a need to overcome the obstacles stemming from excessively restrictive immigration legislation applied to migrant domestic workers, such as restrictions on their right to change their employer or occupational sector.

### III Foreword

On 25 and 26 May 2010, the OHCHR's Regional Office for Europe organized an International Legal Colloquium on the subject of migrant domestic workers in Brussels, which was attended by representatives of Governments, national human rights institutions, trade unions, NGOs and leading academics. An overwhelming consensus was reached by participants – namely, that domestic workers are particularly vulnerable to human rights abuses and that the rights of this particular category of workers deserve more attention and protection.

For many years, the issue of domestic workers' rights remained far from the centre of the human rights agenda. More recently, however, there has been growing interest in this issue on the part of international human rights mechanisms. In this report, Ms. Silvia González del Pino examines the challenges faced by migrant domestic workers, in particular women, as well as the international mechanisms for protection, and also discusses the main outcomes of the Colloquium.

Many domestic workers work an excessive number of hours, seven days a week, without adequate rest and leisure and without paid holidays. For many, the remuneration does not ensure an adequate standard of living, and some are effectively prevented from having a family life at all.

Most of the human rights challenges faced by domestic workers are shared worldwide because the main defining characteristics of their vulnerability remain the same – low status, asymmetrical relationships with their employer, isolation and gender. The work is most often performed by women. It often remains perceived as somehow belonging to traditional, unpaid women's activities rather than to the professional sphere, even when it is performed by paid "outsiders" rather than by female members of the household.

These four factors of vulnerability concern domestic workers, be they nationals of the country concerned, or migrants. Being a migrant only adds another dimension of vulnerability. Domestic workers who are migrants can be even more isolated from society due to a lack of contacts and linguistic or cultural barriers, and are thus unable to ask for outside help even in cases of the most extreme abuses, or from fear of losing their work permit and legal residence status.

It is a well known fact that migrant domestic workers are often exposed on an individual level to verbal, physical or sexual abuse as well as to extreme forms of economic exploitation which may reach the intensity of slavery or slavery-like conditions. However, the underlying issue is not merely one of individual employers abusing their domestic employees in clearly illegal ways. Nor is it simply an issue of criminal actors such as human traffickers organizing the deliberate exploitation of their victims. Such situations do exist, and they need to be addressed by criminal law instruments. But there is also a more systemic issue of the underlying rules which apply to domestic workers more generally. There is ample evidence that these rules often make the domestic workers more rather than less vulnerable to exploitation and abuse by individual employers. In some cases the rules even restrict domestic workers' access to economic and social rights.

It is therefore vital that the issue of adequate protection of human rights of migrant domestic workers be recognized as a major challenge which needs to be taken care of effectively on the international as well as on the regional (European) level, with the aim of guaranteeing these workers the full enjoyment of their human rights, regardless of their citizenship status.

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## IV Introduction

The effective protection of the human rights of migrants is still a major challenge worldwide, including in Europe. Over the last decade, the human rights dimensions of migration have increasingly attracted the attention of the international human rights mechanisms. This attention has focused above all on the area of economic, social and cultural rights as well as on the adverse effects of the increased tendency of States to criminalize irregular migration.

The United Nations High Commissioner for Human Rights, Navi Pillay, has identified migration as one of the six thematic global priorities to guide the work of her Office (for the biennium 2010-2011). OHCHR's strategic view of migration is based on the understanding that effective human rights protection is vital in order to ensure that migration becomes a choice and an opportunity rather than a survival strategy, and to maximize the potential of migration for development, both in countries of origin and destination.<sup>1</sup>

Protecting human rights in the context of migration is one of the focus areas of work for the OHCHR Regional Office for Europe in Brussels (ROE).<sup>2</sup> As a way of contributing to the priority of the Office, the ROE has identified a series of strategic areas for action, in close cooperation with the main stakeholders in the region. In the area of human rights and migration, it aims to follow up the action taken by European Union (EU) institutions aimed at an increased integration of human rights standards and principles related to migration in their respective fields of responsibility; to promote increased compliance of Member State migration policies and legislation with international human rights standards; to promote the adoption of national measures improving the access of migrants to basic services; and to encourage the increased engagement of rights holders, national human rights institutions and civil society organizations with UN and regional mechanisms in Europe to promote the rights of migrants.

All migrants, regardless of their status, are entitled to enjoy civil, political, economic, social and cultural rights under core international human rights instruments, unless specifically noted otherwise. However, several UN International Human Rights Treaty Bodies have noted in their concluding observations and in consideration of reports of countries under their review that some of the least protected groups are often found among the migrant population. The UN Human Rights Council Special Procedures experts also reached similar conclusions following visits to various countries in the European region.

Women migrant workers, in particular those employed in the most female-dominated occupations such as domestic work, are known to be particularly exposed to exploitation and abuse. Growing concerns about the situation of domestic workers, including, above all, those with a migrant background, have been expressed by a number of international-level mechanisms.

At present, there is no comprehensive factual overview of the legislative landscape across EU Member States as concerns the working conditions of these workers, their access to effective social protection and the effective protection of their rights, despite several key areas requiring attention for the effective protection of those human rights being identified by civil society organizations (NGOs, trade unions, research institutes) as well as by Member State Governments.

Some of these concerns involve the lack of applicable legislation, while others relate to the weakness of existing rules, viz. that even where legislation does exist, it is often less protective than laws applicable to other categories of workers. Indeed, in some situations migrant domestic workers might well be considered as being in a sort of legal limbo.

In recent years, the problems faced by migrant domestic workers regarding the full enjoyment of their rights have prompted several studies,<sup>3</sup> which identified several critical issues, namely the lack of recognition of their work as a proper job - in some national legal documents domestic workers are explicitly called 'helpers' rather than 'workers'; their heavy dependence on the employer, particularly if they live in the employer's house; the often abusive conditions of work; and above all the lack of a clear legal framework and jurisdiction to prevent and protect them from abuse.

The impact of the world financial crisis is adding new pressures to the situation in Europe. The UN Secretary-General, Ban Ki-Moon, recently alerted governments to the adverse effects of the crisis on the situation of millions of migrant workers around the world. He noted how important it was that governments ensure the protection and promotion of the human rights of migrant workers through their domestic legislation and political and social framework.<sup>4</sup>

The present paper aims to provide an overview of the main challenges faced by migrant domestic workers, in particular women, in Europe, as identified by existing international human rights mechanisms; of the relevant provisions in the international human rights standards which provide a framework for protection of the rights of migrant domestic workers; and of factors requiring particular attention in the process that aims to secure better protection of the rights of migrant domestic workers, in particular women.

