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Foreword

This thoughtprOVOkiflg 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, MarIa 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 fmai
comments and editing.

Muneto Ozaki,

May 1998. Chief, Labour Law and
Labour Relations Branch.

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Contents

Foreword

iii

IntroductiOn

1

The specificity of domestic work

4

UI. International labour standards

6

ConventiOflS.afldRec0n0ns

6

SuperviSorY mechanism: Observations of the Committee of Experts 8

1V. National regulatiOn

12

A. Form of regulation

12
France

12

Spain

13
Zimbabwe

13

B. Defmitiofl of domestic work

13

C. AccommOdatiOn

15

Housing policy

15

Living standards

15

Payment for room and board

17

D. Hours of work

17

E. jninium

20

F. Leave periods

21

Maternity leave

21
Annualleave

23

G. Termination of employment

25

Notice periods

25
Grounds for dismissal

26

V. Conclusion: The case for specific regulation 29

H: \WP IIN\WP6W EFTS\O1 E1O-01.E98/V.4

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

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.

This Working Paper considers legislative initiatives to achieve recognition of domestic workers' employment rights and concludes that comprehensive 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. u First, a discussion of international labour standards

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 bow the law is contextualized to the domestic employmentrelationship. 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. -

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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,'2 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"'3 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 themselves" 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 fmancially support whole families "back home". ' However, the real costs of migration on the domestic worker, her family and her country of origin are often hIdden."

'2See N. Heyzer and V. Wee, "Domestic workers in transient overseas employment: Who benefits, who profits",
in Heyzer et aL, op. cit., p. 33.
"Bakan and Stasiulis, op. cit., p. 20.
' 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".
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 a Singapour d'une employee philippine provoque une vague d'émotion a Manille: "Les emigres de l'archipel font vivre un tiers de Ia population restée sur place", inLe 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 oftenbidden, and it is debatable whether thesedonot-outweigh-the-benefits;--For-themigrant 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...)

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Third, domesticworkers 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 ofrestrictions found in immigration legislation - to

live with their employer. Perhaps not surprisingly, the wide gamut of difficulties encountered because of the perpetual proxinhity (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 rhetoricwould 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 familymembers, 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 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.eCOflOmic impact of domestic worker migration: Individual, family, commUnitY, country", in Heyzer et al.,
op. cit., p. 105.
1 According to M.L. Vega Ruiz: "The confusion between work within the family and the performance of

domestic work is based on a traditional pater isticoflCePt111aler which the 'servant'
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 workunder Latin American labour law", unpublished paper (Geneva, ILO, 1993), p. 7. The Spanish

version, "Relación laboral al serviciO del hogar familiar en America Latina", is published in Relasur (Montevideo),
No. 3, 1994, pp. 35-51.

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1)u standrd

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

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 modem 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 1LO 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 Conventipfl. 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)).'9
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 Orgamse 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 organizations2° such
as trade unions.

B. Supervisory mechanism: Observations of

the Committee of Experts
The Committee of Experts for the Application of Conventions and Recommendations2'

"has been done by Austria, Brazil and the Netherlands. ILO: Lists of ratifications by Conventions and by
country (Geneva, 11.0, 1996), Report 111, Part 2, p. 140.
Committee of Experts on the Application of Conventions andRecolflfllendatiOfls General Survey of the Reports
on the Freedom of Association and the Right to Or,ganise 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 11.0 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 Expertsfor the Application of Conventions and Recommendations is a body of independent technical experts in law and the social sciences, appointed by theDirector-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 fürthë?actlOfl is taken;Observatiofls dealwithquestiOflst ither_comparat rely_more serious
by nature or that have not been resolved for some time. Observations are published in theat rely_more snt directly ctl-hen no7

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 Coder 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 Africa23 (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". 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.

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

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 taken3° 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 has scr1952 9))to an
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result, they must depend on individual contracts concluded between the parties.3 The Committee of Experts persistently raised the matter, requesting infonnation 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 Code33 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. 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

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

V. National regulation

A. Form of regulation

1. France

In France, domestic workers are covered by the Labour Code, the basic law that fixes the minimum rules applicable to "household workers", although many provisions of the Labour Code do not apply to them. However, France also has a National Collective Agreement (CCN)4° 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 ernployé de maison (FEPEM), and three workers' unions, Ia Centrale syndicale chrétienne des employés de maison (CFTC), la Fédération des personnels du commerce

cooklhousekeeper or child-minder or disabledlaged-minder irrespective of whether or not the place of employment is in an urban or rural area".5'
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

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. Gardeners and guards of private households
are regulated under a separate CCN.

C. Accommodation

One of the factors that most strikingly characterizes the specificity of the domestic work relationsbip is accommothtion. In essence, the workplace is, for a majority of domestic workers, their home. The relationshiP of dependence that results from living in

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

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. 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 workersmigbt simply be unable to fmd 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, 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 RegulationS1 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".

"See Quesada Segura, op. cit., for a detailed analysis of this concept under Spanish law.
"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 Nám. 235/92, s. 26(1)(e).
"For example, s. 5 ofthe 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.
"This is the case in Canada under the appropriately named "Live-in Caregiver Programme" (LCP) adopted in

Domestic Movenleflt(Fp ramne of 1981 which contained the same

live-in requirement. See Bakan and Stasiulis, op. cit., pp. 14 et seq. - - Spanish Real Decreto, s. 7(1).
" 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.
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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 workinghours and overtime protection was to establish a reasonable work period (the principle of the 40-hour work-week),7° 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. 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 presence 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 presence responsable" are limited to four hours per week for most categories of domestic workers. 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. 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 presence 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" (effectz)9 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,

7° See the Forty-Hour Week Convention, 1935 (No. 47).
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.
Articles 13, 25 and 28, CCN. Previously, articles 25 and 28, CCN, provided that 25 per cent of domestic
workers' "izeures de presence 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.)

