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The ILO Convention "Decent Work for Domestic Workers": Improvement of Rights for Domestic Workers?

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Abstract:

Since domestic workers are excluded from labor law in many countries, domestic workers' organizations have long demanded their recognition as workers. Other demands brought forward include provisions for labor inspections, recognition of standby time as work, and health and safety protections. On June 16, 2011 the International Labor Organization adopted the Convention "Decent Work for Domestic Workers" by an overwhelming majority of votes from governments, workers and even employers. This text will present the content of the adopted Convention, as well as outline some aspects of the negotiations of the Convention.

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At the 100th Session of the International Labor Conference, from June 1 - June 17, 2011, the International Labor Organization (ILO) ended their negotiations on the Convention "Decent Work for Domestic Workers" and Recommendation concerning Decent Work for Domestic Workers for the protection of labor rights for domestic workers.

Content of the Convention

The Convention includes minimum requirements for accommodation and privacy for live-in domestic workers, as well as a rest period of 24 consecutive hours per week. Also payment in kind is limited, and the terms of contracts for domestic workers will have to be presented in a way they understand. Moreover, domestic workers migrating for work to another country are to be provided with a written contract or a written job offer before crossing the border.

According to the Convention, member states are supposed to grant social security protection, such as maternity benefits to domestic workers, just as with other workers (Art. 14). They

should also develop clear rules for private agencies (Art. 15), as well as the means to investigate complaints (see also the ILO Interview with Manuela Tomei).

It is especially interesting that the Convention can be a means to include migrants in labor protection schemes, as it is based on fundamental rights and not citizenship. It explicitly notes in the preamble that migrants are a significant part of the domestic labor force and also recognizes the need for labor rights protection for migrants. Therefore, through this piece of international legislation, valid for all workers, rights can be ensured for migrant domestic workers and demands for inclusion into national labor laws can be established.

Negotiations

During the negotiations at the ILC, contentious questions were raised on issues such as working hours, health and safety, and labor inspections. Some argued that labor inspection was impossible in private households due to the right to privacy of the employer family and that because of the character of domestic work, standby time was to be expected.

Researchers present at the ILC, under the guidance of Darcy du Toit, from the University of the Western Cape in South Africa and the Domestic Worker Research Network (DW-RN), conducted research on these issues, looking at regulations and good practices in various countries. For instance, this way it could be established that domestic work can also be subject to labor inspections, as some countries have developed innovative approaches including interviews and meetings with both domestic workers and employers outside of the home. This information was then used by domestic worker representatives in negotiations with government and employer representatives.

In the final debate in the Committee on Domestic Workers, as well as after the vote, several countries took the opportunity to express the reasons for supporting, abstaining, or voting against the Convention. Countries also presented problems relating to ratification and implementation from their own perspectives. For instance, the U.S. strongly backed the Convention during the negotiations in the committee and also announced that they voted in favor of the Convention. The U.S. stressed the importance of domestic work for a functioning modern economy; however, the U.S. representative explained ratification would be difficult because of the U.S. federal system. The EU countries were generally very hesitant about including strong rights provisions in the Convention, arguing that the respective labor laws in EU countries were already inclusive enough and sufficient in protecting domestic workers. For instance, the UK abstained during the final vote, also arguing that domestic work is a unique sector that should be taken into account when developing regulations for it. Completely contrary to the position of most industrialized countries, in committee, Australia surprisingly mentioned that they not only would support the Convention, but also aim to implement the rules stipulated in the Convention. Furthermore, the United Arab Emirates, speaking for the Gulf Cooperation Council, called on all governments to implement and ratify the Convention. This was particularly surprising, because in Gulf countries, many migrant domestic workers are employed and reports of exploitation are common. Since those

governments so far have not been known for approaches to protect domestic workers' rights in their countries, the statement by the United Arab Emirates was more supportive of the Convention than expected. During the negotiations, Brazil and South Africa, both countries in which domestic work plays a significant role,[1] were enthusiastic about advancing toward ratification. In a speech after the final vote on the Convention, the Minister from Brazil stressed his support of ratification, mentioning that his grandfather used to work as a domestic worker. He continued, saying that because of this personal experience knowing the difficulties of a domestic worker from his grandfather's perspective, he would pour his strength into ratification of the Convention.

So while there is the prospect of ratification and implementation in some countries for the Convention, many countries, especially the European Union and North American countries, will most likely not ratify the Convention. Aside from the legal implications that ratification of the Convention might have, the adoption of the Convention alone can be useful for labor rights in different ways, even for countries in which the Convention has not been ratified. For domestic workers, their organizations, and unions, it can be a tool for organizing (Prügl, 2009 as cited in Schwenken, 2010). First, for instance, in organizing workers to lobby for ratification, a movement can be created, building support for the enforcement of labor rights and, potentially, for unions. Second, domestic workers can base labor rights demands on the Convention, even if it is not ratified in their country. The moral claim is grounded on the international labor norms that the ILO represents and also in the fact that most countries, and also employers, supported adoption of the Convention. Furthermore, the adoption of the Convention on June 16, 2011, reaffirms the fact that domestic workers need to be considered workers, in spite of the fact that they are engaged in reproductive work. Because of the support for the adoption of the Convention, employers and most governments accepted the need for protection of domestic workers on which claims can be based. These claims relate to the ethical responsibility countries and employers now have for labor law protection for domestic workers by adopting the Convention. For domestic workers' organizations and unions, the Convention can also be a starting point in educating both domestic workers and employers of labor rights. Thus, even though it will most likely not be ratified by EU countries, the U.S. nor Canada, it can still contribute significantly in the advancement of labor rights for a historically disadvantaged and marginalized groups of workers.

[1] Brazil has an estimated 6.7 million domestic workers (LABORSTA, 2007, cited in Schwenken, 2011c, p. 57) and in South Africa, 1,244,000 domestic workers are estimated to work in private households (LABORSTA 2007, cited by Namukasa, 2011, p. 20).

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