

DELIVER THE DREAM: THE IMPACT OF THE ILO DOMESTIC WORKERS CONVENTION ON ADVANCING HUMAN RIGHTS

An analysis of the impact of the Domestic Workers Convention in three
jurisdictions: Philippines, Germany, and the United States

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EXECUTIVE SUMMARY

This thesis observes and assesses the impact of the ILO's Decent Work for Domestic Workers Convention on the global domestic worker rights movement through the experiences of domestic workers in Germany, United States, and Philippines. This thesis analyzes the role of national regulatory frameworks and various international instruments – with greater focus on the ILO Domestic Workers Convention – in advancing the rights of domestic workers around the globe. The first chapter sheds light on the historical exclusion of domestic rights from international and domestic policy-making, and the group's classification to an informal, “invisible” economic sector has resulted in gross violations of human rights because of the lack of regulation and official labor protections. Chapter 1 also delves into the intersectionality of race, gender, and migrant status and how it critically impacts the experiences of domestic workers, with a special emphasis on female migrant domestic workers – often impaired with discrimination from all three fronts. The last section of Chapter 1 illustrates the exploitation and abuse that occurs in the domestic worker industry, which has been generally accepted as an “invisible sector”. Long, unregulated working hours, stolen wages, poor and unhealthy working and living conditions, and confinement and forced labor, some of the most severe abuses captured by researchers in the field, are examined to stress that the prolonged exclusion of domestic workers from national labor laws and international conventions has led to systematic abuse and exploitation.

Chapter 2 introduces the phenomenon of the domestic workers rights movement, with an emphasis on national grassroots movement that have led to both national and international legislative accomplishments for domestic workers. This chapter provides an observation and comparison of three jurisdictions: Germany, United States, and Philippines. It discusses the extent of existing legal protections for the domestic workforce, and illustrates the possibilities and limitations within the jurisdictions. Furthermore, it observes current regional and

international instruments and the creation of the ILO Convention on Domestic Workers. Various ILO Conventions are scrutinized and compared to determine its breadth in relation to domestic workers rights.

The third chapter demonstrate the impact of the ILO Convention by highlighting the crucial reforms which were spurred by the efforts of the global domestic worker rights movement. The creation of new laws and amendments in current labor laws in the national regulatory frameworks in the three countries researched are provided in this section, characterizing an optimistic development in the advancement of domestic workers rights. While the varying degrees of protection for domestic workers that has transpired due to the adoption of the Convention are discussed in the previous chapter, Chapter 4 observes its shortcomings in providing full realization of domestic workers rights on an international level – pointing out the challenges in collective bargaining and effective enforcement of the Convention. In addition, Chapter 4 highlights the lessons learned from decades of organizing and mobilizing domestic workers, from both a national perspective, as well as on a worldwide level. While recalling the successful campaigns employed by worker organizations and trade union alliances, the chapter draws on their experiences in coalition-building and advocacy strategies to serve as point of reference for future efforts in advancing domestic workers rights.

The concluding section draws attention to the possibilities in the growing social movement of domestic workers and the progress made since the adoption of the Convention, and provides potential avenues and instruments that can be implemented for achieving real and lasting justice and meaningful equality for all domestic workers. The thesis concludes with a discussion of research limitations and possibilities, as well as recommendations for those interested in the analysis of domestic workers rights and the ILO Convention on Domestic Workers.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	vi
ACKNOWLEDGMENTS	vii
INTRODUCTION.....	1
Thesis Problem	1
Aim and Objective	4
Methodology	5
CHAPTER 1- DOMESTIC WORK: INVISIBLE AND UNREGULATED	7
<i>Section 1: Historical Exclusion from Labor Protection</i>	7
1.1.1 Exclusion on an International Level.....	8
1.1.2 Exclusion on a National Level	11
<i>Section 2: Inequalities of Race, Gender, and Migrant Status</i>	16
1.2.1 Race (In the Context of the United States).....	16
1.2.2 Gender.....	17
1.2.3 Migrant Status.....	18
<i>Section 3: Exploitation and Abuse in an Invisible Sector</i>	21
1.3.1 Long Working Hours and Low Wages	21
1.3.2 Poor Working and Living Conditions.....	22
1.3.3 Confinement and Forced Labor	24
CHAPTER 2: WINNING RIGHTS FOR “WOMEN’S WORK”: SOURCES OF PROTECTION FOR THE DOMESTIC LABOR WORKFORCE	26
<i>Section 1: The Rise of Domestic Workers’ Movement</i>	26
<i>Section 2: Domestic Legal Frameworks</i>	27
2.2.1 Philippines	27
2.2.2 Germany	30
2.2.3 United States	35
<i>Section 3: Existing International Instruments and the ILO Convention on Domestic Workers..</i>	37
2.3.1 Existing International Instruments	37
2.3.2 The ILO Convention on Domestic Workers	40
CHAPTER 3: RATIFICATION VS. REALITY	44
<i>Section 1: Changes in National Labor Legislation after the ILO Convention</i>	44
<i>Section 2: Impact of Ratification of the ILO Domestic Workers Convention</i>	47

CHAPTER 4: PATHWAYS TO LASTING CHANGE	53
<i>Section 1: Opportunities for Organizing and Mobilizing</i>	53
<i>Section 2: Challenges and Shortcomings of the ILO Convention</i>	59
4.2.1 Collective bargaining	59
4.2.2 Enforcement of Provisions	62
<i>Section 3: Lessons for a Growing Movement</i>	65
4.3.1 Current Strategies.....	65
4.3.2 Coalition-Building.....	66
4.3.3 Advocacy	68
CONCLUSION: PROGRESS AND POSSIBILITIES	71
BIBLIOGRAPHY	77

LIST OF ABBREVIATIONS

ACTRAV-ITC-ILO – Programme for Workers’ Activities of International Training Centre of the International Labour Organization
CDWC – California Domestic Workers Coalition
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CHIRLA – Coalition for Humane Immigrant Rights of Los Angeles
CIRRS – Coalition for Immigrant and Refugee Rights and Services
DOLE –Department of Labor and Employment (Philippines)
DWU – Domestic Workers United
ECtHR- European Court of Human Rights
ESC – European Social Charter
EU – European Union
FLSA – Fair Labor Standards Act (US)
FRA – European Union Agency for Fundamental Rights (FRA)
HRC – Human Rights Committee
HRW – Human Rights Watch
ICCPR –International Covenant on Civil and Political Rights
ICERD – International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR – International Covenant on Economic, Social, and Cultural Rights
ICRMW – International Covenant on the Protection of the Rights of Migrant Workers and Members of their Families
IDWN –International Domestic Workers’ Network
ILO – International Labour Organization
ITUC – International Trade Union Confederation
IUF – International Union of Food, Agricultural, Hotel, Restaurant, Catering, and Tobacco and Allied Workers’ Associations
NDWA – National Domestic Workers Alliance
NGO – Non-governmental organization
NLRA – National Labor Relations Act
OFW- Overseas Filipino Workers
OSHA- Occupational Safety and Health Act (US)
PACE –Parliamentary Assembly of the Council of Europe
UDHR – Universal Declaration of Human Rights
UN – United Nations
US – United States

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You taught me the importance of fighting the good fight.

I'll never stop.

This is for you, my Jose.

INTRODUCTION

Thesis Problem

“As a domestic worker, you have no control over your life. No one respects you. You have no rights. This is the lowest kind of work”¹, expresses Hasana, a child domestic worker from Indonesia who began working at the age of twelve. Domestic workers, both working in their home countries and as migrant workers overseas, are a workforce that have been historically excluded from fundamental rights provided to other workers. Thus, they become vulnerable to the abuse and exploitation that has become rampant due to the secluded and unregulated nature of their work. The gross violations of human rights in this specific labor force are not only employment-related; they range from physical, sexual, and psychological abuse. In some cases, it has even amounted to forced labor, human trafficking and slavery. Because of the landscape of domestic work, such abuses usually go unreported and unresolved.

The adoption of the Domestic Workers Convention (C189) and Recommendation no. 201 by the International Labour Conference in 2011 has been declared as a landmark victory for those fighting to secure justice and equality for domestic workers. This unprecedented treaty, entered into force on September 5, 2013, provides standards and obligations to protect domestic workers on an international level – giving momentum and legitimacy to existing national social movements, as well as reinforcing a global strategy to advance the rights of domestic workers all over the world. As of October 2015, the Convention and Resolution are ratified by twenty-two States and currently in force in 15 States: Argentina, Bolivia, Colombia, Costa Rica, Ecuador, Germany, Guyana, Ireland, Italy, Mauritius, Nicaragua, Paraguay, Philippines, South Africa, and Uruguay.²

¹ *Swept under the Rug: Abuses against Domestic Workers around the World*. 7th ed. Vol. 18. New York, New York: Human Rights Watch, 2006. 1.

² "Ratifications of ILO Conventions: Ratifications by Convention." Ratifications of ILO Conventions: Ratifications by Convention. Accessed September 14, 2015.
http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:753961769451571:::P11300_INSTRUMENT_SORT:3.

Though there are various definitions for “domestic workers” provided by international instruments and various national jurisdictions, for the purpose of this research and thesis, the definition of domestic workers is in accordance with Article 1 of the Domestic Workers Convention, 2011 (No. 189), adopted on June 2011 at the 100th International Labour Conference:

- (a) the term “domestic work” means work performed in or for a household or households;*
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship*
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.³*

Because domestic workers are not a homogenous group – with demographic and occupation profiles that differ from country to country – who is defined as a domestic worker rely on specific factors and depend on whether the individual is officially employed by a private household or if the individual is performing household duties through a recruitment agency. The unique features of the domestic work industry and the challenges in capturing such features in global and national surveys also account for the contrasting estimations in counting and classifying the number of domestic workers.

Statistical trends demonstrate that the domestic worker sector is growing. Women comprise 43.6 million, or approximately 83 percent of the total domestic worker employment population.⁴ Domestic work is, and will continue, to be a substantial source of income for women. Currently, women migrants make up nearly 50 percent of all migrants – the majority employed in the domestic worker sector. The Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families General Comment no. 1 states: “The Committee considers that migrant domestic workers are included in the term ‘migrant worker’

³ International Labour Organization (ILO), Convention Concerning Decent Work for Domestic Workers, 16 June 2011, PRNo.15A, available at: <http://www.refworld.org/docid/4e0d784e2.html> [accessed 28 November 2014]

⁴ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection. Geneva: International Labour Office, 2013.

as defined in article 2, paragraph 2, of the Convention and that any distinction made to exclude migrant domestic workers from protection would constitute a prima facie violation of the Convention.”⁵ For the purpose of this thesis, I am investigating female migrant workers who are household cleaners and live-in workers who perform duties in private households.

According to the International Labour Organization, most of the estimated 53 million domestic workers across the globe are migrant women who perform jobs ranging from cleaning, cooking, and caring for children and elderly in private households. This number does not include the estimated 11.5 million children, under the age of 18, who are part of the domestic labor sector worldwide.⁶ This figure is alarming, especially because as Human Rights Watch declares “national laws setting a minimum age for employment are often not enforced for domestic work, allowing employers to exploit children with no consequences.”⁷ Domestic work is a major source of employment for women migrating from third and developing nations and new EU countries in search of better employment opportunities. In developing countries, the ILO data shows that approximately 4 to 10 percent of the workforce is made up by domestic works. In developed countries, they comprise of 2 percent of the total labor force.⁸

The rights of these workers have been historically excluded from national and international labor laws, creating working conditions that are often exploitative and abusive. Due to this prolonged neglect to regulate the sector, the exploitation and abuse have only been intensified. The passage of the Convention defends domestic workers by finally granting those same rights and protections as those available to other workers: weekly days off, minimum wage coverage, social security benefits, overtime pay, and clear information on the terms and

⁵ UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, ‘General Comment No 1n on Migrant Domestic Workers’ Adopted by Human Rights Treaty Bodies’ (23 February 2011) UN Doc CMW/C/GC/1

⁶ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 10.

⁷ *Id.* at 14.

⁸ *Domestic Workers Count Too: Implementing Protection for Domestic Workers*. Geneva: UN Women, 2013.

conditions of employment, as well as the right to organize and collective bargaining. This thesis, through research of three unique jurisdictions, will explore the intersection of the existing social movement of domestic workers and the ILO Convention on Domestic Workers, and its impact in advancing the rights of domestic workers worldwide.

Aim and Objective

As the Administrator at the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), I was an active participant in the CA Domestic Workers Bill of Rights Campaign. Through this work, I witnessed the impact of grassroots community organizing and mobilizing on advancing the rights of domestic workers- many of whom were undocumented immigrant women. I also observed critical shifts in state and national policies as this grassroots movement grew, specifically after adoption of the ILO Convention on Domestic Workers in 2011. Though still young in its development, the Convention has shown remarkable progress and promise in the realization of human rights for all domestic workers. There is value in researching this topic, as there are established and emerging practices that have stemmed from the adoption of the Convention. Examining these models of labor policies and human rights advocacy can serve as a lesson for any future social movements.

While the passage of the ILO Domestic Workers Convention in 2011 granted legitimacy to existing national social movements and reinforced a global strategy to advance the rights of domestic workers, its influence is hindered by various political, economic, and social factors. The aim of this research is to explore the dynamics of the ILO Convention and the domestic workers movement, and analyze its influence on the advancement of domestic workers rights in three unique jurisdictions: Germany, United States, and Philippines.

The purpose of this thesis is to determine whether the intersection of the Convention and domestic workers movement has put in place effective and enforceable legal mechanisms in promoting and protecting the rights of domestic workers. From this analysis, a possible

subsidiary issue that may arise would be the limitation of the Convention in tackling the systematic exclusion, exploitation, and discrimination that is rampant in the global domestic workers sector. Furthermore, a comparison of existing legal frameworks that grants recognition of domestic workers in national and international human rights systems will offer a glimpse into the possibilities and challenges in advancing the rights and freedoms of domestic workers around the world.

Methodology

In conducting qualitative research for the thesis, I mostly utilized primary and secondary sources. In performing the initial research on this topic, I performed a detailed study of the ILO Convention on Domestic Workers by examining the text of the treaty from International Labor Organization documents, which are available on their organizational website as well as the International Labour Organization Library in Geneva, Switzerland. In addition, I looked at other international instruments that extend protection to women and migrant workers. These documents are also easily accessible through online research, and have been summarized and highlighted in various ILO and UN publications – both in print and on the web.

In examining the scope of legal protection afforded to domestic workers in the three identified jurisdictions, I based my research on current legal frameworks and practices by looking at constitutional and statutory documents, as well as labor and policy documents, that are applicable to the topic. To gain insight on the role of social movements, I observed case studies and human rights reports from reputable non-governmental organizations (NGOs) working in the field, such as the Human Rights Watch, International Trade Union Confederation, and Amnesty International. Many of these resources include personal testimonies and interviews of domestic worker and employers, providing an insider's experience and perspective on the issue. Throughout the research process, I obtained reliable

data derived from scholarly journal articles and books with reliable reports and published case studies to enhance my knowledge on domestic workers. Since there is an intersection within the topic, I exercised an inter-disciplinary approach to include information on women and migrant workers, as well to examine the connection of the domestic workers movement to other social movements.

CHAPTER 1- DOMESTIC WORK: INVISIBLE AND UNREGULATED

Section 1: Historical Exclusion from Labor Protection

Domestic work stretches into every corner of the world, yet the exclusions of their rights from key national and international labor laws has been the norm. The Preamble of the Domestic Workers Convention states that “domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights.”⁹

The topic of domestic workers rights first gained international attention and importance during the International Labour Conference in 1936, with the adoption of the Holiday with Pay Convention. The treaty excluded domestic workers – not enabling them to have the right to six days of paid leave. This occurrence provoked the Conference to request that domestic workers be placed on the agenda of a future Session of the Conference, and be considered to have the same protection as other wage-earners. In 1939, the ILO adopted a resolution stating that “the employment of women in domestic service (...) should be regulated by adequate social legislation, prescribing standards on hours, wages and other working conditions.”¹⁰

In the 49th Session of the Conference in 1965, members passed a resolution concerning the employment of domestic workers, promoting the principles of dignity and respect for domestic workers; and in 1967, an analysis conducted by the ILO of 68 member states confirmed that domestic workers were under protected, as they are usually overworked, underpaid, and vulnerable to exploitation and abuse. The report concluded the domestic worker

⁹ "C189 - Domestic Workers Convention, 2011 (No. 189)." Convention. June 16, 2012. Accessed September 13, 2014.

