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DOMESTIC SERVICE AND LEGAL PARITY: ARGUMENTATIVE DISPUTE AND ASSOCIATED FACTORS

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Abstract

The objective of this article is to analyze the legislative procedure and arguments for and against the approval of Convention n. 189 of the International Labor Organization (ILO) in 2011, and the “PEC das Domésticas” [Domestic Workers Constitutional Amendment Bill] in the Brazilian National Congress in 2013, ultimately enacted and regulated in 2015. We also examine the possible factors associated with why legal parity for domestic workers was achieved only at that moment, and not earlier. The methodology involves analyzing documents from debates at the ILO and in the Brazilian National Congress. The findings demonstrate a debate opposing economic justifications on one side and social and ethical considerations on the other. We also highlight a set of six factors associated with the delayed achievement of parity.

DOMESTIC WORK • LABOR RIGHTS • LEGISLATION

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SERVIÇO DOMÉSTICO E EQUIPARAÇÃO LEGAL: DISPUTA ARGUMENTATIVA E FATORES ASSOCIADOS

Resumo

O objetivo do artigo é analisar a tramitação e os argumentos favoráveis e contrários à aprovação da Convenção n. 189 da Organização Internacional do Trabalho (OIT), em 2011, e da “PEC das Domésticas”, no Congresso Nacional brasileiro, em 2013, regulamentada em 2015. Também busca examinar os possíveis fatores associados para essa quase equiparação legal dos trabalhadores domésticos ter se dado apenas naquele momento, e não anteriormente. Para isso, a metodologia utilizada é a análise de documentos produzidos durante os debates na OIT e no Congresso Nacional. Os resultados demonstram a disputa entre argumentos centrados em justificações, de um lado, econômicas e, de outro, social e ética. Indicam, ainda, um conjunto de seis fatores associados para a equiparação tardia.

TRABALHO DOMÉSTICO • DIREITOS TRABALHISTAS • LEGISLAÇÃO

SERVICIO DOMÉSTICO Y EQUIPARACIÓN JURÍDICA: DISPUTA ARGUMENTATIVA Y FACTORES ASOCIADOS

Resumen

El objetivo del artículo es analizar el procedimiento y los argumentos a favor y en contra de la aprobación de la Convención n. 189 de la Organización Internacional del Trabajo (OIT), en 2011, y de la “PEC das Domésticas”, en el Congreso Nacional brasileiro, en 2013, reglamentado en 2015. También busca examinar los posibles factores asociados para que esa casi equiparación legal de los trabajadores domésticos haya pasado solo en aquel momento y no antes. Para esto, la metodología utilizada es el análisis de documentos producidos durante los debates en la OIT y en el Congreso Nacional. Los resultados demuestran la disputa entre argumentos centrados en justificaciones, por un lado económicas, y por otro sociales y éticas. También indican un conjunto de seis factores asociados a la equiparación tardía.

TRABAJO DOMÉSTICO • DERECHOS LABORALES • LEGISLACIÓN

SERVICE DOMESTIQUE ET ÉGALITÉ JURIDIQUE: ARGUMENTS EN DISPUTE ET FACTEURS ASSOCIÉS

Résumé

Cet article entend analyser le processus de la Convention 189 de l'Organisation Internationale du Travail (OIT) en 2011 et les arguments pour et contre son approbation, ainsi que la proposition d'amendement constitutionnel concernant le travail domestique, nommée “PEC das Domésticas”, approuvée par le Congrès national brésilien en 2013 et réglementée en 2015. Ce travail cherche aussi à examiner les facteurs ayant pu contribuer à ce que cette quasi-égalité juridique des travailleuses domestiques n'ait pas été mise en place plus tôt. La méthodologie utilisée est celle de l'analyse des documents produits lors des débats à l'OIT et au Congrès national. Les résultats montrent qu'il existe un conflit entre les arguments ancrés sur des justifications économiques et ceux basés sur des justifications sociales et éthiques. Ils indiquent également un ensemble de six facteurs associés à cette égalité juridique tardive.

TRAVAIL DOMESTIQUE • DROITS DU TRAVAIL • LÉGISLATION

THE PERCEPTION OF DOMESTIC WORK AS A WOMAN'S RESPONSIBILITY (MELO, 2000), the devaluation of reproductive activities compared to productive ones (Sorj, 2004), the lingering effects of a slave-holding past during the transition to free labor (Souza, 2019), and the intersectionality of gender, class, and race (Porfirio, 2021), among other factors, help explain why, until 2013, domestic workers lacked a legally defined limit on working hours. The legislative history of this profession has been marred by exclusion and discrimination. Domestic workers were excluded from Decreto-Lei [Decree-Law] n. 5.452 of 1943, which established Brazil's Consolidação das Leis do Trabalho [Consolidation of Labor Laws] (CLT), and only gained minimal protection through specific legislation in 1972 (Lei n. 5.859). Even the 1988 Constitution failed to fully rectify this scenario; although it expanded rights for these workers, it still did not equate their status with that of other workers (Fraga, 2013).

Two significant legal changes in the 2010s marked important milestones in this long journey. The first change originated from the International Labour Organization (ILO) during its 100th Conference in 2011, where representatives from governments, employers' organizations, and workers' organizations from all member states voted to adopt Convention and recommendation on decent work for domestic workers (ILO, 2011f) along with its accompanying Recommendation n. 201 (ILO, 2011e). The second change occurred in 2013 when the Brazilian National Congress approved the Proposta de Emenda à Constituição [Constitutional Amendment Bill] (PEC) known as the "PEC das Domésticas" [Domestic Workers PEC], which was regulated in 2015. Both the Convention and the PEC extended almost the same set of rights previously guaranteed to other workers to domestic workers.

