The ILO Domestic Workers Convention and regulatory reforms in Argentina, Chile and Paraguay. A comparative study of working time and remuneration regulations

Lorena POBLETE*

Abstract. *In June 2011, the International Labour Conference adopted the Convention concerning decent work for domestic workers, No. 189, and its accompanying Recommendation No. 201. From a comparative law standpoint, this article seeks to analyse the role played by Convention No. 189 on regulatory reforms, focusing on the legislative measures taken in three Latin American countries that have ratified it: Argentina, Chile and Paraguay. An analysis is also made of the discussions and controversies that have determined the way in which the working time and wage provisions contained in the Convention have been incorporated into the national laws on paid domestic work in these three countries.*

At its 100th Session, in June 2011, the International Labour Conference (ILC) adopted the Domestic Workers Convention (No. 189) and its accompanying Recommendation (No. 201). These two instruments provide an innovative regulatory model for paid domestic work based upon the fundamental principles and rights at work: freedom of association and the right to bargain collectively; the abolition of child labour; the elimination of all forms of forced labour; and the elimination of discrimination in employment and occupation. In taking measures to ensure these principles and rights, domestic workers are

*Researcher, Centro de Investigaciones Sociales, CIS-CONICET/IDES, Argentina, email: lorena.poblete@conicet.gov.ar. This research was co-funded by the Fung Global Fellows Program, Princeton University, and the Consejo Nacional de Investigaciones Científicas y Técnicas (National Scientific and Technical Research Council, CONICET), Argentina. The author would like to thank Adelle Blackett, Ana María Goldani, Rosmary Taylor, Peter A. Hall and Andreas Wimmer for their comments at the first stages of this research. She extends also all her gratitude to Guy Mundlak for his intelligent and generous reading of the article.

granted: protection from abuse, harassment, violence and discrimination; the right to be informed of the terms and conditions of employment, including termination of employment; protection against excessive working hours; provisions governing periodicity and modalities of pay; daily and weekly rest periods; annual paid leave; sick leave; probation periods; and access to social security.

Since the Domestic Workers Convention was adopted in 2011, 26 countries have ratified it, of which 13 are in Latin America.[1] This may be attributed to the interest in regulating such an important sector in the region and to the activism of domestic workers' organizations in these countries. In Latin America, paid domestic work accounts for nearly 40 per cent of the worldwide total and is one of the main forms of women's labour market participation: 26.6 per cent of working women in the region are domestic workers and 92 per cent of all domestic workers are women (ILO, 2013). Undeclared employment is common in the domestic work sector, which means that labour rights do not apply and workers have no access to social benefits. When Convention No. 189 was starting to take shape, Latin American domestic workers' organizations played an important role in supporting this international standard-setting initiative. After its adoption, these organizations actively promoted its ratification in their respective countries. Although 13 countries in Latin America have ratified Convention No. 189, only Argentina, Chile and Paraguay have introduced comprehensive amendments to their national legislation since its adoption.[2]

The structure of the domestic work sector varies considerably across the three countries. Argentina has 1 million domestic workers (accounting for 7.2 per cent of the labour force and 17.2 per cent of working women). In Chile there are approximately 400,000 domestic workers (accounting for 4.9 per cent of the labour force and 11.7 per cent of working women). Finally, it is estimated that Paraguay has 230,000 domestic workers (accounting for 7.5 per cent of the labour force and 15.8 per cent of working women). Over the past 15 years, varying trends have emerged in the three countries: while the number of domestic workers has risen in Argentina, it has remained relatively stable in Paraguay and declined in Chile (ILO, 2012). Contractual arrangements also differ substantially in each of the three labour markets. In Chile, domestic workers who live in their employers' households make up about 15 per cent of the domestic work sector (MTPS, 2009). In Paraguay, live-in domestic workers account for 10 per cent of the sector (UNFPA, 2013), while in Argentina they make up less than 2 per cent (Pereyra and Tizziani, 2014). These differences are significant in that they shape the domestic work sector according to the national context of each country. The labour market

[1] Uruguay ratified the Convention in 2012; the Plurinational State of Bolivia (hereinafter "Bolivia"), Ecuador, Nicaragua and Paraguay in 2013; Argentina, Colombia and Costa Rica in 2014; Chile, Dominican Republic and Panama in 2015; Brazil and Peru in 2018.

[2] The case of Brazil is worth mentioning, given its importance in the context of the South American Common Market (MERCOSUR). Brazil ratified Convention No. 189 in January 2018, and it will enter into force in January 2019. Since Brazil had already introduced legislation on domestic workers before it ratified Convention No. 189, it is not included in this analysis.

structure and the configuration of this particular sector in turn determine the social representation of domestic work and thus the legal definition of domestic work.

From a comparative law standpoint, this article seeks to analyse the impact that Convention No. 189 has had on regulatory reforms, focusing on the legislative measures adopted in the three countries in question. Has it provided a model to follow or a framework to adapt to local contexts? Does it represent an ideal to be achieved or a catalysing force prompting regulatory reforms? In attempting to answer these questions, this article will examine the legislative discussions that have taken place in Argentina, Chile and Paraguay regarding the measures to be taken to give effect to the provisions of Convention No. 189 and its accompanying Recommendation No. 201. In order to provide a detailed comparison of the three countries, this article will focus on two fundamental but controversial aspects: the introduction of a maximum number of working hours, and the definition of the different components of the remuneration of domestic workers. The empirical material utilized for this study includes the respective national labour legislation relevant to paid domestic work, national Labour Codes and congressional records from the three countries.[3]

The remainder of this article is organized into four sections. The first describes the development of the domestic workers' movement in Latin America, particularly its involvement in regulatory reforms. The second section examines the national regulation relevant to domestic work in Argentina, Chile and Paraguay before the ratification of the Convention. The third section describes the process of adopting and translating Convention No. 189 into national law; it then examines the way the text was discussed in congressional debates, focusing on the way in which legislators referred to the provisions of Convention No. 189 to define the right to "non-working time" and to decent wages. The article concludes with some reflections on the roles and meaning that the Convention has acquired in each national context.

The movement to attain domestic workers' rights in Latin America

Domestic workers' associations began to be established in major cities throughout Latin America in the 1960s, mainly due to the support of the Juventud Obrera Católica (Catholic Worker Youth Organization) (Chaney and Garcia Castro, 1993). At the regional level, the founding of the Latin American and Caribbean Confederation of Domestic Workers (CONLACTRAHO[4]) in

[3] The congressional records from Argentina may be found at: http://www.congreso.gob.ar; records from Chile at: https://www.camara.cl; and records from Paraguay at: http://www.congreso.gov.py [all accessed 18 May 2018]. For details, see below at the end of the References section.

[4] CONLACTRAHO is the Spanish acronym for the Latin American and Caribbean Confederation of Domestic Workers (Confederación Latinoamericana y del Caribe de Trabajadoras del Hogar).

1988 gave shape to the movement for the rights of domestic workers. Today CONLACTRAHO includes at least 20 domestic workers' associations and unions in 13 Latin American countries,[5] including 11 of the 13 countries that have ratified Convention No. 189.

CONLACTRAHO has remained an independent domestic workers' association since it was founded, and it has not affiliated with any of the major national trade unions. Its collaboration with UNIFEM (the United Nations Development Fund for Women), ECLAC (the Economic Commission for Latin America and the Caribbean), the ILO and various non-governmental organizations (NGOs) has been critical to consolidating CONLACTRAHO and bringing the situation of domestic workers to the attention of the public (Goldsmith et al., 2010). These organizations have encouraged members of the various domestic workers' associations to join forces, and have supported national initiatives to promote the development of new regulatory frameworks for domestic work. During the 1990s, some countries in the region undertook limited reforms. At the beginning of the twenty-first century, domestic workers' organizations began mobilizing for comprehensive reforms. The impact of these efforts is reflected in the amendments to legislation in Bolivia and Peru in 2003, and in Costa Rica in 2009 (ibid.).

