



*Fair, safe and productive workplaces*

# Labour



**Canadian Position with Respect to  
a Convention and Recommendations  
adopted at the 99<sup>th</sup> session (June 2010),  
100<sup>th</sup> session (June 2011) and  
101<sup>st</sup> session (June 2012) of the  
International Labour Conference,  
Geneva, Switzerland**

**Canadian Position with Respect to  
a Convention and Recommendations  
adopted at the 99<sup>th</sup> session (June 2010),  
100<sup>th</sup> session (June 2011) and  
101<sup>st</sup> session (June 2012) of the  
International Labour Conference,  
Geneva, Switzerland**

**Canadian Position with Respect to a Convention and Recommendations adopted at the 99<sup>th</sup> session (June 2010), 100<sup>th</sup> session (June 2011) and 101<sup>st</sup> session (June 2012) of the International Labour Conference, Geneva, Switzerland.**

You can download this publication online at [www12.hrsdc.gc.ca](http://www12.hrsdc.gc.ca).

This document is available on demand in multiple formats (large print, Braille, audio cassette, audio CD, e-text diskette, e-text CD, or DAISY), by contacting 1 800 O-Canada (1-800-622-6232). If you use a teletypewriter (TTY), call 1-800-926-9105.

© Her Majesty the Queen in Right of Canada, 2014

For information regarding reproduction rights, please contact via e-mail Employment and Social Development Canada at [droitdauteur.copyright@HRSDC-RHDCC.gc.ca](mailto:droitdauteur.copyright@HRSDC-RHDCC.gc.ca) .

**PDF**

Cat. No.: Em8-1/2014E-PDF  
ISBN No: 978-1-100-23206-5

**ESDC**

Cat. No. : LT-265-02-14

## TABLE OF CONTENTS

	Page
1. Introduction .....	2
<b>HIV AND AIDS RECOMMENDATION, 2010 (RECOMMENDATION 200)</b> .....	<b>3</b>
2. Legislative jurisdiction .....	3
3. General description .....	3
4. Canadian situation with respect to the Recommendation concerning HIV and AIDS and the World of Work .....	6
<b>DOMESTIC WORKERS CONVENTION AND RECOMMENDATION, 2011 (CONVENTION 189 AND RECOMMENDATION 201)</b> .....	<b>9</b>
5. Legislative jurisdiction .....	9
6. General description .....	9
7. Canadian situation with respect to the Convention and Recommendation concerning Decent Work for Domestic Workers .....	13
<b>SOCIAL PROTECTION FLOORS RECOMMENDATION, 2012 (RECOMMENDATION 202)</b> .....	<b>14</b>
8. Legislative jurisdiction .....	14
9. General description .....	14
10. Canadian situation with respect to the Recommendation concerning National Floors of Social Protection, 2012 .....	16
<b>APPENDICES</b> .....	<b>19</b>
Appendix A: Recommendation concerning HIV and AIDS and the World of Work, 2010 .....	20
Appendix B: Convention concerning Decent Work for Domestic Workers, 2011 .....	35
Appendix C: Recommendation concerning Decent Work for Domestic Workers, 2011 .....	45
Appendix D: Recommendation concerning National Floors of Social Protection, 2012 .....	54
Appendix E: Letters of Justice Canada Regarding the Appropriate Legislative Jurisdiction for the Instruments Adopted in June 2010, June 2011 and June 2012 .....	63
Appendix F: Record of the Votes Regarding the Instruments Adopted by the International Labour Conference in 2010, 2011 and 2012 .....	66
Appendix G: Text of Article 19 of the International Labour Organization (ILO) Constitution Regarding the Obligations of ILO Members in Respect of Adopted Conventions and Recommendations .....	69



## 1. Introduction

The purpose of this report is to bring instruments recently adopted by the International Labour Organization (ILO) to the attention of the competent authorities in Canada, as required by Article 19 of the ILO's Constitution.

This report addresses the **HIV and AIDS Recommendation, 2010**, adopted by the International Labour Conference (ILC) at its 99<sup>th</sup> Session in June 2010, the **Domestic Workers Convention and Recommendation, 2011**, adopted by the ILC at its 100<sup>th</sup> Session in June 2011 and the **Social Protection Floors Recommendation, 2012**, adopted by the ILC at its 101<sup>st</sup> Session in 2012. The report includes a general description of these instruments and an assessment of the extent to which current Canadian law and practice comply with their provisions.

### Background on the ILO

Established in 1919, the ILO became a specialized United Nations (UN) agency in 1946. It is a unique tripartite organization with representatives of governments', workers' and employers' organizations participating in the development and administration of ILO policies, programs and international labour standards. Canada was among the founding members of the ILO which currently has 185 member States.

The annual ILC, which brings together tripartite delegations from all member States, adopts international labour standards in the form of Conventions and Recommendations.

Conventions become binding instruments once ratified by a member State. Recommendations are non-binding and are not subject to ratification. They provide guidelines to ILO members for the development of national policy, legislation and practice or, where they accompany a Convention, offer guidance on implementation of the provisions of the Convention.

Under the ILO Constitution, all member States are required to bring newly adopted ILO instruments to the attention of the competent authority or authorities, to inform the ILO that this has been done, and subsequently, to report on the position of its law and practice with respect to the matters dealt with by the instruments, when required. In Canada, this obligation is met by tabling a report in Parliament, and where the instruments address issues falling within their jurisdictions, sending copies of the report to the provincial and territorial governments.

A member State has no obligation to ratify a Convention adopted by the ILC, but if it does ratify, it undertakes to implement the provisions of the Convention throughout its territory, and to report regularly to the ILO

on its implementation. Reports are subject to review by a Committee of Experts that reports annually to the ILC on the degree of compliance of member States with respect to ratified Conventions.

Failure to implement a ratified Convention can give rise to observations by the Committee of Experts. Based on the report of the Committee of Experts, member States may be asked to appear before the ILC Committee on Application of Standards and explain the reasons for non-compliance. In addition, another ratifying member State, or an organization of workers or employers, may make a representation to the ILO alleging failure to implement a ratified Convention.

## **HIV AND AIDS RECOMMENDATION, 2010 (RECOMMENDATION 200)**

### **2. Legislative jurisdiction**

The subject matter of this instrument falls under both federal and provincial jurisdictions.

### **3. General description**

#### **Background**

In March 2007, the ILO Governing Body decided to place an item on HIV/AIDS and the world of work on the agendas of the 98<sup>th</sup> and 99<sup>th</sup> Sessions of the ILC with a view to adopting an international labour standard in 2010. It was decided that the development of an international

instrument on this issue was important in order to increase attention to the response to HIV and AIDS in, and through, the world of work at the national and international levels; to promote collaboration among workplace actors and those of other sectors in national responses to HIV/AIDS; and to increase the impact of the 2001 ILO Code of Practice on HIV/AIDS and the World of Work. At the 2009 ILC, delegates decided that the new instrument would take the form of a Recommendation.

The HIV and AIDS Recommendation, 2010 builds on the 2001 ILO Code of Practice on HIV/AIDS and the World of Work. Recommendation 200 is the first international labour standard for the protection of human rights at work for persons living with and affected by HIV and AIDS. By adopting this Recommendation, ILO tripartite constituents reaffirmed their commitment to address HIV and AIDS and related discrimination in the workplace.

This non-binding instrument calls for the development and adoption of national tripartite HIV workplace policies and programs through an inclusive dialogue process involving governments, organizations of employers and workers, as well as organizations representing persons living with HIV.

#### **The Recommendation**

The Recommendation is divided into six sections.

**Part I** defines the terms used in the Recommendation. It defines “worker” as “any person working under any form or arrangement” and workplace refers “to any place in which workers perform their activity”.

**Part II** sets out the scope of application of the Recommendation as covering all workers and all workplaces, including interns and apprentices as well as armed forces and uniformed services. All sectors of the economy are covered, including the informal sector.

**Part III** outlines a number of General Principles that should be included in a national response to HIV and AIDS in the world of work. HIV and AIDS should be recognized as a workplace issue and an essential element of responses to the pandemic with full participation of workers’ and employers’ organizations. The response to HIV and AIDS should also be recognized as contributing to the realization of human rights and gender equality for all. Non discrimination, voluntary testing, as well as access to prevention, treatment, care and support services are also among the key principles outlined in Part III.

**Part IV** calls on ILO member States to develop and adopt national policies and programmes on HIV and AIDS in the workplace in consultation with social partners and organizations of persons living with HIV.

### *Discrimination and promotion of equality of opportunity and treatment*

Real or perceived HIV status should not prevent equal access to employment nor be a ground for termination of employment. Persons with HIV-related illness, with reasonable accommodation if necessary, should be able to continue to carry out their work, for as long as they are medically fit to do so. When general measures against discrimination in the workplace do not effectively protect workers against discrimination in relation to HIV and AIDS, existing measures should be adapted or new ones adopted. The Recommendation lists measures that should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact.

### *Prevention*

Prevention programs should ensure that all workers have access to accurate, up to date information on HIV and AIDS. Key elements include: comprehensive education programs to help men and women understand and reduce the risk of all modes of HIV transmission; effective occupational health and safety (OHS) measures; measures to encourage workers to know their own HIV status through voluntary counselling and testing; access to all means of prevention; and measures to reduce high-risk behaviors as well as harm reduction strategies.



### *Treatment and care*

All persons should have access to free or affordable health services including voluntary counselling and testing; antiretroviral treatment and adherence education; proper nutrition; treatment for opportunistic infections, sexually transmitted infections and HIV-related illnesses; and support and prevention programs for persons living with HIV, including psychosocial support.

There should be no discrimination against workers on the basis of real or perceived HIV status in access to social security systems, occupational insurance schemes or in relation to benefits under those schemes.

### *Support*

Care and support programs should include measures of reasonable accommodation in the workplace for persons living with HIV, taking into consideration the episodic nature of HIV and AIDS as well as possible side effects of treatment. Member States should promote the work retention and recruitment of persons living with HIV. HIV and AIDS should also be recognized as an occupational disease where a direct link can be established between an occupation and the risk of infection.