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460.

¹⁰ILO, Record of Proceedings, Second Labour Conference of the American States which are Members of the International Labour Organisation, Havana (Cuba) 21 November - 2 December 1939, ILO, Montreal, 1941, p. 235.

sector should not remain a forgotten sector and warrants the attention of public conscience.¹¹ These principles outlined in non-binding international documents and ILO country surveys were an indication of the need for better standards in regulating domestic work. It also demonstrated that the international human rights community was willing and ready to commit resources and energy to make substantial gains for workers whose well-being and interests have been ignored for way too long.

Since that time, a number of ILO conventions and international protection documents have been adopted and entered into force; however, they have fallen short of ensuring that domestic workers are legally granted safeguards that regulate working conditions and that aspects concerning minimum wage coverage, working time, paid annual leave, and maternity protection are covered.¹² Many of the existing ILO instruments apply to *all* workers, therefore should already provide coverage for domestic workers. However, some fundamental conventions are specifically dedicated to workers in certain sectors, while other legal instruments permit for the omission of domestic workers in their application.

1.1.1 Exclusion on an International Level

The insufficient protection for domestic workers on the international level exists because for so long, domestic work was not recognized as formal work. The Domestic Workers Convention classified domestic work as work performed in or for a household or households, which includes duties such as cooking, cleaning, gardening and laundry services, caring for children, elderly, or sick or disabled persons. Domestic workers, classified as “live-in workers” work and live in the house in which they are employed, while “live-out” workers live in their own place of residence. All individuals, working with or without authorization in their home

¹¹ Souza, Asha. *Moving towards Decent Work for Domestic Workers: An Overview of the ILO's Work*. Geneva: ILO, 2010. 44.

¹² *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*. Geneva: International Labour Office, 2013.

country or as a migrant workers in a host country, is assumed to be protected by existing international human rights instruments. The breadth of the protections afforded to migrant domestic workers are discussed in Chapter 2. However, there are tensions and insufficiencies in these legal doctrines which served as the catalyst for the Domestic Workers Convention.

The International Covenant on Civil and Political Rights (ICCPR), which came into force in 1966, calls for the elimination of slavery and servitude (Article 8) and provides for freedom of movement (Article 12). It also calls for Member States to protect the rights of *all* individuals “without any distinction of any kind”.¹³ Laurie Berg declares that its provisions, though based on the universality of human rights, is in fact, contradictory and institutes a sort of hierarchy of entitlements based on immigration status. She concludes that in dealing with unauthorized migrants, a State’s territorial sovereignty to have “discretion over the reception and exclusion of aliens” tend to triumph over the principle of human rights.¹⁴

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, entered into force on July 1, 2003, prescribes that *all* migrant workers shall benefit from its provisions; however, States have complete privilege in matters that involve immigration issues within their borders. Because the State will most likely act to promote their interests, the prospect for domestic workers who are authorized migrants to address labor violations is compromised. Berg points out a very important aspect of the Migrant Workers Convention which compromises and sets apart the rights of regular migrants to those of irregular migrants, referring to “Part VI: Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation.” Such safeguards provided to legal, regular migrant workers and not afforded to irregular migrant workers consists of the

¹³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

¹⁴ Berg, Laurie. "At the Border and Between the Cracks: The Precarious Position of Irregular Migrant Workers Under International Human Rights Law." *Melbourne Journal of International Law* 8, no. 1 (2009): 15.

following: the right to liberty of movement (Article 39), right to form associations, and trade unions (Article 40), and the protection of the unity of family (Article 44).¹⁵

The passage of ICCPR and the Migrant Workers Convention were positive steps in recognizing the need to expand protections to a vulnerable population of workers, but it was not without flaws or obstacles. The Migrant Workers Convention has been deemed as an ambitious legal instrument – taking 13 years to enter into force and with only 38 signatories and 48 parties.¹⁶ Though there was more attention being placed on vulnerabilities of workers in the domestic labor industry, the turning point in specifically recognizing the fundamental rights for domestic workers was yet to occur. Despite the resolutions that were passed concerning workers in the domestic labor market and hard-hitting reports by various international bodies and organizations, a single binding international instrument explicitly addressing the needs of domestic workers still did not exist.

The ILO declared that a “universal feature is that domestic work is predominantly carried out by women, many of whom are migrants or members of historically disadvantaged groups.”¹⁷ Legal safeguards for the rights and freedoms of domestic workers and the mechanisms available to claim these rights have proven to be lacking. The UN’s adoption of The International Convention of the Protection on the Rights of all Migrant Workers and Members of their Families showed promise for groups of workers that have been historically underrepresented in international protection documents. Even though this Convention guaranteed safeguards for every migrant worker and their family members regardless of their legal status, it did not explicitly address women and makes no mention in any of the provisions of any specific types of problems encountered by women.

¹⁵ UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158.

¹⁶ "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families." UNTC. 2011. Accessed July 21, 2015.

¹⁷ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection. Geneva: International Labour Office, 2013. 39.

As Goldberg examines, the particular needs of migrant women are not addressed in the Migrant Convention, as “there is no specific mention of sexual harassment or exploitation, forced prostitution, or violence against women.”¹⁸ These are the exact issues that confront domestic workers on a day-to-day basis, therefore, their exclusion on a human rights treaty is an indication of the need to have additional mechanisms that deal directly with these issues. Other international instruments and documents, in forms of resolutions and declarations that promote nondiscrimination and equal treatment have been adopted, but also do not explicitly concentrate on women or migrants. These include the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

1.1.2 Exclusion on a National Level

The main mechanisms utilized for providing legal protection to workers rests on a State’s labor laws. According to the ILO, approximately 30 percent of the world’s domestic workers are employed in countries where they are completely excluded from national labor laws.¹⁹ The range of protections deprived from domestic workers are alarming. To demonstrate the excessive abuses practices and deficient norms in domestic work, the ILO estimates the following: 45 percent of domestic workers are not entitled to paid annual leave or even weekly rest periods, more than a third are not eligible to maternity leave protection, and under national legislation, more than half of workers have no restriction on their weekly normal hours of work. In addition, the ILO also declares that there is no minimum wage coverage for almost half of all domestic workers.²⁰ Currently, domestic workers continue to be one of the least protected groups of workers under national labor legislation. For countries that do provide some type of

¹⁸ Goldberg, Pamela. "International Protections for Migrant Women as a Human Rights Issue." In *Asian Women in Migration*, 172. Quezon City: Scalabrini Migration Center, 1996.

¹⁹ International Labor Organization (ILO), *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva: ILO, 2013), http://www.ilo.org/wcmsp5/groups/public/—dgreports/—dcomm/—publ/documents/publication/wcms_173363.pdf (accessed January 4, 2015), p. 50

²⁰ *Promoting Decent Work for Domestic Workers: ILO in Action*. Geneva: International Labour Office.

regulation in the domestic workforce, the protection tends to be on a lower level than those available to other workers. Because they are excluded from labor laws, domestic workers have less avenues for redress if they are treated unfairly, since complaint mechanisms may not be available for them. Continued abuse and exploitation, therefore, has been a consequence of the historical exclusion and partial coverage of domestic workers rights in national laws.

As Human Rights Watch (HRW) affirmed in a 2006 report, the majority of national jurisdictions deem domestic work outside the capacity of its regulations and scrutiny because of its classification under the “informal sector.”²¹ In all of three of the jurisdictions observed, the historical exclusion of domestic workers from national legal regulatory frameworks have resulted in persistent human rights abuses by employers, as well as labor agencies and recruiters. As HRW suggests, “labor legislation must be complemented by criminal laws allowing for successful prosecution of offenses such as physical, psychological, and sexual abuse, forced labor, forced confinement, and trafficking in persons.”²² In giving the example of Hong Kong, HRW argues that in order for national jurisdiction to effectively fully safeguard domestic workers’ rights, domestic authorities must have the necessary resources and proper training to carry out the mandates. Even though Hong Kong is unique in providing equal protection (the right to a minimum wage, maternity leave, public holidays, and a weekly day of rest) for domestic workers, effective enforcement is still a challenge.

The ILO claims that 61 percent of domestic workers in Asia are not covered by domestic labor laws. In the Philippines, the existence of national enforcements have not translated into a real expansion of government protections in the domestic worker industry. Though domestic workers are sheltered by some requirements of the general labor laws and local ordinances that have been established, the enforcement of such measures have only been

²¹ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 13.

²² *Swept under the Rug: Abuses against Domestic Workers around the World*. 7th ed. Vol. 18. New York, New York: Human Rights Watch, 2006. 2.

implemented in a few of the major cities in the island nation. Thus, the coverage of existing policies that support domestic workers was evidenced to be inadequate on a local and national level. Special labor law protections was needed to respond to the particular needs and circumstances of local domestic workers.

Home Economics: The Invisible and Unregulated World of Domestic Work, the first national survey of domestic workers in the United States, captures the experiences of thousands of workers across America and determines the following:

*It carries the long legacy of the devaluation of women's labor in the household. Domestic work in the US also carries the legacy of slavery with its divisions of labor along lines of both race and gender. The women who perform domestic work today are, in substantial measure, immigrant workers, many of whom are undocumented, and women of racial and ethnic minorities. These workers enter the labor force bearing multiple disadvantages.*²⁴

To understand the historical exclusion of domestic workers from laws that regulate labor and immigration in the United States, one must understand the deeply rooted prejudices and marginalization of these workers, which has existed from the early history of the United States. Domestic workers, as well as farm workers, was excluded from the 1935 National Labor Relations Act (NLRA), explicitly leaving them out on Section 2 §152 (3): the term employee “shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home.”²⁵ Domestic workers were also excluded from the protections afforded by the Social Security Act of 1935, the Fair Labor Standards Act (FLSA) of 1938, and the Occupational Safety and Health Act (OSHA). It was not until 1950 that domestic workers were included under the scope of the amended Social Security Act.²⁶

During this period in labor law history, workers from all over the country were active participants in determining labor standards in minimum wages, working hours, and working

²⁴ Burnham, Linda, and Nik Theodore. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York, NY: National Domestic Workers Alliance, 2012.

²⁵ NLRA 29 U.S.C. §§ 151-169

²⁶ Nilliasca, Terri. *Some Women's Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform*. New York, NY: City University of New York, 2011.380-381.

conditions. It also reaffirmed each worker's right to the freedom of association, freedom of representation, and effectively recognized the right of collective bargaining.²⁷ However, since domestic workers were a category of workers that were excluded, they were not able to exercise any of the freedoms set out in the NLRA. In the 1937 *State v. Copper* case, the Minnesota Supreme Court ruled that a domestic worker did not have the right to protest in front of his employer's private household, declaring that the "home is a sacred place for people to go and be quiet and at rest and not be bothered with the turmoil of industry".²⁸

Researchers, as well as human and labor rights activists speculate that it was racial discrimination that initially excluded these categories of workers from the NLRA. The history of domestic servitude in American society supports this perspective, as the large majority of domestic workers during the passage of the law were African American women, and during that political moment, most politicians did not believe they deserved protections.

The exclusion of domestic workers from institutional safeguards are highlighted below:

- *Live-in domestic workers, who are especially subject to unreasonable and uncompensated demands on their time, are excluded from the overtime provisions of the Fair Labor Standards Act.*¹⁰
- *Domestic workers routinely work with toxic products, yet are excluded from Occupational Safety and Health Act protections.*
- *Federal anti-discrimination law, including the Civil Rights Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, generally covers employers with multiple employees, creating a de facto exclusion for the vast majority of domestic workers.*
- *Many state employment laws and regulations either explicitly exclude domestic workers or do so on a de facto basis.*²⁹

General labor law applies to domestic workers living and working in Germany; however, because no definite legislation is dedicated to regulating domestic labor, workers tend to be covered under general protections under the standard law. In addition, domestic workers

²⁷ Gross, James A. "A Long Overdue Beginning." In *Workers' Rights as Human Rights*, 9. Ithaca, New York: Cornell University Press, 2003.

²⁸ *State v. Cooper*, 285 N.W. 903, 904 (Minn. 1939).

²⁹ Burnham, Linda, and Nik Theodore. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York, NY: National Domestic Workers Alliance, 2012. 9.

are not covered under occupational health and safety law. Because of this, regulation for domestic workers are minimal compared to those practicing other professions. One of the legal measures implemented in Europe to facilitate employment standards in households is household checks, which occurs when labor inspectors observe if employers who employ individuals in their private home are in compliance with the labor codes. However, as Kontos maintains, the sector, as a whole, continues to be unregulated.³⁰

In Germany, even though the right of collective bargaining has been available to domestic workers since the 1950s, it has not resulted in higher labor standards and regulations. One of the reasons, cited in a 2012 report by ACTRAV/ITC-ILO, is the low coverage rate of collective bargaining agreements on both national and regional levels. Employment conditions and issues relating to wages, working hours, and rest and leave periods are covered under the agreements, but only apply to workers who are “either directly employed by private households or by employment agencies that deal above all with housekeeping, care work and service tasks in private homes”.³¹ The challenge is that both the employer and the worker must be active members of the employers’ association and respective trade union that are parties to the agreement. Without meeting this requirement, the agreement has no binding power and thus, both the worker and the employer will not be covered. Because the majority of employer-worker relationships in the domestic worker industry in Germany are informal, the extent of coverage and effectiveness of these agreements in protecting the rights of such workers is critically low.

³⁰ Kontos, Maria. "Negotiating the Social Citizenship Rights of Migrant Domestic Workers: The Right to Family Reunification and a Family Life in Policies and Debates." *Journal of Ethnic and Migration Studies* 39, no. 3 (2013): 411.

³¹ Carls, Kristin. "Domestic Work and Its Regulation in Europe." In *Decent Work for Domestic Workers: The State of Labour Rights, Social Protection and Trade Union Initiatives in Europe*. Geneva: ACTRAV/ITC-ILO, 2012.

A labor force survey conducted in Germany approximate that around 94 percent of domestic workers are women.³³ Migrant domestic workers in Germany face particular challenges when it comes to realizing their fundamental rights since most of them do not possess valid documentation such as residence and work permits. As Lutz argues, the attempt to professionalize paid domestic work did not have fruitful results, as state regularization programs typically failed due to the high cost.³⁴ The ability of domestic workers in Germany to engage in collective bargain grants them certain labor rights, but as the data shows, a significant amount of workers who are working informally are left out of these protections. The small majority that benefit from collective bargaining are still disadvantaged since there is little protection when it comes to dismissal and maternity and other care leaves. Furthermore, compared to other workers, domestic workers in Germany obtain less paid sick days and typically do not have public insurance.

Section 2: Inequalities of Race, Gender, and Migrant Status

1.2.1 Race (In the Context of the United States)

Race has had a tremendous influence on the lack of rights and protections given to workers, both on a national and international level. Domestic service has a long and troubled history in the United States, stemming all the way back to the colonial period. Rollins asserts that even though domestic servants from Europe were afforded more protection than black and Indian slaves, historical legal documents indicate that *all* groups of servants during that time were treated badly. Instances of physical abuse was documented, as well as poor working

³³ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection. Geneva: International Labour Office, 2013.

³⁴ Lutz, Helma. "Being Illegal in Europe: Strategies and Policies for Fairer Treatment of Migrant Domestic Workers." In *Migration and Domestic Work: A European Perspective on a Global Theme*. Aldershot: Ashgate, 2008.

conditions. The decades after independence and emancipation caused drastic changes in the domestic worker sector, as former domestic slaves became low-wage laborers.

