



## **Fourth item on the agenda: Decent work for domestic workers**

### **Report of the Committee on Domestic Workers**

1. The Committee on Domestic Workers met for its first sitting on 2 June 2010. It was originally composed of 181 members (85 Government members, 32 Employer members and 64 Worker members). To achieve equality of strength, each Government member entitled to vote was allotted 64 votes, each Employer member 170 votes and each Worker member 85 votes. The composition of the Committee was modified six times during the session and the number of votes attributed to each member adjusted accordingly.<sup>1</sup>
2. The Committee elected its Officers as follows:

*Chairperson:* Ms L. Trasmonte (Government member, Philippines) at its first sitting

*Vice-Chairpersons:* Mr K. Rahman (Employer member, Bangladesh) and Ms H. Yacob (Worker member, Singapore) at its first sitting

*Reporter:* Ms P. Herzfeld Olsson (Government member, Sweden) at its 19th sitting

<sup>1</sup> The modifications were as follows:

- (a) 3 June: 215 members (108 Government members with 71 votes each, 36 Employer members with 213 votes each and 71 Worker members with 108 votes each);
- (b) 4 June: 177 members (109 Government members with 546 votes each, 26 Employer members with 2,289 votes each and 42 Worker members with 1,417 votes each);
- (c) 5 June: 152 members (112 Government members with 57 votes each, 21 Employer members with 304 votes each and 19 Worker members with 336 votes each);
- (d) 8 June: 154 members (114 Government members with 33 votes each, 22 Employer members with 117 votes each and 18 Worker members with 209 votes each);
- (e) 9 June: 157 members (114 Government members with 230 votes each, 20 Employer members with 1,311 votes each and 23 Worker members with 1,140 votes each);
- (f) 10 June: 148 members (115 Government members with 2 votes each, 10 Employer members with 23 votes each and 23 Worker members with 10 votes each).

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3. At its sixth and eighth sittings, the Committee appointed a Drafting Committee composed of the following members: Government member: Mr D. Lacroix (Canada), assisted by Ms H. Knorn Mejía-Ricart (Dominican Republic); Employer member: Ms M. Ivanova (France), assisted by Mr P. Mackay (New Zealand); Worker member: Ms H. Yacob (Singapore), assisted by Ms D. Maréchal (France).
  4. The Committee had before it Reports IV(1) and IV(2), entitled *Decent work for domestic workers*, prepared by the Office for a first discussion of the fourth item on the agenda of the Conference: “Decent work for domestic workers (*standard setting, with a view to the possible adoption of a Convention supplemented by a Recommendation*)”. The proposed Conclusions submitted by the Office were contained in Report IV(2), pp. 417–423.
  5. The Committee held 21 sittings.

## Introduction

6. The representative of the Secretary-General, Ms M. Tomei, Director of the ILO Conditions of Work and Employment Programme, welcomed the delegates and noted that the large number of participants reflected the high level of interest of workers, employers, governments and NGOs in the subject.
7. Upon her election, the Chairperson called on all groups to take a proactive role in ensuring that the Committee would fulfil its mandate by consensus, taking the historic opportunity to recognize the social and economic value of domestic workers, and to demonstrate the commitment of governments and the social partners to finding effective ways of extending decent work to that group of workers. She was also aware of the challenges ahead for the Committee and hoped that it would assume responsibility for delivering meaningful outcomes, in a spirit of social dialogue and mutual understanding.

## General discussion

8. The representative of the Secretary-General recalled that in March 2008 the Governing Body had placed the item on the agenda of the International Labour Conference (ILC) with a view to adopting new international labour standards, possibly in the form of a Convention supplemented by a Recommendation. As this was the first year of a double-discussion procedure, the ILC would take a final decision on the adoption of the new instrument(s) in 2011. The Office had prepared a report on law and practice concerning domestic work in ILO member States, namely Report IV(1), *Decent work for domestic workers*. The report and a questionnaire had been sent to governments of ILO member States, which had been invited to send their replies to the Office by 30 August 2009. Many replies from member States, social partners and other stakeholders were summarized in Report IV(2), which represented the basis for the Committee’s discussion. Governments had provided rich information on their national law and practices, which was most useful for the ILO’s work, but not all of which had been reproduced in the report. While the ILO had tried to ensure that the replies were accurately reflected in Report IV(2), regrettably some factually incorrect statements had been included, subsequently rectified in a corrigendum.
9. Report IV(2) also included proposed Conclusions as a basis for the Committee’s discussion, drafted bearing in mind the March 2008 proposal to the Governing Body and the guidance provided by the questionnaire responses. A large majority of the replies indicated support for working towards a Convention supplemented by a Recommendation. If the Conference were to decide to propose – for the 2011 session of the ILC – the

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adoption of international labour standards on domestic work, the Office would, on the basis of the Committee's conclusions, draw up one or more draft instruments to be submitted to governments by mid-August 2010 for their comments. Governments would provide feedback to the ILO, which would prepare the final report containing the text of the draft instruments.

- 10.** New standards on domestic work would present an unprecedented opportunity for the ILO to bring into its mainstream workers who were once deemed to be outside its constituency, and to provide guidance and incentives to member States to facilitate access to decent employment conditions for this historically disadvantaged group, mainly comprising women and girls. Many domestic workers around the world were either excluded from national labour laws or worked under loosely regulated conditions. Where legal protection existed, it was often little known and poorly implemented. Domestic workers remained hidden and faceless, and outside the outreach of regulatory mechanisms, thus vulnerable to abuse. Domestic work was a truly global phenomenon, concerning rich and poor countries alike, in all regions across the world. It was both highly localized – isolated because it was usually performed in individual homes – and characterized by considerable labour migration within and across national borders. Domestic work was an essential part of life. Care work in the household was indispensable for the functioning of the economy. Among the causes for the growth in demand for paid domestic services were the ageing of societies, the growing number of women in paid work, substantial international migration of women in search of work, and inadequate public policies to enable workers to reconcile paid work with family responsibilities. Domestic work absorbed millions of workers, mainly women and girls (although men and boys were also concerned) and their numbers were growing everywhere. It was an important source of employment, with great potential for further job generation and business opportunities, as the expansion of private employment agencies in this sector revealed. Domestic workers also supplied high-value remittances to their countries of origin. Despite its contribution to national economies and societies, domestic work was one of the most precarious, low-paid and unprotected forms of employment. Domestic workers were often undeclared and in the informal economy, because their work was not perceived as “real” or “productive” work and did not generate profits for the households employing them. It was undervalued, because the skills and competencies associated with it were considered to be women’s innate, rather than acquired, capacity. The employee status of domestic workers was invisible because they worked inside the household. New international labour standards therefore meant recognizing that domestic workers deserved both rights and respect. Thus a commitment towards delivering decent work for them acquired greater significance in the current economic downturn. It reflected a genuine concern of the ILO’s tripartite constituency to protect one of the most vulnerable categories of workers, who were already at the margin and least equipped to face the consequences of the economic recession. Delivering decent work for domestic workers required setting a regulatory framework that went beyond the conventional industrial relations approach, and identified and addressed the special context in which domestic work was carried out. It demanded imagination, innovation and a capacity to think “outside the box”. The review of law and practice showed that some countries had been creative in developing well-crafted regulatory mechanisms, suitable enforcement machineries and incentives that could make a difference to the lives of domestic workers. Several governments had accelerated the adoption of policy measures in favour of domestic workers.
- 11.** The proposed Conclusions set out some minimum protections for domestic workers, while taking into account the specificities of domestic work and its heterogeneity. Domestic workers already had rights under some of the existing international labour standards; what was lacking was clear and comprehensive guidance to ensure that they enjoyed decent working conditions in practice. They were workers like any others, and workers like no other. The proposed Conclusions identified and addressed the particular vulnerability faced

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by migrant domestic workers; addressed issues concerning food and accommodation for live-in domestic workers; and offered guidance in limiting the practice of payment in kind. Future standards should allow flexibility to permit some Members, depending on their possibilities and circumstances, to promote progressive implementation of standards on issues such as social security. If new standards on domestic work were eventually adopted, extensive cooperation would be needed from the Office to assist member States striving to promote decent work for domestic workers. Governments, workers and employers were all concerned in one way or another, as all were employers of domestic workers. Tripartite engagement throughout the discussion was crucial for the credibility and meaningfulness of possible new standards on the subject. Delivering decent work for domestic workers would benefit not only those workers, but also millions of households who counted on them in their daily lives.

- 12.** The Employer Vice-Chairperson hoped that his group's cooperation in the Committee's work would result in conclusions that helped to improve conditions for domestic workers. His group supported the ILO's objective of decent work for domestic workers but regulation might not always be the key to mitigating poor working conditions and abuse faced by domestic workers. Regulatory measures were not necessarily applicable in all countries, and could be counterproductive if they ignored ground-level realities of surplus-labour countries. The regulation of domestic work was an unusual area of involvement for the Employers' group, and would not directly affect the private sector companies that were its members. There were nonetheless risks involved in developing a standard for domestic work, and the creation of inappropriate legislation could have potentially deleterious economic effects. The Employers' group felt that their engagement in the creation of a standard was essential, and they would have preferred a deeper discussion on providing decent work to domestic workers before moving to the discussion of a standard. In their view, the term "domestic work" was unique in its breadth, scope and characteristics, which rendered long-standing approaches to regulating work inapplicable. The definition of domestic work was a key consideration, given that a very broad definition could extend to the commercial sector, which might already be covered by existing regulations. The type of work that fell under the definition should be considered carefully, as well as whether the term "employer" should include intermediaries. Very different opinions existed on the issue, as evidenced by member States' replies to the ILO questionnaire. The speaker reiterated the importance of flexibility in any international instrument, and stressed that the Employers' group would welcome a definition of the term "employers" in the instrument. As a consequence of the differences across countries, it was imperative that any standard for domestic work be flexible enough to take this diversity into account, or – if it was an inflexible standard – focused narrowly on very basic issues. The speaker warned delegates of the risk that too much regulation might reduce employment in this sector, given that people employed domestic workers for the convenience that they brought. Employers of domestic workers often lacked the legal expertise to comply with rigid rules set by international labour standards. Maintaining employment was of utmost importance, especially in the aftermath of the global financial crisis, and the risk of harming employment should not be taken.
- 13.** Besides providing employment, domestic work also accounted for a sizeable proportion of foreign remittances, particularly in developing countries. Too much regulation of migrant domestic work could severely hurt these inflows of foreign exchange. Higher wage claims by domestic workers could also lead to higher wage costs in the wider economy. The nature of domestic work made it very difficult to enforce regulations. While domestic workers were entitled to personal security and had the right to be paid, it could be difficult for governments to ensure those rights. Discrimination faced by domestic workers, in particular migrants, was a pressing issue. However, some discrimination might at times be considered acceptable, for example where families preferred specific characteristics in a domestic worker who provided care for their children. Similar exceptions might apply in

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the case of the minimum age and child labour regulations. Such exceptions should be borne in mind when creating any minimum age regulations for domestic work. Different age thresholds might apply for migrant domestic workers, since they were often at greater risk of abuse or exploitation. The speaker recalled that domestic workers were often paid in kind as well as in cash. The quality and nature of accommodation for live-in domestic workers was very important. The issue of salary deductions for housing and food was complex, as was demonstrated by the diversity of the replies from the governments, some of whom suggested such deductions should be prohibited, while others considered they should be permitted.

14. Domestic workers were already covered by national and international laws in many fields, notably concerning fundamental principles and rights at work. The ILO had taken the position that domestic workers were included in the coverage of a Convention or Recommendation unless the instrument specifically excluded them. Countries should ensure that they extended the coverage of ratified instruments to domestic workers in practice. However, sometimes the exclusion of domestic workers could be considered appropriate or practical. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applied to all workers and employers, without distinction whatsoever, and one should try to ensure that domestic workers and their employers were indeed covered. Nonetheless, in some countries domestic workers did not fulfil the legal requirements for their representation by trade unions in collective bargaining.
15. The capacity of governments to implement regulations concerning domestic work varied widely. Several Conventions allowed the exclusion of domestic workers and many countries had declared such exclusions when ratifying an instrument. Governments had already expressed reservations about the implementation of regulation of domestic workers, given that they could not monitor families and households in the same way as companies. Entering private homes to inspect living and working conditions was difficult, given the conflict between respecting the right to privacy of householders and the right to safety and protection of domestic workers. In this regard, the speaker highlighted the role of governments. The Employers' group believed that a Convention should be reserved for unchanging principles on which broad tripartite consensus existed, and would be unsuitable for domestic work; the differences discussed earlier were too great for an overarching, unbending standard. A confused and inflexible text would make reporting on a Convention's implementation difficult for most governments. A Convention would have to be very general to take into account the differences, and would thus lack effectiveness. The Employers' group supported a Recommendation; it would be more appropriate since it would provide flexibility to cover such a diverse range of activities and enable member States to implement existing and new laws for domestic workers, as appropriate. It would also help member States extend existing national legislation to domestic workers where appropriate and viable, thus providing better protection for domestic workers against abuses than a non-ratified Convention.
16. The Worker Vice-Chairperson emphasized that the Committee had an important and historic mission to make "decent work for all" not just a slogan but a truly inclusive agenda, by ensuring that decent work applied to all domestic workers. Domestic workers had remained excluded from protection against abuse under the labour law in many countries, and also from many international treaties, including ILO Conventions. Specific ILO Conventions that permitted the exclusion of domestic workers from the scope of their provisions included the Minimum Age Convention, 1973 (No. 138), the Private Employment Agencies Convention, 1997 (No. 181), the Termination of Employment Convention, 1982 (No. 158), the Protection of Wages Convention, 1949 (No. 95), and the Social Security (Minimum Standards) Convention, 1952 (No. 102). Quoting from document GB.300/2/2, 300th Session (November 2007) of the Governing Body, she

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highlighted the unacceptable and unprotected situation endured by millions of domestic workers. Although domestic work took many forms and circumstances, domestic workers shared three features: they worked in private homes; were vulnerable to abuses; and lacked the legal protection enjoyed by other categories of workers. Domestic workers, who represented an important and growing segment of the labour force, provided society with many benefits: they freed up others for economic, educational and social activities; provided care to the sick, elderly and the young; supported families through their earnings; and contributed a significant portion of GDP through remittances. Domestic workers were “oil for the wheels” of the economy. Ensuring decent work for domestic workers would yield staggering multiplier effects.

- 17.** The Workers’ group supported a Convention on decent work for domestic workers, supplemented by a Recommendation. There was a strong case for a Convention because the isolation of domestic work made it difficult for trade unions to reach out and organize domestic workers to improve their working conditions. It could be used by governments as a reference for improving the legal environment that would enable domestic workers to have the full range of protection and rights to decent work. The speaker was pleased to note that the majority of governments responding to the ILO questionnaire had supported a binding instrument, and that some had already taken initiatives to improve the situation of domestic workers.
- 18.** The Worker Vice-Chairperson countered several points that had been raised against the formulation of a Convention. First, a binding instrument would not cause rigidity in the labour market; rather, it would promote a more robust and efficient labour market because everyone would be competing fairly within the same set of transparent rules and minimum standards. Contrary to the argument about labour market rigidity, governments had set standards for other workers. Secondly, a binding instrument would not lead to the loss of jobs for domestic workers. With improvements in labour standards, the world had seen growth, job creation and poverty reduction. Thirdly, the notion that different social, economic and cultural conditions across member States made standard setting difficult was heard every time the ILO considered a new standard, but member States had affirmed that ILO standards were universal and applicable to all countries when they adopted the ILO Declaration on Social Justice for a Fair Globalization. She recognized that while some countries would be able to apply new standards immediately, others might need ILO technical assistance. A standard should be seen as a goal that governments should aspire to reach. There was a need for balance between an instrument that was overly prescriptive and one that contained only broad principles. To do justice to this forgotten category of workers, minimum protections were to be set. Fourthly, the argument that a Convention would be difficult to apply because domestic work was performed in households was no reason to deny domestic workers the protection they needed. Finally, although domestic workers were already covered by the ILO Declaration on Fundamental Principles and Rights at Work, specific standards covered other categories of workers who were similarly covered under the Declaration. A specific Convention on domestic workers would facilitate the exercise of their rights under the Declaration, and address a “historic oversight”.
- 19.** The Government member of Spain, speaking on behalf of Government members of Member States of the European Union (EU),<sup>2</sup> candidate countries,<sup>3</sup> potential candidate

<sup>2</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

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countries,<sup>4</sup> as well as Armenia, Republic of Moldova and Ukraine, stated that, in view of the decent work challenges posed by domestic work and the high number of domestic workers in all parts of the world, the EU welcomed the discussion, which should aim, among other things, at promoting the full application of existing ILO standards and tailor-made standards taking into account the special working conditions of domestic workers. While the EU recognized the valuable work performed by domestic workers and that domestic working arrangements often worked well, no forms of abuse could be tolerated. Noting that domestic work was carried out in a private setting, he noted that it was particularly important to protect workers' rights to personal and family privacy. Their isolation could hamper their capacity to organize themselves and to bargain collectively, and contributed to the low visibility of domestic work. That, together with the fact that domestic workers were mostly women and very often migrant workers, meant that they had a lower level of protection than other workers. Any instrument should address the issues of child labour and forced labour, as well as the right to education, and should highlight the importance of domestic work in the economy and in society as a whole, as it contributed to the creation of wealth by allowing family members to work and to balance their personal, family and professional life.

20. EU Member States were considering the possibility of a Convention supplemented by a Recommendation. Consensus and subsequent implementation should be a priority and a general and flexible instrument was therefore preferable. Recognizing that the discussions would not be easy, given the regulatory differences in different member States and the particularities of domestic work as compared to workers in a commercial or business environment, he outlined some of the issues to be discussed by the Committee, and stressed the importance of the task before it.
21. The Government member of Australia, speaking on behalf of Government members of the Asia–Pacific group (ASPAG),<sup>5</sup> remarked that the issue of domestic work was very significant to the ASPAG countries, which comprised both prime source countries and key destination countries for migrant domestic workers and had considerable local domestic workforces. Despite the challenges before the Committee, the group believed that it was critical to focus on the development of a clear, robust and meaningful instrument capable of being implemented under all national conditions, with clear and comprehensive guidance. In that respect, the efforts undertaken in some Asia–Pacific region countries to address the issue of domestic workers in their respective policies and legislation through tripartite consultations could serve as useful models and experience.
22. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of Government members of the Group of Latin American and Caribbean States (GRULAC),<sup>6</sup>

<sup>3</sup> Croatia and The former Yugoslav Republic of Macedonia (part of the Stabilisation and Association Process); Turkey.

<sup>4</sup> Albania, Bosnia and Herzegovina, Montenegro, Serbia.

<sup>5</sup> Afghanistan, Australia, Bahrain, Bangladesh, Brunei Darussalam, Cambodia, China, Fiji, India, Indonesia, Islamic Republic of Iran, Iraq, Japan, Jordan, Kiribati, Republic of Korea, Kuwait, Lao People's Democratic Republic, Lebanon, Malaysia, Maldives, Marshall Islands, Mongolia, Myanmar, Nepal, New Zealand, Oman, Pakistan, Papua New Guinea, Philippines, Qatar, Samoa, Saudi Arabia, Singapore, Solomon Islands, Sri Lanka, Syrian Arab Republic, Thailand, Timor-Leste, Tuvalu, United Arab Emirates, Vanuatu, Viet Nam, Yemen.

<sup>6</sup> Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador,

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recalled that, at the 301st Session (March 2008) of the Governing Body, her group had been in favour of including the issue of decent work for domestic workers in the agenda of the 2010 session of the ILC and of holding discussions with a view to the possible adoption of a Convention supplemented by a Recommendation. GRULAC recognized the need to address this issue, given that the specificities of domestic work made it necessary to improve the conditions and the protection of domestic workers, who were vulnerable to exploitation and violation of their human and labour rights, despite the important role these workers played in society and in the economy.

- 23.** The Government member of Uruguay supported the GRULAC statement and, based on his country's experience with the protection of domestic workers, stressed that legislation to protect these workers did not have a negative impact on employment rates. The review and reform of labour law and workers' rights had started in 2006, but it had not had a negative impact on employment rates for workers, and employment of domestic workers had remained stable. He underlined the importance of social dialogue and noted that fundamental principles and rights had to be taken into account, in particular freedom of association and collective bargaining. Collective agreements for domestic workers had not affected employment rates and the informal economy had not been ignored. In fact, 50 per cent of the domestic workers reached had previously been part of the informal economy. That was a practical example of legislative change on workers' rights. He expressed support for the adoption of a Convention supplemented by a Recommendation.
- 24.** The Government member of Switzerland expressed support for the adoption of an international instrument for the protection of the rights of domestic workers. It was very important to support this group of workers whose protection needed to be strengthened. This was particularly the case for migrant domestic workers, since they were often unaware of legislation in the country of destination. She stressed that the Committee should focus on substance rather than on the shape of a new international instrument, and recommended that the Conference, at the end of the first discussion, by means of the resolution, include the item "Decent work for domestic workers" in the agenda of the 100th Session of the ILC in 2011, with a view to adopting a Convention and/or a Recommendation.
- 25.** The Government member of China stated that his country's domestic work industry had grown substantially in recent years. The protection of domestic workers was of great importance to the Chinese Government, and measures had been taken to protect their rights. Taking into account the differences between countries, he expressed a preference for the adoption of a Recommendation, although he would support the adoption of a Convention should this be feasible.
- 26.** The Government member of Singapore welcomed the opportunity to exchange experiences and identify good practices and innovative solutions. Domestic workers, both local and foreign, performed essential household services and should be entitled to decent work. At the same time, domestic work differed from other types of paid work as employers did not hire domestic workers to increase their business profits, but rather to help in the household. Any new instrument should be designed to facilitate wide acceptance and application by member States. It should not be overly prescriptive or impractical to enforce, and should reflect the different national circumstances. Singapore would prefer to start with a promotional approach, with an instrument in the form of a Recommendation. The instrument should acknowledge the unique nature of domestic work, recognize the

Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Bolivarian Republic of Venezuela.

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sovereignty of each country, and highlight the shared responsibility of both labour-sending and labour-receiving countries. A holistic and innovative approach, including education and outreach, would be preferable to a legislative one.

27. The Government member of Canada, noting that domestic workers were particularly vulnerable to exploitation and human rights abuses, expressed his Government's support for the initiative to increase protection for domestic workers. Taking into account the complex issues and questions involved, he considered that the development of a Recommendation was the most practical approach to improve working and living conditions of domestic workers around the globe. Whatever form the instrument might take, it should provide appropriate protection for domestic workers, and offer flexibility in implementation. If the aim was to achieve a practical instrument, the Committee should avoid overly prescriptive provisions, which would pose an obstacle to widespread ratification and implementation. To reflect the fact that domestic workers were predominantly women and girls, any instrument should use gender-inclusive language.
28. The Government member of South Africa, speaking on behalf of the Government members of the Africa group,<sup>7</sup> welcomed the inclusion of the issue in the agenda of the Conference, which was indisputably a token of the Organization's commitment to turn the Decent Work Agenda into a reality in all employment sectors and affirmed one of its core objectives, namely respect for human dignity at work. Recalling that, when the African countries had rallied together for South Africa to host the Football World Cup, they had claimed that "the time is now", he noted that Africa believed that a threshold for change had been reached for domestic workers and it was essential not to falter. Faced with high levels of unemployment, a significant proportion of the workforce in Africa was forced into national or international migrant domestic work, and the regulation of that work posed a real challenge. Despite the importance of domestic work for families and economies, the sector was still hidden and countless challenges still had to be overcome. Noting that the increasing incidence of child labour and human trafficking, especially for sub-Saharan Africa, had to some degree found its roots in domestic work, the proposed instrument should pay particular attention to that phenomenon. Furthermore, care should be taken to ensure that the instrument was ratifiable by all member States, bearing in mind the divergences between the regulatory regimes for domestic workers in different countries. It was also important to consider extending the oversight mechanisms of the labour inspectorate to domestic workers. The Africa group therefore supported a Convention supplemented by a Recommendation.
29. The Government member of the Libyan Arab Jamahiriya supported the Africa group statement. He stressed the importance of addressing the challenges faced by a category of workers that for years had worked without any welfare protection, had been victims of abuse and discrimination, and had been deprived of their labour rights. If the current situation were to persist, domestic workers would start to seek alternative work, which would have a detrimental effect on those with special needs who received care in their home. In January 2010, a law had been promulgated in his country containing specific provisions to protect domestic workers, including with regard to recruitment through employment agencies, providing that domestic workers had to sign a contract, were

<sup>7</sup> Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Republic, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, United Republic of Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

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entitled to medical insurance and holidays and were allowed to join a trade union. The law also provided for the regulation of working hours and regular inspections, and covered most of the aspects addressed in the proposed Conclusions.

- 30.** The Government member of Kenya expressed support for the Africa group statement and recognized the importance of an instrument to promote and protect the rights of domestic workers, who were particularly vulnerable to exploitation and abuse. Domestic workers were generally not well remunerated, did not benefit from social protection schemes and were intimidated and victimized when seeking legal redress. Kenya was a labour-surplus country with a less skilled workforce and high rates of unemployment. The outward migration of domestic workers to labour-deficit countries posed serious challenges, including unreliable recruitment agencies; abuse and harassment by employers; confiscation of travel and identity documents; and the lack of fair and effective dispute settlement procedures in host countries. The speaker also stressed the special need to protect the rights of children engaged in domestic work. Her Government supported a Convention supplemented by a Recommendation that took cognizance of the Declaration on Fundamental Principles and Rights at Work, 1998, and was flexible enough to take account of national needs.
- 31.** The Government member of Brazil reiterated his Government's undivided commitment to the promotion of social justice for domestic workers. There were 6.6 million domestic workers in Brazil, the great majority of whom were black women working in the informal economy. His Government was categorically in favour of a Convention supplemented by a Recommendation, and the speaker stressed that domestic workers were at present often excluded from the application of labour standards. He gave an account on progress made in this field in Brazil, starting with the extension of basic guarantees to domestic workers in 1972. The 1988 Constitution of Brazil extended to domestic workers, among other provisions, entitlement to a minimum wage, to paid weekly rest and maternity and paternity leave. More recent legislation gave further benefits to domestic workers, including paid leave on national and religious holidays, 30 days of paid annual leave and five months of maternity leave. It also prohibited the deduction of in-kind costs for food and for accommodation from the salary, apart from in narrowly defined circumstances. In his country, this progress had been made through extensive social dialogue, including the active engagement of the National Federation of Domestic Workers (FENATRAD).
- 32.** The Government member of the United States stressed the conviction of his delegation that domestic workers were entitled to decent work, citing the vision of the US Secretary of Labor to make "good jobs for everyone" a reality. Domestic workers performed important work in households, making it possible for others to conduct business, but they often faced substandard wages and working conditions and did not receive the benefits that most other employees enjoyed under law or custom. They often did not qualify for social benefits because employers failed to comply with reporting requirements, and usually did not have secured retirement benefits. US federal law applied to domestic employees regardless of whether the worker was employed directly by the household, or through a third party; and regardless of their migration status, thus also covering undocumented migrant workers. His Government fully supported the adoption of a Convention supplemented by a Recommendation; it was in favour of establishing basic minimum standards that improved working conditions and formalized the working relationship of domestic workers; and it supported provisions that addressed the need for protection against abuse and exploitation, in particular of undocumented migrant workers and children. Such a proposed Convention might be framed in the context of a call for member States to adopt, implement and periodically review a national policy on domestic work.

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- 33.** The Government member of the United Kingdom, speaking on behalf of the Government members of industrialized market economy countries (IMEC),<sup>8</sup> considered that domestic workers were more prone to abuse than other workers because of the specific nature of the work they performed. No form of abuse should be tolerated. She expressed the support of the IMEC group for a robust instrument that would ensure adequate protection for domestic workers. Because of differences in national circumstances and the fact that domestic work was performed in private households, flexibility would be necessary to ensure that the instrument would be broadly implemented and yield positive results for the workers involved.
- 34.** The Government member of Norway supported the opening statement of the Government member of Spain, speaking on behalf of EU Member States and a number of other European countries, and also expressed her Government's support for a Convention supplemented by a Recommendation. The purpose of the instruments should be to extend legal protection to groups who did not already have the necessary protection. As regards the content of a new labour standard, the starting point should be that domestic workers deserved the same protection as other workers. Enforcement was important and Norway was prepared to step up efforts to ensure compliance. The fact that the workplace was also a private home called for adaptations, leaving room for member States to shape compliance arrangements with due regard for privacy and national conditions. Any instrument should provide a minimum level of protection as regarded working conditions, and guarantee all the ILO's fundamental principles and rights at work. Special regulations on live-in arrangements would need to be considered. While some of the proposed Conclusions for a Recommendation did not feature in its legislation, Norway would not oppose such regulations if they would be useful to other countries.
- 35.** The Government member of Kuwait, speaking on behalf of the Gulf Cooperation Council (GCC) countries, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates, and Yemen, highlighted the fact that decent work for domestic workers had acquired major importance in the Gulf region, where most domestic workers were migrant and temporary workers. The fight against human trafficking and forced labour was of major importance. Examples of steps taken by countries in the region included labour code provisions or special legislation. He emphasized that GCC countries were committed to promoting decent work for domestic workers and agreed with most of the provisions in the proposed instrument. The new instrument should take into account the specificity of domestic work, different socio-cultural conditions across countries, and provide for the regulation of recruitment and placement agencies in countries of origin which had a role in raising the awareness of migrant domestic workers to their rights and obligations as well as to the socio-cultural conditions in receiving countries.
- 36.** The Government member of India stated that there were more than 6.4 million domestic workers in his country and recognized the vulnerability of domestic workers to abuse, sexual exploitation and human trafficking. However, there was no single solution for all countries; each country would have to address the issues in their own unique context. Underscoring his country's commitment to protecting domestic workers, he pointed out that a number of India's State Governments had taken steps to set minimum wages for domestic workers and extend social security to the unorganized sector. Since many countries had no laws regulating and safeguarding the working conditions of domestic

<sup>8</sup> Australia, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

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workers, a Convention might be difficult to ratify and would not have the desired impact. A Recommendation would, however, enable member States to develop feasible and practical standards and policies, and the ILO could assist member States in developing strategies.

- 37.** The Secretary-General wished to share two considerations with delegates. First, he pointed out that the enormous interest shown in participating in the Committee on Domestic Workers and the media coverage around the world reflected the significance and importance of its work. The Committee was dealing with a complex issue that had never been addressed before and delegates had in their hands the potential to prepare a historic instrument. He encouraged delegates to reach a common understanding on an instrument that would generate hope and benefit a huge number of people. Secondly, the Decent Work Agenda was all about the dignity of work – including for domestic workers, who were often forgotten. Work was not just a cost of production but – for society and people – it was a source of personal dignity and peace in the community. It was the ILO’s role to identify these difficult issues. Protecting domestic workers would require a robust and strong response. He encouraged the Committee to go the extra mile and to produce a result of which everyone could be proud.
- 38.** The Government member of Algeria noted that, despite efforts by governments to promote access to decent work to all workers following the global financial crisis, many people had no choice but to engage in domestic work. Policies and strategies were needed to improve their conditions of work and to ensure that they enjoyed the same rights as other workers, especially with regard to fundamental labour rights and the right to social protection. She strongly supported the adoption of an international instrument to protect such workers. Her Government had already put legislation in place to provide domestic workers with maternity leave, medical insurance and other rights.
- 39.** The Government member of Argentina supported the GRULAC statement and stated that fundamental rights for domestic workers needed to be addressed urgently as they were a vulnerable group, largely composed of women. Her Government had initiated a profound reform of the legislation protecting domestic workers. A new bill currently in Parliament included the recognition of the right to freedom of association and collective bargaining, other fundamental principles and rights at work, maternity leave, health insurance, rest periods and the right to a decent wage. She fully supported the adoption of a Convention supplemented by a Recommendation.
- 40.** The Government member of Morocco supported the Africa group statement and favoured the adoption of a Convention supplemented by a Recommendation. Any instruments should define the scope of domestic work and fix a minimum “social floor” of rights and protection, including on working time, weekly rest, annual leave and a fair wage. Instruments should also identify hazardous occupations for children aged between 15 and 18 and provide elements related to appropriate control mechanisms and sanctions. He mentioned that Morocco had also drafted a legislative bill aimed to improve the working conditions of domestic workers by defining, among others, the tasks to be performed under a domestic work relationship; the terms and conditions of employment, including wages; and possible penalties.
- 41.** The Government member of the Islamic Republic of Iran welcomed the opportunity to develop synergies between social partners and governments with a view to achieving comprehensive mechanisms on domestic workers. These collaborative efforts should take into account the social and economic situation of developing countries, where domestic workers were often not adequately organized and represented. To ensure that domestic workers benefited from decent work, a number of conditions needed to be taken into account, including the reduced efficiency of normal monitoring procedures given the

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special working conditions, as well as the need to ensure separate working and living environments. Despite the comprehensive legislation on domestic work in her country, there remained many challenges and difficulties in ensuring decent work and principles and rights at work for domestic workers. She therefore strongly supported the development of an instrument in order to ensure decent work for domestic workers.

- 42.** The Government member of the Philippines observed that her country had a significant local domestic workforce, and also provided migrant workers to households in more than 50 countries. Her Government believed that an effective way to protect those workers from abuse and exploitation was to adopt an international Convention containing binding provisions, which would serve as a framework for member States. After outlining the challenges faced by domestic workers – which included being vulnerable to inhumane treatment, verbal, physical and sexual abuse and trafficking for forced labour – she described Philippine legislation to protect both local and overseas domestic workers, noting for example that employers were required to provide an employment contract, pay a minimum wage and ensure suitable and sanitary living quarters. Policy and programme reforms had been implemented for both types of workers, including skills development measures around core competencies and, in the case of migrant workers, country-specific language training. A minimum age of 23 had been set for female migrant domestic workers, to reduce their vulnerability. While there were still many challenges to overcome, her Government continued to envision decent work for domestic workers.
- 43.** The Government member of Indonesia, noting that the global financial crisis had highlighted some of the deep inequalities between the rich and the poor, remarked that providing jobs and a decent quality of life for all had become an increasingly pressing and challenging priority for governments worldwide. His Government was committed to fulfilling its constitutional obligation to ensure that every citizen had the right to work and to earn a humane livelihood, and was examining all the ways and means to improve the current situation, especially for domestic workers, who were a key priority. It was fully aware of the need to reform the current legislation on the issue and to create greater awareness among both employers and workers of the need to safeguard the rights of domestic workers. He cited several examples of efforts by the Government to facilitate a shift in social attitudes but, despite the challenges it faced, Indonesia was steadfast in its commitment to make meaningful progress in domestic worker protection. Noting that efforts to formulate an international instrument in that regard were a welcome development, he urged the Committee to focus on the substance of the instrument rather than on its format.
- 44.** The Government member of Australia welcomed the historic opportunity to extend the protection of international labour standards to one of the largest and most vulnerable groups of workers across the world. One of the central contributing factors to the exploitation of domestic workers was that they were excluded from international and often domestic labour regulations and operated in the invisible informal economy. The issue of labour standards for domestic work cut across many issues of concern, as the workers involved were vulnerable to numerous and interrelated forms of discrimination related to gender, race and migrant status as well as age. Accordingly, her Government strongly supported the adoption of a Convention supplemented by a Recommendation. By virtue of their predominance in the informal economy and their unique employment in private homes, domestic workers were a special category of worker who required a separate international instrument. Her Government supported many of the points contained in the proposed Conclusions and would advocate a number of amendments to the structure and focus of the document, in order to enhance its effectiveness and application. It was aware that the discussion would be challenging and that there was a wide diversity of views, reflecting, among other things, national circumstances. Instead of making the discussion a

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difficult and divisive process, Australia believed that those differences highlighted the importance of international collective action.

45. The Government member of Japan remarked that, as such large numbers of workers around the world were engaged in domestic work, it was very important to ensure that they enjoyed the various aspects of decent work. Because domestic work was performed in and for a household, it had a unique nature compared to other types of employment. That aspect should be taken into account throughout the discussions. The new instrument should encourage as many countries as possible to expand the protection of domestic workers and should contain provisions that were flexible enough to allow countries to adopt standards in accordance with their national conditions. His Government suggested that the Committee should discuss the form of the instrument only after the debate on all other points in the proposed Conclusions had taken place. It was important first to discuss the definition of domestic work and the scope of the instrument.
46. The Government member of Namibia supported the statement made on behalf of the Africa group and, noting the diversity in national circumstances and legislation, hoped that it would be possible to benefit from the experiences of other countries. In Namibia, domestic workers made up approximately 10 per cent of the workforce, joining the sector from the ranks of the unemployed and the unskilled. Prior to the country's independence, those workers had been excluded from labour law, but since 1992 provisions had been in place to ensure that they enjoyed the same rights, protection and basic conditions of employment as other employees, including the right to social security. While those provisions had brought about some improvements, it was not clear to what extent they were enforced. Specific measures were therefore needed to achieve the goal of decent work for domestic workers. Unlike in some other countries, private employment agencies were a source of great exploitation in Namibia and were very difficult to regulate; she therefore favoured placing the onus for compliance on the real employers rather than the labour brokers, who interacted with the domestic workers on a daily basis. That did not of course preclude the possibility of regulating such brokers, but it was important to take into account different national situations.
47. The Government member of the Bolivarian Republic of Venezuela highlighted the importance her country attached to developing labour standards to protect domestic workers, noting that although a significant number of people were engaged in domestic work, in most countries they lacked protection and did not enjoy fundamental labour rights or decent working conditions. It was therefore crucial to develop an instrument containing minimum standards to protect those workers and ensure their full enjoyment of labour rights. After outlining the provisions of national legislation that provided protection for domestic workers, many of which reflected proposals that had been made in the report, she confirmed her Government's support for the Committee's work and the formulation of an instrument that would provide a framework to protect domestic workers from exploitation, discrimination and marginalization, and to guarantee them social protection, decent working conditions and the same labour rights as all other workers.
48. The Government member of New Zealand recognized the importance that decent work for domestic workers had for Worker members and Employer members and many ILO member States. Domestic work took place largely behind closed doors, and many domestic workers remained overworked, underpaid and unprotected. While New Zealand was not a significant sending or destination country for domestic workers, his Government recognized that migrant domestic workers were particularly vulnerable to poor working conditions and exploitation. His delegation intended to participate actively in the Committee's discussion, and he emphasized the need for: practical and effective means to resolve the key issues; flexibility in regarding different situations; a clear focus in terms of the scope of the proposed Conclusions; promoting observance by focusing on realistic

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measures; and generating an outcome that could be widely ratified or adopted by member States. The Committee had to look at the root causes of and barriers to the application of present minimum standards to domestic workers, and find ways to overcome problems in the application of current labour standards.

