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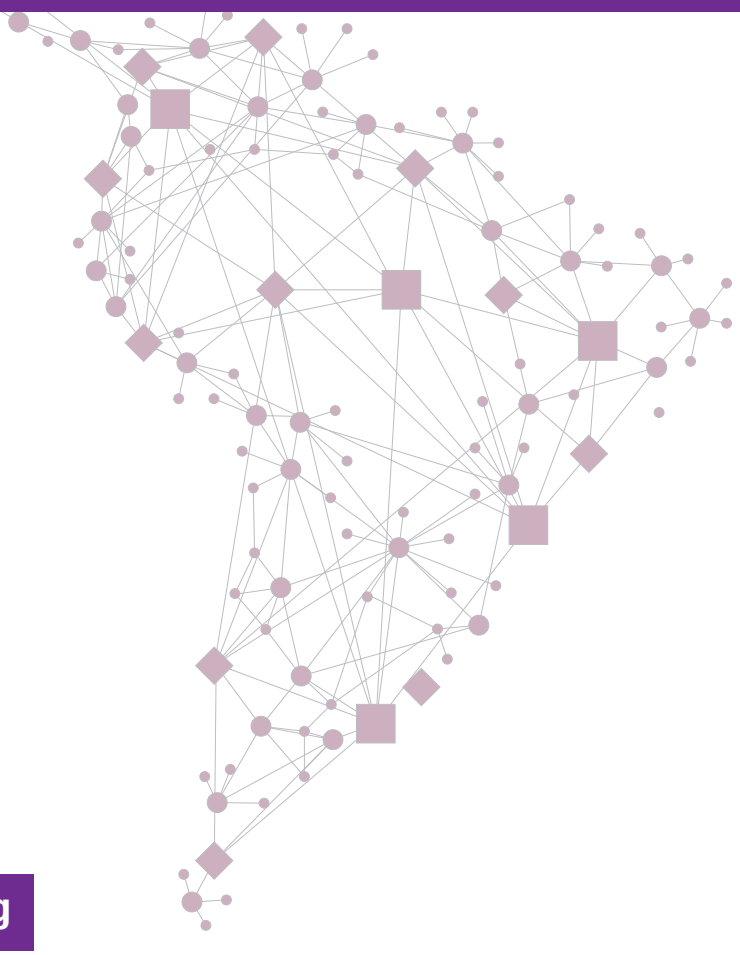

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The Production of Labor Standards for Domestic Work

The Translation of Convention189 to Three Countries of the South: Argentina, South Africa and the Philippines

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Resumen

En 2011, la Organización Internacional del Trabajo aprobó el Convenio 189 que propone un modelo regulatorio para el trabajo doméstico. Si bien hasta el momento, sólo 17 países han ratificado este convenio, su influencia puede observarse en las nuevas leyes aprobadas o todavía en tratamiento parlamentario en distintos países, particularmente del Sur Global. En este contexto, esta investigación se propone analizar el proceso de producción de estándares laborales para el trabajo doméstico. Este proceso está compuesto por tres momentos: la producción del convenio en el seno de la OIT, la difusión del mismo, y la traducción en las regulaciones locales. Particularmente, serán aquí analizadas las regulaciones relativas al trabajo doméstico de Argentina, Sudáfrica y Filipinas.

Abstract

In 2011, the International Labor Organization adopted Convention 189 which is a regulatory model for paid domestic work. Though only 17 countries have been ratified this convention, its influence can be seen in new legislation adopted or still in parliamentary treatment in different countries, particularly in the Global South. In this context, this research aims to analyze the standards labor setting process for domestic work. This process consists of three stages: the production of convention within the ILO, its diffusion, and its translation into local regulations. In particular, regulations on domestic work of Argentina, South Africa and the Philippines will be analyzed in this report.

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Introduction

Globalization, understood as the increase in interconnectivity and interdependence among countries, has arisen as one of the main characteristics of the period beginning in the early 1990s. The flow of commerce, the circulation of capital, goods and ideas, as well as the displacement of persons, are what make up the material dimension of this phenomenon, which represents an important challenge to labor law (Held et. al., 2003). The new international division of labor and the global governmental regime (Kratochwil and Mansfield, 2006; Selby, 2003) that have arisen out of this process of globalization call into question fundamentals of labor law in general and international labor law in particular.[1]

On one hand, the new international division of labor has translated to a transformation of the productive structure (at national as well as international levels), and consequently, a substantive change in the modes of organization of work have been observable. The model of the factory or company—based on long-term labor contracts, full work days and male workers as providers—has been replaced by more flexible modes of work from a distance, through networks (Supiot, 1999; Morin, 2005), in structures that are organized as subcontracting chains (Morin, 1994; 1999). In light of these changes in the world of work, labor law—based on the Ford industrial model—needs to develop tools which allow it to regulate "forms of work that are different from 'standard employment,' and within a framework of complex value chains dispersed throughout the world" (Du Toit, 2013: 19).

On the other hand, the new regime of global governance—referred to by some authors as "governance through regulations" (Levi-Faur, 2005: 13)—is characterized by the participation of numerous new actors (public and private, governmental and non-governmental) in the production of regulations at various levels (international, national, local) (Kratochwil and Mansfield, 2006: 117). This translates to the proliferation of new technologies of regulation, to the formalizing of relationships between different types of institutions, and to the increase of self-regulation mechanisms, examples of which are corporate codes of conduct (Levi-Faur, 2005). Within this new scenario, international organizations, and international governmental organizations like the International Labor Organization (ILO) in particular, are redefining their positions as producers of regulations. As a result of these changes, the relationship between the ILO and states has been deeply disrupted.

Founded in 1919 as part of the Treaty of Versailles, the ILO was one of the first ever international bodies of governance. Its primary aim is the promotion, at the global level, of labor standards and social rights. As stated in the preamble of its constitution, the act of monitoring the application of these standards has as its objective the assurance of balance in the global employment system (Servais, 2004a: 37). So since its beginnings, the ILO has considered itself to be a central agent for the international governance of labor relations (Gravel, et.al., 2014).

[1] The complexity of this challenge to international labor law is analyzed extensively in the literature: cf. Davidov and Langille, 2011; Bercusson and Estlund, 2008; Kauffman, 2007; Maupain, 2013; Barnard, Deakin and Morris, 2004; Conaghan, Fischl and Klare, 2002; Craig and Lynk, 2006.

Over the last 20 years, in response to the new international division of labor and changes in international modes of regulation, the ILO has modified its governance strategy, which had been based traditionally on the promotion of a specific model of labor relations: *the employment relationship*—that is to say, the work contract in its typical form of the labor contract. A renovation of its mechanisms for promotion and monitoring has therefore been seen, along with the establishment of new principles for regulating activities arising from atypical forms of employment (Trebilcock, 2010; Boccaro, 2013; Banks, 2006; Cholewinski, 2006; Sengenberger, 2006). Convention 189 and Recommendation 201 of 2011, which established new labor standards for paid domestic work, can be considered paradigmatic examples of these changes. For this reason, through the study this particular instance of international labor regulation, and by placing ourselves within the perspective developed by the sociology of law, we will be able to explore the process of the production of labor standards as understood in its broad sense. The sociology of law focuses in part on the analysis of "law in books" and in part on the analysis of "law in action". When its focus is "law in books," the sociology of law seeks to analyze the way in which the law crystallizes the conflicts of interest inherent to the processes that produce it (Commaille, 2007). This means deciphering within the actual text of the law the representations and the practices relative to a particular type of social action that the law attempts to regulate. In the case of labor regulation, an analysis is attempted of the representations of work in its specific forms and the practices developed around these (Pound, 1911; Friedman, 1961; Israel, 2008). This implies analyzing the processes and institutions that produce, implement and enforce laws, as well as the way in which various actors participate in their production, implementation and legitimization, as well as the redefinition of laws through daily practices (Bourdieu, 1986; Latour, 2002; Commaille and Perrin, 1985).

With the conceptual model proposed here, this process is comprised of three different phases: the definition of standards that are crystallized in the convention or recommendation, the diffusion of these, and their translation to local regulations. Since the ILO is a tripartite organization whose government is made up of representatives of its member states, employers and workers, the first phase—the definition of standards—involves a complex process of negotiation among these actors. In the case of Convention 189 and Recommendation 201, domestic workers' associations and numerous non-governmental organizations (NGOs) played very active roles here, constituting what some authors refer to as "the fourth actor" (Fish, 2014).

The second phase in this broad process of the production of labor standards—that of their diffusion—takes place through the various institutional channels established by the ILO. These vary across regions and countries, due to the existence of regional offices and the articulation between these and local governments. To these institutionalized channels of diffusion are added other informal ones in which NGOs, workers' organizations and social movements participate. Through these channels, be they formal or informal, labor standards circulate; they do not do so alone, but rather accompanied by (or packaged in) ideas which contain them, introduce them, resignify them.

In the third phase, the labor standards proposed by the ILO take shape in the form of local regulations. Given the type of regulations that the ILO produces—non-binding ones—

local governments have great autonomy in how they translate these standards to their own regulations. This is why—using the conceptual model proposed here—any restrictions on how these labor standards will be applied locally are associated primarily with preexisting regulation, including the state's capacity for generating adequate provisions and establishing control mechanisms for their enforcement, previous systems of social protection, and the labor culture that structures practices and establishes customary norms.

With the aim of studying the manner in which Convention 189 has been translated to local regulations in the South, we focus on three southern countries: Argentina, South Africa and the Philippines. In countries in today's so-called Global South, domestic work is a very important activity, particularly in terms of female employment. While in developed countries it represents fewer than 1% of the employed, in Asia it represents 4.7%, in Africa 4.9% and in Latin America 11.9%. Domestic workers account for 11.8% of employed women in Asia,13.6% in Africa and 26.6% in Latin America. According to ILO estimates, these three continents account for 88% of domestic work worldwide (ILO, 2013). For this reason, the promotion of labor standards is focused on the South, where the majority of domestic workers find themselves outside of any regulation. Levels of informality are very high, reaching 85% to 95% of all domestic workers.

The choice of focusing on Argentina, South Africa and the Philippines is based on two main criteria: their early ratification of Convention 189, and the importance of domestic work in their labor markets. These three national cases involve countries which ratified the Convention early. The Philippines was the first to ratify it, in September of 2012. When South Africa ratified it, in June of 2013, only four countries had previously done so. Argentina ratified the Convention in March of 2014. In all three countries, domestic work accounts for an important part of female employment: 0.5% of all employed persons and 11% of employed women in the Philippines, 9.4% and 16% in South Africa and 7% and 17% in Argentina (ILO, 2013).

Except for these similarities, the three cases are quite distinct. In terms of the regulation of domestic work, the ratification of Convention 189 has led to the passing of new laws in only two of these countries: the Philippines and Argentina, in which the incorporation of ILO labor standards was realized through new legislation in 2013. In South Africa, the ratification of Convention 189 will not mean modifications to the existing regulation of 2002, but the Convention will serve to facilitate the enforcement of this regulation.

Within the framework of the study of labor-standard production, we intend to analyze in this research, from a comparative perspective, the means by which the labor standards proposed by the ILO have translated to local regulations in these three countries of the Global South. Following the methodology of Comparative Law, this comparative analysis takes place at the level of the regulations rather than at the level of modes of their implementation. This transversal reading of the translation of Convention 189 in the three national cases allows us to understand how the conditions of the context in which it takes place affect this translation of international labor law to the local level. This means understanding the fact that although some of the possibilities for translation are contained within the structure of the legal instrument being translated—it may possess a greater or lesser capacity for translation—

another important factor has to do with the context of the translation and the activity of those who participate in the process. This comparative analysis allows us to consider general tendencies as well as local particularities in the translation of Convention 189.

The research we present here focuses mainly on the study of laws, decrees of enforcement, and ILO parliamentary debates and documents, as well as on subsidiary data produced by national and international organisms. Likewise, part of this broad process of lawmaking is reconstructed from specialized literature, specialized legal literature in particular.

The report is divided into three sections, in each of which one phase in the process is analyzed. The first section deals with the way in which ILO labor standards—Convention 189 and Recommendation 201 in particular—were produced. The second analyzes the process of diffusion of these regulatory models. The third looks at the way in which the standards have been translated to labor regulation in the three countries.

1. THE PRODUCTION OF LABOR STANDARDS

Since its creation, the ILO's strategy focuses on the production and monitoring of labor standards. The idea of standardization on which their action is based contains both a political-economic dimension and a moral one. Both dimensions are wrote down in the preamble to its Constitution: "If any nation to adopt humane conditions of work, this omission is an obstacle in the way of other nations which desire to improve the lot of workers in their own countries."

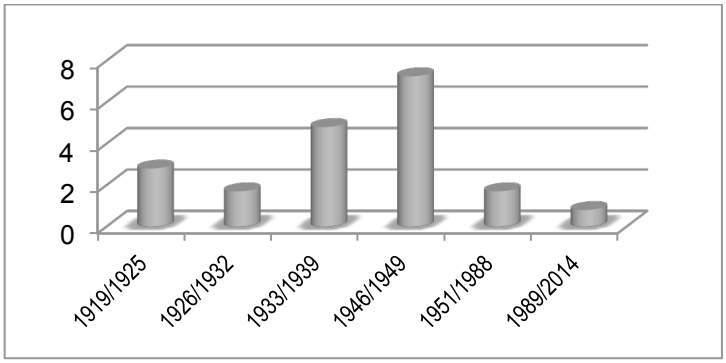
The standardization of forms of hiring and working conditions puts all "nations" on equal positions in the global market. The idea of a balance of positions under this statement is clear. Moreover, the production of standards reflects a basic moral imperative: to provide "humane" working conditions for all workers of the world. What appears in an explicit way is the denunciation of exploitative labor situations (Murray, 2001). Consequently, the definition and control of the respect of labor standards pursue the double objective of ensuring decent working conditions for all workers and fair competition between nations.

The main tools on which the ILO structures its strategy of international governance are the conventions. Conventions are binding instruments and they must be effective when are ratified by member states. Since that, member states must amend their local regulations to comply with the provisions of the convention (Swepston, 1997). In terms of production of conventions, the ILO changes its strategy during the time. Six different periods must be recognized. During the first, from 1919-1925, three conventions per year are approved. In the second phase (1926- 1932), the ILO fail to approved two conventions per year. The third period, from 1933-1939, shows an increase in the production of international regulations, about 5 conventions approved per year. In the fourth period (1945-1949), more than seven conventions are approved each year. The fifth and sixth periods are characterized by a very low production. In the fifth (1951-1988), the ILO approved no more than two conventions per year, and during the sixth (since 1989), not even adopted one year.

During the first period, the ILO established 20 conventions which were considered at that time as fundamental labor rights: limit working hours, right to weekly rest, unemployment insurance, compensation for occupational accidents and diseases, maternity protection, night work, freedom of association, and particularly the regulation of child labor. Most of these conventions are related to the industrial and agricultural sectors.

During the second period, from 1926-1932, the ILO reduced the number of conventions producing one or two annually. At that time, the rights previously recognized to other sectors, such as trade or industry, are extended to port activity, and more generally to the "non-industrial employment". The innovation during this period is that health insurance established.

Figure 1: Number of Conventions adopted by year, period from 1919-2014



During the third period, from 1933-1939, we observed an intense production of conventions again. In this period, four conventions are approved annually, with the exception on 1933 where seven conventions were approved, and 1936 in which nine were approved. In total, during those seven years 34 conventions were approved. This proliferation is related to the establishment of different types of social insurance, structured differentially depending on the different sectors. The ILO proposes regulatory models for establishing old age pensions, disability pensions, health and unemployment insurance, as well as the establishment of a maximum weekly working hours, paid holidays, and reducing the minimum age for participation in the labor market for various industries. Also in this period, there are set for the first Conventions on migrant workers[2].

