

L'agenda du travail décent de l'OIT et les travailleurs domestiques au Nigéria: défis et complexités

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Résumé

Le triste sort des travailleurs domestiques partout au monde est bien documenté. C'est à ce titre que l'Organisation internationale du Travail (OIT) a présenté sa Convention sur les travailleuses et travailleurs domestiques afin de promouvoir le « travail décent » pour chacun d'entre eux. Des déficits au chapitre du travail décent persistent toutefois chez les travailleurs domestiques, et l'application de la Convention de l'OIT « demeure un défi colossal » dans les contextes nationaux. Au moyen de données secondaires et d'une étude de cas des travailleurs domestiques au Nigéria, cet article soutient que l'approche fondée sur les droits de la Convention de l'OIT ne tient pas compte des réalités complexes auxquelles sont confrontés les travailleurs domestiques. Les inégalités et vulnérabilités socioéconomiques et les mécanismes culturels d'adaptation en l'absence de sécurité ou de protection sociales (ou en cas d'exclusion de ces aides), sont les principaux facteurs qui contribuent à l'exploitation des travailleurs domestiques. Les politiques d'État doivent s'y attaquer pour que le travail décent devienne une réalité pour cette classe de travailleurs.

ILO's Decent Work Agenda and Domestic Workers in Nigeria: Challenges and Complexities

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Abstract

The plight of domestic workers worldwide is well documented. It is against this background that the International Labour Organization (ILO) put forward the Domestic Workers Convention to promote “decent work” for domestic workers. However, “decent work deficits” still persist among domestic workers, and the application of the ILO Convention in national contexts remains a colossal challenge. Using secondary data and a case study of domestic workers in Nigeria, this paper argues that the rights-framed approach of the ILO Convention does not address the complex realities confronting domestic workers. Socio-economic inequalities, vulnerabilities and cultural mechanisms of adaptation in the absence of, or exclusion from, welfare provision and social protection are the main issues contributing to the exploitation of domestic workers. State policies need to address these before decent work for domestic workers can be a reality.

Introduction

One of the operations of the International Labour Organization (ILO) is the pursuit of “decent work” for domestic workers. From when the argument for their “protection” was first put forward in 1936, the organization has committed a lot to the cause, yet not much has changed (ILO, 2013: 14). It is almost a cliché today that “domestic workers are among the most exploited and abused workers in the world” (Human Rights Watch (HRW), 2007b: 3). The Domestic Workers Convention (herewith referred to as C189) was put forward in 2011 to address the challenges faced by domestic workers, but “decent work deficits” still persist, with 90 per cent of domestic workers not enjoying effective social protections (ILO, 2016: 4). Yet the problem is not just that many countries have not ratified C189 (only 22 have), but as the ILO admits, “Indeed, even in countries where domestic workers enjoy labour rights, domestic

workers continue to face decent work deficits due to the challenges in compliance” (ibid).

Using Nigeria as a case study, this article analyzes the challenges and complexities of ensuring decent work for domestic workers by investigating the processes that lead to engagement in domestic work and the extent to which C189 and national legislation address these processes and adhere to internal standards in protecting domestic workers. To do this, I draw on existing academic literature, reports by governments agencies and international organizations and other archival documents. The article begins by looking at domestic work in the West African context, outlining the reasons for engaging in it, followed by a review of the ILO’s approach and related policy issues. Next, it highlights the case of domestic workers in Nigeria from a political economy perspective and shows how the rights-framed approach (of C189 and national legislation) compares with socio-economic realities confronting domestic workers. The final section discusses key issues and practical difficulties that C189 cannot account for, and concludes with the need for the ILO and states to address underlying issues and processes leading to the exploitation of domestic workers before decent work can be a reality.

Domestic Work: Definition, Reasons and Policy Issues

This paper adopts the ILO’s definition as contained in Article 1 of the Domestic Workers Convention, 2011 (C189):

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

Examples of work as defined above include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children, guarding the house, driving for the family and even taking care of household pets (ILO, 2011b: 2).

Having established a working definition, it is also useful to understand why and how domestic work emerged as a distinct type of job. Based on the connection between domestic work and related

topics, like child labour, forced labour and human trafficking, the reasons for engagement in domestic work can be broadly classified into demand (pull) and supply (push) factors (UNICEF, 1997; Andvig et al., 2001; Thorsten, 2012), yet this simple classification hides many issues and ambiguities, which I will discuss below.

Any literature on domestic work is likely to have poverty at the top of its list of reasons why people — whether children or adults — are employed as domestic workers (see HRW, 2007a; Thorsten, 2012 for example). There seems to be a direct correlation between being employed as a domestic worker and many poverty-related factors at the individual and household levels, including chronic deprivation, unemployment, absence of opportunities and infrastructures, little or no education opportunities, family crises including death and illnesses of breadwinner(s) etc. Poor people are often forced to devise ways to survive, and one such survival strategies is employment in domestic work (UNICEF, 1999: 4). On a broader scale, the poverty explanation also captures the effects of external factors, like the economic crises in the late 1970s and the subsequent implementation of structural adjustment programs (SAPs), on the expansion of informal employment in many African countries (Tsikata, 2009: 5-9; Thorsten, 2012: 5).

