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Translating Rights into Agency: Advocacy, Aid and the Domestic Workers Convention

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ABSTRACT

In June 2011, the International Labor Conference adopted the *Domestic Workers Convention* (the Convention), the first international labor standard to set out legal obligations that specifically protect and improve the working lives of domestic workers. This paper argues that previous regulatory attempts to protect domestic workers have been inadequate and, although it is an improvement, the Convention is currently also an insufficient legal instrument. However, although the Convention is not yet in force, educational and advocacy work on this legal instrument are already underway. For example, in September 2011, I volunteered as an advocacy officer with the recently-established Working Women's Centre Timor Leste on its first project, providing education, support and advocacy based on the rights expressed in the Convention to domestic workers in Dili and four other rural Districts. My experiences while working with this project suggested that a convention, as a legal instrument, can still have significant impact at a grassroots level without reliance on its legal mechanisms. This paper argues that the Convention may still be effective in improving the lives of domestic workers, by changing norms at the grassroots level. Crucially, the degree of effectiveness will depend on how successfully the Convention's norms can be translated into local contexts. But there are tensions within the process of translation: between remaking rights resonantly *and* faithfully; between affecting local consciousness *and* retaining the essence of the Convention's rights. How then to successfully harness the normative power of the Convention? This paper considers Community Conversations – a radical, participatory approach where domestic workers themselves drive the translation process – as one method of negotiating the tension inherent in translation. Such an approach may effectively engender the key Convention rights of solidarity and collective industrial agency. Through this approach, the normative power of the Convention's legal obligations may successfully affect the protection of labor rights at the grassroots level.

KEYWORDS: Domestic workers; labor rights; participatory development; law and society

RESUMEN

El junio de 2011, la Organización Internacional del Trabajo adoptó el *Convenio sobre las Trabajadoras y los Trabajadores Domésticos*, el primer estándar laboral internacional que incluye obligaciones legales específicas para proteger y mejorar las vidas de trabajadores domésticos. Este artículo sostiene que los anteriores intentos de reglamentación para proteger a los derechos de los trabajadores domésticos no han sido suficientes, y que aunque es una mejora, el Convenio es actualmente un instrumento jurídico insuficiente. Sin embargo, a pesar de que el Convenio no ha entrado en vigor, la labor educativa y de promoción de este instrumento legal ya están en marcha. Por ejemplo, en septiembre de 2011, trabajé de manera voluntaria como encargada de labores de apoyo y defensa en el primer proyecto del recientemente establecido Centro de Trabajo de las Mujeres de Timor Leste, proporcionando educación, apoyo y defensa basada en los derechos del Convenio para trabajadores domésticos en Dili y otros cuatro distritos rurales. Mis experiencias trabajando con este proyecto sugieren que un convenio, como un instrumento legal, aun puede tener un impacto importante al nivel local sin depender de los mecanismos legales. Este artículo sostiene que el Convenio todavía puede ser efectivo para mejorar las vidas de trabajadores domésticos, mediante el cambio de normas al nivel local. Fundamentalmente, el grado de eficacia dependerá de cuan efectivamente las normas del Convenio puedan ser traducidas al nivel local. Pero existen tensiones dentro del proceso de traducción: entre reconstruir esos derechos resonantemente y fielmente al mismo tiempo; entre afectar la conciencia local y mantener la esencia de los derechos del Convenio. Entonces, ¿cómo aprovechar con éxito el poder normativo del Convenio? Este artículo considera las Conversaciones Comunitarias – un enfoque radical y participatorio donde los mismos trabajadores domésticos manejan el proceso – como un método para negociar la tensión inherente en la traducción. Quizás aún más fundamentalmente, esta metodología puede generar derechos claves del Convenio tales como solidaridad y agencia industrial colectiva. A través de esta metodología, la fuerza normativa de las obligaciones legales del Convenio puede contribuir a la protección de los derechos laborales de los trabajadores domésticos.

PALABRAS-CLAVE: Trabajadores domésticos; derechos laborales; desarrollo participativo; derecho y sociedad

I. INTRODUCTION

In June 2011, the International Labour Conference adopted the *Domestic Workers Convention* (the Convention),¹ the first international labour standard to set out legal obligations that specifically protect and improve the working lives of domestic workers. While the Convention is not yet in force, educational and advocacy work on this legal instrument are already underway. For example, in September 2011, I volunteered as an advocacy officer with the recently-established Working Women's Centre Timor Leste on its first project.² This project provided education, support and advocacy based on the rights expressed in the Convention to domestic workers in Dili and four other rural Districts. My experiences while working with this project suggested that a convention, as a legal instrument, can still have significant impact at a grassroots level without reliance on its legal mechanisms.

This paper argues that regulatory attempts to protect domestic workers have been inadequate and, although it is an improvement, the Convention is also legally inadequate. However, this paper argues that the Convention may still be effective in improving the lives of domestic workers, by changing norms at the grassroots level. Crucially, the degree of effectiveness will depend on how successfully the Convention's norms can be translated into local contexts.

In order to assess the legal effectiveness of regulations protecting domestic workers, this paper begins with a critical examination of the effectiveness of national and international labour laws protecting domestic workers prior to the adoption of the Convention. The paper then reviews the nature and scope of the Convention's obligations, and their effectiveness. This paper argues that while the Convention improves on previous regulatory attempts at protecting domestic workers, its effectiveness is fundamentally compromised because 1) as a labour standard, it is subject to the broader marginalisation of labour standards vis-à-vis international trade law, 2) as it is not in force, the Convention's obligations have no legal authority and are disconnected from the interpretive and promotional powers of the International Labour Organisation's (ILO) supervisory mechanisms, and 3) it is unclear whether the Convention addresses the deeper regulatory challenges of domestic work.

However, the application of law is only one way of changing the attitudes, behaviours, and conditions that underpin the exploitation of domestic workers. Despite the above obstacles to its legal effectiveness, the normative power of the Convention's obligations can nevertheless effectively improve the working lives of domestic workers. To do this, norms must be translated into a local context. But there are tensions within the process of translation: between remaking rights resonantly *and* faithfully; between affecting local consciousness *and* retaining the essence of the Convention's rights.

How then to successfully harness the normative power of the Convention? This paper considers Community Conversations – a radical, participatory approach where domestic

¹ *ILO Convention Concerning Decent Work for Domestic Workers (No 189)*, opened for signature 16 June 2011, C189, *Domestic Workers Convention* (not yet in force).

² I would like to acknowledge the assistance of staff at the Union Aid Abroad-APHEDA Sydney and Dili offices, as well as the dedicated activist feminists of the Working Women's Centre Dili and the Working Women's Network, for the invaluable conversations we have had about women's rights, labour rights, poverty and international aid. This paper was originally submitted in partial fulfilment of the Juris Doctor (Honours) program at the Australian National University. Therefore, I also thank my academic supervisor Katharine Young for all her constructive feedback, advice and guidance.

workers themselves drive the translation process – as one method of negotiating the tension inherent in translation. Such an approach may effectively engender the key Convention rights of solidarity and collective industrial agency. Through this approach, the normative power of the Convention’s legal obligations may successfully affect the protection of labour rights at the grassroots level.

II. REGULATING DOMESTIC WORK

Domestic work is an important source of employment for women³, yet it is so often precarious employment, undervalued by society.⁴ Regulation is one means of addressing the disparity between the prevalence of domestic work and the lack of protections for this work. As such, this chapter critically considers the legal effectiveness of national and international labour protections for domestic workers. It looks first at the protections that existed prior to the adoption of the Convention, and then at the Convention itself. This chapter argues that while the Convention provides an improved foundation for addressing domestic work’s regulatory challenges, the legal effectiveness of the Convention is fundamentally compromised by the broader discord between the international trade and labour law regimes, the Convention’s current legal status, and the apparent failure to address the underlying regulatory challenges of domestic work.

A. *National Labour Standards*

Domestic workers are one of the least formally protected groups of workers according to a study of national labour laws by the International Labour Office.⁵ The International Labour Office found that a substantial proportion of domestic workers do not enjoy the same protections on the key conditions of minimum wage, limitation of normal working hours, and maternity protection as other categories of wage workers.⁶

Specifically, some 43 percent of all domestic workers are not entitled to a minimum wage under national law.⁷ Over half of all domestic workers (57 percent) have no statutory limitation to their normal weekly work hours, while 45 percent have no formal entitlement to weekly rest.⁸ More than one-third of female domestic workers (36 percent) have no entitlement to maternity leave under national laws.⁹ Furthermore, access to maternity leave entitlements is significantly undermined – nearly 40 percent of female domestic workers do not enjoy a statutory entitlement to maternity cash benefits or income replacement.¹⁰

³ Domestic work accounts for 3.6 percent of all wage employment and 7.5 percent of all female wage workers, while 83 percent of the 52.6 million domestic workers (over 15 years old) worldwide are women: International Labour Office, *Global and Regional Estimates on Domestic Workers: Domestic Work Policy Brief No. 4* (2011), 8.

⁴ Adelle Blackett, Introduction: Regulating Decent Work for Domestic Workers (2011) 23 *Canadian Journal of Women and the Law* 1, 4-5; Barbara Ehrenreich and Arlie Russell Hoschschild (eds), *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (Granta Publications, 2003); Judy Fudge and Rosemary Owens (eds.) *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (Hart Publishing, 2006).

⁵ International Labour Office, *Coverage of Domestic Workers by Key Working Conditions Laws: Domestic Work Policy Brief No. 5* (2011) 1.

⁶ Ibid, 2, 5 and 6.

⁷ Ibid, 2.

