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**Making domestic work visible:
The case for specific regulation**

Adelle Blackett



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International Labour Office — Geneva

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Making domestic work visible: The case for specific regulation

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Foreword

This thought-provoking Working Paper arose out of requests received from several ILO member States seeking information about the terms and conditions of employment of domestic workers. The Labour Law and Labour Relations Branch is publishing it in the hope of providing a basis for further reflection on the legislative policy issues posed by this particular category of work.

The author, Adelle Blackett, took the initiative to research and prepare the document while on the staff of the Labour Law and Labour Relations Branch in 1995, and updated it in 1996. She wishes to express her thanks to Yola Grant, Shauna Olney, Colleen Sheppard, María Luz Vega Ruiz and Edward Yemin for their support and comments on earlier versions of the text, to Roberto Bedrikow for translations of Portuguese legislation, and to Anne Trebilcock for final comments and editing.

May 1998.

Muneto Ozaki,
Chief, Labour Law and
Labour Relations Branch.

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I. Introduction

Domestic workers face a daunting range of problems linked to the special characteristics of their employment. While this situation has been a concern of the ILO for many years, the problems remain largely unresolved. The dearth of solutions is due in no small measure to the ways in which domestic work calls into question our notions of work, workplaces and workers, and especially how to regulate them. This Working Paper canvasses the specificity of domestic work and seeks to place in relief approaches taken to regulate it both in national legislation and international instruments. In so doing, it calls for greater visibility, and specificity, in regulatory mechanisms that apply to domestic work.

In 1965, the International Labour Conference (ILC) adopted the resolution concerning the conditions of employment of domestic workers,¹ which recognized the “urgent need” to establish minimum living standards, “compatible with the self-respect and human dignity which are essential to social justice”, for domestic workers in both developed and developing countries. Member States were urged to introduce “protective measures” and worker training wherever practicable, in accordance with international labour standards. Research was contemplated, with particular attention to be given to the “problems of women workers”. The research was to serve as the basis upon which an international instrument on the employment conditions of domestic workers could be adopted.

Also in 1965, the International Labour Office (ILO) commissioned a survey of the employment and conditions of domestic workers in private households.² The survey showed that domestic workers were “particularly devoid of legal and social protection”,³ “singularly subject to exploitation”⁴ and that their “legitimate interests and welfare [had] long been neglected in most countries”.⁵

Some 30 years after the ILC resolution was adopted, domestic workers remain excluded from the very scope of labour legislation in some countries.⁶ It is ironic, though, that domestic workers are no longer excluded from the basic labour legislation in most countries,⁷ but remain fundamentally invisible. In other words, the specificity of their employment relationship is simply not addressed in most legislative enactments but that same specificity is relied upon — at the level of common practice — to justify denying them their status as “real workers”⁸ entitled to the

¹ *Official Bulletin* (Geneva), Vol. XLVIII, No. 3, July 1965, Supplement I, pp. 20–21.

² A report on the survey results was subsequently published as “The employment and conditions of domestic workers in private households: An ILO survey”, in *International Labour Review*, Vol. 102, No. 4, Oct. 1970, pp. 391–401.

³ *ibid.*, p. 391.

⁴ *ibid.*

⁵ *ibid.*

⁶ This is especially true for migrant workers, as the Committee of Experts on the Application of Conventions and Recommendations has noted in its Report III (Part 4A) to the International Labour Conference, 82nd Session, 1995, Part One, General Report, para. 59.

⁷ By this, I refer to the employment standards legislation and the system of collective labour relations. With the exception of maternity-leave-entitlements, I do not refer to social-security-legislation, which falls outside of the scope of this analysis.

⁸ Arat-Koc has stated the following: “[Domestic work] is indispensable to the functioning of the economy. However, intertwined as it is with intimate, personal relations, domestic labour is considered a ‘labour of love’. As such, it is ideologically invisible as a form of real work, a status that is hard to change even when it is paid for.”

“In the privacy of our own home: Foreign domestic workers as solution to the crisis in the domestic sphere in (continued...)”

legislative protection that exists. Their employment situation is considered not to 'fit' the general framework of the existing employment laws; few if any bridges are built to enable domestic workers realistically to enforce their rights. Their working conditions remain, in essence, unregulated. The problem is frequently compounded for foreign domestic workers who are sometimes not covered by the labour laws that exist in the countries in which they work or are unable to claim those rights if they are working without proper documentation in the country. Indeed, because of the heightened vulnerability engendered by the intricate link between their employment and immigration status, foreign domestic workers are less likely than most other workers to be willing or able to claim their rights.⁹

This Working Paper considers legislative initiatives to achieve recognition of domestic workers' employment rights and concludes that comprehensive laws¹⁰ are needed to regulate working and living conditions of domestic workers, and ultimately to assist the empowerment of workers to claim and enhance their rights.¹¹ First, a discussion of international labour standards and observations of ILO supervisory bodies provides an overview of many of the internationally

⁹ (...continued)

Canada", in *Studies in Political Economy*, Vol. 28, p. 33 et seq., esp. pp. 46-47.

According to the National Union of Domestic Employees (NUDE) in Trinidad and Tobago, domestic workers were declared "non-workers" by the Government; that characterization is being challenged by NUDE. See M.H. Martens, "Migrant women as domestic workers", in M.H. Martens and S. Mitter (eds.), *Women in trade unions: Organizing the unorganized* (Geneva, ILO, 1994), p. 53.

In Zimbabwe, it was only at independence that domestic workers were elevated not only to the position of emancipated citizen but also of statutory worker, when their right to join trade unions, be paid a minimum wage and be covered under labour legislation was recognized. See J. Pape, "Still serving the tea: Domestic workers in Zimbabwe, 1980-90", in *Journal of Southern African Studies* (Oxford), Vol. 19, No. 19, 1993, p. 387, esp. p. 389.

⁹ The ILO has published several working papers that address the migrant labour dimensions of domestic work. For an overview, see P. Weinert, *Foreign female domestic workers: Help wanted!*, World Employment Programme Working Paper No. 50 (Geneva, ILO, 1991). See also Noeleen Heyzer et al., *The trade in domestic workers: Causes, mechanisms and consequences of international migration* (Kuala Lumpur, Asian and Pacific Development Centre, 1994).

¹⁰ The author of this article should not be understood to be advocating a particular form that the regulation of domestic workers' conditions of employment and labour rights should take. Rather, accessible, legally enforceable laws or collective agreements that apply to all domestic workers, provide the basic rights in a manner that shows sensitivity to the needs and concerns of domestic workers, and that puts in place a workable framework for the exercise of those rights are being advocated.

¹¹ This article does not begin to embrace the ethical questions for women's equality that arise when a relatively more privileged woman (usually urban and/or from the industrialized countries of the North, typically professional), "the employer", hires a less privileged woman (usually rural and/or from countries of the South, often quite young, frequently from a working class or peasant background), "the worker", to perform the "women's work" in the household, generally at a low wage, thereby perpetuating the societal undervaluation of women's work.

Several excellent analyses are available on this topic. M. Silvera, *Silenced: Talks with working class Caribbean women about their lives and struggles as domestics in Canada*, 2nd ed. (Toronto, Sister Vision Press, 1989) provides a compelling account of domestic workers' lived experiences, told by domestic workers themselves. Several other Canadian studies explore the interplay between race, gender and citizenship on the domestic work relationship. See A.B. Bakan and D. Stasiulis, "Foreign domestic worker policy in Canada and the social boundaries of modern citizenship", in *Science and Society*, Vol. 58, No. 1, 1994, p. 7; A. Macklin, "Foreign domestic worker: Surrogate housewife or mail order servant?" in *McGill Law Journal*, Vol. 37, No. 3, 1992, p. 681; and S. Arat-Koc, op. cit.; J. Cock, in "Maids and madams: Domestic workers under apartheid" (London, Women's Press, 1989), analyses the multifaceted issues, drawing upon past experiences in South Africa. A solid compilation of articles on domestic workers in Latin America and the Caribbean may be found in E.M. Chaney and M. García Castro (eds.), *Muchachas no more: Household workers in Latin America and the Caribbean* (Philadelphia, Temple University Press, 1989). B. Anderson, in *Britain's secret slaves: An investigation into the plight of overseas domestic workers in the United Kingdom* (Human Rights Series; No. 5: Anti-Slavery International and Kalayaan, 1993), proffers serious analysis of the forced labour and migration dynamic of domestic work.

recognized rights and protections to which domestic workers should be entitled. Second, a look is taken at some particularly creative measures that have been adopted in three countries: France, Spain and Zimbabwe. The Working Paper focuses on legislative measures that are tailored to the specific employment situation of domestic workers to assess how the law is contextualized to the domestic employment relationship. It also makes occasional reference to some original provisions found in the legislation of certain other countries that have regulated the working conditions of domestic workers. Legislative treatment of domestic workers' employer-provided accommodations, hours of work, minimum wages, leave periods, including maternity leave, and termination of employment is also addressed. The legislation calls attention to the specificity of domestic work and witnesses a concerted effort to deal with its special characteristics. It is thus hoped that this review will stimulate debate on seeking ways to improve the day-to-day situation faced by domestic workers and to broaden our understanding of the work relationship and how it may be regulated.

II. The specificity of domestic work

It would be a perilous exercise to attempt to describe domestic work around the world as if it were a uniform phenomenon. The interplay between cultural, social, racial, religious and linguistic dimensions and economic, historical and political factors significantly shapes the specificity of the trade in domestic workers' labour,¹² and merits nuanced consideration. Across those key differences, however, the life experiences and working conditions of domestic workers around the world are disturbingly similar.

First, the overwhelming majority of domestic workers are women. Domestic workers are among the few categories of workers who systematically have another woman as their employer. The workers are "socially and politically constructed to provide a waged substitute for the unwaged labour"¹³ that has historically been considered women's work, liberating — if only temporarily — the "woman of the house" from the undervalued responsibilities that would otherwise traditionally fall primarily upon her shoulders.

Second, most domestic workers have had to leave their own families behind to migrate either from rural or economically less-favoured areas within their countries of origin to urban centres in their own countries, to wealthier countries within the same region, or from countries of the South to countries of the North. Though many have traditionally recognized professions in their own countries, they work as domestics in foreign lands because economic forces larger than themselves¹⁴ combine with traditional assumptions about work to be performed by women, and because work to be performed by women of a social caste, class, culture and/or race deemed to be subservient relegates them to that form of work. On their generally meagre incomes, domestic workers often financially support whole families "back home".¹⁵ However, the real costs of migration on the domestic worker, her family and her country of origin are often hidden.¹⁶

¹² See N. Heyzer and V. Wee, "Domestic workers in transient overseas employment: Who benefits, who profits", in Heyzer et al., op. cit., p. 33.

¹³ Bakan and Stasiulis, op. cit., p. 20.