Though African Americans were now free and were officially compensated for their work, their position and treatment was far from fair and positive. Groups of immigrants from Ireland, Poland, Germany, Sweden, and China also experienced unfair and inhumane treatment, as they were deemed inferior to white American workers. Anti-servitude sentiment, thus, continued to increase as domestic labor was repeatedly considered unskilled work performed by blacks and immigrants who were uneducated and lower class. Rollins concludes that domestic workers have continuously been regarded as inferior “by virtue of their unfree status, their gender, their geographic origins, their lower-class backgrounds, and/or their caste, race, or ethnicity”.³⁶ Race also impacts the rate of pay; a report conducted by the National Domestic Workers Alliance (NDWA), asserted that the “median hourly wage of white domestic workers is \$2.13 higher than that of Latina workers and workers in the Asian-Other category, and \$1.14 higher than that of black workers.”³⁷

1.2.2 Gender

Passed on December 16, 1992, in its Resolution on Violence Against Migrant Women Workers the United Nations declared that it is “[a]ware of the moral obligation of receiving or host countries to ensure the human rights and fundamental freedoms of all persons within their boundaries, including migrant workers, and in particular women migrant workers, who are doubly vulnerable because of their gender and because they are foreigners.”³⁸

The domestic labor sector is highly feminized; equality in domestic work is deeply linked with realizing gender equality. Because domestic functions in a certain nature and

³⁶ Rollins, Judith. "The History of Domestic Service." In *Between Women: Domesticity and Their Employers*, 48-59. Philadelphia, Pennsylvania: Temple University Press, 1985.

³⁷ Burnham, Linda, and Nik Theodore. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York, NY: National Domestic Workers Alliance, 2012. 20.

³⁸ A/RES/47/96, 12 December 1992. Res. Violence Against Women Migrant Workers.

culture, domestic workers tend to be more exposed to gender-based discrimination. It has become the world-wide norm to perceive domestic work as “woman’s work”, solidifying the gender disparities that exist within the human rights framework. The ILO paints the picture of abusive practices in the domestic labor market in its 2013 report *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*:

*More than half of all domestic workers have no statutory limitation of their weekly working hours, more than two out of five are not entitled to be paid a minimum wage, and more than a third have no rights to take maternity leave. From a human rights and gender equality perspective, this is unacceptable.*⁴¹

As evident by this report, domestic workers suffer through abuses of their human and labor rights. Female migrant domestic workers face even more particular vulnerabilities such as gender-based and racial discrimination and violence. Because they are absent from the scope of labor law in certain national jurisdictions, they face great hurdles in demanding essential rights that will allow them to work and live with dignity and respect.

1.2.3 Migrant Status

A considerable amount of women who are domestic workers are migrants. They face specific human right challenges which deserve the attention of the international community. As Goldberg states that women tend to migrate not because of choice, but because of necessity. Women migrate for similar reasons as any other migrant: extreme poverty and hardship, repressive government regimes, and civil strife and internal conflict.⁴³ Domestic work is strongly interlinked to international migration. Many women who are in dire situations and become desperate to flee for protection and safety often take risks by entering a country without authorization. Undocumented migrant women face even more challenges as their migrant

⁴¹ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection. Geneva: International Labour Office, 2013.

⁴³ Goldberg, Pamela. "International Protections for Migrant Women as a Human Rights Issue." In *Asian Women in Migration*, 167. Quezon City: Scalabrini Migration Center, 1996.

status and lack of proper documentation hinders their ability to enjoy certain freedoms and fundamental rights afforded to other workers.

Because of their undocumented or irregular status, such workers often fear retaliation from their employers if they voice their dissent about having to suffer unjust and inhumane treatment. For many domestic workers living outside of their home countries, an even greater fear than abuse is the fear of deportation. Even in cases where migrant domestic workers enter a host country with authorization and gain employment through a recruitment agency, they still face vulnerabilities if their passport is confiscated. In some circumstances, it has resulted in arrest and deportation when workers report run away from abusive employers. There has been documented wrongdoings of recruitment agencies in Asia, where wages from domestic workers were withheld for months because of fees. Because of the lack of regulation, the exploitation has become systematic, resulting in practices that further degrade the contributions of the domestic workforce.⁴⁴

The immigration status of undocumented migrant domestic workers compel them to be apprehensive of seeking out legal action against their employers because they believe that their status can be used as threat against them. Fearing employment disposal or retaliation, the position of domestic workers to report physical mistreatment or file claim for lost wages against their employers is ultimately weakened. Michael Wishnie provides the case of *Montero v. INS* and *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, to illustrate how employers have retaliated against workers because they protested and filed claims for stolen wages.⁴⁵ Consequently, many of the abuses and violations of rights often go unreported and unrecognized. In California, for instance, 54 percent of domestic workers are the primary wage

⁴⁴ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 14.

⁴⁵ Wishnie, Michael. "Immigrant Workers and the Domestic Enforcement of International Labor Rights." *University of Pennsylvania Journal of Labor & Employment Law* 4 (2002): 556. Accessed May 8, 2015. <http://ssrn.com/abstract=1737066>.

earners in their families and 72 percent send money to family in their home countries. Because of this, domestic workers often endure the conditions at their workplace because of their need to have steady income for their families.⁴⁶

One in every 13, or 7.5 percent of female wage workers is a domestic worker, with the majority of them migrating beyond the borders of their countries in search for work.⁴⁷ There are cultural norms that devalue “women’s work” inside the home. Workers often regarded as “helpers” rather than employees entitled to basic human rights. There are other theories regarding the relationship between that of the employer and the domestic worker employed in a private household. In the United States, the connection between employer and worker is viewed in a quasi-familial relationship that form between employers and their Mexican maids, identifying workers as “part of the family” rather than employees who are entitled to certain rights and benefits.⁴⁸ As D’Souza argues that there are certain characteristics in the employer-worker relationship in the domestic sector that is inherently different than other professions, pointing out issues of invisibility, unequal balance of power, paternalist attitudes, and the lack of precise job description.⁴⁹ These dynamics make it difficult for workers to dispute any human rights or labor law abuses performed by the employers in the privacy of their homes. The relationship of domestic workers with their employer is of extreme and unhealthy dependency. Even though domestic workers are comparatively a smaller share of domestic workers in total employment, their struggle to gain respect and dignity must be recognized and prioritized in the human rights arena.

⁴⁶ Schreiber, Cathy. "Domestic Workers Bill of Rights – Surprising Facts « Women's Foundation of California Blog." *Women's Foundation of California Blog*. Web. 8 May 2011.
<<http://womensfoundationofcalifornia.com/2011/04/06/domestic-workers-bill-of-rights-surprising-facts/>>.

⁴⁷ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 10.

⁴⁸ *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*. Geneva: International Labour Office, 2013.44,

⁴⁹ Souza, Asha. *Moving towards Decent Work for Domestic Workers: An Overview of the ILO's Work*. Geneva: ILO, 2010. 19.

Section 3: Exploitation and Abuse in an Invisible Sector

1.3.1 Long Working Hours and Low Wages

Wage theft, poor and unhealthy working and living conditions, physical and sexual violence, and psychological abuse are frequent experiences of domestic workers across continents. These occurrences of human rights violations are the everyday realities of workers who work in private households. Domestic workers lack control over their working hours, with workers logging one of the longest and most unpredictable amount of working hours in any labor force. Live-in domestic workers who reside in the private households they work for tend to work even longer hours, as they are usually on a full-time basis and are expected to be available whenever their services are required by the employer. Domestic workers, especially live-ins, who may not have a formal written contract with their employers may be expected obey orders at all times. In most cases, hours of work are so long and unregulated that workers usually tend to not have any free personal time at all. There is no distinction between working time and leisure time. In addition, as D'Souza observes, duties designated to the worker are disproportionate to their salary, as well as their capability.⁵⁴

Because of the informal manner of domestic work, employers feel that they possess the freedom to designate more chores than what was originally agreed upon, without necessarily increasing their hourly wage. Hourly wages in the domestic work industry have traditionally been lower than the wage mandated by labor and employment law. To illustrate, a 2012 survey of domestic workers completed by the National Domestic Workers Alliance (NDWA) concludes the following:

⁵⁴*Id.* at 20.

- *Low pay is a systemic problem in the domestic work industry*
- *23 percent of workers surveyed are paid below the state minimum wage.*
- *70 percent are paid less than \$13 an hour*
- *67 percent of live-in workers are paid below the state minimum wage, and the median hourly wage of these workers is \$6.15*
- *Using a conservative measure of income adequacy, 48 percent of workers are paid an hourly wage in their primary job that is below the level needed to adequately support a family.⁵⁵*

In addition, domestic workers tend to receive the same payment, without overtime, regardless of the burden of their chores or the length of their work day. Even with the existence of a formal contract, domestic workers tend to be given lower wages than other workers. The International Human Rights Clinic highlighted the leading grievances of domestic workers in a 2013 report, which surveyed domestic workers from the Philippines and Kuwait:

- *Nonpayment of wages, late payment, or lower payment than the agreed upon salary*
- *Withholdings of passports by recruiters or employers*
- *Long working hours: 78-100 hours per week*
- *No sufficient rest periods or time off*
- *Limited freedom of movement, including confinement to the house*
- *Compulsory tasks different from those agreed upon in contract*
- *Personal or emotional problems, including homesickness*
- *Maltreatment, including verbal, physical, and sexual abuse⁵⁶*

These incidences of abuse and exploitation represent the daily realities of domestic workers around the globe who do not enjoy equal protection in human and labor rights. Even when such incidents amount to torture and forced labor, because of the fact that workers are not aware of their rights and the national legal frameworks are inadequate to regulate the abuses within the industry, the abuse becomes systematic.

1.3.2 Poor Working and Living Conditions

Domestic workers living and working in private households, because of the isolated nature of their work, are usually exposed to even greater vulnerabilities. Their workplace is

⁵⁵ Burnham, Linda, and Nik Theodore. *Home Economics: The Invisible and Unregulated World of Domestic Work*. New York, NY: National Domestic Workers Alliance, 2012.

⁵⁶ *The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and Country of Destination: Case Studies of the Philippines and Kuwait*. Washington DC: International Law and Organizations Program and The Protection Project, 2013. 52.

usually in private homes or dwellings and often, they lack other co-workers. As D'Souza explains, poor working and living conditions for domestic workers has been commonplace in the sector. She asserts that a regular complaint of workers have been the lack of proper accommodations, as most have been “made to sleep in the corridor, kitchen, storage room or under the staircase. Rooms may be small and poorly ventilated without the possibility of locking them.”⁵⁷ The various poor working and living conditions uncovered from different interviews and surveys conducted on domestic workers is telling of the lack of supervision by national regulatory frameworks.

Many studies and reports on this issue have concluded recurrently that hours worked by domestic workers are the most irregular and the lengthiest. It is important to note that this is in comparison with *all* groups of employed workers. What has become accepted in the sector is the notion that domestic workers, especially those employed and living in private households, are to be expected to be available to work day and night. Almost all countries have established standards in regulating normal weekly and overtime hours, with most countries having a limit between 40 and 48 hours per week. The lack of regulation in working time for countries that do not have effective enforcement of working time regulations places a great danger for domestic workers, who usually have little to no limitation on the duration of their weekly working hours. For instance, in countries like Malaysia and Saudi Arabia, domestic workers usually work over 65 hours per week without overtime pay. Domestic workers in Germany have little protection, as there is no restriction on normal weekly hours. As documented by the ILO Report *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*:

⁵⁷ Souza, Asha. *Moving towards Decent Work for Domestic Workers: An Overview of the ILO's Work*. Geneva: ILO, 2010. 21.

Among the 70 countries and territories for which data were available for this report, only three have no limitation on normal weekly hours (Denmark, Germany and Hong Kong, China)...Germany and Denmark use an alternative approach that arguably provides an at least equivalent form of protection: they limit the total duration of the working week to 48 hours, meaning that normal and overtime hours combined cannot exceed the threshold. The lack of protection for domestic workers is therefore not due to a lack of working time legislation, but to the frequent exceptions that are made for domestic workers, who are expected to work for longer hours – or in fact enjoy no limitation on their working week at all.⁵⁸

This necessitates legal clarity on living and working conditions to be established so workers can be informed on their rights and employers can be held accountable. In a report completed by the FRA on irregular migrant domestic workers in the EU, workers surveyed from 10 countries, including Germany, revealed that psychological and psychosomatic medical conditions have been suffered by those working under continued state of stress and instability. Testimonies document their exposure to sexual harassment and/or physical abuse, illustrating that some domestic workers have such a personal and financial dependence on their employers that often, they feel physically and psychologically trapped.

1.3.3 Confinement and Forced Labor

The ILO, in its *Law and Practice Report* states that domestic work, “as one of the oldest and most important occupations for many women in many countries is linked to the global history of slavery, colonialism and other forms of servitude”.⁵⁹ Furthermore, in 2005, the ILO reiterated that “[d]omestic workers are especially vulnerable to forced labour because of the unprotected nature of their work and the highly personalized relationship between the worker and employer....domestic service is also used as a cover to lure women into employment abroad while deceiving them about the real nature of their work.”⁶⁰ Since the majority of domestic workers who migrate to other countries for employment live with their employer, they

⁵⁸ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection. Geneva: International Labour Office, 2013.60.

⁵⁹ Blackett, Adelle. *The Decent Work for Domestic Workers Convention and Recommendation, 2011*. 4th ed. Vol. 106. American Society of International Law, 2012. 780.

⁶⁰ ILO, *A global alliance against forced labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, ILO, Geneva, 2005, p. 50

encounter various maltreatments because they are forced to be isolated from the public, and often fall victims to coercion and threats of employers who can use their legal status to confine them within the household.

In 1991, the Coalition for Immigrant and Refugee Rights and Services (CIRRS) conducted a survey of undocumented women in California who were employed as housekeepers and live-in domestic workers and discovered that they were receiving between \$250 and \$500 a month. More surprisingly was the confessions of women that they had to sustain circumstances that were on the brink of indentured servitude or slavery.⁶¹ The exploitation and mistreatment can easily be hidden behind doors of private dwellings, out of the public eye and left out of traditional labor regulatory schemes. The calamitous consequences is that little accountability and no legal oversight lead into continual abusive and degrading treatment that can result into servitude and forced labor.

⁶¹ Chang, Grace. *Disposable Domestics: Immigrant Women Workers in the Global Economy*. Cambridge, Mass.: South End Press, 2000

CHAPTER 2: WINNING RIGHTS FOR “WOMEN’S WORK”: SOURCES OF PROTECTION FOR THE DOMESTIC LABOR WORKFORCE

Section 1: The Rise of Domestic Workers’ Movement

The domestic work industry has experienced significant growth, rising from approximately 33.2 million to 52.6 million between 1995 and 2010. This number gives evidence to the significance of domestic work as a source of employment in total employment, which has increased to 1.7 percent globally, as of 2010.⁶² With the rise of the number of domestic workers around the world came the creation of grassroots and nongovernment organizations working with workers, labor unions, and employers to address systematic gaps in the legal system and to advocate for better living and working standards in the domestic labor industry. The domestic workers rights movement was born and as evident in the following examples, it was rapidly gaining momentum. The inaction of national governments to protect domestic workers rights have triggered grassroots activism which helped to form organizations on every continent throughout the globe. The International Domestic Workers’ Network (IDWN), launched in 2009, is the largest global network of domestic workers, comprising of 42 affiliate organizations representing 210,000 workers. On October 2013, the International Domestic Workers’ Federation was also created. It is the first global union which is managed and operated entirely by women.⁶³ The creation of these two organizations is a testament to the growing strength of the global social justice movement of domestic workers.

There is great diversity within the global network of domestic workers rights representatives. There are organizations that operate on a grassroots level, as well as at national and regional levels. Usually connected to one another, together they organize and mobilize

⁶² *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*. Geneva: International Labour Office, 2013.24.

