

GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION.

Sixth Informal Thematic Session held from 12-13 October, in Geneva.

Theme: DECENT WORK AND LABOUR MOBILITY

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1.0 Introduction of the theme

IDWF is a global union representing 65 domestic workers' organizations in more than 52 countries and counting over half a million domestic workers many of whom are migrant women.

Decent work and Labour mobility is one of the key areas of the International Domestic Workers Federation.

IDWF work directly with domestic workers (including migrants) and would like to see a compact which will make changes of life of the Migrant Domestic workers in the receiving countries.

The changes will depend much more on the Governments, the trade unions and employers in countries of origin through social dialogue with regard to the protection of migrant domestic workers.

2.0 Facts and Figures related to decent work and labor mobility

There are over 3 million mdws in the middle east, mostly from Asia. In recent years, African countries have emerged as new countries of origin for migrant domestic workers going to the middle east.

In Kuwait, for example, 52,074 domestic workers were nationals of African countries compared to 596,110 South Asian nationals.¹ There are many MDWs going to GCC countries but the data, information in the sending countries are not segregated. It was difficult to get the number of MDWs who leave or work in the GCC countries as well the incidences with regard to MDWs.

Hence this is one of the challenges in the countries of origin which need to be tackled.

Recently, IDWF Africa region had a sub-regional workshop in Kenya –Nairobi from 20-21st September 2017 to see the existing laws, policies and regulations in the sending countries or countries of origin and get testimonies from the MDWs as well get the recommendations. The workshop has trade union leaders, domestic workers and MDWs from sending countries in Africa are Ethiopia, Uganda, Kenya, and Tanzania & Zanzibar.

From the workshop held this is what was revealed.

- **Zanzibar**-CHODAWU the union in Zanzibar has registered 40 MDWs members who work in Oman and have registered with the union. These MDWs come back after two years according to the MOU with these countries. Aziza a MDW who has been working in Dubai, Oman and Saudi Arabia is planning to go again to Oman. She has

¹ Kuwait Central Statistical Bureau; Migration Statistics Bulletin 2015

been a link with her colleagues in Oman where they have formed association of MDWs.

- **Uganda:** According to a MDWs Ciskey from Uganda who worked in UAE and was trafficked by an illegal agent via Busia to Kisumu airport was working in very bad working conditions, long working hours, no rest, abused and payment was very little. The HTS union rescued her and supported her with medical treatment cost. She was then recruited in the union. The union further found the recruitment agent opened a case and she had to be refunded her recruitment fee which was UGX 2,000,000/=. Ciskey then joined the **cooperative in the union.** Uganda HTS union has been able to rescue MDWs from GCC countries who were trafficked or went through illegal ways to work but came back because of poor working conditions which includes no payment, beatings, SH and abuse.
- **Kenya:** A MDW was employed in Saudi Arabia (name with held) was mistreated locked in the room, several relatives got in abused her apart from poor working conditions. KUDHEIHA has recruited her in the union and she is informing other workers about the poor conditions in the GCC countries and what they are supposed to learn before going there.
- These treatments are done but very few incidents are recorded in the countries of origin as well in their embassies in the destination countries.

3.0 Policies and regulations:

- (i) The Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2015.
- (ii) The Guidelines on Recruitment and Placement of Uganda Migrant Workers Abroad, 2013.
- (iii) Strict licensing procedures for Recruitment Agencies which include vetting Directors of Recruiting Agencies by Interpol and presentation of a Bank Guarantee of Fifty Million Uganda Shillings.
- (iv) Vetting of all persons recruited for external deployment by Internal Security Organization and other agencies.
- (v) A model Employment Contract which stipulates the basic minimum rights of Ugandan migrant workers developed by the Ministry of Gender, Labour and Social Development.
- (vi) An Externalization of Labour unit in Ministry of Gender, Labour and Social Development which among others responsibilities monitors the activities of the licensed recruitment agencies and ensures that the terms and conditions of service of Uganda Migrant workers conform to the Model Employment Contract.
- (vii) Bilateral Agreements with the Government of the Hashemite Kingdom of Jordan and Ministry of Labour in the Kingdom of Saudi Arabia.

Kenya:

- i) The Kenya Constitution 2010
- ii) The Kenya Labour Laws 2007

- iii) Various ILO Convention's which have been ratified in Kenya. e.g C100 and C111 which states equal pay for work of equal value and non-discrimination at the work place respectively 97 and C143 on rights and protection of Migrant Domestic Workers.
- iv) The Sexual Offence Act 2006 which prohibits all forms of sexual malpractices.
- v) Migration Policy.
- vi) Employment and Labour Relation Court 2011
- vii) The Basic Education Act 2013

Zanzibar

- (i) Pre departure training
- (ii) Tripartite policy
- (iii) Zanzibar labor inspection especially to Labor Agency
- (iv) Labor law

Tanzania:

- (i) No Specific Law for Migrant domestic workers.
- (ii) There is a Law; The Employment Promotion Service Act (1999), and its Subsidiary Legislation on The Private Employment Agencies (2014) have provided some conditions for employment agencies which cut across all workers.

