

**PROMOTING THE
INTEGRATION OF**

**MIGRANT
DOMESTIC**

WORKERS

IN EUROPE

MODULE II

International Labour Standards relevant to Domestic Work and Migration



International Labour Office



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International Training Centre

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Outline

1. How ILS work and the impact of the new set of standards on Domestic workers

2. Fundamental rights at work & labour standards applying to MDW

3. ILO Migrant Specific Instruments

4. C189 & R201: scope and main provisions

5. How the supervision of labour standards works and its contribution to the protection of (Migrant) Domestic Workers

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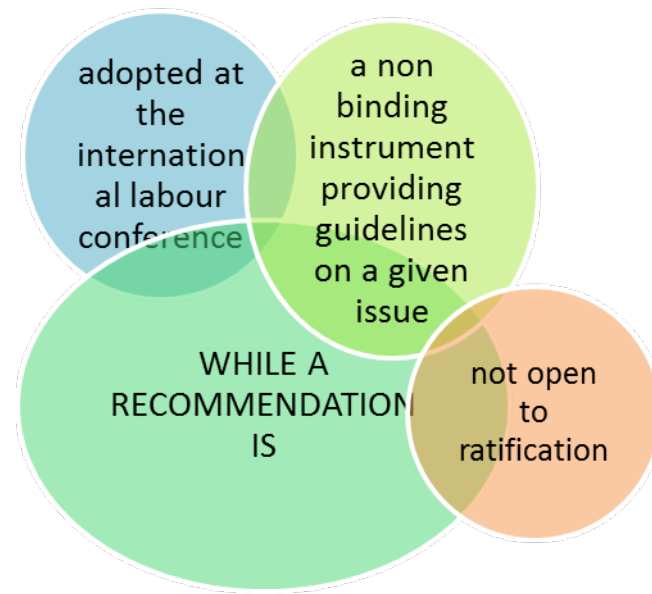
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1. How ILS work and the impact of the new set of standards on Domestic workers

International Labour Standards

- covering all matters related to work to support ILO's mandate in favour of social justice
- international conventions and recommendations drawn up by representatives of governments, employers and workers from around the world in consultation with experts
- adopted when a consensus is reached at the occasion of the annual International Labour Conference.



The impact of C189 & R201

- An increasing number of ratifying States
- Even when a Member State has not ratified, C189 & R201 have an impact



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2. Fundamental rights at work & labour standards applying to MDW

- Fundamental principles and rights at work regarding:
 - Freedom of association and right to collective bargaining
 - Freedom from forced labour
 - Abolition of child labour
 - Freedom from discrimination
- Universal Declaration of Human Rights
 - Just & favourable conditions of work
 - Just remuneration
 - Limitation on working hours; rest & leisure
 - Right to form & join unions
 - Social security, etc.

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Fundamental ILO Conventions

FOA & Collective Bargaining

- Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87) **(149)**
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98) **(159)**

Equality & Non-discrimination

- Equal Remuneration Convention, 1951 (No.100) **(166)**
- Discrimination (Employment and Occupation) Convention, 1958 (No.111)

Elimination of FL

- Forced Labour Convention, 1930 (No. 29) **(173)**
- Abolition of Forced Labour Convention, 1957 (No. 105) **(171)**

Elimination of CL

- Minimum Age Convention, 1973 (No. 138) **(152)**
- Worst Forms of Child Labour Convention, 1999 (No. 182) **(169)**

- All ILO member states are supposed to comply with and report on the application of these conventions even in case of non-ratification of one or several of these eight conventions.
- The reports submitted to the ILO are reviewed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

- **All labour standards apply to migrant workers unless otherwise specified.**
 - Migrant Workers **ARE** Workers
 - Some instruments particularly relevant for protection rights of Migrant Workers such as :
 - All fundamental ILO conventions
 - C181 (Private Recruitment Agencies)
 - C81 (Labour Inspection)
 - **C189 (Decent Work for Domestic Workers)**

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3. ILO Migrant Specific instruments

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ILO Migrant Specific instruments

- **Migration for Employment**
- **the Migration for Employment Convention (Revised), 1949 (No.97) (49 ratifications)**
 - Migration for Employment Recommendation (Revised), 1949 (No. 86)
- **the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) (23 ratifications)**
 - Migrant Workers Recommendation, 1975 (No. 151)
- **Social security**
- Equality of Treatment (Social Security) Convention, 1962 (No.118) (38 ratifications)
- Maintenance of Social Security Rights Convention, 1982 (No.157) (4 ratifications)

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Migrant domestic workers general provisions from labour standards (C97 & C143)