- 49.** The Government member of Tunisia concurred with other delegations in stressing the importance of the Committee's topic. She drew attention to recent changes in the profession of domestic workers, namely that the demand for care assistants for the elderly and infirm had grown in line with the increase in general life expectancy. It was important to distinguish between skilled care assistants who had received specific training, and other domestic workers who often had no specific qualifications and lacked alternatives to domestic work. Under its global social policy, Tunisia had extended social security coverage to domestic workers and established a minimum age for domestic work of 16 years, in line with the Minimum Age Convention, 1973 (No. 138). Her Government agreed with the Africa group, in favouring a Convention supplemented by a Recommendation.
- 50.** The Government member of Zimbabwe aligned himself with the Africa group statement and reflected on the importance of basic human rights and the world of work, deploring serious violations of the right to freedom of association and the continued existence of human trafficking. Before his country's independence, the Masters and Servants Act in what was then Rhodesia denied domestic workers basic rights, including the right to form trade unions; their conditions of work were dictated by the employer. This law was repealed after independence and domestic workers currently enjoyed the same rights as other workers, and had a registered trade union that served their interests. Against this background, the speaker supported an international instrument in the form of a Convention supplemented by a Recommendation to set minimum standards for domestic work worldwide.
- 51.** The Government member of France supported the EU statement and affirmed that the question of domestic workers concerned all countries in the North and the South. Despite the heterogeneity of situations, it was essential to protect the rights of a particularly vulnerable category of workers. In the first instance, the fundamental rights of domestic workers had to be respected, and child labour and forced labour confronted. Secondly, while the specificities of domestic work could justify some adaptations, it was necessary to: guarantee decent working conditions for domestic workers; extend social protection; improve health and safety; provide the right to paid leave and minimum wages; and guarantee protection against abuse and harassment. Migrant domestic workers were in need of special protection, given their particular vulnerability. France was interested in promoting the application of a new instrument by developing technical assistance activities with the ILO in support of receiving countries, for instance to address forced labour or child labour.
- 52.** The Government member of Bangladesh believed that the Committee was timely, as domestic workers were currently an important issue of debate in his country. The Labour Force Survey 2005–06 had shown that Bangladesh had 340,000 domestic workers, and there was a gradual rise in the demand for migrant domestic workers. Given occasional reports of their abuse and mistreatment, the Government was considering direct management and supervision of their employment. In consultation with the social partners, his Government was also involved in preparing comprehensive policy guidance for the protection of domestic workers that would eventually lead to appropriate provisions in national legislation. In this context, ILO technical assistance would be particularly useful. With reference to Reports IV(1) and (2), he suggested that the specific nature of domestic work should not be used as a pretext for excluding domestic workers from existing international labour standards, placing emphasis on their inherent flexibility. The forced

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labour issue in relation to migrant domestic workers should be interpreted in a manner consistent with existing international instruments. He noted that a reference to Bangladesh in Chapter II of Report IV(1) was based on a misrepresentation of a local colloquial expression. He hoped for a pragmatic and reasonable instrument that matched the collective aspirations of the Committee's members.

- 53.** The Government member of the United Republic of Tanzania aligned himself with the Africa group statement and drew attention to the situation faced by many domestic workers around the world. They often enjoyed minimal or no protection in terms of decent work, employment and income security. His Government had enacted legislation to address this and to provide core labour rights and basic employment standards to all employees, including domestic workers. This included freedom of association and the right to collective bargaining; a sectoral wage board had been established to make recommendations on minimum wages. Sectoral trade unions served the interests of domestic workers both on his country's mainland and in Zanzibar. Despite these efforts, remaining challenges included: capacity building for the social partners; strengthening the labour administration; effectiveness of trade unions and of social dialogue; the informal economy; and social security coverage. He called on the Office to continue supporting constituents to address those issues.
- 54.** The Government member of Ethiopia expressed his delegation's strong conviction that it was the duty of any ILO member State to promote decent work, whatever the type of employment. He concurred with other delegations that existing ILO instruments and domestic labour laws might not suffice to protect the rights of domestic workers. There was a need for a workable instrument to effectively safeguard the rights and working conditions of domestic workers, who were often victims of exploitation and abuse, and whose voice was not heard. Given differences in socio-cultural settings between countries, the implementation of the standard would be difficult. However, these challenges should not stand in the way of developing an appropriate instrument, which was a matter of necessity. He stressed the importance of ILO technical assistance in this regard, and supported the Africa group statement in favour of a Convention and Recommendation.
- 55.** The Government member of Sri Lanka described the isolated and vulnerable nature of domestic workers' employment relationship, substandard working conditions and exclusion from laws and social security. He argued that the ILO's commitment to decent work meant that the Organization should not exclude domestic workers from Decent Work Country Programmes. Domestic workers should enjoy the same right to decent work as other workers. Sri Lanka therefore supported the adoption of a Convention, supplemented by a Recommendation.
- 56.** The Government member of Maldives stated that her country – where some 14 per cent of migrant workers were domestic workers – did not regard domestic workers as being different to other workers. They enjoyed equal rights and legal protection. The main challenge was compliance with the law and monitoring it. Part of the problem was that most employers did not consider domestic workers as workers; that called for a change in mindset, information campaigns and awareness raising on domestic workers' rights in countries sending and receiving migrant domestic workers. Maldives fully supported a comprehensive Convention, supplemented by a Recommendation.
- 57.** The Government member of Ghana supported a Convention supplemented by a Recommendation to help strengthen existing laws and provide decent work for domestic workers. His Government had already supported various international Conventions and enacted national laws dealing with domestic workers. The Labour Act, 2003 (Act 651), paid special attention to the working conditions of domestic workers and covered their remuneration, working hours, maternity leave, the formalization of employment contracts

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and other issues. The Domestic Violence Act, 2007, protected domestic workers from abuse, intimidation and harassment.

- 58.** The representative of the Office of the United Nations High Commissioner on Human Rights (OHCHR) emphasized that the issue of domestic workers had clear human rights implications and was of increasingly serious concern to the High Commissioner and to international human rights mechanisms. He echoed previous statements deploring the exploitative practices to which many domestic workers were subjected. Many human rights issues facing domestic workers were in the domain of economic, social and cultural rights covered by Articles 22 to 25 of the Universal Declaration of Human Rights and by the International Covenant on Economic, Social and Cultural Rights. Such human rights violations were not simply individual actions, but also a systemic problem arising from rules that often made domestic workers more vulnerable to exploitation and restricted domestic workers' access to economic and social rights. Although existing international human rights standards applied to domestic workers, specific forms of protection were required to guarantee that they effectively enjoyed rights laid down for everyone. A new ILO instrument was vital to ensure broad protection for all domestic workers regardless of whether they were locals or migrants.
- 59.** The representative of International Young Christian Workers (IYCW), speaking also on behalf of World Solidarity, stressed the need for an international Convention on domestic workers, supplemented by a Recommendation. The home was not recognized as a workplace, and the employment relationship involved in domestic work was invisible to the outside world, rendering domestic workers more vulnerable to discrimination, exploitation and abuse. Legal protection for domestic workers differed from country to country and, where such protection existed, it was not properly applied. She expressed the hope of the organizations she was representing that the Committee would take action so that domestic workers, including migrant workers, would enjoy the same rights as other workers.
- 60.** The representative of Migrant Forum in Asia, having highlighted that the vast majority of the millions of migrant workers in Asia were women and predominantly engaged in domestic work, expressed her organization's support for a definitive, coherent and comprehensive ILO instrument on domestic work. Despite significant contributions to their households and employers' families, to communities and countries (of origin and destination), and to industries and economies, the rights, welfare and dignity of domestic workers had yet to be protected by laws. Although existing core UN instruments and fundamental ILO labour standards could be, and were being, used by domestic workers' groups and advocates in asserting their rights, an ILO Convention on domestic work would clearly establish minimum standards and rights for all domestic workers. It would help reduce the worst forms of child labour, the stigmatization and criminalization of migrant domestic workers (including undocumented workers), and racial and ethnic discrimination. The tripartite partners' recognition of the need for a flexible but robust and effective instrument was appreciated. Finally, she emphasized the importance of involving domestic workers themselves centrally and critically in the process of formulating the instrument, so as not to reinforce their non-recognition and marginalization.
- 61.** The representative of the International Domestic Workers' Network (IDWN) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) expressed her opposition to the notion of favouring a Recommendation for maximum flexibility in an approach to a complex situation in different societies and countries. Countering the argument that a strong Convention would drive domestic work further into informality, she pointed out that it was the lack of strong measures that allowed abuses and exploitation of domestic workers. Therefore a Convention, supplemented by a Recommendation, was critical for domestic workers. The

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fact that good practices extending legal protection to domestic workers existed in some countries, including poor and developing countries such as the United Republic of Tanzania, demonstrated that such measures were not just feasible in rich, developed countries.

- 62.** The representative of Human Rights Watch urged members of the Committee to support a binding Convention supplemented by a Recommendation. A strong Convention would address gender discrimination by recognizing domestic work, which was often associated with the traditional and unpaid roles of women, as work like any other. Essential elements of a Convention included a provision requiring written employment contracts and specific protections for children. Protecting migrant domestic workers required greater bilateral and multilateral cooperation, including oversight of private recruitment agencies. Human Rights Watch's extensive research had illustrated the risk of a wide range of human rights violations in the domestic work sector, which was often invisible and under-regulated. The absence of comprehensive labour protections and monitoring mechanisms contributed to the high incidence among domestic workers of forced labour, servitude and human trafficking. She stressed that research had also shown that positive measures taken by governments could, and did, make a difference, and governments were urged to draw from the experience of countries where domestic workers had been able to organize and form associations, where they were fully covered by labour law and where the workplace was subject to monitoring and inspections.
- 63.** The Employer Vice-Chairperson remarked that in the current discussion there had been general consensus on the need to enhance protection of domestic workers, improve working conditions, prevent abuse, eradicate hidden forms of slavery and maintain or increase domestic employment. He considered a Recommendation to be the most appropriate instrument to achieve this goal because it would provide the flexibility that his group and a number of governments had called for. The speaker stressed that an overly rigid Convention would be counterproductive and result in increased unemployment and informality, and ultimately in decreased protection of domestic workers. Best practices from across the world, such as from France, Morocco and Uruguay, could be used to guide other countries, taking into account national circumstances. However, he observed that those initiatives had been taken irrespective of international labour standards. As for the exclusion of domestic workers in existing legislation, that was an issue that needed to be solved at the national level. He noted a number of difficult issues such as the conflict between the right to privacy and the right of workers as put forward by the Government member of Spain in the EU statement. The definition of domestic work (and subsequently domestic workers and domestic employers) and the scope of the instrument needed to be resolved to achieve clarity on the mandate of the Committee. He reminded governments that they had a responsibility to implement and enforce a binding instrument. The Private Employment Agencies Convention, 1997 (No. 181), which already covered domestic workers employed by agencies, should be the subject of a broader promotional campaign by the ILO. He reiterated that Conventions should be reserved for unchanging principles, whereas Recommendations were more appropriate tools for upgrading legislation in a flexible manner.
- 64.** The Worker Vice-Chairperson noted that in the general discussion all Governments had recognized the need to better protect domestic workers, while the majority supported the adoption of a Convention. She gave examples of ILO Conventions or governments that had already shown how to implement labour inspection in household workplaces. Uruguay's Ministry of Labour and Social Security could undertake home inspections if there was a presumed violation of norms; a specialized section of their inspectorate dealt with domestic work labour inspections. The Labour Inspection (Agriculture) Convention, 1969 (No. 129), applied to any workplace liable to inspection, which could include the worker's or employer's home. On the issue of definition and scope, several countries'

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legislation had demonstrated that solutions could be found. The Philippine Labor Code applied to “all persons rendering services for compensation” and defined “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”. In France, under a collective agreement for domestic workers, “any person who undertakes household tasks of a familial or housekeeping nature, whether on a full-time or part-time basis, is considered an employee”; this also applied to Switzerland. Thus the complexity of defining domestic work should not be considered an obstacle for the adoption of an instrument. She emphasized the critical role of freedom of association and collective bargaining in ensuring decent work for domestic workers, as well as the role of trade unions in organizing domestic workers and ensuring that they were covered by collective bargaining agreements. That would enable moving beyond advocacy towards actual implementation of principles and rights. Another difficulty related to the issue of tracking the number of hours worked, which was also not insurmountable. Other ILO instruments, such as the Maritime Labour Convention, 2006, had shown that measuring working time of special categories of workers was not impossible. Quality and efficient work by a domestic employee should be rewarded as it was for other workers. If a promotional approach were to be adopted, clarifications were needed about the contents that an instrument should promote. This was precisely why it was necessary to adopt a Convention. The example of Uruguay showed that good legislation did not undermine employment creation, and general commitments to comply with international labour standards would promote poverty reduction. Improving the purchasing power of domestic workers through fair wages and working conditions could also be a catalyst for economic growth. Noting the importance of promoting education inspired by human rights principles as well as gender equality, she concluded by highlighting the importance of recognizing and valuing domestic work.

65. The Chairperson summarized the general discussion, which had manifested a genuine tripartite commitment towards constructive social dialogue, despite the different views on the form and content of possible new instruments on domestic work. Some common points had been identified: first, domestic workers represented an important segment of the global workforce, while their economic and social contribution was widely acknowledged. Second, there was recognition of the urgent need to improve the living and working conditions of this neglected workforce. As the Employer Vice-Chairperson had stated, the Employer members did not support the idea that “any work was better than no work”, and they wished to achieve decent work for domestic workers. Third, as many governments had pointed out, there was a call for clear, comprehensive and practical policy guidance to improve the quality of working life for such workers. She noted the interest of governments in sharing knowledge and innovative and successful experiences, as well as their wish to focus the discussion on substantive issues.

## **Consideration of the proposed Conclusions contained in Report IV(2)**

### **A. Form of the instruments**

#### ***Point 1***

66. The Employer Vice-Chairperson introduced an amendment to replace the words “The International Labour Conference should adopt standards concerning decent work for domestic workers” by the following: “The International Labour Conference should provide

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guidance on standards applicable to domestic workers.” He explained that there were already several existing ILO standards which were applicable to domestic workers and that the ILC should provide guidance on how those standards should be applied. A Recommendation would therefore be more appropriate than a Convention.

67. The Worker Vice-Chairperson objected to the proposed amendment and considered that a Convention would be far superior to a Recommendation.
68. The Government member of South Africa, speaking on behalf of the Government members of the Africa group, and the Government members of Argentina, Australia, Brazil, Norway and the United States also objected to the amendment and supported the Workers’ group’s position.
69. The Employer Vice-Chairperson withdrew the proposed amendment.
70. An amendment proposed by the Government member of India to replace the word “standards” by “guidelines” was not seconded and therefore not discussed.
71. The Government members of Canada and Lebanon proposed an amendment which applied to the French and Spanish versions, but had no impact on the English version, to use terminology that applied to both male and female domestic workers. The amendment proposed to replace the words “travailleurs domestiques” in the French version and the words “los trabajadores domésticos” in the Spanish version, by “travailleuses et les travailleurs domestiques” and by “las trabajadoras y los trabajadores domésticos”, respectively. The Government member of Canada explained that gender-sensitive language was particularly important in the case of the instrument under discussion, which would be applicable to a large number of women.
72. The Worker Vice-Chairperson and the Government members of Argentina, Brazil, Canada, Namibia, Spain, Switzerland and Uruguay supported the proposed amendment.
73. The Government member of Chad considered that explicit use of the word “travailleuses” was not necessary.
74. The Employer Vice-Chairperson considered it an issue that should be discussed by the Committee Drafting Committee. He stated that the French term “travailleuses” was not used in everyday language. It was a political term and thus inappropriate for use in an international instrument. The Employer Vice-Chairperson asked the Office to provide an opinion and an appropriate interpretation of the words in question.
75. A representative of the Legal Adviser said that the issue of terminology had been the subject of debate in the ILO for more than a year, and that there was a proposal to change the Standing Orders of the Conference and the ILO Constitution to adopt gender-inclusive terms. While there was general agreement to use gender-inclusive language, views differed on the most efficient methods in different languages. Agreement on the exact method to be used in ILO instruments did not yet exist, but this issue would be discussed at the Governing Body in November 2010. He also clarified that the term “travailleurs domestiques” included both men and women, but that language was evolving and that the Safety and Health in Agriculture Recommendation, 2001 (No. 192), referred to both “travailleurs” and “travailleuses”.
76. The Employer Vice-Chairperson asked that an Employer member knowledgeable in the French language be allowed to speak on behalf of the Employers’ group. The Employer member proposed a subamendment that the term “travailleurs domestiques” be retained in

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the main text and that a footnote be added to point 1, which would read: “The term domestic workers includes men and women workers.”

77. The Government member of the United States said that if the amendment were to be accepted it should use the words “male and female” instead of “men and women” in order to include minors.
78. The subamendment was opposed by the Workers’ group and by the Government members of Argentina, Brazil, Canada and the Bolivarian Republic of Venezuela.
79. The Employer Vice-Chairperson proposed a subamendment to place the words “travailleurs domestiques”, “travailleuses et les travailleurs domestiques”, “los trabajadores domésticos” and “las trabajadoras y los trabajadores domésticos” in square brackets, with a view to deferring the decision to the following year.
80. Responding to a request from the Worker Vice-Chairperson for an explanation on the significance of square brackets, a representative of the Legal Adviser clarified that the use of square brackets was a drafting technique used by the ILO to indicate that the draft text of an amendment or draft instrument had neither been adopted nor rejected, and that a decision on the text would be deferred to a subsequent stage of the discussion.
81. In the interest of moving the discussion forward, the Government member of Canada supported the proposal of the Employer Vice-Chairperson.
82. As the proposal only concerned the French and the Spanish texts, the Worker Vice-Chairperson could also agree.
83. The Government member of Lebanon supported the proposal and pointed out that the following year the Committee would benefit from the discussions that would take place during the Governing Body in November 2010.
84. The amendment was adopted as subamended.
85. Point 1 was adopted as amended.

## **Point 2**

86. In light of the discussions on point 1, the Employer Vice-Chairperson withdrew an amendment to replace the words “These standards” by the words “This guidance”.
87. The Government member of India introduced an amendment which was seconded by the Employers’ group. He proposed to replace the words “Convention supplemented by a Recommendation” by the word “Recommendation”. He explained that a Convention might not have the desired impact as ratification could be difficult for many member States. A Recommendation would be more suitable.
88. The Worker Vice-Chairperson opposed the proposed amendment and observed that many Government members had expressed support for the adoption of a Convention supplemented by a Recommendation. She stated that the adoption of a binding instrument of universal application would be the most appropriate tool for improving the living and working standards of domestic workers around the world. A Recommendation would be a weak instrument. The adoption of a binding instrument would be necessary to address the decent work gaps for domestic workers.

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- 89.** The Employer Vice-Chairperson supported the amendment and considered that a Recommendation would be the best tool for protecting domestic workers. A prescriptive instrument would impose too much rigidity on households and prevent employment creation. Furthermore, governments lacked the capacity to monitor the implementation of a Convention due to difficulties in inspecting private households in the same way as companies. It was therefore necessary to follow a pragmatic approach on this important issue.
- 90.** The Worker Vice-Chairperson, in response to questions about governments' capacity to monitor domestic work, drew the Committee's attention to paragraphs 246 et seq. of Report IV(1), which highlighted that national law and practice had revealed several creative applications of the labour inspector's role in enforcing domestic workers' rights. She cited examples of initiatives in different countries, including Brazil, the United States and Uruguay, to ensure that employers fulfilled their obligations, taking into account the need to respect the balance between a household's privacy and the protection of workers' rights. The notion that a Convention, if adopted, would never be ratified, was presumptuous and not based on fact. There were many examples of Conventions, such as the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Maritime Labour Convention, 2006, which had been ratified on the grounds that they were relevant.
- 91.** The Employer Vice-Chairperson noted that, if existing labour inspection mechanisms were effective, the ILO would not have been receiving as many complaints concerning violations as it had in recent years. The only way to ensure any type of protection was to depend on the national judicial systems.
- 92.** The Government member of Saudi Arabia, speaking on behalf of the GCC countries, indicated his support for the amendment proposed by the Government member of India and said that the countries he spoke for were in favour of adopting a Recommendation rather than a Convention. While a Convention was indeed a fine objective, and they did not oppose the idea, it would be very difficult under the current circumstances to ensure its application, especially from the point of view of inspection and taking into account the very different legal systems in place in different countries; the end result would be nothing more than a hypothetical Convention.
- 93.** The Government member of the Islamic Republic of Iran spoke in favour of adopting a Recommendation, noting that a step-by-step approach was needed before moving towards the adoption of a Convention, to take into account each country's specific circumstances and the special requirements that would be needed with regard to labour inspection.
- 94.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of GRULAC, did not support the proposed amendment and was in favour of adopting a Convention supplemented by a Recommendation.
- 95.** The Government member of the United States said that he too opposed the proposed amendment and was in favour of a Convention supplemented by a Recommendation. While certain aspects of domestic work were covered by existing standards, domestic workers were more often than not excluded from protection, thus it was essential to ensure decent work and equal treatment with other workers. Responding to some of the comments made by previous speakers, he observed that, while it was true that ratification might be difficult, without a Convention there could be no ratification at all. In connection with the question of ratification, he mentioned that, a few weeks previously, his Government had reactivated its review of possible ratification of ILO Conventions, after more than a ten-year break. The idea that monitoring of domestic work was solely about carrying out inspections in private households was false; in the United States, there were various other monitoring mechanisms which were more complaint-driven, for example using telephone

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hotlines. While it was true that regulating domestic work would undoubtedly have a macroeconomic impact, it was very difficult to assess what that impact would be. The fact that most domestic work took place in the informal economy did not mean that it did not warrant a standard; after all, four of the eight core ILO Conventions dealt exclusively with work in the informal economy. He urged the Committee to opt for a Convention.

- 96.** The Government member of Australia endorsed the comments made by the Government member of the United States and opposed the amendment proposed by the Government member of India. Her Government was strongly in favour of a Convention supplemented by a Recommendation. One of the central contributing factors to the exploitation of domestic workers was that they were often excluded from labour regulations and operated in the invisible informal economy. That perpetuated their invisibility and poor working conditions and further marginalized what was already one of the most vulnerable sectors of the labour force. Binding standards were necessary to protect them. A Recommendation should be part of the solution but, given the magnitude of the marginalization faced by domestic workers, merely providing guidance or a best-practice approach was insufficient. With regard to compliance, there were examples of national laws that ensured effective monitoring; in Australia, for example, labour inspectors had the power to inspect a private home if they reasonably believed that work was performed in that part of the residence.
- 97.** The Government member of Brazil reaffirmed his Government's support for a Convention supplemented by a Recommendation. Domestic workers found themselves in a very difficult situation as the true value of their work was never recognized. Only an international organization such as the ILO could truly define rights and standards at the international level. A Convention was therefore a necessity.
- 98.** The Government member of Chile supported the GRULAC position and was in favour of a Convention supplemented by a Recommendation. She therefore did not support the amendment proposed by the Government member of India. Monitoring domestic work would not necessarily mean conducting inspections of private households, although it was important to monitor the conditions of domestic workers to ensure that they benefited from rights such as appropriate occupational safety and health, social security, adequate pay and rest days.
- 99.** The Government member of the Dominican Republic also opposed the amendment.
- 100.** The Government member of Bangladesh observed that, while his Government had strongly supported the move to place the issue of decent work for domestic workers on the agenda of the ILC, it was of the view that the subject should be addressed in a more pragmatic manner, taking into account the different social and economic conditions of each country. Most developing countries had a huge informal economy and, under the circumstances, the adoption of a binding instrument could lead to further unemployment and social insecurity. Therefore, his Government strongly believed that a Recommendation would be more effective in promoting decent work for domestic workers. It therefore supported the amendment proposed by the Government member of India.
- 101.** The Government member of South Africa, speaking on behalf of the Africa group, supported a Convention supplemented by a Recommendation, and wanted to put that clearly on record. He referred to measures that had been taken in South Africa, including the establishment of minimum standards and a minimum wage for domestic workers through a sectoral determination, and noted that such measures had not had an adverse impact on employment in the domestic work sector. South Africa was a developing country, and had proved that such measures were feasible for countries such as his. He referred also to the establishment of monitoring mechanisms such as the Commission for

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Conciliation, Mediation and Arbitration (CCMA) and to the development of sufficient jurisprudence which served to protect the rights of domestic workers.

- 102.** The Government member of Argentina supported the statement made on behalf of GRULAC and agreed with the idea of adopting a Convention supplemented by a Recommendation. Her Government therefore did not support the amendment proposed by the Government member of India. It was important to seize the opportunity to develop an instrument to increase the visibility of domestic workers and some sort of mechanism was needed to monitor implementation. As previous speakers had stated, labour inspections in private households were not the only monitoring mechanism available, and a Convention would be more effective for improving social security and enhancing occupational safety and health.
- 103.** The Government member of Norway also expressed her support for the adoption of a Convention supplemented by a Recommendation and endorsed the statements made by the Government members of Australia, the United States and other countries. She pointed out that conducting inspections of private households was not the only way of monitoring domestic work and that the adoption of a Convention could lead to the establishment of more effective monitoring systems. However, she agreed with the Employers' group that there was a need to adapt the monitoring systems as the workplace was also a private home.
- 104.** The Government member of Uruguay reiterated his support for a Convention, supplemented by a Recommendation. The Convention should take into account demographic change over the next 30 years – the ageing of the population was inevitable, and would require increasing numbers of domestic workers to provide elder care in households. The results of the adoption of a Convention would not only depend on ratification. The existence of a Convention and a Recommendation would provide advantages to every domestic worker. Where a Convention could not be implemented, workers could benefit from actions following a Recommendation. However, in countries where a Convention could be implemented, it would be wrong to deny workers the benefit resulting from such a Convention. If it were possible for some countries to ratify a Convention, why would other countries wish to prevent them from doing so?
- 105.** The Worker Vice-Chairperson was heartened by the support for a Convention shown by many Government members and, in response to previous statements regarding the difficulty of carrying out labour inspections of households, she noted that inspections would not necessarily mean invasion of privacy. Moreover, as South Africa had shown, regulating the employment conditions of domestic workers had not led to a loss of jobs for domestic workers.
- 106.** The Employer Vice-Chairperson stated that previous statements by some Government members referred to the uncertainty and inability of monitoring a binding standard on domestic work, and to the lack of information on whether or not a binding standard would have positive or negative effects on the employment of domestic workers. These statements showed that the adoption of a Convention would be premature. Because there were clearly differing views in the Committee, the Employers' group requested a record vote on the proposed amendment.
- 107.** Put to a vote, the proposed amendment to replace the words “These standards should take the form of a Convention supplemented by a Recommendation” by the words “These

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standards should take the form of a Recommendation” was rejected by 67,158 votes in favour, and 92,820 votes against.<sup>9</sup>

- 108.** The Chairperson, in response to a request made by the Employers’ group for a copy of the transcript of the discussions, said that such a document could not be made available as the discussions in the Committee were neither recorded nor transcribed. However, the Legal Adviser had prepared a note on the opinion that had been given to the Committee during the course of the discussion, outlining the main sequence of events.
- 109.** A representative of the secretariat read out the note prepared by the Legal Adviser, which stated the following:

Following the presentation and the general debate on amendment D3, the Employer members requested that a record vote be taken on the amendment. The Worker members did not oppose but requested an explanation on how this procedure was to be conducted. In reply to that request, the Chairperson requested the Coordinator to explain the procedure of the record vote. At the end of the explanations, when the floor is normally open for questions or requests for clarifications, the Worker members requested another explanation on the text that was the subject of the vote. This was answered by the Coordinator and then a representative of the Government of Brazil made a motion of procedure requesting to postpone the beginning of the vote for 15 minutes. This motion of procedure was seconded by a representative of the Government of Uruguay. Although not specifically mentioned, the motion comes under article 63(2) of the Standing Orders.

The Employer members raised a point of order considering that the motion should not be allowed and that the vote should start immediately. Upon a request of the Chairperson, the Legal Adviser explained that the motion of procedure had been moved timely, was seconded, and that the decision on it took precedence over all other motions. The Legal Adviser considered that the vote had not started as there had only been an explanation by the Secretariat on the procedure, which responded to the request of the Worker members and the Chairperson had not started the vote. This opinion was provided under the authority of the Chairperson in accordance with article 63(9) of the Standing Orders. The only place where an immediate request for a recorded vote is mentioned in the Standing Orders is article 65(8), that reads as follows:

A record vote shall also be taken if requested by show of hands by at least one-fifth of the members present at the sitting, whether such request be made before or immediately after the vote by show of hands.

<sup>9</sup> The results were as follows:

For the amendment: Bahrain, Bangladesh, India, Indonesia, Islamic Republic of Iran, Kuwait, Malaysia, New Zealand, Oman, Panama, Qatar, Saudi Arabia, Singapore, United Arab Emirates. The members of the Employers’ group also voted for the amendment.

Against the amendment: Argentina, Australia, Austria, Barbados, Belgium, Botswana, Brazil, Burkina Faso, Chad, Chile, China, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Honduras, Hungary, Italy, Kenya, Lebanon, Lesotho, Maldives, Mali, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Peru, Philippines, Portugal, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Turkey, United Kingdom, United States, Uruguay, Vanuatu, Bolivarian Republic of Venezuela, Zimbabwe. The members of the Workers’ group also voted against the amendment.

The Government members of the following countries abstained from the vote: Congo, Estonia, Israel and Japan.

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This article provides that a record vote may be taken after a vote by show of hands only when it is requested immediately after the vote by show of hands. The purpose of the record vote in this situation is to verify the results of the vote by show of hands, and immediacy of the request is provided to ensure that there is no break before the two sets of votes on the same question. In the situation before the Committee, there was no vote by show of hands and nothing prevented a motion of procedure to postpone the beginning of the vote for 15 minutes. Following the opinion of the Legal Adviser, the Employer members requested a record vote on the motion of procedure and the majority of the Committee was in favour of the motion. Following 15 minutes' break, the record vote on amendment D3 was taken and the amendment was rejected by the majority of votes.

- 110.** The Government member of New Zealand provided an explanation of his Government's vote at the previous sitting on the form that the standard should take, indicating that its stance had been the subject of some discussion and he therefore wished to correct any misinterpretation that might have arisen. A key reason that the discussion was taking place was because current labour Conventions were not applied to domestic workers in many countries. The aim therefore was to seek practical mechanisms to promote the rights of domestic workers that would be widely adopted and effectively operated, particularly in countries where existing Conventions were not applied. That, he explained, was why the Government of New Zealand had indicated a preference for a Recommendation rather than a Convention. Given that the vote had been taken, he wished to assure the Committee that New Zealand would be actively and constructively participating in the discussion to ensure that it had a positive and effective outcome.
- 111.** The Employer Vice-Chairperson withdrew an amendment to replace, before the word "Recommendation", the words "Convention supplemented by a" with the word "stand-alone".
- 112.** The Government member of Spain, speaking on behalf of EU Member States, withdrew an amendment to replace "should" by "could" in the sentence "These standards should take the form of a Convention supplemented by a Recommendation".
- 113.** Point 2 was adopted as amended.

## **B. Definitions**

### ***Point 3***

#### **Point 3(a)**

- 114.** The Employer Vice-Chairperson presented an amendment to point 3(a) to replace the sentence "the term 'domestic work' should mean work performed within an employment relationship in or for a household or households" by the following text: "the term 'domestic work' should mean work regularly performed in or for a household within an employment relationship in which the employer is the householder. Other forms of domestic work are covered by other ILO standards, notably the Private Employment Agencies Convention, 1997 (No. 181)". He explained that in the definition of domestic work it was essential to establish the nature of the relationship between the employer and the worker and to identify the parties to the employment relationship. He proposed that the workers to be covered by the Convention should be in an employment relationship with the householder, and not with a third party.
- 115.** The Worker Vice-Chairperson objected to the proposed amendment. She considered that the definition should be wide enough to cover all forms of domestic work. First, the amendment would restrict coverage to those working in a single household, whereas the

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existing text took into account the fact that, in many countries, domestic workers were employed by multiple households. Secondly, the proposed amendment would exclude the millions who were employed by agencies and who needed the same protection as those who were hired directly by a household. The Private Employment Agencies Convention, 1997 (No. 181), lacked the specificity that would be provided under a separate Convention on domestic workers. The same standards should apply to all domestic workers, whether employed by a householder or an agency.

- 116.** The Government member of Japan asked whether the definition in the proposed Conclusions included workers who were employed by a third party to provide domestic services and childcare to a household as well as people who perform domestic work under instructions given by a householder.
- 117.** Responding to the question raised by the Government member of Japan, the representative of the Secretary-General explained that work performed within an employment relationship included both domestic workers directly recruited by the household and also domestic workers recruited by a third party to provide services to a household.
- 118.** The Government member of the United Kingdom expressed support for the Employers' group's amendment.
- 119.** The Government members of Argentina, Australia, Brazil, Indonesia, the United States, Kuwait, speaking on behalf of the GCC countries, and South Africa, speaking on behalf of the Africa group, opposed the amendment.
- 120.** The Government member of Bangladesh recognized the need for a structure to guide the debate, but saw the need for flexibility. One could also take into consideration subsequent amendments, which would address the main points contained in the amendment under consideration.
- 121.** The Employer Vice-Chairperson made reference to the list of Conventions that allowed for the exclusion of domestic workers that was reproduced in Report IV(1), and pointed out that the Private Employment Agencies Convention, 1997 (No. 181), was not listed there. He asked for the secretariat's opinion on whether domestic workers were excluded from that Convention or not.
- 122.** The representative of the Secretary-General clarified that Article 2(4)(b) of the Private Employment Agencies Convention, 1997 (No. 181), allowed member States to "exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention". Hence, while the Convention did not explicitly exclude domestic workers, an inbuilt flexibility clause allowed ratifying member States to exclude them from its scope.
- 123.** The Employer Vice-Chairperson withdrew the amendment. He nonetheless pointed out that the Employers' group would not be able to support any instrument unless there was a clear definition. Moreover, the Private Employment Agencies Convention, 1997 (No. 181), was important and should be referred to in the proposed instrument.
- 124.** The Government member of the United States withdrew an amendment, which proposed to insert, after the word "performed", the words "that is not irregular or intermittent, and is the worker's occupation".
- 125.** The Government member of the Netherlands, speaking on behalf of EU Member States, presented an amendment to insert the words "on a regular basis" after the word "performed". He explained that the EU Member States wanted the Convention to refer to

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professional workers and exclude from the instrument those individuals who performed domestic work sporadically.

- 126.** The Employer Vice-Chairperson supported the proposed amendment.
- 127.** The Government member of Bangladesh supported the proposed amendment. For example in rural areas in Bangladesh, persons undertook sporadic communal activities in domestic settings which should not be included in the definition of domestic work.
- 128.** The Worker Vice-Chairperson understood the motivations of the amendment but asked for clarification from a representative of the EU Member States as to who would be excluded if the definition of domestic work were to be limited to work performed “on a regular basis”. Would individuals who performed domestic work part time, a few days per week, a few hours per day or regularly once a month be excluded?
- 129.** The Government member of Spain, speaking on behalf of EU Member States, clarified that the intention of the proposed amendment was to exclude from the scope of the Convention those people who were performing occasional domestic work as a marginal activity, such as students or occasional babysitters. Such people were not professional domestic workers.
- 130.** The Government member of Uruguay opposed the amendment. The proposed phrase “on a regular basis” was not clear and domestic work in his region was often performed by persons who had not received professional training.
- 131.** The Government member of South Africa rejected the amendment proposed by the EU. Endorsing the statement by the Government member of Uruguay, he explained that the coverage of the proposed instrument should include domestic workers who worked without contracts and also untrained domestic workers who worked on a casual or daily basis.
- 132.** The Government member of Spain, speaking on behalf of EU Member States, explained that the term “on a regular basis” was intended to exclude persons who, for example, worked on an occasional basis as babysitters or au pairs, and who should not be considered professional domestic workers.
- 133.** The Worker Vice-Chairperson had hoped for a fuller explanation; it would be useful to have on record what exactly was meant by “regular”.
- 134.** The Government member of the United States fully agreed with the explanation put forward on behalf of the EU, and elaborated by saying that workers who performed occasional chores such as driving, gardening and babysitting should not be covered by the scope of the instrument. He suggested that a working party could be established to draft a definition of “regular”, or alternatively the issue could be deferred. He cautioned against leaving it to national laws to define, as doing so would defeat the purpose of having universal standards. His Government would support the amendment if a definition of “regular” had been agreed.
- 135.** The Government member of Namibia called for greater understanding among the industrialized countries of the situation in developing countries, where unskilled and poorly educated workers were very often employed to take care of children. Such workers did not necessarily work full time or live in the household, and might work for several employers; it would be interesting to know whether such workers would be classed as babysitters in the EU and the United States. In her view, they were most definitely domestic workers who needed to be protected by the Convention, which had to accommodate regional variations. She would like such workers to be professionalized, but that was not currently feasible. Including a term such as “regular” would limit the scope of

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the instrument and did not cater to Namibia's concerns nor those of other African countries.