The first objective of this article is to analyze the process through which the ILO and the Brazilian National Congress enacted these two significant changes in domestic work laws, focusing on the proposal and approval processes within each institution and the arguments put forth by various stakeholders during the debates, both for and against changes, to understand their positions and justifications (Boltanski & Thévenot, 1991). The second objective is to explore why it took until 2013 to achieve near-parity of rights for domestic workers, despite a bill with this aim being introduced in Congress as early as 1989. In other words, we aim to identify the specific factors that contributed to the acceptance of these changes at that particular moment in time

We have chosen to use the term "near-parity" instead of "parity" to indicate that, on one hand, it represents the closest legal alignment of this category with the labor rights applicable to other workers throughout Brazil's legislative history. This period also addressed longstanding demands of domestic workers, such as mandatory contributions to the Fundo de Garantia do Tempo de Serviço [Length-of-Service Guarantee Fund] (FGTS), payment for overtime hours, and eligibility to unemployment insurance. On the other hand, due to the unique characteristics of this profession, certain constitutional rights were either excluded from the new regulations or applied more restrictively. For instance, there were no provisions for additional compensation for strenuous, unhealthy, or hazardous activities, and unemployment insurance benefits for domestic employees were capped at three months, whereas other formal workers receive benefits proportionate to their contribution period, potentially up to five months.

To achieve the stated objectives, we employed a documentary analysis methodology. Within the scope of the ILO, our sources included reports informing the debate on domestic work during the two Conferences, minutes from the Domestic Workers Commission, informational notes, publications, and lists of members of the Brazilian delegation. For the Brazilian National Congress,

we examined official records from the Câmara dos Deputados [Chamber of Deputies], such as the text of PEC n. 478 (Câmara dos Deputados, 2010), reports from the Committee on Constitution and Justice and Citizenship (Câmara dos Deputados, 2011), reports from the Special Committee tasked with providing recommendations on PEC n. 478 (Câmara dos Deputados, 2012b, 2012c), the *Diário da Câmara dos Deputados* (Câmara dos Deputados, 2012a), as well as presidential acts and official appeals. In the Senate, our research reviewed documents such as the *Diários do Senado Federal* (Senado Federal, 2012, 2013a, 2013b), reports from the Committee on Constitution, Justice and Citizenship (Senado Federal, 2013d), Projeto de Lei [Senate Bill] n. 224 (Senado Federal, 2013c), and various advisory opinions.

The International Labour Organization's Convention n. 189

In the 1980s, leaders of associations representing domestic workers in Brazil, Chile, Colombia, and Peru began organizing collectively. These initial international efforts culminated in the founding of the Confederação Latino-Americana e do Caribe de Trabalhadoras Domésticas [Latin American and Caribbean Confederation of Domestic Workers] (CONLACTRAHO) in 1988, which later expanded to include representatives from more countries in the region. The Confederation participated in two trade union seminars on domestic work by invitation of the ILO in 2005 and 2007. The discussions during these seminars highlighted the minimal legal protections and disadvantaged rights status of domestic workers compared to other professional groups across these countries. In response to these challenges, efforts were made during these seminars to agree upon an international convention (ILO, 2011c).

In this direction, the ILO Governing Body mandated in 2008 the inclusion of the topic of decent work for domestic workers on the agendas of the 99th and 100th International Labour Conferences scheduled for 2010 and 2011, thereby setting the stage for a dual debate. Operating within a tripartite structure, the ILO required consultations with governments, workers, and employers from all member states, alongside extensive preparatory measures (ILO, 2011a). To effectively inform discussions at the 2010 Conference and provide global insights into domestic work – including definitions, legislation, and statistical data – the ILO published the report *Trabajo decente para los trabajadores domésticos* [Decent work for domestic workers] in March 2009, commonly referred to as the White Report (ILO, 2009).

Concurrently, the ILO distributed a 63-question questionnaire to member states to gather their opinions on the content, scope, and international tools to be adopted (ILO, 2009). The majority of the 183 countries, including Brazil, responded to this request by August 2009. After analyzing the responses, the results were published in January 2010 in the Yellow Report (ILO, 2010c). Each question in the questionnaire was detailed in the report, showing separate responses from governments, employers, and workers. Additionally, throughout the document, the ILO provided commentary on the answers to each question and attempted to outline potential frameworks for a convention or recommendation.

According to the Yellow Report, in Brazil, the questionnaire was answered by the government, the Federação Nacional das Trabalhadoras Domésticas [National Federation of Domestic Workers] (FENATRAD) affiliated with the Central Única dos Trabalhadores [Unified Workers' Central] (CUT), and the trade union organizations União Geral dos Trabalhadores [General Union of Workers] (UGT) and Força Sindical (FS). Due to the absence of a national organization for domestic

employers in Brazil, the Confederação Nacional da Indústria [Brazilian National Confederation of Industry] (CNI) represented this group. Similarly, the CNI, alongside the Confederação Nacional do Comércio de Bens, Serviços e Turismo [National Trade Confederation of Goods, Services, and Tourism] (CNC) and the Confederação Nacional da Agricultura [National Confederation of Agriculture] (CNA), represented the employers' segment at the ILO conferences.

