

## **Women in the Informal Economy: Fighting Discrimination through Economic and Social Rights**

The informal economy encompasses various types of both paid and unpaid work characterized by a lack of protection of workers in terms of working conditions, social security, fair wages, health insurance, access to resources, and collective bargaining. Women represent the majority in these informal sectors of economy, a situation both consequence and cause of discrimination<sup>1</sup>. One especially disadvantaging practice is that women are burdened with the unpaid reproductive work<sup>2</sup> thus limiting their access to the formal labour market. A number of other factors contribute to the relegation of women to the invisible segments of occupation and impede their emancipation from poverty and marginalization. Firstly, their limited access to education in general, and vocational training in particular, notably diminishes chances of gainful employment<sup>3</sup>. In addition, the wage gap present in formal economic activities is reproduced in the informal sector, causing a systemic lack of financial independence of women, therefore continuing patriarchal family models in many societies<sup>4</sup>. Women's condition is worsened by their segregation to sectors associated to gender roles as, for instance, domestic services and personal care, which are in turn considered less important and skill requiring than men-dominated jobs<sup>5</sup>. These circumstances have a negative impact on women's right to a decent work but also affect their overall societal role, relegating them to a position of economic dependency and lack of bargaining power on the one hand, and ever-increasing working burdens on the other. When examining this plague affecting contemporary societies, some questions inexhaustibly arise: how is it possible to improve women's situation? Which tools do we have to contrast discrimination in the context of informal economy? As political will varies over time and major economic forces, like multinational corporations, have strong interests in perpetuating the low-income and discriminatory informal sectors in the name of profit, a more effective instrument, capable of restraining economy and orient policies, is needed. Economic

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<sup>1</sup> Employment Policy Department, "The Informal Economy and Decent Work: A Policy Resource Guide, Supporting Transitions to Formality" (International Labour Office, 2013), s. 6.1

<sup>2</sup> Reproductive work means 'work that is primarily done in households to continue to reproduce the labour force on a daily basis', *supra* note 1.

<sup>3</sup> Sylvia Chant and Carolyn Pedwell, "Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward" (International Labour Office, 2008), 18-20.

<sup>4</sup> *Supra* note 3, 1-2.

<sup>5</sup> Rania Antonopoulos, "The Unpaid Care Work - Paid Work Connection" (Policy Integration and Statistics Department, International Labour Office, May 2009), 16-17.

and social rights constitute this tool, as they specifically address not only discrimination, as all the major human rights instruments do, but also a number of rights with the potential to significantly improve and protect women who work in the informal economy and provide extensive safeguards against intersectional discrimination while promoting substantive equality<sup>6</sup>. The right to social security, the right to education, the right to an adequate standard of living and the right to health may prove incredibly useful to the purpose of combating women's exploitation in the informal economy by giving them the opportunity to satisfy their basic needs and to gain abilities and knowledge necessary not only to find a decent employment, but also to advocate for their rights. The aim of this paper is to critically analyse how economic and social rights could give a substantive response to the issue of gender-based discrimination and women segregation in the informal economy and what are the current obstacles to their full implementation. To this purpose, the first paragraph introduces the definition of informal economy and its effects on women's lives while the second part of the paper is dedicated to a specific analysis of economic and social rights' potential to improve working and living conditions and to provide a way out of informality and discrimination.

### **1. Defining informal economy and its impact on women**

The current notion of informal economy is the outcome of an evolution process that dates back to the Seventies, when the existence of an 'informal sector' was first conceptualised. The scope of the original concept was limited to traditional activities falling outside the modern industrial modes of production<sup>7</sup>. However, industrial growth proved incapable of absorbing this sector in the formal realm and the Nineties witnessed a shift to a broader idea of informal economy, encompassing a wider range of employment modes, defined as 'all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements'<sup>8</sup>. Under this negative definition fall quite diverse situations ranging from own-account work, either for the production of subsistence goods or not, to

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<sup>6</sup> See UN Committee on Economic, Social and Cultural Rights, "General Comment No. 20. Non-Discrimination in Economic, Social and Cultural Rights (art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)," July 2, 2009, 20, E/C.12/GC/20.

