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

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Abstract

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

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Data and Methods

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

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

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

Indicators for hegemonic or non-controversial human rights norms:

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

Indicators for counter-hegemonic or controversial human rights norms:

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

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

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

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

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

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

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

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

Paragraph from C 189	non-controversial or hegemonic human right provision	controversial or counter-hegemonic human right provision and indicator
Preamble, para 3	Recognition of economic contributions of domestic workers.	
Preamble, para 4		Mentioning the migrant status of many DW
Preamble, para 7		Reference to contested international human rights norms for migrants that include undocumented migrants (ILO conventions no. 97, 143; ILO Multilateral Framework on Labour Migration)
Preamble, para 9	Reference to almost universally ratified international human rights instruments	
Article 1, 2	equality within one category of workers: “all DW”	‘all’ also means undocumented MDW
Article 2 (a)	equality with other workers: “with at least equivalent protection”	
Article 3	“fundamental principles and rights at work”: freedom of association, elimination of forced labour, abolition of child labour, elimination of discrimination	
Article 4	minimum age not lower than in national laws	has been controversially discussed though it is a ‘liberal’, ‘modern’ norm; many child DW
Article 5	anti-discrimination: “effective protection against all forms of abuse, harassment and violence”	due to the private nature of the work relationship, difficult to implement

Paragraph from C 189	non-controversial or hegemonic human right provision	controversial or counter-hegemonic human right provision and indicator
Article 7	right to information: DW need to be informed about their working conditions in an easy to understand manner	
Article 8	(1), (4): minimum standards for recruited migrant DW: “receive a written job offer” ... states “shall specify ... the conditions under which migrant domestic workers are entitled repatriation” These provisions deal with migrant DW and in particular temporary contract workers (language is framed in that way). They accept this particular form of labour migration, although highly problematic in terms of the migrant rights.	
Article 8	(3) member states are called to cooperate with each other Does not threaten state sovereignty, calls for bilateral agreements, global governance and migration management.	
Article 9		(a) DW shall be free to decide whether to live-in or live-out (b) live-in DW can go out during periods of rest/leave These are liberal freedom rights. However, they are due to the nature of many DW employment relationships contested and dependent on the structural power relationships.
Article 9 (c)	MDW “are entitled to keep in their possession their travel and identity documents”	Although this is a liberal fundamental right, it is a wide-spread practice that MDW, in particular contract workers or under sponsorship systems, are requested or forced to give away their documents.
Article 10	equality of treatment between “domestic workers and workers generally”	“...taking into account the special characteristics of domestic work”: this passage can function as a door opener for unequal treatment, depending on how the special nature of domestic work is understood
Article 10		2. “weekly rest period shall be at least 24 hours”: although a typical freedom right, time sovereignty is regularly

Paragraph from C 189	non-controversial or hegemonic human right provision	controversial or counter-hegemonic human right provision and indicator
		not granted to DW due to the “nature of the job” where availability to the service of the employer is often considered part of the job. For some Latin American DW 24 hours was considered a threat as well, because they had already successfully fought for more.
Articles 11, 13, 16	non-discrimination and decent working conditions (safe, healthy, maternity protection), access to court/dispute settlement etc.	
Article 12		limitation of payment in kind: has been an issue of major debate during the negotiations
Article 14	equality of treatment with other workers in terms of social security provisions, “may be applied progressively”	many countries may have reservations and would not ratify if immediately similar conditions were to be established
Article 15		(a) and (b) private recruitment and placement agencies need to work according to national laws; the state has to ensure that it has adequate mechanisms and investigation capacity to fight abuses and fraud; (e) state needs to ensure that fees are paid by the employer and not the DW (= ILO C181). Fraudulent practices by private recruitment agencies are one of the most wide-spread reasons for MDW vulnerability; states have difficulty in regulating them.
Article 17		Implementation of measures for labour inspection, enforcement and penalties; with respect for privacy. This issue has been one of the most debated ones during the negotiations.
Article 19	C189 contains minimum standards, not maximum.	