In 2008, with the aim of extending regulatory reforms to all countries in the region, a number of CONLACTRAHO affiliated organizations, together with the Marcosur Feminist Association,[6] reviewed the existing national regulatory frameworks. They presented a joint proposal to the MERCOSUR Parliament with the aim of harmonizing legislation in the region (Valiente, 2010). In 2009, in response to the movement for legislative reform, the MERCOSUR Parliament's Plenary Session approved the Labour Regime for Domestic Service Staff[7] with the aim of establishing certain minimum requirements for the protection of domestic workers (ibid.). The main points included the presumption of a labour contract; raising the minimum work age to 18 years; limiting working hours to eight per day and 48 per week; recognizing domestic workers' right to paid leave – especially maternity leave; and encouraging union membership.

While the proposed regulatory framework was approved by the MERCOSUR Parliament, it was never enacted because the Common Market Council – MERCOSUR's highest decision-making body – did not include it as a precedent in Recommendation 06/2012.[8] In this Resolution, Member States

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[5] Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Paraguay and Peru.

[6] See: http://www.mujeresdelsur-afm.org.uy/ [accessed 18 June 2018].

[7] Norm 04/2009 of 30 November 2009.

[8] MERCOSUR Recommendation 06/2012, approved at the XLIII Ordinary Meeting of the MERCOSUR Council, Mendoza, Argentina, 29 June 2012, and published in Record 01/12, Annexe II, available at: http://gd.mercosur.int/SAM/GestDoc/pubweb.nsf/Normativa?ReadForm&lang=ESP&id=195518F8230A8D8583257A2F00718254 [accessed 11 July 2018].

and associates[9] agreed to ratify Convention No. 189 and to "implement public policies aimed at improving the working conditions for paid domestic work in accordance with the ILO Convention".

Although MERCOSUR's institutions were unable to establish a common regulatory model at the regional level, workers' associations continued their efforts at the local and international levels, forging alliances with other international workers' associations and NGOs. The movement for domestic workers' rights, which culminated in the reform proposal in the MERCOSUR Parliament, was one of the pillars of the international movement that promoted an international standard for domestic work (Schwenken, 2011; Boris and Fish, 2014; Fish, 2017). Representatives of domestic workers' unions and CONLACTRAHO members actively participated in the movement to support the development and adoption of Convention No. 189, as well as in the subsequent ILO campaigns encouraging countries to ratify the Convention while promoting legislative reform (Goldsmith, 2013).

In the case of Chile, for example, domestic workers' associations were engaged in different stages of the legislative process. After the ILO Member States had adopted Convention No. 189, Chilean domestic workers' associations (SINTRACAP, ANECAP, Fundación Margarita Pozo[10]) and attorneys from the Ministry of Labour and Social Welfare (MTPS[11]) joined forces. On 22 February 2012, as a result of this collaboration, the MTPS, the ILO Office in Santiago, Chile, a group of legislators and representatives from SINTRACAP and ANECAP signed an agreement laying the groundwork for the bill presented by the Executive on 6 May 2012. Domestic workers' associations also participated in the hearings organized by the Senate Labour and Social Security Committee, which analysed the domestic work bill on the floor. In addition, since November 2011, members of the National Federation of Household Worker Unions (FESINTRACAP[12]) have been mobilizing nationwide, calling upon Chile to ratify Convention No. 189.[13]

The strength of the Latin American domestic workers' rights movement, which started to make itself felt in the 1990s and gained momentum as it became part of a broader global movement, is one of the reasons why various

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[9] MERCOSUR is composed of Argentina, Brazil, Paraguay, Uruguay and the Bolivarian Republic of Venezuela (hereinafter "Venezuela"). Chile and Bolivia are currently associates, although Bolivia is in the process of becoming a full member. All but one – Venezuela – have now ratified Convention No. 189.

[10] SINTRACAP is the Spanish acronym for Sindicato de Trabajadoras de Casa Particular; ANECAP for Asociación Nacional de Empleadas de Casa Particular.

[11] Ministerio del Trabajo y Previsión Social (MTPS).

[12] FESINTRACAP is the Spanish acronym for Federación Nacional de Sindicatos de Trabajadoras de Casa Particular.

[13] See the *Official Gazette* of the Labour and Social Security Committee, Chilean Senate Nos 8292-13, 7807-13 and 7675-13; and the website of FESINTRACAP at: http://sintracapchile.cl/ [accessed 18 June 2018].

countries in the region decided to adopt and ratify Convention No. 189 and Recommendation No. 201 – and subsequently to incorporate their provisions into national legislation.

Regulations on domestic work in Argentina, Chile and Paraguay before their ratification of Convention No. 189

In Argentina, before the adoption of Law No. 26.844 in 2013, conditions of work in the domestic work sector were governed by the Special Regime on Domestic Work, approved in 1956. The 1956 legislation provided a very narrow definition of domestic work, covering only those workers performing domestic work tasks for at least four hours per day, four days a week in a single household. Other contractual arrangements for domestic work were excluded from coverage under the law. The legislation also prohibited minors under the age of 14 from working, and established mandatory breaks, the right to paid vacation time, sick leave, an annual bonus, a 90-day probationary period, severance pay, and the right to a minimum wage established by the Executive Branch. In 1975, the Special Regime was amended to include the right to social security and health care. Subsequently, in 1999, a new and exclusive social security regime (Law No. 25.239) was drafted with a view to covering a greater number of domestic workers. Under this regime, any domestic worker working at least six hours per week in a single household was entitled to social security benefits. The regime provided for mandatory social security contributions to be made by the employer and "voluntary" contributions to be made by the workers if they worked less than four hours per day, four days a week in a single household. These voluntary contributions are crucial for access to social security benefits (Poblete, 2015). This expansion of social security benefits was not accompanied by strengthened labour rights because, although domestic workers working less than 16 hours per week could join this special social security regime, they were not allowed to claim the labour rights established by the Special Regime on Domestic Work approved in 1956. In addition, in 2008, the hiring of minors under the age of 16 was prohibited (Law No. 26.390, section 14).

From 2009 to 2011, coinciding with the preparatory work that would lead to the adoption of Convention No. 189 by the ILO, 13 bills were presented in Argentina to reform the regulation of domestic work. Those bills aimed to provide protections for domestic workers, including employment accident insurance, maternity leave and collective bargaining in the establishment of the minimum wage. While certain legislators were in favour of a new special regime, others recommended covering domestic work by incorporating it into a general labour regime under the Employment Contract Law (Law No. 20.744). Ultimately, however, a new special regime was approved (Law No. 26.844), which was enacted in March 2013.

In Chile, the section on domestic workers in the Labour Code (Part I, Section II, "Special Contracts", Chapter V) establishes different regimes for live-in and live-out domestic workers. The maximum number of working hours depends on the regime, which also establishes salary payment methods (cash and in-kind remuneration) and a two-week probationary period. A specific severance pay system was put in place under section 161 of the Labour Code in 1990 (Law No. 19.010/90), and there was a specific way to determine the social security contributions for such workers before the 2008 Pension Reform. In the last few years, the Labour Code has been modified to give domestic workers the right to maternity leave (Law No. 19.591/98), social security benefits (Law No. 20.255/08), a minimum wage (Law No. 20.279/08) and a day off each week (Law No. 20.336/09). Chile considered three bills on domestic work between 2011 and 2012. Ultimately, Law No. 20.786 was adopted in October 2014. The debates in Congress focused on banning the use of work uniforms in public, limiting the working hours of domestic workers and regulating their salary and the different components thereof.