Indeed, that poverty pushes people into precarious situations is hardly debatable. However, the above explanations do not fully capture the picture. Explaining domestic work in the context of poverty and poverty-related factors alone hides the wider patterns and socio-economic and cultural processes involved in its evolution as well as its dynamism in the contemporary world. Thus, it is important to understand why and how people become domestic workers within these institutional processes.

Investigating Domestic Work in West Africa

The transformation of domestic work in Africa can be explained in the contexts of colonialism, urbanization and cultural practices that have continued until today. As far as can be ascertained in the African context, domestic work only began to be constituted as wage employment during the colonial era (Hansen, 1986: 18; Oloko, 1992, 1995, cited in Ladan, 2005). Prior to that time, activities such as cooking and cleaning were mostly carried out by women and girls as part of the gendered division of labour (Tsikata, 2009: 23). But with colonialism, the bourgeois lifestyle of the colonial officers

triggered the demand for paid domestic workers (Ladan, 2005). At the time, working for the White colonial personnel was considered a sign of prestige, and it was mostly done by men (Hansen, 1986: 18; Akurang-Parry, 2010: 37). So, it was common for men to take up jobs (such as cooking, ironing, gardening etc.) that would have been considered demeaning in their own households (Hansen, 1986: 18).

However, since the 1930s, as a result of the growth in plantation agriculture, mineral extraction and factories, domestic work has become increasingly feminized, with the engagement of men in new “productive” areas, i.e., industrial and office work (Coquery-Vidrovitch, 1997: 109). With the expansion of urban centres, African workers — especially the elite and educated — began to emulate the practice of employing domestic workers to assist in services such as child-minding, and this further led to the relegation of domestic work as tasks for women and children (Ladan, 2005; Tsikata, 2009: 24).

From Prestige to Abuse

The growth and concentration of industries created opportunities for formal employment but also led to the rapid expansion of informal labour and apprenticeships (particularly in a trade and handicrafts) in urban centres (Coquery-Vidrovitch, 1997:115). With growing economic disparities between rural and urban centres, it became increasingly popular for young rural dwellers to migrate to cities in search of better opportunities. In this regard, extended family and kinship networks became the reference point — young people were often sent to live with their urban relatives to get education or learn skills in apprenticeship. In exchange, the beneficiaries repaid their sponsors by assisting them — with domestic work. It became common (and later spread after independence) in cities such as Accra, Lomé, Ouagadougou and many southern Nigerian cities (ibid). This resulted in the expansion of “in-kind” employment in domestic work, and it is closely connected to the older idea of fostering, or in Francophone West Africa, “placement” or “*confiage*” (HRW, 2007a: 29).

Fostering is the transfer or relocation of children from their biological homes to other homes where they are raised and cared for by other adults, usually called foster parents (Isiugo-Abanihe, 1985: 53). Although the practice is reported in other continents, it is more institutionalized in West Africa because it is rooted in kinship

structures and traditions (ibid). Fostering predates rapid migration and urbanization, but it became more complex and diversified as a result of growing inequalities between rural and urban centres and rapid rural-urban migration. One major effect of this was a rapid increase in child labour, with different experiences in terms of benefits to rural migrants; while some that lived with wealthy families ended up getting an education and moving up the social ladder, those placed with working-class families (with little or no education and poor wages themselves) were increasingly subjected to abuse and exploitative labour conditions (Coquery-Vidrovitch, 1997: 116).

Today, rural-urban migration continues on a large scale in many West African countries as a result of near neglect of the rural areas in terms of provision of basic infrastructures and services, including education. Thus, “most African domestic workers, working in cities and towns are internal migrants — they ... come from rural, often less-developed and poorer areas within their countries” (ILO, 2013b: 1).

Domestic Work as Forced Labour

Similar to the idea of fostering is another practice that underlies the spread of domestic workers in West Africa. Pawning — the transfer of persons as collateral for loans — was widespread in pre-colonial times (Klein and Roberts 1987: 23; Oroge, 1985). Although it was believed to have declined in the colonial era, it remained a viable option during famine years (Klein and Roberts 1987: 24-25). It is important to emphasize that pawning was not just a result of poverty; it was a form of social protection then — an institutional mechanism against vulnerabilities (Oroge, 1985: 76; Ubah, 1991: 466), and it appears to have been rare in areas where the poor had other options (Klein and Roberts 1987: 25-33). Vestiges of the practice can still be seen, especially in female domestic work (Akurang-Parry, 2010). For example, it is not unusual to see a relative or an intermediary collecting wages on behalf of young girls working as domestic workers in order to pay for some supposed family indebtedness and obligations — including brothers’ marriages (Coquery-Vidrovitch, 1997:115).

So, worsening inequalities (between rural and urban centres as well as between groups), combined with socio-cultural processes and institutional mechanisms, explain the involvement of people

in domestic work beyond the simple poverty-related supply-side account. The demand factors are also better understood within these processes and structures.

The Demand Side

The poverty-related analysis assumes that there is demand for domestic work (and workers) because there is supply of people (cheap labour) as a result of poverty. This analysis is weak because vulnerability alone does not dictate the type of work that people do (Thorsten, 2012: 5). In other words, the range of adjustment of the poor is dependent on available opportunities and social structures. In this case, the demand side, which is often neglected, is very important. People are not just in domestic work because they are poor; they are in it because a demand exists. They could be involved in other activities if the opportunities and structures were different. Their availability does not just result in their employment; their employment is also a result of a “labour gap”.

