

Submission to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Submitted by the Commonwealth Human Rights Initiative

15 March 2022

Introduction

The **Commonwealth Human Rights Initiative (CHRI)** welcomes this opportunity to respond to a call for input from the Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences, to inform his upcoming report on the informal economy to be presented to the 77th session of the General Assembly.

This submission focuses on domestic workers as participants in the informal economy, and it is based largely on research conducted in late 2021 by CHRI and published in the report titled *Domestic Work is Work: Using ILO Convention 189 to Protect Workers' Rights Across the Commonwealth*. CHRI, with support from the International Trade Union Confederation and the Commonwealth Trade Union Group, launched this report to inform good practice, inspire action, and raise awareness of the importance of ratifying the Domestic Workers Convention, also known as Convention 189 (C189). It explores the situation of domestic workers across the Commonwealth and focuses on good practice case studies as well as case studies from countries yet to ratify the Domestic Workers Convention, such as the United Kingdom, India, Uganda, Dominica, and Papua New Guinea, while also presenting data from the Commonwealth more broadly.

The ILO has defined the **informal economy** as economic activity not covered by formal arrangements, such as contracts with mutually-agreed terms.¹ Domestic work is defined in the Domestic Workers Convention, as 'work performed in or for a household or households.'² A person who performs domestic work only occasionally or sporadically, and not on an occupational basis, is not considered a domestic worker.³ Domestic work has three particular characteristics within the informal economy: the employment relationship takes place within the private sphere of a third party, such as the household; it can be blurred or disguised by social norms and highly personalised contexts; and it falls outside the conventional regulatory frameworks of many countries.⁴

¹ International Labour Organisation (2015). *R204 - Transition from the Informal to the Formal Economy Recommendation (No.204)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204 (accessed 02/03/22).

² International Labour Organisation (n.d.). *Domestic Workers*. Available at: <https://www.ilo.org/global/topics/care-economy/domestic-workers/lang--en/index.htm> (accessed 21/02/22).

³ International Labour Organisation (n.d.). *Domestic Workers*. Available at: <https://www.ilo.org/global/topics/care-economy/domestic-workers/lang--en/index.htm> (accessed 21/02/22).

⁴ International Labour Organisation (2017). *Formalising Domestic Work Policy Brief*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_559854.pdf (accessed 21/02/22).

81.2 percent of domestic workers are employed in the informal economy.⁵ This high rate of informal employment means domestic workers have little guaranteed access to social or labour protections.⁶ While some progress has been made through extensions of labour and social security laws to cover domestic workers, there remain significant gaps in regulating working time, wages, and social security compared to other sectors. This means that domestic workers were some of the hardest hit by the COVID-19 pandemic,⁷ and that it is more pressing than ever to secure and uphold their rights.

Who are domestic workers and how are they at risk?

There are 75.6 million domestic workers globally aged 15 years and over.⁸ The regions that employ the largest amount of domestic workers are Asia, the Pacific, and the Americas.⁹ At 76.2 percent, women continue to make up the majority of domestic workers and account for 4.5 percent of female employment worldwide.¹⁰ 46.8 percent of all employees globally are employed in upper-middle income countries,¹¹ and domestic workers are overrepresented in this statistic, with more than half (53.1 percent) working in upper-middle-income countries.¹² Migrant domestic workers also comprise a significant portion of domestic workers in many regions,¹³ and it is well-documented that migrant domestic workers are more vulnerable to abuse resulting from limited freedom to change employers, dependence on recruitment agencies, and stringent visa conditions.¹⁴ The demand for domestic work is only expected to increase in light of demographic changes, population ageing, increasing long-term care needs, and continued economic and education inequality between countries.¹⁵

⁵ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

⁶ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ For categories of low, lower-middle, upper-middle, and high-income countries for 2021-2022, see World Bank (2021). *New World Bank country classifications by income level: 2021-2022*. Available at: <https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2021-2022> (accessed 14/03/22).

¹² International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

¹³ See for example: International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

¹⁴ International Labour Organisation (n.d.). *Migrant Domestic Workers*. Available at: <https://www.ilo.org/global/topics/care-economy/migrant-domestic-workers/lang-en/index.htm> (accessed 21/02/22).

