Domestic Workers’ Voice: the guarantee of the fundamental right to freedom of association and collective bargaining

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Problem

• More and more precarious types of relationships.
• Labour Law models do not fit the peculiarities of their work.
• An important example: Domestic Workers (DWs)
• Lack of legal regulation has hindered their attempts to organize.
New developments on this problem

• Freedom of association and collective bargaining have been affirmed as fundamental rights.

• ILO Committee on Freedom of Association:

  *DWs are not excluded from the application of Convention No. 87 and should therefore be governed by the guarantees it affords and have the right to establish and join occupational organizations*
ILO Convention 189

• The 2011 Convention 189 on Decent Work for Domestic Workers:

... protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.
Our Objective

- Question the exclusion of DWs from FA/CB regulation
- … and to propose possible policy solutions.
- Focus on the Canadian and the Brazilian case.
Two Questions

• Does the exclusion of domestic workers from labour relations regulations violate the principle of freedom of association?

• What policies would be effective in guaranteeing FA/CB rights for domestic workers?
Does the exclusion of DWs from Labour Law violate the principle of freedom of association?

- DWs miss two key dimensions of labour law.
- The ILO Convention 189 recognized DWs associations
Main argument for restricting rights for DWs

- Domestic work does not fit the legal model of a standard employment relationship (SER).

- This argument disregards the role of law in promoting domestic workers’ rights.

- Lack of legal protection reinforces precariouness.
Legal developments

• Brazil & Canada

• In both cases, labour law does not fit entirely in the peculiarities of domestic work
Brazil

- DWs have guaranteed FA/CB rights under the Federal Constitution.
- Included in the corporatist labour relations system.
- Main characteristics of the Brazilian system:
  - professional category;
  - Unicity (exclusive bargaining agent)
  - mandatory trade union dues.
**DWs trade unions: a long history of struggles**

- In 2014, there were 13 registered DW trade unions.
- The first DW trade union dates from 1936.
- In 1988, the new Federal Constitution guaranteed some fundamental rights to DWs.
Constitutional Amendment 2013

- In 2013, the Federal Constitution was modified to give DWs the same fundamental rights as those granted to other workers.
- Now, no legal doubt on their right to register trade unions, nor on their right to collective bargaining.
- This guarantee opens a whole new world of possibilities.
DWs’ Trade Unions → Corporatist system
Trade-off

On the one hand, the system facilitates the creation of trade unions; on the other hand, the lack of representativeness is a problem.
First Collective Agreement

• In February/2014, the first ever collective agreement for DWs in Brazil was signed.

• The agreement set new conditions related to wages, hours of work & trade union dues.
  • R$1400 p.m. for a full-time live-in DW (min wage is R$724 p.m.)
  • Workers can complain to the labour courts in case of violation of its clauses.
Corporatist System can be a fit with the needs of DWs

DWs need stronger protection because:

• DWs work in a private household and isolated from other workers.

• It is harder for the trade union to have access domestic workers.

• It is harder to domestic workers to organize a reunion
The need for stronger protection for DWs

- The isolation of domestic workers also compromises an important feature of collective action.
- The trade union in a certain degree depersonalizes worker’s voice and action.
- For domestic workers, it will always be personal.
Brazilian corporatist system

- For standard employees, corporatist rules curb their individual freedom to associate.

- For domestic workers, these rules might mean a necessary protection that will allow them to organize in trade unions.
The DW experience in other countries

- Stronger interference of the law
- Uruguay: tripartite negotiation & legal recognition of the ERs association.
- Switzerland: Standard Employment Contract & mandatory minimum wages.
Canada

- In Ontario, DWs are excluded from the Ontario Labour Relations Act – OLRA (Section 3).

- Canada has not yet ratified ILO Conventions 87 and 189.
According to the Govt of Canada:

- Certain categories of workers are legitimately excluded from the Act
- The statutory regime is not appropriate for non-industrial workplaces.
- In response, the ILO has asked for creativity in finding new legal solutions.
3 main obstacles to the unionization of DWs:

• Appropriate bargaining unit;
• Membership support & certification vote;
• & lack of employers’ associations.
More than 1 worker, avoid the fragmentation of the representation & community of interest.

DW is performed in a fragmented way.
Membership & Vote

Provide membership support and go through a certification vote

Structural and ideological obstacles
Lack of employers’ associations

- Negotiation with 1 ER
- Individual household
Conclusion: Finding new legal solutions

Provide stronger legal protection for DWs through:

• Specialized legislation for DWs or,
• By amending the law to accommodate the rights of domestic workers.
  • Examples: Bargaining unit based on territorial division; loosen up the conditions on membership support & certification vote; support the formation of an ERs association; foster DW associations; tripartite negotiations.