The Brazilian response revealed a divergence of opinion. The government, FENATRAD, UGT, and FS supported both a convention paired with a recommendation, emphasizing the necessity of a binding international treaty. In contrast, the CNI endorsed only the recommendation, preferring it as a suggestion rather than a mandate. This outcome mirrored the broader international stance, where governments and workers' organizations generally favored a convention complemented by a recommendation. Meanwhile, employers were divided: some opposed any regulation, while others, acknowledging the need for some kind of regulation, leaned towards a non-binding recommendation.

To ensure delegations were well-prepared for the conferences, the ILO conducted studies and organized events on the issue. With support from the United Nations Development Fund for Women (Unifem), the Secretariat of Policies for Women (SPM), and the Special Secretariat for Policies to Promote Racial Equality (Seppir), the Brazilian office undertook several initiatives. These included workshops and seminars to assist union leaders in answering the questionnaire sent to member countries and devising strategies for the ILO meetings (ILO, 2011g). As the 2010 and 2011 International Labour Conferences approached, Brazil defined its delegation, which included government officials, employers, workers, federal ministers, and technical advisors. Additionally, domestic worker union leaders attended as observers (ILO, 2011h).

The 99th International Labour Conference took place at the ILO headquarters in Geneva from June 2 to June 18, 2010. According to the Minutes of the Domestic Workers Committee (ILO, 2010a), the proceedings commenced with the examination of both the White Report and the Yellow Report. Representing the employers' group, Kamran Tanvirur Rahman, an engineer and president of the Federation of Employers of Bangladesh, argued against excessive regulation. He emphasized that families, rather than companies, typically hire domestic services, suggesting that stringent regulations could potentially increase unemployment among domestic workers. Rahman also highlighted the impracticality of conducting inspections in private homes, concluding that it would be more feasible to support a recommendation rather than a convention.

Subsequently, Halimah Yacob, a lawyer and unionist from Singapore, spoke on behalf of the workers' group and opposed Rahman's arguments. She emphasized that domestic workers endure inadequate legal protection despite their vital societal roles in caring for homes, children, the elderly, and the sick, thereby enabling others to engage in social, economic, and educational activities. Yacob also advocated for parity of rights between domestic workers and other workers, acknowledging their specific contributions, and considered it misguided to speak of "excessive regulations". She viewed these rights as fundamental for all workers, domestic or otherwise. Consequently, she supported a convention paired with a recommendation to rectify a historical oversight.

Lastly, it was the turn of government members to express their views. They appeared divided between supporting a recommendation, as advocated by the employers' spokesperson, or endorsing a convention, as championed by the workers' spokesperson. During their intervention, the Brazilian government firmly stated a preference for adopting a convention coupled with a recommendation.

However, the Indian government opposed this stance, proposing only a recommendation and receiving backing from the employers' group. With the committee deadlocked, Kamran Rahman called for a roll-call vote. The outcome revealed that 42% of delegates, comprising all employers and some governments, favored a recommendation alone, while the remaining 58%, consisting of all workers and most governments, preferred a convention paired with a recommendation.

This stance was documented in the report drafted by the Committee. With this main issue settled, they proceeded to analyze the text. Some less unanimous topics would need revisiting in the subsequent conference. The consolidated document, following discussions in both the Committee and the Conference, became known as the Brown Report (ILO, 2010b), submitted to member countries for feedback until November 2010 (ILO, 2011d). Based on responses from 93 countries, the ILO compiled and published two documents in March 2011: the Blue Report (ILO, 2011i, 2011j), which included their considerations, and the texts of the convention and recommendation.

Luc Boltanski and Laurent Thévenot (1991) have argued that social conflicts can be analyzed through how conflicting parties develop justifications for their ideas, behaviors, and practices. This framework allows us to identify where the disputing actors stand, consider the diverse evaluative criteria at stake, and understand the principles shaping their arguments. As individuals advocate specific viewpoints and emphasize discrepancies in their worldviews, opportunities arise to find common ground on contentious issues. Thus, we can observe how employers and workers justified their positions and divergent interests regarding the protection of paid domestic work at the ILO conferences, as well as examine the efforts to forge consensus and achieve tangible outcomes

The 100th International Labour Conference took place from June 1 to 17, 2011. An analysis of the Record of Proceedings of the Domestic Workers' Committee (ILO, 2011b) reveals that the debates began with the text drafted by the ILO, based on the previous conference, the Brown Report, and the Blue Report. Paul Mackay, a labor relations specialist and manager of a prominent organization promoting business-friendly policies in New Zealand, served as the new spokesperson for the employers' group. He reiterated their 2010 preference for a recommendation over a convention, stating that they still believed this was the best approach. In contrast, the workers' group, with Halimah Yacob again as their spokesperson, along with several governments, reminded the committee that the previous conference had already resolved this issue in favor of adopting both a convention and a recommendation.

Following this initial tension, it was decided to retain all outcomes from the previous year and focus on reaching consensus on the remaining contentious points. One major issue was defining the limit of working hours. Employers wanted the duration of the workday to remain undefined, while workers sought to establish a clear limit in the text. The agreed solution did not specify exact hours but ensured that domestic workers would have the same rights to regular and overtime hours as other workers, according to the specific regulations of each member country. Another contentious point involved the possibility of payment for services not only in cash but also *in natura*, such as food and housing. Employers argued to allow this, while workers sought to ban the practice entirely. To reach an agreement, workers eventually conceded to include some partial deductions in the remuneration.