⁸ Ibid, 3.

⁹ Ibid, 5.

¹⁰ Ibid.

Even accepting that there is a significant gulf between the letter of the law and its application – between law “on the books” and law “on the ground”¹¹ – a substantial proportion of domestic workers are simply *excluded* from formal labour protections and entitlements which provide minimum, legally enforceable benchmarks. This is in a sector where collective organising and bargaining are rare. These gaps in formal national labour protections underscore the significant challenges to transform domestic work into decent work,¹² and ensure domestic workers can access the same fundamental rights formally available to other categories of workers.¹³

B. *International Labour Standards*

Prior to the *Domestic Workers Convention*, the international regulation of domestic work required piecing together several different groups of relevant conventions, some of which allowed Member States to exclude domestic workers.¹⁴ Furthermore, the resulting legal patchwork still fundamentally failed to grasp and regulate the special nature of domestic work as work comparable with caring work performed outside the home, while also being inextricably bound up with the needs of a private household.

Among the groups of conventions applicable to the protection of domestic workers, the eight core ILO conventions that underpin the *Declaration on Fundamental Principles and Rights at Work* are of particular relevance.¹⁵ The coverage of these core ILO conventions has consistently been found to extend to domestic workers by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), one of the ILO’s regular supervisory mechanisms. That is, any formal national legislation consistent with these conventions should also protect the fundamental rights of domestic workers, and be enforceable in practice.¹⁶

¹¹ ILO, *Decent Work for Domestic Workers: Report no IV(1)*, International Labour Conference, 99th session, Geneva (2010) 26.

¹² *Resolution concerning decent work and the informal economy*, International Labour Conference, 90th session, Geneva (2002) [2].

¹³ Everyone has the right to just and favourable conditions of work: *Universal Declaration of Human Rights*, UNGA Res 217, UN GAOR, 3rd sess., 183rd plen mtg, arts 23 and 24, UN Doc A/810 (1948). The UN Committee on Economic, Social and Cultural Rights has emphasized that “domestic and agricultural work must be properly regulated by national legislation so that domestic and agricultural workers enjoy the same level of protection as other workers”: UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, [10], E/C.12/GC/18 (2006).

¹⁴ For instance, Spain has excluded domestic workers from the scope of Protection of Worker’s Claims Convention (No. 173) as cited in *ibid*, 41.

¹⁵ *ILO Declaration on Fundamental Principles and Rights at Work*, 86th sess, Geneva (1998); *Freedom of Association and Protection of the Right to Organise Convention (No 87)*, opened for signature 9 July 1948, C87 (entered into force 4 July 1950); *Right to Organise and Collectively Bargain Convention (No 98)*, opened for signature 1 July 1949, C98, (entered into force 4 July 1951); *Forced or Compulsory Labour Convention (No 29)*, opened for signature 28 June 1930, C29, (entered into force 01 May 1932); *Abolition of Forced Labour Convention (No 105)*, opened for signature 25 June 1957, C105, (entered into force 17 January 1959); *Minimum Age for Admission to Employment Convention (No 138)*, opened for signature 26 June 1973, C138, (entered into force 19 Jun 1976); *Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention (No 182)*, opened for signature 17 June 1999, C182, (entered into force 19 Nov 2000); *Equal Remuneration Convention (No 100)*, opened for signature 29 June 1951, C100, (entered into force 23 May 1953); *Convention concerning Discrimination in Respect of Employment and Occupation (No 111)*, open for signature 25 June 1958 (entered into force 15 June 1960).

¹⁶ ILO, *ibid* n 10, 17-20.

Although not expressly mentioned, domestic workers are covered by other ILO conventions dealing with the conditions of work, such as minimum wage, hours of work, maternity protections and termination of employment.¹⁷ There are also additional groups of ILO conventions specifically dealing with, for example, social security or issues pertinent to migrant workers, and the coverage of these conventions extends, in principle, to domestic workers.¹⁸ In all, international labour standards that apply to domestic workers are unhelpfully dispersed across 34 different conventions.¹⁹

Furthermore, domestic workers can be excluded from the scope of ILO conventions if the instrument contains a flexibility clause on which the ILO Member State relies.²⁰ However, the ability to rely on these flexibility clauses has been interpreted by the CEACR strictly,²¹ and where there has been successful reliance on a flexibility clause, the CEACR has required the progressive reduction of this exclusion where possible, considering future developments.²²

However, at a fundamental level, ILO Member States reported confusion arising from a fundamental mismatch between the familiar, predominately industrial nature of the employment activities protected by the groups of conventions discussed above, and the special nature²³ of domestic work as work “like no other” but also work “like any other”.²⁴ Thus, both national and international labour laws prior to the Convention have inadequately protected domestic workers because the protections afforded were patchy and failed to capture the special nature of domestic work. Does the *Domestic Workers Convention* better protect the working lives of domestic workers?

C. *The Domestic Workers Convention*

Since the late 1930s, ILO Member States have recognised a need for a specific international standard to better protect domestic workers.²⁵ However, it was not until March 2008 that the issue of a convention for domestic workers was placed on the ILO’s agenda for a standard double discussion at the June 2010 and June 2011 International Labour

¹⁷ Asha d’Souza, *Moving toward Decent Work for Domestic Workers: An Overview of the ILO’s Work* (2010) 40.

¹⁸ Ibid, 41.

¹⁹ Ibid, 39-42.

²⁰ For instance, Spain has excluded domestic workers from the scope of Protection of Worker’s Claims Convention (No. 173) as cited in ibid, 41.

²¹ In accordance with the CEACR’s interpretation, at the time of ratification, the Member State must provide an accompanying declaration clearly expressing the intention to exclude domestic workers from the scope of obligations to which the Member State will otherwise be bound: ILO Committee of Experts on the Application of Conventions and Recommendations, *Individual Direct Request concerning Maternity Protection, 1952, (No.103) Italy (ratification: 1971)* (1974), and ILO Committee of Experts on the Application of Conventions and Recommendations, *Observation concerning Maternity Protection, 1952, (No.103) Cuba (ratification: 1957)* as cited in ILO, *Decent Work for Domestic Workers: Report no IV(1)*, International Labour Conference, 99th session, Geneva (2010) 21.

²² ILO Committee of Experts on the Application of Conventions and Recommendations, *Individual Direct Request concerning Termination of Employment, 1982, (No.158) Morocco (ratification: 1993)* (2006) as cited in ILO, above n 10, 21.

²³ ILO, above n 10, 24.

²⁴ That is, while the skills required for domestic work are comparable with caring work performed outside the home (e.g. childcare, aged care), domestic work is work that is intimately bound up with the needs of the employer households. Blackett, above n 3, 14-15.

²⁵ d’Souza, above n 15, 42.

Conferences.²⁶ To inform these discussions, the International Labour Office commissioned a report of existing labour laws and practices regarding domestic workers.²⁷ Finally, at its 100th Conference on 16 June 2011, the ILO adopted specific international labour rights for domestic workers as set out in the *Convention No 189* and *Recommendation No 201*.²⁸

The Convention has two definite advantages over previous regulatory attempts at protecting the labour rights of domestic workers: it is comprehensive and it recognises the special nature of domestic work. However, its effectiveness is also compromised by three significant flaws.

The first advantage is that the Convention, and its accompanying Recommendation, creates and provides guidance on a broad range of obligations as labour protections for domestic workers, respectively. These obligations include: the protection of fundamental principles and rights at work, such as freedom of association and right to collective bargaining (art 3); minimum age (art 4); abuse, harassment and violence (art 5); terms of employment and work conditions, including for live-in domestic workers, migrant workers, and workers placed by employment agencies (arts 6, 7, 8, 10, 11, 12 and 15); freedom of movement and residence (art 9); occupational health and safety (art 13); social security (art 14); access to justice (art 16); labour inspections (art 17), and consultation (art 18).

The Convention creates obligations touching on all of the numerous workplace issues investigated in the *ILO Decent Work for Domestic Workers Report IV(I)*. Therefore, unlike previous national and international labour protections for domestic workers, this Convention provides a single, comprehensive foundation for the effective protection of domestic workers.

The second advantage of the Convention relates to its ability to properly conceptualise domestic work as both work “like no other” and work “like any other”, unlike pre-existing international standards. For example, Article 1(a) defines domestic work as work performed in or for households, capturing the distinguishing feature of this type of care work, and reflecting the prevailing approach of national legislation.²⁹ However, the Convention does not adopt another common approach of national legislation – that of romanticising domestic work as unlike any other lucrative, commercial or professional economic activity.³⁰ The romanticisation of domestic work prevents the necessary, rational comparison of domestic workers’ skills and monetary value with other, comparative care work performed outside the family home. By refraining from the romanticisation of domestic work, the Convention allows for the revaluation of domestic work as work “like any other”.

Despite these advantages, the Convention is still an inadequate regulatory attempt at protecting domestic workers, for three reasons. First, there is lingering broader uncertainty about the legal effectiveness of international labour standards, including the Convention, given the continuing discord between the international trade and international labour law regimes. Second, the Convention has only been adopted - it is not currently in force. Third, while the Convention systematically addresses all key workplace issues for domestic

²⁶ A double discussion at consecutive International Labour Conferences is the formal process for considering the adoption of a Convention: *Constitution of the International Labour Organisation*, art 19(1).

²⁷ ILO, above n 10.