¹⁴ Bakan and Stasiulis, *ibid.*, state the following: "In post-colonial conditions, the legacy of imperialism in the third world has combined with modern conditions of indebtedness to generate large pools of female migrant labour to fill the demand in the domestic care industry of industrially advanced states. Global conditions of recession have created increased pressure for qualified applicants from third world countries to attempt to enter more advanced states under any terms, even if this involves considerable deskilling in employment".

¹⁵ Consider, for example, that the approximately 3 million Filipinos who work overseas — the vast majority of whom are domestic workers — send back about 5 billion dollars to their country of origin thereby supporting approximately 20 million family members in a country with a total population of slightly more than 65 million inhabitants. (P. Pons, "L'exécution à Singapour d'une employée philippine provoque une vague d'émotion à Manille: "Les émigrés de l'archipel font vivre un tiers de la population restée sur place", in *Le Monde* (Paris) (19–20 Mar. 1995) 4.)

¹⁶ B. Anderson, in *Britain's secret slaves*, op. cit., p. 15 states the following: "Migrant domestic workers free their employers from the household responsibilities. But others must come in to take the migrant's place at her home: grandparents or sisters look after her children, while she flies thousands of miles away to look after another's child. At the same time as a woman in Britain is being liberated from household chores by a migrant domestic, the migrant's sister, friend or mother is adding the migrant's household chores and child care to her own burden. The real costs of migration are often hidden, and it is debatable whether these do not outweigh the benefits. For the migrant herself, the problems associated with domestic work outlined above are compounded when the worker is isolated, subject to restrictive immigration laws, and dependent on her employer to a far greater extent than she would normally be in her own country".

She notes, in addition, that migrant workers' financial remittances also do not provide a long term solution to the economic problems faced by the domestic worker's home country. She argues that "[m]oney is not invested in ways
(continued...)

Third, domestic workers are usually employed in private households. Largely because of their status as migrants, many domestic workers are forced — out of economic necessity, work demands imposed by the employer, and often because of restrictions found in immigration legislation — to live with their employer. Perhaps not surprisingly, the wide gamut of difficulties encountered because of the perpetual proximity (or accessibility, from an employer's perspective) also includes restrictions on the workers' ability to associate freely and increases their vulnerability to physical and sexual abuse.

But, as the rhetoric would have it, domestic workers are considered "one of the family". That gratuitous classification has an important effect upon the manner in which domestic workers are treated: as family members, they are less likely to be considered one of the parties to an employment relationship whose conditions of employment are to be respected, and more likely to be treated as the bearer of "family responsibilities" who should be grateful for having been drawn into the employer's family fold and whose every privilege depends upon the "other" family members' convenience or disposition.¹⁷

Ironically, it is precisely because domestic workers are employed within the "private sphere" that there is resistance to recognizing the domestic work relationship, and appropriately regulating it. The cumulative result is that these workers experience a degree of vulnerability that is unparalleled to that of most other workers.

¹⁶ (...continued)
which increase the country's capital stock, it is spent on paying off debts, on food, medical care and education. Consumer goods sold in these countries, such as radios, washing machines, televisions, are manufactured elsewhere, and the migrants' hard-earned money is ploughed indirectly into other economies", *ibid.*, p. 35. See also P. Licuanan, "Socio-economic impact of domestic worker migration: Individual, family, community, country", in Heyzer et al., *op. cit.*, p. 105.

¹⁷ According to M.L. Vega Ruiz: "The confusion between work within the family and the performance of domestic work is based on a traditional paternalistic concept under which the 'servant' who lives in the same residence as the family theoretically becomes part of the family. Whatever the situation may actually be, amicable interactions and in many cases pseudo-family ties do not alter the facts that point to a relationship of subordination: the domestic worker is providing services in a subordinate relationship, under the orders of the householder and in return for a wage". "Domestic work under Latin American labour law", unpublished paper (Geneva, ILO, 1993), p. 7. The Spanish version, "Relación laboral al servicio del hogar familiar en América Latina", is published in *Relasur* (Montevideo), No. 3, 1994, pp. 35-51.

III. International labour standards

The ILO maintains that the specificity of domestic work is not adequate reason for uncritically excluding domestic workers from the scope of international labour protections. To the contrary, ILO supervisory bodies have repeatedly expressed their support for basic labour protections to be extended in a meaningful manner to domestic workers.

A. Conventions and Recommendations

International labour Conventions bind member States which have ratified them to give effect to their provisions. They serve, along with Recommendations, as guidelines to other member States, ILO Conventions bind member States having ratified them to give effect to their provisions, and together with Recommendations offer guidelines for action to non-ratifying States. National laws serve the purpose of ensuring that protections contained in international labour standards are effectively extended to all workers who fall within their scope. To meet that obligation, specific regulation might be required. To date, no international instrument has been devoted to prescribing labour standards that exclusively apply to domestic workers. However, international labour standards in many key areas — including the fundamental human rights Conventions on freedom of association, equality of rights and prohibition forced labour — apply to domestic workers.

A few Conventions expressly stipulate that they apply to domestic workers. For example, the full title of the Sickness Insurance (Industry) Convention, 1927 (No. 24), is the Convention concerning Sickness Insurance for Workers in Industry and Commerce and Domestic Servants. It provides that the compulsory sickness insurance system of a country ratifying the Convention is to apply to manual and non-manual workers, including domestic workers.¹⁸

Certain ILO Recommendations also specifically address the status of domestic workers. For example, the Medical Examination of Young Persons Recommendation, 1946 (No. 79), stipulates that it should apply to domestic service for wages in private households (Paragraph 1(e)). The Employment Services Recommendation, 1948 (No. 83) proposes that within the general framework of free public employment services that are to be established by member States, measures should be taken where appropriate to develop separate employment offices that specialize in meeting the needs of employers and workers belonging to certain categories of work, including the domestic service “wherever the character or importance of the industry or occupation or other special factors justify the maintenance of such separate offices”.

Some Conventions permit the exclusion of certain types of domestic work from their scope of application. For example, Article 1(3)(b) of the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), and Article 1(4)(b) of the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60), authorize the competent authority in each country to exempt from their scope “domestic work in the family performed by members of that family”. Although the Minimum Age Convention, 1973 (No. 138), which revises Conventions Nos. 33 and 60, does not explicitly provide for that exclusion; domestic service in private households is regarded as an example of categories of work that may be excluded from its scope under Article 4. While the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79), leaves the discretion to exempt “domestic service carried on for wages or earnings in a private household” from its scope of application to individual member

¹⁸ The Medical Care and Sickness Benefits Convention, 1969 (No. 130), which revises Convention No. 24, does not mention domestic workers specifically.

States, the Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 80), encourages member States to adopt appropriate legislative and administrative measures to restrict night work of children and young persons under 18 years of age who engage in domestic work. Under the more modern standard on night work, the Night Work Convention, 1990 (No. 171), Members may only exclude limited categories of workers, such as domestic workers, from the scope of the Convention if coverage of those categories "would raise special problems of a substantial nature" (Article 2). Before excluding them, governments must first consult the representative organizations of employers and workers concerned, and progressive extension of the provisions of Convention No. 171 to those workers would need to be contemplated.

In one important ILO instrument, the Maternity Protection Convention (Revised), 1952 (No. 103), extra care is taken in Article 1(3)(h) to ensure that "domestic work for wages in private households" is clearly understood to be included within the meaning of "non-industrial occupations" that are covered by the Convention. A member State may only exclude this category of work from the scope of the Convention by way of a declaration accompanying ratification of the international instrument (Article 7(1)(c)).¹⁹

In most cases, however, domestic workers are not specifically mentioned in Conventions. It is understood in those cases that domestic workers, unless they have been excluded from the scope of a Convention by a Member pursuant to use of a general flexibility clause, are to enjoy the rights, freedoms, and protections contained within it. The most notable examples are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Though neither specifically refers to domestic workers, both entitle them to the full gamut of freedom of association guarantees, including the right to establish and join occupational organizations²⁰ such as trade unions.

B. Supervisory mechanism: Observations of the Committee of Experts

The Committee of Experts for the Application of Conventions and Recommendations²¹

¹⁹ This has been done by Austria, Brazil and the Netherlands. ILO: *Lists of ratifications by Conventions and by country* (Geneva, ILO, 1996), Report III, Part 2, p. 140.

²⁰ Committee of Experts on the Application of Conventions and Recommendations: *General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948 and the Right to Organise and Collective Bargaining Convention (No. 98), 1949* (Geneva, ILO, 1994), para. 59.

²¹ Member States are required by the Constitution of the ILO to submit various reports to ILO supervisory bodies so that compliance with ratified Conventions, as well as compliance with the core international labour Conventions, ratified or not, may be assessed. The Committee of Experts for the Application of Conventions and Recommendations is a body of independent technical experts in law and the social sciences, appointed by the Director-General of the ILO and approved by the ILO's Governing Body. The Committee of Experts is empowered to make comments or ask for further information from governments. It does so in the form of direct requests and observations. Direct requests are sent directly to governments and are not published in the Committee of Expert's annual report. If the Committee of Experts is satisfied by the responses, which might indicate that appropriate modifications to the law and practice have been made, then no further action is taken. Observations deal with questions that are either comparatively more serious by nature or that have not been resolved for some time. Observations are published in the annual report, which is referred to the tripartite, annual International Labour Conference held in June, and may be consulted via the ILO's Homepage on the Internet: <http://www.ilo.org>. At that point, a Conference Committee report is made detailing the discussions of governments on these observations and any remaining questions that the Committee of Experts might have. For a more comprehensive discussion of this and other supervisory bodies of the ILO, see *ILO Law on Freedom of Association: Standards and Procedures* (Geneva, ILO, 1995), Part II.

has on many occasions turned its attention to the coverage given to domestic workers under national legislation. It has systematically called into question the practice of excluding domestic workers from the scope of freedom of association legislation. With respect to Ethiopia, the Committee of Experts repeatedly challenged the fact that domestic workers were denied the right to organize and bargain collectively. In 1993, the Committee of Experts was able to "note with satisfaction" that the new Ethiopian *Labour Proclamation No. 42/1993*, which contains some freedom of association protections, did not exclude domestic workers from its scope of application.

The Committee of Experts has also called attention to the absence of provisions favouring freedom of association for domestic workers in the Labour Code²² and the new draft Labour Code of Jordan. With a view to ensuring that Convention No. 98 is applied to domestic workers, the Committee of Experts noted with interest that the Council of Ministers of that country would be able to establish regulations concerning the legal situation, conditions of work and rights and obligations of domestic workers. However, it specified that the legislation must apply to all domestic workers and provide them with "protection against acts of anti-union discrimination, as well as the right to negotiate their conditions of employment collectively".

