The National Consultation Decent Work for Domestic Work, 15-16 July 2009 brought together unions and civil society organizations working on domestic workers and related issues. Employers’ Organizations were invited but unfortunately could not be present. The objectives of the meeting were -

- To obtain a consolidated view from unions and civil society organizations working on domestic workers issues on key issues relating to regulation of domestic worker that merits reflection in the ILC questionnaire.
- A consolidated view on a national level action plan and how ILO can help technically support them.

After presentations on domestic workers and their situation (wages, working conditions) in Delhi, and the role/ experience in organizing domestic workers, five technical sessions, each focusing on key components of domestic work were held.

**ILS process and issues**

The Standards Specialist presented the fundamentals of ILS, such as the adoption process, ratification and supervisory mechanisms. The timeframe for ILC standard setting on domestic work was also shared with the participants. Furthermore, key provisions under Conventions that are relevant to domestic workers were presented.

Discussion also covered the need to get employers’ organizations perspectives, although these are not the “true” employers of domestic workers.

**Definitions**

A discussion on definition attempted to identify some “principles” on which to define domestic workers. Some such examples were shared -

- Based on tasks (cleaning, cooking…and so on)
- Based on location of work (Household)
- Based on who employed them (private households).

Examples of domestic work definitions from the Indian Acts and Bills are as follows:

- “domestic work” means household work like sweeping, cleaning utensils, washing clothes, cooking and such other manual work as is mutually agreed between the employer and domestic worker carried out at the work place (Maharashtra Domestic Workers Welfare Board Act No 1 of 2009).
- “domestic servant” means any person who earns his livelihood by working in the household of his employer and doing household chores (The Housemaids and Domestic Servants (Conditions of Service and Welfare) Bill 2004, Rajya Sabha).
• “domestic worker” means a person between the age of 15 and 60 years working in any domestic employments, directly or through any agency or contractor whether exclusively for one employer or in a group or otherwise one or more employers whether simultaneously or otherwise and includes a casual or temporary domestic worker; migrant worker. But does not include any member of the family of an employers; Domestic Workers (Regulation of Employment, Condition of Work, Social Security and Welfare) Bill 2008- Nirmala Niketan and National Campaign for Unorganised Workers

• “domestic worker” means, a person who is employed for remuneration whether in cash or in kind, in any household through any agency or directly, either on a temporary basis or permanent, part time or full time to do the household work or allied work. Explanation: household and allied work includes but is not limited to activities such as cooking or part of it, washing clothes or utensils, cleaning or dusting of the house, caring/nursing of the children/sick/old/handicapped. (Domestic Workers Registration, Social Security and Welfare) Act 2008- NCW Draft Bills

In view of previous discussion on this subject, the majority view (based on those present) seemed to be that domestic work should apply to any work performed in a home (household) for household members. Definition should also emphasize that domestic work is work performed in homes (other than one’s own) for remuneration, regardless of cash or in-kind payment.

The above will include all tasks that are done in a home but exclude workers whose work is undertaken outside the home, such as drivers, personally hired security guards, gardeners to some extent. The above exclusion reflects a rationale based on vulnerability of workers who are confined to private “invisible” spaces and risk this poses to bonded labour, and other forms of abuse arising out of restricted mobility. The disadvantage of this rationale is that it misses the important specificity of domestic work, which is that they are workers employed by private households where labour laws / inspection norms are difficult to apply.

Hence, another rationale on which to define domestic workers, albeit it seemed to have received less support, was based on “who employs the worker”. Drivers, security guards, and gardeners face the same vulnerability in terms of informality and limited access to schemes meant for “workers” as long as they are employed by private households. Excluding these workers puts them in an extremely invisible position. Drivers, for example, do not seem to be in the domestic work ISCO category (ref ILC report box III.1) but given that many households employ drivers, the rationale for their exclusion warrants a careful consideration.

Notwithstanding, an overarching consideration expressed for excluding certain categories of workers who work for households is that while a large majority of domestic workers who work within households are women, workers such as drivers, gardeners and security guards who work outside are men who not only have better bargaining capacity, but also receive comparatively better remuneration. Hence the exclusion of these workers in the definition will give it a focused attention on the most vulnerable. Secondly, certain tasks such as cleaning, dusting washing utensils
have the lowest value in pay and perception as “work”. Thus it is necessary to single them out to enable policies to cater to the vulnerabilities.

Some considered it important to define domestic work based on tasks performed – domestic and related helpers, cleaners…” covering private households, hotels, offices and hospitals and other establishments. In this context, workers who are hired to work in wedding halls, building complexes, were sited, who in the Indian context are informal / casual workers hired as and when required. Some also thought it was important to define as domestic workers those who worked in enterprises/ businesses where the owners also resided. However, the majority view was that these workers are included in existing laws. What is required was implementation laws to ensure adequate working conditions. Including these workers under the definition will make it too broad and difficult to implement.