Globally, the demand for domestic workers has grown as a result of women’s increasing engagement in formal paid employment in the public and private sectors, and the requirements of such jobs, as well as the increase in the number of female-headed households (ILO, 2013b: 2). As more women have taken paid employment, their traditional roles of childcare and domestic duties have not changed much. Employment of women in career-structured jobs particularly involves high levels of commitment and long working hours, with little room for domestic responsibilities. The solution for women with relative control over income, particularly where their partners do not share domestic duties, is the employment of domestic workers (Gregson and Lowe cited in Cox, 2000: 242). Thus, this “dual burden” has created both the need for help in the home as well as the means to pay for it (Cox, 2000: 242). In less-developed economies, including West African countries, domestic work is further driven by the lack of mechanization in households and scarcity and costliness of time- and effort-saving commercial products etc. (Ladan, 2005). These coupled with the total or near absence of government welfare support and weak institutional frameworks for enforcement of labour legislation are the other particularities of domestic work in the West African context.

Policy Issues

From the above, it is clear that the main issues driving domestic work in West Africa are interconnected. The processes are not separate from one another; to attempt to separate them is to obscure the realities of domestic work. Widespread poverty and inequalities between rural and urban centres, coupled with the institutionalization of cultural practices of fostering and pawning in the absence of a welfare state, underscore the complexity of domestic work in West Africa. Some of these complexities manifest in terms of living arrangements (some domestic workers live with their employers, some are occasional or part-time residents, and some do not live with their employers); agency (differentiating between domestic workers that have been pawned or fostered and those that are directly employed); relationship with employers; and terms of engagement (paid, in-kind or apprenticeship) (Jacquemin, 2006: 391; ILO, 2013a: 35). Identifying these intricacies, in addition to the fact that domestic workers are often “hidden” in private homes, has implications both for understanding the situation of domestic workers and the effectiveness of any policy that seeks to improve their conditions.

The main approach to tackling the problems faced by domestic workers has been championed by the ILO in form of the Domestic Workers Convention, 2011 (C189) and Recommendation (201). As an organization with a tripartite (governments, employers and workers) governance structure responsible for setting labour standards and pursuing labour rights at the international level (Lerche, 2007: 426), the ILO sought to ensure international labour standards specific to domestic work “and in the process reframed domestic work as a human rights issue” (Blackett, 2014: 251). The basis for adopting C189 is that by nature, the work of cleaning, washing, caring, etc. is “indecent” and tends to be seen within a framework of servitude. But by adopting a human rights framework, it is hoped that the servitude framework will be eradicated and it will be “decent work” (Blackett, 2016). C189 “lays down basic rights and principles, and requires States to take a series of measures with a view to making decent work a reality for domestic workers” (ILO, 2011b: 1).

Although it is not the aim of this dissertation to appraise the ILO in general, the Decent Work Agenda represents the ILO’s “fight back” of the 1990s (Lerche, 2012: 18), given the multidimensional

challenges confronting the organization in the era of globalization (Standing, 2009). The extension of decent work to domestic workers should be seen in this context, in which the ILO “quietly ceased to be an international body attempting to redress structural inequality and became one promoting employment equity” (Standing, 2009: 369). This is why it is easier for the ILO to call for better treatment of domestic workers than to call for measures to address the structural inequalities within which the exploitation of domestic workers thrives. Thus, whereas C189 has been widely praised as the panacea to the challenges faced by domestic workers, it has not been widely ratified, and even where it is in force, compliance remains “a colossal challenge” (ILO, 2016c). The obvious issue here is how international standards can be applicable in national contexts if the conditions leading to domestic work are not universal. In the West African context, domestic work is peculiar because it involves real or fictitious kin relations, cultural mechanisms of addressing vulnerabilities and internal migration processes — all of which are difficult to unpack in relation to the rights-framed approach of C189.

An in-depth analysis of the extent to which the provisions and recommendations of C189 can be applied in the national context will be done below. First however, there will be an examination of the situation of domestic workers in a single West African country case study and how C189 compares with existing legal frameworks applicable to domestic workers.

Domestic Workers and Legal Frameworks in Nigeria

Although Nigeria has not ratified C189, there are “numerous calls and support” for the country to do so (Taran and Youtz, 2015: 7). Nigeria has the largest population in Africa, accounting for 47 per cent of West Africa’s population (World Bank, 2015b; ILO, 2016b). The country has recorded robust economic growth in recent years (at least before the recent slump in global oil prices), but this has not translated to better living conditions for the majority of the population. A full 78 per cent of the over 170 million people are estimated to live on less than \$1.25 a day (ILO, 2015), and inequality is a big challenge in the country: rural poverty is more than three times the urban poverty rate, and more impoverishment is found in the northern parts than in the southern (*The Economist*, 2014; World Bank, 2015a). As a result, rural-urban migration is pronounced; half of the population live in urban centres with deplorable conditions

and high unemployment levels — the national unemployment rate is 24 per cent, but the youth unemployment rate is twice as high (ILO, 2015). Furthermore, the country does not have a functional social protection system (Muqtada, 2012). As such, many rely on the generosity of relatives and philanthropists to meet their basic needs (Nwaubani, 2015), while others are forced to rely on “any available job” for survival. Thus, a lack of decent jobs is common (*The Economist*, 2014), and like a typical Sub-Saharan African country, formal employment is only about 10 per cent of the labour force (ILO, 2008b:4).

