

Challenges in promoting and protecting the human rights of migrant domestic workers, regardless of their migration status

Introduction

Migration, especially for employment has historically been a preserve of men, who have been mainly the breadwinners in the household. However, this is fast changing as responsibilities for household income are shifting towards women. In recent times, migration; both international and labour migration has increasingly become feminized. The majority of migration in Sub-Saharan Africa is intra-regional and this has become known as “south-south” migration. Many countries in the region, for example South Africa host migrant domestic workers from neighboring countries. Females are migrating as labour migrants and recently as domestic workers. Information provided by the OECD (2010) estimated that 47 per cent of international migrants in Africa are women. Many of these women are engaged in the domestic sector.

Best practices in promoting and protecting the human rights of migrant domestic workers

In addressing issues faced by migrant domestic workers, some countries have ratified the Domestic Workers Convention (2011) or have adopted their national legislation by implementing minimum rest requirements or wages. Country specific initiatives have also been introduced. Below are best practices that can be replicated in promoting and protecting the human rights of migrant domestic workers.

1. Data collection and Research for Evidence based Policy Formulation and Implementation

It is necessary to generate appropriate knowledge about domestic work and domestic workers in countries of origin and destination. The data will include statistical data, analysis of the situation of domestic workers at all stages of the migration process, including on site employment conditions. This information will be important as it will strategically help in developing the right policies, programs to protect the human rights of migrant domestic workers. For example in Nepal, local research institutions in partnership with international organizations undertook a situational and policy analysis of out migrating women migrant workers, including domestic workers. This became a powerful evidence based advocacy tool that convinced the government of Nepal to lift the ban on Nepali women migrant workers, including domestic workers migrating to the Gulf countries and contributed to the government of Nepal adopting the Foreign Employment Act, 2008 with gender sensitive provisions.

2. Labour law coverage

Given the existing gaps in labour law coverage, legislative initiatives are an important step towards protecting the rights of domestic workers, as they provide for codified rights and entitlements. Labour laws covering domestic rights have been introduced and implemented in several countries over the years including South Africa, Bolivia, and France.

Strong implementation requires the creation of effective compliance and enforcement mechanisms at the national level to give legal effect to laws and regulations protecting migrant domestic workers. This includes ensuring the domestic worker's right to access to court on one hand, while on the other hand, it calls for assigning responsibility to a competent governmental authority to supervise compliance with relevant laws and regulations. For example in South Africa, sectoral Determination 7 under the Basics Conditions of Employment Act, 1997 was introduced in 2002. The act for the first time set out comprehensive standards and protections for domestic workers governing working conditions, including a minimum wage, hours of work, overtime pay, salary increases and leave entitlements.

3. Tripartite Consultation and collective Bargaining

Germany, Uruguay and France are good examples of countries having collective bargaining mechanisms for domestic workers with some combination of the following: a domestic worker union or another union representing domestic workers; an employer bargaining entity; an institutional monitoring framework for bargaining facilitated by government; a collective bargaining process that successfully ended in a collective agreement.

The domestic worker collective bargaining agreement in Uruguay was reached through a tripartite structure bringing together the Domestic Workers Union, the Uruguayan League of Homeworkers and consumers that undertook to represent employers of domestic workers in wage negotiations, and the Ministry for Employment and Social Security Ministry. The first agreement of August 2008 among other things provided for minimum wages and increases, severance pay, overtime and early termination payments and banned sexual harassment. The second of 2010, renewed the provisions of 2008 and increased minimum wage levels. Both agreements were extended to the entire domestic work sector in Uruguay.

4. Dialogue and Consultative Platforms on Domestic Work.

Inclusive social dialogue and tripartite consultations, including with domestic workers organizations at all stages of the policy process that is design, implementation and assessment stage of measures protecting domestic workers are important. In Lebanon, A National Steering Committee on women migrant domestic workers comprised of government, civil society and international organizations was established in 2006 to make proposals towards the better protection of these workers.

5. Cooperation at bilateral, multilateral and global levels.

Migration for domestic work is a transnational, regional, global phenomenon and requires multi stakeholder cooperation and coordination at bilateral, regional and multilateral levels to effectively protect migrant domestic workers. Important areas of cooperation at bilateral, regional and global levels include prevention of forced labour and trafficking in persons, access to social security, monitoring of private employment agencies, and dissemination of good practices and collection of statistics on domestic work. An example here is the well-known

overseas employment programme of the Philippines which provides comprehensive assistance and protection to migrant domestic workers, including through regulating employment agencies, bilateral agreements and labour offices in countries of destination.