- 136.** The Government member of Australia favoured a Convention that could be widely ratified, and therefore had some concerns about including the definition of domestic work proposed by the EU. In her view, the existing wording was satisfactory. Australia had been unable to ratify the Minimum Age Convention, 1973 (No. 138), because of a technicality, even though her country far surpassed that standard in law and in spirit, and she was concerned that the same thing could happen with the instrument under discussion. It was clearly a challenge to try to take into account the needs of all countries and the Committee should therefore allow for maximum flexibility. In that regard, the notion of “employment relationship” should be consistent with the Employment Relationship Recommendation, 2006 (No. 198), and include employment both by a household and through an employment agency. In order to ensure optimal ratification, the definition should not be too specific.
- 137.** The Government member of Spain, speaking on behalf of EU Member States, explained that the amendment was not intended to exclude workers who worked for various employers, or on a temporary or part-time basis, or those who had different working relationships with various employers; they were all considered to be domestic workers. The aim was to exclude people who worked as au pairs or babysitters or who came into a household very occasionally to care for children; under the current draft text, they would be included in the definition of domestic workers. He welcomed the suggestion to establish a working party to reach agreement on the definition of “regular work” by domestic workers.
- 138.** The Government member of Kuwait, speaking on behalf of the GCC countries, supported the proposal by the EU.
- 139.** The Worker Vice-Chairperson concurred with the Government member of Australia that it was important to make the Convention as workable as possible and to find constructive solutions taking account of national variations – such as the use of au pairs – which could lead to very different interpretations. While she was not advocating the adoption of point 5, the concerns of the EU Member States and other Government members could perhaps be addressed under that point, which allowed for the exclusion by Members of particular categories of workers. She cautioned, however, that allowing too many exclusions would make the Convention meaningless.
- 140.** The Government member of Australia explained that her concerns with regard to the amendment had arisen because the Worker members had submitted a proposal to delete point 5. It would be more appropriate to deal with the question of exclusions at a national level, as had originally been envisaged under point 5, but that wording was prescriptive and allowed exclusions to be made even after ratification. It was necessary to be explicit about exclusions prior to, and not after, ratification.
- 141.** The Worker Vice-Chairperson informed the Committee that her group intended to withdraw its proposal to delete point 5 but would propose some subamendments to other amendments relating to that point. She requested the Office to provide a definition of the term “on a regular basis” as set out in international labour law.
- 142.** The representative of the Secretary-General explained that the term “on a regular basis” was not used in international labour Conventions or Recommendations to qualify any occupational category currently covered by such standards. A similar issue had emerged in the Home Work Convention, 1996 (No. 177), and had been addressed by including in the definition of home work, in Article 1(b): “persons with employee status do not become

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homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces”.

- 143.** The Government member of Brazil did not support the amendment proposed by the EU. Wording along the lines provided by the secretariat, however, could be sufficiently flexible and wide-ranging to accommodate the concerns raised. She suggested that the issues raised by the EU could be reconsidered during the discussions on the text of the Recommendation.
- 144.** In order to move the discussion forward, the Employer Vice-Chairperson proposed that a working party be set up, consisting of two members from the Employers’ group, two members from the Workers’ group, and five members from the Government group representing the five regional Government groups. The proposal was supported by the Workers’ group, the Government members of the Africa group, of the EU, of the GCC countries and of the United States. The working party would develop suitable formulations for points 3 and 5 and report to the plenary session of the Committee two days later. The Committee agreed to this.
- 145.** Following the meeting of the working party,<sup>10</sup> the representative of the Secretary-General reported on its work and, on its behalf, submitted the following amendment to replace point 3 with the following text:

For the purpose of these standards:

- (a) the term “domestic work” should mean work performed in or for a private household or households;
- (b) the term “domestic worker” should mean any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a “domestic worker”.

The working party had not been able to resolve one issue concerning exclusively the Spanish version of the text. Some members of the working party had suggested that after the terms “trabajador o trabajadora” the term “doméstico” should be replaced by “del hogar”, but other members of the working party had expressed reservations in that respect. For that reason, the terms “trabajador o trabajadora doméstico” and “trabajador o trabajadora del hogar” had been square-bracketed.

- 146.** The Employer Vice-Chairperson expressed his appreciation to the Office for having facilitated the work of the working party and thanked the participants for their hard work. It had been a very useful exercise on an issue that had been very difficult to resolve.
- 147.** The Worker Vice-Chairperson also thanked the participants of the working party. She asked for the exact meaning of the term “private household”. It was the Workers’ group’s understanding that a household was, by its very nature, private and not public. She also wanted to put on record a number of points regarding the text proposed by the working

<sup>10</sup> The working party comprised nine members: Ms G. Aguirre, Government member of the Bolivarian Republic of Venezuela, on behalf of GRULAC; Ms P. Herzfeld Olsson, Government member of Sweden, on behalf of the EU Member States; Mr V. Seafeld, Government member of South Africa, on behalf of the Africa group; Mr M. Smyth, Government member of the United States, on behalf of the IMEC group; Mr J. Strang, Government member of New Zealand, on behalf of ASPAG; Mr J. Kloosterman and Mr G. Touchette on behalf of the Employers’ group; and Ms A. Avendano and Ms P. Stalpaert on behalf of the Workers’ group.

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party. First, she explained that, in the understanding of the Workers' group, the definition proposed under point 3 included as domestic workers all those who worked one hour per day or even a few hours per year, people with low skills, students who worked as domestic workers for a living, as well as people who worked in multiple households. The crucial term in the definition was "occupational basis", which was meant to exclude from the scope of the Convention people doing domestic work for pocket money but not as an occupation. All workers who performed domestic work as a living were understood to be included. Secondly, the Workers' group would have preferred to have point 3(c), which specified the groups of workers to be excluded from the scope of the Convention, moved to the Recommendation in order to make the Convention more inclusive.

- 148.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of GRULAC, said that, if the amendment proposed by the working party was adopted, she would prefer the term "privados" in the Spanish version of the text under point 3(a) to be translated as "particulares". The Government members of Argentina and Chile supported the suggestion to replace the term "hogares privados" by "hogares particulares" in point 3(a) of the Spanish translation of the proposed amendment.
- 149.** The Government member of South Africa, speaking on behalf of the Africa group, explained that in point 3(a) the word "private" was motivated on two grounds: first, to identify domestic workers by their place of work in or for a private household, rather than by the type of work they performed; and secondly, that those places of work that did not qualify as private households, such as privately owned guesthouses, should be covered by other legislation.
- 150.** In reply to a question by the Government member of Japan, the Chairperson confirmed that work performed within an "employment relationship", as expressed in point 3(b), included domestic workers directly employed by a household as well as domestic workers employed by a third party to provide services to a household.
- 151.** The Government member of Canada and the Government member of Spain, the latter speaking on behalf of EU Member States, supported the amendment proposed by the working party. The Government member of the United States also supported the proposed amendment. He explained, as a member of the working party, that the incorporation of the word "and" in point 3(c) meant that domestic work should be defined as an occupation as opposed, for example, to occasional babysitting by the daughter of one's neighbour. He considered that some aspects of the definition could be further clarified in a Recommendation.
- 152.** The Government member of Ecuador explained that the word "private" was useful to distinguish between work performed in a private household and hotel work. In many Latin American countries, households might have guests staying with them who provided income to the household. In that case, the domestic work should be regulated by existing laws that covered hotels.
- 153.** The Government member of Senegal considered that the use of the word "private" was problematic as it might be understood to exclude domestic workers who provided childcare in cooperative crèches. The Government members of Indonesia and Tunisia considered that the word "private" required further clarification.
- 154.** The Government member of South Africa proposed a subamendment to delete the term "private" in point 3(a) of the proposed amendment, provided that the records of the Committee's deliberations included the intent behind the reference to "private household" in the original version of the amendment.

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**155.** The Worker Vice-Chairperson supported the subamendment proposed by the Government member of South Africa and agreed that his explanation should be taken into account when interpreting the Convention. The Employer Vice-Chairperson and the Government member of Uruguay also supported the subamendment.

**156.** The representative of the Secretary-General pointed out that only the English and French versions were considered authentic versions of the text, and that the issue of an appropriate Spanish translation could be referred to the process that followed the work of the Committee Drafting Committee.

**157.** The Government member of Spain considered that there were some concerns with the Spanish translation of point 3, and encouraged all the Spanish-speaking delegations to reach a consensus on this matter.

**158.** Point 3(a) was adopted as amended.

Point 3(b)

**159.** Point 3(b) was adopted as amended according to the proposal of the working party.

Point 3(c)

**160.** With respect to point 3(c), the Government member of the Islamic Republic of Iran indicated that the definition of what constituted domestic work carried out “occasionally” or “sporadically” should best be left to national legislation.

**161.** The Government member of Namibia expressed her concerns regarding the exclusion of persons who performed domestic work only occasionally or sporadically from the scope of the term “domestic worker”. In her country, it was common for unemployed workers to be picked up by employers on a daily basis to perform work such as gardening. She wondered whether the implication of the proposed text in point 3(c) was that these workers would not be covered. The Government members of Ecuador, El Salvador, Lebanon and South Africa, the latter speaking on behalf of the Africa group, also expressed concern about the possibility that the proposed text might exclude certain categories of workers who should not be excluded.

**162.** In view of the concerns expressed by several Government members, the Worker Vice-Chairperson proposed a subamendment to delete point 3(c) from the proposed Convention and, instead, move the text to the proposed Recommendation.

**163.** The Employer Vice-Chairperson objected to the proposal to delete point 3(c), pointing out that the working party had been comprised of representatives of Governments, Workers and Employers who had put considerable effort into reaching the proposed text. Although the proposed text might not be perfect, it did reflect the main purpose of the instrument.

**164.** The Government member of Sweden, who had represented the EU in the working party, also opposed the subamendment, explaining that it was not the intention of the proposed text in point 3(c) to exclude day labourers, part-time workers or those who worked irregularly as described in previous statements, if those workers were performing domestic work as an occupation.

**165.** The Government member of Australia also opposed the subamendment and supported the comments made by the Government member of Sweden and the Employer Vice-Chairperson. The drafting of point 3 had been assigned to the working party, whose

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members had adequately represented the different concerns in the Committee. The Government member of Canada concurred with the Government member of Australia.

- 166.** The Worker Vice-Chairperson, underlining her appreciation for the work of the working party, wanted to put on record the preference of the Workers' group to move point 3(c) to the proposed Recommendation.
- 167.** In response to a question by the Worker Vice-Chairperson regarding translation of the term "sporadically" into French, where it was translated as "par intermittence", the Chairperson suggested referring this matter to the Committee Drafting Committee.
- 168.** Point 3(c) was adopted as amended.
- 169.** In response to a point of order raised by the Government member of South Africa, the Chairperson clarified that all amendments submitted under point 3 had fallen with the adoption of the working party's amendment.
- 170.** Point 3 was adopted as amended.

### **C. Proposed Conclusions with a view to a Convention**

#### ***Point 4***

##### Point 4(a)

- 171.** The Employer Vice-Chairperson introduced an amendment, which sought to add, after the words "decent work for all", the following words: "through the achievement of the goals of the 1998 Declaration on Fundamental Principles and Rights at Work and the 2008 Declaration on Social Justice for a Fair Globalization". He considered that the objective of decent work was already being promoted through those ILO Declarations, which the Employers' group fully supported. The proposed amendment was linked to another amendment, which proposed to delete point 6.
- 172.** The Worker Vice-Chairperson opposed the amendment and suggested retaining the current text of point 4(a). Point 6 was of crucial importance to her group, and the Employers' group's linking of the two amendments made the proposal unacceptable. In addition, point 4(a) being part of the preamble, these principles should be strongly reaffirmed.
- 173.** The Government member of Switzerland recognized the importance of referring to ILO Declarations in the preamble; her country would support the proposed amendment if it was not linked to deleting point 6.
- 174.** The Government member of Canada and the Worker Vice-Chairperson endorsed the position adopted by the Government member of Switzerland.
- 175.** The amendment was adopted.
- 176.** Point 4(a) was adopted as amended.

##### Point 4(b)

- 177.** The Employer Vice-Chairperson introduced an amendment to replace the clause "considering that domestic work continues to be undervalued and invisible and is mostly

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carried out by women, many of whom are migrants or members of historically disadvantaged communities, and therefore particularly vulnerable to abuses of basic human rights and to discrimination in respect of employment and working conditions” by the following words: “taking into account the special nature of domestic work that is mostly carried out by women, migrant workers and people from vulnerable groups who may be subject to abuses”. While recognizing the problems faced by many domestic workers and agreeing to include this in the preamble, he considered the proposed wording clearer than the original text. In particular, concepts such as “invisible” or “historically” might be difficult to understand, while separation into three groups – “women”, “migrant workers” and “vulnerable groups” – was proposed. For instance, male migrants could also be victims of abuse, so the new wording was deemed to be more inclusive and closer to the purpose of the clause.

- 178.** The Worker Vice-Chairperson objected, since the new wording would dilute the preamble’s purpose, which was meant to encapsulate the rationale of a Convention. Domestic work was indeed “undervalued” and “invisible” and that should be reflected in the preamble. The proposed amendment omitted any reference to “discrimination”, commonly faced by domestic workers, and for those reasons could not be supported.
- 179.** The Government member of Brazil, while partially agreeing with the Employers’ group, could not support the amendment since the original text included crucial aspects, such as the reference to the fact that domestic work was “undervalued” and “invisible”, that should be reflected in the preamble. She also wished that more time could be devoted to the operative paragraphs.
- 180.** The Government member of Australia supported the position of the Workers’ group and the Government member of Brazil, explaining that, as the instrument aimed to cover a special category of workers, it was important to reiterate the reasons for a new Convention comprehensively in the preamble.
- 181.** The Government member of the United States endorsed the statements of the Government members of Brazil and Australia arguing that, since domestic workers were “undervalued” and “invisible”, the preamble should provide a full explanation about this.
- 182.** The Government member of South Africa, speaking on behalf of the Africa group, concurred with previous speakers, adding that his group was in favour of strengthening the clause and amendments to this end had already been submitted by his group.
- 183.** The Government member of Spain, speaking on behalf of EU Member States, and the Government member of Argentina agreed with the previous Government speakers and preferred the original text.
- 184.** The Employer Vice-Chairperson withdrew the amendment.
- 185.** An amendment submitted by the Government member of Australia, to insert in the first line of point 4(b), after the words “domestic work”, the phrase “predominantly in the informal economy” fell.
- 186.** The Worker Vice-Chairperson explained that her group proposed to insert “and girls” after “by women” in point 4(b) so that the text would refer to “women and girls”. This took account of the fact that many domestic workers were girls, some of whom migrated across borders and were thus particularly vulnerable.

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187. The Employer Vice-Chairperson asked the Worker Vice-Chairperson if there was a specific meaning to the term “girls”, and suggested that the text could, if this was not the case, refer to “females”.
  188. The Government member of Spain, speaking on behalf of the Governments of EU Member States, and the Government members of Argentina and Indonesia supported the amendment as proposed by the Workers’ group.
  189. The Government member of Bangladesh supported the proposed amendment, and suggested that the Workers’ group might consider making a reference to “children” more generally, rather than just to “girls”, given that some domestic workers were boys.
  190. The Worker Vice-Chairperson welcomed this proposal, but considered a reference to “women and girls” more appropriate since these two groups accounted for the great majority of domestic workers.
  191. The Government member of South Africa, speaking on behalf of the Africa group, supported the proposed amendment and reiterated that his group’s opening statement had stressed that child labour often found its root in domestic work.
  192. The Government member of the United States moved a subamendment, to refer to “women and children”. The Government member of Uruguay seconded the proposed subamendment, and stressed the importance of facing up to child labour. The Employer Vice-Chairperson supported the proposal.
  193. The Worker Vice-Chairperson appreciated the subamendment, but maintained that her group would prefer the wording “women and girls”. “Girls” was more specific than “children”, and using the term “children” could create the misleading impression that the proposed text sought to formalize child labour.
  194. The Government member of Uruguay reminded the Committee that it had previously engaged in an extensive discussion about the merit of referring to both male and female workers, and suggested that both boys and girls should be mentioned.
  195. The Government member of Switzerland endorsed the subamendment and expressed reservations about the earlier proposal made by the Employers’ group.
  196. The Government member of Ecuador supported the original amendment. Since the amended text would read that domestic work was “mainly carried out by women and girls”, it would put emphasis on two specific situations, although a Convention should cover everybody.
  197. The Government member of the Dominican Republic agreed with the subamendment proposed by the Government members of Bangladesh, the United States and Uruguay, referring to “children”.
  198. The Worker Vice-Chairperson explained that the amendment proposed by her group was not an issue of ideology, but of purely descriptive nature and aimed at ensuring that the preamble focused on the right groups. Some 90 per cent of domestic workers were women, and a fair number of them girls. By contrast, boys in child labour were predominantly found in other sectors, such as construction or deep-sea fishing.
  199. The Government members of Australia, Norway and the Bolivarian Republic of Venezuela expressed their support for the Worker Vice-Chairperson’s intervention.

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- 200.** The Government member of the United States withdrew his suggestion to put “and children” in place of “and girls”, in response to the Worker Vice-Chairperson’s explanation as to why it was not appropriate to replace “and girls” by “and children”, and to interventions by several Government members. He was ready to support the proposed amendment.
- 201.** The Employer Vice-Chairperson supported a suggested subamendment to insert “and children” after “by women”. He pointed out that many boys in domestic work were also migrants and were vulnerable, and reiterated that inserting “and children” would be more appropriate than “and girls” after “by women”.
- 202.** The Worker Vice-Chairperson explained that, while men and boys were also engaged in domestic work and suffered from abuse, point 4(b) was meant to reflect the prevailing problem, which was that domestic workers were mostly women and girls.
- 203.** The amendment was adopted.
- 204.** The Government member of South Africa, speaking on behalf of the Africa group, presented an amendment to insert, in the second line of point 4(b), after the words “many of whom”, the words “mainly in industrialized countries”. The objective was to make explicit the fact that the clause referred to a problem that occurred mainly in industrialized countries. The rationale for the proposal was to highlight the different circumstances of developing and industrialized countries, which was also the rationale of another amendment, also submitted by the Africa group. A proposal was made to discuss the two proposed amendments together.
- 205.** The Worker Vice-Chairperson supported the proposal to discuss the two amendments together, adding that her group supported the rationale for the first amendment to insert the words “mainly in industrialized countries” after “many of whom”. However, with the aim of adding more clarity to clause (b), she introduced a subamendment to replace the word “mainly” by “often” and to move that word and the words “in industrialized countries” after the words “are migrants”.
- 206.** The Employer Vice-Chairperson, noting that the proposed insertion would change the introductory nature of the point, declared that he could not support the subamendment.
- 207.** The Worker Vice-Chairperson withdrew the subamendment.
- 208.** The Employer Vice-Chairperson objected to the amendment proposed by the Africa group, on the grounds that point 4 was preambular and aimed at providing context, while the proposed amendment shifted the balance of emphasis towards developing countries, which was not acceptable to his group.
- 209.** The Government member of South Africa, speaking on behalf of the Africa group, indicated that the aim of the amendment was not to shift the balance towards developing countries, but rather to delineate clearly the specific problems faced by developing and by developed countries and to reflect reality. As the aim of the preamble was to provide a backdrop for the Convention, it was important to spell out clearly the concerns of developing countries; that was why the amendment had been proposed.
- 210.** The Government member of the United States could not support the amendment, first because he was not sure if it was factually correct to say that the abuse of domestic workers took place mainly in industrialized countries, and secondly because, in the absence of a real definition, it was not clear to him exactly which countries were to be

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considered as industrialized; he would, however, fully support any proposals to reflect that abusive practices existed in developed and developing countries.

- 211.** The Government member of Namibia, speaking on behalf of the Africa group, explained that the proposed amendment should ideally be considered together with the subsequent one, which she hoped would be adopted even if the one currently under discussion was not. The existing text did not accurately reflect reality in the Africa region, where domestic workers were not predominantly migrants. The intention was to show that there was more than one type of situation. However, in the light of the question about its accuracy, the Africa group withdrew the proposed amendment.
- 212.** The Employer Vice-Chairperson introduced an amendment to move point 4(b) after point 4(c), noting that his group would prefer to present the positive aspects of domestic work before the negative aspects. Domestic work was very important for a huge number of people and an important source of employment. Unfortunately, it seemed that, for the Workers' group, domestic work was perceived to be negative. The position of his group was to promote and better control domestic work, not to eradicate it. It was regrettable that the proposed text did not recognize the added value of domestic work for the economy – for example, it provided a source of income and possibilities for working women. The general tone of the debate, in his opinion, was far too negative.
- 213.** The Worker Vice-Chairperson remarked that, contrary to what the Employer Vice-Chairperson had said, the aim of her group was to turn negative situations into positive ones and to make positive ones even more positive. She therefore had no difficulty whatsoever in supporting the Employer members' proposal.
- 214.** The amendment was adopted.
- 215.** Point 4(b) was adopted as amended.

#### New clause after point 4(b)

- 216.** The Government member of Namibia, speaking on behalf of the Africa group, introduced an amendment to insert a new clause after clause (b), which would read:

(...) further considering that in developing countries with historically high rates of unemployment, domestic workers constitute a significant proportion of the national workforce, are predominantly nationals drawn from the ranks of the unemployed and are among the most marginalized and vulnerable workers;

The aim of the proposed amendment was to reflect the realities of her region.

- 217.** The Worker Vice-Chairperson supported the proposed amendment, which contained a general statement of fact.
- 218.** The Employer Vice-Chairperson also supported the proposed amendment.
- 219.** The amendment was adopted.

#### New clause after point 4(d)

- 220.** The Worker Vice-Chairperson introduced an amendment to insert after point 4(d) a new clause to read:

(...) noting that there are Conventions and Recommendations which have particular relevance for domestic workers and whose provisions should apply to them, such as the Migration

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for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Employment Relationship Recommendation, 2006 (No. 198);

She explained that it would be useful in the preamble to the proposed Convention to include references to specific Conventions and Recommendations that were relevant to domestic workers, as a reminder that other instruments applied to that group of workers.

**221.** The Employer Vice-Chairperson did not support the proposed amendment. As far as he understood, Conventions Nos 97 and 143 were considered to be obsolete and he would prefer to include a reference to the Private Employment Agencies Convention, 1997 (No. 181), and to the non-binding ILO Multilateral Framework on Labour Migration. He therefore proposed a subamendment, which would read:

(...) noting that there are Conventions and Recommendations and other international documents which have particular relevance for domestic workers and whose provisions should apply to them, such as the ILO Multilateral Framework on Labour Migration and the Private Employment Agencies Convention, 1997 (No. 181);

He recalled that Recommendation No. 198 had not been supported by the Employers' group.

**222.** The Worker Vice-Chairperson found it difficult to understand the Employer members' objection to the proposed amendment, especially as they were in favour of including a reference to other documents and as questions had been raised since the start of discussions about whether the existing Conventions applied to domestic workers or not. She queried the assertion that Conventions Nos 97 and 143 really were obsolete; as far as she knew, they were still up to date. Furthermore, the Multilateral Framework on Labour Migration made reference to them.

**223.** The Government member of South Africa, speaking on behalf of the Africa group, asked the Office to clarify the legal status of a preamble to a Convention. It would be interesting to know whether a preamble carried any force of law or was just explanatory.

**224.** The representative of the Secretary-General, in response to the questions raised, explained that Conventions Nos 97 and 143 were considered to be up to date ILO instruments. Further, the preamble to a Convention did not entail any legal obligations as such; it was meant to provide the context and rationale as to why a particular Convention was being adopted.

**225.** The Government member of Bangladesh took note of the Office's explanation and stated that he could support the amendment proposed by the Workers' group, if subamended to delete the wording "whose provisions should apply to them", which was more operative than preambular. With regard to the proposed subamendment by the Employers' group, he considered that it might be useful to discuss further the issue of including references to the Multilateral Framework on Labour Migration and to the Private Employment Agencies Convention, 1997 (No. 181), but he had serious reservations about the inclusion of the phrase "and other international documents", which was too vague.

**226.** The Worker Vice-Chairperson and the Government members of Australia and South Africa endorsed the subamendment proposed by the Government member of Bangladesh.

**227.** The Employer Vice-Chairperson, while recognizing that Conventions Nos 97 and 143 were still up to date, commented that according to the Conference Committee on the Application of Standards, those Conventions were considered "difficult or impossible" to

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implement. New international labour standards should be geared to guiding ILO member States towards Conventions that were easy to implement. Consequently, he maintained his group's subamendment.

- 228.** The Worker Vice-Chairperson noted that the Conference Committee on the Application of Standards had not indicated that Convention No. 97 was obsolete, but only that it was difficult to implement. She reaffirmed that the instrument was up to date and had been ratified by 49 countries. In addition, reference to Conventions Nos 97 and 143 had been supported by the Committee's working party as well as by many Government members, so mention of these instruments should be preserved.
- 229.** The Employer Vice-Chairperson reiterated that Conventions Nos 97 and 143) were difficult to implement and not easy to ratify; a new Convention should preferably make reference to international labour standards that were easy to apply. However, he suggested adding the words "the Private Employment Agencies Convention, 1997 (No. 181)" after the words "(No. 156)," and the words "and also the ILO Multilateral Framework on Labour Migration" after the words "(No. 198)", in addition to the text of amendment proposed by the Workers' group and subamended by the Government member of Bangladesh.
- 230.** The Worker Vice-Chairperson supported the subamendment.
- 231.** The Government member of Namibia opposed the reference to the Private Employment Agencies Convention, 1997 (No. 181), and called on the Workers' group to reconsider their endorsement of the Employer members' subamendment. The definition of private employment agencies proposed by that Convention, which had only been ratified by 23 countries, was deemed problematic in the context of Namibia and other developing countries. In addition, that instrument appeared to set aside the obligations of the householder (as opposed to the employment agency) that might arise from a new Convention on domestic workers.
- 232.** The Government member of Ecuador proposed the use of a general reference to instruments on labour migration and workers with family responsibilities, among others, and to omit a specific mention to current Conventions or Recommendations that in future could become obsolete or could be adopted on subjects relevant to domestic workers.
- 233.** The Government member of Uruguay endorsed the proposal of the previous speaker, noting that the content of the discussions was not in line with the rationale of a preamble, which should not provide a reference to a specific Convention or Recommendation. He encouraged a more focused debate on substantive issues.
- 234.** The Government member of South Africa felt uncomfortable with the adopted text and supported the statement of the Government member of Namibia. He asked that his position be put on record.
- 235.** The Worker Vice-Chairperson, while noting the concerns expressed by the Government members of Namibia and South Africa, added that Article 8 of the Private Employment Agencies Convention, 1997 (No. 181), stated that:

A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

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She hoped that this protective framework would address the concerns of the Government members of Namibia and South Africa.

- 236.** The Government member of Algeria and the Government member of Kuwait, speaking on behalf of the GCC countries, concurred with the position of the Government member of Bangladesh.
- 237.** The Government member of the Libyan Arab Jamahiriya rejected a reference to obsolete or not broadly accepted Conventions and called for a more general wording, in line with some previous speakers. In addition, he suggested that a reference should be made to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by UN General Assembly resolution 45/158 of 18 December 1990, as that instrument was more broadly recognized than the ILO's Convention No. 97.
- 238.** The Government member of Bangladesh, while thanking the Employers' and Workers' groups for their flexibility and noting the concern expressed by some Government members, proposed a subamendment aimed at adding in the second line between the words "such as" and "the Migration", the words ", as appropriate,".
- 239.** The Government member of Namibia concurred with the position expressed by the Government member of South Africa and suggested putting the reference to the Private Employment Agencies Convention, 1997 (No. 181), in square brackets, so that a final decision on this aspect would be deferred to the Committee's discussions of June 2011. Reference to this instrument represented an obstacle to protecting domestic workers in Namibia, so further discussions on this aspect were recommended.
- 240.** The Worker Vice-Chairperson supported the subamendment proposed by the Government member of Bangladesh, as it represented a good way to bridge the different positions on this issue. She reiterated that a preamble had no legally binding effects but was just a statement of fact. The Private Employment Agencies Convention, 1997 (No. 181), included some useful and protective provisions.
- 241.** The Employer Vice-Chairperson endorsed the Worker Vice-Chairperson's position.
- 242.** The proposed subamendment was adopted, the Workers' and Employers' groups having endorsed it.
- 243.** The Worker Vice-Chairperson withdrew an amendment in light of the adoption of the previous amendment, as subamended.
- 244.** The new clause after point 4(d) was adopted as subamended.

Point 4(e)

- 245.** The Employer Vice-Chairperson introduced an amendment to add the words ", taking into account the right to privacy that each household enjoys" after "rights fully" in point 4(e). He stressed the importance of the right to privacy, and argued that the discussion was between the worker's rights and a household's right to privacy.
- 246.** The Worker Vice-Chairperson did not see the need to introduce this formulation, and saw a risk that referring to the right to privacy of households might serve to neutralize the rights of workers. She suggested rephrasing the proposed amendment as follows: ", taking into account the right to privacy that each domestic worker and each household enjoys".

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- 247.** The Employer Vice-Chairperson commented that the proposed subamendment was acceptable to his group.
- 248.** The Government member of South Africa expressed concerns about the proposed subamendment. It was important to recognize that the proposed Conclusions addressed the relationship between employee and employer, and the existence of an employment relationship within the household. The fact that the workplace was a household should not infringe the rights of any worker who worked in that household.
- 249.** The Worker Vice-Chairperson found the clarification provided by the Government member of South Africa to be valid, and referred to the text of point 41(1)(a) of the proposed Conclusions that concerned “a system of visits to households in which migrant domestic workers will be employed”, envisaged for the Recommendation. There should be no contradiction between that phrase and privacy concerns.
- 250.** The amendment was adopted as subamended.

Point 4(f)

- 251.** The Employer Vice-Chairperson introduced an amendment to delete point 4(f). The instruments mentioned there had been adopted by the United Nations and were not ILO instruments, and thus not tripartite in nature. There was no need to mention them.
- 252.** The Worker Vice-Chairperson objected to the deletion of point 4(f) since it was important to highlight other relevant UN instruments in a Convention for domestic workers. Several other ILO Conventions made reference to UN human rights instruments, for example: the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Indigenous and Tribal Peoples Convention, 1989 (No. 169); and the Maternity Protection Convention, 2000 (No. 183). Such a reference was thus not unusual.
- 253.** The Government member of Brazil supported maintaining the reference to the UN human rights instruments in view of the fact that other ILO Conventions contained similar language.
- 254.** The Government member of Indonesia concurred and felt that it was important to emphasize the human rights perspective in the preamble.
- 255.** The Government member of South Africa, speaking on behalf of the Africa group, objected to the deletion of point 4(f) that was proposed in the amendment.
- 256.** The Government member of Argentina concurred and, for the reasons given by the Worker Vice-Chairperson and the Government member of Brazil, opposed the amendment.
- 257.** The Employer Vice-Chairperson withdrew the amendment.
- 258.** The Government member of the United States introduced an amendment submitted jointly with the Government members of Argentina and Canada. The amendment proposed to insert the following words into point 4(f): “the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime”. The Protocol had been widely ratified and complemented ILO Conventions on forced labour, and could be used efficiently to suppress human trafficking. Domestic workers were particularly susceptible to trafficking.

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- 259.** The Worker Vice-Chairperson supported the proposed amendment, arguing that the Protocol was relevant to the issue at hand.
- 260.** The Employer Vice-Chairperson cited his group's general reservations about including references to UN instruments, but his group could support the amendment if there was a majority in favour of it.
- 261.** The Government member of Bangladesh had no particular difficulty with the proposed amendment, but pointed out that the other instruments also had optional protocols. He thus had reservations about singling out one particular protocol, and suggested a subamendment to include a specific reference only to the United Nations Convention against Transnational Organized Crime, and a generic reference to "and their optional protocols" at the end of the clause.
- 262.** The Government member of the United States considered that it was valid to cite all the relevant UN Conventions at the same level, but nonetheless felt that the optional protocol to this Convention was of particular relevance, given that it directly referred to trafficking. He suggested modifying the subamendment proposed by the Government member of Bangladesh, citing the Convention first, but adding the words "in particular the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" immediately after the Convention, rather than a generic reference at the end of the clause.
- 263.** The Government member of Bangladesh agreed to that proposal in the interest of time, but wanted to put on record that his delegation did not support a selective approach to international human rights treaties and their use by some member States to make judgements on other member States.
- 264.** The amendment was adopted as subamended by the Government member of the United States.
- 265.** The Government member of Austria, speaking on behalf of EU Member States, introduced an amendment that sought to delete the rest of the sentence after "child" in point 4(f), i.e. removing the reference to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention had only been ratified by a limited number of countries, and did not have enough support to serve as a reference document.
- 266.** The Worker Vice-Chairperson sought clarification as to whether, in the light of the extensive discussion on the previous amendment, the amendment should fall.
- 267.** The representative of the Secretary-General responded that, whereas the previous amendment had sought to insert reference to an additional UN instrument, this amendment sought to delete one, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- 268.** The Government member of Indonesia noted that point 4(f) was a carefully balanced text and remarked that, if the Committee had agreed to adopt a human rights perspective in the proposed instrument, the Committee should not pick and choose from the human rights instruments. Recalling Chapter I(5) of the Vienna Declaration and Programme of Action, 1993, he stated that "All human rights are universal, indivisible and interdependent and interrelated." As a possible subamendment of point 4(f), he suggested that the text might refer only generally to human rights Conventions.

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- 269.** The Chairperson informed the previous speaker that she could not accept that proposal as it was not a subamendment but constituted a completely new amendment and was therefore not receivable.
- 270.** The Government member of Bangladesh opposed the proposed amendment as it took a selective approach towards human rights by singling out for deletion the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The “amputation” of point 4(f) was not acceptable. In addition, the Employer members had already accepted point 4(f) in its entirety by withdrawing their amendment to delete point 4(f). Finally, the reference to the human rights Conventions was in the preamble which was not binding.
- 271.** The Employer Vice-Chairperson noted that, as the Employers’ group was not familiar with UN Conventions, they relied on Government members to decide on what was an appropriate wording on the subject.
- 272.** The Government member of Argentina pointed out that the previous amendment, as subamended, which listed relevant international human rights instruments, had already been adopted by the Committee, while the amendment under discussion referred only to the deletion of one particular instrument from the list.
- 273.** The Worker Vice-Chairperson rejected the proposed amendment and recalled the many previous statements about abuse and trafficking of domestic workers. She also rejected the alternative proposal from the Government member of Indonesia not to identify the relevant international Conventions on human rights. The Committee had agreed that human rights were integral to the instrument on domestic workers. The Employers’ group had withdrawn their amendment to delete point 4(f), and point 4(f) had been adopted as amended.
- 274.** The Government member of Kuwait, speaking on behalf of the GCC countries, supported the proposed amendment. In the case of the GCC countries, domestic workers were migrant workers recruited by private employment agencies and placed in private households on a temporary contractual basis. Migrant domestic workers were not living with their families.
- 275.** The Government member of El Salvador emphasized that a quarter of migrant workers from her country were domestic workers and should be protected. She did not support the proposed amendment.
- 276.** The Government member of Brazil opposed the proposed amendment. It was important to make an explicit link between migrant work and domestic work because the number of migrant workers was increasing and most of them were domestic workers. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was a fundamental Convention. Some 42 countries had signed that Convention.
- 277.** The Government member of Kenya joined other Government members in rejecting the proposed amendment.
- 278.** In response to the opposition expressed, the Government member of Austria, on behalf of EU Member States, withdrew the amendment.
- 279.** Point 4 was adopted as amended.

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## **Point 5**

**280.** The representative of the Secretary-General reported on the work of the working party and, on its behalf, submitted the following amendment to replace point 5 with the following text:

- (1) The Convention should apply to all domestic workers, provided that a Member which has ratified it may, after consulting representative organizations of employers and workers and, in particular, organizations representing domestic workers and their employers, where they exist, exclude wholly or partly from its scope:
  - (a) categories of workers who are otherwise provided with at least equivalent protection;
  - (b) limited categories of workers in respect of which special problems of a substantial nature arise.
- (2) Each Member which avails itself of the possibility afforded in the preceding paragraph should, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

**281.** The Worker Vice-Chairperson recognized that the phrase “special problems of a substantive nature” in point 5(1)(b) had been used in other instruments and wondered about the exact meaning of that phrase. The Government member of Japan supported the comment made by the Worker Vice-Chairperson.

**282.** The Government member of Bangladesh stated that the words “special problems of a substantial nature”, which seemed to have been borrowed from other international instruments, might raise problems of interpretation and thus prevent a possible ratification by his country. While explaining that an alternative text was not immediately available and not wishing to obstruct the advancement of the discussions, he noted that his country might submit a proposal for rewording point 5(1)(b) during the Committee sittings in 2011.

**283.** Point 5 was adopted as amended.

## **Point 6**

**284.** The Employer Vice-Chairperson withdrew an amendment in the light of the discussion on point 4(a) of the proposed Conclusions.

**285.** The Government member of Singapore introduced an amendment which sought to make the text of point 6 of the proposed Conclusions consistent with the ILO Declaration on Fundamental Principles and Rights at Work, 1998, by replacing the words “Each Member should take measures to ensure that domestic workers enjoy” with the words “Each Member should, in relation to domestic workers, respect, promote and realize, in good faith,”. The Government members of Norway and the United States and the Worker Vice-Chairperson supported the proposed amendment.

**286.** The Worker Vice-Chairperson stated that the proposed amendment left out a critical part of point 6 of the proposed Conclusions, namely that Members should “take measures to ensure that” domestic workers enjoyed the fundamental principles and rights at work.

**287.** The Government member of South Africa, speaking on behalf of the Africa group, rejected the proposed amendment. He wondered what the words “in good faith” meant in relation to the fundamental principles and rights that workers already had.

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**288.** The Worker Vice Chairperson shared the previous speaker's concern and expressed a preference for the original text of point 6.

**289.** In response to a question from the Government member of Bangladesh, the representative of the Secretary-General explained that the words "in good faith" were taken from Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, which read as follows:

[The International Labour Conference ...]

Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

**290.** The Government member of Bangladesh supported the proposed amendment and had no problem with the addition of "and in accordance with the Constitution", if needed. He wondered what it meant to "take measures to respect" something.

**291.** The Worker Vice-Chairperson proposed a subamendment to insert "take measures to" after "domestic workers" and to add "and in accordance with the ILO Constitution" after "in good faith". The Government members of Canada, Singapore and the Government member of Spain, speaking on behalf of EU Member States, supported the subamendment, as did the Employer Vice-Chairperson. The Government member of the United States also supported the subamendment while pointing out that the amendment and the subamendment were essentially the same.

**292.** The Government member of South Africa, speaking on behalf of the Africa group, reiterated that he could support neither the proposed amendment nor the subamendment because they would dilute the fundamental principles and rights at work. He expressed great concern about the proposed moderation of point 6 of the proposed Conclusions to better reflect the ILO Declaration on Fundamental Principles and Rights at Work, 1998.