Source: Convention No. 189 (ILO 2011), compilation by author

The compilation of articles of the convention shows that it is built upon widely endorsed minimum labour standards calling for the equality of treatment of this group of workers with others. Also some of the features that I characterised as contentious (minimum age of employment, nobody shall be forced to live-in etc.) are in fact liberal, ‘modern’ norms that usually count as hegemonic, but due to the ‘nature of the sector’ caused contention. The

novelty is that these standards are now applied to a formerly excluded group of precarious women and often migrant workers.

The widely shared normative base is reflected in the consensus-oriented mode of national discussion about ratification. Those countries in Latin America that have ratified or are close to ratification share consensus-oriented deliberations: The Colombian Senate approved the ratification unanimously (CSA/TUCA 2012, Camino a la Ratificación del C.189, 17.09.2012); the Costa Rican Legislative Assembly did the same across party lines (CSA/TUCA 2012, 17.09.2012); the Bolivian Chamber of Deputies also ratified law no. 552/2012 unanimously on August 21, 2012 (CSA/TUCA 2012, 22.08.2012), which was confirmed by the joint vote in the Chamber of Senators on 24th of October 2012 (CSA/TUCA 2012, 24.10.2012); and the Nicaraguan Legislative Assembly approved the law to ratify also across party lines unanimously on October 17, 2012 (CSA/TUCA 2012, 17.10.2012).

Given the marginalisation of domestic worker issues in many countries before the ILO started the debate (see Blofield 2009 for legislative changes in selected Latin American countries) and the contentious debates during the first round of negotiations during the 99th International Labour Conference in 2010, the harmonious approach surprises. Several factors contribute to the explanation. The first one is linked to who led the negotiations from the employers' side at the second round of ILO debates. The employer representative from Bangladesh during the first round of negotiations had a quite aggressive style of negotiation that did not show much will for compromise, but following a strict line of being against all arguments that were brought forward for the convention. During the second round of negotiations he has been replaced by an employer representative from New Zealand who showed much more consent with the contributions from governments and even the worker vice-president. In an ironic manner he repeatedly concealed being in the minority position. This style, of course not alone, paved the way for the huge majority of votes for the convention, which then has been an argument in the national setting to approve ratification. This reason is, of course, a personalized one. A second reason lies in the comparatively high degree of normative legitimacy of the process. From Robert Keohane's six normative criteria of legitimate global governance that are derived from liberal democratic principles (Keohane 2011: 101-103) the process fulfils at least five: minimal moral acceptability, procedural inclusiveness, epistemic quality, accountability and compatibility with democratic procedures in the addressed countries. Keohane's sixth criterion refers to "comparative benefit", which might be contested, depending on the perspective. Keohane's principles explain the attitude shared by most participants in global governance processes. If complementing this perspective with a more critical view, there is also a third, more strategic reason for the consensus-orientation. With Basok's differentiation between hegemonic and counter-hegemonic human rights norms, she found in the cases of Canada and the United States that advocates for open borders and the rights of undocumented migrants relegated themselves to hegemonic human rights norms. This can be seen in the case of the domestic worker convention as well. In the case of undocumented migrants, for example, the chief negotiators of the workers' group were cautious in not putting the issue too much up front. They stuck to the accepted language that had been agreed upon during the 2004 ILO negotiations for a non-binding multilateral framework on migration (ILO 2006). When 'all workers' was said, 'all workers' was meant, and there would be no need to mention undocumented migrant workers in particular. This diplomatic mode was sometimes difficult to accept for some of the formerly undocumented migrants domestic workers that participated in the conference (author's field work observation), because they followed a strategy of visibility and not of silencing, they were proud to represent an important group of domestic worker that could not cross international

borders themselves to participate in the conference (Schwenken/Pabon 2011). In sum, these factors explain the consensus-oriented mode of adoption – and possibly later ratification.