⁶³ "Domestic Workers – Progress and Ongoing Struggle." Domestic Workers: Progress & Ongoing Struggle. January 1, 2014. Accessed October 16, 2014

<http://wiego.org/informal-economy/domestic-workers—progress-and-ongoing-struggle>

domestic workers to raise awareness of their cause. Activists around the globe have gained momentum and achieved legislative victories in domestic workers rights through strengthening organizing efforts and lobbying at a local and national level. The increased vitality and legitimacy of the global domestic workers rights movement, made up of grassroots domestic worker organizations, trade unions, human rights advocates, and civil society groups, ignited the negotiation process and adoption of the ILO Convention on Domestic Workers.⁶⁴

Section 2: Domestic Legal Frameworks

2.2.1 Philippines

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) estimates that there are approximately 600,000 to 2.5 million domestic workers in the Philippines, with approximately 1 million being children. Following the trend in other countries, the majority (84.8 percent) of the workers are women and young girls, and represent more than 5.3 percent of the total workforce of the Philippines. In addition, many Filipina women migrate to other countries to work in the domestic labor sector, increasing 54 percent since 2004.⁶⁵

The struggle for domestic workers rights in the Philippines has a long history, dating back to 1974, when for the first time the Philippines Labor Code included a section on the employment of house helpers. Twenty years later, the Philippines government signed a MOU with the ILO concerning the elimination of child labor, which led to the 1996 filing of a Senate Bill for domestic workers.⁶⁶ A large portion of the Filipino workforce is Overseas Foreign Workers (OFWs). Because of this, there are many legal documents that explicitly provide

⁶⁴ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 3.

⁶⁵ *Domestic Workers Count Too: Implementing Protection for Domestic Workers*. Geneva: UN Women, 2013.

⁶⁶ *Primer on the ILO Convention No.189 and RA10361 Domestic Workers Act*. Manila: Philippines Migrants Rights Watch and ILO, 2014. 6.

protection for domestic workers working and living in other countries. Domestic worker advocacy groups in the Philippines, Visayan Forum and Migrante International, initiated a campaign to encourage domestic legislative reforms during the mid-1990s. Following the 1995 execution of a Filipina domestic worker in Singapore for murder allegations, thousands of protesters fought for policy changes to provide higher protections for domestic workers. The result of their advocacy was the Migrant Workers and Overseas Filipino Act of 1995 (RA 8042), which called for the State to do the following:

“afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.”⁶⁷

The enactment of RA 8042 established Philippines as the first country in Asia to have a law in the books and in practice to protect their nationals living and working overseas. Because four in five Filipino domestic workers are women, the law called for the inclusion of gender-sensitivity in carrying out the provisions of the law. In 2007, the “Freedom Charter for Domestic Workers” was proposed, further expanding the legal protections for domestic workers living and working in the country. It garnered strong support from the public, as well as policymakers. In September 2012, the Convention was ratified by the Philippines government – becoming one of the first countries to officially make the commitment to integrate measures that will uphold the fundamental rights of all domestic workers employed in the nation of 7,100 islands. The current labor legislation protecting domestic workers working locally in the Philippines, Republic Act No. 10361 – known as Batas Kasambahay Bill or Magna Carta – was filed in 1999 by Senator Juan Ponce Enrile. It was not adopted until January 18, 2013. The UN Women publication *Domestic Workers Count Too* highlights the new guarantees by the law:

⁶⁷ Republic Act No. 8042 of 1995, section 2(b).

1. *A written contract signed before employment begins, written in a language or dialect understood by both worker and employer;*
2. *Regularly paid minimum wages and registration of employment with local government;*
3. *Five day incentive leaves per year in addition to the 1 rest day per week and a maximum daily working hours with provisions for overtime pay. "A domestic worker who has rendered at least one (1) year of service shall be entitled to an annual service incentive leave of five (5) days with pay."*⁶⁸
4. *Workers' coverage under the social security system, including health insurance. (A domestic worker who has rendered at least one (1) month of service shall be covered by the Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund or Pag-IBIG, and shall be entitled to all the benefits in accordance with the pertinent provisions provided by law.)*⁶⁹
5. *Basic accommodation and meals for line-in domestic workers;*
6. *Paid annual leave (minimum 5 days) and maternity (4 weeks) and paternity leave (7 days) for domestic workers; and*
7. *Protection against abuse and violence, forced labor, debt, bondage and trafficking in persons and clear penalties in case of violation of the law.*⁷⁰

The Kasambahay Bill, as well as specific Labor Codes and Civil Codes of the Philippines applies to and particularly focus on domestic workers providing services for compensation. However, the Philippines government has been criticized because the mechanisms put forth have been inconsistent and outdated. The ILO has strongly advocated that the Philippines needed to be more comprehensive and up-to-date on the legal and regulatory framework.

A major challenge in the efficient implementation of these newly adopted policies has the lack of coordinated efforts by the many agencies working on domestic workers' rights. Another hindrance in achieving justice for Filipina domestic workers working in other countries have been the abuse of the judicial framework that is meant to safeguard workers when they experience sexual or physical abuse, have their passports confiscated, or their salaries withheld. The mishandling of the judicial system by representatives of the Philippines

⁶⁸ Republic Act No. 10361 of 2013, section 29. <http://www.gov.ph/2013/01/18/republic-act-no-10361/>

⁶⁹ *Id.* at section 30.

⁷⁰ *Domestic Workers Count Too: Implementing Protection for Domestic Workers*. Geneva: UN Women, 2013.

Embassy who have held compensation from domestic worker victims and recruitment agencies who falsify reports of abuse make it especially difficult for workers to find a positive recourse. In addition, there are accounts of State enforcement officials who delay and deflect submitted reports of abuse by workers.⁷¹

2.2.2 Germany

It is estimated that the percentage of the EU population aged 80 years or older will triple from 2008 to 2060.⁷² This figure, united with the fact that there will be less of the population that can provide care for older people, demonstrate that the need for the workers who perform household and care duties will continue to increase. The domestic labor industry in Europe is already a major source of employment for at least 2.5 million men and women.⁷³ The demand is met by a workforce comprised of mostly migrant domestic workers from developing countries and new EU States. The European Union Agency for Fundamental Rights (FRA) contributes this to the lack of entitlements and low pay of domestic work – pushing the indigenous workforce away from domestic work. Workers, who participate in informal or undeclared employment, thus, are in the mercy of their employers – many of whom who do not pay taxes or social charges.

On a European level, there are regional instruments which provides guidelines on equal and fair pay for workers, including migrant workers. The Charter of Fundamental Rights of the European Union Article 23(2) provides that “Everyone, without any discrimination, has the right to equal pay for equal work.”⁷⁴ While Article 23 of the Universal Declaration of Human Rights (UDHR) states the following:

⁷¹ *The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and Country of Destination: Case Studies of the Philippines and Kuwait*. Washington DC: International Law and Organizations Program and The Protection Project, 2013. 84.

⁷² *Migrants in an Irregular Situation Employed in Domestic Work: Fundamental Rights Challenges for the European Union and Its Member States*. Luxembourg: Publications Office of the European Union, 2011. 17.

⁷³ *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection*. Geneva: International Labour Office, 2013.

⁷⁴ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/0.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.*
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.⁷⁵*

Another instrument adopted by the Council of Europe in 1961, the European Social Charter (ESC) – meant to harmonize with the ECHR – is a treaty that guarantees specific fundamental economic and social rights that also pertains to domestic workers. The first five sections of Part I of the European Social Charter mandates the following:

- 1) Everyone shall have the opportunity to earn his living in an occupation freely entered upon.*
- 2) All workers have the right to just conditions of work.*
- 3) All workers have the right to safe and healthy working conditions.*
- 4) All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.*
- 5) All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.⁷⁶*

Article 1 of the ESC addresses forced labor and exploitation, while Article 8 grants specific protections for pregnant women and women in post-natal period, requiring States Parties to provide job-protected leave before and after birth, allows a breast feeding period, and sets in place regulations to ensure that working conditions are not “dangerous, unhealthy, or arduous nature.”⁷⁷ In 2012, the European Committee of Social Rights reaffirmed its commitment to advancing the rights of domestic workers, as it evoked the States Parties to recall the ECtHR judgments in the cases of *Rantsev v. Cyprus and Russia* and *Siliadin v. France* and concluded the following:

⁷⁵ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 23.

⁷⁶ Council of Europe, *European Social Charter*, 18 October 1961, ETS 35

⁷⁷ *Id.*

*Work in family enterprises may give rise to excessive working hours, failure to remunerate properly, etc. The Committee asks States Parties for information on the legal provisions adopted to combat these practices and the measures taken to supervise their implementation.*⁷⁸

Migrant workers, including irregular migrants who are exposed to labor and human rights violations must be able to access to legal and justice systems to seek effective remedies for such violations. As the FRA points out, there are several means of determining disputes: “conflict mediation, civil courts, specialized labour courts, labour inspectors, equality and anti-discrimination bodies and, for certain cases such as forced labour, criminal courts.”⁷⁹ Ver. Di (United services union) in Germany has mediation services and legal counseling and aid for irregular migrant workers, but they must be formal members of the trade union. Because the residence status of the worker may be verified in labor court procedures, many migrants tend to be discouraged from initiating legal action against their employer. As the FRA prescribes: “[t]here is a need to monitor the implementation of fundamental rights and to ensure that they are disconnected from immigration status considerations and enforcement procedures.”⁸⁰

In 2001, the Parliamentary Assembly of the Council of Europe (PACE) addressed the growing concern over rights violations of domestic workers in the context of domestic slavery. PACE adopted Recommendation 1523, identifying the vulnerabilities of domestic workers who become victims of slavery and calling for Council of Europe member states to explicitly recognize domestic slavery an offence in their criminal codes. It provided that workers should be issued residency permits on a humanitarian basis and offered administrative and legal assistance, as well as compensation. PACE also adopted Recommendation 1663 in 2004, which urges member states to “elaborate a charter of rights for domestic workers.”⁸¹

⁷⁸ "European Committee of Social Rights: Conclusions 2012." European Social Charter. 2013. Accessed November 24, 2015. http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/Conclusions2012_en.pdf.

⁷⁹ *Migrants in an Irregular Situation Employed in Domestic Work: Fundamental Rights Challenges for the European Union and Its Member States*. Luxembourg: Publications Office of the European Union, 2011. 38.

⁸⁰ *Id.* at 53.

⁸¹ Council of Europe, Parliamentary Assembly 2004: Recommendation 1663, Domestic Slavery: servitude, au pairs and “mail order brides”, 22 June 2004.

Though difficult to pinpoint consistent resources that quantify workers in domestic labor, researchers approximate that there are about 1 million domestic workers in Germany, with 66 % of them being migrant workers. Domestic workers hold the right to collective bargaining in Germany, but as Carls argues, the exercise of this labor right has not been effective, citing that agreements only provide low coverage, and that the high proportion of informal employment in the sector make it difficult for workers to claim their rights.⁸² As a response to the growing need to put in place mechanisms to regulate the domestic labor sector in Europe, the European Parliament passed a resolution in November 2000, which called for the inclusion of domestic workers in directives on employment, as to ensure that they are better protected in terms of working conditions, working hours, and social security.

In addition, the resolution asked the EU Commission to guarantee that workers were entitled to quality jobs and on-going professional training courses, and also stated the necessity of social integration of migrant domestic workers.⁸³ Though this resolution offered a comprehensive discussion of the issues related to domestic workers in Europe and was a step in the right direction, it has not influenced EU policy in a manner that resulted in supplementary legal safeguards for migrant domestic workers in Germany. Irregular migrant status and informal or undeclared employment, coupled with intensifying migration policies are issues that hinder workers from taking advantage of existing regulatory frameworks that are already in place in Europe. There is no legal migration options for third-country domestic workers in Germany, other than through the Au-Pair visa program, and through a “specific recruitment

⁸² Carls, Kristin. "Domestic Work and Its Regulation in Europe." In *Decent Work for Domestic Workers: The State of Labour Rights, Social Protection and Trade Union Initiatives in Europe*. Geneva: ACTRAV/ITC-ILO, 2012.

⁸³ Kontos, Maria. "Negotiating the Social Citizenship Rights of Migrant Domestic Workers: The Right to Family Reunification and a Family Life in Policies and Debates." *Journal of Ethnic and Migration Studies* 39, no. 3 (2013): 413.

scheme for household aid limited to migrant workers from new EU Member States who work in households with a person in need of care.”⁸⁴

A landmark European Court of Human Rights (ECtHR) case, *Siliadin v. France*, was the first instance in which the Court clarified the responsibility of Member states to assure effective protection to victims of slavery, servitude, and forced labor. The applicant, a minor of Togolese origin who possessed a tourist visa and valid passport, was brought to France and was originally supposed to work at the private household of ‘Mrs. D’, in exchange for the cost of her journey and help with arranging placement for her schooling. She ended up being an unpaid housemaid, working from 7:30 am to 10:30 pm, seven days a week, and without any days off for rest or holidays in between. She slept on the floor and did not have her own room, and constantly living in fear from immigration and police officials since her passport was confiscated. The promise of fixing her immigration status by ‘Mrs. D’ was never fulfilled, leaving Ms. Siliadin to be without proper immigration or work authorization documents. Because slavery and servitude were not explicitly criminalized in the national criminal legislation, the Court – in a unanimous decision – declared that the State was in violation of not providing sufficient and effective protection to the applicant and was indeed in breach of its positive obligations under Article 4 of the Convention.⁸⁵ The *Siliadin v. France* case illustrates one of the ways in which the deficiency of national legislation in dealing with issues of domestic servitude, forced labor, and servitude ultimately restricts the ability of workers to claim their rights.

As Laurie Berg points out, a hurdle in realizing labor and human rights for migrant domestic workers in Germany is the existence and exercise of domestic laws that permit the State to have absolute discretion when it comes to the regulation of borders. She argues that

⁸⁴ *Migrants in an Irregular Situation Employed in Domestic Work: Fundamental Rights Challenges for the European Union and Its Member States*. Luxembourg: Publications Office of the European Union, 2011. 18.

⁸⁵ *Siliadin v France*, App No 73316/01, ECHR 2005-VII, [2005] ECHR 545, (2006) 43 EHRR 16, 20 BHRC 654, IHRL 2866 (ECHR 2005), 26th July 2005, European Court of Human Rights [ECtHR]

Section 76 of the German Foreigners Law, which mandates “all public offices to report to immigration officials of irregular migration status”⁸⁶, causes irregular migrant workers to be fearful and discouraged from using domestic courts or regional human rights tribunals to seek remedy or damages.⁸⁷ Furthermore, Berg reiterates that the provisions enshrined in the European Convention on Human Rights “has no express mandate to protect unauthorized immigrant workers”.⁸⁸ Berg’s observation of the tension between the need of States to regulate their borders and the promise of international treaty laws to protect and advance the rights of migrants clearly demonstrate the requirement for a more progressive human rights doctrine that considers the various interests at stake and holds fundamental human rights at its core.

2.2.3 United States

The current state of the domestic worker industry places individuals in vulnerable positions; the mistreatment, abuse, and labor violations must be addressed to promote the dignity and respect of the thousands of domestic workers contributing to the well-being of American families, as well as the country’s economy. There are approximately 1.8 to 2.5 million domestic workers in the United States.⁸⁹ The U.S. has signed the Convention, but has yet to ratify it. Though there is no indication that the United States will sign the Domestic Workers Convention any time soon, real progress has been met in establishing better protections for domestic workers on a state level.

On November 29, 2010, New York became the first state in the nation to pass legislation guaranteeing basic work standards and protections for all domestic workers, regardless of

⁸⁶ Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz — AuslG), vol 9, July 1990 (BGB1. I S. 1354) as amended by Gesetz zur Änderung ausländer — und asylverfahrensrechtlicher Vorschriften, vol 29, October 1997 (BGB1. I S. 2584) (Aliens Act).

⁸⁷ Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Ausländergesetz — AuslG), vol 9, July 1990 (BGB1. I S. 1354) as amended by Gesetz zur Änderung ausländer — und asylverfahrensrechtlicher Vorschriften, vol 29, October 1997 (BGB1. I S. 2584) (Aliens Act).

⁸⁸ Berg, Laurie. "At the Border and Between the Cracks: The Precarious Position of Irregular Migrant Workers Under International Human Rights Law." *Melbourne Journal of International Law* 8, no. 1 (2009): 22.