## V Domestic work: women, migration and human rights

### 1. Definition of domestic work

While a commonly agreed international legal definition of the concept of domestic work has not to date been drafted, in 1951 an ILO meeting of experts provided a general outline of what constitutes domestic work. At the time, a domestic worker was defined as a “wage earner working in a private household under whatever method and period of remuneration, who may be employed by one or several employers, and who receives pecuniary gain from this work”.<sup>5</sup>

The range of activities carried out by migrant domestic workers is very wide. Nevertheless, there are some common factors. The domestic worker’s job tends to involve a variety of tasks of a domestic nature, which are perceived as “low-skilled”, and therefore poorly valued in social and economic terms. However, unlike some other “low-skilled” jobs, this type of job tends to be highly personalized, isolated and emotionally charged. It involves very unequal power relationships and is typically performed by women – indeed, it is widely perceived as a “woman’s job”.<sup>6</sup>

### 2. Continued gender dimension of domestic work

Despite the continuous incorporation of women in paid work and the more balanced sharing of responsibilities between men and women, domestic work remains a highly gender-specific niche of the labour market. For instance in Austria, more than 96 per cent of domestic workers officially accounted for in 2008 were female.<sup>7</sup> In conjunction with gender stereotypes, this fact contributes to the low social prestige and poor economic evaluation of domestic work

The underlying context is one of a persistent gender stereotype which identifies domestic work with traditional, unpaid women’s activity. This view leads to an undervaluation of domestic work, which is not perceived as a professional activity even when it is carried out by paid “outsiders” rather than by female members of the family.

### 3. The growing migration dimension of domestic work

In Europe, the trend in recent years has been towards an increased proportion of migrants among domestic workers. As the gender composition of domestic workers has remained virtually unchanged, the growing demand from abroad has inevitably become one of the factors contributing to the “feminization of migration”.<sup>8</sup> This development reveals not only the increasing proportion of women migrants but also the phenomenon of women migrating independently in search of jobs (rather than accompanying their male family members) in response to the surge in demand for a cheap female labour workforce in developed countries.<sup>9</sup> This trend, moreover, is likely to continue in coming years



due to dramatic population ageing in most European societies and the consequent increase in the demand for domestic work and personal care.

The phenomenon of migration and specifically of the “feminization of migration” is accompanied by human rights violations at several levels and in a variety of contexts. The global awareness of these abuses spread significantly as a result of the Santa Cruz Declaration on Human Rights of Migrant Workers in October 2006, which underlined the urgency of taking up the issue and the need for the strong involvement of the States of origin and destination. As a result, national human rights institutions committed themselves to prioritizing work on the rights of migrants and agreed to a set of principles to guide this work.

#### 4. The magnitude of the phenomenon

According to the ILO, domestic work accounts for between 5 per cent and 9 per cent of all employment in industrialized countries.<sup>10</sup> In 2008, data provided by EUROSTAT,<sup>11</sup> collected in 2005 for 25 EU Member States, showed that the fourth and fifth largest occupational categories for women were those of “domestic helpers” and “personal care workers”; these two categories (together with that of “other office clerks”) employed 19 per cent of women. For example, in Belgium, domestic workers are estimated at 41,100, more than 92 per cent of whom are women. In Spain, the total number of officially employed domestic workers (in 2008) amounted to some 752,000. None of these statistical data, however, take into account the actual numbers of persons employed irregularly, within the “shadow economy”, in “atypical relationships” outside any legislative framework.

The following table shows the magnitude of this factor in European Union countries.

**Table 2: Magnitude of domestic work in the EU-27 in 2008**

	Total No. of employees
<b>Spain</b>	752,600
<b>France</b>	606,600
<b>Italy</b>	419,000
<b>Germany</b>	173,000
<b>Portugal</b>	136,300
<b>United Kingdom</b>	136,000
<b>Greece</b>	68,100
<b>Belgium</b>	41,100
<b>Poland</b>	18,000
<b>Cyprus</b>	16,800
<b>Austria</b>	11,000
<b>Ireland</b>	8,600
<b>Finland</b>	8,000
<b>Netherlands</b>	4,000
<b>Lithuania</b>	2,900
<b>Slovakia</b>	2,200
<b>Norway</b>	2,000
<b>Latvia</b>	1,900
<b>Czech Republic</b>	1,000
<b>Bulgaria</b>	no information available
<b>Denmark</b>	no information available
<b>Estonia</b>	no information available
<b>Hungary</b>	no information available

<b>Luxembourg</b>	no information available
<b>Romania</b>	no information available
<b>Slovenia</b>	no information available
<b>Sweden</b>	no information available

Source: Table based on Laborsta, ILO database of labour statistics (search by "Paid Employment, by economic activity").

## 5. Relationship between domestic work, informal/undeclared employment and irregular migration

The relationship between domestic work, undeclared employment relationships and irregular migration is complex. In general, while irregular migration is often perceived by the media, the broader public or even policymakers as being “the” cause of the rise of the informal economy, it is clear that an established informal sector is a powerful “pull” factor, attracting irregular labour migration to Europe; and this also holds true for the area of domestic work.

In fact, this is one of the major informal sectors. In the first place, this may be due to the characteristics of the sector itself: it is a very flexible type of work (in terms of schedules, salaries and employment conditions) which has traditionally been considered as assistance, rather than a profession. In addition, it is usually carried out in the employer’s house, which may also be the employee’s residence. Due to these factors, there must be a relationship of trust between the employer and the employee; if this does not exist abusive situations can ensue. These are difficult to detect as the closed conditions in which the work is carried out hinder the access of labour inspectors.

In addition, the existence of a large informal sector is driven by the employers themselves, who seek to avoid the burdensome administrative procedures involved in registration of domestic workers. In certain cases, the administrative hurdles stemming from restrictive migration policies might actually prevent employers from recruiting migrant domestic workers legally even if they wish to do so.

For many migrant workers with various types of irregularity (from those who are fully undocumented to those whose conditions of legal residence exclude paid employment), such undeclared work is not truly a choice but a necessity since they are unable to gain access to the legal labour market. Even in certain circumstances and in certain legal systems, a relatively long stay in the informal domestic service labour market is the only possible way to access administrative regularization.

Moreover, some fully regular migrants may also accept undeclared work if required to do so by their employer in a highly asymmetrical working relationship, or because they have not been successful in finding a job in the legal labour market (due to a lack of skills, discrimination etc).

## 6. Relationship between migration, labour market and welfare policies

There are different legal and social realities regarding migrant domestic workers depending on national migration, welfare and labour policies. While Nordic countries offer social care regimes promoting daily child and elderly care facilities for working couples or individuals needing such services (essential in ensuring equality in employment for both men and women), Southern European countries (with some exceptions) do not usually offer such facilities, which results in a higher demand for private domestic work. This situation is also combined with different active labour market policies and approaches, which have a direct impact on the numbers of declared or undeclared working relationships in the domestic work sector. Some of these measures are tax deductions, cash payments, service cheques, etc.

