

On the Future of Domestic and Caring Labour: Lessons from the ILC Deliberations on the ILO Convention on Domestic Work

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Abstract

As the world is rapidly ageing, there will be an unprecedented demand for domestic and caring labour, for which many countries are currently not prepared. The low status and difficult living and working conditions of this type of work do not make it attractive. The ILO Convention on Domestic Work is a labour standard-setting instrument which calls for the formal recognition of this sector. These standards call for labour rights and social protections which would help improve working conditions. At present, there are only 37 ratifying countries, half of which are in Latin America. This means that the majority of the 76 million-strong workforce are working with little to no legal and social protections, leading to labour exploitation and human rights violations. Those who are living and working in a country not their own are especially at risk. The piece will explain some of the problems that arise from the invisibility of domestic work from national laws, including issues to do with migration policies. The essay specifically focuses on some of these problems as discussed in the International Labour Conferences in 2010 and 2011, during which the instrument was deliberated. It will also give some actionable recommendations (apart from ratifying the Convention itself).

Policy Recommendations

- Ratifying the ILO Convention on Domestic work is an important step in formalising domestic work, legitimising and valorising it as work like any other. The Convention itself is an important tool to guide national legislation and aid in public advocacy for various stakeholders.
- Domestic work – both paid and unpaid - needs to be made visible in order to acknowledge its public value. This can be done through governments' statistical data collection. This data is useful not only to formalise the sector, but also to craft policies in relation to care needs and public welfare.
- With or without C189, states should nevertheless initiate changes that would formalise domestic work. Domestic workers comprise an important labour constituency in countries around the world. Their formal recognition is crucial to enable freedom of association and collective bargaining. These labour rights are needed to improve living and working conditions. The human element of domestic and caring labour means that these conditions are directly related to the quality of care to recipients.
- Differences in national standards and policies make it difficult to address issues between countries that send and receive migrants. The Convention is a good place to find solutions to harmonise standards for both high and low-rights contexts.

During the Covid-19 pandemic, many of us retreated to the safety of our homes. Households became the defence of last resort to an unseen threat that quickly spread around the world. Economies shut down, supply chains were disrupted, and both vulnerable and able bodies were laid sick in hospitals and homes. As schools closed, parents had to juggle minding their children at the same time as working from home. The elderly suffered disproportionate mortality rates. In an unprecedented way, the polycrisis demonstrated the absolutely essential role of domestic and caring labour in households. In many societies, this is still seen as a responsibility that falls on women's shoulders. But the household, and the care needs of those in it, are not simply a woman's problem, or even just the family's. It is a public issue that has multiple, interlocking implications to not only welfare systems, but to issues of the global economy, the world of work and gender equality.

According to the latest estimates, there are nearly 76 million domestic workers worldwide (ILO, 2023). This is an inexact number, given the difficulty of accessing quality data from national statistical authorities. In preparation for the ILC deliberations in 2010, the ILO sought to come up with global estimates based on the International Standard Industrial Classification (ISIC) Division 95 which groups "activities of households as employers of domestic staff" (Simonovsky & Luebker, 2011, p. 2). This was the first attempt to do so even though feminists have long called for the measurement and valuation of the "economic and social contribution of housework and other domestic chores" as early as in the UN World Conference on Women in 1975 (United Nations, 1975, p. 33). It is important to note that these figures depend on a statistical definition of domestic work – that it is performed in the household under an employment contract, excluding those who work for agencies for example. In any case,

the lack of accurate, variegated data may be due to how countries quite literally do not count this workforce because domestic work is not normally recognised as "work". As such, domestic workers are often exempted from labour laws, which means that a vast majority (61,4 million or 81,2 percent) are working in the informal economy. They are excluded from legal and social protections, and even employment norms that regular employees may take for granted – a written employment contract, weekly days off, and receiving our salaries in regular intervals.

Numbers. The Asia Pacific region (South, East and Southeast Asia) comprises more than half of all domestic workers worldwide (50.6% or 38,3 million). The Americas (Latin American and the Caribbean, North America) comprise nearly a quarter (23,3% or 17,6 million), followed by Africa (12,7% or 9,6 million), the Arab States (8,7% or 6,6 million) and Europe and Central Asia (4,7% or 3,6 million) (ILO, 2021, p. 26). Given current estimates, 1 in every 12 female employees earns an income by cooking, cleaning and caring for dependents in other people's households. This is a major labour constituency that is underserved and underrepresented.

