



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families
Thirteenth session**

Summary record of the 144th meeting

Held at the Palais Wilson, Geneva, on Thursday, 25 November 2010, at 3 p.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 3.10 p.m.

Issues pertaining to the Convention

*Consideration of draft general comment No. 1 on migrant domestic workers
(CMW/C/12/CRP.2/Rev.2; CMW/C/13/CRP.1)*

1. **The Chairperson** said that some of the comments submitted by members of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and civil society partners since the discussion at the previous session had been incorporated in the present draft, as had others resulting from the discussions in June of the Committee on Domestic Workers of the 2010 International Labour Conference (ILC) in view of the proposed adoption of an International Labour Organization (ILO) convention and recommendation on decent work for domestic workers.

2. **Mr. Halsteen** (Office of the United Nations High Commissioner for Human Rights) said that, as the definition of terms and the issue of child domestic work had been discussed at length at the Committee on Migrant Workers' previous session, an explanatory note on the definition of domestic work and the permissibility of domestic work by children (CMW/C/13/CRP.1) had been drawn up to update members on similar discussions in the context of ILO.

Paragraph 1

3. **Mr. El-Borai** proposed that the phrase "women and girls" at the end of the paragraph should be replaced by "women and children", or simply "women".

4. **The Chairperson**, supported by **Mr. Carrión-Mena**, suggested standardizing the phrase in line with the wording used in the ILC documents. He asked the secretariat to check and make the necessary amendments.

5. **Mr. Taghizade** proposed, for clarity, deleting the third sentence and the word "Indeed" at the beginning of the fourth.

Paragraph 2

6. **Mr. Alba** pointed out that the purpose of the general comment was not to address risks and vulnerabilities as such, but rather to help States parties interpret the Convention correctly, in the light of those risks and vulnerabilities.

Paragraph 4

7. **Mr. Carrión-Mena** said that it was not clear whether the national immigration laws referred to were those of the country of origin, transit or arrival.

Paragraph 5

8. **Mr. Alba**, supported by **Mr. Tall** and **the Chairperson**, proposed that the French and Spanish versions should use both genders of the word "workers" in the definition, placing the feminine first, noting that the relevant wording in the proposed ILO convention had not yet been finalized.

9. **Mr. El-Borai** pointed out that some comparative law texts defined domestic work as physical, rather than intellectual, tasks.

10. **Mr. Martin Oelz** (ILO) suggested including a footnote to mention the outcome of the discussions on the proposed ILO convention and recommendation.

Paragraph 6

11. **Mr. Tall**, responding to a question from **Ms. Cubias Medina**, explained that some employers restricted workers' freedom to leave the workplace by confiscating their passports. He proposed specifying that the practice concerned only some employers.
12. **The Chairperson** and **Mr. Alba** pointed out that the reliance of family members on a worker's remittances was not a factor controlled by the employer and should therefore be expressed separately from the other factors listed.
13. **Mr. Brillantes** said that it was important to distinguish clearly between national domestic workers and migrant domestic workers.
14. **Ms. Poussi Konsimbo** proposed, in the French text, replacing "sexiste" by "sexuelle", the correct term in the context.
15. **Mr. Tall** said that "the reliance of family members back home on remittances sent back from the domestic work" was less of a factor in the migrant worker's dependence on the job and employer than the other reasons given, and should therefore be moved to the end of the sentence.
16. **Mr. El-Borai**, supported by **Mr. Taghizade** and **Ms. Cubias Medina**, proposed that the reasons for a migrant domestic worker's dependence on the job and employer should be included in a footnote.
17. **The Chairperson** said that it was important to list the reasons in the text, since they were specific to migrant domestic workers, as opposed to domestic workers in general.
18. **Mr. Tall** said that the reasons and examples listed should be retained, given the pedagogical nature of the Committee's general comments. It was important to point such things out to the reader.
19. **Mr. Alba**, supported by **Ms. Poussi Konsimbo**, said that the reference in the first sentence to "nationals of a country" should be removed, since issues relating to national workers did not fall within the Committee's mandate. The issue of reliance of family members back home on remittances should be dealt with in a separate point, since it was a completely different matter to the issue of a migrant domestic worker's dependence on the job and employer.
20. **Mr. Brillantes** said he shared the view that issues relating to national workers fell outside the Committee's mandate. The Committee's draft general comment specifically focused on migrant domestic workers, unlike the draft instruments prepared by the International Labour Office, which related to domestic workers in general.
21. **The Chairperson** suggested that the phrase "whether migrants or nationals of a country" should be deleted.

