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Domestic Work Regulation as a Challenge for South Countries

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❖ Presentation

In South countries, domestic work is a very important activity among the female population. In developed countries, domestic work represents less than 1% of all working people, while in Asia it accounts for 4.7%, in Africa 4.9%, and in Latin America 11.9%. Domestic workers represent 11.8% of working women in Asia, 13.6% in Africa and 26.6% in Latin America. According to ILO estimates, 88% of domestic work at the global level is concentrated on these

◆ KEYWORDS

■ Domestic Work

■ Labor and Social Rights

■ International Labor Standards

■ Lawmaking Process

■ Global South Countries

three continents. Most domestic workers come from another country or region: they represent 30% of all international migrant workers.

In terms of legal protection, only 10% of domestic workers in the world benefit from labor standards; 50% are covered by restricted regulations, and almost 30% of domestic workers are excluded from national labor regulations. Aside the differences concerning existing regulation, most of domestic workers are informal workers. That is means that most of them are not covered by any labor regulation. Thus, implementation of existing regulation is very difficult. In some cases, the condition of migrant worker is the reason why domestic workers are excluded from national regulatory frameworks.

Facing this reality, in 2011, within decent work framework, the International Labor Organization approved the Convention 189 and the Recommendation 201. The assumption behind these regulatory tools is that pertinent regulation will contribute to the improvement of working conditions and social protections for domestic workers. Since their approval, various countries began to change their regulations. In the case of South countries, most of them have already ratified the Convention or are in process to.

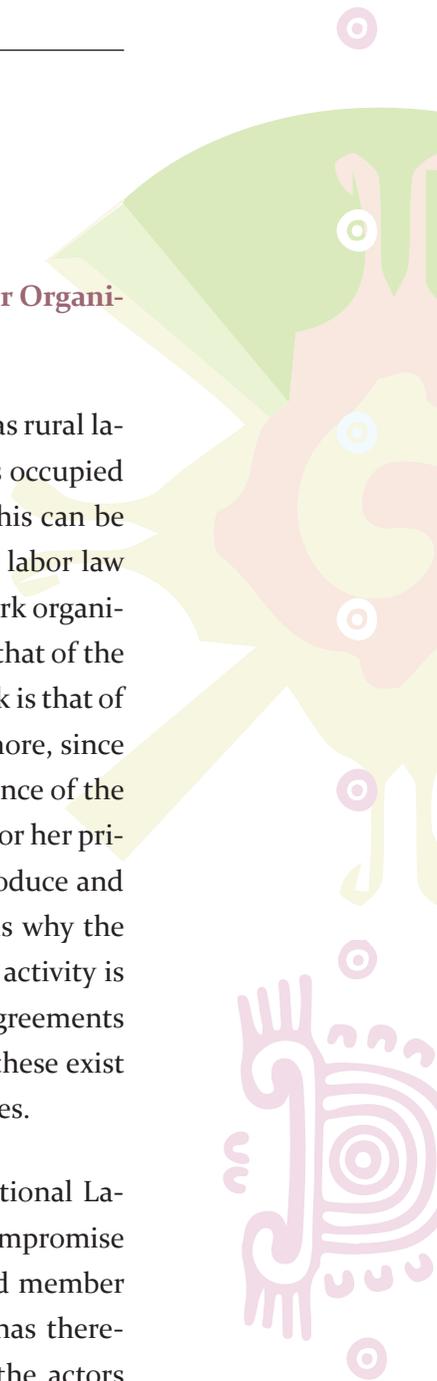


✦ Political analysis

2. Convention 189 of the International Labor Organization as a key instrument

Like other atypical forms of employment such as rural labor or self-employment, domestic workers has occupied a marginal position in national regulations. This can be explained in part by the difficulty of adapting labor law to activities that take place under models of work organization and labor relationships that differ from that of the factory. The labor relationship in domestic work is that of a sole employer and a sole employee. Furthermore, since domestic work takes place in the private residence of the employer and involves activities relevant to his or her private life, it is very difficult for the state to introduce and enforce respect for the law in this area. This is why the production of labor regulation for this type of activity is conditioned by the possibility of establishing agreements between the different actors involved, even if these exist in isolation, as individuals, and not as collectives.