- C.97 = the principle of equality of treatment between regular migrant workers and national workers with respect to hours of work, rest period and holidays. It aims at protecting regular migrant workers from discrimination and exploitation.
- C.143 = the issue of control of migration flows, including clandestine migration and illegal employment of migrants and operates a shift increasing the protection of migrant workers.
 - it broadens the scope of equality between migrant workers by extending it from equality of treatment to equality of opportunities.
 - it clearly highlights the obligation to respect the basic human rights of all migrants, irrespective of their legal status in the country of destination.
- even in an irregular situation, migrant workers must enjoy minimum standards of protection such as:
 - Basic human rights
 - Right to due process
 - Return in conditions of dignity - No arbitrary expulsion
 - Cost of expulsion not to be borne by the worker
 - Right to past accrued wages, social security

- Historical context
 - Facilitate the movement of surplus labour
- Purpose
 - Protect migrant workers from exploitation and discrimination
- Scope
 - Migrant workers and their families regularly admitted to the country of employment
- Categories of workers excluded
 - Frontier workers, seafarers, members of liberal professions and artists entering on a short-term basis

- Regulation of conditions in which labour migration takes place
- General protection provisions
- Non-discrimination and equality of treatment between migrants and nationals
 - Wages/ working conditions
 - Trade union rights
 - Accommodation
 - Social security
 - Employment taxes
 - Access to courts

- Whenever necessary or desirable, conclusion of agreements to regulate migration for employment in cases where numbers of migrants are sufficiently large
- Recommendation No. 86 (Annex): model bilateral labour migration agreement

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Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

■ Historical context

no longer facilitation of movement of migrant workers, but bringing migration flows under control and hence eliminating illegal migration and suppressing activities of organizers of clandestine movements of migrants

■ Aims

- Facilitate and regulate labour migration flows
- Suppress activities of organizers of clandestine movements of migrant workers
- Provide minimum protection to all migrant workers

■ Structure: Flexible instrument

- Part I – Migrations in abusive conditions (Articles 1-9)
- Part II – Equality of opportunity and treatment (Articles 10-14)

Migration in abusive conditions – Minimum standards

- **Basic human rights of all migrant workers**
- **Protects regular status of migrant worker when loss of employment**
 - **But distinguished from “a right to stay”**
- **Migrants in an irregular situation:**
 - **Equal treatment in respect of rights arising out of past employment (e.g. remuneration, social security)**
 - **Access to legal proceedings**
 - **No costs on expulsion**
 - **Possibility of regularization**

- Recommendation No. 86, Para. 4(2):
 - Consultation on all general questions concerning migration for employment
- Convention No. 143, Art. 7:
 - Consultation on laws and regulations and other measures designed to prevent and eliminate migration abuses

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Multilateral Framework on Labour Migration (2006):

A set of non-binding principles, guidelines and best-practices for Governments, organizations of employers and workers to pursue a rights-based approach to labour migration.

The Framework aims to foster cooperation in order to assist in the implementation of effective policies on labour migration.

- Based on significant international instruments, an analysis of policy, and the mandate of the ILO
- 9 sections, 15 principles and about 120 guidelines:
- Decent Work for All
 - Governance
 - Protection of Migrant Workers
 - Migration and Development
 - International Development
 - Annex: Examples of best practices, corresponding to the principles, drawn from all regions.

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4. C189 & R201: scope and main provisions

C189 & R201: summary

- **Convention No. 189**
 - Sets minimum standards
 - Binding on ratifying States
 - In force from 5 Sept 2013

- **Recommendation No. 201**
 - Non-binding
 - Guidance for strengthening national laws, policies and practice
 - To be read in conjunction with Convention

- All domestic workers
- Under strict conditions, possible exclusions:
 1. Workers with higher or equivalent protection
 2. Workers in respect to which application of Convention's provisions poses serious problems

C.189, Art. 2

Scope - Definitions

- What is “domestic work”?
 - *“Work performed in an for a household or households”*
- Who is a “domestic worker”?
 - *“any person engaged in domestic work within an employment relationship”*
- Not a domestic worker:
 - *“a person who performs domestic work only occasionally or sporadically and not on an occupational basis”*

C. 189, Art. 1

Scope - Definitions (continued)

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- ***the employer of a domestic worker***
 - *The employer of a domestic worker may be a member of the household for which the work is performed, or an agency or enterprise that employs domestic workers and makes them available to households.*

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C189 & R201: A rights-based approach

- **Two overarching, inter-related obligations:**
 1. Effective promotion and protection of the human rights of all domestic workers
 2. Measures to ensure fair terms of employment and decent working and living conditions
- Protection against abuse, harassment & violence
- Right to be informed on terms and conditions of employment