In 1991, an ILO supervisory body specifically focused on the practical consequences of extending freedom of association rights to domestic workers when the South African Government consented to a mission by the Fact-Finding and Conciliation Commission on Freedom of Association (FFCC). In the ensuing report, entitled *Prelude to change: Industrial relations reform in South Africa*²³ (FFCC report), the link between domestic workers' living conditions and their freedom of association rights was specifically explored, on account of the particularly large number of domestic workers in the South African labour force.²⁴ The FFCC reported that "the exclusion of farm workers and domestic workers from the provisions of the LRA [Labour Relations Act, No. 28 of 1956 of South Africa, which has since been replaced by a new LRA] is one of the most serious problems affecting freedom of association in South Africa. It is contrary to the basic principles of the ILO".²⁵ The FFCC report expressed sensitivity to the reality that:

... although there is nothing in South African law which prohibits [domestic workers] from forming or joining the trade union of their choice, there is, at the same time, nothing which protects [...] domestic workers from being victimized or dismissed (with consequential eviction in most cases from their homes) for trade union membership or activities. [...] Moreover, the absence of an effective statutory framework means that their unions have no legal basis on which they can claim the right to bargain collectively on behalf of their members, nor do the workers or their unions enjoy any protection in the event of strike action.²⁶

The Committee of Experts has also focused on the pervasive problem of children working as domestics, often to pay their parents' debt bondage to local landlords or money-lenders. In these cases in particular, the Committee of Experts has searched deeper and wider than the legislative texts presented to it to obtain information on the actual, often profoundly disturbing, practices. With respect to Bangladesh, the Committee of Experts cited the discussions in the Working Group on Contemporary Forms of Slavery of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities at its fourteenth session, 1989, and the Report of the Working Group.²⁷ It noted the anti-poverty initiatives which the Bangladeshi Government had already undertaken to address the problem, and called upon the Government to ensure that the appropriate legal measures (notably that

²² No. 21 of 1960.

²³ ILO, *Official Bulletin* (Special Supplement) Vol. LXXV, 1992, Series B, p. 8.

²⁴ *ibid.*, para. 496.

²⁵ *ibid.*, para. 723.

²⁶ *ibid.*

²⁷ Doc. E/CN.41Sub.2/1989/39 of 28 Aug. 1989.

the illegal exaction of forced or compulsory labour shall be punishable as a penal offence in accordance to Article 25 of the Forced Labour Convention, 1930 (No. 29)) are adequately and strictly enforced.²⁸

Another example of the widespread practice of child labour was identified in Haiti, regarding the plight of the *restavek* (the Creole word for live-in child domestic workers). The Committee of Experts acknowledged that the Haitian Labour Code²⁹ contained detailed provisions to protect children employed as domestic servants and prohibit employment of children under the age of 12. The Committee of Experts none the less pointed out that the report from which the information was taken³⁰ had alleged that poor families sometimes sold their children to urban families. *Restavek* children were reported rarely to be treated as members of *restavek* families; rather, *restavek* children took orders from the families' children, were often fed different food, worked long hours for no pay and were often housed in a separate shed. Few were sent to school, and those who ran away and were found by their *restavek* family could be forced to return. The Haitian Government was urged to answer the allegations.

The Committee of Experts has scrutinized legislation on maternity leave and benefits, to ensure that domestic workers are afforded the rights contained in the Conventions. In its 1989 observations for Bolivia under the Maternity Protection (Revised) Convention, 1952 (No. 103), the Committee of Experts expressed its approval of the initiative to include previously excluded workers, such as domestic workers and rural workers, within the scope of the draft *Social Security Code*, thereby entitling domestic workers to maternity leave protection. In its 1993 observations, it lamented the fact that the draft *Social Security Code* had been deferred by the parliamentary commissions and encouraged the Government to adopt the appropriate measures in the near future, "both in law and practice".

In both its 1989 and 1993 observations, the Committee of Experts mentioned the Italian Government's expressed intention to modify Act No. 1204 of 1971 to extend to domestic workers rules prohibiting dismissal of pregnant women workers and working mothers, in order to bring the legislation into conformity with Convention No. 103. The Committee of Experts also considered collective agreements on domestic work, concluded on 28 April 1987 and 13 July 1988, which provide protection against dismissal from the day the worker presents a medical certificate of pregnancy until the day that she begins maternity leave. The Committee of Experts pointed out that the provisions of these agreements do not conform in full with Article 6 of Convention No. 103, which also prohibits giving notice of dismissal to a woman during the period in which she is absent from work on maternity leave.

The Government of Ecuador was called upon by the Committee of Experts to follow through on its stated intention to extend the period during which pregnant workers may receive cash and medical benefits to 12 weeks, in order to correspond with the leave allowance in the Convention. The Committee of Experts stated clearly that the extension should apply to domestic workers.

The Committee of Experts has also challenged the exclusion of domestic workers from the minimum wage-fixing machinery as being contrary to the Minimum Wage Fixing Convention, 1970 (No. 131). In Uruguay, comments were submitted to the Committee by the Inter-Union Workers' Assembly — National Workers' Convention (PIT-CNT) in 1989. The PIT-CNT alleged that domestic staff continue to be left outside any wage-fixing system; as a

²⁸ The Committee of Experts has also commented on child labour in domestic service in India (observations of 1991, 1992), Sri Lanka (observations of 1992) and Sudan (observation of 1992).

²⁹ ss. 341-355.

³⁰ The Committee of Experts drew this information from a report on Children's Rights in Haiti, prepared by the Minnesota Lawyers International Human Rights Committee in February 1989 and submitted to the Working Group on Contemporary Forms of Slavery of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, August 1989. The report was presented to the UN Committee by an observer of the International Human Rights Internship Programme.

result, they must depend on individual contracts concluded between the parties.³¹ The Committee of Experts persistently raised the matter, requesting information on measures envisaged to ensure that domestic workers are provided with a system for fixing minimum wages, in accordance with Convention No. 131. In 1991, the Committee of Experts was able to note with satisfaction that a Decree³² had been adopted to establish a minimum wage for domestic workers, both in Montevideo and the interior of the country.

The implications of international and domestic migration, and the role of fee-charging employment agencies, have also been considered by the Committee of Experts. In its 1990 observation on Italy concerning the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Committee of Experts referred to observations submitted previously by the Italian General Confederation of Labour (CGIL) and requested information on the measures taken or envisaged to secure acceptance and observance, in practice, of equal opportunity and treatment, according to Article 12 of Convention No. 143, particularly as regards migrant domestic workers. The Government denied the existence of discrimination against domestic workers since domestic work is regulated under Act No. 943 of 1986 and the relevant collective agreement.

The Committee of Experts has commented for many years on the *Labour Code*³³ of the Syrian Arab Republic, which has ratified the Fee-Charging Employment Agencies (Revised) Convention, 1949 (No. 96). It has requested that the authorization to set up private employment agencies be repealed and that "domestic and similar workers" be included within the scope of application of the chapter on placement of unemployed persons.

Accurately defining the work performed by domestic workers is crucial, otherwise workers who need the protection risk exclusion from the outset. For example, it is not immediately apparent that those who care for the elderly or disabled in a private household are understood to fall within the conventional meaning of "domestic worker". In fact, it might well be appropriate in some cases to deal with care-givers under different legal instruments than other domestic workers. The key is that by one means or another they are afforded the rights and protections contained in the core international labour standards.³⁴ On this point, the Committee of Experts has commented, in the case of Jordan and in the context of Convention No. 98, that regulating the conditions of work of certain categories of domestic workers (such as gardeners and cooks), but not others, is inadequate; rather, "all domestic workers, without exception" are entitled to "protection against acts of anti-union discrimination, as well as the right to negotiate their conditions of employment collectively".³⁵

From the preceding brief survey of observations made by the Committee of Experts, a consistent approach to domestic workers is also witnessed: domestic workers are entitled to the rights and protections contained in a wide range of international labour standards.

Some might perceive a paradox between arguing for specific regulation in national laws when international labour standards for the most part do not directly mention domestic workers or contemplate the specificity of their employment relationship. A specific international instrument addressing labour, social and immigration aspects of domestic work would no doubt be helpful to member States and enable more of them to regulate domestic work in an effective manner. None the less, member States already are obligated, under the Conventions that they have ratified, to extend a gamut of labour standards to this category of workers. The question remains, however: how does a member State that is called upon to

³¹ 1989 observations.

³² Decree No. 433/990 of 19 Sep. 1990.

³³ No. 51 of 1959.

³⁴ Weinert has also remarked that the failure to define domestic work precisely is a reflection of the general societal view that domestic work is not viable economic activity; she responds, however, that domestic work "contributes just as much to a smooth functioning of that society as any other work", Weinert, op. cit., p. 5.

³⁵ Observation of 1992.

address in a serious manner the challenge of effective protection for domestic workers meaningfully go about that daunting task?

The part which follows examines the initiatives of three ILO member States — France, Spain, and Zimbabwe — to regulate domestic workers' conditions of employment in a comprehensive way. Each has done so in a different manner and to a different degree, within specific national traditions. This Working Paper does not exhaustively detail that regulation; rather, it highlights certain key areas of regulation and compares each country's approach. The approaches often show creativity and sensitivity to the context of domestic work, and an effort to balance appropriately the competing interests while legislatively recognizing domestic workers' rights. This Working Paper in no way suggests that the regulation is in all respects adequate or even commendable, nor is any assertion made about the adequacy of enforcement mechanisms available in these countries and their relative effectiveness. Rather, it seeks only to draw attention to the myriad of issues, particular to domestic workers in private households, that cry out for specific regulation, and to stimulate discussion by detailing three distinct attempts to address them.

IV. National regulation³⁶

A. Form of regulation

1. France

In France, domestic workers are covered by the Labour Code,³⁷ the basic law that fixes the minimum rules applicable to “household workers”,³⁸ although many provisions of the Labour Code do not apply to them.³⁹ However, France also has a National Collective Agreement (CCN)⁴⁰ for this category of workers, as it does for workers in many other occupations. The CCN was signed by the national employers’ federation, the Fédération nationale des groupements d’employeurs de personnel employé de maison (FEPEM), and three workers’ unions, la Centrale syndicale chrétienne des employés de maison (CFTC), la Fédération des personnels du commerce de la distribution et des services (CGT), and la Fédération générale des travailleurs de l’agriculture, de l’alimentation et des secteurs connexes (FGTA) FO. It came into force on 3 June 1980, and was extended by order in council (*arrêté d’extension*) on 26 May 1982 to apply to all employers of household workers irrespective of whether they were members of the employers’ federation that originally signed the agreement. It both clarifies rights available under the Labour Code and provides more favourable standards for domestic workers.⁴¹

The CCN is considered to be one of the most innovative devices in the French law on collective agreements. According to Professors Gérard Lyon-Caen and Jean Pélissier, despite considerable debate in French doctrine, collective agreements are now widely regarded as both contracts that generate obligations between the signatories and forms of regulation that generate norms which apply to individuals.⁴² CCNs are arguably more regulatory in nature, as a tripartite commission (*commission mixte*), presided over by a representative of the Minister of Labour, negotiates as full a range as possible of employment and labour conditions and social protections for the category of workers it represents.⁴³

³⁶ The information on the countries under study provides only a selective illustration of different types of regulation. It does not offer a comprehensive study of the law as it relates to domestic workers in these countries.