⁸⁹ Global Forum on Migration and Development (GFMD) 2012; Official Background Paper for Round Table 3.3, “Protecting Migrant Domestic Workers: Enhancing their Development Potential”

immigration status. The following are the protections granted by the Domestic Workers' Bill of Rights for the over 200,000 domestic workers in New York, as highlighted by a UN Women Report *Domestic Workers Count Too: Implementing Protection for Domestic Workers*:

1. *Allows them normal working time of 8 hours a day, 40 hours a week for live-out domestic workers and 44 for live-in domestic workers.*
2. *Grants them the same minimum wage as workers in New York.*
3. *Employers are mandated to pay overtime pay of 1 and half times the worker's regular wages.*
4. *Provides one rest day in each calendar week.*
5. *After 1 year of employment, worker is entitled to 3 paid days off.*
6. *Prohibits workplace discrimination and sexual harassment based on race, gender, sexual orientation, religion, national origin, disability, marital status and domestic violence victim status.*⁹⁰

Three years later, on July 1, 2013, Hawaii became the second state to pass a Bill of Rights. The law mandates that domestic workers are entitled to be paid at least the minimum wage and overtime pay if they work over 40 hour per week, and are protected from discrimination. Another development in local jurisdiction is the passage of the California Domestic Workers' Bill of Rights. The California State Legislature passed a Resolution for a Domestic Workers' Bill of Rights on August 23, 2010, with 13 "No" votes and 21 "Ayes". The resolution called for the equal treatment of domestic workers, declaring that workers have a right to be treated with dignity and respect in their workplace. Though an important step towards the growing movement for full rights for domestic workers, the resolution was a non-binding document and resulted in no enforceable legislation.

On February 18, 2011, California Assembly members Tom Ammiano and V. Manuel Pérez introduced the California Domestic Workers' Bill of Rights (Assembly Bill 889) in the state legislature. It contained such rights as equal overtime pay, equal rights to workers' compensation, and the right to five hours uninterrupted sleep in adequate conditions. The passage of the law on September 26, 2013 went beyond the New York bill since it provided

⁹⁰ *Domestic Workers Count Too: Implementing Protection for Domestic Workers*. Geneva: UN Women, 2013.

paid days off and severance upon termination, in addition to an eight hour day and minimum wage assurances. On July 2014, the state of Massachusetts passed what the National Domestic Workers Alliance regards as the “most forward-thinking bill of rights to date” that “protect workers and employers by requiring clear guidelines for employers and workers including: a written contract; 30 days’ notice of termination for live-in workers; and maternity leave for workers, among other protections.”⁹¹

The advances of domestic workers rights in national legal frameworks, as exemplified by the passages of state-level reforms, is telling of the future of the domestic workers rights movement in the international arena. Though there are still gaps that remain in realizing complete equality in the domestic labor industry, it is important to recognize that the integration of new laws and policies in national legislations is a critical step in granting domestic workers everywhere access to decent work, comprehensive protections, and effective access to justice.

Section 3: Existing International Instruments and the ILO Convention on Domestic Workers

2.3.1 Existing International Instruments

The Universal Declaration of Human Rights (UDHR) addresses many of the human rights hindrances applicable to domestic workers. Article 3 provides the right to security of a person, Article 23 grants the right of free choice of employment, while Articles 23 to 25 contain the right to just and favorable working conditions, containing the right to just and favorable remuneration safeguarding an “existence worthy of human dignity, the right to rest and leisure, including reasonable restriction of working hours and periodic holidays with pay, as well as

⁹¹ "Campaigns." National Domestic Workers Alliance. July 1, 2014. Accessed May 6, 2015. <http://www.domesticworkers.org/campaigns>.

provisions regarding social protections.”⁹² Similar protections are outlined in ICESCR’s Articles 7 to 10, which prescribes that individuals are entitled to fair working conditions, the right to join and form trade unions, the right to social security benefits such as maternity leave and social insurance.⁹³

Moreover, there are several existing international instruments that promote the fundamental rights of women workers. The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (ICRMW) is another instrument, which in its 13th Session adopted the General Comment No. 1 on Migrant Domestic Workers and declared the following:

*Even if certain protections for migrant domestic workers are provided under national laws, there is often a gap between protections enjoyed by such workers in law and in practice. Some of the practical obstacles faced relate to the “hidden” nature of domestic work and factors preventing or deterring migrant domestic workers from claiming their rights.*⁹⁴

The ICRMW provides safeguards for all migrant workers, regardless of their migrant status, but to date, no EU country is a party to it. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and General Recommendation No. 26 on Women Migrant Workers, adopted in 2008 by the CEDAW Committee, placed greater emphasis on the necessity for specific legal mechanisms to defend the fundamental rights and self-determinations of migrant domestic workers. In 2008, the UN Committee on the Elimination of Discrimination against Women in its General Recommendation No. 26 on women migrant workers states the following:

⁹² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

⁹³ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁹⁴ UN Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, ‘General Comment No 1n on Migrant Domestic Workers’ Adopted by Human Rights Treaty Bodies’ (23 February 2011) UN Doc CMW/C/GC/1

“Regardless of the lack of immigration status of undocumented women migrant workers, States parties have an obligation to protect their basic human rights. Undocumented women migrant workers must have access to legal remedies and justice in cases of risk to life and of cruel and degrading treatment, or if they are coerced into forced labour, face deprivation of fulfilment of basic needs, including in times of health emergencies or pregnancy and maternity, or if they are abused physically or sexually by employers or others.”⁹⁵

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) also recognizes that migrants, particularly irregular migrants, are more susceptible to human rights abuses. Article 5 of ICERD affords protections to migrant domestic workers as it declares that everyone is equal before the law in claiming their fundamental rights. In its General Recommendation, emphasis is placed on the unique vulnerabilities of women and the need for States to not differentiate between citizens and non-citizens.⁹⁶ Article 8 of the ICCPR prohibits slavery, slave trade, and forced labor. The Committee on the ICCPR also called on States Parties to instill measures in order for the economic and social rights of domestic workers to not be threatened. The Committee placed emphasis on important obstacles faced by workers in the domestic labor industry, such as their difficulty in receiving social security protections and difficulty in exercising their freedom of association.⁹⁷ In addition, the Human Rights Committee (HRC) declared that migrant workers “may not be imprisoned for failure to fulfill a contractual obligation, that they shall be equal before the courts, and that they cannot be deprived of the right to peaceful assembly and freedom of association.”⁹⁸

The previously mentioned examples of international conventions and documents illustrate that there was a necessity and demand to address issues specifically faced by women

⁹⁵ UN Committee on the Elimination of Discrimination against Women (2008), General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, paragraph 26 (i).

⁹⁶ "The Protection of the Rights of Migrant Domestic Workers in International Human Rights Law." In *Rights of Migrant Domestic Workers in Europe*, 15. Geneva: OHCHR Regional Office for Europe.

⁹⁷ Oelz, M. "The ILO's Domestic Workers Convention and Recommendation: A Window of Opportunity for Social Justice." *International Labour Review* 153, no. 1 (2014): 150.

⁹⁸ "The Protection of the Rights of Migrant Domestic Workers in International Human Rights Law." In *Rights of Migrant Domestic Workers in Europe*, 12. Geneva: OHCHR Regional Office for Europe.

and migrants, and that there has been substantial developments made in helping to realize their rights. However, the effective implementation of these legal instruments and their immersion into national regulatory frameworks and the lack of ratification by key Member States have proven to be yet another barrier in realizing human rights for domestic workers.

2.3.2 The ILO Convention on Domestic Workers

The 100th Session of the International Labour Organization (ILO) on June 2011 was a landmark victory for the struggle for domestic workers' rights. For the first time in history, international labor standards for domestic workers were officially outlined in international legal instruments. The ILO Conference is comprised of workers, employer delegates, and government bodies from 183 Member States. The Convention passed with 396 favorable votes, 16 negative votes, and 63 abstentions. The Recommendation was adopted with a vote of 434 to 8, with 42 abstentions. According to the ILO, the aim of the Domestic Workers Convention (no.189) and the Recommendation supplementing it (no. 201) is to recognize "the economic and social value of domestic work and a call for action to address the existing exclusions of domestic workers from labour and social protection."⁹⁹ Furthermore, it hopes to address gender equality in the sector which is predominantly women, by granting them equal rights and legal labor protections.

The Convention was a product of collaborative work by ILO constituents, which included government representatives and employers' and workers' organizations, with contribution from partners within the UN system, NGOs, and trade unions from all over the globe. Since 2008, these participants started to work together, and during the Committee on Domestic Workers of the International Labour Conference in 2010 and 2011, they collectively

⁹⁹ *Decent Work for Domestic Workers: Convention 189 and Recommendation 201 at a Glance*. Geneva: ILO, 2011. 2.

conclude that all domestic workers deserve to be treated like other workers and “have the right to decent working and living conditions.”¹⁰⁰

These representatives went beyond helping to design the Convention, they are also essentially involved in how the provisions are to be implemented. The following four provisions of the Convention highlight the role of organizations representing domestic workers and their employers, as well as NGOs:

Article 2(2): Identification of categories of workers who may be excluded from the scope of the Convention;

Article 13(2): Progressive application of measures in respect of occupational safety and health of domestic workers;

Article 14(2): Progressive application of measures in respect of social security; and

Article 15(2): Measures to protect domestic workers from abusive practices by private employment agencies.¹⁰¹

Recommendation no. 201, a non-binding instrument, assists Members in designing measures that will enhance existing national legal mechanisms and policies concerning domestic work. In addition, the Recommendation provides additional directions that are not included in the Convention, including “policies and programmes for the professional development of domestic workers, work-life balance, provisions regarding statistical data and international cooperation in a number of areas, including with regard of the protection of the rights of domestic workers employed by diplomatic personnel.”¹⁰²

One of the valuable aspects of the Domestic Workers Convention, is the manner in which it is supposed to be implemented. Workers, as well as employers, are active participants; States are also obligated to confer with these representative organizations of workers and employers in putting into practice the provisions enshrined in the Convention. As the ILO summarizes in the Convention No. 189 Fact Sheet, State governments must work with workers

¹⁰⁰ *Id.* at 6.

¹⁰¹ "C189 - Domestic Workers Convention, 2011 (No. 189)." Convention. June 16, 2012. Accessed September 13, 2014.

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460.

¹⁰² *Decent Work for Domestic Workers: Convention 189 and Recommendation 201 at a Glance*. Geneva: ILO, 2011. 7.

and employers on the following: identification of workers who would be left out, safety and health procedures, social security measures, and processes to safeguard workers from abuse and exploitation by private recruitment and employment agencies (Articles 2, 13, 15).¹⁰³

The Convention addresses various pressing human rights issues that are often confronted by domestic workers; it provides guidelines on minimum wage protection and means and modalities of payments, nondiscrimination, and offer measures on social security and occupational safety and health. Moreover, the Convention also focuses on the special needs of particular groups, such as child domestic workers, live-in domestic workers, and migrant domestic workers. Article 3(2) provides the fundamental principles and rights granted by the Convention:

- (a) freedom of association and the effective recognition of the right to collective bargaining*
- (b) the elimination of all forms of forced labor or compulsory labour*
- (c) the effective abolition of child labour*
- (d) the elimination of discrimination in respect of employment and occupation.*¹⁰⁴

An essential and progressive principle of the Convention is to recognize domestic workers as equivalent to all other wage-earners in different industries. It broadens established labor and social protections to all domestic workers, providing more comprehensive safeguards in the following aspects of labor law: minimum wage, working time, and maternity protection. To demonstrate the increased scope of protection provided by the Convention, Article 10 sets out the following objectives:

¹⁰³ "Fact Sheet on ILO Convention No. 189." August 1, 2011. Accessed April 26, 2015.
http://www.ilo.org/wcmsp5/groups/public/---asia/---robangkok/documents/genericdocument/wcms_208561.pdf.

¹⁰⁴ "C189 - Domestic Workers Convention, 2011 (No. 189)." Convention. June 16, 2012. Accessed September 13, 2014.

- 1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.*
- 2. Weekly rest shall be at least 24 consecutive hours.*
- 3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.¹⁰⁵*

Furthermore, the Convention also ensures that domestic workers enjoy “effective protection against all forms of abuse, harassment, and violence (Article 5) and receive “fair terms of employment and decent living conditions” (Article 6). The Convention also mandates that Member States guarantee that the terms and conditions of employment must be established, understood, and acknowledged by domestic workers through written contracts (Article 7).

¹⁰⁵ *Id.*

CHAPTER 3: RATIFICATION VS. REALITY

Section 1: Changes in National Labor Legislation after the ILO Convention

Before the issue of domestic workers rights gained international attention through the adoption of the Domestic Workers Convention by the ILO, the levels of regulation of domestic work varied tremendously between regions and countries. While some countries had existing laws that provided legal protection for domestic workers, other jurisdictions did not even view domestic work as “work” at all, and provided no legal avenue to address violations of human rights in the industry. In the three featured jurisdictions, there were gaps in labor law and regulatory frameworks that put domestic workers at a disadvantage enjoying the same protections as other workers. In States that did have some form of regulation regarding issues faced by workers, the response was at times not swift enough or did not come at all. Since the adoption of the Convention, significant reforms have been implemented by several States. Some countries such as Uruguay and the Philippines, the first two countries to ratify, have adopted new laws that provide comprehensive legal protection for domestic workers – providing minimum wage coverage, health insurance, and social security.¹⁰⁷

The signing and ratification of the Domestic Worker’s Convention is critical to the development of laws on a national level that can bestow workers the same decent work standards as all other workers. This means that domestic workers, both working locally and abroad, are fully aware of the terms and conditions of their contract employment, have the choice to be a live-in or live-out domestic worker and enjoy the freedom of movement, be entitled to fair wages, rest times, and paid leave for maternity/paternity and vacation. It also strives to ensure that the industry is protected from child labor, harassment, and abuse. The

¹⁰⁷ "Snapshot: ILO in Action, Domestic Workers." Snapshot: ILO in Action, Domestic Workers. Accessed November 7, 2014. http://www.ilo.org/travail/Whatsnew/WCMS_214499/lang--en/index.htm.

adoption of the Convention has, in no doubt, served as a catalyst for the advancement of domestic workers rights in the international arena.

The domestic worker rights movement has garnered strength and power in the Asia region, resulting in the Philippine's steadfast ratification of the Convention. Currently, Philippines is the second country, as well as the only country in Asia and the Pacific Region that has signed and ratified the Convention. Ratified on August 6, 2012, the Convention serves as an essential step in protecting workers, as there are 2.5 million local domestic workers in the Philippines. Domestic work is also the top occupation for Overseas Filipino Workers (OFW), who tend to work in Middle Eastern countries and other Asian countries such as Singapore, China, and Malaysia.¹⁰⁸ Since then, new laws have been introduced and implemented that are in harmony with the requirements of the Convention. After fourteen years, the Kasambahay Bill (Domestic Workers Act) was finally signed into law on January 18, 2013 – further solidifying the State's commitment to prioritize the rights of domestic workers – at home and overseas.

In Europe, domestic work is regulated by explicit legislation, but in Germany, no such specific legislation is present for domestic workers. However, domestic workers are covered under general labor laws before the adoption of the Convention. In addition, though they are excluded from occupational health and safety law, the common law (*Bürgerliches Gesetzbuch*) provides coverage of general health and safety regulations. Domestic workers are also afforded rights under collective bargaining, which been institutionalized in the State since the 1950s. The regional level of bargaining deals with wages, while on a national level, working and employment conditions are regulated.¹⁰⁹ In the spring of 2013, the German Bundestag and Bundesrat approved a draft law adopting the Domestic Workers Convention; the law entered

¹⁰⁸ *Primer on the ILO Convention No.189 and RA10361 Domestic Workers Act*. Manila: Philippines Migrants Rights Watch and ILO, 2014. 2.