Table 2. Systematisation of the content of ILO recommendation No. 201

Paragraph from Recommendation No. 201	non-controversial or hegemonic human right provision	controversial or counter-hegemonic human right provision and indicator
Many articles, not all are listed here	explanations of the non-controversial parts of the convention; spell-out details	
Article 6 (2) c) Article 9 (1)		calculation, payment and compensation for overtime and stand-by; when DW go on vacation with the employers, this shall not be counted as her own vacation. The issue of stand-by has been one of the most controversially debated ones; arguments against counting stand-by as working time have been that availability is part of the specific nature of domestic work and that it is impossible to measure.
Article 6 (3)	Governments shall provide a sample contract.	
Article 20 (2)	transferability/portability of social security payments across borders shall be negotiated bi-/multilaterally	
Article 21 (1)	Governments in countries of destination shall provide measures to effectively protect migrant domestic workers (hotline with translators, network of shelters, sensitising employers about their duties, complaint mechanisms, public information systems for MDW on their rights, legal protection against violence and trafficking). Governments in countries of origin shall provide pre-departure orientations, legal protection, social services, special consular services. Non-controversial as long as framed in ‘protection’ language.	
Article 23		regulation of private recruitment agencies according to C181 and R188
Article 24		Governments shall develop adequate forms of labour inspections.

Article 25	DW shall have access to further qualification (professionalisation of the sector; exit options).	
Article 26	States shall consider cooperation to enact C189	
Article 26 (4)		States shall develop mechanisms to ensure protection of DW working under diplomatic immunity. Contentious issue, because it touches upon state sovereignty.

Source: Recommendation No. 201, compilation by author

It is noteworthy that the text of the convention contains explicit language and regulations on migration only very marginally, but about one fifth of the recommendation's text refers explicitly to migration. This includes the specific vulnerabilities of migrant domestic workers – almost exclusively women are mentioned – and regulations that countries of origin and destination shall negotiate to improve the social and legal protection of migrant domestic workers. The relegation of migration issues to the non-binding recommendations is pointing to the contested nature of the role of migrant DW. If they had been included into the main instrument, the convention, the likelihood for non-adoption and non-ratification would have increased significantly. As the recommendation is only a recommendation, governments need not to legally subscribe to it. These differences between the contents of the convention and the recommendation confirm Basok's observation of migration-related hegemonic and counter-hegemonic human rights norms in international human rights instruments and the attached likelihood of subscription by governments to them.

In a next step I analyse the campaign by major trade unions and civil society organizations for ratification with a view to the issues that have been characterised as hegemonic and counter-hegemonic human rights norms.

A Global Campaign for Ratification of C 189

The International Relations (IR) literature on international norms highlights the role of norm entrepreneurs in particular for the establishment of new norms, their role is committed lobbying and persuasion (Finnemore/Sikkink 1998: 898). Although the previous section has shown that the convention is built upon widely accepted norms, the extension to a group of precarious and informal workers is significant. Therefore I analyse the ratification campaign by those 'norm entrepreneurs'.

The '12 by 12' campaign has been initiated by the International Trade Union Confederation. Key international partners are the International Domestic Workers Network (IDWN), the global union federations IUF and PSI, the European Trade Union Confederation, the Migrant Forum Asia, Human Rights Watch, Anti-Slavery International, CARITAS, World Solidarity, Solidar and Amnesty International. The international partners contain those trade union federations and international NGOs that already showed the most consistent level of activities throughout the preparation phase of the convention. The campaign's aim was 12 national ratifications of the convention by the end of 2012. With six completed ratifications (as of December 20, 2012), this aim was not entirely reached, but the campaigners identified a number of ratifications on the way. Until August 2014, 14 countries had completed the (often lengthy) ratification process. Compared to other conventions, this can be considered a very successful track-record.

Table 3. Overview over '12 by 12' campaign.