²⁸ International Labour Organisation, ‘100th ILO annual Conference decided to bring an estimated 53 to 100 million domestic workers worldwide under the realm of labour standards’ (Press Release, <http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang-en/index.htm>, 16 June 2011); *ILO Convention Concerning Decent Work for Domestic Workers (No 189)*, opened for signature 16 June 2011, C189, *Domestic Workers Convention* (not yet in force); *ILO Recommendation Concerning Decent Work for Domestic Workers (No 201)*, International Labour Conference, 100th session, Geneva (2011).

²⁹ ILO, above n 10, 28.

³⁰ Ibid, 29.

workers, it is unclear whether it will be able to address three, more fundamental regulatory challenges of domestic work: the employer's home as 'worksites', intersectional discrimination, and the ambiguous work/care relationship.

1. *Discord between Legal Regimes*

The first significant flaw limiting the effectiveness of the Convention relates to two significant challenges to the broader labour law regime: first, the challenge of trade liberalisation to the ILO's legitimacy,³¹ and second, continuing tension over the proper governance roles played by labour standards and international trade law over the liberalisation of trade. Although the ILO attempted to reform itself to meet these challenges, it is at best unclear whether these reforms placed ILO labour standards in a more commanding position to regulate the labour challenges of globalisation. This means that international labour instruments, including the Convention, remain fundamentally weakened.

Since the 1980s, the gradual domination of national and international policy debates by market-oriented economic policies has meant that international labour standards have been increasingly perceived as lacking relevance and effectiveness.³²

The specific impacts of these market-oriented policies were twofold: first, the ILO was consistently unable to ensure Member States compliance with many of its key instruments,³³ and second, the ILO found itself largely on the periphery of international trade governance.³⁴ This was despite the liberalisation of trade significantly impacting the ability of workers to access and exercise their labour rights. Furthermore, enforcement mechanisms such as remedies or sanctions are traditionally part of international trade laws.³⁵ International labour standards lack the "teeth" of hard enforcement mechanisms and so instead, rely on supervisory mechanisms to influence states towards compliance.³⁶ However, in an environment of competing obligations where sanctions for non-compliance and public "naming and shaming" are attached to a country's obligations under international trade law, the relative balance of power has shifted toward trade law.

To address this, the ILO embarked on a series of reforms in the 1990s to shift the organisational focus from traditional standard-setting to consensus and capacity building. One reform was the 1998 International Labour Conference adoption of the non-binding *Declaration on Fundamental Principles and Rights at Work*.³⁷ This Declaration marked a

³¹ As the values of fiscal conservatism and economic rationalism have proliferated across geographic and political boundaries, there has been a re-regulation (not deregulation) of labour protections in favour of the interests of capital. Breen Creighton and Andrew Stewart, *Labour Law: An Introduction* (2005) 8.

³² Patrick Macklem, 'The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right?' in Philip Alston (ed), *Labour Rights as Human Rights* (Oxford University Press, 2005) 63.

³³ Nigel Haworth and Steve Hughes, 'Trade and International Labour Standards: Issues and Debates over a Social Clause' (1997) 39(2) *Journal of Industrial Relations* 179.

³⁴ Rorden Wilkinson, 'Peripheralising Labour: The ILO, WTO and the Completion of the Bretton Woods Project' in Jeffrey Harrod and Robert O'Brien (eds), *Globalized Unions? Theory and Strategies of Organized Labour in the Global Political Economy* (Routledge, 2002), 204; Rorden Wilkinson 'Labour and Trade-Related Regulation: Beyond the Trade-Labour Standards Debate?' (1999) 1(2) *British Journal of Politics and International Relations* 179.

³⁵ A critique of an analogous lack of enforcement mechanisms in the legal processes of international human rights can be found in Anne F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Cross-roads* (Kluwer Law International, 2001) as cited in Sally Engle Merry, 'Constructing a Global Law – violence against women and the human rights system' (2003) 28 *Law and Society Inquiry* 941, 942.

³⁶ Neville Rubin (ed), *Code of International Labour Law: Law, Practice and Jurisprudence* (Cambridge University Press, 2005) vol 1 [4.02.1.1].

³⁷ *ILO Declaration on Fundamental Principles and Rights at Work*, 86th sess, Geneva (1998).

significant departure from the ILO's traditional focus on setting legally binding standards, to promoting a privileged core of negative labour rights, forming a floor of minimum labour standards.³⁸ This move was aimed at addressing the patchy compliance record of ILO Member States, the heavy burden of reporting against ever multiplying standards, and the ILO's overall contemporary relevance. However, the Declaration drew significant and sustained criticism that it was a shift that fundamentally compromised the ongoing authority of the ILO as the premier labour standard setting intergovernmental organisation without guaranteeing any demonstrable improvement in compliance.³⁹

Another reform involved attempting to negotiate minimum labour considerations into international trade law. However, this also produced dismay. The first formal World Trade Organisation (WTO) occasion to discuss linking labour and trade standards through a 'Social Clause' was marked with the sudden withdrawal of an invitation to ILO Director-General Michel Hansenne to speak. This was apparently the result of some WTO members lobbying against having to discuss labour issues within the WTO forum.⁴⁰ The idea of requiring a minimum platform of labour standards, enforced by penalties such as the loss of some advantages under the General Agreement on Tariffs and Trade, polarised and entrenched the positions of WTO members along developed (e.g. the United States, France and Scandinavia) and developing (e.g. India, Venezuela and Malaysia) economy lines.⁴¹ As an international organisation noted for its member-driven approach to policy and law making,⁴² WTO Tribunals have persistently refrained from enlarging its members' obligations to include labour-related responsibilities. A consensus emerged, and remains, within the WTO, that labour standards are not a proper trade issue, but more appropriately within the remit of the ILO.⁴³ The marginalisation of the ILO and its comparative lack of punitive enforcement mechanisms have meant that ILO instruments, including the Convention, are inherently weakened.

³⁸ The Declaration commits all Member States to respect, promote and realise freedom of association and the effective right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in all its forms. Also see n 13 for the full list of the eight Conventions.

³⁹ Guy Standing, 'The ILO: an agency for globalization?' (2008) 39(3) *Development and Change* 355; Brian Langille, 'Core Labor Rights: the true story (Reply to Alston)' (2005) 16(3) *European Journal of International Law* 409; Philip Alston, 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda' (2005) 16(3) *European Journal of International Law* 467; Philip Alston and James Heenan, 'Shrinking the International Labour Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principle and Rights at Work?' (2004) 36 *New York University Journal of International Law and Politics* 221; Philip Alston and James Heenan, 'Core Labor Standards and the Transformation of the International Labour Rights Regime' (2004) 15(3) *European Journal of International Law* 457; Katherine A Hagen, *The International Labour Organization: Can It Deliver the Social Dimension of Globalization? Dialogue on Globalisation No. 11* (Friedrich Ebert Stiftung - Geneva Office, 2003).

⁴⁰ Nigel Haworth and Steve Hughes, *The International Labour Organization: Coming in from the Cold* (Routledge, 2010) 64.

⁴¹ Ibid.

⁴² Kent Jones, 'The WTO core agreement, non-trade issues and institutional integrity' (2002) 1 *World Trade Review* 257, 261.

⁴³ WTO, Trade Policy Review Body, 'Minutes of Meeting', 1/14-1/16, WT/TPR/M/12615 March 2004; Kofi Addo, 'The Correlation Between Labour Standards and International Trade: Which Way Forward?' (2002) 36(2) *Journal of World Trade* 285, 285; Robert Howes, 'The World Trade Organisation and the Protection of Workers' Rights' (1999) 3 *Journal of Small and Emerging Business Law* 131, 133.

2. Legal Force

The second significant flaw affecting the effectiveness of the Convention relates to its current legal status. Although adopted by the International Labour Conference almost a year ago, the Convention is not yet in force as there has not been the sufficient number (two) of formal ratifications by ILO Member States.⁴⁴

There are two key consequences of the Convention not being ratified. First, the obligations created by the Convention are therefore not yet legally binding. Second, the Convention is disconnected from the ILO supervisory mechanism of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), a monitoring mechanism that wields the crucial power to acculturate norms into the behaviour of the ILO Member States.

Analogous to the independent and expert interpretive role of common law courts, the CEACR supervisory process affects the application of standards produced by the quasi-legislative process of the International Labour Conference.⁴⁵ The authority of the CEACR supervisory mechanism depends upon the ratification of an ILO instrument and deals with the automatic and systematic reporting obligations of Member States under that convention.⁴⁶ Based on reports provided by Member States and the International Labour Office, the CEACR will outline its observations or record direct requests in the second part of its annual report. Direct requests and the more critical and potentially more publicised observations are processes which enable a Member State's compliance with the new international "standard of civilization"⁴⁷ to be praised, and the naming and shaming of breaches escalated.⁴⁸

But, the nature of international labour standards is predominantly promotional.⁴⁹ The ability of the CEACR to define and constitute norms from which narratives of virtuous or noncompliant memberships emerge is a crucial exercise of cultural power which influences state behaviour.⁵⁰ This is more extensive, although softer, than the narrower legal capacity to impose punitive sanctions.⁵¹ However, as the Convention is not yet in force, it is merely a quasi-standard, a law-like document that remains critically disconnected from the power of the supervisory process to influence the behaviour of ILO Member States.

⁴⁴ The Convention comes into force when two Member States notify their formal ratification of the Convention: *ILO Convention Concerning Decent Work for Domestic Workers (No 189)*, opened for signature 16 June 2011, art 21(2) (not yet in force); ILO, *Ratifications for Convention No C189* (6 March 2012) ILOLEX <<http://www.ilo.org/ilolex/cgi-lex/ratfice.pl?C189>> at 20 April 2012.