**293.** The amendment was adopted as subamended.

**294.** The Government member of South Africa, speaking on behalf of the Africa group, wished to place on the record that 54 countries in Africa opposed the amendment. There was a need to go beyond that formulation of fundamental rights at work, in order to develop social justice, especially for developing countries.

**295.** The Worker Vice-Chairperson withdrew an amendment as it was already reflected in the proposed Recommendation.

**296.** Point 6 was adopted as amended.

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**Point 7****Point 7(1)**

- 297.** The Government member of Sweden introduced an amendment submitted by the EU Member States to replace the text “Each Member should set a minimum age for admission to domestic work which should not be lower than that established by national laws and regulations for wage earners in general” with the following text: “Each Member should set a minimum age for admission to domestic work in accordance with Conventions Nos 138 and 182 and not lower than that established by national laws and regulations for wage earners in general.” The amendment was intended to set minimum standards on this important point and ensure that the provisions of Conventions Nos 138 and 182 also applied to domestic workers.
- 298.** The Employer Vice-Chairperson stated that his group was agreeable to supporting the proposed amendment, subject to a subamendment to replace the words “wage earners in general” with the words “workers generally”.
- 299.** The Worker Vice-Chairperson stated that her group was also agreeable to supporting the proposed amendment, subject to another subamendment to insert the words “on child labour” so that the new text would read as follows: “Each Member should set a minimum age for domestic workers in accordance with Conventions Nos 138 and 182 on child labour and not lower than that established by national laws and regulations for workers generally.”
- 300.** The Government members of Indonesia, Norway, the Philippines and Sweden expressed their support for the proposal as subamended by the Employer members and by the Worker members.
- 301.** The amendment was adopted as subamended.
- 302.** In view of the above adoption and with the agreement of the Employers’ group, an amendment fell.
- 303.** Point 7(1) was adopted as amended.

**Point 7(2)**

- 304.** The Government member of Sweden introduced an amendment, submitted by the EU Member States, to delete the paragraph which read: “Where, in accordance with national laws and regulations, domestic work is qualified as work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons, the minimum wage should not be less than 18 years.” The proposal was aimed at avoiding repetition as reference to Conventions Nos 138 and 182, which provided that the minimum age should not be less than 18 years, had already been made.
- 305.** The Worker Vice-Chairperson and the Employer Vice-Chairperson supported the proposed amendment. The Government member of Canada also supported the amendment as did the Government member of the Philippines.
- 306.** The amendment was adopted.
- 307.** As a result of the amendment being adopted, a number of proposed amendments fell.
- 308.** Point 7(2) was deleted.

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New paragraph after point 7(2)

- 309.** The Government member of South Africa introduced an amendment, submitted by the Africa group, to add a new paragraph stating that “Member States should ensure that domestic work performed by child domestic workers does not deprive them or interfere with their education or vocational training.” The purpose was to ensure that access to education and vocational training was not hampered by domestic work and was recognized as a right.
- 310.** The Worker Vice-Chairperson stated that, although the intention of the amendment was laudable, the proposed amendment could inadvertently give the impression that it was an endorsement of the phenomenon of child domestic workers.
- 311.** The Employer Vice-Chairperson proposed a subamendment to replace the text thus: “Member States should ensure that domestic work performed by children does not deprive them or interfere with their education or vocational training, according to national laws and regulations.” In response to a request for clarification from the Worker Vice-Chairperson, he added that the reference to national laws and regulations related to whether these required education to the age of 16 or 18, as the case might be.
- 312.** The Government member of the Netherlands, speaking also on behalf of the Government member of Sweden, supported the amendment as formulated by the Africa group. The Government members of the United States, Uruguay and the Bolivarian Republic of Venezuela also supported the Africa group’s amendment in its original formulation. The Government member of Kuwait concurred that children below the age of 18 years were entitled to education and vocational training.
- 313.** The Government members of Argentina, Dominican Republic, El Salvador, Uruguay and the Bolivarian Republic of Venezuela stated that they could not support the Employer members’ subamendment as, at least in the Spanish language version, it sounded as if it was promoting domestic work by children. The Government member of South Africa also had a concern with using the term “children” and reiterated that the Africa group did not support child labour.
- 314.** The Worker Vice-Chairperson agreed and proposed a further subamendment so that the text would read as follows: “Member States should ensure that domestic work performed by children, who are above the minimum age of employment, does not deprive them or interfere with their education or vocational training, according to national laws and regulation.” It was essential to avoid the appearance of endorsing child labour. The exact final wording could be left to the Committee Drafting Committee.
- 315.** The Employer Vice-Chairperson could accept neither the Worker members’ subamendment nor its proposal to send the unresolved issue to the Committee Drafting Committee, and insisted that it was important to include the word “children” in the text, as that was precisely the group that the new paragraph sought to protect. The Government member of the Netherlands, speaking also on behalf of the Government member of Sweden, and the Government member of Norway supported the Employer members’ suggestion to refer explicitly to “children”.
- 316.** The Worker Vice-Chairperson stated that her group was agreeable to the proposal to make the paragraph specifically about children but remained averse to the idea of inadvertently endorsing child labour in the instrument and therefore could not support the formulation proposed by the Employer members. She proposed using the term “young domestic workers” instead of “children” in the amendment.

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- 317.** The Employer Vice-Chairperson stressed that it was important to keep the reference to children, defined as those between 15 and 18 years of age, and not young people, which was a sociological concept that lacked definition. He suggested simply inserting the words “between 15 and 18 years” after the term “child domestic workers” in the proposed amendment.
- 318.** The Chairperson pointed out that the minimum age for admission to employment differed between countries. A reference to “above the minimum age of employment and below 18 years” would thus be more appropriate.
- 319.** The Worker Vice-Chairperson proposed that the text could read as follows: “Member States should ensure that domestic workers under the age of 18 and above the minimum age of employment are specially protected against domestic work that deprives them of or interferes with their education or vocational training.”
- 320.** The Government member of South Africa said that he could agree to the proposal, if it brought the discussion to a resolution. The Government member of the United States concurred.
- 321.** Responding to a question by the Government member of Ecuador, who had asked why the draft text used the word “should” rather than the imperative form “shall”, the representative of the Secretary-General clarified that the text under consideration was the proposed Conclusions and that the term “should” would be replaced by “shall” in the final draft of the Convention.
- 322.** The Government member of Bangladesh thought the proposal was generally good, but expressed some reservations about the phrase “specially protected against domestic work”. It could make it difficult for his country to ratify a Convention. He proposed a subamendment with a possible compromise wording so that the text would read “Member States should ensure that domestic work performed by domestic workers under the age of 18 and above the minimum age of employment does not deprive them or interfere with their education or vocational training.” The subamendment was seconded by the Government members of the Netherlands, Norway and Sweden.
- 323.** The Employer Vice-Chairperson and the Worker Vice-Chairperson supported the proposal made by the Government member of Bangladesh.
- 324.** The new paragraph was adopted as subamended.
- 325.** An amendment submitted by the Government member of Lebanon, requesting special attention to the needs of young domestic workers, fell.
- 326.** Point 7 was adopted as amended.

### **Point 8**

- 327.** The Employer Vice-Chairperson introduced an amendment to replace the existing text, that “Each Member should take measures to ensure that domestic workers, like all wage earners, enjoy fair terms of employment as well as decent working conditions and, where applicable, decent living conditions respecting the worker’s privacy”, with the following text: “Each Member should take appropriate measures to ensure that domestic workers, like workers generally, enjoy fair terms and conditions of employment, appropriate working conditions and, for live-in domestic workers, appropriate living conditions respecting the worker’s and householder’s privacy, taking account of national laws and regulations.” The original text was not clear and could lead to misinterpretation by

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governments and by the CEACR. It was also important to take into account the fact that many countries, such as the Plurinational State of Bolivia, Ireland, Singapore and Uruguay, already had legislation that sought to ensure a minimum standard of working and living conditions for domestic workers. The term “appropriate” was suggested following the usual practice in ILO instruments. It was also important to recognize the householder’s privacy.

- 328.** The Worker Vice-Chairperson objected to the proposed amendment as it would weaken the text, which formed the heart of the proposed Convention. Replacing “decent” with “appropriate” was not acceptable. Moreover, “appropriate” was highly subjective. Reference to conditions according to “national laws and regulations” narrowed the need for international standards and implicitly accepted the deficits that still existed despite national laws on domestic work.
- 329.** The Government members of Argentina, Brazil, Canada, Ecuador, South Africa, Spain speaking on behalf of EU Member States except Finland, and the United States opposed the Employer members’ amendment and shared the Workers’ group’s position.
- 330.** The Employer Vice-Chairperson proposed a subamendment to replace the term “appropriate” with “decent” before the words “working conditions” and “living conditions”.
- 331.** In response to this subamendment, the Worker Vice-Chairperson proposed another subamendment to delete the phrase “and householder’s” before “privacy” and to delete the phrase “taking account of national laws and regulations” at the end of the paragraph.
- 332.** The Government member of the United States preferred to keep the original text of the proposed Conclusions, for which many Governments had expressed support. He considered that the original text was reasonable and did not place an excessive burden on any of the parties.
- 333.** Following consultations, the Employer Vice-Chairperson withdrew the amendment, indicating that the Employer members and Worker members had agreed that his group’s concerns regarding the privacy of households could be addressed in a later paragraph.
- 334.** The Worker Vice-Chairperson introduced an amendment aimed at ensuring that domestic workers should – like other wage earners – enjoy decent working conditions, and highlighting the importance of health and safety. The text would read “Each Member should take measures to ensure that domestic workers enjoy fair terms of employment as well as decent working conditions no less favourable than those of other wage earners and, where applicable, decent living conditions respecting the worker’s privacy, health and safety.”
- 335.** The Employer Vice-Chairperson proposed a subamendment to change the words “other wage earners” to “workers generally”, wherever it appeared in the text.
- 336.** The Worker Vice-Chairperson supported the subamendment.
- 337.** The Government member of Australia remarked that, although she recognized that agreement had been reached between the Employers’ and Workers’ groups, she was aware that, if the amendment was adopted, a subsequent amendment, proposed by the Government members of Australia, Canada, Finland, New Zealand, Norway and Switzerland, to delete the words “and, where applicable, decent living conditions respecting the worker’s privacy”, would fall. It was the view of the Government member of Australia and a number of others that point 8 related to decent working conditions and

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that it would be more appropriate to refer to the issue of privacy under point 11, which concerned living conditions.

- 338.** The Government member of Canada could not accept the amendment proposed by the Worker members, as it duplicated point 15 as far as occupational safety and health was concerned.
- 339.** The Government member of Norway agreed with the Government member of Canada. If adopted, however, the amended text should at least use the same wording as that used in point 15 (“with due regard to the specific characteristics of domestic work”) to reflect the fact that, given the specificities of domestic work, it was difficult to ensure that domestic workers enjoyed exactly the same conditions as those of other workers.
- 340.** The Government member of Spain, speaking on behalf of EU Member States, concurred with the Government members of Australia and Norway that the issue of occupational safety and health should not be introduced in point 8. The Government members of EU Member States had submitted a separate amendment on the issue.
- 341.** The Government member of the Philippines indicated her support for the subamendment proposed by the Employers’ group and stressed the importance of ensuring equal treatment for domestic workers.
- 342.** The Government member of Australia, responding to the Government member of the Philippines, emphasized that there had been no suggestion to remove from the Convention the provision relating to decent living conditions with respect to privacy, but rather simply to move that provision to point 11.
- 343.** The Worker Vice-Chairperson proposed a subamendment to delete the reference to health and safety from the amendment because several speakers had indicated a preference not to link that issue with privacy. The text would read “Each Member should take measures to ensure that domestic workers enjoy fair terms of employment as well as decent working conditions, no less favourable than those of workers generally, and, where applicable, decent living conditions respecting the worker’s privacy.”
- 344.** The Government member of Switzerland, speaking also on behalf of the Government member of the Netherlands, endorsed the statements made by the Government members of Norway and Spain, the latter on behalf of the EU Member States, and did not support the proposed amendment, as the issue of occupational safety and health was already mentioned in point 15, where it was more appropriate.
- 345.** The Government member of Canada fully agreed with the Government member of Switzerland.
- 346.** The Government member of South Africa also agreed with the Government member of Switzerland and believed that the issue of occupational safety and health was already adequately catered for in point 15; it would be superfluous to mention it in point 8.
- 347.** The Worker Vice-Chairperson stressed the importance of health and safety; her group would have liked to include a reference to it in the provision dealing with decent working conditions. In a spirit of consensus, however, she withdrew that part of the proposed amendment and expressed her support for the subamendment made by the Employer members.
- 348.** In response to a question from the Government member of Bangladesh, the Worker Vice-Chairperson confirmed that the only change as compared with the proposed

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Conclusions would be to replace “like all wage earners” with “like workers generally”, as suggested by the Employer members.

- 349.** The Employer Vice-Chairperson and the Government members of the Netherlands, Norway, the Philippines and Switzerland concurred.
- 350.** The proposed amendment was adopted as subamended. As a consequence, two amendments fell.
- 351.** The Worker Vice-Chairperson withdrew an amendment.
- 352.** The Worker Vice-Chairperson introduced an amendment that underlined the importance of freedom of association and collective bargaining as a means of achieving the decent work objective. It was a vital mechanism that could work alongside laws and government machinery to improve the working conditions of workers. That had been the initial motivation for proposing to add two paragraphs to point 8. However, that concern was already reflected in point 6 of the proposed Conclusions, and she therefore subamended the text originally proposed by her group to read as follows: “Members should take measures to ensure the effective protection of basic human rights for all domestic workers.”
- 353.** The Employer Vice-Chairperson found the proposed amendment, as subamended, to be acceptable.
- 354.** As there were no objections to the text from the Government members, the amendment was adopted, as subamended.
- 355.** Point 8 was adopted as amended.

## **Point 9**

### **Chapeau**

- 356.** The Employer Vice-Chairperson introduced an amendment, which was only intended to replace the chapeau of point 9, and subamended the amendment as follows: “Domestic workers should be informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner, including, where possible, through written contract, in accordance with national laws and regulations, including where possible:”.
- 357.** The Worker Vice-Chairperson acknowledged that the mention of “written contracts” in the Employer members’ amendment was a good point. However, the phrase “including where possible” weakened the text such that the Workers’ group could not support the proposed amendment in its current formulation.
- 358.** The Government member of Australia objected to the Employer members’ amendment, stressing that point 9 was critical to the protection of domestic workers and was thus one of the most important elements of the proposed binding instrument. The Government members of Argentina, Brazil, Canada, Congo, on behalf of the Africa group, the Philippines, Spain, on behalf of EU Member States, the United States, and the Bolivarian Republic of Venezuela, on behalf of GRULAC, voiced similar opposition to the amendment and their preference for the original text.
- 359.** The Government member of Uruguay, while also expressing preference for the original text, added that the only problem was that it did not specify that the employer of the

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domestic worker had the obligation to provide information on terms and conditions of employment.

- 360.** The Government member of Kuwait, speaking on behalf of the GCC countries, endorsed the Employer members' amendment, particularly the need for written contracts containing all the elements of clauses (a)–(h) of point 9. Written contracts were already required in the GCC countries.
- 361.** The Government member of Indonesia explained that his Government could accept the amendment submitted by the Employer members' because point 9(e), which listed duration of contract among the terms and conditions of employment to be specified, was not yet stipulated by law in Indonesia. The obligation to specify the duration of contract of a domestic worker applied only to migrant workers.
- 362.** The Government member of Bangladesh supported the retention of the reference to "written contracts" in the amendment proposed by the Employer members.
- 363.** In response to the various interventions, the Worker Vice-Chairperson submitted a further subamendment, which read as follows: "Members should ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner, including through written contracts in accordance with national laws and regulations, in particular:".
- 364.** The Employer Vice-Chairperson proposed a further subamendment to add "where possible and preferably" after "including", which was supported by the Worker Vice-Chairperson.
- 365.** The Government member of the United States suggested adding "in a language they understand" after "informed". The subamendment was supported by the Government member of Australia and the Worker Vice-Chairperson.
- 366.** The Government member of Spain, speaking on behalf of EU Member States, supported the text as amended by the Employer members, but he was unsure that the subamendment proposed by the Government member of the United States would be realistic, given that it could require an individual householder to provide a contract written in a language they did not understand. While a domestic worker might understand a contract verbally, he/she might not necessarily understand it in writing. The Government member of Uruguay voiced the same concern, although he understood the intention of the subamendment.
- 367.** The Government member of France supported the EU position and added that it was unrealistic and unfeasible to ensure that all private employers provide written contracts in a language that a domestic worker would understand, and recalled that employers would include older people, for example.
- 368.** The Government member of Bangladesh understood the value of the subamendment but suggested keeping the text of the Convention broad. He referred the Government member of the United States to point 26(1) of the proposed Conclusions, which stipulated that the terms and conditions of employment should be provided in writing and that, when necessary, appropriate assistance should be provided to ensure that the domestic worker understood those terms and conditions.
- 369.** The Government member of the United States withdrew his subamendment in the interest of moving ahead.
- 370.** The amendment was adopted as amended.

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**371.** An amendment which had been submitted by the Worker members fell.

**372.** The chapeau of point 9 was adopted as amended.

Point 9(a)

**373.** The Employer Vice-Chairperson introduced an amendment to replace the word “employer” by the word “householder”, and proposed a subamendment to replace the word “householder” by the words “domestic employer”.

**374.** The Worker Vice-Chairperson could support neither the Employer members’ amendment nor its related subamendment, arguing that the Convention already provided a definition of “employer”, which included both householders and employment agencies.

**375.** The Employer Vice-Chairperson withdrew the amendment.

**376.** Point 9(a) was adopted.

Point 9(b)

**377.** The Employer Vice-Chairperson presented an amendment to delete the clause, considering it overly detailed and impossible to be fully implemented by an employer.

**378.** The Worker Vice-Chairperson, while rejecting the amendment, commented that informing a domestic worker about the type of work that he or she was asked to perform should not be considered a difficult responsibility for an employer. It would avoid the situation where domestic workers were asked to carry out tasks for which they were not hired. As was the case for all employees, domestic workers should also be entitled to be informed about their job description.

**379.** The Government member of the United States supported the position of the Workers’ group and noted that informing a domestic worker about the type of work to be performed was a matter of transparency, which affected the whole process of negotiation, covering crucial aspects of the employment relationship, such as wages.

**380.** The Government member of Canada endorsed the position of the previous speakers, adding that the original text of the clause did not call for many details, but only covered the issue of the type of work to be performed by a domestic worker.

**381.** The Government member of Argentina rejected the Employer members’ amendment, noting that decent work could not be ensured if the rights covered under an employment relationship were not clearly stated.

**382.** The Employer Vice-Chairperson withdrew the amendment.

**383.** The Employer Vice-Chairperson introduced an amendment to insert the word “general” before the words “type of work”.

**384.** The Worker Vice-Chairperson opposed this, explaining that the clause was already sufficiently clear and no further details were required.

**385.** The Government members of Argentina and Norway opposed the amendment.

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- 386.** The Government member of Congo, speaking on behalf of the Africa group, also opposed the amendment, noting that adding the word “general” might suppose that a domestic worker should perform all the work within a household.
- 387.** The Government member of Australia also opposed the proposed addition, indicating that the type of work to be performed should be clearly stated in an employment contract.
- 388.** The Employer Vice-Chairperson withdrew the amendment.
- 389.** Point 9(b) was adopted.

Point 9(c)

- 390.** The Employer Vice-Chairperson introduced an amendment to replace the words “method of calculation and pay interval” with the following words: “which may include payment in kind”. He considered that the method of calculating remuneration should not be part of a Convention and it should be up to the employer to decide this according to national laws and regulations. Mention of payment in kind should also be made, since this practice frequently occurred in many countries.
- 391.** The Worker Vice-Chairperson rejected the proposed amendment because the method of calculation and the regularity of payment were crucial aspects of the employment contract, and especially important for domestic workers, who usually earned very low wages on which their households relied for their livelihood. Further, knowing the periodicity of payment (daily, weekly or monthly) was also deemed essential for planning the worker’s expenditure. Moreover, she cautioned that adding a reference in point 9 to payment in kind could encourage that type of practice. In particular, noting that point 14(1) and (2) already mentioned the issue, she stated that the use of payment in kind should be exceptional and its share of total wage had to be limited.
- 392.** In response to a question from the Government member of Indonesia, the Employer Vice-Chairperson confirmed that “payment in kind” referred to accommodation, food and other allowances appropriate to the personal use and benefit of the domestic worker, as outlined in point 34.
- 393.** The Worker Vice-Chairperson asked the Office to provide a definition of the term “remuneration”, which commonly appeared in ILO instruments. She wondered, for example, if it referred only to cash payments.
- 394.** The representative of the Secretary-General explained that the term “remuneration” was defined in Article 1(a) of the Equal Remuneration Convention, 1951 (No. 100), as including “the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment”.
- 395.** The Worker Vice-Chairperson observed that, according to that definition, remuneration included payments both in cash and in kind. There was therefore no need to include in the text a specific reference to payment in kind.
- 396.** The Government members of Argentina, Brazil, New Zealand, the Philippines, South Africa, speaking on behalf of the Africa group, Spain, speaking on behalf of EU Member States, and Uruguay agreed with the Workers’ group and did not support the proposed amendment.

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- 397.** The Employer Vice-Chairperson said that, before withdrawing the amendment, he would first like to know whether there was a definition of the term “method of calculation”, which appeared in the original text in relation to remuneration.
- 398.** The representative of the Secretary-General said that the term “method of payment” had not been defined but that it referred to whether wages might be calculated on a piecework or output basis, for example.
- 399.** The Employer Vice-Chairperson withdrew the amendment.
- 400.** The Government member of Spain, speaking on behalf of EU Member States, introduced an amendment to delete the words “rate of” so that the text would read “the remuneration, method of calculation and pay interval”. It was important to ensure that workers received information about the amounts they would actually receive.
- 401.** The Employer Vice-Chairperson and the Worker Vice-Chairperson supported the proposed amendment.
- 402.** The amendment was adopted.
- 403.** The Government member of Spain, speaking on behalf of EU Member States, introduced an amendment to the English version to replace the term “pay interval” by “regularity of its payment”, which was more commonly used in English and highlighted the importance of being paid regularly. He pointed out that the proposed amendment did not affect the French or Spanish versions.
- 404.** The Employer Vice-Chairperson and the Worker Vice-Chairperson supported the amendment.
- 405.** The amendment was adopted.
- 406.** Point 9(c) was adopted as amended.

Point 9(d)

- 407.** The Government member of Spain, speaking on behalf of EU Member States, introduced an amendment to replace “normal hours of work” by “regular hours of work”. He said that the aim of the amendment was to improve the Spanish version, as in Spanish it was preferable to use the term “habitual” rather than “normal” when referring to hours of work.
- 408.** The Worker Vice-Chairperson suggested that the change should apply only to the Spanish version, if that was where the problem lay. She would prefer the English version to remain as it stood; it was very common in English to refer to “normal hours of work”, whereas the term “regular hours of work” was not clear. The term “normal” in that context meant work that was normally performed under the employment contract or under the existing legislation. She drew the Committee’s attention to the fact that the term “normal” working day or week was also used in EU Directive No. 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship. She therefore did not support the amendment.
- 409.** The Government member of Spain, speaking on behalf of EU Member States, said that the problem was one of translation and could be entrusted to the Committee Drafting Committee to resolve. He therefore withdrew the amendment.

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Point 9(e)–(f)

**410.** No amendments had been submitted on points 9(e)–(f).

Point 9(g)

**411.** The Employer Vice-Chairperson introduced an amendment to add the words “or trial period” so that the text would read “the period of probation or trial period, if applicable;”. The aim was to clarify the meaning of the word “probation”, which was called “trial period” in some countries.

**412.** The Worker Vice-Chairperson asked whether the proposed amendment changed the meaning of the text.

**413.** The Employer Vice-Chairperson confirmed that it did not.

**414.** The Worker Vice-Chairperson supported the amendment.

**415.** The amendment was adopted.

**416.** Point 9(g) was adopted as amended.

Point 9(h)

**417.** The Government member of Austria, speaking on behalf of EU Member States, introduced an amendment to delete the clause, which referred to “the terms of repatriation, if applicable”. He would prefer to discuss the issue of repatriation in a subsequent point, perhaps in point 16 or in the text of the Recommendation, rather than in point 9 which was on the terms and conditions of employment.

**418.** The Worker Vice-Chairperson emphasized the importance of the issue of repatriation, especially for migrant domestic workers, who were mainly women and sometimes girls who were often separated from their families or had travelled thousands of miles in order to work. It was important to take into account the fact that, if they were not repatriated, such workers often had to stay in the country illegally when their employer no longer required their services and became very vulnerable to abuse. Under Article 4(1) of EU Directive No. 91/533/EEC, the employment contract of a migrant worker had to include, where appropriate, the conditions governing the employee’s repatriation. It was an important issue that applied to millions of workers and it was not fair to call for the deletion of the clause. She urged EU Member States to bear in mind that the issue had already been included in an EU directive.

**419.** The Employer Vice-Chairperson said that, in view of the fact that the issue would be discussed under point 16(2), he would support the proposed amendment.

**420.** The Government member of the United States, while appreciating the EU Member States’ desire to make the list shorter, was of the view that point 16 was somewhat broader. The aim of point 9 was to provide a specific list of issues that should be disclosed to the worker. He therefore agreed with the Workers’ group on the matter.

**421.** The Government member of South Africa, speaking on behalf of the Africa group, also considered that it made sense to retain a reference to the terms of repatriation in point 9. Thus, he did not support the amendment.

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**422.** The Government members of Argentina and Uruguay also supported the views of the Workers' group and wished to retain the original wording.

**423.** The Government member of Austria, speaking on behalf of EU Member States, withdrew the amendment.

New paragraph in point 9 and new clause after point 9(h)

**424.** The Worker Vice-Chairperson withdrew an amendment to insert a new clause after clause (h) to read "sick leave and any other personal leave", as the issue was covered under the proposed Recommendation.

**425.** The Worker Vice-Chairperson withdrew an amendment on the provision of accommodation and food for domestic workers, as the provisions were reflected under the proposed Recommendation.

**426.** The Worker Vice-Chairperson introduced an amendment to insert a paragraph with the following wording: "In the event of termination of employment, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation." She drew attention to the plight of live-in domestic workers who lost their jobs and, as a consequence, also their accommodation. This had special importance for migrant domestic workers, who might end up stranded without accommodation thousands of kilometres away from their home. From the accounts of many trade unions and NGOs, this had emerged as a serious problem especially for women, who might fall into unsafe situations. Live-in domestic workers should thus be given a reasonable notice period during which they could look for work and new accommodation. Such a notice period was already a common element in national legislation of many countries.

**427.** The Employer Vice-Chairperson expressed his preference for retaining the provision in paragraph 38, and hence in the part that referred to a Recommendation.

**428.** The Government member of South Africa, speaking on behalf of the Africa group, stressed that, while his group saw the relevance and importance of the issue, the detailed provision should be left to the Recommendation; otherwise, there was a risk that the Convention would become too difficult for countries to ratify. His group therefore did not support the proposed amendment.

**429.** The Government members of Canada and Spain, the latter speaking on behalf of EU Member States, and Switzerland concurred with the Government member of South Africa and also objected to the proposed amendment.

**430.** In light of the views expressed by Government members, the Worker Vice-Chairperson proposed to subamend the text as follows: "Special measures should be taken in the event of termination of employment of live-in domestic workers to address the problems that may arise in connection with residence and accommodation in the host country." In response to a question from the Government member of Indonesia, the Worker Vice-Chairperson clarified that the subamendment was intended to cover all "live-in domestic workers", whether they were migrant domestic workers or nationals who had moved from one part of their home country to another.

**431.** The Government member of Switzerland reiterated her delegation's commitment to protect migrant domestic workers, but stated that she could not follow the Workers' group's latest subamendment. Point 9 referred to the relationship between employer and employee,

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whereas the subamendment touched upon the relationship between the domestic workers and the State. That might create problems regarding the ratification of a Convention.

- 432.** The Government member of Australia could not support the Workers' group's subamendment because it was a departure from the clear list of fundamental aspects of an employment relationship that were currently covered in point 9. Nonetheless, she appreciated the situation of live-in domestic workers and suggested, as a possible compromise, adding a new clause that would read as follows: "termination of employment provisions".
- 433.** The Government member of Canada supported the proposal made by the Government member of Australia.
- 434.** The Worker Vice-Chairperson appreciated the concerns expressed by the Government members of Australia and Canada, but wished to return to the earlier subamendment and suggested deleting the words "in the host country" after the word "residence".
- 435.** The Employer Vice-Chairperson did not support the Worker members' subamendment but supported the proposal made by the Government member of Australia.
- 436.** The Government member of Spain, speaking on behalf of EU Member States, concurred in supporting the new clause proposed by the Government member of Australia. It was sufficient to include the clause in the Convention, and to place the rest in the Recommendation.
- 437.** The Government members of Bangladesh, Kuwait, speaking on behalf of the GCC countries, and the Philippines also supported the new clause proposed by the Government member of Australia and expressed a preference for leaving detailed provisions to the Recommendation.
- 438.** The Worker Vice-Chairperson recognized the difficulties with regard to ratification that had been identified by some Government members. She introduced a further subamendment so that the text would read: "Special measures should be taken in the event of termination of employment of live-in domestic workers to address the problems that may arise in connection with accommodation in some situations immediately following termination."
- 439.** The Employer Vice-Chairperson rejected the proposed subamendment.
- 440.** The Government member of the United States considered that there was large support for the Government member of Australia's proposal for a new clause and suggested that the latest subamendment proposed by the Workers' group could be discussed later, under point 11, in a new clause (d).
- 441.** The Worker Vice-Chairperson agreed to the proposal made by the Government member of the United States.
- 442.** The Employer Vice-Chairperson supported the suggestion to address the issue in point 11 and restated his support for the subamendment proposed by the Government member of Australia.
- 443.** The amendment to insert a new clause after clause (h) was adopted.
- 444.** The Government member of Australia withdrew an amendment as it purely concerned a structural issue.

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445. Point 9 was adopted as amended.

**Point 10**

446. The Worker Vice-Chairperson introduced an amendment to replace the original text with the following: “Member States should adopt measures under national laws or regulations for the effective detection of the abusive use of domestic work, which includes all forms of child labour, forced labour, harassment and other abusive situations. Such measures should include appropriate remedies as well as the sanctioning of such abuses.” The original text was weak because it spoke only about effective protection while many violations were embedded in domestic work, which called for measures aimed at effective detection of those abuses. Moreover, citing examples of abusive use of domestic work would underscore the importance of identifying and recognizing hidden abuses. Measures to prevent as well as to punish abuses were called for.
447. Responding to questions from the Government members of South Africa, speaking on behalf of the Africa group, and the United States, the representative of the Secretary-General clarified that in ILO terminology the words “effective protection” included “taking remedies”.
448. The Government member of the United States considered therefore that the original text of point 10 should stand, describing it as being to the point, comprehensive and memorable.
449. The Government member of Kuwait shared the position of the Government member of the United States and pointed out that all countries had laws that punished illegal practices, whether committed in the context of domestic work or other types of work.
450. The Government members of Brazil, Canada, Chile, Norway, the Philippines, Singapore, the United Kingdom, speaking on behalf of EU Member States, and Uruguay also expressed a preference for retaining the original text.
451. The Worker Vice-Chairperson explained that, despite the clarifications of the Office, it was necessary to draw attention to the importance of remedies. Putting in place laws or systems to protect domestic workers was not enough. Proactive measures were required to ensure effective implementation. The use of the words “take measures” would help reinforce that point and she called on Government members to reconsider their reservations.
452. The Government member of South Africa, speaking on behalf of the Africa group, stated that the Convention should focus on the main principles. The text should be kept simple and not too detailed so that it would be ratifiable by a large number of countries. He supported the original text of point 10 because it encompassed a clear principle and provided simplicity.
453. The Government members of Algeria, the Libyan Arab Jamahiriya and Namibia echoed the same sentiments.
454. Considering the consensus that the words “effective protection” included “taking remedies”, and that additional details could be further reflected in the Recommendation, the Worker Vice-Chairperson withdrew the amendment.
455. The Employer Vice-Chairperson withdrew an amendment to insert the word “appropriate” before the word “measures” and to delete the word “effective” after the word “enjoy”.

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- 456.** The Government member of the United Kingdom, speaking on behalf of EU Member States, withdrew an amendment which sought to replace the word “enjoy” by “have access to”.
- 457.** The Employer Vice-Chairperson withdrew an amendment to add at the end of the point the words “as those terms are defined in national laws and regulations”.
- 458.** Point 10 was adopted.

## **Point 11**

### Chapeau

- 459.** The Employer Vice-Chairperson withdrew an amendment to insert the word “appropriate” in the chapeau, after the word “take”.
- 460.** The Government member of Australia withdrew an amendment submitted by the Government members of Australia, Canada, Finland, New Zealand, Norway and Switzerland to modify the text of the chapeau and insert a new clause.

### Point 11(a)

- 461.** The Employer Vice-Chairperson withdrew an amendment to replace “employer” by “householder”.
- 462.** The Government member of Canada, speaking also on behalf of the Government member of Japan, presented an amendment to insert the words “unless residence in the home is a condition of employment” at the end of the clause. The proposed amendment aimed at recognizing that residing in the household could be a condition of employment, for example in the case of taking care of children, persons with disabilities or elderly persons.
- 463.** The Employer Vice-Chairperson supported the proposed amendment and suggested a subamendment to add the words “taking into account employer’s and worker’s privacy” after the words “unless residence in the home is a condition of employment”.
- 464.** The Worker Vice-Chairperson opposed the amendment and subamendment, noting that they would undermine the principle of freedom of negotiation, which was the key objective of point 11(a). That principle enabled both parties to decide whether or not to conclude a contract on the issue. The addition would make the text contradictory.
- 465.** The Government member of the United States also opposed the proposed amendments, stating that residence was part of the negotiations even if it was a condition of employment.
- 466.** The Government member of Australia also opposed the proposed amendments and supported the position of the Workers’ group, arguing that the ability to negotiate included the capacity for both parties to accept or refuse residence as a condition of employment.
- 467.** The Government members of Brazil, Chile, speaking on behalf of the Government members of the Dominican Republic and the Bolivarian Republic of Venezuela, Kuwait, speaking on behalf of the GCC countries, the Philippines, South Africa, speaking on behalf of the Africa group, and Sweden, speaking also on behalf of the Government members of Spain and Switzerland, endorsed the statement of the Government members of Australia and the United States.

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468. The Government member of Canada, noting the consensus expressed by the previous speakers, withdrew the amendment.
469. The Employer Vice-Chairperson introduced an amendment to add at the end of the clause the following text: “, taking account of whether residence was a condition of employment when the employment was first offered”. He explained that the original text would limit the possibility for the employer to negotiate on the issue of residence, so the addition would strengthen freedom of negotiation.
470. The Government member of Canada supported the proposed amendment, noting that the Employer members’ text aimed at preserving the rationale of the previous amendment which he had withdrawn, with more consensual wording.
471. The Worker Vice-Chairperson objected to the proposed amendment, considering the text to have the same objective as the previous amendment proposed by the Government members of Canada and Japan, and that it would similarly undermine the principle of freedom of negotiation.
472. The Government member of the United States stated that the rationale of the amendment under discussion was slightly different to that of the previous one, as it addressed the situation where an employee, having accepted to reside in the household, then decided to move out. That situation might open grounds for dismissal. However, he considered that the proposed language was not necessary and objected to the amendment.
473. The Employer Vice-Chairperson withdrew the amendment.
474. The Worker Vice-Chairperson returned to an amendment, which had been introduced and subamended earlier, aimed at addressing issues surrounding termination of employment for live-in domestic workers, originally intended to be inserted in point 9.
475. The Worker Vice-Chairperson appreciated the time that had been spent discussing a very important issue and the fact that her group’s views had been taken into account. She proposed an alternative subamendment, which she hoped took into account the concerns expressed by the Employers’ group with regard to the exercise of certain rights, to insert the following text as a new paragraph after clause (c): “In taking these measures, due respect should be given to the privacy of both the domestic worker and the householder.”
476. The Employer Vice-Chairperson supported that subamendment. He noted, however, that numbering would need to be inserted, a task that could be entrusted to the Committee Drafting Committee.
477. The subamendment proposed by the Worker members was adopted.
478. Point 11 was adopted as amended.

## **Point 12**

### Point 12(1)

479. The Employer Vice-Chairperson withdrew an amendment to insert in the first line the word “appropriate” before the word “measures”.
480. The Government member of Spain, speaking on behalf of EU Member States, withdrew an amendment to replace in the first line the word “normal” by the word “regular”, noting that

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another amendment proposing the same change had not been approved earlier in the discussion.

- 481.** The Worker Vice-Chairperson withdrew an amendment to add in the second line the words “and payment” after the words “overtime compensation”, after receiving confirmation from the representative of the Secretary-General that the term “compensation” included reference to payment.
- 482.** The Employer Vice-Chairperson introduced an amendment to replace in the third line the words “applicable to other wage earners” with the words “mandated for workers generally in accordance with national laws and regulations”. The aim was to align the conditions of domestic workers with those of all other workers in a national context. In response to a question by the Worker Vice-Chairperson, he confirmed that the inclusion of the words “in accordance with national laws and regulations” was in no way intended to restrict the scope of application of the provision.
- 483.** The Worker Vice-Chairperson stated that, with that clarification, she could support the proposed amendment.
- 484.** In response to a query by the Government member of South Africa, the representative of the Secretary-General explained that there was no reason why the word “mandated” should not be used in an official ILO text; it could be used, if the Committee so wished.
- 485.** The Government member of the United States pointed out that, in his country and some others, many of the issues under consideration were determined by state governments or authorities other than national governments, and asked whether those cases would be subsumed by the term “national laws”.
- 486.** The representative of the Secretary-General replied in the affirmative.
- 487.** The Government member of Indonesia said that, in his understanding, the term “national law” in such a context meant both national and provincial laws.
- 488.** The amendment was adopted.
- 489.** The Government member of Spain, speaking on behalf of EU Member States, introduced an amendment to add at the end of the paragraph the words “, unless a difference can be justified on objective grounds”. The specific nature of domestic work justified special treatment on objective grounds. He pointed out that family workers were excluded from the scope of EU Working Time Directive 2003/88/EC; it was therefore not possible to apply to domestic workers the same terms and conditions relating to working time as those that applied generally to other workers. Furthermore, there were objective differences between domestic and other workers, as was the case, for example, with live-in domestic workers, who were excluded under EU legislation from provisions relating to daily rest, for example. It was therefore important to retain a degree of flexibility, as was provided for in the amendment.
- 490.** The Worker Vice-Chairperson, noting that there was already an exclusion clause under point 5, saw the amendment as providing further grounds for excluding domestic workers from the right to periods of rest, as stipulated under point 12. Rest time, overtime and normal hours of work were very important components of an employment contract; domestic workers should not be treated any differently to other workers in that respect. If there were to be exclusions, they should be the same as those that applied to other wage earners. If there were no exclusions for other wage earners, then there was no reason to

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exclude domestic workers on the basis that a difference could be justified on “objective” grounds.