Region	Number of countries participating in the '12 by 12' campaign
Asia-Pacific	18
Africa	20
Americas	20
Europe	26
Total	84

Source: ITUC 2012

Between the countries there is a wide range of how broad the national alliances were. In many countries – such as in Angola, Argentina, Australia, Austria, Burundi, Germany, New Zealand, Portugal, Sweden – just the national trade union centre or a sectoral union signed up for the campaign. For at least some of these countries it can be said that important NGOs and DW self-organizations have, for whatever reasons (e.g. lacking relation with trade unions that clearly led the campaign; short period of time to set up the campaign), not been part of the campaign. In other countries the campaign has a much broader set-up. In Bangladesh, for example, 32 organisations are cooperating; also in Indonesia and Malaysia national coalitions have formed. In the Philippines a “Technical Working Group” that includes trade unions, the Migrant Forum Asia and many other groups have been participating in extensive consultations with the government. In Kenya the coalition includes the trade union centre, the domestic workers trade union and women, migrant and human rights organizations. The national coalitions in Latin America are clearly dominated by trade unions, in most countries though more than one, which shows an interesting development of bridging cleavages. The European panorama contains some countries where only the trade union centre having signed up, but also some countries with broader coalitions, such as in Ireland, Italy and Spain. In each of the countries a longer tradition of trade union cooperation with other civil society organisations working on domestic worker issues does exist. From this brief overview alone one can see that broader campaigns have only formed in those countries with a previous record in cooperation. This shows that the sudden emergence of the campaign and a global movement have not come out of the blue, but rest on relationships that need time to build (Schwenken 2014 (forthcoming)).

All actors place the issue of domestic work in the **workers' rights and labour law framework**, which is consistent with the ILO's framing and the trade union background of the campaign initiators. Some complement it with a human rights frame, such as building a human chain in Bangladesh on the International Human Rights Day, or a women's rights framework. Several events have, for example, taken place at the International Women's Day on March 8 or the International Day Against Violence Against Women on November 25. In Argentina the trade union CGT-RA organised an event on 12-12-12 with women from all sectors to show cross-sector and cross-class solidarity with domestic workers (CSA/TUCA 2012). Here gender and class are considered as intersectional categories that need to be linked with each other to not create fault lines. For the mobilizations towards the ratification of the convention I found that many events strategically took place at important days of remembrance that supported a frame bridging of worker's rights with women's rights, human rights and migrants' rights (Schwenken 2011). This strategy turned out to be very successful as the organisers of the campaign managed to frame an issue that some might consider marginal – a subgroup of a subgroup of precarious workers; or a subgroup of a subgroup of women – as relevant to many constituencies that all had their own publics and mobilization potentials.

At almost all events the organisers and/or civil society participants call for **national ratification** of the convention. The argument that has been brought forward by most actors is that the government has voted for the convention during the International Labour Conference in Geneva and that it therefore has to bring their legal framework at home in order and ratify. All call for the ratification of the convention, but no action takes the recommendation into account.

From the **convention's contents** that are referred to are the most basic ones that define a work relationship: maximum working hours, rest periods and social security. Equal treatment of domestic workers with other workers is the main legitimising rationale. Some frame it as correcting a historical wrong, in particular in countries where the history of slavery is closely interlinked with the one of domestic work, such as in Brazil. Some actors call in their events for other elements of the convention that are otherwise rarely mentioned, such as a safer work environment (Bangladesh) or the issue on how to categorize and 'value' domestic workers' multiple tasks for pension entitlements (Chile, CSA/TUCA 2012, 24.08.2012). In many cases the demands are country-specific, such as a change of the constitution that is a necessary precondition for Brazil's ratification of the convention, because so far domestic workers are excluded by article 7 from labour rights. In Nicaragua the law has to be changed that foresees a 12 hour working day instead of an 8 hour working day as in the convention (CSA/TUCA 2012).