Ethiopia:

- Ethiopia has the Ethiopian overseas Employment Proclamation of 2016.

4.0 Recommendations:

(A) States Strengthen and promote fair policies on Migration in the countries of origin
 Migrant and MDWS from African countries are suffering from the policies in labor receiving countries of the MENA region because of the short of international standards. The kafala system (or sponsorship system) which governs the work and living conditions of migrant workers in the Middle East is a set of laws and practices which limit many of the worker's basic rights including the right to mobility in the labor market, the right to terminate employment and ability to return home before the end of the contract, and the migrants' right to family life. The employer- employee relationship is built around a strong dependence on the employer; which creates a huge power imbalance. The kafala links the legal status of the worker to that of the kafeel (or sponsor) so that if workers leave their jobs their visas are automatically revoked and they become in a situation of illegality. Under this system, access to justice is very difficult as in the overwhelming majority of cases employers have the power to deport workers even when judicial procedures are still ongoing. However, to uphold the labor and human rights of workers in the region, countries must commit to promoting fair migration policies that balance between the needs of economy and the rights of the worker without compromising the latter.

- Domestic work need to be recognized as work by both countries of origin and Destination and institutionalize in the labor laws/policies of CoO and CoD.
- Countries of origin should locate labour attaché in the CoD to monitor these bad practices.

(B) Decent work and labor mobility at national level should be ensured in CoO and Destination such as rights of living wage, OHS, the right to just and fair terms of Employment conditions of work:

- (i) Countries at national level should adopt national laws on protection of migrant Domestic workers, consistent with international standards; such as Kenya which has included in the employment relation Act of 2007.

(C) Information of their Rights:

Migrants/MDWS in the Africa region have limited information about their rights in the COD. Lack of information about rights can lead to a number of abuses such as about the conditions of the work, debt burden, unpaid wages and hazardous working conditions.

- The compact should see that Countries of Origin must cooperate and invest in pre-departure and post-arrival orientation programs that would acquaint workers with the conditions of the job; including wages, days off, and nature of job and the rights in the countries of destination.
- These programs should be either financed by the nation in the CoO or paid for by the employer
- Also, orientation programs for employers must also be made available as many employers in the region are not aware of their duties towards the workers especially in sectors such as domestic worker which are traditionally not considered as work.
- Orientation programs for employers must explain the rights of the worker and the conditions of the contract.
- Language is another very important element.
- Contracts are signed in Arabic, a language that the migrant worker does not understand. Countries must ensure that all contracts are written in a language the worker understands and the worker always be allowed to retain copies of the contract.

Few good practice:

- Education and training for workers rights such as in Kenya, Zanzibar and Ethiopia.
- Pre –departure-training for all women and men migrant workers the case of Ethiopia and Zanzibar.
- Awareness creation of the rights, laws, culture in the CoO, such as is done by IDWF affiliate the KUDHEIHA union in Kenya and CHODAWU-Zanzibar

(D) Working conditions:

- *Strengthen the role of labor inspections:*

Labor inspection plays a vital role in ensuring that labor standards are followed and that migrant workers are free from abuse and exploitation. Despite the advantages of labor inspections, the effectiveness of inspections has been limited in both countries, the CoO and the COD due to several factors:

1. The inability of inspectors to inspect sectors such as domestic work is very limited or else lack some knowledge and expertise as most of them are used to formal sectors. When inspectors have mandates, ministries of labor often lack capacity and inspectors lack training. Hence the compact should see that:
 - Give mandate under the law for labor inspectors to inspect houses and to cover sectors which are often excluded from inspections such as domestic work.
 - Countries must invest in strengthening the role of labor inspection as they constitute an important safeguard against abuses
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 - Inspection should also focus on recruitment agencies and check compliance with local laws and regulations
 - Develop a clear mechanism under the law for labor inspector to take action when abuses are detected
 - Strengthen and formalize cooperation and referral between labor inspectors, diplomatic missions abroad, and civil society that provide services to migrants.
 - Train and build the capacity of labor inspectors, and increase the size of available staff
 - Labor inspection should be carried at workplaces in collaboration with community leaders and government officials and trade unions. Unlawful deductions of wages by recruiters in the Co O be stopped. The case of Uganda whereby the recruitment agency was brought before the trade union and paid UGx 2,000,000/=

- **THE STATES IN THE COD MUST ALLOW MIGRANTS AND MDWS' RIGHTS TO ORGANIZE AND FORM TRADE UNIONS AND ASSOCIATIONS:**

The right of migrants /MDWS to freedom of association, and to form and join trade unions is recognized by a number of international instruments including the ILO fundamental principles and rights at work, **ILO C.87 and C.98**.

A number of labor laws in the MENA region have failed to extend the right to organize and form labor unions to all migrant workers. In most cases, migrant workers/MDWs are not allowed to organize or form unions. This means migrant workers are effectively denied their right in the countries of destinations.

The right of migrant workers/MDWS to organize in trade unions and their right to vote and to run for leadership positions must be promoted.