Migration. An estimated 11,5 million domestic workers are working in a country that is not their own. Migrant status brings an added set of challenges – such as visa regulations and immigration-related issues which limit workers' options to collectively negotiate to improve their working conditions. The Arab States have the highest proportion of migrants among those in the sector (83%). These are mostly workers from Southeast Asia, South Asia and Africa. In Southeast Asia, nearly one-quarter (24,7 percent) of all domestic workers are migrants.

The problem. Due to its "invisibility" to the law and the economy, domestic work has historically been seen as having low status, and is poorly paid. Often, those who perform

it are people at the margins of society, compounding the precarity of their economic status with the effects of societal hierarchies (e.g. race, caste, religion, etc.). The irony is that these persons doing low-status work are entrusted with the most intimate tasks necessary to sustain households and human lives. Without drastic policy changes, i.e. investment in domestic and care systems, it is likely that current conditions will hold. This means that many households will have to shoulder hiring a domestic or care worker as a private cost. Due to the taken-for-granted, heavily gendered aspects of these tasks, it is often women who have the responsibility to make care arrangements. Without exception, this burden is not shared equally in all world regions. On average, women spend two to ten times more hours doing unpaid domestic labour compared to men (Charmes, 2019). This unpaid labour may be valued at \$10,8 trillion USD worldwide, triple the size of the tech industry (Oxfam, 2020). Women's paid and unpaid domestic work are two sides of the same coin. Both are not recognised as having any value to economies and are not formally recognised as an issue in public policies even though these tasks quite literally sustain every single human being on the planet.

A way forward. The International Labour Organization's Convention on Domestic Work (C189) is a universal labour standard-setting instrument that was established in 2011. Aside from social and labour protections, the spirit of the Convention would have domestic workers be treated like any other category of worker. The sector's perennial exclusion from standard-setting is no longer be tenable. To date, there are 37 countries that have ratified the Convention. The ILO estimates that about 53,4 percent of domestic workers worldwide are covered by some kind of legislation (general labour laws or specific to domestic workers). However there are regions that are lagging behind in legislative reforms. For example, in the Asia Pacific, which accounts

for more than half of the sector, only 25% of workers are covered by some sort of legislation (ILO, 2023). Moreover, ratification of C189 and/or inclusion in legislation are necessary but are not sufficient conditions. For example in Europe, where the sector is in principle completely covered, an estimated 34% of those in the care sector and 70% of those in direct household employment perform their jobs undeclared, either because they may be undocumented workers, or because the work itself has not been formalised (European Labour Authority, 2021, p. 2).

This essay will outline some of the most disputed points as discussed in the deliberations of the Convention on Domestic Work at the ILO's International Labour Conference (ILC). The ILC is an important labour diplomacy platform in which interests by Workers and Employers are represented, apart from Governments. The ILO's tripartite structure allows for the articulation of views of social partners when it comes to labour standards and policies. It is worthwhile to unpack the points of agreement and contention among delegates in order to emphasize the stakes and identify ways of moving forward. The thematic analysis below draws from the record of proceedings of the ILC in 2010 and 2011 and analyses the dominant themes in a total of four weeks of debates (ILO Office, 2010, 2011).

Issues on Domestic Work

There were key issues which were not in dispute in the ILC deliberations. There was recognition that workers were at risk due to the specific circumstances in which this type of work was performed. The household as workplace was seen as unique, if not problematic. Delegates agreed that there were differences in national conditions that needed to be addressed. At this stage, there was

acknowledgement that some kind of instrument was needed – whether a Convention, a Recommendation or both.

Strength of the instrument. There was a clear agreement that domestic workers were vulnerable, that they were among the lowest-paid workers and usually come from the margins of society. The differences lay in how to respond to this undisputed global, historical fact. There was an exchange in which the Employer Vice-Chairperson called to replace a section in the preamble that included the words “undervalued” and “invisible”. The Worker Vice-Chairperson objected, stating that these terms were important to keep the essence of the proposed text. Government members from South Africa (speaking on behalf of the Africa group), Spain (speaking on behalf of the EU), Brazil, Australia and the United States all agreed.