The fourth period -beginning with the second post-war- is very significant for the ILO. On the one hand, because it clearly establish its role as a body of international governance of labor relations, and specially because it joins the United Nations. In 1944, the ILO General Conference took place in Philadelphia. On that occasion, in the document known as the "Declaration of Philadelphia", the objectives of the organization are redefined. From that moment, this declaration is incorporated into the Constitution of the ILO. It establish as fundamental principles that: "a) labor is not a commodity; b) freedom of expression and association are essential to sustained progress; c) poverty anywhere constitutes a danger for

[2] C048, Convention concerning the organization of an international regime for the preservation of the rights of disability insurance, old age and death, 1935 (Effective date: August 10, 1938); C066, Convention concerning the recruitment, placing and conditions of labor of migrants, 1939 workers (Adoption: June 28, 1939, Withdrawn instrument).

posterity everywhere; d) the war against want requires to be undertaken with unrelenting vigor within each nation, and by international, continuous and concerted effort, in which the representatives of workers and employers, collaborating on an equal footing with the representatives of the governments, join with them in free discussion and democratic decision, in order to promote the common good "[3].

In accordance with the Declaration of Philadelphia, in 1946 the ILO approved 13 conventions, mostly extending rights previously recognized to sectors that remained excluded from international labor regulation. During 1947, the focus was placed on labor regulation at "non-metropolitan territories" and the regulation concerning the status of "indigenous workers." Among the four conventions approved in 1948 one is focused on the "employment service"; that is "a national system of employment offices under the control of a national authority" aimed at placing workers in jobs available. In 1949, the seven conventions signed on the revision of the migration are highlighted.

The fifth period running from 1951-1988, is a period with low production conventions, an average of two per year. What we see in these years is the extension of the existing labor standards to new groups of workers, such as fishermen, carriers, as well as employees of public administration. Among the most important conventions of the period, we can find the convention on social policy, the one on equal treatment between local and migrant workers, fixing the minimum wage, about collective bargaining and unemployment protection.

Finally, the last period beginning in 1989, it characterized by the lowest number of annual regulations. This is explained by a dramatic change in the mode of governance. The ILO began to focus on the recognition of fundamental rights inscribed in its constitution. This form of soft law is combined with other instruments of the same type, such as recommendations, resolutions, codes of practice, and with the binding conventions. Since the adoption of the 1998 Declaration four fundamental rights set out in the constitution of the ILO: freedom of association, the elimination of forced labor, abolition of child labor, and the principle of non-discrimination. This is the incorporation of labor rights in the international human rights regime (Alson, 2004, 2005). Since then, the 185 member states must implement these fundamental rights in their labor regulations, even if they have not ratified the Conventions relatives of these rights. That is the reason why during this period only some conventions are approved; most of them focused on social protection systems[4]. What it appears as a major innovation during this period is the regulation of atypical forms of employment such as work in hotels and restaurants, home work, work through temporary employment agencies, and fishing activity. It is in this framework that Convention 189 was approved in order to establish labor standards for domestic work.

This convention is not the first attempt by the ILO to regulate domestic work (Blackett, 1998; Grumiau, 2007; Valenzuela and Mora, 2009). At the 20th International Labour Conference in 1936, the possibility of recognizing certain labor rights to domestic workers

[3] International Labour Organization, "Declaration of Philadelphia", Appendix XIII, section I. The first section contains the general principles relating to work, particularly those concerning the meaning and value. Section II sets out five general principles, mainly associated with the role of the ILO in the national political scene. Finally, in section III clearly defines the role of the ILO.

arises. In 1948, at the 31th International Labour Conference, a resolution requesting to include domestic work in the agenda of the upcoming conference (Goldsmith, 2013) was adopted. In 1965, the International Labour Conference adopted a resolution calling for the "urgent need" to establish minimum standards for domestic workers (Blackett, 2004) was recognized. Since then, various studies were conducted in order to design "an international instrument on the employment conditions of domestic workers" (ILO, 2010: 13). According to Adelle Blackett, although if the ILO emphasized the urgent need to establish a specific regulatory model for domestic work, no standard was defined in those years (Blackett, 2011: 8). Institutional inertia preserved previous standards, because -in theory- they had the ability to guarantee minimum standards for domestic workers. According to the ILO, the standards contained in the various conventions apply to all workers, unless any specific category of workers was expressly exclude. The "Declaration of Fundamental Principles and Rights at Work" of 1998 strengthens this institutional inertia. The focus of ILO action was set to ensure the respect of the four fundamental rights as a starting point for the recognition of other labor and social rights inscribed in the various conventions. Fundamental rights include the elimination of forced labor and abolition of child labor, as well as non-discrimination, domestic work appears again on the international stage. In many countries, domestic workers are children, particularly migrant girls. The condition of many of these migrant workers puts them in a position of great vulnerability *vis-à-vis* employers. It is these extreme cases of exploitation that are mobilized in the context of promoting fundamental rights at work, and again allow installing the regulation of domestic work as a pending issue for the ILO.

1.1. Atypical work as a challenge

The definition of labor standards relating to atypical forms of employment has meant a great challenge for the ILO. While in the beginning most of the conventions were aimed at workers in industry and commerce, quickly workers in other sectors were hit by the international labor regulation. Even in recent decades, the ILO has sought to include activities that are not satisfactorily regulated locally. Standards promoted by the ILO traditionally represent the most complete forms-and in that sense ideals of protected employment. However, because international labor law settles their bases on labor law for which the model is "employment relationship" -the relation structured around the contract wage labor-, all kind of work that does not conform to that model is problematic. Therefore, to establish appropriate standards regarding working methods that deviate from the "norm" is necessary to redefine the way in which the parties involved in an employment relationship are conceived, as well as to redefine the bond between them. In the case of domestic work, three elements are presented as particularly problematic for labor law, both nationally and internationally: 1) the definition of the employer; 2) the workplace; 3) and the relationship between the parties.

First, the definition of the employer triggers various disputes. On the one hand, the employer (in direct contracting) is defined as a person who has a profitable undertaking from the work performed by domestic worker, but a family for whom that labor has not economic "profit". This point has been analyzed in different national debates as well as within the ILO. To some scholars, while domestic work does not produce a direct economic profit, it allows

greater financial resources due to the addition of one more worker from the household into the labor market allowing women to work-. That is why the notion of "non-profit" is ambiguous. In some national regulations, the dispute was settled including the adverb "indirectly" before "economic benefits". What is behind this technicality is the question of the ability of the employer to be responsible for social security contributions under the general system of employment and social protections. A second controversy surrounding the definition of the employer, which is also related to the ability to assume labor costs, has to do with the idea that the employer is "always" a woman. Since it is considered that domestic worker replaces the "woman of the house" doing household tasks, the employment relationship is thought as a relationship between women: a woman who works outside the home and another woman who works inside. Further considering that the majority of women enter the labor market under part-time schemes, and there is a wage gap between female and male workers, it is assumed that this particular female employer/worker has fewer resources to assume her obligations as employer. The question of who is the employer, hides another question: how labor law can harmonize the positions of an "atypical employer" with a "typical employer"?

The workplace is another feature that challenges labor law. The house as workplace established a clear limit to all labor regulations, and particularly labor inspections. Inside the home, the employer is who sets the rules. All aspects of the employment relationship are presented as the result of an arrangement between the employer and the domestic worker (Anderson, 2001; Calleman, 2011; Chen, 2011). The respect for household privacy, in the form of the right to inviolability of the home, reduces state capacity to verify compliance with labor regulations (Loyo and Velasquez, 2005; Vega Ruiz, 2011). The variety of regulations clearly show the "difficulty of resolving the tension between two competing rights positions: the employer's right to protect their private domain and the right of workers to decent working conditions" (Rodgers, 2009: 104). In addition, the isolation of domestic workers in the homes constitutes an obstacle to the development of collective action to claim their rights (Rodgers, 2009; Lautier, 2003).

The kind of labor performed is another problematic feature for labor law. Because of the tasks performed by domestic workers, their role in the household is assimilated to the role of "the woman of the house", and therefore becomes invisible (Blackett, 1998). Unpaid domestic work and paid domestic work appear as if they were identical. The role exerted by domestic worker is primarily a role of caring for family members. The same can be done either through direct care tasks as assisting the elderly and disabled person, or caring for children; either through indirect care tasks such as cleaning the home, cooking, doing the laundry. This conception of the role of domestic workers within the household leads employers to believe the worker/ family-employer relationship is more like an emotional relationship as an employment one. Domestic workers that replace completely or partially woman care tasks are then considered "family members". This paternalistic view leaves the regulation of domestic work and the definition of working conditions as a matter to the each employer discretion. As highlighted in the ILO report, "even if well-intentioned employers, self- regulation does not adequately replace the specific rules that effectively extend international labor standards to domestic workers" (ILO, 2010: 15).

Finally, one last challenge to the definition of labor standards is that informality and perception of low wages remain main characteristics of this form of employment. In addition, domestic work takes place in many cases under partial work schemes for one or more employers. Sometimes, domestic workers are migrant workers who develop that activity outside any regulatory framework. Therefore, the biggest challenge for the ILO is to establish standards that allow domestic workers to reach the labor standards established for other categories of workers. This means trying to reduce the gap between the positions of the most protected workers and the self-marginalization of domestic workers.

That is why since 2008 the ILO promotes the debate for defining the best way to regulate this particular activity, which is not wholly consistent with the canons of the typical job. Particularly, within atypical work, the commitment of the ILO has been to regulate the activities included in what is widely called informal labor market. Between 2008 and 2010, under the demand of various bodies within the ILO, a series of researches that led to the publication of the Report IV, entitled "Decent Work for Domestic Workers" were made. This report is the fourth item on the agenda of the 99th meeting of the International Labour Conference in 2010. It is at this conference that they start discussing how it would be possible to establish a regulatory model for domestic work.

1.2. From bottom to top: the construction of Convention 189

Convention 189 is a very special instrument. It takes in account the difficulty of designing labor standards for jobs that are poorly regulated because of its distance from the typical model. But also, this convention is very significant because it represents a regulatory model built "bottom-up". According to Goldsmith, "it was the first time that workers who are affected by an international instrument attended the International Labour Conference" (2013: 238). Indeed, because domestic work is an activity performed in isolation in employers' house, the difficulty of establishing groups of workers seems incontestable. However, domestic workers association achieved a significant mobilization, and their role was capital in the adoption of Convention 189.

Clearly, because the tripartite structure of the ILO requires the agreement of representatives of governments, representatives of employers and representatives of workers, to produce a "bottom-up" convention necessarily implies a set of mediations that make possible the interference of domestic workers movement in the internal dynamic of the ILO. Following descriptions and analyzes of those who witnessed this process (Goldsmith, 2013; Boris and Fish, 2014th; Schwenken, 2011; Blackett, 2011; Kawar, 2014), it is clear that it is possible to distinguish various stages in the process leading to the adoption of Convention 189 and Recommendation 201. The first stage is the emergence and consolidation of national associations of domestic workers. A second phase comprises the structuring of regional federations. A third stage is represented by the establishment of an international network based on international NGOs and unions with global reach. A fourth point is marked by the convergence of interests between some jurisdictions of the ILO and the international movement of domestic workers. Finally, a fifth stage is the discussion process resulting in Convention 198, during the two International Labour Conferences in 2010 and 2011.

Various researches described the long and arduous process leading to the construction of national groups of domestic workers. In most cases, these groups were structured on the basis of what has been called "the partnership model" (Ally, 2005). In this particular case, domestic workers association's main purpose is to accompany domestic workers in the vulnerability of their situation. This means bring them emotional support, institutional and information about their rights. In many cases, these early movements emerged from religious groups (Arondo, 1975), such as the Catholic Youth in Latin America (Goldsmith, 2013; Silver Quezada 2013). It is from these groups that domestic workers associations begin to constitute themselves as collective entity capable of facing a process of struggle for their rights. Initially these associations opposed the idea of joining the existing unions. However, in some countries, the place that these workers try to occupy in the public arena was dependent on its participation in unions of other sectors. This is the case of domestic workers in Chile, Brazil, the UK and the Netherlands (Schwenken, 2011). In many cases, domestic workers associations are linked to migrant workers associations or feminist groups. During the 80s and 90s, they begin to organize domestic workers confederations. In 1988, the CONLACTRAHO (Latin American and Caribbean Confederation of Domestic Workers), which is the first regional confederation was founded. This confederation was proposed to maintain its identity as a group of domestic workers, and did not accept to join unions. Structuring and consolidation was made possible thanks to the work of some NGOs and UN jurisdictions, such as UNIFEM and ECLAC (Economic Conference for Latin America and the Caribbean). These institutions provided opportunities for discussion among members of different national associations, as well as to organize training on a global scale.

Amsterdam Conference 2006 was presented as the key moment in which an international movement is in favor of a Convention for regulating domestic work. It was in this conference, organized by IUTA, the International Domestic Workers Network (IDWN) was created (Kawar, 2014). IUF (International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association) is an international union placed in Geneva. IUF has been associated with domestic workers associations and provide them the structure and the expertise to achieve the organization the international network (Boris and Fish, 2014th / b). This campaign for an international instrument for regulating domestic work was also engaged by two other important NGOs: WIEGO (Women in Informal Employment: Globalizing and Organizing) and RESPECT (Equality Rights Solidarity Power Europe Cooperation Today). WIECO is an international NGO that was founded in 1997 in order to form an international network of organizations of informal workers, researchers and stakeholders. This NGO is headquartered at Harvard University, and has units in Manchester (UK) and Ottawa (Canada). Meanwhile, RESPECT is a network of labor organizations, trade unions and human rights NGOs, founded in 1998 and is funded by the European Commission. These three organizations -IUTA, Respect, and WIECO- have been contribute fundamentally to the development of organizational capacities of domestic workers associations. This will enable them to have a major role in the process of defining and structuring Convention 189 and Recommendation 201 (Kawar, 2014: 494).

The fourth point in this process of construction of the Convention can be dated in February 2007, when the organizers of the conference in Amsterdam, in collaboration with

the ICFTU (International Congress of Federated Trade Unions)- have a meeting with ILO officials, specifically with team members of ACTRAV (Bureau for Workers' Activities), to raise the possibility of including in the agenda of the ILO the discussion regarding the production of a regulatory model for domestic work. Since activities developing by ACTRAV were focused on promoting the rights of migrant workers on the basis of recognition of labor rights as human rights, the project to include domestic workers in a particular instrument was fully integrated in its program's objectives. That is why since then, the proposal of the international network of domestic workers, as well as NGOs and international unions who supported them, becomes a claim inside the ILO. This allows domestic workers, by using the bureaucratic mechanisms of the ILO, to get a place on the agenda of the International Labour Conference to start thinking about the definition of this legal instrument of international regulation. Since the spring 2007, ACTRAV team decided to engage the executive body of the ILO in that project, and began to organize an international campaign to support this initiative (Kawar, 2014: 494). This campaign was based on one main idea: the definition of a legal instrument as an outstanding debt to domestic workers. The way in which ACTRAV shows the need to define a labor standard for domestic work is based on the institutional history of domestic work in the ILO. It stresses that on several occasions the ILO agreed to build legal tools that would improve working conditions and life of domestic workers, and yet no action was taken for more than 50 years. This genealogy which shows the involvement of various agencies of the ILO during that extended period is presented as empirical evidence of a consensus of long standing within the ILO on the need to produce a legal instrument to establish a regulatory framework for domestic work (Kawar, 2014: 496). Mainly, what ACTRAV team members bring out was that the definition of a normative model for this activity was fully located in the heart of "decent work" that the ILO was promoting as its main objective (Boris and Fish, 2014).