Only Uruguay has moved to ratification as both its House of Representatives and Senate have now approved ratification of the Convention: Human Rights Watch, *Uruguay: First to Ratify Domestic Workers Convention* (1 May 2012) Human Rights Watch, <http://www.hrw.org/news/2012/05/01/uruguay-first-ratify-domestic-workers-convention>

⁴⁵ Merry, 'Constructing a Global Law – violence against women and the human rights system', above n 33, 974; Annelise Riles, 'Infinity within the Brackets' (1999) 25 *American Ethnologist* 378.

⁴⁶ *Constitution of the International Labour Organisation*, art 22.

⁴⁷ Rosemary Foot, *Rights beyond Borders: The Global Community and the Struggle over Human Rights in China* (2000) 11.

⁴⁸ Rubin, above n 34, [4.06.3.1.2].

⁴⁹ Analogous to the promotional nature of international human rights law: Susanne Zwingel, 'How do Norms Travel? Theorizing International Women's Rights in Transnational Perspective' (2011) 56(1) *International Studies Quarterly* 115, 115-116.

⁵⁰ Sally Engle Merry, 'Global Human Rights and Local Social Movements in a Legally Plural World' (1997) 12 *Canadian Journal of Law and Society* 247, 251.

⁵¹ *Ibid.*

3. *The Regulatory Challenges of Domestic Work*

The third significant flaw affecting the effectiveness of the Convention relates to its ability to meet the deeper challenges of domestic work. As work “like no other,” domestic work occupies a nebulous space overlapping both the public sphere of employment and the private sphere of the home. In this space where gender, class, race and labour concerns converge, the capacity of the law to meet the challenge of protecting increasing numbers of domestic workers is uncertain.

As surveyed by Blackett, and reflected in other contemporary scholarship, there has been increasing demand for paid domestic workers, for three reasons.⁵² The first is the rise of the dual income family, in which both workers with family responsibilities are pressured (by the globalisation of production and consumption) to be constantly market ready and productive.⁵³ The second reason is the increasing value attached to the dignity and autonomy of receiving care in one’s home by growing segments of society, such as older people and persons with disabilities.⁵⁴ The third reason is the retreat of the state in the provision of certain social services, often funded through employer contributions or corporate taxation,⁵⁵ as part of best practice fiscal conservatism encouraged by exceptionally fluid global capital and structural readjustment programs.⁵⁶

Despite this increasing demand for paid domestic workers, domestic work continues to be underpaid, insecure and precarious work. The undervaluation and insecurity of domestic work presents three fundamental challenges to any labour law regime.

a) *The Worksite*

The first regulatory challenge of domestic work is the worksite. The worksite of domestic work is within the employer’s family home, and this shapes both the possibility and the practices of industrial citizenship.⁵⁷ Although never really considered an equal member of the household, domestic workers are critical to the life of the household. Therefore, asserting agency in collectively bargaining for work conditions can easily be seen as inappropriate self-interest or disloyalty, which can lead to the deterioration, even termination, of employment.⁵⁸ The indeterminate nature of the domestic worker’s “employment” relationship within the isolation of the employer’s home underpins the limited exercise of collective bargaining and

⁵² Blackett, above n 3, 3; Ehrenreich and Hoschschild, above n 3, 2-3; Martha Alter Chen, ‘Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges’ (2011) 23 *Canadian Journal of Women and the Law* 167, 168-169; Victor E. Tokman, *Domestic Workers in Latin America: Statistics for New Policies* (WIEGO, 2010) 22.

⁵³ Catharina Calleman, ‘Domestic Services in a “Land of Equality”: the Case of Sweden’ (2011) 23 *Canadian Journal of Women and the Law* 121, 122; Katherine V W Stone, ‘The New Face of Employment Discrimination’ in Judy Fudge and Rosemary Owens (eds), *Precarious Work, Women and the New Economy: The Challenge to Legal Norms* (Hart Publishing, 2006) 243, 244; Alan Hyde, *Working in Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market* (M E Sharp, 2003) 14.

⁵⁴ Linda Delp and Katie Quan, ‘Homecare Worker Organizing in California: An Analysis of a Successful Strategy’ (2002) 27(1) *Labor Studies Journal* 1, as quoted in Blackett, above n 3, 3.

⁵⁵ Blackett, above n 3, 3.

⁵⁶ Haworth and Hughes, above n 38, 34.

⁵⁷ Blackett, above n 3, 41.

⁵⁸ Pierrette Hondagneu-Sotelo, ‘Blowups and Other Unhappy Endings’ in Barbara Ehrenreich and Arlie Russell Hoschschild (eds), *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (Granta Publications, 2003) 55, 62-64.

freedom of association rights and the persistent insecurity and undervaluation of domestic work.⁵⁹

b) *Intersectional Discrimination*

The second regulatory challenge of domestic work relates to the intersection of gender, class and race discrimination (including nationality).⁶⁰ Domestic work is an activity in which multiple forms of stratification interact to subordinate and marginalise an “othered” woman.⁶¹ The increasingly important paid care work performed within private homes is work laden with the historical and social subordination of women of perceived inferior, and often foreign, origins, labouring under the direction of the master, or indeed the mistress of the house.⁶²

c) *The Messy Intimacy of the “Employment” Relationship*

Given its historically laden and enduring subordinate status, the third and central regulatory challenge is whether domestic work can be decent work at all. I worked on an aid project aimed at empowering domestic workers in Timor Leste by day, and returned to my freshly laundered sheets and suddenly tidy share house by night. During this period, the question of “whether, when all is said and done, the persisting messiness of the intimacy that overlays care with coercion, privilege with paternalism or maternalism, and solidarity with self-interest can give birth to an equitable social reordering,”⁶³ remained discomfortingly unanswered. Within feminist scholarship on domestic work,⁶⁴ it is this self-conscious disquiet that is uneasy about the distant, albeit well-intentioned, development of regulatory mechanisms of rights and remedies. Instead, the central regulatory challenge, or goal, is the development of rights and protections driven from within and facilitating, rather than

⁵⁹ Michael McKeon, *The Secret History of Domesticity: Public, Private, and the Division of Knowledge* (John Hopkins University Press, 2005) 212-222.

⁶⁰ ILO, above n 10; Cynthia Cranford et al, *Self-Employed Workers Organise: Law, Policy and Unions* (McGill Queens University Press, 2005) 11; Antoinette Fauve-Chamoux (ed), *Domestic Service and the Formation of European Identity: Understanding the Globalization of Domestic Work, 16th–21st Centuries* (Peter Lang, 2004); Barbara Ehrenreich and Arlie Russell Hoschschild (eds), *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (2003); Pierrette Hondagneu-Sotelo, *Domestica: Immigrant Workers Cleaning and Caring in the Shadows of Affluence* (University of California Press, 2001); Grace Chang, *Disposable Domesticity: Immigrant Women Workers in the Global Economy* (South End Press, 2000).

⁶¹ Kimberlé Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1990-1991) 43 *Stanford Law Review* 1241, 1283; Nira Yuval-Davis, ‘Intersectionality and Feminist Politics’ in Michelle Tracy Berger and Kathleen Guidroz (eds), *The Intersectional Approach: Transforming the Academy through Race, Class & Gender* (The University of North Carolina Press, 2010) 44, 50.

⁶² For examples of assumptions about domestic workers being uneducated, unskilled, rural, of minority ethnic or irregular migration status, see: Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work and the Family, from Slavery to the Present* (Basic Books, 2010) at 24-5; Irene Browne and Joya Misra, ‘The Intersection of Gender and Race in the Labor Market’ (2003) 29 *Annual Review of Sociology* 487, 502; Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and ‘Race’ in New England, 1780-1860* (Cornell University Press, 1998) 8, 17-18 and 23; Abigail Bakan and Daiva Stasiulis (eds), *Not One of the Family: Foreign Domestic Workers in Canada* (University of Toronto Press, 1997); Bonnie Thornton Dill, *Across the Boundaries of Race and Class: An Exploration of Work and Family among Black Female Domestic Servants* (Routledge, 1994).

⁶³ Blackett, above n 3, 42.

⁶⁴ Bonnie Thornton Dill, above n 60, 83.

crowding out, domestic workers' own capacity to determine and realise dignity and security in her work.

The Convention, *prima facie*, acknowledges each of these three deeper regulatory challenges of domestic work. For instance, the preamble of this Convention acknowledges the problematic subordinate status of domestic work by setting out its traditional invisibility in the home and the complex disadvantage experienced by domestic workers.⁶⁵ Although the preamble of a convention is not a component of the legally binding obligations contained in the articles of the convention, it is part of a convention's context in light of which the legal obligations should be interpreted.⁶⁶ The Convention also attempts to untangle the ambivalent status of domestic work by defining domestic workers as within a legitimate employment relationship. That is, in Article 1, the Convention defines 'domestic work' as work performed in or for a household/s,⁶⁷ and 'domestic worker' as any person engaged in domestic work within an employment relationship.⁶⁸

However, because the Convention is not in force, it is difficult to properly understand the impact of this recognition of domestic work's deeper regulatory challenges. There is no jurisprudence from the CEACR either interpreting the Convention's obligations or considering state practise that would provide indications of how, if at all, these features of the Convention text address domestic work's deeper regulatory and enforcement challenges in practice.

In summary, the Convention improves on the problems of previous regulatory attempts to protect the labour rights of domestic workers, and improve their working lives. However, its effectiveness as a *legal* instrument to achieve these goals is uncertain and likely to be compromised because of the three key flaws analysed above. However, international legal instruments do not just have influence through legal authority, which regardless this Convention currently lacks. Rather, law, and this Convention, can also exert a broader *normative* power to fulfil their purpose and affect positive change.