The difference between a Convention and a Recommendation has to do with legal obligations. The former is an international treaty while the latter serves as non-binding guidelines. In practical terms, ratifying an ILO Convention means a state not only has to harmonise its national legislation in conformity with the Convention’s principles, but is subject to complaint procedures in case of violations. This would then allow the ILO to engage in an investigative procedure in cases where it is shown that the state has not addressed complaints. Some countries like Singapore expressed sovereignty issues and to “highlight the shared responsibility of both labour-sending and labour-receiving countries” (ILO Office, 2010, p. 349). Australia (speaking on behalf of the Asia-Pacific Group) was optimistic that a universal instrument could be crafted that could be implemented under all national conditions, especially since the region comprised both sending and receiving countries.

The reasons given by governments which expressed a preference for a

Recommendation was flexibility, feasibility of implementation and differences in national conditions. Canada stated that an “overly prescriptive” instrument would make it difficult for many states to ratify. A government member of Bangladesh said that domestic workers comprised a significant sector of the informal economy, and that the adoption of a binding instrument would lead to unemployment and social insecurity. The Employer Vice-Chairperson stated that there were already existing ILO standards applicable to domestic workers. For the Workers Group, a Convention was always the preferred option, and they worked to defend the strength of the instrument. The Worker Vice-Chairperson therefore objected to the proposed amendment and was supported by the Africa group, Argentina, Australia, Brazil, Norway and the United States.

The contested nature of domestic work. There were exchanges about the nature of domestic work and why there needed to be a labour standard-setting instrument specific to the sector. The Employers Group recognised that it was an important source of employment for women. There were also numerous statements from governments that the sector still employed child labour in certain regions. In many cases these practices predated modern employment norms, as in the *criadazgo* system in Paraguay. An Employer member from Spain underscored questions about what domestic work was, and how it was related to the economy and world of work in general. He stated that domestic work:

...does not create direct or indirect economic benefit, nor does it produce any product that is put on the market or service that could generate benefit and would justify the head of the family establishing obligations or responsibilities, as in a company or a micro-company (ILO Office, 2010, p. 1085).

The question of if or whether domestic work contributed to the “economy” goes to the

question of what kinds of activities are recognised as having value in modern economies. Australia (speaking on behalf of the Asia-Pacific group), highlighted the fact that domestic work allowed men and women with family responsibilities to join the formal workforce. Vicky Kanyoka, a Worker delegate from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) stated that domestic workers were “the oil in the wheels” that made all other work possible (ILO Office, 2010, p. 266). Secretary-General Juan Somavia stated that extending rights to domestic workers crucially opens up “a door to labour standards in the informal economy” (ILO Office, 2011, p. 222). These are sectors that are not monitored or regulated by the state (e.g. waste pickers, sidewalk vendors). The ILO estimates that the vast majority of the world's workers (61% or about 2 billion people) are informally employed (ILO Office, 2018, p. 13).

The question of whether domestic work was like any other kind of work has implications on regulating employment relations – a core concern in standard-setting. Because the household is the workplace, the employment relationship is essentially invisible. Employers and governments had major concerns for privacy and objected to labour inspections. The Employer Vice-Chairperson pointed out the conflict between respecting the right to privacy of householders and the right to safety and protection of workers. For live-in domestic workers who reside in their employers' homes, it is practically difficult to distinguish working and non-working hours. There were extensive debates specifically about regulating working time. The sector suffers from notoriously long hours. The issues brought up around “working time” highlights the gendered aspect of this concept, which has a “thoroughly male reference, defined in opposition to female reproductive time” (Supiot, 1999, p. 84).