Some of the details that are interesting are some legal changes that some would consider **symbolic**, but that bring an important message to the domestic workers. During the negotiations the organized domestic workers placed great emphasis on the term they were named, such as 'worker' instead of 'helper' or 'maid'. Also the phrase in the preamble "Recognizing the significant contribution of domestic workers to the global economy..." (ILO 2011, preamble) has frequently been positively mentioned by domestic worker representatives. In Uruguay the new law provides the 19th of August as a special paid holiday for domestic workers, which the domestic workers trade union SUTD considers the result of their successful long struggles (CSA/TUCA 2012, 23.08.2012, fieldwork by author in April 2014). In a law adjusting the Nicaraguan labour law to the convention, the Minister of Labour announced to change the term "trabajadoras domésticas" (domestic workers) to "asistentes del hogar y la familiar" (household and family assistants) (CSA/TUCA 2012), which signifies a move away from class consciousness and worker's rights language to one of professionalisation and service sector orientation. The position of the organised domestic workers though could not be reconstructed from the available documents. In Chile, the new law includes a ban of uniforms for domestic workers in public space, shopping malls or beaches, because of repeated incidents of discrimination (Cámara de Diputados de Chile 2012, fieldwork by author in June 2014). This legal provision is an attack to the inferior social status that is attached to the profession of domestic work by bodily demarcations. How a domestic worker should or should not dress or that she should look nice, but not too nice to attract the sexual interest of the male family members, have been issues for a long time and linked to explicit and implicit conduct (Chang/Ling 2000). The Chilean provision is an interesting proposal to translate the abstract and widely shared notion of anti-harassment and anti-discrimination (ILO 2011, article 5, further provisions in the recommendation) into a real-life reform.

Of all 58 events, only four in Asia and six in Latin America and the Caribbean explicitly refer to **migrant domestic workers**, two of them to internal migrants. In Indonesia the coalition launched the '12 by 12' campaign 2011 on International Migrants' Day, December 18, by

cleaning the Ministry of Manpower and Transmigration (www.ituc-csi.org/indonesia,11526.html, 15.12.2012). The Malaysian Trade Union Congress (MTUC) distributed flyers with the rights of migrant domestic workers at Indonesian embassies on 12-12-2012 (ITUC Newsletter, Dec. 2012). Because contract migrant workers are not allowed to join trade unions, the MTUC's Migrant Forum offers a platform for hundreds of migrant domestic workers to voice their concerns (ITUC Newsletter). The ITUC publicised a video on the issue of migrant domestic workers in the Gulf region as part of their activities on the International Day Against Violence Against Women on Nov 25, 2012 (ITUC Newsletter, Dec. 2012). At one event in the Dominican Republic the ITUC representative calls Costa Rica for ratification of the convention because of the many migrant domestic workers who are afraid of deportation and need legal backup (www.ituc-csi.org/republica-dominicana.html, 09.12.2012). Two events in Uruguay are linked to a series of six workshops and one final event for migrant domestic workers from a range of Latin American countries working in Uruguay and organised by, amongst others as it appears, INMUJERES and BPS (CSA/TUCA 2012). The aim of the workshops has been to increase the awareness among migrant domestic workers about their existing rights and how to claim them under difficult circumstances. Collaboration between the different nationalities has also been one of the declared aims. In Uruguay the exploitation of two undocumented Bolivian migrant domestic workers became a scandalised issue at a conference of SUTD, BPS, the Labour Ministry and the Liga de Amas de Casa (CSA/TUCA 2012). The reporting leaves it unclear what political consequences this incident should have – stricter immigration control or the extension of rights to all migrant workers. For Brazil it is noted that most domestic workers are internal migrants originating from the poorer North-East parts. A similar reference is made at an event in Peru where it is mentioned that 89 percent of all domestic workers are indigenous migrant women or *campesinas*.

Analysing the migration dimension of the '12 by 12' campaign, one can note that migration is indeed an issue. However, in Asia one might expect more events that engage with the issue of contract migration, because between the different Asian regions domestic work is often organised within this framework that creates numerous vulnerabilities for the migrants (e.g. Irudaya/Sukendran 2010, Gardner 2010, Gamburd 2000, Asian Migrant Centre et al. 2001, Rodriguez 2010). Also the ILO recommendation No. 201 calls explicitly countries of origin and destination to enter bilateral agreements on regulating domestic work migration and granting labour rights and social security. Given this explicit mention in the recommendation, one might have expected that trade unions and NGOs had taken it up and use it for lobby purposes. Only three actions in Malaysia and Indonesia explicitly refer to it by choosing the respective Ministry for Manpower and Transmigration as a target for a rally, by passing on flyers to migrant domestic workers and by facilitating the informal participation of contract migrant workers in the established trade union structures, because they are formally excluded. The question to which extent (temporary or contract) migrant domestic workers are covered by the existing legal framework or the one that is lobbied for, remains from the data at hand open. The almost-neglect of the issue of the call for bilateral agreements as a window of opportunity for the campaign can be interpreted in the light of the labelling of migration as a 'difficult' issue where the campaign might have slid into a non-hegemonic character that might endanger the otherwise relative consensus, if applicable, on national ratification. The issue of migration is in Latin America different, because no such state-facilitated temporary labour migration agreements exist. What surprises is that the question of rights for intra-regional migration within South America has not been touched upon although there have been important legislative changes that go back to free movement and regionalisation processes.