In Paraguay, domestic work is also covered under the Labour Code (Part I, Section III, "Special Contracts", Chapter IV), although only certain provisions of the general labour legislation, such as maternity leave and the right to paid vacation time, are applicable to domestic workers. Since 1995, domestic workers in Paraguay have been entitled to an annual bonus and severance pay in the event of unjustified dismissal, and they are entitled to a rest period of 12 hours; however, there is no limit on working hours, which means that domestic workers can legally work 12 hours a day. Given the specific nature of this type of work, the Labour Code establishes a shorter period of notice for domestic workers and excludes them from severance pay based on job tenure (after ten years of service) and from the social security system. In 2013, with the adoption of Law No. 4.933, domestic workers became eligible to voluntarily enrol in the pension system for independent workers – in which they are required to assume full responsibility for their contributions.

The discussions on reforming Paraguay's legislation on domestic work were launched in 2013. Law No. 5,007 was adopted in May 2015, although it was not enacted until October 2015, due to a presidential veto concerning section 5, which was related to the employment of minors in domestic work. In the final version of the law, domestic workers under 18 years old are not allowed to work. Section 5 seeks to forbid the *criadazgo* system, whereby poor families – frequently rural families – hand minors over to affluent families. The expectation is that minors will exchange domestic work for food, board and the chance to study, but, in practice, they usually drop out of school because of the long working hours.

We may therefore observe – as noted by Goldsmith et al. (2010) – that certain amendments were made to legislation during the 1990s to address domestic work in the three countries under consideration; however, broad reforms of domestic work legislation did not occur until after the adoption of Convention No. 189 in June 2011. The Chilean experience differs from that of Paraguay

and Argentina in that Chile began amending its normative framework in 1990. This activity was stepped up in 2007 and culminated in the adoption of Law No. 20.786 in 2014.[14] In the case of Paraguay, the normative framework was partially modified in 1995, but it took another two decades before new rights were incorporated into the regime. Of the three, Argentina is the country in which legislation on domestic work is the oldest, and few amendments were made to the 1956 Special Regime on Domestic Work during the 2000s. Thus, the regulatory innovations proposed in Convention No. 189 encountered diverse national normative contexts. Aligning national legislation to the requirements of the Convention therefore presented different challenges in each of these countries. [15]

Regulations pertaining to hours of work and the minimum wage for domestic workers in the three countries under review are described in more detail in the following sections.

Convention No. 189 and regulatory reforms in Argentina, Chile and Paraguay

The first stages of adopting and transposing Convention No. 189 into national law were supported not only by the domestic workers' associations belonging to CONLACTRAHO, but also by the governments and the largest trade unions in all three countries under review. Specifically, the governments categorically expressed the need for an international standard that would prescribe substantial changes to the national legislation on domestic work (ILO, 2010). The development of the Convention was the result of a lengthy process of tripartite social dialogue (Tomei and Belser, 2011). During the ILO's constitutional standard-setting process, some government representatives suggested reinforcing the ILO supervisory bodies such as the Committee of Experts on the Application of Conventions and Recommendations; others opted to promote compliance through other means rather than a binding Convention. The Government of Argentina was one of the eight governments to propose a Convention with binding provisions, noting that "a Convention comprising binding provisions is necessary to establish basic universal principles, while non-binding provisions would allow each country to legislate in accordance with its national specificities" (ILO, 2010, p. 13). The Governments of Chile and Paraguay supported the adoption of both a Convention and a Recommendation. A Government representative of Chile observed that

[14] Chile's President Michelle Bachelet supported a wave of reforms between 2007 and 2009. From 2010 until 2013, Bachelet served as the Executive Director of UN Women, where she actively worked for the recognition of domestic workers' rights. In spite of political differences, the bill presented by President Sebastián Piñera, which was ultimately approved in 2014 during Bachelet's second administration, was in line with the domestic work policy implemented by Bachelet's first administration in 2007.

[15] For a broader analysis of the national reforms and a specific study of the implementation mechanisms, see Poblete (2018).

"this would address the particular vulnerability of domestic workers due to the specificity of the work they carry out" (ibid., p. 11). The Government of Paraguay pointed out that "for non-ratifying countries, the Recommendation could be used as a basis for drafting improved national legislation in conformity with the Convention" (ibid., p. 12). All three countries acknowledged the importance of an international standard that could serve as a model and foster national regulatory reforms. However, during congressional debates in the respective countries, different approaches were taken to Convention No. 189. In some cases, legislators referred to the Convention in order to lobby in favour of amending national legislation and push for controversial changes; in others, it was used as a pretext to avoid discussing potentially conflictive issues; and, finally, it was also used to support positions that could be considered contradictory to the spirit of the Convention.

In each country, the respective National Congresses discussed Convention No. 189 in different ways. In Argentina, certain legislators referred to the Convention as setting out universal principles, not as a regulatory model to be followed. The debate in this case was focused more on the obsolescent 1956 Argentinian law rather than on the need to adapt it to the requirements of Convention No. 189. During the three congressional sessions in which the new labour regime for domestic work was discussed on the floor, Convention No. 189 was mentioned only five times. Most of the references to the Convention were made during the Senate session held on 28 November 2012, due to the fact that the Senate had voted in favour of ratifying it at the previous day's session. Those who supported the draft stated that "we are aligned with the ILO's guidelines for domestic work"[16] and "as a country without a specific normative framework for domestic work, we are fulfilling our pledge to the ILO".[17] Those who considered that the bill on the floor needed amendments stated: "There are aspects of Convention No. 189 that have not been considered in the bill but should be. That is why it is important for us to ratify this Convention in order to make progress in other areas such as, for example, migrant domestic workers."[18] In this statement, the Convention is used as a tool to promote future regulatory innovations. In the session of the Chamber of Deputies, when Law No. 26.844 was adopted in March 2013, there was only one mention of Argentina's pledge to the ILO. In fact, Convention No. 189 was not ratified by Argentina until December 2013, when Law No. 26.921 was promulgated.

In Chile, the ratification of Convention No. 189 was approved on the same day as the new law No. 20.786 in October 2014. In December 2011, under the Government of Sebastián Piñera, the Chamber of Deputies requested the Executive to initiate the process of congressional ratification of the

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[16] *Diario de Sesiones de la Cámara de Senadores de la Nación, República Argentina, 21º Reunión, 15º Sesión ordinaria, 28 de noviembre de 2012* (Record of Proceedings, National Senate, Republic of Argentina, 21st meeting, 15th Ordinary Session, 28 November 2012), p. 56.

[17] Ibid., p. 42.

[18] Ibid., p. 57.

Convention in question. However, the process only started almost three years later, when the newly elected President – Michelle Bachelet – sent a bill on the ratification of Convention No. 189 to the Chamber on 3 September 2014. While Convention No. 189 was referred to as a "normative model" in the various committee reports on the domestic work bill, during the first Chamber of Deputies session in which the new law was debated, in September 2012, the Convention was presented as a way to ensure continuity in the process of reforming the regulatory framework for domestic work. One deputy stated:

> "What work remains? Since both the previous and the current administrations have made valuable contributions with their focus on this area, it is important for the next administration, regardless of its party affiliation, to address the pending issues. One issue that should be dealt with before the current administration leaves office is the ratification of the ILO's 189th Convention, which the Chilean government has signed [but not yet ratified]."[19]

Given that the ratification of Convention No. 189 was sent to Congress for consideration in September 2014, during the final congressional sessions when Law No. 20.786 was on the floor, Convention No. 189 was presented as the model for legislation on domestic work. In fact, when the Chamber of Deputies met in October 2014, it debated both the bill on paid domestic work and the ratification of Convention No. 189. Every deputy who spoke at this session made reference to the Convention. Innovations to existing legislation were discussed in the light of adapting national laws to this international standard. During the most heated moments of the debate, the deputies referred to specific articles of Convention No. 189 to contradict opposing arguments. As had occurred in Argentina, those who were in favour of the bill pointed out that the new law "is based on Convention 189",[20] or that its goal was "to position us within the framework of Convention No. 189 on decent work for domestic workers".[21] Critics who wished to highlight the limitations of the new law stated: "The norms of this Convention will oblige the country to continue working to address pending issues."[22] As in the case of Argentina, Convention No. 189 was presented as a source of law on which future modifications to the Chilean Labour Code could be based.

