

# **Speedy Latin America, Slow Europe? – Regional Implementation Processes of the ILO Convention on Decent Work for Domestic Workers**

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## Abstract

After the International Labour Conference in 2011 voted with a great majority for Convention 189 “Decent Work for Domestic Workers” the expectations were high. – Expectations that the ratification process would start right away; and expectations that the rights of all domestic workers, including (undocumented) migrants, would be brought an important step forward. Trade unions and domestic worker organisation initiated campaigns such as the “12 by 12” campaign aiming for 12 ratifications in 2012. As the paper takes, in addition to a general assessment, a specific look at the role of migrants’ rights, I borrow from Tanya Basok the distinction between hegemonic and counter-hegemonic human rights and systematise the convention along those lines. In a second step I analyse the ‘12 by 12’ campaign in two regions, Asia and Latin America, and one case, Germany, and draw first conclusions about different ratification pathways. Concerning the rights of migrant domestic workers I argue that the convention is clearly not an international labour *migration* instrument and that the migration dimension is so far neglected in the ratification processes. However, in the long run and in different ways, it can be used for the promotion of migrant domestic workers rights.

Keywords: domestic work, migration, rights, Asia, Latin America

## Introduction

The ILO convention no. 189 and recommendation no. 201 “Decent Work for Domestic Workers” are the newest of the international labour standards (ILO 2011). They were adopted after a three year long tripartite process and campaign by domestic worker, labour, migrant and human rights organizations by a huge majority at the 100<sup>th</sup> International Labour Conference in 2011. For those who are interested in the rights of migrant workers, it is important to note that the convention and recommendation are as such not instruments of labour *migration* governance. However, as international and internal migrants are in many countries a significant number, if not the majority, of all domestic workers, the convention might be a *de facto* instrument to protect migrant workers. And as the large majority of all domestic workers are women and girls, it is an instrument to protect (migrant) *women’s* rights. The migration issue, and in particular rights of undocumented migrant domestic workers, have been among the most controversial issues in the preparation and negotiation phases of the convention. Migrants’ rights have always been among the tricky issues in international politics, or in the words of Tanya Basok “counter-hegemonic human rights norms” (Basok 2009), that might complicate ratification or/and implementation processes. Therefore I ask in this paper in particular for the role of migration in the ratification processes and look towards the end of the paper into the case of Germany as just one example for a specific ratification pathway. Drawing from that case, I will discuss three modes on how the convention, although it is not a migrant worker rights instrument, can nonetheless be used as such.

The paper develops in the following way: After a brief snapshot on the migration dimension in the domestic work sector and having introduced my conceptual and empirical background, I lay out an analysis of the convention contents and share first impressions about the nature of the ratification processes. I find that in those countries that already have ratified it or are close to it, the debates have been consensus-oriented, which might astonish observers who had expected more contentious debates. In the second part I analyse the “12 by 12 ratification campaign” by various trade union and civil society actors in two regions, Asia and Latin America. The latter part is, as mentioned before, dedicated to the issue of one concrete ratification case and its migrant workers’ rights dimension.

## A Brief Overview: Migrants as an Important Group of Domestic Workers

The domestic sector is in many countries dominated by migrants (Heimeshoff/Schwenken 2011: 11-12), a heterogeneous group and to different degrees marginalized and with only few (labor) rights. Although official numbers do not exist and are extremely difficult to calculate, Pannell and Altman calculate at least 17-25 million female migrants to work in the sector globally (Pannell/Altman 2009).

**Internal migration** dominates the picture for example in Nepal (C-WISH 2009) and Brazil (Trabajadoras Domésticas del MERCOSUR 2012: 26.11.2012). In Brazil the Brazilian Institute of Geography and Statistics (IBGE) states that 62 percent are Black (ibid.), mostly originating from the poor Northeast and being descendents from former slaves and therefore a historically disadvantaged group. Often it is difficult to recall who exactly belongs to the group of internal migrants and in some countries this has more relevance than in others. In

India or China, for example, also internal migrants do not have the same rights as non-mobile citizens. While in most countries there is no legal or formal distinction.

With regards to **international migration** two migration patterns are dominant: First, a number of in particular in South, Southeast and West Asian countries, but also in the Global North, such as Canada or the UK, have specific contract labor migration schemes and bilateral agreements for domestic workers and carers. These programmes have been addressed highly critical, because of their built-in regulations of vulnerability, such as tying the domestic worker to one employer or so called *kafala* sponsorship systems that also create severe dependencies (Varia 2011, Brickner/Straehle 2010, Fudge 2011). The second migration trend refers to regular (often within regions with free movement of citizens) and irregular migration. In the latter case the deficit in rights is obvious and well documented (FRA 2011), in the former case these domestic workers and carers often work informally and therefore also fall out of the social protection and labour rights framework. Lutz and Palenga-Möllenberg have found that many governments, in their studies from the Global North, are complicit with this situation of semi-compliance and informality (Lutz/Palenga-Möllenberg 2010). Migration is therefore a structural feature of the sector.