¹⁰⁹ Carls, Kristin. *Decent Work for Domestic Workers: The State of Labour Rights, Social Protection, and Trade Union Initiatives in Europe*. Geneva: ACTRAV/ITC-ILO, 2012.16.

into force on September 2013. Even though domestic workers in Germany had certain rights under the existing national legal framework, the Convention affords them greater protection as it expands employment benefits such as social security. As labor sociologist Carls declares: “only 3.6% of the estimated 1 million domestic workers in Germany have such a regular contract with social security contributions.”¹¹⁰ Carls also discusses how domestic workers who work under the German minor employment scheme or “Minijobs” puts them at a precarious situation – disadvantaged when it comes to regulation of working hours, unemployment benefits, dismal protections, and workers compensation for sickness and accidents.¹¹¹ Germany’s move to ratify the Convention, therefore, will address the gaps in the rights and entitlements afforded by the existing national legal and regulatory frameworks. Italy and Germany serve as forerunners in adopting the Convention, serving as an example for other EU Member States to follow.

The landmark passage of the New York Domestic Workers Bill of Rights in 2010 paved the way for other states to pass similar legislation and address the gaps in their labor codes. The National Domestic Workers Alliance (NDWA) built on their organizing and advocacy victory and modeled similar campaigns in other states. The adoption of the Convention on June 16, 2011 legitimized the movement and heartened their momentum to pass a bill of rights in all 50 states. As a result, Hawaii passed a similar legislation in 2013, while California and Massachusetts passed their own version in 2014. Oregon passed a Bill of Rights (Senate Bill 552) in June 2015, amending the Oregon Labor Law to expand workplace protections for domestic workers employed in private households. Connecticut passed a Domestic Worker Bill the following month, becoming the sixth state to include comprehensive protections for domestic workers. The Illinois Domestic Workers Bill of Rights (House Bill 1288), modeled

¹¹⁰ *Id.*

¹¹¹ *Id.* at 17.

after the New York's version of the bill, was filed on February 15, 2013 and was passed by the House in May 2015 and by the Senate Executive Committee on August 19, 2015. As of October 2015, the bill is awaiting to be deliberated and voted on by the State Senate.¹¹² Each bill of rights is specific to the needs of the state and thus, has variations in the text of the law; nevertheless, each version essentially guarantee to all domestic workers federal minimum wage, overtime pay, and extended worker's compensation.¹¹³ Since the adoption of the Domestic Workers Convention, the momentum by trade unions, civil society, and state governments have been growing at an incredible rate. This is evident in the steady development of state-wide campaigns to push bill of rights in states where there is a large concentration of domestic workers, and the passage of new laws and policies granting them more rights and freedoms.

Section 2: Impact of Ratification of the ILO Domestic Workers Convention

The purpose of the Convention and Recommendation is to address the systematic exclusion of domestic workers from key international legal instruments, providing them greater protection and narrowing the decent work deficit. States that signed and ratified the Convention, in turn, provided comprehensive guidance on how to implement the standards set within the provisions to ensure that domestic workers worldwide are treated humanely and receive the dignity and respect that they have been deprived of for so long. According to the ILO Convention No. 189 Fact Sheet, Member States that ratify the Convention are required to uphold the following fundamental rights and principles:

¹¹² "Illinois General Assembly - Bill Status for 1288." Illinois General Assembly - Bill Status for 1288. October 1, 2015. Accessed August 9, 2015.

¹¹³ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 22.

- *promotion and protection of the human rights of all domestic workers*
- *respect and protection of fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; and elimination of discrimination with respect to employment and occupation*
- *effective protection against all forms of abuse and harassment and violence*
- *fair terms of employment and decent living conditions*¹¹⁴

For the first time, a binding international instrument addresses issues in providing effective protection for domestic workers and calls for Member States to deal with abusive and exploitative practices within the industry. The adoption of the Domestic Workers Convention by the ILO and the impressive rate of ratification since 2013 signal the growing phenomenon of domestic workers rights. In 2007, the average minimum wage in the Philippines was 283.57 Pesos. The wage for domestic workers, with the majority working without formal contracts, was estimated at 89 Pesos (approximately \$2.00) per day.¹¹⁵ In January 2013, the Convention entered into force in the Philippines, granting workers a minimum wage, health insurance, social security benefits and includes a new policy regulating employment agencies, prohibiting unreasonable recruitment fees.

The push for necessary legislative changes on the domestic front was also resilient. The Kasambahay Bill, passed after the adoption of Convention, marked for the first time in Philippines labor history, that domestic work is distinguished as a formal sector of labor. The comprehensive bill, similar to the provisions set forth in the Convention, has guidelines on the rights and privileges of workers such as wage guidelines, mandated benefits, and board and lodging requirements. It even has a mandate that workers have the right to work and study simultaneously, should be encouraged by their employers to complete basic education, and should have access to education and training.¹¹⁶ The Philippines is regarded as a trailblazer for

¹¹⁴ "Fact Sheet on ILO Convention No. 189." August 1, 2011. Accessed April 26, 2015.

¹¹⁵ Cruz, Fredrick, and Frances Sayson. "The Kasambahay Law: Its Precedents and Its Promises." The Kasambahay Law Its Precedents and Its Promises Comments. October 23, 2013. Accessed July 15, 2015.

¹¹⁶ Republic Act No. 10361 of 2013, Article II, section 29. <http://www.gov.ph/2013/01/18/republic-act-no-10361/>

calling urgency to the rights of domestic workers in the Asia and Pacific Region, as it is currently the only Asian country to formally recognize that domestic work is part of the formal labor sector. The ILO declared that 61 percent of domestics working in developing and emerging countries in Asia are not covered by labor laws, while a shocking estimated 99 percent of all domestic workers in the Middle East region are left out of labor legislation.¹¹⁷ These figures solidify the need to not only ratify the Convention, but to ensure the provisions are incorporated into national labor laws, ensuring that domestic workers are able to enjoy stronger protections than before.

The European Commission has urged Member States to ratify the Domestic Workers Convention. In implementing the Convention, ratifying states will have to ensure that domestic workers receive equal treatment with other workers. They will have equal and fair compensation and benefits, be informed of the terms and details of their employment, protected against discrimination, offered decent living conditions, and have easy access to complaint mechanisms.¹¹⁸ A majority of domestic workers in the European Union are female migrant workers who often do not have legal status. In turn, this group of workers tends to perform “undeclared employment in the informal economy.”¹¹⁹ According to a research study: “Paid domestic and care work in the EU is now the most important single category of employment of female migrants from the new EU member states and the non-EU countries of Central and Eastern Europe.”¹²⁰ There were many attempts to professionalize paid domestic work in

¹¹⁷ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection. Geneva: International Labour Office, 2013.52.

¹¹⁸ "Commission Urges EU Countries to Implement ILO Domestic Workers Convention." László Andor. March 21, 2013. Accessed November 19, 2014. http://ec.europa.eu/commission_2010-2014/andor/headlines/news/2013/03/20130321_en.htm.

¹¹⁹ Lutz, Helma. "Being Illegal in Europe: Strategies and Policies for Fairer Treatment of Migrant Domestic Workers." In *Migration and Domestic Work: A European Perspective on a Global Theme*. Aldershot: Ashgate, 2008.

¹²⁰ Anthias, Floya, Maria Kontos, and Mirjana Morokvasic-Müller. *Paradoxes of Integration Female Migrants in Europe*. Dordrecht: Springer Science, 2013. 32.

Germany over the last 20 years, but failed in creating an effective system of regulation due to the high cost of enforcement for the individual household.

There are approximately 3 million domestic workers employed in private households in the EU, with 700,000 working in Germany. Germany, became the 10th State and second EU Member State to sign and ratify the Convention. The Director of the International Labour Standards Department, Doumbia-Henry declared the following:

*Germany's ratification is a strong signal of the current momentum and growing expectations generated by this international instrument for the protection of the world's domestic workers. [...] The hope is now that many more ILO Member States will follow the example of Germany and will join forces in this global effort to secure decent work for domestic workers.*¹²¹

The current legislation and policy concerning domestic workers rights vary across the EU region, and typically depend on each country's labor codes, immigration and social policies. After Italy and Germany's ratification, other EU Member States have begun the process of ratification. Ireland became the third country to ratify, and Belgium, Switzerland, and Finland has finalized the ratification process, but the Convention has yet to enter into force.

The inclusion of domestic workers rights in European policies has come a long way in the last 15 years. The adoption of the EU Parliament Resolution of 2000 was to urge the EU Commission to incorporate "domestic work in existing and future directives on employment".¹²² However, as researcher Maria Kontos points out, the resolution and policy plans that followed did little to prompt the EU to immediately change their policy on domestic workers. She goes on to argue that EU legislation has failed in addressing the issue of irregular migrant domestic workers, as it has become somewhat tolerated. In recent years, the demographic trends of low fertility rates, aging population, increasing feminization of

¹²¹ "Germany Ratifies the Domestic Workers Convention." Labour Standards:.. September 20, 2013. Accessed July 15, 2015. http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_221800/lang--en/index.htm.

¹²² Kontos, Maria. "Negotiating the Social Citizenship Rights of Migrant Domestic Workers: The Right to Family Reunification and a Family Life in Policies and Debates." *Journal of Ethnic and Migration Studies* 39, no. 3 (2013): 413.

migration, and the continued demand for cheap labor are all factors that have garnered the attention of EU Member States in the direction of ratifying the Domestic Workers Convention. The European Commission, as well as the European Parliament have approved the Convention and have consented to its ratification by EU Member States. The expectation is to have more countries to commit to either begin the ratification process or to at least explore legislative reform to address the issue. In the United Kingdom, for example, there is a campaign to repeal visa laws which is similar to Qatar's controversial kafala system – a sponsorship system which gave rise to human rights abuses and labor exploitation by employers. In this system, workers are vulnerable to forced labor and modern-day slavery as their immigration status and employment is tied to their employer.¹²³

Currently, there have been no ratifications from countries in North America. The United States, has signed but not ratified the Convention; nevertheless, it continues to be strong advocate for the provisions enshrined in the Convention and has adopted state-level legal reforms in the domestic worker industry. Currently, six states have a Domestic Workers Bill of Rights. Similar to Germany, a considerable amount of individuals engaged in domestic work in the U.S. are undocumented and working without legal documentation. These workers, disadvantaged by their immigration status, receive a lower level of protection. When New York passed the Bill of Rights, it presented protections for *all* domestic workers, irrespective of their immigration status.

However, as Nilliasca asserts, the Bill of Rights “creates a minimum floor of protections for domestic workers” because it “has no provisions to address a path towards legalization or protection from punitive immigration regulatory schemes.”¹²⁵ Hence, legal reforms on a state

¹²³ *Primer on the ILO Convention No.189 and RA10361 Domestic Workers Act*. Manila: Philippines Migrants Rights Watch and ILO, 2014. 33.

¹²⁵ Nilliasca, Terri. *Some Women's Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform*. New York, NY: City University of New York, 2011.405.

level is only one strategy to tackle the systematic oppression that is widespread in the domestic work industry, and can still have limitations in its ability to effectively protect the most vulnerable workers. To realize what the ILO consider decent work standards for domestic workers, it is not enough to expand existing coverage or enact new laws; to bring about meaningful change to lives of domestic workers means that the relevant mechanisms put in place to carry out legal obligations are practical, enforceable, and are evaluated regularly.

CHAPTER 4: PATHWAYS TO LASTING CHANGE

Section 1: Opportunities for Organizing and Mobilizing

Marieke Koning, Equality Officer at the International Trade Union Confederation (ITUC), declared the following:

The historical adoption of C189 and R201 on 16 June at the ILO Conference paves the way to end modern day slavery for domestic workers. When C189 is ratified and implemented in a substantial number of countries, millions of workers will be pulled out of the informal economy into formal jobs and enjoy the right to organize, form trade unions and engage in collective bargaining. This requires a long term commitment of the union movement to keep up the pressure on governments as well as to connect with and organize domestic workers.¹²⁶

It is without a doubt that the global domestic workers rights movement is in a moment of cooperation, power, and influence. In order for it to be an effective advocacy movement, domestic workers need to organize and mobilize themselves and their allies. The creation of local coalition-building, regional alliances, and global connections is a strategy that has proven to benefit their movement and grow their power and influence and power.

In the Philippines, changes in legislation protecting workers were due to the dedication of political leaders and active organizations advocating for pro-domestic workers initiatives. The champions of domestic workers rights ranged from President Aquino to SUMAPI, a domestic workers' union that was locally-based. In addition, the Department of Labour and Employment, National Commission for Women, and local governments demonstrated full support for the passage and immediate implementation of the Kasambahay Bill. The commitment from prominent political, administrative, and local bodies enhanced by the passion of advocacy groups are the driving dynamics behind the accomplishment of domestic workers rights in the Philippines. Their efforts to organize workers in private households for mass mobilizations met challenges as employers began to learn of their strategy and prohibited

¹²⁶ "Domestic Workers: Activities and Campaigns for Ratification of ILO Instruments." Domestic Workers: Activities and Campaigns for Ratification of ILO Instruments. March 9, 2012. Accessed October 24, 2014. http://www.ilo.org/actrav/media-center/pr/WCMS_175394/lang--en/index.htm.

workers to leave the house to join in the rallies planned by Visayan Forum. In order to engage the local communities more effectively, the organization turned to parishes and schools to help with coordinating their activities – more than 80 Catholic and Protestant congregations joined their movement.¹²⁷

Visayan Forum which formed SUMAPI, along with Migrante International worked in coalition to urge decision-makers to incorporate domestic workers rights into local ordinances and national legal frameworks. They were successful in passing local ordinances when the first version of the national bill of rights failed to pass. They planned visits to members of Congress, with the workers in the front line- a strategy that propelled some workers to actively participate in Geneva for the negotiations for the ILO Convention. The efforts of civil society went beyond the passage of legislation; their advocacy changed perspectives and raised awareness which compelled the Philippines government to be the second State to sign and ratify the Convention. Currently, there is also an overseas employment program carried out by the State which protects migrant domestic workers by regulating recruitment agencies and labor offices in host countries and through bilateral labor agreements.¹²⁸ SUMAPI discovered that their challenges in empowering and organizing workers were contingent on identical elements that made them prone to abuse and exploitation. Becker announces that these factors include “workers’ relative invisibility, mobility, low levels of education, lack of information on protection mechanisms, and low self-esteem stemming from society’s bias and low value attached to domestic work.”¹²⁹

SUMAPI’s experience is not unique to those of Filipino domestic workers, as these reasons have been articulated by domestic workers in other regions of the world, regardless if the country belongs to the global North or South. The fight to have domestic workers rights

¹²⁷ Becker, Jo. "Organizing for Decent Work for Domestic Workers." In *Campaigning for Justice: Human Rights Advocacy in Practice*, 35. Stanford: Stanford University Press, 2013.

¹²⁸ *Domestic Workers Count Too: Implementing Protection for Domestic Workers*. Geneva: UN Women, 2013.

¹²⁹ Becker, Jo. "Organizing for Decent Work for Domestic Workers." In *Campaigning for Justice: Human Rights Advocacy in Practice*, 35. Stanford: Stanford University Press, 2013. 51.

recognized and respected, thus, is an uphill battle that requires perseverance and consistency in the strategies employed. Models of organizing, mobilizing, and empowering strategies varied from region to region, however, strategic alliances made between local worker organizations and international unions and the innovative approaches they devoted to building their bases were comparable. Becker's study of domestic worker organizing maintains this assertion, as she demonstrates that during the two-year period of negotiations for the Convention, worker groups and unions from different parts of the world were synchronized in solidifying bases of workers, producing hard-hitting research reports, and fostering support from unlikely allies like employers.

Organizing and mobilizing on a local and national level can transcend beyond a country's borders. The efforts of unions and worker organizations in the United Kingdom, Italy, Netherlands, France, and Germany has made great strides in garnering regional and international support. Transnational labor organizations, such as the European Trade Union Confederation has worked for years in advancing the rights of domestic workers and on a global level, the contribution of the ITUC through the "12x12 campaign" proved to be effective in encouraging States to sign and ratify the Convention. The campaign's goal was to attempt to have 12 Member States to ratify the Convention by December 12, 2012. ITUC, HRW, and the International Domestic Workers Network (IDWN) have also been vigilant in documenting abuses within the sector and providing information and resources to Member States. Their campaign was productive in meeting their target goals and growing the pressure to win more labor protections for domestic workers. Their contribution proved to be critical in revealing to the public the harsh realities within the domestic worker industry and the possibilities to address the human rights violations.