Oman constitutes a good practice; all workers in Oman including migrant workers have the right to form and join labor unions as well as MDWS who have formed associations. A good example is MDWs from Zanzibar has an association which links with DWs union in Zanzibar. The compact should see that States in the countries of destinations actively promote the rights of migrants/MDWs to organize, including

through in trade unions, associations self-help groups and member-based organizations.

(E) On Standard Employment Contract:

- The Compact Should Ensure that MDWs and others have standard contracts that follow core labour standard.
- Contracts also need to be applicable in the CoO and CoD: **The case of Uganda which has the A Model** Employment Contract which stipulates the basic minimum rights of Ugandan migrant workers developed by the Ministry of Gender, **Labor and Social Development**.

(F) Gender inequality and gender discrimination at work be eliminated: Promoting and ensuring equal pay for equal work between men and women;

Policies, mechanism and practice must include provision, guidelines to ensure gender equality and address gaps such as wages, promotions, terms of employment.

Like for African MDWs there is discrimination and racism when it comes to wages, promotion and terms of employment in the CoD (source MDWs in Tanzania and Kenya)

(G) End Wage discrimination based on nationality, gender, and migration status:

Migrant Domestic Workers and MW in the CoD are often concentrated in sectors where working conditions are difficult and where nationals refuse to work; these include construction, domestic worker and agriculture. As a result, wages in these sectors are very low and often below national minimum wages (where those exist).

Migrant women face double wage discrimination, for being foreign and as a result of the gender gap that exists in the region. Jobs for women are concentrated in less regulated sectors such as domestic worker and agriculture, making them more prone to exploitation and unequal treatment.

Wage discrimination based on nationality is also rampant in the region; Filipino workers earn the highest wages while **African women worker** and especially **MDWs** earn the lowest wages- and is often linked to employer preferences and the perceived attributes of the workers.

Wage discrimination based on nationality, gender and migration status contravenes the fundamental principles and rights at work and a number international convention (Article 25, CMWs; Article 6, ILO C97).

Countries must end **wage discrimination** by developing skills qualifications and recognition systems, including for domestic and construction with a view to capturing the occupational segmentation within the different sectors and waging occupations appropriately irrespective of nationality and migration status. States must also promote opportunities for career progression within sectors and across different sectors.

Sending countries should develop skill training curriculum for MDWs so as to facilitate their competence, work experience and qualifications in the CoD. The case study of Ethiopia.

(H) Fair recruitment and no charge of recruitment fees to the MDWs/Migrant worker

(I) Migrant workers/MDWs should be able to terminate the employment with the employer due to abuse or any exploitation in the workplace. They should be free from mobility and this should be stipulated in the contract:

The case of Ciskey MDW who was who asked for termination in UAE was terminated and then she was free to go to the Embassy to ask for assistance.

(J) **Rights to access to complaints redress and justice in the country of origin and country of destination must be ensured.**

There should be availability of access to free legal assistance in CoO and CoD and the language used should be accessible to the workers.

- In Uganda, the MOL and the trade union has been supporting the MDWs without any cost. (2015-2017).

The Kenya Government has located a labour attaché for the middle East to assist MW and MDWs in legal and labor related issues. (K) **Ensure global, regional multilateral, bilateral national mechanism on monitoring, compliance reporting to promote and decent work for MDWS and MWs.**

A number of countries in the Africa region including Ethiopia, Kenya, Tanzania, Uganda, and Zanzibar have signed bilateral agreements or Memorandum of Understandings with receiving countries such as UAE, Saudi Arabia, Dubai, Jordan, Oman, Qatar, and Kuwait. Bilateral agreements and MoUs are useful tools for the governance of migration; however in the context of labor mobility in the region, BLA and MoU have often fallen short of labor standards.

To strengthen the governance of migration, existing bilateral agreements must;

- Be revised to ensure that they are **worker centered** and that they address the human rights violations faced by workers in the country of destination, including confiscation of passports, lower wages, long working hours, prohibition on the enjoyment of family rights among others.
- All bilateral agreements must uphold minimum international standards and must be rooted in international labor and human rights standards.
- Bilateral agreements must be transparent and a clear monitoring and accountability mechanism must be set forth. Bilateral agreements should not discriminate between workers on the basis of nationality, gender, or any other factor.
- The negotiations of BLAs and MOUs should not only include governments but must necessarily include other stakeholders such as migrant workers, NGOs, and trade unions.
- The process should undergo tripartite process in the CoO and CoD such as Uganda HTS had to engage the Gov't on the MOU with Saudi Arabia on MDWs. This is good practice.

- Ensure there is transparency and effective formulation and implementation of agreements in both countries.
- There should be strong agreements which confirm with International standards, which follow labor rights. Such as the Ethiopian Overseas Proclamation Act of 2016.

Conclusion:

- Global compact should make sure that Migrant workers and Domestic workers are workers like other workers and need to be protected.
- Migrant domestic workers both local and those migrating to foreign countries have the right to organize and be recruited into unions, associations in order to safe guard their rights.
- Social dialogue is one of the key element to have decent work for migrant/ MDWs so tripartite forum are very fundamental to make sure that policies, national laws and agreements made protect migrant workers.