### *Testing, privacy and confidentiality*

Testing programs must be genuinely voluntary and respect international guidelines on confidentiality, counselling and consent. The results of HIV testing should be confidential

and not endanger access to jobs, job security or opportunities for advancement. Migrant workers should not be excluded from migration on the basis of real or perceived HIV status.

### *Occupational safety and health*

The working environment should be safe and healthy in order to prevent transmission of HIV in the workplace. Safety and health measures to prevent workers' exposure to HIV at work should include universal precautions, accident and hazard prevention measures, personal protective equipment and post-exposure prophylaxis and other safety measures. In occupations where there is a possibility of exposure, workers should receive education and training on modes of transmission and measures to prevent exposure and infection.

### *Children and young persons*

Member States should take measures to protect young workers against HIV infection, and to include the special needs of young persons in the response to HIV and AIDS in national policies and programs. Special measures should also be taken to protect children from sexual exploitation and child trafficking, especially in cases where the vulnerability of children is increased by the death or illness of caregivers due to AIDS.

**Part V** of the Recommendation deals with implementation. National policies and programs on HIV and AIDS in the workplace should be

implemented through various means including national laws and regulations; collective agreements; national and workplace policies and programs of action; and sectoral strategies with particular attention to sectors in which workers are most at risk. Implementation should be based on cooperation between employers, workers and governments, with the active involvement at their workplace of persons living with HIV.

Training, safety instructions and other types of guidance in the workplace related to HIV and AIDS should be provided in a clear and accessible form for all workers and be adapted to the characteristics of the workforce. The Recommendation notes that workers and their representatives should have the right to be informed and consulted on measures taken to implement workplace policies and programs related to HIV and AIDS and to participate in workplace inspections in accordance with national practice.

With a view to ensuring an effective response to HIV and AIDS, the role of the labour administration services, including the labour inspectorate and relevant judicial authorities should be reviewed and, if necessary, strengthened. There should be domestic coordination among labour, social security and health policies and programs.

International cooperation should also be encouraged between and among member States, their national structures on HIV and AIDS and relevant international organizations

and should include information exchange on all measures taken to respond to the HIV pandemic.

**Part VI** of the Recommendation calls on ILO member States to monitor, in collaboration with the social partners, developments in relation to their national policy on HIV and AIDS and the world of work. Member States should collect detailed information, statistical data and conduct research on developments in relation to HIV and AIDS in the world of work.

#### **4. Canadian situation with respect to the Recommendation concerning HIV and AIDS and the World of Work**

In 2011, in order to evaluate efforts already underway in Canada that implement the Recommendation's provisions, the Public Health Agency of Canada, in close collaboration with the Labour Program of Employment and Social Development Canada, undertook an environmental scan of existing policies and programs in Canada related to the issue of HIV and AIDS and the world of work and developed a report of Canadian best practices.

The report on best practices was designed to provide an overview of initiatives and resources that support Canada's efforts with respect to the provisions of ILO Recommendation 200. The scan included a review of legislation, regulations, policies, programs, as well as practices in relevant jurisdictions, policy sectors, and areas of economic activity. The findings were informed by interviews

with government officials, representatives of workers' and employers' organizations, as well as non-governmental organizations. Additional information was provided in the context of a tripartite panel presentation and a facilitated discussion on the Recommendation that was organized during a Roundtable on ILO issues hosted by the Labour Program in February 2011.

### **Results of the report:**

Canada is positively and extensively engaged in addressing the Recommendation's provisions. Many initiatives began well in advance of the adoption of the Recommendation in June 2010.

These measures are not implemented necessarily within a policy or program framework specific to HIV and AIDS and the world of work. Rather, they are embedded within broader frameworks of legislation, regulations, policies and practices which provide protection of human rights; access to prevention, treatment, care and support; promotion of equality of opportunity and treatment with respect to employment; and application of OHS measures to prevent occupational HIV transmission.

Canadian workers' and employers' organizations are actively engaged in initiatives addressing HIV issues in the workplace. The report highlights some of the activities undertaken by

workers' organizations, including those focused on raising awareness and information sharing as well as those contributing to counter stigma associated with workers living with HIV and AIDS. The report also outlines examples of efforts undertaken by employers' organizations, such as the development of practical guidelines by associations of professionals in the healthcare sector as well as initiatives aimed at employment of workers living with HIV and AIDS.

Below are some of the highlights of the report on best practices:

#### *Discrimination and promotion of equality of opportunity and treatment*

The report identified a range of legislative frameworks, policies and programs that address issues of workplace discrimination, and that promote equality of opportunity and treatment. Human rights, employment equity and labour standards laws are in place across federal, provincial and territorial jurisdictions, as are a number of policy and program measures to prevent discrimination and to promote equality of opportunity and treatment for persons living with HIV and AIDS. Measures have also been taken by federal, provincial and territorial governments, national and community-based AIDS organizations, and workers' and employers' organizations to address discrimination, access to prevention, treatment and care, and workplace accommodation.

### *Prevention, treatment and care*

In Canada, health is a shared responsibility across federal, provincial and territorial governments, with universal access to HIV prevention, treatment and care provided through a legislated publicly-funded health care system. Health legislation in Canada provides the framework for ensuring access to prevention, treatment and care for all citizens, and for all health conditions, including HIV and AIDS. Within this framework, HIV-specific policies and programs are in place across federal, provincial and territorial jurisdictions. The workplace has been identified among the settings for HIV prevention and education.

### *Support*

In Canadian jurisdictions, there are a range of measures in place to address reasonable accommodation in the workplace and the provision of income support to persons with disabilities. Persons living with HIV and AIDS have been interpreted in law to constitute a person living with a disability. Human rights laws, employment equity legislation and labour standards provide a legislative framework that promotes equality of opportunity and treatment with respect to employment as well as fair working conditions. Federal, provincial and territorial jurisdictions have programs in place to support the labour force participation of persons with disabilities, which are complemented by civil society initiatives. Income support measures are in place to mitigate the impact of

HIV and AIDS on workers and their families through federal, provincial and territorial programs, including Employment Insurance (sickness, compassionate care benefits), Canada Pension Plan disability (CPPD), Veterans' Benefits for Disability, Disability Tax Credits, Personal/Family Resources Registered Disability Savings Plan (RDSP), Workers' Compensation, Long Term Income Protection (LTIP), and provincial and territorial social assistance for disability. Extensive research, advocacy, policy and program development have also been undertaken through the Canadian Working Group on HIV/AIDS and Rehabilitation to strengthen measures for persons living with episodic disabilities.

### *Testing, privacy and confidentiality*

In Canada, the legislative framework in place governing testing, privacy and confidentiality is complex and varies across jurisdictions. The report identified overarching legislation to protect individual privacy and confidentiality for all Canadians, including people living with HIV and AIDS. Voluntary HIV testing in the context of a working environment is also broadly promoted. In order to protect workers in specific occupations in the case of occupational exposure to bodily fluids, some jurisdictions have specific and limited mandatory bodily fluid testing order provisions. In these specific and well-defined cases, mandatory testing provisions are intended to support early access to prevention and treatment for workers who have come in contact

with bodily fluids while carrying out specified functions or duties. The report findings indicate that civil society organizations, particularly national and community-based AIDS organizations, are actively engaged in developing and disseminating information related to HIV testing, human rights and the law.

#### *Occupational safety and health*

The report identified the broad legislative and regulatory framework in place in Canada governing OHS in the workplace as it relates to preventing occupational exposure to HIV. Federal, provincial and territorial policies, programs and administrative bodies are in place for OHS, as well as clear, evidence-based guidelines for infection control through universal precautions in health care and other high risk settings. Civil society measures were also identified, such as the development of policy and practice guidelines by health care professional associations, and information resources and promotional activities by OHS centers, national and community-based AIDS service organizations and unions.

#### *Children and young persons*

Canada's national frameworks for HIV and AIDS, *Leading Together: Canada Takes Action on HIV/AIDS*, and the *Federal Initiative to Address HIV/AIDS in Canada*, identified youth at risk as a priority population and further promote efforts in prevention, diagnosis, treatment, care and support. A number of interviewees

suggested that increasing awareness and education in the workplace to prevent HIV transmission among young workers is an area that could be further explored.

### **DOMESTIC WORKERS CONVENTION AND RECOMMENDATION, 2011 (CONVENTION 189 AND RECOMMENDATION 201)**

#### **5. Legislative jurisdiction**

The subject matter of this instrument falls under both federal and provincial jurisdictions.

#### **6. General description**

##### **Background**

In March 2008, the ILO Governing Body decided to place the development of an instrument on domestic work on the ILC agenda. During the first ILC discussion on domestic work in 2010, the Conference agreed to develop a Convention on domestic work supplemented by a Recommendation.

Following two years of discussion, in June 2011, at its 100<sup>th</sup> Session, the ILC adopted the Domestic Workers Convention and Recommendation, also known as the Convention (No. 189) and Recommendation (No. 201) concerning Decent Work for Domestic Workers. The Convention is binding on member States that ratify it and came into force in September 2013.

The Domestic Workers Convention and Recommendation address the working and living conditions of domestic workers. The Convention sets out minimum standards in the following areas: the basic rights of domestic workers; information on terms and conditions of employment; hours of work; remuneration; OHS; social security; private employment agencies; and dispute settlement, complaints and enforcement.

The Convention defines domestic work as “work performed in or for a household or households” [Art. 1(a)], and domestic workers as “any person engaged in domestic work within an employment relationship” [Art. 1(b)]. The Convention does not apply to those workers who perform domestic work only occasionally or sporadically [Art. 1(c)].

The Domestic Workers Recommendation provides practical guidance concerning possible legal and other measures to implement the provisions of the Domestic Workers Convention.

According to ILO estimates, domestic work constitutes about 3.6 per cent of global wage employment, and at least 52.6 million people are employed as domestic workers, the majority of whom are women.

### **The Convention**

**Articles 1 and 2** establish the definitions and scope of the instrument.

**Article 3** sets out obligations related to the promotion and protection of domestic workers’ human rights. It also establishes obligations to respect, promote, and realize fundamental principles and rights at work.