7° Articles 13 and 14, CCN. Code du travail, Book 2, Title 1, Ch. 2, s. L.212-1. 7° Article 25, CCN.

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disabled or ill, or child-minderS. However, the "heures de presence responsable" calculations apply to the latter categories of workers.
It should also be recognized that by extending the concept of "heures de presence 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. IirSpain,domeSticw0 have an ordinary maximum work-week of 40 hours,. with a nine-hour daily niaximurn;75 these standards are consistent with those established for most employees
under the general labour law.16 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. In reality, though, Real Decreto 1424/1985 does not
consider the tieinpos depresenCia as time worked; instead, the time is "on-calimitorkn itordur to be Tj ven-cally work-1 112 Tf -310 -

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. K 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 bewilling to pay for "non-productive" 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. 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. 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. 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

"Do,nestic Workers Regulation, 1992, sub-s. 5(3).
"According to Gaitskell et at.: '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.
"ibid. p. 92.
See generally H. Martens and Mitter, op. cit., notably Part II: "Organizing women domestic workers".
"Among them is the Province of Ontario (Canada) (Domestics, Nannies and Sitters Regulation, sec. 3, and Regulation 325 under the Enzployment 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-weekAt-4s-noteworthy as-welithatininimum wages havelinen fixed for foreigiijlpmestic 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.
Article 28(b) and (e), CCN.
"A detailed classification of domestic work is contained in article 25 of the CCN.

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22

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

' 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 tojustif' the denial. "LQu6 se Compra y qué se Paga en el Servicio Doméstico?:

El Caso de Bogota", in M. Leon (ed.), La Realidad Colombiana: Debate sobre Ia mujer en A,nérica Latinay el Caribe, Vol. I (Bogota, ACEP, 1982), pp. 99 et seq.
"Cousider-forexample, that- it is- iilegal'-for-a-.foreign-domestic_worker_who.holdsa_workpej in either Singapore or Malaysia either to get pregnant or to many 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.
Liaisons sociales, suppl. to No. 11658, op. cit., p. 39.

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

Maternity insurance covers medical fees, the cost of medication, pregnancy-related hospitalizatiOn9 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. 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. °°

In Spain, domestic workers may also contribute to the social security scheme, which
includes maternity protection.'°'
In Zimbabwe, the employer is responsiblefor 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 IO2 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".

N paritaire du 23 septembre 1994, accord paritaire du 13 octobre 1995 and s. 5. of the Loi quinuennale
du 20 décembre 1993 (Journal Officiel du 21 décembre 1993). See also "France: The service cheque - promoting domestic work", in European In25 j /Ft0eliverververververv1Tf 159 v, No.ate1Tf 119 41 Td(The)7g of thDec.1 93 T p.at3.99 T sys

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According to the most recent and comprehensive international labour standard on annual leave, the Holidays with Pay Convention (Revised), 1970 (No. 132), rs'°3 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. Convention No. 132 also authorizes the competent authority of the country to provide for the division of annual holiday withpay, and establishes ruLes on the manner in which this may be done.'°6 it prohibits agreements to relinquish the right to the minimum annual holiday with pay or to forgo the holiday for compensation.

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. 100 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"' and any domestic worker whose employment is terminated, regardless of the reasons, is entitled to the cash equivalent of the accumulated leave. 1*2

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."3 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

'°' 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 ofa substantial nature, relating to enforcement or to legislative or constitutional matters".
Article 5.
'°' Article 4.
'"Articles 8 and 9.
'"Article 13.
'°' Domestic Workers Regulation, 1992, sub-ss. 13(1) and (2).
'"Domesttc Workers Reguitioni, 1992; sub-s-13(3).
'"Domestic Workers Regulation, 1992, sec-s. 13(5).
" 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).
112 Code du travail, ss. L.223-2 and L.223-4, and CCN, article 17.

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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

repudiation."8 Employees, on the other hand, must give seven days' notice irrespective of the length of service."9 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 tofalta 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 compellingnecessity.'2' 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 ofwomen 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,' is that termination of employment at the initiative of the employer is to occur only for a valid reason. ' 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 " Decreto 1424/85, sub-s. 9(3), as modified by Boleffn Oficial del Estado, No. 212, 4 Sep. 1985, p. 2163

(erratum). As the concept of urepudiation is not defmed by the Royal Decree, the Colectivo be, expressed the concern that it could become a source of abuse, op. cit., 10, p. 1.
"° Real Decreto 1424/85, sub-s. 9(4).
'°Real Decreto 1424/85, sub-s. 10(3).

221 Domestic Workers Regulation, 1992, S. 16. 222 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)). 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, -1-95-7 (No-. -105)". Protection against Unjusrfied Dismissal: Report of the Committee of Experts on the Application of Conventions and Recommendations

(Geneva, ILO, 1995), para. 77.
224 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...)

26 H: \WPW1NWp6WE\DEpTh\o1 170-OI.593/y.4

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.
In Zimbabwe, dismissal of a domestic worker

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 defmed, 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.