



CONCEPT NOTE

The care economy has moved to the centre stage in global policy agendas, debates and initiatives (ILO 2021e).¹

The provision of care is changing in many different and profound ways, driven by demographic shifts. The care economy entails a diversified range of productive work with both paid and unpaid work activities for providing direct and indirect care necessary for the physical, psychological, social wellbeing of primarily care dependent groups such as children, the elderly, disabled and ill, as well as for prime-age working adults².

As care needs continue to expand and diversify, the care economy offers enormous potential for employment generation, particularly for women, who represent the vast majority of care workers³.

Care work

According to the ILO Care work report⁴, the global care work- force represents 11.5 per cent of total global employment, and it is estimated that increasing investment in the care economy to achieve the Sustainable Development Goals (SDGs) will result in a total of 475 million jobs by 2030 and care work is crucial to the future of decent work⁵. Despite a recent flurry of attention, definitions of care work vary widely. Most United Nations publications use the term “unpaid care work” quite broadly, synonymously with terms such as “non- market work” or the work of “social reproduction.” Some scholars define care work more specifically, focusing on the labour process rather than the relationship to the site of production (home versus market). Another definition considers care work as “*part of human activity, both material and social, that is concerned with the process of caring for the present and future labour force, [...]*” (EIGE, 2015). For the ILO Care work may be broadly defined as the “*activities and relations involved in meeting the physical, psychological and emotional needs of adults and children, old and young, frail and able-bodied*”⁶.

The global care workforce includes care workers in various sectors such as education and health and social work), domestic workers and non-care workers in care sectors, who support care service provision.

According to ILO (2018) estimates, the size of the paid care work corresponds to 381 million jobs around the world (249 million women and 132 million men), comprising

¹ In 2021, a Global Alliance for Care was launched by the National Institute of Women of Mexico and UN Women as a collective multisectoral initiative where governments, the private sector, international and philanthropic institutions and civil society organizations can participate and make concrete commitments to advance the care work agenda at the global level

² A guide to Public Investment in Care Economy , ILO-UN WOMEN Policy Tool , March 2021

³ Care work and care jobs for the future of decent work, ILO (2018).

⁴ Ibid

⁵ Ibid

⁶ ILO (2018). Care work report, op. cit., p. 6.

11.5 per cent of global employment or 19.3 per cent of global female employment and 6.6 per cent of global male employment.

Domestic work is the main occupation of millions of women and men throughout the world [at least 75.6 million men and women aged 15 or over]. Recent decades have seen a substantial increase in the number of migrant domestic workers, of whom women make up the overwhelming majority⁷. Care work is also performed on a paid basis in the public or market spheres, including personal services.

More specifically, domestic work is undervalued and poorly regulated, resulting in millions of domestic workers being overworked, underpaid and unprotected.⁸

Domestic workers

The Domestic Workers Convention, 2011 (No. 189), defines “domestic work” as “*work performed in or for a household or households*” and consequently identifies domestic workers with reference to their *place of work in or for a private household*, rather than the type of work they perform. The ILO Committee of Experts (CEARC) in the 2022 General Survey⁹ has noted that in some countries there are no legal definitions of “domestic worker” or “domestic work” and de facto definitions exist in practice. The Committee has also emphasized that, to ensure effective protection of the rights of domestic workers, the relevant legislation should ensure clarity with respect to the definition of terms and the scope of the specific laws and regulations governing domestic work. The Committee noted that governments have used a range of legal instruments to include domestic workers in the scope of national labour laws.

*Care workers:
who they are ?*

Personal care workers

These workers (caregivers), who are not qualified or certified as nurse¹⁰s, provide routine personal care to elderly persons, those with disabilities or others for day-to-day activities, such as feeding, bathing and carrying out basic health checks. They are particularly prevalent in long-term care provision, both in institutional settings and in home-based and community care. In many countries Trade Unions consider that 24-hour caregivers should be included in the definition of domestic workers¹¹, but in some countries they are excluded.

Nursing personnel

The ILO Convention no.149 offers a broad definition of the term “nursing personnel” as including “*all categories of persons providing nursing care and nursing services wherever they work*”. In most countries there is a legal definition of “nurse” or “registered nurse”, and in some cases there is also a legal definition of “nursing”. Other countries indicate that they do not have a legal definition of “nursing personnel”, but that a de facto definition exists in practice. In other countries, the definition of “nursing

⁷ United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of their families, General comment No. 1 on migrant domestic workers, (2011).

