

SHARED CONCERNS AND JOINT RECOMMENDATIONS ON MIGRANT DOMESTIC AND CARE WORK



Contributors

The following working document gathers shared concerns and joint recommendations, and may be updated and further developed as needed. The document has been developed¹ by the following global and European level trade unions confederations, European level NGOs and networks, national level trade unions and NGOs:

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¹ The common concerns and recommendations were developed during 3 strategy meetings in December 2016, July 2017 and October 2017.

Definition of key terms

Migrant worker: non-EU migrant workers. EU mobile citizens who are domestic and care workers face some similar challenges, and recommendations included seek to address the situation of all workers in the sector, regardless of status.

Domestic and care work: Work carried out for a household or households, including most frequently, cleaning, cooking, ironing, gardening and shopping as well as caring for children, for older people or other people with home-based care needs, including due to disability, health or other needs. This paper does not address care services provided outside the home. It is referred to as a “sector” while recognising that some stakeholders differentiate the care sector from other personal household services.

Domestic worker:² any person engaged in domestic work within an employment relationship. A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

1. Challenges around lack of recognition and poor regulation of domestic and care work / economy

Lack of recognition and investment

- Policies in the areas of domestic work and long-term care have not yet taken stock of the demographic challenges faced by the European Union, namely an ageing population and a low recruitment of EU nationals for the domestic and care sector.
- Lack of recognition of domestic and care work as work, and as a decent and skilled job/ occupation. Lack of recognition of the difficulties and needs attached to the domestic and care work, as well as its value for the society as a whole.
- Non-application of labour standards to domestic and care work and to all workers, regardless of status (in line with human rights law, including ILO conventions as well as CEDAW including General Recommendation no. 26, and the Migrant Workers’ Convention, including General Comment no. 1); need to ratify & implement ILO Conventions in particular C189 and Forced Labour Protocol.
- Lack of investment in the domestic and care sector and quality service provision (as well as social and work-life balance policies in general), and pressures on informal carers.
- Poor working conditions whether provided in the home or through other channels.
- Need for regulation of the sector, while ensuring the preservation and improvement of existing livelihoods during the transition, as well as support for informal carers.
- Lack of recognition of informal learning, skills and qualifications, including between countries (skills portability).
- Need to highlight positive contributions of intra-EU and extra -EU migrants to domestic and care sector regardless of status, and opportunities for decent employment provided by the sector – possible win-win for migrants, employers, the sector (NB. with the right policies in place to support this).

² Definitions are based on those in ILO C189 - Domestic Workers Convention, 2011.

- Need for government support and subsidisation to provide affordable care to people with care needs.

Poor working conditions

- Prevalence of exploitative working conditions for all workers in the sector (national, EU, non-EU migrant): excessive working hours and hours when expected to be available (“on call”), limited and/or only unpaid holidays or sick leave, under payment.
- Limited access of labour inspectors, trade unions and NGOs representing migrant workers to private households as places of employment.
- Lack of career paths (training, skills development, possibilities to change sectors).
- Need to develop quality assurance systems.
- Benefits and pitfalls of voucher systems.

Gender dimensions – not only but largely migrant women

- Links to issues around women’s empowerment, gender stereotypes and discrimination, including perception of domestic and care work as “women’s work” (and lack of recognition of it as work and the perpetuation of that perception due to continued gender imbalance/ high proportion of female workers).
- Necessary to facilitate equal participation in the labour market and work-life balance for families.
- Changes in the care responsibilities and opportunities within migrant workers’ families both within and across countries, and need to support transnational care and welfare systems.
- Risks of gender-based violence and exploitation, dependence, precarity.

Lack of regular channels and regularisation

- Restricted labour migration possibilities i.e. usually not possible for people to migrate to work as domestic worker, except for employees of diplomats (either because no permits are issued to third country nationals for this work, or because of labour market test requirements). Few countries allow migrant workers to get a permit for this work, even if they are already residing in the country.
- Dependent status of migrant workers – if no right to change employer, risks of exploitation as a result.
- Misuse of au pair systems to meet demands for migrant domestic and care workers, exploitation of au pairs (type of duties, long hours, underpayment, etc.), and lack of labour rights protections for people currently working on au pair visas.
- Situations where migrant domestic and care workers to register as self-employed (and therefore work without rights as employees), or treatment as if they are, regardless of status.
- Very few possibilities to regularise through employment, in particular through employment in domestic work.