The last stage in the construction of Convention 189 is the process of discussion which takes place during International Labour Conferences in 2010 and 2011, and the work done between the two conferences, both locally and internationally (Goldsmith, 2013; Boris and Fish, 2014b; IDWN, 2012). The presence of domestic workers clearly breaks with the traditional dynamics of International Labour Conferences. As expressed by Goldsmith, it was presented as a "transgression" to the rules of this ancient body of the United Nations. During the 2010 conference, the workers had to learn what was the place that was assigned to them in the space of this tripartite discussion, and try to gain space. Mary Goldsmith describes a situation in which an official of the ILO tells domestic workers that they needed to calm down. He said that they could not you clap or sing during the discussions of the commissions (Goldsmith, 2013). To confront legal arguments provided by different actors at the conferences, domestic workers proposed individual narratives. They presented stories of struggle in which their vulnerabilities and strengths clearly appeared. The leaders of the International Network relied on traditional conceptions of gender representations to make their voices audible not only as human being but also as workers (Boris and Fish, 2014). Using the emotion was a strategy more powerful than technicalities of international law.

In the general assembly of the ILO, domestic workers were placed to the balconies. Therefore, they were separated from the main players, they were located as mere spectators.

That is why the strategy of the International Domestic Workers Network (DWN) was to gain visibility in the streets of Geneva. They began to occupy public spaces and appear in the media. Their goal was to gain public legitimacy, making clear the importance of their claim and the necessity of the enforcement of their rights as workers. Between the two conferences, domestic workers associations were adding allies in governments and labor unions. Meanwhile, the ILO proposed a compromise between the expectations of domestic workers, employers and governments. The ILO proposed to approve a convention containing general principles and a recommendation with more comprehensive proposals. In 2011, the discussion on acceptance of Convention 189 and Recommendation 201 occurs smoothly. After the vote, in which both documents were approved by an overwhelming majority (434 votes in favor, 8 against and 42 abstentions), domestic workers unfurled a large banner that read: "Now the domestic work for governments: ratify and implement. " The session ended with much of the assembly singing one of the songs that domestic workers singed repeatedly during the conference: "domestic workers have a convention." But, what are the implications of Convention 189? Which are the additional elements contained in 201 Recommendation?

1.3. The basic principles of the Convention

Convention 189 is an innovative instrument in many respects, but particularly as regards the recognition of labor rights of domestic workers as human rights (Blackett, 2014; Oelz, 2014, Albin and Mantouvalou, 2012). The preamble clearly states that the convention is subject to the Universal Declaration of Human Rights, as well as other United Nations treaties concerning human rights and the elimination of all forms of discrimination, prevention and punishment of trafficking in people, and the Convention on the rights of the Child. Also in Article 3, Section 1, which explicitly states: "Each Member shall take measures to ensure the effective promotion and protection of human rights of all domestic workers, in accordance with this Convention."

This position is in line with the strategy that the ILO has been developing since 1998 on the basis of the "Declaration on Fundamental Principles and Rights at Work". This statement aims to establish a dynamic constitutional recognition of labor rights considered fundamental. These rights have then the status of constitutional rights and therefore their recognition and enforcement are facilitate, since they are independent from the technical-bureaucratic procedures of ratification of conventions. All member states, when they accept to be part of the ILO must insure the respect of the ILO constitution and the rights inscribed on it. Convention 189 reinforces that commitment. In Article 3, Section 2, these fundamental rights are listed: "each Member shall, with regard to domestic workers, establish the measures provided for in this Convention to respect, promote and realize fundamental principles and rights at work, namely: a) freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labor; c) the effective abolition of child labor; d) the elimination of discrimination in respect of employment and occupation. What is expressed in this article, rather than a technical issue, it represents a legal tool that associations of domestic workers can use to demand the implementation of Convention 189 in national regulations.

In legal and conceptual terms, another key element of Convention 189 is the recognition of domestic work -at the same time- as a job "like no other" as a job "like any other". This long-discussed difference, it is expressed in the 189 Convention in the form of complementary characteristics (Blackett, 2004, 2014). Normally, these notions of domestic work were thought of as opposite positions. The fact that domestic work was considered as work "like no other" is follow by the establishment of special labor regimes, often with restrictive rights. This is for example the case of the Statute of domestic service established in Argentina in 1956 by Decree-Law 326. By contrast, the definition of domestic work as work "like any other" involved the incorporation of domestic workers to the General Labor Regime or Labor Code, and therefore the recognition of the same rights enjoyed by salaried workers. Convention 189 and Recommendation 201 present a collection of labor and social rights, while equating the position of domestic workers to other workers, especially protecting their particular characteristics.

Among the measures that equate the position of domestic to that of other workers, there are: 1) the regulation of working time; 2) the mechanism of wage determination; 3) access to social security; and 4) the ability to organize themselves in unions. Among the measures that take into account the peculiarity of this activity are: 1) the regulation of the situation of many migrant domestic workers; 2) protection of children developing this activity; and 3) protection in the workplace.

1.3.1. Working time

In order to put them in the same position in terms of labor rights of "any" employee, one of the high points was the regulation of working time. The multiplicity of ways in which domestic work is carried requires different types of treatment of working time. That is why establishing a comprehensive approach that may include all cases it was presented as the major technical challenge, but also a political challenge within the International Labour Conference. As formulated in the report that set up the basis for drafting Convention 189 and Recommendation 201, working time in the case of domestic work seems to have "no limits" (ILO, 2010). According to ILO data, about 60% of domestic workers work without a maximum limit of weekly hours, contractual or statutory established (ILO, 2013: 60). Contrary to what happens in other activities, due to the workplace characteristics (home and workplace), the distinction between work and non-work time becomes uncertain (McCann and Murray, 2010). This situation is less clear in the case of workers who live in their employers' homes. The question is how to define working time and, especially in which way it is possible to limit the disposal of domestic workers in that mode of employment (Berlser and Tomei, 2011). In the case of workers who do not live in the employer's home, either working under a part-time basis (half day or some hours), work does not seem to be defined in relation to time, but in relation to the tasks performed in a specific time. Especially in the case of workers who perform their activity when employers are not at home, there is a strong pressure regarding the obligation to complete the assigned tasks, even if that obligation exceed the number of hours paid or engaged by contract.

As reported by Martin Oelz, at the time of the discussion in commissions "many delegates supported equal treatment for domestic workers regarding working time, but others argued that the context of domestic work was different from other sectors therefore, the principle of equal treatment was not appropriate "(Oelz, 2014: 160). Finally, Convention 189 translates, in the article 10, the compromise reached: "Each Member shall take measures to ensure equal treatment between domestic workers and workers generally in relation to normal working hours, overtime compensation, periods of daily and weekly rest and paid annual leave, in accordance with national legislation or collective conventions, taking into account the special characteristics of domestic work ". They then set minimum, as a weekly rest period of 24 consecutive hours, or the need to consider the hours of availability and working hours. Recommendation 201 raises some clarifications. The first is that "should accurately record hours worked" (Article 8). To point the exact record of hours worked, in Article 9, it is proposed to undertake a collective assessment of the best way to establish them. This issue should be resolved in a dialogue between representatives of workers and employers. In the same article it is advisable to determine a maximum number of hours worked per week, per month or per year; as well as the kind of "countervailing period that the domestic worker is entitled if the normal rest period is interrupted for a period of standby rest" and the payment of these hours. In Article 10 it is recommended to ensure "the right to adequate rest periods during the workday, so they can make the meals and breaks." Article 11 establish fixed weekly day of rest, and the possibility of a collective bargaining to accumulate days off. Furthermore, it states that "collective arrangements should define the reasons requiring domestic workers to provide service during the period of daily or weekly rest" (Article 12). It also specifies that "the time spent by domestic workers accompanying the household members during the holidays should not be counted as annual leave with pay of these workers" (Article 13). This is critical because it runs counter to the implicit rules governing domestic work, and it contradicts customary rules (Blackett, 2014: 785). In all cases, these recommendations must be consistent with existing national regulations.

1.3.2. The fixing of wages

Numerous investigations, conducted in various countries have shown that domestic workers receive wages well below the national minimum wage or minimum wage of service sector. In most cases, this is because the definition of working conditions is the product of a personal negotiation between the employer and the worker. In this negotiation, the difference in terms of bargaining power of each party becomes apparent (Blackett, 2014). Therefore, the intention of the ILO was to reinforce what had already been established in Convention 131 on Minimum Wage Fixing (1970). This convention, like all others, allows the recognition of flexibility clauses that allow the exclusion of certain types of workers. In many countries, these clauses had been used to exclude domestic workers. Convention 189, Article 11 states: "Each Member shall take measures to ensure that domestic workers enjoy minimum wage regime, where such coverage exists, and that remuneration is established without discrimination grounds of sex ". This right is subject to the existence of a minimum wage system locally, and of course, the dynamics of fixing this. That is, if the minimum wage is set by collective conventions or by a National Minimum Wage Commission.

1.3.3. The right to social security

From the perspective that recognizes that domestic work is "a job like any other" it is necessary to ensure that all domestic workers have access to social security system. Article 14 of Convention 189 stipulates that: "any Member, duly taking into account the specific characteristics of domestic work and acting in accordance with national law, shall take appropriate steps to ensure measures that domestic workers enjoy conditions not less favorable than those applicable to workers in general with regard to the protection of social security, including with respect to maternity." While the right to social security was recognized in Convention 189, because the way where social security systems are organized in each country it is different, the ILO proposes the inclusion of domestic workers into the national systems. In Recommendation 201, Article 20, states that "in accordance with national legislation", member states should propose "means to facilitate the payment of contributions to social security, including for domestic workers employed multiple employers, for instance through a system of simplified payment." The aim here is to ensure the availability of rights from the simplification of the participation of domestic workers in the social security system.

1.3.4. The right to organize themselves

The right to organize themselves in unions is one of the elements on which Convention 189 puts all his attention. This fundamental right appears in the presentation of the convention, and it is also included indirectly in almost every chapter of Recommendation 201 where it is recommended that decisions be made on the basis of social dialogue. Article 3 states that domestic workers enjoy "freedom of association and the effective recognition of the right to collective bargaining". Recommendation 201 proposes some strategies for the effectiveness of this recognition (Article 2). The first is to "identify and eliminate any legislative or administrative restrictions or other obstacles to the exercise of the right of domestic workers to establish their own organizations or to join workers' organizations of their own choosing." The second is to develop measures to " strengthen the capacity of organizations of workers and employers." The Recommendation 201 also proposes to define issues related to working time, safety in the workplace, working conditions of migrant workers, labor inspection, and the collection of statistical data. According to this recommendation, members must "consult the most representative organizations of employers and workers, where such organizations exist." Therefore, in Recommendation 201, the consultation of the various actors appears as a prerequisite for defining different aspects of working conditions.

1.3.5. Protection in the workplace

Protection in the workplace appears as a central point and the most difficult to resolve. This is basically because in this particular case two different issues are combined. The two of them are rooted in the perception of domestic work as a non-work activity, as a "help" (Devetter and Rousseau, 2011). Since domestic work is hardly seen as "work" or a job, the employer's home is rarely thought as a workplace. Therefore, the question of the conditions in which domestic work can be performed without involving risks for domestic workers is

invisible. Employers think their homes are safe to live, and therefore it is not obvious why their homes can be unsafe for a person working there. That is why Convention 189 provides in Article 13 that "all domestic workers are entitled to a safe and healthy environment. Each Member shall, in accordance with national law and practice, should adopt effective measures, taking due account of the specific characteristics of domestic work, to ensure the safety and health at work of domestic workers." In the same article, it is clear that each state shall take the necessary measures to enable the progressive implementation of this regulation, in accordance with the associations of employers and workers. Specific strategies that member states can take to ensure the protection in the workplace are set out in Recommendation 201. Two complementary strategies are the development of mechanisms for preventing accidents, and the development of training programs and campaings for safety and health at work. Another strategy that is aimed at employers is that the state should "provide advice on safety and health at work, including on ergonomic aspects and protective equipment" (Article 19). Finally, Recommendation 201 proposes an inspection system to verify working conditions, and a system of monitoring of workplace accidents in order to prevent risks. Both documents point out the need to seek alternatives to prevent accidents in the workplace.

1.3.6. The situation of women migrant workers

The situation of migrant workers was an important element in legitimizing the idea of establishing an international regulation on domestic work. This interest in protecting migrant workers is clearly reflected in Convention 189 and Recommendation 201. First, in the preamble to the Convention 189appear a set of ILO conventions concerning the regulation of working conditions for migrant workers (Convention 97 of 1949 and Convention 143 of 1975). In Article 8, 9 and 15 of Convention 189, there are measures to protect migrant domestic workers from abuse by employers. Among them is the requirement of an employment contract "that is enforceable in the country where workers will serve" to include conditions of employment; migrant workers "are entitled to keep their travel documents and identity", as well as ensure that it is possible to investigate complaints of domestic workers regarding international placement agencies. In all cases, the ILO recommends that fundamental rights must be guaranteed to migrant workers through bilateral agreements. Recommendation 201 also includes portability of social rights on the basis of these agreements between member states.

1.3.7. Child protection

One of the characteristics of domestic work that appears repeatedly in the discussions is the protection of child labor. In many countries, particularly in the global South, domestic work is performed by children, which is why this instrument of international law emphasizes the protective measures concerning these workers. First, the Convention 189 reaffirms the existing conventions for protecting child labor; ie. Convention 138 on Minimum Age (1973) and Convention 182 on the Worst Forms of Child Labour (1999). While the ILO through legal instruments cannot have direct influence on the minimum age established in each country, it stresses the need to protect the right to education of those workers in school age. Recommendation 201 established certain kinds of protections such as limiting working hours,

allow contact with their families, prohibition of night work, limiting the physical and psychological demands, and strengthening mechanisms for monitoring their working and living conditions (Article 5).

1.3.8. Scope of application of Convention 189

But to whom this convention applies? Regarding its scope, Convention 189 provides a generous definition of domestic work, however also include some exceptions. In the second article, it states that Convention 189 " applies to all domestic workers." However, the definition of domestic worker includes "every person, male or female, engaged in domestic work within an employment relationship". The Convention makes explicit what is meant by "domestic work", but the notion of "employment relationship" is not established. The first article states that domestic work is the "work done in a household or for a household." But, the notion of "employment relationship" has to be interpreted in terms of the features with which it is defined in Recommendation 198 of 2006. This means that excluded workers working as self-employed workers or independent service providers. According to some reserchers, this is a major limitation of the definition of scope since left out of the regulation all domestic workers who are located in those gray areas develop between employment relationship and a genuine independent contractor relationship (Oelz, 2014: 154).