The New York Domestic Workers Justice Coalition and Domestic Workers United, together with the National Domestic Workers Alliance (NDWA), collaborated for eight years

to pass the NY Domestic Workers' Bill of Rights. The efforts to organize and mobilize domestic workers was first initiated in 1881 by the Washing Society –a trade organization of mostly African-American women who performed laundry work in Atlanta, where 98 percent of black female workers performed domestic labor. Their campaign included door-to-door recruitment and an aggressive membership crusade; they were also strategic in building coalitions with white laundresses. These factors attributed to their success of growing a base from 20 to 3,000 strikers within three weeks' time. The washerwomen's strike of 1881 was victorious in gaining an increased rate of pay and ignited a movement within the domestic work industry in the United States, inspiring maids and cooks to also demand better wages. It also reached the hospitality sector as hotel workers began to strike.¹³⁰ The experience of the washerwomen's strike parallel the experiences of modern-day domestic workers organizing. The tactics to organize and mobilize workers are similar, as the backbone of the NDWA is also its robust membership base. It also kindled other movements, as carwash workers and nail salon workers are currently being organized by worker organizations and unions and have made significant strides in claiming justice for the human rights and labor rights violations in the industry.

The role of NGOs in advancing the rights of domestic workers is invaluable. From the grassroots to international and well-funded organizations, NGOs have been effective in conveying their agenda of dignity and respect for domestic workers to their respective national governments and international bodies. This is demonstrated in the ability of the collective movement to advance the rights of domestic workers beyond national borders, with their efforts making waves in the international human rights arena. In 2011, European NGOs from London, Dublin, Brussels, Amsterdam, Berlin, Paris, and Vienna worked together to submit evidence-

¹³⁰ Hunter, Tera W. *Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War*. Cambridge, Mass.: Harvard University Press, 1997.

based policy briefs for UN Special Rapporteur on the Human Rights of Migrants and have also submitted inquiry procedure requests to the UN CEDAW Committee against States that have allegedly violated labor laws. The presence of evidence-based policy and advocacy have made their case stronger, effectively gaining the attention and later on, the support of legislative bodies. Reports by renowned organizations such as the Human Rights Watch, Anti-Slavery International, along with the ILO and UN experts about the long-standing abuses and exploitation have further legitimized the accounts of domestic workers. In Germany, specifically, the work of trade unions and migrant workers organizations has led to the inclusion of migrant domestic workers in collective agreements and there is also push for to cover them in social security legislation.

The changes in the political and economic climates across the European region necessitate regional and national legal frameworks to respond to the challenges faced by migrant workers. In the case of domestic workers, it is not only about intervention; it is about effective implementation that takes in account issues in labor law, gender equality, and migration. One of the pivotal moments in the global movement for domestic worker rights came in 2006 when sixty representatives from labor unions (both domestic and international) and worker organizations came together for the first international conference presented by FNV trade union confederation in Amsterdam, Netherlands. As Becker recalls, the purpose of this gathering was to create an “international domestic workers’ network and to explore the possibility of establishing global standards to protect the rights of domestic workers through a new International Labour Organization convention.”¹³¹ This event served as a catalyst for diverse groups and leaders to come together and pursue the possibilities in organizing and mobilizing workers and their allies to address the rising international concerns on the abuses

¹³¹ Becker, Jo. "Organizing for Decent Work for Domestic Workers." In *Campaigning for Justice: Human Rights Advocacy in Practice*, 35. Stanford: Stanford University Press, 2013. 42.

in the domestic worker industry. Meetings between trade unions and the ILO quickly followed the 2006 Amsterdam conference, resulting in the official collaboration of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, and Tobacco and Allied Workers' Associations (IUF), the International Domestic Workers' Network (IDWN), IUTC, and ACTRAV to endorse an ILO Convention specifically designed to protect the rights of domestic workers. By March 2008, the ILO Governing Body received a proposal to prioritize domestic workers rights agenda on the International Labour Conference in 2010. With the backing of the majority of States government, the Governing Body granted the proposal to remodel their approach to domestic workers rights and thus, initiated the process of designing a legally binding international labor instrument particularly addressing the needs of the domestic worker industry.

The same network that pushed for the issue to be put on the agenda were involved in the negotiation process, which was necessary to appropriately amend the existing legislative frameworks. As Becker points out, worker organizations and unions held regional and international meetings, lobbied their governments, as well as conducted surveys to determine the needs and demands of the industry and collaborated with media to communicate their cause to the world. Strategies to educate, organize, and mobilize workers were successful due to the inclusive approach by the network, as domestic workers themselves were granted the opportunity to advocate for themselves and serve as official delegates to the International Labour Conference.¹³² The tremendous response from the ILO members signaled that the momentum built by the efforts exerted by the global network of worker organizations and labor unions were not in vain – on June 16, 2011, they made history as the Convention was officially adopted by the ILO.

¹³² *Id.* at 47.

Section 2: Challenges and Shortcomings of the ILO Convention

4.2.1 Collective bargaining

James A. Gross asserts that “until recently, the international human rights movement and organizations, human rights scholars, and even labor organizations and advocates have given little attention to worker rights as human rights.”¹³³ Lance Compa also agrees as he declares that “[i]nternational human rights analysts and advocates have been slow coming to grips with issues of workers’ rights.”¹³⁴ Both authors discuss the history and impact of collective bargaining and workers’ right to form and join trade unions, with a focus on how there is an obvious gap between the ideals presented by international and regional legal instruments and their actual implementation and practice. I agree with their sentiments, as it is evident in how human rights organizations and international governing bodies have tended to focus on the most horrendous types of human rights violations.

The right to organize and collectively bargain is not enjoyed by domestic workers in the United States, as they are excluded from the National Labor Relations Act. In Germany, even irregular migrant domestic workers have the opportunity to participate in trade unions, however, fear of immigration-related retaliation and mistrust of the police deter such individuals to report labor law and human rights violations and file claims to the appropriate authorities. Other factors that come into play in the obstacles to organizing domestic workers, both regular and irregular migrants, are highlighted in *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*:

*The same factors that make domestic workers prone to marginalization and abuse can often hinder their organizing. These include gaps in legal protections, domestic workers’ relative invisibility in the public eye, limited time and mobility, and poor information on their rights.*¹³⁵

¹³³ Gross, James A. *Workers' Rights as Human Rights*. Ithaca, NY: Cornell University Press, 2003. 2.

¹³⁴ *Id.* at 23.

¹³⁵ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 23.

The isolated structure of their work, immigration status, language barriers, and lack of mobility and days off hinder the efforts by activist groups to conduct outreach to workers and give them information regarding their rights. Direct contact with domestic workers is an important factor in the capacity of trade unions and worker organizations to organize workers. In order to provide legal counseling and aid and to disseminate information on rights training and lobbying activities, trade unions and organizations need to be able to maintain constant communication with workers. This is particularly difficult for live-in domestic workers, as their isolation, mobility and lack of free time affects their ability to engage in trade union activities or network with worker organizations. When workers are outside of the home, they are occupied with errands or accompanied by those who they care for, unlike workers in a work site, it is difficult to pinpoint a central location where domestic workers gather and can be approached. Domestic workers who are undocumented in irregular migration status or without work permits are even in a worse situation because they live in fear of not only their employers, but of immigration and police officials. In turn, they may feel powerless to report the abuse and abandon their abusive employment situation because they fear detainment and deportation.

The difficulty in reaching domestic workers through traditional union tactics and the non-standard (and at times, undeclared) nature of their work, explains the diminished capacity of domestic workers to empower themselves and why they are frequently deemed as a workforce that is “unorganizable”. Because of this, they have been unsuccessful in organizing themselves, having to rely on outside forces such as labor unions and worker organizations to advance their cause. Domestic work is perceived as work that requires little skills and little education, which affects how the profession and the workforce in this industry is treated. A large portion of the domestic worker population come from socially and economically disadvantaged backgrounds, with diminutive access to proper education and decent jobs. Economic empowerment of domestic workers can only occur if the principle of decent work is

realized in the industry and legally recognized through the establishment of labor standards such as decent wages and formal social security schemes.

In order to actively involve workers in the collective bargaining process, unions and organizations have to give attention to what authors Luttrell and Quiroz identify as the four ‘dimensions’ of empowerment: economic, human and social, political, and cultural.¹³⁶ Because the work performed by domestic workers have been deemed for so long as unimportant and low-skill work, they have experienced pro-longed disempowerment on a cultural and social level, as well. Their important contribution to the labor market is not respected and valued by their employers and in some regions, by society as a whole; this paradox magnifies the struggle for workers to feel empowered to take ownership of their destiny. This brings forth the matter of human and social empowerment, in which Luttrell and Quiroz claims is what allows individuals to “gain control over their own lives.”¹³⁷ Political empowerment represents the legitimacy of educated and aware workers to actively participate in the political process, with an emphasis on collective action that affect social change. Cultural empowerment, as agreed by various researchers, is another essential element since it signifies that the respect of cultural identity and minority rights play a role in the ability of domestic workers to fight for their rights.¹³⁸ These four dimensions of empowerment are crucial in giving workers the impetus to be organized and empowered.

In order to strengthen the voice of workers and the impact it will have on the movement for domestic workers rights, empowerment must first occur on an individual level and transpire into collective worker empowerment. Women must serve as pioneers of change, for themselves and their communities. Their perceived inferiority, legalized through decades of

¹³⁶ Luttrell, Cecilia, and Sitna Quiroz. "Understanding and Operationalising Empowerment." 2009, 1.

¹³⁷ *Id.*

¹³⁸ Vanqa-Mgijima, Nandi, Yvette Wild, and Darcy Du Toit. "Organising for Empowerment." In *Exploited, Undervalued- and Essential: Domestic Workers and the Realisation of Their Rights*, 274. Johannesburg: Pretoria University Law Press, 2013.

marginalization and historical exclusion in national and international laws, should no longer be tolerated in society. However, there are various implications for women migrant domestic workers who engage in organizing and mobilizing efforts. The majority of women migrant workers tend to send remittances to their families in their home countries; this may discourage them in participating in collective bargaining as their employer may terminate their employment. Because their salaries are a source of livelihood for their families, migrant workers are cautious of any action that may harm their occupation. For those that are involved in union activities such as membership recruitment or political lobbying, these risks are always present. To hold abusive employers accountable, pursue legal action, and join in the advocacy efforts to secure rights, domestic workers must feel protected in their ability to not only know their rights, but to claim them. This ongoing struggle is captured by authors Kabeer, Milward, and Sudarshan:

*It takes time to build social and self-recognition of the value of the work that these women do, to organize them and retain their loyalty, to build common identities and interests across women otherwise divided by the location in the economy and the social hierarchy, to become a collective force, and to win the smaller or larger gains that would help give members a stake in the organisation, and the commitment to further change.*¹³⁹

4.2.2 Enforcement of Provisions

Ownership, political will, consciousness and understanding of those who will have duties to implement and enforce the provisions listed under the Convention are all critical factors to the effective enforcement of new laws and policies regarding domestic work. These consist of employers, recruitment agencies, service providers, and government officials. In addition, there is a need to commit resources to build the capacity of Member States to understand the current situation within their jurisdiction and the new standards that they are obligated to uphold.

¹³⁹ Kabeer, Naila, Kirsty Milward, and Ratna Sudarshan. "Organising Women Workers in the Informal Economy." *Gender & Development* 21, no. 2 (2013): 261. doi:10.1080/13552074.2013.802145.

One example is illustrated in the Philippines: due to the new national domestic workers law and the adoption of the Domestic Workers Convention in the Philippines, the Department of Labor and Employment (DOLE) and the Bureau of Local Employment are working together to ensure that urban cities, as well as villages, are acting in accordance with the both of these legal instruments. The Department of Interior and Local Government are also actively involved in monitoring employment contracts, while the National Conciliation and Mediation Board and Bureau of Labor Relations have designated officials to receive and resolve complaints from domestic workers. These entities and the new mechanisms are supposed to reverse the systematic inequalities within domestic work. However, as Vice President for Social Development Attorney Jaime Holifeña criticizes: the loopholes in the implementation produces a “built-in difficulty because it is in the household.” In addition to highlighting the criticism by government officials, authors Cruz and Sayson theorizes that an unintended consequence of the bill might actually be lower employment opportunities for domestic workers as middle class employers may not be able to keep up with the minimum wage provision and back payments for social security benefits.¹⁴⁰ These instances exhibit the clash of interests between maintaining the privacy of employers and the public interest to inspect possible violations occurring inside private homes. In addition, a possible negative impact may be that employment opportunities for workers are lessened because middle class households may not be able to bear increased costs. In moving forward with the implementation of the provisions in the Convention, the regulatory frameworks must efficiently provide due protection for both the human rights interests of domestic workers, as well as the interests of employers and their households.

¹⁴⁰ Cruz, Fredrick, and Frances Sayson. "The Kasambahay Law: Its Precedents and Its Promises." The Kasambahay Law Its Precedents and Its Promises Comments. October 23, 2013. Accessed July 31, 2015.

Robust compliance and effective enforcement must prevail in order for the Convention to have any meaningful legal impact. UN Women suggests that a comprehensive system of enforcement must include the following:

- *Labor inspection measures*
- *Effective access to information and courts*
- *Specialized dispute resolution mechanisms*
- *Sanctions of non-compliance*¹⁴¹

The evaluation of national legal frameworks and how the Domestic Workers Convention can strengthen existing laws and regulations is critical. Parties to the Convention must provide to the ILO an implementation report two years after the date of ratification, and the ILO has to provide assistance to countries during the ratification process. As contained in a progress report published by the ILO:

*Activities under the ILO strategy may be categorized into two mutually reinforcing components: (i) country-level assistance; and (ii) knowledge building and sharing. The Office gave top priority to supporting governments, social partners and domestic workers in bringing about changes in the working and living conditions of domestic workers. The Office also paid attention to building a good knowledge base on domestic work, drawing in part on these initiatives, to inform policy dialogue and decision-making, reinforce national institutional capacities, and thereby enhance the impact of country-level actions.*¹⁴²

Labor inspections, on a local level, is imperative in uncovering violations, and thus, national laws and regulations should include procedures for inspection, dispute resolution, and penalties for claims filed by domestic workers. Inspections in private households, due to privacy concerns, may pose a challenge in determining whether abuse is committed. One method to overcome this obstacle is to require employers and employment agencies to report to national authorities, on a regular basis, the amount of working hours performed by the worker with included testimonies on the working conditions. The national domestic workers

¹⁴¹ *Domestic Workers Count Too: Implementing Protection for Domestic Workers*. Geneva: UN Women, 2013.

¹⁴² "Follow-up to the Resolution concerning Efforts to Make Decent Work a Reality for Domestic Workers Worldwide: Progress Report." International Labour Office. September 10, 2013. Accessed June 8, 2015. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--relconf/documents/meetingdocument/wcms_222102.pdf.

rights legislation in the Philippines mandates employers to register with the local labor officers. For those workers employed overseas, they are obliged to register their job agreements before they depart the Philippines. In doing so, the Department of Labor and the embassy in the host country can inspect the validity of the job offer and contract, as well as monitor working conditions. Because migrant status and gender have played a role in discrimination in the domestic work, effective and consistent mechanism should be a leading priority for Member States.

Section 3: Lessons for a Growing Movement

4.3.1 Current Strategies

“You don’t achieve progress from one day to the next, but over a long period of many years.... Before we were vulnerable and invisible; but with the new law, now people are aware of us”¹⁴³ states Migueline Colque, a domestic worker activist from Bolivia. The strategies employed by the international domestic workers rights movement has been successful in gaining legal victories for domestic workers. The creation of help-desks in Berlin, Munich, Frankfurt, Cologne, and Hamburg by German-based organization Respect have provided “know-your-rights” information and legal support for undocumented migrant workers. In the United States, worker centers established and operated by NGOs provide similar services such as wage claim workshops, legal and mediation assistance, as well as English classes and vocational training. The centers are often sustained by a nominal membership fee and by contribution of volunteer hours from the workers themselves. Help-desks and worker centers, though unable to collectively bargain on behalf of workers, are making great strides in increasing the leadership and empowerment of workers to become agents of change. The

¹⁴³ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 18.

efforts aimed at raising awareness of the plight of domestic workers should not only be geared towards the acknowledgement and respect for human rights for domestic workers; it should also focus on the promotion of the concrete exercise of these rights. A strategic mix of community education, coalition-building, and advocacy has allowed the domestic workers rights movement to reach its potential to transform the living and working conditions of those engaged in domestic work.