**Article 4** deals with minimum age of employment requirements and the education of domestic workers between the ages of 15 and 18.

**Article 5** relates to the protection of domestic workers against all forms of abuse, harassment, and violence.

**Article 6** provides for fair terms of employment, and decent working and living conditions for domestic workers.

**Article 7** covers the obligation to ensure domestic workers are informed of their terms and conditions of employment, preferably in writing.

**Article 8** addresses requirements related to the recruitment of migrant domestic workers and their receipt of written job offers, or contracts of employment, prior to crossing national borders.

**Article 9** covers protections related to domestic workers’ residence in the household where they are employed, including their entitlement to keep their travel and identity documents.

**Article 10** addresses hours of work, including overtime compensation, rest periods, paid leave, as well as

periods when domestic workers remain at the disposal of the household to respond to possible calls.

**Articles 11 and 12** address remuneration, including minimum wage coverage, the payment of wages, and payments in kind.

**Articles 13 and 14** establish OHS and social security protections for domestic workers.

**Article 15** outlines measures to protect domestic workers recruited or placed by private employment agencies from potentially abusive practices.

**Articles 16 and 17** address dispute resolution mechanisms, as well as the implementation of complaint, labour inspection, and enforcement mechanisms.

**Article 18** relates to the implementation of the Convention, and **Article 19** stipulates that the Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

**Articles 20, 21, 22, 23, 24, 25, 26 and 27** contain the Convention's provisions regarding matters of ratification; entry into force; denunciation and revision of the Convention; and the equal authority of the English and French versions of the text.

## **The Recommendation**

The Recommendation provides guidance on the implementation of the Convention. The Recommendation also references other international standards, including International Labour Conventions and Recommendations, and an ILO code of practice.

**Paragraph 1** stipulates that the provisions of the Recommendation supplement those of the Convention and should be considered in conjunction with them.

**Paragraph 2** outlines measures to ensure domestic workers' enjoyment of freedom of association and the effective recognition of the right to collective bargaining.

**Paragraphs 3 and 4** provide guidelines related to work-related medical testing and non-discrimination, including respect for the principle of confidentiality of personal data. The availability and distribution of public health information are also addressed.

**Paragraph 5** pertains to the identification, prohibition and elimination of types of domestic work harmful to children.

**Sub-paragraph 5(2)** sets out measures to protect domestic workers under the age of 18 and above the minimum age of employment.

**Paragraph 6** addresses the terms and conditions of employment for domestic workers and includes provisions related to ensuring domestic workers understand their terms and conditions of employment; particular terms and conditions to be identified; and the establishment of model contracts of employment for domestic work.

**Paragraph 7** identifies mechanisms to protect domestic workers from abuse, harassment and violence.

**Paragraph 8** addresses the recording of hours of work and the provision of related guidance.

**Paragraph 9** deals with the regulation of the periods during which domestic workers remain at the disposal of the household in order to respond to possible calls, and night work.

**Paragraphs 10 and 11** cover periods of rest during the working day, weekly rest, and the accumulation of weekly rest.

**Paragraph 12** defines the grounds on which domestic workers may be required to work during rest periods.

**Paragraph 13** stipulates that time spent accompanying household members on holiday should not be counted as part of domestic workers' annual leave.

**Paragraphs 14, 15, and 16** address remuneration, including guidelines for payment in kind, the provision of written accounts of remuneration, payment upon termination of

employment, and protection of domestic workers' claims in the event of the employer's insolvency or death.

**Paragraph 17** identifies what should be included in the provision of accommodation and food for domestic workers, for example, access to suitable sanitary facilities.

**Paragraph 18** relates to the termination of employment and the provision of a reasonable period of notice and time off for live-in domestic workers to seek new employment and accommodation.

**Paragraph 19** sets out measures that member States, in consultation with social partners, should take related to the OHS of domestic workers, including those to prevent injuries, diseases and deaths, the provision of an appropriate OHS inspection system, the collection and publication of statistics related to accidents and diseases related to domestic work, providing advice on OHS, and developing training and guidelines.

**Paragraph 20** addresses several measures that member States should consider, in accordance with national laws and regulations, related to domestic workers and social security, including those to facilitate the payment of social security contributions; and bilateral, regional or multilateral agreements to ensure equality of treatment, access to, and portability of social security entitlements for migrant domestic workers.



**Paragraph 21** sets out additional measures that member States should consider to effectively protect domestic workers, and migrant domestic workers, in particular. These measures include establishing a national hotline for domestic workers who need assistance.

**Paragraph 22** recommends that after consulting with the social partners, member States should consider specifying the conditions under which migrant domestic workers are entitled to repatriation at no cost.

**Paragraph 23** pertains to the promotion of private employment agencies' good practices related to domestic workers, taking into account the relevant ILO Convention and Recommendation.

**Paragraph 24** addresses the issue of national law and practice concerning respect for privacy and members' consideration of conditions when enforcement officials should be allowed to enter the premises where domestic work is carried out.

**Paragraph 25** recommends that member States establish policies and programs related to domestic workers' continued skill and qualification development, and work-life balance needs. It also addresses strengthening the capacity of national statistical offices to collect data on domestic work to support policy-making.

**Paragraph 26** addresses cooperation amongst members in the application of the Domestic Workers Convention and Recommendation. It recommends bilateral, regional, and global cooperation, especially in matters concerning the prevention of forced labour and trafficking in persons, for example. The paragraph also addresses enhanced assistance to give effect to the provisions of the Convention and provides recommendations in the context of diplomatic immunity.

## **7. Canadian situation with respect to the Convention and Recommendation concerning Decent Work for Domestic Workers**

In Canada, the regulation of labour relations, OHS, and employment standards for domestic work falls within the exclusive jurisdictions of the provincial and territorial governments. Minimum working conditions prescribed by law for domestic work are not uniform across Canadian jurisdictions. As a result, not all Canadian laws would be compliant with all the provisions of the Domestic Workers Convention.

While the regulation of domestic workers' working conditions is the responsibility of provincial and territorial governments, the federal government regulates and administers the Live-in Caregiver Program that facilitates the entry of temporary foreign workers to work

as live-in caregivers in Canada. The Live-in Caregiver Program, jointly managed by Employment and Social Development Canada/Service Canada and Citizenship and Immigration Canada, promotes protections and fair working conditions for domestic workers in a manner that is consistent with the provisions in the Convention. Recent legislative and regulatory changes to the program further strengthen protection for program participants and are consistent with the Convention's objectives.

Private employment agencies in Canada fall under provincial and territorial jurisdiction and must comply with the same labour, employment, human rights, and other laws that apply to other employers. Most jurisdictions have adopted legislation to regulate private employment agencies and some also have adopted specific legislative provisions to protect migrant workers, including domestic workers, from potential exploitation. These provisions reflect the objective of the Convention's provisions related to the regulation of private employment agencies.

While there is significant conformity with the principles of the Convention, legislative changes would be required in most jurisdictions to fully implement the Domestic Workers Convention.

As for the accompanying Domestic Workers Recommendation, the detailed provisions provide non-binding guidance on the implementation of the Domestic

Workers Convention. As the Recommendation addresses the same issues as the Convention, there are differences between the Recommendation and the Canadian situation that similarly reflect the lack of uniformity in approaches to regulating domestic work across Canadian jurisdictions.

## **SOCIAL PROTECTION FLOORS RECOMMENDATION, 2012 (RECOMMENDATION 202)**

### **8. Legislative jurisdiction**

The subject matter of this instrument falls under both federal and provincial jurisdictions.

### **9. General description**

#### **Background**

In the conclusions of a June 2011 general discussion on social protection at the ILC, the Conference Committee noted that there was a need for an ILO Recommendation complementing existing ILO standards that would provide flexible and meaningful guidance in building social protection floors within comprehensive social security systems tailored to national circumstances and levels of development. The Committee further noted that such a Recommendation should be promotional, gender-responsive and allow for flexible implementation to be applied by all member States using different methods and according to their own needs, resources and their time frame for progressive implementation.

The ILO Governing Body placed the development of this new international labour standard on the agenda of the 2012 ILC. When the instrument was put to a vote in the ILC Plenary on 14 June 2012, it was adopted unanimously.

Prior to the adoption of Recommendation 202, the most recent international social security standard was adopted by the ILC in 1988. The new Social Protection Floors Recommendation will be a useful tool for governments and social partners in developing and maintaining national legal frameworks, policies and programs for social protection.

### **The Recommendation**

The Recommendation is divided into four sections.

**Part I** covers the Recommendation's objectives, scope and principles.

The objective is to provide guidance on the establishment and maintenance (as applicable) of social protection floors as a fundamental element of national social security systems and to implement these within strategies for the extension of social security.

Social protection floors are nationally defined sets of basic social security guarantees that secure protections aimed at preventing or alleviating poverty, vulnerability and social exclusion.

Principles to be applied when establishing social protection floors

include universality of protection; non-discrimination in application; entitlements prescribed in national law; adequacy and predictability of benefits; diversity of approaches in providing social protection; respect for the rights and dignity of persons covered by social security guarantees; financing which seeks to find an optimal balance between those who fund the social protection schemes with those who benefit from them; transparent, accountable and sound financial management and administration; high quality public services; efficient and accessible complaint and appeal mechanisms; involvement of the social partners and civil society; and regular monitoring and evaluation.

**Part II** addresses the components of national social protection floors. They are to comprise at least the following four sets of guarantees: essential health care including maternity care; basic income security at nationally defined minimum levels for children providing access to nutrition, education and care; basic income security for those in active age unable to earn sufficient income in the case of sickness, unemployment, maternity or disability; and basic income security for older persons.

Basic social security guarantees should be established by law specifying the range, qualifying conditions and levels of benefits. There should also be impartial, transparent, effective, rapid and accessible complaint and appeal procedures.

In designing basic social security guarantees member States should give consideration to the following: that persons in need of health care should not face hardship and increased risk of poverty due to the financial consequences of accessing health care; basic income security should allow for a life in dignity; and the levels of basic social security guarantees should be regularly reviewed with the participation of the social partners and other relevant organizations.