Lastly, the third point of contention centered around inspections. Employers wanted to bar labor inspections to protect family privacy, while workers opposed this stance. Paul Mackay cited Article 12 of the Universal Declaration of Human Rights, which protects against arbitrary intrusions into private life. Halimah Yacob countered that labor inspections should not be seen

as arbitrary intrusions, especially when initiated by complaints, and advocated for granting inspectors the right to enter homes. As a compromise, the text specified the conditions under which inspectors could access homes. Consequently, the draft convention and recommendation were approved.

The final report and the texts of the convention and recommendation were entrusted to Maria Luisa Escorel de Moraes, Minister Counselor of the Brazilian Mission to the United Nations (UN), and invited to serve as the rapporteur of the Commission. During the conference plenary on June 16th, representatives of governments, employers, and workers gathered in Geneva for the vote. As a tripartite organization, each of the ILO's 183 member states was represented by two government delegates, one employer, and one worker, each able to independently express their position. The convention required a two-thirds majority vote for approval, receiving 83% approval for Convention n. 189 and 89% for Recommendation n. 201 (ILO, 2011e). The decision effectively standardized domestic workers' rights, aligning them with those of other workers in countries that ratified the convention.

The "PEC das Domésticas" in Brazil

While the ILO was discussing domestic work at the 2010 and 2011 International Labour Conferences, the issue was also prominently featured on the Brazilian Federal Government's political agenda. This involved, on one hand, thoroughly preparing the Brazilian delegation to advocate for the approval of Convention n. 189 in Geneva, which they successfully achieved. On the other hand, the government made efforts to immediately initiate internal legislative changes aimed at expanding domestic workers' rights toward parity, rather than solely awaiting the outcome of international consultations. Government studies conducted in 2010 concluded that the most effective approach was to amend the Federal Constitution itself, rather than attempting to pass individual bills. This meant abolishing the sole paragraph of Article 7, which previously limited the rights of domestic workers.

During that period, several bills were being considered in the National Congress aimed at reforming the rights of domestic workers. One bill, however, stood out for proposing the same solution as the government: the removal of a specific paragraph from the Constitution. This bill, PEC n. 478, was introduced by Federal Deputy Carlos Bezerra (PMDB-MT) and had been in progress in the Chamber since April 2010. To expedite the process, and given its alignment with government objectives, the Federal Government under President Lula's administration decided to endorse Bezerra's proposal. The parliamentarian justified the bill by arguing that it would benefit millions of workers, granting them rights to overtime pay, access to the FGTS, unemployment insurance, and compensation for occupational injuries. He acknowledged that there would be consequences, such as increased costs for employers, but contended that maintaining an unfair disparity based on this argument was unsustainable. According to the bill:

The current system that permits the existence of second-class workers is a blemish on the democratic Constitution of 1988 and should be abolished. There is no ethical justification for continuing to tolerate this injustice. The restriction of rights for domestic workers, allowed by the aforementioned sole paragraph in Article 7, is an aberration and must be eradicated. (Câmara dos Deputados, 2010, p. 2, own translation).

After passing through the Committee on Constitution and Justice and Citizenship (Câmara dos Deputados, 2011), the Presidency of the Chamber of Deputies established a Special Commission in August 2011 to review PEC n. 478, comprising 25 parliamentarians. In September of the same year, during the inaugural meeting of this Commission, Deputy Benedita da Silva (PT-RJ) was elected as the rapporteur. During its operation, the Commission held five public hearings between October 2011 and May 2012, aiming to gather insights from various stakeholders involved in the issue. In total, the 26 invited guests may be grouped into four categories: government authorities; representatives of civil society, including FENATRAD; labor law jurists; and professors and researchers from institutes and universities (Câmara dos Deputados, 2012b).

All the guests expressed support for PEC n. 478. While building their case, they criticized the longstanding legal distinctions imposed on domestic workers, framing these disparities as rooted in racial issues and the country's history of slavery. They used phrases such as “the abolition of slavery has been left unresolved for over 120 years in Brazil” and “this is debt of over five centuries to the Afro-descendant population”. They also emphasized the gender dimension, arguing that the undervaluation of this profession stems from the perception of domestic work as inherently feminine. Data shows this trend has persisted over time; in 2022, 91.4% of domestic workers were women and 67.3% were Black (Departamento Intersindical de Estatística e Estudos Socioeconômicos [Dieese], 2023). Lastly, they highlighted that domestic work is often viewed as reproductive rather than directly productive labor (Câmara dos Deputados, 2012b).

The predominant view among the participants was that the disparity between domestic workers and other workers was unjustified, primarily rooted in the nature of the profession: unprofitable and predominantly performed by Black women. They argued that this scenario reflects a society that is both racist and sexist, and one that prioritizes commercial interests. They emphasized the importance of recognizing that domestic work allows many families to balance work and family demands, thereby providing not only economic but also social value, which is incompatible with the legal uncertainties surrounding this profession, which fail to even establish limits on the workday. Among the guests, only one voiced dissent, not fully supporting the PEC due to opposing mandatory enrollment in the FGTS. This guest, the CEO of an online platform offering services to employers, argued for the legitimacy of differentiation, noting that domestic work takes place in a household environment for an individual who does not profit from the arrangement. He also cited a survey conducted with his clients, in which nearly half of whom indicated they would dismiss their domestic workers if FGTS enrollment became mandatory (Câmara dos Deputados, 2012b).