**Wages**

Several existing studies point to the significant contribution domestic workers’ wages make to family income. Their wages are low but constitute a steady income in the household as the husbands generally have unsteady income as workers in the informal economy. A recent study conducted by the Institute of Social Studies Trust showed that the variables which influence wages are location, socio-economic profile of employers, tasks performed and combination of tasks.

Several States have notified minimum wages for domestic work but have no norms for implementation or monitoring. A discussion took place to unpack the questions on wage calculation – and the varied norms and principles for the part-timers and full-timers.

An important point made was that wages were self-regulated (based on the variables mentioned above) and most workers were aware of the prevailing rate in the localities and were prepared not to accept less. However workers who for one reason or another were not part of any (informal) social networks did not have access to such information and they were the ones who accepted lower rates due to ignorance. Many were aware of location based differences in rates however could not travel the distance due to their own child care responsibilities, etc. These were important inputs to confirm the positive impact of organizing workers and to make such “floors” also present in issues such as medical fees, overtime, annual leave and bonuses.

The focus of the discussion was on how to set minimum wages. Majority was of the view that “minimum wages” should be based on consideration of a living wage and establish the floor which all domestic workers (applicable by locality, etc) should receive. Furthermore it should be time rated rather than piece rated. That would make calculation of overtime simpler. Many voiced that employers income should also be reflected in the calculation of minimum wages, possibly by establishing by decentralized “boards” which can consider location specific wage and other issues which can be topped up on the basic minimum wage.

In terms of in-kind payment, there were no agreements on the percentage of in-kind payment permissible (ILO Convention mentions not more than 50 percent). It was
however pointed out that minimum wage should be in monetary terms. Moreover, items considered “in-kind” should be specified so as not to confuse them with “incentives” such as clothing on demand.

In terms of accommodation, there are several different arrangements—quarter, room and living in the house in the same space as the family. Accommodation can be a great support as well as a source of exploitation. Cost of accommodation should be only considered “in-kind” if it is a separate living quarter where the worker can be granted privacy and for example be able to live with her family. A space in the house should not be considered as accommodation worthy of in-kind payment. Moreover, automatic deduction should be avoided, and workers should receive their pay in full in cash to bring dignity. Food should be automatically provided if the worker lives in the house of the employer.

Wages should also take into account the skills of the worker. This may be taken up by a decentralized board, or be based on negotiation between the worker and employer (above the minimum wage).

Norms must be fixed to ensure that no wages are deducted when workers take paid leave, when employers go out. Furthermore, many supported that they should be paid 10 per cent increment annually, one month bonus also.

The workers must be paid every month, and written account of the payments due and the amounts paid to be given. To this end, most participants supported the development of a model contract that is legally binding.

**Working conditions: Hours of work, leave arrangements, social security and OSH**

The following issues were covered in this session.

**Working time:**
- Weekly hours, hours worked at night and weekly rest periods.
- Stand by, freedom to leave the house.

**Living conditions:**
- Accommodation/privacy, food and water.

**Social Security/OSH**
- Sickness, injury, maternity, invalidity.
- Safety at work, sexual harassment.
- Unemployment and pensions.

**Leave**
- Maternity
- Privilege, casual and sick leave.

An important point for discussion—bearing in mind the specificity of domestic work—whether policies/legislations were to ensure that domestic workers are treated “not less favourably” as other wage workers. In such a case, the issue is who pays for the
benefits and associated costs, the extent of coverage to be provided and to what extent the provisions should be statutory as opposed to a more flexible arrangement of individually negotiated contracts?

All agreed that domestic workers should not be treated less favourably compared to other wage earners. This means not less favourably than workers covered under the factories Act and other similar acts.

Working time: The maximum number of working hours for an adult worker should not exceed 48 hours in a week and nine hours in a day. Any worker working for more than the maximum prescribed time is entitled to wages in respect of such overtime work at twice the ordinary rate of wages.

Every worker must be allowed one holiday in a week, on any day. Whenever a worker is required to work on a weekly holiday, he is to be allowed a compensatory holiday for each holiday so lost, within the same month or within two months immediately following that month are such examples.

In terms of rest period, many suggested 10 hours of consecutive rest period where overtime should be prohibited. Meal intervals should be provided after 5 hours of consecutive work for live-in workers.

Regulating working time can be conceived for full-time (live-in) workers but it would be difficult to place any regulation on part-time workers. For part-time workers, the wages will automatically work as a self-regulating mechanism. Others considered that a setting up of a “tripartite board” could help in monitoring and regulating for part time workers.