<sup>7</sup> Martha Alter Chen, Joann Vanek, and Marilyn Carr, *Mainstreaming Informal Employment and Gender in Poverty Reduction: A Handbook for Policy-Makers and Other Stakeholders* (Ottawa: IDRC Books/Les Éditions du CRDI, 2004).

<sup>8</sup> General Conference of the International Labour Organization, 90th Session, "Resolution Concerning Decent Work and the Informal Economy," 2002.

contributing family work and informal jobs, defined on the basis of the employment relationship<sup>9</sup>. Before analysing the involvement of women in these sectors and its impact on living conditions, it is important to underline some of key features of informality. Firstly, informal activities have proven a permanent pattern and not only temporary pockets of underdevelopment in an overall process of growth towards free market and industrial capitalism<sup>10</sup>. Given its stability in time, the informal economy clearly is not isolated from the formal dimension and the distinction between the two is often blurred. For instance, as a result of the increased competition on globalized markets, companies and transnational enterprises tend to favour less expensive forms of labour and subcontract their productive activities to informal enterprises<sup>11</sup>. Another inherent characteristic, as mentioned above, is the lack of homogeneity of the categories going under the label of informality, a fact that makes generalisations often inaccurate. Nevertheless, women occupy quite defined sectors within the informal economy, namely they are mainly employed in the service sector, in subsistence agriculture, or as family contributing workers<sup>12</sup>. The problems arising from an informal condition present two dimensions: a general one, affecting all informal workers indiscriminately, and a gender-specific aspect that captures those issues related to discrimination, maternity, childcare, and relative to the particular types of employment women undertake. Some widespread issues arising from the lack of legal protection characteristic of informality are the insecurity of work and income, the exclusion from social security and public services, the weakness of workers in terms of bargaining power, and the lack of enjoyment of rights at work<sup>13</sup>. This, together with the absence of control on the workplace by public authorities, often contributes to hazardous working conditions worsened by the process of decentralization and subcontracting of production that has multiplied the number of employers, boosting instability and deregulation of the labour market and thus jeopardizing the rights and

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<sup>9</sup> International Labour Office, "Women in Labour Markets: Measuring Progress and Identifying Challenges" (International Labour Organization, March 2010).

<sup>10</sup> Marty Chen, *Rethinking the informal economy: from enterprise characteristics to employment relations* in Neema Kudva and Lourdes Benería, *Rethinking Informalization: Poverty, Precarious Jobs and Social Protection* (Cornell University Open Access Repository, 2005), <http://ecommons.library.cornell.edu/handle/1813/3716>.

<sup>11</sup> Employment Policy Department, "The Informal Economy and Decent Work: A Policy Resource Guide, Supporting Transitions to Formality."

<sup>12</sup> *Supra* note 9.

<sup>13</sup> *Supra* note 11. See also Martha Alter Chen, Joann Vanek, and Marilyn Carr, *Mainstreaming Informal Employment and Gender in Poverty Reduction: A Handbook for Policy-Makers and Other Stakeholders*, 24-25.