However, this is not the only exclusion in Convention 189. Explicitly, the first article stipulates that "a person who performs domestic work only occasionally or sporadically, and not in a professional basis is not considered a domestic worker". Therefore, this workers falls outside the scope of Convention 189. This is a sensitive point for two reasons. On the one hand, because that provision does not take into account changes in the way in which that activity takes place. In recent decades it is seen that in different parts of the world, a decrease in live-in domestic work and a steady increase of domestic work for hours are observed. While the model of domestic work under a scheme of part-time for the same employer remains predominant, many workers work by hours for different employers. In some cases, even if they work a few hours a week, the activity carried out for these workers is their main activity since much of the household's income depends on their work. Furthermore, this exclusion of labor law from those workers doing domestic work or care "only occasionally or sporadically" authorizes -more precisely legitimate- the informality of certain modes of integration into the labor market. For example, the abuses committed in connection with the "filles au pair" -model of babysitters so common in Europe- or the "girls in the care of families" -model quite common in some countries students Africans- are completely invisible, as these workers are outside the legal framework proposed by Convention 189. Consequently, this exclusion, the ILO admits that under certain circumstances it is not possible to give a legal framework for this activity. In this sense it is problematic the vagueness of the notion of "occasional or sporadic". What is the minimum number of hours after which it is considered that it is "a professional occupation"? The answer to this question then is left to each country, depending on the overall regulation of the labor market and, secondly, of cultural norms that structure this activity.

Finally, Convention 189 states like many other conventions of the ILO which are called "flexibility clauses". In the second article, second section, it states that: "Each Member which

ratifies this Convention may, after consultation with the most representative organizations of employers and workers as well as organizations representing domestic workers, where such organizations exist, exclude wholly or partly from the scope of: (a) categories of workers for which other protection that is at least equivalent is provided; and (b) limited categories of workers in respect of which special problems of a substantial nature "arise. As in all cases where a State wishes to apply the exception clause, following the provisions of article 22 of the ILO Constitution, shall submit a report in which he explained the reasons for the exclusion of a particular category of workers and "specify all measures that have been taken with a view to extending the application of this Convention to the workers concerned". Obviously, this flexibility clause applies only to cases where exclusion jure -that is to say, specified in the law-and not when de facto exclusion occurs because of weak institutional provision of the provisions of law.

As can be seen from the analysis of Convention 189 and Recommendation 201, some rights are more widely expressed and other more concisely. Therefore, you may think that the former allow more room for interpretation by national states. This would result in different ways of translating the same rights. In the case of the latter, you can expect new regulations or implementation mechanisms tend toward converging positions. In either case, the existing regulations and rules of the custom function as limits on the translation of these new instruments of international labor law on national labor regulations.

2. THE DIFUSSION OF LABOR STANDARDS

The second time in this broad process of producing labor standards is the diffusion of labor standards. Global diffusion theory provides a number of conceptual tools to analyze how different objects (policies, ideas, regulations, technology, etc.) move from one place to another. This theory arises in the field of sociology in the 80s, based on the pioneering work of Paul DiMaggio, Walter Powell (1983), John Meyer and David Strang (1993). The issue that mobilizes these authors is the verification of a certain convergence in institutional terms. "What is it that makes organizations are so similar?" (DiMaggio and Powell, 1983: 147). In that 1983 article, arguably the opening article of this theory, DiMaggio and Powell propose different diffusion mechanisms for explaining the similarity between organizations in a global context of intense exchanges and strong interdependencies between countries. Since 2000, this question is analyzed by many political scientists who focus on investigating the relevance of different mechanisms of diffusion, in different national contexts and in relation on various objects. Their analysis focuses primarily on the study of public policies and political regimes, and the debate is structure around four main diffusion mechanisms: coercion, competence, learning and emulation. Coercion is defined as the imposition of a policy by a powerful international organization or countries with greater weight on the world stage. The competition is related to the influence of some countries over others in trying to become attractive to foreign investors. One of the assumptions of this theory is that decisions relating to the different types of policies that a country adopts are influenced by what the countries are presented as competitors in a particular market. The mechanism "learning" is observed when a country (or city) taking the experience of other countries as a model developed certain

policies at the local level. Finally, emulation is the mechanism put in work when a country copies these policies already implemented in another country based on their characteristics and not on their factual consequences (Simmons, et al, 2006). In the analysis of the spread of Convention 189, or any other ILO convention, none of these mechanisms seem to contribute to this process exactly. However, this theoretical perspective provides us with some very interesting conceptual tools to understand what happens between the time of production of labor standards and the time of local translation thereof.

Among them we can highlight the analysis of diffusion conditions. They are defined by three key elements: the institutional context, actors involved in the process, and what accompanies the object of diffusion -what some authors call the "companions" (Howlett and Morgan, 2010). The institutional context is constituted by all institutions participating in the dissemination of a policy (Klingler-Vidra and Schleifer, 2014). These institutions can be thought of as media, and analyzed the distribution channels that are established within them. During the process of diffusion, different actors may intervene at different moments. Some may promote the spread of a certain policy, while others may hinder it. Within the group of actors are the internal stakeholders, external actors, and what some authors have called "actors in between" (Graham et al, 2013). The internal actors are agents that are intended, and / or the mission to spread a particular policy, or in this case an instrument of international labor law. External actors are those who in the reception venue will facilitate communication and dissemination of information on particular policy or a particular regulation, and from there contribute to their legitimacy. The so-called "actors in between" consist of "think tanks", academics, research institutes, media, intergovernmental or nongovernmental organizations (Graham et al, 2013: 687). The third element that contributes to the diffusion process has been presented from different metaphors as "companions" (chaperons), such as vehicles, as "packages" such as labels, including as a process of "theorizing" (Strang and Meyer, 1993). What these different metaphors are trying to account is the conceptualization, representations, meanings that accompany the shift policies or regulations. These companions or labels are not just ideas that travel at the same time as the objects that accompany (policies, regulations, technology, etc.), but are the condition of its spread and the basis of its legitimacy at the point of arrival.

Convention 189 and Recommendation 201, as instruments of international labor law, are specifically aimed at influencing the local production of domestic regulation. Therefore, the diffusion process is central to achieve that purpose. While the ILO structures much of that process, another part results from the intervention of various actors, both governmental and non-governmental external to the organization. In the case of ILO Conventions, it is clearly a kind of institutional diffusion; ie. the structure of the diffusion process will be defined in terms of the institutional structure of the ILO, internal actors and "in between" the ILO to convene, as well as about the way in which the ILO packaged these instruments as broader principles or concepts.

In this section we will focus on analyzing the various elements of the diffusion process of Convention 189 and Recommendation 201. The objective of this analysis is to provide some elements to try to answer the question: how, the process of diffusion of a regulatory

model (ie the way in which this process structure) affects the translation of this model at the local level?

2.1. Institutional Diffusion

The diffusion of Convention 189 represents a very clear process of vertical diffusion of regulatory models (Forsberg, 2014). When we analyzed exclusively the process of institutional diffusion, that means the way in which the ILO structure the transfer of regulatory models to member states, it is possible to recognize two different modes of diffusion: one call "techno-bureaucratic", and the second consisting on "promotion campaigns". Both cross, in different ways the institutional structure of the ILO.

The "technical-bureaucratic" channel of diffusion involves two different bureaucratic procedures. The first has to do with the process of ratification of conventions, and various assessments by ILO experts about the way in which a specific convention must be implemented. The second procedure involves the various agencies in charge of monitoring the implementation of conventions. These agencies regularly evaluate the manner in which the conventions have been implemented and they make recommendations to member states. The "technical-bureaucratic" channel primarily involves areas of "government" and "monitoring" of the ILO. Within the area of monitoring, this channel involves three sub-agencies of the Monitoring System Standards: a) the expert committee and the implementation committee; b) the committee of special procedures where general and complaints relating to the violation of freedom of association are received; c) the team of technical assistance and training.

The second institutional diffusion channel is specifically established to promote conventions. The ILO organizes various extensive campaigns by involving local stakeholders in order to either promote the ratification of the conventions, either to promote the implementation of these once were ratified. In these stages of evaluation of local actors-politicians, lawyers, etc. involved in discussions concerning the manner in which locally can translate international labor law instruments are incorporated. Most of these campaigns are carried out in cooperation between the International Labour Office in Geneva and Regional Offices. In the case of Convention 189, two different promotional campaigns were conducted. The first was called "12 x 12", and aimed to achieve twelve ratifications of Convention 189 for the first year. This was a campaign associated with workers associations to promote the convention, particularly the International Domestic Workers Network and regional confederations of domestic workers unions. Although it was an intense campaign, did not reach its goals because for the first year only three countries were ratified Convention 189: Uruguay, Philippines and Mauritius. The twelve ratifications were reached only in March 2014 with the ratification of Argentina.

The second campaign in which Convention 189 is included, even if as part of a set of legal instruments, is the campaign for the promotion of decent work. Decent work (as will be developed later) currently represents the main philosophy of the ILO, and therefore established regional offices in different bases of DWA have. Since they both information campaigns, joint activities with workers' organizations are performed and events are organized in collaboration with relevant ministries; information manuals for both workers and

employers are produced; information on cases in which the principles of decent work occurs are not checked.

2.2. The actors involved in the diffusion process

The actors involved in the diffusion process of Convention 189 are numerous and varied. Following the classification proposed by Graham, Shipan and Volden (2013), there are three types of actors: a) internal; b) external; and c) "in between". Among the internal actors are agents ILO belonging to different areas. As mentioned, on the one hand, there are the agents involved in the monitoring area, and secondly, agents campaigns area and regional offices. Regarding external actors, the main actors are politicians or technicians mainly been in the ministries that are responsible for the regulation of labor, social security and migration, and legislators. In the case of Convention 189, in the three countries were different political parties which took the campaign to legitimize this instrument and the proposed legislative renewal. It was not a particular political party that assumed the diffusion of the Convention at the national level but different formations echoed the need to promote decent working conditions for domestic workers were made.

Perhaps in the case of this particular convention, the most innovative institutional diffusion process analyzed here was the participation of groups of domestic workers. As we stated, the International Domestic Workers Network, and regional confederations and national associations played a key role in the production of this regulatory model. The International Federation of Domestic Workers, as well as WIEGO (Women in Informal Employment: Globalizing and Organizing) have regularly organized international events to promote decent work for domestic workers, often in partnership with the ILO. The International Federation of Domestic Workers keeps a campaign called "ratify C189", while seeking the consolidation of networks of online information to assist domestic workers to claim their rights. The site of the Federation is an information portal that allows real time the different steps that occur in every part of the world in recognizing the rights of domestic workers. This site has a dual function, on the one hand, serve as an input to the mass media, and on the other, an effect of cohesion among member associations. From this perspective, progress in the fight for the recognition of domestic workers' rights taking place somewhere in the world, become the same incentive and an example, in terms of strategies for other associations. WIEGO meanwhile, has a more academic profile. The work of this NGO focuses on promoting research on women in the informal market, and regularly organizes major events in different locations.

Nationally, various associations of workers, in some cases domestic workers and others, such as Argentina, migrant workers also contributed to the promotion of Convention 189 in particular, and the rights of domestic workers in general. The relationship between associations of workers and the diffusion of the Convention is a dialectical relationship. Associations of domestic workers were the pillars of the diffusion of Convention 189, while during that campaign were strengthened as institutions. In the Philippines, for example, the movement of workers arose during the production process of the Convention, continued to be active in its promotion. In April this year, was established as the first union of domestic workers from the Philippines. This movement began with the support of LEARN (Labor

Education an Research Network) is a Philippine NGO whose main objective is to educate workers on labor issues, seeking to reinforce the collective of workers and contribute to the awareness of their rights. The commitment of the NGOs and the Philippines working with the campaign to promote Convention 189 was the basis on which it was possible the founding of the union of domestic workers.

From the beginning, different teams of researchers were working with these associations of workers, some of them associated with the institutions that participated in the production of Convention 189 and ILO as WIEGO, other autonomously in different national spaces. By way of example, the analysis of the programs of the conferences organized by the "Regulation of Decent Work" ILO project realizes how domestic investigations were gaining ground. This project seeks to encourage and promote research on the integration of labor to economic growth strategies rights, and intends to create a network of researchers in different parts of the world. Every two years a conference is organized on the premises of the ILO in Geneva, in which he discusses the ways of producing labor regulation that achieves the goal of "decent work" for all workers. In the 2011 conference, including 134 researchers, only 6 were studying the situation of domestic workers, one promptly analyzed Convention 189. Two years later, in 2013, the same number of studies on domestic work is observed. In this case the works were collected into two panels: one on domestic labor and another on care work. The three country cases regarding domestic work are those of Brazil, India and Spain. Regarding care services research on Australia, Korea and Belgium they were presented. At the conference scheduled for 2015, provided the fifty panels, ten panels are exclusively devoted to domestic work. The topics that intersect the various panels are new regulations, social protection, and the situation of migrant workers. Four of the ten panels focus on domestic workers organizations. There is also a panel focus on Convention 189, with researchers who actively participated in the pre-meeting approval of the convention involved. There are also numerous presentations on various aspects of the regulation of domestic work outside these panels. Of the 209 papers presented there are 43 focused on domestic work. In 2011 and 2013, studies presented at the conference of the Network on Regulating for Decent Work for domestic work accounted for only about 5% of all presentations. By contrast, in 2015, they represent over 20% of the total. It notes that in any of the calls, domestic work appeared as a topic proposed by the organizers. The overrepresentation of research on domestic work in this conference organized by the ILO is very significant. Shows, firstly, that there is growing interest in the scientific community to study the regulatory changes regarding domestic work or discussions about the possibility of these changes in different countries. On the other hand, it realizes the interest of the ILO in publicizing these investigations and provide a space for discussion that is at the same time, a space for promotion of Convention 189.

2.3. Under the label of "decent work"

A third condition diffusion presenting theories of global spread is, as noted, that the policies and regulations that are broadcast are packaged or labeled, or accompanied by more general concepts that serve their understanding and public legitimacy. Convention 189 and

Recommendation 201 of the ILO were "wrapped" or "packaged" into what appears as the ILO Decent Work Agenda, and labeled as "Decent Work for Domestic Workers". This is the name given to the report which was discussed at the International Labour Conference in 2010, and also the name given to Convention 189 (Convention on decent work for women workers and domestic workers). What implies "decent work" label?

The Decent Work Agenda can be understood as meaning in the context of these two legal instruments are inscribed, through which flows the new regulatory model whose main objective is to provide a legal framework for this type of work to the time seems to have resisted all regulatory schemes. This new concept, which is presented today as the fundamental value that defines and guides the role of the ILO, marks a fundamental change in the policy of this institution. Since the second postwar period, more precisely since the Declaration of Philadelphia in 1944, the ILO has focused on promoting a standard form of employment to which labor rights and social protections are associated. This standard form of employment, built on the industrial model, is the legal model that the ILO has sought to extend to all areas of activity, in all member countries. Based on an evolutionary idea of modernization and development, as noted, the homogenizing ILO mission was built through the definition of "standards" contribute to bringing the various positions in the labor market to that ideal job protected.

In the late 90s, the new international division of labor and the persistence of "people on the periphery of formal systems of employment", highlights the crisis of this paradigm. One hand, that questions the role of the ILO in international governance, and on the other, its ability to extend the recognition of labor and social rights. It is in this context that, seeking to maintain its centrality in defining regulatory frameworks of labor, the ILO calls for a model base, not on regulatory standards, but on moral and ethical values. As defined by the Director of the ILO, Juan Somavia, at the International Labour Conference 2000: "Decent work is not defined in terms of a fixed standard or monetary level. It varies from country to country. But everyone, wherever he may be, has the sense that decent work means in terms of their own lives and in relation to their own society. "

Decent work is then thought of as "a work that meets the fundamental aspirations of the individual, not only in terms of income but also in terms of safety for him and his family, without discrimination or vexatious impositions, and that gives equal treatment women and men ". The concept of "decent work" is not presented as synonymous with "labor standard", but rather as the overcoming of these regulations, limited and ineffective idea. "Decent" adjective qualifying defines it-and at the same time the new model of work that will be subject to policies promoting the ILO, gives rise to a plurality of sense because it combines at the same time, a universalist vision of "good job" with a relativistic vision. On the one hand, the notion of "decent work" is based on a universal concept of human dignity, which appeals to a treatment of labor rights as if they were human rights (Mantouvalou, 2006). Moreover, it also seems supported by a cultural relativism that confronts the "regulation of the labor standard" with a multiplicity of locally-because legitimated- legitimate conceptions of what a "good job" is in each region of the world.