Key recommendations to policy makers

1. **Invest in the domestic and care work sector** – in the provision of public services and subsidised and well-regulated private service provision. Ensure proper social protection for those needing care and those working in the sector, by supporting individuals and families to access affordable and qualitative domestic and care services while meeting the real costs of the services.
2. **Include domestic and care work in the same employment regulations framework** as other occupations, including anti-discrimination legislation, in recognition of the role of the sector in social reproduction,³ to improve standards and perceptions, and address reproduction of social, racial and gender inequalities. Include nationality as a prohibited ground for discrimination in national legislation on access to social protection, goods, services, training, employment and occupation.
3. **Ensure labour standards**, including a living wage, health and safety and social protection, as well as the right to non-discrimination and equal treatment, and the right to organise, to collective bargaining, and to information and consultation, apply to the domestic and care sector.
4. Facilitate recognition of **skills acquired through experience by migrant carers as well as informal carers, as well as the recognition of foreign diplomas**, and ensure **training and career trajectories**.
5. Develop and implement **quality assurance systems** for the sector, for example through certificates of professional competence (linked to recognition of skills).
6. **Recognise clear demand for workers in key sectors, including domestic and care work**, and how it is met currently by undocumented migrant workers (improve data collection and use, noting impact of undocumented workers meeting demand on the data) and/ or not addressed in the way labour market tests, shortage occupation lists and quotas are developed.
7. **Open up more/ extend existing admission channels for labour migration for different skills/ sectors, in particular for domestic and care work**. Regular channels must ensure:
 - possibilities to change employer, job and sector, work for more than one employer, and allow time for unemployment/ job search;
 - equal treatment and labour rights, equal social and family rights as nationals;
 - possibilities to renew, as well as apply for another type of permit, move within the EU, and access permanent status after a number of years.
8. Implement **clear, permanent, accessible mechanisms to regularise** present undocumented workers, including those working as domestic and care workers, including through allowing applications for work permits from within the territory, regardless of status, while respecting workers' fundamental rights and ensuring opportunities for income security and livelihoods.

³ Addressing how domestic work is essential to the reproduction of communities, households and families, including through care; while at the same time recognising that this reproduces social relations - gender relations, class and economic relations, cultural relations - including discrimination. See Bridget Anderson, *Doing the Dirty Work?: The Global Politics of Domestic Labour*, 2000, Palgrave Macmillan: London and New York.

2. Particular risks of exploitation and challenges to access justice for migrant workers

- Exploitation and deception in recruitment, recruitment fees – need for regulation, ethical recruitment and no fees for workers.
- Limitations on liberty and mobility for live-in workers in particular, and confiscation of documents.
- Domestic servitude in diplomatic households and misuse of immunity to circumvent labour law.
- Contradictory and overlapping competences between migration and labour laws and authorities – prioritisation of migration law enforcement over labour law enforcement resulting in joint inspections, and responsibilities on labour inspectors to check immigration status and report undocumented workers to immigration authorities and ineffective complaints and redress mechanisms; therefore risks of penalties for irregular work, employer retaliation, arrest, detention and deportation as a result of engaging with labour authorities, and very limited chances of recuperating unpaid wages and compensation.
- While some advancements in protection and support to identified trafficked persons, still limited access to meaningful support and justice (including access to secure residence status and compensation as relevant), high threshold for recognition of trafficking and issues around evidence, and lack of attention to widespread economic exploitation and continuum of exploitation and risks associated with exclusion and discrimination against undocumented migrants.
- Risks associated with care workforce being unsupported, over-worked, underpaid, etc.
- Difficulties around reaching, empowering and organising domestic workers and undocumented workers.
- Lack of capacity building e.g. financial empowerment and management for families in, and if returning to, the country of origin, and costs of sending remittances.

Key recommendations to policy makers

1. **Regulate recruitment agencies and au pair agencies**; ensure registration, mandatory minimum standards for positions offered, that fees are not charged to workers or au pairs, monitoring of implementation and accountability.
2. **Countries of destination to check that contracts** include minimum labour and social standards (including social security), and are in a language the worker can understand, including through the use of model contracts, **before issuing visas** for domestic workers. **Monitoring** should be ensured by requiring a separate meeting with the worker, after a given period, including through cooperation with NGOs.
3. Regarding **domestic workers employed by diplomats**, both the country of destination and country of origin should:
 - Ensure that workers are issued a **work permit** rather than as a family member/ dependent, and have **equal rights** as other workers (all above recommendations also equally apply, regarding contracts, conditions of employment, labour mobility, social rights, etc.).
 - Explore use of **memorandums of understanding** for diplomats employing domestic workers, stating that they will comply with labour regulations, allow inspections and participate in mediation as needed.