In Paraguay, Convention No. 189 was an even more important reference for legislators since it was ratified before Congress discussed legislative reforms concerning paid domestic work. The Convention was ratified in 2012 (Law No. 4.819/12), and the bill to introduce it into law was presented to Congress in

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[19] *Diario de Sesiones de la Cámara de Diputados, República de Chile, Legislatura 360º, Sesión 76º, 5 de septiembre de 2012* (Record of Proceedings, Chamber of Deputies, 360th Legislature, 76th Session, 5 September 2012), pp. 48–49.

[20] Ibid., p. 46.

[21] Ibid., p. 31.

[22] Ibid., p. 54.

July 2013. As a result, Convention No. 189 was mentioned during the congressional debates as being the model for a legal framework as well as a national pledge to comply with international standards. References to Convention No. 189 helped to overcome opposing views and to justify regulatory decisions that could be considered constitutionally borderline. During discussions in Congress, innumerable references were made to Convention No. 189, which was even cited word for word on several occasions when legislators used it to justify either moving forward with the new law or limiting certain amendments. The Convention was also used as support for the imminent reform. One legislator stated the following:

> "According to the International Labour Organization's current norms on domestic workers worldwide, workers who take care of families and households should have the same basic rights as other workers. These include reasonable working hours, at least one day off each week, a limit to payments in kind, and clear employment terms and conditions. They are also entitled to respect for fundamental working rights like freedom of association and collective bargaining because, Mr President and fellow representatives, both Paraguay and Congress have ratified this Convention."[23]

Although Convention No. 189 served certain legislators as a guide or model for legislative reform, it was also used as a political tool in the congressional debates, interpreted and reinterpreted numerous times in the light of different situations that required regulation and in relation to the existing regulatory frameworks in each country. As stated above, there are significant differences in the way domestic work was regulated before the reform in each country. In some cases, the rights outlined in Convention No. 189 were already protected by national legislation; in others, they were not.

Two controversial issues: Minimum wages and hours of work

During the congressional debates in the three countries, legislators agreed on the need to draft new laws for domestic work, given that such work was only partially covered by existing legislation. However, there was no consensus on the nature of the regulatory reform. Convention No. 189 served as a reminder that national laws had to be amended in order to ensure that the labour rights of domestic workers were comparable with those of other employees. In the process of changing national regulation, two problematic issues emerged: the limits that apply to working and non-working time, and the salary level and its

[23] *Diario de Sesiones, Honorable Cámara de Senadores, República de Paraguay, Sesión 53º, 10 de julio de 2014* (Record of Proceedings, Chamber of Senators, Republic of Paraguay, 53rd Session, 10 July 2014).

components. The same arguments were often used in debates on these topics in all three countries, although they did not ultimately lead to the same decisions.

The right to non-working time

Setting limits on the hours of work in the countries under review was controversial because it challenged the widespread belief in Latin America that a domestic worker should be available to respond to a family's needs at any time of the day or night (Kuznesof, 1993; Valenzuela and Mora, 2009). This notion corresponds to the "servitude model", exemplified by the live-in work arrangement (Pereyra and Tizziani, 2014). For this reason, congressional debates focused on modifying this work arrangement, although it is the least common in all three countries under consideration.

Convention No. 189 provides as follows:

> "Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work (Article 10(1))."

When the ILO consulted the governments of the three countries during the preparatory work for the standard-setting process in 2010, all were in favour of reducing the number of working hours of domestic staff to bring them in line with the general working time regime. The Government of Argentina stated: "Daily and weekly hour limits should be established and overtime remunerated. The Convention should clearly state that the hours of work and periods of rest should ensure the worker's psychophysical health" (ILO, 2010, p. 152). The Government of Chile observed that: "The working day of domestic workers should be the same as for all other workers" (ibid., p. 152). The Government of Paraguay was of the opinion that "domestic workers should work a maximum of eight hours daily with rest breaks and a maximum of three overtime hours per day, the remuneration of which will depend on whether the work is performed during the day, the night or both" (ibid., p. 153).

While there seemed to be consensus on modifying domestic workers' working time regime, there were disagreements over whether to treat domestic workers differently, given the unique characteristics of domestic work, or to establish the same conditions for them as for other workers. In the three country cases, differences in the debates on whether and how to limit the working hours of domestic workers may be attributable to variations between the labour rights of domestic workers and employees, on the one hand, and the idiosyncratic nature of domestic work on the other. In Paraguay, domestic workers devote on average 44.9 hours each week to their jobs. This is 20 per cent more than in Chile (36.4 hours per week), and almost twice the average in Argentina (24.4 hours per week) (ILO, 2012).

In the case of Argentina, the 1956 legislation in place before the 2013 reform established a maximum of 12 working hours per day for live-in domestic workers, with three consecutive hours off during the day (at lunch time) and nine consecutive hours of rest at night. There was no set limit for live-out domestic workers. According to the 1956 legislation, all domestic workers had the right to 24 hours of rest per week, although this rest period could be divided into two half days. Like employees, they also had a right to paid leave according to their length of service, although domestic workers were entitled to fewer days off than other workers. The 2013 law set limits on the number of hours worked each day (eight) and each week (48), applying the same caps on working hours that applied to other workers. The law allows for up to nine hours of work per day, provided that the total number of working hours per week does not exceed 48. The 2013 legislation also established a more extensive weekly rest period (35 consecutive hours), starting at 1 p.m. on Saturdays. In the case of live-in workers – a small minority in the case of Argentina – the clauses regulating daytime and night-time rest periods remained the same as those stipulated in the 1956 regime. Finally, paid annual leave entitlements were aligned with those of other workers. In the case of Argentina, amending the legislation on working hours for domestic workers was a less problematic process than in Chile or Paraguay, as changes in the labour market in previous years had contributed to changing the perception of a domestic worker as someone who needed to be available for work at all times. In 2003, only about 30 per cent of workers worked 35 hours per week; in 2014, less than 20 per cent worked that many hours. The number of working hours for this category of workers has gradually diminished, primarily because of the increased number of domestic workers working by the hour for two or more employers. This group accounted for 20 per cent of all domestic workers in 2004 and 30 per cent in 2014 (MTESS, 2006; Pereyra and Poblete, 2015).

In Chile, the working time for domestic workers is regulated under section 149 of the Labour Code, as amended in 2015. Prior to these amendments, the Code provided for two different regimes, one for live-in and another for live-out workers. In the first case, the working hours were "determined by the nature of the work rendered". The only limitation on working hours for live-in domestic workers was that they enjoy a minimum rest period of at least nine uninterrupted hours. For live-out workers, the Code stipulated a maximum of 12 working hours per day, with an hour-long break. It also provided for a one-day mandatory rest period, which could be taken in two half days "at the worker's request" (section 150). The 2015 amendments modified the live-out arrangement, establishing 45 hours per week as the maximum number of weekly working hours, the same as that applicable to other workers under the general regime. However, in order to adapt the general working time regime to the reality of domestic work, a provision was introduced allowing domestic workers to work up to 15 additional hours per week. These workers would receive 50 per cent more than the agreed hourly wage for these additional hours. The amendments also established Sunday as a mandatory rest day that

could not be divided up or exchanged for another day of the week. With regard to holidays, the existing legislation allowing the employer and worker to jointly agree on the worker taking a different day off was left intact. When the new law was being debated, the Executive Branch proposed ensuring two days of weekly rest for domestic workers (Saturday and Sunday). Although this modification was not incorporated when Law No. 20.786 was adopted in 2014, it was introduced at a later date in November 2015.

