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Legal Protection for Southeast Asian Migrant Domestic Workers: Why It Matters

Domestic work is often excluded from the protections afforded to migrant workers through national and international laws, and this has led to exploitation and abuse. This NTS Insight investigates the dynamics of the migrant-domestic-worker sector by examining the experiences of Filipino and Indonesian migrant domestic workers in Saudi Arabia and Malaysia. It explains why domestic work remains unrecognised and poorly regulated, reviews current protection measures and charts potential ways forward to address the most common protection needs of migrant domestic workers.

By Pau Khan Khup Hangzo, Zbigniew Dumiencki and Alistair D.B. Cook.



Protesters demanding fair wages for domestic workers.

Credit: nic0/Flickr.com

Introduction

While many migrant domestic workers enjoy decent working conditions, others endure a range of abuses at the hands of their employers. This includes non-payment of salary, forced confinement, food deprivation, an excessive workload, severe psychological, physical, and sexual abuse, and in extreme cases, death. As there is often no set procedure or system for handling cases of abuse against domestic workers, responses are ad hoc and ineffective.

This NTS Insight argues that the protection of the rights of migrant domestic workers has not kept pace with the increasing recognition of their economic and social contributions. This is reflected in the lack of guidance in existing national and international labour laws as to how to address the specific challenges and circumstances of domestic work.

Through reviewing the experiences of migrant domestic workers from the Philippines and Indonesia, this NTS Insight sheds light on the domestic-work sector's dynamics and explains why it remains unrecognised (as formal labour) and is consequently unregulated. It also outlines some of the measures taken by governments to address problems of exploitation and abuse, in order to chart potential ways forward for national as well as regional and global institutions.

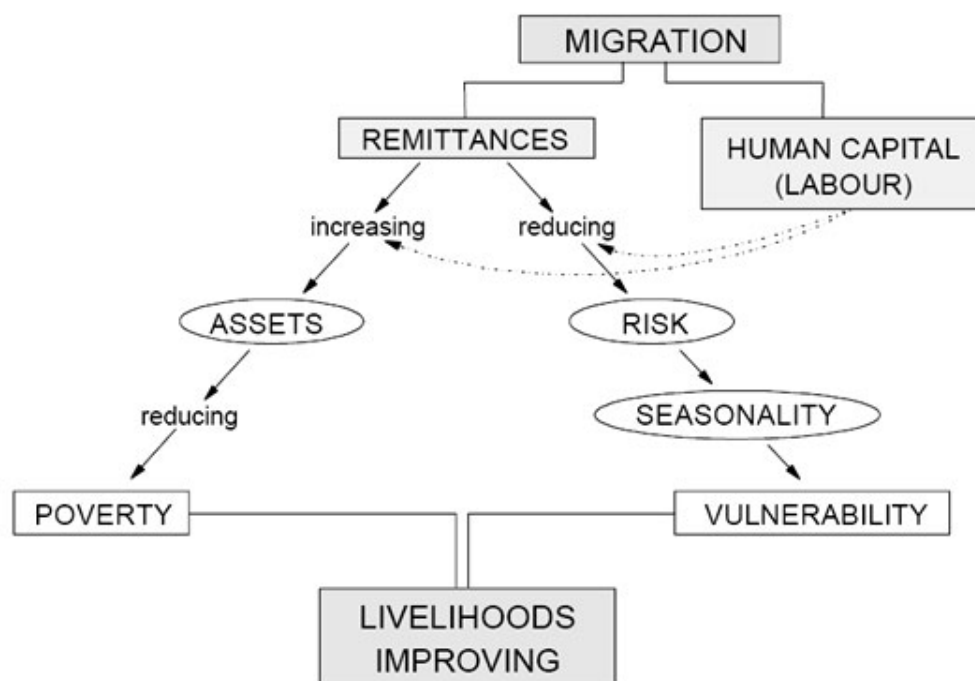
Theoretical Considerations

Migrant domestic workers fall within the broader category of 'labour migration', which is defined as the migration of a person 'from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment' (ILO, 1949).

