

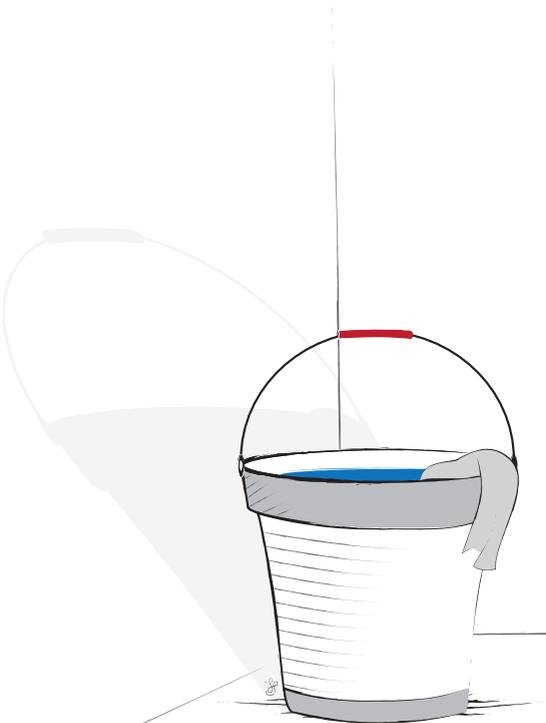


المجلس الوطني لحقوق الإنسان
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Conseil national des droits de l'Homme

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Kingdom of Morocco

Domestic Workers Employment Conditions Bill # 12-19

Memorandum



The National Human Rights Council of Morocco (CNDH) is a national institution for the protection and promotion of human rights (NHRI). It campaigns for and against abuses of all human rights in Morocco. It pressures and encourages Moroccan government, parliament, and competent stakeholders to respect, uphold and advance human rights and consolidate the rule of law.

The CNDH is accredited as an “A” status NHRI by the International Coordinating Committee (ICC), i.e. in full compliance with the Paris Principles (international standards adopted by the UN General Assembly in 1993 to frame the work of NHRIs and broadly accepted as the test of their legitimacy and credibility). It was established as an advisory council on human rights in 1990 and reformed in March 2011 to have more prerogatives, broader mandate, and to secure its independence of the government.

The CNDH investigates violations, conducts surveys and publishes reports on all human rights. It monitors places of deprivation of liberty, handles complaints, advises on the harmonization of national legislations with international human rights law, issues advisory opinions and memoranda on human rights-related issues, etc. The Council has 13 regional human rights commissions closely monitoring human rights in the different regions of Morocco.

For more information, please visit our website: **www.cndh.ma/an**

Domestic Workers Employment Conditions

Bill # 12-19

Memorandum

PREFACE

In September 2013, the upper house of the Moroccan Parliament (the House of Councillors), referred a bill to the National Human Rights Council (CNDH) on domestic workers for advisory opinion (Correspondence #328/13, dated 23 September 2013). The Bill aims to set the employment conditions for one of the most vulnerable groups of workers and a significant workforce that has long been working in informal employment.

In this memorandum, the CNDH makes several recommendations and proposals, following a human rights-based approach, to bring the provisions of the bill into closed alignment with the international standards and best practices and to further protect the rights and dignity of domestic workers. One of the most important recommendations in the memorandum is setting minimum age for admission to domestic work at 18, to prohibit child labor and further protect children's rights. The CNDH also recommends ratifying the Domestic Workers Convention (C189) and aligning the bill to its provisions and the rights and guarantees of the Moroccan Labor Code. The recommendations and proposals also concern decent work, wages and equal pay, freedom of association and the right to organize, rest and annual leaves, contractual guarantees of domestic workers, retirement, social security, health insurance, etc. The following is a translation (from Arabic) of the CNDH's advisory opinion as was sent to the Speaker of the House of Councillors.

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1. Following correspondence No. 328 /13, dated 23 September 2013, by virtue of which the Speaker of the House of Councillors requests the advisory opinion of the National Human Rights Council on a Bill on the employment conditions of domestic workers; Under article 16 of *Dahir* (Royal Decree) No. 1-11-19 of 25 Rabi' I 1432 A.H. (1st March 2011) establishing the National Human Rights Council (CNDH), the Council contributes to "*promoting democracy-building, by fostering broad-based social dialogue and developing any relevant tools and mechanisms to that end*";

The CNDH, pursuant to Article 13 of the said Royal Decree, also examines "*laws and regulations in force with the provisions of international human rights conventions and international humanitarian law which the Kingdom has ratified or to which it has acceded, as well as with the concluding observations and recommendations of UN treaty bodies on the reports submitted to them by the Government*".

2. The CNDH recognizes the significant impact that a on down the employment conditions of domestic workers will have on the legal, economic and social empowerment of this vulnerable group of workers, and as part of the proposals it puts forward to support the process of drafting "organic" and ordinary laws relating to the economic, social and cultural rights. It devotes particular and legitimate attention to the regulation of domestic work. This interest can be further justified by the Council's "human rights based approach" explicitly mentioned in the explanatory statement of the Royal Decree establishing the Council.

3. The proposals put forward in this memorandum draw on different national and international reference standards and declarations. The National Human Rights Council has also carried out a comparative study of laws regulating domestic work in several countries with progressive social legislation to bring its proposals into closer alignment with the best practices in these countries.