⁶⁵ These contributions are specifically recognised as enabling the productivity of other workers with family responsibilities, delivering a decent standard of living through caring for children, older people and persons with disabilities, and contributing significantly to the global economy, particularly for highly remittance dependent countries and communities.

Also noteworthy is the considered modification of the Convention text to avoid discriminatory stereotyping of this feminised workforce as inherently "vulnerable", as passive rather than active agents who, despite marginalisation, are already campaigning for the improvement of their own working and living conditions: see International Labour Office Commentary for Proposed Text at ILO, *Decent Work for Domestic Workers: Report IV (1)*, International Labour Conference, 100th session, Geneva (2011) 3.

⁶⁶ *Vienna Convention on the Law of Treaties* 1969, opened for signature 23 May 1969, 1155 UNTS 331, arts 31(1) and 31(2) (entered into force 27 January 1980); *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* 1986, opened for signature 21 March 1986, 25 ILM 543 (1986), arts 31(1) and 31(2) (not yet in force).

⁶⁷ *ILO Convention Concerning Decent Work for Domestic Workers (No 189)*, opened for signature 16 June 2011, art 1(a) (not yet in force)

⁶⁸ *ILO Convention Concerning Decent Work for Domestic Workers (No 189)*, opened for signature 16 June 2011, art 1(b) (not yet in force). Individuals can be excluded from the definition of domestic worker if he or she performs domestic work only occasionally or sporadically, on a basis which could not be considered occupational: art 1(c).

III. INFLUENCING CHANGE

The power of a convention to promote rights-based norms, such as freedom of association or collective bargaining, is not entirely dependent on that convention's legal authority or the operation of legal mechanisms of review. Conventions, as legal instruments, can affect behaviour and consciousness to achieve their regulatory purpose. Conventions, as powerful normative documents, can also affect behaviour and consciousness to achieve their purpose.

This chapter will extend the analysis of the *Domestic Workers Convention* beyond its legal effectiveness to critically examine how its normative power can affect change and improve the working lives of domestic workers at a grassroots level. The Convention's normative power is facilitated to a grassroots level through a process of "translation," in which the Convention's norms are re-made to matter in a local context. The effectiveness of the Convention, while it remains without legal force, totally relies on the success of this translation process. However, at the heart of this process is a tension between re-making the rights-based norms resonantly and re-making them faithfully; a risk between losing the essence of the Convention and alienating local consciousness. This chapter argues that in resolving this tension, the tenor of the translation process should reflect the commitment to agency in the Convention. That is, the translation process should be radically participatory, so that from the start, domestic workers can exercise agency and collectively determine how they wish to realise dignity and security in their own work. The paper will examine Community Conversations as one example of a radically participatory approach to the translation process, an approach that both embodies and engenders the norms of the Convention.

A. Making International Rights Matter

How the normative power of international legal instruments is transferred into different local contexts has been considered in theories of global norm diffusion,⁶⁹ particularly in theories about social movements and transnational networks.⁷⁰ However, this scholarship has been criticised for paying insufficient attention to how international, rights-based norms can prevail against existing – and sometimes competing – normative frameworks to be successfully adopted by an individual as the frame for their grievances.⁷¹

For example, Michael McMann's research into the 1980s pay equity movement for underpaid female workers in the USA closely examines the emergence of activist leaders and the courtroom aspect of the reform strategy. However, it is unclear from the study how other underpaid female workers who did not rise into leadership positions nevertheless came to conceive of their grievances in terms of rights.⁷²

McMann's study found that the value of rights as a normative framework was validated when courtroom arguments framed through rights led to significant victories.⁷³ The

⁶⁹ For a summary overview of global norm diffusion analysis, see Zwingel, above n 47, 115-118.

⁷⁰ Sally Engle Merry and Rachel Stern, 'The Female Inheritance Movement in Hong Kong: theorising the local/global interface' (2005) 46(3) *Current Anthropology* 387, 388.

⁷¹ Merry, 'The Female Inheritance Movement in Hong Kong: theorising the local/global interface', above 68; Sally Engle Merry, 'Rights Talk and the Experience of Law: implementing women's human rights to protection from violence' (2003) 25 *Human Rights Quarterly* 343, 346.

⁷² Michael McCann, *Rights at Work: pay equity reform and the politics of legal mobilization* (University of Chicago Press, 1994) 100.

⁷³ Although court decisions became less sympathetic in the late 1980s: *ibid*, 277.

study also found that movement leaders experienced the language of rights as a powerful and effective tool for engendering support from underpaid female workers because that language resonated widely with the workers.⁷⁴ But why did rights-based language resonate with these marginalised female workers? How do rights-based norms come to form the legal consciousness of aggrieved individuals seeking redress?⁷⁵ Specifically for the *Domestic Workers Convention*, how could the norms of the Convention, not yet legally in force, become meaningful to domestic workers?⁷⁶

Sally Engle Merry's anthropological research into the global profusion of women's rights examines these questions through the process of norm translation.⁷⁷

B. *The Process of Norm Translation*

The normative power of rights found in international legal instruments can be re-made meaningfully into local contexts through a process of norm translation. This concept of norm translation has been adapted from the methodological tool of translation found in anthropology. As a basic anthropological tool, translation is a process whereby a translator, such as a researcher, converts cultural concepts and their transmitters (such as language and customs) from one system of meaning into another to enable understanding across cultures.⁷⁸ However, this process has been critiqued as containing a manipulative potential that is rooted in global hierarchies of wealth and power.⁷⁹ Particularly in colonial encounters, the system of meaning into which cultural concepts are translated forms a standard against which the translated culture is essentialised as the Other and assimilated.⁸⁰ It is suspicion of this cultural interference, cast against histories of colonisation and independence, which is commonly and persistently levelled against international rights regimes, transnational activists, national elites and educated NGO leaders who attempt to affect local consciousness by working as translators of international norms.

Nevertheless, anthropologists of law, particularly Sally Engle Merry, have led an appropriation of translation from being a methodological tool to an analytical lens. Through

⁷⁴ Ibid, 236.

⁷⁵ Patricia Ewick and Susan Silbey, *The Common Place of the Law* (University of Chicago Press, 1998).

⁷⁶ Neal Milner, 'The Right to Refuse Treatment: four case studies in legal mobilization' (1987) 21 *Law and Society Review* 447 as cited in Merry, 'Rights Talk and the Experiences of Law: Implementing Women's Human Rights to Protection from Violence', above n 69, 346.

⁷⁷ A selection of key literature on this issue includes Zwingel, above n 47; Merry, 'Constructing a Global Law – Violence against Women and the Human Rights System' (2003) 28 *Law and Social Inquiry* 941, above n 33; Merry, 'Rights Talk and the Experiences of Law: Implementing Women's Human Rights to Protection from Violence', above n 69.

⁷⁸ Abraham Rossmann and Paula G Rubel (eds), *Translating Cultures: perspectives on translation and anthropology* (Berg Publishers, 2003) as cited in Zwingel, above n 47, 124.

⁷⁹ The Gluckman-Bohannan debate in legal anthropology illustrates this difficulty in the translation of normative ideas between culturally distinct communities: Max Gluckman, 'The Village Headman in British Central Africa: introduction' (1949) 19(2) *Africa* 89; *The Judicial Process among the Barotse of Northern Rhodesia* (1955); 'Concepts in the Comparative Study of Tribal Law' in Laura Nader (ed), *Law in Culture and Society* (University of California Press, 1997); Paul Bohannan, *Justice and Judgement among the Tiv of Nigeria* (Waveland Press, 1957); 'Ethnography and Comparison in Legal Anthropology' in Laura Nader (ed) *Law in Culture and Society* (1997) as cited in Sally Engle Merry, 'Transnational Human Rights and Local Activism: mapping the middle' (2006) 108(1) *American Anthropologist* 38, 41.

Also see Zwingel, above 47, 124; Sally Engle Merry, *Human Rights & Gender Violence: translating international law into local justice* (2006) 177.

⁸⁰ Claire Chambers, 'Anthropology as Cultural Translation' in Amitav Ghosh (ed), *In an Antique Land. Postcolonial Text Vol 2 No 3* (Ravi Dayal Publishers, 2006) 1-19 as cited in Zwingel, above 47, 124.

this lens, the complex and uneven process of integrating global rights norms into local consciousness, thereby re-making international rights locally meaningful, can be critically examined.

The process of norm translation is complicated by the juxtaposed use of the terms “global” and “local.”⁸¹ The global/local divide is often an allegory for casting rights, as “civilisation”, against a puritanical, ahistorical conception of “culture”.⁸² In the process of making international rights-based norms meaningful in locally specific sites, the terms “global” and “local” are slippery. This is because international labour standards are transmitted via programs, models and institutions that were first developed in a local place before being circulated globally, and adapted to new locations.⁸³ Translating norms such as international labour rights at once involves the global *and* the local,⁸⁴ in a process which is fundamentally uneven as inequalities of wealth and power in the international political economy skew the global circuits on which rights-based norms travel.⁸⁵

1. The Three Features of Translation

Within this context of complexity and unevenness, the translation of norms from distant legal constructs into specifically resonant and effective rights has three particular features.⁸⁶

a) Awareness of existing structural conditions

The first feature of translation focuses on the continual adaptation of rights programs, models and institutions to the varying structural conditions of the context in which they operate.⁸⁷ Each location has its own set of laws, court and police systems, political institutions, and public and private services which will affect how a prototype norm, program, or institution is adapted for that location.⁸⁸

For example, during my time volunteering at the Working Women’s Centre Timor Leste, my local colleagues shared their understanding of some of the structural conditions, which undermined domestic workers’ rights and effective advocacy for these rights, including:

1. Reluctance toward enacting special legislation for domestic workers because of entrenched practices, such as requiring domestic workers to work ad hoc overtime, and sensitivities due to familial bonds between employer and domestic worker,

⁸¹ Mark Goodale, ‘Introduction’ in Mark Goodale and Sally Engle Merry (eds) *The Practice of Human Rights: tracking law between the global and the local* (2007) 1, 14-17.