³⁷ *Code du travail*, L. n° 73-4 du 2 janv. 1973 (Act No. 73-4 of 2 Jan. 1973).

³⁸ This is the literal translation of the term, “employés de maison”; it is used here interchangeably with “domestic workers”.

³⁹ Domestic workers are entitled to three basic forms of social protection independent of the existence of a CCN: paid leave, notice and the ability to bring disputes before the Conseil de Prud’hommes (a type of labour tribunal). *Encyclopédie Dalloz, Travail*, Vol. II, “Employés de maison”, paras. 1 and 11.

⁴⁰ *Convention collective nationale de travail du personnel employé de maison*, in *Journal officiel*, Fascicule n° 3180, 13^e ed., Jan. 1996. Various departmental collective agreements came into being between the 1950s and the adoption of the current CCN.

⁴¹ However, it does not stop individual departments or regions from availing themselves of the more beneficial conditions agreed upon before the CCN was introduced or from further attempting to better the conditions of domestic workers. See S. Zaquin, “Employés de maison” in *Liaisons Sociales: Employés de maison, assistantes maternelles, concierges*, Suppl. to No. 11658 of 31 Mar. 1994, Paris, p. 10. It should be noted, though, that on 23 Feb. 1995, the FEPEM denounced the regional and departmental annexes to the CCN, arguing that the working conditions of domestic workers should be simplified and unified to facilitate their application (BOCC No. 95-40).

⁴² *Droit du travail*, 16th ed. (Paris, Dalloz, 1992), paras. 818-819. The authors argue that the collective agreements are less like contracts and more aptly called agreements because they are less likely to create obligations than to recognize and declare rights (para. 819). They also argue that judges tend to interpret the agreements in a manner consistent with regulation rather than contract (para. 820).

⁴³ *ibid.*, para. 913.

2. Spain

In Spain, since 1985⁴⁴ domestic work has been classified as a special employment relationship, which means that domestic workers are generally excluded from the provisions of the comprehensive Workers' Statute.⁴⁵ Domestic work was classified in this manner based on both the fact that the work takes place in a home, and the perception that "special trust" is required between the worker and the employer.⁴⁶ The Workers' Statute continues to apply when an issue has not been addressed in the Royal Decree of 1985.⁴⁷

The Royal Decree has been considered by Spanish doctrine to be a somewhat anomalous instrument. Quesada Segura speaks of a form of operative *deslegislación* because the Royal Decree largely supplants the Workers' Statute, is a form of direct governmental regulation, and is typically meant to be temporary.⁴⁸ However, Quesada Segura concedes that given the distinct, complex nature of certain employment sectors, such as domestic work, regulation can be indispensable to applying the law in a viable manner.⁴⁹

3. Zimbabwe

After obtaining independence in 1980, Zimbabwe, a common law jurisdiction, replaced the *Masters and Servants Act* of 1903 with the first⁵⁰ of a series of statutory instruments regulating domestic workers' labour and employment relations. The use of regulations that apply exclusively to one category of worker would appear to facilitate amendment; the regulations have been revised repeatedly since independence and have tended to provide increasingly comprehensive regulation of domestic work.

B. Definition of domestic work

The importance of defining domestic work in a way that is specific and inclusive has already been stressed.

Zimbabwean legislation offers detailed definitions of domestic work. A "domestic worker" means "a person employed in any private household to render services as a yard/garden worker,

⁴⁴ *Real Decreto 1424/1985*, de 1 de agosto, *por el que se regula la relación laboral de carácter especial del servicio del hogar familiar*, *Boletín Oficial del Estado*, 13 de agosto de 1985 (Núm. 193), 2017. See R. Quesada Segura, *El contrato de servicio doméstico* (Madrid, Distribuciones de La Ley, 1991), pp. 11–45 for an overview of the antecedents to this law. See also Colectivo Ióe, *Foreign women in domestic service in Madrid, Spain*, World Employment Programme Working Paper No. 51.E (Geneva, ILO, 1991), pp. 9–10.

⁴⁵ *Estatuto de los trabajadores*, Ley 8/1980 de 10 de mayo, sec. 2(1)(b).

⁴⁶ See European Foundation for the Improvement of Living and Working Conditions, *European Employment and Industrial Relations Glossary: Spain* (London, Sweet and Maxwell, 1991). See also T. Sala Franco, "La relación laboral especial del Servicio del Hogar Familiar y el contrato de trabajo doméstico", in *Relaciones Laborales* (Madrid) Vol. 1, 1986, pp. 286–287, for a critique of this classification. Sala Franco argues that the classification serves as a justification for discriminatory treatment of domestic workers with respect to other workers who are not classified as "special". He acknowledges that employers have constitutional protection of their personal and family privacy ("intimidad personal y familiar", article 18(1) of the Spanish Constitution), but counters that domestic workers also have a right to non-discrimination (Article 14) as well as to personal and family privacy. Moreover, the Workers' Statute provides that the regulation of special-labour-relations-is-to-respect-basic-constitutional-rights.

⁴⁷ Additional Provision, *Real Decreto 1424/85*.

⁴⁸ Quesada Segura, *op. cit.*, pp. 86–89. See also O. Duhamel, *Droit constitutionnel et politique* (Paris, Éditions du Seuil, 1994), p. 545.

⁴⁹ Quesada Segura, *op. cit.*, p. 87.

⁵⁰ *Employment (Domestic Workers) Regulations, 1981*, Statutory Instrument 925C of 1981.

cook/housekeeper or child-minder or disabled/aged-minder irrespective of whether or not the place of employment is in an urban or rural area".⁵¹

Zimbabwe also provides more precise definitions of the terms listed in the definition of domestic worker. Thus:

- "child-minder" is defined to mean a domestic worker whose responsibilities include in any way and to any extent taking care of, or watching over, any child under the age of 11 years, regardless of whether or not the domestic worker is also employed as a garden worker and additionally, or alternatively, as a cook/housekeeper;⁵²
- a "cook/ housekeeper" means any domestic worker whose main responsibilities include or involve house-keeping, house-cleaning, laundry, ironing, cooking, dish-washing, food preparation or food service, regardless of whether or not that person also acts as a garden worker but does not include any worker whose responsibilities include those of a child-minder and additionally, or alternatively, a disabled/aged-minder.
- in 1993, a definition of "disabled/aged-minder" was adopted: a domestic worker whose responsibilities include in any way and to any extent taking care of, or watching over, any person who is so disabled as to be unable to take normal care of himself, regardless of whether the disability is physical, mental or related to advanced age;⁵³
- finally, a "yard/garden worker" means a person whose duties are limited to taking care of any or all of the yard, lawn, shrubs, hedges, fences and garden of any private household or the property of a welfare organization.

In Spain, Royal Decree 1424/85 interprets the domestic service relationship as between the employer and the person who provides remunerated services in the household. The Royal Decree also defines the object of this relationship as being the services or activities provided in or for the home in which the work is done. The services or activities may take any of the forms of domestic tasks, such as running or taking care of all or part of the household and caring for or attending to the members of the family or to those living in the home. Specific occupations such as guards, gardeners or chauffeurs would be included in this definition.⁵⁴

In France, the term *employés de maison* is used to denote salaried workers employed by individuals to perform domestic labour.⁵⁵ Article 1 of the CCN defines household workers as monthly or hourly workers, at full or part time, who perform all or part of the household tasks, be they of a family care nature or a household cleaning nature. It excludes workers who spend more than 50 per cent of their time performing an activity that pertains to their employer's profession. These forms of employment are further classified into more specific occupational groupings, based on level of experience and expertise as well as the nature of the work. In particular, employment positions of a family nature (*postes d'emploi à caractère familial (PECF)*) have been defined separately as positions that have as their purpose to increase the physical and moral comfort of adults or children. This category of domestic workers includes child-minders who guard children (presumably including but not limited to baby-sitters). It also includes nannies

⁵¹ s. 3, *Labour Relations (Domestic Workers) Employment Regulation*, 1992. S.I. 377 of 1992, as amended by *Labour Relations (Domestic Workers) Employment (Amendment) Regulations*, 1993 (No. 2), S.I. 373 of 1993 [hereinafter *Domestic Workers-Regulations*, 1992].

⁵² It is noteworthy that the *Labour Relations (Domestic Workers) Employment (Amendment) Regulations*, 1993 (No. 2) raised the age of the child from 7 to 11 years.

⁵³ *Labour Relations (Domestic Workers) Employment (Amendment) Regulations*, 1993 (No. 2), s. 2(c).

⁵⁴ *Real Decreto*, ss. 1(2) and 1(4).

⁵⁵ *Code du travail* s. L.772-1.

or governesses who hold diplomas or have five years of professional experience in the field. It also encompasses assistants to aged or disabled persons and sitters who watch over persons who are ill, but who do not provide health care to them.⁵⁶ Gardeners and guards of private households are regulated under a separate CCN.⁵⁷

C. Accommodation

One of the factors that most strikingly characterizes the specificity of the domestic work relationship is accommodation. In essence, the workplace is, for a majority of domestic workers, their home. The relationship of dependence that results from living in the employer's house cries out for regulation. Many other employment issues, such as working hours, leave periods, even termination notice, cannot seriously be discussed unless the defining impact of living in the employer's house is considered. More basically, the right to privacy, autonomy and personal security is directly related to the degree of control which the domestic worker has over her living space. In the employer's house, the domestic worker typically has little control; consequently, her privacy and autonomy are severely limited and potential threats to her personal security are compounded.

After a look at ILO standards on workers' housing, the legislation of the three countries will be examined in relation to accommodation of domestic workers.

1. Housing policy

The Workers' Housing Recommendation, 1961 (No. 115) of the ILO, indicates clearly, in Paragraph 12(2), that it is "not desirable that employers should provide housing for their workers directly". Rather, the general framework for the housing policy, articulated in Paragraph 2, is to promote [...] the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

Recommendation No. 115 does provide an exception in Paragraph 12(2), however, for cases that "necessitate that employers provide housing for their workers". The following example would be the normal justification for applying this exception to domestic workers, namely that "the nature of the employment requires that the worker should be available at short notice". To rely on such a justification would imply recognition that a domestic worker is considered to be "on-call" during those additional hours, much as a fire-fighter or a nurse might be. That recognition holds considerable implications for the purpose of remuneration.⁵⁸

2. Living standards

If we accept the reality that many domestic workers live in the home of their employers and that employer-provided accommodation is not prohibited in the domestic work sector, then a plethora of other issues must be tackled, particularly in so far as controlling the conditions of domestic workers' accommodation is concerned. For example, in the FFCC report on South

⁵⁶ Article 25, CCN, as modified by Avenant No. 10 of 20 January 1995 and in force from 23 October 1995.

