

Reversing a History of Exclusion through International Labour Law

by Claire Hobden

Although domestic workers provide crucial care services that make all other work possible, their labour too often is not seen as real work meriting legal protections. This view has resulted in 100 million women and girls left unprotected by national labour law in nearly half the world's countries. Until recently, domestic workers were excluded even from international labour laws, which is symbolic of the slow evolution of social perceptions of women's work generally and of domestic work in particular. Reducing the exploitation of domestic workers will therefore require both normative change to reverse the history of exclusion, and social change to actualize their rights. An international labour standard on the rights of domestic workers is essential to achieve both.

Whether it takes the shape of a binding convention or just a recommendation, an international labour standard for domestic workers is not a stand-alone answer. First, it would provide a *minimum* standard that purports to provide universal coverage; it constitutes a basis on which campaigns can seek more rights. Second, it gains effect only through implementation, monitoring, enforcement, and cultural change. Its use domestically as a campaign tool can increase its usefulness as a labour standard. If won, a binding convention is possibly the most effective way of holding states accountable by providing a baseline standard against which the promotion and protection of the rights of domestic workers can be monitored and enforced.

This article argues first that an international labour standard would extend necessary protections to domestic workers. Second, the standard-setting process provides a compelling campaign tool to mobilize domestic workers and raise awareness among states and civil society. Domestic workers are then empowered through their participation in drafting international law, and their input helps ensure the relevance of the standard. By virtue of their participation, domestic workers exercise their civil and political rights, gaining traction and increasing dialogue with their respective governments at the national level. Finally, their engagement provides an accountability mechanism, as international labour standards provide a role for civil society actors in the implementation of their rights.

Inclusion

The legislative exclusion of domestic workers is arguably one of the more egregious oversights in labour history. Even when arguing that domestic work is the product of global inequality, and that only structural change can transform the industry, we cannot deny that the culture of disrespect and undervaluing of domestic work is supported by legislative silence at the state and international levels. Despite provisions in existing human rights instruments and ILO conventions that address some of their concerns, domestic workers have been left out of labour

legislation in about 40 per cent of countries (ILO, 2010) and excluded from many ILO conventions via a flexibility clause that allows governments to exclude certain limited categories of workers upon ratification of a convention. Such exclusionary practices underline the need to establish domestic worker rights through an international instrument that comprehensively addresses their specific concerns.

The lack of protection demands an international effort to identify good practices and establish a clear human rights framework. When there are no standards, the normative belief is that anything goes, and that there are no repercussions for abuse. Human rights reports denouncing abuses such as unpaid wages, long working hours without rest, insufficient provision of often inadequate food, substandard accommodation, forced labour, confinement, and emotional and sexual abuse provide ample evidence that such practice is the norm, not the exception (Human Rights Watch, 2006). Establishing fair labour standards makes a statement to both governments and societies about the value of labour, setting a minimum benchmark for employers and governments.

Campaign Tool

Negotiating an international standard is an opportunity for domestic workers to build their movements, raise awareness, and increase their policy influence nationally and internationally.

Labour movement history shows that a strong campaign builds movement, increases union membership, and raises consciousness. In some countries, domestic workers have been organizing locally for decades, using local and regional policy campaigns to encourage worker participation, build cross-sector alliances, and alter the discourse around domestic work through the media. Where domestic worker movements gained less traction locally, the ILO discussion on domestic work legitimized their struggles, drawing government and media attention.

Increased buy-in from these stakeholders then guides constituents to shift their perceptions of domestic work, egging on the fundamental social change that must accompany policy change to ensure effective implementation. Global multimedia dissemination of campaigns stimulates thinking on a topic that has remained invisible for centuries. Governments, international and domestic actors thus learn about domestic work, and are more likely to address the issues domestically.

The international standard-setting process also catalyzed transnational domestic worker organizing by providing a common platform. Such collaboration is imperative to pro-

tect migrant domestic workers in particular, providing worker organizations from sending and receiving countries with information of use to migrating domestic workers.

To be clear, the campaign for an ILO convention for domestic workers has not been a campaign for the sake of having a campaign. Although it serves to engage members and build networks, the goal remains establishing and implementing robust labour laws. Moreover, a successful campaign lifts the overall energy of a movement, inflating its power as a domestic force to reckon with.

Empowerment

Including domestic workers in negotiating an international labour standard serves to empower historically disenfranchised women and to ensure that the standard is relevant to the sector. Moreover, an ILO instrument would grant domestic workers the right to form or join trade unions, which is still denied to them in many countries.

Where historically they lacked access to international legislative processes, domestic workers had the rare opportunity to bring their demands directly to the international negotiating table at the International Labour Conference (ILC) through the organizing efforts of working women, mostly migrants from the South, via the International Domestic Worker Network (IDWN) and in partnership with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF). Though the ILO standard-setting process is tripartite, providing voting rights to governments, employers' associations and national trade union centres, domestic workers are not yet unionized in most countries, and therefore are not always represented in national trade union centres with voting rights. However, thanks in part to the lobbying efforts of the IUF and IDWN, a number of trade union centres included domestic workers in their delegations, giving them a voice in the deliberation.¹ Shaping the international legislative agenda and participating in the discussion was a huge success for domestic workers and is a testament to the movement they have built. Their alliances with trade unions and other actors also strengthened their movement, building a strong foundation from which to implement and expand the standards achieved.

The ILC campaigns also empowered domestic workers domestically. Once added to the ILC agenda, domestic workers met with their respective labour ministries to sensitize them to their specific concerns and provide guidance on what rights they needed. Domestic workers in Brazil, South Africa, and the United States, *inter alia*,² began consulting with their government months before the ILC, arguably shaping the stances of these governments that led the argument for a robust instrument.

Domestic worker participation had six results: it raised their profile at the national and international levels; substantiated the ILC debate; amplified their voices; increased their knowledge of international instruments; and built their movement through collaboration with trade unions. Finally, it empowered domestic workers locally to dialogue and cooperate with governments in implementing domestic worker rights. To take just

one example, as a result of the partnerships forged in the preparatory phases of the ILC, the United States Department of Labor is collaborating with domestic worker organisations on regulatory reforms to improve domestic worker rights and protections.³

Accountability

Input from domestic workers leads not only to relevant legal standards, but also structures a role for domestic workers to hold employers and states accountable. International labour and human rights law evolved in part to protect individuals within a state's borders, and to provide guidance to states in enacting laws and regulations. In turn, states are expected to ensure that employers remain compliant. The vulnerable status of domestic workers in most countries underlines the role of international law and accountability. International labour standards allow international institutions and domestic non-state actors to monitor the conditions of domestic workers, and, in cases of non-compliance, the ILO supervisory mechanisms provide workers' (and employers') organizations with the right to comment, make representations and lodge complaints against their government. As such, an international instrument is an important implementation tool for domestic workers.

Conclusion

Let us momentarily take the perspective that in a world free from inequality, there would be no need for domestic workers. The vast majority of the world sadly is far from such a utopia. Structural and economic overhaul is not likely to occur soon; and the social change needed to shift perceptions of domestic work will take generations to evolve. Meanwhile, 100 million women and girls worldwide suffer from a lack of protection. This is the immediate unjust reality that we must begin to address through international labour standards.

¹ Such was the case for the delegations of South Africa, Jamaica, Trinidad & Tobago, Peru, Brazil, UK, US, and the Netherlands.

² Such consultations also took place in Trinidad & Tobago, Jamaica, Tanzania, Namibia, Indonesia, Nepal, Philippines, Peru and Mexico, with varying results.

³ www.nationaldomesticworkeralliance.org

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