For labour sending countries, the export of labour is an important strategy for addressing unemployment, generating foreign exchange and fostering economic growth. Of the more than USD440 billion worldwide migrant remittances in 2010, developing countries received USD325 billion, an increase of 6 per cent from the 2009 level (World Bank, 2011). Most importantly, labour migration expands the scope for poor people to construct their own pathways out of poverty (Nyberg-Sorensen et al., 2002). The remittances help poor families hedge against the seasonality and risk inherent in livelihood activities such as crop production, thus reducing their vulnerability (Ellis, 2003; refer to Figure 1). The income also enables them to invest in a range of livelihood assets such as land, education, livestock, etc. Receiving countries facing labour shortages also benefit, as labour migration adds to their human capital stock.

However, as this NTS Insight will show, labour migration also gives rise to exploitative working conditions, which pose a significant challenge for policymakers, particularly those in labour sending states.

Figure 1: Positive links between migration and improvement of livelihoods.



Source: Ellis (2003:8).

Owing to their status as 'labour surplus' countries, the Philippines and Indonesia actively promote labour export as a development policy (UNESCO, 2007). The significance of labour migration as a state policy is perhaps most clearly seen in the Philippines, where the state has produced a discourse which emphasises 'migrant heroism', representing overseas workers, particularly women migrants, as self-sacrificing, nationalist martyrs – in order to normalise migration and migrants' faithful remittance-sending to the homeland (Rodriguez, 2005).

This institutionalisation of labour export has its origin in Presidential Decree No. 442, better known as the Labor Code of the Philippines, issued by President Ferdinand E. Marcos in 1974 (Republic of the Philippines, 1974). The policy was further enhanced in 1978 when Presidential Decree No. 1412 created the Overseas Employment Development Board (OEDB) and the Office of Emigrant Affairs, which were charged with the promotion, development and regulation of Filipino overseas employment. In 1982, the functions of the OEDB was absorbed by the Philippine Overseas Employment Administration (POEA) which was established through Executive Order No. 797.

The Philippines has since become the largest labour sending country in Asia (Lindio-McGovern, 2003). There are an estimated 8.7 million overseas Filipinos worldwide in December 2007, of whom 58 per cent (or 5 million) are overseas Filipino workers (OFWs) (Domingo, 2009). Remittances by OFWs in 2010 were estimated at USD21.3 billion (World Bank, 2011).

In neighbouring Indonesia, the institutionalisation of labour export started in the 1970s when the Indonesian Government announced a series of regulations to administer overseas labour recruitment (Raharto, 2007). The objectives of Indonesia's labour export and national

development programme, also known as Pelita or Repelita, were: (a) to evenly distribute employment opportunities; (b) to extend employment opportunities; and (c) to provide foreign exchange revenue.

Since the implementation of labour export programmes, Indonesia, like the Philippines, has become one of the major labour exporting countries in Asia, with approximately 4.3 million documented Indonesian migrant workers working overseas in 2008 (ILO, 2010c). Remittances from Indonesian labour migrants (who are commonly known as TKIs or *tenaga kerja Indonesia*) in 2010 was estimated at USD7.1 billion (World Bank, 2011).

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Domestic Work: A Labour Sector Vulnerable to Exploitation

Indonesia and the Philippines have one of the highest proportions of female migrants. Each year, more than 60 per cent of legal migrant workers from these countries are women (IOM, 2008). This is in line with an overall international migration trend which has become known as the 'feminisation of migration' – more and more young single women or female family breadwinners migrate independently in search of jobs rather than as family dependants travelling with their husbands or under the authority of older relatives and men (Nyberg-Sorensen et al., 2002).

The Philippines in particular offers an interesting example of this phenomenon. In 1975, 12 per cent of total labour outflow from the Philippines were women. By 2002, however, they accounted for 73 per cent (Sayres, n.d.). Indeed, an analysis of available data from the POEA (2009) shows that from 1999 to 2009, women migrants consistently outnumber men. For example, out of 331,752 workers who migrated from the Philippines in 2009, 175,298 were women and 156,454 men (POEA, 2009). Likewise, out of the 288,832 Indonesian migrant labourers worldwide in 1996, 56 per cent were women. The number of labour migrants from Indonesia further increased to 543,859 in 2007, of which 78 per cent were women (IOM, 2010).