⁸ ILO (2018). Care work report, op. cit

⁹ General Survey “*Securing decent work for nursing personnel and domestic workers, key actors in the Care Economy*” ILO Committee of Experts (2022) In this Survey, the ILO Committee of Experts has examined four instruments related to decent work for care economy workers in a changing economy: the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011. The General Survey would provide a comprehensive survey of the situation in law and practice with respect to care workers, as related to Conventions No. 149 and 189.

¹⁰ *OECD Health Statistics 2021: Definitions, Sources and Methods*

¹¹ General Survey “*Securing decent work for nursing personnel and domestic workers, key actors in the Care Economy*”, op. cit.

personnel” or “nurse” has been embedded within a broader definition of “health workers”.

Care workers providing long-term home or institutional care

Long-term care (health and social) consists of a range of medical, personal care and assistance services that are provided with the primary goal of alleviating pain and reducing or managing the deterioration in health status for people with a degree of long-term dependency¹².

They have been neglected for many years and their work is significantly undervalued. During the pandemic, many migrant live-in domestic workers were summarily dismissed by their employers due to fear of infection, and many were left on the streets to fend for themselves, frequently with no means of returning to their home countries. In contrast, other migrant live-in domestic workers were forbidden to leave their employers’ homes, and as a result were often required to work excessive hours, while being unable to take leave or dispose freely of their rest time.

Overall, care workers remain some of the most vulnerable workers in the global economy. This is due in part to the lack of effective protection. They are also overexposed to OSH risks and to violence and harassment, which is a widespread phenomenon that is deeply embedded in patterns of society and too often seen as normal. More than half care workers in health services are among the 30 per cent lowest-paid workers with poor working conditions. Finally, these vulnerabilities result in significant decent work deficits.

The Gender dimension of Care Work

Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all women and men are entitled, in all countries and in all societies.

Women continue to make up the majority of this sector (76.2 per cent), although this share varies significantly across regions. In Latin America and the Caribbean, 91 per cent of domestic/care workers are women, while in the Arab States, men outnumber women and represent 63.4 per cent of the sector¹³.

In view of the highly gendered nature of the care work, the situation of care workers, including nursing personnel and domestic workers, mirrors the situation faced by women workers generally around the world, which is characterized by gender segregation and segmentation, poor working conditions, low remuneration, gender pay gaps, as well as an increased risk of violence and harassment.

The “unpaid care work–paid work–paid care work circle” has further implications for gender equality¹⁴. Informal employment is one of the main sources of the vulnerability of domestic/care workers. Some 81.2 per cent of them are in informal employment, which is twice the share of informal employment among other employees (39.7 per cent). An estimation by the ILO (2018) shows that unpaid care work for household production entails 16.4 billion hours of work time annually (equivalent of approximately 2 billion jobs). Three quarters of these unpaid work hours are performed by women. A “care drain” also comes into play as many women in poor countries leave their families behind in order to work as childcare or elder care workers in rich countries

¹² *OECD Health Statistics 2021: Definitions, Sources and Methods*

¹³ *Making decent work for domestic workers, ILO (2021)*

¹⁴ *Care at Work: Investing in care leave and service for amore gender equal world of work, ILO (2022)*

Close to two thirds of women and more than one quarter of men who continue in employment under the pandemic conditions state that they find the total (paid and unpaid) workload extremely difficult to cope with (UNDP Turkey 2020; Ilkkaracan and Memis 2020). The International Organisation of Employers (IOE) observes that the examination of the ILO legal instruments on nursing personnel and domestic workers is very timely as the world is facing a global health pandemic.

Gender inequality and discrimination against nursing personnel and other care workers affect the enjoyment of all their other labour rights. Different factors contribute to the undervaluation of care workers, including socio-cultural norms, beliefs and stereotypes surrounding the role of women and men. Traditionally, women have been portrayed as the “caregivers”, and society and labour markets continue to function largely on this assumption. The International Trade Union Confederation (ITUC) observes that gendered perceptions of women’s roles particularly in relation to caregiving, contribute to occupational segregation and the undervaluation of the work that women perform.