An examination of the argumentative strategies employed, not only in public hearings where consensus was more prevalent but also in broader debates in the Congress and Senate, reveals two contrasting conceptions of fairness among the parties involved. This contrast suggests that they relied on different foundational principles to justify their arguments and actions, akin to what Boltanski and Thévenot (1991) described as “orders of worth”. One group deemed differentiation fair insofar as it highlights specific characteristics that are typical to this profession: it takes place in domestic settings, lacks profitability, is difficult to monitor, and involves individual employers rather than corporations. Their arguments were rooted in economic reasoning, suggesting that parity could potentially increase unemployment. Drawing on Boltanski and Thévenot's framework (1991), this group justified their stance by invoking the mercantile order, asserting the

unique characteristics of domestic work and legitimizing its continued provision at a lower cost to employers.

In contrast, the opposing group, focusing on addressing gender, class, and racial discrimination along with the devaluation of reproductive work, argued against differentiation as unfair. They also grounded their justification based on the particularities of the profession, albeit emphasizing the social dimension over economic factors, building their arguments on ethical considerations. They contended that differentiation reflects lingering traces of slavery in Brazilian society and called for historical reparations from the State. Drawing once again on Boltanski and Thévenot's "orders of worth" framework (1991), we may say this group justified their stance during the debates in the National Congress on the "PEC das Domésticas" by appealing to a civic order, emphasizing collective causes, equity, and principles of citizenship.

After the public hearings and debates in the Special Committee, rapporteur Benedita da Silva delivered her report on PEC n. 478 in June 2012. The conclusion, aligned with the stance of the Tribunal Superior do Trabalho [Supreme Labor Court] (TST), was that simply revoking the sole paragraph of Article 7 would not suffice. Such an action would not only fail to extend rights to domestic workers but also remove existing rights. Therefore, a substitute amendment to the PEC was deemed necessary, retaining the sole paragraph but proposing new text that specified all provisions applicable to domestic workers. In the initial version of her report, the rapporteur proposed 17 new rights, including equalizing protection for casual domestic workers (*diaristas*) with those who have formal employment ties (*empregadas domésticas*), aiming to protect day laborers as demanded by FENATRAD.¹ However, she failed to secure support for this proposal, as the prevailing opinion was that such legislation should not apply to casual domestic workers (Câmara dos Deputados, 2012b).

The bill drafted by the rapporteur and approved by the Committee in November introduced 16 additional rights for domestic workers, supplementing the 9 rights already guaranteed by the Constitution, albeit excluding provisions specifically for casual domestic workers. These newly included rights encompassed FGTS, unemployment insurance, an eight-hour daily work limit, a 44-hour weekly work limit, and differential pay for night shifts compared to day shifts (Câmara dos Deputados, 2012c). Implementation varied, with immediate effect for some rights while others awaited further regulatory clarification. When the bill reached the plenary of the Chamber later in November, all parties instructed their members to vote "yes". The debates echoed the same aforementioned justifications, reflecting the differing perspectives of the groups involved. Out of 361 deputies present, 359 voted in favor, with only 2 opposing the bill. In December 2012, during the second voting round in Congress, 347 out of 351 deputies present voted in favor, while two voted against and two abstained (Câmara dos Deputados, 2012a).

Upon approval in the Chamber of Deputies, the proposal was forwarded to the Senate in December 2012 and renamed PEC n. 66 (Senado Federal, 2012). In the Senate's Committee on Constitution and Justice and Citizenship, Senator Paulo Bauer (PSDB-SC) proposed an amendment in March 2013 to immediately enforce maternity leave without further regulation, citing its previous establishment. The rapporteur, Lídice da Mata (PSB-BA), defended the amendment's

¹ Translation note: In Brazil, "diaristas" and "empregadas domésticas" refer to distinct categories of domestic workers. *Diaristas* are casual domestic workers hired on a per-day basis. They do not reside in the employer's household and are hired for specific tasks or days, without a long-term employment commitment. In this text we refer to them interchangeably as casual domestic workers or day laborers. In turn, *empregadas domésticas*, translating to domestic workers, denotes individuals employed under a formal arrangement, sometimes residing with their employers. The distinction between the two categories underscores varying employment structures and legal entitlements within the domestic work sector in Brazil.

constitutionality and advocated for its approval, arguing it would rectify unfair disparities faced by domestic workers compared to other labor sectors (Senado Federal, 2013d). The amendment passed and, subsequently, the bill underwent two rounds of voting on the Senate floor in March 2013. Discussions mirrored those in the Chamber, touching on historical references to slavery and concerns about potential risks to increased unemployment. The proposal received unanimous approval (Senado Federal, 2013a, 2013b).

PEC n. 66 subsequently evolved into Emenda Constitucional [Constitutional Amendment] n. 72, which was enacted during a Joint Solemn Session of the National Congress in April 2013. The session, held on the plenary of the Federal Senate, lasted just under an hour. Renan Calheiros, then-President of the Senate (PMDB-AL), presided over the session, which included Creuza Maria Oliveira, President of FENATRAD, among the participants. In his closing remarks, Renan Calheiros emphasized that this marked a decisive step for Brazil to align with the civilized world, particularly emphasizing the issue of racial equality, which had been a substantial argument throughout the legislative process.