¹⁵ *Ibid.*

Not only is domestic work a high-risk sector for contemporary forms of slavery practices due to the informality of labour, but also because a large portion of workers are migrants who are often excluded from national labour legislation.¹⁶ As a result of COVID-19, domestic workers have even been found living on the street after being dismissed by their employers.¹⁷ Without shelter, income, or the legal right to remain after dismissal, they face increased vulnerability to trafficking.¹⁸

What are the main factors in the informal economy that drive domestic work?

Research shows that there are many factors that push people to seek employment as domestic workers in the informal economy. The most prominent reasons include poverty, a need to generate more income for families at home, and a lack of alternative employment opportunities.^{19 20} However, there has been less inquiry into and evidence of the drivers of demand for domestic work. Evolving social norms, including changes to family structure and the increased participation of women in the workplace, have contributed to an upsurge in demand for care workers, particularly in more developed countries.²¹ What is clear is that the care economy has a large influence on demand.²² Even more clear is that States, including those of the Commonwealth, have an obligation to protect these workers and can negatively impact the lives of those in the informal economy if they do not.

Despite this, the United Kingdom, which abstained from voting to adopt the Domestic Workers Convention in 2011²³ arguing it did not need additional ILO protections for domestic workers, made sweeping changes ten months later to its Overseas Domestic Worker visa, eradicating the limited

¹⁶ International Labour Organisation (2013). *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf (accessed 21/02/22).

¹⁷ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

¹⁸ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

¹⁹ Anderson, B. and Anderson, B.L. (2000). *Doing the dirty work?: The global politics of domestic labour*. Palgrave Macmillan, London.

²⁰ Blofield, M. (2012). *Care work and class: Domestic workers' struggle for equal rights in Latin America*. Penn State Press, Pennsylvania.

²¹ International Labour Organisation (2018). *Care work and care jobs for the future of decent work*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf (accessed 02/03/22).

²² International Labour Organisation (2018). *Care work and care jobs for the future of decent work*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf (accessed 02/03/22).

²³ C189 - Domestic Workers Convention, 2011 (No. 189). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (accessed 22/02/22).

employment and social protections afforded to migrant domestic workers.²⁴ The government changed the terms of this visa such that the visa is now ‘tied’ to an employer. As a result, domestic workers in private households are unable to shift employers.²⁵ This effectively removed the bargaining power and limited the ability of domestic workers to challenge abusive conditions.²⁶ Evidence suggests that those on tied visas were twice as likely to be physically abused as those on the original Overseas Domestic Workers visa.²⁷

In Uganda, current labour laws do not extend to domestic workers,²⁸ and the 2006 Employment Act protects workers in formal employment sectors only.²⁹ Fortunately, there has been strong advocacy by civil society which has pushed the government to commit to ratifying the Domestic Workers Convention.³⁰ The ratification must happen urgently, as approximately half a million children are involved in hazardous work in Uganda, including domestic services.³¹

The Indian government has also not ratified C189, stating in 2015 that the Convention’s provisions did not align with national legislation.³² While domestic workers are included as protected employees under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013,³³ the Act mandates that domestic workers’ cases be referred to the police, which has the potential of

²⁴ Travis, A. (2012). The Guardian. 19 February 2012. *New visa rules for domestic workers ‘will turn the clock back 15 years’*. The Guardian, 29 February. Available at: <https://www.theguardian.com/uk/2012/feb/29/new-visa-rules-domestic-workers> (accessed 22/02/22).

²⁵ Kalayaan (2013). *Slavery by another name: the tied migrant domestic worker visa*. Available at: <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf> (accessed 22/02/22).

²⁶ Kalayaan (2013). *Slavery by another name: the tied migrant domestic worker visa*. Available at: <http://www.kalayaan.org.uk/documents/Slavery%20by%20a%20new%20name-%20Briefing%207.5.13.pdf> (accessed 22/02/22).

²⁷ Universal Periodic Review, 3rd cycle, 27th Session (2016). *JS13: AntiSlavery International and Kalayaan: Submission for the Universal Periodic Review of the United Kingdom - 3rd cycle. 27th Session (May 2017)*. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRStakeholdersInfoS27.aspx> (accessed 22/02/22).