C.189, Art. 3 and 6

C189 – global coverage

- **The convention provides practical provisions touching upon the following subject matters:**
 - Fundamental rights at work (article 3)
 - Protection against abuse, harassment and violence (article 5)
 - Protection of particular groups, children, live-in workers and migrant workers (respectively articles 4, 6 and 9, 8 and 15)
 - Fair terms of employment, decent working and living conditions (article 6)
 - Privacy (articles 6, 17)
 - Information on terms and conditions of employment, written contracts (article 7)
 - Working time (article 10)
 - Remuneration (articles 11 and 12)
 - Occupational safety and health (article 13)
 - Social security (article 14)
 - Private employment agencies (art.15)
 - Dispute settlement, complaints, enforcement (art.17)

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C189 relevant to MDW

Additional provisions specific for protection of migrant domestic workers

- Written job offer or contract before travelling to country of employment
 - Exception: workers enjoying freedom of movement for employment
- Conditions for repatriation to be specified
- Emphasis on cooperation between ILO Members

C.189, Art.8

R.201, Para. 20(2), 21, 22, 23, 26

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C189 relevant to MDW: Protection against abuse, harassment and violence

- Protection of domestic workers from abusive practices by private employment agencies (Article 15).
- &
- Effective protection against all forms of abuse, harassment and violence
 - Including: physical, moral, sexual, & discriminatory (based on sex, gender, ethnicity, religion etc.)
 - Right to be informed of terms and conditions of employment
 - In an appropriate, easily understandable, and verifiable manner
 - Preferably written contracts

C.189, Art. 5
R.201, Para. 7

C189 provisions relevant to MDW: Live-in domestic workers

**Face specific risks and issues.
Migrant workers particularly concerned.**

- Key principles:
 - Decent living conditions respecting worker's privacy
 - Freedom to reach agreement on live-in requirement
 - No obligation to remain in household during daily and weekly rest, annual leave
 - Right to keep personal documents
- Access to third-party assistance and effective protection in case of dispute or abuse (R.201)

*C.189, Art. 6 and 9
R.201, Para. 3, 17, 18*

C189 provisions relevant to MDW: Ensuring compliance

- Compliance with laws and regulation protecting domestic workers:
 - Crucial to make the Convention effective
- A combination of means
 - Effective and accessible complaints mechanisms
 - Develop and implement measures for labour inspection, enforcement and penalties
- Balancing the right to equal protection with the privacy of the home

C.189, Art. 17
R.201, Para. 7, 21, 24

C189 provisions relevant to MDW: Means of implementation

- A range of means:
 - Laws and regulations
 - Collective agreements
 - Additional measures
 - Arbitration awards, bilateral & multi-lateral agreements, policies and programmes, model contracts, codes of conduct provision of information, hotlines, outreach etc.
- Depending on the circumstances:
 - Extending or adapting existing measures to cover domestic workers
 - Development of specific measures
- In consultation with social partners