The Government member of the Netherlands (speaking on behalf of the EU), stated the difficulty of achieving parity between domestic workers and other kinds of workers. She gave an example of workers needing to tend to “very ill household members” who may need attention at all hours (ILO Office, 2011, p. 451). In response, the Workers Group pointed to the example of the Maritime Labour Convention of 2006, which demonstrated that it was not impossible to measure and delimit the working time of special categories of workers. Further, there were already-existing examples of labour inspection practices in countries like the United States, Brazil and Uruguay which took care to respect householders' privacy as well as ensuring that they fulfilled their obligations (ILO Office, 2010, p. 363). There were also provisions in the Homework Convention of 1996 (C177) which regulated household inspection practices consistent with national legislation. A worker delegate from Bolivia underscored the importance of the idea of “working time” itself. It is “the time during which the worker is in the service and at the disposal of the employer to carry out a stipulated amount of work”. It delimits the employer's claims to a worker's time and efforts, and indeed “gives rise to all workers' rights (ILO Office, 2011, p. 270)”.

There were extended debates about who to include in the category “domestic worker”, delimiting the scope of the Convention. Did it matter whether a worker was employed directly by a householder or a third party (i.e. an employment agency)? Would it include professionally trained care workers or those who only did domestic work on occasional basis, such as au pairs and babysitters? In the end, those covered by the instrument are people who perform work in or for households within an employment relationship. This excludes the categories mentioned previously. The key term here is “employment relationship”, which was why there were extended discussions about whether it could

apply to domestic work. The Employers Group were hesitant to extend the concept to households, essentially opening this private domain to the public sphere.

Challenges of migrant status. While domestic workers are at risk due to the lack of legal and social protections as well as their working environment, migrant status also brings others kinds of vulnerabilities. Various delegates expressed the need to secure bilateral agreements between sending and receiving countries, and to check immigration laws and work permit systems. They also pointed to the key role of private recruitment agencies and the need to standardise and regulate their practices. The opinion that the problem of domestic work should be seen as a human rights issue was relatively unambiguous. Kenya stated the importance of the UN's international instruments to guide multilateral agreements. Austria (speaking on behalf EU member states) sought to remove the UN Convention on Migrant Workers as a reference document because of its low ratification rate. Kuwait (speaking on behalf of the Gulf Cooperation Council), supported the amendment. Brazil stated that it was important to explicitly link migrant work with domestic work and pointed out that 42 countries had already signed the Convention. The Worker Vice-Chairperson, Bangladesh, El Salvador, and Kenya also opposed, after which Austria withdrew the amendment.

Apart from all the challenges mentioned previously, migrant status may lead to a two-tier system in which nationals are protected while migrants (documented or undocumented) are not, even in regions where human rights norms are relatively strong (e.g. in the European Union). Needless to say, layers-upon-layers of invisibility and lack of regulation create severely challenging living and employment conditions in low-rights contexts (Kandilige et al., 2023).

What are the Stakes?

A changing global economy. The deliberations on the ILO Convention on Domestic Work highlight a change in the world of work, opening up discussion on the informal economy and the increasing recognition that households were places of work. In the post-Covid era, this is no longer difficult to imagine. The Homework Convention (C177) presaged these transformations, in which “technology had made the Fordist spatial separations of home and workplace irrelevant, enabling a merger of the feminine ‘private sphere’ with the ‘private sector’ of the economy” (Prugl, 1999, p. 208). Literatures in feminist political economy have also long highlighted the links between the household, informality and the formal economy (Dunaway, 2014; Elson, 1998). The refusal or inability to bridge these links makes it difficult to understand the polycrisis in social reproduction, in which it is increasingly difficult to not only literally reproduce a population (birth rates), but to maintain social relations and communities (healthcare and education) (Bakker & Gill, 2004, pp. 17–18). The humble tasks of cooking, cleaning and caring for dependents are the most taken-for-granted elements in these processes.

Revisiting the gendered social contract. There was resistance to treating the employer's household as workplace, as highlighted by C189 deliberations. This rejection makes it difficult to formalise the sector because there wouldn't be a workplace in which a standard employment relationship (SER) could be created. The SER was engineered by the ILO from its inception, and without which it cannot set labour standards. Its three pillars include an employer-employee relationship regulated by a contract, standardised working time and continuous employment (Vosko, 2010, p. 52). Ironically, there was very little resistance to workers treating their own households as a workplace during Covid lockdowns. It is

therefore difficult to maintain the fiction that households are not places of employment, but also places in which all kinds of services (public or private) are needed.