²⁸ Uganda Human Rights Commission (2016). *NHRI Submission for Uganda’s Second Universal Periodic Review - October 2016*. Available at: <https://www.uhrc.ug/download/uganda-human-rights-commission-upr-report/> (accessed 22/02/22).

²⁹ Uganda Human Rights Commission (2016). *NHRI Submission for Uganda’s Second Universal Periodic Review - October 2016*. Available at: <https://www.uhrc.ug/download/uganda-human-rights-commission-upr-report/> (accessed 22/02/22).

³⁰ Universal Periodic Review, 2nd cycle, 26th Session (2016). Recommendations supported by Uganda. Available at: <https://upr-info-database.uwazi.io/library/?q=> (accessed 22/02/22).

³¹ Ministry of Gender, Labour and Social Development (2021). *The National Action Plan on Business and Human Rights*. Available at: https://globalnaps.org/wp-content/uploads/2021/08/uganda_approved-national-action-plan-on-business-and-human-rights_august-2021.pdf (accessed 22/02/22).

³² International Labour Organisation (2020). *Domestic Workers and Decent Work in Sri Lanka*. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_768671.pdf (accessed 22/02/22).

³³ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

creating barriers to individuals voicing their complaints.³⁴ Research shows that the requirement to lodge a complaint with the police can deter the engagement of domestic workers, due to fear of reprisals or mistrust of authorities.³⁵ And yet the COVID-19 pandemic has had a particularly dire effect on domestic workers in India. A study found that 99% of domestic workers in Delhi were unable to work in April 2020 due to government-imposed lockdowns, and by the summer of that year, only 42% had resumed work.³⁶

In Dominica, employers of domestic workers are exempt from Labour Contract Act requirements to provide employees with a bespoke contract outlining terms and conditions of the services they provide.^{37 38} This perhaps contributes to a lack of data about domestic work in this country, and subsequently a lack of international attention on the full range of issues domestic workers face in Dominica. What is clear is that government intervention has been lacklustre. The Dominican government has not ratified the Domestic Workers Convention and has, through a revision of the minimum wage provisions in September 2021, entrenched domestic workers as the lowest-paid minimum wage demographic in its society.³⁹

In Papua New Guinea, the Employment Act 1978 only extends to domestic workers that hold a formal agreement of employment with their employers. Domestic workers under informal arrangements therefore lack access to a guaranteed minimum wage, annual leave, sick leave and medical coverage. Such workers are typically expected to accept the provision of food and accommodation alone as remuneration for their labour.⁴⁰ While expressing political commitment to ensure decent work for domestic workers, the Papua New Guinea government has not ratified the Domestic Workers Convention or provided any explicit framework tailored for domestic workers.

These are just some examples of how a lack of protection has affected domestic workers. This underscores how crucial it is to implement mechanisms and legislation to ensure their safety and guarantee labour protections.

What mechanisms currently exist to protect domestic workers in the informal sector?

³⁴ Human Rights Watch (2020). “No #MeToo for Women Like Us”: Poor Enforcement of India’s Sexual Harassment Law. Available at: <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law> (accessed 22/02/22).

³⁵ Human Rights Watch (2006). *Swept Under the Rug: Abuses against Domestic Workers Around the World*. Available at: <https://www.hrw.org/report/2006/07/27/swept-under-rug/abuses-against-domestic-workers-around-world> (accessed 22/02/22).

³⁶ Women in Informal Employment: Globalizing and Organizing (2020). *COVID-19 Crisis and the Informal Economy: Informal Workers in Delhi, India*. Available at: https://www.wiego.org/sites/default/files/publications/file/WIEGO_FactSheet_Delhi_for%20Web.pdf (accessed 22/02/22).

³⁷ Caribbean Development Bank (2016). *Country Gender Assessments Synthesis Report*. Available at: <https://issuu.com/caribank/docs/synthesisreportcountrygenderassessm> (accessed 02/03/22)

³⁸ Labour Contracts Act, (No. 12 of 1983), 1990 (Dominica).