⁵⁷ *Convention collective des jardiniers et gardiens de propriétés privées du 25 septembre 1975.*

⁵⁸ See section D, Hours of work, below.

Africa,⁵⁹ the FFCC noted that accommodation for domestic workers was “frequently squalid with little or no access to decent bathing, toilet and cooking facilities”.⁶⁰ A study that considered domestic workers’ living conditions in Zimbabwe found that despite the fact that some employers attempted to qualitatively upgrade the living conditions of domestic workers, reform-minded employers were in the minority and the majority of domestic workers continue to live in segregated “kias” or servants quarters located out at the back of the plots on which the employer’s houses are built. The “kias” often lack electricity or indoor kitchens, although they are situated at the back of luxurious houses. A near chronic housing shortage does not assist the state of affairs.⁶¹

Inquiry into the available assurances of personal privacy and security cannot be overlooked, especially when domestic workers live at their employer’s residence. At one level, heightened proximity may lend the impression that the worker is always present to work, despite the fact that a full workday might have been accomplished. At a more nefarious level, living conditions may play a significant role in facilitating or curtailing sexual harassment or physical or sexual abuse.

The French CCN provides one of the most complete regulations of accommodation, which it describes as an accessory of the employment contract.⁶² First, it considers practical, concrete methods to provide or increase personal privacy and security. For example, article 30 of the CCN stipulates that each domestic worker must have an individual room that can be locked from the inside and closed with a key. It also specifies that, in particular, employees who care for children must have a space that is separate from the child’s room.⁶³ Second, it seeks to ensure that the lodgings are in appropriate condition: decent, sanitary, adequately lit and appropriately heated. The employer is responsible for cleaning any clothing or linen that he or she provides to the domestic worker. Sanitary facilities are to be available in domestic workers’ lodgings; otherwise, the domestic worker must have access to the employer’s facilities. If food is provided, it must be healthy and sufficient in quantity. Third, in order to ensure that the lodgings are kept in a proper state, the employer may conduct an inventory of the lodgings and the objects provided to the domestic worker and a survey of the state of the premises at the time of hiring and when the contract comes to an end. Finally, an attempt is made to regulate transition periods, such as when an employment contract is suspended or when termination of employment has occurred. Hence, when a contract has been suspended but not broken or ended, and within the notice periods, the premises may not be taken back by the employer without the domestic worker’s agreement. If the domestic worker is not using the premises, however, the employer may house a replacement worker. The employer would in such a circumstance be responsible for the personal affairs of the domestic worker and would be required to preserve them suitably.

⁵⁹ The FFCC report is cited in footnote 23 supra.

⁶⁰ FFCC report, op. cit., p. 149, para. 499; see also p. 196, para. 724.

⁶¹ See J. Pape, “Still serving the tea”, op. cit., p. 396.

⁶² Article 30, CCN.

⁶³ The following account of a Botswanian domestic worker indicates how necessary such provisions tend to be: “I start work at 6 a.m. every morning and finish at 10 p.m. You see I can never really finish because I sleep in the big house ... they have rented out the workers’ room. I sleep with the children, get Sunday afternoons off and sometimes I like to sleep at my friend’s house at Bontleng on some Sundays, but my *lekgowa* [term emanating from colonial times meaning employer] gets angry and shows this by keeping me knocking at the door for a long time on Monday mornings”. See L. Letsi-Taole, “Domestic workers in Botswana”, in *Southern Africa Political and Economic Monthly* (Harare), Vol. 6, No. 12, 1993, pp. 57–58.

In Spain, the head of the family household (*titular del hogar familiar*)⁶⁴ bears responsibility for the safety and health conditions of the workers; however, the Royal Decree makes no direct mention of housing standards.⁶⁵

3. Payment for room and board

The traditional tendency is to view room and board as services provided by the family to the domestic worker for which the domestic worker should pay. Domestic workers are frequently charged for room and board; the amount — which is not usually subject to a legal maximum — is typically deducted from earnings.⁶⁶ It is sometimes rationalized as being a convenience to the domestic worker, whose family might live quite far away from the employer's home. In some contexts, it might not be socially acceptable for a young, unmarried woman to live alone. Additionally, domestic workers might simply be unable to find accommodation for which they earn enough to pay, which of course adds to the vicious circle. In most cases, however, domestic workers are compelled to live with the family, often because of that family's extensive work exigencies. Having a live-in domestic worker, particularly where care-giving is involved, is seen to provide considerable flexibility, notably where those who hold the care-giving responsibility work outside of the home. In a few cases, it is even a legal requirement that domestic workers live in the same dwelling as their employers.⁶⁷ For these reasons, a legislative provision stipulating that once the workday is completed, the domestic worker is not obligated to stay in the employer's house,⁶⁸ does not begin to address the practical realities that often impede domestic workers from living out.

The Zimbabwean example on housing policy is interesting because it challenges the traditional manner in which the provision of room and board is perceived. The principle is that domestic workers must receive "free" of charge — or receive allowances for — accommodation and goods that in some other countries are considered to be a form of payment in kind. The rule set out in section 6 of the *Domestic Workers Regulations, 1992*, is that "every domestic worker shall be entitled to either free lodging, free transportation to and from work, free lights, free fuel for cooking, free water for normal domestic use or to the minimum allowances specified in the Second Schedule".⁶⁹

⁶⁴ See Quesada Segura, *op. cit.*, for a detailed analysis of this concept under Spanish law.

⁶⁵ *Real Decreto 1424/85*, s. 13. Quesada Segura identifies this as an area in need of further regulation in Spain, *op. cit.*, p. 207. Note that in Portugal, health and safety provisions for domestic workers stipulate that accommodation and food must be provided under conditions that safeguard the health and hygiene of workers. *Decreto-Lei Núm. 235/92*, s. 26(1)(e).

⁶⁶ For example, s. 5 of the Spanish *Real Decreto 1424/85* provides that a full 45 per cent of a domestic worker's salary may be deducted for room and board.

⁶⁷ This is the case in Canada under the appropriately named "Live-in Caregiver Programme" (LCP) adopted in 1992. This programme replaced the Foreign Domestic Movement (FDM) programme of 1981 which contained the same live-in requirement. See Bakan and Stasiulis, *op. cit.*, pp. 14 et seq.

⁶⁸ Spanish *Real Decreto*, s. 7(1).

⁶⁹ Note that according to s. 4 of these Regulations, an employer is exempted from paying a transportation allowance for employees who live within reasonable walking distance of the place of employment. It is also noteworthy that in Paraguay, "absent proof to the contrary", the standard remuneration received by domestic workers is presumed to include, over and above cash wages, the supply of room and board. *Código del trabajo actualizado*, s. 147.

D. Hours of work

The inevitable blurring between work and home that arises in the domestic employment context, especially when domestic workers “live in”, complicates the task of regulating suitable boundaries between the two. Respect for domestic workers’ right to reasonable working hours and recognition of the needs of employers when care-giving responsibilities are involved often call for regulation that is carefully tailored to the actual employment conditions. Work, which may be never ending in the private sphere, must be defined: then it must be realistically limited.

Part of the impetus for introducing standards governing maximum weekly working hours and overtime protection was to establish a reasonable work period (the principle of the 40-hour work-week),⁷⁰ all the while recognizing that circumstances occasionally require longer periods of service which should be compensated accordingly through overtime pay. In some jurisdictions, the approach has been simply to define a longer ordinary work-week for domestic workers.⁷¹ Other countries have attempted to combine creatively maximum working hour protections with limited “on-call” duties to try to arrive at fair and realistic solutions to regulate working hours.

The French CCN demonstrates formal acknowledgement of this aspect of domestic work; it stipulates that care-givers who may be called upon during the day or night must be remunerated for the hours during which they hold on-call but not “actual” responsibilities. Those hours are considered “*heures de présence responsable*” (hours actively on call), and are limited and remunerated in the manner designated in the CCN for different categories of workers. Notably, the “*heures de présence responsable*” are limited to four hours per week for most categories of domestic workers.⁷² Otherwise, most categories of domestic workers have a 40-hour work-week; any work above that amount is considered to be overtime, whereas the standard work-week for most other employees is slightly lower, at 39 hours per week with a 10 hour maximum per day.⁷³ For the PECF category of workers (employment positions of a family nature), however, the daily maximum is 12 hours.⁷⁴

Despite the progress that recognition of “*heures de présence responsable*” suggests, the irony is that the principles do not apply to the category of workers most likely to benefit from them. Consider that nannies and governesses of children who work full time and live-in are exempted from the application of the rule under article 25 of the current CCN. The legislative explanation is that it is “difficult to determine” the “actual” (*effectif*) work performed as compared to the on-call working time. These workers are paid according to the gross salary scale that corresponds to their occupational category. Given the requirements of experience and/or education for this category of workers, it is far from clear that the pay scale accurately remunerates the number of hours that nannies and governesses are likely to work. The provisions might also take away considerable incentive for employers to minimize the overtime hours that domestic workers are called upon to work. Moreover, it is not apparent that it is more difficult to calculate the hours worked by nannies and governesses than it is of assistants to the elderly,

⁷⁰ See the Forty-Hour Week Convention, 1935 (No. 47).

⁷¹ In Quebec, the “standard work-week” for live-in domestic workers is 53 hours, as opposed to 44 hours for most other workers, including domestic workers who are covered by the *Labour Standards Act* but do not live in the home of their employers. *Regulation respecting labour standards*, RRQ, c.N-1.1, r.3, s. 8.

⁷² Articles 13, 25 and 28, CCN. Previously, articles 25 and 28, CCN, provided that 25 per cent of domestic workers’ “*heures de présence responsable*” (hours actively on call) were to be remunerated at the full rate, even when general housekeeping responsibilities were not being fulfilled, and that all other on-call hours should be remunerated at least at 2/3 of the standard salary. (See *Avenant* No. 8 of 13 Sep. 1990.)

⁷³ Articles 13 and 14, CCN. *Code du travail*, Book 2, Title 1, Ch. 2, s. L.212-1.

⁷⁴ Article 25, CCN.

disabled or ill, or child-minders. However, the "*heures de présence responsable*" calculations apply to the latter categories of workers.

It should also be recognized that by extending the concept of "*heures de présence responsable*" to a wide range of daytime and nighttime "on duty" hours, workers who might otherwise have been paid at the full salary scale for a full day's presence could find a significant part of their time remunerated at a reduced rate. The reason would be that the work is considered to be "on-call" rather than "actual work". The distinction might turn out to be a rather fine one when a worker is watching over a child, or an elderly, disabled or ill person. Attempting to arrive at this distinction could undermine what might otherwise have been a desirable outcome of the on-call provisions: recognizing, valuing and ultimately reducing the lengthy hours that domestic workers are called upon to work outside of the traditional workday.