This moral imperative takes a legal form through the definition of a minimum level of protection. Some authors believe that this translates into the facts in accepting different levels of statutory rights and social protections (Vosk, 2002). Which would lead to the Member States to abandon policies tend to generalize and standardize labor and social protections. Other authors consider that this is a limit below which no work can be social-and legally-accepted. That means that it is necessary to develop policies that seek to improve the conditions of most vulnerable workers. Between them, the intermediate positions are multiplied. In any case, what is certain is that this more elastic and indeterminate decent work model enables the standardization of non estadarizables soft forms of work, as domestic work.

2.4. Between production and translation of Convention 189: the diffusion

How does the process of diffusion of Convention 189 influence the translation of it locally? Two constituent elements of the diffusion process will condition the translation: on the one hand, the active participation of organizations of domestic workers; on the other, the labeling in terms of "decent work".

In the three local scenarios, organizations of domestic workers will have a very active role both in the process of legitimation of rights recognized in Convention 189, as in the discussions that take place in the political arena. To some extent, they settled into a role of citizen oversight for the translation of the Convention into local regulations. Even if that role was not always sufficient to insure respect of some critical points.

For its part, the concept of "decent work" as a fundamental right of every individual was a key to present the claims of domestic workers tool, not as claims of a sector but as a defense of human rights. This point was crucial to gain legitimacy in public opinion, as domestic regulation demonstrates the strong tension and social distance between the parties engaged in this labor relation. However, beyond the paternalistic and moralistic interpretations of this idea, it represented an indisputable argument. The inalienable right to decent work was a very powerful engine for the different actors involved in the production process of labor standards at the local level, particularly in third moment: the translation.

3. THE TRANSLATION PROCESS OF CONVENTION 189

In the literature on the diffusion of regulations, particularly in the field of comparative law, the central question is: to what extent the "import", "transplant" or "transfer" of laws contributes to the production of regulatory changes and innovations in the reception point? For some authors, the transplant itself is an innovation for the legal system that is at the point of arrival of the diffusion process (Watson, 1974, 1983.1996, 1995). This is the answer given by the canonical version of the theory of legal transplants, often criticized for its simplistic and mechanistic approach (Perju, 2012; Sacco, 1991). Others argue that the broadcasting regulations (or even more comprehensive regulatory models) produce a large convergence between the legal systems (especially between legal families), leaving little room for innovation (Garupa and Ogus, 2006). A third position holds that, given the fact that external regulations act to some extent as "irritants", transplantation requires "adjustments" in the legal

system of destination, and that opens the possibility to produce innovations (Teubner, 1989, 1998, 2002 Orucu; Peerenboom, 2013). The set of national regulations is presented as a "system" having some consistency. For some of the authors who share this third position, legal transplants contribute to hybridization of national legal systems (Miller, 2003; Wiener, 2001; Forsyth, 2006).

In this debate, our position is closer to that of the third group. However, far from considering national legal systems as coherent systems (consistent), we conceive them as heterogeneous assemblies, which are the result of extensive sedimentation process in which new laws partially overlap with existing regulations, building areas of tension and conflict. This is relatively evident in the area of labor regulations. In most national systems both in developing countries as in developed countries, there is a core set of regulations designed to formalize the typical form of employment, while a heterogeneous group whose purpose is structuring marginal positions in the job market like for example, atypical forms of industrial employment, rural work, self-employment and domestic-service. Following the structure of the legal field, the "importation" of regulatory models in a specific area necessarily change the regulations in the other. This is the case with the regulation of domestic work, the reform of the labor questions the whole legal system.

In order to analyze the last time during the production of labor standards, our proposal is to take up the notion of translation at the same time, as a metaphor for the process of incorporation of international labor law on local regulations, and as a methodological tool. This notion appears in literature in 2004, in two different fields: Comparative Law and Historical Institutionalism in sociology. In both cases, the concept of translation appears in confrontation with the dominant theories in each field. In the case of Comparative Law, the notion of translation appears as an alternative to the metaphor of transplant in the theory of Legal Transplant (Langer, 2004). In the second case, the translation appears as a mechanism explaining institutional change. This mechanism is presented as the mechanism forgotten or ignored by the global diffusion theory (Campbell, 2004: 80).

The theory called "Legal Transplants" develops from two major publishing texts in which the idea of transplantation appears as a metaphor that explains the process of regulatory change. Since at that time the organ transplants were a recurring theme in the media, it seems strange that the same metaphor appears in both proposals (Cairns, 2013: 644). One of the founding texts of this theory is the conference Sir Otto Kahn-Freund at the London School of Economics in 1973 (Kahn-Freund, 1974), and the other is the book entitled "Legal Transplants: An Approach to Comparative Law" Alan Watson (1974). Although these authors did not agree on the way we conceive the nature of the transplantation process, the notion of transplant becomes central to describe the process of importing foreign laws in the legal system receiver. During the 80s, this metaphor became a common space within the vocabulary of comparative law, sociology of law and legal history studies. From 2000, interconnectivity of different countries around the globe rehabilitate this old theory of transplant of standards (Graziadei, 2009). The criticism directed various authors to the theory of legal transplant is mainly concentrated within the limits set by the metaphor itself, which seems to contain an explanation of the regulatory process of transferring models from one country to another (Teubner, 1998; Orucu 2002). Particularly, the transplant is presented as a

process of "cut and paste" that ignores the changes in the regulatory model for the transfer process between two legal systems. The metaphor of translation appears as a heuristic tool for understanding "the transfer of legal institutions from one system to another as the translation from one sense to another system" (Langer, 2004: 5). The methodological consequences of using this metaphor are mainly three. First, to analyze the differences between the systems of meaning; that is, between the legal system and the legal system starting arrival. Second, the intervention of the "translators" is underlined. In Comparative Law, the role of translator is exercised by judges, legislators, and lawyers in general. The third element is the language, which in this case is the legal system at the point of arrival.

In the case of Historical Institutionalism, the metaphor of translation appears as necessary against leaving out the metaphor of diffusion (Maman, 2006). According to Campbell, the diffusion theory has failed to explain why the principles and practices that travel from one place to another are implemented differently depending on the social and institutional contexts of arrival. "More specifically, new ideas are combined with the institutional practices that already exist, and then they are translated into local practices in different degrees and ways that involve a process similar to bricolage" (Campbell, 2004: 80). For this current of sociology, conditions of the reception and the translation depend on local institutional contexts, conflicts of power, leadership, and state capacities. However, the way in which Historical Institutionalism present translation of regulatory models focus on the question of the transported object and stakeholders, rather than the process of translation from a holistic perspective. Among the issues raised by different authors of this perspective, Camptell highlights some central questions. "When the translation can be done quietly and when it is answered? When a translation is related to a substantive change that with a symbolic change? What are the conditions under which the translation is performed if can produce more successful results? What institutional type elements are more likely to be translated with major changes and which tend to diffuse without major changes? "(Campbell, 2004: 85). In this case the metaphor of translation has other implications in terms of methodology. While the figure of the translator appears, it is clearly not a limpid technical role, but crossed by power struggles, where the weight of leadership should be taken into account. As expected, the Historical Institutionalism focuses on two central issues: the institutional context -the set of institutions-; and institutional capacities of the state.

So in these two theoretical perspectives, the metaphor of translation has a huge explanatory potential. It can, at the same time explain the change in the widespread legal order and account of the process in which the change occurs. Our interest in using the translation process as a metaphor of the third stage of the production process of labor standards is mainly methodological. From our point of view, relying on theories of translation, and the way they conceive the translation process, it is possible to distinguish the different elements involved, as well as understanding the roles played by different actors in this process.

The first element, even if it seems obvious, is the object to be translated; that is, the text that is the subject of the translation process. What is important is to understand what the language of the text, and if within that language has suffered any particular encoding process.

In this case, the element to be translated is Convention 189 which, as we stated, has been coded, or packed, in Decent Work Agenda.

The second element is the language, conceived as a system of meanings. In this particular case the language is made up of the legal systems of each country. One might think that there is a grammar defined by the type of treatment that is given to an instrument of international labor law, and a semantic structured according to the existing laws specifically regulating domestic work; and more widely, the labor market and migration.

The third element is the actors, specifically translators. Within this group are technical (politicians, legislators, judges, lawyers, etc.) and lay (civil associations, NGOs, trade unions, workers, journalists, etc.).

The fourth element is what we call general context of interpretation including the socio-political moment in which the translation, the structure of the labor market, workplace culture and what institutionalists called the "institutional context".

Think of the translation process as a heuristic model also enables to imagine the existence of different versions. The translation of a text not necessarily results in a static object, but can be thought of as a version. In this particular case, one may think that translations of Convention 189 currently displayed on local regulations are just the first versions of a translation process that can be extended over time.

In this section we intend to explore some of these elements in the case of the three countries. First, we analyze the relationship between international labor law and national regulations in all three cases. Particularly, we will analyze the strategies of ratification and denunciation of ILO conventions developed by each of the countries under study. Secondly, we will present the difference between the languages available for translation in each country. We will focus on the analysis of the conventions ratified by each country. Thirdly, on the basis of the analysis of five rights established by Convention 189, we will discuss the ways in which these rights appear translated into local regulations. The goal is to understand the practices and challenges behind these translations.

3.1. Local customs regarding the translation of international labor standards

Even if Convention 189 represents a special case within the ILO by the conditions of its production and diffusion, translation is conditioned to some extent by the traditional willingness to translate that present the three countries studied. In other words, the translation of Convention 189 will be conditioned by the way in which historically each of the countries have incorporated labor standards in their own regulations. Although Convention 189 was innovative in terms of production of international labor standards, as well as international distribution, local translation tenses new with institutional inertia in the local treatment that is made of international labor law.

A first element to consider when analyzing the available translate international labor standards are the strategies for the ratification of ILO conventions developed in each country.

Behind each of these strategies can read the commitment of member states to the system of setting international labor standards, as well as the commitment to modify their own regulations following the directives of the ILO (Chau, et.al., 2001). According to Flanagan (2003), the countries with greater willingness to ratify conventions are those for whom incorporating them into their regulations is less expensive because the internationally recognized labor rights are somehow already present in local laws. That is why the ILO is strengthening its campaigns in developing countries for whom the gap between labor rights recognized locally and international labor standards is more significant.

Argentina, South Africa and the Philippines show different strategies regarding the incorporation of international labor standards. While the three countries have ratified the conventions that establish the so-called "fundamental rights", they have shown different interests in their use of international instruments locally. Among the three countries, Argentina is the most ratified conventions (80), Philippines 37 and South Africa 27 conventions. In all three countries, the percentage of conventions in force is over 80%, and 85% in Argentina and South Africa. These numbers need to be read in the context of the regional strategies of translation of international labor standards.

An analysis of the number of ratifications and denunciations in all the member states of the ILO, shows that ratification strategies and reports vary greatly from region to region. Indeed, since the ILO emerged in Europe and focuses his early years in the regulation of labor relations product of industrialization, the countries of Central Europe are those that show higher levels of ratification. 34% of countries have ratified more than 100 conventions; 39% have ratified between 80 and 100; and 26% between 60 and 80. These countries also show higher levels of reporting of conventions that were not properly completed. This is clearly related to the number of ratified Conventions, but especially with the power of unions and civil associations to lodge complaints with the ILO. Among the first group, denounced the conventions are between 30 and 40; the second between 20 and 30; and the third between 8 and 15.

Argentina, in Latin American countries, is part of the 26% of countries that ratified conventions; ie ratified more than 80 conventions. There is another 26% between 50 and 80 ratified, ratified by 30% between 30 and 50, and 16% to ratify less than 30. Under the conventions reported in the first group were reported between 9 and 14 by country. Argentina, within this group, is the country that has claimed breach conventions (22 conventions). In the second group, allegations are between 4 and 10 conventions by country, the third between 2 and 5; and last, between 1 and 2.

South Africa, meanwhile, is among the second group unless ratified conventions and reporting levels correspond to the levels of that group. In Africa quite varied strategies are observed. 15% of the member countries ratified ILO Conventions 50 and 66, and reported between 4 and 8; 19% between 41 and 50 ratified conventions, and reported between 5 and 9; 27% between 31 and 40 ratified conventions and the rate of complaint goes 1-3 conventions per country; 19% between 21 and 30 ratified denouncing conventions between 1 and 3; and finally 21% less than 20 Conventions ratified and still no complaints.

In Asia, three types of strategies are observed. 24% of countries have ratified 30 conventions and 40, and reported between 2 and 6; 38% have ratified between 20 and 29, denouncing between 1 and 2; and 38% have less than 20 conventions ratified without presenting yet complaints. In this regional context, the Philippines is among the countries that have ratified conventions, and within that group, of which more conventions have been reported.
The analysis of the strategies of ratification and denunciation of Conventions highlights the differences between the three countries studied. However, international law plays an important role in all cases. The case of South Africa away from the other two national cases, since it is among the countries least ratified conventions and has only reported two conventions. This low level of ratifications has to do with the fact that South Africa has a constitutional clause that favors international law in the interpretation of each court case. Instead, both Argentina and the Philippines, international labor law appears to have an important place in regard to political commitment to incorporate local regulation. Both countries are among the groups of countries in their regions most have ratified conventions, and also being those most conventions have been reported. Complaints to unfulfilled conventions, although it is not proof of respect of obligations owed to the ILO, it is also a sign that international labor standards play an active role in these countries. International labor standards established in the various conventions are used as tools for claiming rights by the various political actors, groups of workers or civil associations. This means that around international labor standards has created a dynamic of uninterrupted production of labor regulation. Returning to the metaphor of translation, what is observed is a translation process extended in time, which will result in the production of "versions" of international labor standards.

3.2. Available languages

Translation of Convention 189, as we said above, it will be conditioned by the way in which in each of the countries translate international labor standards. However, ratification strategies and reporting discussed in the previous section, the analysis is necessary to add the type of conventions that each country has ratified.

ILO classified into three types of conventions: 1) core conventions; 2) relative to the government; and 3) technical conventions. Within the latter, you can set other classifications whether they relate to working conditions; procedures relating to social dialogue; regulating the flow of workers; various types of social protections; workers considered vulnerable; and atypical forms of work.

These three countries have ratified the eight core conventions, which are those that establish the so-called "fundamental principles and rights at work", included in the 1998 Declaration; ie freedom of association, the elimination of forced labor, abolition of child labor, and the principle of non-discrimination. Within the conventions concerning the government, these three member states have ratified the Convention on Tripartite Consultation (C144). In addition, South Africa and Argentina ratified the Convention on labor inspection (C81). In the "technical" conventions, only three conventions were ratified by the

three countries. Argentina has eight common with each other convention countries, and among them only have a common convention ratified.