Given the above, domestic work in Nigeria is best understood within a political economy framework. Within the dominant capital-labour contradiction in Marxist analysis, domestic workers are “survival-level petty commodity producers in the informal economy” (Lerche, 2012: 18), or the “classes of labour” that Henry Bernstein (2007: 4) identified that “have to pursue their reproduction through insecure and oppressive — and typically increasingly scarce — wage employment and/or a range of likewise precarious small-scale and insecure ‘informal sector’ (‘survival’) activity.” Although there is no “homogenous proletarian condition” here, what unites these groups is “the need to secure reproduction needs (survival) through the (direct and indirect) sale of labour power” (ibid). This also makes the dualist account of informality more tenable in the country — informal employment like domestic work provides income and safety nets for the bulk of people ‘living on the margins’ of structural poverty, vulnerability and social exclusion” (ibid).

Profile of Domestic Workers in Nigeria

Although there is a dearth of reliable employment data in Sub-Saharan Africa, it is estimated that men and women are almost equally employed as domestic workers in Nigeria (National Bureau of Statistics, 2009, cited in ILO, 2013: 34). This can hardly come as a surprise to anyone with a knowledge of the situation in Nigeria, given the scope of activities covered in the ILO’s definition (see above). For example, the absence or limited coverage of modern security technology, a weak policing system, high urban crime rates etc. cause many high- and middle-income households to employ security guards or “gatemen”, and these are usually men; add to this the numbers that are increasingly employed in private households as gardeners, drivers etc. and the information may not be far from reality.

Domestic workers in Nigeria vary by age group too. In general, the sector has not been comprehensively researched to ascertain which age group dominates. This is because of conceptual and methodological challenges (see ILO 2013a for the problems of counting domestic workers). The few available studies either follow the popular conception of domestic workers as “maids or servants” and exclude gardeners, gatemen, drivers etc. or focus on specific themes in domestic work, such as child labour or trafficking, in their analysis (see for example, Akinrimisi, 2002; Ekpe-Otu, 2009; WHO, 2011; Tade and Aderinto, 2012). Also, most of the studies are region-based, and given the diversity in the country, generalization becomes problematic. In northern Nigeria, young boys sent to Quranic schools, often in a master-servant relationship, may also double as domestic workers (USDOL, 2014); in eastern Nigeria, young men that are sent to live with their “uncles” to learn a trade in cities often help with domestic duties (Agbu, 2009); and in the south, domestic workers may be children, youths and adults that have been fostered or trafficked or that are directly employed (Tade and Aderinto, 2012).

In spite of the above, a plausible explanation is that domestic workers are generally from households and backgrounds “to whom society at large grants little respect” (Coser, 1973: 39). On one hand, they may be children and youths employed in lower-middle-income households because they are available at cheaper rates and are easier to control compared to adults, or if they have been fostered or trafficked, they are easier enticed by the prospects of education and apprenticeship in the cities than adults (Ekpe-Otu, 2009; Thorsten, 2012). On another hand, they may be adults considered as “social inferiors” (Coser, 1973: 39) based on ethnic, historical or cultural factors and stereotypes.

The heterogeneity of domestic workers in Nigeria is also reflected in their terms of employment and remuneration. Akinrimisi (2002: 2) sums it up like this: “Some receive wages, some do not, some have their education sponsored by their employers in return for the services that they render and some undergo some form of vocational training or the other. Some are not paid wages and are not undergoing any form of educational or vocational training. Someone else receives their wages and they may not even know how much.”

Finally, like elsewhere in the world, stories of abuse and exploitation are common. These include unregulated working hours,

unhealthy working conditions, insecure incomes, physical assaults, gun violence, sexual abuse etc. (see, for example, *The Guardian*, 2016; *This Day*, 2016; *The Punch* 2016). However, there are exceptions as a few are employed in households (or even fostered there in the case of children or youths) where they are afforded provisions and opportunities for education, training and upward social mobility (Ekpe-Otu, 2009: 30; Nwaubani, 2015).

So, to a very large extent, domestic workers in Nigeria are in a vulnerable situation — similar to what is obtained globally. As stated earlier, practices and processes of fostering, pawning, human trafficking, forced labour, child labour etc. are all intertwined in the employment of domestic workers in the country. Yet, some of these practices are prohibited by national laws as well as international laws which the country has ratified. What follows is a review of the key provisions and recommendations of C189 in relation to existing legal frameworks applicable to domestic workers in Nigeria, and an analysis of why the existing legislation has not been effective.

C189 and National Legislation

Like in most parts of the world, domestic workers in Nigeria are only partly covered by the various laws in the country (ILO, 2013a: 50-52). Here, the various aspects of the nation's legislation that address (or are supposed to address) domestic work, as well as C189, will be covered. This is because although Nigeria has not ratified C189, it has been reported that: "A number of the provisions of ILO C189 are already incorporated in Nigerian national legislation and policy ... existing gaps could be effectively remedied following and with support of ratification of this instrument ... [and] ... ratification is feasible as well as urgent" (Taran and Youtz, 2015: 7).