In Spain, domestic workers have an ordinary maximum work-week of 40 hours, with a nine-hour daily maximum;⁷⁵ these standards are consistent with those established for most employees under the general labour law.⁷⁶ Spanish law provides for an eight-hour uninterrupted rest period to be observed for resident domestic workers, but specifies that non-resident domestic workers are entitled to ten uninterrupted hours. Interestingly, it refers to the "on-call" concept (*tiempos de presencia*), indicating that outside of the 40-hour ordinary work-week, the contracting parties can fix the required hours by agreement.⁷⁷ In reality, though, *Real Decreto 1424/1985* does not consider the *tiempos de presencia* as time worked; instead, the time is considered to be over and above the ordinary workday and is not subject to any legislative limits on its duration, except in so far as the mandatory rest periods indirectly limit it. Indeed, it is not even clear that the hours are to be remunerated, unless the parties agree to such a condition. As Quesada Segura argues, although the requirement that the parties reach an agreement on the matter in theory prevents employers from imposing "on-call" hours upon domestic workers, since the calculation is complex and not without controversy, abusive practices might none the less result.⁷⁸ After comparing the regulation of domestic workers with other categories of workers who are required to be on-call,⁷⁹ Quesada Segura contends that domestic workers' "on-call" time should not only be remunerated; it should be of a duration limited by law.⁸⁰

In Zimbabwe, 49.5 hours per week is the ordinary number of hours of work, exclusive of overtime; the ordinary hours of work, breaks excepted, are not to exceed a total of 9 1/2 per day.⁸¹ Interestingly, a domestic worker residing outside of her employer's premises may not be required to work beyond 7 p.m.⁸² If the "live-out" domestic worker consents to work after 7 p.m., then the time that she works after that hour must be counted as overtime.⁸³ Zimbabwean legislation does not speak to the issue of on-call hours. It does stipulate that no employer may require or

⁷⁵ *Real Decreto 1424/85*, s. 7(1).

⁷⁶ *Estatuto de los Trabajadores*, s. 34.

⁷⁷ *Real Decreto 1424/85*, s. 7(1).

⁷⁸ Quesada Segura, op. cit., p. 173.

⁷⁹ Quesada Segura refers, notably, to professional athletes and artists in public performances who benefit from special regulation in Spain with regards to "on-call time". She also mentions types of work which require the employee to be at the service or disposal of the employer, even though work is not actually being performed, such as when an employee is waiting for instructions, is performing work as a guard, or when an employee must eat while on the road; *ibid.*, p. 174.

⁸⁰ *ibid.*, pp. 174-175.

⁸¹ *Domestic Workers Regulations, 1992*, sub-s. 5(1).

⁸² s. 5(2) was modified in 1993 to permit a domestic worker to consent to working past 7 p.m. (*Labour Relations (Domestic Workers) Employment (Amendment) Regulations, 1993 (No. 2)*, s. 4).

⁸³ *ibid.*

permit a domestic worker to work a continuous period of 6 1/2 hours without a meal break of at least 30 minutes, a lunch break of at least one hour and a tea-break of at least 15 minutes.⁸⁴ The assumption, found in the regulations of most countries, is that someone else will be available to assume the domestic worker's responsibilities during the break time, and that even if the domestic worker is not "replaced" during the break time, the responsibility does not warrant remuneration. The very essence of what constitutes "work" is thus implicitly at stake.

E. Minimum wages

Minimum wage fixing in the domestic work sphere is both complex and necessary. It is complex because it involves determining what a household can afford to pay and would be willing to pay for "non-productive"⁸⁵ labour. As Gaitskell et al. argue, domestic workers are: structurally dependent on the degree to which different households can afford them ... understood in terms of the customary levels of wages paid to domestic workers in terms of the fluctuating income of the household of the employer and whether they have sufficient income to pay for the services of a domestic worker, or possess the relative power to force down the level of wages paid.⁸⁶

Minimum wage fixing is necessary because domestic workers are typically unorganized or are associated in unions that are not legally recognized, therefore are usually unable to bargain collectively.⁸⁷ Their markedly unequal individual bargaining position leaves them powerless to demand wages commensurate with the work that they perform or, indeed, that are adequate to live on and to support a family.

Several countries have instituted minimum wages for domestic work.⁸⁸ Two schemes are particularly noteworthy because they attempt to categorize in some detail the type of work which different domestic workers perform and the experience which domestic workers have acquired.

In France, the minimum wage for domestic workers is referred to under article 28 of the CCN, based upon the principle of equal pay for equal work, and is revised two times per year by the signatories to the CCN.⁸⁹ Monthly and hourly minimum wages, which include the cost of meals and accommodation, vary depending on the type of work which the household employee performs, his or her level of experience, and the number of years that he or she has worked for the same employer.⁹⁰ For example, a household worker who assumes a full range of "very qualified" family and housework responsibilities that would otherwise fall upon the head (*maître*

⁸⁴ *Domestic Workers Regulation, 1992*, sub-s. 5(3).

⁸⁵ According to Gaitskell et al.: "Briefly, domestic labour is not exchanged directly against variable capital, it is not productive of commodities, it is not allocated according to the law of value and it does not constitute a source of surplus value for the capitalists; it is not productive in the Marxist sense". D. Gaitskell, J. Kimble, M. Maconachie and E. Unterhalter, "Class, race and gender: Domestic workers in South Africa," in *Review of African Political Economy* (1984), No. 27/28, pp. 91-92.

⁸⁶ *ibid*, p. 92.

⁸⁷ See generally H. Martens and Mitter, *op. cit.*, notably Part II: "Organizing women domestic workers".

⁸⁸ Among them is the Province of Ontario (Canada) (*Domestics, Nannies and Sitters Regulation*, sec. 3, and *Regulation 325 under the Employment Standards Act*) s. 10(1). According to the combined effect of these provisions, domestic workers receive 110 per cent of the minimum wage set for students under age 18 who are gainfully employed for not more than 28 hours a week. It is noteworthy as well that minimum wages have been fixed for foreign domestic workers in Hong Kong, Singapore, Saudi Arabia and Malaysia (L. Gulati, *Women migrant workers in Asia: A review* (New Delhi, ILO/Asian Regional Team for Employment, 1993). In Spain, domestic workers were included under the inter-occupational minimum wage scheme for the first time with the adoption of the Royal Decree. See Quesada Segura, *op. cit.*, pp. 163-164 for a brief description of this minimum wage system.

⁸⁹ Article 28(b) and (e), CCN.

⁹⁰ A detailed classification of domestic work is contained in article 25 of the CCN.

ou maîtresse) of the household, is paid more than a household employee who assists the employer to perform certain tasks over which the employer retains responsibility. The length of experience as a household worker is another element in the classification.

The degree of detail contained in the classification of domestic work in the French CCN shows that a serious attempt has been made to match the degree of skill, effort, experience, education⁹¹ and responsibility required by the work to the minimum level of remuneration to which a domestic worker is entitled. None the less, it might be considered curious that a chauffeur is classified at the fifth and highest level — irrespective of experience, it would appear, although required to be “highly specialized” — whereas an assistant to the aged or disabled, who is required to be qualified, responsible and capable of acting autonomously, is placed at the third level. The value attributed to work traditionally performed by men relative to work traditionally performed by women might be a prevailing concern in this area.⁹²

Zimbabwe also has a minimum wage schedule, which sets monthly, weekly, daily and hourly wages for three different grades of domestic employment.⁹³ According to subsection 4(3) of the Regulations, a domestic worker who is promoted to a higher grade is not to be paid less than the minimum wage applicable to that grade; moreover, if she earned a higher wage prior to the promotion, she is entitled to continue to receive that higher wage. A domestic who is required to perform work at a lower grade than that in which she is normally employed is to be paid the wage applicable to the grade of work which she normally performs, according to subsection 4(4). Subsection 4(5) none the less provides that a domestic worker who is required to perform work classified at a higher grade than the work that she normally performs shall be paid for all the hours worked in that higher grade the greater of the minimum wage applicable to that higher grade or the wage that she last received prior to working in that higher grade. The Second Schedule (section 6) establishes minimum allowances where accommodation, transportation, lighting and fuel for cooking are not provided by the employer.

F. Leave periods

1. Maternity leave

Providing maternity leave entitlements in domestic service fundamentally challenges perceptions of domestic workers' role in the household. Domestic workers have traditionally been expected to sacrifice their own needs and responsibilities for those of the employer's family.⁹⁴ In some countries, domestic workers leave their children and other family members who depend on them in order to live with their employer, who might reside in an exclusive, often urban, area a fair distance away from the domestic worker's home, or in another country. As local practice and national immigration policies often reveal, the ideal domestic workers would commence employment with a family at a young age, stay with that family, preferably never marry and as

⁹¹ Depending on whether or not an employee holds a diploma, the type of diploma, and the amount of experience in the field, he or she enters the profession at a different level in the classification.

⁹² See C. Pettiti, “Equal pay in France”, in F. Eyraud et al., *Equal pay protection in industrialised market economies: In search of greater effectiveness* (Geneva, International Labour Office, 1993).

⁹³ The three grades are described in general terms. Grade I workers are yard and garden employees, Grade II represents cooks and/or housekeepers (with or without Grade I duties), and Grade III workers are baby-minders or disabled/aged-minders (with or without Grades I and II duties). First Schedule, *Domestic Workers Regulations, 1992*.

⁹⁴ Analogous concerns are raised with respect to sick-leave entitlement.

a result not have direct (nuclear) family care responsibilities.⁹⁵ In fact, the perception in some countries was and remains that domestic workers who marry should leave domestic service, or their country of work.⁹⁶

The constant is that domestic workers' family aspirations or responsibilities are not to interfere with the exigencies of the employer's family and indeed, of the receiving country's immigration policy. Maternity leave, as well as other leave entitlements, challenges that perception, because it recognizes the domestic worker's right to establish her own family and to retain a level of job security throughout the process.

Even when domestic workers are entitled to claim maternity benefits, the practical question of who pays must be addressed.

The ILO has made a clear policy choice by stipulating that responsibility for paying for maternity benefits should not rest upon individual employers. Rather, the Maternity Protection Convention (Revised), 1952 (No. 103), states that publicly funded programmes or compulsory social insurance schemes that provide maternity benefits, possibly through a payroll tax paid by the employer and all the workers, without distinction based on gender, should be put into place. As mentioned above, member States that have ratified Convention No. 103 without submitting a declaration that they exclude domestic work for wages in private households from the scope of their ratification are responsible for ensuring that domestic workers receive the protections outlined in the international instrument. In fact, though, many countries have not instituted such cost-sharing schemes and employers are responsible for paying maternity benefits directly. That may pose very real problems for several categories of workers, particularly domestic workers.

In France, however, domestic workers are obligatorily affiliated to the social security system, which may include maternity protection to which the employer and the employee subscribe.⁹⁷ Contributions by the employer may be calculated on a percentage of actual wages paid or on a minimum flat-rate basis. A system has been developed to account for the monetary value of food and lodgings in order to calculate social security contributions. Part-time domestic workers may — but are not obliged to — subscribe.