The convention that South Africa and the Philippines have in common is the convention 89 on night work for women (Revised), 1948. Among the eight conventions ratified Argentina and South Africa are:

- C002: on unemployment (1919)
- C004: Night Work (Women) (1919)
- C026: on methods for fixing minimum wages (1928)
- C027: on Marking of Weight Packages Transported by boat (1929)
- C041 (Revised) Night Work (Women) (1934)
- C042: Occupational Diseases (Revised) (1934)
- C155: safety and health of workers (1981)
- C188: on work in fishing (2007)

Including Argentina and the Philippines have ratified are:
- C017: on compensation for accidents at work (1925)
- C023: Repatriation of Seafarers (1926)
- C053: on certificates of competency of the officers (1936)
- C077: Medical Examination of minors -industry- (1946)
- C088: Employment Service on (1948)
- C090 (revised) on night work of minors -industry- (1948)
- C095: Protection of Wages (1949)
- C159: Vocational Rehabilitation and Employment - (1983)

Not all these conventions are considered valid by the ILO and some were left out and others were superseded by more recent ones. Among these conventions, five were updated, five are in interim status, and two pending review.

Within this list by the three countries ratified conventions, only some are related to the rights recognized in Convention 189. On one side are the various conventions on night work for women; other related occupational diseases and safety at work. In both cases there are two nodal points in the definition of the rights of domestic workers. As noted above, one of the contentious and difficult issues to resolve during the preparation of the Convention was the distinction between working hours, hours of availability and hours of rest, and therefore the establishment of maximum and minimum for each case. Another sticking points was the conception of the employer and workplace address. This implied that there highlight occupational hazards in the home and diseases that can be contracted by performing certain tasks, such as loading of heavy objects, or the use of certain cleaning products. The existence of such conventions ratified previously in relation to other workers presupposes at least a starting point to discuss whether that recognition may be extended to domestic workers.

As for those expressly mentioned in Convention 189 as background and rationale of the same conventions, it appears that the three countries under study have ratified very few. The only two Conventions ratified by the three countries are Convention 138 on Minimum Age and Convention 182 on the worst forms of child labor are the fundamental Conventions, including the Declaration of 1998. As we have said, to be included in the Constitution ILO, these fundamental rights do not need to be ratified. Any member state, by the mere fact of

being, is required to include in its national regulations the fundamental principles contained in the ILO Constitution. It is therefore not surprising that these two conventions have been ratified by the three countries.

Regarding the other covenants contained in Convention 189, South Africa did not ratify any. Philippine previously ratified two of them are related to migrant workers. This is a very important point because the Philippines is the major exporter of domestic workers. With respect to Argentina, it has only ratified C156 Workers with family responsibilities. None of the three countries have ratified the Convention on private employment agencies (C181), and the recommendation on the employment relationship (R198).

If we look at other conventions that are directly or indirectly related to the rights recognized in Convention 189, we see a wide gap between the three countries. As expected, being that Argentina has ratified conventions eighty presents a greater number of conventions associated with the rights recognized in Convention 189. However, the difference is not so important. Of the 27 conventions that may be attached to Convention 189, Argentina has ratified nine six Philippines and South Africa one. In the case of Argentina, most have to do with fundamental rights; ie complementary to the right of association and collective bargaining and the protection of minors conventions. It has also ratified various related health at work (C155 and C187) conventions. In the Philippines, most of the conventions relating to migrant workers (C118, C157, C097 and C143), one on the protection of children (C077) and on the protection of wages (C095). South Africa has only ratified Convention 155 on the safety and health of workers.

From this perspective, in relation to what we interpret as grammar, different countries are differently equipped to translate Convention 189 in their national regulations. Regarding semantics also cases are very different. In each country the interpretation of Convention 189 and its translation needs the support of the existing regulation, and it is the product of different times and contexts in which domestic work was conceived differently.

In the Philippines, the regulation of domestic work prior to the enactment of the new law of 2013 was contained in Book III, Title III, Chapter III of the Labour Code. The inclusion of domestic work in the Philippine labor code resulting from an amendment made through a Presidential Decree (no 442.) In 1974. In the case of South Africa, three post-apatheid regulations, structure the rights of domestic workers: the Labour Relations Act 66 of 1995 Basic Conditions of Employment Act 75 of 1997 and Basic Conditions of Employment Act: Sectorial Determination 7, 2002. The latter regulation sets minimum wages according to hours worked and in different regions, plus a set of rights relating working conditions. In the case of Argentina, Convention 189 will promote and encourage the reform statute created in 1956. Since then, the status of domestic service had not been modified. The unique innovations in regulatory terms were incorporated into laws aimed at reforming the tax system. In 2000, 25,239 law allowed the integration of domestic workers who worked between 6 and 16 hours a new "Special Social Security Scheme for Domestic Service Employees", and in 2006, allowed to enroll as independent workers in the regime established by Law 24,977. The translation of Convention 189 will then be limited by previous regulations and the ability of States to modify the provisions relating to the new regulations.

But without doubt, it will be embedded in the idea of decent work covering the whole claims contained in Convention 189 and Recommendation 201.

3.3. Translations in plural

In order to permit comparison to the rights that are afforded to domestic workers and the way in which they appear structured in regulation, we revisit five key elements in the Convention: 1) the scope; 2) the contractual structure; 3) working conditions; 4) remuneration; and 5) social protections. The first point that interests us is to highlight the similarities and differences in the definition of domestic worker and the same activity to understand what kind of domestic workers and local regulations apply. In the second, we will seek to understand what the legal form that the various local regulations established in regard to the relationship of that particular job. This means analyzing the structure of the employment contract and severance conditions. On the third point, on conditions of work, we will focus exclusively on the distinction between working time and non-working time is one of the critical points of the regulation of domestic work. In the fourth, we analyze the way in which the compensation is set by the working time and the tasks performed. Finally, the last point is the analysis of social protection and the relevant legal provisions. In each national case will be analyzed these five elements. In order to understand the way how it is translated in the local regulation quickly retake Convention 189 as provided in Articles 1, 2, 10, 11, 12 and 14 (which were already discussed in detail in the first section).

The aim of Convention 189 is to extend regulation to all domestic workers, without exception. That is why the ILO defines a domestic worker as "any person, male or female, engaged in domestic work within an employment relationship", while "professional occupation"; that is, not "only occasionally or sporadically" (Article 1). In the same article first it defined domestic work as "work performed on a home or homes or for themselves."

Regarding the form of the employment relationship, in this inaugural article, the ILO argues that this is an activity "in the context of an employment relationship". The definition of "working relationship" as we stated, is subject to recommendation 198 of 2006. The recommendation there is no precise definition, but elements are presented that can verify their existence following the technique of "fan indicia ". Specific indications Recommendation 198 proposed in Article 13 are related, on the one hand, the way in which the work is done, and secondly, the way in which the activity is remunerated. Regarding the way in which the work is done, it is established that imply the existence of an employment relationship when the activity:

1. "is performed according to the instructions and under the control of another person"
2. "implies the integration of the worker in the organization of the company"
3. "must be carried out personally by the worker, within specific working hours or at the place specified or agreed by the party requesting the work"
4. "that work is of a particular duration and has a certain continuity"
5. that "requires the availability of the worker"
6. "involves the provision of tools, materials and machinery by the person who needs the work."

Regarding remuneration, Recommendation 198 states:

1. "remuneration is the only or main source of income of the worker"
2. "including payments in kind such as food, housing, transportation, or other"
3. 'rights are recognized as weekly rest and annual leave "
4. the party requesting the work for travel to be undertaken by the worker to perform his work "
5. "no financial risk to the worker."

Domestic work, following the definition set out in Article 1 of Convention 189, covering virtually all features of "working relationship" according to the description given in Recommendation 198.

The specifications concerning working conditions with regard to working time and I do not work are described in separate chapters (9 to 13). Just recover here the elements relevant to the comparison between the cases. Convention 189 provides that any member state must take measures to:

1. "equal treatment between domestic workers and workers generally in relation to the normal hours of work, overtime compensation, periods of daily and weekly rest, and paid annual leave, in accordance with national legislation or collective conventions, taking into account the special characteristics of domestic work ";
2. "The weekly rest period must be at least 24 consecutive hours";
3. "The periods during which domestic workers are not free to dispose of his time and stay home available to respond to possible requirements of their services should be considered as working hours" (Article 10).

Regarding remuneration, Convention 189 states that "domestic workers benefit from a system of minimum wage coverage where such coverage exists, and that remuneration is established without discrimination based on sex" (Article 11). It also states that "the wages of workers should be paid to them directly in cash at regular intervals and at least once a month." Furthermore, "the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind" is authorized. However, this payment in kind may not be less favorable than those generally applicable to other categories of workers. They have to be agreed with the worker (Article 12).

The issue of social protection is also referred in general to Convention 189, since it states that should "ensure that domestic workers enjoy no less favorable than the conditions applicable to workers in general with regard to the protection of social security, including with respect to maternity "(Article 14).

A reading of the various items, which is clearly seen that the ILO, to define the employment relationship as a "working relationship" calls on member states to honoren the "equal treatment", in other words, respect the fundamental principle of non-discrimination inscribed in the Constitution of the ILO. In the joint work between the notion of "like no other" and consideration of domestic work as "other", the ILO particularly reinforces the defense mechanism of this basic principle. Domestic workers are entitled to be treated as "other" employee, which means taking into account the specificity of the task and the conditions in which it is performed. Now, how this imperative results in national regulations?

3.3.1. The Philippines' case: from Kasambahay to workers rights

In the Philippines, the first regulation of domestic work dates from the 70s. In 1974, Presidential Decree no. 422, amending the Labour Code incorporating a chapter on "Using the home helps" (Book III, Title III, Chapter III). This law applies to "all persons providing services in homes in return for compensation." Domestic service is defined as "the service provided in the employer's home, service is usually necessary or desirable for the maintenance of the home, including care of the personal welfare and convenience of the members of the family" (Article 141). According to the Book III, this definition excludes children and relatives living in the employer's home (Sayres, 13). This means that it does not regulate the work of family allowances, or authorize the work of minors. Also in this chapter the duration of the contract-not more than two years, renewables (Article 142) states; the obligation to pay the minimum wage (section 143); the payment for accommodation, food and medical services outside of the minimum wage (Article 144) is regulated; work in commercial, industrial or agricultural enterprises (Article 145) is prohibited; It arises that workers under 18 must have guaranteed conditions to complete basic education (Article 146); also it stipulates that domestic workers must receive decent and sanitary living conditions, adequate food and medical care free of charge (Article 148). In addition to Article 147, it states that domestic workers are entitled to be treated "humanely" without physical violence. Since 1974, the minimum wage was modified on several occasions, most recently through the 7655 Act, 1993.

The new law passed in 2013 was debated in Congress for two years, and was adopted on 18 January 2013. Since then, two legal instruments have contributed to its implementation and provided supplements to this main law. In the first section of the first article the name of the law states: "This Act shall be known as the Domestic Workers Act". This point seems banal but it is extremely important since it will try to erase the name of the previous regulations that were using the old voice "kasambahay" which stands for "slave" in classical social structure of the Philippines. However, in the definition of domestic worker "kasambahay" voice its synonym listed.

In the second section, the status is "committed to respect, promote, protect and fulfill the fundamental principles and rights at work, including, but not limited to, the abolition of child labor, the elimination of all forms of forced labor, discrimination in employment and occupation, and trafficking in persons, especially women and children "(Section 2, paragraph a). The commitment to the principle of decent work is here explicit. In paragraph b) of the same section accession to "the conditions of internationally accepted labor" is declared and the principles established in the Convention lists 189. The new law is thus aligned with Convention 189. Furthermore, in paragraph d) It adds that "the State, protecting the work of women and recognizing the particular need to ensure conditions for safe and healthy workplaces, promote sensitive measures to gender issues in the formulation and implementation of policies and programs affecting the industry Local domestic work. "

The definition of domestic work posed by Law 10,361 is identical to that presented by the ILO, only adds a list of the types of workers engaged in this activity: employee general household, nanny / or (or "yaya"), cook / or gardener / oo Laundry person. As Convention

189, workers who perform this activity on an occasional or sporadic way (Section 4, paragraph c) is excluded. Maintaining what has been stipulated by the 1974 Act, also it excludes those who have an affinity or consanguinity with the employer. Also they fall outside the scope of this Act who, living in the employer's home, have related to home care arrangements or children, and they are completing an educational program. This law defines the employer, as "the person who hires and monitors the services of a domestic worker, and that is a party to the contract of employment" (section 4, paragraph d).

Regarding employment, the law establishes the obligation to establish a contract for pre-recruitment work. It must be written in the language or dialect that both domestic and employer-understand-a worker. The employer must provide the employee an employment contract which must include: "a) the duties and responsibilities of domestic workers; b) the period of employment; c) compensation; d) authorized deductions; e) specification of working hours and overtime; f) rest periods and authorization for licenses; g) food, shelter and medical care; h) agree on moving expenses if necessary-; i) credit conventions; j) the conditions for terminating the contract; k) and any other legal conditions agreed by both parties "(Article III, Section 11). This contract must, under the Act on the model developed by the Department of Labor and Employment. In this case, Law 10,361 Article 7 of the Convention 189 without innovations.

The law also establishes provisions concerning the breaking of the employment contract. Article 5, entitled, post-employment, establish that "neither the worker nor the employer may terminate the contract before the expiration date except in cases established by law". Also, if the domestic worker was unjustly fired, domestic worker should receive the compensation it deserves by law, plus the equivalent to fifteen working days as compensation. "If the domestic worker quits his job without any valid justification, any unpaid wages exceeding fifteen working days will be paid. Instead, the employer of a domestic worker can recover the costs related to travel expenses, if any. " This applies to cases where the termination of contract occurs after six months. If the duration of the contract was not stipulated, the employer or the employee must submit a written notice -five days before the cessation of service delivery. Under the law, domestic worker may terminate the contract before its expiration time because of the following reasons: "a) verbal or emotional abuse by the employer or any household member; b) inhuman treatment, including physical abuse by the employer or any household member; c) when it has committed a crime or offense against domestic workers by employers or any household member; d) violation by the employer of the terms and conditions of employment contracts and other standards established by law; e) for any disease that could harm domestic worker carried by a household member "(Article V, Section 33). The employer may terminate the contract for the following reasons: "a) for misbehavior or disobedience by domestic worker with respect to what is legally established; b) a significant error or some form of habitual neglect or inefficiency in the performance of tasks; c) fraud or loss of confidence; d) when a crime or offense against the employer or any household member is committed; e) violation by domestic worker of the terms and conditions of employment contracts and other standards established by law; f) for any disease that could harm domestic worker carried by a household member; g) for other reasons similar to those listed "(Article 5, section 34).

Article IV -on the conditions and terms of employment-, Law 10,361 establishes that "domestic worker is entitled to a rest period of eight hours" (Section 20). Also "entitled to a weekly rest period of at least 24 consecutive hours. The employer and employee may agree in writing, weekly, daily breaks scheme of domestic worker "(section 21). At this point the incorporation of the principles set out in the Convention 189without modification is also observed. The weekly rest period must be agreed depending on the preference of the employee if it is related to religious practices. It also states that workers and employers can agree on: "a) replace a day of absence on a day of rest; b) give a particular day off in exchange for payment of a day's work; c) accumulate days off not exceeding five days; d) other similar arrangements." With this possibility of conventions, although the law tries to cover every conceivable case, at the same time, greatly influences the standardization of practices. As for the vacation pay it is expected that when domestic worker is a year of service, "service shall be entitled to annual five-day incentive payments. In any case the portion of unused vacation can be cumulative or usable outside of that year, and not be allowed to become paid days (section 29).