benefits to which workers are entitled<sup>14</sup>. With regard to the powerlessness or absence of informal workers' organisations, the causes are represented by both practical hurdles, like the geographical dispersion of certain sectors, and the legal limitations on freedom of association, denying recognition to informal actors and, consequently, to their employers' organisations and trade unions<sup>15</sup>. Another problem informal workers face is underemployment, which consists in an insufficient amount of hours worked or, conversely, in long working hours to attain low wages<sup>16</sup>. All the above-mentioned shortcomings affect anybody employed in the informal economy and neither encompass patterns of discrimination nor include group-specific needs and vulnerabilities. For this reason, it is indispensable to conduct a gender-oriented analysis of the informal economy, taking in consideration the additional obstacles and onuses women have to bear. A first, pervasive impediment to decent work is discrimination, which operates in multiple ways and prevents women's economic empowerment. Women numerically prevail in the informal economy, especially in developing countries, and occupy the most unsecure and less remunerative positions within it<sup>17</sup>. In addition, they are burdened with the unpaid care work that comprises housekeeping and taking care of children, the elderly and other persons in need of assistance, within the family or the community. These activities constitute a time and energy-consuming occupation that limits women's access to the labour market, relegating them in low-income and insecure employment and reproducing discriminatory patterns that place on women the responsibility of domestic tasks and reproductive functions<sup>18</sup>. There are several factors contributing to this situation: the insufficiency of family planning, child-care, and health services, the dependence of social security on formal employment, and the persistence of patriarchal family models, among others. This already disadvantaged situation is worsened by the fact that even women's paid work is poorly valued and wage differentials are strikingly severe in the informal economy<sup>19</sup>. Furthermore, informal employment mirrors women's discriminatorily assigned role of unpaid

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<sup>14</sup> Dan Gallin, "Organizing in the informal economy" in *Unprotected Labour: What Role for Unions in the Informal Economy?*, Labour Education No.127 (Bureau for Workers' Activities (ACTRAV), International Labour Organization, 2002), [http://www.ilo.org/actrav/what/pubs/WCMS\\_111464/lang--en/index.htm](http://www.ilo.org/actrav/what/pubs/WCMS_111464/lang--en/index.htm).

<sup>15</sup> *Supra* note 11, s.4.a2.

<sup>16</sup> *Supra* note 7, 45-46.

<sup>17</sup> *Ibidem*, 37-39. See also Rania Antonopoulos, "The Unpaid Care Work - Paid Work Connection."

<sup>18</sup> Debbie Budlender, "Why Should We Care about Unpaid Care Work?" (United Nations Development Fund for Women (UNIFEM), 2004), 2-8.

<sup>19</sup> *Supra* note 7, 29-31; 43-45.

carers in that it clearly presents sectors associated to women's employment. These are considered less valuable in terms of importance and required skills, they are characterised by lower earnings, and nevertheless are often guided by men, who occupy managerial positions<sup>20</sup>. Hence, occupational segregation means difficulties to obtain a *de facto* recognition of the equal value of female-dominated jobs in the domestic, agricultural, textile and service sectors, and lack of vertical mobility, namely the access to positions where men are the majority and to the formal economy. Women's relegation to the lower levels of informal economy is compounded by the inadequacy of training opportunities: skills and capacities development improves employment conditions and work opportunities but formal training systems are commonly inaccessible to women both physically, as many of them work at home or in remote rural areas, and socially, due to discriminatory traditional norms<sup>21</sup>. The restricted enjoyment of vocational training and, generally, of the right to education, coupled with the lack of knowledge concerning rights at work, jeopardises the already weak bargaining power of women in the informal economy<sup>22</sup>. Finally, a situation of gendered disadvantage exists also with regard to accessing productive assets, such as property and capitals, because of the discriminatory exclusion of women from land tenure and inheritance, male predominance in productive activities ownership, and women's subordination, like in the case of contributing family workers who have no control over the household finances<sup>23</sup>. The cumulative effect of these unfavourable conditions are unsurprisingly connected to poverty: discrimination, the burden of unpaid care work, irregular and insecure earnings make women workers vulnerable to external events so that any crisis could lead to destitution<sup>24</sup>. All these elements clearly point towards a unique direction: the present situation of women in the informal economy is no longer acceptable and there is urgent need for change. Economic and social rights respect and implementation might represent an effective pattern of transformation or, at least, part of the solution to the problems delineated.

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<sup>20</sup> Rania Antonopoulos, "The Unpaid Care Work - Paid Work Connection," 16-18. See also International Labour Office, "Women in Labour Markets: Measuring Progress and Identifying Challenges," 37-40.

<sup>21</sup> Sylvia Chant and Carolyn Pedwell, "Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward," 18-20.

<sup>22</sup> *Supra* note 11, s.6.