In light of this, Convention 189 of the International Labor Organization (ILO) appears clearly as a compromise among the interests of employers, workers and member states. Its translation to each local situation has therefore brought about new agreements among the actors involved, such as workers associations, non-governmen-



tal organizations, employers associations, or legislators with different political positions. In national regulations of the cases studied (Argentina, South Africa and the Philippines) an extensive and intense period of negotiations between the various actors can be observed. In each case, Convention 189 and Recommendation 201 function as normative references that help bring conflicts to light and clarify positions. For this reason, it is important to acknowledge the significant persuasive role that instruments produced by the ILO play in domestic processes of regulation production in the southern nations.

* Proposals

3. Technical and political challenges to the regulation of domestic work

The regulation of domestic work poses clear challenges to labor law at the international, regional and local levels. These challenges arise in different ways at each of these levels, although at all levels, both a technical and a political component are observed.

At the international level—the level of labor law produced by the ILO—the technical challenge can be seen

in the need to define a new labor standard. Historically, the development of domestic labor standards has been associated with defining the best model of regulation for “typical” labor relationships. On one hand, domestic work, due to its characteristics as work for and in the household, cannot be considered an activity related to previously defined standards. On the other hand, since this type of activity is organized in a manner that is directly related to the structure of the labor market and the ways in which masculine and feminine roles are structured culturally, any proposed labor standard for it must be broad enough to encompass various situations.

The political challenge at this level is for the ILO to achieve the adoption of Convention 189 by member countries. This implies intense promotional work by the ILO in order to increase the number of ratifications and the accuracy of implementations.

At the regional level, particularly in the case of regions subject to commercial and/or political accords, the technical challenge lies in the realistic possibility of harmonizing national regulations in the region and establishing coordinating mechanisms that ensure the portability of social rights concerning migrant workers. The political challenge here is that of establishing regional or bilateral accords that satisfy the interests of countries exporting workers as well as those of countries importing them.



At the local level, two considerable technical challenges arise. Firstly, it is important that regulation specific to domestic work not be minimized by existing regulation. In many cases, the possibility of many different laws being applied to the same case leads to a gray area in which no regulation ends up being truly applied. Secondly, the effectiveness of any new regulation depends on the state's capacity for establishing legal and institutional provisions: that is to say its capacity for generating or modifying institutions for ensuring the recognition of rights written into the law. Mainly, this includes institutions concerned with social protections (social security regimes) and those designed to facilitate or ensure compliance with the law (labor inspection).

The primary political challenge at this level is one of producing regulation that crystallizes a compromise among the interests of the actors involved (workers, employers and the state)—a compromise that translates to favorable action with regards to the rights recognized by the law. Although institutionally the state must be able to rely on agencies that ensure compliance with the law, in political terms, it must be able to count on the adherence of employers and workers to the point that compliance with the law is possible outside of coercive mechanisms.



At all of these three levels, the production of pertinent and effective regulation must be accompanied by promotional campaigns for the rights of domestic workers. As various research endeavors have already demonstrated, even most well-intentioned law cannot protect the rights of domestic workers because the recognition of their rights implies a profound change in how the positions of the parties involved in this labor relationship are conceived. A law might be able to establish guarantees, but it cannot on its own change social representations and the practices derived from them. For this reason, promotional campaigns for the rights of domestic workers play a fundamental role in bringing about profound change.

These campaigns can be exclusively national and brought about by various state jurisdictions; they might be the fruit of cooperation between the ILO (or other international NGOs) and states; or they can be developed at the level of domestic workers associations or NGOs. Their importance lies in that they can serve diverse objectives, depending on those involved in them. Firstly, promotional campaigns for the rights of domestic workers place the issue on the public agenda from where, little by little, it can acquire an indispensable social legitimacy. Secondly, they bring greater visibility to domestic workers associations in the public sphere, a visibility workers can use to



make more general demands related to the enforcement of the regulation. Thirdly, such campaigns create better awareness of current regulation on the part of both employers and workers. While employers can use the information they provide in order to comply with the requirements of the law, workers can use it to demand better working conditions and highest wages.

Such campaigns should not be limited to the times during which a new law is drafted or its recent passing is promoted. Although they are important at these times, it is essential that subsequent campaigns contribute to the permanent promotion of domestic workers rights. Observation has shown that compliance with the law is not total during the first years of its enforcement. Numerous promotional campaigns are therefore necessary in order to ensure maximum compliance.



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