In some countries, the increase in demand for migrant domestic work appears to be linked to a recent reduction in expenditure on social policies. For instance in the Netherlands, domestic work is especially in demand among the elderly and disabled, but cuts have reduced the availability of public services for these groups. Italy has also been quoted as another example of an increasing demand

for domestic work as a result of reduced expenditure on social policies. Sector growth in some countries, such as Spain, runs parallel to the recent massive incorporation of women in the labour market and the ageing of the population, together with a lack of social policies to cope with these new trends.

National immigration policies also have a direct impact on the domestic work labour market (as a large percentage of these jobs are carried out by migrants) and they respond to very diverse perceptions of the benefits and shortcomings of incorporating migrants into the national labour market. For instance, Northern and Eastern European countries have developed immigration policies which reflect the expectation that EU citizens from new EU Member States will substitute third-country nationals occupying the jobs in these sectors. Some of these countries have even established recruitment policies for temporary work. Southern European countries have (belatedly) established immigration policies which foresee the intermittent regularization of immigrant (including domestic) workers, but these have not been very effective.

Some countries in Southern Europe have established rigid recruitment schemes for temporary workers that exclude an extension of stay. Nevertheless, the growing demand for migrant domestic workers is often not reflected in migration legislation that maintains an overwhelmingly restrictive approach. For instance, in the case of Italy, although the Government has expressed an interest in programming migration flows, it appears to prefer to regularize the situation of some of the irregular migrants already in Italy. In general, throughout Europe, there is a lack of explicit recognition of the need for migrants to carry out domestic work.

An additional problem related to domestic work is the legal regime applicable to the sector. Normally the worker is faced with conditions which are often in violation of labour rights (regarding working hours, salaries, holidays, and unemployment and retirement benefits). This places any worker in this sector at a disadvantage. If we add the fact that the worker is an immigrant and in an irregular situation, their vulnerable position becomes substantially more serious.

This combination of migration, labour market and welfare policies has different effects as far as full enjoyment of the rights of domestic workers is concerned. In the case of Northern and Eastern European countries, this was described at the Brussels Colloquium (in the keynote speech given by Professor Maria Kontos) as a “stable illegalization” of migrant domestic and care workers, especially in States with a long history of immigration, but also in Eastern European countries, whereas in the case of the Southern European countries, the combination of these policies leads to an “unstable legalization” of domestic and care workers.

## 7. Risks of abuse and human rights violations

The fact that the domestic work sector is increasingly served by poor migrant women entails a combination of inequalities determined by gender, race, ethnicity and social status. These factors make migrant domestic workers a group which is very vulnerable to human rights abuses. These abuses range from economic exploitation (excessive numbers of working hours without adequate rest, wages far below the national standard or, where applicable, legally set minimum wages) through degrading treatment and violations of human dignity, to violence. In some extreme cases, the exploitation and abuse may reach the intensity of slavery-like conditions and/or be linked with human trafficking. One of the main obstacles to combating domestic slavery and trafficking has been the fact that anti-trafficking legislation, which had been geared to penalizing trafficking for the purposes of sexual exploitation, has tended to penalize only the traffickers and not the actual employer (who may or may not be aware of the conditions under which the worker arrived in the country).

While the extent of such abuses is extremely difficult to evaluate due to the fact that they are concealed in private households, there is ample evidence that they do not constitute mere individual cases, but can be regarded as more or less systematic. The risks of human rights abuses are particularly high for migrant domestic workers with irregular or undocumented migration status or those who accept undeclared work. However, even migrant domestic workers whose migration and employment status are fully legal are usually in a weaker position than the national workforce in terms of the protection of their rights.

For instance, the legislation in some EU Member States does not provide for the opportunity of changing employer, making it more difficult to escape an abusive employer, as this would lead to the loss of the residence permit. This is the case in the legislation in Cyprus, according to which domestic workers cannot change employers, and if they are dismissed (or leave), they inevitably lose their residence permit.

Even where laws and regulations do allow for a change of employer, they often only allow short time limits for obtaining another job before migration status is revoked, as a result preventing domestic workers from leaving employers who exploit them. An example of this situation is Belgian legislation. This potential loss of the residence permit also discourages migrant domestic workers from denouncing abuse.

Restrictions regarding the sector of employment in which they are allowed to work are also common. For instance, in the United Kingdom, a domestic worker can change employer. However, the worker is restricted to one sector, and must continue to work in that sector for a minimum of five years on a full-time contract.

In many cases, the physical, cultural and linguistic isolation experienced by migrant domestic workers (especially if they are “live-in workers”), and their lack of support networks and knowledge of the legislation of the host country further aggravate their exposure to abuse. In fact, even when their rights are protected by law, there might be social, linguistic and cultural barriers which prevent them from seeking and receiving support from the authorities.

This isolation is made worse by the working conditions, which leave little time for leisure and social contacts. However, in some countries such as Spain, a factor called “spontaneous association” is taking place, thanks to initiatives by tertiary sector organizations. These are domestic work platforms which bring together associations of workers in the sector and which work towards improving national legislation regarding domestic work and migrant domestic workers’ human rights.

## VI The protection of the rights of migrant domestic workers in international human rights law

### 1. Universal Declaration of Human Rights

All the situations faced by migrant domestic workers have a respective provision guaranteeing protection in the Universal Declaration of Human Rights (UDHR) and subsequent core international Human Rights Instruments. As a general rule, basic international human rights standards and core labour standards apply to all migrants. Moreover, the core international human rights conventions contain non-discrimination clauses, which ensure that each of these instruments is also applied to non-citizens.

Almost all the 30 articles of the UDHR fully or partially cover relevant aspects of the human rights challenges faced by migrant domestic workers. The UDHR establishes, inter alia, the right to security of a person (Article 3); freedom of movement (Article 13); the right to free choice of employment (Article 23); the right to rest and leisure (Article 24); the right not to be held in slavery or servitude (Article 4); the right not to be subjected to cruel, inhuman or degrading treatment (Article 5); the right to equal protection of the law (Article 7); the right not to be subjected to arbitrary interference of privacy (Article 12); the right to social security and the right to a standard of living adequate for health and wellbeing (Article 25) - all falling under the overriding principles of equality and non-discrimination and applicable to everyone, everywhere and always (Article 2). A renewed commitment to the promotion of the principles of the UDHR was launched in 2008 by all the UN Member States, including all the European countries, in the context of the commemoration of the 60<sup>th</sup> Anniversary of the Adoption of the Declaration. These commitments require direct translation into domestic legislation and policies to continue to effectively take up the challenges ahead.

Since the adoption of the Declaration in 1948, nine core Human Rights Instruments (treaties) have been adopted, eight of which have entered into force. All UN Member States have ratified at least one, while some 80 per cent of Member States have ratified four or more. Europe is one of the

regions with the highest number of ratifications. All these instruments further develop the main provisions in the Declaration. Some of them contain specific relevant norms addressing the human rights problems faced by many migrant domestic workers. These Human Rights Instruments, presented below, require periodic reporting by Member States to Treaty Bodies (Committees) which review their performance and issue both specific recommendations and general comments.