The high participation of women in the migrant labour force is particularly apparent in the domestic-work sector. Domestic work accounts for a significant proportion of the labour workforce in developing countries, that is, between 4 and 10 per cent of total employment, both female and male (compared to between 1 and 2.5 per cent in industrialised countries) (ILO, 2010a). Data from the Philippines illustrate the predominance of women in the domestic-work sector. Out of 331,752 workers migrating from the country in 2009, 71,557 (22 per cent) were absorbed by the domestic-work sector. Of this number, 97 per cent were women and only 3 per cent men (POEA, 2009). A similar distribution is observed in data for the preceding years.

Domestic workers enable other women and their households to improve their living standards. These workers take care of homes and household members including children, the elderly, the sick and the disabled while their employers go out to work. In fact, the services needed by households – dry cleaners, caterers, child care centres, care homes for elderly, etc. – would cost many times more if purchased from market-based providers.

However, despite being important, and even indispensable, the domestic work sector and domestic workers are still not appreciated as such. Domestic work is looked upon as unskilled because it is the traditional work of women, and taught by other women in the home. There is also a perception that women have an innate capacity to learn the skills (ILO, 2010a). When performed as paid work, therefore, it remains undervalued, and thus poorly regulated.

Another reason for the lack of regulation of the domestic-work sector is that the work is done in private households, which are not considered places of work in many countries. The perceived need to protect the sanctity of the home serves as a reason to leave domestic work and domestic workers unregulated and therefore unprotected by labour laws in receiving countries (Kahale, 2003). These have exposed domestic workers to experiences such as psychological and physical abuse, sexual harassment and assault, food deprivation, non-payment of wages and even death. The next section explores this vulnerability to exploitation and abuse further by examining the experiences of the Filipino and Indonesian migrant-domestic-worker labour force in Saudi Arabia and Malaysia.

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The Cases of Filipino and Indonesian Migrant Domestic Workers

Although most domestic workers migrate voluntarily, they subsequently end up in forced labour situations due to inherent flaws in the labour laws and legal systems of receiving countries. Employment laws in both Saudi Arabia (Labour Law 2005) and Malaysia (Employment Act of 1955) do not extend equal protection to domestic workers, leaving their work hours, payment of overtime wages, rest days and compensation for workplace injuries unregulated.

Both Saudi Arabia and Malaysia also tie the employment visas of migrant domestic workers to their employers. This often traps workers in exploitative situations as escaping means losing his or her legal immigration status (Human Rights Watch, 2004, 2008). In Saudi Arabia, this practice has been institutionalised through the *kafala* (sponsorship) system whereby an employer assumes responsibility for a hired

migrant worker and must grant explicit permission before the worker can enter Saudi Arabia, transfer employment or leave the country. The *kafala* system gives employers immense control – domestic workers are unable to escape abusive conditions because their employers deny them permission to leave. Due to the factors described above, domestic workers in Saudi Arabia and Malaysia are vulnerable to exploitation and abuse.

Saudi Arabia is the most important receiving country in the Middle East for OFWs. An estimated 1.1 million Filipinos are currently working there, 80,000 of which are domestic workers (COWA, 2011). In explaining the plight of migrant Filipino domestic workers in Saudi Arabia, one Filipino diplomat noted that ‘70 per cent of Filipinos (in Saudi Arabia) are professionals or skilled workers and 30 per cent are low-skilled workers. However, the proportions are reversed when it comes to difficulties and problems, with low-skilled workers, including domestic workers, accounting for about 70 per cent of these and professionals for 30 per cent’ (COWA, 2011).

There are also between 600,000 and 1 million Indonesian workers in Saudi Arabia, 96 per cent of which are domestic workers and drivers (Human Rights Watch, 2008). The continued vulnerability of Indonesian domestic workers in Saudi Arabia was highlighted by recent cases. The torture of 23-year-old Sumiati binti Salan Mustapa in Medina resulted in her being admitted to hospital on 6 November 2010 (Amtul, n.d.). Even as Sumiati was recovering in hospital, another report of mistreatment by employers surfaced. The body of an Indonesian domestic worker, 36-year-old Kikim Komalasari, was recovered from the streets of Abha on 11 November 2010 bearing signs of extensive physical abuse (Quiano and Basu, 2010).