Concerning wages, Law 10,361 establishes the obligation to establish a minimum wage through the Regional Tripartite Wages Council and Productivity. This Council has the obligation to adjust the minimum wage annually (Article 4, Section 24). The Act has three minimum monthly wages for three different regions: National Capital Region (NCR), cities and "first class municipalities" and other municipalities. "The wages shall be paid monthly in cash directly to domestic worker. It prohibits any payment in the form of promissory notes, vouchers, coupons, tickets, or any object. Except when authorized by law, it will be considered illegal by the employer, directly or indirectly, deduct any amount to domestic worker wage (Article 4, Section 25).

Regarding social protection, section 19 of the same article establish that "the employer must ensure the safety and health of domestic workers in accordance with the laws, rules and regulations, with due consideration to the peculiar nature of domestic work". This mainly concerns safety in the workplace, which is covered by certain systems integrated into the system of social protection insurance. Regarding the social security system, the health system (PhilHealth) and the Home Development Mutual Fund or Pag-IBIG (mixed fund), "any domestic worker who has worked at least one month must be covered" by these three systems, and "entitled to all benefits in accordance with the relevant provisions of the law" (section 30). If the monthly salary exceeds two minimum wages, contributions are fully paid by the employer. Otherwise, domestic worker must pay the difference proportionally full payment.

This analysis of the regulation allows us to understand how the principles established in Convention 189 on the Philippines' regulatory translation. By simply analyzing the legal provisions relating to these five nodal points, the translation seems quite in line with international labor standards, however entanglement with what is called the law of custom is clearly observed. The way in which their rights under the Law 10,361 are ordered, you can clearly see that section 5 of Article 3 is not simply the "literal" translation of the article 5 of the Convention. It underlines that "Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence." Section 5 of Article 3 stipulates that "the employer or any member of your household is not

inflict domestic worker or" kasambahay "any kind of abuse or some form of physical violence or harassment or any act aimed at the degradation of the dignity of domestic worker." As we watched in the list of just reasons of breach of contract work, as well as in other parts of the law, uses and customs of abusive practices that structure the domestic labor in the Philippines are in evidence. Many articles are devoted to framing and limit such practices, which in some cases are related to the way in which it comes to domestic workers and others with the way it distorts the place of payment economic in employment. For example, in Article 3, section 13, provides that domestic worker cannot pay any monetary sum for recruitment. Section 14 of the same article, the "illegality by the employer or any person requiring the payment, by domestic worker, deposit to reimburse loss or damage of tools, materials, furniture and household equipment" is set (Article 3, Section 14). It also prohibits "the employer or any person acting on behalf of the employer" can put domestic worker in a situation of "debt bondage" (Article 3, Section 15). Article 4 concerning the terms and conditions of employment, the prohibition of interference in the use of wages is established. "An employer may not coerce, impose or force domestic worker to purchase goods, objects or other property of the employer or any person, or not make use of any business or service that employer or someone else." It also prohibits retention of remuneration. "It is unlawful for an employer, directly or indirectly, hold domestic worker wages. If domestic worker leaves his activity without any valid reason, any wages not paid for a period not exceeding fifteen days must be paid. Similarly, employer can not induce domestic worker to abandon any part of their salary by force, intimidation, threat or otherwise "(Article 4, Section 28). These provisions highlight the practices established by custom. Remuneration in the Philippines case longer a right to become a tool of control and submission.

Looking protect domestic workers, the law also regulates what it calls "extension of the task". Article 4, Section 23 provides that: "the domestic worker and the employer may mutually agree that the first temporarily perform tasks outside of the second home for the benefit of another home. However, any liability incurred related to domestic worker that arrangement should be supported by the original employer. Similarly, the work done outside the home entitle domestic worker to an additional payment not less than the existing minimum wage. It will be considered illegal as the original employer receives an amount for that home where the services of a domestic worker were temporarily made." This common activity, where domestic worker is assigned to serve another home, is regulated from the new law since it identifies the employer will be the other party to the contractual relationship. Law 10,361 effectively seeks to avoid all these forms of deprivation of liberty exercised by employers who are part of the practices established by custom.

Beyond that, the Law 10,361 pursues both professional activity and also present alternatives to domestic work. In Article 3, Section 18, establish that "to ensure the productivity and quality of services, the Ministry of Labor (DOLE), through the Authority for Technical Education and Skills Development Authority (TESDA), provide access of domestic workers to efficient training, and regulation based training certifications ". A supplementary Law, called "Educational Opportunities for Domestic Workers" adopted in July 2013 proposes that in addition to professional training, domestic workers can get scholarships to enter state universities, and technical and vocational schools; they can get discounts at private

institutions; and have preferential access to the Alternative Learning System and other non-formal education programs established by the Department of Education program.

3.3.2. The Argentine case: the inclusion of all domestic workers

The law of "Personal Private Houses" adopted in 2013 is presented as a breakthrough in terms of legislation for the repeal of the special status of domestic service established in 1956, it includes all domestic at the same regulatory regime workers regardless of the number of hours working for each employer. If domestic workers work at least one hour per week for an employer, they are entitle of rights.

During the parliamentary debates -between 2011 and 2013-, legislators explicitly establish that one of the objectives of the law was to reach the International Labour Organization (ILO, 2012, 2010) standards. At that time, when the pre-bills are analyzed and discussed on the final draft, Argentina had not yet begun the ratification process. Therefore, the enactment of the law (March 13, 2013) is prior to the ratification of the Convention (March 24, 2014), and of course, prior to their effective date (March 2015), even if when prepares the new regulation has already started the process of ratification. This means that the discussion around the law and the ratification process run parallel. It is then that drives the ratification law reform as commonly assumed (Strang and Chang Ying, 1993; Servais, 2004). However, this does not mean that the Convention 189 has no influence. On the contrary, it has a strong persuasive effect, particularly when it is taken up as a banner for domestic workers' associations, NGOs, or even political parties (de Wet, 2008). It also works as a reference model when resolving disputes between opposing positions. The case of Argentina, like many others, shows the weight that can have regulations called "soft" in areas such as labor law (Abbott and Snidal, 2000).

While the new law does not incorporate domestic the scope of the Employment Contract Act (which acts Labour Code Argentina) workers, establishes a spatial system in which domestic workers guarantees virtually the same rights as such law guarantees the rest of employees. Through this position, lawmakers stressed that although domestic work is a "work like no other", these workers must be considered as any other worker (Blackett, 2004, 2011; Mundlak & Shamir, 2011). In this translation of the joint between the two notions of domestic work, the particularity of it seems prioritized.

That is why the extension of rights under the new law is based on the recognition of the specificity of domestic work. Some of these rights represent an extension regarding recognized by Decree-Law 326/56, and others, an extension of those recognized in the Labor Contract Law. One of the main innovations of this law is the extension of applicability to tasks "non-therapeutic care." 26,844 The law states that "work shall be considered pensions to all provision of services or execution of cleaning, maintenance or other typical household activities. It is understood as such also provided personal assistance and support to family members or those living in the same home with the employer as well as the non-therapeutic for sick or disabled "(Article 2) care. The exclusion established by this law is not related as Convention 189, with no professional or activities conducted sporadically, but with certain jobs or certain types of employers. Article 3 states that "staff shall not be considered private

homes and therefore be excluded from the special regime: a) persons employed by legal persons for the tasks referred to herein; b) the persons related to the homeowner, such as parents, children, siblings, grandchildren and / or the laws or customs and customs related considered in some degree of kinship or cohabitation relationship not work with the employer; c) persons performing duties of care and assistance to sick or disabled, in the case of the provision of exclusively therapeutic nature or for which it is required to have specific professional ratings; d) Persons engaged only to drive private cars of family and / or household; e) people who live in housing with the staff of private houses and do not provide services of the same nature for the same employer; f) persons in addition to such domestic tasks must provide other services outside the private home or family home, with any frequency in business activities or your employer; in which case it is presumed the existence of a single foreign employment relationship regulated by this law regime; g) persons employed by consortia of owners under the Law 13,512, for country clubs, gated condominium or other systems for carrying out the tasks described in Article 2 of the present law, in the respective functional units. "

The law establishes three categories of workers on the basis of two criteria: the place of room and the number of employers: "a) workers / tasks is no retirement pay for the same employer and residing at the address where they meet them; b) workers / tasks is to provide retirement for one and the same employer; c) workers / tasks is to provide retirement for different employers "(Article 1). Many of the rights will be defined differently following these categories. In Argentina, the law needs to take into account that about 30% of domestic workers is working for more than one employer. It is therefore also essential to guarantee these workers the same rights as the rest. Most domestic workers are placed in the second category-about 70% work with employer-retirement for, and only 8% of all working under the modality without retirement (Tizziani and Pereyra, 2014).

In relation to the type of employment contract, the new law establishes the freedom to choose the contractual form, but guarantees the presumption of indefinite contract. Law 26,844 explicitly regulates the conditions of termination of the contract of work, and establishes the obligation to pay compensation. The compensation to which domestic workers are entitled depends on the length of employment. As grounds for termination of the employment contract are: a) "by mutual agreement of the parties, having formalized the act only and exclusively before the competent judicial or administrative authority"; b) "dependent resignation, which shall be by telegram or registered letter personally completed by the resigning staff to your employer or personal declaration made before the administrative or judicial authority of the work; c) "death of the employee / or"; d) "retirement of the employee / o; e) "the death of the employer"; f) "death of the person whose personal assistance or support person was hiring"; g) "pay provisions by the employer without justification or without giving a reason"; h) "for termination of employment contract with just cause made by the employee or the employer, in cases of breach of the obligations arising thereof configured serious injury that does not consent to the continuation of the relationship"; i) "for dereliction of duty"; j) "permanent and permanent disability". The amounts of compensation fixed by the new regulations correspond to those established in the Labor Contract Law; ie. that they are identical to those entitled other employees in the private sector: 1 month for each year or part

of three months.

Regarding working conditions, the law of "Personal Private Houses" some rights already present fall within the Decree-Law 326/56. Among them they are mandatory, particularly for those who work and live in the home of employers-, provision of work clothing and equipment, as well as a "healthy food" weekly rest. The new law advances in making explicit the limits of working hours (8 hours per day and 48 hours per week), and extends the weekly rest in accordance with the provisions of the Labour Act (contract runs 35 hours from 13 hours of Saturday). The new law Staff Houses (Article 25), overtime must be paid at the same level as in the case of private sector employees covered by the Employment Contracts Act (section 201); that is, with a surcharge of 50% of salary when during ordinary days, and 100% during the weekend and holidays.

Probably the biggest innovation proposed by Law 26,844 is the regulation of licenses. For the first time, they recognize domestic workers special leave: marriage, death in the family, examination, etc. But particularly the new law recognizes the "right to a family" because it includes maternity leave. The law clearly regulates the latter case, even foreseeing the possibility of combining maternity leave and sick leave if necessary. Law 26,844 recognizes that domestic workers, like workers in the private sector are entitled to an additional annual salary (Articles 26 to 28), a regular licenses (Articles 29 to 32), where a special license is included maternity- license (Article 38), to overtime pay (Article 25).

In some cases, these rights were established by Decree-Law 326/56, such as bonus payments, sick leave, the vacation pay, compensation for breach of the employment contract and notice. Only from equality with the rights established in the Labor Contract Law, conditions improve. For example, annual sick leave recognized by Decree-Law 326/56was 30 days, when the new law will recognize three months per year to those with the least seniority in service for five years and six months more than five years old. For the holidays, recognized four days those workers who have less than five years old, but once, eighteen and twenty days to those who have worked between five and ten years, ten and twenty, or twenty respectively (Article 29).

As for wages, like Decree-Law 326/56, a state authority is responsible for determining a minimum each of the categories of workers wages. In the new law, it is the executive branch that sets the remuneration but the National Working Committee of Private Houses, comprising representatives of ministries Labor and Social Security, Social Development and Economy, as well as representatives of the workers and employers. It explicitly states that wages paid monthly must be paid between the first four working days of each month. In the case of part-time workers, wages must be paid at the end of the working day (Article 19). A receipt stating the paid hours, wages and contributions made by the employer must be delivered to the worker monthly. The law prohibits the employee to sign blank receipts to the employer (Article 24). The payment of bonuses is also regulated. While, out of habit, many domestic workers, even if they were not registered, perceived this benefit (Pereyra, 2012), since the enactment of the new law, employers are required to pay additional annual salary of two times of the year (50% of monthly salary in each case).

As regards social protection, no innovation since the new law keep in place the Special

Regime of the Social Security for Domestic Workers introduced in 2000, without major modifications. This system, because of the structure of joint contributions (compulsory for employers and voluntary workers) and proportional to the number of hours worked, has strong disparities between the costs of a social security and other workers. These differences translate into differential access to health insurance, and the contributions made to the pension system. The restriction of rights is presented in terms of social protection, mainly because given the tax structure of the system of social protection, which is at issue is the ability to pay of employers. On this point it is interesting to compare different versions of the law and the arguments that accompanied its initial approval and final approval. In each of the versions appear different solutions to the problem of employer-worker.

Unlike other social benefits, insurance risk work is presented identically in all versions of the law. The project strives to domestic workers in the field of laws regulating the risks of labor and repair damage from accidents. In the different versions it is proposed that the Executive is responsible for fixing 'the rates that employers must pay contributions and other necessary to access the respective benefits conditions. "Also explicit to be achieved "gradually and progressively benefits covered by that law, according to the peculiarities of this statute."

The most controversial point of discussion has to do with family allowances, more specifically with the amendment of Article 2 of Law 24,714, which states that "are exempt from the provisions of this regime [family allowance] to domestic workers". However, in the final version of the Law, Article 2 of Law 24,714, it reads as follows: " are included in subparagraph c) Article 1, being beneficiaries of the allowance Pregnancy for Social Protection and the Universal Child Allowance for Social Protection, to the exclusion of a) and b) of article except the right to receive the allowance Maternity established by subsection e) of Article 6 of this law. "This means that you explicitly set the exclusion of domestic workers from most of the allowances covered by Article 6 of Law 24,714, but ensures the perception of maternity allowance and the Universal Child Allowance. Access to the latter category, in the case of other workers, depends on the presence of children under 18 and the low level of household income. It is a program of conditional income transfer. At this point the law also focuses on the specificity of domestic work, but in this case, from a realistic perspective. The feature that is prioritized is that they are usually women who perform this activity, many of them are heads of households (47%) and, because of their family responsibilities but may not work under a scheme of part-time, and therefore, they have very low income levels.

3.3.3. The South African case: Convention 189 as a mechanism for implementation

The South African case is unique because it was the model case studies that preparations of the International Labour Conference in 2010 and also the case on which domestic workers' associations were supported during the discussions focused on the ILO. The set of pieces of legislation regulating domestic work in South Africa realizes that it is possible to establish labor standards that ensure the protection of domestic workers. In South Africa a new labor regime is established, the end of the apartheid regime. As part of the three legal instruments aimed at guaranteeing, directly or indirectly, labor rights to domestic

workers they were approved. The first is the Law 66 of 1995 which acts Labour Code. A feature of the regulation is that South Africa will devise domestic work as a sector of such activity to the other, and this will lead to equate the position of the household more easily than that of workers in other sectors workers. This means that the prioritized notion is to "work like any other". The definition of "domestic industry" on the South African labor code is as follows: "the work of employees who perform domestic work in the homes of their employers or the property on which the house is located" (Chapter 3, Section 17). Mother in law is precisely the "domestic industry". It appears included in Chapter 3 on "Collective Bargaining". Section 17, entitled "Restricted Rights in the domestic sector," states that "while the rights granted to apply to the domestic sector unions are subject to the following limitations": a) between the access rights granted in section 12, union representatives are not "include the right to enter the house of the employer, unless the employer agrees"; b) "the right to disclose information set out in section 16 does not apply to the domestic sector."