## 2. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is important for the protection of migrant domestic workers above all in terms of its Article 8, which prohibits slavery and slave trade in all their forms as well as forced labour. Article 22 is also important as it establishes the right to freedom of association and may be relevant in the context of restrictions to which some migrant domestic workers are subjected. However, there are many other provisions which protect migrant workers from abuses, such as Article 13 which establishes a due process for expulsion of an alien lawfully in the territory of a country, or for the other human rights included in the Covenant, most of which are applied for both regular and irregular migrants. The Treaty Body created by the ICCPR, the Human Rights Committee (HRC), drafted General Comment No. 15: The position of aliens under the Covenant,<sup>12</sup> which provides the specific aspects of the applicability of the Covenant to citizens and aliens. The Committee recognized that although some of the rights included in the Covenant are only applicable to citizens, many States go further in their restrictions and de facto deprive non-citizens of the enjoyment of other rights with no justification under the Covenant. Specifically, the Committee noted that aliens may not be imprisoned for failure to fulfill a contractual obligation, that they shall be equal before the courts, and that they cannot be deprived of the right to peaceful assembly and freedom of association. In its comments on the situation of States, the HRC noted that domestic workers, especially migrants, are “particularly vulnerable to exploitation”. In this sense, the Committee has proposed that the Netherlands create a specific legal framework or the extension of the general labour law to migrants.<sup>13</sup>

## 3. International Covenant on Economic, Social and Cultural Rights

Articles 7 to 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognize the right of everyone to the enjoyment of just and favourable conditions of work that ensure equal and satisfactory working conditions, the right to form trade unions and join them, and the right to enjoy social security, including social insurance and maternity leave.

The Committee on Economic, Social and Cultural Rights (CESCR) noted the special vulnerability and discrimination suffered by domestic workers and their families in its comments on the situation in Belgium.<sup>14</sup> In the case of Denmark, the Committee recognized that a majority of domestic workers are migrants.<sup>15</sup> Furthermore, on several occasions it, underlined the discrimination suffered by migrant domestic workers regarding their conditions of work, difficult access to healthcare facilities, in particular undocumented workers in Belgium and France. This was pointed out in two different State reports on Belgium and France.<sup>16</sup> The CESCR also noted the lack of a proper regulation of the issue under national law<sup>17</sup> and, in its comments on the situation in Sweden, the passive approach of the State towards the situation of “illegal workers who are employed in the ‘shadow economy’” as domestic workers.<sup>18</sup> The CESCR has reminded the States that, regardless of their migration status, all persons “are entitled to primary and emergency medical care”.<sup>19</sup>

In addition, regarding the situation in Denmark, the Committee warned that “a strong link between the labour contract and the length of a residence permit may hinder the enjoyment by migrant workers and their families” of the human rights protected by the Covenant.<sup>20</sup> In the case of Poland and Denmark, the Committee has also expressed its interest in the possibility of migrant workers having access to official or judicial institutions where they can submit their claims to ensure the effective protection of their rights.<sup>21</sup> The CESCR recommended national governments to work for equality for domestic workers through the improvement of their legal protection<sup>22</sup> (recommendation made to Denmark), in line with the conditions of local workers<sup>23</sup> (recommendation to Sweden).

#### 4. Convention on the Elimination of All Forms of Discrimination against Women

In its Article 11, the Convention on Elimination of All Forms of Discrimination against Women establishes the obligation of all the State Parties to work for the elimination of discrimination against women in the field of employment.

The Committee on Elimination of Discrimination against Women (CEDAW) has repeatedly emphasized (in its comments on Ireland and Cyprus) the need to make more efforts to eliminate discrimination against women, including domestic helpers, in the fields of work conditions and wages,<sup>24</sup> as, in certain cases, these suffer from a “precarious situation”.<sup>25</sup> In its comments on Austria, the CEDAW stated that the wage gap between men and women in the employment sector is even wider in the case of migrant women.<sup>26</sup> Indeed, in the cases of Austria, France, Cyprus and Germany, the CEDAW considered that migrant women have more difficulties finding a job, accessing justice to complain about violations of employment rights, and accessing social services, and that they suffer from salary inequalities.<sup>27</sup> The CEDAW asked the States “to address the issue of women migrant workers”.<sup>28</sup> Very specific attention was drawn to the situation of female migrant domestic workers in the households of diplomats in Germany.<sup>29</sup>

In 1991, the CEDAW first considered the question of domestic work in its General Recommendation No. 17.<sup>30</sup> It recommended taking into account the unremunerated domestic activities of women as a contribution to the gross national product. This was a first step towards accepting domestic work as a job. Migrant women, the CEDAW noted, have the same rights as men to have family unity; this right to join the family is included in General Recommendation No. 21.<sup>31</sup>

The CEDAW also drew up a General Recommendation specifically on the subject of women migrant workers<sup>32</sup> on the basis of the particular vulnerability of this group with low-paid jobs and a high risk of abuse and discrimination, as opposed to the situation of male migrant workers. According to the CEDAW, it is fundamental to analyse female migration from a gender perspective in order to better understand and address the particular situations confronted by female migrant workers and, in particular, domestic workers.

The CEDAW considers that one of the reasons for the so called “feminization of migration” is the exacerbation of sex-specific divisions of labour in the formal and informal services sector, although there are others as well. This has significantly increased the number of women migrating to work in the domestic sector. As the CEDAW points out, such occupations “may be excluded from legal definitions of work, thereby depriving women of a variety of legal protections”, such as less access to health services, discrimination in relation to pregnancy, graver risk of physical and sexual assault, exploitation and abuse because of their irregular immigration status, limited access to justice *de jure* (in countries where there are legal restrictions to their access to justice) and *de facto* (no knowledge of the language, of their rights, of the role of their national embassies). The CEDAW drafted several recommendations to the States implicated in the process of migration of women, starting with the involvement of women migrant workers and relevant NGOs in the formulation of gender-sensitive and rights-based policies and in their implementation, monitoring and evaluation. The CEDAW also encourages the collection of quantitative and qualitative data in order to better identify the problems and needs faced by these women in the process of migration. The CEDAW recommendation differentiates between the State of origin, transit and destination, with specific advice to each of them:

1. Regarding the country of origin, the CEDAW recommends the lifting of discriminatory restrictions on migration on the basis of age, marital status, pregnancy or maternity status, facilitating pre-departure information to women concerning the risks and their rights, providing a list of reliable recruitment agencies and raising public awareness of all the costs and benefits of migration for women.
2. Concerning the countries of transit, the CEDAW considers that they should ensure that the rights of women migrant workers are not violated and that they should do so by training their public agents and by prosecuting violations if they occur under their jurisdiction.
3. As for the countries of destination, the CEDAW considers they should ensure that migrant women workers enjoy the same rights as national women workers by lifting discriminatory bans on immigration and by reviewing the coherency of national laws with the equality principle formulated in

the international treaties. They should also ensure that sectors dominated by women, such as domestic work, are protected by labour laws, which include mechanisms for monitoring workplace conditions. Facilitating access to justice should be another priority, which should not only include access to complaint mechanisms, but also provide temporary shelters for women migrant workers who wish to leave abusive employers, husbands or other relatives. The State should also endeavour to ensure that nobody confiscates or destroys travel or identity documents belonging to women workers and that family reunification schemes for migrant workers are not directly or indirectly discriminatory on the basis of sex. They should also adopt regulations to ensure that the recruiting agents respect the rights of migrant women workers to access legal and administrative assistance, to ensure that they can safeguard remittances of income, facilitate the right to return and access to diplomatic and consular protection.