Paragraph 9

22. **The Chairperson** said that it was not clear what was meant by "agents de recrutement illégaux" in the first sentence of the French version.
23. **Ms. Poussi Konsimbo** said that it would be more logical to move the second sentence, the initial words of which were "Upon arrival", to the start of paragraph 10, in the section "At arrival and during employment".
24. **Mr. Tall** supported Ms. Poussi Konsimbo's proposal and said that, in addition, the words "very often" should be inserted at the start of the sentence.

Paragraph 10

25. **Mr. El-Borai** queried the use of the expression “presque invariablement” in the French version.
26. **The Chairperson** suggested that the expression “très souvent” should be used instead.
27. **Mr. Alba** endorsed the Chairperson’s suggestion and said that “casi siempre” should be changed to “frecuentemente” in the Spanish version, accordingly.
28. **Mr. Carrión-Mena** asked for clarification of the text in square brackets, and said that, in the Spanish version, the word “prometido” should be replaced by “convenido”, to match the reference earlier in the sentence to the signing of a contract.
29. **Ms. Rinaldi** (Office of the United Nations High Commissioner for Human Rights) said that the Spanish wording proposed by Mr. Carrión-Mena could be reflected in the other language versions by replacing “promised” by “agreed upon” in the English version and “ce qu’on leur avait promis” by “ce qui avait été convenu” in the French version.
30. **Ms. Miller-Stennett** said that “pre-departure” should be changed to “prior to departure”.
31. **Mr. Tall** said that he was not in favour of linking the wording specifically to the idea of the migrant worker having signed a contract before departure, since in many cases migrant workers were simply promised, verbally, all manner of things prior to departure.
32. **Mr. Alba** proposed that, in addition to the wording suggested by the secretariat to reflect Mr. Carrión-Mena’s proposal, the original, more general word “promised” should be left in, to cover cases where a contract had not been signed before departure.

Paragraph 11

33. **Mr. El-Borai** said that the reference to the illegal withholding of passports duplicated the information contained in paragraph 6 and that both paragraphs should be reviewed in order to ensure coherence between the two.
34. **Mr. Carrión-Mena** said that a phrase should be inserted to indicate who was responsible for withholding passports. Was it the employer, for example, or the authorities?
35. **Mr. Sevim**, supported by **Ms. Miller-Stennett**, said that the word “illegal” should be deleted, since surely there could be no circumstances in which it was legal to withhold someone’s passport.
36. **Mr. Tall** expressed his support for deleting the word “illegal”, and proposed the insertion of the words “by the employer” after “withholding of passports”.
37. **Mr. Alba**, supported by **Ms. Poussi Konsimbo**, said that the duplication referred to by Mr. El-Borai between paragraph 6 and paragraph 11 did not matter: paragraph 6 was in the introductory part of the document, and paragraph 11 was in the section covering specific matters. It could not hurt to repeat that such serious practices existed; it would therefore be better to leave the paragraphs as they stood.
38. **Mr. Tall** said that there was no real duplication between paragraph 6 and paragraph 11; the first mentioned the practice of an employer restricting a migrant domestic worker’s freedom to leave the workplace, while the second specified the withholding of passports. The end result might be the same, but they were two different things.

Paragraph 12

39. **Ms. Poussi Konsimbo**, supported by **Mr. Alba**, proposed that the issue of abuse and harassment by employers should be retained in the second-to-last bullet point in paragraph 12, but that the issue of abuse and harassment by recruitment agents or intermediaries should be moved to the preceding section, on “Recruitment and pre-departure”.

40. **Mr. El-Borai** said that, in the first bullet point in the French version, it made no sense to describe a restriction as “importante” and then add “et, dans de nombreux cas, totale”. Perhaps “importante” could be replaced by “partielle”, which was the logical contrast to “totale”, or the qualifying phrase “dans de nombreux cas” could be removed altogether.

41. **Mr. Alba** said that he was not in favour of using the word “grave” in the Spanish version, as it implied a subjective judgement.

The meeting was suspended at 4.35 p.m. and resumed at 4.45 p.m.

Paragraph 13

42. **Mr. Tall** said that, in the first sentence, “child domestic workers” should be changed to “child migrant domestic workers”.