The second regulation containing the domestic sector is Law 75 in 1997. In this law the domestic worker as "someone who does chores around the house of his employer, defined includes: a) a gardener; b) a person employed by the household as a driver of a vehicle; c) caretaker children, elderly, sick or disabled, but that does not perform agricultural work "(Chapter 1, Section 1). All rights recognized and guaranteed to all workers are also guaranteed to domestic workers. This law also establishes the need for specific studies on the situation of the different sectors and then to establish more appropriate sectorial regulations.

In 2002, following the provisions of Law 75 of 1997, the "domestic work sector Sectoral Determination No. 7" is approved. In this law a particular joint crystallizes between the two notions of domestic work presented above: domestic workers understood "like no other" and domestic work conceived "like any other" (Blackett, 2004). In this case, what is prized is the equality of rights with respect to other workers. As in Convention 189, the scope of this law to domestic workers for whom such work is merely "professional occupation" (Article 1). That is excluded from regulation any "person who performs domestic work only occasionally or sporadically" (Article 1). The agreement of this proposition in the South African regulation is given by the limit the scope established from the monthly hours worked: less than 24 hours per month; ie least 4.8 hours per week. Domestic workers working under this regime of casual work are entitled to a minimum hourly wage, but are excluded from all other rights under the "Sectoral Determination no. 7 ".

In relation to the previous legislation, introduced a new definition of domestic worker in which, instead of describing the specific tasks performed by these workers -such as shown in 75- Act, a statutory definition is given. According to this law, they are considered domestic workers, all workers who perform domestic chores as "employees or employment agency staff" or "employees as independent workers" (Chapter 1, Section 1). This definition is based on the de facto labor statutes define possible modes of recruitment, without necessarily explicitly articulated. Domestic workers can be hired directly as direct employees, employees of employment agencies or freelancers. In all cases, it states that domestic workers must have a written contract in which the conditions of employment (Part C, section 9) are established. This clause is in line with the stipulations of the Convention 189 Article 7.

The law establishes conditions for termination of employment contract being similar to those of all workers have a more protective bias regarding domestic workers. In all cases it notices, which is one week if the employee has been employed for six months or less is assumed, and four weeks if he has been employed for more than six months (part G, section 24). In the general regulation, stipulating two weeks who have worked for six months to a year, and four weeks for those who have worked for over a year (Chapter 5, Section 37). Stipulated severance pay is one month for every year worked (part G, section 27).

Regarding working time regulation for domestic work is virtually identical to the established Law 75 (Chapter 2, Section 9). A maximum of 45 hours per week is set. The maximum daily hours depends on the number of days that the domestic worker works each week for the same employer. When five days or less works, it can work up to nine hours a day, but when you work more than five days, the maximum stipulated is eight hours (part D, section 10). Regarding overtime, it establishes -at the same as for other workers-there must be a written agreement between the employer and the employee so that the latter can request that the maximum hours established by contract is exceeded. Even with this agreement, the law sets a maximum number of hours, in the case of domestic workers is 15 hours per week (part D, section 11b). In this case, the law allows domestic workers work five hours overtime than the other workers. This means that if for the latter the maximum weekly hours beyond the Extraordinary -including is 55 hours for domestic workers is 60 hours per week, which means an average of ten hours a day. The daily limit, counting overtime, is identical for all workers cannot exceed twelve hours a day (part D, section 11). Overtime must be paid at special rates, as well as hours worked on Sundays, holidays or night hours. Stipulated wage supplements for domestic work are identical to those for other workers.

The rules on the intervals to eat during working hours and rest periods are also aligned to the general regulation (part D, section 15 and 16). The minimum daily rest period laid down are twelve consecutive hours and the weekly rest period 36 consecutive hours which must indicate on Sunday. In the case where the worker lives in the employer's home, is reduced to 10 hours, but it extends the time to eat three hours. The law authorizes according to an agreement can establish a rest period of 60 hours biweekly. The unique feature in the regulation of working time presenting housework is available at night, after 20 hours and before 6. The law states that availability has to be agreed and established in writing in the contract work. Remuneration for availability per shift (from 4 to 6 hourly wages) is also set. It prohibits domestic worker to work over five shifts a month or fifty times a year (part D, section 14).

As to paid leave, the general regulation follows also ensuring domestic workers three weeks a year for a period of 12 months (part E, section 19). Domestic workers are also entitled to six weeks leave for illness per period of 36 weeks (part E, section 20). Licensing maternity or family responsibilities apply only to workers who have worked for the same employer for more than four months, at least four days a week. They have rights, these five days for four consecutive first case and the second (part E, section 21 and 22) months. The rules on working time, rest time and uptime fully conforms to the provisions of Article 10 of Convention 189, when promoting equal rights with other workers, guaranteeing a weekly rest at least 24 consecutive hours, and regulation of uptime.

Regarding remuneration State law establishes minimum hourly wage by geographic areas and two categories based on hours worked (less or more than 27 hours per week). A minimum wage per day, equivalent to four hours, even if the employee works less (part B, section 2) is established. The law provides for an hourly wage increase of 8%. The payment is comparable to that prescribed for the entire workforce. Wages must be paid in legal tender; either daily, weekly or monthly; using cash, checks or direct deposit to a bank account of the employee. The payment date should be established beforehand, and be respected. The employer is required to give the employee a receipt stating the hours and the amount paid. As can be seen, in terms of wages, "Sectorial Determination 7 on Domestic Work" present the same requirements set by the Convention 189.

Another of the items shown in this sector law and a particularity of domestic work are the limits on the deductions that the employer may make the employee's salary. As in the Philippine case, it provides that the employer may not withhold payment for work equipment or work clothes, or for food provided in the workplace. Neither can force workers to buy goods from the employer or another person, or in a business designated by the employer. It prohibits the employer of a domestic worker receives a payment in compensation for a miscalculation that the employer has made (Part B, section 7). With the consent of the employee, the employer can deduct the salary of non-working days are not considered licenses of any kind. You can also deduct up to 10% of salary as payment for a room or other accommodation as long as it is in good condition, has at least one window and a door that can be locked, and include a bathroom and a shower if the domestic worker does not have access to other facilities (Part B, Section 8). Under written consent, the employer may deduct from the salary payment, such as insurance, social security, pension funds, union dues, or rent if you stay on your own. In addition, it can be concluded up to 10% of salary on payday to cover a loan or advance of money that the employer has made the worker (Part B, section 7).

Social rights will not be registered by this law, as they are regulated by other laws. However, it is remarkable that no mention is made thereto in the "Sectorial Determination No. 7". Domestic workers who work more than 24 hours a week for an employer is covered by the Unemployment Insurance Act since 2002. The right to benefits provided in this law depends on employers to register domestic workers in the Unemployment Insurance Fund. According to Malherbe (2013), about 20% of domestic workers was registered in 2010. This means that most domestic workers had no real access to unemployment insurance, health insurance and maternity. Because health insurance contribution by the employer is voluntary, and therefore not very often, domestic workers receive minimum benefits that are related to the contributions made in terms of days and hours worked (Malherbe, 2013, 129). Regarding pensions, the South African case is atypical in the international arena because employers are not required to contribute to pension funds for their employees. In the case of domestic workers, the benefits to which they can access are those of the welfare system. If you are older than 60 years can apply for an allocation for seniors, which is a non-contributory pension for the elderly without resources. As in the Argentine case, those workers who have children under 18 and are heads of households can access a program of conditional cash transfer called "Primary Caregiver".

The fundamental difference between this regulation and those prevailing in the Philippines and Argentina, is that the "Sectorial Determination No. 7" on domestic work is included in the South African Constitution. This regulation is inserted in Chapter 2 of the Constitution called "Bill of Rights". What sets the labor rights of domestic workers at the level of constitutional rights.

When Convention 189 was adopted in 2011, the South African industry regulation was in accordance with what was requested. Following Flanagan (2003), this would explain the fact that South Africa is one of the first countries to ratify the Convention 189. According to him, the willingness to ratify Conventions cost increases when the ratification is under, or in this case, null. While in the case of South Africa's ratification of Convention 189 did not cause any legislative reform, nor represented a mere formality and that had consequences on the implementation of existing regulation. As explained le Roux (2013), because the "Sectorial Determination 7 on Domestic Work" is made to the "Bill of Rights" of the Constitution, and the Constitution has a clause in the recommended priority interpretations of laws to international standards, Convention 189 becomes a fundamental point of reference in regard to de facto recognition of the labor rights of domestic workers. In the South African Constitution there is a clause which is favored international law by default. Section 233 provides that: "where necessary interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law" (le Roux , 2013: 35). He argues that Section 233 creates an independent constitutional duty, not enrolled in the text of Convention 189, to interpret all the reforms or to reinterpret existing regulation on domestic service in accordance with the agreement (le Roux, 2013: 36). This internationalist outlook also appears in connection with the "Declaration of Rights" in particular. Section 39 (1) (b) of the Constitution provides that "every court, tribunal or forum must consider international law before determining the content or meaning of a specific right under the Bill of Rights for workers domestic "(le Roux, 2013: 36). Following this constitutional device, the translation of Convention No. 189 in the South African case will be done primarily through court decisions. If in the other two cases, the influence of Convention 189 is crystallized at a particular time, the regulatory reform, in the case of South Africa, this influence persists in each court rulings favoring the implementation of a law that has since 2002, serious difficulties to move from the "books" to "action".

The comparison of the three national cases shows that the translation process is done Convention 189 through two different mechanisms. On the one hand, translation is seen through the production of new legislation, and secondly, through the translation of jurisprudence. These mechanisms are not necessarily mutually exclusive, especially in the case of countries whose first version of Convention 189 is crystallized in laws passed in 2013, which may be supplemented or amended with later jurisprudence, resulting in a new version in the form of a new law. In all cases, it is important that this last link of the legal system accessible to domestic workers.

3.3.4. Versions of Convention 189 in the South

The legal texts analyzed here can therefore be considered possible versions of this regulatory model proposed by the ILO, but above all, they appear as descriptors of the tension between practices that have become ossified by custom and the new practices proposed by international labor standards. Through the analysis of "law in books," the representations and practices related to domestic work in each of the countries are brought to light. In its prescriptive role, the Law acknowledges existing practices, while at the same time proposing corrective (or transformative) mechanisms for them, with the aim of bringing them closer to the "ideal" that society has set as a goal. In this case, the ideal is for domestic work to acquire the characteristics of "decent work".

What this comparison of the cases shows is that the role of the employer continues to be determinant, and this is true in three aspects in particular: the control of work time, the management of remuneration and the termination of the labor relationship. With regards to the first of these aspects, legislation in the three countries has emphasized the regulation of work hours, especially the availability of those workers who live in the employer's home. In all three cases, we see that complete work days are intensive; a weekly maximum of 45 to 48 hours is established. Although this is also a characteristic of the general labor market in Argentina and South Africa, the sector under study shows greater intensity in terms of work hours. In South Africa, domestic workers can work an extraordinary amount of time, up to a maximum of 12 hours per day and 60 hours per week. In the Philippines, domestic workers are also subject to a high number of work hours; they are allowed only 8 hours off per day, 24 hours weekly. These can be replaced—on convention—by a day off or by a day of work. In these two latter cases, we see that the pertinent laws seek to limit this intensity, within acceptable limits according to customarily established practices. In the three national cases, therefore, domestic work requires a high level of availability of domestic workers. As a result, the different regulations seek to reach a compromise between limits that are legally acceptable and limits that can be realistically respected.

The second aspect demonstrates the power that the employer has in terms of remuneration in the labor relationship. In the Philippines and South Africa, the law emphasizes limits on deductions that employers can make to domestic workers' wages. Wages are always a key element in negotiating labor relationships, and in this particular relationship, they operate as an agent of pressure and subordination. This has to do with the servile nature that this activity has in the Philippines and in South Africa, where the idea of remuneration is not entirely unrelated to this way of structuring domestic work. In various cases, it is made clear that deductions from wages to cover damages are not allowed; nor are deductions to cover costs of materials for the work. In all three countries, in an attempt to provide domestic workers with some semblance of control—as well as documentation that would be useful in a formal complaint—the laws require the employer to provide the worker with a receipt in which the number of hours worked and sums paid are detailed. In Argentina, in order to avoid false declarations by employers, it is specifically stated that domestic workers must not, under any circumstances, sign blank work receipts. This serves to keep domestic workers from renouncing the possibility of claiming payment for hours worked.

The third aspect in which the imbalance between parties in this labor relationship can be seen is that of the termination of the work contract. Although the law denounces and prohibits the violation of the human rights of domestic workers, it does leave room for the exercise of arbitrary power by the employer. In the case of the Philippines, the law establishes verbal, emotional and physical abuse as just causes for terminating the labor relationship, as well as inhumane treatment and crimes committed by employers against domestic workers. So in its prescriptive modality, the law denounces human rights violations that take place within this labor relationship. Yet at the same time, it states that the employer can dissolve the labor relationship when the domestic worker disobeys the employer, makes important mistakes or is repeatedly negligent, or when the employer loses trust in her. In the case of Argentina as well, the employer is left with arbitrary power, since he or she is authorized to dissolve the labor relationship "without expressing cause or justification."

In light of this imbalance between positions, which has to do not only with the employer/worker dichotomy but also with the social distance that separates them, Convention 189 proposes that a large part of regulations be the result of dialogue between representatives of both parties. Nevertheless, in the three regulations analyzed, what is observed is the promotion of conventions between the employer and the worker. This appears to be the protection that the laws propose when they establish that the parties "be able to agree upon in writing" numerous components of the labor relationship. It is clear, therefore, that there is room for new versions of Convention 189.

By way of conclusion: Decent work as a model

The production of labor standards for domestic work has meant an important challenge for all actors involved. These include the domestic workers' movements that pushed for their creation; the members of NGOs who made sure that the ILO heard the voice of these workers; the agencies within the ILO that participated in the various steps of the process, from the initial presentation of the concern through the drafting of the Convention, including the great amount of research on which the definition of the standards is based; the different actors—agents of the ILO, national authorities, workers' movements and NGOs—who contributed to the Convention's diffusion internationally and locally; and the national legislators and judges who made use of Convention 189 to translate the standards to the local level. For all of these, the challenge has been to define a regulatory framework that, while taking into account deeply-rooted local practices, might redefine domestic work as "decent work".

The analysis of the three phases in the process of producing labor standards for domestic work demonstrates the high translatability of Convention 189. In the first phase, at the moment of the Convention's conception in discussions within the ILO, general parameters were drawn which clearly established the meeting ground between preexisting practices and regulations and the changes that are being sought. By proposing "decent work" as a model, the intent of the ILO is to promote alternatives that will guarantee domestic workers better working conditions and true access to social protection, regardless of their nationality or their manner of insertion into the labor force.

In the second phase, that of diffusion, promotion campaigns have played a fundamental role. From the time of the passing of Convention 189 to today, various campaigns have been developed in collaboration with entities of civil society, unions and governments. Currently, those involved in these campaigns and in technical cooperation are moving forward with what is called "making decent work a reality for domestic workers". This means that initial diffusion efforts are being complemented by continuing promotional efforts on the fundamental principles of work, as well as on the defense of domestic workers' human rights.

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