International labour standards (Conventions, Protocols and Recommendations) are universal instruments adopted by the international community and reflecting common values and principles on work-related issues.

In 2011 the ILO has adopted the Convention on Domestic Workers, 189 with the objective to improve living and working conditions for the millions of domestic workers throughout the world, guaranteeing a decent job that provides them with protections equivalent to those enjoyed by other workers. ILO Member States should set out decent work a reality for domestic/care workers, that requires:

- legal recognition of such workers in labour and social security laws¹⁵, affording adequate levels of protection that are, at a minimum, no less favourable than those enjoyed by other workers; and
- the effective implementation of those laws.

Paragraph 21(1) of the Domestic Workers Recommendation, 2011 (No. 201), indicates that Members should consider additional measures to particularly ensure the effective protection of migrant domestic workers.

Since the adoption of the Convention, much progress has been made in enacting laws that extend rights and protections to domestic/care workers, notably in the areas of working time, wages and maternity protection. But for an effective improvement to be achieved, laws and regulations must also be implemented fully.

What policy gaps are there?

The following points provide a summary of the gaps in the policy areas :

- Legal coverage;
- Working time, wages , social security and OSH;
- Violence and harassment.¹⁶

For example, for nursing personnel article 6 of the ILO Convention 149 states that they shall enjoy conditions at least equivalent to those of other workers in the country such as: hours of work,¹⁷(including regulation and compensation of overtime, inconvenient

*Standards
setting*

*Policy gaps and
Policy tools*

¹⁵ The challenge of legal form has been tackled by the ILO in 2006 in Employment Relationship Recommendation no. 198, and is highly present in domestic/care work and has in some jurisdictions become an important way for domestic workers to be subtracted from employment and social security protection through contractualization.

¹⁶ European Agency for Safety and Health at Work (EU-OSHA) (2014).

Current and emerging issues in the healthcare sector, including home and community care

¹⁷ For more information, paragraph 36(2) ILO Recommendation 157.

hours and shift work), weekly rest, paid annual holidays, educational leave, , maternity leave; sick leave; and social security.

Large deficits in care policies' coverage exist across the world¹⁸. In Africa, Asia and the Pacific, and the Arab States, coverage gaps are the widest, with detrimental health and economic consequences for people with care needs and care responsibilities (especially women). In Latin America and the Caribbean, although care policies are higher up on the policy agenda, substantial deficits persist, notably in terms of access to services. Even in high-income countries, the design and implementation of care policies does not systematically address those gender and social inequalities related to the division of care work and barriers to women's labour force participation.

Overall, there remains a paucity of gender-responsive and human rights-based policy approaches.

One important factor limiting a large majority of countries in their pursuit of adequate policies is resource-constrained settings. This underlines the importance of defined policy priorities and a fiscal space in order to generate the adequate levels of resources needed to support an expansion of care policies with particular attention to promoting gender equality (ILO 2018; Stiglitz 2016; UNCTAD 2017; UN Women 2018).

The European Pillar of Social Rights lays down the political promise of dignified ageing by acknowledging the need to "*provide affordable care services of good quality for everyone*" (European Parliament, Council and Commission 2017). However, this goal cannot be achieved without actively addressing the rights of those who provide care as a profession. A general open question is whether the emerging care platforms operate based on worker-initiated offers and matching and long-term care relationships between the carer and care seeker or if care platforms will move towards algorithm-based matching with a focus on one-off care services. The latter one would reinforce problematic aspects of the working relationship between platform, client and care worker and would indeed foster an "uberisation" of care work.

Litigations in care work

The effective regulation of the conditions of employment of care workers and the enforcement of their fundamental principles and rights at work require transformative care policies grounded on human and labour rights¹⁹. Transformative care policies are a key component of the ILO 5R Framework for Decent Care Work to promote a high road to care work by recognizing, reducing and redistributing housework and family care, rewarding care workers fairly, while generating sufficient care jobs to meet the demand and giving care workers rights, voice and representation in social dialogue and collective bargaining.