The Recommendation provides information on how social security schemes could be structured, the types of benefits that could be included and how they could be financed.

**Part III** of the Recommendation provides guidance on how ILO member States could progressively build and maintain comprehensive and adequate social security systems coherent with national policy objectives.

**Part IV** addresses the issue of monitoring progress in implementing social protection floors, including through consultations and appropriate statistical analysis; information exchange of good practices, and protection of personal information.

## **10. Canadian situation with respect to the Recommendation concerning National Floors of Social Protection, 2012**

Canada's comprehensive social security system, founded on the

principles of fairness and equity, provides the protections that are outlined in the Recommendation.

Canada's publicly funded health care system provides universal coverage for medically necessary health care services on the basis of need rather than the ability to pay. Most provincial and territorial governments offer and fund supplementary benefits for certain groups (e.g. low-income residents and seniors), such as drugs prescribed outside hospitals, ambulance costs, and hearing, vision and dental care, that are not covered under the *Canada Health Act*.

The Canada Child Tax Benefit (CCTB) provides income support to families with children to help them with the cost of raising their children. The CCTB includes a base benefit that goes to some 90% of families with children and the National Child Benefit Supplement for low-income families. The National Child Benefit Supplement is the federal contribution to the Federal-Provincial-Territorial National Child Benefit Initiative that provides income support as well as benefits and services for low-income families with children. One of the primary goals of the Initiative is to help prevent and reduce the depth of child poverty in Canada.

Each province and territory has an independent workers' compensation agency, funded by employers, which funds services for workers who suffer from occupational related illness or injury. Workers compensation benefits include

wage loss benefits, permanent disability benefits, dependency benefits, and rehabilitation.

The federal government delivers key income security programs for the unemployed and retired. There are several types of income security benefits available to Canadians, depending on their situation. There are Employment Insurance Regular Benefits for individuals who lose their jobs through no fault of their own (for example, due to shortage of work, seasonal layoffs, or mass layoffs) and who are available for and able to work, but cannot find a job. Employment Insurance Maternity and Parental Benefits provide support to individuals who are pregnant, have recently given birth, are adopting a child, or are caring for a newborn. Employment Insurance Sickness Benefits are for individuals who are unable to work because of sickness, injury, or quarantine. Employment Insurance Compassionate Care Benefits are available to people who have to be away from work temporarily to provide care or support to a family member who is gravely ill with a significant risk of death. Employment Insurance Fishing Benefits provide support to qualifying, self-employed fishers who are actively seeking work.

The federal government has also entered into bilateral transfer agreements with the provinces to address the needs of persons with disabilities. In addition, the Canada Pension Plan administers the largest public long-term disability plan in Canada.

Federal and provincial governments are committed to ensuring that seniors have a good quality of life as they age and provide retirement income support to seniors through a mix of government programs and incentives for private savings. Canada's retirement income system is designed to fulfill two different but related objectives: to prevent and reduce the incidence of low income in old age, and to help avoid a significant drop in living standards in retirement.

Canada's retirement income system is based on three pillars: First pillar: the Old Age Security (OAS) Program and Guaranteed Income Supplement, administered by the federal government and financed through general tax revenues; Second pillar: the contributory Canada Pension Plan (CPP) and Quebec Pension Plan; and the Third pillar: the private Retirement Pension Plans and Registered Retirement Savings Plans. Canada has also entered into social security agreements with other countries to help seniors receive pensions from other countries and qualify to receive OAS and CPP payments in Canada and abroad. Canada's retirement income system has contributed to sharply reducing low income rates among seniors from 21.4% in 1980 to 5.2% in 2011.

Canada closely monitors and analyzes societal trends through a variety of instruments, including policy research and consultative processes, in order to identify groups at risk and develop social protection policies to respond to their needs.

In addition, federal departments and agencies are responsible for identifying interested and affected parties, and for providing them with opportunities to take part in open, meaningful, and balanced consultations at all stages of the regulatory process.

## **APPENDICES A – D**

### **Texts of the Instruments**

**Appendix A:**  
**RECOMMENDATION CONCERNING  
HIV AND AIDS AND THE WORLD OF WORK, 2010**



## Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 99th Session on 2 June 2010, and

Noting that HIV and AIDS have a serious impact on society and economies, on the world of work in both the formal and informal sectors, on workers, their families and dependants, on the employers' and workers' organizations and on public and private enterprises, and undermine the attainment of decent work and sustainable development, and

Reaffirming the importance of the International Labour Organization's role in addressing HIV and AIDS in the world of work and the need for the Organization to strengthen its efforts to achieve social justice and to combat discrimination and stigmatization with regard to HIV and AIDS in all aspects of its work and mandate, and

Recalling the importance of reducing the informal economy by attaining decent work and sustainable development in order to better mobilize the world of work in the response to HIV and AIDS, and

Noting that high levels of social and economic inequality, lack of information and awareness, lack of confidentiality and insufficient access to and adherence to treatment, increase the risk of HIV transmission, mortality levels, the number of children who have lost one or both parents and the number of workers engaged in informal work, and

Considering that poverty, social and economic inequality and unemployment increase the risk of lack of access to prevention, treatment, care and support, therefore increasing the risk of transmission, and

Noting that stigma, discrimination and the threat of job loss suffered by persons affected by HIV or AIDS are barriers to knowing one's HIV status, thus increasing the vulnerability of workers to HIV and undermining their right to social benefits, and

Noting that HIV and AIDS have a more severe impact on vulnerable and at-risk groups, and

Noting that HIV affects both men and women, although women and girls are at greater risk and more vulnerable to HIV infection and are disproportionately affected by the HIV pandemic compared to men as a result of gender inequality, and that women's empowerment is therefore a key factor in the global response to HIV and AIDS, and

Recalling the importance of safeguarding workers through comprehensive occupational safety and health programmes, and

Recalling the value of the ILO code of practice *An ILO code of practice on HIV/AIDS and the world of work*, 2001, and the need to strengthen its impact given that there are limits and gaps in its implementation, and

Noting the need to promote and implement the international labour Conventions and Recommendations and other international instruments that are relevant to HIV and AIDS and the world of work, including those that recognize the right to the highest attainable standard of health and to decent living standards, and

Recalling the specific role of employers' and workers' organizations in promoting and supporting national and international efforts in response to HIV and AIDS in and through the world of work, and

Noting the important role of the workplace as regards information about and access to prevention, treatment, care and support in the national response to HIV and AIDS, and

Affirming the need to continue and increase international cooperation, in particular in the context of the Joint United Nations Programme on HIV/AIDS, to support efforts to give effect to this Recommendation, and

Recalling the value of collaboration at the national, regional and international levels with the structures dealing with HIV and AIDS, including the health sector and with relevant organizations, especially those representing persons living with HIV, and

Affirming the need to set an international standard in order to guide governments and organizations of employers and workers in defining their roles and responsibilities at all levels, and

Having decided upon the adoption of certain proposals with regard to HIV and AIDS and the world of work, and

Having determined that these proposals shall take the form of a Recommendation;

adopts this seventeenth day of June of the year two thousand and ten the following Recommendation, which may be cited as the HIV and AIDS Recommendation, 2010.

## **I. DEFINITIONS**

1. For the purposes of this Recommendation:

- (a) "HIV" refers to the human immunodeficiency virus, a virus that damages the human immune system. Infection can be prevented by appropriate measures;
- (b) "AIDS" refers to the acquired immunodeficiency syndrome which results from advanced stages of HIV infection, and is characterized by opportunistic infections or HIV-related cancers, or both;

- (c) “persons living with HIV” means persons infected with HIV;
- (d) “stigma” means the social mark that, when associated with a person, usually causes marginalization or presents an obstacle to the full enjoyment of social life by the person infected or affected by HIV;
- (e) “discrimination” means any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as referred to in the Discrimination (Employment and Occupation) Convention, 1958, and Recommendation, 1958;
- (f) “affected persons” means persons whose lives are changed by HIV or AIDS owing to the broader impact of the pandemic;
- (g) “reasonable accommodation” means any modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, or participate or advance in, employment;
- (h) “vulnerability” means the unequal opportunities, social exclusion, unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS;
- (i) “workplace” refers to any place in which workers perform their activity; and
- (j) “worker” refers to any persons working under any form or arrangement.

## **II. SCOPE**

### 2. This Recommendation covers:

- (a) all workers working under all forms or arrangements, and at all workplaces, including:
  - (i) persons in any employment or occupation;
  - (ii) those in training, including interns and apprentices;
  - (iii) volunteers;
  - (iv) jobseekers and job applicants; and
  - (v) laid-off and suspended workers;
- (b) all sectors of economic activity, including the private and public sectors and the formal and informal economies; and
- (c) armed forces and uniformed services.

### III. GENERAL PRINCIPLES

3. The following general principles should apply to all action involved in the national response to HIV and AIDS in the world of work:
  - (a) the response to HIV and AIDS should be recognized as contributing to the realization of human rights and fundamental freedoms and gender equality for all, including workers, their families and their dependants;
  - (b) HIV and AIDS should be recognized and treated as a workplace issue, which should be included among the essential elements of the national, regional and international response to the pandemic with full participation of organizations of employers and workers;
  - (c) there should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection;
  - (d) prevention of all means of HIV transmission should be a fundamental priority;
  - (e) workers, their families and their dependants should have access to and benefit from prevention, treatment, care and support in relation to HIV and AIDS, and the workplace should play a role in facilitating access to these services;
  - (f) workers' participation and engagement in the design, implementation and evaluation of national and workplace programmes should be recognized and reinforced;
  - (g) workers should benefit from programmes to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as tuberculosis;
  - (h) workers, their families and their dependants should enjoy protection of their privacy, including confidentiality related to HIV and AIDS, in particular with regard to their own HIV status;
  - (i) no workers should be required to undertake an HIV test or disclose their HIV status;
  - (j) measures to address HIV and AIDS in the world of work should be part of national development policies and programmes, including those related to labour, education, social protection and health; and

- (k) the protection of workers in occupations that are particularly exposed to the risk of HIV transmission.

