

**Final Report of the Task Force
On
Domestic Workers**

Realising Decent Work

September 12, 2011

Director General Labour Welfare
Ministry of Labour and Employment
Government of India

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1 BACKGROUND

- 1.1 Domestic work form one of the largest sectors of work in urban areas and majority of the workers are women. The sector is growing rapidly in urban areas and it is an important source of employment for migrant workers who come in search of livelihood opportunities. Despite its growing size and importance both for workers and families who benefit from their labour, domestic work remains unregulated and workers are unprotected by labour laws. In view of the vulnerabilities of the domestic workers, the Ministry of Labour and Employment, Government of India, under the office of Director General Labour Welfare, set up a Task Force to deliberate on the issues related to welfare and regulatory measures for promoting decent work for domestic workers. The Task Force was set up in December 29th, 2009, initially for a period of three months, with the terms of reference to:
- I) Evolve Policy Framework for domestic workers in context of:
 - (a) Regulatory Mechanism
 - (b) Providing Welfare Measures
 - II) Generate knowledge in order to evolve an India Paper for presentation /consideration during the 99th Session of the ILC in Geneva, June 2010:
- 1.2 In the first three months of its tenure the Task Force held five meetings under the Chairmanship of Director General (Labour Welfare), MoLE, and on March 18, 2010 produced the First Report of the Task Force which contained a set of recommendations. The report and the recommendations were subsequently adopted by the government on April 6, 2010. The First Report containing the recommendations is annexed to this report (annex 2).
- 1.3 Since the adoption of the recommendations by the Government, the tenure of the Task Force was extended further to continue on the deliberations regarding the welfare measures that can be extended to the domestic workers, as well as look into the regulatory measures.
- 1.4 This report presents the results of the deliberations of the Task Force. Section one provides the background. Section two presents the status of the implementation of March 2010 recommendations contained in the First Report. It then describes the deliberations of the Task Force regarding the regulatory measures, drafting a National Policy for Domestic Worker and how such a Policy would be operationalised. Finally, section five contains a new set of recommendations of the Task Force.

2 STATUS OF IMPLEMENTATION OF THE TASK FORCE RECOMMENDATIONS OF MARCH 2010

- 2.1 The Task Force has provided timely assistance to the Government on matters relating to labour rights of domestic workers and assisted in the implementation of the Task Force Recommendations of March 2010. The Task Force is pleased to note that as a result, the Government has implemented most of the recommendations contained in the First Report. The status of implementation is provided in matrix 1 below.

- 2.2 The Task Force expressed in its First Report (para 5.2) that in order to evolve a comprehensive Policy Framework there was a need for more deliberations on the regulatory mechanisms for domestic workers, for example whether a new legislation was needed or how to make existing labour laws inclusive for domestic workers and what would the implementation mechanisms be. These deliberations took place from April 2010 to August 2011 under the Chairmanship of Director General (Labour Welfare), MoLE.

MATRIX 1: status of implementation of the TF Recommendations on domestic workers

| RECOMMENDATIONS REPRODUCED FROM THE 1 ST REPORT | STATUS OF IMPLEMENTATION |
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| <p>9.3.1. Extension of the welfare schemes to the domestic workers including: Health and Maternity Benefits, Death and Disability Benefits, and Old Age Benefits. (Ref: Para 5.3, 6.2)</p> <p>9.3.2. The RBSY scheme should be the first welfare scheme to be extended to the domestic workers. The smart cards issued under the RBSY can be later used to load other welfare schemes, rolled out for domestic workers. (Ref: Para 5.3, 6.2)</p> <p>9.3.3. Domestic workers should be identified and registered by the State Labour Department. The registered domestic workers should be enrolled under the RBSY scheme. (Ref: Para 6.6)</p> | <p>A proposal to extend RSBY to domestic workers was submitted to the Cabinet, which was subsequently approved by the same on 23 June 2011. A brief guideline has been issued on the required steps (annex 3).</p> |
| <p>9.3.4. Domestic work should be included in the Central list of scheduled employments wide a notification under the Minimum Wages Act 1948, for fixation and enforcement of minimum wages in respect of domestic workers. The state governments, which have not fixed minimum wages for domestic work, should fix minimum rates of wages for the domestic workers, as labour is a state subject. (Ref: Para 5.5)</p> | <p>A letter was sent on 1 July 2010 from the Secretary of Labour, Ministry of Labour and Employment to the State Chief Secretaries requesting them to take necessary steps for inclusion of domestic workers as employment in the schedule and for fixing minimum rates of wages for domestic workers in respective States as a matter of priority (annex 4).</p> |
| <p>9.3.5. The Ministry of Labour and Employment should issue notification for mandatory registration of all placement agencies and individuals providing placement, sourcing and recruitment services relating to domestic work, under the Shops and Establishment Act, 1953. This registration will be irrespective of the registration/non registration under any other existing Act. The placement agencies should maintain and make available all necessary records pertaining to domestic workers placed, details of the employers, wages, mode of payment of wages, working hours, nature of work, and duration of placement and the copy of the contract. (Ref: Para 5.6)</p> | <p>A letter was sent on 13 October 2010 from the Director General Labour Welfare, Ministry of Labour and Employment to the Principal Secretaries requesting them to take necessary steps for registration of placement agencies providing domestic workers under the Shops and Establishment Act, to be undertaken as a matter of priority (annex 5).</p> |
| <p>9.3.6. The Task Force recommends drafting of a National Policy for the Domestic Workers covering the welfare, regulatory, and skill development issues. The National Policy on Domestic Worker should also include a Code of Practice, which should serve as a guideline for protecting the domestic workers and regulating their work conditions and wages. (Ref: Para 5.9, 5.11)</p> | <p>A draft National Policy on Domestic Work has been drafted by the Task Force, to be submitted to the Government for consideration (annex 1).</p> |

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| 9.3.7. The skill and re-skill training program initiated by ILO, MoLE and Delhi Government should be scaled up and replicated in different states of India in a phased manner. (Ref: Para 4.5, 5.12, 5.13) | These items are included in the draft National Policy on Domestic Work, to be submitted to the Government for consideration (annex 1). |
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3 DELIBERATIONS OF THE TASK FORCE: A NATIONAL POLICY FOR DOMESTIC WORKERS

In pursuit of recommendation of the First Report, paragraph 9.3.6 to draft a National Policy for the Domestic Workers covering the welfare, regulatory, and skill development issues, the Task Force held 8 meetings (21.04.2010, 07.09.2010, 18.10.2010, 10.11.2010, 27.01.2011, 24.02.2011, 04.07.2011 and 18.8.2011) under the Chairmanship of Director General (Labour Welfare), MoLE.

- 3.1 At the outset, the Task Force felt it necessary to highlight that the fundamental principles of right to livelihood and rights at work enshrined in the Indian Constitution applied to all women and men who engaged in economic activities and domestic workers were no exceptions. Hence, the Task Force concurred that, given the general lack of public awareness of domestic work as a legitimate labour market activity undertaken in an employment relationship, and the low social status unjustly accorded to the occupation, the ultimate goal of the Policy on Domestic Workers should be to realize decent work for domestic workers through a rights based approach; thereby protecting domestic workers' human rights and fundamental principles and rights at work on matters of minimum wage, hours of work, rest periods, social security, safe and healthy workplaces, protection from abuse, harassment and violence, access to skills development, grievance redressal and creating public awareness on employers' obligations under the law.
- 3.2 The Task Force felt that a Policy on Domestic Workers should be comprehensive, and should seek to formally establish the labour rights of domestic workers in line with the Indian Constitution and enable them to receive treatment that is not less favourable than that from which workers generally benefit under the national laws and regulations. The aspirations of all domestic workers to work with dignity, to engage in a meaningful work opportunity, to get remunerated with decent wages for the work performed, to have a voice and recognition of that voice, being able to balance work and family life, get opportunities and avenues for self development and training leading to wage enhancement and career progression need to be promoted through appropriate policies, legislations and programs. The domestic workers also need to have social protection and social security, get fairness in treatment with no discrimination on the basis of caste, religion, colour, domicile or sex at work and society at large.
- 3.3 For this purpose, the Task Force concurred that a policy should lay down a labour rights framework for domestic workers- serving to highlight certain minimum conditions for domestic work which should not be compromised with- where the Central and State Governments are obliged to take effective measures to include domestic workers in the existing labour legislations, and where such inclusion is not possible, or where such inclusion would not amount to equivalent protection due to the specific nature of their work, the Central and State Governments would be obliged to design an appropriate legislative mechanism to ensure their rights as workers can be exercised comprehensively.
- 3.4 The Task Force felt it was necessary to call for specific efforts to be made on certain aspects of working conditions which are unique to domestic workers and which arise from their

vulnerability to abuse and labour rights violation due in part to their un-conventional workplace in private households, and because workers are mainly women and girls, poorly educated, many of whom are migrants or members of disadvantaged communities.

- 3.5 In terms of identifying areas that require specific efforts, the Task Force observed that considerable progress has been made in bringing domestic workers in the ambit of labour related schemes, laws and policies. Policy and legislative measures for domestic workers have been taken up for action at both the central and state levels in the past. In subsequent years, some States have included domestic workers for benefits under their welfare fund laws and provisions. During the past decade some States have notified minimum wages for domestic workers under the Minimum Wages Act, 1948. The Child Labour (Prohibition and Regulation) Act, 1986 now prohibits employment of child labour in domestic work as also the conduct rules governing government employees. Domestic workers are explicitly included in the Unorganised Workers (Social Security) Act, 2008, and through its decision of the Government 26 June 2011, domestic workers have come under the coverage of RSBY, paving way for effective access to social protection for domestic workers and their family members.
- 3.6 The Task Force agreed that despite the developments, efforts were not consistent across States. Moreover, much progress has been made in the extension of social security through legislation and schemes, but efforts to regulate their conditions of work, including wages, hours of work, safety and health and access to grievance redressal continue to remain outside central legislative protection.
- 3.7 Hence, the Task Force agreed that specific attention was warranted on regulating domestic workers' working conditions. Particular areas where the Task Force felt additional and specific legislative or policy interventions were needed were in ensuring payment of fair wages in line with their skills and hours of work, organizing and ensuring the right to register as workers; ensuring access to grievance redressal; and public awareness creation on the obligation of employers. The proposed legislative mechanism should be in addition to the existing labour laws.
- 3.8 The Task Force also noted the leadership exercised by the Government of India at the international level on matters related to domestic workers' labour rights. Recent developments such as the extension of social protection through the RSBY and skills development for domestic workers under the National Skills Development Initiative have begun to generate wide interest in South Asian countries that are looking for ways to promote decent work to unorganized sector workers, particularly domestic workers. The leadership was also evident at the recently concluded 100th Session (June 2011) of the International Labour Conference of the ILO, where a Convention (C.189) and a Recommendation (R. 201) on Domestic Workers were adopted with unanimous support from all of the South Asian governments. The Indian government's decision to support the adoption of the Convention was deemed to have played a key influencing role.
- 3.9 The Task Force felt that the Indian experience in promoting decent work for domestic workers could be further shared with the international community. Development of a National Policy for Domestic Workers in the manner described in paragraphs 3.3 to 3.8 could serve to demonstrate how it is possible to make concrete steps in safeguarding domestic workers' labour rights.

4 OPERATIONALIZATION OF THE NATIONAL POLICY

- 4.1 The Task Force deliberated extensively on how to effectively operationalise the Policy. The Task Force felt that the key to effective implantation was for an Implementation Committee to be constituted by the Ministry of Labour and Employment comprising representatives of the government, employers' and workers' organizations, representative organizations of domestic workers and employers of domestic workers, which will be tasked to oversee/facilitate the implementation of the Policy. The Task Force felt that in addition to the Implementation Committee, appropriate tripartite institutional mechanisms should be established at State levels which will oversee the implementation of the substantive provisions of the Policy. The Ministry of Labour and Employment should be the Central Government agency responsible to oversee the implementation of the Policy.
- 4.2 The Task Force strongly felt there was a need to create public awareness, especially of the household employers' obligations and to that end, a Code of Practice should be drafted which should serve as a practical tool to protect the rights of the domestic workers at the workplace. The Code of Practice should be drafted subsequent to the National Policy. The Task Force agreed that the Code could cover a large number of issues to be defined under the category of working conditions, contract of employment, probationary periods, remuneration (wages, payment in kind, regular payment of wages, overtime), implications of employer-provided accommodation, regulating living conditions, working time for live-in workers, working time, night work, weekly rest periods, termination of employment and notice periods etc. The Task Force felt that institutional mechanisms to deliver these shall be designed and explained in the Code of Practice. Furthermore, the Code should be validated by stakeholders before being implemented.
- 4.3 The Task Force agreed that a National Policy for Domestic Workers should not affect more favourable provisions applicable to domestic workers under any other policy, regulation, law or scheme currently being applicable in the country or that will be notified / implemented in future. The Task Force further concurred that a policy for domestic workers should aim to promote an enabling environment and mutually beneficial relationships amongst the domestic workers, their employers, associations of domestic workers and of employers and the government.

5 RECOMMENDATIONS

- 5.1 The Task Force recognizes that domestic work is an important economic activity and as such the Indian Constitutional Rights guaranteed to workers apply to domestic workers. However, due to the particular nature of domestic work, for example that it takes place in an unconventional workplace (private households) and because workers are mainly women and girls, poorly educated, many of whom are migrants or members of disadvantaged communities, who are not aware of their rights as workers, existing labour legislations, policies and schemes have not been effective in safe-guarding domestic workers' labour rights.
- 5.2 The Task Force recommends the Government to adopt a National Policy on Domestic Workers which will place a labour rights framework for domestic workers and will lay down certain minimum conditions for domestic workers which should not be compromised with. Such a Policy may eventually lead to a specific legislative mechanism for domestic workers (Ref: 3.2 -3.8). A draft National Policy on Domestic Workers is attached to this report (annex

1).