⁸² Sally Engle Merry, ‘Human Rights and Transnational Culture: regulating gender violence through global law’ (2006) 44 *Osgoode Hall Law Journal* 53, 60. This conception of ‘culture’ has been criticised as inadequately narrow and politically calculated. Key critiques within legal anthropology and development include Richard A Wilson, ‘Introduction: human rights, culture and context’ in Richard A Wilson (ed), *Human Rights, Culture and Context: Anthropological Perspectives* (Pluto Press, 1996) 1; Jane K Cowan, Marie-Benedict Dembour and Richard Wilson (eds), *Culture and Rights: Anthropological Perspectives* (Cambridge University Press, 2001) 6-7; Amartya Sen, *Development as Freedom* (Anchor, 1999) 240-246.

⁸³ Merry, *Human Rights & Gender Violence: translating international law into local justice*, above n 77, 135.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, 177.

⁸⁶ *Ibid.*, 136-137.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, 136.

2. Gender and resource politics affects the organising and advocacy capacity of the local trade union movement, and
3. Where the household is the employer (e.g. in the situation of domestic work), women in rural Timor Leste are at significantly higher risk of precarious employment.⁸⁹

b) Adaptation to the local population

The second feature of translation involves the continual redefinition of the target local population. As the prototype norms are indigenised to the structural conditions of each location, the target population for the translated rights needs to be redefined so that the demographics of the issue can be accurately addressed.⁹⁰ As an example of this, my Timorese colleagues discussed with me the need for the format and content of planned workshops to evolve as they get more information, for example, following consultation with domestic workers about which workplace issues are key and topical.

c) Framing rights to resonate

The third feature of translation focuses on the use of local cultural narratives and conceptions in programs, models, and institutions to transmit rights talk with resonance. For example, domestic violence advocates in India drew on stories of powerful Hindu deities to promote self-assertiveness among Hindu women, while in China, where modern culture stigmatises feudalism, domestic violence has been criticised by feminists as feudal behaviour.⁹¹ This feature has been analysed within sociology as the technique of framing.⁹² Framing is an interpretive package surrounding a core idea.⁹³ It is a technique used by actors to communicate, interpret, and understand their interests, thereby building solidarity while discrediting opponents.⁹⁴ Frames are not ideas themselves, but a means of packaging and presenting ideas that build on and generate shared beliefs, motivate collective action and define appropriate campaign strategies.⁹⁵

In the process of norm translation, one is faced with a choice between frames. A frame that resonates more with existing cultural traditions and narratives may be more effective for translating a new idea.⁹⁶ However, resonant discourses may be less radical than non-resonant approaches.⁹⁷ In fact, in choosing a resonant frame that builds on the status quo

⁸⁹ Secretariat of State for Vocational Training and Employment, *Timor Leste Labour Force Survey 2010*, (2010) 41.

⁹⁰ Merry, *Human Rights & Gender Violence: translating international law into local justice*, above n 77, 137.

⁹¹ *Ibid*, 136.

⁹² Sidney Tarrow, *Power in Movements: Social Movements and Contentious Politics* (Cambridge University Press, 2nd ed, 1998); David A Snow et al, 'Frame Alignment Processes, Micromobilization, and Movement Participation' (1986) 51(4) *American Sociological Review* 464.

⁹³ Myra M Ferree, 'Resonance and Radicalism: Feminist Framing in the Abortion Debates in the United States and Germany' (2003) 109(2) *American Journal of Sociology* 304, 308.

⁹⁴ Katharine G Young, 'Freedom, want and economic and social rights: frame and law' (2009) 24 *Maryland Journal of International Law* 182, 191.

⁹⁵ Sanjeev Khagram, James V Riker and Kathryn Sikkink (eds), *Restructuring World Politics: Transnational Social Movements, Networks, and Norms* (University of Minnesota Press, 2002) 12-13; Tarrow, above n 90; Snow, above n 90 as cited in Merry, 'Transnational Human Rights and Local Activism: mapping the middle' above n 77, 41.

⁹⁶ David A Snow, 'Framing Process, Ideology and Discursive Fields' in David A Snow, Sarah A Soule and Hanspeter Kriesi (eds), *The Blackwell Companion to Social Movements* (Wiley-Blackwell, 2004) 380, 401.

⁹⁷ Ferree, above n 91, 305.

more than challenging it, there may be significant costs in sacrificing ideals, limiting demands on authorities, and possibly excluding potential coalitions of allies and their goals.⁹⁸

So while a resonant frame may be appealing in the short term, a non-resonant discourse may actually achieve greater social change in the long term.⁹⁹

2. *The Central Tension of Translation*

This third feature of norm translation, the choice between resonant and transformative frames, is the tension at the heart of adapting international rights into local contexts.

Resonantly translated international norms may lead to more ready adaptation of norms into local consciousness. However, it is the transformative capacity of rights to challenge existing power relations within social and cultural practices that offers radical and inspirational possibilities.¹⁰⁰ If domestic workers' rights are presented as compatible with existing social conditions, including the conditions that facilitate inequality and exploitation, then the Convention may fundamentally fail to achieve positive change.¹⁰¹ Yet, without at least some indigenisation of the packaging, the core of radically challenging labour norms may also fail to translate into positive change.¹⁰²

The question remains: who should resolve this central tension? Who decides the extent to which existing social conditions will be challenged, and how radical rights-based norms will be concealed in familiar packaging?

C. *Resolving the Central Tension of Translation*

It is the translators who negotiate and resolve the tension between the aims of resonance with local consciousness and faithfulness to the origins.¹⁰³ The translators of norms may be local participants and activists, lawyers, NGO leaders, academics or other community leaders.¹⁰⁴ These norm translators negotiate the middle ground between international norms and local consciousness, between power and opportunity, when reframing rights programs, models and institutions for local contexts.¹⁰⁵

This ability to occupy that middle position underpins both the translator's power and vulnerability. On the one hand, translators are powerful, particularly *vis-à-vis* local communities, because of their ability to traverse between worlds and between conflicting normative frameworks to access funding, gain sympathetic audiences, build capacity and reputation, and make change happen.¹⁰⁶ However, translators are also vulnerable to suspicion. They are caught between powerful external patrons whose demands for change may be resisted by at least some parts of the local community who, in turn, may make demands that are incompatible with the funding arrangement.¹⁰⁷ The position of the aid worker is in many

⁹⁸ Ibid, 340.

⁹⁹ Ibid.

¹⁰⁰ Martin Chanock, "'Culture' and Human Rights: Orientalizing, Occidentalizing and Authenticity' in Mahmood Mamdani (ed) *Beyond Rights Talk and Culture Talk* (2000) 15; Merry, *Human Rights & Gender Violence: translating international law into local justice*, above n 77, 137.

¹⁰¹ Merry, 'Transnational Human Rights and Local Activism: mapping the middle', above n 77, 41.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, 42.

¹⁰⁶ A classic example of anthropological research on the intermediary's dilemma is Gluckman's analysis of the position of the village headman in British Central Africa during colonisation: Gluckman, above n 77, 93-94.

¹⁰⁷ Merry, 'Transnational Human Rights and Local Activism: mapping the middle', above n 77, 42.

ways parallel to that of the rights translator, the intermediary negotiating between the donor and the recipient.¹⁰⁸

While the translator is crucial to the translation of norms, the translation process is characterised by unequal and sometimes uneasy dynamics between its actors. Given the juxtaposition between these dynamics and the principles (and objectives) of agency underpinning the *Domestic Workers Convention*, the critical concern is what role should domestic workers themselves play in adapting the norms of their Convention to their own circumstances.

3. *Can Already Translated Rights be Effective?*

Could international labour norms, already remade into the vernacular by intermediary translators,¹⁰⁹ be meaningful for domestic workers? Studies thus far indicate that marginalised individuals, even when active contributors and participants of a successful social movement, most often adopt already translated rights waveringly, contingently and pragmatically.

Fundamental shifts toward a rights-based consciousness, similar to conversion, are possible where the translator and marginalised individuals, for example battered women in a local community, work closely together.¹¹⁰ However, the research of Sally Engle Merry on the battered women's movement in Hilo, Hawai'i observed that women who have experienced domestic violence tended to take a tentative, pragmatic and sometimes vacillating approach to already translated women's rights.¹¹¹ Within the larger landscape of competing normative frameworks and sometimes conflicting identities and relationships, the durability of such a shift partly depends on how this new way of claiming is validated or undermined by others.¹¹²

Sally Engle Merry and Rachel Stern's research into a social movement against traditions of male-only inheritance of family land in the New Territories of Hong Kong also revealed that effective rights-based movements do not require the enduring adoption of a rights-based consciousness by marginalised individuals at the grassroots.¹¹³ The marginalised indigenous women were mobilised by rights talk and participated in a rights-based social movement, but their commitment to rights was not necessarily deep or long-lasting. It was more often that these individuals pragmatically and strategically adopted a rights-based framework, layering it over existing and perhaps more instinctive frameworks, such as kinship obligations.¹¹⁴ In contrast, the women's groups and transnational elites were far more committed to a rights-based consciousness because they played a key role in translating

¹⁰⁸ Ibid, 43.