4. The following normative and declarative standards were thus taken into consideration:

- The Constitution, mainly its preamble and articles 8, 19, 30 (§3), 31, 32 and 34;
- Convention No. 138 concerning Minimum Age for Admission to Employment¹, mainly articles 1² and 3 (§1)³, and the Minimum Age Recommendation (R146)⁴, mainly paragraphs 12⁵, 13⁶, 14⁷ and 15;
- Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor⁸, in mainly articles 2⁹, 3¹⁰, 4¹¹, and the Worst Forms of Child Labor Recommendation (R190)¹², mainly paragraphs 2 (c)¹³, 3¹⁴ and 4¹⁵;
- Convention No. 189 (Domestic Workers Convention)¹⁶ and Recommendation 201,

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concerning Decent Work for Domestic Workers (R201)¹⁷;

- The UN Convention on the Rights of the Child, mainly articles 3, 12 and 19, as was commented on in General Comments 5¹⁸, 12¹⁹ and 13²⁰;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and as was commented on in General Comment No. 1 on Migrant Domestic Workers²¹.

5. The Council also examined the observations addressed to Morocco by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), mainly:

- The observation of the Committee of Experts on the Application of Convention No. 138, concerning Minimum Age²²
- The observation of the Committee of Experts on the Application of Convention No. 182 on the Worst Forms of Child Labor²³.

6. In addition, the Council conducted a comparative study of legislations regulating domestic work in several countries with progressive social legislation:

- the Swiss Ordinance on Conditions of Entry, Stay and Work for Private Household Employees of Individual Beneficiaries of Privileges, Immunities and Facilities (Private Household Employees Ordinance-PHEO), June 6, 2011;
- the Swiss Ordinance on the Standard Contract for Workers in the Domestic Economy of 20 October 2010;
- Act No. 26844 of 2013 establishing the special regime of labor contracts for domestic workers - Argentina;
- Decree No. 807/PRES/PM/MTSS of 2010 determining the working conditions of domestic workers²⁴ - Burkina Faso;
- Act No. 5.859 of 11 Dec. 1972 relating to domestic work, as was amended and supplemented - Brazil.
- The Act on the Employment of Household Workers (951/1977) - Finland²⁵
- Royal Decree 1620/2011 of 14 November 2011, regulating the special relationship that characterizes service within the family household - Spain²⁶
- The National Collective Agreement of Employees of Individual Employers of 24 November 1999 – France;
- Act No. CL-05-2009-006, amending Article 257 of the Labor Code – Haiti²⁷
- Regulation 90/2009 of 1 October 2009, regulating domestic workers - Jordan²⁸
- Act No. 2450 on Domestic Workers, dated 9 April 2003 - Bolivia²⁹
- Republic Act No. 10361, Instituting Policies for the Protection and Welfare of Domestic Workers- Philippines³⁰
- Act No. 18.065 on domestic work, 27 November 2006 - Uruguay³¹

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- Sectoral Determination 7 - Domestic Workers (No. R. 1068), 15 August 2002 - South Africa³²
- The Minimum Wages and Conditions of Employment (Domestic Workers) Order, 2011 - Zambia³³
- Code of Practice for Protecting Persons Employed in Other People's Homes, Order 2007 - Ireland³⁴

6. The CNDH also studied some key documents relating to domestic work:

- Human Rights Watch's report on child domestic work in Morocco: Lonely Servitude - Child Domestic Labor in Morocco, 2012³⁵
- ILO's Guide to designing labor laws to protect domestic workers³⁶
- Previous versions of the current Bill, mainly Bill No. 34.06 laying down the employment and hiring conditions of domestic workers.

The CNDH held, moreover, within the framework of its consultation-based approach, meetings with several national and international NGOs, thematic coalitions, trade associations, trade unions and the International Labour Office in order to hear their views on the various aspects related to the regulation of domestic work.³⁷

7. The proposals of the CNDH concerning the Bill laying down the employment conditions for domestic workers are justified by the following arguments:

Argument 1: The CNDH, which recommends the ratification of the Domestic Workers Convention (C189), proposes, in this opinion, making this Bill compatible with the C189, anticipating thus its ratification by the government. Making such proposal can be justified by the provisions of Articles 13 and 17 of the founding decree of the Council. ILO Recommendation No. 201 on decent work for domestic workers can serve as an interpretation tool to read the Bill in light of a reference that links the ILO Conventions to other human rights instruments, including 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.

Argument 2: Being aware that the legislature has opted, under Article 4 of the Labor Code, for the regulation of the *"employment and work conditions for household employees who have an employment relationship with the householder"* through a *"special law"*, the CNDH, which considers that this choice is up to the legislative power, stresses nevertheless that this choice should not threaten in any way the scope of the legal safeguards provided for this vulnerable group of workers. Hence the need, as the Council believes, to align some provisions of the Bill with the common legal safeguards provided for in the (Moroccan) Labor Code.

Argument 3: According to the opinion of the CNDH, the effective elimination of child labor must be addressed in light of several parameters, mainly: treaty commitments of Morocco with regard to the implementation of Conventions 138 and 182 and the Convention on the Rights of the Child, in addition to the implementation of articles 31 and 32 of the Constitution, and the findings and conclusions of several sociological studies highlighting the precarious situation of domestic workers in Morocco and the extreme vulnerability of children employed as domestic workers³⁸. This finding was recently confirmed by the observations of the Committee of Experts on the Application of Convention No. 182 on the Worst Forms of Child Labor to Morocco.