43. **Mr. Halsteen** (Office of the United Nations High Commissioner for Human Rights), explaining the comment contained in square brackets, drew the Committee members’ attention to the recommendation by the United Nations Special Rapporteur on contemporary forms of slavery contained in paragraph 94 of her report to the Human Rights Council at its fifteenth session (A/HRC/15/20): “States should prohibit live-in domestic work for migrant or local children younger than 18 years, since it is typically inherently hazardous. Other domestic work of children who are younger than 15 or still completing their mandatory education should be prohibited to the extent that it interferes with their schooling.” He suggested that the Committee might wish to insert a reference to the recommendation, in the form of a footnote.

Paragraph 14

44. **Ms. Miller-Stennett** pointed out that, in the English version, the last sentence was incomplete.

45. **Mr. El-Borai** said that the entire paragraph 14 should be deleted, since the point made concerned migrant workers in general, and did not specifically relate to migrant domestic workers.

46. **Mr. Alba** proposed moving the paragraph to the introductory section.

47. **Ms. Rinaldi** (Office of the United Nations High Commissioner for Human Rights) said that the inclusion of paragraph 14 had been requested by the United Nations Children’s Fund (UNICEF). Recent work by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, in respect of Sri Lanka, had shown that migration on a mass scale not only had social implications, but also resulted in violations of the human rights of migrant workers’ children and families.

48. **Mr. Taghizade** said that the problems of children left behind in the country of origin were common to all migrants. The text should address the problems specific to migrant domestic workers.

49. **Mr. Tall** said the text should indicate that the separation of children from their families was conducive to violations of their rights.

Paragraph 15

50. **Mr. Tall** said that the issue of the portability of social security benefits was secondary to the fact that many migrant domestic workers did not have any social security benefits at all in the host country, which should be stated clearly first.

51. **Mr. Sevim** proposed splitting the two sentences into different paragraphs, as reintegration into the labour market and social security benefits were two very different issues.

52. **The Chairperson** suggested including the sentence on social security in the section of the general comment on arrival in the host country.

Paragraph 16

53. **Mr. Tall** proposed, in the French version, replacing “il se peut par exemple que” by the stronger term, “il arrive que”. He also suggested including “without any pay or” before “with less pay”.

54. **Mr. El-Borai** said that much of paragraphs 15, 16 and 17 concerned migrant workers in general, rather than migrant domestic workers. He proposed having an introductory section on the problems of migrants in general, and then a specific section on those facing migrant domestic workers.

55. **Mr. Tall** said that it was very difficult to separate out the different facets — migrant, worker, domestic worker — of a migrant domestic worker. The subject should therefore be addressed as a whole.

56. **Ms. Barrita-Chagoya** (Secretary of the Committee) pointed out that separating the two concepts would lead to an abstract statement that might overlook the interdependence and indivisibility of human rights.

57. **Mr. Alba** suggested that the Committee should try to be more specific, though without redrafting the whole text.

58. **Mr. Sevim** said that the proposed ILO convention also spoke of migrant workers in general, as well as migrant domestic workers. The paragraphs of the draft general comment should be retained as they were.

Paragraph 19

59. **Mr. Alba** said that it would be useful to include, in addition to the description of the gaps in protection and the subsequent recommendations to States parties, a short section explaining the Committee’s interpretation of the Convention, which was one of the functions of a general comment. A positive tone should be used, with States parties enjoined to ensure that all labour legislation covered migrant domestic workers, instead of the current wording that said that they were often specifically excluded. The new section would also be an opportunity to address other aspects essential to assisting interpretation, before recommendations were made, and could help to establish a body of jurisprudence.

60. **Mr. Tall** proposed, in the French version, deleting “grandes catégories de”, to leave simply “les lois” and, at the end of that sentence, replacing “en cas de violation” by “effectifs”.

Paragraph 20

61. **Mr. El-Borai** proposed merging paragraphs 19 and 20, as they both dealt with labour law.

62. **Mr. Tall** said that the terms “aides” (“helpers”) and “assistés” (“helped”) were unclear in French.

63. **Ms. Miller-Stennett** said there was no need for both terms.

64. **Ms. Barrita-Chagoya** (Secretary of the Committee) explained that, while domestic workers were there to help their employers, some employers considered that they were helping the workers by employing them.

65. **Ms. Poussi Konsimbo** proposed using, in French, the term “aides familiales” rather than “aides”.

66. **The Chairperson** suggested that the original wording should be retained.

Paragraph 21

67. **Mr. Tall** proposed, in the French version, amending the first words of the paragraph to “Certaines législations nationales en matière du travail”.

68. **Ms. Dicko** said that the problems involved in monitoring compliance with labour laws in private homes ought to be highlighted.

69. **The Chairperson** pointed out that the aspects of labour laws that excluded, or were not in practice applied to, domestic workers were not limited to monitoring.