- 491.** The Employer Vice-Chairperson asked for a representative of the EU Member States to explain what was meant by the term “on objective grounds”.
- 492.** The Government member of Spain, speaking on behalf of EU Member States, explained that the intention was quite simply to allow for flexibility when considering legislation governing working hours and rest periods. It was important not to lose sight of the specific characteristics of that category of workers, who often lived in the home of their employer. The aim had been to refer to limited situations that would justify some kind of different treatment.
- 493.** The Government member of Australia indicated that her Government did not support the proposed amendment, primarily because the issues of daily rest, weekly rest and annual leave were among the areas of greatest vulnerability for domestic workers. Throughout the text, efforts had rightly been made to ensure that domestic workers were placed on an equal footing to other workers. There were many examples of working arrangements that were not typical but were nevertheless accommodated in labour law; the situation of domestic workers should be no different.
- 494.** The Government member of South Africa, speaking on behalf of the Africa group, stated that he could support the proposed amendment, but wondered whether the concerns of the EU could be taken into account by the exclusions under point 5 or by including terminology along the lines discussed in relation to a previous amendment, to the effect that the rules mandated for workers generally, in accordance with national laws and regulations, should also apply to domestic workers.
- 495.** The Government member of the United States supported the position taken by the Government member of Australia. The principal goal of the Committee was to provide equality of treatment for domestic workers, and the amendment ran counter to this. Point 5(1)(b) already provided some flexibility, but its advantage was that member States had to report such exclusions under article 22 of the ILO Constitution. That had the benefit of making known any exceptions made by member States.
- 496.** The Government member of Spain, speaking on behalf of EU Member States, withdrew the amendment.

Point 12(2)

- 497.** The Government member of the Netherlands, speaking on behalf of EU Member States, introduced two amendments to be considered together. The first sought to replace the reference in point 12(2) to at least 24 hours of weekly rest “in every” seven-day period with a reference to “per each” seven-day period. The second amendment proposed to add the following provision: “When providing this rest period, each Member may lay down a maximum reference period stipulated in national law and collective agreements.” The second amendment was in line with EU labour legislation that also stipulated a minimum rest period of 24 hours per each seven-day period, while allowing EU Member States to lay down a maximum reference period that extended beyond seven days. For example, legislation could mandate a rest period of 48 hours per each 14-day period. Reference periods longer than 14 days were subject to strict conditions.
- 498.** The Government member of Bangladesh warned that the second, more substantive, amendment could create problems in implementation and prompt long negotiations. If there were particular concerns, those could be dealt with in the text of the proposed

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Recommendation that could go into a level of detail that should be avoided in the text of the proposed Convention.

- 499.** The Government member of the United States pointed out that the term “maximum reference period” was not familiar to him, and asked for clarification whether it was generally accepted terminology or a term specific to the EU.
- 500.** The Government member of Ecuador found the amendment to be incoherent, since no exact reference period was mentioned. The issue was left to national legislation and collective agreements. The text should specify a minimum rest period, and not a maximum reference period, since that could open the possibility of setting a very low minimum rest period.
- 501.** The Worker Vice-Chairperson expressed concern that the amendments were very specific to the EU, and noted that, even within that grouping, no agreement had been reached on this specific issue in the context of the EU Working Time Directive. The Committee should avoid introducing uncertainty into point 12(2), which currently very clearly stipulated 24 consecutive hours of rest in every seven-day period. She therefore found it difficult to support the second amendment, since it neither added clarity nor enhanced the rights of domestic workers.
- 502.** The Government member of the Netherlands, speaking on behalf of EU Member States, clarified that the “maximum reference period” was a concept introduced by the EU. However, Article 2 of the Weekly Rest (Industry) Convention, 1921 (No. 14), and Article 6 of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), already allowed for exceptions to the basic rule of 24 hours of rest in every seven-day period. Such exceptions ought to be possible.
- 503.** The Government member of Australia called on the Committee to keep the text simple. Domestic workers should have the right to one day off per week, and the reference to maximum reference periods was less relevant to the situation of domestic workers, but could be placed in the Recommendation.
- 504.** The Government member of the Netherlands, speaking on behalf of EU Member States, offered to withdraw the second amendment in the event that the first amendment was adopted by the Committee.
- 505.** The Worker Vice-Chairperson and the Employer Vice-Chairperson had no objections to the adoption of the first amendment.
- 506.** The first amendment was adopted while the second was withdrawn.

#### Point 12(3)

- 507.** The Employer Vice-Chairperson introduced an amendment that sought to replace existing point 12(3) with the following: “Non-work periods during which a domestic worker is required to be on call or standby should be treated in accordance with national laws and regulations applicable to such periods.” The intention was to align the way in which non-work hours of domestic workers were treated with the conditions applicable to all other workers in the national context.
- 508.** The Worker Vice-Chairperson argued that the proposed amendment did not add any clarity, but substantially weakened the existing text. First, the existing text clearly defined periods during which a worker had to remain at the disposal of the household as hours of work, while the proposed amendment referred to standby time as “non-work periods”.

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Secondly, the existing text also included a reference to “collective agreements or any other means consistent with national practice” to determine the extent to which standby time should be regarded as hours of work, whereas the Employer members’ proposal made reference only to “national laws and regulations”.

- 509.** The Government member of the United Kingdom, speaking on behalf of EU Member States, supported the proposed amendment and drew attention to another amendment that had been submitted by the EU Member States and which sought to move point 12(3) to the Recommendation.
- 510.** The Worker Vice-Chairperson cited Article 4(1) of the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), that stipulated that “[...] the term *hours of work* means the time during which a worker is at the disposal of the employer”. Parallel to that provision, it should be stated clearly that standby time was part of working hours. It was important that domestic workers had proper rest and, if standby time were to be treated as “non-working hours”, it would undermine that objective and weaken the provision.
- 511.** The Government member of Norway supported the proposed amendment under discussion. In view of the many existing regulations concerning standby, there was a need for flexibility in the proposed Convention. In Norway, for example, standby duty outside the workplace was not considered as work time, and one-fifth of standby hours was considered as normal working hours. The proposed Recommendation should also have rules on limitations.
- 512.** The Government member of South Africa, speaking on behalf of the Africa group, asserted that the situation of domestic workers was totally different from that of industrial workers. The former spent their whole day in their workplace, and were completely at the beck and call of their employer for whatever reason. Therefore, such time devoted to the wishes of the employer should be considered as hours of work. The manner in which member States dealt with this would be in accordance with national laws and practice, as stated in point 12(3). The original text should thus be retained.
- 513.** The Government members of Argentina, Australia, and the Bolivarian Republic of Venezuela, speaking also on behalf of the Government members of Chile and Ecuador, concurred with the position expressed by the Government member of South Africa.
- 514.** The Government member of the United States agreed with the previous speakers, further pointing out that two different concepts were being represented by the opposing positions. Point 12(3) was concerned with domestic workers who were tightly restricted in their workplace and could not use their time as they pleased for their personal use. On the other hand, the amendment submitted by the Employer members was about employees who were free to use their time as they pleased until they were called on duty. An example would be a worker who did not have to stay in the workplace and was free to use his or her time until called to the place of business via a beeper or telephone.
- 515.** The Government member of Bangladesh sought clarification from the Office regarding the apparent inconsistency between point 12(3) and point 28 of the proposed Conclusions. While point 12(3) treated standby time as hours of work, point 28 seemed to allow some flexibility in how to treat standby hours. The latter permitted national laws to determine how standby would be remunerated and the maximum number of hours of standby period.
- 516.** The representative of the Secretary-General clarified that point 12(3) and point 28 alluded to the same provision: standby time would be treated as hours of work. Point 28 only explained how to compensate and regulate standby hours.

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- 517.** The Government member of Bangladesh countered that point 28 was not explicit in treating standby time as hours of work. The amendment proposed by the Employer members reflected flexibility in that respect.
- 518.** Referring to the explanation made by the representative of the Secretary-General, the Government member of South Africa maintained that the text of point 12(3) was very clear. Standby time should be regarded as work “to the extent determined by national laws or regulations, collective agreements or any other means consistent with national practice”. He reiterated his support for the original text.
- 519.** The Employer Vice-Chairperson withdrew the amendment.
- 520.** The Government member of the United Kingdom, speaking on behalf of EU Member States, introduced an amendment, which would move the text of point 12(3) to point 28 concerning the proposed Recommendation.
- 521.** The Employer Vice-Chairperson supported the proposed amendment.
- 522.** The Worker Vice-Chairperson, however, could not accept the amendment. Point 12 dealt with hours of work and rest periods, so removing point 12(3) would adversely affect the comprehensiveness of the intention behind that paragraph of the proposed Convention.
- 523.** The Government member of Sweden, speaking on behalf of EU Member States, expressed appreciation for the Workers’ groups’ position but explained that point 12(1) was a general rule on working time while point 12(3), although important, dealt in detail with a different aspect of working time and thus would be more suitably placed in the proposed Recommendation.
- 524.** The Government member of Australia took issue with the rationale given by the EU Member States for their proposed amendment and noted that it was unlikely that doctors on standby duty would be treated in that way. Standby hours were a key aspect that was inherent to domestic work, especially among live-in domestic workers, so that point 12(3) was required in order to ensure equality between domestic workers and other workers.
- 525.** The Government members of South Africa, speaking on behalf of the Africa group, and the United States agreed with the position of the Government member of Australia.
- 526.** The Government member of the United Kingdom, speaking on behalf of EU Member States, withdrew the amendment in a spirit of cooperation.
- 527.** The Government member of Australia proposed an amendment to move points 12, 13 and 14 to follow immediately after point 8. As it was important to focus on substance at this stage, she suggested referring the idea behind the proposed amendment to the Committee Drafting Committee.
- 528.** Following questions from the Government member of Bangladesh and the Employer Vice-Chairperson as to whether or not the mandate of the Committee Drafting Committee would extend to such matters, a representative of the Legal Adviser explained that the primary goal of the Committee Drafting Committee was to ensure coherence between the English, French and Spanish texts. The Committee Drafting Committee was also mandated to adjust terminology and, in the past, such committees had suggested changes in the order of points. The Committee Drafting Committee would report back to the Committee on Domestic Workers for approval on any suggested changes.

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**529.** In response to the explanation provided by the representative of the Legal Adviser, the Employer Vice-Chairperson made clear that the Employers' group reserved the right to change its participation in the Committee Drafting Committee if that Committee were to discuss substantive issues.

**530.** To save time, the Government member of Australia withdrew the amendment as well as the suggestion to refer the matter to the Committee Drafting Committee.

**531.** Point 12 was adopted as amended.

### **Point 13**

**532.** The Employer Vice-Chairperson withdrew an amendment.

**533.** The Government member of Spain speaking on behalf of EU Member States, proposed amending point 13 by deleting "rates of" and replacing "are" with "is" in the second line. He reminded the Committee that the same amendment had been accepted in point 9(c).

**534.** The amendment was adopted.

**535.** The Employer Vice-Chairperson withdrew an amendment.

**536.** The Government member of Greece, speaking on behalf of EU Member States, withdrew an amendment.

**537.** Point 13 was adopted as amended.

### **Point 14**

#### **Point 14(1)**

**538.** The Employer Vice-Chairperson introduced an amendment to replace the words "only in legal tender" with the words "as is applicable to workers generally under national laws and regulations". The concept of "legal tender" only applied for payments in cash, while it was widely recognized that domestic workers were paid both in cash and in kind. He requested the Office to shed light on the issue.

**539.** In reply to a question from the Worker Vice-Chairperson, the representative of the Secretary-General confirmed that the words "legal tender" were used in Article 3(1) of the Protection of Wages Convention, 1949 (No. 95), which read "Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited."

**540.** The Worker Vice-Chairperson underlined that there was very good reason why Convention No. 95 stipulated that payments should be in legal tender. There would be occasions where employers would wish to pay workers in different forms that were of no use to the worker, such as payment in second-hand clothes. Domestic workers, who were particularly vulnerable and often women, were no different from other workers and needed the same protection.

**541.** The Government member of Uruguay asked whether payment in foreign currency was considered to be payment in legal tender. In Uruguay, national law allowed payment of wages in foreign currency, which was common during the tourist season and beneficial to workers.

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- 542.** The Government member of South Africa objected to the proposed amendment and clarified that the term “remuneration” included payments both in cash and in kind, while the term “wage” was used to include only payments in legal tender. Therefore, since point 14(1) dealt with payment of wages, the expression “legal tender” was a clear and well-recognized concept that applied to the issue that the provision aimed to cover.
- 543.** The Government member of Argentina supported the position of the Government member of South Africa, noting that the term “legal tender” was in line with Convention No. 95, whose provisions intended to restrict the payment of wages in forms other than cash. The objective was to prevent unfair treatment of domestic workers, for example when their remuneration was entirely paid in kind.
- 544.** The Worker Vice-Chairperson welcomed the explanation from the Government member of South Africa and added that point 14 did not exclude payments in kind. It only indicated that the wage component of remuneration should be paid according to the provisions of Article 3 of Convention No. 95. Limiting the payment of remuneration in forms such as cheques or vouchers would allow the recognition of domestic workers’ vulnerability as well as their protection. Payment by cheque could cause problems; the worker might have to wait several days to be able to cash a cheque, or might be unable to cash it at all.
- 545.** The representative of the Secretary-General, replying to the request from the Employers’ group, confirmed that, according to Article 1(a) of the Equal Remuneration Convention, 1951 (No. 100), the term “remuneration” included payments “whether in cash or in kind”. In addition, to answer the Workers’ group’s question, she quoted Article 3(2) of Convention No. 95, which stated that “The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned.”
- 546.** The Government member of Chile introduced a subamendment to delete the word “only” from the first line of point 14(1), so as to ensure coherence between the first and the second paragraphs, bearing in mind that payments in kind should be limited.
- 547.** The Government member of Uruguay seconded the proposed subamendment.
- 548.** The Worker Vice-Chairperson supported that proposal and noted that, since point 14(1) only dealt with the cash component of wages, the omission of the word “only” would not prevent the requirement of legal tender for the payment of wages.
- 549.** The Government member of the United States endorsed the subamendment and proposed deleting the word “and” in the second line, which he considered similarly superfluous.
- 550.** The Government member of Bangladesh seconded that subamendment.
- 551.** The amended was adopted as subamended.
- 552.** Point 14(1) was adopted as amended.

Point 14(2)

- 553.** The Employer Vice-Chairperson introduced an amendment that sought to replace the existing text of point 14(2) with the following text: “A part of a domestic worker’s remuneration may be paid in kind in accordance with national laws and regulations.”

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- 554.** The Worker Vice-Chairperson did not support the proposed amendment. Her group agreed that part of the payment of domestic workers could be in kind. However, she was concerned about abuses that arose out of payment in kind. For example, some employers required their domestic workers to wear uniforms when on duty, and then made a deduction for the cost of the uniform from their pay. The existing point 14(2) protected against such abuses and listed the conditions under which payments in kind should be allowed. Those safeguards were missing from the amendment submitted by the Employers' group.
- 555.** The Government member of Ecuador agreed with the Workers' group. He stated that it was important to limit the percentage of remuneration that could be paid in kind and to state clearly that in-kind payments could not be the normal way of remuneration. Uniforms and other items needed by the worker to perform his or her work should not be considered to be part of in-kind payments, but clearly were the responsibility of the employer.
- 556.** The Government member of the Bolivarian Republic of Venezuela concurred and opposed the proposed amendment. She preferred the existing version of point 14(2) which made it clear that in-kind payments must remain an exception and meet strict conditions.
- 557.** The Employer Vice-Chairperson indicated that clauses that dealt with the Workers' group's concerns were already included in the part of the Committee's proposed Conclusions that referred to a Recommendation.
- 558.** The Worker Vice-Chairperson reiterated that in-kind payments of allowances should remain admissible only on an exceptional basis. The Convention should lay down, as in the existing formulation of point 14(2), the conditions for payment in kind, namely that they should be made "in conditions not less favourable than those applicable to other categories of wage earners", that they should be "appropriate for the personal use" of the worker, and that "the value attributed to such allowances is fair and reasonable". Unlike the amended version proposed by the Employers' group, that gave clear protection to domestic workers.
- 559.** The Government member of South Africa, speaking on behalf of the Africa group, wondered whether the proposed amendment implied that the entire remuneration could be paid in kind. If that was the case, the amendment would limit the provision made in point 14(1), namely that, as a rule, remuneration should be paid in cash. For that reason, the Africa group could not support the proposed amendment.
- 560.** The Employer Vice-Chairperson sought to take the concerns into account and proposed a subamendment to add the word "reasonable" so that the amendment would read "A reasonable part of a domestic worker's remuneration may be paid in kind in accordance with national laws and regulations."
- 561.** The Worker Vice-Chairperson considered that that was not an appropriate solution, since it remained unspecified what a "reasonable part" would be. Crucially, the three conditions of the original point 14(2) were still missing from the subamended text.
- 562.** The Government member of Australia opposed the amendment as subamended. The rule that payment should be in cash, as laid down in point 14(1), was a crucial provision and addressed a key area of abuse, namely the lack of payment of wages. The original text in point 14(2) reflected the responses given in replies to the ILO questionnaire and was of particular importance for domestic workers.
- 563.** The Government member of Uruguay opposed the amendment as subamended. It did not reflect the spirit of point 14, which sought to protect the remuneration of domestic workers.

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**564.** The Government member of the Philippines also opposed the amendment as subamended. She considered that point 14(1) and (2) should be read together, and that allowances in kind should remain an exception. The original text was more specific in detailing the conditions under which they were permissible.

**565.** The Government member of the United States concurred and argued that the amendment would create a big loophole by delegating to national law the conditions under which payments in kind should be allowed. That would effectively remove the conditions from the scope of the proposed Convention. His delegation therefore opposed the amendment.

**566.** The Employer Vice-Chairperson withdrew the amendment.

**567.** The Government member of Portugal, on behalf of EU Member States, introduced an amendment to replace the original text of point 14(2) with:

National laws or regulations and collective agreements subject to national law may, as an exception to point 14(1), provide for the payment of a limited proportion of the remuneration of domestic workers in the form of allowances in kind, in conditions not less favourable than those applicable to other categories of wage earners. The value attributed to these allowances must be fair and appropriate.

The intention of the proposed amendment was to underline a technical point, which was that payment in kind was possible only as an exception to the general rule.

**568.** The Worker Vice-Chairperson asked the Government members of EU Member States to clarify three points regarding their proposed amendment. First, why did the amendment exclude reference to arbitration awards which were cited in the original text? Collective agreements and arbitration awards dealing with payment in kind existed in some EU countries. Secondly, why did the amendment change the reference to the value attributed to allowances in kind from “fair and reasonable” to “fair and appropriate”? Thirdly, why did the amendment exclude the condition that allowances in kind should be for the personal use and benefit of the workers?

**569.** The Government member of Portugal, speaking on behalf of EU Member States, clarified that provisions on allowances in kind were not usually contained in collective bargaining agreements and arbitration awards in the EU. He agreed with the Worker Vice-Chairperson that “fair and appropriate” was probably not clear, and that allowances in kind should be for the benefit of the worker. He had no problem with the original formulation of point 14(2) on those aspects. The intention of the EU amendment was to limit the payment in kind and the important words in the amendment were “as an exception to point 14(1)”.

**570.** The Employer Vice-Chairperson, supporting the EU amendment, submitted a subamendment, which would replace the phrase “wage earners” with “workers generally”.

**571.** The Worker Vice-Chairperson could accept the Employer members’ proposal, but she asked if the Committee could agree to discuss the present EU amendment together with a subsequent amendment submitted by the Government members of Australia and the United States that had not yet been introduced to the Committee. She considered that the subsequent amendment was superior to the amendment currently under discussion.

**572.** The Government member of Portugal, speaking on behalf of EU Member States, agreed with the Worker Vice-Chairperson’s proposal to discuss both amendments together. He reiterated that the primary concern of Government members of EU Member States was that payment in kind should be explicitly established as an exception to point 14(1).

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**573.** A member of the secretariat explained that, taking into account the Employer members' subamendment, the amendment would read:

National laws or regulations, collective agreements or arbitration awards may exceptionally provide for the payment of a limited proportion of the remuneration of domestic workers in the form of allowances in kind, in conditions not less favourable than those applicable to other workers generally, provided that measures are voluntarily agreed to by the worker and are furnished primarily for the benefit and convenience of the worker, rather than the employer, and that the value attributed to such allowances is fair and reasonable.

**574.** The Government member of the United States suggested that it was also appropriate for the Committee to consider another amendment, submitted by the Government member of Australia and himself. That amendment proposed to add at the end of the paragraph the words "and is calculated using a method that is made known to the worker in advance".

**575.** The Worker and Employer Vice-Chairpersons agreed with the text of the previously mentioned amendment of the Government members of Australia and the United States, with the Employer members' subamendment.

**576.** The Government member of Portugal, speaking on behalf of EU Member States, insisted that, in order for the earlier EU amendment to be taken into account, there was a need to replace in the text of the amendment submitted by the Government members of Australia and the United States the word "exceptionally" with the phrase "as an exception to point 14(1)".

**577.** The Government member of Norway also urged the Committee to accept the EU proposal to use the phrase "as an exception to point 14(1)" as it was more precise than the current formulation.

**578.** The Government member of Bangladesh cautioned that the proposed text had become verbose and was increasingly containing provisions and guidelines that should be listed in the proposed Recommendation rather than in the proposed Convention. The proposed Convention was becoming restrictive and would be difficult for countries to ratify. The phrase "voluntarily agreed to by the worker" was superfluous because it had already been stated in a previous paragraph that workers should be free to negotiate with their employer. The precision that allowances in kind should be for the benefit of the worker "rather than the employer" carried a negative connotation and should be deleted. The original text of the proposed Conclusions was preferred, but if the amendments were to be accepted by consensus, the phrases just cited should be deleted.

**579.** The Government member of Canada also said that she would prefer to reserve that level of detail for the proposed Recommendation.

**580.** The Government member of Switzerland concurred with the Government member of Bangladesh and expressed a preference to retain the original text together with the EU proposal to replace the word "exceptionally" with the words "as an exception to point 14 (1)".

**581.** The Employer Vice-Chairperson, in order to accommodate concerns that the text was becoming too restrictive, proposed a subamendment to insert the words "with due regard to the specific characteristics of domestic work" after the words "allowances in kind". The same language was also used in point 15(1).

**582.** The Worker Vice-Chairperson did not support the subamendment, as it would introduce uncertainty. It was essential to have a reference point. The reference point elsewhere in the text was to ensure that the conditions of domestic workers were no less favourable than

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those of other workers. However, in light of the reservations expressed by Government members about the excessive level of detail in the text, she proposed to go back to the original text. To reflect the discussion, the original text should be modified with the addition of the words “as an exception to point 14(1)” to reflect the EU concerns, as well as by replacing “wage earners” by “workers generally” as proposed by the Employer members. The most important aspect of 14(2) was that the conditions for payment of in-kind allowances to domestic workers were not less favourable than those applicable to other workers.

- 583.** The Government member of Australia expressed support for the Workers’ group’s proposal, which was an acceptable compromise.
- 584.** The Government member of the United States said that, while he would not object to the proposal by the Workers’ group, he wished to place on record that there should be a limited number of cases when payments in kind could be made and that his Government did not wish to endorse cases where, for example, an employer could simply give some old clothes or goods to their employee in lieu of wages or claim that work done around the house was to the worker’s benefit. It was for that reason that he had been in favour of indicating that any in-kind payments should be voluntarily agreed upon by the worker. It was essential to set parameters on the conditions in which in-kind payments could be made.
- 585.** After listening to the previous speaker, the Worker Vice-Chairperson proposed that the original text of point 14(2) should also be modified by adding the words “voluntarily agreed to by the worker and” after the words “provided that measures are taken to ensure that such allowances are”.
- 586.** The Employer Vice-Chairperson asked that the words “with due regard to the specific characteristics of domestic work” be inserted after the words “allowances in kind” in the original text. The other proposed modifications were acceptable to his group.
- 587.** The Government member of the United States said that it was not appropriate to include the words “with due regard to the specific characteristics of domestic work” in point 14(2). That wording was used in point 15 in relation to the working conditions of domestic workers, which were clearly very different from those of workers in factories or other workplaces, whereas point 14 related to methods of payment, which should be no different for domestic workers than for other wage earners.
- 588.** The Government member of Brazil agreed with the statement made by the Government member of the United States.
- 589.** The Employer Vice-Chairperson maintained that it was valid to take into account the specific characteristics of domestic work, as the allowances in kind might be very different for domestic workers than for workers in factories and other workplaces.
- 590.** The Government member of South Africa was not comfortable with the way in which the original text was currently being modified and considered by the Committee. He did not agree that point 14(2) should be presented as an exception to point 14(1). It was fundamental to protect domestic workers to ensure that only a limited amount of their remuneration was paid in kind, under some specific conditions. As currently drafted, there was no indication that the proportion of payment in kind should be limited.
- 591.** The Government member of Portugal, speaking on behalf of EU Member States, explained that the words “exception to point 14(1)” did not change the provision of 14(1), according

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to which the remuneration of domestic workers should be paid to them in legal tender, with only a limited proportion being paid in kind, in a form that was beneficial to the worker.

- 592.** The Worker Vice-Chairperson said that there was clearly no intention to negate the purpose of point 14(1) and that the problem seemed to be one of terminology. She therefore suggested that point 14(2) could start with the words “Taking into consideration point 14(1),”, which would replace the words “as an exception to 14(1)”. That could accommodate the concerns expressed by the Government member of South Africa. The new formulation would make clear that any payments in kind made under point 14(2) would have to take into account the provisions of point 14(1), which stated that wages should be paid in legal tender at regular intervals.
- 593.** The Government member of Portugal, speaking on behalf of EU Member States, said that the proposal by the Worker Vice-Chairperson was constructive and reflected the intentions and understanding of the EU Member States.
- 594.** A member of the secretariat clarified that the text currently under consideration for point 14(2) read as follows:
- Taking into consideration point 14(1), national laws or regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of allowances in kind, with due regard for the specific circumstances of domestic work, in conditions not less favourable than those applicable to other categories of workers generally, provided that measures are taken to ensure that such allowances are voluntarily agreed to by the worker and are appropriate for the personal use and benefit of the worker, and that the value attributed to such allowances is fair and reasonable.
- 595.** The Worker Vice-Chairperson stated that there was general agreement in her group to support the first part of point 14(2). However, she could not support the amendment suggested by the Employers’ group to insert the words “with due regard for the specific circumstances of domestic work” into the text.
- 596.** The Government member of the United States shared the Workers’ group’s view for the reasons already expressed. He supported the insertion of the words “are voluntarily agreed to by the worker” but objected to the words “with due regard for the specific circumstances for domestic work”.
- 597.** The Government members of Australia and South Africa, speaking on behalf of the Africa group, supported the views of the Government member of the United States.
- 598.** The Employer Vice-Chairperson withdrew the subamendment to add the words “with due regard for the specific circumstances of domestic work” and also proposed to delete the word “voluntarily” from the last line.
- 599.** The Worker Vice-Chairperson could accept the deletion of the word “voluntarily”, noting that the term “agree to” already implied the voluntary nature of the in-kind allowances.
- 600.** The Government member of the United States, with a view to reaching consensus, accepted the Employer members’ subamendment, while highlighting that some concern still persisted with the deletion of the word “voluntarily”.
- 601.** The two amendments were adopted as subamended.
- 602.** In line with the previous positions of the Government members of Australia and Bangladesh, the Government member of the United States proposed to postpone the

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discussion on an amendment, submitted by the Government members of Australia and the United States, until point 34 of the proposed Conclusions.

**603.** The Workers' and Employers' groups endorsed the proposal of the Government member of the United States to postpone the discussion on the proposed amendment until point 34 of the proposed Conclusions.

**604.** Point 14 was adopted as amended.

### **Point 15**

**605.** The Government member of Kuwait, speaking on behalf of the Government members of Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, withdrew an amendment to replace point 15 with the following text: "Each Member should take measures to ensure that domestic workers enjoy: (a) occupational safety and health, as required to ensure decent work for them; (b) social security protection, including maternity, on an equal basis with other wage earners in the same situation."

#### Point 15(1)

**606.** The Government member of Spain, speaking on behalf of EU Member States, introduced an amendment to replace the chapeau with the following text: "Each Member should take measures, with regard to the specific characteristics of domestic work, to set up appropriate conditions of protection for domestic workers in respect of:". The objective was to recognize the specific characteristics and the conditions in which domestic work took place and, consequently, tailor protective measures, such as occupational safety and health and social protection, accordingly.

**607.** The Worker Vice-Chairperson asked for clarification regarding the reason for deleting the words "to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to other wage earners". She considered that omitting an explicit reference to the situation of other wage earners, when setting up the conditions for protection of domestic workers, would unnecessarily weaken the clause.

**608.** The Government member of Spain, speaking on behalf of EU Member States, explained that the intention of the proposed amendment was to guarantee the most appropriate conditions of occupational safety and health and social protection for domestic workers, but noted that the treatment for domestic workers might be specific to the circumstances in which the domestic work took place. In particular, the domestic workers' workplace should be taken into account when setting up conditions of protection for domestic workers.

**609.** The Employer Vice-Chairperson supported the amendment proposed by the EU Member States.

**610.** The Worker Vice-Chairperson expressed concern with the proposal and the dilution of the paragraph that would result from omitting a reference to other wage earners. She noted that the original words "with due regard to the specific characteristic of domestic work" already provided the flexibility sought by the EU amendment.

**611.** The Government member of Spain, speaking on behalf of EU Member States, clarified that the intention of the amendment was not to remove protection from domestic workers, but to find a wording that established adequate and appropriate protection with respect to occupational health and safety and to social security, adapted to the domestic workplace. Limited restrictions and exclusions would cover this.

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- 612.** The Government member of Switzerland supported the proposed amendment and stressed that the goal to ensure protection for domestic workers in terms of occupational health and safety as well as social security was important. Her country's occupational health and safety approach was adapted so as to be appropriate to each sector, and the text proposed by the EU was much more in line with that approach than the original text.
- 613.** The Worker Vice-Chairperson regretted that the proposed amendment seemed to establish two categories – domestic workers and other workers. As long as the reference “conditions that are not less favourable than those applicable to other wage earners” was missing, domestic workers would suffer from inferior standards. She had no problem with sectoral rules and regulations, as such approach could be reconciled with the existing text and was already common practice. For example, boilermen were exposed to heat, so the specific measures required to protect their health and safety were different from those taken for carpenters or workers in an electronics factory; but the same occupational health and safety principles should apply to all. Households were not necessarily safe workplaces since domestic workers could be exposed to toxic cleaning chemicals and other hazards. Maternity protection was another related issue that should be covered. While standards differed between sectors, it was nonetheless possible to adhere to the same principles for occupational safety and health and social security.
- 614.** The Government member of Canada argued that point 15 had been very carefully drafted by the Office and struck the right balance between extending protection to domestic workers and providing enough flexibility. There was thus no need to change the existing text.
- 615.** The Government member of the United States concurred and found that the amendment's text calling upon each Member to “take measures [...] to set up appropriate conditions ...” was vague. His delegation preferred the original phrase that referred to “measures to ensure that domestic workers enjoy conditions ...”.
- 616.** The Government members of the Philippines and Uruguay also expressed a preference for the original text.
- 617.** The Government member of Australia supported the previous Government speakers. The phrase “due regard to the specific characteristics of domestic work” in the original text could accommodate the concerns raised by the EU.
- 618.** The Government member of Spain, speaking on behalf of EU Member States, asked the Office to clarify what the phrase “due regard to the specific characteristics of domestic work” signified. The fact that the workplace of domestic workers was a household justified differences, whereas the reference to “conditions that are not less favourable” in the original text appeared to imply equivalence. It was not realistic to expect that equal treatment could be ensured in that regard through government measures. He reiterated that the intention of the proposed amendment was not to remove protection, but to ensure that the conditions enjoyed by domestic workers corresponded to the specific conditions of the household as a workplace.
- 619.** The Government member of New Zealand sympathized with the views expressed by the Government member of Australia, but agreed with the Government members of Spain and Switzerland, because his country found itself in a situation similar to that of the EU and Switzerland, and sought greater flexibility in point 15(1), to allow more countries to ratify a Convention.
- 620.** The representative of the Secretary-General explained that the phrase “with due regard to the specific characteristics of domestic work” meant that the types of measure to be taken

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should be adapted to the reality that the workplace of domestic workers was in the household. The Office text therefore did not promote measures identical to those taken for other workers, and acknowledged that specific measures taken for domestic workers might differ from those for other workers. Nonetheless, the intent was that, while measures might differ taking into account the specificities of domestic work, the conditions should not be less favourable than those enjoyed by other workers.

- 621.** The Government member of South Africa, speaking on behalf of the Africa group, supported the position of the Government member of Australia. The phrase “to set up appropriate conditions of protection for domestic workers” in the proposed amendment implied that a separate system for domestic workers should be established, setting them apart from other workers – this was exactly the problem the Worker Vice-Chairperson had identified. For that reason, his group could not support the amendment.
- 622.** The Government member of Spain, speaking on behalf of EU Member States, referred to the statement made by the representative of the Secretary-General and sought confirmation of his understanding that the Office text did not imply completely identical conditions.
- 623.** The representative of the Secretary-General confirmed that the measures taken did not have to be identical, but that an equivalence of conditions was intended.
- 624.** The Government member of the Netherlands asked that the Committee’s report reflect that her country provided adequate protection for domestic workers, while not extending exactly the same protection as to other workers. If legislation offered the same social security protection, that could lead to a loss of formal employment because households might hesitate to hire domestic workers.
- 625.** The Government member of Spain, speaking on behalf of EU Member States, withdrew the amendment to enable the Committee to move on in its discussion. However, he reserved the right to revisit the issue in the second reading of the instrument in 2011, and expressed his wish that the intent behind the amendment and the explanations given by the Office should be adequately reflected in the Committee’s report, so as to inform further debate.
- 626.** The amendment was withdrawn.
- 627.** The Government member of Indonesia introduced an amendment, supported by the Government member of Singapore, that sought to insert “in conformity with national laws” after “characteristics of domestic work” in point 15(1). The rationale was that measures taken for domestic workers might differ with respect to social security provisions, as countries might have their own domestic laws. In order to implement safety and health provisions effectively, member States could be guided by ILO Conventions, but many had their own systems in place with regard to maternity protection and social security. Countries might adjust existing laws on social security and maternity along the lines of the proposed Convention. The proposed amendment was in no way meant to lessen conditions of domestic workers.
- 628.** The Employer Vice-Chairperson supported the proposed amendment.
- 629.** The Worker Vice-Chairperson believed that the amendment sought to restrict measures for the protection of domestic workers. There were at present many gaps in national laws as regards the coverage of domestic workers, and inserting the proposed words would expose domestic workers to the vagaries of existing national laws. She sought clarification from the Office as to how far existing national laws excluded domestic workers from provisions

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on occupational health and safety and on social security. The Workers' group did not support the proposed amendment.

- 630.** The representative of the Secretary-General remarked that Chapter V of Report IV(1) on national law and practice in respect of social protection had identified that exclusion of domestic workers from the coverage of national laws was widespread, especially with regard to unemployment benefits and occupational health and safety regulations. With respect to compensation of occupational injuries, however, the inclusion of domestic workers was more common.
- 631.** The Government member of Bangladesh, voicing a lack of clarity in the proposed amendment, asked the Government member of Indonesia if the phrase “in conformity with national laws” referred to characteristics of domestic work or to coverage of measures. He suggested that the suggested phrase be inserted after “workers enjoy” instead of where it was proposed.
- 632.** The Government member of Indonesia clarified that the proposed phrase referred to measures that member States should take.
- 633.** The Government member of Australia highlighted that the issue raised by the Government member of Indonesia reflected challenges to increasing the likelihood of ratification of the proposed Convention. First, many national laws excluded domestic workers, as indicated in the Office report. Inserting the phrase “in conformity with national laws” would therefore pose a concern for the speaker. Secondly, it was important for the Committee to aim for the best international standard regardless of existing national laws. The concern over national laws was addressed in point 15(2).
- 634.** The Worker Vice-Chairperson observed that the interventions by the Government members of Australia and Indonesia implied the intention to bring national laws up to the international standard. The proposed Convention should thus set a standard to aspire to, and an international standard could not always be anchored to national laws.
- 635.** The Chairperson noted that point 15(2) might address the concern expressed by the Government members of Indonesia and Singapore.
- 636.** In that regard, the Government member of Indonesia remarked that the Worker members had submitted an amendment to delete point 15(2), and his delegation would be prepared to withdraw the amendment under discussion if point 15(2) were retained.
- 637.** The Employer Vice-Chairperson made the same observation.
- 638.** Following subsequent discussion of point 15(2), the Government member of Indonesia, withdrew the proposed amendment.
- 639.** The Employer Vice-Chairperson introduced an amendment to insert in the first line the word “appropriate” before “measures” and, in the third line, replace “other wage earners” with “workers generally”. He also proposed that the term “wage earners” be replaced with “workers generally” throughout the text of the proposed Conclusions, with the Committee Drafting Committee checking that global change.
- 640.** The Worker Vice-Chairperson accepted the proposal, as did the Government members of Indonesia and the United States.
- 641.** On this point, the Government member of Australia asked whether the term “workers generally” referred only to employees in employment relationships and did not include the

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self-employed in view of the fact that Australia had separate provisions for self-employed workers.

**642.** The Employer Vice-Chairperson clarified that the proposed phrase “workers generally” referred only to workers in employment relationships.