6 ANNEXES

- 1 Draft National Policy on Domestic Workers
- 2 First Report of the Task Force on Domestic Workers
- 3 Copy of the guideline on extending RSBY to domestic workers
- 4 Copy of the letter from the Secretary of Labour, Ministry of Labour and Employment to the Chief Secretaries on Minimum Wages
- 5 Copy of the letter from the Director General Labour Welfare, Ministry of Labour and Employment to the Principal Secretaries on Placement Agencies

Annex 1: Draft National Policy on Domestic Workers

NATIONAL POLICY FOR DOMESTIC WORKERS

1 PREAMBLE

- 1.1 The Government accords high priority to making decent work a reality for domestic workers.
- 1.2 Considering that domestic work is a sector:
 - 1.2.1 That contributes significantly to the economy by providing care services, enabling men and women with family responsibilities to engage in productive employment and helping increase paid employment within the country;
 - 1.2.2 That remains invisible and under reported, both in the labour market and in the society;
 - 1.2.3 That enables men and women with little education to gain first entry in the labour market, without which their employment avenues will be further limited;
 - 1.2.4 That engages a large population of rural men and women from vulnerable communities and backward areas, many of whom are illiterate and unexposed to the urban way of life;
 - 1.2.5 Characterised by lack of job security, decent wages and proper work conditions, defined work time, weekly holiday and may suffer from loneliness, violence, abuse, and sexual harassment at workplace, victimization at the hands of traffickers/ placement agencies, forced migration, and the work is generally undervalued and many domestic workers remain overworked, underpaid and unprotected;
 - 1.2.6 Insufficiently covered by social protection measures, such as health insurance, maternity protection, old age security, accidental benefit;
 - 1.2.7 That offers limited access to skills development resulting in career stagnation and no significant increase in the well being of the worker;
 - 1.2.8 That is not regulated, as it concerns work with private households as employers, multiple work arrangements such as part time workers, full time workers and live-in workers;
 - 1.2.9 Beset with the presence of unregistered placement agencies that tend to exploit the workers;
 - 1.2.10 Where no child should be employed;

- 1.3 It warrants particular attention rather than exclusion and hence calls for inclusion in the existing legislations as well as supplementing these with legislations specific to domestic workers, to enable them to fully enjoy their rights as workers.
- 1.4 Recalling that the Constitution of India guarantees the fundamental right to equality to all citizens and the fundamental principles of right to livelihood and rights at work apply to all women and men who engage in economic activity including domestic work, the domestic workers- like other workers- have the right to:
 - 1.4.1 Minimum wage protection and suitable limitation of payments in kind;
 - 1.4.2 Normal hours of work, including compensation for overtime, and suitable daily and weekly rest periods;
 - 1.4.3 Paid annual leave and sick leave;
 - 1.4.4 Social security coverage including maternity benefits;
 - 1.4.5 Safe and healthy place to stay and sufficient food (if the worker stays in the home of the employer i.e. a live-in worker);
 - 1.4.6 Protection against sexual harassment at the place of work;
 - 1.4.7 Safe working environment and protection from hazards and accidents at workplace;
 - 1.4.8 Work with dignity and respect;
 - 1.4.9 Register as workers with the Labour Departments and be recognized as workers;
 - 1.4.10 Access schemes and benefits which are available or will be made available to other categories of workers.
- 1.5 Suitable amendments may be made in all the relevant legislations applicable to workers generally to explicitly include domestic workers and to enable their effective implementation and enforcement. The legislations include, but not limited to, the following:
 - 1.5.1 The Workmen's Compensation Act 1923,
 - 1.5.2 The Trade Union Act 1926,
 - 1.5.3 The Payment of Wages Act 1936,
 - 1.5.4 The Minimum Wages Act 1948,
 - 1.5.5 The Maternity Benefit Act 1961,
 - 1.5.6 The Contract Labour (Regulation and. Abolition) Act, 1970.

- 1.5.7 The Equal Remuneration Act 1976 ,
 - 1.5.8 The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act 1979.
- 1.6 The Government deems it appropriate to formulate a National Policy to establish and promote the labour rights of domestic workers and to extend to domestic workers all such rights and protection which is available to other categories of workers. It is also recognized that domestic workers should be covered under the existing labour legislations, if required, by making a suitable amendment to the legislation; as well as in existing and proposed laws and schemes meant for other workers generally.

2 AIMS AND OBJECTIVES

- 2.1 The Policy places an obligation on the Central and State Governments to take effective and appropriate measures to ensure that domestic workers are able to exercise their labour rights as guaranteed under the Indian Constitution. The policy aims to promote domestic workers' human rights and fundamental principles and rights at work by bringing them in the ambit of labour legislations, and relevant labour policies and schemes that are available to other workers in India. The Policy lays down a labour rights framework to facilitate the inclusion through amendments in Central and State labour legislations where required, and setting up of legislative mechanism to address any inconsistencies, insufficiencies and inapplicability arising from their specific nature of work for which existing legislations are not able to address.
- 2.2 *The Policy aims at providing a direction for Central and State Governments to establish formal rights of domestic workers and ensure domestic workers can exercise their rights by:*
- 2.2.1 Explicitly and effectively expanding the scope of applicable legislations to domestic workers by making necessary amendments in legislations, policy and schemes to grant domestic workers rights that are enshrined in laws for other categories of workers;
 - 2.2.2 Setting up of legislative mechanism to address any inconsistencies, insufficiencies and inapplicability arising from their specific nature of work for which exiting legislations are not able to address;
 - 2.2.3 Setting up an institutional mechanism which provides for social security cover, social protection benefits, fair terms of employment, grievance redressal and disputes resolutions, which can be easily used by the domestic workers;
 - 2.2.4 Facilitating the process to register as workers and being recognized as workers;
 - 2.2.5 Promoting the rights of domestic workers to organize, form their own associations or join an organisation of their choosing;

- 2.2.6 Promoting the skill development as one of the entry points to professionalize domestic work and enhance employability, wages and living and working conditions;
 - 2.2.7 Setting up necessary mechanisms to protect the rights of domestic workers who seek work abroad;
 - 2.2.8 Setting up necessary mechanisms to regulate placement agencies;
 - 2.2.9 Establishing the roles and responsibilities of the government, the private household employer and the workers and employers organizations, including through the adoption of the Code of Practice;
 - 2.2.10 Creating public awareness of domestic work as legitimate labour market activity and the household employers' obligations under the law to provide decent working and living conditions;
- 2.3 The Policy shall be read and interpreted as to promote, protect and advance the the aims and objectives, and any narrow or technical interpretation of the provisions is to be avoided.

3 SCOPE AND DEFINITION

- 3.1 **Domestic worker:** For the purpose of this policy, the “domestic worker” means, a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary or permanent, part time or full time basis to do the household work, but does not include any member of the family of an employer:
- 3.1.1 **Types of domestic workers**, based on the hours of work and nature of employment relationship: The domestic workers can be:
 - 3.1.1.1 Part-time worker i.e. worker who works for one or more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers every day.
 - 3.1.1.2 Full-time worker i.e. worker who works for a single employer every day for a specified number of hours (normal full day work) and who returns back to her/his home every day after work.
 - 3.1.1.3 Live-in worker i.e. worker who works full time for a single employer and also stays on the premises of the employer or in a dwelling provided by the employer (which is close or next to the house of the employer) and does not return back to her/his home every day after work.
- 3.2 **Employer:** For the purpose of this policy, the “employer” means, a person or a household who employs or benefits from the employment of domestic worker/s, irrespective of the number or type of domestic worker/s employed, or the nature of the employment or the time period for which such employment exists or the nature of activity/ies performed by the domestic worker/s.

- 3.3 **Placement agency/agents:** A placement agency is any organization/ agency/ institution/ association/ union, public or private business or individual/s providing placement, sourcing and recruitment services relating to domestic workers.

4 SUBSTANTIVE PROVISIONS

- 4.1 **Legislative inclusion and designing specific legislative mechanism:** Domestic workers shall be included in the appropriate existing labour legislations, if they are not included as of now, and suitable amendments shall be made, if required to enable their inclusion. The Central Government, through the mechanisms set up to implement this Policy, shall facilitate in identifying what is the nature, if any, of the constraints in including domestic workers into existing major labour legislations (see for example paragraph 1.5 this Policy), and others laws, programs and polices, as appropriate. If the provisions of the existing legislation/s cannot be extended to domestic worker to provide equivalent protection available to other categories of workers generally because of practical or other reasons, reasons thereof shall be provided for the same. In such cases the appropriate Government shall take measures to achieve equivalent protection by other means, including legislative means, as necessary, and address any inconsistencies, insufficiencies and inapplicability which existing legislations are not able to address.
- 4.2 **Right to register as workers:** Domestic workers have the right to register as workers with the State Labour Departments (or any other suitable mechanism devised under the Unorganized Sectors Workers Act etc.). Registration of the domestic workers should be done under the aegis of the Ministry of Labour and Employment and its State Labour Departments. Such registration is to certify the worker status of the domestic workers, with a view to facilitating their access to rights and benefits accruing to them as workers and enable the domestic worker to seek legal remedies in case of disputes related to wages and conditions of work/service between the domestic worker and the employer of the domestic worker.
- 4.3 **Right to organise:** Domestic workers have the right to form their own associations, trade unions or join an organisation of their choosing. The Central Government in collaboration with workers organizations and organizations of domestic workers shall identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers' organizations of their own choosing and to the right of organizations of domestic workers to join workers' organizations, federations and confederations.
- 4.4 **Right to fair terms of employment, social protection and labour welfare:** Domestic workers have a right to fair terms of employment relating to: minimum wage protection; setting suitable limitation on payments in kind; establishing normal hours of work, rest periods, paid leave etc.; access to social security; work in safe and healthy workplaces; and protection from abuse, harassment and violence. Workers shall have social security and social protection and such social security benefits will be in accordance with legislations which includes, amongst others: health and maternity benefits (including, but not limited to health insurance, cost of institutional delivery, pre and post partum support); death and disability benefits (including, but not limited to life insurance, accidental insurance and compensation in case of accidents); old age benefits (including, but not limited to gratuity and pension). Appropriate implementation mechanisms shall be developed at the State levels

to facilitate workers access to decent working conditions. In addition, implementation of health insurance scheme, RSBY to domestic workers shall be undertaken as a matter of priority.

- 4.5 **Protection of domestic workers who seek work abroad:** Domestic workers who are recruited to work overseas must be protected from abuse and exploitation. For the purpose of this policy, migrating domestic workers also include Indian workers who accompany their employers on overseas long term assignments. Legislations and policies need to ensure that domestic workers taking up work abroad or accompanying their employers abroad shall be appropriately briefed and made aware about their rights and privileges in the country of work and trained as appropriate as part of the existing emigration procedures of the Ministry of Overseas Indian Affairs. Furthermore, the Ministry of Labour and Employment shall, in collaboration with the Ministry of Overseas Indian Affairs, set up a mechanism to ensure potential migrant domestic workers receive written job offer or contract of employment addressing the terms and conditions of employment prior to crossing national borders for the purpose of taking up domestic work to which the offer or contract applies, and the terms of conditions of the contract must be explained to the worker in a language which is understood by her/him. The mechanism shall also include measures to ensure that domestic workers are briefed about the helpline numbers or the contact points, such as embassies, or names and address of the civil society organizations/workers organizations in the country of work, which can provide assistance and relief in case of infringement of any rights, abuse or conditions of distress, which the domestic workers may face. This policy shall not affect any more favourable provisions applicable to domestic or migrant workers under other bilateral/multilateral instruments/treaties or foreign legislations, policies, programs or schemes etc.
- 4.6 **Rights to skills development:** Domestic workers have a right to enhance their professional skills and employment opportunities through skills development. Domestic work is a skilled occupation which requires skills ranging from basic skills to highly specialised skills. State Governments shall make efforts to establish policies and programmes that encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate. In pursuance of this, State Governments are encouraged to include domestic work as one of the occupations in the State level implementation of the National Skills Development Initiative (SDI) (an initiative of the Directorate-General of Education and Training, Ministry of Labour and Employment, Government of India). As part of the work of the National Skills Development Initiative, DGET has established a national competency standard for domestic work which are being used to certify domestic workers' skills under the Modular Employable Skills (MES) scheme implemented by DGET through the registered Vocational Training Providers (VTPs) and Government ITIs/ITCs. It has also developed the curriculum, teaching and learning materials which can be readily used at the State levels. Further, the National Skills Development Initiative is encouraged to put in place measures to carry out pre and post training evaluation to monitor the outcomes of the training programs in terms of competency built, the effect of the training on job growth, job enrichment, enhancement of wages and quality of work and family life and living conditions of the domestic workers who enroll and successfully complete the training programs.
- 4.7 **Regulation of placement agencies:** The Central Government shall establish a mechanism for the regulation of the placement agencies, which will promote the rights of workers to just and fair working conditions. Till such a mechanism is formulated, such agencies should be mandatory registered under the Shops and Commercial Establishments Act, 1953. This

registration will be done in addition to and irrespective of the registration/non registration of such agency under any other existing Act or legal provision; and the placement agencies should maintain and make available all necessary records pertaining to domestic workers placed, details of the employers, wages, mode of payment of wages, working hours, nature of work, and duration of placement and the copy of the contract to be sent every six months to the State Labour Departments.

- 4.8 **Grievance redressal:** All domestic workers, either by themselves or through a representative, shall have easy access to courts, tribunals or other dispute resolution procedures under conditions that are not less favourable than those available to workers generally. The Ministry of Labour and Employment shall make sure that domestic workers are able to secure access to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment. The Ministry of Labour and Employment shall set up an appropriate grievance redressal mechanism to protect the rights and welfare of domestic workers. Such mechanism shall provide a single window access to domestic workers for all their needs, whether related to welfare matters, social protection, social security, protection from abuse, harassment and violence, addressing grievance against the employer or placement agency, or for settlement of disputes through the courts or through alternate dispute resolution mechanisms. In case of a dispute between the domestic worker and the employer; or between domestic worker and placement agency; or between the placement agency and the employer, where ever possible, the parties shall be encouraged to settle the dispute amicably, and otherwise by mediation and/or arbitration. In such cases, the domestic workers, either by themselves or through a representative (such as a trade union or a domestic workers organization or a civil society organization or any other representative nominated by the domestic workers) shall make the request for dispute settlement. Any mechanisms described above, however, do not prevent the domestic workers or any other party to the dispute from seeking legal remedies, available under any other law of the state.
- 4.9 **Awareness creation on employers' obligations:** The message that domestic work is a legitimate labour market activity which is undertaken in an employment relationship and that workers are entitled to a enjoy fair terms of employment and decent working and living conditions must be disseminated to the public. The Ministry of Labour and Employment, in collaboration with workers' and employers' organizations, representative organizations of domestic workers and employers of domestic workers and other stakeholders, will develop a Code of Practice for domestic workers and their employers and work towards creating public awareness on this. The Central and State labour departments will provide information on good practices in the employment of domestic workers, legal requirements for employment of domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers. To enable Labour Department officials to provide effective information and support to employers of domestic workers and others, stakeholders' trainings, workshops and seminars shall be organized to develop a clear understanding of this Policy, domestic workers' issues and the progress of the Policy implementation and on any other issues that further the aims of this policy.