Paragraph 22

70. **Mr. Taghizade** asked for the wording concerning migrant domestic workers and national domestic workers to be aligned with that proposed earlier in the discussion.

Paragraph 23

71. **Mr. Nyman** (UNICEF) proposed the insertion of the words “gender-sensitive” before “health care”.

Paragraph 24

72. **Ms. Merico** (Caritas Internationalis) proposed the insertion of the words “or are found to be HIV-positive” after “who get pregnant”.

73. **Mr. Tall** said that paragraph 24 dealt with family law matters. The HIV issue should be dealt with under the section on social security and health services.

Paragraph 27

74. **Mr. Tall** proposed the deletion of the word “literally”, which was superfluous.

Paragraph 28

75. **Mr. Brillantes** proposed the insertion of a paragraph, to be drafted by the secretariat, flagging the problem concerning the repatriation of migrant domestic workers’ remains in the event of death abroad. As unskilled workers, they rarely benefited from protection in that regard.

Paragraph 30

76. **Mr. Sevim**, referring to the third bullet point, said that he was not in favour of deleting “debt and finance”. He proposed that, after the word “including”, the text should read “issues of migration, working conditions, wages, social security, work-related fees,

debt and finance, basic knowledge on methods of conflict resolution, and avenues for redress”.

77. **The Chairperson** asked members to submit in writing the amendments they had proposed to which no objections had been raised.

78. **Mr. Alba** said that members would be reluctant to submit amendments if they were expected to come up with the final drafting immediately. The Committee should take the time it needed to come up with a good document. If it was not possible to adopt the document at the current session, it should be adopted at the following session.

79. **Mr. Tall** said that he would prefer all amendments to be decided on in plenary. Otherwise, there was no way of checking the wording of amendments submitted in writing.

80. **Mr. El-Borai** said that the Committee should aim to adopt the document at the current session, in order to be able to provide input to the convention and recommendation concerning decent work for domestic workers being drawn up by the International Labour Office.

Paragraph 32

81. **Mr. Tall** said that “States of transit” should also be mentioned, in addition to “States of origin” and “States of employment”, since States of transit played an important role in protection, especially with regard to victims of trafficking in persons.

Paragraph 33

82. **The Chairperson** said that Mr. Tall’s proposal for paragraph 32 would also apply to paragraph 33.

Paragraph 34

83. **Mr. Tall** said that the last part of the sentence should be amended to read “to ensure that they respect the rights of domestic workers”.

Paragraph 37

84. **The Chairperson** suggested that the information contained in square brackets could be inserted as a footnote.

85. **Mr. Halsteen** (Office of the United Nations High Commissioner for Human Rights) said that the important point was that, under the ILO Convention concerning Private Employment Agencies (No. 181), private employment agencies should not charge, directly or indirectly, any fees or costs to workers. The Committee might wish to include a statement to that effect in the paragraph itself.

86. **Mr. Alba** said that the recommendation formulated in the paragraph should be realistic. He was in favour of the inclusion of a footnote.

87. **Mr. Brillantes** pointed out that, in the English version, the last word in the paragraph should read “deductions”, not “reductions”.

Paragraph 38

88. **Mr. Alba** said that footnote 8 should be redrafted as follows: “This recommendation is in line with the recommendation made by the Committee on Economic, Social and Cultural Rights in its general comment No. 18 (2005) ...”.

Paragraph 39

89. **Ms. Merico** (Caritas Internationalis) proposed the insertion of a reference to “pension rights” after “with respect to maternity”. In the last sentence, “treatment not less favourable than that” should be changed to “equal treatment to that”.

90. **Mr. Alba** said that he was in favour of retaining the words “treatment not less favourable”, since that left open the possibility that migrant domestic workers might even receive better treatment than nationals of the State of employment. Furthermore, it was the wording used in the Convention.

Paragraph 40

91. **Mr. Carrión-Mena** said that it was important to suggest the ways in which States could promote a shift in public perceptions.

92. **Mr. Tall** proposed that, in the French version, “encourager” should be changed to “prendre des mesures pour favoriser”.

Paragraph 42

93. **Mr. Tall**, supported by **Mr. Carrión-Mena**, said that the first part of the sentence should be changed to “Les États parties devraient veiller à incorporer ...”, in order to make the paragraph stronger.

94. **The Chairperson** said that the secretariat would amend the text to reflect the proposals made by the members. The new text would then be submitted to them for approval.

The meeting rose at 6 p.m.