Indeed, the analysis of child labor in domestic work, in light of these instruments that focus on the rights of all children under 18 years of age, shows that many rights are actually violated or may be violated, such as: the right to non-discrimination based on sex and/or status, the right to education and training, the right to rest and leisure, the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Domestic work can be hazardous because of the tasks performed and working conditions, which can be harmful to the child's physical, mental, spiritual, moral or social development, not to mention the fact that isolation of a child who lives within an unfamiliar environment, with little or no support networks, can make the child particularly vulnerable to physical and verbal abuse and sexual abuse, as the findings of several sociological studies and the observations of the Committee of Experts on the Application of Convention No. 182 on the Worst Forms of Child Labor to Morocco show.

Taking these factors into account, the CNDH considers that the nature and the conditions under which domestic work is carried out, -at least in the Moroccan context-, is likely to be harmful to the child's health, safety or moral development, within the meaning of paragraph (d) of Article 3 of the ILO Worst Forms of Child Labor Convention (C182).

In the same vein, the first paragraph of Article 3 of the ILO Minimum Age Convention (No. 138) states that "*the minimum age for admission to any type of employment or 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 shall not be less than 18 years.*"

Based on these legal elements, the CNDH, underlining the objective of the effective elimination of child labor, as provided for in Article 3 of Convention No. 189, recommends setting 18 years of age as the minimum age for admission to domestic work.

Argument 4: The proposals put forward in this opinion are also based on the structuring concept of "decent work". The ILO defines decent work as "*productive work for men and women in conditions of freedom, equality, security and human dignity. It involves opportunities for work that deliver a fair income; provide security in the workplace and social protection*

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*for workers and their families. It offers better prospects for personal development which also encourage social integration; give people the freedom to express their concerns, to organize and to participate in decisions that affect their lives; and guarantee equal opportunities and treatment for all*³⁹. This concept is relevant to the analysis of the Bill concerned by this opinion. It was in fact referred to in the ILO's guide to design laws regulating domestic work.⁴⁰

The proposals of the CNDH on the Bill laying down the employment conditions for domestic workers are as follows:

8. Proposals for alignment with the guarantees provided for in the (Moroccan) Labor Code

Analyzing the provisions of the Bill, the CNDH found that there's little reference in this "special law" to the general rules: the Labor Code is expressly referred to only partially e.g. in articles 4 and 6 of the Bill. However, the CNDH noted that some provisions of the Bill literally transposed some articles of the Labor Code (e.g. leave authorizations in Article 12 of the Bill). This actually consolidates the legal protection of domestic workers.

For these reasons, it is proposed that the alignment of the Bill with the Labor Code covers other legal guarantees granted to this group of workers:

As such, it is proposed to provide for the following in the Bill:

- The general provisions of the Labor Code, in particular in Articles 9, 10 and 11⁴¹. These provisions may be included between Articles 1 and 2 of the Bill;
- The provisions of Articles 13 and 14⁴² of the Labor Code relating to the probationary period. These provisions may be included between Articles 3 and 4 of the Bill;
- The provisions of Article 23 of the Labor Code, which may be included between Articles 5 and 6⁴³;
- The provisions of Article 24 of the Labor Code⁴⁴ which must be pre-adapted to the specificity of domestic work (especially points 2 and 5). They may be then included between Articles 5 and 6 of the Bill;
- The provisions of Articles 39 and 40 of the Labor Code⁴⁵, which may be included between Articles 15 and 16 of the Bill;
- The provisions of Articles 72 and 73⁴⁶ of the Labor Code which must be pre-adapted to the specificity of domestic work (especially the second paragraph of Article 72). They may be then included between Articles 7 and 8 of the Bill;

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- 6
- Adapting the provisions relating the collective labor agreement, mainly the provisions of Article 105 of the Labor Code, in order to provide for the possibility of having collective agreement in domestic work. In this context, the CNDH proposes to build on the French experience in this area, mainly on the National Collective Agreement of Employees of Individual Employers of 24 November 1999;
 - With regard to maternity, the CNDH recommends including the provisions of Articles 152, 153, 154, 155, 156, 157, 158, 159 and 160 of the Labor Code in the Bill and adapting the provisions of Article 164 (regarding the scope of nullity) to the specificity of domestic work;
 - The provisions of the first paragraph of Article 184 of the Labor Code which sets the normal working hours of employees to 2288 hours per year or 44 hours per week. These provisions may be included between Articles 7 and 8 of the Bill. The same is recommended for Article 201 of the Labor Code, after deleting the provisions relating to agricultural activities.
 - With regard to the possibility, in Article 8 of the Bill, to postpone weekly rest days to have one longer rest period by mutual agreement between the employer and the employee, the CNDH proposes to include in the said Article a provision that excludes 50 years old domestic workers, or older, from the scope of this possibility. In the same vein, it is proposed to reduce the period of compensatory rest to one month instead of two months as provided for in Article 8 of the Bill. This proposal will align the second paragraph of Article 8 of the Bill with Article 215 of the Labor Code.⁴⁷
 - In terms of seniority bonus, the CNDH recommends transposing the provisions of Article 350 of the Labor Code⁴⁸ in the Bill. These provisions may be included between Articles 14 and 15 of the Bill.
 - Aiming to strengthen contractual guarantees of domestic workers, it is proposed to include the provisions of Articles 370⁴⁹ and 18⁵⁰ of the Labor Code in the Bill. These provisions may be included between Articles 5 and 6. It should be noted that several compared laws take into account the specificity of domestic work and ensure access of domestic workers to a minimum of documents proving formal employment. Under article 18 of the 2010 decree regulating working conditions for domestic workers in Burkina Faso, for example, the employer is “required to keep a register” but “must” issue pay slips to his/her employees.⁵¹
 - Noting that the Bill does not set a specific age of retirement, and given the absence of any assessment of the drudgery of domestic work in the national economic and social context, the CNDH proposes to align the age of retirement with that provided for in Article 526 of the Labor Code, namely 60 years.
- The CNDH also believes that some fundamental guarantees for the rights of domestic workers must be laid out explicitly in a general provision to be included in the Bill, mainly:

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- Freedom of association and the right to organize;
- Equal pay;
- Social security
- and basic health insurance;

In addition to this partial alignment approach (with the provisions of the Labor Code), the CNDH notes, for comparison, that some in laws the legislature opted, for solutions to uphold the Labor Code as a general rule against the specific rule, which is the legislation regulating domestic work, and provide, on the other hand, for legal formulas, such as general clauses of invalidity, in order to guarantee the rights of the vulnerable party in contractual relationship, namely the “domestic worker”.

The Spanish experience with the sources of law regulating domestic work is significant in this regard. The Spanish Royal Decree regulating domestic work, in particular Article 3, refers to the general rules laid down in the Labor Code, to specific laws governing domestic work, the employment contract work and to collective agreements⁵². It is also proposed to provide for a comprehensive legal protection for domestic workers who are the “*weak party*” in a contract. This protection may be as follows form: a general provision that shall automatically void any contractual provisions limiting the scope of rights guaranteed by the law governing domestic work or the labor code. Bolivian Act No. 2450 of 9 April 2003 regulating domestic work provided in Article 2 for a general clause of “*non-renunciation*” of rights guaranteed by the said law⁵³. Other examples comparing the articulation of the sources of law governing domestic work (labor code, specific law and collective agreement) can be found in the ILO guide⁵⁴.

9. Defining domestic works (Article 2 of the Bill):

Conducting a comparative study on the definitions of housework⁵⁵, the CNDH found that the list in Article 2 of the Bill includes some tasks that can be hazardous for children. For this reason, it is proposed to move the last two paragraphs of Article 6 of the Bill to Article 2. The CNDH underlines in this respect the observation addressed to Morocco by the Committee of Experts on the Application of the Minimum Age Convention (No. 138). In the same vein, paragraph 5 of Recommendation No. 201 stipulates that “*taking into account the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labor*”

10. Standard contract provided for in Article 3 of the Bill

The CNDH recommends that the standard contract should provide, in addition to the terms and conditions stipulated by labor legislation, for specific provisions: the type of work to perform, remuneration, how it's calculated and the frequency of payments, any payment in kind and its value, rate of pay or overtime pay, normal working hours, paid annual leave and both daily and weekly rest periods, food and accommodation, if any, the probationary period, if applicable, the conditions of repatriation (in case of foreign worker)⁵⁶, description of any accommodation provided, how overtime and periods of availability can be calculated and how the domestic worker can access this information.

The CNDH recommends that the Bill should grant to labor inspectors the possibility to appeal to the court, requesting the declaration of invalidity of any contract that contradicts the provisions of the Labor Code and the specific law governing domestic work.

8 The analysis of comparative laws can reveal a clear trend vis-à-vis the tasks of domestic work. For example, the Irish law on domestic work stipulates in Article 5 that the employment contract shall include, in addition to usual information, a detailed description of the tasks to be performed by the employee and the details of the daily rest periods⁵⁷. The South African Sectoral Determination 7 (R.1068) of 15 August 2002 on domestic work provides for a standard contract with a very detailed descriptive list of tasks that contractors may check. This facilitates defining the contractual obligations of the parties.⁵⁸

On housing conditions of domestic workers, the CNDH proposes that the Bill defines the minimum requirements for decent accommodation for domestic workers. In this respect, the legislature can draw on the provisions of Article 30 of the Swiss Ordinance which lay down food and accommodation conditions for private household employee⁵⁹. Similar provisions are provided for in Article 8 of the South African Sectoral Determination⁶⁰.

11. Medical certificates (Article 5)

The CNDH proposes to enhance the last paragraph of Article 5 to take account of Recommendation No. 201, under which Members should:
among other things:

- “(a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers, and are consistent with the ILO code of practice “Protection of workers’ personal data” (1997), and other relevant international data protection standards;
- (b) prevent any discrimination related to such testing; and
- (c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or

to disclose HIV or pregnancy status.”

12. Minimum age for domestic work

The CNDH notes that the preamble of the Domestic Workers Convention (C189) refers to the UN Convention on the Rights of the Child⁶¹. In addition, under the second paragraph of Article 3 of the C189, Member States “*shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work*” including “*the effective abolition of child labor.*” Morocco has recently adopted the Rabat Declaration⁶², for the 3rd Global Conference on Child Labor in Brasilia in 2013, which advocates for the review of the old list of hazardous work prohibited for children under 18 years of age and suggests drafting decree with a new list. Based on these principles, the CNDH recommends setting the minimum age for domestic workers at 18 years of age.