4.3.2 Coalition-Building

One of the most important success factors in any human rights movement is that it is inclusive in creating collective power. The victories of the domestic workers rights movement is owed to the strong coalition-building efforts of human rights groups, worker organizations, labor unions, sympathetic employers, and government bodies that cooperatively advocate and act for domestic workers rights. HRW features the work of the Technical Working Group on the Protection of Decent Work for Domestic Workers (TWG) – comprised of local domestic worker organizations, trade unions, regional Asian NGOs, and ILO representatives – who was effective in advocating for the ratification of Convention by the Philippines and the passage of the Kasambahay Bill. Like Migrante International and SUMAPI, TWG participated in legislative visits, held nationwide assemblies, conducted trainings and informative workshops, and more importantly, convened workers and employers to actively participate in the advocacy process. On an international level, the global alliance of 42 affiliate domestic workers organizations and trade unions known as the International Domestic Workers' Network (IDWN) was fundamental in pushing for the Convention to be positioned high on the ILO agenda.

Building strategic alliances has a long history within domestic worker organizing, dating back to the creation of the National Union of Domestic Workers in 1968. In the 1990's, Domestic Workers United (DWU) in New York and Mujeres Unidas Y Activas in California

began to organize and mobilize immigrant domestic workers to demand fair wages and better treatment. Together with the Urban Justice Center, DWU was able to recuperate almost half a million dollars in wage claims for domestic workers in New York and establish a 24-hour hotline for domestic workers to ask about employment issues. They amplified their education and legal support campaign by engaging in legislative advocacy. Three years after their formation, DWU became the leading force in fighting for a city-wide agency bill, Local Law 33, which toughened the regulation of employment agencies in recognizing workers' rights. The next step for the coalition was to reform law on a state level. The campaign for the first Domestic Workers Bill of Rights was launched and by 2007, DWU was recognized nationwide as a trailblazer for domestic workers rights. The coalition organized state-wide actions and demonstrations, press conferences with political figures, worker leaders, and community supporters. The membership base grew fast, and workers frequently participated in educational and training workshops to prepare for frequent legislative visits to the capitol. The campaign was also effective in garnering support from labor, faith-based and community organizations, student groups, women organizations, and even employers who became supportive of their cause.¹⁴⁴

The strategy to engage different communities as allies was vital to the success of DWU as a coalition, and their ability to influence legislation on a local and state level. Simply denouncing injustices and abuses and pursuing legal proceedings against employers for unpaid wages was not enough. DWU, like other regional and national workers' rights organizations, strategically engaged in the policy and legislative process. States that followed NY's Domestic Workers Bill of Rights also operated their own regional coalitions. The California Domestic Workers Coalition (CDWC) was formed by seven organizations spread across the state,

¹⁴⁴ Poo, A.-J. "A Twenty-First Century Organizing Model: Lessons from the New York Domestic Workers Bill of Rights Campaign." *New Labor Forum* 20, no. 1 (2011): 50-55.

successfully working together for the passage of the bill in 2013. Both DWU and CDWC, along with 51 other organizations across the country, are affiliated with the NDWA, which was formed at the end of the United States Social Forum in 2007. During this convening, 10,000 activists from all over the country engaged in knowledge-sharing and discussed challenges and opportunities of organizing, and presented their joint vision to advance domestic workers rights. As Executive Director Ai-Jen Poo declares, the goals of the NDWA are as follows:

1. *Collective bring public attention to the plight of domestic/household workers;*
2. *Bring respect and recognition to the workforce;*
3. *Improve workplace conditions; and*
4. *Consolidate the voice and power of domestic workers as a workforce*¹⁴⁵

The achievement of these organizations and their membership bases is an example of effective advocacy and a testament to the power of the growing solidarity in the global domestic workers rights movement.

4.3.3 Advocacy

An effective advocacy strategy operated by the domestic worker rights movement is the mainstreaming of their cause. By changing the hearts and minds of the general public, support and awareness are not only raised, but become sowed into the values of those who instigate meaningful changes. Domestic workers' organizations were crucial in gathering the real experiences of domestic workers and formulating them into stories and evidence-based data that were included in policy research and official recommendations. Thus, in this context, the collection of data and research convinced decision-making bodies to enact or amend legislation affecting domestic workers. Supportive high-profile government officials who highlighted the gaps in existing policies and laws in legislative sessions and public forums were also instrumental in garnering the endorsement of other lawmakers.

¹⁴⁵ Mercado, Andrea Christina, and Ai-Jen Poo. *Domestic Workers Organizing in the United States*. Toronto: AWID, 2008. 4.

An effective advocacy strategy is to give the chance for workers to serve as advocates for themselves. Rather than having the staff of organizations and union leaders partake in legislative visits and leading mobilizations, domestic workers were placed in the forefront to spearhead their own campaigns. The California Domestic Workers Coalition (CDWC) employed creative tactics to engage with elected officials. Thousands of postcards and petitions written on sponges were sent to the offices of legislators who were against the bill of rights. In public rallies and marches, CDWC distributed pots and pans to serve as noisemakers and had signs posted on brooms. Campaign demands were also printed on aprons that were worn by domestic workers and their allies during legislative visits to the capitol in Sacramento, California.¹⁴⁶ Lobbying performed on a state and national level by grassroots organizations and regional coalitions have shown to be successful, especially in the United States and the Philippines. Worker leaders made frequent visits to Congress to gain the support of key legislators.

Commitment to widespread ratification by the diverse groups of NGOs and trade unions must focus on organizing workers and bottom-up advocacy, starting with local entities and then lobbying governments. These groups typically first evaluate the merits of domestic work-related legislation. Furthermore, they dedicate efforts to observe if implementation is coherent with the international standards and if it is responsive and efficient. As an example, the Philippines Migrants Rights Watch was an active force in analyzing the legislative process for the Kasambahay Bill, as well as the ratification the ICRMW and Domestic Workers Convention. The Philippines exemplified how strong advocacy efforts on a local front can translate into actual, meaningful socio-economic and legal advances for domestic workers. As illustrated in the events leading up to the negotiation process and the subsequent adoption of

¹⁴⁶ The author, Whelma Cabanawan, served as the Administrator for the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), a founding member of the California Domestic Worker Coalition. She actively participated in the Domestic Workers Bill of Rights Campaign and was involved in the mobilization efforts by CHIRLA's Household Workers Committee.

the Convention, the buy-in of the diverse network of workers' rights groups is necessary to making the goals of the Convention a reality.

CONCLUSION: PROGRESS AND POSSIBILITIES

Limitations of this Research

The available statistics in this field of study are not completely reliable as there is a lot of irregularity and invisibility of individuals engaged in domestic work. Therefore, the data collection in the industry is an ongoing challenge for those engaged in research and advocacy, as they can only relate on estimated figures. This clarifies why there is contradictory data, with global estimates that fluctuate greatly and definitions of domestic workers that vary from one jurisdiction to another. The population of domestic workers worldwide is most likely undercounted as researchers and advocates can only place faith on the available information that exist. And because the probability that labor statistics, global surveys, and official national censuses underestimate domestic workers is high, this limits the research conducted on this subject matter. Even the ILO, which is a credible source of information, testifies that there is great difficulty in furnishing qualitative and quantitative data on a sector and a workforce that has such unique characteristics. Systematic collection of data on domestic workers has yet to be accomplished, however, there has an increased effort by international advocacy groups and the ILO to compile and analyze data regarding domestic workers.

At the current early stage of the Domestic Workers Convention and the newly-enacted national laws and policies, it is difficult to draw a concrete conclusion on the impact of these instruments. However, the shift in the approach to advancing global domestic workers rights is tangible, as evident in the heightened interest and concern for this particular workforce. The progress by Member States who ratified and by countries who have already implemented changes in their national labors to include domestic workers should be monitored and evaluated. In this manner, the impact of these laws, policies, and programs can be measured to compare and contrast the impact of new labor and social protections spurred by the Convention. To determine the substantive improvements on standards such as working time, remuneration,

living and working conditions, and social security protections, researchers should delve into data from each State in which the Convention is in force and implemented effectively. Given this information, best practices can be promoted while the challenges can be addressed to come with a better approach for Member States hoping to ratify.

Research Possibilities

There are various research possibilities that can be explored in the domestic work industry. For instance, country-specific research can be conducted, with a special focus on countries where regulations regarding domestic workers are weak or non-existent. Though it is difficult to account for all the demographic and occupational profiles in the industry, the amount of research and surveys conducted on domestic workers has massively increased since early 2000s. Evidence-based publications has served as strong tools for policy planning and advocacy efforts. Research focusing on the most invisible, irregular migrant workers, will be valuable as there has been a tendency for them to be left out. The existing publications on the domestic work industry implies that there is a lack of information on irregular migrant workers across the board. By gaining more insight on the experiences of domestic workers working and living in the shadows, researchers can produce studies and reports which may be used by NGOs and unions in their assessment of proposed legal reforms and how these may negatively or positively impact the lives of vulnerable worker populations, such as irregular migrant workers. Other research possibilities can include separately analyzing the experiences of domestic workers employed by diplomats and child domestic workers, as there are unique challenges faced by these group of workers and the measures required to protect them may differ from traditional domestic workers.

Recommendations

Narratives of domestic workers that are country-specific or regional-specific would serve as crucial advantage, as well, since information on problematic issues in the industry like discrimination, forced labor, and abuse is missing in some countries. Because of the varied regional patterns that exist in the human rights and legal context, it is essential to examine the various forms of existing regulation and the gaps that need to be addressed. In countries with a large population of irregular migrant domestic workers, better strategies to ensure that these workers and their experiences are counted in the data must be explored by researchers. This effort should be supported by the respective labor departments. The availability of this data and its dissemination will be pivotal in changing the perspectives of the general public and decision makers. Policy consultations between the ILO and Member States should also be featured more frequently, as this may alter the attitudes of Governments who are not interested in ratification or have negative attitudes towards the Convention. Public awareness of the plight of domestic workers increased dramatically due to the propagation of studies and surveys conducted by reputable organizations such as the Human Rights Watch and Amnesty International, as well as official UN agencies. The harsh conditions of domestic work and the lack of regulation to combat the abuses and exploitation committed by employers and recruitment agencies became front and center in the agenda-setting and negotiation process of the Convention.

The release of reports and training manuals on domestic workers by the ILO were also instrumental in advancing their human rights, as this enhanced their capacity to advocate for urgent changes in regulation on an international level. The labor standards put forth in the provisions of the Convention on Domestic Workers Rights, thus, was the product of years of gathering data and narratives from first sources, the workers. Because of this, the scope of the Convention was tailored to the specificities of their work and the precise protections they need

in order to work and live with dignity and respect. In reflecting on the adoption of the Convention, Hellen Rivas Martinez, Secretaria de Género, Confederación de Trabajadoras Rerum Novarum (CTRN) of Costa Rica stated on September 30, 2013:

*It is a great achievement that protection for domestic workers is finally a reality. We have been working on this for a very long time.... The Domestic Workers Convention is progress, but it doesn't end here. We [need to] move forward and strengthen our efforts ... to promote more protection and rights for domestic workers.*¹⁴⁷

Progress Made and Future Possibilities in Advancing Human Rights of Domestic Workers

The passage of the ILO Convention on Domestic Workers is indeed a testament to the impressive developments and growing strength of the domestic workers rights movement. However, it is only a contributing factor to the full realization of human rights for domestic workers around the world. In ensuring that domestic workers rights are enjoyed worldwide, States must implement robust national laws, as well as uphold international standards which are in compliance with the ILO Convention. Ratification signals the willingness of national and subnational governing bodies to reform labor laws to grant broader legal protections for all domestic workers. The adoption of the Domestic Workers Convention in 2011 and the increased reforms on a national level gives notion to the positive movement towards achieving the full recognition and protection of human rights of all workers engaged in domestic work. Member States must make a solid commitment to their obligation to protect the rights of individuals by cultivating and maintaining legal and regulatory frameworks that is fair and inclusive to all workers within their jurisdiction. The ILO must also dedicate resources in providing support to countries that need capacity building; this can be ensured through assistance in the ratification process, as well as training and technical support.

¹⁴⁷ Rullo, Matthew, and Nisha Varia. *Claiming Rights: Domestic Workers' Movements and Global Advances for Labor Reform*. New York: Human Rights Watch, 2013. 28.

The improvement in the international human rights system is illustrated by the three jurisdictions featured, as the extension of labor laws to include domestic workers have resulted in greater protection from harassment, abuse, and exploitation. With the increasing influence of trade unions and worker organizations, workers have been able to access justice through the courts by recovering stolen and overtime pay through wage claims. Workers in other places, however, especially in Asia and the Middle East, continue to suffer from the lack of national labor legislation that safeguards their rights. The prevalence of forced labor, servitude, and trafficking in these regions make it particularly urgent for domestic workers to be covered by robust labor laws.

Before the Convention and the establishment of these new laws and policies, domestic workers in certain countries were not even covered by the most basic guarantees afforded by general labor standards. There were no regulations on the amount of hours worked per day, no right to minimum wage, no requirement of employers to provide the terms and conditions of employment, no social security benefits, no freedom of movement and the right to join trade unions, and no effective protection against harassment and abuse. The mentioned mistreatments are not exhaustive of the magnitude of the inequality that is rampant in the domestic work industry. Because domestic workers have been historically excluded from the scope of national legislation, their social, economic, and political experiences have been shaped by a human rights system that has failed in responding to the particular vulnerabilities of domestic workers.

To date, there are 22 countries that have ratified the Convention. As the ILO emphasizes, Member States that have ratified can use the Convention to pursue legal disputes in courts if a domestic workers rights are being violated under the international standards set forth in the provisions. In addition, countries who have not ratified the Convention can still employ its standards “as a reference point in order to get legislation adopted at the local

level.”¹⁴⁸ This rings true in the experience of the United States, where six states have enacted a Domestic Workers Bill of Rights and campaigns in several cities have already begun. I agree with researcher Terri Nilliasca in her claim that the real challenge in achieving human and labor rights for domestic workers is whether the newly adopted laws can ‘adequately address the forces of racism, heteropatriarchy, immigration, and structural neoliberalism.’¹⁴⁹ To change a system that has been riddled with so much abuse and negative social stigma has proven to be an uphill battle. In spite of this truth, the adoption of the Domestic Workers Convention and the national legal reforms are proof that there is momentous progress being made in the fight for domestic workers rights. Without a doubt, the Convention elevated the struggle of domestic workers and exposed to the world the daily realities they face. Visibility and interest has been established in the international human rights arena, fueling the momentum of the domestic worker rights movement toward more victories.

Triumphs begets more triumphs; this has been the experience of the fight for domestic workers rights, as local victories have translated into legal advances and improved international standards. They have been marginalized and excluded for far too long. Now, there is an authentic effort by the international community to correct the historical wrongs bestowed upon these workers. The ILO’s groundbreaking adoption of the Domestic Workers Convention was a response to the worldwide movement that has been built by the local, national, and international coalitions of NGOs and trade unions. There is still a lot of work to be accomplished in affirming the fundamental rights of domestic workers. It is not only about protection in policy, it is about effective protection in practice. Only in this approach can domestic workers everywhere fully enjoy substantive equality, and finally receive complete respect, recognition, and dignity in and out of their workplace.

¹⁴⁸ "Application and Implementation." In *Achieving Decent Work for Domestic Workers: An Organizer's Manual to Promote ILO Convention No. 189 and Build Domestic Workers' Power*, 38. Geneva: ILO, 2012.

¹⁴⁹ Nilliasca, Terri. *Some Women's Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform*. New York, NY: City University of New York, 2011.

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