From this moment onward, domestic workers emerge from invisibility, humiliation, and social clandestinity into the light of labor protections and guarantees. Today, 125 years after the abolition of slavery, we are closing the last slave quarters, throwing away the keys, and promoting this long-awaited inclusion, which, though long overdue, is warmly welcomed by all Brazilians. (Congresso Nacional, 2013, p. 1084, own translation).

Some of the newly approved rights took immediate effect, while others required further regulatory clarification. Consequently, the Joint Committee for the Consolidation of Federal Legislation and Regulation of the Constitution drafted Projeto de Lei [Bill] n. 224 of 2013, also known as the new Lei dos Empregados Domésticos [Domestic Workers Law] (Senado Federal, 2013c). As it progressed through committees and sessions in both the Chamber and the Senate, it became evident that several issues remained contentious, particularly regarding the inclusion of day laborers. One group advocated for their inclusion by proposing a definition of “domestic worker” that omitted the requirement of continuous employment. Conversely, the opposing group, whose perspective prevailed, argued for maintaining this distinction, advocating for a stipulation that domestic workers must work a minimum frequency of more than two days per week in the same household to qualify for labor rights (Senado Federal, 2013c).

After passing through both legislative houses, the final text was approved in May 2015, thus becoming Lei Complementar [Complementary Law] n. 150, sanctioned by President Dilma Rousseff in June of that same year. Despite overlooking some specific aspects of the occupation, domestic workers achieved near-parity with other urban and rural workers, benefiting from Emenda Constitucional n. 72 since April 2013 and Complementary Law n. 150 since June 2015. These new laws defined domestic workers as individuals who provide continuous services to a person or family in a residential setting for more than two days per week. The newly acquired rights included mandatory employer contributions to the FGTS, overtime pay, night shift premiums, unemployment insurance, workplace accident insurance, severance pay in cases of unjustified dismissal, family allowance, and a 44-hour workweek.

Factors contributing to near-parity in the 2010s

There is a 70-year gap between the 1943 CLT, which excluded domestic workers, and the approval of the “PEC das Domésticas” in 2013, which brought their rights to near-parity with other workers. This gap highlights how the State – comprising the Executive, Legislative, and Judicial branches – has shifted its historical relationship with this occupation, where its unique characteristics repeatedly served to justify lesser protections. It is crucial to understand why this formal change only became possible in the 2010s and not earlier, especially given that as far back as 1989, then-federal deputy Benedita da Silva introduced Projeto de Lei n. 1.626 to the Federal Chamber of Deputies, advocating for domestic workers to receive all the rights that the Constitution did not guarantee them.

One significant factor contributing to this shift is the political mobilization of domestic workers. The legal victories secured over time, although gradual and slow, were also responses to the persistent demands and mobilizations of these professionals as they built their organizations. In the 1930s, these early movements took their first steps towards institutionalization with the creation of several associations in 1936. The first of these was founded in Santos (SP) by Laudelina de Campos Melo, a pioneer in the fight for domestic workers’ rights. However, due to the Estado Novo dictatorship under Getúlio Vargas (1937-1945), the political movement of domestic workers was forced to suspend its activities before reemerging in the Rio-São Paulo belt in the 1950s. It was only in the following decade that the movement expanded nationally, leading to the creation of new associations in other regions of the country (Bernardino-Costa, 2015).

Amid this effervescent context, domestic workers organized various municipal, state, regional, and national congresses in the 1960s and 1970s. These events facilitated the planning of larger-scale actions, advocating for rights such as social security and minimum wage. Although the country was under a dictatorship from 1964 to 1985, the military regime did not focus their attention on these organized workers, as they were not perceived as a political threat. In the 1980s, the creation of the Conselho Nacional das Trabalhadoras Domésticas [National Council of Domestic Workers] served to unite all existing associations. This unification enabled the formation of workers’ unions once the 1988 Constitution removed the legal barrier preventing unionization for this profession and recognized domestic workers as a professional category. The Council also took a step towards international mobilization by affiliating with CONLACTRAHO in 1988 (Bernardino-Costa, 2015).

In the 1990s, the rise of labor unions across the country led to the foundation of FENATRAD in 1997. During the 2000s, discussions emerged about creating a global network of domestic workers, which gained official recognition at the 2009 International Labour Conference in Geneva as the International Domestic Workers Network (IDWN). In 2013, at the 1st International Congress of Domestic Workers in Uruguay, the IDWN evolved into the International Domestic Workers Federation (IDWF) (Bernardino-Costa, 2015). Each of these milestones elevated the movement to a new level, enhancing its capacity to influence public policy and engage with stakeholders in the Executive and Legislative branches, ultimately achieving incremental victories toward near parity of rights with other workers.

Another significant contributing factor involves the partnerships that domestic workers and their organizations successfully cultivated over time, further supporting their growing mobilization efforts. The first association, founded by Laudelina de Campos Melo in the 1930s,

gained momentum through its alliances with the Black Movement, which helped revive activities in the 1950s, especially in the Rio-São Paulo corridor. By the 1960s, expanding beyond this corridor and achieving national reach became possible through collaborations with the Church, notably the Juventude Operária Católica [Catholic Worker Youth] (JOC). With churches scattered all across Brazil, groups of workers organized themselves in various states (Bernardino-Costa, 2015).