<sup>23</sup> *Ibidem* s.6-6.1.

<sup>24</sup> Renana Jhabvala and Shalini Sinha, "Social Protection for Women Workers in the Informal Economy," *Comparative Labour Law & Policy Journal* 27, no. 2 (2006): 167-185.

## 2. Economic and social rights as means of women's empowerment

The extension of the enjoyment of economic and social rights (ESRs) to women in the informal economy would constitute a major transformation and improvement in their living and working conditions, income security, employment opportunities, and economic independence. However, a ESRs-based approach would be effective only bearing in mind the complexity of the situation and the necessity to address not only particular aspects of women's condition, but the totality of issues negatively impacting them<sup>25</sup>. In this concern, it is also important to underline the indivisibility and interdependence of human rights: even if the focus here is on economic and social rights, their attainment is strictly connected to the enjoyment of civil and political rights<sup>26</sup>. A first example of this interrelation is the fundamental right to non-discrimination, which is enshrined in every human rights treaty regardless of categorisations. As discussed above, discrimination is a pervasive issue for women trying to access or working in informal sectors and, therefore, the implementation of its prohibition is indispensable. Nevertheless, formal non-discrimination is not sufficient to reach a radical improvement because laws, policies, and practices that are *prima facie* neutral could still have discriminatory effects<sup>27</sup>. It should be emphasised that the obligation imposed by the right to non-discrimination consists in accomplishing substantive equality and allows the adoption of special measures aimed at achieving equality of opportunity<sup>28</sup>. The realisation of substantive equality for women requires taking action in many areas and, in particular, guaranteeing the implementation of ESRs but also of the right to property. The latter, although considered a negative right and the symbol of liberalism, has a fundamental value for the realisation of women's empowerment because the limited access to land and productive resources is at the root of gendered poverty and exclusion<sup>29</sup>. There are multiple factors restricting women's right to property, such as the lack of effective legislation and the persistence of discriminatory cultural attitudes, requiring a

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<sup>25</sup> Barbara Harriss-White, "Inequality at Work in the Informal Economy: Key Issues and Illustrations," *International Labour Review* 142, no. 4 (2003): 459-469.

<sup>26</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), "General Comment No. 3. The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)," December 14, 1990, 3, E/1991/23, §8.

<sup>27</sup> UN Committee on Economic, Social and Cultural Rights, "General Comment No. 16. The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)," August 11, 2005, E/C.12/2005/4, §8.

<sup>28</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13, art.4(1).

<sup>29</sup> UN Women and Office of the High Commissioner for Human Rights, "Realizing Women's Rights to Land and Other Productive Resources," 2013, HR/PUB/13/04.

multi-layered response that should encompass measures to protect women from forced eviction, to include wives in the registration of property, and to ensure the security of tenure, access to loans, and inheritance rights<sup>30</sup>. Turning to ESRs, it is worth noting that usually the right to social security and the rights concerning conditions at work and trade unions are considered the only relevant for workers for their significant and direct impact. Yet, a number of other economic and social rights play a complementary role in enhancing the condition of women in the informal economy and of workers in general. Among these are the rights to health, education, and adequate standard of living, the right to be free from hunger, and the protection of motherhood. A comprehensive approach and implementation are indispensable to bring about an actual and durable transformation, as each of these rights has the potential to give women the means to improve their living conditions and achieve independence. A first right whose enjoyment by women in the informal economy would have an uncontested positive impact, is the right to social security, which is recognised, *inter alia*, in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in the Universal Declaration of Human Rights (UDHR)<sup>31</sup>. Social security ensures protection in a number of circumstances like sickness, unemployment, old age, disability, widowhood, or employment injury, and overlaps with the right to health and the protection of maternity<sup>32</sup>. The main difficulty regarding its realisation is the marginalisation or thorough exclusion of informal workers from social protection schemes due to a number of reasons, the most influential being the orientation of the system towards formal employment, the dependence of benefits on contributions, and the inadequacy of schemes, which focus on the long-term to the detriment of day-to-day needs<sup>33</sup>. Some general solutions that would benefit all informal workers are represented by the broadening of the notion of employee to include any forms of economic dependency, the tailoring of social security on the short-term risks existing in the informal economy, and the introduction of a proportionality criterion for contributions<sup>34</sup>. Although the extension of social security to informal sectors would partially relieve women from the burden of unpaid care

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<sup>30</sup> *Ibidem*.