In view of the particular characteristics of the domestic work, which often include isolation, dependency on the employer, lack of representation and intermediation, it is crucial for those workers, and more generally for all care workers, to be able to know their rights so that they can exercise them effectively. In some countries, special procedures have been established to resolve employment disputes in this sector. National courts have also made reference to the Convention in relation to violations of the labour rights of domestic workers.

Article 16 of Convention No. 189 requires Members to "*take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or*

¹⁸ Care work and care jobs for the future of decent work, ILO (2018)

¹⁹ Care at Work: Investing in care leave and service for amore gender equal world of work, ILO (2022)

other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally". This may require²⁰ special measures that take into account the barriers that domestic workers often encounter when seeking redress for violations of their rights. In addition, the institution of criminal procedures is a necessary part of ensuring decent work for domestic workers, particularly in cases of physical and sexual abuse, trafficking and forced labour.

Dispute resolution mechanisms include access to the courts and labour dispute settlement committees and bodies, as well as special bodies handling disputes involving domestic workers. The ILO Committee of Expert (CEARC)²¹ noted that in some countries complaints mechanisms are not available to domestic workers, nor have systems been established for the mediation or conciliation of individual disputes in the sector. This often amounts to denial of justice, as access to the courts requires legal assistance and proceedings may be protracted and costly. According to the analysis carried out by the ILO Committee of Expert (CEARC²²) the consequences of dismissal are worse for live-in domestic workers than for other workers because of their dependence on the employer's home. In cases of termination at the initiative of the employer, given the unequal bargaining power between the parties, countries should take measures to ensure that termination is not agreed under conditions of coercion or duress.

Recently, some national courts have instructed governments to modify the legislation on domestic workers.

Confronted with low pay and problematic working conditions, care workers around the world have turned to the courts, attempting to invoke the protections of traditional labour and employment law. Despite care work being a genuine global system of work, the current gaps in the labour law system set the stage for inconsistent rulings, conflicts of law and legal uncertainty eroding worker protection.

Despite some progress in care work policies, there is a number of significant gaps in the design and availability of policies in terms of better conformity of national laws to international labour standards such as :

*Main
challenges*

- gender inequalities and discrimination,
- new occupational safety and health (OSH) challenges in the health and social care sectors,
- increase of violence in health care settings. The Violence and Harassment Convention, 2019 (No. 190), applies to all nurses, including volunteers, irrespective of their contractual status.²³
- employment contract,
- contractual requirements specific to migrant domestic workers,
- minimum wage
- access to the courts and to appropriate, speedy, inexpensive, fair and efficient dispute resolution mechanisms,
- ensuring working conditions at least equivalent to those of other workers.

The need for increased public investment in the care economy has long been an issue in policy debates. Another challenge for National Authorities concerns the law

²⁰ General Survey "Securing decent work for nursing personnel and domestic workers, key actors in the Care Economy" ILO Committee of Experts (2022)

²¹ Ibid

²² Ibid

²³ Moreover, under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), sexual harassment is considered to be a form of sex-based discrimination.

enforcement. A well-functioning labour administration and inspection system aligned with international labour standards is a key element of the effective and efficient governance of labour law. The specificities of care work work, including the diversity of the parties in the employment relationship and monitoring into private homes, constitute a challenge when developing compliance policies, which require a detailed knowledge of the characteristics of the sector²⁴. Hence, labour law sits at the intersection of a regulatory nexus which includes sound labour relations and the promotion of legal and institutional frameworks based on international labour standards, including fundamental principles and rights at work²⁵.

Shortcomings in social policies demand action on the organization of care work from governments, employers, trade unions and individual citizens. If not addressed properly, current deficits in care work and its quality will create a severe and unsustainable global care crisis and further increase gender inequalities in the world of work. What policies can be put in place to recognize, reduce and redistribute unpaid care work, create more and decent jobs for care workers, and guarantee care workers' representation, social dialogue and collective bargaining?

The high road to care work needs to be grounded in transformative measures to accelerate progress and invest in care to fill the policy gaps in five main policy areas: care, macroeconomics, social protection, labour and migration²⁶. These policies are transformative when they contribute to the recognition of the value of unpaid care work, the reduction of the drudgery of certain forms of care work and the redistribution of care responsibilities between women and men and between households and the State. The policies need also to reward paid care workers adequately and promote their representation, as well as that of care recipients and unpaid carers. Moreover, to maximize their transformative impact, care policy packages need to be rights-based and gender-responsive, integrated, universal, and based on solidarity, representation and social dialogue²⁷. The transition is therefore from an exploitative, socially marginalized status, to what the ILO refers to as a "decent work" core²⁸. Thus, the law and practice frame the notion of decent work for domestic/care workers²⁹.