¹⁰⁹ The terms "translation" and "vernacularisation" have been used interchangeably in literature on the process by which international norms are adopted and adapted by local social movements: Merry, *Human Rights & Gender Violence: translating international law into local justice*, above n 77; Mark Goodale and Sally Engle Merry (eds) *The Practice of Human Rights: tracking law between the global and the local* (2007).

¹¹⁰ For example in the safe, facilitated and intimate space of a domestic violence support group: Merry, 'Transnational Human Rights and Local Activism: mapping the middle', above n 77, 44.

¹¹¹ Merry, 'Transnational Human Rights and Local Activism: mapping the middle', above n 77, 44.

¹¹² Merry, 'Rights Talk and the Experience of Law: implementing women's human rights to protection from violence', above n 69, 345.

¹¹³ Merry, *Human Rights & Gender Violence: translating international law into local justice*, above n 77, 215; Merry and Stern, 'The Female Inheritance Movement in Hong Kong: theorizing the local/global interface', above n 68.

¹¹⁴ Merry and Stern, 'The Female Inheritance Movement in Hong Kong: theorizing the local/global interface', above n 68, 389.

women's rights to frame the issue of male-only inheritance as one of gender discrimination.¹¹⁵

Shifts toward a consciousness based on already translated rights are not necessarily transformative or enduring. Nevertheless, the expedient adoption of already translated rights can still lead to an effective local social movement.¹¹⁶ However, could a project seeking to engender labour rights, such as greater collective agency, amongst domestic workers actually succeed without generating more than an expedient commitment to these rights?

D. *Radically Participatory Translation*

The leitmotif of international labour standards, including the Convention, is a preeminent and enduring commitment to the industrial agency of workers through the protection of the freedom of association and right to collective bargaining.¹¹⁷ A true exercise of collective agency requires, as a crucial component, active and equitable participation by the workers themselves.

Participation has long been associated with progressive social movements, including grassroots aid work targeting poverty alleviation and trade unionism.¹¹⁸ However, as a politically equivocal and definitionally vague term, "participation" has also been used rhetorically to neutralise political opposition to the status quo.¹¹⁹ Within the practice of development, participation manifests in both neoliberal and radically progressive approaches.¹²⁰ This has meant there is broad agreement across a spectrum of development

¹¹⁵ Merry and Stern, 'The Female Inheritance Movement in Hong Kong: theorizing the local/global interface', above n 68, 397-398.

¹¹⁶ Ibid, 390 and 396-397; Merry, *Human Rights & Gender Violence: translating international law into local justice*, above n 77, 215. The indigenous women were the emotive and sympathetic face of the campaign, while local feminist activists and expatriates devised public and political campaign strategies which challenged local politicians while resonating well through local and international news outlets.

¹¹⁷ The right to freedom of association, that is, the right to associate for social, political, religious, or industrial reasons, has been consistently recognised in international labour and human rights instruments: *ILO Declaration on fundamental principles and rights at work*, ILO, 86th sess, Geneva (1998); *Freedom of Association and Protection of the Right to Organise Convention (No 87)*, opened for signature 9 July 1948 (entered into force 4 July 1950); *Right to Organise and Collectively Bargain Convention (No 98)*, opened for signature 1 July 1949 (entered into force 4 July 1951); *Constitution of the International Labour Organization*; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

The right to freedom of association at work has also come to be seen by many as an essential means for workers to defend their interests, express their concerns, and protect their entitlements: Lee Swepston, 'International Labour Law' in Roger Blanpain (ed), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Kluwer Law International, 2006) 137, 146; Francis Maupain, 'Reflections on the Myanmar Experience' in Philip Alston (ed), *Labour Rights as Human Rights*, above n 30.

¹¹⁸ Muhammad Anisur Rahman, *People's Self-Development: Perspectives on Participatory Action Research* (Zed Books, 1994) as cited in Andrea Cornwall and Karen Brock, 'What do Buzzwords do for Development Policy? A Critical Look at 'Participation', 'Empowerment' and 'Poverty Reduction'' (2005) 26(7) *Third World Quarterly* 1043, 1046.

¹¹⁹ John M Cohen and Norman T Uphoff, 'Participation's Place in Rural Development: Seeking Clarity through Specificity' (1980) 8 *World Development* 213; Richard Vengroff, 'Popular Participation and the Administration of Rural Development: the case of Botswana' (1974) 33(3) *Human Organisation* 303 as cited in Cornwall and Brock, above n 116.

¹²⁰ Giles Mohan and Kristian Stokke, 'Participatory Development and Empowerment: the dangers of localism' (2010) 21(2) *Third World Quarterly* 247, 249: Recent shifts in neoliberal development strategy have refocused a precious singular emphasis on market deregulation to now include an additional emphasis on institutional

practitioners that the re-valuation of local knowledge is a necessary first step, participant diversity should be actively sought and local knowledge should be expressed accessibly and actively.¹²¹ However, as an activity that both embodies and facilitates agency, debate remains about how political participation should be.

The apolitical approach to participation views it as a functional and strategic necessity to the formation of appropriate policies. This pragmatic, “programmatically choice” view has been criticised for its shallow commitment to equality which veils local politics and structural inequalities by conceiving what is local as a homogenous and harmonious community,¹²² and prevents the examination of unequal positions, different interests, and dissenting opinions at the intra-community level. Instead, critics argue that participation should be a more politicised activity, which offers opportunities to frankly explore the conditions of exploitation and practise critical agency from the start.¹²³

For instance, the Freirian ideas of conscientisation (i.e. the development of a critical consciousness) and praxis (i.e. action based on the reflections of one’s critical consciousness) outline a radically participatory, principled approach to fundamentally change consciousness.¹²⁴

The development of a critical consciousness, conscientisation, involves frank dialogue intentionally triggered by ideas, media, drama, music or visual art,¹²⁵ whereby both the teacher and the student are open to mutual learning.¹²⁶ Students are encouraged to be active participants and are recognised as already possessing relevant experiences and knowledge to build upon, rather than as empty vessels to be filled with pre-digested, expert knowledge.¹²⁷ Analogous to this dynamic is the relationship of solidarity between workers and their representatives. From my own experiences working within a trade union and as a workplace

reforms and social development. That is, neoliberals view civil society organisations as capable of exerting increased organised pressure on recalcitrant states with tendencies toward centralisation. Civil society institutions, rather than the state, can be vehicles for participation in development programs to empower poor people. For more radical development practitioners, empowerment involves the collective mobilisation of marginalised groups against the disempowering activities of both the state *and* the market. Through various critiques, the inherently power-laden and hegemonic effects of universalistic, Western and apparently gender-neutral claims are exposed. A consequence of these critiques is a commitment to seeking out and revaluing alternative, local knowledge.

¹²¹ For example, see literature on Participatory Rural Appraisal: Robert Chambers, ‘The Origins and Practice of Participatory Rural Appraisal’ (1994) 22(7) *World Development* 953; Robert Chambers, ‘Participatory Rural Appraisal: analysis and experience’ (1994) 22(9) *World Development* 1253; Robert Chambers, ‘Paradigm Shifts and the Practice of Participatory Research and Development’ in Nici Nelson and Susan Wright (eds), *Power and Participatory Development: Theory and Practice* (Practical Action, 1995) 30.

¹²² Tom Brass, ‘Old Conservatism in “New” Clothes’ (1995) 22(3) *The Journal of Peasant Studies* 516 as cited in Mohan and Stokke, above n 118, 253; Nici Nelson and Susan Wright, ‘Participation and Power’ in Nelson and Wright, above n 119; Bill Cooke and Uma Kothari, *Participation: The New Tyranny?* (Zed, Books, 2001); Irene Guijit and Meera Kaul Shah, *The Myth of Community: Gender Issues in Participatory Development* (ITDG Publishing, 1998); Johan Pottier and Patrick Orone, ‘Consensus or Cover-up? The Limitations of Group Meetings’ in International Institute for Environment and Development (ed), *Critical Reflections from Practice* (IIED, 1995).

¹²³ The inspiration for this participatory approach to knowledge is found in Paulo Freire’s idea of ‘conscientisation’: Paulo Freire, *Pedagogy of the Oppressed* (Herder and herder, 1970).

¹²⁴ Paulo Freire, *The Politics of Education: Culture, Power and Liberation* (1985) 85.

¹²⁵ Meredith Minkler and Nina Wallerstein (eds), *Community-Based Participatory Research for Health: From Process to Outcomes* (John Wiley & Sons, 2nd ed, 2008) 38.

¹²⁶ Paulo Freire, *Pedagogy of Freedom: Ethics, Democracy and Civic Courage* (Rowman & Littlefield Publishers, 1998) 120.

¹²⁷ Paulo Freire, *Pedagogy of the Oppressed*, above n 122.

delegate, frank, open and egalitarian dialogue with union members and colleagues is the only proven means of identifying the collective goals and actions upon which genuine and enduring solidarity can be built.

While the Freirian idea of conscientisation has been highly influential, it also has been criticised as being fundamentally contradictory in its intentions and practice. That is, this approach emphasises participatory education as a means of liberation from oppression. However, in practice, conscientisation may actually be motivated by an unexamined commitment to an already determined set of alternative, apparently superior norms.¹²⁸

Participation, planned in advance to service a particular cause, might actually be a fundamentally patronising exercise of herding participants toward adopting the “correct” rights-based norms, rather than facilitating the development of genuinely critical consciousness. This is precisely why the translation process should be radically participatory – so that from the beginning, domestic workers can exercise collective agency in determining how they wish to realise dignity and security in their own work. An example of how this might take place is clear in the methodology of Community Conversations, a methodology that both is embedded with the principle of, and stimulates, collective agency.