The laws that implicitly cover domestic workers in the country include the 1999 Constitution (which outlines the general laws governing the country, including the fundamental rights of every person), the 1990 Nigerian Labour Act (legislation relating to the labour market), the 2011 Minimum Wage (Amendment) Act (which specifies the minimum wage payable to any worker) and the 2003 Child Rights Act (relating to the rights of the child based on the country's ratification of international conventions and treaties such as the UN Rights of the Child and the ILO's Convention on the Elimination of the Worst Forms of Child Labour (C182)). However, because of space constraints, I will examine only the

aspects of these laws corresponding to the four strategic pillars of the Decent Work Agenda: full and productive employment; rights at work; social protection; and the promotion of social dialogue (ILO, 1998). The C189 contains 27 articles, but articles 19–27 are about administration and reporting to the ILO and are therefore excluded from this review.

Article 1 of C189 outlines the definition of domestic workers and this has been outlined above. This definition is consistent with section 91 of the Labour Act (1990) and the Minimum Wage Act 2011(2) in Nigeria except that they refer to persons employed in domestic work as “domestic servants”. Article 2 of C189 outlines any categories or groups that may be excluded from the provisions of the Convention. It is therefore not relevant here.

Article 3 of C189 requires member states to “take measures to ensure effective protection, promotion and realization of human rights of domestic workers, 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 labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.” These are consistent with Chapter IV of the Nigerian Constitution (1999), which covers the rights of all persons in Nigeria; section 40, which guarantees freedom of assembly and association; section 34(b) and (c), which prohibits forced or compulsory labour; section 17(3), which makes provision for the protection of children and young persons from all forms of exploitation as well as protection against discrimination on any account; and section 73 of the Labour Act (1990), which prohibits forced labour and states the penalties to be meted out to offenders.

The Child Rights Act (2003) delineates anyone below the age of 18 as a child and this is consistent with Article 4 of C189, which specifies the adoption of a minimum age for domestic work consistent with ILO’s Conventions on Minimum Age and the Worst Forms of Child Labour. Section 46 of the Nigerian Labour Act (1990) also appears to be consistent with Article 5 of C189, which specifies the need to “ensure effective protection of domestic workers against all forms of abuse, harassment and violence”. Also, section 65 of the Labour Act, which makes provisions for the Minister (in charge) to make regulations concerning the employment of domestic workers and their general living and working conditions, appears to be

relevant to the need to specify the terms of employment as contained in Articles 6 and 7 of C189.

Articles 8 and 9 of C189 contain special provisions and considerations for migrant domestic workers. Although they are not mentioned as a separate group, provisions covering them could be inferred from the ones that apply to domestic workers in general.

Article 10 of C189 enumerates provisions for hours of work, including weekly rest. This is similar to section 13 of the Labour Act (1990), with its specification on regular hours of work based on agreement between employers and employees, collective bargaining or the Industrial Wages Board. Article 11 of C189 contains specifications about minimum wage. However, the national Minimum Wage Act (2011) seems to exclude domestic workers with its provision in section 2(a) that the requirement to pay minimum wage shall not apply to any organization with less than fifty employees. Also, the provision of Article 12 of C189 on in-kind payment is another part that is not covered in national legal tools.

Article 13 of C189 contains the right to a safe and healthy working environment; similar provisions are outlined in section 17(b) and (c) of the Constitution as well as sections 65 and 88 of the Labour Act. Article 14 of C189 outlines social security protection; Article 15 is on regulation of employment agencies in the recruitment of domestic workers; and Articles 16–18 contain provisions about social dialogue. Although these are covered in varying degrees by the laws highlighted here, “domestic work is not explicitly mentioned and domestic workers appear not to be covered” (Taran and Youtz, 2015: 20).

As earlier stated, the majority of workers (about 90 per cent) in Nigeria, as in other Sub-Saharan African countries, are in informal employment (ILO, 2008b: 4). So, even where the provisions are stated, the majority of workers do not have a chance to enjoy labour protection (Tsikata, 2009). It is therefore not surprising that despite the current legal provisions, domestic workers continue to suffer abuse and exploitation and the sector is booming in the country (*The Guardian*, 2016). While it can be argued that consolidating all these provisions in the form of C189 and ratification of the same will address the peculiar situation of domestic workers and make the laws more effective (Tsikata, 2009), the obvious question is: if existing provisions have not been effective, by what mechanisms will the ratification of C189 ensure decent work for domestic workers in Nigeria?

Socio-Economic Realities Versus Human Rights Discourse

Ratifying C189 will not be a magic bullet. The legal framework of C189, like many aspects of national legislation applicable to domestic workers in Nigeria, reflects the human rights discourse of the “international community” (notably the United Nations (UN) and its agencies, international non-governmental organizations (NGOs) and Western countries) (Mutua, 2001) rather than internal standards and cultural expectations that drive the demand for and supply of domestic workers in the country. The ILO’s position is that fighting poverty requires the promotion of decent work (ILO, 2009: 54), but this is adopting a “non-confrontational mode” (Standing, 2009: 371); it does not challenge the structure that breeds “indecent work”. The large number of individuals and households in poverty, unemployed and without state welfare provision in the country constitute a huge “reserve army of labour” (Marx, 1998 [1887]: 902), whose labour power is available for exploitation. Private households and individuals can freely draw from this reserve to manage and maintain their high-status lifestyle (Cock, 1989), while the most deprived members of society see the same work as a survival strategy or solution out of their poverty and deplorable situation. Thus, domestic work is essentially a private contract between unequal parties — a relationship that is complex and goes beyond “the language of rights” (Jacquemin, 2006: 389) in legal (public) documents.