Table 1 summarises the forms of exploitation and abuse suffered by migrant Filipino and Indonesian domestic workers in receiving countries.

Table 1: Exploitation and abuse of Filipino and Indonesian domestic workers in receiving countries.

Forms of exploitation and abuse	Filipino domestic workers in Saudi Arabia ¹	Indonesian domestic workers in Malaysia and Saudi Arabia
<i>Exploitative Employment Terms</i>	<ul style="list-style-type: none"> • Underpayment of wages – actual wages paid were much less than signed on in the Philippines. • Non-payment of wages for up to months on end, despite promises. • Selling of domestic workers to another employer (by employment agencies) when problems arose between the worker and the original employer. 	<ul style="list-style-type: none"> • Underpayment or non-payment of wages (the most frequent complaint).
<i>Poor Working and Living Conditions</i>	<ul style="list-style-type: none"> • Excessive working hours – typically 20 to 22 hours per day, with no day off. 	<ul style="list-style-type: none"> • Excessive working hours – insufficient or no rest periods. • Confinement by employers, including the withholding of passports and other documents by employers and restricted access to information and communication. • Insufficient food.
<i>Physical, Psychological and Sexual Abuse</i>	<ul style="list-style-type: none"> • Beatings by employers (the most frequent complaint). • Rape and other forms of sexual abuse – estimated to constitute between 15 to 20 per cent of reported cases of domestics in distress. 	<ul style="list-style-type: none"> • Physical abuse, including beatings and torture, and in extreme cases, murder. • Shouting, insults, belittlement, threats and humiliation. • Excessive and repeated criticisms of job performance – workers are often required to redo their work several times. • Rape and other forms of sexual abuse.

Note:

1. Based on the findings of the Committee on Overseas Workers' Affairs (COWA) which was dispatched by the Philippine government to Saudi Arabia over the period 9–13 January 2011.

Source:

Filipino domestic workers: Human Rights Watch (2008) and IOM (2010).

Indonesian domestic workers: (COWA, 2011).

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Protection Measures

To address the plight of their migrant domestic workers and to ensure their protection, the Philippines and Indonesia have in recent years introduced the following measures:

- **Imposing a temporary ban on the migration of domestic workers**

Banning the migration of domestic workers in response to abuse and exploitation is the most common approach adopted by labour sending countries. For example, since 26 June 2009, Indonesia has instituted a moratorium on sending its migrant domestic workers to Malaysia in response to mistreatment by employers and even murder (Rachman, 2009).

Banning is however limited in scope and application. It is only a temporary measure, and is reactive in nature, that is, it is invoked in response to severe cases of abuse and exploitation. However, the imposition of such bans has not resulted in substantial improvements in the working conditions of domestic workers in labour receiving countries. Rather, it has put would-be migrants in a tight spot and put them at risk of further exploitation. For instance, the moratorium by Indonesia has led to an increase in the irregular migration of Indonesian workers to Malaysia, thereby putting them at further risk of abuse and exploitation due to their undocumented status.

- **Forging bilateral labour agreements**

Another strategy adopted by labour sending countries has been to forge bilateral labour agreements with receiving countries. Examples include the Memorandums of Understanding (MOUs) between the Philippines and Malaysia, and between Indonesia and Malaysia, elaborated further below.

The MOU on migrant Filipino workers signed by the Philippines and Malaysia in 1987 lays down the minimum wage (USD400 per month), working hours, living conditions and days of leave (Human Rights Watch, 2010b). In contrast, the MOU signed by Indonesia and Malaysia in 2006 falls critically short of addressing the concerns of Indonesian migrant domestic workers. The MOU allows employers to keep workers' passports and lacks guidelines on a minimum wage or rest periods – including a weekly day off – and does not establish clear penalties and enforcement mechanisms. In the absence of strict, standardised guidelines, employment agencies and employers typically set the salaries of domestic workers based on their country of origin instead of their education and experience. As a result, Indonesian domestic workers earned only USD89–150 per month compared to the USD400 earned by their Filipino counterparts (Human Rights Watch, 2010b; IOM, 2010).