Under article 9 of the Swiss Ordinance on Conditions for Entry, Stay and Work for Private Household Employees of Individual Beneficiaries of Privileges, Immunities and Facilities (Private Household Employees Ordinance), for example, the private household employee must meet several cumulative conditions, among which the minimum age of 18 years⁶³.

13. Wages of domestic workers

The CNDH notes that the Bill provides in Article 13 for the possibility to incorporate some benefits in kind (up to 40%) in the wages of domestic workers accommodated in the employers home. The Council also notes that some comparative laws, such as the Brazilian law relating to domestic work, amended in 2006, prohibits in Article 2 employers of household employees from deducting wages of their employees, for supplied food, clothing, accommodation and hygiene services⁶⁴. The South African Sectoral Determination 7 (No. R. 1068) of 15 August 2002 on domestic work has a similar provision (article 7⁶⁵). It provides, however, for a “*deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker*”⁶⁶. The Royal Decree 1620/2011 of 14 November 2011 regulating domestic work in Spain has opted for a similar solution as provided in the Bill, but it limited the maximum benefits in kind in 30%⁶⁷, while the Uruguayan legislature has limited it to only 20%⁶⁸.

In light of these experiences, the CNDH proposes reducing the percentage of any payment in kind, under Article 13 of the Bill. It recommends, at last, taking into account any redefinition of this component and the parameters specified in the second paragraph of Article 12 of ILO Convention No. 189, namely the “*limited proportion of the remuneration*

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of domestic workers in the form of payments in kind”, ensuring that “such payments in kind are agreed to by the worker are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.”

Notes

1. Entered into force on the 19th of June 1976 and ratified by Morocco on the 6 January 2000
2. Article 1: "Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons."
3. Article 3 (§1): 1. "The minimum age for admission to any type of employment or 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 shall not be less than 18 years."
4. Adopted in Geneva, 58th ILC session (26 Jun 1973)
5. Article 12 (§1): "(1) Measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. These conditions should be supervised closely."
6. Article 13: "(...) special attention should be given to:
a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work;
b) the strict limitation of the hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework related thereto), for rest during the day and for leisure activities;
c) the granting, without possibility of exception save in genuine emergency, of a minimum consecutive period of 12 hours' night rest, and of customary weekly rest days;
d) the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults;
e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;
f) the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision."
7. Article 14: (1) Measures to ensure the effective application of the Minimum Age Convention, 1973, and of this Recommendation should include-- (a) the strengthening as necessary of labor inspection and related services, for instance by the special training of inspectors to detect abuses in the employment or work of children and young persons and to correct such abuses;
8. Entered into force on the 19th of November 2000 and ratified by Morocco on the 26 of January 2001
9. Article 2: For the purposes of this Convention, the term «child» shall apply to all persons under the age of 18.
10. Article 3: "(...)(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.
11. Article 4: "1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labor Recommendation, 1999."
12. Adopted in Geneva, 87th ILC session (17 JUNE 1999)
13. 2.2. "The programmes of action referred to in Article 6 of the Convention should be (...) (c) giving special attention to (...) - (iii) the problem of hidden work situations, in which girls are at special risk;"
14. "3. In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to: (a) work which exposes children to physical, psychological or sexual abuse; ... (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.
15. "4. For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers' and employers' organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity."
16. Adopted in 2011. The Convention will enter into force on 5 September 2013
17. Adopted on 16 June 2011
18. Committee on the Rights of the Child, General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003
"Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children. The article refers to actions undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The principle requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's

rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children."

19. Committee on the Rights of the Child, General Comment No. 12 (2009): The right of the child to be heard, *CRC/C/GC/12*, 20 July 2009:

" (...) Children should also be heard when policies are developed to eliminate the root causes of child labor; in particular regarding education.

Working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labor laws. Children and, if existing, representatives of working children's associations should also be heard when labor laws are drafted or when the enforcement of laws is considered and evaluated." (p23)

20. Committee on the Rights of the Child, General Comment No. 13 (2011): The right of the child to freedom from all forms of violence, *CRC/C/GC/13*:

" (...) Children in potentially vulnerable situations. Groups of children which are likely to be exposed to violence include, but are not limited to, children: (...) in hazardous child labor; including the worst forms." (p27)

21. Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families: General comment No. 1 on migrant domestic workers; *CMW/C/GC/1* (23 February 2011)

22. Adopted in 2012, published in the 102nd ILC session (2013)

"The Committee notes the information provided by the Government in its report under the Worst Forms of Child Labor Convention, 1999 (No. 182), according to which, with the entry into office of the new Government, the Bill on domestic work has been withdrawn from Parliament and submitted once again to the Council of the Government on 12 March 2012, which deferred it for in-depth examination. The Committee once again expresses the firm hope that the Bill which has been under examination for a certain number of years, will be adopted in the very near future. It requests the Government to provide information in its next report on the progress achieved in this respect.

(...) The Committee once again requests the Government to take the necessary measures to amend the national legislation to bring it into conformity with Article 8 of the Convention, so that permits granted to minors under 18 years of age allowing them to participate in artistic performances explicitly limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

(...) Observing that the Government has been referring to the adoption of the Bill on domestic work and the specific list of prohibited types of hazardous work in the domestic work sector for several years, the Committee urges it to take the necessary measures to ensure that the Bill and the list are adopted on an urgent basis.