**643.** The Government member of Australia was satisfied with that clarification.

**644.** The amendment was adopted.

*Point 15(1)(a)*

**645.** The Worker Vice-Chairperson introduced an amendment to add “including training” after the word “health”. Training was an important element of safety and health because domestic workers handled detergents, inflammable materials, electric appliances, etc., which could cause damage to the health and safety of the domestic worker as well as the householder.

**646.** The Employer Vice-Chairperson considered that training did not fit into point 15(1)(a).

**647.** The Worker Vice-Chairperson withdrew the amendment with the intention of including it in the proposed Recommendation.

*Point 15(1)(b)*

**648.** The Worker Vice-Chairperson withdrew an amendment.

*Point 15(2)*

**649.** The Worker Vice-Chairperson withdrew an amendment.

**650.** An amendment submitted by the Government member of Lebanon to insert a new paragraph after paragraph 15(2) to read “Each Member should take measures to identify occupational hazards specific to domestic work.” did not receive any support, so the amendment fell.

**651.** Point 15 was adopted as amended.

**Point 16**

**652.** The Government member of Norway proposed an amendment, seconded by the Employer Vice-Chairperson, to move paragraphs (1) and (2) of point 16 to Part D, “Proposed Conclusions with a view to a Recommendation”, after point 40. The amendment had been motivated by the fact that Norway formed part of the European Economic Area (EEA) and was subject to European law and that – in view of the subsequent amendment, which had been proposed by some of the Governments of EU Member States – she would withdraw it.

**653.** The Government member of Ireland introduced an amendment, submitted by the Government members of the Czech Republic, Finland, Ireland, the Netherlands and Sweden, to replace, at the beginning of point 16(1), “National laws and regulations [...] contract” with “To the extent prescribed by the national laws, Members should require that migrant domestic workers receive a written offer of employment, a contract, or information”. She wished to subamend the text to read “16. (1) National laws and regulations should require that migrant domestic workers receive a written contract

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containing minimum terms and conditions of employment that must be agreed upon either prior to crossing national borders or external borders of a regional economic integration organization area.”

- 654.** She pointed out that, for some countries of the EU and the EEA, different rules applied for migrant workers entering countries from outside the area. Some countries required a written offer of employment only to receive a work permit, others required information only and some had other requirements. The amendment and subamendment would give the necessary flexibility for the relevant EU and EEA countries to be able to ratify the Convention without having to change their national migration laws, which would be practically impossible. There was also the issue of domestic workers who moved within the EU and EEA, or within the territory of any regional economic integration area, to seek employment. It was her understanding that those workers would be considered migrant domestic workers under the Convention. If that was correct, and she sought clarification on that matter from the Office, applying the rule set out in point 16(1) would mean that domestic workers could not benefit from the possibility already available to them to reside in another EU or EEA Member State to seek work and take up employment, as they would have already crossed the border before agreeing to a contract. It would mean that they would not be able to conclude an employment contract while residing in a Member State other than their own. It was neither feasible nor cost-effective for workers to travel back to their home countries before concluding a contract. She also noted, in relation to the subamendment, that for migration purposes, there was a common external border of the EU. The necessity of having a contract agreed upon prior to crossing national borders could therefore not apply to domestic workers from within the regional economic integration organization area.
- 655.** The Employer Vice-Chairperson queried whether the phrase “regional economic integration organization area” was widely understood.
- 656.** A representative of the EU explained that the concept of regional economic integration organization areas had already been acknowledged in the Maritime Labour Convention, 2006, and the Work in Fishing Convention, 2007 (No. 188). They were areas that allowed the freedom of movement of workers and capital, which were fundamental principles of the EU and the EEA. In the EU, workers had extensive employment rights. She was concerned that the narrow wording of point 16(1) as it stood would lead to genuine discrimination of EU nationals, who would have to return to their own Member State in order to seek employment in another, which would be both costly and impractical. Many workers chose to reside in another Member State prior to seeking employment. The provision should apply not only to the EU and EEA but also to all other regional economic integration areas.
- 657.** The Government member of Bangladesh asked the Office to read out the wording of the ILO texts that referred to regional economic integration areas.
- 658.** The representative of the Secretary-General read Article 4 of Standard A4.5 of the Maritime Labour Convention, 2006, relating to social security, which stated “Notwithstanding the attribution of responsibilities in paragraph 3 of this Standard, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of **regional economic integration organizations**, other rules concerning the social security legislation to which seafarers are subject.”
- 659.** The Employer Vice-Chairperson supported the amendment, as subamended.
- 660.** The Worker Vice-Chairperson supported the proposal but would like to make a subamendment to ensure the right emphasis: the word “either” should be placed after

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“crossing”. Furthermore, she would like to add the words “if applicable” after “organization”, so that the text would read “16. (1) National laws and regulations should require that migrant domestic workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing either national borders or external borders of a regional economic integration organization area, if applicable.”

- 661.** The Government member of Ireland accepted the subamendment proposed by the Workers’ group.
- 662.** The Government Member of Bangladesh asked whether the term “regional economic integration organization” as mentioned in the Maritime Labour Convention, 2006, and the term “regional economic integration area” had the same meaning.
- 663.** A representative of the EU confirmed that the context in the amendment warranted the use of the word “area”, as people could not freely move in an organization.
- 664.** The Government member of Bangladesh thanked the previous speaker for her explanation, which was helpful. He would also like to know whether the reference referred to the European Community or just to the EU.
- 665.** A representative of the EU explained that the European Community had been abolished by the Treaty of Lisbon when it had entered into effect in December 2009.
- 666.** In response to the Government member of Bangladesh, the Government member of the Netherlands confirmed that the term would indeed apply to all Schengen countries. She asked for clarification about the term “if applicable”, as proposed by the Workers’ group.
- 667.** The Worker Vice-Chairperson responded that she would prefer to retain the words “should require” as used in the original wording of point 16(1).
- 668.** The Government member of South Africa, speaking on behalf of the Africa group, said that, in view of the fact that various bilateral and multilateral agreements were in place to allow the freedom of movement of workers, which did not necessarily relate to national laws, the text could be subamended to read “national laws, regulations and multilateral agreements between member States ...”. The reference to “external borders of a regional economic integration organization area” could therefore be omitted, as that concept would be covered by the inclusion of the reference to multilateral agreements between member States.
- 669.** A representative of the EU pointed out that multilateral agreements could not be compared to, and did not reflect, the status of cooperation that had been established within the European regional economic integration zone, where Member States had transferred sovereign authority to the supranational level. She did not support the subamendment proposed by the Africa group.
- 670.** The Employer Vice-Chairperson supported the amendment put forward by the EU.
- 671.** The Worker Vice-Chairperson asked whether the amendment of the Africa group was necessary. If it was necessary, the word “and” should be replaced with “or”.
- 672.** The Employer Vice-Chairperson proposed a subamendment replacing the word “if” with “as”.

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- 673.** The subamendment was supported by the Government member of Sweden. She could agree to the text as it stood and reiterated that she could not agree to the subamendment put forward by the Africa group.
- 674.** The Government member of Norway explained that the European economic regional integration organization area included the EU Member States, Iceland, Liechtenstein and Norway, and agreed with the Employers' subamendment.
- 675.** The Government member of Indonesia felt that "information" should be placed on an equal footing with "a written offer of employment" and a "contract". He therefore suggested replacing "or information" with "and information".
- 676.** That was not acceptable to the Government member of Sweden, speaking on behalf of EU Member States, because it created additional requirements. It meant that information, and a written offer of employment and a contract needed to be provided.
- 677.** The Employer Vice-Chairperson opposed the suggestion made by the Government member of Indonesia because it made it necessary to fulfil all three requirements – so the word "and" should be replaced by "or".
- 678.** The Government member of Indonesia withdrew the subamendment.
- 679.** The Government member of the United States did not support the reference to multilateral agreements, explaining that the current wording opened the door to inclusion in any multilateral agreement.
- 680.** The Government member of South Africa, speaking on behalf of the Africa group, did not support the subamendment proposed by the Employers' group. He reiterated that it was necessary to refer to multilateral agreements because, although there was no regional economic integration area in Africa, there were several bilateral agreements.
- 681.** The Government member of Uruguay referred to the cooperation within the Common Market of the Southern Cone (MERCOSUR) and supported the subamendment.
- 682.** The Worker Vice-Chairperson stated that the regional economic integration organization was a European concept. She did not have a problem with the insertion of a reference to multilateral agreements to broaden the scope.
- 683.** The Government members of Canada and the United States opposed the subamendment because it was far too broad and could apply to all sorts of multilateral agreements, pertaining to trade, commerce and investments.
- 684.** The Government member of Sweden, speaking on behalf of the Czech Republic, Finland, Ireland and the Netherlands, expressed strong reservations about inserting of a reference to multilateral agreements. It was not feasible to ensure that all multilateral agreements would be in line with the requirements of point 16(1).
- 685.** The Worker Vice-Chairperson withdrew the subamendment. She proposed a new subamendment to change the order in which the requirements were mentioned so that this part of point 16(1) would read "receive information and a written offer of employment or a contract. The subamendment was not meant to change the substance of point 16(1) but was an attempt to make the sequence more logical.
- 686.** The Government member of Sweden, speaking on behalf of EU Member States, supported the subamendment.

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- 687.** The Employer Vice-Chairperson stated that the subamendment did indeed change the substance of point 16(1) and he therefore opposed it.
- 688.** The Government member of Indonesia believed that the subamendment gave the impression that a written offer of employment or information was more important than a contract. He asked the Worker Vice-Chairperson to reconsider the subamendment so as to put the emphasis on the contract, which he believed was far more important than a written offer of employment or information, as it contained the minimum terms and conditions of employment.
- 689.** The Government member of Bangladesh underlined that the last part of the draft text of point 16(1) was still under consideration. He thought that more generic language was needed to accommodate future developments whereby other regions might decide on regional borders, while the European regional economic integration organization might cease to exist.
- 690.** The Government member of South Africa, speaking on behalf of the Africa group, expressed serious concerns about the reference to the European regional economic integration area in point 16(1). The proposed Convention should reflect the international reality rather than addressing specific regional issues. He strongly disagreed with the discussion on this point.
- 691.** The Government member of Australia stated that, while she supported the intent of the draft text of point 16(1), she saw an implementation problem. Migration workers who were already in the country of destination would have difficulty receiving an offer of employment, a contract or information prior to crossing the border. She proposed a subamendment to insert at the beginning of the first sentence “Where migrant domestic workers are recruited specifically to perform domestic work,”.
- 692.** The subamendment was supported by the Government members of the Netherlands and New Zealand.
- 693.** The Employer Vice-Chairperson proposed to postpone the whole discussion on point 16, in order to have more time to reach consensus on the issue.
- 694.** The Worker Vice-Chairperson supported the request.
- 695.** The Government member of Indonesia endorsed the proposal, provided that the subamendments under discussion would remain in brackets.
- 696.** The discussion on point 16 was thus postponed to a later sitting of the Committee.
- 697.** The discussion on point 16 resumed at the 19th sitting of the Committee.
- 698.** The Government member of Ireland, on behalf of EU Member States, Australia, Canada, New Zealand, Norway, Switzerland, the United States and the Africa group, submitted a subamendment. The revised text would read as follows:

National laws and regulations should require that migrant domestic workers receive a written job offer or a contract of employment containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders for the purpose of taking up domestic work to which the offer or contract applies without prejudice to (1) regional, bilateral or multilateral agreements, (2) the rules of a regional economic integration area, where applicable, to migrant domestic workers.

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- 699.** The Worker Vice-Chairperson sought clarification of the meaning of the phrase “without prejudice to (1) regional, bilateral or multilateral agreements, (2) the rules of a regional economic integration area, where applicable, to migrant domestic workers”.
- 700.** A representative of the EU explained that domestic workers within regional integration area or areas covered by regional, bilateral and multilateral agreements would not be required to have a job contract or employment offer prior to crossing national borders because such requirement would diminish their rights within such areas.
- 701.** The Worker and Employer Vice-Chairpersons supported the proposed subamendment.
- 702.** The Government member of Indonesia thanked the sponsors of the subamendment for a carefully balanced proposal. He pointed out that the use of “or” between “written job offer” and “a contract of employment” implied that a contract, which was vital and crucial for every migrant worker, would appear to be optional and secondary; while a job offer might have no legal basis. There were many instances where migrant workers were confronted with a totally different contract upon arrival in the destination country. However, as a gesture of good faith and willingness to continue the negotiation, he was ready to support the amendment, provided that it was put on record that acceptance of a written job offer was understood by the Committee to be legally binding.
- 703.** The Government member of Chile sought clarification as to whether a migrant domestic worker who had lost his or her job would have to leave and re-enter the host country in order to take up a new job.
- 704.** The Government member of Australia replied to the question, explaining that, under the proposed subamendment which included the words “for the purpose of taking up domestic work”, the migrant worker could change jobs without having to return to his or her country and recross the border.
- 705.** The Government members of the Philippines and Singapore supported the proposed subamendment.
- 706.** The Government member of Estonia also supported the subamendment but requested that it be put on record that special arrangements would be needed for migrant domestic workers prior to crossing borders, and that that should be discussed in the second discussion, in June 2011.
- 707.** The Government member of Chile likewise requested that the report of the Committee state that the item would be addressed again in the second discussion.
- 708.** The Government member of the United States clarified that the words “written job offer or a contract of employment containing minimum terms and conditions of employment” did not mean that the contract itself should provide only minimum terms and conditions, but that it should not fall below the minimum standard.
- 709.** The amendment was adopted as subamended and all other amendments referring to point 16(1) fell.
- 710.** Point 16(1) was adopted as amended.

Point 16(2)

- 711.** The Government member of Sweden, on behalf of EU Member States, introduced an amendment to move point 16(2) to become a new paragraph after paragraph (1) of

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point 26, which would make it part of the proposed Recommendation. The conditions regarding repatriation were among the most important terms of employment about which a domestic worker should be informed. That had been recognized in point 9, as amended, of the proposed Conclusions with a view to a Convention. If on top of that a member State should specify, by means of laws and regulations, the conditions under which migrant workers were entitled to repatriation upon expiry or termination of the employment contract, that should be left to each and every member State to decide. To underline the point, the speaker introduced a subamendment that would replace “specify” by “consider specifying”. The amended text of point 16(2), moved to become a new paragraph after point 26(1), would read as follows: “Each Member should consider specifying, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation upon the expiry or termination of the employment contract.”

- 712.** The Employer Vice-Chairperson accepted the proposed amendment as subamended.
- 713.** The Worker Vice-Chairperson, having underscored that the way domestic workers were repatriated was very important because it was open to abuse, and having recalled the Worker members’ support for point 9 and their agreement to move details on termination of employment to the proposed Recommendation, accepted the amendment as subamended. She asked that it be put on record that the subject would be further discussed in 2011.
- 714.** The amendment, as subamended, was adopted.
- 715.** In view of their endorsement of the amendment that had just been adopted, the Worker Vice-Chairperson withdrew an amendment concerning point 16(2).
- 716.** The Government member of the United States introduced an amendment to insert “, at no cost to the worker,” after “repatriation”. The purpose of the proposed amendment was to ensure that the conditions under which repatriation could be at no cost to the worker would be specified and the domestic worker would be made aware of that fact.
- 717.** The Worker Vice-Chairperson accepted the proposed amendment as a valid point.
- 718.** The Employer Vice-Chairperson had no objections, noting that the decision was left to the Government members.
- 719.** The Government members of Bangladesh, the Philippines and Sri Lanka supported the proposed amendment. The Government member of Bangladesh expressed uncertainty as to whether point 16(2) should be in the proposed Recommendation or not, and requested that it be discussed further in the second discussion.
- 720.** Point 16(2) was adopted as amended.

New paragraph after point 16(2)

- 721.** The Worker Vice-Chairperson withdrew an amendment to insert the following new paragraph after point 16(2): “Members should ensure that migrant domestic workers shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of their employment, which shall not in itself imply the withdrawal of their authorization of residence or, as the case may be, work permit.” The amendment was being withdrawn on the understanding that the issue would be revisited in 2011. The issue was very close to the speaker’s heart and the intention was to protect migrant domestic workers, who very often found themselves in an illegal situation when they lost their job, with nowhere to live. In

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such circumstances, it was very difficult for them to find new employment. She acknowledged that in some countries, such as Belgium, mechanisms had been put in place to allow such workers to remain legally in the country for a certain period.

- 722.** The Worker Vice-Chairperson withdrew, for reasons she had already outlined, another amendment to add the following new paragraph after paragraph (2): “Members should take measures to ensure that migrant domestic workers are able to change employer after a reasonable period.” She noted that Article 14 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), contained a provision that would prevent a situation akin to slavery or forced labour being imposed on a domestic worker because they had no job mobility.
- 723.** The Government member of Bangladesh indicated that he was both surprised and saddened by the withdrawal of the two amendments. He wished to put on record that his Government wished to revisit both those issues the following year.
- 724.** Point 16 was adopted as amended.

### **Point 17**

- 725.** Considering the similarity of the issues they addressed, it was agreed that four amendments would be discussed simultaneously. If the first one was adopted, the three subsequent amendments would fall.
- 726.** The Government member of Portugal, speaking on behalf of EU Member States, introduced an amendment to replace the existing text with the following: “Each Member should take measures to ensure that domestic workers have access to fair and effective dispute settlement procedures that are no less favourable than those available to other wage earners.” The intention was to preserve the principle of non-discrimination in access to justice, which was generally protected in EU Member States as a fundamental right, even in constitutional terms, and which applied to all citizens, not only domestic workers.
- 727.** The Worker Vice-Chairperson, with a view to combining all the amendments under discussion, proposed a subamendment to add the following words to the amendment: “either by themselves or through a representative” after the words “domestic workers” in the first line; the word “easy” before the word “access”; the words “and legal remedies” before the word “that” and to replace the words “wage earners” by the words “workers generally”. As regarded the first addition, it was important to enable domestic workers to have access to justice through a workers’ representative, given the special conditions of domestic workers, as well as the procedural difficulties of national judicial systems. Second, adding “legal remedies” and “workers generally” was in line with previous changes introduced respectively by the Government member of the United States and the Employers’ group and adopted by the Committee.
- 728.** The Government member of Australia endorsed the text as subamended by the Workers’ group.
- 729.** The Employer Vice-Chairperson introduced a new subamendment to add the word “all” before the words “domestic workers” and to delete the word “easy”.
- 730.** The Government member of South Africa, speaking on behalf of the Africa group, noted the importance of retaining the word “easy” and supported the text of the Workers’ group with a subamendment to replace the word “settlement” with the word “resolution”. The latter was deemed preferable, because it brought together the dispute settlement aspect as well as the mediation and conciliation dimensions.

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- 731.** The Government member of Namibia supported the position of South Africa, pointing out that the Spanish version of the word “settlement” in the amendment was indeed “resolution” (*resolución*), which was commonly used to include both mediation and adjudication procedures.
- 732.** The Government member of South Africa found himself in broad agreement with the subamended version of the amendment. Point 17 currently read as follows: “Each Member should take measures to ensure that all domestic workers either by themselves or through a representative have access to fair and effective dispute resolution procedures and legal remedies that are no less favourable than those available to other workers generally.” However, he proposed a further subamendment to insert the term “easy” in front of “access”.
- 733.** The Government member of the United States seconded the subamendment and proposed another subamendment to insert after “access to” the words “courts, tribunals or other” and also to remove the words “legal remedies”, so that the phrase would read “access to courts, tribunals or other fair and effective dispute resolution procedures”.
- 734.** The Government member of South Africa seconded the subamendment.
- 735.** The Government member of France supported the proposals made by the Government members of South Africa and the United States, but expressed concern regarding the words access “through a representative”. That was not possible in France, where the parties to a legal procedure had to be present in person. She therefore proposed a subamendment to replace “through a representative” by “assisted by a representative”.
- 736.** The Government member of Norway seconded the subamendment.
- 737.** The Government member of Uruguay opposed the subamendment proposed by the Government member of France, since the concept of a legal representative was central in Uruguay and other Latin American countries. He therefore preferred the previous wording that referred to access “through a representative”.
- 738.** The Worker Vice-Chairperson suggested that the problem could perhaps be fixed in the French translation without affecting the English version. The wording “assisted by a representative” was weaker than “through a representative” and could exclude migrant domestic workers from seeking effective legal recourse. They often lost their residence permit when an employer terminated the employment contract and had to return to their home country. In such a situation, they could no longer be present in person.
- 739.** The Government member of France restated that in her country the physical presence of a party was necessary. The employee thus had to be in court during the proceedings, apart from some very specific exceptions.
- 740.** The Government member of Norway cautioned that the word “through” led the Committee into some very specific, national matters of legal procedure. She also supported the subamendment proposed by the Government member of the United States.
- 741.** The Government member of the Philippines supported the subamendments proposed by the Government members of South Africa and the United States. However, there was a concern that access to legal remedy could place a heavy burden on domestic workers. She thus proposed a new subamendment to insert “and affordable” between “easy” and “access”.
- 742.** The Government member of Argentina seconded the subamendment.

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- 743.** The Worker Vice-Chairperson restated that the wording “through a representative” was crucial to give migrant domestic workers legal recourse, even in cases where they had lost their residence and could no longer be present in person.
- 744.** The Government member of Indonesia supported the words “through a representative” and sought clarification from the Government member of the United States on the term “tribunals”, in particular as to whether that included international tribunals.
- 745.** The Government member of the United States clarified that “tribunals” were part of the formal justice system. The term did not intend to include access to international tribunals, which was not generally open to workers.
- 746.** The Government member of Indonesia said that, in light of the explanations, he could accept the subamendment since “tribunals” only referred to domestic legal remedies. He asked however if a footnote could be included in the proposed Convention to indicate that “the term ‘tribunals’ refers to any legal mechanism at the national level pertaining to domestic workers”. After the Office clarified that a Convention could not have a footnote, he asked that the text of the footnote be recorded in the report of the Committee.
- 747.** The Government member of the Philippines supported the words “through a representative”.
- 748.** The Employer Vice-Chairperson questioned what exactly the term “easy” meant in the context of access to legal remedies. Access to courts was never easy, but inherently difficult for employers and workers alike. The rest of the current version of the amendment was acceptable.
- 749.** The Government member of South Africa emphasized that “easy access” to the justice system was fundamental, given that domestic workers were in practice often excluded from legal remedies through overly burdensome procedures.
- 750.** The Employer Vice-Chairperson took note of the explanation, but wanted to hear an example of easy access to the justice system.
- 751.** The Government member of South Africa provided an example from his own country of easy access to legal remedies, where the Commission for Conciliation, Mediation and Arbitration (CCMA) had been established in terms of the Labour Relations Act, 66 of 1995, as a dispute resolution body. It gave domestic workers an opportunity to bring their concerns forward without having to go through complicated procedures.
- 752.** The Government member of Canada opposed the insertion of the words “easy and affordable”, which in his view went beyond the initial intention of the amendment.
- 753.** The Government member of Uruguay explained that his country had also established simple procedures to give domestic workers legal recourse.
- 754.** The Government member of Portugal, speaking on behalf of EU Member States, explained that the purpose of the amendment was to underline the principle of non-discrimination. The idea was that domestic workers should have the same access to fair and effective dispute settlement procedures as other workers. In that context, the term “affordability” did not add clarity.
- 755.** The Employer Vice-Chairperson reiterated his opposition to the word “easy”, which was mythical more than anything else.

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- 756.** The Government member of Australia found the text as amended by the Government member of South Africa and without the phrase “and legal remedies” a good reflection of the intention of the original text.
- 757.** The Government member of Bangladesh also supported the text, and cited an example from his country where legal assistance enabled easy access to dispute settlement mechanisms.
- 758.** The Government member of Canada proposed a subamendment to remove the words “and affordable” from the text, while agreeing to keep the word “easy” in the text.
- 759.** The Employer Vice-Chairperson endorsed the subamendment proposed by the Government member of Canada.
- 760.** The Government members of Argentina and Norway shared the position of the Employer Vice-Chairperson. For the Government member of Argentina, “easy access” could mean a dispute resolution process that was simple and cheap.
- 761.** The Government member of the Philippines considered that the word “affordable” was important because courts and tribunals were often costly, and should stay in the text.
- 762.** The Government member of New Zealand shared the view that “affordable” was a key element in the text.
- 763.** The Worker Vice-Chairperson asked the Office if the term “easy” was comprehensive enough to include low-cost or even free access to justice, and would thus capture the intention of point 17.
- 764.** In reply, the representative of the Secretary-General clarified that the term “easy access” was not found in ILO instruments but was recurrent in national laws especially in civil law.
- 765.** The Worker Vice-Chairperson interpreted “easy” also to possibly mean cheap and free.
- 766.** The Government member of the Philippines pointed out that “easy” referred to procedures that were not complex while “affordable” referred to cost. However, if “easy” was interpreted as also meaning not costly and even free, that should be recorded in the proceedings of the Committee.
- 767.** The Employer Vice-Chairperson reiterated his support for the text without the word “affordable”.
- 768.** The Government member of Australia accepted the text without the word “affordable”, explaining that the word “easy” did not necessarily mean free of charge but it did not exclude it either.
- 769.** The Government member of Portugal accepted the amended text without the word “affordable”, and emphasized that “easy” did not necessarily mean free of charge.
- 770.** The amendment was adopted as subamended and, as a result, three other amendments fell.
- 771.** Point 17 was adopted as amended.

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## **Point 18**

- 772.** The Government member of the United Kingdom, speaking on behalf of EU Member States, withdrew an amendment which sought to replace the existing text with the following: “Each Member should ensure that the specific context of domestic work is taken into consideration when ensuring compliance with national laws and regulations applicable to domestic workers.”
- 773.** The Employer Vice-Chairperson introduced an amendment which sought to replace the words “put in place arrangements that are suited to the specific context of domestic work to ensure” with “establish effective means of ensuring”. The proposal was meant to simplify the formulation of the text without changing its meaning.
- 774.** In response to the request from the Worker Vice-Chairperson for a further explanation as to why reference to arrangements suited to the specific context of domestic work had been removed, an Employer member explained that the proposed reformulation simply removed duplication, as the reference to applicability of laws and regulations to domestic workers remained in the proposed amendment.
- 775.** The Government member of Indonesia wondered whether point 18 was the same as point 20, and sought clarification from the Office.
- 776.** The representative of the Secretary-General explained that the two points addressed different goals. Point 18 was concerned with mechanisms that would ensure compliance with national laws by taking into account the obstacles posed by the special workplace of domestic workers. For example, in Uruguay, inspections for compliance with national law did not involve visiting the domestic worker’s workplace. Point 20 was concerned with the means of applying the proposed Convention as a whole.
- 777.** The Government member of Australia supported the amendment proposed by the Employer members. It proposed simpler language while containing the same intention with regard to compliance and applicability.
- 778.** The Worker Vice-Chairperson agreed but introduced a subamendment to replace the words “applicable to” with “for the protection of”.
- 779.** The Employer Vice-Chairperson accepted the subamendment.
- 780.** The Government members of Indonesia and Norway said that they would prefer to retain the original text, with the specific reference to domestic work, so that supervision could be adapted to reflect the fact that domestic work was performed in private homes.
- 781.** The Government members of the Philippines, South Africa, speaking on behalf of the Africa group, and Spain endorsed the Employer members’ amendment as subamended.
- 782.** An amendment submitted by the Worker members fell.
- 783.** Point 18 was adopted as amended.

## **Point 19**

- 784.** The Employer Vice-Chairperson introduced an amendment which proposed the deletion of point 19.

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**785.** The Worker Vice-Chairperson asked if the Committee could first discuss another amendment, which had been submitted by the Government member of the United States, to insert a new paragraph.

**786.** In response to a question by the Government member of South Africa, who asked whether it was logical to discuss a substantive matter before discussing whether the point should be deleted altogether, a representative of the Legal Adviser said that it had been a practice to discuss a proposal to delete a clause before discussing less radical amendments. However, a motion as to procedure had been moved by the Workers' group to change the order of discussion of a particular amendment, which had been supported by the Employers' group. The question remained as to whether the rest of the Committee supported the motion.

**787.** The Government member of South Africa said that he did not object to the motion.

**788.** The Government member of the United States introduced the proposed amendment to insert a new paragraph to read as follows:

Each Member should take measures:

- (a) establishing criteria for registration and qualifications of employment agencies, including publicly available information on any past violations;
- (b) ensuring regular inspections of employment agencies to ensure compliance with relevant laws and regulations, and instituting significant penalties for violations;
- (c) providing accessible complaint mechanisms for domestic workers to notify authorities of abusive practices; and
- (d) ensuring that fees incurred by agencies are not deducted from the remuneration of domestic workers".

He explained that measures under clauses (a)–(c) were standard proposals for good governance. The aim of clause (d) was to protect the rights of workers who were hired by agencies.

**789.** The Government member of Argentina seconded the proposal.

**790.** The Worker Vice-Chairperson supported the proposed amendment and agreed that the measures mentioned under clauses (a)–(d) were very pertinent for domestic workers. Although many countries had an efficient, robust and sustainable agency sector, many had fly-by-night agencies that were concerned only with making money. While all the issues covered in the proposed text were important, clause (d) was absolutely critical, as in some cases domestic workers had to work without pay for six months in almost slave-like conditions in order to cover agency fees.

**791.** The Employer Vice-Chairperson said that, although the issues were addressed in other instruments, he did not oppose the amendment.

**792.** The Government members of Canada, Japan, Norway, Spain speaking on behalf of EU Member States, and the United Kingdom opposed the amendment. Although they understood the original intent of the proposed amendment, the text would be better placed in the Recommendation. A Convention should not include too much detail and be too prescriptive.

**793.** The Government members of Argentina, Australia, Brazil, Colombia, the Dominican Republic, Indonesia, the Philippines, South Africa, speaking on behalf of the Africa group, and Uruguay supported the amendment.

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- 794.** After consultation with the Employers’ and the Workers’ groups, the Chairperson announced that a majority supported the amendment.
- 795.** The amendment was adopted.
- 796.** The Government members of Canada, Japan, Norway and EU Member States reiterated their reservations about the adopted amendment and wanted them to be placed on record.
- 797.** The Employer Vice-Chairperson withdrew an amendment to delete the point.
- 798.** The Government member of Australia withdrew an amendment to move point 19 before point 18.
- 799.** The Employer Vice-Chairperson introduced an amendment to insert the word “appropriate” before “measures” and to add “in accordance with national laws and practices” at the end of the point.
- 800.** The Worker Vice-Chairperson was concerned that the reference to “national laws and practices” would limit the scope of the instrument. She proposed a subamendment to replace “should take measures” with “should adopt laws or regulations”.
- 801.** The Government member of Canada expressed a preference for the original text of point 19.
- 802.** The Government member of South Africa, speaking on behalf of the Africa group, proposed a subamendment to replace “in particular” with “including” because abusive practices by recruitment agencies did not exclusively affect migrant domestic workers.
- 803.** The Worker Vice-Chairperson proposed another subamendment to replace “should take measures” with “should adopt laws, regulations or other measures”.
- 804.** In reply to a question by the Government member of Namibia, the representative of the Secretary-General explained that “other measures” did not have a defined meaning. In the context of the proposed Convention, “other measures” referred to a broad range of measures that did not have a legal nature that could help the protection of domestic workers. Examples included information programmes, training programmes, or the collecting of statistics with a view of determining trends in the numbers of domestic workers.
- 805.** The Government member of Namibia considered that “other measures” were no substitute for laws and regulations, and proposed a sub-amendment to replace the word “or” with “and” before the word “other measures”.
- 806.** The subamendment was seconded by the Government member of Zimbabwe.
- 807.** The Government member of Indonesia stated that the subamended text was diverging from the purpose of the amendment and proposed to go back to the original text of point 19.
- 808.** The Government member of Singapore joined the Government members of Canada and Indonesia in their preference for the original text. The term “measures” was encompassing and included laws, regulations and other measures.
- 809.** The Government member of Canada reiterated his preference for the original text.

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- 810.** The Employer Vice-Chairperson, considering the subamended version of the text that had resulted from the discussion, decided to withdraw the amendment.
- 811.** The Government member of Namibia reiterated that the Africa group had made a proposal to replace the words “in particular” by the word “including” and asked whether the subamendment could be taken into consideration.
- 812.** A representative of the Legal Adviser explained that since the amendment had been withdrawn such a proposal could not be accepted. Although the withdrawn amendments could be resubmitted, the subamendments still had to relate to the text of the amendment so resubmitted.
- 813.** The Government member of the Netherlands, speaking on behalf of EU Member States, withdrew an amendment to delete the words “or placed” from the original text of point 19.
- 814.** The Worker Vice-Chairperson introduced an amendment to add a new paragraph after the first paragraph. She immediately proposed a subamendment to include, after the words “Member States should take measures to“, the following text: “ensure that in the case of a triangular employment relationship, households utilizing the services of a domestic worker secured through an employment agency should be jointly and severally liable with the employment agency for the domestic worker”. The text should replace the words “allocate and determine, in accordance with national law and practice, the respective responsibilities of the employers and intermediaries in relation to this Convention” which were included in the original amendment. She explained that that the objective of the subamendment was to ensure joint and individual liability of both employers and employment agencies in the case of domestic workers placed through employment agencies. That possibility already existed in the Philippines, where domestic workers, in the case of violations, could take action either against householders or employment agencies.
- 815.** The Employer Vice-Chairperson introduced a point of order, arguing that the change constituted a completely new text and sought the legal advice of the Office.
- 816.** A representative of the Legal Adviser considered that the subamendment of the Workers’ group was receivable and the Chairperson made a ruling confirming that opinion.
- 817.** The Worker Vice-Chairperson explained the rationale behind the subamendment. In triangular employment relationships where the domestic worker had been recruited or placed by an employment agency, it was not clear who the employer was, who had the obligations towards the domestic worker or which regulations would apply. This was a widespread problem. Therefore, the household and the employment agency should be responsible, jointly and severally, for meeting their obligations towards a domestic worker secured by the employment agency.
- 818.** An Employer member, speaking on behalf of the Employers’ group, stated at the outset that, if there was a valid employment problem to be resolved, then whoever was at fault – either the household employing the domestic worker or the employment agency – should be liable and responsible towards the domestic worker. Focusing on the proposed subamendment, he observed that the term “triangular relationship” did not appear in any ILO instrument, and featured only in the discussion of the Committee on the Employment Relationship, 95th Session (2006) of the ILC, with regard to the issue of disguised wage employment relationships. The case of disguised wage employment relationships, where commercial arrangements were used to hide wage employment relations and enable an employer to escape his or her obligations, was clearly undesirable. However, the problem of disguised wage employment was not the issue being discussed by the Committee. The Committee ought to address who should foot the bill when the employer or the agency was

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in the wrong. Imposing collective legal liability on the household and the employment agency would not be helpful. Millions of households with modest means who employed domestic workers through employment agencies should not be exposed to such risks.

- 819.** To further clarify the problem being discussed, the Government member of South Africa described a situation where a domestic worker – hypothetical “Anna” – was placed in a household by an employment agency. For some unknown reason, “Anna” was dismissed by the household, and tried to claim her rights under national law, but since it was not clear who her employer was and who had legal liability, she was not able to secure redress. This demonstrated that, to ensure effective protection of domestic workers, the household and the employment agency should be made jointly and severally liable towards the worker. In this regard, the speaker, on behalf of the Africa group, proposed a further subamendment that would delete “of triangular employment relationships” from the Worker members’ subamendment, and replace it with “where a domestic worker is placed to work in a household by a private employment agency”. The text would read “Member States should take measures to ensure that, in the case where a domestic worker is placed to work in a household by a private employment agency, households utilizing the services of a domestic worker secured through an employment agency should be jointly and severally liable with the employment agency.”
- 820.** Following the line of thought presented by the Government member of South Africa, the Government member of Namibia provided further circumstances which illustrated the need to improve responsibility on the head or heads of household, such as if “Anna” were to be sexually harassed by the householder and her employment terminated as a result; or if the agency that employed her was transient or bogus and did not pay her wages; or that she suffered an occupational injury. In all three cases, the employee would not have adequate protection unless the head or heads of household also bore a legal responsibility under national laws.
- 821.** The Government member of the Philippines supported the subamendment sponsored by the Worker members, and described how both employer and private employment agency were jointly and severally liable for the migrant worker placed by the agency under Philippine law. Under the Philippine procedure, the employer signed a power of attorney with the agency, creating a principal-agent relationship between the employer and the employment agency, and the agency put up a bond to cover all liabilities to the domestic worker.
- 822.** An Employer member, speaking on behalf of the Employers’ group, appreciated the concerns, examples and possible solution shared by previous Government speakers; other countries could face different issues and should be able to take appropriate measures. There was no logic in assigning liability to a party who had not committed the violation. If the proposed Convention insisted on joint liability of the employer and the employment agency, the instrument would be unacceptable.
- 823.** The Government member of Canada opposed the suggestion to include the notion of joint responsibility, both on its merits – as it would have the adverse side effect of diluting the real employer’s responsibility – and technically, because joint responsibility went far beyond what was covered in existing instruments such as the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198); its inclusion would hinder ratification.
- 824.** The Government member of the United States proposed a subamendment that he hoped would address the Employers’ group’s concerns and protect domestic workers. The text would read “Each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, in particular migrant domestic workers, are effectively

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protected against abusive practices, including by establishing the legal liability of both the household and the agency.”

