

LAW, DEMOCRACY & DEVELOPMENT

Journal of the Faculty of Law at the University of the
Western Cape

VOLUME 15 (2011)

Editorial

June 2011

Domestic Workers' Convention: A breakthrough in human rights

DARCY DU TOIT

On Thursday 16 June 2011 the International Labour Conference, meeting in Geneva for its 100th session, adopted Convention 189 on Domestic Workers (by 396 votes to 16, with 63 abstentions), supported by Recommendation 201 (adopted by 434 votes to 8, with 42 abstentions).

Just how important a step this is can be gauged from the following two examples:

- "I am working as a domestic worker for five years now. At first when I was employed I thought that my work was only taking care of the animals but it was not the case. I am also doing other work. I am always the first one to wake up and the last one to sleep. I must wake up at 4am every day so as to find grass for cows. The area where I am looking for grass is Army area, and is strictly forbidden to cut grass there. I told my employer about the danger involved in what I was doing, but she was less

concerned. One day the army men caught me and I was [beaten] badly, I went back home I told the employer; again she said it was up to me. I have been working for a long time without receiving any salary for the reason that the employer is keeping it for me. I am doing all this work without wearing Personal Protective Equipment (PPE). Now I have developed the problem of back ache, and my hands and legs are painful which makes me the work very difficult.”¹

- “Doctors in Sri Lanka on August 27, 2010, operated on Lahadapurage Daneris Ariyawathie, 49, to remove nails and metal objects she said her Saudi employers had hammered into her body after she complained of being overworked. Ariyawathie had worked in a Riyadh home since March before her Saudi employers returned her to Sri Lanka in late August.

“The abuse suffered by this woman is not an isolated incident, but one of countless cases of abuse and exploitation of migrant domestic workers,’ said Christoph Wilcke, senior Middle East researcher at Human Rights Watch ... Saudi employers typically confiscate a domestic worker's passport and confine her to the house, even when she is not working. Many are locked in. Saudi law also requires an employer's written consent for a domestic worker to change employers or to obtain an exit visa to leave the country. These measures, known as the sponsorship, or *kafala*, system, combine to give the employer inordinate control over the worker and to block avenues for the worker to seek redress for abuses, Human Rights Watch said.”²

Countless other instances of ill-treatment and exploitation of domestic workers could be given, also in developed countries where the rule of law normally prevails. Not only labour rights are involved; around the world, domestic workers’ rights to freedom of movement, freedom of association, freedom of expression and freedom and security of the person, to name but a few, are violated with impunity.

Even where abuse does not take extreme forms, domestic workers have for generations formed one of the most disempowered and neglected sections of the workforce, if not expressly excluded from legal protection (as was the case in South Africa until 1994), then in practice unorganised, overlooked by traditional trade unions and unable to benefit from

¹ Interview with domestic worker in Mazizini-Gongo la Mboti, Ilala District, Dar es Salaam Region, Tanzania, 7 October 2010, in Deograsia Vuluwa *WIEGO Occupational Health and Safety Research on Domestic Workers in Tanzania* Report by Conservation, Hotels, Domestic Social Services and Consultancy Workers Union (CHODAWU) December 2010 (unpublished) at 8.

² Human Rights Watch “Saudi Arabia: Domestic Worker Brutalized” (2 September 2010) at <http://www.hrw.org/en/news/2010/09/02/saudi-arabia-domestic-worker-brutalized> (accessed 15 June 2011).

rights designed for “standard” employees (i.e., full-time or “permanent” employees in formal workplaces).

Given that there are up to 100 million domestic workers in the world – in South Africa the number fluctuates around one million – the conditions experienced by so many of them, and by extension their families, represent a human rights failure of significant proportions whereby tens of millions of people are prevented from achieving their full potential as persons, workers and citizens.

What renders the situation all the more deplorable, if not perverse, is the fact that domestic workers play an indispensable role in the economy. By their labour they free many thousands of others – usually women – from household tasks and enable them to do other work, often in key functions. Despite this, their contribution remains largely invisible and under-valued – or worse.

These realities help to explain the significance of Convention 189. Scenes of jubilation among domestic worker representatives present in Hall XVIII of the Palais des Nations when the text of the draft Convention was agreed gave a sense of the historic nature of the occasion, as did the fact that all clauses of the Convention as well the Recommendation were adopted by the hundreds of government, employers’ and workers’ representatives in the Committee on Domestic Workers – sometimes after sharp debate – without once being forced to a vote. The message is that domestic workers are human beings with rights, not servants to be treated as their employers may deem fit, and – crucially – whose rights need to be regulated in more specific ways, adapted to the unique conditions of domestic employment, if they are to be meaningful.

It is, therefore, not the end of the process. The next challenge is to persuade member states of the ILO to ratify the Convention. (Technically, the Convention only takes effect after two ILO member states have ratified it; but, given the size of the majority that voted for it, this should not present an obstacle.) After that will come the struggle for appropriate legislation.

In South Africa, fortunately, the prospect is less daunting; the Basic Conditions of Employment Act³ and Sectoral Determination 7 of 2002⁴ already regulate many of the basic rights laid down in the Convention. But, even here, the need for improvement – notably, but not only, in finding better ways of promoting compliance with the law – has become apparent and will be debated in the months and years ahead.

³ 75 of 1997.

⁴ Applicable to the domestic worker sector, South Africa.

The [Domestic Workers Research Project](#) at the Faculty of Law, UWC, which has been involved in the process leading up to the Convention since 2009, will continue to monitor and support its fullest possible implementation and, beyond that, the full realisation of domestic workers' constitutional rights in South Africa.

This will not be a simple process; the private and often secluded nature of domestic work calls for radical innovation both in the formulation of legal rights and duties and in empowering domestic workers individually and collectively to exercise those rights.

But one important thing has changed. Convention 189 has set a new benchmark. Rights for domestic workers, as opposed to sightlessness or paternalistic benevolence, have become the international paradigm. It is now a question of turning this paradigm into a reality, both in the minds of domestic workers and their employers and in the practical relationships between them.