6. Policy advocacy, Mobilizing , Frontline Service Delivery and Access to justice

Kalayaan is a United Kingdom based nongovernmental organisation created in 1987 by domestic workers who had become undocumented after fleeing abusive employers. Its clients are mainly women from 30 Asian and African countries. Kalayaan partnered with others to advocate for the adoption of the Domestic Workers' Convention, revisions to the UK visa system for domestic workers and won protection for them. These include coverage in minimum wage legislations, maternity leave, and state funded safe houses for victims of trafficking (Kalayaan, 2011). The organisation partners with lawyers to offer clients free employment and immigration advice and helps the domestic workers to reclaim their passports.

Case Studies

a. South Africa

South Africa is possibly the largest employer of migrant domestic workers in the Southern Africa. However, it is important to note that there are two types of domestic worker migrants, internal and international. The domestic labour sector of South Africa is made up of migrant workers from neighbouring countries (international) as well as migrant workers from within South Africa (internal) that have moved from less developed settlement to urban settlements. Most of the workers are originating from countries such as Zimbabwe, Mozambique and Lesotho. In 2002, The Sectoral Determination No. 7 under the Basic Conditions of Employment Act (No. 75 of 1997) was introduced in South Africa and it sets out comprehensive standards and protection for domestic workers, governing working conditions, including a minimum wage, hours of work, overtime pay and leave entitlements. However, the application of Act to foreigner domestic workers is difficult for several reasons. Because of the economic situations back home, foreign domestic workers are willing to accept low wages. According to Mangqalaza (2012) *"Domestic workers from foreign countries are more vulnerable to exploitation and abuse than South African domestic workers, as foreign domestic workers have fewer laws that protect them"*.

While South Africa has successfully improved the welfare of local (South-African) domestic workers, the foreign domestic workers who are usually irregular migrants have been excluded from these benefits. South African employers of foreign domestic workers are aware of the irregular status of these women and exploit them.

b. Kenya

Kenya has set up a high-level Ministerial group, led by the President, which has developed an action plan and guidelines on labour migration. This was prompted among others by the number of reported cases of abuse of Kenyan migrant workers employed in the Middle East. In 2012 the country put a ban on employment of their nationals as domestic workers in countries in the Middle East. A new legislation on Private Recruitment Agencies was developed, to improve the enforcement of regulations regarding recruitment agencies. The country is currently involved in bilateral dialogues with some major countries of destination, and has entered into an agreement with Qatar, while an agreement with Saudi Arabia is in the process.

c. UAE

The United Arab Emirates (UAE) is a major destination for female domestic workers. The major sending countries of female domestic workers to the UAE are Ethiopia, Philippines, India, Indonesia and Sri Lanka¹.

Female domestic workers are brought into UEA as cheap labour through means that promote trafficking and propagates violation of their rights. Although the immigration laws in UAE are against trafficking, “the loose federal and tribal structure of United Arab Emirates society could play a role in easing the way to possible traffickers”¹. Additionally, the new regulations on visa acquisition for female domestic workers where the visa is sponsored by a third party who is usually the employer perpetuates violence and abuse against female domestic workers e.g. withholding of their passports². Irregularities and deception in recruitment of female domestic workers especially in the UAE also subjects female migrants to abuse and exploitation³.

Promoting and protecting the rights of female domestic workers requires actions from both sending and receiving countries. Destination countries need to establish labour laws that protects the rights of migrants. There is also the need for monitoring and regulatory

¹ Sabban, R. United Arab Emirates: Migrant Women in the United Arab Emirates. The case of female domestic workers. GENPROM Working Paper No. 10 Series on Women and Migration. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_117955.pdf]. Accessed on 11th June 2015.

² Sönmez, S., Apostopoulos, Y., Tran, D. and Rentrop, S. 2011. Human rights and health disparities for migrant workers in the UAE. *Health and Human Rights*, 13(2):17-35.

³ Esim, S. and Smith, M. 2004. Gender and Migration in Arab States: The Case of Domestic Workers. International Labour Organization, Regional Office for Arab States, Beirut. Available at [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_204013.pdf]. Accessed on 12th June 2015.

mechanisms in the operations of recruitment agencies. Sending countries should ensure that migrants have proper contracts and are recruited through the right channels.

References

Global Forum on Migration and Development. 2012

Kalayaan (2011). Annual Report 2009-2010.

Mangqalaza H. (2012) The Economic Worth of Domestic Workers in South Africa. MSc Dissertgation. Tshwane University of Technology.

OECD, International Migration Outlook, OECD, SOPEMI, 2010