While in some countries the total **numbers** of migrant domestic workers are impressive, in others it is more the percentage of all migrant woman that work as domestic workers, which indicates their important role in the sector. In Argentina, for example, 78 percent of women migrants are employed in domestic services; in Costa Rica and Chile respectively 47 percent and 37 percent, of whom most are coming from neighbouring countries (Tokman 2010). Due to rapid urbanization, fewer local women, often coming from the countryside, tend to work in the sector and are replaced by immigrant women. Human Rights Watch estimates that 160,000 migrant domestic workers are employed in Singapore and 300,000 in Malaysia (HRW 2006). In Jordan, more than 40,000 migrant domestic workers are registered with the Ministry of Labor; however, another 30,000 foreign migrant domestic workers are estimated to work in Jordan without valid documents (ai 2008). These numbers are by far incomplete, but give a first impression about the numerical and structural role of migrant domestic workers.

## **Theoretical Approach: Explaining (Non-)Ratification of Human Rights Instruments**

In International Relations scholarship two views on the ratification of human rights instruments dominate: the neo-institutionalist world culture or world society approach (Boli/Thomas 1997, Meyer 2005, Meyer/Ramirez 2000) and, related to it but not identical, the liberal constructivist norm socialisation approach (Risse/Sikkink 1999, Risse 1999). The world culture approach sees human rights norms spread all over the world. They become generalised by habitualisation or socialisation into a 'world culture'. Some world culture proponents see these norms diffuse through global fora and international organizations. Although the ILO is an international organization and created space for global exchange and benchmarking, this approach seems not very appropriate for the analysis of the adoption and ratification processes of the convention. One reason lies in statements made throughout the negotiation process at the International Labour Conferences. Government representatives from a range of countries explicitly or implicitly referred to the "culture of having a domestic worker" (my own words to summarise a range of arguments made that used the words 'culture', habit and indicated ownership). This attitude is not indicative for a general recognition of the rights of this group of workers, but for a split among constituents. Some

constituents that would like to keep their privileges by a prolongation of (post-)colonial or post-slavery work relationships, and others that truly want to treat domestic workers equally like other workers. If the world culture approach does not offer much explanatory power for the broad agreement to the convention, Risse and Sikkink's other modes of norm socialization appear more promising. Their conceptualisation of the norm socialisation approach regards two other forms of socialisation relevant. First, the forced acceptance of human rights norms to avoid shaming or a potential discontinuation of foreign aid that is bound to compliance. Second, the argumentative and moral persuasion pressured by (often) non-governmental actors (Risse 1999). Both explanations may hold some truth, depending on context. During the negotiations government representatives from, for example, the Gulf countries appeared to play the game in order not to be the – expected – bad guys. One might conclude that a motivation to vote for the convention has been to avoid shaming. Yet, my impression as an observer has been that this position has been the clear minority. The observation of the processes that led to the adoption of the ILO convention no. 189 makes the argument plausible that we are witnessing the third process: governments being morally and argumentatively persuaded to, finally, end the injustices domestic workers face by being an excluded group of workers. In the course of the paper, we will find empirical evidence for this interpretation.

However, this perspective alone seems not to be sufficient to explain the adoption and ratification of the convention. Tanya Basok has made a very interesting argument about the nature of specific human rights norms. She argues that most of the empirical work in this field has been carried out on those human rights norms that are hardly questioned (Basok 2009: 187). But when we deal with workers' human rights and the more with (irregular) migrant workers' rights, we have to distinguish – following Basok – between non-controversial/hegemonic and controversial/counter-hegemonic human rights norms. The latter are human rights norms that potentially threaten some of the foundations of liberalism – such as liberal market economy and state sovereignty. These show much less support as compared to those that rest upon liberal and widely accepted norms.

I will take Basok's framework of hegemonic and counter-hegemonic human rights norms and analyse ILO's C189 by qualifying the different provisions, and I will return to two regions – Asia and Latin America – and look into the ratification campaigns. Which rights are in particular and strategically highlighted? How open or closed are governments' attitudes towards the ratification and implementation of the convention? Can these findings be linked to the prior distinction between hegemonic and counter-hegemonic human rights norms?