The 2015 amendments applied the principle of non-discrimination as the basis for adapting domestic work regulation to the general working time regime. The legislators emphasized that there was no legal principle that would warrant differentiating between the working time of domestic workers and that of other workers. Many legislators, however, maintained that working time should reflect the nature of the work rendered. They considered that working hours should be adapted to common practice, stating that "flexible hours are necessary in order to respond to the particular needs of each family".[24] By recognizing those 15 extra hours per week as overtime, Congress reached a compromise between the two opposing views. However, according to certain legislators, such overtime still discriminates against domestic workers, since it authorizes them to work up to three extra hours per day without allowing for the application of the "special need" (objective needs) clauses established in the Labour Code with regard to overtime. The concern was that while domestic workers would theoretically receive a higher salary for working the additional hours, this overtime could become regular, resulting in a de facto working day of ten to 12 hours. The legislators were in full agreement on recognizing Sunday as a mandatory rest day. Some mentioned that nearly a century after the enactment of the Sunday Rest Law (1917), it was ridiculous to be debating whether domestic workers were entitled to the same rights as other categories of workers. This statement reveals the perception held in Chile of domestic work as being menial, where legislation could not be seen as giving domestic workers the same rights granted to other workers under the general labour regime.

In the case of Paraguay, before the approval of Law No. 5.007 in 2015, section 154 of the Labour Code established a mandatory 12-hour rest period (divided between day and night), without setting a limit on working hours. Therefore, in practice, domestic workers could be working up to 12 hours each day. The new legislation also established a mandatory 24-hour rest period per week, to be taken on a day to be decided jointly with the employer. Annual leave entitlements for domestic workers were the same as those granted to other workers. The bill presented in 2013 sought to reduce domestic workers' working hours to align them with the general labour legislation: a maximum of eight hours per day and 48 hours per week for daytime work, and a maximum

[24] *Diario de Sesiones del Senado, República de Chile, Legislatura 362º, Sesión 48º, 23 de septiembre de 2014* (Record of Proceedings of Sessions of the Senate, Republic of Chile, 362nd Legislature, 48th Session, 23 September 2014).

of seven hours per day and 42 hours per week for night-time work. The bill did, however, authorize up to three hours of overtime per day. The debate around the bill focused on whether different limits should be provided for live-in and live-out arrangements, even though only 10 per cent of all domestic workers were live-in. As elsewhere in the region, live-out domestic workers make up the majority of domestic workers in Paraguay. In 2010, 80.4 per cent of all domestic workers in the country were employed on a live-out basis. That percentage rose to 87 per cent in 2011, while live-in domestic workers accounted for 19.6 and 13 per cent of all domestic workers, respectively. However, the number of hours actually worked does not appear to have fallen as a result of this trend. In 2011, 58.3 per cent of domestic workers worked less than the maximum 48 hours per week, but 22.5 per cent worked between 48 and 60 hours, 12.2 per cent between 61 and 72 hours, and 7 per cent more than 73 hours per week. In other words, 41.7 per cent of all domestic workers exceeded the maximum working hours stipulated under the new law (UNFPA, 2013).

While Paraguay's Congress debated the bill, the Legislation and Social Development Committee presented an alternative proposal to permit live-in domestic workers to work a maximum of ten hours per day and 60 hours per week. The argument was that even in this scenario these workers would benefit, since they would work two hours less (down from 12 to ten hours of work per day). Since the legislation also introduced a daily mandatory two-hour break, one legislator affirmed that it would be as if "domestic servants were working two five-hour shifts per day".[25] During the debate, a number of legislators described the daily lives of their own families in order to show that it would be impossible for a family to adapt to what the law proposed. The main argument against a reduction in working time was the applicability of the law. The legislators argued that it was impossible to adjust the working hours of domestic workers to the general legislation, and that the new law would therefore not have any specific impact. The final version does nonetheless make domestic work comparable with that of other workers in terms of the maximum number of working hours (section 13). It also provides for an hour-long break during the working day for live-out and two hours for live-in workers (section 14); 24 hours of mandatory weekly rest, to be agreed on jointly with the employer; and the possibility for domestic workers to work during their statutory break period or leave, provided that they are paid double the normal rate (sections 15 and 16), without any limit on the number of hours worked. This final item introduces some flexibility into managing the working hours of domestic workers.

In all three countries, the legislation on domestic work followed the general labour legislation. In Argentina, where the majority of domestic workers work fewer than the maximum working hours, no clauses were introduced to provide for flexibility in this regard. In the cases of Chile and Paraguay,

[25] Record of Proceedings, the Chamber of Senators, Republic of Paraguay, 53rd Session, 10 July 2014.

legislators decided that the maximum statutory working day could be extended by a certain number of additional hours in order to adapt the legislation to the actual working day of domestic workers in each country. However, while paying an overtime rate that is 50 or even 100 per cent higher than the regular hourly rate might be considered a benefit for domestic workers as well as a deterrent to employers, due to the structure of the work relationship – a structure based on social hierarchies (Rodgers, 2009; Lautier and Destremau, 2002; Gorbán and Tizziani, 2014) – and ineffective mechanisms to ensure compliance (Vega Ruiz, 2011; Chen, 2011), it is likely that the effectiveness of these new laws will be limited.

Minimum wage for domestic workers

The debates on the minimum wage in the three countries under review focused on the social value of domestic work, reaffirming its prestige (or lack thereof) in comparison with other occupations. In this regard, the legislators brought up two different arguments: the limits of the labour market structure and the position of the employer, who is often also a worker, and in general a female worker. The discussions centred on the salary levels of domestic workers, the components of their salary – that is, the percentage of salaries paid in kind – and the consequences that establishing a minimum wage would have on their ability to access benefits under the national social security system.

Article 11 of Convention No. 189 states that "[e]ach Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex". In addition, Article 12 (2) of the Convention provides as follows:

> "National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable."

In Chile, the debate on the establishment of a minimum wage for domestic workers preceded the adoption of Convention No. 189, because this issue was part of the 2008 pension system reform. At the initiative of former President Bachelet, domestic workers were included in the minimum wage legislation (section 44 of the Labour Code) under Law No. 20.276/08. Gradual salary increases were scheduled so that domestic workers would be earning the full minimum wage by 2011. The legal basis for granting domestic workers rights that were comparable with those of other workers was the principle of non-discrimination. Those supporting the bill noted that even though domestic workers were ensured a minimum wage, discrimination persisted, since the minimum wage

was based on an eight-hour working day, and working hours for domestic workers exceeded this eight-hour day before Law No. 20.786 on domestic work was adopted in 2014. Those against the bill maintained that adopting a minimum wage for domestic workers would cause a distortion in the wage scale, which would mean that families earning the minimum wage, or just a little over, would no longer be able to hire a domestic worker. Another claim in the wage distortion argument was that the employer of a domestic worker was usually another woman – generally from the middle class – who was replaced by the domestic worker in the carrying out of household tasks. The gender discrimination that all women suffer in the labour market with regards to wages thus has a direct impact on what domestic workers earn. Despite these arguments, legislators voted to recognize domestic workers' right to earn a minimum wage in 2008.

Given that Chile had already established a minimum wage for domestic workers, the debate in 2013 and 2014 focused on regulating wages paid in kind. The version of section 151 of the Labour Code in force at the time established that the salary of a domestic worker was made up of three components, without specifying the percentages: a cash payment, room and board (the latter in the case of a live-in arrangement). According to the legislators, deducting room and board from a domestic worker's wages had been, and continued to be, common practice in Chile. Since there was no cap placed on such deductions, even under the minimum wage legislation, domestic workers were actually earning far below the legal minimum. Therefore, as part of the legislative reform, legislators proposed to ban this practice on the grounds that it was arbitrary and discriminatory. For this reason, the 2014 version of section 151 of the Labour Code explicitly provides that the domestic worker's salary shall be paid, "in legal tender, without deductions for food or board, which shall be borne exclusively by the employer".