So, whereas the human rights discourse emphasizes that domestic workers are exploited, it does not highlight the structures within which the exploitation is perpetrated. I argue against this approach and assert that domestic workers are not only “victims” in the hands of their employers, but also “victims” in a structure of inequalities, vulnerabilities and associated cultural practices in the absence of a formal welfare system; the former being perpetuated because of, and within, the latter. Therefore, relying on legal instruments to “save” domestic workers from the exploitation of employers without addressing how they become “victims” is attempting to solve a problem without addressing its root cause. This is why the legal framework cannot be effectively applied within the status quo. I analyze the practical difficulties of applying C189 in Nigeria in the next section.

C189: Key Issues and Practical Difficulties

Ignoring the structure within which people become domestic workers is a major drawback of the ILO's approach to ensure decent work for domestic workers. In this section, I analyze some practical difficulties in applying the key provisions of C189 (formalization, fundamental rights at work, remuneration, working and living conditions, activities of intermediaries and social protection) within the existing structure in which domestic work is done.

The Challenge of Formalization

C189 is “a means of bringing domestic workers within the formal economy and into the mainstream of the Decent Work Agenda” (ILO, 2013a: 43). Thus, the ILO's strategy is to address the plights of domestic workers by promoting the formalization of domestic work. However, as the organization admits in another report, transition to formality requires more than legal documents and reforms because of the multifarious causes of informality (ILO, 2009: 24). Thus, the main challenge is addressing the causes of informality. In this context, the underlying conditions and processes within which domestic work thrives — poverty, inequality, insecurity, pawning, trafficking etc. will need to be addressed before formalization can be effective. Yet, this is not a straightforward process; for example, kinship networks and family relationships may need to be redefined given the rather loose usage of these terms in the African context (Bass, 2004: 89-90). More importantly, informal activities and debt relations may offer freedom from unwanted dependency on relatives or enable people to fulfil their social obligations to their immediate dependants (O'Connell Davidson, 2015: 200). Beyond the formal-informal categorization however is the fact that the majority of workers are left in vulnerable and precarious working conditions given the political economy of Nigeria, as earlier stated.

Fundamental Rights at Work

The fact that domestic workers live and mostly operate alone or as isolated groups makes it difficult to enforce their fundamental rights of association and collective bargaining to improve their wages and living conditions (Tsikata, 2009: 28). There are several challenges in attempting to enforce these rights. One is that domestic workers are mostly recruited from vulnerable groups desperate for survival and are often in a dependent relationship (ILO, 2013a:44).

Furthermore, given the social stigma attached to domestic work in Nigeria and the fact that it is only seen as a temporary work (i.e., something that people do with the hope of being able to save enough money to do something better in life (ILO, 2004; Tsikata, 2009), many would prefer to leave the work completely rather than bargain for better wages or living conditions.

Another challenge is how cultural expectations affect the application of these rights. In practice, a domestic worker who has been pawned has no bargaining rights (Klein and Roberts 1987: 24-25; ILO, 2004: 34-35). So, until the conditions that make pawning a viable option are addressed, application of C189 will be difficult. Also, in Nigeria, where respect for family values and kinship ties is emphasized, domestic workers who have been fostered may see their work as an obligation to their kin group or family members, or an act of loyalty to their “benefactors” (ILO, 2004). This is why even when and where they are abused and exploited, formal complaints are rare (at least until serious physical danger is involved) or in some cases, domestic workers are encouraged by their relatives to see their plight in the overall interest of the family (or in the case of children, as part of training for a better future) (Ekpe-Otu, 2009: 30-31).

The above also explains why organizing domestic workers is very challenging in a multicultural and diverse setting like Nigeria. In many societies where there has been successful organization of domestic workers, they have been united by a number of factors — for example, where they are mostly migrant workers (in the case of many Western countries) or are mostly members of the same race (as in South Africa) (Ally, 2005). But as already established, men and women; children, youths and adults; relatives and non-relatives; members of different ethnic groups etc. are employed as domestic workers in Nigeria, and in many cases, those that are supposed to promote their rights — including trade unionists, members of parliaments and government officials — are their employers, who promote the ratification of C189 as more of conformity to the “international norm” rather than standards that are meant to be privately binding (Anderson, 2001; Oluwaniyi, 2009).

Remuneration

The provision of the payment of minimum wage to domestic workers and the regulation of in-kind payments in C189 are inherently problematic given that informal employment relations

tend to have their own rules and dynamics beyond state interference (Breman, 1996: 186). For a start, it is important to recognize that payment of wages does not equal freedom (from exploitation and oppression) (O'Connell Davidson, 2015: 199). This is especially true considering the difficulty in quantifying the value of domestic work (Anderson, 2000; 2001). However, even if one assumes that domestic workers are supposed to be included in the current minimum wage of N18,000 (eighteen thousand naira or about US\$91²) per month in Nigeria, the amount is insufficient to ensure a decent living given the country's size and level of income (World Bank, 2015). On the other hand, a minimum wage for domestic workers (often with little or no education and/or skills) above the national minimum wage is inconceivable, whereas setting it below the national level will lead to further impoverishment and exploitation of domestic workers.