Contribution to the social security system has been simplified greatly for domestic workers. Since 1 December 1994, an agreement between the French Minister of Labour, the post office and an organization representing credit unions has been in effect to enable employers to pay domestic workers, if the domestic workers consent, by using a "*service cheque*". The bank or post office, once authorized, makes deductions from the employer's account for the social security contributions. Domestic workers under this system receive a monthly statement setting

⁹⁵ M. Castro Garcia has argued that an essentially universal constant in domestic work is the denial of women workers' autonomous existence, sexuality and privacy. The workers' youth heightens their dependency on their substitute parent/employer and is used to justify the denial. "¿Qué se Compra y qué se Paga en el Servicio Doméstico?: El Caso de Bogotá", in M. Leon (ed.), *La Realidad Colombiana: Debate sobre la mujer en América Latina y el Caribe*, Vol. I (Bogotá, ACEP, 1982), pp. 99 et seq.

⁹⁶ Consider, for example, that it is illegal for a foreign-domestic-worker who holds a work permit in either Singapore or Malaysia either to get pregnant or to marry a citizen of their host country. In Singapore, domestic workers must submit to a pregnancy test every six months; if a domestic worker fails the test, she may be immediately deported and would be permanently banned from returning to that country. In Malaysia, an employer must execute a security bond for the foreign domestic worker which is forfeited if the domestic worker becomes pregnant. See L. Gulati, *op. cit.*, pp. 45-47.

⁹⁷ *Liaisons sociales*, suppl. to No. 11658, *op. cit.*, p. 39.

out details of employment; the statement also serves as a pay slip and a statement of entitlement to social security coverage.⁹⁸

Maternity insurance covers medical fees, the cost of medication, pregnancy-related hospitalization, delivery and some post-natal care. It also includes cash benefits for a fixed period before and after birth, provided that the worker ceases all salaried employment for at least eight weeks. In addition, a number of medical consultations are obligatory. Domestic workers are entitled to at least six weeks of leave before delivery and eight weeks after delivery.⁹⁹ In order to claim these benefits, however, the domestic worker must have contributed to the fund for at least ten months before the baby's delivery date.¹⁰⁰

In Spain, domestic workers may also contribute to the social security scheme, which includes maternity protection.¹⁰¹

In Zimbabwe, the employer is responsible for paying for maternity leave benefits. Domestic workers' maternity leave entitlements are outlined in section 18 of the *Labour Relations Act, 1985*, reproduced in the Fourth Schedule of the *Domestic Workers Regulations, 1992*. The aggregate of leave before and after the birth of the child is not to exceed 90 days.¹⁰² A domestic worker may agree to forfeit her vacation leave which she was entitled to accumulate in the previous six months; in that case, she may receive — in addition to all the normal benefits payable by the employer — not less than 75 per cent of her normal wages during her maternity leave. Otherwise, she is entitled to not less than 60 per cent of her normal wage and benefits.

2. Annual leave

A frequently voiced objection of domestic workers concerns the limited control they tend to have over the timing of their vacation leave and the manner in which it is taken. Domestic workers are often expected to take vacation leave when their employer chooses to take vacation leave, and in some cases are expected to accompany the employer on the vacation and assume care-giving and other work responsibilities. Ironically, in some cases they are not even paid during that time since they are also considered to be "on vacation".

⁹⁸ *Accord paritaire du 23 septembre 1994, accord paritaire du 13 octobre 1995* and s. 5. of the *Loi quinquennale du 20 décembre 1993* (*Journal Officiel* du 21 décembre 1993). See also "France: The service cheque — promoting domestic work", in *European Industrial Relations Review*, No. 251, Dec. 1994, p. 23. The system appears to simplify the paperwork surrounding the employment relationship. Official declaration of a domestic worker for social security purposes also offers a powerful incentive to employers — 50 per cent of the amount spent on employing the domestic worker can be claimed as a tax deduction in personal income tax.

⁹⁹ *Code du Travail*, s. L.122-25.

¹⁰⁰ For a more exhaustive overview, see *Liaisons sociales*, supp. to No. 11658, op. cit., pp. 39-45.

¹⁰¹ The Colombian example of social security protection, including various maternity benefits, is one in which domestic workers themselves lobbied effectively for special inclusion that took into account the realities of their working-situation and actual wages. See *Decreto Número 824 de 1988 por el cual se desarrolla la Ley 11 de 1988*. M. Leon, "Lucha por la seguridad social de la trabajadora doméstica", in *El Otro Derecho* (Bogotá), No. 2, 1989, provides a detailed account of this organizing effort.

¹⁰² Where the birth takes place after 45 days, the period of 90 days is extended without pay by the number of days which have elapsed between the expiry date and the date of birth of the child. Also, where a registered medical practitioner or state-registered nurse certifies that as a result of complications accompanying the birth of the child, the employee needs to convalesce for a greater amount of time than the time allotted. *Labour Relations Act, 1985*, s. 18(b).

According to the most recent and comprehensive international labour standard on annual leave, the Holidays with Pay Convention (Revised), 1970 (No. 132), workers¹⁰³ are entitled to an annual paid holiday of a specified minimum of three working weeks for one year of service. A minimum period of service may be required for entitlement to annual holiday with pay, but should not exceed six months.¹⁰⁴ Moreover, a person whose length of service in any year is less than that required for the full entitlement prescribed in Article 3 should be entitled to a holiday with pay proportionate to the length of service in that year.¹⁰⁵ Convention No. 132 also authorizes the competent authority of the country to provide for the division of annual holiday with pay, and establishes rules on the manner in which this may be done.¹⁰⁶ However, it prohibits agreements to relinquish the right to the minimum annual holiday with pay or to forgo the holiday for compensation.¹⁰⁷

As to the time during which holidays are to be taken, Article 10(1) of Convention No. 132 postulates the principle of employer consultation with the employee or his or her representatives, unless the time has been fixed by regulation, collective agreement, arbitration award or other means consistent with national practice. In particular, Article 10(b) affirms that "work requirements and the opportunities for rest and relaxation available to the employed person" are to be taken into account.

In Zimbabwe, domestic workers accrue 1 1/2 working days of vacation leave per month, with any portion of a month worked considered to be a full month for the purposes of the calculation.¹⁰⁸ A domestic worker who is in her first year of employment is to accrue normal vacation leave, but she may only take the leave during the first year with the consent of the employer.¹⁰⁹ However, a domestic worker who has accumulated vacation leave may, with the consent of the employer, take cash in lieu of leave.¹¹⁰ Finally, neither the employer nor the domestic worker may give notice of termination of employment while the domestic worker is on vacation leave¹¹¹ and any domestic worker whose employment is terminated, regardless of the reasons, is entitled to the cash equivalent of the accumulated leave.¹¹²

In France, annual vacation leave is calculated on the basis of 2 1/2 days per month, with a maximum of 30 days per year.¹¹³ Seniority-based increases are provided for under article 19 of the CCN and section L.223-3 of the Labour Code. Moreover, annual leave can be lengthened for female domestic workers who were under 21 years of age on 30 April of the preceding year

¹⁰³ Convention No. 132 applies to all workers unless, according to Article 2(2), they are part of a limited category of workers that have been excluded from the scope of the Convention, after consultation by the competent authority in a country with the organizations of employers and workers concerned, due to the "special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters".

¹⁰⁴ Article 5.

¹⁰⁵ Article 4.

¹⁰⁶ Articles 8 and 9.

¹⁰⁷ Article 13.

¹⁰⁸ *Domestic Workers Regulation, 1992*, sub-ss. 13(1) and (2).

¹⁰⁹ *Domestic Workers Regulations, 1992*, sub-s. 13(3).

¹¹⁰ *Domestic Workers Regulation, 1992*, sec-s. 13(5).

¹¹¹ *ibid.*, sub-s. 16(4).

¹¹² *ibid.*, sub-s. 13(6). It should also be noted that domestic workers may, with the consent of the employer, elect to be paid cash in lieu of vacation leave, according to sub-s. 13(5).

¹¹³ *Code du travail*, ss. L.223-2 and L.223-4, and CCN, article 17.

and have one or more dependent children.¹¹⁴ Section R.771-4 of the Labour Code also establishes a schedule for monetary compensation for accommodation and meals during the leave period.

In Spain, a domestic worker is entitled to 30 days of annual leave, of which at least 15 must be taken over an uninterrupted period of time. The remaining leave days may be taken in a manner agreed upon between the parties.¹¹⁵

G. Termination of employment

1. Notice periods

Since for many domestic workers losing or quitting a job also entails losing a place to live, additional precautions are often necessary to ensure that disproportionate prejudice is not suffered by domestic workers.

Article 11 of the Termination of Employment Convention, 1982 (No. 158), enshrines the principle that a worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless that worker is guilty of serious misconduct. Serious misconduct is defined in the same provision as "misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period". Based on Convention No. 158, it would be feasible to regulate that a longer notice period applies when an employer decides to terminate a domestic worker's employment relationship than when a domestic worker decides to terminate the employment.

That solution has been adopted in France. Article 10 of the CCN provides that employees who have worked for less than six months with the same employer must give one week's notice, those who have worked for between six months to two years must give two weeks' notice, and those who have worked for over two years must provide one month's notice to their employer. But, according to Article 11(a) of the CCN, except in cases of gross negligence (*faute grave*) on the part of the employee, the employer must give the employee one week's notice if she has worked for less than six continuous months, one month's notice if she has between six months and two years of continuous service, and two months' notice if she has served the employer for over two continuous years. Moreover, the employer must provide the domestic worker with two hours of paid leave per day for six to ten working days, depending on whether the employee has worked for more or less than two years with that employer, in order to look for new employment. Should the employee find a new job during the notice period, once proof of the new position has been presented, she may stop working for the current employer after giving two weeks' notice within the remaining notice period. Likewise, the employer will be discharged of the responsibility to remunerate the employee for the portion of the notice period during which the employee ceased to work.¹¹⁶

In Spain, employers must give at least seven days' notice to employees who have worked for less than one year but 20 days notice for employees who have worked for more than one year.¹¹⁷ For each additional year that an employee has worked, she is entitled to an additional indemnity of seven days, up to a total of six months' wages if the employment is terminated by

¹¹⁴ CCN, article 21.

¹¹⁵ *Real Decreto 1424/85*, subsec. 7(6). Interestingly, in Portugal, where a resident domestic worker does not require use of her room and board during the leave period, that worker may claim the cash amount for the room and board in addition to normal wages that would be earned during the leave period. *Decreto-Lei Núm. 235/92*, s. 17.

¹¹⁶ CCN, article 11(c).