#### **IV. NATIONAL POLICIES AND PROGRAMMES**

4. Members should:
  - (a) adopt national policies and programmes on HIV and AIDS and the world of work and on occupational safety and health, where they do not already exist; and
  - (b) integrate their policies and programmes on HIV and AIDS and the world of work in development plans and poverty reduction strategies, including decent work, sustainable enterprises and income-generating strategies, as appropriate.
5. In developing the national policies and programmes, the competent authorities should take into account the ILO code of practice on HIV/AIDS of 2001, and any subsequent revision, other relevant International Labour Organization instruments, and other international guidelines adopted on this subject.
6. The national policies and programmes should be developed by the competent authorities, in consultation with the most representative organizations of employers and workers, as well as organizations representing persons living with HIV, taking into account the views of relevant sectors, especially the health sector.
7. In developing the national policies and programmes, the competent authorities should take into account the role of the workplace in prevention, treatment, care and support, including the promotion of voluntary counselling and testing, in collaboration with local communities.
8. Members should take every opportunity to disseminate information about their policies and programmes on HIV and AIDS and the world of work through organizations of employers and workers, other relevant HIV and AIDS entities, and public information channels.

#### **DISCRIMINATION AND PROMOTION OF EQUALITY OF OPPORTUNITY AND TREATMENT**

9. Governments, in consultation with the most representative organizations of employers and workers should consider affording protection equal to that available under the Discrimination (Employment and Occupation) Convention, 1958, to prevent discrimination based on real or perceived HIV status.

10. Real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities consistent with the provisions of the Discrimination (Employment and Occupation) Convention, 1958.
11. Real or perceived HIV status should not be a cause for termination of employment. Temporary absence from work because of illness or caregiving duties related to HIV or AIDS should be treated in the same way as absences for other health reasons, taking into account the Termination of Employment Convention, 1982.
12. When existing measures against discrimination in the workplace are inadequate for effective protection against discrimination in relation to HIV and AIDS, Members should adapt these measures or put new ones in place, and provide for their effective and transparent implementation.
13. Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged, taking into consideration the relevant International Labour Organization and United Nations instruments.
14. Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by:
  - (a) ensuring respect for human rights and fundamental freedoms;
  - (b) ensuring gender equality and the empowerment of women;
  - (c) ensuring actions to prevent and prohibit violence and harassment in the workplace;
  - (d) promoting the active participation of both women and men in the response to HIV and AIDS;
  - (e) promoting the involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group;
  - (f) promoting the protection of sexual and reproductive health and sexual and reproductive rights of women and men; and
  - (g) ensuring the effective confidentiality of personal data, including medical data.

## PREVENTION

15. Prevention strategies should be adapted to national conditions and the type of workplace, and should take into account gender, cultural, social and economic concerns.
16. Prevention programmes should ensure:
  - (a) that accurate, up to date, relevant and timely information is made available and accessible to all in a culturally sensitive format and language through the different channels of communication available;
  - (b) comprehensive education programmes to help women and men understand and reduce the risk of all modes of HIV transmission, including mother-to-child transmission, and understand the importance of changing risk behaviours related to infection;
  - (c) effective occupational safety and health measures;
  - (d) measures to encourage workers to know their own HIV status through voluntary counselling and testing;
  - (e) access to all means of prevention, including but not limited to guaranteeing the availability of necessary supplies, in particular male and female condoms and, where appropriate, information about their correct use, and the availability of post-exposure prophylaxis;
  - (f) effective measures to reduce high-risk behaviours, including for the most at-risk groups, with a view to decreasing the incidence of HIV; and
  - (g) harm reduction strategies based on guidelines published by the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Office on Drugs and Crime (UNODC) and other relevant guidelines.

## TREATMENT AND CARE

17. Members should ensure that their national policies and programmes on workplace health interventions are determined in consultation with employers and workers and their representatives and are linked to public health services. They should offer the broadest range of appropriate and effective interventions to prevent HIV and AIDS and manage their impact.

18. Members should ensure that workers living with HIV and their dependants benefit from full access to health care, whether this is provided under public health, social security systems or private insurance or other schemes. Members should also ensure the education and awareness raising of workers to facilitate their access to health care.
19. All persons covered by this Recommendation, including workers living with HIV and their families and their dependants, should be entitled to health services. These services should include access to free or affordable:
  - (a) voluntary counselling and testing;
  - (b) antiretroviral treatment and adherence education, information and support;
  - (c) proper nutrition consistent with treatment;
  - (d) treatment for opportunistic infections and sexually transmitted infections, and any other HIV-related illnesses, in particular tuberculosis; and
  - (e) support and prevention programmes for persons living with HIV, including psychosocial support.
20. There should be no discrimination against workers or their dependants based on real or perceived HIV status in access to social security systems and occupational insurance schemes, or in relation to benefits under such schemes, including for health care and disability, and death and survivors' benefits.

## SUPPORT

21. Programmes of care and support should include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses, with due regard to national conditions. Work should be organized in such a way as to accommodate the episodic nature of HIV and AIDS, as well as possible side effects of treatment.
22. Members should promote the retention in work and recruitment of persons living with HIV. Members should consider extending support through periods of employment and unemployment, including where necessary income-generating opportunities for persons living with HIV or persons affected by HIV or AIDS.
23. Where a direct link can be established between an occupation and the risk of infection, AIDS and infection by HIV should be recognized as an occupational disease or accident, in accordance with national procedures and definitions, and with reference to the List of Occupational Diseases Recommendation, 2002, as well as other relevant International Labour Organization instruments.



## TESTING, PRIVACY AND CONFIDENTIALITY

24. Testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counselling and consent.
25. HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants.
26. The results of HIV testing should be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.
27. Workers, including migrant workers, jobseekers and job applicants, should not be required by countries of origin, of transit or of destination to disclose HIV related information about themselves or others. Access to such information should be governed by rules of confidentiality consistent with the ILO code of practice on the protection of workers' personal data, 1997, and other relevant international data protection standards.
28. Migrant workers, or those seeking to migrate for employment, should not be excluded from migration by the countries of origin, of transit or of destination on the basis of their real or perceived HIV status.
29. Members should have in place easily accessible dispute resolution procedures which ensure redress for workers if their rights set out above are violated.

## OCCUPATIONAL SAFETY AND HEALTH

30. The working environment should be safe and healthy, in order to prevent transmission of HIV in the workplace, taking into account the Occupational Safety and Health Convention, 1981, and Recommendation, 1981, the Promotional Framework for Occupational Safety and Health Convention, 2006, and Recommendation, 2006, and other relevant international instruments, such as joint International Labour Office and WHO guidance documents.
31. Safety and health measures to prevent workers' exposure to HIV at work should include universal precautions, accident and hazard prevention measures, such as organizational measures, engineering and work practice controls, personal protective equipment, as appropriate, environmental control measures and postexposure prophylaxis and other safety measures to minimize the risk of contracting HIV and tuberculosis, especially in occupations most at risk, including in the healthcare sector.

32. When there is a possibility of exposure to HIV at work, workers should receive education and training on modes of transmission and measures to prevent exposure and infection. Members should take measures to ensure that prevention, safety and health are provided for in accordance with relevant standards.
33. Awareness-raising measures should emphasize that HIV is not transmitted by casual physical contact and that the presence of a person living with HIV should not be considered a workplace hazard.
34. Occupational health services and workplace mechanisms related to occupational safety and health should address HIV and AIDS, taking into account the Occupational Health Services Convention, 1985, and Recommendation, 1985, the *Joint ILO/WHO guidelines on health services and HIV/AIDS*, 2005, and any subsequent revision, and other relevant international instruments.

### CHILDREN AND YOUNG PERSONS

35. Members should take measures to combat child labour and child trafficking that may result from the death or illness of family members or caregivers due to AIDS and to reduce the vulnerability of children to HIV, taking into account the ILO Declaration on Fundamental Principles and Rights at Work, 1998, the Minimum Age Convention, 1973, and Recommendation, 1973, and the Worst Forms of Child Labour Convention, 1999, and Recommendation, 1999. Special measures should be taken to protect these children from sexual abuse and sexual exploitation.
36. Members should take measures to protect young workers against HIV infection, and to include the special needs of children and young persons in the response to HIV and AIDS in national policies and programmes. These should include objective sexual and reproductive health education, in particular the dissemination of information on HIV and AIDS through vocational training and in youth employment programmes and services.

### V. IMPLEMENTATION

37. National policies and programmes on HIV and AIDS and the world of work should:
  - (a) be given effect, in consultation with the most representative organizations of employers and workers and other parties concerned, including relevant public and private occupational health structures, by one or a combination of the following means:
    - (i) national laws and regulations;
    - (ii) collective agreements;
    - (iii) national and workplace policies and programmes of action; and
    - (iv) sectoral strategies, with particular attention to sectors in which persons covered by this Recommendation are most at risk;

- (b) involve the judicial authorities competent in labour issues, and labour administration authorities in the planning and implementation of the policies and programmes, and training in this regard should be provided to them;
- (c) provide for measures in national laws and regulations to address breaches of privacy and confidentiality and other protection afforded under this Recommendation;
- (d) ensure collaboration and coordination among the public authorities and public and private services concerned, including insurance and benefit programmes or other types of programmes;
- (e) promote and support all enterprises to implement the national policies and programmes, including through their supply chains and distribution networks, with the participation of organizations of employers and workers and ensure that enterprises operating in the export processing zones comply;
- (f) promote social dialogue, including consultation and negotiation, consistent with the Tripartite Consultation (International Labour Standards) Convention, 1976, and other forms of cooperation among government authorities, public and private employers and workers and their representatives, taking into account the views of occupational health personnel, specialists in HIV and AIDS, and other parties including organizations representing persons living with HIV, international organizations, relevant civil society organizations and country coordinating mechanisms;
- (g) be formulated, implemented, regularly reviewed and updated, taking into consideration the most recent scientific and social developments and the need to mainstream gender and cultural concerns;
- (h) be coordinated with, among others, labour, social security and health policies and programmes; and
- (i) ensure that Members make reasonable provision for the means of their implementation, with due regard to national conditions, as well as to the capacity of employers and workers.