Regardless of the rate at which the minimum wage is set, translating the legislation into actual practice is even more complex. The ILO believes compliance can be measured through the number of formal complaints made by domestic workers, workplace inspections or the proportion of workers receiving minimum wages (Oelz and Uma, 2015: 17-18). However, given the abundant labour supply, high poverty and vulnerability levels, weak legal and governance institutions and cultural expectations involved in domestic work in Nigeria, the viability and effectiveness of these measures of compliance is highly limited. For example, employers have many options to keep wages low and workers can hardly complain (formally) about low wages as this represents a better option than no wages at all (Krugman, 1997).

Furthermore, regulating in-kind payments is even more difficult. This is because domestic work, like other employer-employee relations in informal employment, is governed by "social customs and traditions" (WDR, 1995: 87). Informal commitments by employers or relatives of domestic workers — especially those recruited from rural areas — to provide education, shelter, clothing, apprentice opportunity or start-up capital for business in urban centres etc. are socially acceptable in the country (ibid). Also, the ILO's recommendation does not consider "employers" who are themselves relatively poor but have relatives as domestic workers that they are expected to help by cultural standards. The implications for the ILO's recommendation in this regard are obvious: such arrangements and the terms have to be quantified in monetary terms,

real and fictitious kin relations have to be defined, and extended family networks and support (against insecurities and risks) may have to be regulated and/or replaced by the state. All of these require more than legislation to be feasible.

Working and Living Conditions

C189 calls for “measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave” (Article 10). However, the nature of domestic work itself makes it difficult to regulate. Domestic work is highly unstructured, difficult to divide fairly and involves a contractual relationship where both the worker’s labour power and personal identity are turned into commodities to be bought and sold (Anderson, 2001). In practice, domestic workers are employed to lessen the burden and enhance the leisure of their employers (Cock, 1989). So, in a sense, employers feel they own the labour power of domestic workers in some sort of master-servant relationship (Tade and Aderinto, 2012: 530).

To a large extent, the type of domestic worker determines the feasibility (or otherwise) of having “normal working hours”. For example, some domestic workers are employed on a part-time basis or for specific tasks; some are general assistants at home as well as in their employers’ businesses; while many are “maids of all works,” i.e., they are expected to “always be there” for every household need and often live with their employers (Cox, 2006: 9; HRW, 2007). The latter is particularly problematic to normalize. From their field study with employers of domestic workers in Ibadan, South-West Nigeria, Tade and Aderinto (2012: 530) portrayed the perception of many employers: “Respondents (employers) said they could use the domestic servants ‘anyhow’ because he or she is being paid to render a service.” Also, the fact that the home is also the workplace and it is hidden from public glare means regulation is difficult (ibid).

The above also explains why domestic workers are continually in demand — even where technology can replace some of their services; employing them is not only cheaper but is also often interpreted as a symbol of high status and superiority (Coser, 1973; Cock, 1989; Anderson, 2001; Tsikata, 2009). So, the issue here is not really about emphasizing the rights of the weak in an unequal power relationship; rather it is about challenging the inequalities

and practices where people are impoverished in the first place (Cox, 2006).

If the provisions of normal weekly hours and weekly rest are not difficult enough to implement, the implementation of paid annual leave is even more problematic. As already stated, about 90 per cent of the labour force in Nigeria, as in most Sub-Saharan Africa (including many employers of domestic workers), are estimated to be in informal employment relationships, where they are hardly covered by such provisions. The obvious issue here is that if employers themselves do not get paid annual leave, it would be ridiculous to expect them to provide that to their employees.

Intermediaries

It is difficult to regulate the role of intermediaries or private employment agencies in domestic service. Intermediaries may be relatives who negotiate and collect wages on behalf of the domestic workers — especially child domestic workers but also adults in some cases — under the guise of helping them to take care of some needs in the village. Regulating the activities of these intermediaries requires being able to monitor the migration of rural residents to urban centres as well as being able to regulate fostering practice or distinguish between potentially abusive and beneficial fostering practice in education or apprenticeship (Ekpe-Otu, 2009; Oluwaniyi, 2009). All these are practically impossible where the poorest people and/or vulnerable groups are left to survive on their own.

Given the intricate connections and blurred distinctions between fostering, pawning, child labour and forced labour in domestic work, “it is impossible to know how many are exploited in domestic service” (ILO, 2004:14). If it is impossible to know, how are countries expected to ensure the elimination of all forms of forced labour and child labour, as C189 stipulates? In Nigeria, as in many African states, it is perhaps safe to say that fostering would need to be eliminated or abolished before child labour, forced labour and exploitation in domestic work associated with it can be effectively abolished. Yet fostering or pawning cannot be outlawed effectively without addressing the vulnerabilities that make people engage in it. This explains why, although Nigeria is a signatory to the ILO’s conventions on forced labour and child labour — two major “drivers” of domestic work — success has been limited, and it has been suggested that child labour in particular might be on the

increase in the country (Harma, 2009).