There were different suggestions on the extent of notice period that should be provided, ranging from one month to up to two months, but all participants agreed that a notice period or an equivalent compensation in salary was required.

Living conditions: As mentioned in the previous section on wages, accommodation can range from a separate staff quarter, room and living in the house in the same space as the family. Of key concern was the issue of privacy and how to define it. It was agreed that if a family cannot offer “reasonable” degree of privacy and accommodation that is safe and decent, respects the worker’s privacy and provides meals of good quality and sufficient quantity, they should not be permitted to have live-in domestic workers.

In addition to living condition, it was mentioned that the use of toilets in the house was an important issues where many households denied access of toilets to their domestic workers due to caste based discrimination. Access to toilets during work was essential.

A special emphasis needs to be placed on prevention and punishment of sexual harassment.
Furthermore, policy efforts need to be strengthened to develop working women’s hostels that can be used by domestic workers as many would like to be able to live out or at least have a place to go for their weekly day off.

**Social Security:** All agreed that domestic workers should be entitled to social security, maternity benefits and leave that are no less favourable than wage workers. This leaves the question of who pays for the associated costs. Several welfare board models have been suggested (including those already in place) but it was pointed out that these boards are not functioning very effectively. The benefits also need to be offered based on sound actuarial calculations of the costs and contributions required for sickness, injury, education grant and maternity protection. In terms of contribution to the welfare boards, it should be state, workers and employers. Many participants expressed the need to study existing welfare models with a view to analyzing their challenges and how they could be implemented effectively.

**Leave:** There are largely four categories of leave; maternity leave, privilege, casual and sick leave. Many strongly emphasized the need to offer fully paid, or at least at 80 per cent of the original salary, maternity leave of no less than 14 weeks The worker should be able to go back to the original employment at the end of the leave. The worker should be entitled to paid sick leave (wages not to be cut) for 12 days a year as well as benefits to be provided in the event of long term illness. Both live in and live out workers should receive one month privilege leave and when the employer goes on leave the wages should not be cut. Although some voiced the need to be realistic when advocating for paid maternity leave employment protection, many believed this could be worked out through a welfare board.

**Enforcement**

Labour inspection requires access to the household, which may come in conflict with principle of privacy within the family/home. An important enforcement mechanism is also in developing grievance mechanisms. Some of the welfare board models that are being discussed by various organizations working on domestic workers have considered a grievance mechanism/cell within the board.

Also important is to strengthen organizations of domestic workers, particularly through trade unions. Expanding the scope of existing laws-often through the change in definition on “workmen” or “workplace”- to extend application to domestic workers is important. This is especially the case in regulating the so called “placement agencies”. A recent study indicates that at present, there are no laws to regulate the functioning of domestic workers placement agencies, though there are laws to regulate employment and placement of migrant and contract workers. None of the present laws recognize households or homes as workplaces but are treated as private spheres which are beyond the reach of any labour laws. Thus, domestic workers do not come under the definition of ‘workmen’, which places placement agencies safely outside the existing regulatory framework.

In regulating placement agencies, it is important to re-conceptualise what is meant by domestic worker placement agencies. All participants agreed that if an agency is to be considered a ‘placement agency’, it needs to have certain positive qualifying criteria,
such as being a “service provider” who places domestic workers in households for a fee, and operate with the principle of promoting the welfare of domestic workers and uphold their rights, that these providers will not have any role in salary collection or payment, etc. In order to weed out unscrupulous operators driven purely by profit and practicing exploitative tactics, it was suggested that those not conforming to the “positive criteria” shall not be authorized. A separate registration for domestic workers placement agencies may therefore be required to ensure that they comply with the criteria.

A contract will assist in establishing employment relationships between a domestic worker and employer in addition to making the terms of employment clearer. Model contracts can be promoted and placed, for example in welfare boards, websites, trade unions, RWA offices, and so on.

**Next Steps**

The consultation served its purpose which was to provide a forum for civil society organizations already active in domestic workers’ rights to discuss elements of the questionnaire based on existing initiatives both in law and practice. Drafting Committees for certain sections have been formed and they will coordinate and own the responses. The responses will be sent to the ILO directly and also to ILO constituents for inclusion in their responses.

Parallel to the ILC process, the organizations present suggested the following ground level action to be pursued together:

- Compilation of welfare board challenges and successes to identify a good model for domestic workers;
- Consolidated action to demand inclusion of domestic worker in the Minimum Wages Act and the development of a welfare board in every State.
- Developing an effective social security system for domestic workers
- Facilitate linkages between Labour Departments and civil society organizations, particularly Unions, NGOs and Resident Welfare Organizations.