## SOCIAL DIALOGUE

38. Implementation of policies and programmes on HIV and AIDS should be based on cooperation and trust among employers and workers and their representatives, and governments, with the active involvement, at their workplace, of persons living with HIV.

39. Organizations of employers and workers should promote awareness of HIV and AIDS, including prevention and non-discrimination, through the provision of education and information to their members. These should be sensitive to gender and cultural concerns.

#### EDUCATION, TRAINING, INFORMATION AND CONSULTATION

40. Training, safety instructions and any necessary guidance in the workplace related to HIV and AIDS should be provided in a clear and accessible form for all workers and, in particular, for migrant workers, newly engaged or inexperienced workers, young workers and persons in training, including interns and apprentices. Training, instructions and guidance should be sensitive to gender and cultural concerns and adapted to the characteristics of the workforce, taking into account the risk factors for the workforce.
41. Up to date scientific and socio-economic information and, where appropriate, education and training on HIV and AIDS should be available to employers, managers and workers' representatives, in order to assist them in taking appropriate measures in the workplace.
42. Workers, including interns, trainees and volunteers should receive awareness-raising information and appropriate training in HIV infection control procedures in the context of workplace accidents and first aid. Workers whose occupations put them at risk of exposure to human blood, blood products and other body fluids should receive additional training in exposure prevention, exposure registration procedures and post-exposure prophylaxis.
43. Workers and their representatives should have the right to be informed and consulted on measures taken to implement workplace policies and programmes related to HIV and AIDS. Workers' and employers' representatives should participate in workplace inspections in accordance with national practice.

#### PUBLIC SERVICES

44. The role of the labour administration services, including the labour inspectorate, and of the judicial authorities competent in labour issues, in the response to HIV and AIDS, should be reviewed and, if necessary, strengthened.
45. Public health systems should be strengthened and follow the *Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005*, and any subsequent revision, to help ensure greater access to prevention, treatment, care and support, and reduce the additional strain on public services, particularly on health workers, caused by HIV and AIDS.

## INTERNATIONAL COOPERATION

46. Members should cooperate, through bilateral or multilateral agreements, through their participation in the multilateral system or through other effective means, in order to give effect to this Recommendation.
47. Measures to ensure access to HIV prevention, treatment, care and support services for migrant workers should be taken by countries of origin, of transit and of destination, and agreements should be concluded among the countries concerned, whenever appropriate.
48. International cooperation should be encouraged between and among Members, their national structures on HIV and AIDS and relevant international organizations and should include the systematic exchange of information on all measures taken to respond to the HIV pandemic.
49. Members and multilateral organizations should give particular attention to coordination and to the necessary resources to satisfy the needs of all countries, especially high prevalence countries, in the development of international strategies and programmes for prevention, treatment, care and support related to HIV.
50. Members and international organizations should seek to reduce the price of supplies of any type, for the prevention, treatment and care of infection caused by HIV and other opportunistic infections and HIV-related cancers.

## VI. FOLLOW-UP

51. Members should establish an appropriate mechanism or make use of an existing one, for monitoring developments in relation to their national policy on HIV and AIDS and the world of work, as well as for formulating advice on its adoption and implementation.
52. The most representative organizations of employers and workers should be represented, on an equal footing, in the mechanism for monitoring developments in relation to the national policy. In addition, these organizations should be consulted under the mechanism as often as necessary, taking into consideration the views of organizations of persons living with HIV, expert reports or technical studies.
53. Members should, to the extent possible, collect detailed information and statistical data and undertake research on developments at the national and sectoral levels in relation to HIV and AIDS in the world of work, taking into account the distribution of women and men and other relevant factors.

54. In addition to the reporting under article 19 of the Constitution of the International Labour Organization, a regular review of action taken on the basis of this Recommendation could be included in national reports to UNAIDS and reports under relevant international instruments.

**Appendix B:**  
**CONVENTION CONCERNING  
DECENT WORK FOR DOMESTIC WORKERS, 2011**

## Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Mindful of the commitment of the International Labour Organization to promote decent work for all through the achievement of the goals of the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization, and

Recognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries, and

Considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights, and

Considering also that in developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized, and

Recalling that international labour Conventions and Recommendations apply to all workers, including domestic workers, unless otherwise provided, and

Noting the particular relevance for domestic workers of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Private Employment Agencies Convention, 1997 (No. 181), and the Employment Relationship Recommendation, 2006 (No. 198), as well as of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (2006), and

Recognizing the special conditions under which domestic work is carried out that make it desirable to supplement the general standards with standards specific to domestic workers so as to enable them to enjoy their rights fully, and

Recalling other relevant international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of



All Forms of Discrimination against Women, the United Nations Convention against Transnational Organized Crime, and in particular its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air, 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, and

Having decided upon the adoption of certain proposals concerning decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this sixteenth day of June of the year two thousand and eleven the following Convention, which may be cited as the Domestic Workers Convention, 2011.

### **Article 1**

For the purpose of this Convention:

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

### **Article 2**

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

### **Article 3**

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Each Member 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, namely:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.
3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

### **Article 4**

1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.
2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

### **Article 5**

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

### **Article 6**

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

### **Article 7**

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

- (a) the name and address of the employer and of the worker;
- (b) the address of the usual workplace or workplaces;
- (c) the starting date and, where the contract is for a specified period of time, its duration;
- (d) the type of work to be performed;
- (e) the remuneration, method of calculation and periodicity of payments;
- (f) the normal hours of work;
- (g) paid annual leave, and daily and weekly rest periods;
- (h) the provision of food and accommodation, if applicable;
- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

### **Article 8**

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.
2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.
3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.
4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

### **Article 9**

Each Member shall take measures to ensure that domestic workers:

- (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;

- (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
- (c) are entitled to keep in their possession their travel and identity documents.

### ***Article 10***

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

### ***Article 11***

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

### ***Article 12***

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure 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.

### ***Article 13***

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.
2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

### ***Article 14***

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.
2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

### ***Article 15***

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:
  - (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
  - (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
  - (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

- (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and
  - (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.
2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

### ***Article 16***

Each Member shall 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 other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

### ***Article 17***

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.
3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

### ***Article 18***

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

### ***Article 19***

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

### ***Article 20***

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### ***Article 21***

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

### ***Article 22***

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

### ***Article 23***

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

#### ***Article 24***

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

#### ***Article 25***

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### ***Article 26***

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;
  - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### ***Article 27***

The English and French versions of the text of this Convention are equally authoritative.



**Appendix C:**  
**RECOMMENDATION CONCERNING  
DECENT WORK FOR DOMESTIC WORKERS, 2011**

## Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 100th Session on 1 June 2011, and

Having adopted the Domestic Workers Convention, 2011, and

Having decided upon the adoption of certain proposals with regard to decent work for domestic workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Domestic Workers Convention, 2011;

adopts this sixteenth day of June of the year two thousand and eleven the following Recommendation, which may be cited as the Domestic Workers Recommendation, 2011.

1. The provisions of this Recommendation supplement those of the Domestic Workers Convention, 2011 (“the Convention”), and should be considered in conjunction with them.
2. In taking measures to ensure that domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members should:
  - (a) identify and eliminate any legislative or administrative restrictions or other obstacles to the right of domestic workers to establish their own organizations or to join the workers’ organizations of their own choosing and to the right of organizations of domestic workers to join workers’ organizations, federations and confederations;
  - (b) give consideration to taking or supporting measures to strengthen the capacity of workers’ and employers’ organizations, organizations representing domestic workers and those of employers of domestic workers, to promote effectively the interests of their members, provided that at all times the independence and autonomy, within the law, of such organizations are protected.
3. In taking measures for the elimination of discrimination in respect of employment and occupation, Members should, consistent with international labour standards, 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.
4. Members giving consideration to medical testing for domestic workers should consider:
- (a) making public health information available to members of the households and domestic workers on the primary health and disease concerns that give rise to any needs for medical testing in each national context;
  - (b) making information available to members of the households and domestic workers on voluntary medical testing, medical treatment, and good health and hygiene practices, consistent with public health initiatives for the community generally; and
  - (c) distributing information on best practices for work-related medical testing, appropriately adapted to reflect the special nature of domestic work.
5. (1) Taking into account the provisions of the Worst Forms of Child Labour 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 labour.
- (2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:
- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
  - (b) prohibiting night work;
  - (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
  - (d) establishing or strengthening mechanisms to monitor their working and living conditions.
6. (1) Members should provide appropriate assistance, when necessary, to ensure that domestic workers understand their terms and conditions of employment.
- (2) Further to the particulars listed in Article 7 of the Convention, the terms and conditions of employment should also include:
- (a) a job description;
  - (b) sick leave and, if applicable, any other personal leave;
  - (c) the rate of pay or compensation for overtime and standby consistent with Article 10(3) of the Convention;
  - (d) any other payments to which the domestic worker is entitled;
  - (e) any payments in kind and their monetary value;

- (f) details of any accommodation provided; and
  - (g) any authorized deductions from the worker's remuneration.
- (3) Members should consider establishing a model contract of employment for domestic work, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.
- (4) The model contract should at all times be made available free of charge to domestic workers, employers, representative organizations and the general public.
- 7. Members should consider establishing mechanisms to protect domestic workers from abuse, harassment and violence, such as:
  - (a) establishing accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence;
  - (b) ensuring that all complaints of abuse, harassment and violence are investigated, and prosecuted, as appropriate; and
  - (c) establishing programmes for the relocation from the household and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care.
- 8. (1) Hours of work, including overtime and periods of standby consistent with Article 10(3) of the Convention, should be accurately recorded, and this information should be freely accessible to the domestic worker.
  - (2) Members should consider developing practical guidance in this respect, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.
- 9. (1) With respect to periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls (standby or on-call periods), Members, to the extent determined by national laws, regulations or collective agreements, should regulate:
  - (a) the maximum number of hours per week, month or year that a domestic worker may be required to be on standby, and the ways they might be measured;
  - (b) the compensatory rest period to which a domestic worker is entitled if the normal period of rest is interrupted by standby; and
  - (c) the rate at which standby hours should be remunerated.