5 **IMPLEMENTATION OF THE POLICY**

- 5.1 The Ministry of Labour and Employment, Government of India, shall be responsible for establishing the mechanisms to implement the National Policy on Domestic Workers, starting with setting up the Implementation Committee comprising representatives of the Ministry of Labour and Employment, Ministry of Women and Child, workers' and employers'

organizations, representative organizations of domestic workers and employers of domestic workers and other stakeholders as deemed appropriate.

5.2 The Implementation Committee shall undertake the following activities:

5.2.1 Monitor the implementation of the Policy particularly in ensuring that necessary actions are taken by the responsible authorities to extend legislative coverage to domestic workers for the purposes of protecting their rights as workers, and in instances where existing mechanisms are deemed inadequate to grant domestic workers equivalent protection, suggest additional mechanisms that may be considered.

5.2.2 Define the functioning of a tripartite institutional mechanism at the State level which shall be responsible for securing domestic workers' access to social protection, welfare measures, fair wages, and decent conditions of work, and address any grievances.

5.2.3 Evolve a mechanism for seeking a report from the State tripartite institutional mechanism.

5.2.4 Function as information source for domestic workers and employers on areas relating to workers' rights.

5.2.5 Collect and analyse information, and take stock of the progress in meeting the policy objectives with a view to devising strategies and guidelines to be implemented by the appropriate Governments . It shall also be responsible for taking strategic decisions to improve the implementation of the policy and the Implementing Committee will submit recommendations to the Ministry of Labour and Employment accordingly.

5.3 The Ministry of Labour and Employment as part of its role to implement the Policy will also facilitate implementation of regular situational analysis and assessments, especially respect to payment of wages, working hours, safe and healthy living and working condition. Other areas include promoting and facilitating the collection of accurate statistics on domestic workers through national statistical instruments.

5.4 As referred in paragraph 5.2.2 an appropriate tripartite institutional mechanism on Domestic Workers shall be established at the State levels to implement the substantive provisions of the Policy, particularly registration of the workers, facilitating the regulation of work, collection of contributions for social protection, extension of the social security benefits, facilitating work related to regulating placement agencies and to providing access to grievance redressal through provision of a help line. The tripartite institutional mechanism will have adequate representation of the State labour departments, employers' and workers' organizations, representative organisations of domestic workers and employers of domestic workers and other stakeholders.

5.5 Respective State Governments shall set up appropriate grievance redressal mechanisms, which will protect the rights and welfare of domestic workers. Such mechanisms shall provide a single window access to domestic workers for all their needs, whether related to welfare matters, social protection, social security, protection from abuse, harassment and violence, addressing grievance against the employer or placement agency, or for settlement

of disputes through alternate dispute resolution or facilitating free legal aid. Such a mechanism shall be constituted as part of the tripartite institutional mechanism referred in paragraph 5.4.

- 5.6 Central Government and respective State Governments shall facilitate and encourage workers' and employers' organisations, representative organisations of domestic workers and employers of domestic workers and other stakeholders to spread awareness about this Policy to domestic workers and their employers.
- 5.7 Central Government and respective State Governments shall facilitate and encourage workers' and employers' organisations, representative organisations of domestic workers and employers of domestic workers to continue their efforts to organize domestic workers and employers of domestic workers with a view to engage in a constructive social dialogue in the implementation of this Policy.
- 5.8 Central Government and respective State Governments shall facilitate and encourage workers' and employers' organisations, representative organisations of domestic workers and employers of domestic workers to engage with Resident Welfare Associations (RWAs) or equivalents where they exist , to work jointly towards:
 - 5.8.1 spreading awareness about this policy and promote the adoption of the Code by the employers of the domestic workers and other stakeholders (when drafted).
 - 5.8.2 motivating households in the RWA community to help domestic workers connect with benefits and privileges provided by the government and also encourage their members to send their domestic workers for skills trainings.
 - 5.8.3 developing common facilities, such as toilets and rest room/day shelter for the domestic workers. Crèches may also be built so as to enable the domestic workers with small children to promote family and work life balance. The gender specific concerns of the women domestic workers should be built into such initiatives.

6 TIMELINE FOR IMPLEMENTATION

- 6.1 The Ministry of Labour and Employment shall establish the Implementation Committee as stated in paragraphs 5.1 and 5.2 within three months of the adoption of the Policy.
- 6.2 The Implementation Committee shall produce an implementation plan of the Policy within three months from the date of its establishment and submit it to the Ministry of Labour and Employment.
- 6.3 The Implementation Committee will hold information dissemination session with State Labour Departments on the contents of the Policy and assist in the establishment of the State level tripartite institutional mechanism in collaboration with other stake-holders. The State level tripartite institutional mechanism shall be established within ten months from the date of establishment of the Implementation Committee.

- 6.4 An activity report shall be produced by the State tripartite institutional mechanisms on an annual basis, which will be compiled into a national report by the Implementation Committee, and will be used to provide advice to the Ministry of Labour and Employment on the progress, requirements for evolving of the Policy.

7 BUDGETARY AND FINANCIAL PROVISIONS

- 7.1 All the stakeholders viz. Central/State Governments Ministries/Departments, employers/workers organizations, , key national organizations and civil societies etc. who are directly responsible for implementing the policy on domestic work shall make suitable allocation in their budgets to ensure regular flow of finances for promoting and protecting the rights of domestic workers in line with the objectives of this Policy. The funds allocated for Unorganized Sector Workers or any other funds for workers generally at the Central or state level, shall also be made available for the implementation of the policy.

**FIRST REPORT OF THE TASK FORCE
ON
DOMESTIC WORKERS**

**Director General Labour Welfare
Ministry of Labour and Employment
Government of India**

Preface

With a view to providing social security to workers in the unorganized sector, the Government enacted ‘Unorganised Workers Social Security Act, 2008’. Consequent to the enactment of this legislation, an initiative was taken to set up of National Social Security Board which took the decision to extend social security cover to various segments of unorganized workers. One of the most vulnerable sections consists of domestic workers. Setting up of a Task Force was move in the direction of evolving instruments through which social security could be provided to such workers and to prevent their exploitation. The deliberations during a series of meetings of the Task Force were both intensive and extensive. Organisations like National Domestic Workers Movement, Self Employed Women Association (SEWA), and National Domestic Workers’ Welfare Trust participated actively and contributed immensely towards the output. The VV Giri National Labour Institute provided invaluable support in terms of analysis and data. The representatives from International Labour Organisation (ILO) played a pivotal role in the drafting of the Report. Ms Reiko Tsushima and Ms Bharti Birla deserve a special mention in this regard. The report of the Task Force, therefore, is a joint effort of all the members and those that came subsequently to the Task Force. It is hoped that the recommendations of the Task Force will go a long way in alleviating the miseries of domestic workers and provide protection and social security to such workers. This Report is the first step in that direction. The Task Force will continue to deliberate upon evolving a comprehensive national policy as well as regulatory mechanism for ensuring justice for domestic workers.

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First Report of the Task Force on Domestic Workers

1. Background

- 1.1. Domestic work forms one of the largest sectors of female employment in the urban areas. Domestic workers are unorganized workers and the sector remains unregulated and unprotected by labour laws. Looking into the vulnerabilities of the domestic workers, the Ministry of Labour and Employment, Government of India, under the office of Director General Labour Welfare, Government of India, set up a Task Force to deliberate on the issues related to welfare and regulatory measures for promoting decent work for domestic workers. The setting up of such a Task Force also provided an opportunity to discuss the agenda on an international legal instrument for the protection of domestic workers at the 99th Session of the International Labour Conference (ILC).
- 1.2. The domestic workers are not covered under any significant labour law mainly because of the nature of their work and the employment relationship. The rights and the regulated work conditions, wages and conditions of employment, which are available to other class of workers, are currently not available to domestic workers. This is largely because the domestic workers undertake work in private homes rather than commercial establishments forming a part of the care economy. They work in appalling conditions, with no coverage under the existing welfare measures and schemes for social security, old age pension, health and maternity protection etc.
- 1.3. The underestimated, underreported statistics and the gendered nature of work, make the domestic workers invisible. Domestic workers lack organizational strength and voice and comprise largely of unskilled women, who enter the labour market without any technical skills. It was felt that domestic workers warrant special attention rather than exclusion.

2. Purpose of the Task Force

- 2.1. The Task Force has been set up for a period of 3 months initially. The main agenda before the Task Force is to recommend the welfare and regulatory mechanisms for the domestic workers and to suggest how to operationalize such measures to promote decent work for domestic workers.

2.2. The Terms of Reference (ToR) of the Task Force are to:

1. Evolve Policy Framework for domestic workers in context of:

- Regulatory Mechanism
- Providing Welfare Measures

2. Generate knowledge in order to evolve an India Paper for presentation/consideration during the 99th Session of ILC in Geneva, June 2010

2.3. It was proposed that the Task Force be time bound in terms of giving first set of recommendations, so that appropriate and timely steps can be taken. The Task Force held five (5) meeting under the Chairmanship of Director General (Labour Welfare), MoLE since its setup in January 2010. The deliberations and recommendations of the Task Force are based on a consultative approach. The First Set of Recommendations (draft) was discussed by all members of the Task Force and special members representing the interests of the domestic workers. Based on the deliberations and comments received, this report was adopted by the members of the Task Force on March 18, 2010.

2.4. This is the First Report of the Task Force. The objective of this report is to respond to item one of the ToR, which is to evolve a Policy Framework for domestic workers in context of (a) regulatory mechanism and (b) providing welfare measures.

2.5. It has been decided to recommend extension of tenure of the Task Force for a period of 6 months to continue on the deliberations regarding the welfare measures that can be extended to the domestic workers, as well as look into the regulatory measures in the Phase 2 of its work.

3. Constitution of the Task Force

3.1. The Task Force on Domestic Workers was constituted wide the office memorandum No. M16011/09/2009/BL by the Ministry of Labour and Employment (MoLE). The composition of the Task Force is as under:

- Mr. Anil Swarup, Director General Labour Welfare, MoLE
- A representative of International Labour Organization (ILO)
- A representative of Ministry of Women and Child Development

- A representative of Ministry of Social Justice
 - An expert from National Labour Institute
 - Mr. Suraj Bhan, Economic Advisor in the office of DG(LW).....Convener
- 3.2. The list of Task Force members is annexed as **Annexure 1**. After the initial meeting of the Task Force, other stakeholders were invited to participate in the deliberations of the Task Force. The list of such associate members is annexed as **Annexure 2**.

4. Domestic work in India

- 4.1. Based on secondary literature review and interviews with Trade Unions and civil society organisation representing domestic workers' rights and interests, the TF put together a situational analysis of domestic worker to understand the size of workers in this sector, the condition of work and current coverage under labour laws and labour welfare schemes.
- 4.2. **The size of the sector:** The statistics on domestic workers vary from 4.75 million (Employment and unemployment NSS 61st round, 2004-05) to 6.4 million (Census 2001). Some reports say that the number of domestic workers may be upto 90 million in India. Domestic work has been increasing over the years (222% since 1999-2000). While paid domestic work was once a male dominated occupation in pre-independence India (Neetha N. 2004), today women constitute 71 percent of this sector. National estimates for 2004-5 suggest 4.75 million workers were employed by private households; 3.05 million of these were urban women, making domestic work as the largest female occupation in Urban India. The data may be underreported because of several reasons, the main being domestic work not treated as 'real' work leading to large instances of undeclared work, and secondly, domestic work can be a part time occupation, with workers taking up other seasonal occupations.
- 4.3. **Condition of work:** A large population of such domestic workers comes from vulnerable communities and backward areas. Most domestic workers are poor, vulnerable, illiterate, unskilled and do not understand the urban labour market. Domestic work is undervalued and poorly regulated, and many domestic workers remain overworked, underpaid and unprotected. Many are maltreated, exploited, ill-treated and suffer violence and many are sexually abused. The domestic workers may also include child domestic workers, inspite of the Government banning the utilization of services of child workers below 14 years of age in any domestic work. The main issues that concern domestic work are: **lack of decent wages and work conditions, no defined work time, no weekly offs, loneliness, violence, abuse, and sexual harassment at workplace, victimization at**

the hands of traffickers/ placement agencies, forced migration, lack of welfare measures (such as health insurance, maternity protection, old age security), and lack of skills development resulting in stagnation and no career growth.

- 4.4. **Current coverage in labour law and labour welfare:** A brief study was conducted to analyze the applicability of major labour laws to domestic workers. The analysis of the selected labour legislations shows that the domestic workers are not included in the scope of these laws because of the constraints in the definition of either the 'workmen', 'employer' or 'establishment'. The nature of work, the specificity of the employee-employer relationship, and the work in private households instead of public and private establishments, makes the coverage of domestic workers under the existing laws more challenging. To include the domestic workers under the above mentioned laws, the definitions will have to be amended. Some of the labour enactments which were considered include The Minimum Wages Act 1948, The Maternity Benefit Act 1961, Workmen's Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Equal Remuneration Act 1976, Employee's State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972. To justify the status of domestic workers as real workers, it was felt that they should be entitled to legislative protection and their conditions of employment should be regulated. The analysis shows that the labour laws treat only establishments, mines, and factories, as workplaces. The private homes are treated as private spheres beyond the reach of these laws. The definition of the workmen or the employer also excludes the domestic workers from the scope of these laws. Even the placement agencies get out from the ambit of the labour laws (especially the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979) because of these definitional issues. It was also felt that when deliberating on a comprehensive law or inclusion into the existing labour laws, attention should also be paid to proposed legislations, such as Prevention of Sexual Harassment Bill (and other gender related laws), and to include the domestic workers under these laws by treating household as a workplace.
- 4.5. **Skill Development for Domestic Workers:** The Task Force members acknowledged and noted the progress made under the Modular Employable Skills (MES) Scheme administered by MoLE. Under the scheme, a pilot training programme to skill and re-skill domestic workers/household assistants across the Delhi and Noida region project has been initiated in partnership with the Directorate General of Employment & Training (DGET) Ministry of Labour and Employment and Government of Delhi and International Labour Organization (ILO) has been initiated. This Skill Development Initiative for Domestic Workers/Household Assistants is aimed to improve the service of domestic work as well as to enhance the employability and living and working conditions of domestic workers. The successful trainees of the program will obtain a National Council for Vocational Training (NCVT) certificate at the end of training. The Pilot

programme initially targeted 250-350 trainees before scaling up to cover a larger number of domestic workers. The Initiative viewed skill development as an entry point for professionalizing and organizing domestic workers. It attempted to unpack skill sets required for various types of domestic work and presented a career progression route within domestic work. Trainees would be officially registered and given a skills card which would enable prospective employers to identify their skill sets and background. A quality analysis framework is also being developed by ILO to standardise the selection of the training provider, the training process, and the expected outcomes from the training program.