Moreover, the CEDAW has raised the issue of undocumented migrant workers having the right of access to the due process of law, including free legal aid, and that each case of deportation should be considered individually. The CEDAW encourages cooperation between States through bilateral and multilateral agreements in order to better achieve the recommendations formulated.

Finally, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (15/10/1999) provides the possibility for individual complaints delivered in relation to human rights violations according to the Convention. For this purpose, the association of migrant women in countries of destination is an important step towards better protection of their rights since it makes it possible to denounce the situations which are invisible to judicial or police officers.

Regarding the countries of destination, the Vienna Convention on Consular Relations, 24 April 1963, protects the rights of migrants in the country of destination by consular assistance and helps and establishes some procedural guarantees before courts and the law. The importance of this Convention stems from the relevance of certain Decisions of the International Court of Justice.<sup>33</sup>

## 5. The International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) stipulates in Article 5 the right of everyone to equality before the law, without distinction as to race, colour, national or ethnic origin, notably as regards the enjoyment of political, civil, economic, social and cultural rights. The Convention regards migrants as one of the groups vulnerable to discrimination.

The Committee on the Elimination of Racial Discrimination (CERD) has expressed its concern about the situation of undocumented migrant workers in European countries "...drawing attention to violations of their human rights, including alleged ill-treatment, low wages received with considerable delay and long working hours". In the case of Spain, the CERD has reminded national authorities that they must "ensure the enjoyment of human rights for all foreigners in the country, whether documented or undocumented, regular or irregular".<sup>34</sup> Regarding Italy, the Committee urged the national authorities to take measures to eliminate discrimination against foreigners concerning working conditions and work requirements and it urged "...effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, including debt bondage, passport retention, illegal confinement and physical assault".<sup>35</sup>

On the other hand, the CERD stated its satisfaction with the measures adopted in Belgium "to strengthen the inclusion of migrants in the labour market..."<sup>36</sup> and with the introduction, in the case of Portugal, of criminal legislation "against the illegal trafficking of migrant workers"<sup>37</sup> and "against employers of undocumented migrants". Similarly, it expressed appreciation of the measure adopted by Italy "to combat exploitation in the workplace"<sup>38</sup> as well as those undertaken by Cyprus allowing "foreign workers, including domestic workers" to submit complaints before the national authorities.<sup>39</sup> While analysing the situation of the Netherlands, the Committee invited the State to ensure that even when "...domestic servants may change employers though not occupation (...), the status of domestic servants under immigration law is not exploited by employers".<sup>40</sup>

The CERD also drew up a General Recommendation on discrimination against non-citizens, which is highly relevant to migrant domestic workers.<sup>41</sup> This Recommendation warns that hostility against

migrants “constitutes one of the main sources of contemporary racism”. Moreover, it recommends the State parties not to interpret Article 1, paragraph 2 (which provides the possibility of differentiating between citizens and non-citizens) in order to detract in any way from the human rights recognized in the international treaties, i.e. recommending that they respect the principle that human rights, with very few and specific exceptions, are to be enjoyed by all persons. The CERD states that any differentiation between citizen and non-citizen rights “will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”. The CERD also recommends removing any obstacle preventing “the enjoyment of economic, social and cultural rights by non-citizens”, notably in the area of employment among others, and any discrimination “in relation to working conditions and work requirements”.

In the General Recommendation, the CERD recognizes the serious problems faced by non-citizen workers and in particular by non-citizen domestic workers and stresses among others: passport retention, illegal confinement, rape and physical assault. It recommends the State parties to take effective measures against these situations. It also reminds them that, while the employers may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights (...) once an employment relationship has been initiated up until it is terminated.

Finally, the CERD recognizes that there are some forms of racial discrimination against women and recommends monitoring the discrimination, disadvantages, obstacles and difficulties women face in the full exercise of their rights on grounds of race, colour, descent, national or ethnic origin.<sup>42</sup>

## 6. The International Convention on the Rights of Migrant Workers and Members of their Families

One of the key international human rights instruments, which specifically protects the rights of migrant workers and members of their families, is the International Convention on the Rights of Migrant Workers and Members of their Families (ICRMW). This instrument, which has not been ratified by any of the EU Member States, provides for a specific and comprehensive framework of protection and applies to all stages of the migration process. It is the Convention with the largest number of provisions applicable to the specific challenges being faced by migrant domestic workers and with a non-discrimination clause with respect to rights in Article 7. However, many of the articles of this Convention merely specify the provisions already foreseen in the ICCPR and the ICESCR – ratified by all EU member States- and in the other core human rights treaties, establishing additional guarantees. The Convention has a special and exceptional reference to the State measures for the reunification of migrant workers in a regular situation (Article 44), and to the right to transfer all migrant workers’ earnings and savings (Article 32).

The Migrant Workers Committee (MWC), the body of experts set up to monitor the implementation of the Convention, is currently involved in the preparation process for its first general comment to be devoted specifically to the situation of migrant domestic workers. While the jurisdiction of the different Convention Committees is limited to the State parties to the Convention, general comments have proved extremely useful to all States as regards understanding the scope of the rights in the treaties. Therefore, the general comment under preparation will certainly provide guidance within the complexity of the situations of migrant domestic workers in all the regions of the world. The Committee organized a day of general discussions in preparation for the general committee in Geneva during its 11<sup>th</sup> session in October 2009. Some of the main points addressed by the participants included the frequent (mis)perception that domestic work is not work and lacks coverage by labour legislation and regulations, therefore it is not subject to labour inspections; the fact that many of these workers have no real choice but to engage in irregular work without contracts and protection; the lack of employer contributions to social security schemes and a wide range of abuses due to this protection gap, such as the unlimited working hours, discrimination in salaries and wages and the frequent situations of violence (including sexual violence) which these workers face with no possibility to escape or obtain redress. The participants confirmed the views that, as a general rule, the existing international human rights standards apply to all migrants regardless of their status.