E. *Community Conversations*

Community Conversations is an example of a successful, radically participatory approach to translating rights and affecting a rights-based, local critical consciousness.¹²⁹ Community Conversations emerged as a principled approach to participatory public health policy¹³⁰ that enabled communities to critically examine the deeper pathologies of power, including the social and economic conditions that facilitate the spread of the HIV/AIDS epidemic within and between communities.¹³¹ Coming from outside the canon of international labour law and anthropological studies of human rights law, Community Conversations is an unexpected but proven methodology with which critical awareness and collective agency about complex issues can be engendered in a radically community driven way.

As practised in HIV/AIDS awareness projects, Community Conversations is a highly structured, inclusive series of discussions during which any and all members of a community, irrespective of gender, sexual orientation, age, class, status or ethnicity, can voice concerns and opinions on the social and economic norms and practices that shape their experiences and relationships.¹³² Facilitators of this process can be from inside or outside the community, but are expected to be grounded in the local context, committed to mutual learning and the development of critical consciousness (i.e. including within themselves).¹³³

¹²⁸ Majid Rahnema, ‘Participatory Action Research: the “Last Temptation of Saint” Development’ (1990) 15(2) *Alternatives: Global, Local, Political* 199, 205-206.

¹²⁹ Elizabeth Reid, ‘Re-thinking Human Rights and the HIV Epidemic: A Reflection on Power and Goodness’ in Niamh Stephenson, Cammi Webb and Marina Carman (eds) *Testing, Trials and Re-thinking Human Rights: Reflections from the HIV Pandemic* (Australasian Society for HIV Medicine, 2005) 20, 20-21.

¹³⁰ Cf an instrumentalist approach which is driven, for example, by a concern to contain an epidemic rather than a concern for people, their dignity or rights: Elizabeth Reid, ‘Putting Values into Practice in PNG: the Poro Sapot project and aid effectiveness’ (2010) 1(2)-2(1) *eJournal of the Australian Association for the Advancement of Pacific Studies* [1] at <http://intersections.anu.edu.au/pacificcurrents/reid.htm#n1>.

¹³¹ Elizabeth Reid, ‘Re-thinking Human Rights and the HIV Epidemic: A Reflection on Power and Goodness’, above n 127, 21.

¹³² Ibid.

¹³³ UNDP, *Community Capacity Enhancement Handbook: The Answer Lies Within* (2005) 9.

By drawing on values, such as social justice and solidarity, and social traditions, such as talking things through,¹³⁴ Community Conversations has been described as “the stunning revelation”,¹³⁵ which has produced astonishing shifts in consciousness and behaviour by addressing the structural factors facilitating the marginalisation and exploitation of individuals. In mid-2004, Stephen Lewis sat with two communities in a predominantly Islamic region of rural Ethiopia as they conversed about the social conditions facilitating the spread of HIV/AIDS within their communities. One community’s Conversation involved 200 villagers who had met every fortnight for a few months, and the other community’s Conversation involved 15 to 20 people, with dozens of onlookers, who had been meeting for over a year. Even at the Community Conversations conducted during Lewis’ short visit, a wide range of apparently taboo matters were openly discussed by various villagers, including female genital mutilation, sexual violence, bride sharing, child abduction, early marriage, condom use, living with HIV, and women’s rights.

Community Conversations as a methodology for engendering critical consciousness and agency helps communities, in a structured way, to identify and explore the ways in which existing social norms, values and practices facilitate significant and complex social ills, such as disease, poverty, gender inequality and economic exploitation.¹³⁶ In one of the Ethiopian communities undertaking Community Conversations, where female genital mutilation had been universally practised, the prevalence of this practice was down to 10 to 15 percent within a year as a result of the Conversations. Young girls talked openly about their rights as women, and strategies they had adopted to protect themselves against HIV infection. An Islamic leader and 130 other men decided to be tested for HIV as an example for others to follow.

While these previous exercises in Community Conversations provide creative and exciting insights into how norms can be radically translated at the grassroots level, Community Conversations is not meant to operate as a prescriptive methodology. Therefore, it is difficult for this paper to propose how Community Conversations should be conducted in Dili, Oecusse, or Lospalos from such a far distance. It would be up to the project’s participants, the domestic workers, to decide whether and how common workplace issues should be collectively discussed, whether or when those discussions should take place as Community Conversations (and therefore at least open to all to look on, if not participate) and whether there are rules about who, when and how people can participate in the Community Conversations.

Nevertheless, during my time in Timor Leste, my local colleagues shared with me their initial plans for providing education, support and advocacy to domestic workers that could form the basis of Community Conversations in different Timorese communities. First, the Dili-based Working Women’s Centre Timor Leste staff planned to identify and support a local feminist activist in each of the five Districts the project would reach. These local activists would then develop their relationships with domestic workers in each District, including through conducting an initial survey with these workers.¹³⁷

¹³⁴ Elizabeth Reid, ‘Re-thinking Human Rights and the HIV Epidemic: A Reflection on Power and Goodness’, above n 127, 21.

¹³⁵ Stephen Lewis, ‘UN Secretary-General’s Special Envoy for HIV/AIDS in Africa on his 19-23 May 2004 trip to Ethiopia’ (Press Briefing, <www.planusa.org>, 1 June 2004) as cited in *ibid*.

¹³⁶ *Ibid*

¹³⁷ The dual purposes with this mapping exercise are to 1) collect demographic information on domestic workers across Timor Leste (there is currently no systematic study), and 2) provide opportunities for the surveyed domestic workers to begin identifying as workers, identifying their workplace issues, and connecting with other domestic workers: see Rosaria Burchielli, Donna Buttigieg and Annie Delaney, ‘Organising

Based on this information, it could be anticipated that Community Conversations will occur within the broader geographic boundaries of the five different Districts reached as part of the project. However, unlike the dynamics of a community affected by an HIV/AIDS epidemic, the dynamics of the employment relationship more clearly involves two inherently unequal negotiating sides, even if complicated by common and complex kinship ties in Timorese society. Therefore it is likely that, initially, the participants of the Community Conversations would be domestic workers only. However, as an open-ended methodology driven by the principles such as diversity, the boundaries of the community participating in these Conversations are likely to fluctuate as more Conversations are conducted.

As a radically participatory process for translating the norms, such as agency, into a local context, Community Conversations may appear to presuppose the existence of agency. However, in the context of Timor Leste, it would be incorrect to assume that prior to the introduction of ideas such as freedom of association and the right to collectively bargain, rural women did not know about collective agency. As active resisters and survivors of colonisation and occupation, Timorese women are familiar with the power of collective power and solidarity. The *Domestic Workers Convention* and Community Conversations challenge the gendered societal boundaries of women exercising collective agency in Timor Leste. However, the everyday, naked poverty and the omnipotent national narrative of struggle against injustice and exploitation are strong reasons for why Community Conversations could successfully develop the existing sense of collective agency into an expanded, labour rights based consciousness.

Just as Community Conversations have been useful to untangle and guide the inherent “messiness” of the relationships encountered in HIV/AIDS aid work,¹³⁸ perhaps it too could be a suitable mechanism for creating an inclusive space to explore the intimacy, self-interested concern, and conflicted solidarity between employer and domestic worker, between aid worker and aid recipient. Perhaps within Community Conversations, where the principles of agency and diversity are both embedded in and engendered by its practices, the dynamics of power and conditions of exploitation can be incisively explored and the principles of equality, non-discrimination, and industrial agency can be successfully adapted by domestic workers, for domestic workers.

IV. CONCLUSION

In this paper, I have made a systematic attempt to critically analyse the potential effectiveness of the international labour standard, the *Domestic Workers Convention*. Historically, national and international labour laws have been inadequate and inappropriate to protect the labour rights of domestic workers. While the Convention provides a comprehensive single foundation for the protection of domestic workers’ labour rights, this paper has outlined three significant limitations on its legal effectiveness.

However, rights-based legal instruments such as labour standards do not only possess legal authority (though this Convention lacks it), they also possess normative power. An important part of this paper has been a critical examination of the broader normative effectiveness of this Convention. That is, although the Convention may currently be a fundamentally compromised legal instrument, it can nevertheless still have significant

Homeworkers: the use of mapping as an organising tool’ (2008) 22 *Work Employment Society* 167 for a study of participatory mapping as both a demographic and a consciousness building tool.

¹³⁸ Elizabeth Reid, ‘Putting Values into Practice in PNG: the Poro Sapot project and aid effectiveness’, above n 128, [5] and [32].

normative effect at a grassroots level. This paper has closely examined the process of norm translation, as a means of facilitating normative power from the international legal instrument into local contexts to affect consciousness and advocacy outcomes. The tension at the heart of this process of norm translation is an apparent dilemma between translating rights resonantly and translating rights faithfully. To resolve this tension, this paper has argued that the marginalised individuals, in this case, local domestic workers, should participate in the translation process from its inception. That is, the process of translating rights-based norms should embody within its practices the very rights values in the norms being translated. By radically participating in the translation of their Convention through Community Conversations, domestic workers would be at once practising and re-producing for themselves key labour rights, such as collective agency, solidarity, equality, and non-discrimination. In this way, a legally inadequate Convention can nevertheless still creatively exert its normative power and be re-made as law which matters to the most insecure and marginalised workers.

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