- (2) With regard to domestic workers whose normal duties are performed at night, and taking into account the constraints of night work, Members should consider measures comparable to those specified in subparagraph 9(1).
10. Members should take measures to ensure that domestic workers are entitled to suitable periods of rest during the working day, which allow for meals and breaks to be taken.
11. (1) Weekly rest should be at least 24 consecutive hours.
  - (2) The fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker.
  - (3) Where national laws, regulations or collective agreements provide for weekly rest to be accumulated over a period longer than seven days for workers generally, such a period should not exceed 14 days for domestic workers.
12. National laws, regulations or collective agreements should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation.
13. Time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.
14. When provision is made for the payment in kind of a limited proportion of remuneration, Members should consider:
  - (a) establishing an overall limit on the proportion of the remuneration that may be paid in kind so as not to diminish unduly the remuneration necessary for the maintenance of domestic workers and their families;
  - (b) calculating the monetary value of payments in kind by reference to objective criteria such as market value, cost price or prices fixed by public authorities, as appropriate;
  - (c) limiting payments in kind to those clearly appropriate for the personal use and benefit of the domestic worker, such as food and accommodation;
  - (d) ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker; and
  - (e) ensuring that items directly related to the performance of domestic work, such as uniforms, tools or protective equipment, and their cleaning and maintenance, are not considered as payment in kind and their cost is not deducted from the remuneration of the domestic worker.

15. (1) Domestic workers should be given at the time of each payment an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which may have been made.
  - (2) Upon termination of employment, any outstanding payments should be made promptly.
16. Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers' claims in the event of the employer's insolvency or death.
17. When provided, accommodation and food should include, taking into account national conditions, the following:
  - (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
  - (b) access to suitable sanitary facilities, shared or private;
  - (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and
  - (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.
18. In the event of termination of employment at the initiative of the employer, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.
19. Members, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, should take measures, such as to:
  - (a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace;
  - (b) provide an adequate and appropriate system of inspection, consistent with Article 17 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;
  - (c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;
  - (d) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and

- (e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.
20. (1) Members should consider, in accordance with national laws and regulations, means to facilitate the payment of social security contributions, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment.
- (2) Members should consider concluding bilateral, regional or multilateral agreements to provide, for migrant domestic workers covered by such agreements, equality of treatment in respect of social security, as well as access to and preservation or portability of social security entitlements.
  - (3) The monetary value of payments in kind should be duly considered for social security purposes, including in respect of the contribution by the employers and the entitlements of the domestic workers.
21. (1) Members should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, such as:
- (a) establishing a national hotline with interpretation services for domestic workers who need assistance;
  - (b) consistent with Article 17 of the Convention, providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed;
  - (c) developing a network of emergency housing;
  - (d) raising employers' awareness of their obligations by providing information on good practices in the employment of domestic workers, employment and immigration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers;
  - (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
  - (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.
- (2) Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and through any other appropriate measures.

22. Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.
23. Members should promote good practices by private employment agencies in relation to domestic workers, including migrant domestic workers, taking into account the principles and approaches in the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188).
24. In so far as compatible with national law and practice concerning respect for privacy, Members may consider conditions under which labour inspectors or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter the premises in which the work is carried out.
25. (1) Members should, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, establish policies and programmes, so as to:
  - (a) encourage the continuing development of the competencies and qualifications of domestic workers, including literacy training as appropriate, in order to enhance their professional development and employment opportunities;
  - (b) address the work–life balance needs of domestic workers; and
  - (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities.
- (2) Members should, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, develop appropriate indicators and measurement systems in order to strengthen the capacity of national statistical offices to effectively collect data necessary to support effective policymaking regarding domestic work.
26. (1) Members should consider cooperating with each other to ensure the effective application of the Domestic Workers Convention, 2011, and this Recommendation, to migrant domestic workers.



- (2) Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning the prevention of forced labour and trafficking in persons, the access to social security, the monitoring of the activities of private employment agencies recruiting persons to work as domestic workers in another country, the dissemination of good practices and the collection of statistics on domestic work.
- (3) Members should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.
- (4) In the context of diplomatic immunity, Members should consider:
  - (a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers' rights; and
  - (b) cooperating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.

**Appendix D:**  
**RECOMMENDATION CONCERNING  
NATIONAL FLOORS OF SOCIAL PROTECTION, 2012**

## Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 101st Session on 30 May 2012, and

Reaffirming that the right to social security is a human right, and

Acknowledging that the right to social security is, along with promoting employment, an economic and social necessity for development and progress, and

Recognizing that social security is an important tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, to promote equal opportunity and gender and racial equality, and to support the transition from informal to formal employment, and

Considering that social security is an investment in people that empowers them to adjust to changes in the economy and in the labour market, and that social security systems act as automatic social and economic stabilizers, help stimulate aggregate demand in times of crisis and beyond, and help support a transition to a more sustainable economy, and

Considering that the prioritization of policies aimed at sustainable long-term growth associated with social inclusion helps overcome extreme poverty and reduces social inequalities and differences within and among regions, and

Recognizing that the transition to formal employment and the establishment of sustainable social security systems are mutually supportive, and

Recalling that the Declaration of Philadelphia recognizes the solemn obligation of the International Labour Organization to contribute to “achiev[ing] ... the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care”, and

Considering the Universal Declaration of Human Rights, in particular Articles 22 and 25, and the International Covenant on Economic, Social and Cultural Rights, in particular Articles 9, 11 and 12, and

Considering also ILO social security standards, in particular the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69), and noting that these standards are of continuing relevance and continue to be important references for social security systems, and

Recalling that the ILO Declaration on Social Justice for a Fair Globalization recognizes that “the commitments and efforts of Members and the Organization to implement the ILO’s constitutional mandate, including through international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on ... (ii) developing and enhancing measures of social protection ... which are sustainable and adapted to national circumstances, including ... the extension of social security to all”, and

Considering the resolution and Conclusions concerning the recurrent discussion on social protection (social security) adopted by the International Labour Conference at its 100th Session (2011), which recognize the need for a Recommendation complementing existing ILO social security standards and providing guidance to Members in building social protection floors tailored to national circumstances and levels of development, as part of comprehensive social security systems, and

Having decided upon the adoption of certain proposals with regard to social protection floors, which are the subject of the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation;

adopts this fourteenth day of June of the year two thousand and twelve the following Recommendation, which may be cited as the Social Protection Floors Recommendation, 2012.

## **I. OBJECTIVES, SCOPE AND PRINCIPLES**

1. This Recommendation provides guidance to Members to:
  - (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and
  - (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards.
2. For the purpose of this Recommendation, social protection floors are nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion.
3. Recognizing the overall and primary responsibility of the State in giving effect to this Recommendation, Members should apply the following principles:
  - (a) universality of protection, based on social solidarity;
  - (b) entitlement to benefits prescribed by national law;

- (c) adequacy and predictability of benefits;
- (d) non-discrimination, gender equality and responsiveness to special needs;
- (e) social inclusion, including of persons in the informal economy;
- (f) respect for the rights and dignity of people covered by the social security guarantees;
- (g) progressive realization, including by setting targets and time frames;
- (h) solidarity in financing while seeking to achieve an optimal balance between the responsibilities and interests among those who finance and benefit from social security schemes;
- (i) consideration of diversity of methods and approaches, including of financing mechanisms and delivery systems;
- (j) transparent, accountable and sound financial management and administration;
- (k) financial, fiscal and economic sustainability with due regard to social justice and equity;
- (l) coherence with social, economic and employment policies;
- (m) coherence across institutions responsible for delivery of social protection;
- (n) high-quality public services that enhance the delivery of social security systems;
- (o) efficiency and accessibility of complaint and appeal procedures;
- (p) regular monitoring of implementation, and periodic evaluation;
- (q) full respect for collective bargaining and freedom of association for all workers; and
- (r) tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.

## II. NATIONAL SOCIAL PROTECTION FLOORS

4. Members should, in accordance with national circumstances, establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees. The guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level.
5. The social protection floors referred to in Paragraph 4 should comprise at least the following basic social security guarantees:
  - (a) access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality;
  - (b) basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services;
  - (c) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and
  - (d) basic income security, at least at a nationally defined minimum level, for older persons.
6. Subject to their existing international obligations, Members should provide the basic social security guarantees referred to in this Recommendation to at least all residents and children, as defined in national laws and regulations.
7. Basic social security guarantees should be established by law. National laws and regulations should specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees. Impartial, transparent, effective, simple, rapid, accessible and inexpensive complaint and appeal procedures should also be specified. Access to complaint and appeal procedures should be free of charge to the applicant. Systems should be in place that enhance compliance with national legal frameworks.
8. When defining the basic social security guarantees, Members should give due consideration to the following:
  - (a) persons in need of health care should not face hardship and an increased risk of poverty due to the financial consequences of accessing essential health care. Free prenatal and postnatal medical care for the most vulnerable should also be considered;

- (b) basic income security should allow life in dignity. Nationally defined minimum levels of income may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance or other comparable thresholds established by national law or practice, and may take into account regional differences;
  - (c) the levels of basic social security guarantees should be regularly reviewed through a transparent procedure that is established by national laws, regulations or practice, as appropriate; and
  - (d) in regard to the establishment and review of the levels of these guarantees, tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned, should be ensured.
9. (1) In providing the basic social security guarantees, Members should consider different approaches with a view to implementing the most effective and efficient combination of benefits and schemes in the national context.
- (2) Benefits may include child and family benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, survivors' benefits, unemployment benefits and employment guarantees, and employment injury benefits as well as any other social benefits in cash or in kind.
- (3) Schemes providing such benefits may include universal benefit schemes, social insurance schemes, social assistance schemes, negative income tax schemes, public employment schemes and employment support schemes.
10. In designing and implementing national social protection floors, Members should:
- (a) combine preventive, promotional and active measures, benefits and social services;
  - (b) promote productive economic activity and formal employment through considering policies that include public procurement, government credit provisions, labour inspection, labour market policies and tax incentives, and that promote education, vocational training, productive skills and employability; and
  - (c) ensure coordination with other policies that enhance formal employment, income generation, education, literacy, vocational training, skills and employability, that reduce precariousness, and that promote secure work, entrepreneurship and sustainable enterprises within a decent work framework.