¹¹⁷ *Real Decreto 1424/85*, sub-s. 10(2).

repudiation.¹¹⁸ Employees, on the other hand, must give seven days' notice irrespective of the length of service.¹¹⁹ In cases of disciplinary dismissal, live-in domestic workers may not be forced to leave the employer's residence between 5 p.m. and 8 a.m. unless the dismissal was due to *falta muy grave* (very serious misconduct) with respect to the obligations of loyalty and confidence.¹²⁰

In Zimbabwe, the notice period is in principle left to freedom of contract but is regulated by a mechanism whereby each employment contract is to provide that an equal period of notice to terminate must be accorded to each contracting party and the period is not to be less than the pay period. One exemption from the notice requirement is granted to domestic workers who are unable to provide notice due to an emergency or compelling necessity.¹²¹ The broad nature of that exemption might well be intended to provide the more vulnerable party in the relationship with the opportunity to escape quickly from an abusive work situation or to respond effectively to other responsibilities that that worker might have, such as family responsibilities.

2. Grounds for dismissal

Grounds for dismissal is by far one of the most sensitive areas of regulation for domestic workers. It is one of the clearest contexts in which the tendency to decrease the protection afforded to domestic workers by increasing the number of valid reasons for dismissal might manifest itself. For, from the traditional principle that "a man's home is his castle" came the fundamental principle of privacy. Patriarchal legal systems have had considerable difficulty grappling with how to recognize and enforce the rights of women and children within the private sphere; how much more difficult it has been to recognize the rights of servants who work in that household. While in contemporary times legislators might be increasingly sensitive to the importance of providing basic working conditions to domestic workers, they might none the less hesitate when it comes to circumscribing what might otherwise be a wide discretion on the part of employers to fire those who work in their homes, at will.

The cornerstone principle in Convention No. 158, which a priori applies to domestic workers,¹²² is that termination of employment at the initiative of the employer is to occur only for a valid reason.¹²³ Valid reasons must be "connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."¹²⁴

¹¹⁸ *Real Decreto 1424/85*, sub-s. 9(3), as modified by *Boletín Oficial del Estado*, No. 212, 4 Sep. 1985, p. 2163 (erratum). As the concept of "repudiation" is not defined by the Royal Decree, the *Colectivo Ioé*, expressed the concern that it could become a source of abuse, op. cit., 10, p. 1.

¹¹⁹ *Real Decreto 1424/85*, sub-s. 9(4).

¹²⁰ *Real Decreto 1424/85*, sub-s. 10(3).

¹²¹ *Domestic Workers Regulation, 1992*, s. 16.

¹²² They may, however, be excluded by ratifying State which avails itself of the flexibility clause that permits exclusion of "limited categories of persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned on the size and nature of the undertaking that employs them" (Article 2(6)).

¹²³ Article 4. Of course, "[a] worker's freedom to end an employment relationship of indeterminate duration, subject to an obligation to give notice, is a basic guarantee of the freedom of labour protected by the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)". *Protection against Unjustified Dismissal: Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, ILO, 1995), para. 77.

¹²⁴ Article 4. According to Article 5 of Convention No. 158, the following shall not constitute valid reasons for termination: union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; seeking office as, or acting or having acted in the capacity of, a workers' (continued...)

Although this principle could be read as recognizing the relevance of context, it maintains that a valid reason for dismissal by the employer must be shown.

In Spain, 11 ways for an employment contract to be terminated, on the part of either the employer, the worker or both, are listed;¹²⁵ they tend to correspond to the grounds articulated in the labour legislation applicable to most workers.¹²⁶ In the case of disciplinary dismissal,¹²⁷ the cause(s) for it must correspond to those outlined in the Workers' Statute. One formal requirement is that compensation be paid in an amount equivalent to money wages for 20 days multiplied by the number of years during which the contract of employment was in existence, up to a maximum of 12 months' wages. It is noteworthy, though, that disciplinary dismissal is considered to be an exceptional mechanism since the Royal Decree provides for termination of the contract through unilateral "resolution", without cause, on the part of the employer (*desistimiento*).¹²⁸

The domestic work relationship is one of the only relationships in Spain in which unilateral termination without cause on the part of the employer may take place, the other being the employment of high-ranking managerial staff (executives).¹²⁹ The domestic worker whose employment contract is unilaterally terminated without cause is entitled only to 20 days' notice if the employees' contract was for more than one year and to severance pay in the amount of seven days' wages per year of service.

The commonly expressed rationale for allowing unilateral termination without cause on the part of the employer, according to Quesada Segura, is the fiduciary nature of the relationship between the parties in these contexts. Quesada Segura contends, however, that the reason for — or nature of — the fiduciary relationship between the executive and the corporation is strikingly distinct from the relationship between the domestic worker and the employer: the former may be said to act, in essence, as an agent or a mandatory. As such, the executive has a series of juridical powers which might otherwise be difficult to limit. The latter, however, is characterized as fiduciary because the domestic worker is considered to be a "stranger" entering the "private sphere" of the employer and his or her family.¹³⁰ Quesada Segura argues, however, that the employer's constitutionally guaranteed rights to personal and family privacy must be balanced with the worker's guarantee of basic constitutional and legal rights, including the right not to be dismissed without cause.¹³¹

Quesada Segura challenges the effectiveness of unilateral termination with such short notice, considering that domestic workers might live with their employer. She points to it as an area that remains in particular need of specific regulation. Based on a law of 1944 which remains in force pursuant to the Final Provisions of the Workers' Statute, Quesada Segura posits that domestic

¹²⁴ (...continued)
representative; the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative authorities; race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and absence from work during maternity leave.

¹²⁵ Some examples include mutual agreement of the parties, death of either party, major invalidity or permanent invalidity (total or absolute) of the worker, and unforeseen circumstances (*fuerza mayor*) which renders performance of the contract of employment impossible. Article 9, *Real Decreto 1424/85*.

¹²⁶ *Real Decreto*, s. 9, compared with *Estatuto de los trabajadores*, s. 49.

¹²⁷ *Real Decreto*, sub-s. 10(1).

¹²⁸ sub-s. 10(2).

¹²⁹ *Real Decreto*, No. 1382/1985 of 1 Aug. 1985.

¹³⁰ Quesada Segura, op. cit., p. 203.

¹³¹ *ibid.*

workers are generally entitled to stay in the employer's home for one month from the date that the termination of employment was communicated to the domestic worker.¹³²

By way of contrast, in France, due to a recent judgement of the Cour de Cassation (Chambre sociale), the Labour Code provisions relating to dismissal for both genuine and serious cause have been held to apply to household workers.¹³³ As a result, domestic workers may only be fired for genuine and serious cause, in conformity with section L.122-14-3 of the Labour Code. Moreover, domestic workers are entitled to a meeting with their employer before any dismissal action is taken. However, unlike other categories of workers, domestic workers are not entitled to the assistance of a person of their choice during that meeting.¹³⁴

In Zimbabwe, dismissal of a domestic worker is regulated according to the general principles applicable to most workers. The employer has the right to dismiss a domestic worker summarily "on grounds recognized by law as justifying summary termination of employment".¹³⁵ The only additional formality in the *Domestic Workers Regulation, 1992* is that a domestic worker whose services are terminated for any reason whatsoever may request and is to be granted a record of service from his or her employer. That record of service is to specify the period served by the domestic worker with the employer and the occupation in which he or she was employed.¹³⁶

¹³² *ibid.*, p. 207.

¹³³ Cass. Soc. 13 Jan. 1994. *Recueil de jurisprudence sociale* 3/1994, No. 329 and p. 163, concl. Y. Chauvy.

¹³⁴ *Encyclopédie Dalloz*, *op. cit.*, para. 74.

¹³⁵ *Domestic Workers Regulation, 1992*, sub-s. 16(6). Note that sub-s. 13(3) of Zimbabwe's *Employment (Domestic Workers) Regulation, 1981*, contained an added protection for domestic workers who were summarily dismissed from employment: "Where the employee is summarily dismissed from employment, he or she shall, unless the Minister agrees otherwise, be entitled to the full pay for the month in which the summary dismissal occurs and for the following month that would have constituted the notice period, in addition to: (a) the applicable allowances in the Schedule; (b) the accommodation and other applicable allowances in the case of an employee who is normally provided with accommodation but is thereafter denied access to such accommodation on dismissal".

¹³⁶ *Domestic Workers Regulation, 1992*, sub-ss. 18(1) and (2). It is not clear whether or not the domestic worker would be able to prevent an employer from adding any further details (notably subjective details about the worker's performance) on the record of service.

V. Conclusion: The case for specific regulation

Specific regulation serves a most basic role: it recognizes domestic workers and the work that they perform. General forms of regulation might no longer specifically exclude domestic workers but they often continue to perpetuate domestic workers' invisibility. For all intents and purposes, general regulation ignores domestic workers, and as a result, fails to protect them. Domestic workers have to distort their realities and fit themselves into regulations that do not expressly contemplate their needs. Meanwhile, the impact that living in the employer's home has on other conditions of employment would likely go unregulated; instead, specific regulation can identify problems that arise from domestic workers' living conditions and facilitate the adoption of concrete solutions to resolve them. While general-regulation might disregard the issues raised by on-call time, for example, specific forms of regulation can enable social partners to devise ways to calculate that time, remunerate it and limit it in a fair, flexible and practical manner. In sum, specific regulation indicates that consideration has been given to the reality of domestic work and that an attempt has been made both to grapple with the consequences of that reality and to arrive at pragmatic solutions.

Despite the potential benefits of specific regulation, it remains crucial to guard against regressive provisions. Mobilization of workers into trade unions or domestic workers' associations, and garnering favourable public support, are essential to the process of preventing or countering regulation that would further disenfranchise domestic workers.¹³⁷ The fact is, though, that the existence of specific regulation might enable domestic workers to enhance their rights by using the specific regulations as a ladder for reaching a higher degree of protection. That the French courts extended the general principle on grounds for dismissal to domestic workers is an indication of that potential. Once specific rights are clearly defined, domestic workers' ability to claim effective remedies for breaches of their rights might also increase. Indeed, the specific regulation, although crucial, is empty without powerful and accessible mechanisms to ensure compliance. Specific regulation might also be necessary to make sure that enforcement mechanisms do not actually exclude these workers, but are tailored to meet domestic workers' needs.

Perhaps most fundamentally, specific regulation testifies to a level of recognition of the social importance of domestic work and attempts to value it. One certainly cannot overlook the inherently exploitative nature of hiring an economically less favoured person, usually a woman, who is likely to come from an historically disadvantaged racial group and/or from a country in the South to do work that remains socially undervalued. However, specific regulation starts a different, dynamic process. It begins to expose the actual nature of the work, the workplace and the worker. It forces those who pay for the work, those who regulate the work, and even those who do the work to think about it in a radically different manner. Through that dynamic process, specific and ultimately more accurate regulation has the potential to restore some respect and dignity to domestic work.

¹³⁷ See generally Martens and Mitter, *op. cit.*