In Paraguay, the issue of whether to incorporate or adapt the minimum wage provisions set out in Convention No. 189 and Recommendation No. 201 also formed a major part of the debate. However, there was no consensus on paying domestic workers a minimum wage. The wage distortion argument weighed heavily in the discussions, particularly because it was associated with occupational status. The proposals made during the discussions on Law No. 5.407 reveal the enormous discrepancies in this area. The bill presented in 2013 sought to modify sections 151 and 152 of Paraguay's Labour Code. While the previous text of section 151 established that domestic workers could not be paid less than 40 per cent of the minimum wage, the bill proposed increasing this to 60 per cent. Section 152 stipulated that the employer must provide food and accommodation, no matter what the contractual arrangement; and the bill proposed to add that no in-kind payments could be deducted from the cash payments to which a domestic worker was entitled.

With respect to section 151 of the Labour Code, three proposals were made during the congressional debates regarding the percentage of the legal minimum wage that domestic workers should be paid, ranging from 60 per cent to 70 per cent – even to 100 per cent. In view of the terms of section 152 of the Labour Code, the proposed amendment was rejected because it was

considered legally inconsistent. Nevertheless, the discussion of these two sections produced synergies during the debate. Those in favour of incorporating domestic workers into the minimum wage system argued that there was no legal basis to justify wage inequality. A provision authorizing domestic workers to be paid less than the minimum wage was considered discriminatory and thus unconstitutional (Articles 92 and 46 of the National Constitution) and contravened other international treaties ratified by Paraguay, such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and ILO Convention No. 189. These legislators argued that gender inequality in the labour market had become normalized and was being used to justify wage inequality. What was shameful, according to one female Paraguayan senator, was seeing that in this case "one woman was exploiting another".[26] Others argued that a minimum wage "was the baseline for a person's survival as established by law".[27] Refusing this right to domestic workers thus showed what little value society gave to this kind of work. One legislator highlighted that "domestic work is as valuable as any other work and, as a result, its economic value must not be underestimated".[28]

In their arguments, legislators opposing the establishment of a minimum wage for domestic work referred to the realities of the labour market and the ineffective application of the minimum wage legislation in other sectors. In Paraguay, 45.8 per cent of employees earn less than the minimum wage: 18 per cent in the public sector and 53.1 per cent in the private sector (UNFPA, 2013). Like their Chilean counterparts, Paraguayan legislators argued that an employer earning the minimum wage or a little over would be unable to pay a domestic worker the minimum wage. In response, some legislators argued that because the bill provided for diverse contractual arrangements – work by the hour or by the day – it would be impossible to justify paying a domestic worker anything less than the minimum wage. For families unable to pay the minimum wage of a full-time domestic worker, the law provided for other, less burdensome contractual arrangements. The threat of unemployment – an argument common to all the congressional debates on domestic work – was raised in an attempt to counter this argument. Some claimed that increasing the cost of employing a domestic worker by imposing a mandatory salary rise or an increase in employer contributions would result in an immediate loss of jobs in the domestic work sector. They added that, as no particular skills were required for domestic work, it seemed likely that domestic workers who lost their jobs would be unable to find a position in another sector.

What is interesting about the debate on the minimum wage in Paraguay is that domestic workers ended up being excluded on the basis of the principle of non-discrimination, as well as on the basis of Convention No. 189 and Recommendation No. 201. In the words of one legislator:

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[26] Record of Proceedings, Chamber of Senators, Republic of Paraguay, 53rd Session, 10 July 2014.

[27] Ibid.

[28] Ibid.

> "We cannot pass unconstitutional legislation. In other words, if the [domestic workers' wage] amounts are less than minimum wage, we are violating Article 92 [on non-discrimination] of the Constitution. (…) In this case, then, the proposal is in the second paragraph that you have before you: "At least 70 per cent of the minimum legal wage for live-in domestic work – equal to the wage for diverse work activities established by the Executive – will be paid in cash. The remaining 30 per cent will be paid in kind." Later on, in the chapter on live-in and live-out arrangements, we break down what payment in kind refers to, that is, room and board, among other services. In other words, and I believe that this should be very clear, domestic workers should receive the full minimum wage [70 per cent cash and 30 per cent in kind] in accordance with the Constitution and in accordance with ILO Convention No. 189, because Article 12 of this Convention allows for payment in kind and our legislation should be based on this."[29]

The final version of the bill to amend the Labour Code proposed raising the wages of live-in domestic workers to 60 per cent of the minimum wage, since it stipulated that the portion of the salary paid in kind – room and board – was the equivalent of 40 per cent of the country's minimum wage. Some legislators argued that if domestic workers received 100 per cent of the minimum wage in cash plus the 40 per cent in kind, this would represent another sort of income inequality: wage earners in other employment sectors who did not receive such in-kind payment would be subject to discrimination, since domestic workers would be earning 40 per cent more than them. What this argument revealed was that the wage scale continued to be adapted on the basis of perceptions of occupational status – and it is difficult to imagine any modification of these socially accepted hierarchies. The final version of section 151 thus ultimately stipulated only a 20 per cent pay increase for domestic workers compared with the existing legislation.

While the Chilean and Paraguayan congressional debates revolved around nearly identical issues, the case of Argentina was very different. Under the 1956 legislation, it was incumbent upon the Executive Branch to establish a minimum wage for the domestic work sector (section 13). When Congress was discussing Law No. 26.844/13, the minimum wage for certain subcategories of domestic work was in fact equal to or higher than the general minimum wage. The question that arose was therefore not about whether to grant domestic workers a minimum wage, but rather how to ensure that the minimum wage was set in the same manner for all workers. In an institutional context in which collective bargaining had become central to the regulation of labour conditions (Palomino, 2008), and based on the principles established under Convention No. 189, legislators were in favour of setting a minimum wage for domestic

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[29] *Diario de Sesiones de la Honorable Cámara de Senadores, República del Paraguay, Sesión 65º, 2 de octubre de 2014* (Record of Proceedings, Chamber of Senators, Republic of Paraguay, 65th Session, 2 October 2014).

work through tripartite collective bargaining. Since there were a number of associations and unions for domestic workers in the country, the greatest challenge for legislators was to put together a group representing the employers of domestic workers. For this reason, while attempts were being made to create this group within the context of the collective bargaining process, certain legislators proposed forming a committee composed of representatives of several ministries and of domestic workers in order to establish a minimum wage and to define working conditions. This was established as a temporary measure until the end of 2015, when tripartite negotiations were held for the first time to establish wage scales for the domestic work sector.

What was problematic in Argentina was the exclusion of domestic workers from the general family allowance regime, a subject of extensive congressional debate. Along with health insurance, retirement and workplace risk insurance, this benefit is one of the pillars of Argentina's social security system. Since 2009, there have been two types of family allowances: contributory and non-contributory (Law No. 24.714/96). The contributory scheme includes employees whose employers make contributions totalling 9 per cent of their gross salary. The non-contributory scheme, known as the Universal Child Allowance and structured as a conditional cash transfer programme, includes the unemployed and workers in the informal economy who earn less than the minimum wage. When the congressional debate took place, legislation excluded domestic workers from both the contributory and the non-contributory family allowance regimes. According to legislators, incorporating these workers into the contributory regime would constitute an undue burden for employers who would be unable to make additional social security contributions. They maintained that, in the context of domestic work, the employer was simply another worker, either a working woman or a family, for whom the work rendered did not yield any profit. Imposing an increase in social security contributions could thus pose an obstacle to formalization of the employment relationship. Conversely, incorporating domestic workers into the non-contributory regime was problematic, since the legislation only provided for the inclusion of workers excluded from the formal labour market, either because they were out of work or working informally. Those in favour of incorporating domestic workers into the non-contributory regime claimed that the income of informal workers tended to be reported imprecisely or falsely, thus granting the family allowance de facto to workers with higher incomes than those of domestic workers. Although it seemed contradictory to support both formalizing domestic workers and incorporating them into the non-contributory regime for informal workers, the legislators maintained that excluding domestic workers from this regime would pose a barrier to formalization. For this reason, the decision was made to include domestic workers under the non-contributory regime of family allowances (Poblete, 2016).