³⁹ International Labour Organisation (2018). *Gender at Work in the Caribbean, Country Report: Dominica*. Available at: https://ilo.userservices.exlibrisgroup.com/discovery/delivery/41ILO_INST:41ILO_V2/1256219810002676?lang=en&viewer_ServiceCode=AlmaViewer (accessed 02/03/22).

⁴⁰ 9 Sekum, A. P., Assistant General Secretary, Papua New Guinea Trade Union Congress (2021). Online interview, 22 November, (accessed 02/03/22).

The world's 75.6 million domestic workers have suffered significantly during the COVID-19 pandemic.⁴¹ Unfortunately, while the Domestic Workers Convention recently commemorated its tenth anniversary, the rights of domestic workers are still not protected to the same extent as other workers. As of 2020, 27.3 million domestic workers were not included within the scope of their country's labour laws.⁴² Globally, 28% of countries impose no limits on normal weekly hours of work for domestic workers, 94% of domestic workers are not covered by all social security branches in their country, and 43% of domestic workers are either excluded from minimum wage coverage or have a statutory minimum wage lower than other workers.⁴³ Despite evidence that C189 leads to improvements in the lives of domestic workers,⁴⁴ only 6 of 54 Commonwealth countries have ratified and brought this convention into force to date.

The ILO Domestic Workers Convention sets out several mechanisms that aims to support domestic workers, including protected freedom of association and collective bargaining; legislated minimum wages that are the same as other workers'; legislation to ensure domestic workers are treated equally to other workers in terms of working hours, overtime compensation, rest, and leave; protections in place to prevent abuse, harassment, and violence; requirements for fair and transparent terms of employment and decent living conditions; safeguards to ensure domestic workers are able to retain passports and other identity documents; mandated occupational safety checks and labour for domestic workers; and ensuring that domestic workers are able to access the same employment dispute mechanisms as other workers.⁴⁵

Recommendations to States and civil society

Particularly in light of the global COVID-19 pandemic and the resulting reliance on care work worldwide, States must recognise the important role that domestic workers play in their societies and economies. We urge States to prioritise the inclusion of domestic workers in labour laws and social protections in parity with all other workers. Genuine consultation and collaboration with domestic workers is essential for ensuring that policies are relevant and impactful. Consultations should reflect the diversity of the sector by taking into account age, gender, race, class and ethnicity. Domestic workers are often bearers of extreme traumas related to exploitation or abuse in the workplace, making it essential to ensure all

⁴¹ International Labour Organisation (2021). *10 years on, domestic workers still fight for equality and decent work*. Available at:

https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_802516/lang--en/index.htm (accessed 22/02/22).

⁴² International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at:https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

⁴³ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at:https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

⁴⁴ International Labour Organisation (2021). *Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No.189)*. Available at:https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_802551.pdf (accessed 21/02/22).

⁴⁵ International Labour Organisation, C189 - Domestic Workers Convention, 2011 (No. 189). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (accessed 22/02/22).

collaboration is trauma-informed. Crucially, States must ensure the ratification and implementation of the Domestic Workers Convention. States should also prioritise funding and providing resources for civil society organisations and other institutions that support domestic workers and conduct research about domestic workers in their country. Information and data on domestic workers should be made accessible so that interventions and support are evidence based, relevant and strategically address existing gaps in protection.

Civil society actions can complement State initiatives to promote the rights of domestic workers. Civil society should collaborate with domestic workers and organisations led by domestic workers, including trade unions, to inform advocacy and promote unionisation and formalisation. Civil society can also engage key decision makers who can push for the ratification and implementation of The Domestic Workers Convention or other domestic legislation. If appropriate, this can be done through parliamentary questions, private or public letters, and meetings with sympathetic government officials or parliamentarians who can be encouraged to raise the convention and the rights of domestic workers on their own platforms.

Action is needed now to protect domestic workers from further exploitation and abuse. The dire impact of the COVID-19 pandemic on the rights of domestic workers, and the anticipated expansion of the care economy, requires decent pay, improved working conditions, and fair contracts. Despite being part of an informal, gendered labour force that largely goes unseen, domestic workers contribute immensely to households and communities - they are owed recognition, support, as well as legal guarantees to ensure their human rights are upheld.