(...) The Committee encourages the Government to intensify its efforts for the identification, removal and reintegration of girls under 18 years of age engaged in domestic work who are victims of economic or sexual exploitation, and requests it to continue providing information on the results achieved, particularly in the context of the ILO/IPEC/PAMODEC project on domestic work by girls. The Committee encourages the Government to ratify the Domestic Workers Convention, 2011 (No. 189), which has key provisions for child protection

23. Adopted in 2012, published in the 102nd ILC session (2013)

The Bill fills the current legislative gap and sets the minimum age for admission for this type of employment at 15 years, lays down conditions of work and establishes supervisory measures and penalties, including imprisonment, for persons employing children under 15 years of age. The Committee noted the Government's indication that the process of adopting the Bill on domestic work had been under way since June 2011.

(...) The Committee reminds the Government that young girls engaged in domestic work are often victims of exploitation and that the clandestine nature of such work makes it difficult to monitor their conditions of employment

(...) The Committee reminds the Government that, under Article 1 of the Convention, immediate and effective measures have to be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labor.

(...) Observing that the Government has been referring to the adoption of the Bill on domestic work and the specific list of prohibited types of hazardous work in the domestic work sector for several years, the Committee urges it to take the necessary measures to ensure that the Bill and the list are adopted on an urgent basis

24. Official Gazette (JO) No. 03 of 20 January 2011

25. Act 951/1977 on the Employment of Household Workers amendments up to 480/2011 included

26. Royal Decree 1620/2011 of 14 November on the special nature of domestic employment, published in the Official Gazette of 17 November 2011; No. 277, Sec I, para. 119046 and thereafter.

27. Promulgated on 6 May 2009

28. Regulation No. 90/2009 of domestic workers, cooks, gardeners and similar categories published on page 5348 of official gazette No. 4989 dated October 1, 2009 ; promulgated by virtue of section 3/b of labor code no 8/1996 and amendments thereof

29. Act No. 2450 of 9 April 2003 governing domestic wage labor.

30. Republic Act No. 10361 instituting policies for the protection and welfare of domestic workers.

31. Act No. 18.065 on domestic work rules, published in the Official Gazette of 5 December 2006 - No. 27133.

32. Basic conditions of employment act, no 75 Of 1997 sectoral determination 7: domestic worker sector

33. Statutory instrument N°3 of 2011, the minimum wages and conditions of employment (Domestic workers) order 2011

34. Industrial relations act 1990 (code of practice for protecting persons employed in other people's homes) (declaration) order 2007

35. Human Rights Watch: "Lonely servitude: child domestic labor in Morocco", 2012

36. International Labour Office: "Effective protection for domestic workers: a guide to designing labor laws", Geneva, 2012 (p1)

37. INSAF, AMVEF, FMAS (E-JOSSOUR), AMDH, CPD, OMDH, AMIT, FDT, GIZ, OXFAM and BIT participated in these meetings

38. See for example Human Rights Watch's report "Lonely servitude: child domestic labor in Morocco", 2012

39. ILO: Toolkit for mainstreaming employment and decent work (Geneva, 2007), p. vi.

40. International Labour office: "Effective protection for domestic workers : a guide to designing labor laws", Geneva; 2012 (p1)

41. Chapter III: General Provisions

Article 9: Shall be prohibited any infringement of freedoms and rights related to trade union activities within the company, in accordance with the laws and regulations into force, and any infringement of the freedom of work for the employer and the employees of the company.

Shall also be prohibited any discrimination against employees based on race, color, sex, disability, marital status, religion, political opinion, trade union membership, national or social origin, that may violate or alter the principle of equal opportunities or treatment on an equal footing in terms of employment or professions, particularly as regards the hiring, management and distribution of work, vocational training, pay, promotion, benefits, disciplinary measures and dismissal.

This also shall include:

- the right of women to enter into an employment contract;
- the prohibition of discriminatory measures based on the employees trade union membership or activities;
- the right of women, married or not, to join a trade union and to participate in its administration and management.

Article 10: It shall be prohibited to force workers to perform a task or do it against their will.

Article 11: The provisions of this Code shall not preclude the implementation of more favorable provisions granted to employees by statutes, employment contracts, collective employment agreements, rules of procedure or customs

42. Section I: Employment contract

Chapter I: Probationary period

Article 13: The probationary period is the period during which either party may voluntarily terminate the employment contract without notice or being entitled to compensation.

However, after at least one week of work, termination of the probationary period, for reasons other than serious misconduct of the employee, may take place only after giving one of the following notices:

- A two-day notice if the employee is paid on a daily, weekly or fifteen-day basis;
- An eight-day notice if the employee is paid on a monthly basis.

If, after the probationary period, the employee is dismissed for reasons other than serious misconduct, the employee must be entitled to a notice of not less than eight days.

Article 14: The probationary period in indefinite contracts shall be:

- three months for executives and similar officers;
- one month and a half for employees;
- fifteen days for workers.

The probationary period may be renewed once.

The probationary period in fixed-term contracts may not exceed:

- a day per each working week and up to two weeks if contracted for less than six months;
 - one month if contracted for more than six months.
- Probationary periods less than the said periods may be provided for in the employment contract, collective agreement or the rules of procedure.

43. Article 23: Employees shall have the right to literacy and training programs.

The terms and conditions of these programs shall be set by regulation.