One question that has guided this study has been whether the convention can be regarded or used as a regional human rights mechanism for migrant workers. Concluding from the orientation of the '12 by 12' campaign, one needs to caution that perspective.

Ratification Pathways

The analysis of the 12-by-12-campaign and the attempts to lobby for ratification already indicate that the conditions for ratification differ significantly in different countries and regions. In this final section of the study I hypothesise that there tend to be three different ratification pathways. One interesting mode is when a country ratifies the convention, but does not consider it necessary to introduce any changes, even though the rights of (migrant and/or informally employed) domestic workers cannot be considered satisfactory. Therefore, the German case shall be highlighted in this part of the paper.

The case of Germany: Ratification yes, changes no

To illustrate the neglect of the migration dimension the case of Germany might be interesting. The German government completed the ratification process very quickly and deposited the ratification on September 20, 2013. There has been hardly any opposition to the ratification. All parties represented in parliament, except for the liberal party FDP, voiced their support for the ratification of the convention already during a parliamentary debate in November 2012 (Bundestag 2012). The Liberals did not see a need for ratification as Germany already has the legal framework asked for in the convention. They also call for a further liberalized "mini job" market, in their view the best mechanism for household jobs. Migration is with one exception not mentioned in the debate. The only case is the problematique of abuses in diplomatic households, an issue raised by Josip Juratovic from the Social Democratic Party. The MP from the Green Party calls for a minimum wage for domestic workers.

In its draft law, which has been prepared by the Labour Ministry, the German government set the tone and proposed the ratification of the convention (Bundesregierung 2012b). The government stated that German laws are in accordance with the convention and no legal amendments were necessary. Thus, no budgetary impacts were foreseen. In an extended explanatory text for the law, the government gave details about the existing legal framework in Germany and how it fits with the ILO convention and recommendation (Bundesregierung 2012a, c). One has to note that this is a strictly legal procedure that has not much to do with the reality of the current situation and the future development of the sector of domestic work in Germany.

To give the example of migration: The government referred to articles 8 and 15 of the convention and minimum requirements for migrant domestic workers that came under bi- or multilateral temporary labour migration agreements (Bundesregierung 2012a: 6, 12). The government said that Germany is not party to such agreements (except for two with Bulgaria and Rumania that became meaningless at January 1st, 2014 when free movement has been granted to the citizens of these countries) and thus the article is not applicable. In accordance with the convention (article 8 (2)), for all mobility that takes place within the European Union, no regulations have to be made, because of existing EU regulations. Further, the government did not see a need for future foreign recruitment and believed that the demand for domestic workers can be fulfilled by intra-European Union mobility. If at all recruitment might take place, the state employment agency has a monopoly (Bundesregierung 2012a: 12).

From a strictly legal perspective this is a correct procedure to check whether there are any ratification barriers within or implications for German law. However, when one turns to predominating practices in the sector, several issues are noteworthy:

- Private recruitment and placement agencies do exist (in countries of origin, via the internet and small advertisements in media), but their main task seems to find ways to circumvent the non-existing labour recruitment agreements. So, the government is correct in the letters of the law that there is no state-regulated legal recruitment.
- On other occasions, there is no doubt that there will be a huge increase in the demand for care services and domestic work due to demographic changes (see for example IAB 2011). Just two weeks before the government issued the draft law for the ratification of the convention, in one of the states, Hesse, the government attended a foreign recruitment fair and announced the recruitment of hundred Spanish carers, and in the future also likely nurses and carers from the Philippines and other third countries.¹
- Although Germany has no official labour recruitment agreements for domestic workers and child and elderly carers, the reality in German households looks different with domestic workers and carers being employed from Eastern Europe and the former Soviet states, Latin America, Asian and African countries, often without proper legal documentation and in most cases without being registered for social security benefits and taxes.