The discussions in Argentina, Chile and Paraguay on the subject of wage scales and salary components in the domestic work sector reveal the social value accorded to domestic work in each country. On the one hand,

the perception of domestic work as unpaid work performed by women leads to the assumption that payment in kind is acceptable. On the other hand, given that domestic work is viewed as unskilled work, there is the view that domestic workers should earn less than other workers. For this reason, Convention No. 189 and Recommendation No. 201 envisage placing limits on the proportion of in-kind payments, while ensuring that domestic workers earn a minimum wage. A minimum wage serves as a salary benchmark. However, the structure and operation of minimum wage systems in each country determines the way in which domestic workers are incorporated into these systems – and also their effectiveness.

Conclusions

During the regulatory reform process in relation to domestic work in Argentina, Chile and Paraguay, the core issue in the congressional debates was whether domestic workers were being discriminated against by national legislation. Given that the labour legislation in all three countries provided less protection to domestic workers than to other workers, the regulatory reforms primarily sought to ensure that domestic workers would have the same labour and social rights as other workers (Blackett, 1998; Oelz, 2014). Cited many times in all the discussions, the non-discrimination principle guided the decision-making process on each of the rights recognized under Convention No. 189. Throughout the process, however, legislators first debated how best to ensure equality under the law within their national contexts before attempting to determine how to incorporate the non-discrimination principle into their national legislation with the legal tools available.

The two distinct perceptions of domestic work – as "work like any other" and "work like no other" (Blackett, 1998) – sparked tensions in the regulatory reform process. Similar tensions had arisen during discussions on Convention No. 189 at the International Labour Conference:

> "The regulatory approach entailed identifying domestic workers as workers, comparing their conditions with those in other work relationships, and insisting that an equality perspective should be adopted to emphasize not necessarily sameness of treatment (work like any other) but also the need for differential affirmative treatment, which recognizes the relationship between reproduction and human dignity and is aimed at rooting out structural discrimination that perpetuates the undervaluation of care provided by paid domestic workers in the home (work like no other)" (Blackett, 2011, pp. 14–15).

During the debate on working time, the need to recognize domestic work as "work like any other" conflicted with its status as "work like no other", and legislators often took diametrically opposed positions in this regard. While some considered that domestic workers should be entitled to the same limits

on working hours as those enjoyed by other workers covered under general labour legislation, others highlighted the "boundlessness" of domestic workers' time (Blackett, 2014), considering that being on call was a unique characteristic of domestic work. According to the "on-call" argument, it was necessary for domestic work to adapt to the needs of the employer's family, making it impossible to establish mandatory rest periods and regulate working time in the domestic work sector (McCann and Murray, 2014).

A similar tension arose in the debates on salary level and composition. A number of legislators were of the opinion that domestic workers could not earn less than other employees; but others argued that since domestic worker salaries were paid both in cash and in kind, the minimum wage could not be applied to the portion paid in cash, because the families they work for – who often earned little more than the minimum wage – could not afford it. Some legislators also took the position that applying the minimum wage to domestic workers would discriminate against other workers, who did not receive a supplementary payment in kind, because domestic workers would effectively be earning more than the minimum wage. There were also legislators who argued that domestic workers could not be entitled to the same social security, the invisible salary component borne by employers, because the families they worked for were not "employers like any other". Unlike companies that profited from the work carried out by their workers, the work that domestic workers performed yielded no profit and thus families could not fully bear the costs or risks of an employment relationship.

Throughout this process, ILO Convention No. 189 served as a tool for a range of different purposes. It was at times a model to be followed – and at other times a regulatory framework to be adapted to national contexts. From the standpoint of a micro-level analysis of the law-making process, Convention No. 189 was critical to settling arguments and creating space for a compromise between those legislators who considered domestic work to be work "like no other" and those who viewed it as "work like any other". Convention No. 189 was also crucial to both justifying immediate reform and laying the groundwork for future amendments. From the standpoint of a macro-level analysis of the regulatory reform process in the three countries reviewed, Convention No. 189 served as a catalyst for reforms that were already under way. Promoted by both national and regional domestic workers' associations and supported by national governments and other social actors, including NGOs, the labour and social rights of domestic workers were both conditioned and rapidly expanded to implement the Convention. In the case of Latin America, adherence to the Convention, its widespread ratification in the region and its subsequent implementation through the adoption of national legislation, may be mainly attributed to the strength of the domestic workers' rights movement. At both the national and regional levels, this movement mobilized additional political and social actors, paving the way for the initiation of regulatory reforms and for the persistence of the fight for the recognition and enforcement of domestic workers' rights.

References

Blackett, Adelle. 2014. "The decent work for Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201). Introductory Note", in *International Legal Materials*, Vol. 53, No. 1, pp. 250–266.

—. 2011. "Introduction: Regulating decent work for domestic workers", in *Canadian Journal of Women and the Law*, Vol. 23, No. 1 (Jan.), pp. 1–46.

—. 1998. "Making domestic work visible: The case for specific regulation", in *Labour Law and Labour Relations Programme*. Working Paper No. 2, Geneva, ILO.

Boris, Eileen; Fish, Jennifer N. 2014. "'Slaves no more': Making global labour standards for domestic workers", in *Feminist Studies*, Vol. 40, No. 2, pp. 411–443.

Chaney, Elsa; Garcia Castro, Mary (eds). 1993. *Muchacha, cachifa, criada, empleada, empregadinha, sirvienta y… más nada: Trabajadoras del hogar en América Latina y el Caribe*. Caracas, Nueva Sociedad.

Chen, Martha Alter. 2011. "Recognizing domestic workers, regulating domestic work: Conceptual, measurement, and regulatory challenges", in *Canadian Journal of Women and the Law*, Vol. 23, No. 1 (Jan.), pp. 167–184.

Fish, Jennifer N. 2017. *Domestic workers of the world unite! A global movement for dignity and human rights*. New York, NY, NYU Press.

Goldsmith, Mary Rosaria. 2013. "Los espacios internacionales de la participación política de las trabajadoras remuneradas del hogar", in *Revista de Estudios Sociales*, No. 45 (Jan.), pp. 233–246.

—; Baptista Canedo, Rosario; Ferrari, Ariel; Vence, María Celia. 2010. *Hacia un fortalecimiento de derechos laborales en el trabajo de hogar: Algunas experiencias de América Latina*. Casilla, Uruguay, Friedrich-Ebert-Stiftung.

Gorbán, Débora; Tizziani, Ania. 2014. "Inferiorization and deference: The construction of social hierarchies in the context of paid domestic labour", in *Women's Studies International Forum*, No. 46, pp. 54–62.

ILO. 2013. *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Geneva.

—. 2012. *Panorama Laboral 2012. América Latina y el Caribe*. Lima.

—. 2010. *Decent work for domestic workers*. Report IV (2), International Labour Conference, 99th Session, 2010. Geneva.

Kuznesof, Elizabeth. 1993. "Historia del servicio doméstico en la América hispana (1492–1980)", in Elsa Chaney and Mary Garcia Castro (eds).

Lautier, Bruno; Destremau, Blandine. 2002. "Introduction: Femmes en domesticité. Les domestiques du Sud, au Nord et au Sud", in *Tiers-Monde*, Vol. 43, No. 170 (Apr.–June), pp. 249–264.

McCann, Deirdre; Murray, Jill. 2014. "Prompting formalisation through labour market regulation: A 'framed flexibility' model for domestic work", in *Industrial Law Journal*, Vol. 43, No. 3 (Sep.), pp. 319–348.