## 7. The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) has two dimensions regarding the protection of migrant children. The first is the protection of children as exploited “workers”. In that sense its Article 32 recognizes the right of the child to be protected from economic exploitation and from performing any work. The second is the protection of minors as migrant workers’ children. According to the Convention “the best interest of the child” is a primary consideration (Article 3) and must be taken into account in order to separate a child from his or her parents (Article 9 in relation to other Articles of the Convention). Amongst all the rights included in the Convention, States shall ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible (Article 18).

In the context of its examination of the situation in Spain and France, the Committee on the Rights of the Child (CRC) has expressed its concern about the situation of children of domestic workers, since they are more vulnerable than others and their access to health and education services is more limited.<sup>43</sup> On considering the situation in Denmark, the CRC also pointed out the discrimination suffered by children of migrant workers and by children of migrant families,<sup>44</sup> in particular the children of undocumented migrants (in the case of the Czech Republic).<sup>45</sup>

## 8. UN Special Procedures mandate holders

The UN Special Procedures mandate holders, referred to as “Special Rapporteurs”, “Special Representatives” and “Independent Experts”, are distinguished independent experts on specific human rights themes appointed on an individual basis by the Human Rights Council or the General Secretary of the United Nations. Several of them have also studied the issues which are directly or indirectly linked to human rights challenges faced by migrant domestic workers.

Difficulties in accessing the labour market have been pointed out by Yakin Ertürk, the UN Special Rapporteur on violence against women, together with their causes and consequences. She recently emphasized the impact of the economic crisis on migrant women workers, including domestic workers. In her opinion, they have already been among the first to be laid off, a reflection of their involvement in part-time, flexible and vulnerable jobs, as well as gender biases which consider women’s labour as dispensable.<sup>46</sup>

The concern about the linkage between restrictive migration policies and irregularity was formulated by the UN Special Rapporteur on racism, Doudou Diène, in the case of Italy. He expressed his concern about the situation of migrant domestic workers in Italy, mentioning the abusive working conditions of migrant women working in this sector. He also pointed out that migrants continue to suffer from a security approach to immigration legislation that criminalizes them and that the discourse of the authorities supporting a model of legal migration within quotas established on the basis of the needs of the labour market is challenged by the reality of a substantial number of migrants working in the illegal sector.<sup>47</sup>

The former UN Special Rapporteur on the human rights of migrants, Gabriela Rodríguez Pizarro, pointed out the difficulties which migrant domestic workers experience in accessing health care services even in cases of accidents occurring during working time.<sup>48</sup> In the report on the issue, she also noted that women domestic workers are more vulnerable to sexual abuse.<sup>49</sup> She also expressed serious concern about miscommunication and the difficulties caused by the lack of knowledge of the language of the country of destination.<sup>50</sup>

The former UN Special Rapporteur on violence against women, Radhika Coomaraswamy, has alerted the international community to the fact that violence against domestic workers is an issue requiring urgent attention. According to the Special Rapporteur, the silence that surrounds violence against domestic workers arises partly from the unwillingness of both the origin and host States to accept the responsibility for migrant workers (owing to the economic benefits associated with migrant labour) as well as to the lack of documentation regarding such violence.<sup>51</sup> Her successor, Yakin Ertürk, expressed concern about the disproportionate percentage of violent situations suffered by women domestic workers in the reports for the Netherlands and Sweden in 2007. As a general feature, reports of the UN Special Rapporteurs on violence against women have included concerns

about the difference between the de jure situation of women and the de facto situation. In the opinion of the current UN Special Rapporteur, Rashida Manjoo, the situation of domestic workers is generally ignored at national level and only limited academic work and research has been carried out on the issue.

The special vulnerability of migrant domestic workers was also noted by the UN Special Rapporteur on Contemporary forms of slavery, its causes and consequences, Gulnara Shahinian, due to the unprotected nature of their work, the highly personalized relationship between the worker and his or her employer, and their insecure legal status in the host country.<sup>52</sup> She warned that forced labour is an expression of slavery and occurs in cases of domestic workers. According to the Special Rapporteur, some of the most traditional forms of slavery, such as debt bondage, have evolved and now manifest themselves in the plight of some migrant domestic workers.<sup>53</sup>

Trafficking is a human rights violation. The Special Rapporteur on trafficking in persons, especially women and children, considered the question of recruitment of migrant workers, women and children, with the aim of exploitation, i.e. as victims of trafficking.<sup>54</sup> In relation to this issue, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, now widely ratified, is a very important instrument for combating this crime.

## 9. The International Labour Organization (ILO)

The ILO adopted a resolution on the conditions of employment of domestic workers<sup>55</sup> as early as 1965, recognizing the “urgent need” to establish minimum living standards for them. The survey that followed up this resolution 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.<sup>56</sup>

ILO Conventions and Recommendations are critical to the improvement of legislation and practice in the Member States with respect to decent work for domestic workers. In fact, the work of the UN and that of the ILO are complementary since international labour standards elaborate further on how to achieve the human rights which are laid down in the UN instruments and protected by them from a labour perspective.

The ILO has repeatedly taken the stance that unless a Convention or Recommendation specifically excludes domestic workers, these workers are included in the scope of these international instruments. While there is not a specific ILO instrument on domestic work as yet, the rights of domestic workers are protected under the ILO’s eight fundamental Conventions covering freedom of association and collective bargaining, discrimination in employment and occupation, child labour and forced labour.<sup>57</sup> These areas are also covered by the 1998 Declaration on Fundamental Principles and Rights at Work which reaffirmed that all ILO Members have an obligation to promote, respect and realize these rights and principles. The eight fundamental Conventions apply to all workers, regardless of their citizenship.

In addition, a range of other ILO instruments are relevant to the protection of the rights of migrant domestic workers,<sup>58</sup> including Convention No. 97 on migration for employment, Convention No. 143 on working conditions and equal treatment of migrant workers, and Convention No. 118 on equality of treatment in social security. ILO Convention No. 143 provides specific guidance for irregular migrant workers who are employed unlawfully since it establishes the minimum norms applicable to all migrant workers. Indeed its Article 1 sets out that the States parties must “respect the basic human rights of all migrant workers” regardless of their migratory status or legal situation.

The Committee of Experts on the Application of Conventions and Recommendations has interpreted “basic human rights” as the rights included in the International Bill of Human Rights, the ICRMW, and the ILO Declaration on Fundamental Principles and Rights at Work.

The situation of domestic workers is an issue which is being given increasing attention by the ILO. In this regard, the ILO went further in its commitment, and in 2006, the ILO Multilateral Framework on Labour Migration dealt with the special needs of migrant domestic workers. Although it is not a binding document, it is a useful guide for States as regards the adoption of effective policies on this

issue. The main step, however, will be taken in the near future. The ILO's decision to discuss the drafting of an international convention on domestic workers was included in the agenda of the 99th Session of the International Labour Conference (ILC) of June 2010 and it is proof of the new prominence achieved by this topic. Civil society organizations are hopeful that it might be easier to receive support for such an instrument from States, since it involves a tripartite (employers, workers and governments) negotiation logic which is different from the strictly intergovernmental logic of the UN human rights instruments. As the fourth item on the agenda for the above-mentioned ILC, the ILO published the Report on Decent Work for Domestic Workers. This report includes a proposal for a Convention and Recommendation concerning this issue. The proposed Convention includes definitions and human rights from a general perspective, meaning that there is still work to be done in order to improve the first draft.