An ageing planet. In the coming few decades, it is likely that we will see an intensification of has been called a “pincer movement”, where women meet the demand for unpaid caring labour at the same time as pressures increase to participate in the formal labour force (Singh & Zammit, 2000, p. 1260). Demographic decline and continued divestment in welfare, childcare and healthcare spending will make it difficult to realise gender equality in labour markets. It may delay or even defer women’s decisions to have children, exacerbating the demographic problem (Brinton et al., 2018). According to projections of the United Nations, the number of people aged 65 and older will increase to 16 percent of the total population by mid-century (UN Department of Economic and Social Affairs, 2022). While this is a global phenomenon, some regions have been ageing more rapidly than others. Europe and North America will have the highest proportion of retiree-age persons (65 and older) (26,9 percent), followed by East and Southeast Asia (25,7 percent). This means that there will be an increase in demand for caring labour in the coming few decades. While care homes are certainly an important space to meet their needs, elderly care recipients may also prefer the familiarity of their own homes. In the OECD, an estimated 70% of the long-term care workforce are personal care workers (OECD, 2020).

Global inequalities. There are also inequalities between high and low-income countries which are in part driven by low public investment in the domestic and care sectors. Lack of care investment in the richer, more rapidly ageing regions means they are turning to “importing” domestic and care workers as the inexpensive solution to their own population’s welfare needs (Wichterich, 2019). This leads to “care

deficits” in the Global South, which are already resource-poor. The World Health Organization estimates that there will be a shortage of 18 million healthcare workers by 2030, concentrated primarily in low and middle-income countries (WHO, 2016, p. 8). Meanwhile, governments that leave care arrangements to private recruitment agencies - the so-called migration industry - (Betts, 2013) - makes the delicate migration process opaque to regulatory institutions and trade unions. Without public oversight, the risks of migrant status may be exacerbated.

Ways Forward

The Convention on Domestic Work is an important instrument that was established in 2011 after nearly a century of exclusion in the ILO’s standard-setting history. Its ratification signals a country’s political commitment to valorising and legitimising domestic work as work like any other. It also signals a country’s commitment to norms set at the world’s largest venue for labour diplomacy. However, even if the stakes outlined above are not sufficient to convince stakeholders to move to ratify C189, there are concrete steps that can be made without ratification.

Domestic work is a cross-cutting issue to do with labour rights, human rights and women’s rights. An important, relatively easy step is to start making the sector visible to statistical systems and national accounts. The United Nations is currently revising its statistical tools to make it possible to literally count women’s paid and unpaid labour (UN Department of Economic and Social Affairs, 2021). This data is useful not only to formalise the sector, but to measure and anticipate care needs and public welfare. The ILO itself is committed to developing tools to better “see” this sector, through the tripartite activities of the Statistics Department. The recently concluded International Conference on Labour

Statisticians highlight new methods of data generation that have accelerated since the ILC in 2011. National statistics offices may avail of technical assistance from the ILO to learn and implement new methodologies.

The Convention is an important resource to ratifying states seeking to improve their implementation as well as various stakeholders advocating for ratification. In the entire Asia Pacific where most domestic workers reside, only the Philippines is a ratifying country. For advocates seeking to improve the working and living conditions of domestic workers in the region, C189 can be a useful agenda-setting tool because the instrument, and indeed the ILO's status and recognition itself, valorises the sector.

States must prepare for the care needs of a world that is ageing at varying speeds, and how these demographic changes impact not only national economies but the global economy as a whole. Due to the affective nature of caring labour, the quality of care given is directly related to the working conditions of care givers. Improvement in living and working standards, especially of those working in employers' households, may be achieved by guaranteeing freedom of association and collective bargaining, cornerstones of labour rights. Whether states ratify C189 or not, there is a need to improve the status and working conditions of the sector to attract workers and meet shortages.

The concerns over compatibility with national legislation and feasibility of implementing C189 in local contexts are not insurmountable. Given the estimated size and value of the domestic and care sectors, initial public costs should outweigh public gains in making the transition from informality. Variations in national legislation and policies pose a challenge between migrant-sending and receiving countries. These differences have direct impact on the well-being of workers. Between government-to-government

approaches and migration industry-initiated efforts, stakeholders must weigh their options, guided not only by market value and efficiency but also fairness and standards.

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