- 4.6. **Placement Agencies:** It was noted that there is an upsurge of placement agencies, which are managed by private entrepreneurs, voluntary and civil society organizations and/or trade unions for recruitment and placement of domestic workers, especially in the large cities. While some of these placement agencies are registered and doing good work, there are a large number of placement agencies who engage in fraudulent practices, mobilize large number of vulnerable and tribal population for work; at the same time regulate the conditions of work, wages and service agreements with the employer in lieu of commissions. Many times, the domestic workers are not paid due wages, wages are delayed or a part of wages earned by the domestic worker are retained by the agency. As per broad estimates, there are over 800-1000 placement agencies in the capital city of Delhi itself. The placement agencies play an important role of an intermediary between the worker and the employer. They function with varied terms and conditions placed on the employer and in services offered to the worker and differ considerably in their objectives (Neetha N. 2009). Placement agencies exist in several forms. Some of them are described below:

| Type of Placement Agency | Placement Agencies (Who call them selves as Registered Agencies) | Private Placement Agencies (Not Registered) | Cooperative Societies | Civil Society Organizations/ Movements | Registered Trade Unions | Registered Placement Bodies backed by Unions or Civil Society |
|--------------------------|---|--|------------------------|--|--|---|
| Nature of Agency | Registered either under Shops and Establishment Act 1953, Societies Registration Act, 1860, Indian Trusts Act, 1882 | Private bodies charging the employer for placing the DWs | Cooperative of workers | Movements and rights based organizations | Unionize DWs and work for the welfare of the members | Organize DWs |

| | | | | | | |
|---|---------|--------------|--|---|--|--|
| Enroll Domestic workers as members (Member-ship Based) | No | No | Yes | Some have DWs as their members, others loosely work by organizing the DWs | Yes | Domestic workers are enrolled as members but do not have status of Union members |
| Take Commissions/Benefits/Charges | Many Do | Yes | May take memberships charges, contribution for corpus fund and/or for welfare activities | Usually do not, but some may | Do not take commissions, but may charge for services | May or may not charge |
| Deal with Salaries | Many Do | Yes (mostly) | May deal in salaries | Many do | May deal in salaries | Many do |

It was felt that it is important to deliberate upon the issue of who is a placement agency and how it needs to be regulated.

5. Deliberations of the Task Force: Identifying priorities

- 5.1. The Task Force members felt that the three key issues that require immediate attention are: the lack of any social or welfare schemes for the domestic workers, the lack of any regulatory mechanism for the domestic workers, their employers and the placement agencies, and the lack of skill/re-skill training opportunities for the domestic workers.
- 5.2. Though all these issues are crucial, it was agreed to adopt a phased approach which should include **Phase 1** focusing on welfare measures and a **Phase 2** on regulatory mechanisms. This was done realizing the fact that improving labour welfare of domestic workers requires a multifaceted approach. The Task Force recognized that regulation of domestic work (through legislation) is an important issue. However it requires extensive consultation and interaction over time with different stakeholders. Hence, it is important to first move forward by extending welfare benefits through existing, well-established schemes/ channels. Keeping the time frame in mind, such phasing of activities was essential. It was observed by the Task Force members that the discussion on regulatory mechanisms such as a new legislation or making the existing labour laws inclusive for domestic workers need more in-depth deliberations, requiring more clarity on the definitional issues, the employee-employer relationships and implementation mechanisms and should be discussed and deliberated upon in the second phase.

- 5.3. The task force felt that the domestic workers should have health insurance, maternity benefit, life and disability benefit, and old age pension coverage. It was suggested that the first target in the welfare measures should be to extend the Rashtriya Swasthya Bima Yojana (RSBY) coverage to domestic workers. More benefits are envisaged to be added on gradually.
- 5.4. The Task Force looked into immediate issues, such as decent wages and regulation of placement agencies, which are one of the major concerns. It was decided to include two recommendations pertaining to regulatory phase.
- 5.5. The Task Force noticed lack of decent wages is one of the major concern areas. In this regard, the Task Force noted that a recommendation should be made to the Central Government to include the domestic workers under the Central Notification issued under the Minimum Wages Act. It was also suggested that the Centre should direct the State Governments to include domestic workers under the state Minimum Wages notifications, as this is a state subject. Some states and union territories, such as States of Andhra Pradesh, Bihar, Karnataka, Rajasthan and Union Territory of Dadra and Nagar Haveli have already taken the lead and the minimum wages have been fixed for domestic workers.
- 5.6. The Task Force felt it necessary to deliberate upon the issue of registering and regulating the placement agencies. It was felt that the definition of a placement agency needs in-depth discussion. The members pointed out the different forms of agencies that exist and how they differ in size (from 1 person with mobile phone to a large Trade Union backed agency like SEWA), in terms of vision and objectives as well as the nature of services offered to the domestic workers (some placement agencies offer training, provide counseling, empowers domestic workers, provide hostel facilitates, provide distress services etc.). It was felt that all individuals and/or agencies, irrespective of the nature of their constitution, and irrespective of their registration (or not) in any other Act should be registered and regulated by the Ministry of Labour and Employment. Some members pointed out that for example Trade Unions do not take commissions and if they are placed under the category of Placement Agency, there could be tax implications. It was suggested tax exemptions in such case could be one of the way out. The suggested definition of the Placement Agency is as under:
- 5.6.1. Placement Agency is any individual or organization that acts as middleperson/link in supplying or placing workers either local or migrant domestic worker to households.
- 5.7. The Task Force felt that it is important to regulate the placement agencies/individuals who act as middleperson/link in supplying or placing

domestic workers in the households by **making it mandatory for them to register under the Shops and Establishment Act 1953**. It was suggested Ministry of Labour and Employment may be asked to give effect to this recommendation immediately. The Placement Agencies should also be directed to maintain records of all domestic workers placed, including the details of the employers, wages, mode of payment of wages, working hours, nature of work, and duration of placement and the copy of the contract.

- 5.8. The task force felt that domestic workers should be encouraged to organize their unions that can facilitate their training and access to work in ways in which their rights and conditions for decent work can be safeguarded. Such worker's unions should be seen as distinct from placement agencies that are not controlled by the workers themselves and are not membership based.
- 5.9. A **Code of Practice**, which should be a practical tool to protect the rights of the domestic workers at the workplace, should be drafted. The Code should cover a large number of issues that may need to be defined under the category of working conditions, contract of employment, probationary periods, remuneration (wages, payment in kind, regular payment of wages, overtime), implications of employer-provided accommodation, regulating living conditions, working time for live-in workers, working time, night work, weekly rest periods, termination of employment and notice periods etc. The code should be validated by the stakeholders before being implemented.
- 5.10. The Task Force suggested that this code of practice should be treated as a **regulatory guideline** till a separate legal instrument is drafted and/or domestic workers are covered under existing regulatory labour legislations.
- 5.11. The Task Force felt that the **National Policy and Code of Practice** should be evolved for submission to the Government. It was decided that the Task Force members will be drafting a **National Policy for Domestic Workers** for submission to the Government for consideration. The policy should address both regulation and welfare of the domestic workers. The policy should also include a specific section on the **skills development of domestic workers**, for skill and re-skill training of the domestic workers and a **Code of Practice**, which will serve as voluntary guidelines for protecting the domestic workers and regulating domestic work.
- 5.12. The Task Force felt that the low-paid, docile, low-status and low-skilled domestic work has the potential to become a better paid, dignified skilled work with possible interventions in forms of skill development of the domestic workers.

- 5.13. The Task Force observed that the pilot program to skill and re-skill domestic workers/household assistants, as described in para 4.5 should be scaled up and replicated in different states and suggested that a recommendation be made to this effect. It was also suggested that pre and post training evaluation should be carried out to monitor the outcomes of the training programs in terms of competency built, the affect of the training on job growth, job enrichment, enhancement of wages and quality of work and family life and living conditions of the domestic workers who enroll and successfully complete the training programs. The Task Force felt that such training programs can be initially rolled out in states where the domestic workers have been already registered/unionized/or organized initially. Later, the scheme may be rolled out in other states.

6. Framework for implementation and modality

- 6.1. For any solution to move towards provision of welfare schemes or including the domestic workers under any existing schemes, it is important to adapt a step-wise process that enables the implementation process. For implementing the welfare measures, that the following three steps were suggested:

6.1.1. Identification of Domestic Workers - There is a need for a working definition of domestic workers, so that they can be identified.

- A working definition, which could be made broader subsequently, was worked out. (see section 7, 'Who will be covered')
- It was pointed out that the statistics related to number of domestic workers may not be accurate and there could be under-reporting. It was felt that the numbers will emerge as the schemes for domestic workers roll out.
- It was decided that to initiate the process, the figures quoted by various government studies, census and NSS rounds will be used.
- The definition of domestic workers and the figures can be revised subsequently, if required.

6.1.2. Registration of Domestic Workers - It was felt that Police should not be the registering authority (as it tends to criminalize the profession) and registration should be done by a Ministry of Labour and Employment (so that the domestic workers are registered as a class of real 'workers'). Several options, such as Ministry of Social Justice, Ministry of Labour were put forward. It was finally agreed to suggest that the State offices of the Ministry of Labour and their representative offices in Districts should be doing the registration, till the Social Security Boards, which are to be established under the Unorganized Sector Workers Act, 2008 are set up in each state. This

was suggested keeping in mind the availability of the infrastructure for implementation and reach of the implementation machinery to the district level.

6.1.3. Implementation of Schemes - It was felt by the Task Force members that the schemes identified out in para 6.2 should be applicable to domestic workers who are duly identified and registered.

6.2. Schemes to be extended to Domestic workers: The Task Force is of the opinion that at the first instance, the Rashtriya Swasthya Bima Yojana (RSBY) and National Pension Scheme coverage should be extended to the domestic workers. Additional schemes and benefits that should be “converged” on the same platform subsequently for the domestic workers can be:

- Health and Maternity Benefits
- Death and Disability Benefits
- Old Age Benefits

6.3. The reason for selecting RBSY scheme as the first scheme to be rolled out is that the scheme has already established an implementation process that uses a unique biometric smart card. The smart card is portable across India and has photographs of the beneficiaries (members of the household covered under the scheme). The smart photo card can be printed easily, even at mobile enrollment stations (which can have the hardware to collect biometric information). This can be like a single window system and the beneficiaries can get the card at a convenient place immediately on paying the requisite premium/fee. Secondly, this smart card can be also used subsequently to load other schemes established for domestic workers into the same card. This should enable to domestic workers to effectively use the same card for multiple benefits.

6.4. As pointed out earlier, to extend any scheme, including RSBY, it is necessary to list out the possible mechanisms to identify and register the domestic workers, the agencies to be involved in the process and to have indicative numbers of domestic workers and plan the budget outlay for the same.

6.5. The Task Force felt that the task of identification of domestic workers as well as their registration should be undertaken by the State Labour Department through its District offices. This data will be collected and housed in the desired format for it to be used for the purpose of rolling out RSBY. For registration of domestic workers, registration camps can be organised. Assistance of trade unions, civil society organisations and resident welfare organisations can be taken to organise the camps. Format

for registration of domestic workers has been designed and is annexed to the report.

- 6.6. The State Labour Department should then formulate the proposal for seeking assistance from the Central Government to roll out the health insurance scheme. While sending the proposal, the State Labour Department should clearly indicate the commitment of the State Government to make its own contribution. The process outlined in RSBY scheme shall be followed by the State Labour Department.

7. Who will be covered

- 7.1. The first step towards the identification of a domestic worker is to first define who is a domestic worker. The Task Force considered several aspects related to domestic work. The fundamental approaches to defining domestic work can be on the following parameters:

7.1.1. **According to the nature of employment:** The type of employer-employee relationship that exists and the work being performed for defined payments, whether in cash or kind (and does not include the household chores performed by the family members).

7.1.2. **According to the place where the work takes place:** The work that takes place in the household, for non commercial purposes. There was a discussion whether to include the work done for the household in the ambit of the definition. It was felt that at this stage, for the purpose of the initiation of welfare measures, the approach can be to look at the work done in a household. This may exclude some class of workers initially. Later on, when a legal definition is being worked out, detailed discussions on the issue can be taken up, evaluating the pros and cons of including or excluding such workers from the definition. The definition proposed is a working definition and may be revised, if required, at an appropriate time.

- 7.2. **Agreed definition of a Domestic Worker:** The task force suggested the following working definition of the Domestic Worker:

- *“Domestic Worker” means, a person who is employed for remuneration whether in cash or kind , in any house hold through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work or allied work, but does not include - any member of the family of an employer.*

Note: The first part of the definition comes from the Draft Bill proposed by National Commission for Women and the second part from the Proposed Bill of National Campaign Committee for Unorganized Sector Workers.

- 7.3. The definition is kept broad so as to include as many domestic workers as possible, whether receiving payments in cash or kind. This definition, however, leaves out workers who work for a household but not in the confines of a household, such as drivers and gardeners. As mentioned earlier, this can be the initial working definition and may be amended subsequently.
- 7.4. It was felt that for the process of identification and registration of domestic workers, the above definition can be used. The definition can be expanded or amended, if required, later.

8. Financial Resources

- 8.1. For calculating the financial requirements regarding extension of RBSY scheme to the domestic workers, it was decided that the number of domestic workers should be taken as 4.75 million workers which is an estimate based on the NSS statistics. Though the figure of 4.75 million is considered to be a significant underestimation but given that it is derived from a national source, it would be used as the basis for developing the proposal to extend RSBY.
- 8.2. For the premium calculation for the RBSY scheme, 25% of the contribution can come from Domestic Worker, 25% from the States and 50% from the Center.
- 8.3. Later the RSBY Smart Card can be used to load other additional benefits, such as pension, maternity benefit etc. The financial requirements for the additional schemes should be worked out once the schemes are finalized and requisite approvals are taken.

9. Recommendations

- 9.1. The Task Force recognizes that domestic work is a 'work' and domestic workers are 'workers'. Domestic workers should be entitled to all the rights and benefits which are available to all other class of workers.