## VII Conclusions and recommendations

The core international human rights instruments protect all human beings, including domestic workers as well as migrants, regardless of their migration status. International human rights treaty mechanisms have increasingly reminded European States of the applicability of these instruments to migrant domestic workers and their obligation to develop national legislation in accordance with the international human rights instruments to which they are parties.

On the international level, the proposal to establish a new ILO instrument (a Convention accompanied by a Recommendation) appears to be essential for providing general guarantees such as information on terms and conditions of employment, working-time provisions (including rest and freedom of movement during rest), choice (but not the requirement) to reside in the home of the employer, provisions against child labour, prohibiting employers from keeping domestic workers' documents, and protection against abuse and harassment. Furthermore, strengthening scrutiny at international level would also contribute to ensuring responses at the national level. A mechanism would ensure that national governments commit themselves to reporting on the situation of domestic workers when drafting reports on the international human rights mechanisms. In general, it is crucial to make better use of the existing international and regional frameworks and of the work done by the international instruments (monitoring bodies) which can provide guidance for the development of national legislation and policies.

National legislation needs to address some of the specific vulnerabilities which domestic workers suffer from while at the same time providing the same standard of rights for them as for other categories of workers. Models of contracts and a description of what constitutes abusive conditions could be clearly spelt out in public documents accessible to these workers. In particular, one of the specific points which national legislation should not ignore is the fact that the large majority of migrant domestic workers are women. In this context and in order to cope with the dual discrimination they might suffer as women and migrants, specific professional counseling mechanisms could be established as ways to tackle the complex abusive situations they face, including verbal and sexual violence.

Exchange of good practices between European countries in this respect could be a very promising area in terms of introducing legal arrangements which protect from abuse or reduce the incentives for irregular employment. For instance, Belgium adopted a measure aimed at promoting legal hiring, a payment instrument co-financed by national authorities and operated through a State-controlled intermediary ("titre-service"). Sweden decided to create tax benefits for employers hiring domestic workers and thus encourage legal hiring to bring irregular workers into the formal sector. These new conditions mean that the employer pays only half of the cost while the Government pays the rest. In many European countries where the existence of slow, ponderous administrative procedures discourages employers from hiring workers in a regular way, it would be useful to make the legal recruitment of foreign workers easier and faster.

It is also necessary to find mechanisms to overcome the difficulties involved in demonstrating any abuse which has been committed in private households. While there might be legal obstacles, at least in some countries, for carrying out inspections in private households, there are other methods of monitoring which do not necessarily mean visiting the workplace. One solution could involve obligatory reporting to the authorities on the number of working hours and providing information on

working conditions. For instance, in Ireland obtaining a visa for employment requires a declaration by the employer accepting an inspection. It would also be useful to interview the worker outside the workplace. Where inspections are legally possible, lack of human resources in labour inspectors may pose a problem; but this could be at least partly overcome by carrying out a limited number of random inspections rather than only checking on those cases in which the employee has made a complaint. Moreover, drawing up a guide for labour inspectors could help them better understand the complexities involved in domestic work, the workplace, and their specific aspects. In any case, there is a general need to externalize the working relationship so as to better monitor and inspect working conditions.

In general, a greater involvement of national labour ministries is to be recommended. In many countries, the situation of migrant domestic workers remains mainly part of the responsibilities of the interior ministry and/or the ministry of migration because the workers are perceived first and foremost as migrants and their work-related problems are overlooked. Moreover, there is often a mismatch between the realities of the job market and employment migration policies and legislation. Therefore, labour ministries should be more involved in policies or legislation aimed at improving the situation of migrant domestic workers. This would contribute, among other measures, to increasing the level of coherence and consistency between immigration legislation and domestic work regulation, thereby providing greater and more integrated protection of migrant domestic workers.

Sharing good practices between countries of origin and countries of destination in designing an effective framework of protection for migrant domestic workers is also essential, in particular in an area of regional integration such as the EU. For instance, in the Philippines, domestic workers must register their contract before leaving the country so that the embassy in the host country can follow up on working conditions and the legality of the contract.

In the context of contributing to this exchange of good practices and in accordance with the Santa Cruz Declaration on Human Rights of Migrant Workers, national human rights institutions could facilitate further research, develop codes of practice and assist transnational cooperation by using their networks to communicate migration issues between the States involved in the migration process of domestic workers.

Finally, efforts at international and national level are recommended in order to empower migrant domestic workers. Such awareness-raising efforts should not only be aimed at the recognition of the existence of their rights but also at promoting the exercise of these rights by the workers in real life. On this point, migrant domestic workers should be encouraged to start using mediation and collective action. Embassies can contribute to this empowering task by facilitating information on the country of destination, its labour and domestic work legislation if the latter exists, on trade unions and migrant worker associations, etc. The involvement of the media in this process is also essential in raising awareness of the role of domestic work in society and the realities of these workers.

## Notes

<sup>1</sup> United Nations Human Rights. Office of the High Commissioner. High Commissioner's Strategic Management Plan 2010-2011. Geneva, 2009, p. 31.

<sup>2</sup> Opened on 14 October 2009, the ROE aims to foster the engagement of OHCHR and of the UN human rights system with European States and institutions by providing them with advice and assistance for integrating human rights dimensions into regional and national policies and programmes.

<sup>3</sup> E.g. RESPECT Network: Acting Together for the Protection of the Rights of Migrant Domestic Workers, Migrant Domestic Workers Perspectives, Amsterdam, September 2009; CES-ETUC, Out of the Shadows - Organising and protecting domestic workers in Europe: The role of trade unions, Brussels, April 2005; Caritas Internationalis: Migrant domestic workers – General considerations and examples from selected countries, October 2009.

<sup>4</sup> Ban Ki-Moon: Opening Speech, Global Forum on Migration and Development. Brussels, 2 November 2009.

<sup>5</sup> ILO, The Status and Conditions of Employment of Domestic Workers. Meeting of Experts, Geneva, 2-6 July 1951, Report 3, Document MDW/8.

<sup>6</sup> M. Gallotti, The Gender Dimension of Domestic Work in Western Europe, International Migration Papers, No. 96, ILO, Geneva 2009, p. 2-3.

<sup>7</sup> ILO/Laborsta: Statistics for 2008 under the search criteria "Paid employment by economic activity".

<sup>8</sup> RESPECT Network, op. cit. p. 3.

<sup>9</sup> United Nations International Research and Training. Institute for the Advancement of Women (INSTRAW), Gender, Remittances and Development. Feminization of Migration, 2007, Working Paper 1. Santo Domingo, 2007.