The ILO Supervisory bodies have called for labour standards to be extended to domestic/care workers, but the stories behind these changes in law underscore the often-underestimated role of international labour standards as powerful tools of empowerment. The effective implementation in law and practice of international labour standards can create a human-centred development cycle that raises standard of working and living conditions in the respect of fundamental principles and rights at work.

Conclusions

²⁴ Labour Inspection Convention, 1947 (No. 81), and its accompanying Recommendation No. 81, the Labour Administration Convention, 1978 (No. 150), and its accompanying Recommendation No. 158, establish the basic regulatory framework for labour inspection

²⁵ Stories of Care: A labour of Law, L.JB Hayes (2017)

²⁶ Care at Work: Investing in care leave and service for amore gender equal world of work, op. cit

²⁷ Ibid

²⁸ The ILO has placed care work at the heart of the Women at Work and the Future of Work Centenary Initiatives. The achievement of gender equality at work is also an urgent priority as a result of the adoption of SDG 5, which aims at recognizing and valuing unpaid care work "through the provision of public services, infrastructure and social protection policies" (target 5.4).

²⁹ Regulating Decent Work for Domestic Workers, Adelle Blackett in Canadian Journal of Women and the Law

Knowledge Sharing Event

OBJECTIVE

Drawing on the guidance from international labour standards (ILS), current policy debate and case law at national level, the knowledge sharing aims at supporting a comparative analysis of current policies gaps and good practices in transformative care work measures, including case law ruling litigations.

More specifically, the event intends to facilitate an international debate amongst labour law professionals and practitioners on the guiding role and effective implementation of ILS in a fragmented and challenging context related to the safeguard of minimum rights and protections for all workers in the care economy. The key findings of this exchange will produce a wealth of contents and case studies for further dissemination at international level. The decisions gathered during the debate will also be used to enrich the ITCILO database of court decisions, a key tool for judges and legal practitioners worldwide.

TARGET

Judges, labour lawyers, academics, representatives from ministries, social partners, cooperatives and associations of care workers .

CONTENTS & STRUCTURE

The three-day debate aims to provide an outstanding opportunity to analyse and discuss the implications and challenges brought about by the lack of enacting laws and related enforcement mechanism to extend rights and protection in a highly gendered care work and the consequent impact on Court decisions concerning the application of ILS and substantive rights for care workers .

More specifically, the knowledge sharing opens a dialogue focused on critical issues arising in the framework of policy gaps and labour disputes.

The online discussion offers a well-structured update on technical issues and an interactive platform facilitated by international experts from the ILO, other International Organizations and Academic institutions worldwide.

During the three-day event participants will have the opportunity to update knowledge and share experiences & case studies on the following topics:

- Recent comparative studies at international level on the challenges in care work;
- Transformative policies and gender equality
- Effective implementation of relevant ILS;
- Analysis of Case Law;
- Comparative analysis of the trends worldwide.

The programme is designed to engage participants in immersive debate to discuss the tough challenges. The programme will be interactive and participatory and will be structured as follows:

- Live webinars on the above mentioned topics with the involvement of International experts ,
- interactive discussions on case studies,
- Presentation of key findings.

The online knowledge-sharing event is structured in two main components:

- a) Asynchronous phase : in the E Campus ***Towards decent work in the Care Work*** participants will have the opportunity to consult and share the following resources :
 - ◆ Virtual library,
 - ◆ Access to Continuing Legal Education on ILS (CLE) – Module 1,
 - ◆ Results of thematic discussions,
 - ◆ Collection of case studies and practices.

- b) Synchronous phase: during **n. 3 live webinars** participants will be actively involved in thematic review, peer – to – peer learning, discussions in plenary sessions.

+++

International Labour Standards, Rights at Work and Gender Equality, ITCILO
Phone: +39.011.693.6600 ● E-mail: ils@itcilo.org