At the 5th National Congress in Recife in 1985, domestic workers not only strengthened their alliances with the Black and Catholic movements but also forged new ties with the feminist and labor movements, notably the CUT. During the debates of the National Constituent Assembly from 1987 to 1988, where a new constitution was being drafted, domestic workers actively advocated for their rights. According to Bernardino-Costa (2015), despite engaging with these various groups, it was the feminist movement that effectively incorporated their demands into the Constitution. Thus, the struggle of domestic workers involved not only Catholic, Black, class-based labor unions, and feminist organizations but also expanded in the 2000s to include international entities such as the ILO, Unifem, and UN Women. The growing cooperation among diverse local, national, and global social actors empowered FENATRAD and the labor unions representing these workers to gain strength and visibility for their demands heading into the 2010s.

As domestic workers' organizations grew stronger, they actively pressured the Federal Executive Branch and successive presidents to support their agendas. In this direction, a third influential factor was President Lula's administration during his two terms (2003 to 2010), which not only engaged in a more constructive dialogue with this professional category and made decisions in direct collaboration, but also effectively institutionalized the longstanding issue of paid domestic work. These efforts involved mobilizing various federal institutions, including the Seppir, the SPM, the Ministério do Trabalho e Emprego [Ministry of Labor and Employment] (MTE), the Ministério da Previdência Social [Ministry of Social Security], the Ministério da Educação [Ministry of Education], and the Ministério das Cidades [Ministry of Cities], and aligning them with other entities such as FENATRAD, the ILO, and the Unifem.

This collaboration resulted in the development of various measures to address the needs of domestic workers, encompassing public policies, legislative bills, workshops, courses, conferences, seminars, brochures, campaigns, and public hearings. One notable initiative was the Trabalho Doméstico Cidadão [Domestic Work and Citizenship] program (TDC), specifically designed to respond to the sector's demands. The program focused on enhancing skills, improving educational levels among workers, strengthening union organization, and promoting formal employment through the signing of work contracts. Furthermore, in 2006, Medida Provisória [Provisional Measure] n. 284 was introduced to encourage formal work arrangements by allowing employers to deduct contributions made to social security for domestic employees from their income tax. National public hearings, conferences, and seminars were also held to discuss expanding legal protections, complemented by brochures aimed at educating the public about domestic workers' rights.

The government made concerted efforts to amend legislation and expand the rights of domestic workers, aiming to achieve parity and eliminate legal distinctions with other workers – an objective advocated by FENATRAD since its initial dialogues with the government in 2003. In this direction, the SPM created a workgroup (WG) in 2011 to study the socioeconomic impacts of proposing expanded rights in the Federal Constitution. According to the WG's report (Secretaria de Políticas para as Mulheres [SPM], 2011), the efforts focused on identifying the impacts, barriers, and

progress toward ensuring that domestic workers enjoy rights equal to those of other professional categories, with the findings from these discussions shared across the Executive, Legislative, and Judicial branches. These initiatives ultimately led to the “PEC das Domésticas”, debated in the National Congress from 2010 to 2013, approved, and enacted as a constitutional amendment in 2015.

The government’s commitment to enhancing legal protections for domestic workers received significant reinforcement with the adoption of ILO Convention n. 189 at the 100th International Labour Conference in 2011, aligning directly with national efforts to achieve equality of rights. The adoption of this international standard represents the fourth potential factor contributing to Brazil achieving near-parity for domestic workers in the 2010s. Despite the “PEC das Domésticas” beginning its process before the ILO ratified the convention, and with the Brazilian government already progressing towards parity, this development effectively acted as a catalyst for the process. As a constitutional amendment bill, thus requiring three-fifths of the votes in both houses for approval, this international endorsement had the potential to sway both the Chamber and the Senate in favor of the PEC.

During the Lula administration, in collaboration with federal ministries, FENATRAD, and the ILO, Brazil organized workshops and seminars to prepare for its participation in international labor conferences to deliberate on this issue. These meetings included tripartite discussions, sessions with Brazilian union leaders, and dialogues with domestic workers’ organizations across Latin America. Notably, Brazil’s active role led to the country being appointed as the rapporteur for Convention n. 189, responsible for drafting both the final text and the concluding report. This created a circular movement: Brazil’s government and its delegation in Switzerland facilitated the approval of the ILO convention, which, in turn, contributed to the approval of the “PEC das Domésticas” in Brazil.

Some time after the enactment of the “PEC das Domésticas,” this professional category faced significant impacts from the economic crisis that began in 2014 and intensified during Dilma Rousseff’s second presidential term (2015-2016), compounded by the COVID-19 pandemic (2020-2021). However, during the legislative process of these new bills in the National Congress (2010 to 2013), Brazil’s economic landscape was markedly different. To secure support from both Legislative Houses (Chamber and Senate) for parity of rights for domestic workers, the country’s low unemployment rates and favorable economic conditions proved pivotal, marking them as the fifth relevant factor. According to the Instituto Brasileiro de Geografia e Estatística (IBGE) (2015), unemployment rates during this period were the lowest ever recorded in the historical records of the Monthly Employment Survey: 2010 (6.7%), 2011 (5.9%), 2012 (5.5%), and 2013 (5.4%).

During public hearings and in the arguments presented by employers and some lawmakers, one of the strongest points opposing parity was the belief that it would significantly increase unemployment rates among domestic workers. Critics argued that the higher costs of hiring after the “PEC das Domésticas” would lead to widespread layoffs and a shift from fixed monthly salaries to daily wages. However, subsequent data showed that these predictions did not materialize (Fraga & Monticelli, 2021). Therefore, we can conclude that during the PEC’s legislative process in the National Congress, spanning the final year of Lula’s presidency and the first three years of Dilma’s administration, the economic conditions were favorable for refuting arguments against the bill.