- 9.2. The Task Force activities have been divided into two phases. The welfare measures are being discussed in the Phase 1. The regulatory mechanisms are to be discussed in the Phase 2. The Task Force has made the First Set of Recommendations which includes welfare and regulatory measures, and policy decisions for consideration by the Government. (Ref: Para 5.2).
- 9.3. The first set of recommendations of the Task Force is as under.
- 9.3.1. **Extension of the welfare schemes to the domestic workers** including: Health and Maternity Benefits, Death and Disability Benefits, and Old Age Benefits. (Ref: Para 5.3, 6.2)
- 9.3.2. The **RBSY scheme** should be the first welfare scheme to be extended to the domestic workers. The smart cards issued under the RBSY can be later used to load other welfare schemes, rolled out for domestic workers. (Ref: Para 5.3, 6.2)
- 9.3.3. Domestic workers should be **identified and registered** by the State Labour Department. The registered domestic workers should be enrolled under the RBSY scheme. (Ref: Para 6.6)
- 9.3.4. The domestic work should be included in the Central list of scheduled employments wide a notification under the Minimum Wages Act 1948, for **fixation and enforcement of minimum wages** in respect of domestic workers. The state governments, which have not fixed minimum wages for domestic work, should fix minimum rates of wages for the domestic workers, as labour is a state subject. (Ref: Para 5.5)
- 9.3.5. The Ministry of Labour and Employment should issue notification for **mandatory registration of all placement agencies and individuals** providing **placement, sourcing and recruitment services** relating to domestic work, under the Shops and Establishment Act, 1953. This registration will be irrespective of the registration/non registration under any other existing Act. The placement agencies should maintain and make available all necessary records pertaining to domestic workers placed, details of the employers, wages, mode of payment of wages, working hours, nature of work, and duration of placement and the copy of the contract. (Ref: Para 5.6)
- 9.3.6. The Task Force recommends drafting of a **National Policy for the Domestic Workers** covering the welfare, regulatory, and skill development issues. The National Policy on Domestic Worker should also include a **Code of Practice**, which should serve as a guideline

for protecting the domestic workers and regulating their work conditions and wages. (Ref: Para 5.9, 5.11)

9.3.7. The **skill and re-skill training program** initiated by ILO, MoLE and Delhi Government should be **scaled up and replicated** in different states of India in a phased manner. (Ref: Para 4.5, 5.12, 5.13)

Annexure-I Constitution of Task Force



No. M-16011/09/2009-BL

**GOVERNMENT OF INDIA
MINISTRY OF LABOUR & EMPLOYMENT**

Jaisalmer House, Mansingh Road,
New Delhi - 110011, Dated the 29th December, 2009.

OFFICE MEMORANDUM

Subject:-Constitution of Task Force on Domestic Workers – reg.

The undersigned is directed to say that Ministry of Labour and Employment has decided to constitute a Task Force to evolve a policy frame work for Domestic Workers. The composition of the Task Force will be as follows:

- (i) Shri Anil Swarup, DGLW
- (ii) A representative of ILO
- (iii) A representative of Ministry of Women and Child Welfare
- (iv) A representative of Ministry of Social Justice
- (v) An expert from National Labour Institute
- (vi) Shri Suraj Bhan, Economic Adviser in office of DG(LW) Convener

2. The terms of reference of the Task Force are as under:
 - (i). Evolve a policy framework for domestic workers in the context of-
 - (a). Regulatory mechanism
 - (b). Providing social security
 - (ii). Evolve an India Paper for presentation/consideration during the 99th Session of International Labour Conference at Geneva in June, 2010.
3. The Task Force will submit its report within three months of its constitution.
4. The first meeting of the Task Force will be held on 15th January, 2010 at 11.00 A.M. in the Chamber of Shri Anil Swarup, DGLW, Jaisalmer House, Mansingh Road, New Delhi.

Suraj Bhan
29/12/09
(Suraj Bhan)
Economic Adviser
Telefax: 23384891

1. Ms. Leyla Tegmo Reddy, Director, Sub-Regional Office for South Asia, International Labour Organization, Core 4B, 3rd Floor, India Habitat Centre, Lodhi Road, New Delhi-110003. It is requested that a representative to the Task Force may be nominated.
2. The Secretary, Ministry of Women and Child Development, Shastri Bhavan, New Delhi. It is requested that a representative to the Task Force may be nominated.
3. The Secretary, Ministry of Social Justice, Shastri Bhavan, New Delhi. It is requested that a representative to the Task Force may be nominated.
4. The Director, V.V. Giri National Labour Institute, Noida. It is requested that an expert to this Task Force may be nominated.

Copy for information to

1. PPS to Secretary (L&E)
2. PA to DG(LW).

Annexure-II Minutes of Meetings of the Task Force

○ 1st Meeting: January 13th, 2010

The participants of the meeting were as under:

1. Mr. Anil Swarup, DGLW, Ministry of Labour and Employment
2. Mr. Suraj Bhan, Economic Advisor in office of DGLW
3. Ms Anju Bhalla, Deputy Sec., Dept of WCD (in lieu of Ms Sangeeta Verma)
4. Ms Indrani Gupta, Under Sec., Ministry of Social Justice
5. Dr. Poonam S. Chauhan, V.V. Giri, National Labour Institute, Noida
6. Hilde Roren, Associate Expert, ILO
7. Bharti Birla, Project Coordinator, ILO

The Task Force has been set up for a period of 3 months. The Terms of Reference of the Task Force are:

1. Evolve Policy Framework for domestic workers in context of:
 - a) Regulatory Mechanism
 - b) Providing Social Security
2. Evolve an India Paper for presentation/consideration during the 99th Session of ILC in Geneva, June 2010

The key issues that were discussed:

- Keeping the time frame in mind, in terms of sequencing of the activities of the task force, the initial focus of the task force should be on suggesting the welfare measures and their implementation mechanism for the domestic workers. The regulatory mechanisms can be evolved subsequently.
- The general view was that regulatory mechanisms, such as legislation need more in-depth deliberations, especially on definitions and implementation mechanisms.
- For implementing the welfare measures, it was agreed that three steps need to be followed:
 - **Identification of Domestic Workers** - This needs a working definition of domestic workers, so that they can be identified.
 - A working definition, which could be made broader subsequently, was worked out.
 - It was noted that the statistics related to number of domestic workers may not be accurate and there could be under-reporting.
 - The VV Giri National Labour Institute has been asked to come up with some data regarding the numbers.
 - To initiate the process, the figures quoted by various studies and NSS survey will be used.

- **Registration of Domestic Workers** - It was unanimously agreed that Police should not be the registering authority and registration should be done by a Ministry. Several options, such as Ministry of Social Justice, Ministry of Labour were put forward. It was finally decided that the State offices and their representative offices in Districts will be doing the registration, till the Social Security Boards are set up in each state. This was decided keeping in mind the availability of the infrastructure for implementation and reach of the implementation machinery to the district level.
- **Implementation of Schemes** - It was agreed that the following schemes should be applicable to domestic workers who are duly identified and registered:
 - Health and Maternity
 - Death and Disability
 - Old Age Benefit
- Agreed definition of a **Domestic Worker**: The task force suggested the following working definition of the Domestic Worker:
 - *"Domestic Worker" means, a person who is employed for remuneration whether in cash or kind , in any house hold through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work or allied work, but does not include - any member of the family of an employer.*

Note: The first part of the definition comes from the Draft Bill proposed by National Commission for Women and the second part from the Proposed Bill of National Campaign Committee for Unorganized Sector Workers.

It was decided that for the process of identification and registration of domestic workers, the above definition can be used. The definition can be expanded or amended, if required later.
- It was also agreed that a recommendation should be made to the Central Government to include domestic workers under the Minimum Wages Act.
- It was suggested that one representative from National Domestic Workers Movement (Sister Jeane Devoss) should also be invited to be a member of the Task Force. This was supported by all, including ILO.

Next Meeting:

The next meeting of the Task Force is scheduled for Feb 1, 2010 at 11:00 A.M.

Apart from the other points, following will also be discussed during the next meeting is:

- How the domestic workers can be covered by other labour legislations, such as Minimum Wages Act 1948, or the Maternity Benefit Act 1961, Workmen's Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Equal Remuneration Act 1976, Employee's State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972 etc. **(ILO has to prepare a background note regarding the feasibility of including the domestic workers in the above acts)**

- Finalization of the performa for registering the domestic workers (**ILO to suggest the Performa adapted from the Construction Workers Registration Performa**).

○ 2nd Meeting: February 1st, 2010

Participants:

1. Mr. Anil Swarup, DGLW, Ministry of Labour and Employment
2. Mr. Suraj Bhan, Economic Advisor in office of DGLW
3. Ms Anju Bhalla, Deputy Sec., Dept of WCD (in lieu of Ms Sangeeta Verma)
4. Ms Indrani Gupta, Under Sec., Ministry of Social Justice
5. Dr. Poonam S. Chauhan, V.V. Giri, National Labour Institute, Noida
6. Jeanne Devos, National Domestic Workers Movement
7. Lizzy Joseph, National Domestic Workers Movement
8. Reiko Tsushima, Senior Specialist, ILO
9. Hilde Roren, Associate Expert, ILO (minutes)
10. Bharti Birla, Project Coordinator, ILO

Mr. Anil Swarup opened the meeting with a short summary of the previous meeting and the work to be undertaken by the task force. First the task force should suggest how best to extend welfare measures for domestic workers. This work should focus on practical solutions fitting the Indian context. The strategy should be to deliver incremental benefits, guided by achievable targets. Regulation of domestic workers (through legislation) is an important issue, however it requires extensive consultation and interaction over time. Hence, it is important to first move forward by extending welfare benefits through existing, well-established schemes/ channels. The regulatory mechanisms can be evolved subsequently. Mr. Swarup informed that the objective of the meeting today was to agree on a definition, number of domestic workers & roll out modality of extending RSBY and suggest an approach for welfare and regulation.

Realising that improving labour welfare of domestic workers requires a multifaceted approach, it was agreed to adopt a phased approach which will include **Phase 1** focusing on **welfare measures** and a **Phase 2** on **regulatory mechanisms**.

The first target in the welfare measures will be to extend RSBY coverage to domestic workers. To extend RSBY, it is necessary to make a proposal, with mechanisms to identify and register the domestic workers, the agencies to be involved in the process and to have indicative numbers of domestic workers and plan the budget outlay for the same. The TF will produce a report which will be the basis of the proposal.

Phase 1: Welfare measures

1. For implementing the welfare measures, three steps need to be concluded:

a. Identification of Domestic Workers

This will include a definition of domestic workers so that they can be identified.

b. Registration of Domestic Workers

c. Implementation of Schemes

This work will start with providing an identity and health insurance by extending RSBY coverage to domestic workers. More benefits are envisaged to be added on at a later stage for example, life and disability benefit, health and maternity benefit, and old age pension.

- d. Definition: the following definition was agreed "*Domestic Worker*" means, a person who is employed for remuneration whether in cash or kind, in any house hold through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work or allied work, but does not include - any member of the family of an employer.
- e. The term family covers only immediate family as defined in RSBY scheme.
- f. The definition is kept broad so as to include as many domestic workers as possible. This definition, however, leaves out workers who work for a household but not in the confines of a house, such as drivers and gardeners. It was suggested that a list is made of the kind of workers who are likely to be excluded given the adopted definition.
- g. There was also a deliberation of the definition of 'placement agency' and the payment of wages in cash or kind. It was decided that for the time being, the wages should be broad and may cover cash or kind, so as to make the definition of domestic worker more inclusive. Later, while working on the regulations part, such issues can be discussed in greater details and the amount of in-kind wages can be regulated.

Action 1: Taskforce members to make list of who gets included and who gets excluded with current definition.

2. Registration:

There was a discussion on what would be the best method for registering domestic workers and it was agreed that the task force should recommend a system that involved the State Labour Commissioners. A guidance note will be sent to the State governments / Labour Commissioners which will request them to collect data of domestic workers with the purpose of extending RSBY to them. State governments / Labour Commissioners should also be encouraged to actively work with civil society organizations during this process. Subsequent to collecting data, they will be requested to make a proposal to the Central Government starting with the health insurance scheme. The guidance note should not be a rigid instruction on how to register workers, but rather suggest different options such as registration camps. In terms of the number of domestic workers to be covered by RSBY, the TF agreed to go by the figure provided by VV Giri NLI, of 6.4 million workers which is an estimate based on the NSS. The figure of 6.4 million is considered to be a significant underestimation but given that it is derived from a national source, it would be used as the basis for developing the proposal to extend RSBY. It would also be useful to have this broken down by state level.

It was suggested that for the scheme, 25% of the contribution can come from Domestic Worker, 25% from the state and 50% from the Center. Later the RSBY ID Card can be used to load other additional benefits, such as pension, maternity benefit etc.

Action 2: MOLE to issue a notice to state level partners about extension of RSBY and suggested procedures once necessary approvals have been obtained.

Action 3: taskforce members to come up with suggestions how to register workers and organizations/people they can work with.

Action 4: ILO to design a form for registration and circulate to members

3. The First Task Force Report should be submitted before the end of the financial year and should include background, first set of recommendations and further extensions.

Action 5: first taskforce report drafted by next meeting the 25th of February (to be distributed by 20th) by ILO.

Action 6: VV Giri National Labour Institute to provide state by state number on domestic workers to ILO and MOLE.

Phase 2: Regulatory issues

4. It was decided to include two recommendations pertaining to regulatory phase. These are:
 - a. A recommendation should be made to the Central Government to request State Governments to include domestic workers under the Minimum Wages Act.
 - b. A recommendation should also be made that all placement agencies should be registered as according to the Shops and Establishment Act 1953.
5. It was decided that a National Policy for Domestic Workers will be drafted by the task force, which will address both regulation and welfare. It would include a section on skills development as well as a Code of Conduct. The TF report which will be submitted to government will mention that the TF is evolving a National Policy on Domestic Workers, supplemented by a code of practice/conduct. The timeframe for the Policy will be discussed at the next TF meeting.

Action 7: National Domestic Workers Movement to prepare first draft of policy document for next meeting February 25th

Action 8: ILO to prepare first draft of Code of Conduct document for next meeting February 25th

Action 9: ILO to circulate background note regarding the feasibility of including the domestic workers in various acts before next meeting February 25th

6. It was also decided that a presentation on the RSBY scheme will be organized for the Task Force members on the date of next to next meeting.