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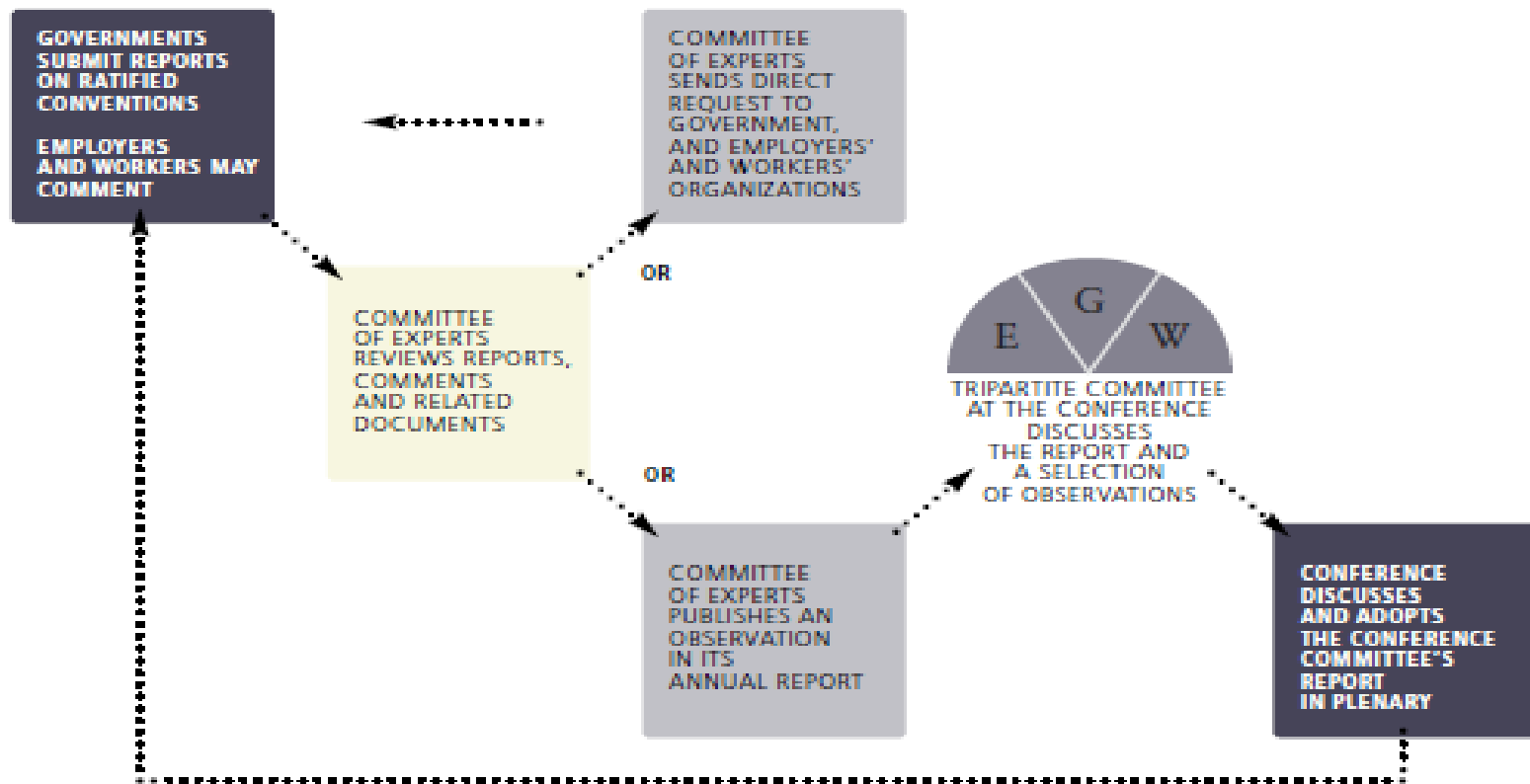
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5. How the supervision of labour standards works and its contribution to the protection of (Migrant) Domestic Workers

ILO Regular supervisory process

The regular supervisory process



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The CEACR on Domestic Work: comments on Fundamental Conventions

**Article 2 of the
FREEDOM OF
ASSOCIATION
AND
PROTECTION OF
THE RIGHT TO
ORGANISE
Convention, 1948
(ILO Convention
No. 87), applies
to all “workers
and employers,
without
distinction
whatsoever.”**

- The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), seeks to ensure that workers enjoy adequate protection against interference in the establishment, functioning and administration of their representative organizations.
- The CEACR has consistently interpreted Conventions 87 and 98 as requiring that legislative provisions concerning freedom of association, including the right to organize, be extended to domestic workers and that these legislative provisions be applied in practice.

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The CEACR on Domestic Work: comments on Fundamental Conventions

The fundamental principles OF NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY reflected in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100), also apply to domestic workers.

- The CEACR has drawn attention to the vulnerability of these workers, in particular migrant domestic workers, to multiple forms of discrimination and abuse due to the individual employment relationship, lack of legislative protection, stereotyped thinking about gender roles and undervaluing of domestic work.
- laws or measures designed to promote equality of opportunity and treatment in employment and occupation that exclude domestic workers from their scope are contrary to these Conventions.
- domestic workers are often affected by wage disparities between men and women and has cautioned against undervaluing domestic work when fixing minimum wages.

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The CEACR on Domestic Work: comments on Fundamental Conventions

In its 2007 General Survey on the eradication of forced labour (ILO Conventions 29 & 105), the CEACR recalled that the prohibition of the use of forced or compulsory labour was a peremptory norm of modern international human rights law.

- The CEACR has addressed the important issue of trafficking of women, to which migrant domestic workers can be particularly vulnerable.
- In its 2001 general observation on Convention No. 29, the CEACR asked Members to ensure that those responsible for the exaction of forced labour from legal or illegal migration, inter alia in domestic work, are actually punished, and that trafficking in persons be suppressed.

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The CEACR on Domestic Work: comments on Fundamental Conventions

The CEACR has been very active in responding to the problem of child labour in domestic work, when examining implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182), a crucial source of guidance on the setting of standards to combat child domestic labour, and the minimum age convention (No.138).

- The CEACR has repeatedly called upon member States to take effective action to prevent child domestic labour, highlighting the traditional practice of entrusting young children (often distant relatives) to the care of adults – such as the *restavek* system in Haiti that has led children into forced labour.