The German government has levelled down all potentially counter-hegemonic or controversial issues in the convention by holding itself close to the letters of the law. Thus, it appears as if there is no need in Germany to change anything. Some MPs and even civil society actors also see a ratification not as something that is necessary because of the situation of domestic workers within the country, but as a “signal” for developing countries (MPs from the conservative and the Green parties, Bundestag 2012).

Interviews with domestic workers though show that the reality of working conditions in the sector is characterised by a high level of precariousness, feelings of anger and fear because even though domestic workers have, irrespective of their legal status, employment and human rights, they cannot realise them (Heimeshoff/Schwenken 2013).

The question for domestic workers in Germany is now ‘what will change after ratification’? Will there be any changes, even though the government does not see any need for changes?

Ratification pathways: What’s the meaning of ratification?

The German case is only one ratification pathway. It belongs to the group of countries that will ratify, because their laws allow for it already, but ratification will not be much of a public issue. One can assume that there will be no immediate legal changes and not immediate improvement of the situation of domestic workers. Nonetheless, the tool of the convention can be used in the long run in various ways:

(a) In these countries we might see court cases in the future and an improvement of the situation of (M)DW through legal action at the national level. A case in point (although with

¹ “Weil es zu wenig Pflegekräfte in Hessen gibt, will das Land Altenpfleger aus Spanien anwerben. Das kündigte Sozialminister Stefan Grüttner (CDU) ... an. In dem Modellversuch sollen zunächst 100 Arbeitsstellen bei Marburg, Offenbach und Wiesbaden durch Fachkräfte aus der Region Madrid besetzt werden.”, Frankfurter Rundschau, 05.11.2012.

its limitations, which would go too far to lay out here in a detailed manner), can be the legal and political campaigning around 'Ana', a former au-pair and then undocumented domestic worker from a Latin American country who managed in Hamburg/Germany to receive compensation for three years of outstanding wages (Frisius 2008).

(b) Here also the macro-regional dimension might come in. Satterthwaite has shown how the Inter-American Court system has contributed to acknowledging the rights of migrant domestic workers (Satterthwaite 2008). The same might work at the European Union level where European legal decisions have to be transposed into national law.

(c) And last but not least the fact that Germany, or any other country, has ratified the convention can be used by trade unions and other (migrant) domestic worker support organizations when initiating action that is below a formal legal dispute. The trade union run Migr.Ar counselling offices, for example, report that it is often sufficient to send the employer a letter on official letter head in which the employer is reminded to pay outstanding wages (or conform to other elements of the contract) (informal conversation by the author). With a ratified convention these letters can give more emphasis to the international and national legal backing.

As a rough analysis of the ratification campaign and the mode of debate in the regions has shown, there are a lot of countries which approach the issue of the convention differently than the German case as there will be clear legal changes. There are two indicators for this: even before the adoption of C189 in 2011 many countries changed laws or initiated such processes. This has been evaluated as the strong normative power the tripartite consultation process had in the two years before the adoption, because governments were involved in a constant reporting procedure and domestic worker organizations and trade unions could use the occasion for lobbying (Schwenken 2012). There are no solid estimates about the number of countries with such changes initiated, but there are clearly more than a dozen. In those countries with a continuous trade union and social movement pressure, this has continued and led to a range of new legal provision, mostly in favour of domestic workers (http://www.idwfed.org/files/files/resources/Claiming%20Rights_2013%20Oct.pdf pages 8-9). The analysis of events on the convention – including those reports that were methodologically excluded because the actors were government entities – gives clear evidence. In a number of Latin American countries currently national legal and even constitutional reforms are debated to prepare for the ratification of the convention. Some advocates of the convention stress that this can also be done after a country has ratified and not necessarily prior to it (Rebeca Pabon in CSA/TUCA 2012, 08.06.2012).