<sup>31</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3, art.9. Universal Declaration of Human Rights, 10 December 1948, art.22.

<sup>32</sup> UN Committee on Economic, Social and Cultural Rights, "General Comment No. 19. The Right to Social Security (art. 9)," February 4, 2008, 19, E/C.12/GC/19.

<sup>33</sup> Nicola Smit and Letlhokwa George Mpedi, "Social Protection for Developing Countries: Can Social Insurance Be More Relevant for Those Working in the Informal Economy?," *Law, Democracy & Development* 14 (2010): 159–187.

<sup>34</sup> *Ibidem*.

work, it should also meet their specific needs. It has to prohibit dismissal based on pregnancy, and to guarantee maternity benefits, as prescribed by article 10(2) ICESCR, and childcare, which is indispensable to enable mothers to dedicate more time to work and obtain income security<sup>35</sup>. These latter measures constitute also a way to fulfil the 'special care and assistance' to which motherhood and childhood are entitled<sup>36</sup>. Social security and maternity protection are also dependent on and linked to the right to health, which entails at the very least free primary health care, to the benefit of poor households<sup>37</sup>. Other initiatives that would diminish health risks for women are the introduction of state-funded or, when appropriate, contributory health insurances and the realisation of health educational programmes giving basic, life-saving health information and promoting diseases prevention<sup>38</sup>. However, the right to health alone is not sufficient to secure the wellbeing of women and their families, as this might be threatened by economic insecurity. As already mentioned, social security would be the preferential means to address this issue but, in effect, there are situations where the invisibility of women's employment or their extreme destitution require an immediate and incisive action. It is in such cases that the right to an adequate standard of living comes into play, imposing on states the obligation to mitigate and alleviate hunger and to provide basic housing<sup>39</sup>. The guarantee of minimum subsistence is fundamental for the satisfaction of short-term basic needs but other rights are necessary to achieve the permanent improvement of women's conditions. One of these is access to education for girls, which increases their future opportunities in the labour market, their awareness about rights at work, and has proven capable of breaking the poverty cycle<sup>40</sup>. Among the obstacles in the field of education, a major one is the entrenchment of discriminatory practices that prevent girl children from entering or continuing their education but it has been shown that this form of discrimination could be overcome by granting

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<sup>35</sup> Convention on the Elimination of All Forms of Discrimination against Women, art.11(2); Renana Jhabvala and Shalini Sinha, "27 (2) Comp. Lab. L. & Pol'y. J. (2005-2006)."

<sup>36</sup> UDHR, art.25(2).

<sup>37</sup> Independent Expert on the question of human rights and extreme poverty, "Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Maria Magdalena Sepúlveda Carmona," March 17, 2011, UN Doc. A/HRC/17/34 (2011), §15-16.

<sup>38</sup> Renana Jhabvala and Shalini Sinha, "27 (2) Comp. Lab. L. & Pol'y. J. (2005-2006)."

<sup>39</sup> *Supra* note 37; UN Committee on Economic, Social and Cultural Rights, "General Comment 12 (Twentieth Session, 1999). The Right to Adequate Food (art. 11)," May 12, 1999, 12, E/C.12/1999/5, §6.