Next meeting: Feb 25th 2010 at 11am

3rd Meeting: February 25th, 2010

Participants:

1. Mr. Anil Swarup, DGLW, Ministry of Labour and Employment
2. Mr. Suraj Bhan, Economic Advisor in office of DGLW
4. Ms Indrani Gupta, Under Sec., Ministry of Social Justice
6. Jeanne Devos, National Domestic Workers Movement
8. Reiko Tsushima, Senior Specialist, ILO
9. Hilde Roren, Associate Expert, ILO (minutes)
10. Bharti Birla, Project Coordinator, ILO

Taskforce report

1. The groups started the meeting with going through the first draft of the task force report. Some of the changes needed include;
 - a. 8.4 to be re-written by Mr Swarup
 - b. Change structure with clear recommendations at the end
 - c. Simplify the registration form
2. In addition the taskforce should mention the need for upgrading the skills of domestic workers in the report. Following this the idea should be developed in more details in the policy paper. The skills specialist at ILO, Akiko Sakamoto, as well as SEWA can contribute in the deliberations.
3. A Code of Practice will be drafted by ILO and circulated to all members. This will be taken up for discussion during the second phase of the task force, and will be included with the National Policy for Domestic Workers.
4. Final version of the report should be approved at the next meeting and then passed on to parliament.

Action:

- Mr Anil to prepare amendments of section 8.4 to be included in new draft
- ILO to update and send new draft to taskforce members by March 10th for comments. Any comments must be received back by March 16th
- ILO to simplify the registration form and circulate for comments
- ILO to prepare Code of Practice for report to be circulated and approved at next meeting

Policy paper

1. NDWM prepared and shared the first draft of the National Policy Paper for Domestic Workers. Before the next meeting they will share a second draft which will be shared with task force members for comments.

Action:

- NDWM to produce and share second draft of policy paper
- ILO to contribute with section on skills development for policy paper

Intervention paper:

1. The task force decided to produce a paper of intervention for India that can be presented at the ILC in June 2010. Since ILO is the secretariat for this meeting, ILO members of the task force cannot participate in this exercise.

Action:

- Ms Indrani Gupta MOLE to prepare a draft of the intervention paper for discussion at the next meeting

Registration of placement agencies:

1. Before Mr. Swarup can prepare a recommendation that all placement agencies should be registered as according to the Shops and Establishment Act 1953 the task force needs to find out if this will require an amendment to the act.

Action:

- ILO to find out if an amendment to the act is required

Next meeting: March 18th 2010 at 11am

○ **4th Meeting: March 18th, 2010**

Participants:

1. Mr. Anil Swarup, DGLW, Ministry of Labour and Employment
2. Mr. Suraj Bhan, Economic Advisor in office of DGLW
4. Ms Indrani Gupta, Under Sec., Ministry of Social Justice
6. Jeanne Devos, National Domestic Workers Movement
8. Reiko Tsushima, Senior Specialist, ILO
9. Hilde Roren, Associate Expert, ILO (minutes)
10. Bharti Birla, Project Coordinator, ILO
11. Brother Varghese, NDWM
12. Father Chetan, NDWM
13. Ms Nalini Nayak, SEWA

The agenda of the meeting was to finalize and adopt the recommendations. The Task Force members discussed about each clause and made some suggestions regarding the clause on placement agencies. The suggestions have been incorporated in the final report.

It was decided that the finding of the Task Force will be presented to the Hon'ble Minister. In the next meeting of the Task Force, the members will discuss the draft National Policy on Domestic Workers and the Code of Practice.

The next meeting will be on April 21, 2010 at 3:00 P.M.

Annexure-III Background Paper on Domestic Workers: The Global Picture

Draft – Not to be quoted

Domestic Work: Work Like Any Other, Work Like No Other¹

Introduction

Domestic work is one of the oldest occupations for women and men across the globe. Their work is important as they allow the women and men of the household to take up formal and non formal occupations outside the house. Their care work at households is crucial for the economies outside to function. There are several reasons for an increase in the household domestic workers. Some of the reasons are:

1. **Aging of the societies** – Today, people tend to live longer because of better life expectancies. This phenomenon of demographic aging², is causing the increase in the population of the elderly. The number of children is decreasing, the family structures are transforming. All this is leading to a greater demand for the care work and need for paid domestic work.
2. **Massive incorporation of women in the labour force** – Because of the availability of the domestic workers, the woman of the household can take up work (either formal or informal), as the household and care responsibilities are taken up by the paid domestic workers. This also provides the first opportunity to the domestic workers, who are largely women, to enter into the labour market, without any formal training or qualification.
3. **The intensification of work** - “Work intensification” means not just increased work load, but the work context within which it occurs. Basically, the term includes both “working longer hours and working harder within each hour spent at the workplace³.” Because of work intensification, the demand for paid domestic workers is increasing.
4. **The frequent lack or inadequacy of policy measures to facilitate the reconciliation of family life and work** – Because of the lack or inadequacy of the policy measures to facilitate the reconciliation of family life and work⁴, many households⁵ are looking at paid

¹ The contents of the background note are essentially taken from the ILO Law and Practice Report on Domestic Work and other ILO working papers, reports and publications.

² In 2006, almost 500 million people worldwide were 65 and older. By 2030, that total is projected to increase to 1 billion—1 in every 8 of the earth’s inhabitants. (Source: National Institute on Aging, National Institutes of Health, U.S. Department of health and human services, U.S. Department of State)

³ Work intensification goes beyond just working your existing job at a faster pace. It includes the key elements of: job enlargement or broadening through under-staffing (increased content of jobs), reducing “idle time” (leaving less space for rest breaks and time between tasks), more simultaneous demands (similar to job enlargement), speeding up work (includes deadline tightening as a result of ICT use), shifting remuneration from time-based to results-based criteria (‘working until the job is done’) and extension of the working day. (Source: ACTU Congress 2003 “Future of Work – Trends and Challenges in Australian Workplaces” Issue Paper 3 “Increased workloads and work intensification” page 59 - 61.)

⁴ The issues raised by the reconciliation of work and family life are addressed by the ILO’s Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981. The Convention, which had been ratified by 31 countries as of 30 June

domestic workers/care workers. At the level of the women domestic worker, especially the part-time workers, getting engaged in paid domestic work provides an opportunity to work for flexible or short working hours. This enables the women to take care of their own families as well as enhance the overall income of the family.

Apart from the above, there are several pull and push factors that are promoting the movement of the domestic workers from the source or the supply states to the destination or demand areas. The rapid decline of the agriculture produce coupled with lack of livelihood security, the workers are being pushed to the urban destinations in search of livelihood. Also, the lure of a good life with reasonable income amongst the youth has been the pulling factor for the young men and women towards the cities and towns. The different factors, such as disproportionate and inconsistent development and urbanization is also leading to migration of population, keen in taking up employment as domestic work, which is assumed to be an unskilled work (Shrayana Bhattacharya, ISST, Shalini Sinha, WIEGO India Law Project, 2009).

Domestic work, nonetheless, is undervalued and poorly regulated, and many domestic workers remain overworked, underpaid and unprotected. Accounts of maltreatment and abuse, especially of live-in and migrant domestic workers, are regularly denounced in the media. In many countries, domestic work is very largely performed by child labourers.

Domestic Workers and Domestic Work

Domestic work absorbs a significant proportion of the workforce, especially in developing countries. Their number has been increasing – even in the industrialized world. In developing countries, domestic workers accounts for between 4 and 10 % of total employment (both female and male). In industrialized countries the figure ranges between 1 and 2.5 % of total employment. In some countries a significant number of men are employed in private homes as gardeners, guards and chauffeurs. Women invariably make up the overwhelming majority of domestic workers. According to an ILO survey in Delhi and Noida region, 90% of the domestic workers were women (2009).

In India too, the women's participation in the work force has been increasing over the years⁶. As a percentage of the total female employment, domestic work constitutes 2.3 percent (Raveendran 2009). This is not as high as some other developing countries where data is available which could be as high as 18.31 percent in Argentina, 17.10 percent in Brazil, 16.13 percent in South Africa. In industrialised countries, the share is smaller ranging from 2 to 9 percent (ILO: Law and Practice Report). While paid domestic work was once a male dominated occupation in pre-independence India (Neetha 2004), today women constitute 71 percent of this sector. Domestic Work is largest sector of female employment in Urban India (Approx 3.05 million women involved). National estimates for 2004-5 suggest 4.75 million workers were employed by private households; 3.05 million of these were urban women. It has been seen that in India, women spend nearly ten times as much time on unpaid care work as men⁷. Domestic work also includes child labour.

Invisible Occupation

Domestic work is predominantly a female occupation in India, and hence it is invisible and

2000, calls for measures to be adopted which take into account the needs of workers with family responsibilities in their terms and conditions of employment and in social security. The Recommendation also covers a number of areas in which measures can be taken to facilitate the lives, and therefore reduce the levels of stress encountered by workers with family responsibilities. These include: *the provision of child-care facilities; the reduction of hours of work, the reduction of overtime and the introduction of more flexible arrangements in relation to working schedules, rest periods and holidays; adequate regulation and supervision of the terms and conditions of part-time workers, temporary workers and homeworkers, many of whom have family responsibilities; the possibility for either parent to take parental leave, during the period immediately following maternity leave, without loss of job or employment rights; and the availability of leave of absence to care for a sick child or family member.*

⁵ This is particularly true in families in which both parents work, as well as in single-parent families.

⁶ The period 1993/94 to 2004/05, women's employment growth has been much faster than those of men.

⁷ D. Budlender: *The statistical evidence on care and non-care work across six countries*, Gender and Development Programme Paper No. 4 (Geneva, UNRISD, 2008), p. v.

unaccounted for. Despite such significant presence, and fast growth of the sector (increasing by 222% since 1999-2000), domestic work is slow to receive recognition as professional work. The invisibility and low social status awarded to this sector is compounded by the fact that a large number of domestic workers belong to lower caste or ethnic minority communities. The discrimination on the basis of caste, religion, gender and nationality is evident.

Domestic work does not take place in a factory or an office, but in the home. The employees are not male breadwinners, but overwhelmingly women. They do not work alongside other co-workers, but in isolation behind closed doors. Their work is not aimed at producing added value, but at providing care to millions of households. Domestic work typically entails the otherwise unpaid labour traditionally performed in the household by women. This explains why domestic work is undervalued in monetary terms and is often informal and undocumented. It tends to be perceived as something other than regular employment, as not fitting the general framework of existing labour laws despite the fact that its origins go back to the "master-servant" relationship. As a result, the domestic employment relationship is not specifically addressed in many legislative enactments, thus rendering domestic workers vulnerable to unequal, unfair and often abusive treatment.

Key issues faced by domestic workers

There are several issues that the domestic workers face as part of their work. Some of the key issues that need to be addressed in any policy initiative or legislation for domestic workers include the following:

- **Lack of decent wages:** Most domestic workers are underpaid, because of the lack of the bargaining power. Most do not even get the minimum wages that are prescribed for other unorganized sector workers. The women are much more vulnerable, as they are untrained and lack any voice.
- **Lack of decent work conditions:** Many domestic workers, especially the live-in workers may have to work in appalling work conditions. There is no work place safety, as domestic work is generally considered to be safe.
- **No defined work time, no weekly offs:** This becomes most critical as no work time is defined. The live-in domestic workers have to be available at all times, with no defined periods of rest. There are hardly any weekly offs⁸, or well defined rest periods.
- **Loneliness:** The domestic workers are mostly migrant families separated from relatives and friends. In case of live-in domestic workers, with no weekly offs and no vacations, the seclusion from the loved ones often leads to depression and workplace stress. Some live-in domestic workers also have children, who they leave behind with their relatives. This loneliness is also evident in part-time domestic workers, who leave their children behind to come to work. With lack of social safety net, such as crèches etc., the care and safety of these children often is a major concern.
- **Violence, abuse, and sexual harassment at workplace:** The most challenging aspect of the domestic work is the physical and mental abuse, workplace violence and sexual harassment. Particularly in-house workers, get exposed workplace violence and sexual harassment. In some cases, they get trapped and are physically or legally restrained from leaving the employer's home (by means of threats or actual violence, or by the withholding of pay or identity documents⁹).
- **Victimization at the hands of traffickers/ placement agencies, forced migration –** Many women, young girls and boys are brought to the cities by the agents under a lure of a decent job and many land up in the traffickers' net. Some are forced to migrate because of the lack of employment in the rural areas. Most are untrained and unskilled and often are ready to work at wages far below the prevalent market rates, making them further vulnerable and deprived.
- **No health insurance, no maternity protection, and no old age security –** There is no medical, maternity, social or old age protection available. Most part-time workers work with

⁸ Except in some cases, where the domestic workers are sourced through a church based organization or placement agency, where it is mandatory to give a weekly off as part of the placement contract.

⁹ ILO, Decent work for domestic workers, Labour Education 2007/3-4, No. 148-149.

multiple employers and even those who work as live-in workers have very sparse security net available.

- **No skills development, no career growth** - As said earlier, domestic work is considered to be a women's natural occupation, and hence perceived as a no or low skill job. Most women enter the occupation untrained and do not receive any re-skill or skill trainings during the course of their employment. A very few of them might be trained by the employer to take up more higher and specialized responsibilities and enhances the scope of job growth and enrichment. But that number is very miniscule.

Key challenges related to Domestic Work

There are several challenges in bringing adequate policy measures, legislations and programs for domestic workers. Some of the key challenges are discussed below:

Domestic work not considered as real work

The major challenge is that the domestic work is an invisible occupation. Domestic work is an extension of women's work at home, which itself is largely hidden and not accounted for. Most women who undertake domestic work, also do not consider it as a real work. For most, the work is important to sustain the family or bring home additional income.

The nature of work and work conditions further add to the myth that domestic work is not real work. Unless the employer and the employee treat the work as real work, the situation of domestic workers will remain appalling.

Lack of accurate and comparable data

Collecting accurate and comparable data on the number of domestic workers throughout the world is difficult. There is a high incidence of undeclared domestic work which results in under-reporting. National statistics often do not count domestic workers as a distinct category but register them under such headings as "community, social and personal service activities". Part-time domestic workers may not report domestic work as their main occupation. There are varying definitions of domestic work in national statistics. Sometimes, sample surveys conducted miss out on domestic workers intensive in habitations, which remain concealed in slums.

Nature of Work

Domestic work is an extension of household work, which women have traditionally been considered capable of doing without any skill training. The domestic work is not aimed at producing plus value, but at providing care services. The different work conditions, nature of employers, nature of the work relationship all make it more complex. **It is a work like any other, yet work like no other.**

Gender Dimension

The feminization of the domestic work has further contributed to demeaning the value of domestic work. As discussed earlier, domestic workers are paid a wage to assume a range of "gendered" family responsibilities in private homes. The home is the workplace. Yet the work that domestic workers undertake does not correspond to what is generally thought of as the "labour market" and reflects a dichotomy between work and family.

There is evidence, too, of wage discrimination on grounds of gender. The male domestic workers, who are largely employed as security guards, gardeners, and drivers are better paid. This is because of the better bargaining capacities of the male workers compared to women. Also, most male workers are in some way trained to undertake the job, which is considered as a skilled job, vis-à-vis women. This results in better pay packages and career enhancement for men compared to women.