11. (1) Members should consider using a variety of different methods to mobilize the necessary resources to ensure financial, fiscal and economic sustainability of national social protection floors, taking into account the contributory capacities of different population groups. Such methods may include, individually or in combination, effective enforcement of tax and contribution obligations, reprioritizing expenditure, or a broader and sufficiently progressive revenue base.
  - (2) In applying such methods, Members should consider the need to implement measures to prevent fraud, tax evasion and non-payment of contributions.
12. National social protection floors should be financed by national resources. Members whose economic and fiscal capacities are insufficient to implement the guarantees may seek international cooperation and support that complement their own efforts.

### **III. NATIONAL STRATEGIES FOR THE EXTENSION OF SOCIAL SECURITY**

13. (1) Members should formulate and implement national social security extension strategies, based on national consultations through effective social dialogue and social participation. National strategies should:
  - (a) prioritize the implementation of social protection floors as a starting point for countries that do not have a minimum level of social security guarantees, and as a fundamental element of their national social security systems; and
  - (b) seek to provide higher levels of protection to as many people as possible, reflecting economic and fiscal capacities of Members, and as soon as possible.
- (2) For this purpose, Members should progressively build and maintain comprehensive and adequate social security systems coherent with national policy objectives and seek to coordinate social security policies with other public policies.
14. When formulating and implementing national social security extension strategies, Members should:
  - (a) set objectives reflecting national priorities;
  - (b) identify gaps in, and barriers to, protection;
  - (c) seek to close gaps in protection through appropriate and effectively coordinated schemes, whether contributory or non-contributory, or both, including through the extension of existing contributory schemes to all concerned persons with contributory capacity;



- (d) complement social security with active labour market policies, including vocational training or other measures, as appropriate;
  - (e) specify financial requirements and resources as well as the time frame and sequencing for the progressive achievement of the objectives; and
  - (f) raise awareness about their social protection floors and their extension strategies, and undertake information programmes, including through social dialogue.
15. Social security extension strategies should apply to persons both in the formal and informal economy and support the growth of formal employment and the reduction of informality, and should be consistent with, and conducive to, the implementation of the social, economic and environmental development plans of Members.
  16. Social security extension strategies should ensure support for disadvantaged groups and people with special needs.
  17. When building comprehensive social security systems reflecting national objectives, priorities and economic and fiscal capacities, Members should aim to achieve the range and levels of benefits set out in the Social Security (Minimum Standards) Convention, 1952 (No. 102), or in other ILO social security Conventions and Recommendations setting out more advanced standards.
  18. Members should consider ratifying, as early as national circumstances allow, the Social Security (Minimum Standards) Convention, 1952 (No. 102). Furthermore, Members should consider ratifying, or giving effect to, as applicable, other ILO social security Conventions and Recommendations setting out more advanced standards.

#### **IV. MONITORING**

19. Members should monitor progress in implementing social protection floors and achieving other objectives of national social security extension strategies through appropriate nationally defined mechanisms, including tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned.
20. Members should regularly convene national consultations to assess progress and discuss policies for the further horizontal and vertical extension of social security.
21. For the purpose of Paragraph 19, Members should regularly collect, compile, analyse and publish an appropriate range of social security data, statistics and indicators, disaggregated, in particular, by gender.

22. In developing or revising the concepts, definitions and methodology used in the production of social security data, statistics and indicators, Members should take into consideration relevant guidance provided by the International Labour Organization, in particular, as appropriate, the resolution concerning the development of social security statistics adopted by the Ninth International Conference of Labour Statisticians.
23. Members should establish a legal framework to secure and protect private individual information contained in their social security data systems.
24. (1) Members are encouraged to exchange information, experiences and expertise on social security strategies, policies and practices among themselves and with the International Labour Office.  
  
(2) In implementing this Recommendation, Members may seek technical assistance from the International Labour Organization and other relevant international organizations in accordance with their respective mandates.

**Appendix E:**

**Letters of Justice Canada Regarding  
the Appropriate Legislative Jurisdiction  
for the Instruments Adopted in  
June 2010, June 2011 and June 2012**



Department of Justice  
Canada

HRSDC  
140 Promenade du Portage  
Phase IV, 11<sup>th</sup> Floor  
Gatineau, Quebec  
K1A 0J9

Ministère de la Justice  
Canada

RHDCC  
140, Promenade du Portage  
Phase IV, 11<sup>e</sup> étage  
Gatineau (Québec)  
K1A 0J9

August 26, 2011

Ms. Debra Young  
Director General  
Human Resources and Skills Development Canada  
International and Intergovernmental Affairs (DGO)  
Place du Portage, Phase II, 8<sup>th</sup> Floor  
165, Hôtel de Ville  
Gatineau, Québec  
K1A 0J2

Dear Ms. Young :

I refer to your inquiry regarding appropriate legislative jurisdiction for the following instruments adopted by the International Labour Conference at its 99<sup>th</sup> and 100<sup>th</sup> Sessions which commenced on June 2, 2010 and June 1, 2011, respectively:

*HIV and AIDS Recommendation, 2010* (June 17, 2010) recognizes the importance of addressing the impact of HIV and AIDS in the world of work and provides related guidance to governments, employers and workers.

*Domestic Workers Convention, 2011* (June 16, 2011) recognizes the special conditions under which domestic work is carried out and concerns standards for ensuring decent work for domestic workers.

*Domestic Workers Recommendation, 2011* (June 16, 2011) recognizes the special conditions under which domestic work is carried out and provides guidance in the application of the *Domestic Workers Convention, 2011* provisions.

The subject matter of the above-mentioned instruments is partially within federal jurisdiction and partially within provincial jurisdiction.

Sincerely,

  
Thomas D. Cunningham

Legal Counsel/Conseiller juridique  
Human Resources and Skills Development Canada/Legal Services  
Ressources humaines et développement des compétences Canada/Services juridiques



Ministère de la Justice  
Canada

Services juridiques, RHDC  
Place du Portage, Phase IV  
Gatineau, Québec  
K1A 0J9

Department of Justice  
Canada

HRSDC, Legal Services  
Place du Portage, Phase IV  
Gatineau, Québec  
K1A 0J9

October 3, 2012

Ms. Debra Young  
Director General  
Human Resources and Skills Development Canada – Labour Program  
International and Intergovernmental Labour Affairs  
Place du Portage, Phase II, 8<sup>th</sup> Floor  
165 Hôtel de Ville  
Gatineau, Québec  
K1A 0J2

**Re : International Labour Conference Recommendation on Social  
Protection Floors**

Dear Ms. Young :

The following is in response to your inquiry of September 28, 2012, regarding the appropriate legislative jurisdiction for the *Recommendation concerning National Social Floors Protection* adopted by the International Labour Conference at its 101<sup>st</sup> Session (June 14, 2012).

The *Recommendation Concerning National Social Floors Protection* recognizes the importance of social security and provides guidance to governments on the establishment, maintenance and extension of basic social security guarantees.

The subject matter of this Recommendation is partially within federal jurisdiction and partially within provincial jurisdiction.

Sincerely,

Rachel Guy  
Legal Counsel/Conseillère juridique  
Human Resources and Skills Development Canada, Legal Services  
Ressources humaines et développement des compétences Canada, Services  
juridiques

**Appendix F:**

**Record of the Votes Regarding  
the Instruments Adopted  
by the International Labour Conference  
in 2010, 2011 and 2012**

**Vote regarding the HIV and AIDS and the World of Work Recommendation, 2010**

**Total Vote:** (All voting delegates at the Conference)

For	439
Against	4
Abstentions	11

**Canada:**

Worker	For
Employer	For
Government	For

**Vote regarding the Domestic Workers Convention (2011)**

**Total Vote:** (All voting delegates at the Conference)

For	396
Against	16
Abstentions	63

**Canada:**

Worker	For
Employer	For
Government	For

### Vote regarding the Domestic Workers Recommendation (2011)

**Total Vote:** (All voting delegates at the Conference)

For	434
Against	8
Abstentions	42

**Canada:**

Worker	For
Employer	For
Government	For

### Vote regarding the Recommendation on National Floors of Social Protection, 2012

**Total Vote:** (All voting delegates at the Conference)

For	453
Against	0
Abstentions	1

**Canada:**

Worker	---
Employer	For
Government	For



**Appendix G:**

**Text of Article 19 of the International Labour Organization (ILO) Constitution  
Regarding the Obligations of ILO Members in Respect of  
Adopted Conventions and Recommendations**

## **Article 19**

### **Conventions and Recommendations**

#### DECISIONS OF THE CONFERENCE

1. When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.

#### VOTE REQUIRED

2. In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

#### MODIFICATIONS FOR SPECIAL LOCAL CONDITIONS

3. In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

#### AUTHENTIC TEXTS

4. Two copies of the Convention or Recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General. Of these copies one shall be deposited in the archives of the International Labour Office and the other with the Secretary-General of the United Nations. The Director-General will communicate a certified copy of the Convention or Recommendation to each of the Members.

#### OBLIGATIONS OF MEMBERS IN RESPECT OF CONVENTIONS

5. In the case of a Convention:
  - (a) the Convention will be communicated to all Members for ratification;

- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
- (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention;
- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

#### OBLIGATIONS OF MEMBERS IN RESPECT OF RECOMMENDATIONS

##### 6. In the case of a Recommendation:

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;

- (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

#### OBLIGATIONS OF FEDERAL STATES

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces, or cantons rather than for federal action, the federal government shall:
  - (i) make, in accordance with its Constitution and the Constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the session of the Conference to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action;
  - (ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State coordinated action to give effect to the provisions of such Conventions and Recommendations;

- (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them;
- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent States, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;
- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

#### EFFECT OF CONVENTIONS AND RECOMMENDATIONS ON MORE FAVOURABLE EXISTING PROVISIONS

8. In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.