The limitations of the 2006 MOU were also reflected in the continued abuse of Indonesian migrant domestic workers which prompted the Indonesian government to, on 26 June 2009, impose a freeze on the migration of domestic workers to Malaysia. Following this, the two countries indicated their willingness to revise the 2006 MOU, eventually signing a Letter of Intent in May 2010. The Letter stipulates that Indonesian migrant domestic workers are entitled to one day off per week, periodic salary increases and the reimbursement of their transport expenses. They will also be allowed to retain their passports for the duration of their contract. However, progress stalled on the issue of a minimum wage. Malaysia would not agree to the figure of USD237 stipulated by the Indonesian government (Human Rights Watch, 2010c).

Recently, Muhaimin Iskandar, Indonesian Minister of Manpower and Transmigration, stated that the two countries will be signing an MOU in May 2011 (Pasandaran, 2011). It remains to be seen if the revised MOU will finally address all outstanding concerns of Indonesian migrant domestic workers in Malaysia.

- **Establishing new laws or amending existing ones**

Legal frameworks aimed at protecting the rights of domestic workers may include regulations within a general labour code, a separate regulatory instrument or a mixture of both.

The Philippines incorporated protection mechanisms for its migrant domestic workers into the Republic Act No. 10022 – an amendment to

the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042) – passed on 8 July 2010. Section 3 of the Act specifically states that the Philippines ‘shall allow the deployment of overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected’ (Republic of the Philippines, 2010).

The Republic Act No. 10022 recognises any of the following as a guarantee on the part of the receiving country that the rights of OFWs will be protected: the receiving country has existing labour and social laws protecting the rights of workers, including migrant workers; it is a signatory to and/or have ratified multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; or it has concluded a bilateral agreement or arrangement with the Philippine government on the protection of the rights of OFWs (Republic of the Philippines, 2010). A Department of Foreign Affairs (DFA) certification that the rights of domestic workers would be adequately protected is required prior to deployment.

The Philippines, in establishing legal mechanisms for the protection of its migrant domestic workers, had been guided by the legal provisions it had adopted for domestic workers employed within the country such as the 2007 Magna Carta for Household Helpers (Senate Bill No. 1141). The Magna Carta regulates the terms and conditions of employment of the domestic workforce within the Philippines, including working hours, leave, minimum wage and payment of monthly wage, as well as membership in the social security system and the PhilHealth system (Republic of the Philippines, 2007).

Indonesia, on the other hand, does not have any laws covering either migrant or in-country domestic workers. The 2003 Manpower Act which safeguards workers’ rights discriminates against domestic workers as it fails to provide the same protection it affords ‘formal workers’ (who enjoy a minimum wage, overtime pay, an eight-hour workday, a weekly day of rest, etc.). Likewise, the 2004 National Law on the Placement and Protection of Indonesian Overseas Workers (Law No. 39/2004) falls short of addressing the protection needs of migrant domestic workers. In 2009, the Legislative Council (BALEG, Badan Legislatif) agreed to make the drafting and passage of a domestic workers’ law a priority for the parliament in 2010. However, the law failed to materialise (Amnesty International, 2011).

The Indonesian government’s inability to implement clear and consistent policies for its migrant domestic workers can be linked to its failure to adopt laws for the domestic-worker labour force employed within the country. The absence of national laws to serve as a framework for responding to cases of abuse and exploitation of both in-country and migrant domestic workers has resulted in ad hoc and reactive measures. For instance, in response to the recent cases of abuse in Saudi Arabia, Indonesia issued new conditions: prospective Saudi employers were required to provide details such as the workload in their homes, the number of family members, their photographs, copies of identity cards, a certificate from the police confirming that the sponsor does not have a criminal record, etc. (Khan and Abdullah, 2011).