Lack of specific legislation

Domestic workers often have no clear status as a worker and tend to be excluded de facto from labour legislations and their enforcement. This is not to imply that their working lives necessarily lack structure and regulatory control. On the contrary, domestic workers lives and work are regulated by strong non-state norms regarding work in the employer's household. The norms vary significantly from one cultural context to the next but which result in domestic workers being among the most marginalized workers – and for whom decent work is often a distant aspiration. Regulating domestic work therefore means addressing individual employers, placement agencies and care recipients, as well as the countries that supply domestic workers and those that receive them.

Lack of definitional clarity

Because of the nature of the domestic work, which is work like any other, yet work like no other, **it is often difficult to define the associated terminology with specificity.** For example, issues that need definitional clarity include, categories of domestic workers (who are domestic workers), live-in/part-time employee-employer relationships, employers (who is the employer- the family, the women of the household, the breadwinner, then placement agencies), workplace and home/place of stay (the workplace and place of stay may be same for live-in workers), working conditions, wages (cash/in kind, minimum wages, calculation of wages), medical and social security (who pays for it, what happens in case of multiple employers), safety at work place, night work, rest periods (how to account for overtime, stand by time), weekly offs and termination of employment.

There is no agreement on these definitions yet, and that the new proposed ILO instrument will put an end to this discussion by adopting a universally accepted definition. These are some of the issues that need clarity and need to be defined in a coherent manner.

Coverage of Domestic Workers under Existing Legislations

As said earlier, most laws do not recognize domestic work as real work, and domestic workers as real workers. Because of this the existing labour legislations fail to include the domestic workers in the categories of workers and some even specifically exclude them from the labour legislations. An ILO study of the legislation in 65 countries revealed that only 19 of them have brought in laws or regulations specifically concerning domestic work.

In India, domestic workers are not covered under any labour legislation. They are also not covered under the Minimum Wages Act 1948, or the Maternity Benefit Act 1961. None of the other relevant acts, such as Workmen's Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages Act 1936, Equal Remuneration Act 1976, Employee's State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, 1972 are applicable to domestic workers.

Definitional Issues

The major challenge in drafting the legislation or formulating policies and programs is what to be included and what to be excluded from the various definitions that surround domestic work. Some of the key areas for deliberation are:

Definition of Domestic Work:

Fundamental approach to defining domestic work is that it is a work that takes place in the **'household'**. This has two important implications:

- In Argentina (Decree No. 7.979/56) and Malaysia (Labour Code), the relevant legislation **excludes** labour connected with a trade, business or profession conducted by an employer in the employer's home from the scope of domestic work.
- Brazil excludes work that does not have a non-lucrative objective. In section 161 of the Labour Code, Guatemala excludes from the definition work that provides profit or business for the employer. Section 2 of the Household Workers' Act and section 1 of the accompanying regulation exclude work that provides profit or business for the employer or the employer's family.
- The recent initiatives taken by the Indian Government and some of the State Governments, for the domestic workers, include the enactment of Unorganised Workers' Social Security Act, 2008, which includes domestic workers, and addresses issues related to old age pensions, maternity insurance, general insurance, and health insurance. The employment of children in domestic work has been prohibited w.e.f. October, 2006.
- The National Commission for Women (NCW) has drafted legislation for protection of domestic workers, which is under the review process. The Commission proposes legislation to regulate conditions of work nationally, establish a registry of workers, employers, and employment agencies, and set up state and district boards to monitor and assist domestic workers. Some NGOs have proposed amendments to the draft bill circulated by NCW, while some others have drafted another version of the bill.
- The initiatives by different states include: Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act 1982, Maharashtra Domestic Workers Welfare Board Act 2008, five states/UT (Andhra Pradesh, Bihar, Karnataka, Rajasthan and Dadra and Nagar Haveli) have fixed minimum wages for domestic workers.

- a) The work performed by workers in places of worship (such as monasteries, churches, mosques, temples etc.) and other non profit or volunteer based, social service oriented places gets excluded from the definition of the domestic work non profit, social work.
- b) Second, many seek to capture the non-lucrative nature of domestic work by excluding assistance with commercial or "professional" activities that may be performed within the home.

- Spain's Royal Decree specifies that domestic work may take place **in or for the household**.
- United States (Montgomery County, Maryland), the definition of "domestic service" under Bill No. 2-08 extends to work that is "**primarily performed at home**".
- In Mexico, section 332 of the Federal Labour Act specifically excludes such workplaces as hotels, restaurants, hospitals, boarding schools (internados) and similar establishments from the scope of domestic work.

The ILO's International Standard Classification of Occupations (ISCO) recognizes domestic work under two broad classification groupings (5 and 9) and identifies associated tasks and the corresponding skill levels (see box 1).

Categories of Domestic Work

The domestic workers may be assigned different names according to the nature of work performed and may include:

- | | |
|--|--|
| a) Cooks | b) Butlers |
| c) Child maid, nanny, governess, child's nurse, | d) Gardner |
| e) Laundry personnel, washerwoman, ironing personnel | f) Security guard, watchman |
| g) Driver/chauffer of vehicle for private use | h) Household employee/housekeeper/house-servant/maid/boy |
| i) Elder caregiver | j) Caregiver to infirm and disabled |
| k) Night attendant | l) Cleaning personnel |
| m) Porters, valets | n) Custodians |
| o) Rural domestic workers/farm workers | p) Au Pair |
| q) Apprentices | r) Student baby sitters/ occasional/ causal/ short-term baby sitters/ caregivers |

BOX 1: Domestic work according to the ISCO

Classification 5 addresses commercial establishments, institutions and private households. It covers two key categories: housekeeping (minor group 512), which includes housekeepers and related workers and cooks; personal care and related workers, including childcare workers and home-based personal care workers (minor group 513). Housekeeping foreseen under 5121 emphasizes the supervisory work of the housekeeper. Classification 5131 defines childcare workers as those who “take care of employers’ children and oversee their daily activities” and considers that the tasks include:

- (a) assisting children to bath, dress and feed themselves;
- (b) taking children to and from school or outdoors for recreation;
- (c) playing games with children, or entertaining children by reading or storytelling;
- (d) maintaining order in children’s bedrooms and playrooms;
- (e) taking care of schoolchildren at lunch or other school breaks;
- (f) taking care of schoolchildren on excursions, museum visits and similar outings;
- (g) performing related tasks;
- (h) supervising other workers.

Similarly, home-based personal care workers under classification 5133 “attend to various personal needs and in general provide personal care for persons in need of such care at their own homes because of physical or mental illness or disability or because of impairment due to old age”. Tasks of this category, an example of which is a “home nursing aid”, include:

- (a) assisting persons in getting into and out of bed and making the appropriate change in dress;
- (b) changing bed linen and helping persons with their bath and toilet;
- (c) serving food – prepared by them or others – and feeding persons needing help;
- (d) giving or ensuring that persons take the necessary medicaments;
- (e) watching for any sign of deterioration in the person’s health and informing the
- (f) relevant medical doctor or social services;
- (g) performing related tasks;
- (h) supervising other workers.

Classification 913 speaks specifically of “domestic and related helpers, cleaners and launderers”. It covers private households, hotels, offices, hospitals and other establishments, as well as a variety of vehicles to keep interiors and fixtures clean. The classification includes domestic helpers and cleaners, as well as hand-launderers and pressers. Under classification 9131, domestic helpers and cleaners “sweep, vacuum, clean, wash and polish, take care of household linen, purchase household supplies, prepare food, serve meals and perform various other domestic duties”.

In some countries, the one or more of the above are specifically excluded by the definition of domestic workers (example elderly care in US, Gardener in Costa Rica, Child’s Nurse in Finland), because they might be covered by a specific legislation.

Definition of these occupational categories is non-exhaustive and may include several other jobs, which they are required to perform in the household. Most times, for women, specifically, there may be overlapping of occupations, without any occupation differentiation as discussed above. For example, a domestic worker may be asked to take care of the child, clean the home when the child is sleeping, clean the windows, take the dog out for a walk and clean the garden.

Employment Relationship:

The laws worldwide define the employment relationship along the lines of paid employment to a situation of subordination or dependence to remuneration. Some legislations distinguish between the regular and continuous work, while others include full-time and part-time workers, irrespective of the manner and frequency of their employment. Some countries restrict the coverage of domestic workers in terms of the duration of employment. Other legislation requires that domestic workers remain employed by the same employer for a minimum number of hours or days per week. In some countries, work like gardening, snow removal service and periodic home cleaning is structured like an enterprise. Also, a category of domestic worker that is frequently excluded is the employer’s family

members.

- In Viet Nam, section 139 of the Labour Code specifically includes domestic workers, defining them as persons who are employed to help in households.
- The Domestic Employee Act of Barbados defines a “domestic employee” as “any person employed for reward for the purpose of performing household duties in a private dwelling”.
- Swiss Canton of Geneva, where the standard contract defines “workers in the domestic economy” as both full-time and part-time workers employed regularly or occasionally according to an agreed schedule, which might be hourly, half day, full day or weekly.
- Others refer also to multiple employers of the same domestic worker, as do Uruguay (section 1 of Act No. 18.065 on norms regulating domestic work) and Burkina Faso (Decree No. 77-311PRES/FPT of 17 August 1997).
- Argentina excludes employment of less than one month, fewer than four hours per day or fewer than four days per week for the same employer.
- Section 2 of the Employment of Household Workers Act of Finland excludes domestic workers whose contractual engagement is for less than one month, or who work a maximum of one day per week for the same employer, or whose regular hours for the same employer do not exceed three hours per day.
- Section 141 of the Labor Code of the Philippines applies to “all persons rendering services in households for compensation” and defines “domestic or household service” as “service in the employer’s home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer’s household, including services of family drivers”.

Employer:

The law may define who the employer is. Many countries specify that the employer must be a “natural person”, while others include the entire family. Another challenge is, for almost all other types of workers are employed by an employer who is a business head, a factory owner, an enterprise head etc. In case of the domestic worker, the employer is a member of the private household or the entire household.

- In Brazil, for instance, section 3 of Decree 71.885/1973 specifies that the employer is the “person or family that admits into its service a domestic employee”.
- In Barbados, an “employer”, as defined in section 2 of the Domestic Employees Act, 1985, is any person employing one or more domestic employees and includes any **agent, manager or representative of such person** who is **responsible directly or indirectly for the payment**, in whole or in part, of remuneration to a domestic employee.
- In the United States, California’s Wage Order specifically provides that a “personal attendant” may be employed not only by a private householder but also by a third party employer recognized in the health-care industry.

Working Conditions

There are a large number of issues that may need to be defined under the category of working conditions, including:

- a) Contract of employment (mandatory contracts, model contracts)
- b) Probationary periods
- c) Remuneration (Minimum wages, payment in kind, regular payment of wages)
- d) Implications of employer-provided accommodation (Payment in kind, regulating living conditions, working time for live-in workers, working time, night work, weekly rest periods)
- e) Termination of employment and notice periods

Contract of employment

A contract of employment is often assumed to be a clear sign of a formalized employment relationship. However, in many countries the ability to establish an employment relationship is deemed sufficient and the employment contract might either be in writing or verbal. Written contracts are often required when domestic workers cross national borders to work. Some countries have also provided model contracts which can be used by the employers and employees.

Probationary periods

Probation periods specifically applicable to domestic workers vary widely, with some of the shortest periods lasting one week and the longest around 90 days. The implications of probationary periods are more severe for domestic workers on temporary migration contracts. The bilateral Memorandum of Understandings (MoUs) on migrant workers generally do not address this issue.

- In Bolivia, Brazil, Costa Rica, Nicaragua, Guatemala, Paraguay, Spain, Viet Nam and elsewhere, labour legislation specifically provides that a domestic employment contract may be verbal or in writing.
- In Trinidad and Tobago, section 10 of the Minimum Wages (Household Assistants) Order of 1991 requires that “the duties, hours of work and rest periods of every household assistant shall be clearly set out in writing by his employer when the household assistant first assumes duty”.
- In Ireland, section 5.1 of the code of practice for protecting persons employed in other people’s homes requires employers of persons employed in the home of another person to supply a written statement of terms and conditions of employment, in conformity with the Terms of Employment (Information) Acts 1994 to 2001. These include hours of work, rates of pay, list of duties, periods.
- In the United States (New York), a written contract is required for domestic workers placed by employment agencies.
- In South Africa, section 9(1) of Sectoral Determination 7 requires an employer to supply a detailed, written list of particulars to domestic workers when they start work.
- Peru the model contract prepared for reference purposes and accessible via the Internet provides a guidance function, clarifying for example that a regular work-day should not exceed eight working hours and leaving room only to indicate the start and end times.
- In France, the model contract is annexed to the national collective agreement and must be in keeping with its provisions. The model contract also offers guidance on terms of employment; for example, the contract should specify both the gross salary and the net salary after required deductions.

Remuneration

Payment in kind: In many parts of the world, payment in kind (accommodation and meals) has traditionally been considered part of the remuneration of domestic workers. Although there is evidence that such payments may enable some domestic workers to weather economic crises better, they can be open to considerable abuse. Several countries prohibit payment in kind (Canada (Quebec), Republic of Moldova, Bolivia). In Austria and Czech Republic, payments in kind may be offered only for the portion of the wage that is higher than the minimum wage. In some countries, Payments in kind permitted of up to 25 per cent of remuneration (Russian Federation Chile; Uruguay South Africa). Payments in kind permitted of up to 50 per cent of remuneration in Spain Costa, Rica, Mexico, Nicaragua, and Panama).

Minimum wages: The minimum wages varies considerably, demonstrating that minimum wage fixing, as well as the protection of wages in this area, are both complex and crucial. Since the domestic workers come from vulnerable and extremely poor economic conditions, they are also more liable to succumb to the power of employers to force wage levels downwards. Out of 66 member states of ILO surveyed, a two-thirds majority of countries establish minimum wages for domestic workers. In India too, minimum wages for 45 occupations has been set by Central Government. Currently this list excludes the domestic workers. However, some individual states have taken initiative to fix the minimum wages for the domestic workers. Minimum wage fixation would also

require deliberations.

Equal Pay for Equal Value of Work: Domestic workers are often affected by wage disparities between men and women and has cautioned against undervaluing domestic work when fixing minimum wages. Positive initiative needs to be taken to ensure that rates for female-dominated occupations such as domestic work are not set below the level of rates for male-dominated occupations involving work of equal value.