<sup>40</sup> *Supra* note 11, §6; International Labour Conference, 100th Session 2011, "Report I(B) - Equality at Work: The Continuing Challenge - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work."



incentives to parents, a measure that has proven effective also in combating child labour<sup>41</sup>. The implementation of the rights described insofar regards areas to a greater or lesser extent related to informal employment but still external to it, with a focus on women's livelihood rather than on their workplace. The right to just and safe working conditions complement those 'external' rights as it prevents hazardous situations at work, thus reinforcing the right to health, limits working hours and, in general, reduces the likelihood of exploitation<sup>42</sup>. However difficult it could be tracking informal businesses, it is of the utmost importance to extend working conditions standards to the informal economy and states have not only the responsibility to carry out labour inspections, but also to regulate the presence and activities of transnational corporations<sup>43</sup>. A recent positive development is represented by the ILO Domestic Workers Convention that, although it has been ratified only by 12 countries insofar, constitutes a significant recognition of the existence of the informal economy and the need to ensure workers' rights within it<sup>44</sup>. Specific rights should also be accompanied by wider action to bring about political change. A significant tool to give women in the informal economy bargaining power and visibility in the political arena, thus bringing about the accountability of decision-makers, is the right to form or join trade unions<sup>45</sup>. The right in itself makes clear that there are two main possibilities for women informal workers: to create new unions through self-organisation or to join already existing unions. Both paths presents some difficulties: forming new organisations might be precluded by the dispersion of informal workers while, on the other hand, existing trade unions are usually based on the industrial model, where men and their needs prevail, leaving insufficient room for the wide variety of occupations in the informal economy and gender-specific requirements<sup>46</sup>. Irrespectively of the option chosen, a precondition to the enjoyment of this right that clearly reaffirms the interdependence of civil and political rights and ESRs, is the protection of freedom of association. In addition, it is essential to remove all legal barriers to informal workers' organisation because the

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<sup>41</sup> *Supra* note 11, §6.

<sup>42</sup> "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: [...] (b) Safe and healthy working conditions; [...] (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays," ICESCR, art.7.

<sup>43</sup> See *supra* note 11, §4a2.

<sup>44</sup> Convention concerning decent work for domestic workers (No.189), (adopted 16 June 2011, entered into force 05 September 2013).

<sup>45</sup> See ICESCR, art.8 and UDHR, art.23(4).

<sup>46</sup> *Supra* note 14.

representation of informal sectors of employment is not only a tool for workers to pursue their interests, but also an instrument for the government to solve economic and social problems and to boost democratic participation<sup>47</sup>. To make the implementation of the rights described effective and thus actually empower women, the principles of transparency, participation and accountability must be applied. Solutions imposed with a top-down approach without consulting the individuals concerned would result in more harm than benefit and would not meet women's real needs. Another key element for the success of the policies suggested is monitoring. In fact, the lack of reliable data on the informal economy is a crosscutting issue that impedes rights realisation<sup>48</sup>. A final good practice that should be adopted more extensively is gender mainstreaming, which consists in a constant assessment of the gender implications of policies, legislation and programmes in any area of public activity, and that has proven useful to enhance gender equality<sup>49</sup>.

## **Conclusion**

Although the protection of women workers in the informal economy is just at its beginning, it benefits from the increasing attention to gender issues and some progress, like the adoption of the Domestic Workers Convention, has already been made. The growing concern about the informal economy also concurs to reinforce the effort towards regulation and protection of workers' rights. However, public policies are still inconsistent and often ineffective and, although there is increasing recognition of the indivisibility and interdependence of rights, few states have incorporated ESRs in their legal system. These facts, together with the harshness of living and working conditions that women still face in the informal economy, call for a stronger international advocacy and a greater effort by states to realise the universal enjoyment of rights. The potential for bringing about change, however, is in women's hands. As shown by the campaign for the international protection of domestic workers<sup>50</sup>, women's direct organisation and advocacy are powerful instruments for transformation.

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<sup>47</sup> *Supra* note 11, §5.

<sup>48</sup> *Ibidem*, §1.

<sup>49</sup> International Labour Conference, 100th Session 2011, "Report I(B) - Equality at Work: The Continuing Challenge - Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work," 19-21.

<sup>50</sup> "Pressure Grows to Protect Domestic Workers," *Human Rights Watch*, October 28, 2013, <http://www.hrw.org/news/2013/10/27/pressure-grows-protect-domestic-workers>.

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