The employer shall give a work card to the employee. The card must contain information as laid down by regulation (Decree No. 2-04-422 of 16 Kaada 1425 (29 December 2004) on information to be included in work cards, Official Gazette No. 5280 of 24 Kaada 1425 (6 January 2005), p. 16).

It must be renewed when the employee changes position within the company or when the employee's wage changes.

44. Article 24: In general, the employer shall take all necessary measures to protect the health, safety and dignity of employees when they are performing tasks under within his/her company and shall ensure standards of good conduct, good manners and morals within his/her business.

The employer shall also be required to inform employees, in writing when they are hired, about the provisions relating to the following areas and each amendment made thereof:

- collective employment agreement and, if need be, its contents;
- the rules of procedure;
- working hours;
- how weekly rest shall be applied;
- legal provisions and measures for health and safety and the prevention of risks related to machinery;
- date, time and place of pay;
- National Social Security Fund registration number;

insurance company against accidents and occupational diseases

45. Article 39: Shall be considered serious misconduct that may led to dismissal:

- offense affecting honor; trust or morality, leading to a final court judgment of imprisonment;
- disclosure of a trade secret which harm the enterprise;
- Committing the following within the business or during work:
 - theft;
 - breaching trust;
 - drunkenness in public;
 - drug use;
 - Assault causing bodily harm;
 - serious insult;
 - deliberate and unjustified refusal to perform a task within the employee's competencies;
 - unauthorized absence of an employee for more than four days or eight half-days in a period of twelve months;
 - serious deterioration of equipment, machinery or raw materials caused by the employee deliberately or as a result of the employee's gross negligence;
 - misconduct causing considerable material damage to the employer;
 - failure to follow instructions to ensure safety or property causing considerable damage;
 - incitement to debauchery;
 - any form of violence or aggression against an employee, the employer or the employer's representative affecting the functioning of the company.

In this case, the labor inspector inspects that affect and draw up a report about it.

Article 40: Shall be considered as serious misconduct by the employer; the head of the company or the institution against the employee:

- serious insult;
- any form of violence or aggression against the employee;
- sexual harassment;
- incitement to debauchery.

If an employee quit his/her job because of one of the offenses listed in this article, if it is established that the employer has committed one, it shall be considered as unfair dismissal

46. Section VII: Work certificate

Article 72: The employer must give the employee an employment certificate, at the end of the employment contract within a maximum period of eight days, under penalty of damages.

The work certificate may only indicate the date when the employee joined the company, the date when the employee leaves and the positions the employee held. However, by mutual agreement, this certificate may contain statements relating to professional qualifications of the employee and the tasks he/she performed.

The employment certificate shall be exempt from registration fees even if it contains information other than those provided for in the second paragraph above. The exemption shall extend to certificates including a "free from any commitment or

foreseeable liabilities" or any other phrase indicating that the employment contract was terminated in the ordinary way.

Section VIII: Full and final settlement receipt

Article 73: "The full and final settlement receipt» is a receipt given to the employee by the employer on termination of the contract for any reason whatsoever; to settle any payment due to the employee.

Shall be void any discharge or conciliation in accordance with article 1098 of the Code of Obligations and Contracts by virtue of which the employee waives any payment due to him/her for the execution or termination of the contract.

47. Article 215: Employees whose weekly rest has been suspended or reduced should receive compensatory rest within a maximum period of one month.

The compensatory rest period referred to in the preceding paragraph shall be equal to the weekly rest suspended.

Compensatory rest shall be granted according to the conditions set by the government authority in charge of employment, after consultation with the professional organizations of employers and the trade unions that represent the highest number of employees

48. Article 350: Unless the pay is based on seniority, by virtue of a clause in the employment contract, the rules of procedure or a collective agreement, the employee shall receive a retirement bonus:

- 5% of the paid wages, after two years of service;
- 10% of the paid wages, after five years of service;
- 15% of the paid wages, after twelve years of service;
- 20% of the paid wages, after twenty years of service;
- 25% of the paid wages, after twenty-five years of service.

49. Article 370: Every employer shall be required to give his/her employees, when the wages are paid, a pay slip that must necessarily include information specified by the government authority in charge of employment

50. Article 18: The existence of an employment contract may be proved by all means. Written employment contracts shall be exempt from registration fees.

51. Article 18: The employer may not keep a register but must give pay slips to his/her employees.

52. Article 3 : Sources of employment relationship
The rights and obligations concerning this special employment relationship shall be regulated by:

- a) the provisions of this Royal Decree;
- b) additionally, common labor standards with regard to the elements compatible with the specific nature of this relationship. Expressly, Article 33 of the Statute of Workers shall not apply;
- c) collective employment agreements;
- d) the will of the parties expressed in the employment contract, which must respect the provisions of laws in force and collective employment agreements.
- e) local and professional uses and customs.

53. ARTICLE 2 - (No Waiver of Rights). The rights

granted by this Act shall be inalienable.

54. Clarifying the relationship between legislative instruments

In France, the Labor Code defines domestic workers and clarifies the provisions applicable to them (article L7221), while comprehensive standards regarding domestic workers are contained in a collective agreement which has the force of law (the National Collective Agreement of Employees of Individual Employers of 24 November 1999). For its part, the collective agreement makes certain provisions of the Labor Code applicable to domestic workers, for example, those regarding fixed-term contracts. Rural domestic workers and gardeners/guards are covered by specific national collective agreements separate from the national collective agreement of 24 November 1999. Employment of domestic workers by enterprises or associations is governed by general labor law and the applicable sectoral collective agreements.