- For example, Costa Rica's National Institute for Women (INAMU) and Gender Equality Unit have taken action to ensure that the minimum wage of female domestic workers is equivalent to the minimum wage for unskilled workers, and that the national Wages Board approves a percentage increase.

Regular payment of wages: It has been seen that the domestic workers may not be paid regularly and may have huge backlogs of salaries, which prevent them from seeking fresh employment.

- In Côte d'Ivoire, section 32.3 of the Labour Code provides that salaries must be paid at regular intervals that may not exceed 15 days.
- In Burkina Faso, according to section 113 of the Labour Code, monthly payments must be made promptly within eight days of the end of the month.
- In Malaysia, sections 18 and 19 of the 1955 Employment Act, which is applicable to domestic workers, stipulate that the contract must specify a wage period not exceeding one month and that domestic worker must receive payment after lawful deductions by the seventh day following that period.

Implications of employer-provided accommodation

For live-in workers, there are several implications of the accommodation which is provided by the employer. The three major issues are, first is whether room and board should be treated as a form of payment in kind to the domestic worker or as implicit in the nature of the employment – and for which the domestic worker should be paid. The second concerns the condition of the accommodation and the quality of the food provided. The third stems from the specific nature of domestic work and raises the issue of wages and working time. The nature and type of the accommodation provided, the amount of privacy allowed to the domestic worker, the personal hygiene related issues need to be addressed.

The working time for live-in workers, the associated night work, and weekly rest periods need to be defined. Also the standby period, when the worker may be in rest, but should be available on call needs to be defined. Usually the live-in workers have to work much longer and upto 70-100 hours per week.

Termination

Most legislation provide for the termination of the services of the domestic workers. A majority countries allow terminations of services at will of the employer, without providing for a ground for dismissal, unless specified in the contract, if any. Some countries require a notice of termination, especially if the domestic worker is part of a collective agreement. The other grounds of termination are valid reason, serious misconduct, death of employer, termination for economic, technological, structural or other reasons, and illness of employee.

Social Protection

The major challenge in drafting the legislation or formulating policies and programs is what to be included and what to be excluded from the various definitions that surround domestic work. Some of the key areas for deliberation are:

- Social security coverage

- Social security protection for migrant domestic workers (and the role of sending and receiving countries)
- Promoting occupational safety and health protection for domestic workers
- Maternity protection and recognition of domestic workers' own family responsibilities

Social Security Coverage

It is easier for this category of low wage earners to have access to social security under general, social welfare systems that provide universal, egalitarian access, notably to health care or age-based pension entitlements. (See Annexure A).

Social security coverage includes:

- A wide range of collective protection and insurance mechanisms
- Occupational safety
- Health coverage
- Workplace compensation
- Life and accident insurance schemes
- Access to general health care
- Retirement pensions
- Unemployment insurance schemes
- Pregnancy and maternity leave protection (as domestic work is predominantly a women's occupation)

Social security protection for migrant domestic workers

An important caveat in providing social security schemes is that migrant domestic workers may not have automatic coverage under generalized national healthcare schemes when they do exist. In this case, the role of sending countries in social security protection needs to be stressed. Some countries negotiate social security protection within the terms of bilateral agreements.

Promoting occupational safety and health protection

Because domestic work is associated with the normal activities of a household, it tends erroneously to be perceived as safe and non-threatening. It is normally excluded from Labour legislations regulating health protection and occupational safety. Domestic work can entail a number of serious risks, which increase with the fatigue of long working hours. The work tends to involve a great deal of repetition, bending and reaching, lifting heavy objects, extremes of heat (cooking, ironing), sharp objects (knives), handling potentially toxic cleaning products and prolonged exposure to dust. Vulnerability to these risks may be higher among migrant domestic workers, with their lack of knowledge of local products and of the local language. Limited exposures to sunlight among workers who care for children during the night and nutritional problems caused by insufficient food have also been reported. Also, home care workers may be even more vulnerable because they cannot rely on coworkers for advice and assistance in their work.

- In Viet Nam, where section 139 of the Labour Code obliges employers to respect the honour and dignity of domestic workers, which indicates that the employer would be held responsible if a domestic worker fell sick or suffered an accident.
- In Salvador, Brazil, a recent study of non-fatal work injuries found a statistically significant difference between domestic workers and workers in other occupations among the 1,650 women surveyed. Domestic workers were reported to have an annual incidence of non-fatal work injuries of 7.3 per cent compared to 5 per cent for the working population in general. Half of the injuries did not entail long-term disabilities, but 38.1 per cent of the domestic workers surveyed reported not being able to return to work after two weeks. This suggests that there is a need for public policies on the occupational safety and health of domestic workers.

Maternity protection and recognition of domestic workers' own family responsibilities

Despite legal and contractual entitlements to maternity protection in many countries¹⁰ pregnancies often result in the dismissal of the worker. In some cases, the legislation may permit or facilitate such dismissals. Some countries do not include domestic work, which is predominantly a female occupational category in their legislation. The length of the maternity (minimum of 12-14 weeks) also needs to be deliberated upon.

Forced Labour and Migration Issues

Domestic workers are particularly vulnerable to discrimination, exploitation and abuse, without this necessarily constituting trafficking or forced labour. When forced labour occurs, it may affect domestic workers migrating from rural to urban areas as well as those migrating abroad. The other major area of concern is International migration of domestic workers and the link between migrant domestic work and forced labour, slavery and slave-like conditions, and human trafficking. The major challenge in drafting the legislation or formulating policies include: forced labour in migrant domestic work, loss of resident status and termination of employment, Safe houses, automatic live-in requirement and regulation of employment agencies

Skill Development

Career development must be central to domestic work if it is to be seen as something more than a temporary job entailing self sacrifice and low wages – the first step on the social ladder to more fulfilling employment. In the past it was often assumed that living with a more affluent family was an opportunity to acquire certain skills, and indeed some employers do encourage domestic workers to learn a trade. However, a more contemporary approach to career development that is increasingly reflected in national policies and legislation is to recognize the skills required in domestic work and to offer domestic workers a better future by promoting basic literacy skills and vocational training.

- In India, the Ministry of Labour and Employment (MoLE), Government of India, the Delhi Government (Department of Training and Technical Education and Higher Education), and the ILO have joined hands to kick-start a pilot training programme titled “**Skill Development Initiative Programme for Domestic Workers**” to skill and re-skill domestic workers/ household assistants across the Delhi and Noida region. As part of the process, the ILO conducted a skill mapping survey in Delhi and Noida region and developed the career path and curriculum for training the domestic workers. Under the pilot training initiative, around 350 domestic workers are undergoing level 1 training in General Household care. Level 2 trainings in Elderly Care and Child Care will be initiated in early 2010. Another new initiative in the program is the establishment of the **Skill Card System**. The objective of the System is to promote the employability and marketability of our trained domestic workers.

Conclusion

Governments may depend on women’s underpaid or unpaid work to deliver or even replace public services¹¹ as they seek to reduce care’s financial burden on the State. Yet underpaid/unpaid care work is one of the biggest barriers to equality for women and affects their ability to upgrade skills, find highly paid jobs, join in social dialogue and benefit from social protection¹².

Governments also stand to gain from formalizing domestic work and implementing social protection for those concerned. Once domestic work is treated as decent work and paid accordingly, it can become a source of employment promotion and gains in efficiency.

¹⁰ Such as Austria; Belgium; Spain; Denmark; Finland; France; Germany; Ireland; Italy; Netherlands; Portugal; Switzerland; United Kingdom, Hong Kong (China); Philippines; Sri Lanka, Viet Nam, Brazil; Chile; Colombia; Costa Rica; Guatemala; Mexico; Nicaragua; Panama; Paraguay; Peru; Uruguay etc.

¹¹ M. Cornish: *Securing pay equity for women’s work – Everyone benefits: The international experience*, Paper for ILO International Seminar on Equal Pay for Work of Equal Value, Santiago, Chile, 25 August 2008, p. 3.

¹² International Labour Conference, 98th Session, 2009, Report VI, Gender equality at the heart of decent work

Annex 3: Copy of the guideline on the steps to take to extend RSBY to domestic workers

Guidelines for Extension of RSBY to Domestic Workers

Definition of Domestic Workers

"Domestic Worker" means, a person who is employed for remuneration whether in cash or kind, in any house hold through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work but does not include - any member of the family of an employer." He/she should have been have completed 18 years of age.

Criteria for Identification of Domestic Workers

The State Government would identify the domestic worker. For identification of domestic workers, any of the following two would be treated as evidence of persons working as domestic workers:

- (a) certificate by registered Resident Welfare Association to the effect that a person is working as a domestic worker in the area;
- (b) employer certificate
- (c) certificate from a registered trade union that the concerned person is working as a domestic worker;
- (d) police verification certificate which certifies that the person is working as a domestic worker.

Extension of Rashtriya Swasthya Bima Yojana (RSBY) to domestic workers

Benefits under the scheme include:

- i. Smart card based cashless health insurance cover of Rs. 30000 per annum for a family of five on family floater basis.
- ii. All pre-existing diseases to be covered.
- iii. Hospitalization expenses, taking care of most of the illnesses, including maternity benefits.
- iv. Transportation cost of Rs. 100/- per visit with an overall limit of Rs. 1,000/- per annum.

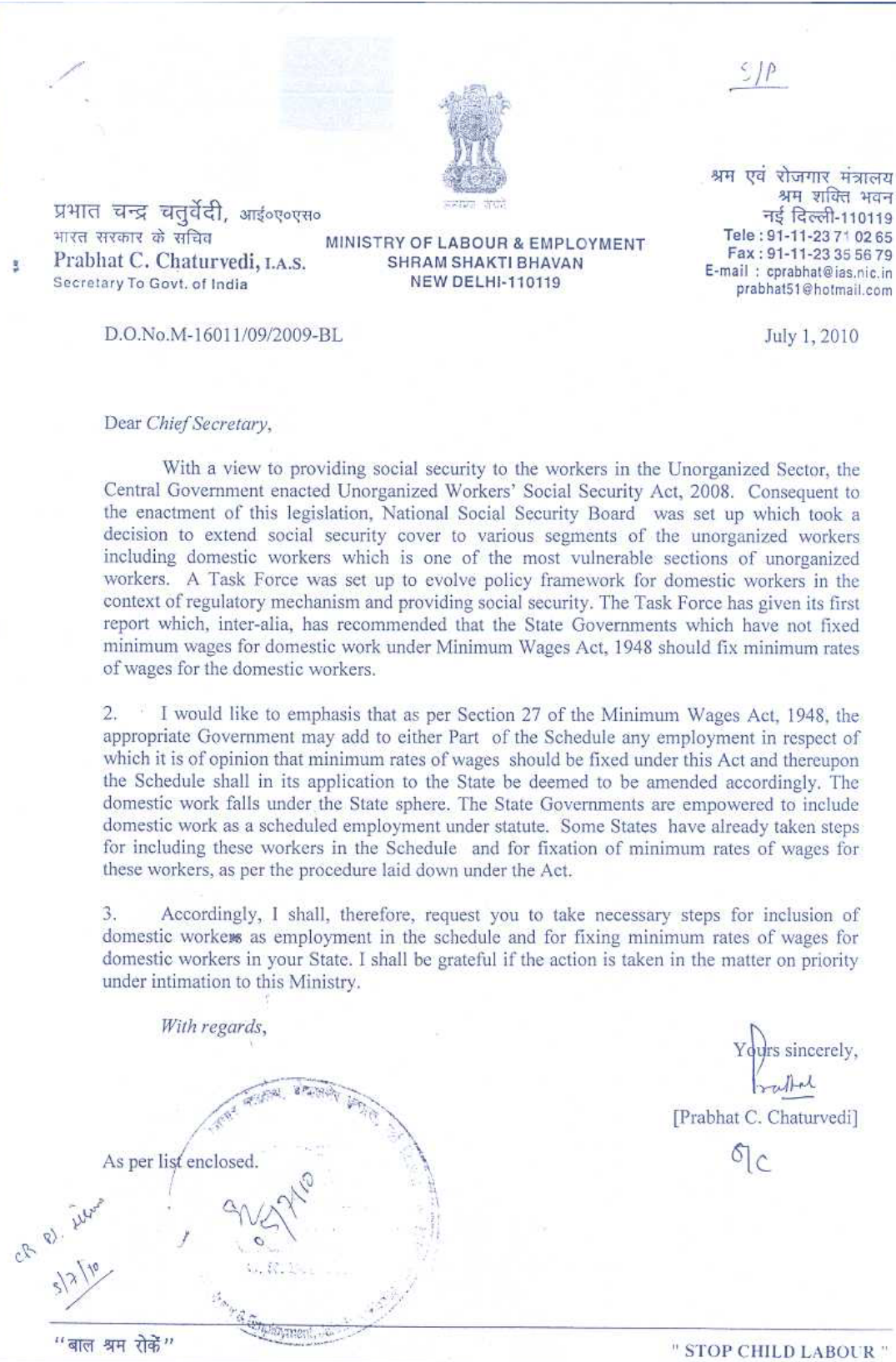
Financial Implications

Under the scheme, contribution of Government of India is 75% of the estimated annual premium of Rs. 750, subject to a maximum of Rs. 565 per family per annum. Additionally, the cost of smart card, estimated at Rs. 60, is borne by the Central Government. Remaining 25% is borne by the State Government. In case of States in the North Eastern Region and Jammu & Kashmir, the Central Government share is 90%. Rs. 30 is being paid by the beneficiary as registration/renewal fee per annum.

Implementation Mechanism

- The State Government to take policy decision to implement the scheme and commit State share of premium under RSBY.
- Identify agencies/organizations for the purpose of registering Domestic workers and prepare soft version of the data of domestic workers in the format under RSBY as per the guidelines prescribed there under (data preparation guidelines at (www.rsby.gov.in)).
- This data, along with the commitment to contribute its share of premium, shall be forwarded to the State Nodal Agency (SNA) implementing RSBY in the State. (Where RSBY is yet to be implemented, the State Government will either nominate an existing independent legal entity or create one for the purpose).
- The procedure to be followed by the SNA for selection of insurance company and the process thereafter would be same as for the ongoing RSBY and the policy period co-terminus with it. (Process Flow document for (Interested Agencies (IA) at www.rsby.gov.in refers)
- The SNA will furnish the proposal for Domestic Workers to the Approval and Monitoring Committee of the Central Government for consideration.

Annex 4: Copy of the letter from the Secretary of Labour, MOLE to the Chief Secretaries on Minimum Wages



Annex 5: Copy of the letter from the Director General Labour Welfare, MOLE to the Principle Secretaries on Placement Agencies