- 825.** The Government member of Uruguay supported that subamendment.
- 826.** An Employer member, speaking on behalf of the Employers’ group, endorsed the subamendment in principle, but would prefer to delete the words “or placed”, as the intention was to refer to cases where there was an ongoing relationship with an agency. He explained that there was a difference between recruitment and placement of workers by agencies. When an agency recruited a domestic worker, the employment relationship remained with that agency. However, it was more common for agencies to match employers and employees, for a fee. The employment relationship after such placement was between the employer and employee, and the agency had no further role to play. The text of the proposed amendment, as it stood, was not appropriate.
- 827.** The Worker Vice-Chairperson, in response to concerns about the use of the term “triangular employment relationships”, pointed out that the relationship between a principal and an agency was an established feature of common law, which allowed for joint and several liability. It was important to avoid causing any confusion on the issue. Furthermore, the notion was not something that was unheard of; for example, the Private Employment Agencies Convention, 1997 (No. 181), contained a provision which referred to the respective responsibilities of private employment agencies providing services and of user enterprises. She suggested the following wording, to take into account the concerns that had been raised: “Each Member should take measures to ensure that domestic workers recruited by employment agencies, in particular migrant domestic workers, are effectively protected against abusive practices, including by establishing the respective legal liability of the household and the agency.”
- 828.** An Employer member, speaking on behalf of the Employers’ group, supported the Worker Vice-Chairperson’s proposal.
- 829.** The Government member of South Africa, speaking on behalf of the Africa group, indicated that he would endorse the subamendment proposed by the Government member of the United States – which was very constructive – if it could be modified slightly to reflect that the essence of the Convention was to address domestic workers generally. He would therefore propose that the words “in particular migrant workers” should be changed to “including migrant workers”. He disagreed with the subamendment proposed by the Employers’ group, as the employment relationship between the employer and the private employment agency continued after the placement of the worker. He would therefore prefer to retain the words “or placed”. The text would read “Each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, including migrant domestic workers, are effectively protected against abusive practices, including by establishing the respective legal liability of the household and the agency.”
- 830.** The Employer Vice-Chairperson proposed replacing “in particular” with “including”. He explained that the term “placed” referred to cases where an employment agency matched a domestic worker with an employer, placing him or her in the household. In that case, an employment relationship emerged between the domestic worker and the employer to which the employment agency was not a party.
- 831.** The Government member of South Africa stated that the scenario where a domestic worker was placed by an agency and received monthly wages from an agency should be covered under point 19.

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- 832.** The Employer Vice-Chairperson considered the scenario an example of “recruitment” whereby an employment agency matched a domestic worker with a household, hired the domestic worker and placed the domestic worker with the household. In that case, there was an employment relationship between the domestic worker and the employment agency.
- 833.** The Government member of the United States understood the concerns of the Employers’ group about the inclusion of “placement” in the text, but noted that different countries might interpret “placement” in different ways. The term “respective” provided discretion as to where legal liability would fall.
- 834.** The Employer Vice-Chairperson understood that “respective” would provide sufficient flexibility and withdrew his subamendment.
- 835.** The Government members of Australia and of Spain, speaking on behalf of EU Member States, supported the text as it stood.
- 836.** The amendment was adopted as subamended.
- 837.** The Worker Vice-Chairperson proposed an amendment to protect the claims of domestic workers in the event of death or insolvency of the employer. It was often very difficult for a domestic worker to receive outstanding wages when their employer died. A related issue was the horrendous problems that arose when the domestic worker died. She stated that those issues should be covered in the proposed Recommendation and withdrew the amendment.
- 838.** Point 19 was adopted as amended.
- 839.** Responding to a question raised by the Government member of Indonesia, a member of the secretariat confirmed that the text of point 19(1) had been agreed in the previous sitting and that the amendment that had just been discussed had been introduced by the Workers’ group as an additional paragraph in point 19. During the discussion of the amendment in the Committee, the solution that had emerged was to merge the new paragraph with the original text of point 19(1).
- 840.** The Government member of Indonesia pointed out that the Standing Orders of the ILC did not allow for amendment of an already agreed paragraph. In future, the Committee needed to be duly informed if an amendment aimed to change an agreed paragraph.
- 841.** The Government member of Bangladesh echoed the same view. He suggested that the Committee had allowed itself to suffer from temporary amnesia. He asked to put on record that he reserved the right to revisit point 19 at a later stage. He also stated that several delegates had remarked that point 19(2) was very detailed and, although it dealt with a critical issue, it would be better placed in the Recommendation rather than the Convention. He reminded the Committee that if application of the Convention became conditional on too many different and detailed factors that went beyond the main issues on domestic workers, the Convention would become very difficult to ratify.
- 842.** The Government member of Indonesia fully supported the position of the Government member of Bangladesh and requested that their reservation be reflected in the Committee’s report.
- 843.** The Government member of the Dominican Republic also supported the statement of the Government member of Bangladesh.

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## ***New point after point 19***

**844.** The Worker Vice-Chairperson introduced an amendment that aimed to protect domestic workers in the case of termination of the employment contract. Domestic workers were very vulnerable and often lacked proper protection in that respect, such as ensuring due process. They should also be protected against termination because of trade union membership. Pregnant domestic workers – whose ability to perform tasks slowed down and who sometimes suffered from sicknesses related to pregnancy – should enjoy the same protection as other pregnant workers. She withdrew the amendment and proposed to address the issue in point 38 of the proposed Conclusions.

## ***Point 20***

### Point 20(1)

**845.** The Employer Vice-Chairperson withdrew an amendment to move the paragraph to before point 5.

**846.** The Employer Vice-Chairperson introduced an amendment to replace the text of point 20(1) with the following:

The provisions of this Convention should be implemented in consultation with workers' and employers' organizations by laws, regulations, collective agreements or any other appropriate measures consistent with national laws and regulations, by adapting existing measures to cover domestic workers or by developing specific measures for domestic workers.

The intention was to clarify the text and highlight the important role of social partners in the adoption of measures to give effect to the Convention.

**847.** The Worker Vice-Chairperson supported the intention of the Employer members' amendment and introduced a subamendment to add the word "representative" before the words "workers' and employers'", to delete the word "appropriate" and to add the words "extending or" before the word "adapting". Those changes were in line with the wording of previously discussed provisions and would strengthen the rationale of the paragraph.

**848.** The Employer Vice-Chairperson supported the Worker members' subamendment.

**849.** The Government member of the United States noted that adding the words "national laws and regulations" after the words "consistent with" resulted in a repetitive, overcharged and inconsistent text. He proposed to reinstate the original words "national practice" so that point 20(1) would read as follows:

The provisions of this Convention should be implemented in consultation with representative workers' and employers' organizations by laws, regulations, collective agreements or other measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for domestic workers.

**850.** The Employer Vice-Chairperson agreed with the proposal of the Government member of the United States.

**851.** The Worker Vice-Chairperson pointed out that the discussion was not just a matter of wording and declared that, since point 20(1) and (2) dealt with the measures that member States had to adopt to give effect to the Convention, the issue was to ensure that those measures would be shaped in line with the standards fixed by the Convention. The measures to implement the Convention should not be drafted in line with existing national

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laws and regulations, as they would weaken the level of legal protection of domestic workers. As far as that intent was reflected in point 20, the Worker members would agree to defer the wording of point 20(1) to the Committee Drafting Committee.

**852.** The Worker Vice-Chairperson proposed subamending the existing text as follows:

The provisions of this Convention should be implemented in consultation with the representative workers' and employers' organizations by using existing or developing new laws, regulations, collective agreements or any other additional measures consistent with national laws and practices by extending or adapting existing measures to cover domestic workers or by extending, developing or adapting specific measures to cover domestic workers.

**853.** The Government member of Australia argued that the paragraph had become repetitive and was not very intelligible, but could be made simpler without losing any substance. She suggested returning to the original text of point 20(1), which was quite clear. The phrase "in consultation with the representative workers' and employers' organizations" could be inserted so that it would read:

The provisions of this Convention should be implemented – in consultation with the representative workers' and employers' organizations – by laws, regulations, collective agreements or other measures consistent with national practices, by extending or adapting existing measures to cover domestic workers or by developing specific measures for domestic workers.

**854.** The Government member of Singapore seconded the subamendment.

**855.** The Worker Vice-Chairperson drew attention to point 20(2) that called for consultation in adopting laws, regulations or other measures. Her understanding was that consultations should take place with respect both to implementation and to adopting measures. She also drew attention to another amendment, submitted by the Employer members, which sought to delete point 20(2). She asked for clarification regarding the relationship between point 20(1), as subamended by the Government member of Australia, and point 20(2).

**856.** The Government member of Australia clarified that, in suggesting the insertion of the reference to "in consultation with the representative workers' and employers' organizations", her delegation agreed with the Employers' group that point 20(2) could be deleted.

**857.** The Government member of South Africa drew a distinction between two different concepts: the implementation, as referred to in paragraph (1), and the consultation on the adoption of laws, regulations and other measures, as referred to in paragraph (2). He warned against conflating the two concepts. That was how point 20 stood in the version prepared by the Office.

**858.** After consultation with the Employer members, the Worker Vice-Chairperson proposed a new text which read as follows:

Each Member should, in consultation with representative workers' and employers' organizations, implement the provisions of this Convention through laws, regulations, collective agreements as well as through additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for these workers.

The text would replace paragraphs (1) and (2) of point 20.

**859.** There were no objections from Government members.

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**860.** The amendment was adopted, as subamended, as a result of which a number of amendments fell.

**861.** Point 20 was adopted as amended.

#### Point 21

**862.** The Employer Vice-Chairperson withdrew an amendment to delete point 21.

**863.** The Government member of Spain, speaking on behalf of EU Member States, withdrew an amendment to insert “ratified” between “other” and “international labour Conventions”.

**864.** An amendment submitted by the Government member of Lebanon to add “or national legislation” after the words “other international labour Conventions” was not seconded, and was thus not discussed.

**865.** Point 21 was adopted without amendment.

#### **D. Proposed Conclusions with a view to a Recommendation**

**866.** The Employer Vice-Chairperson expressed his concern that the Committee might be unable to discuss all the points of the proposed Recommendation before the end of the first discussion of the Committee. He requested the opinion of the Legal Adviser on the possible implications of such a situation.

**867.** The representative of the Legal Adviser replied that, the request might be prematurely as in his view, the Committee had enough time to progress efficiently with the discussion and complete its work before the end of the first session of the Committee. However, if there was not enough time to discuss all the points of the proposed Conclusions, the Committee could seek inspiration from two precedents from the years 1951 and 1956. Based on those precedents, the Committee report that should be submitted at the end of the first discussion could include proposed Conclusions with a view to a Convention as well as a Recommendation covering all the points that had been discussed. The points that regrettably might not have been discussed could be placed by the Conference on the agenda of the June 2011 session of the Conference for a single discussion.

#### **Point 22**

**868.** Point 22 was adopted without amendment.

#### **Point 23**

##### Chapeau

**869.** The Employer Vice-Chairperson introduced an amendment which proposed to insert “and their employers” after “domestic workers” so that the text of the chapeau would read as follows: “In taking measures to ensure that domestic workers and their employers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:”. He pointed out that employers’ organizations also existed and should be recognized alongside workers’ organizations.

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- 870.** The Worker Vice-Chairperson opposed the amendment. She explained that point 23 dealt with the freedom of association of domestic workers in recognition of the huge deficits in that regard. There was no objection to the fact that employers had the same right to freedom of association, but it would not be appropriate to insert reference to the right of employers in that particular part of the text.
- 871.** The Government members of Australia, New Zealand, Norway, Spain, the latter speaking on behalf of EU Member States, and the United States concurred with the position of the Worker Vice-Chairperson. Point 23 dealt specifically with domestic workers. The Government member of Australia further expounded that, as the proposed Recommendation should support the proposed Convention, point 23 was related to a paragraph in the proposed Convention that specifically mentioned domestic workers' right to freedom of association and collective bargaining.
- 872.** The Employer Vice-Chairperson stressed that employers had the same rights to freedom of association as workers, and asked why employers were being excluded from the text. He reiterated that freedom of association was a fundamental right and formally requested the Chair for a vote on the amendment by show of hands.
- 873.** The Chairperson announced the results of the vote by show of hands: of a total of 526 votes, there were 250 votes in favour, 276 against and 44 abstentions. She noted that the quorum of 276 had been reached. The proposed amendment was therefore defeated.
- 874.** The Employer Vice-Chairperson, emphasizing that freedom of association was a fundamental human right, observed that it was the first time in the history of the ILO that the freedom of association of employers had been refused. He would like to know which Government and which Worker members had denied employers that right. He therefore immediately called for a record vote.
- 875.** The Worker Vice-Chairperson expressed her astonishment at the request made by the Employer Vice-Chairperson. There had been a vote and the motion had been defeated. The Workers' group was not denying employers the right to freedom of association. The aim of point 23 was to correct an existing deficit and to protect the rights of domestic workers. In addition, she wondered about the procedure. Reading from a blue booklet entitled "Conference Committees without Tears: Pocket Guide for the Secretariat", she pointed out that members who challenged the result of a vote by show of hands should give a valid reason for doubting the result of the vote, for example if the result was very close, or if there was some perceived irregularity in the voting process. That had not been the case with the vote that had just been carried out. However, recalling that more than 100 million domestic workers were depending on the Committee, at what was a historic moment, to make progress in developing an instrument to protect them, she said that, notwithstanding the vote, her group would agree to include the terms "and their employers" in the text.
- 876.** The Employer Vice-Chairperson said that the record vote should be held immediately.
- 877.** The Government member of South Africa raised a point of order, noting that, according to article 65, paragraph 7, of the Standing Orders of the ILC, a record vote could be taken only if the result of a vote by a show of hands was challenged, and that in this particular case the vote had not even been close. He also doubted that Worker members could change their position now that a vote of hands had already taken place.
- 878.** The representative of the Legal Adviser explained that article 65, paragraph 8, of the Standing Orders of the ILC provided for a record vote to be taken if at least one-fifth of the members present at the sitting requested it after the vote by show of hands. That had been the case. He summarized that there had been a show of hands on the amendment submitted

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by the Employer members on point 23. Subsequently, there had been a request for a record vote on that amendment by the Employers' group who represented more than one-fifth of the members of the Committee.

- 879.** The Worker Vice-Chairperson asked the representative of the Legal Adviser what the subject of the vote was, given that her group had withdrawn its objection to the amendment in question.
- 880.** The representative of the Legal Adviser explained that the subject of the record vote was whether there was support for the amendment proposed by the Employers' group.
- 881.** The Committee proceeded to a record vote, the results of which were as follows: of a total of 274 votes, there were 248 votes in favour, 26 against and 300 abstentions.<sup>11</sup> She announced that the quorum of 276 had not been reached. The amendment was therefore defeated.
- 882.** The Government member of Namibia was deeply concerned that some members of the Committee were not discussing the proposed Convention and proposed Recommendation in good faith. She sincerely hoped that one social partner did not have the desire to prevent the Committee from concluding its discussions on the proposed Recommendation. She hoped that the Committee would make every effort to discuss the Recommendation and reach a conclusion.
- 883.** The Employer Vice-Chairperson took note of the results. He reaffirmed the importance of freedom of association for the Employer members. He wished that the work of the Committee could progress in light of that principle. The Employers' group remained committed to the issues of domestic workers and that is why they had requested a record vote.
- 884.** The Government member of Indonesia wanted to put on record the fact that his Government believed that everyone had the right to freedom of association. That belief was based on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Indonesia's Law No. 39 of 1999 Concerning Human Rights. As a party to the International Covenant on Civil and Political Rights, Indonesia was duty bound to respect that freedom. His Government also considered that that right was clearly stated in Article 20 of the Universal Declaration of Human Rights that stated that "Everyone has the right to freedom of peaceful assembly and association." It was

<sup>11</sup> The results of the record vote were as follows:

For the amendment: Bahrain, Chile, Dominican Republic, Indonesia, Kuwait, Panama, Qatar, Saudi Arabia, United Arab Emirates. The ten members of the Employers' group also voted for the amendment.

Against the amendment: Argentina, Norway and Uruguay. Two members of the Workers' group also voted against the amendment.

Abstentions: Algeria, Australia, Austria, Bangladesh, Barbados, Belgium, Brazil, Canada, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Honduras, Ireland, Japan, Kenya, Republic of Korea, Lesotho, Morocco, Mozambique, Netherlands, New Zealand, Philippines, Portugal, Romania, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Bolivarian Republic of Venezuela, Zambia. Twenty-one members of the Workers' group abstained.

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based on that understanding that his delegation had voted in favour of the proposed amendment.

- 885.** The Government member of the United States noted that, during the discussion on the proposed amendment, the Employer Vice-Chairperson had mischaracterized the vote as being on the principle of freedom of association of employers, when in fact it was a vote on whether to make a reference on that right in one particular paragraph of the text. There had not been a single voice in the discussion that opposed the right of employers to freedom of association.
- 886.** The Government member of South Africa, speaking on behalf of the Africa group, concurred with the statement made by the Government member of the United States.
- 887.** The Government member of Spain, speaking on behalf of EU Member States, explained that the votes cast by the Member States of the EU had been solely on the proposed amendment. Members of his group did not believe that a reference to employers should be included in point 23. That was the question in front of them. Members of his group had never said that they were opposed to freedom of association for either party.
- 888.** The Government member of Uruguay clarified that his delegation was not opposed the right to freedom of association and collective bargaining for employers. His delegation had voted on the question of whether to modify the original text in point 23, and not on the principle of freedom of association for employers, which his country fully supported.
- 889.** The Government member of Brazil clarified that her Government was in favour of freedom of association. However, the text under consideration was supposed to lead to a Convention on domestic workers. There was no need to specifically mention the freedom of association of employers in point 23.
- 890.** The Government member of Norway affirmed that her Government was not opposed to the freedom of association of employers. Her delegation had only voted in reply to the specific question being asked, and found it unacceptable to turn the specific debate on point 23 into a debate on the principle of freedom of association for employers.
- 891.** The Worker Vice-Chairperson explained that her group was not opposed to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which included the right of employers to freedom of association. As part of a tripartite organization, her group recognized the rights of the employers. However, the question before the Committee was simply whether it was appropriate to include such a reference in point 23. Now that the vote had been conducted, she encouraged the Committee to resume its work. There were more than 100 million domestic workers worldwide who needed protection. Her group would continue the negotiations in good faith.
- 892.** The chapeau was adopted.

### ***Point 23(a)***

- 893.** The Employer Vice-Chairperson introduced an amendment which proposed to replace the existing text with the following: “identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers and their employers to establish their own organizations or to join organizations of their choice and to the right of organizations of domestic workers and employers to join federations or confederations;”. He explained that the amendment sought to recognize the existence of employers’ organizations in the realm of domestic work.

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- 894.** The Worker Vice-Chairperson expressed a preference for the original text of point 23(a), and suggested accommodating the intention of the amendment by inserting a new clause between clauses (a) and (b) to read “and likewise to ensure the right of employers to establish and join organizations, federations and confederations of employers of their choosing”.
- 895.** The Employer Vice-Chairperson gave his support, but proposed to replace the term “trade union federations” in the original point 23(a) with “workers’ organizations”.
- 896.** The Government member of the United States asked if the text proposed by the Workers’ group would form a new clause (b) so that the existing clause (b) would then be renumbered (c).
- 897.** The Worker Vice-Chairperson confirmed that that would be the case.
- 898.** The Government member of the United States pointed out that the chapeau ended on “Members should:” and suggested removing the words “and likewise to” at the beginning of the new clause (b) so that it would start with “ensure that”. That would lead to a better flow of the text.
- 899.** The Employer Vice-Chairperson supported the suggestion.
- 900.** The amendment was adopted as amended.
- 901.** In response to a question raised by the Employer Vice-Chairperson, the representative of the Secretary-General explained that the intention of clause 23(b) – which read “take or support measures to strengthen the capacity of organizations of domestic workers to protect effectively the interests of their members” – was not intended to imply that member States should take measures to finance organizations of domestic workers; it was aimed only at strengthening the capacity of domestic workers’ organizations to advance their interests.
- 902.** In light of that explanation, the Employer Vice-Chairperson withdrew an amendment to delete the clause.
- 903.** The Government member of Norway, speaking also on behalf of the EU Member States, withdrew an amendment that they had submitted, to add, at the end of clause (b), the words: “to the same extent as measures are taken or supported with respect to other workers’ organizations”.
- 904.** Point 23 was adopted as amended.

## **Point 24**

- 905.** The Government member of the United States introduced an amendment, submitted with the Government member of Australia, to change “ascertain” to “ensure”.
- 906.** The Worker and the Employer Vice-Chairpersons supported the amendment.
- 907.** The amendment was adopted.
- 908.** The Employer Vice-Chairperson introduced an amendment to insert the word “illegal” in the last line, before the word “discrimination”, and to add, at the end of the point, the words “, in accordance with national laws and regulations”. His group believed that the

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proposed amendment strengthened the protection of domestic workers. It would therefore read as follows:

In taking measures to ensure the elimination of discrimination in respect of employment and occupation, Members should, among other things, ensure that work-related medical testing respects the principle of the confidentiality of personal data and the privacy of domestic workers, and prevent any illegal discrimination related to such testing, in accordance with national laws and regulations.

- 909.** The Worker Vice-Chairperson asked the Office whether there was such a concept as “illegal discrimination” and, more specifically, whether it was referred to in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100).
- 910.** The representative of the Secretary-General explained that neither Convention No. 111 nor Convention No. 100 used the term “illegal discrimination”. However, under Convention No. 111, any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of that job was not deemed to be discrimination.
- 911.** The Worker Vice-Chairperson observed that the purpose of point 24 was to prevent the use of information, such as information gained through medical testing, that was discriminatory towards domestic workers. Any exceptions would undermine it. On very strong grounds of principle, she did not support the proposed amendment.
- 912.** The Employer Vice-Chairperson conceded that the word “illegal” did not need to be included. However, he wanted to retain the words “in accordance with national laws and regulations”.
- 913.** The Worker Vice-Chairperson reiterated that her group did not support the proposed amendment.
- 914.** The Employer Vice-Chairperson withdrew the amendment.
- 915.** Point 24 was adopted as amended.

### **Point 25**

- 916.** The Employer Vice-Chairperson introduced an amendment to replace the word “young” by “children who are”. The text would read as follows: “When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of children who are domestic workers, as defined by national laws and regulations, including in respect of working time and restrictions on undertaking certain types of domestic work.” He said that the wording was more appropriate and took into account his group’s views on the use of the word “young”, as discussed previously.
- 917.** The Worker Vice-Chairperson preferred the terminology that had been used in point 7 and proposed a subamendment, to read “domestic workers who are under the age of 18 and above the minimum age of employment”.
- 918.** The Employer Vice-Chairperson accepted the proposed subamendment.
- 919.** The Government member of Norway supported the amendment, as subamended.
- 920.** The amendment was adopted, as subamended.

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**921.** The Worker Vice-Chairperson withdrew two amendments – one to insert the words “safety and health,” in the third line, after “respect of”, and the other to add “and access to education and vocational training,” in the fourth line, after “domestic work” – noting that the issues addressed had already been adequately dealt with.

**922.** Point 25 was adopted, as amended.

## **Point 26**

### Point 26(1)

**923.** The Government member of Spain, speaking on behalf of EU Member States, withdrew an amendment to insert, at the beginning of paragraph (1), the words “To the extent prescribed by the national laws,”.

**924.** The Employer Vice-Chairperson introduced an amendment to replace, in the first line, the words “in writing” by “in a form that is easily understandable to both parties and is verifiable” and, in the second line, after “provided” to insert “by the Member”. He proposed a subamendment to use the same formulation as in point 9 of the proposed Convention text by replacing “in writing and,” with “by the Member in an appropriate, verifiable and easily understandable manner, including, where possible and preferably, through written contracts in accordance with national laws and regulation and,”.

**925.** The Worker Vice-Chairperson proposed a subamendment to delete “by the Member” because the paragraph mostly dealt with contracts, which were more in the realm of employers than governments.

**926.** The Employer Vice-Chairperson agreed.

**927.** The Government member of South Africa, speaking on behalf of the Africa group, asked whether the word “verifiable” related to the “terms and conditions” or to the manner in which the contract was provided.

**928.** The Employer Vice-Chairperson reminded the Committee that the language in the amendment had already been agreed in the proposed Convention and could not be changed at the current stage.

**929.** The Government member of South Africa, speaking on behalf of the Africa group, commented that, if there was no logical explanation of the term “verifiable”, he would propose a subamendment to delete “verifiable”.

**930.** The Worker Vice-Chairperson saw value in retaining the word “verifiable”. There was merit in verifying terms and conditions of employment through documents.

**931.** The Government member of South Africa was comfortable with the explanation that “verifiable” related to the terms and conditions of employment.

**932.** The Government member of the United States expressed a preference for retaining “verifiable” to be consistent with the proposed Convention.

**933.** The amendment was adopted as subamended.

**934.** Point 26(1) was adopted as amended.

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Point 26(2)

*Point 26(2)(a)*

**935.** Point 26(2)(a) was adopted.

*Point 26(2)(b)*

**936.** The Employer Vice-Chairperson introduced an amendment to replace “detailed list of duties” with “job description” as the latter term was more inclusive and did not only cover tasks but also skills.

**937.** The amendment was supported by the Worker Vice-Chairperson and by the Government members of Argentina, Brazil, and Spain, speaking on behalf of EU Member States.

**938.** The amendment was adopted.

**939.** Point 26(2)(b) was adopted as amended.

*Point 26(2)(c)–(e)*

**940.** Point 26(2)(c)–(e) were adopted.

*Point 26(2)(f)*

**941.** The Employer Vice-Chairperson introduced an amendment to add “, if any” at the end of clause (f) of point 26(2), in case there might not be any overtime.

**942.** The Worker Vice-Chairperson asked for further clarification as to why the proposed amendment was needed. The clause aimed to make clear what the rate of pay for overtime work was and there was no need to add “if any”.

**943.** The Government member of Spain, speaking on behalf of EU Member States, supported the amendment proposed by the Employers’ group and proposed a subamendment to replace “rate of pay” with “pay” or “remuneration” to make the text consistent with point 9(c).

**944.** The Government member of Brazil supported the subamendment proposed by the Government member of Spain but thought that the amendment proposed by the Employers’ group was completely unnecessary.

**945.** The Government member of South Africa, speaking on behalf of the Africa group, could support neither the amendment proposed by the Employers’ group, nor the subamendment proposed by the Government member of Spain. Clause (f) did not deal with wages but with the rate of pay for overtime which was always a ratio of the wage.

**946.** The Worker Vice-Chairperson shared the same view, and stated that the rate of pay for overtime should be clear.

**947.** The Government member of the United States agreed with the Government member of South Africa. He noted that there might have been a problem with the translation of the intervention of the Government member of Spain. The subamendment as presented to the Committee used the word “pay” whereas the speaker had used the word “remuneration”.

**948.** The Government member of Spain withdrew the subamendment.

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**949.** The Government member of Brazil put forward that “if any” could be interpreted with regard to “rate of pay” but also with regard to “overtime”. It made the clause ambiguous and she therefore rejected the proposed amendment. The Government members of Australia, Belgium, France and the Philippines supported the position of the Government member of Brazil.

**950.** The Employer Vice-Chairperson withdrew the amendment.

**951.** Point 26(2)(f) was adopted.

*Point 26(2)(g)*

**952.** The Worker Vice-Chairperson withdrew an amendment to add at the end of clause (g) the words “, including severance pay”.

**953.** Point 26(2)(g) was adopted.

*Point 26(2)(h)–(j)*

**954.** Point 26(2)(h)–(j) were adopted.

*Point 26(2)(k)*

**955.** The Employer Vice-Chairperson introduced an amendment to replace clause (k) of point 26(2) with “the period of notice required by either the domestic worker or the employer for termination, if any”, subamending it by deleting “if any”.

**956.** The Government member of Uruguay proposed a subamendment to insert “where applicable” at the end because in some Latin American countries it was not required to give a period of notice for termination.

**957.** The Government member of Chile seconded the subamendment of the Government member of Uruguay, because similarly in her country there was no requirement for a notice period.

**958.** The Worker Vice-Chairperson supported the Employer members’ amendment as subamended to delete the words “if any”. Her group recognized the importance of the principle of complementarity, thus notice had to be provided to the domestic worker, on the one hand, and to the employer, on the other. Notice was considered essential in the case of migrant domestic workers. In addition, since the ILO standard-setting process sought to fill existing decent work deficits in national laws and practices, she could not support the subamendment of the Government members of Chile and Uruguay, if the words “where applicable” had the same meaning as “if any”.

**959.** The Government member of Australia stated that point 26 was part of the proposed Recommendation, which was not binding and prescriptive but aimed to provide guidance to member States. Therefore, current national laws and practices were less relevant and it would be important that a Recommendation pointed out international best practices that could provide countries with something to aspire to.

**960.** The Government member of Brazil noted that, since the Employers’ group had deleted the words “if any” from their amendment, there should be no scope for discussing the introduction of the words “where applicable”, as their meaning was similar. The clause as amended was important because it stressed the principle of mutual respect that both parties should show when it came to the issue of the notice period. While international standards

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had to recognize that principle, it was a matter for national authorities to establish the duration of the notice period. There were also other ways to get around that issue. For instance, in Brazil compensation could be paid to workers, instead of the provision of a notice period.

**961.** The Government member of Uruguay took note of the clarifications of the Government member of Australia and, bearing in mind that point 26 was part of the proposed Recommendation, withdrew his subamendment.

**962.** The Government member of Chile concurred with the previous speaker.

**963.** The amendment was adopted as subamended.

**964.** The Worker Vice-Chairperson introduced an amendment to add the words “and, if applicable, arrangements concerning accommodation provided by the employer in case of termination” at the end of the clause. While highlighting the importance of the provision of accommodation after termination, especially in the case of migrant domestic workers, she withdrew the amendment and called for further discussion on the issue in June 2011.

**965.** Point 26(2)(k) was adopted.

#### New clause at the end of point 26(2)

**966.** The Government member of the Netherlands, speaking on behalf of EU Member States, withdrew an amendment to add at the end of paragraph (2) the words “the terms of repatriation, if applicable”.

#### Point 26(3)

**967.** The Worker Vice-Chairperson withdrew an amendment to replace the words “consider establishing” with the words “take measures to establish”, in the first line. She felt that the proposed words were stronger and in line with the practice that already occurred in countries such as Indonesia, the Philippines and Singapore; she asked for the amendment to be put on record for discussion in 2011.

**968.** The Worker Vice-Chairperson withdrew an amendment to insert, in the second line, after the word “workers”, a full stop and to delete the rest of the paragraph.

**969.** Point 26(3) was adopted as amended.

**970.** Point 26 was adopted as amended.

#### **Point 27**

**971.** Point 27 was adopted.

#### **Point 28**

**972.** The Government member of the United Kingdom, speaking on behalf of EU Members, withdrew an amendment to replace the existing text with the following: “Periods during which domestic workers are not required to carry out work with the usual continuity, but are obliged to remain at the disposal of the household in order to respond to possible calls, should be regarded as hours of work to the extent determined by national laws or

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regulations, collective agreements or any other means consistent with national practice.” She requested that the point be put on record for broader discussion in June 2011.

- 973.** The Employer Vice-Chairperson introduced an amendment to replace the word “regulate” with the words “provide guidance”, in the fourth line; that wording seemed more appropriate and softer for the text of a Recommendation, which was intended to provide guidance to member States.
- 974.** The Worker Vice-Chairperson objected to the proposed amendment, noting that national laws and regulations should regulate and not provide guidance. That wording would unnecessarily weaken the text, while the intention was to protect domestic workers, especially on an essential issue such as working time.
- 975.** The Government member of Argentina supported the position of the Workers’ group, concurring that national laws should regulate and not provide guidance.
- 976.** The Government member of Norway endorsed the arguments of the previous speakers. She also expressed her reservations about point 28, stressing that the text as it stood looked impossible to implement, so more flexibility should be introduced. In particular, the provisions on fixing a maximum number of working hours as well as standby hours were deemed too rigid and difficult to implement in the context of her country. She recommended broader discussion on point 28 in June 2011.
- 977.** The Government member of the United States, with a view to find a compromise, proposed a subamendment to replace the words “provide guidance” with the word “address”. He understood the concerns of the Government member of Norway and noted that point 28 was part of the proposed Recommendation and, as such, not binding and only for guidance for member States. He withdrew the subamendment.
- 978.** The Government member of Spain, speaking on behalf of EU Member States, could not support the proposed amendment since, in technical terms, a law should regulate and not provide guidance. However, he shared the concerns expressed by the Government member of Norway on point 28 and called for an in-depth discussion in 2011 on issues related to working time. The objective was to come up with flexible, useful and broadly acceptable instruments that could be widely ratified.
- 979.** The Government member of South Africa objected to the proposed amendment on the same grounds of the previous speakers and noted that, as all the text would be open for broader discussion in 2011, it appeared redundant to call for broader discussions on specific points.
- 980.** The Employer Vice-Chairperson, noting the consensus on that proposal, withdrew the amendment.
- 981.** The Worker Vice-Chairperson withdrew an amendment to insert, in the fourth line, after the word “regulate”, the words “, in terms no less favourable than those applicable to other wage earners”. She declared that the principle of no less favourable treatment of domestic workers had been sustained by the Workers’ group throughout the whole discussion and had been already reflected in the proposed Convention.

#### Point 28(a)

- 982.** The Employer Vice-Chairperson introduced an amendment to add, at the end of the clause, the words “and the means by which these might be measured”. It was important that an employer had knowledge on the methods by which the calculation of the maximum

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number of hours that a domestic worker might be required to be on standby as well as on where information on that subject could be found.

**983.** The Worker Vice-Chairperson supported the amendment, which was adopted.

**984.** Point 28(a) was adopted as amended.

Point 28(b)–(c)

**985.** Point 28(b)–(c) were adopted.

**986.** Point 28 was adopted as amended.

### **Point 29**

**987.** The Employer Vice-Chairperson introduced an amendment to delete the text of point 29, which read as follows: “Members should consider specific measures, including appropriate financial compensation, for domestic workers whose normal duties are performed at night, taking into account the constraints and consequences of night work”. He argued that the proposed Recommendation should not include protection from night work, since that issue was already covered by the proposed Convention.

**988.** The Worker Vice-Chairperson opposed the amendment, stating that protection from night work was a universal right for all workers across all sectors, including services and manufacturing, where, for instance, shift allowances were provided for work carried out between 11 p.m. and 6 or 7 a.m. Moreover, recent research had shown that night work had adverse effects on workers’ health. Once more, the principle of no less favourable treatment for domestic workers was reaffirmed. Compensation for night work was especially important in the case of live-in domestic workers, who could be on call any time, including overnight. If that principle was not guaranteed, the Committee would fail in its mandate to provide decent work for domestic workers.

**989.** The Government member of South Africa rejected the proposed amendment, concurring that night work disturbed circadian rhythms and noting the particular context of live-in domestic workers.

**990.** The Government member of Argentina opposed the proposal on the same grounds as the Government member of South Africa.

**991.** The Government member of Australia opposed the amendment. Night work was a particular feature of domestic work, and it was essential that the point be included in the proposed Recommendation.

**992.** The Government member of the Philippines also opposed the deletion of point 29. Night work was often subject to abuses when domestic workers were asked to work at night without compensation.

**993.** The Employer Vice-Chairperson clarified that his group was not arguing that the issue of night work was not important, but merely that this aspect was already covered elsewhere. He withdrew the amendment.

**994.** The Worker Vice-Chairperson withdrew an amendment to insert, in the first line, after “specific measures” the words “that are no less favourable than for other wage earners” and, in the second line, to delete “taking into account the constraints and consequences of night work”.

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995. Point 29 was adopted.

### **Point 30**

996. The Worker Vice-Chairperson withdrew an amendment to insert, in the first line after “entitled”, the words “in terms no less favourable than those applicable to other wage earners”.

997. Point 30 was adopted.

### **Point 31**

998. The Employer Vice-Chairperson introduced an amendment to delete in the first line the words “a fixed day in every period of seven days to be” from point 31. This level of detail was not required in a Recommendation; the important issue reflected in point 31 was that the day of weekly rest should be determined in agreement between the employer and the worker.

999. The Worker Vice-Chairperson opposed the proposed amendment and reminded the Committee that domestic work was often adverse and physical, making a weekly day of rest essential. If the interval of one day in seven days was not fixed, domestic workers might end up working one, two or three months without interruption. Many national laws already provided for a weekly day of rest.

1000. The Government member of Norway acknowledged that a fixed day of weekly rest might be reflected in the laws of many countries, but cautioned that other countries – including her own – provided more flexibility. That enabled workers to take off a longer period at one time if they wished.

1001. The Government member of Australia argued that it was important to take into account point 31 as a whole, which already contained some flexibility. What was needed was a simple message as to the certainty of having a day off every week.

1002. The Government member of Switzerland did not support the proposed amendment and concurred with the Government member of Australia on the importance of the provision in point 31. If more flexibility was needed, reference could be made to “24 consecutive hours of rest per seven-day period”.

1003. The Government member of South Africa, speaking on behalf of the Africa group, did not support the amendment. He argued that the focus should be on the binding Convention, whereas the part currently under discussion referred to a proposed Recommendation that would provide advice to member States.

1004. The Government member of Norway concurred and considered that it was acceptable to have the phrase as it stood in the proposed Recommendation.

1005. The Employer Vice-Chairperson took note of the position of the other members of the Committee and withdrew the amendment.

1006. Point 31 was adopted.

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### **Point 32**

- 1007.** The Worker Vice-Chairperson withdrew an amendment to insert in the second line, before “maybe”, the word “exceptionally”.
- 1008.** Point 32 was adopted.

### **Point 33**

- 1009.** Point 33 was adopted.

### **New point before point 34**

- 1010.** The Worker Vice-Chairperson introduced an amendment that sought to introduce a new point, containing two paragraphs, before point 34, one concerning the right of domestic workers to choose when to take their holidays, and the second regarding the provision of accommodation for live-in domestic workers in the case of prolonged absence of their employer. With reference to the second issue, she pointed out that some employers who were absent for a prolonged period did not allow live-in domestic workers to stay at their usual place of residence. Those concerns had motivated the proposed amendment, and should be reflected in the report. She withdrew the amendment.
- 1011.** The Government member of Portugal, on behalf also of the Government members of New Zealand, the Netherlands, Norway, Slovakia and Spain, introduced an amendment. It sought to delete the word “exceptionally” in the chapeau of point 34 that currently read as follows: “When provision is exceptionally made for the payment of a limited proportion of the remuneration in the form of allowances in kind, Members should consider:”. The proposed amendment would bring it into line with point 14(2).
- 1012.** The Employer Vice-Chairperson supported the proposed amendment.
- 1013.** The Worker Vice-Chairperson objected to the proposed amendment. The current version of the text highlighted that payment in kind should be the exception, even if it only accounted for a limited proportion of total remuneration.
- 1014.** The Government member of Portugal, speaking on behalf of EU Member States, restated that the parts of the proposed Conclusions referring to the Convention and the Recommendation should be made consistent. When discussing point 14, all members of the Committee had agreed in paragraph (1) that payments in cash should be the rule. As an exception to that rule, paragraph (2) allowed for provisions for allowances in kind.
- 1015.** The Worker Vice-Chairperson commended the previous speaker for the point that payments should be in cash as a general rule, and reemphasized that payments in kind should be made only as an exception.
- 1016.** The Government member of Portugal was in broad agreement with the Workers’ group on substance, namely that point 14(2) established an exception to point 14(1). However, it was possible under point 14(2) that a limited proportion was paid in kind on a regular basis. They were thus not exceptionally made in kind, but regularly made in kind.
- 1017.** The Worker Vice-Chairperson considered the fact that other provisions in the proposed instrument provided protection to domestic workers in that respect and withdrew her objections to the amendment.