The meaning of ratification can thus be different and ranges from countries that see no necessity to change anything to those that change their constitution and labour laws to reach accordance with the convention. As the data so far contains mainly stories of success, the excuses of governments not to ratify or the legal fights that are associated to it, are not yet part of the sample, but would need analytical attention as well.

Does “region” make a difference for ratification patterns?

The question on a **regional comparison** can be worked on in two ways, either considering 'region' as a rather loose concept, or with reference to the existing economic and political regional blocs. If we take Nye's classical definition, a macro-region is “a limited number of states linked together by a geographical relationship and by a degree of mutual

interdependence” (Nye 1971: vii). Nowadays most prominently these clearly defined regions following certain functions are the European Union (EU), the Southern Common Market (Mercosur), the North American Free Trade Agreement (NAFTA), the Association of Southeast Asian Nations (ASEAN), the African Union (AU), the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC). During the ILO negotiations in 2010 and 2011, speakers of blocs did in fact appear. The European Union, for example, always speaks with one voice. In the ratification processes so far these regional blocs did not matter as prescribing which policy to follow, the regional blocs did not consider the ratification of the convention a political project.

Therefore, I take region here more as a loose concept and look, according to newer debates on comparative regionalism, also for “informal regionalism”, which includes civil society (Söderbaum 2008: 7). The International Domestic Workers Network, for example, is organized according to region. CONLACTRAHO as the domestic worker network from Latin America and the Caribbean has a long record in regional coordination, and their coordinated activism might be one factor for the strong ratification record of the convention in the region. Also the Migrant Forum Asia is a well-organised regional factor in civil society activism on migration issues and the domestic worker convention.

It is too early to draw conclusions about regional patterns of ratification, because the process has only started. What might be safe to argue is that the openness for ratification is biggest in **Latin America and the Caribbean**. Not least due to the already existing legal frameworks, very active domestic workers trade unions and organizations and some left-leaning governments. In **Asia** there seems to be a discrepancy between very active and regionally well connected actions and governments that, with some exceptions, are less responsive. This might be related to the high amount of temporary labour migrants in the sector that would also fall under the new regulations, if implemented “in the spirit of the convention” (a term often used by ILO officials when talking about the national ratification). In **Europe** it can be expected that countries either do not see any need to ratify because of the existing regulations which they consider sufficient (an argument that was brought forward during the negotiations by various governments) or that ratify easily, but see not need to address the situation in reality, which often differs from the one in law, because of the significance of the shadow economy and the large proportion of (undocumented) migrants in the sector. For **Africa** the legal prerequisites are too different (from a progressive legal setup in for example South Africa (Ally 2009) to those lacking it) and the data available are yet too scattered to give any regional prognosis.

Conclusion

In the domestic work sector a lot of migrants are working. Therefore the question is of utmost importance whether the ILO convention 189 “Decent Work for Domestic Workers” can be of assistance for realising better working and living conditions of this group of workers. It is clearly not a migrant worker convention. Therefore, wrong expectations can be problematic. The analysis has shown that countries that have already ratified it or are on a good way to do so were not driven by the motivation to improve the situation of *migrant* domestic workers. Also most ‘12 by 12’ campaign events did not refer to migrant domestic workers. ‘Domestic’ domestic workers have been the main subject of the political debates. Among the political motivations to ratify and change existing laws were the attempted increased formalisation of the sector and/or the inclusion of the sector in national labour law where it has been excluded so far. Another indicator for the rather marginal, or better: contested and counter-hegemonic,

role of migration in the process is that the provisions are mainly included in the non-binding recommendation. The so far consensus-oriented mode of ratification is grounded in the logic of the instrument that refers to well-established, minimum core labour standards that are applied to a formerly excluded group of workers. Nonetheless, I have argued, can the convention be used by migrant domestic workers and their advocates by its legitimacy power and by opening up new legal avenues that might show results that have not been intended by parliaments, governments and presidents voting for its ratification.

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