MTESS (Ministerio de Trabajo, Empleo y Seguridad Social – Ministry of Labour, Employment and Social Security). 2006. *Situación laboral del servicio doméstico en la Argentina*, Subsecretaría de Programación Técnica y Estudios Laborales. Buenos Aires.

MTPS (Ministerio del Trabajo y Previsión Social – Ministry of Labour and Social Welfare). 2009. *Trabajadoras de casa particular*. Report of the MTPS, Government of Chile.

Oelz, Martin. 2014. "The ILO's Domestic Workers Convention and Recommendation: A window of opportunity for social justice", in *International Labour Review*, Vol. 153, No. 1, pp. 143–172.

Palomino, Héctor. 2008. "La instalación de un nuevo régimen de empleo en Argentina: De la precarización a la regulación", in *Revista Latinoamericana de Estudios del Trabajo*, Vol. 13, No. 19 (Oct.), pp. 121–144.

Pereyra, Francisca; Poblete, Lorena. 2015. "¿Qué derechos? ¿Qué obligaciones? La construcción discursiva de la noción de empleadas y empleadores en el debate de la Ley del Personal de Casas Particulares (2010–2013)", in *Cuadernos del IDES*, No. 30 (Oct.), pp. 73–102. Available at: http://ides.org.ar/wp-content/uploads/2012/03/Cuadernos-del-IDES-N%C2%BA-30-Octubre-2015.pdf [accessed 29 June 2018].

—; Tizziani, Ania. 2014. "Experiencias y condiciones de trabajo diferenciadas en el servicio doméstico: Hacia una caracterización de la segmentación laboral del sector en la ciudad de Buenos Aires", in *Trabajo y Sociedad*, Vol. 23, No. 15, pp. 5–25.

Poblete, Lorena. 2018. "The influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay", in *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 34, No. 2, pp. 177–201.

—. 2016. "Empleo y protecciones sociales, ¿dos caras de la misma moneda? Reflexiones en torno a la regulación del servicio doméstico en Argentina", in *Revista Latinoamericana de Derecho Social*, No. 22 (Jan.–June), pp. 153–180.

—. 2015. *New rights, old protections: The new regulation for domestic workers in Argentina*. Labour Law and Development Research Laboratory (LLDRL), McGill University, Working Paper Series #5. Available at: http://www.mcgill.ca/lldrl/files/lldrl/poblete_final.pdf [accessed 29 June 2018].

Rodgers, Janine. 2009. "Cambios en el servicio doméstico en América Latina", in María Elena Valenzuela and Claudia Mora (eds): *Trabajo doméstico: Un largo camino hacia el trabajo decente*. Santiago de Chile, ILO.

Schwenken, Helen. 2011. "Mobilisation des travailleuses domestiques migrantes: De la cuisine à l'Organisation internationale du travail", in *Cahiers du Genre*, No. 51, pp. 113–133.

Tomei, Manuela; Belser, Patrick. 2011. "New ILO standards on decent work for domestic workers: A summary of the issues and discussions", in *International Labour Review*, Vol. 150, No. 3–4, pp. 431–438.

UNFPA (United Nations Population Fund). 2013. *Conocimiento de una realidad invisible: Características y condiciones del trabajo doméstico remunerado en el Paraguay*. Asunción.

Valenzuela, María Elena; Mora, Claudia (eds). 2009. *Trabajo doméstico: Un largo camino hacia el trabajo decente*. Santiago de Chile, ILO.

Valiente, Hugo. 2010. *Regímenes jurídicos sobre trabajo doméstico remunerado en los Estados del MERCOSUR*. Montevideo and Santiago de Chile, AFM and OFXAM.

Vega Ruiz, Maria Luz. 2011. "L'administration et l'inspection du travail dans le domaine du travail domestique: Les expériences de l'Amérique latine", in *Canadian Journal of Women and the Law*, Vol. 23, No. 1 (Jan.), pp. 341–358.

Congressional records

Diario de Sesiones de la Cámara de Senadores de la Nación, República Argentina, 5º Reunión, 4º Sesión ordinaria, 4 de mayo de 2011 (Record of Proceedings, National Senate, Republic of Argentina, 5th Meeting, 4th Ordinary Session, 4 May 2011).

Diario de Sesiones de la Cámara de Senadores de la Nación, República Argentina, Sesiones Ordinarias de 2011, Orden del día Nº 724, 29 de septiembre de 2011 (Record of Proceedings, Republic of Argentina, Ordinary Sessions of 2011, Agenda No. 724, 29 September 2011).

Diario de Sesiones de la Cámara de Senadores de la Nación, República Argentina, Período 130º, 21º Reunión, 15º Sesión ordinaria, 28 de noviembre de 2012 (Record of Proceedings, the National Senate, Republic of Argentina, 130th Period, 21st Meeting, 15th Ordinary Session, 28 November 2012).

Diario de Sesiones de la Cámara de Diputados de la Nación, República Argentina, 1era Reunión, 1era Sesión ordinaria, 13 de marzo de 2013 (Record of Proceedings of the

Chamber of Deputies, Republic of Argentina, 1st Meeting, 1st Ordinary Session, 13 March 2013).

Diario de Sesiones de la Cámara de Diputados, República de Chile, Legislatura 360º, Sesión 22º, 8 de mayo de 2012 (Record of Proceedings of the Chamber of Deputies, Republic of Chile, 360th Legislature, 22nd Session, 8 May 2012).

Diario de Sesiones de la Cámara de Diputados, República de Chile, Legislatura 360º, Sesión 75º, 4 de septiembre de 2012 (Record of Proceedings of the Chamber of Deputies, Republic of Chile, 360th Legislature, 75th Session, 4 September 2012).

Diario de Sesiones de la Cámara de Diputados, República de Chile, Legislatura 360º, Sesión 76º, 5 de septiembre de 2012 (Record of Proceedings of the Chamber of Deputies, Republic of Chile, 360th Legislature, 76th Session, 5 September 2012).

Diario de Sesiones del Senado, República de Chile, Legislatura 362º, Sesión 48º, 23 de septiembre de 2014 (Record of Proceedings, the National Senate, Republic of Chile, 362th Legislature, 48th Session, 23 September 2014).

Diario de Sesiones de la Cámara de Diputados, República de Chile, Legislatura 362º, Sesión 76º, 7 de octubre de 2014 (Record of Proceedings of the Chamber of Deputies, Republic of Chile, 362nd Legislature, 76th Session, 7 October 2014).

Diario de Sesiones de la Honorable Cámara de Senadores, República del Paraguay, Sesión 38º, 10 de abril de 2014 (Record of Proceedings, the Senate, Republic of Paraguay, 38th Session, 10 April 2014).

Diario de Sesiones de la Honorable Cámara de Senadores, República del Paraguay, Sesión 48º, 12 de junio de 2014 (Record of Proceedings, the Senate, Republic of Paraguay, 48th Session, 12 June 2014).

Diario de Sesiones de la Honorable Cámara de Senadores, República del Paraguay, Sesión 53º, 10 de julio de 2014 (Record of Proceedings, the Senate, Republic of Paraguay, 53rd Session, 10 July 2014).

Diario de Sesiones de la Honorable Cámara de Diputados, República del Paraguay, Sesión 121º, 10 de septiembre de 2015 (Record of Proceedings, the Chamber of Deputies, Republic of Paraguay, 121st Session, 10 September 2015).

Diario de Sesiones de la Honorable Cámara de Senadores, República del Paraguay, Sesión 65º, 2 de octubre de 2014 (Record of Proceedings, the Senate, Republic of Paraguay, 65th Session, 2 October 2014).

Diario de Sesiones de la Honorable Cámara de Diputados, República del Paraguay, Sesión extraordinaria Nº 13, 17 de marzo de 2015 (Record of Proceedings, the Chamber of Deputies, Republic of Paraguay, 13th Extraordinary Session, 17 March 2015).