Beyond the question of ratification or non-ratification, ratification has different meanings. In the final part of the paper I will refer to ratification pathways and illustrate by taking the example of Germany that ratification does not always mean change to the better of (migrant) domestic workers.

## Data and Methods

The analysis is based upon three data-gathering and analytical methods:

**Content analysis of the convention and recommendation:** The content of the text of the convention and of the recommendation have been analysed according the Basok's differentiation between non-controversial/hegemonic and controversial/counter-hegemonic

human rights norms. The background knowledge about contestations during the negotiation processes have been taken into account.

Indicators for hegemonic or non-controversial human rights norms:

- widely accepted, e.g. high ratification record of conventions with similar content
- formal equality between individuals
- individual freedom
- core labour standards
- does not threaten nation state sovereignty

Indicators for counter-hegemonic or controversial human rights norms:

- threatens nation state sovereignty
- undermines the existing global division of labour, including reasons for employing 'cheap' migrant workers
- if implemented, significant changes necessary, significant economic impact
- high level of contestation during negotiations, conflicts basically unresolved

There might also be a middle ground between controversial and non-controversial norms, these might be "emerging norms" (Finnemore/Sikkink 1998: 895) or slowly establishing norms. This could be the case for parts of the convention that have been discussed controversially during the negotiations, but ended in a relative consensus. One cannot assume that all parties agree or that there is a teleological "norm life cycle" (Finnemore/Sikkink 1998: 896) with norms being internalized step by step, as some IR scholarship might allude to, but nonetheless these parts do not seem to have been an obstacle for voting in favour of the convention.

**Fieldwork:** The author did participatory observations of and expert interviews during the negotiations at the 92<sup>nd</sup> International Labour Conference on the multilateral framework on labour migration in 2004 (ILO 2006) and the 99<sup>th</sup> and 100<sup>th</sup> International Labour Conferences in 2010 and 2011 on the convention and recommendation "Decent Work for Domestic Workers" (ILO 2009, 2010a, b, ILO 2011).

**Protest data event analysis:** For the "12 by 12 campaign" for the ratification of the convention a protest data event analysis of the first round of mobilizations (June 2011 until December 2012) after the approval of the convention has been carried out. The three newsletters of the campaign as well as the campaign website and corresponding web links have been taken as the source for events. Given the dynamic character of the campaign, the regional foci have been Asia and Latin America and the Caribbean. In total 59 events from June 2011 to December 2012 (24 from Asia and 35 from Latin America and the Caribbean; see tables 4 and 5 below) have been identified, sorted by region and country and coded. The selection criterion has been "an event where a non-state actor has been initiator or participant", thus the many events that referred to the state of ratification in one country (for example: parliament of country xy has passed law to ratify the convention) have not been taken into account. The number of campaign events has been much higher in reality, because reports have not been published on all events and the reporting from the countries appears quite unevenly. For example, from my background knowledge about campaign activities I had expected more reported events from the Philippines or Mexico. Thus, the collected events can only be an approximation and do not cover the totality of events. The codes contained the following categories: date of event, country of event, city/region, main organizer of event, other participants in the event, mentioned opponents, brief description of the event, type of action, content of demands, reference (yes/no) and type of reference to C189, open field for

further comments, source and type of document. In the next phase of the research the data will be complemented by (a) including Europe, North America and Africa and (b) the events mentioned on the other campaign partners' websites and publications. The data analysis – which is still ongoing – follows the logic of the coding and the differentiation between hegemonic and counter-hegemonic human rights norms as a point of reference. The data, though, not always allowed for such a characterisation, because information on the events was often very limited.

## Between Non-controversial and Controversial Human Rights Norms: C 189

In order to analyse the character of the convention, the following table lists selected passages of the convention and the recommendation that can be considered either non-controversial or controversial. In some cases a norm might be both, non-controversial and controversial. A content has been coded like this when the norm as such is widely accepted, but during the negotiations turned out to be controversial and/or there might be reasons for controversy that are explained in the second column.

**Table 1. Systematisation of the content of ILO convention No. 189**

<b>Paragraph from C 189</b>	<b>non-controversial or hegemonic human right provision</b>	<b>controversial or counter-hegemonic human right provision and indicator</b>
Preamble, para 3	Recognition of economic contributions of domestic workers.	
Preamble, para 4		Mentioning the migrant status of many DW
Preamble, para 7		Reference to contested international human rights norms for migrants that include undocumented migrants (ILO conventions no. 97, 143; ILO Multilateral Framework on Labour Migration)
Preamble, para 9	Reference to almost universally ratified international human rights instruments	
Article 1, 2	equality within one category of workers: “all DW”	‘all’ also means undocumented MDW

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