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**1018.** The amendment was adopted.

**1019.** An identical amendment therefore fell.

### **Point 34**

#### Point 34(a)

**1020.** The Worker Vice-Chairperson withdrew an amendment [D.218] to insert, in the second line, after “paid in kind”, the words “, such as allowing payment in kind only in addition to remuneration in cash at least at the level of the minimum wage, where such minimum wage exists,”. The aim had been to preserve the core principle that as much of the salary as possible should be paid in cash.

**1021.** The Employer Vice-Chairperson introduced an amendment to delete, in the second line, “the maintenance of” and, in the third line, after “domestic workers” to insert “to maintain themselves”. He said that, as it stood, the clause read as if the employer had a responsibility to maintain the worker’s family. As amended, the text would be more in line with the reality that workers had to support their own families.

**1022.** The Worker Vice-Chairperson explained that the logic behind point 34(a) was to establish an overall limit on the proportion of the remuneration that could be paid in kind; the intention was in no way to suggest that employers should be responsible for supporting workers’ families. She therefore did not support the amendment.

**1023.** The Employer Vice-Chairperson withdrew the amendment.

**1024.** Point 34(a) was adopted.

#### Point 34(b)

**1025.** The Employer Vice-Chairperson introduced an amendment to insert the words “where possible” after “calculating”, explaining that the aim was to recognize that it might not always be possible to calculate the cash value of allowances in kind.

**1026.** The Worker Vice-Chairperson asked the Employer Vice-Chairperson to explain what sort of allowances in kind could not be attributed a cash value. She noted that the text already provided examples of objective criteria that could be used, such as the market value, cost price or prices fixed by public authorities.

**1027.** The Employer Vice-Chairperson gave as examples of allowances that could not be attributed a cash value the use of the family vehicle or the freedom to use tools or equipment in the household.

**1028.** The Worker Vice-Chairperson failed to understand the relevance of those examples and reiterated that adding the words “where possible” weakened the clause, the intention of which was to set some criteria for calculating the cash value of payments in kind.

**1029.** The Government member of Australia agreed with the Worker Vice-Chairperson. Referring to the examples that had been given by the Employer Vice-Chairperson, she remarked that, in cases where domestic workers were lucky enough to get a day off, it seemed highly unlikely that their employer would lend them the family car for personal use. The clause as it had been originally drafted aimed to define the term “payment in kind” in order to prevent abuse, and it was therefore reasonable.

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**1030.** The Government member of Spain, speaking on behalf of EU Member States, did not support the proposed amendment.

**1031.** The Employer Vice-Chairperson withdrew the amendment, noting that he would provide further examples during the 2011 session.

**1032.** The Worker Vice-Chairperson withdrew three amendments which sought, respectively, to insert: “and transparent” in the first line, after “objective”; to delete “such as the market value, cost price or prices” in the second line; and to insert, in the second line, after “public authorities”, the words: “in consultation with the representative organizations of employers and workers”.

**1033.** Point 34(b) was adopted.

Point 34(c)

**1034.** The Worker Vice-Chairperson withdrew an amendment to replace, in the first line, after “to those”, the rest of the clause by “voluntarily agreed to by the worker and furnished primarily for the benefit and for the convenience of the worker, rather than the employer”. She explained that her concerns in that regard had been adequately addressed elsewhere in the text.

**1035.** The Government member of South Africa, speaking on behalf of the Africa group, withdrew an amendment to insert, at the end of the point, a new paragraph that would read “Where remuneration includes allowances in kind, the total cash value of such remuneration should be used as the basis for calculating benefits based on remuneration.”

**1036.** The Chairperson recalled that the Government members of Australia and the United States had requested that an amendment originally submitted under point 14(2) to insert the wording “and is calculated using a method that is made known to the worker in advance” be considered under point 34.

**1037.** The Government member of the United States, speaking also on behalf of the Government member of Australia, withdrew the amendment.

Point 34(d)

**1038.** Point 34(d) was adopted.

**1039.** Point 34 was adopted.

**Point 35**

Point 35(1)

**1040.** The Government member of the United States, speaking also on behalf of the Government member of Canada, withdrew an amendment to replace, in the first line, “an easily understandable” by “a clear” and to insert, in the second line, after “written account”, the words “in a language they understand”. He said that the essence of the amendment had already been discussed.

**1041.** Point 35(1) was adopted.

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Point 35(2)

- 1042.** The Government member of South Africa, speaking on behalf of the Africa group, withdrew an amendment to replace “promptly” with “in reasonable time and in terms of national laws and regulations”, on the understanding that the issue could be reconsidered in 2011. The intention had been to take into account the fact that employers might not have the necessary means to make outstanding payments immediately at the time of termination of employment.
- 1043.** The Worker Vice-Chairperson withdrew an amendment on the understanding that the issue would be discussed at the 2011 session. The amendment had been to add, at the end of the point, a new paragraph that would read as follows:

The settlement of disputes concerning outstanding payments and/or the existence and terms of an employment relationship should be a matter for labour courts or agreed dispute settlement mechanisms to which workers and employers have effective access. In the absence of a written contract, the burden of proof as to the existence or not of an employment relationship, as well as regarding proof of payment, should lie with the employer.

It was necessary to provide clarity with regard to the issue of the burden of proof, which normally lay with the claimant. That posed difficulties in cases where the claimant was a domestic worker with no written contract or terms of employment.

- 1044.** Point 35 was adopted.

**Point 36**

- 1045.** The Government member of Germany, speaking on behalf of EU Member States, withdrew an amendment to replace the word “take” by “consider taking”.
- 1046.** The amendment proposed by the Employers’ group to replace “wage earners” with “workers generally” had been accepted at an earlier stage for the entire text of the proposed Conclusions. The Employer Vice-Chairperson therefore withdrew his amendment.

- 1047.** Point 36 was adopted.

**Point 37**

Point 37(a)–(c)

- 1048.** Point 37(a)–(c) were adopted.

Point 37(d)

- 1049.** The Employer Vice-Chairperson withdrew an amendment to replace, in the first line, “adapted to the cultural” by “with appropriate sensitivity for the dietary”.

- 1050.** Point 37(d) was adopted.

New clauses at the end of point 37

- 1051.** The Worker Vice-Chairperson withdrew an amendment to add two new clauses as follows: “– access to kitchen to cook own food” and “– provided with a key to the house to ensure freedom of movement”.

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**1052.** Point 37 was adopted.

***Point 38***

**1053.** The Employer Vice-Chairperson withdrew an amendment to delete “serious” and replace “notice and ... employment and accommodation” with “time or reasonable allowance to enable them to seek new accommodation”.

**1054.** The Worker Vice-Chairperson withdrew an amendment to add a new paragraph and announced that some elements of the amendment would be reintroduced next year.

**1055.** The Worker Vice-Chairperson withdrew an amendment related to point 19 of the proposed Conclusions she had wished to move to the Recommendation.

**1056.** Point 38 was adopted.

***Point 39***

Chapeau

**1057.** The Worker Vice-Chairperson withdrew an amendment to add “to provide a safe place of work, and in particular” after “measures”.

Point 39(a)–(b)

**1058.** Point 39(a)–(b) were adopted.

Point 39(c)

**1059.** The Worker Vice-Chairperson withdrew an amendment to replace “advise” with “proactively educate employers and workers” and, after “aspects”, insert “exposure to toxics and safer alternatives”.

**1060.** Point 39(c) was adopted.

Point 39(d)

**1061.** Point 39(d) was adopted.

**1062.** Point 39 was adopted.

***Point 40***

**1063.** The Worker Vice-Chairperson withdrew an amendment to insert “or declaration” after the word “payment”.

**1064.** Point 40 was adopted.

***New point after point 40***

**1065.** The Government member of the United States introduced an amendment to add a new point after point 40 which read as follows: “Migrant workers should be entitled to repatriation at no cost on the expiration of the employment contract for which they were

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recruited.” He recalled that the Committee had agreed to include language in point 16(2) to the effect that Members should consider the instances in which migrant domestic workers were entitled to repatriation at no cost to the worker. The present amendment aimed at ensuring that the burden of the cost of repatriation was not on the domestic worker but on the employer in the case of termination of the domestic worker’s contract.

- 1066.** The Government member of Indonesia seconded the proposed amendment.
- 1067.** The Worker Vice-Chairperson supported the proposed amendment, considering that it took into account the interests of both the migrant domestic worker and the employer by the specification for the job “for which the migrant worker was recruited”.
- 1068.** The Government member of Canada opposed the proposed amendment, considering that it was too prescriptive. The conditions of repatriation should be dealt with in the employment contract.
- 1069.** The Employer Vice-Chairperson supported the proposed amendment.
- 1070.** The Government member of South Africa agreed with the intention of the proposed amendment.
- 1071.** The Government member of the Philippines thought that the contents of the proposed amendment were already covered under point 16(2). She preferred to have the amendment in the proposed Convention but had no problem with the amendment being proposed. Her Government already had laws to the same effect as the amendment.
- 1072.** The Government of the United States clarified that point 16(2) basically provided that, in general, laws should specify the instances in which the domestic worker was entitled to repatriation at no cost. These could include several situations. The amendment under discussion was specifically focused on repatriation at no cost in the case of termination of the job for which the migrant domestic worker was recruited.
- 1073.** The Government member of Spain, speaking on behalf of EU Member States, shared the same concern as the Government member of Canada and could not support the proposed amendment.
- 1074.** The Government member of Norway shared the position of the Government members of Canada and Spain.
- 1075.** The Government member of Australia proposed a subamendment to add the following words at the beginning of the text: “In relation to clause 9(h) of the Convention, consideration should be given to migrant domestic workers receiving repatriation at no cost.” Worded in such a way, the Recommendation would provide useful guidance to assist member States with the interpretation of a specific clause of the Convention.
- 1076.** The Government member of the United States also supported that proposal and thanked the Government member of Australia for their suggestion.
- 1077.** The Government member of Canada supported the subamendment proposed by the Government member of Australia, on the understanding that the word “should” would not be transformed into the word “shall” in the final text of the proposed Recommendation.
- 1078.** The Worker Vice-Chairperson supported the subamendment proposed by the Government member of Australia.

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- 1079.** The Government member of Bangladesh also endorsed the proposal, while suggesting that the Committee Drafting Committee might want to adjust the wording of the point to clarify that what was being terminated was the employment, not the contract.
- 1080.** The Government member of the Netherlands supported the subamendment proposed by the Government member of Australia, adding that the conditions for repatriation should be specified within each country.
- 1081.** The Government member of Kuwait, speaking on behalf of GCC countries, proposed a further subamendment to add, at the end of the text, the following words: “and in particular if the termination of the contract was instigated by the domestic worker”.
- 1082.** The Worker Vice-Chairperson, the Employer Vice-Chairperson and the Government members of Argentina, Canada, the Philippines, Spain, speaking on behalf of EU Member States, and the United States endorsed the subamendment proposed by the Government member of Australia and opposed the subamendment proposed by the Government member of Kuwait.
- 1083.** The Government member of Saudi Arabia, speaking on behalf of the GCC countries, pointed out that in the countries of his region hiring a domestic worker aged less than 20 was not permitted. In addition, in the GCC region, employment agencies had to pay for repatriation costs if the termination occurred before the end of the contract, otherwise it was up to the worker to pay for them.
- 1084.** The amendment was adopted as subamended.
- 1085.** Point 40 was adopted as amended.

#### ***Point 41***

##### Point 41(1)

##### *Point 41(1)(a)*

- 1086.** The Worker Vice-Chairperson withdrew an amendment to delete clause (a) of point 41(1). There had been some confusion at the time that her group had submitted the amendment.
- 1087.** The Employer Vice-Chairperson withdrew an amendment to delete the clause. He warned that the clause, which promoted a system of visits to households in which migrant domestic workers would be employed, was impossible to implement. He said that the discussion could return to this point the following year.
- 1088.** Point 41(1)(a) was adopted.

##### *Point 41(1)(b)*

- 1089.** Point 41(1)(b) was adopted.

##### *New clauses after clause (b)*

- 1090.** The Government member of the United States introduced an amendment, submitted together with the Government member of Australia, which proposed to insert after clause (b) the following new clauses:

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- (...) establishing a national hotline, with interpretation services for domestic workers who need assistance;
  - (...) making employers aware of potential sanctions, including penalties, for abuse of domestic workers;
  - (...) ensuring that domestic workers can access complaint mechanisms, and have the ability to pursue lawful civil and criminal remedies, both during and after employment, both in-country and after repatriation;
  - (...) public outreach to domestic workers to educate them about their rights under relevant laws and regulations, access to complaint mechanisms, legal remedies, and other pertinent information in languages understood by the workers concerned.

The amendment would enhance the proposed Recommendation by listing a number of practical steps that member States could take to protect domestic workers.

- 1091.** The Worker Vice-Chairperson supported the proposed amendment. Domestic workers were often unaware of their rights, and therefore complaints procedures and outreach mechanisms could support greater awareness and help domestic workers to exercise their rights.
- 1092.** The Employer Vice-Chairperson supported the proposed amendment and suggested a subamendment to make the language sound less negative by inserting the words “their obligation and of the sanctions applicable thereto” after the words “making employers aware of”.
- 1093.** The Government member of the United States and the Worker Vice-Chairperson supported the subamendment proposed by the Employers’ group.
- 1094.** The amendment was adopted as subamended.

*Point 41(1)(c)*

- 1095.** Point 41(1)(c) was adopted.

*Point 41(2)*

- 1096.** The Employer Vice-Chairperson withdrew an amendment to replace the word “these” with “domestic” and, after the word “rights”, to insert “and responsibilities. The issue regarding the responsibilities of domestic workers could be addressed the following year.
- 1097.** Point 41(2) was adopted.
- 1098.** Point 41 was adopted as amended.

***New point after point 41***

- 1099.** The Government member of the United States withdrew an amendment, which proposed to add a new point regarding the protection of domestic workers, in particular migrant domestic workers, against abusive practices of employment agencies.
- 1100.** The Government member of Bangladesh suggested that the Committee Drafting Committee might consider whether 41(c) had been made redundant by another amendment introduced by the Government member of the United States.

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## **Point 42**

### Point 42(a)–(c)

- 1101.** The Employer Vice-Chairperson withdrew three amendments which had been submitted on clauses (a)–(c). The proposed amendments were: in clause (a) to replace, in the first line, “encourage” with “facilitate”; in clause (b) to replace “address” with “recognize”; and in clause (c) to replace, in the first line, “ensure that the concerns and rights” with “ensure, as far as possible, that the concerns, rights and responsibilities”.
- 1102.** The Worker Vice-Chairperson withdrew two amendments concerning point 42(a)–(c). The proposed amendments were: in clause (a), in the second line, before “literacy training” to insert “ongoing education and”; and in clause (c) to replace the existing text with “ensure the rights of domestic workers in the context of more general efforts to reconcile work and family”.
- 1103.** Point 42(a)–(c) were adopted.

### New paragraph at the end of point 42

- 1104.** The Worker Vice-Chairperson introduced an amendment to add a new paragraph to read as follows: “In addition, Members should develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices and collect effectively comprehensive data on domestic workers.” This would, in some cases, require the Office to provide assistance to member States.
- 1105.** The Employer Vice-Chairperson supported the proposed amendment.
- 1106.** The amendment was adopted.
- 1107.** Point 42 was adopted as amended

## **Point 43**

- 1108.** The Government member of the United States withdrew an amendment that had been submitted jointly with the Government members of Australia, Canada and New Zealand, in the interest of time and in a spirit of collaboration to help move along discussion. The amendment had sought to replace the reference to “forced labour and human trafficking” with “forced labour including human trafficking” as human trafficking for labour exploitation was a form of forced labour. The speaker noted that the amendment on that important subject would be resubmitted the following year.

### New paragraph at the end of point 43

- 1109.** The Government member of Bangladesh introduced an amendment which read as follows: “Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.” Such a reference to international cooperation was common in international instruments, and would be useful where low-income countries, such as his own, took on new responsibilities. The text sought to address some of the underlying causes of deficits in the context of domestic work and drew on Article 8 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

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- 1110.** Both the Employer Vice-Chairperson and the Worker Vice-Chairperson supported the proposed amendment.
- 1111.** The Government members of Brazil, South Africa, speaking on behalf of the Africa group, and the United States also supported the proposed amendment.
- 1112.** Point 43 was adopted as amended.

## **Adoption of the report**

- 1113.** The Reporter presented the Committee's draft report and annexed proposed Conclusions as amended by the Committee. She noted that the report was the result of the Committee's hard work, characterized by a common determination to adopt proposed Conclusions aimed at standards that would help to improve the employment and living conditions of domestic workers, a historically disadvantaged group of workers. While the Committee had sometimes had difficulty in reaching consensus on where to find balance in the proposed instruments, it had started exploring more informal channels of seeking consensus. She reminded the Committee that some aspects of the outcomes would need further consideration because many Committee members had expressed a wish to revisit the amendments on the proposed Recommendation which they had withdrawn due to time constraints. She concluded by calling upon the Committee to prepare their work for the following year's discussion, as early as possible, in order to be able to concentrate on the crucial issues.
- 1114.** The Worker Vice-Chairperson, as well as a number of Government members, requested certain changes to the text of the report.
- 1115.** The Chairperson noted that the changes should be submitted in writing and would be reflected in the report that would be issued as *Provisional Record* No. 12. The report, the proposed Conclusions and the resolution would be submitted to the Conference for adoption.
- 1116.** The report was adopted.

## **Adoption of the proposed Conclusions and resolution**

- 1117.** The Committee approved the proposed Conclusions.
- 1118.** The Committee approved the text of the resolution to place an item entitled "Decent work for domestic workers" on the agenda of the ordinary session of the ILC in June 2011.

## **Closing statements**

- 1119.** The Government member of Spain, speaking on behalf of EU Member States, thanked the Workers' group, the Employers' group and Government members for their very constructive cooperation. There was a very broad consensus on the importance of a Convention and Recommendation that would truly improve the protection of the rights of domestic workers, including young workers, without endangering their job opportunities. He believed that agreement had been reached towards a flexible and meaningful Convention that could be widely ratified. During the second discussion, balanced solutions

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would need to be found on difficult issues such as social security, health and safety at the workplace and working time. The ultimate aim remained decent work for domestic workers.

- 1120.** The Government member of Canada thanked the Chairperson for her work and the Office for the support provided to the Committee. The Office text of the proposed Conclusions balanced the views of all constituents and provided a good foundation for the development of practical and meaningful international standards for domestic work. In his opening statement, he had stated that a meaningful instrument should provide adequate protection to domestic workers, and offer flexibility in its implementation. The speaker expressed his country's concern that the important balance had not been maintained and that some provisions of the proposed Convention were far too detailed and prescriptive, and would be more appropriate in the proposed Recommendation. In addition, some provisions might be inconsistent with existing international labour standards. Those issues should be revisited in the second discussion.
- 1121.** The Government member of the United Kingdom, on behalf of the IMEC group, thanked the Chairperson, colleagues and the secretariat for a productive meeting. It was a historic International Labour Conference. While the discussions had been challenging, there had been good cooperation between all the parties involved. The commitment to providing decent work to domestic workers remained clear to all.
- 1122.** The Government of Kuwait, speaking on behalf of the GCC countries, joined the previous speakers in thanking the Chairperson, the Employers' group and the Workers' group. He reiterated the importance of improving the conditions of domestic workers, which he hoped was positively reflected in the proposed Conclusions of the Committee.
- 1123.** The Government member of the United States appreciated the work of the Chairperson and the Vice-Chairpersons. He recognized the difficulties in reaching agreement on any international standard, the strong and divergent views on what constituted decent work, and the need to fine-tune the proposed Conclusions drafted by the Committee. The proposed Conclusions provided the essence of what the constituents defined as decent work for domestic workers.
- 1124.** The Government member of South Africa, on behalf of the Africa group, expressed their appreciation to the Chairperson for having facilitated the work of the Committee.
- 1125.** The Government member of Switzerland welcomed the adoption of the proposed Conclusions with a view to the adoption of a Convention supplemented by a Recommendation. She stated that her delegation had followed the work of the Committee with great interest and thanked the Chairperson and the Office for handling a difficult but, at the same time, rich and substantive first discussion, which would contribute to the development of national measures. In addition to the standard contract at the cantonal level, social partners in Switzerland were in the process of negotiating a federal standard contract, including fixing a minimum wage for domestic workers. The Swiss delegation looked forward with much interest to the forthcoming international standards on decent work for domestic workers and welcomed the active participation of social partners and the commitment of national governments, which would allow the adoption of truly comprehensive and universal standards.
- 1126.** The Government member of El Salvador thanked the Committee for its work and mentioned that the Social Security Institute of El Salvador was currently extending social security coverage to domestic workers, a traditionally forgotten and exploited segment of the workforce. Since 1983, the Constitution of El Salvador had included the obligation to establish social security for domestic workers. Based on that, the new Government had

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adopted a regulation on the setting-up and application of a special health and maternity insurance system for domestic workers, including 12 weeks of maternity leave paid at 100 per cent of previous earnings. Those efforts were part of a five-year project to set up universal social protection coverage in the country, which the Government hoped to bring about with the technical assistance of the ILO.

- 1127.** The Government member of Algeria expressed her appreciation to the Chairperson, the Vice-Chairpersons and the secretariat for their work. Much work still lay ahead on the way to the final adoption of the instruments the following year, which she hoped would get the necessary attention.
- 1128.** The Government member of Indonesia also thanked the Chairperson, the Vice-Chairpersons and the secretariat. The report was a good foundation for future implementation. A follow-up to the discussion was necessary to achieve results that would ensure decent work for domestic workers and the commitment of all member States.
- 1129.** The Government member of the Libyan Arab Jamahiriya pointed out that the Committee had achieved an important victory in putting in place the foundations for international standards for domestic workers. This category of workers had suffered from discrimination. In the future, domestic workers should have their rights respected, and the Committee should be proud of that achievement. When the Committee's work was concluded the following year, there would be two international standards to protect such workers.
- 1130.** The Government member of the Philippines believed that the Committee's decision to recommend the adoption of a Convention supplemented by a Recommendation expressed the highest respect for domestic workers. Their vulnerability to abuse should not be a convenient excuse, but in fact a compelling reason to extend the same working and living conditions to them as to other workers. The Committee had recognized domestic workers not only as workers, but also as human beings and respected the inalienability of their human and labour rights. The rights-based approach required that States should detail how they implemented their obligations to domestic workers. While having a system in place for the protection of domestic workers, her country would be the first to acknowledge its gaps and weaknesses, in particular with regard to the trafficking of women and minors. Effective prevention of that crime required the combined efforts of both sending and receiving countries.
- 1131.** The Employer Vice-Chairperson pointed out that ensuring decent work for domestic workers was a formidable task, and had been the challenge before the Committee. He congratulated the Chairperson for conducting the Committee's discussions in an appropriate manner, and thanked the Worker Vice-Chairperson for her participation in the discussion. He extended his vote of thanks to the Government members with whom his group might have agreed on some occasions, and disagreed on others. Those discussions had been part of a democratic process, and his group appreciated their participation. He also thanked the members of the Employers' group for their support.
- 1132.** The Worker Vice-Chairperson expressed her sincere thanks to everyone for having made it possible to adopt the proposed Conclusions of the Committee. Everyone had known that the work of the Committee would not be easy but, in agreeing to have a Convention supplemented by a Recommendation, the Committee had made history. She felt that, thanks to the work of the Committee, the world was beginning to recognize the names and faces of domestic workers who had previously been invisible and ignored. The Worker Vice-Chairperson looked forward to working closely with the Committee members during the 2011 discussion to produce two instruments. The huge deficits which existed in

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national laws and practices made the instruments necessary, so the consensus among countries was much appreciated.

**1133.** The Chairperson thanked the Committee for having given her the opportunity to chair the discussion, and thanked all for their patience and commitment to ensure social protection and justice for domestic workers. The difficult concepts, divergent national experiences and intricacies of the Standing Orders of the ILC that the Committee had grappled with were all learning experiences. Government, Employer and Worker representatives had remained focused on working together with mutual trust and understanding to promote decent work for domestic workers, and risen to this historic challenge. She thanked the secretariat, the Committee Drafting Committee and the interpreters.

**1134.** The representative of the Secretary-General underscored that the Committee's proposed Conclusions were a major achievement in view of the comprehensiveness and complexity of the issues they addressed. The debates had been lively, frank and insightful. From the deliberations, four common themes had emerged and received unanimous support. First, new standards on domestic work had to be both robust and flexible, guaranteeing minimum protection to domestic workers while allowing for wide ratification and continuous improvement of domestic workers' working and living conditions. Secondly, new standards had to provide practical and realistic guidance to ensure that coverage would be real rather than a commitment on a piece of paper. Thirdly, there was a need for better knowledge and dissemination of successful national practices in areas such as working time, occupational health and safety, social security for domestic workers and law enforcement. Fourthly, there was a need for statistical information on domestic work. The following year's deliberations would likely be challenging, but the Office was ready to respond to the call for greater knowledge-sharing and documentation of good practices and statistical information. Finally, the representative of the Secretary-General acknowledged the hard work, determination and constructive inputs given by the Chairperson, Vice-Chairpersons and all the Government members. Last but not least, she expressed gratitude to the members of the secretariat and support services for their professionalism, dedication and capacity to keep smiling.

Geneva, 14 June 2010

*(Signed)* L. Trasmonte  
Chairperson

P. Herzfeld Olsson  
Reporter

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## Proposed Conclusions

### A. Form of the instruments

1. The International Labour Conference should adopt standards concerning decent work for domestic workers.
2. These standards should take the form of a Convention supplemented by a Recommendation.

### B. Definitions

3. For the purpose of these standards:
  - (a) the term “domestic work” should mean work performed in or for a household or households;
  - (b) the term “domestic worker” should mean any person engaged in domestic work within an employment relationship;
  - (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

### C. Proposed Conclusions with a view to a Convention

4. The Convention should include a preamble with the following wording:
  - (a) mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization;
  - (b) recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for workers with family responsibilities;
  - (c) considering that domestic work continues to be undervalued and invisible and is mostly carried out by women and girls, many of whom are migrants or members of historically disadvantaged communities, and who are therefore particularly vulnerable to abuses of basic human rights and to discrimination in respect of employment and working conditions;
  - (d) further considering that, in developing countries with historically high rates of unemployment, domestic workers constitute a significant proportion of the national workforce, are predominantly nationals drawn from the ranks of the unemployed and are among the most marginalized and vulnerable workers;
  - (e) recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided;

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- (f) noting that there are international labour Conventions and Recommendations which have particular relevance for domestic workers, such as, where appropriate, the Migration for Employment Convention (Revised), 1949, the Migrant Workers (Supplementary Provisions) Convention, 1975, the Workers with Family Responsibilities Convention, 1981, the Private Employment Agencies Convention, 1997, the Employment Relationship Recommendation, 2006, as well as the ILO Multilateral Framework on Labour Migration;
  - (g) recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers, to enable them to enjoy their rights fully, taking into account the right to privacy that each domestic worker and each household enjoys;
  - (h) recalling other relevant international instruments, such as the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
5. (1) The Convention should apply to all domestic workers, provided that a Member which has ratified it may, after consulting representative employers' and workers' organizations and, in particular, organizations representing domestic workers and their employers, where they exist, exclude wholly or partly from its scope:
- (a) categories of workers who are otherwise provided with at least equivalent protection;
  - (b) limited categories of workers in respect of which special problems of a substantial nature arise.
- (2) Each Member which avails itself of the possibility afforded in point 5(1) should, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.
6. Each Member should take measures to ensure the effective protection of basic human rights for all domestic workers.
7. Each Member should take, in relation to domestic workers, measures to respect, promote and realize, in good faith, and in accordance with the ILO Constitution, the fundamental principles and rights at work, namely:
- (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.

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- 8.** (1) Each Member should set a minimum age for domestic workers in accordance with the provisions of the Minimum Age Convention, 1973, and the Worst Forms of Child Labour Convention, 1999, and not lower than that established by national laws and regulations for workers generally.
- (2) Each Member should ensure that domestic work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of, or interfere with, their education or vocational training.
- 9.** Each Member should take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, where applicable, decent living conditions respecting the worker's privacy.
- 10.** Each Member should ensure that domestic workers are informed of their terms and conditions of employment, in an appropriate, verifiable and easily understandable manner, including, where possible and preferably, through written contracts in accordance with national laws and regulations, in particular:
- (a) the name and address of the employer;
  - (b) the type of work to be performed;
  - (c) the remuneration, method of calculation and regularity of its payment;
  - (d) the normal hours of work;
  - (e) the duration of the contract;
  - (f) the provision of food and accommodation, if applicable;
  - (g) the period of probation or trial period, if applicable;
  - (h) the terms of repatriation, if applicable; and
  - (i) termination of employment provisions.
- 11.** Each Member should take measures to ensure that domestic workers enjoy effective protection against all forms of abuse and harassment.
- 12.** (1) Each Member should take measures to ensure that domestic workers:
- (a) are free to negotiate with their employer whether to reside in the household;
  - (b) are not bound to remain in or with the household during the periods of daily and weekly rest or annual leave;
  - (c) are entitled to keep in their possession their travel and identity documents.
- (2) In taking these measures, due respect should be given to the right to privacy of both the domestic worker and the household.
- 13.** (1) Each Member should take measures to ensure that the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave of domestic workers are not less favourable than those provided for workers generally in accordance with national laws and regulations.

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- (2) Weekly rest should be at least 24 consecutive hours per each seven-day period.
- (3) Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls should be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national practice.
- 14.** Each Member should take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.
- 15.** (1) The wages of domestic workers should be paid directly to them in legal tender at regular intervals but not less often than once a month.
- (2) Taking into consideration point 15(1), national laws or regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of allowances in kind, in conditions not less favourable than those applicable to other categories of workers generally, provided that measures are taken to ensure that such allowances are agreed to by the worker and are appropriate for the personal use and benefit of the worker.
- 16.** (1) Each Member should take appropriate measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of:
- (a) occupational safety and health; and
- (b) social security protection, including with respect to maternity.
- (2) The measures referred to in point 16(1) may be applied progressively.
- 17.** (1) National laws and regulations should require that migrant domestic workers receive a written job offer or a contract of employment containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders for the purpose of taking up domestic work to which the offer or contract applies, without prejudice to regional, bilateral or multilateral agreements, the rules of a regional economic integration area, where applicable to migrant domestic workers.
- (2) Members should cooperate with each other to ensure the effective protection of migrant domestic workers' rights under this Convention.
- 18.** Each Member should take measures to ensure that all domestic workers, either by themselves or through a representative, have easy access to courts, tribunals or other dispute resolution procedures under conditions that are not less favourable than those available to workers generally.
- 19.** Each Member should establish effective means of ensuring compliance with national laws and regulations for the protection of domestic workers.
- 20.** (1) Each Member should take measures to ensure that domestic workers recruited or placed by an employment agency, including migrant domestic workers, are effectively protected against abusive practices, including by establishing the respective legal liability of the household and the agency.
- (2) Each Member should take measures to:

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- (a) establish criteria for the registration and qualifications of employment agencies, including for publicly available information on any past violations;
  - (b) ensure regular inspections of employment agencies to ensure compliance with relevant laws and regulations, and institute significant penalties for violations;
  - (c) provide accessible complaint mechanisms for domestic workers to notify authorities of abusive practices; and
  - (d) ensure that fees incurred by agencies are not deducted from the remuneration of domestic workers.

**21.** Each Member should implement, in consultation with representative employers' and workers' organizations, the provisions of this Convention through laws, regulations and collective agreements, as well as through additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them.

**22.** The Convention should not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

#### **D. Proposed Conclusions with a view to a Recommendation**

**23.** The Recommendation should include a preamble indicating that the provisions of the Recommendation should be considered in conjunction with those of the Convention.

**24.** In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:

- (a) 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 choice, and to the right of organizations of domestic workers to join workers' organizations, federations and confederations;
- (b) ensure the right of employers of domestic workers to establish and join organizations, federations and confederations of employers of their choosing;
- (c) take or support measures to strengthen the capacity of organizations of domestic workers to protect effectively the interests of their members.

**25.** In taking measures to ensure the elimination of discrimination in respect of employment and occupation among other things, Members should ensure that work-related medical testing respects the principle of the confidentiality of personal data and the privacy of domestic workers and should prevent any discrimination related to such testing.

**26.** When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers under the age of 18 and above the minimum age of employment defined by national laws and regulations, including in respect of working time and restrictions on undertaking certain types of domestic work.

**27.** (1) The terms and conditions of employment should be provided in an appropriate, verifiable and easily understandable manner including, where possible and preferably, through written contracts in accordance with national laws and regulations; when

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necessary, appropriate assistance should be provided to ensure that the domestic worker has understood those terms and conditions.

(2) The terms and conditions of employment should include the following particulars, in addition to those provided for in point 10:

- (a) the starting date of the employment;
- (b) job description;
- (c) paid annual leave;
- (d) daily and weekly rest;
- (e) sick leave and any other personal leave;
- (f) the rate of pay for overtime work;
- (g) any other cash payments to which the domestic worker is entitled;
- (h) any allowances in kind and their cash value;
- (i) details of any accommodation provided;
- (j) any authorized deductions from the worker's wages; and
- (k) the period of notice required by either the domestic worker or the employer for termination.

(3) Members should consider establishing a model contract for domestic work, in consultation with representative organizations of employers and workers and, in particular, organizations representing domestic workers and their employers, where they exist.

(4) Each Member should consider specifying, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation, at no cost to the worker, upon the expiry or termination of the employment contract.

**28.** (1) Hours of work and overtime should be accurately calculated and recorded, and this information should be freely accessible to the domestic worker.

(2) Members should consider developing practical guidance in this respect, in consultation with representative organizations of employers and workers and, in particular, organizations representing domestic workers and their employers, where they exist.

**29.** With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (commonly known as standby or on-call periods), national laws and regulations or collective agreements should regulate:

- (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby and the means by which these might be measured;
- (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is disturbed by standby; and

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- (c) the rate at which standby hours should be remunerated.
- 30.** Members should consider specific measures, including appropriate financial compensation, for domestic workers whose normal duties are performed at night, taking into account the constraints and consequences of night work.
- 31.** Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for the taking of meals and breaks.
- 32.** The day of weekly rest should be a fixed day in every period of seven days to be determined by agreement of the parties, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.
- 33.** National laws and regulations, or collective agreements, should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.
- 34.** Time spent by domestic workers accompanying the household on holiday should not be counted as part of their annual leave.
- 35.** When provision is made for the payment of a limited proportion of the remuneration in the form of allowances in kind, Members should consider:
- (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the cash remuneration necessary for the maintenance of domestic workers and their families;
  - (b) calculating the cash value of allowances in kind by reference to objective criteria such as the market value, cost price or prices fixed by public authorities, as appropriate;
  - (c) limiting allowances in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation; and
  - (d) prohibiting allowances in kind that are directly related to the performance of work duties, such as uniforms, tools or protective equipment.
- 36.** (1) Domestic workers should be given at the time of each payment an easily understandable written account of the payments due to them, the amounts paid and the specific amount and purpose of any deductions which may have been made.
- (2) Upon termination of employment, any outstanding payments should be made promptly.
- 37.** Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of insolvency or death of the employer.
- 38.** When provided, accommodation and food should, taking into account national conditions, include:
- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
  - (b) access to suitable sanitary facilities, shared or private;

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- (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and
  - (d) meals of good quality and sufficient quantity, adapted to the cultural and religious requirements, if any, of the domestic worker concerned.
- 39.** In the event of termination of employment, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.
- 40.** Members should take measures to:
- (a) identify, mitigate and prevent occupational hazards specific to domestic work;
  - (b) establish procedures for collecting and publishing statistics on occupational safety and health related to domestic work;
  - (c) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and
  - (d) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.
- 41.** Members should consider means to facilitate the payment of social security contributions by employers, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.
- 42.** In relation to point 10(h) of the proposed Conclusions, consideration should be given to migrant workers receiving repatriation at no cost on the expiration or termination of the employment contract for which they were recruited.
- 43.** (1) Members should consider additional measures to ensure the effective protection of migrant domestic workers' rights, such as:
- (a) providing for a system of visits to households in which migrant domestic workers will be employed;
  - (b) developing a network of emergency housing;
  - (c) establishing a national hotline with interpretation services for domestic workers who need assistance;
  - (d) making employers aware of their obligations and of the applicable sanctions;
  - (e) ensuring that domestic workers can access complaint mechanisms and have the ability to pursue both during and after employment legal civil and criminal remedies, both in-country and after repatriation;
  - (f) providing for a public outreach service to domestic workers, in languages understood by the workers concerned, to educate them about their rights under relevant laws and regulations, their access to complaint mechanisms and legal remedies, and other pertinent information.
- (2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before

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departure, establishing legal assistance funds, social services and specialized consular services and any other appropriate measures.

- 44.** (1) Members should establish, in consultation with representative organizations of employers and workers and, in particular, organizations representing domestic workers and their employers, where they exist, policies and programmes that:
- (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, so as to enhance their career and employment opportunities;
  - (b) address the work–life balance needs of domestic workers; and
  - (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.
- (2) Members should develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices and effectively collect comprehensive data on domestic workers.
- 45.** (1) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning social security, the monitoring of private employment agencies, the prevention of forced labour and human trafficking, the dissemination of good practices and the collection of statistics on domestic work.
- (2) Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.

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**Resolution to place on the agenda of the next ordinary session of the Conference an item entitled “Decent work for domestic workers”**

The General Conference of the International Labour Organization,

Having adopted the report of the Committee appointed to consider the fourth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of Governments, proposals for a comprehensive standard (a Convention supplemented by a Recommendation) concerning decent work for domestic workers,

Decides that an item entitled “Decent work for domestic workers” shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a comprehensive standard (a Convention supplemented by a Recommendation).

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