In Mali, Decree No. 96-178/P-RM of 13 June 1996, issued under the Labor Code, addresses, among other things, conditions of work and social protection for domestic workers. It incorporates a reference to coverage of domestic workers afforded by generally applicable legislation, in article D.86-40: For all matters not expressly provided for in articles D.86-1–D.86-39, the provisions of the Labor Code, the Code of Social Welfare and the respective regulations in force are applied.

In 2006, Uruguay passed Act No. 18.065 which extended a range of labor protection measures to domestic workers and on 25 June 2007 a Presidential Decree was issued under the Act, conferring workplace rights specific to domestic employment. In South Africa, the Basic Conditions of Employment Act, 1997, provides labor rights protection to employees generally, while a binding "sectoral determination" made under the Act, Sectoral Determination 7, establishes detailed and comprehensive standards specifically for employees in the domestic work sector. Sectoral Determination 7, part A, section 4, in defining the scope of its coverage, states:

The provisions of the Basic Conditions of Employment Act apply to all domestic workers covered by this determination and their employers in respect of any matter not regulated by this sectoral determination

55. Article 2 of the Private Household Employees Ordinance (PHEO) of 6 June 2011

"(...) Domestic service is understood to mean any task carried out by the private household employee in the home of the employer, such as household chores, cooking, waiting on table, laundry, child care or gardening tasks."

Article 3 of the Ordinance on the standard contract for workers in the domestic economy of 20 October 2010:

Shall be considered domestic work activities, the general housework activities, including:

- a. cleaning;
- b. washing clothes;
- c. charges;
- d. kitchen;
- e. participation in taking care of children, elderly and

sick;

f. assistance to elderly and sick people in everyday life.

56. See in this regard

- Decree No. 2-04-466 of 29 December 2004 (16 kaada 1425) on the commitment of the employer to repatriate the employee at the employer's expense and bear the costs of hospitalization, Official Gazette No 5280 of 6 January 2005 (24 Kaada 1425), p.20 (French)

- Decree of the Minister of Employment and Vocational Training No 350-05, dated February 9, 2005 (29 Hijja 1425), on the standard employment contract for foreigners, Official Gazette No 5540 of July 5, 2007 (19 Jomada II 1428), P908 (French)

57. 5.1 The employer shall supply to the employee a written statement of terms and conditions of employment, as required under the Terms of Employment (Information) Acts 1994 to 2001, setting out clearly the following:

- Hours of work
- Rates of pay
- List of duties
- Periods of Annual Leave
- Place or places of work
- Commencement date

Details of rest breaks should be included in the written statement of terms and conditions of employment.

58. See annex: Job Description, Sectoral Determination 7: Domestic worker sector; No. R. 1068, 15 August 2002, Government Gazette of 15 August 2002 No. 23732 p 43

59. Article 30: Conditions of accommodation and food of private household employees

1. Private household employees have the right to their own individual room within the home of their employer. The room must:

- a. conform to a good standard of hygiene;
- b. be able to be locked;
- c. have good light, from natural and artificial light sources;
- d. be well-heated and ventilated;
- e. contain the necessary furniture, such as a bed, a lockable wardrobe, a table and a chair.

2. Private household employees must have access to decent bathroom and toilet facilities.

3. Private household employees have the right to healthy and adequate food and three daily meals (morning, midday and evening).

60. (b) deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker by the employer if the accommodation -

- i. is weatherproof and generally kept in good condition;
- ii. has at least one window and door, which can be locked;
- iii. has a toilet and bath or shower; if the domestic worker does not have access to any other bathroom.

61. "Recalling other relevant international instruments such as (...) the Convention on the Rights of the Child"

62. This Declaration was adopted at the sub-regional meeting of experts on «The fight against child labor in Africa: intervention national policy, outcome and prospects» which took place from the 21st to the 23rd of May 2013 in Rabat

63. Article 9: General conditions

1. Subject to any derogation granted elsewhere in the provisions of this Ordinance, private household employees must satisfy all of the following conditions:
a. be 18 years of age or over

64. Article 2: The employer is forbidden to make any deductions from the employee's salary for providing food, clothing, hygiene or housing. (Included in Act No. 11.324 of 2006)

65. Article 7 (1): An employer may not receive any payment directly or indirectly, or withhold any payment from a domestic worker in respect of –
.... (c) the supply of any work clothing; or
(d) any food supplied to the domestic worker while the domestic worker is working or is at the workplace

66. Article 8 : An employer may not make any deduction from a domestic worker's pay except –
... (b) deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker by the employer if the accommodation –

67. Article 8: Remuneration

2. The wage payments shall be made by the employer in cash or by check or other similar form of payment through credit institutions, upon prior agreement with the employee. However, in case of domestic services giving entitlement to benefits in kind, such as boarding and maintenance, a percentage agreed by the parties may be deducted for these benefits, provided it is guaranteed that the wage is paid in cash, at least, of the amount of the monthly minimum wage and without exceeding a deduction higher than 30% of the total wage.

68. Article 11, Law No 18.065 of November 27, 2006 on Domestic work



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Conseil national des droits de l'Homme

**DOMESTIC WORKERS - EMPLOYEMENT CONDITIONS
BILL # 12-19**

Memorandum - November 2013

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