4. **Prevent a situation where Europe meets its care needs through exploitation of migrant workers – ensure that employment in domestic and care sector is decent and dignified.**
 - Ensure human rights and labour standards apply to **all workers, regardless of migration/ residence or employment status**, including for people on au pairs permits and workers that are self-employed but actually employed, or whose direct employer is an agent.
 - This requires **effective mechanisms** for all workers, regardless of migration/ residence or employment status, **to file a complaint and access remedies**, without risk of apprehension or other negative repercussions and with necessary support.
 - This includes implementing a strict **firewall** between the duties of labour inspectors and immigration enforcement (no role to enforce immigration law, check or report immigration status, no joint inspections).
 - Labour inspectors must have access to **private homes as places of employment** (without a warrant, for example, through requiring employers to sign a waiver to allow unannounced labour inspections when issuing the work permit, both to check standards initially and monitor during employment). Labour authorities should have the resources and powers necessary to monitor, investigate, award compensation and ensure it is actually received by workers.
 - Ensure that all workers have their **right to organise**, participate in collective bargaining, to join and form trade unions and social enterprises. Facilitate trade unions and NGOs supporting migrants to have access to workers.
 - **Support for workers** to lodge a complaint should also be provided, including access to residence status, information and legal representation.
5. Countries of origin embassies in countries of destination should explore **consular services that support legal and social protection** of migrant workers, regardless of status, and their families in the countries of origin, and organise **information sessions** for their citizens on their rights in the country and services available to them, regardless of status, in cooperation with civil society.

3. Discrimination, violence and limited access to services and social protection

- Exposure to discrimination including on basis of nationality and religion.
- Exposure to violence (all forms of violence, including psychological, physical, sexual, financial, etc.)
- Inadequate housing, lack of privacy.
- Risks of homelessness, in particular for live-in workers.
- Lack of access to health services including reproductive health services, services for chronic conditions, etc. and in cases of workplace accidents.
- Lack of access to public social services, including portability and transfer of social security across countries, including outside the EU.

Key recommendations to policy makers

1. Ensure that all residents, including undocumented migrants, have **equal access to services**, including health, education, and shelter, as well as access to housing (including non-criminalisation of renting and protection of tenants' rights), **police protection** (as victims or witnesses of crime) and access to **justice**.
2. Ensure that a **firewall** exists between service providers and immigration authorities (a clear separation in law and practice, in particular through prohibiting enforcement actions near or around services, and sharing of personal data for immigration enforcement purposes/ without consent).
3. Countries of origin should seek **bilateral agreements to ensure portability of social rights**, including transfer of social security, for their citizens that return, as well as support capacity building for returning migrants.
4. Improve **data collection and disaggregation** to monitor intersecting/ multiple discrimination and different experiences of exploitation.

4. A multi-stakeholder approach: Recommendations to all actors

- Build alliances between care users (people in need of care and informal carers), employers and providers of quality of care, and workers' associations – campaign together, where possible and appropriate.
- Support domestic workers, including (undocumented) migrants to organise. Role of trade unions in particular to do outreach and facilitate membership and support, including through cooperation with NGOs. Trade union participation of and advocacy for all migrant domestic and care workers, regardless of residence status, is crucial to empower domestic workers and improve labour standards for all workers in the sector.
- Ensure domestic workers around the table on equal basis (genuine multi-stakeholder approach).
- Campaign to change the way that the sector is viewed with due attention to both the gender dimensions and the reliance and contribution of migrants – the sector cannot be discussed without considering rights and empowerment of women and of migrants (and of women migrants).
- Employer, provider and workers' associations should work together facilitate enforcement of social and employment standards–
 - Lobby for equal rights regarding pay, working hours, holidays, sick leave, freedom of movement, health insurance, decent and private accommodation etc.
 - Raise awareness of workers' rights and obligations on employers, including individuals and families, and support them to meet those obligations (for example, with tools such as template contracts, translation support/ referrals, support to access subsidies and publicly provided services, support to comply with tax and social security regulations, etc.)
 - Provide mediation services, to support tailored and quality service provision and working conditions, as well as manage disputes.