The exploitation and abuse revealed by the foregoing analysis reflects the reality that existing laws in both sending and receiving countries do not offer adequate legal protection for domestic workers. However, while labour sending countries have begun instituting laws to protect their migrant domestic workers, receiving countries have not been as eager to introduce complementary laws. Instead, they continue to maintain discriminatory labour practices, and may even prove uncooperative when protection measures are implemented by sending countries. For instance, the new conditions imposed by Indonesia (described earlier) were branded by Saudi Arabia as ‘outrageous’ and impossible to fulfil and Indonesia was accused of using labour recruitment as a way to gather sensitive information on Saudi citizens’ personal lives (Khan and Abdullah, 2011). Also, in response to the Philippines’ Republic Act No. 10022, Saudi Arabia announced on 12 March 2011 that it would stop the processing of employment contracts for Filipino domestic workers (Tubeza, 2011).

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Conclusion

To adequately protect migrant domestic workers, efforts would be required at all levels: national, regional and global. At the national level, there must first and foremost be a focus on the lack or absence of legal protection in both sending and receiving countries, which is at the root of the vulnerability of migrant domestic workers.

As already discussed, there have already been attempts to institute legal mechanisms to protect migrant domestic workers but they have not been translated into laws. Saudi Arabia’s Shura Council, for example, passed a bill to improve legal protections of domestic workers in July 2009. The bill requires employers to give domestic workers at least nine hours of rest every day, suitable accommodation and rest breaks (Human Rights Watch, 2009). The bill falls short however of international standards as it contains vague provisions that would leave workers open to abuse, including the duty to obey employers’ orders and a prohibition against leaving the place of employment without a ‘legitimate reason’ (Human Rights Watch, 2009). Although the bill has been approved, it is yet to be translated into law.

In Indonesia, existing national labour migration laws do not offer a coherent and comprehensive strategy for addressing the many complex issues pertaining to the management of migrant domestic workers. The laws and policies that are in place in the country are still primarily concerned with reducing local unemployment, and thus tend to focus more on facilitating the outflow of migrant labour rather than creating a protection mechanism for migrants. Moreover, as mentioned earlier, attempts to push through a domestic workers’ law have not as yet yielded any results (Amnesty International, 2011). Malaysia, on the other hand, has not even contemplated amending its laws and continues

to rely on bilateral agreements. The Philippines is perhaps the only country that has enacted laws addressing the specific protection needs of migrant domestic workers. Rather than stalling efforts at instituting legal protections, countries discussed in this paper must establish new laws or amend existing ones to accommodate the protection needs of migrant domestic workers. In addition to legal protection measures, there must also be provisions for adequate enforcement mechanisms.

Receiving countries in particular must learn from governments that have initiated steps to establish national policies and legal protections for migrant domestic workers. For example, foreign domestic helpers (FDHs) in Hong Kong are entitled to the same benefits and protection as other professions. The basic rights and responsibilities related to the employment of FDHs are clearly specified in a standard contract (Immigration Department of Hong Kong, 2008). The Immigration Department of Hong Kong makes the granting of an entry visa contingent upon the inclusion of mandatory terms and minimum standards in a worker's employment contract, which ensures better working conditions for migrant domestic workers. This remains one of the few success stories in the regulation and protection of migrant domestic workers in Asia.

As migrant domestic workers are a transnational phenomenon, it is often difficult for individual countries to adequately address the protection needs of the workers. Regional institutions such as ASEAN need to therefore take the initiative to establish regional standards for domestic workers employed in Southeast Asia and beyond. In Southeast Asia, momentum was established with the ASEAN Framework Agreement on Services (AFAS) which seeks to enhance cooperation in trade in services among ASEAN member states (ASEAN, 1995). Further, during the 12th ASEAN Summit on 13 January 2007, ASEAN member states signed the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ASEAN, 2007). However, despite these developments, not much has been done in terms of establishing legally binding instruments aimed at protecting the rights of migrant domestic workers specifically, both those working in Southeast Asia and those employed further afield. ASEAN must now work towards this.

Finally, establishing legally binding global agreements focused on domestic workers will go a long way towards ensuring the long-term protection of such workers. Existing international labour conventions such as the International Labour Organization's (ILO) Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers 1975 and the UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 do not specifically address domestic work.

Recognising this gap, the ILO Governing Body included 'decent work for domestic workers' in the agenda of the 2010 International Labour Conference (ILO, 2010a). Whether or not the upcoming 100th Session of the International Labour Conference to be held in June 2011 will further discuss and agree upon a draft Convention as part of a process to address migrant-domestic-worker issues remains to be seen.

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