Low unemployment rates and abundant professional opportunities in the 2010s created a favorable environment for advancing parity of rights for domestic workers. In the preceding two

decades, the paid domestic labor force had aged significantly without being replenished by younger generations, such as daughters of domestic workers (Fraga, 2013). During such periods of expanding job opportunities, these younger, more educated women saw prospects beyond domestic and care work. Therefore, even if critics' predictions of increased unemployment among domestic workers had materialized, these women would have been less vulnerable than in the past, mitigating the impact of those concerns.

Lastly, the rise in the proportion of day laborers compared to regular domestic workers is the sixth relevant variable. The new legislation defined a domestic worker as someone who works more than two days a week in the same household. Despite significant efforts by FENATRAD and then-Federal Deputy Benedita da Silva, the PEC's rapporteur, to include equal rights for both permanent and day laborers, there was insufficient support. The majority view was that day laborers should not be included, thereby protecting a segment of the middle class that had already been shifting to part-time domestic services without an employment contract. While day laborers comprised approximately 15% of overall domestic workers in the early 1990s, their share had increased to 37.5% by 2013, the year the PEC was approved (Dieese, 2023).

Therefore, rights were extended at a time when a significant number of families had already found alternative ways to delegate reproductive work beyond hiring a regular monthly domestic worker – a practice much less likely to have occurred in previous decades when there was greater dependence on such services. This shift arose from demographic changes such as smaller family sizes, an increase in single-person households, and evolving lifestyles. These various economic, political, legal, cultural, and social factors collectively explain how, specifically in the 2010s, the State altered its relationship with this professional category, moving away from differentiation and minimal regulation towards the opposite approach.

Concluding remarks

Brazil operates under a predominantly familial care regime, where the balance between productive and reproductive work relies heavily on families rather than on the state or market, as seen in social-democratic or liberal models. Consequently, state support for these needs has traditionally been minimal. Without public assistance, only the middle and upper classes have had the means to fully or partially outsource household tasks to the market through domestic workers, who have played various roles throughout the country's history. The state has also been notably slow to regulate this sector, while simultaneously facilitating the production-reproduction dynamic within employing families, thereby historically limiting the rights of domestic workers.

This historical path – marked by cycles of exclusion and partial inclusion compared to other professions – is reflected in various legislations such as the CLT (Decreto-Lei n. 5.452, 1943), Lei n. 5.859 (1972), known as the Lei dos Empregados Domésticos, and the Federal Constitution (Constituição da República Federativa do Brasil, 1988). Over the course of the 2000s, these rights were gradually expanded, including bans on deductions from wages in exchange for food, clothing, hygiene, or housing; job security for pregnant workers until five months after childbirth; and guaranteed paid leave on civil and religious holidays. Despite these incremental improvements, distinctions from other workers persisted. It was not until the 2010s that significant changes occurred, both within the International Labour Organization with the adoption of

Convention n. 189, and in the Brazilian National Congress with the approval and regulation of the “PEC das Domésticas”.

Our research identified the arguments presented in debates concerning increased protections for domestic workers at both the ILO and the Brazilian National Congress. Opposing groups justified their positions using frameworks rooted in specific orders of worth, such as commercial and civic (Boltanski & Thévenot, 1991). In both arenas, opponents of expanded rights expressed concerns about potential job losses and emphasized the unique characteristics of domestic work: its non-profitable nature, its confinement to the domestic setting, challenges in supervision due to household privacy, and the familial dynamics in the employers’ homes. On the other hand, proponents underscored the social importance of domestic labor, arguing for increased rights rooted in concerns about racial, gender, and class discrimination. They addressed the undervaluation of reproductive labor and emphasized its historical ties to slavery, thereby opposing the legal segregation of this occupation from other types of work.

Based on our research findings, we have identified six reasons why near-parity was only achieved in Brazil during the 2010s specifically. Ranked by importance, the inclusion of the issue as a top priority in the political agenda during Lula’s presidency and international pressure from the ILO emerge as the two most crucial factors, directly responsible for driving effective legislative changes. Additionally, continuous mobilization by domestic workers over time and the establishment of local, national, and global partnerships with other organizations facilitated the ILO’s proposal and approval of an international convention protecting domestic work. Furthermore, favorable economic conditions, low unemployment rates, and an increasing proportion of day laborers all contributed to creating a conducive environment for government efforts and the enactment of the “PEC das Domésticas”, thereby undercutting some of the counterarguments presented by opponents.

In Brazil, the new legislation has brought positive impacts to domestic workers both in their present conditions – such as defined working hours – and for the future – through mandatory FGTS contributions. However, the law has also drawn a clear distinction between day laborers (up to two days in the same household) and monthly workers (three or more days), thereby excluding a significant portion of casual domestic workers who work on a daily basis from labor protections. Previously, the status of these workers was uncertain and depended on varying interpretations by judges. Nonetheless, for a professional category historically lacking equal formal inclusion, achieving near legal parity represents an important, albeit insufficient, step in a prolonged struggle for rights, yet it still falls short in ensuring the effective guarantee of such rights.

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Data availability statement

The contents underlying the research text are contained in the manuscript.

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