<sup>10</sup> ILO, Decent work for domestic workers: towards new international labour standards, World of Work Magazine No 68, April 2010.

<sup>11</sup> EUROSTAT statistical books. The life of women and men in Europe. A statistical portrait, European Communities. Luxembourg, 2008, pp. 57-61. The data showed that some 61 % of women in employment worked in just six sectors of activity, all of which involved the supply of services - health care and social work (in which 17 % of all working women were employed), retailing (12.5 %), education (11.5 %), public administration (7 %), business activities (7 %) and hotels and restaurants (5 %). These six sectors, however, accounted for only 31 % of men in employment.

<sup>12</sup> General Comment No. 15: The position of aliens under the Covenant: 11/04/86.

<sup>13</sup> Para. 23, CCPR/CO/72/NET (HRC, 2001).

<sup>14</sup> Para. 14 E/C.12/BEL/COL/3 (CESCR, 2008).

<sup>15</sup> Para. 15, E/C.12/1/ADD.99 (CESCR, 2004).

<sup>16</sup> Para. 21 E/C.12/BEL/CO/3 (CESCR, 2008) and para. 26 E/C.12/FRA/CO/3 (CESCR, 2008).

<sup>17</sup> Para. 20, E/C.12/1/ADD.70 (CESCR, 2001).

<sup>18</sup> Para. 20, E/C.12/1/ADD.68 (CESCR, 2001).

<sup>19</sup> Para. 37, General Comment 19, E/C.12/GC/19, 4 February 2008.

<sup>20</sup> Para. 17 E/C.12/1/ADD.103 (CESCR, 2004).

<sup>21</sup> Para.15 E/C.12/1/ADD.82 (CESCR, 2002) and para. 4 E/C.12/1/ADD.99 (CESCR, 2004).

<sup>22</sup> E/C.12/1/ADD.98 (CESCR, 2004) and E/12/1/ADD.107 (CESCR, 2005).

<sup>23</sup> Para. 32 E/C.12/1/ADD.99 (CESCR, 2004) and para. 31 E/C.12/1/ADD.70 (CESCR, 2001).

<sup>24</sup> Para. 29, CEDAW/C/CYP/CO/5 (CEDAW, 2006), para. 395 bis, A/60/38 (SUPP) (CEDAW, 2005).

<sup>25</sup> Para. 394 bis, A/60/38 (SUPP) (CEDAW, 2005).

<sup>26</sup> Para. 227 bis, A/55/38 (SUPP) (CEDAW, 2000).

<sup>27</sup> Para. 29, CEDAW/C/AUT/CO/6 (CEDAW, 2007), para. 30, CEDAW/C/CYP/CO/5 (CEDAW, 2006), para. 18, CEDAW/C/FRA/CO/6 (CEDAW, 2008), para. 27, CEDAW/C/DEU/CO/6 (CEDAW, 2009), para. 339 bis, A/59/38 (SUPP) (CEDAW, 2004).

<sup>28</sup> Para. 204, A/54/38/REV.1 (SUPP) (CEDAW, 1999).

<sup>29</sup> Para. 394, 395, A/59/38 (SUPP) (CEDAW, 2004).

<sup>30</sup> CEDAW General Recommendation No. 17, tenth session, 1991, Measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP.

<sup>31</sup> CEDAW General Recommendation No. 21, thirteenth session, 1994, Equality in marriage and family relations. Other important Recommendations are those related to violence against women (General Recommendation No. 12, eighth session, 1989, Violence against women; General Recommendation No. 19, eleventh session, 1992, Violence against women) or labour questions (General Recommendation No. 13, eighth session, 1989, Equal remuneration for work of equal value).

<sup>32</sup> CEDAW, General Recommendation No. 26 on women migrant workers.

<sup>33</sup> Lagrand case, No. 104, 27 June 2001, Germany v. United States of America. Avena case, No. 128, 31 March 2004, Mexico v. United States of America.

<sup>34</sup> Para. 12, CERD/C/64/CO/6 (CERD, 2004).

<sup>35</sup> Para. 17, CERD/C/ITA/CO/15 (CERD, 2008).

<sup>36</sup> Para. 9, CERD/C/BEL/CO/15 (CERD, 2008).

<sup>37</sup> Para. 3 CERD/C/304/ADD.117 (CERD, 2001).

<sup>38</sup> Para. 9, CERD/C/ITA/CO/15 (CERD, 2008).

<sup>39</sup> Para. 260, A/56/18(SUPP) (CERD, 2001).

<sup>40</sup> Para. 17, CERD/C/304/ADD.104 (CERD, 2001).

- <sup>41</sup> General Recommendation No. 30: Discrimination against non-citizens: 01/10/2004.
- <sup>42</sup> CERD General Recommendation No. 25: Gender related dimensions of racial discrimination, 20/03/2000.
- <sup>43</sup> Para. 17, CRC/C/15/ADD. 185 (CRC, 2002) and para. 42 CRC/C/15/ADD. 240 (CRC, 2004).
- <sup>44</sup> Para. 26, CRC/C/15/ADD. 151 (CRC, 2001).
- <sup>45</sup> Para. 54, CRC/C/15/ADD.201 (CRC, 2003), para. 55, CRC/C/15/ADD. 201 (CRC, 2003).
- <sup>46</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, op. cit. p. 9.
- <sup>47</sup> A/HRC/4/19/Add. 4, 2007.
- <sup>48</sup> Report of the Special Rapporteur, Gabriela Rodríguez Pizarro. Specific Groups and Individuals. Migrant Workers. E/CN.4/2004/76, 12 January 2004, p. 10,
- <sup>49</sup> Report of the Special Rapporteur, Gabriela Rodríguez Pizarro, *ibid.* p. 9.
- <sup>50</sup> Report of the Special Rapporteur, Gabriela Rodríguez Pizarro, *ibid.*
- <sup>51</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, A framework for model legislation on domestic violence E/CN.4/1996/53/Add. 2, 2 February 1996.
- <sup>52</sup> Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, A/HRC/9/20 28, July 2008, p. 9.
- <sup>53</sup> "Slavery is not history" warns UN Special Rapporteur, 27 November 2008. United Nations Press Release.
- <sup>54</sup> A/HRC/10/16, Report to the Human Rights Council, 2009.
- <sup>55</sup> ILO: Official Bulletin (Geneva), July 1965, Supplement I p. 20-21 in M. Gallotti, op. cit. p. 13.
- <sup>56</sup> ILO: International Labour Review, Oct. 1970.
- <sup>57</sup> All EU Member States have ratified all eight fundamental ILO Conventions.
- <sup>58</sup> The coverage of domestic workers by the existing body of international labour standards is examined in detail in ILO, Decent Work for Domestic Workers, report IV(2), International Labour Conference, 99<sup>th</sup> Session, June 2010.