As elaborated before, there are many child domestic workers in the country, working under the worst forms of child labour in many cases. By the ILO's standard, they are not meant to be in domestic work if this deprives them of compulsory education or opportunities to participate in further education or vocational training (Article 4). This provision is based on the premise that there is equal access to education and vocational training. However, this is not the case in many rural areas in Nigeria; rural poverty, neglects and the near absence of opportunities for education, employment etc. "push" people into urban centres and make them readily "exploitable" (Oluwaniyi, 2009). So, the paradox in the situation of child domestic workers in the country is that opportunities for education and vocational training often come with domestic work in urban centres (ibid; Nwaubani, 2015).

Social Protection

Discussing social protection for domestic workers is contradictory in many ways. The first is how social security protection is emphasized for domestic workers but not for the conditions that make people become domestic workers. The reality for many domestic workers is that their employment itself is a form of social protection. Fostering, pawning, trafficking and forced labour in domestic work are difficult to address despite their exploitative tendencies and "illegality" (as defined by international standards) because they are individual and cultural strategies of survival where the state mechanism is non-existent or too weak to protect the poor (Oroge, 1985: 76; Ubah, 1991: 466; O'Connell Davidson, 2015: 200). While this does not justify the exploitation that domestic workers are subjected to by employers, it poses a serious challenge to the human rights discourse: if the "universally declared rights" of basic provisions and protection (Gaay Fortman, 2006: 263) are not guaranteed by the state, how well can the same state regulate individuals' or households' mechanisms of adaptation (and any vulnerability resulting from the same)? The real challenge therefore is to protect the poor from daily hardship and vulnerability — conditions that drive them to further exploitation when they become domestic workers, not to merely attempt to "save" them from the exploitation of employers.

Furthermore, C189 specifies that domestic workers are

entitled to work under conditions that are not less favourable than those applicable to other workers (Article 14). This is a paradox because people become domestic workers in the first place as a result of “less favourable conditions” that they are trying to overcome — either at the individual or household level. In this regard, apart from its peculiar nature, domestic work is fundamentally different because it is not a job that reflects people’s aspirations but one that reflects their marginalization and alienation. So, the main challenge here is not the conditions under which domestic workers labour, but the conditions under which they become domestic workers. If the latter is less favourable (and it is), the former cannot be expected to be different.

Another paradox here is the proposition that domestic workers should be entitled to social security protection, such as sick leave, guaranteed occupational safety and health protection etc. This is because to a very large extent, the status of a domestic worker is determined by the income of the household where the work is being done, as well as the goodwill of the employer (Tade and Aderinto, 2012). Domestic workers do not work in typical offices and factories, where standards can be strictly adhered to. International labour standards are difficult to apply in private households for several reasons: households are different across the country, and the notion of “private” reflects values, identities and practices that make it difficult to identify what is “decent” or “indecent”; to measure “exploitation”; and to judge between what constitutes appropriate or inappropriate employment relations (O’Connell Davidson, 2015: 199). There are also issues with labour inspections to ensure adherence to standards in private households: the tension between inspecting and respecting “rights to privacy” and the possibility of getting distorted facts when households are informed about inspection ahead of time (as they are supposed to be) (Article 17).

To summarize, domestic work thrives within the existing structures of the rural-urban divide, regional inequalities, high unemployment and poverty levels, absence of state welfare support, and fostering and pawning as cultural forms of social protection. These structural and institutional arrangements present real challenges which the rights-framed approach of C189 and its key provisions and recommendations cannot address. The rights-framed approach, with its emphasis on international standards, assumes that all nations — and by extension, individuals — enjoy some equality

(Mutua, 2001: 206-08). The notions of neutrality and universality in such discourse hide fundamental tensions and contradictions as well as issues of unequal power relations in the contemporary world (ibid) — a world of the (powerful) rich and the (vulnerable) poor; the privileged and “inferior” people; the private and public; urban and rural; and other divisions within and among countries. The plights of domestic workers are rooted in these divisions and inequalities, which the rights-framed discourse belies.

Conclusion

Applying C189 without addressing the structures within which domestic work is carried out in national contexts is why it has remained “a colossal challenge” (ILO, 2016c). The rights-framed approach of C189 assumes that domestic workers are exploited primarily because of their work. Hence, it seeks to ensure the recognition of domestic workers and the regulation of domestic work. But the reality is that it is because people are in a vulnerable position in the social hierarchy that they become domestic workers to begin with. The ratification of C189 is therefore not enough to ensure decent work for domestic workers; any policy recommendation that will be effective in addressing the plight of domestic workers must begin (and be consistent) with the processes and conditions that push people into domestic work in the first place. Given viable options, not many will remain in domestic work where they are stigmatized and abused; and domestic service will likely be increasingly operated on a specialized basis (Cosser, 1973:39). This is the only way decent work for domestic workers can become a reality.

It has not been the purpose of this article to argue against the exploitation and abuse of domestic workers but to show the fundamental flaw of the ILO’s approach in urging state action to regulate domestic work and protect domestic workers. State action should be directed differently — at managing the structures and conditions under which domestic work thrives. The ILO probably needs to set another “international standard” or champion a structural reform that will ensure income support and redistribution and challenge many dimensions of the inequalities through which domestic work is carried out before promoting the ratification of C189. But without changing the status quo, decent work for domestic workers is not a realistic goal.

Endnotes

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2. Based on the official exchange rate of N197 to US\$1 before the recent devaluation of the naira (see <https://www.cbn.gov.ng/rates/ExchRateByCurrency.asp> for updates).

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