The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay

Lorena POBLETE**

Since the International Labour Organization Decent Work for Domestic Workers Convention (No. 189) was adopted in 2011, twelve Latin American countries have ratified it. Argentina, Chile and Paraguay are particularly interesting when analysing how C189 influenced national reforms because they made sweeping amendments to their legislation after the Convention was adopted. In the case of Argentina and Chile, the debate on the reforms took place as the Convention was in the process of being ratified, and in Paraguay after ratification. In these countries, adapting national regulatory frameworks to the Convention's provisions involved two main challenges. One of them was to draft legislation considering the specific nature of domestic work while guaranteeing these workers the same rights granted to employees. The other was to innovate in relation to enforcement mechanisms to ensure compliance with new laws when domestic work has been generally perceived as a relation based on affection and trust and regulated by customary practices. Comparing the way in which national legislation was shaped following the international standard in these three countries reveals diverse uses of C189 reflecting distinct approaches to regulating this activity and the features of the labour market in each country. This means that during the law-making process, C189 was read, interpreted and translated in different ways in each country for the purpose of filling the legal gaps associated with the protection of domestic workers. The aim of this article is to analyse how the principles and rights established in C189 are assimilated to different national contexts while considering the common challenges facing legislators in these three countries.

1 INTRODUCTION

Following the adoption of ILO Decent Work for Domestic Workers Convention (No. 189) in 2011, eleven Latin American countries ratified the Convention during the first four years,[1] with Brazil recently added to this list.

* This research was conducted during residence at the Fung Global Fellow Program, Princeton Institute for International and Regional Studies (Princeton University), with funding by CONICET (Argentina's National Research Council). My sincerest thanks to Adelle Blackett and Anne Trebilcock, whose generous comments and suggestions were crucial when reviewing the previous version of this article. I would also like to thank the anonymous peer reviewer for the careful reading and thoughtful remarks.

** Centro de Investigaciones Sociales del Instituto de Desarrollo Económico y Social, CONICET (CIS-CONICET/IDES), Argentina. Email: lorena.poblete@conicet.gov.ar.

1 Uruguay ratified C189 in 2012; Bolivia, Ecuador, Nicaragua and Paraguay in 2013; Argentina, Colombia and Costa Rica in 2014; Dominican Republic, Chile and Panama in 2015. After this, there were no new ratifications until Brazil ratified in Jan. 2018.

Poblete, Lorena. 'The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay'. *International Journal of Comparative Labour Law and Industrial Relations* 34, no. 2 (2018): 177–202.

These countries represent almost half of all Member States ratifying it by 2018. During the 1990s, some countries implemented limited reforms. However, at the turn of the century, various countries undertook comprehensive reforms, like Bolivia and Peru in 2003, and Costa Rica in 2009.[2] At that time, while some domestic workers' organizations were participating in the standard-setting process,[3] others aimed to engage government representatives and the main unions to promote legislative reforms at the national level. As a result, when C189 was adopted in 2011, many Latin American countries had already started the process of regulatory reform or had political and social support for the initiative. In that context, C189 became a catalyst for reforms already underway and a model for reforming domestic work legislation in Latin American countries, regardless of whether or not they ratified it.

Argentina, Chile and Paraguay are particularly interesting when analysing how C189 influenced national reforms because they made sweeping reforms to their legislation after the Convention was adopted. In the case of Argentina and Chile, the debate on new laws occurred as the Convention was in the process of being ratified, and in Paraguay after ratification. Legislation on domestic work in these countries focused on the specific features of this kind of work, conceiving of it as 'work like no other'.[4] In Chile and Paraguay, domestic work is covered by a special section of the Labour Code, while in Argentina it is subject to a special labour regime. In Chile, the changes to domestic work regulation have occurred gradually since the 1990s so that when C189 was ratified, the country's legislation was relatively aligned with its provisions. In the case of Paraguay and Argentina, countries where regulation of the domestic sector had been subject to limited changes in the 1990s and 2000s, more amendments were needed.

Comparing the way in which national legislation was fashioned in line with the international standard in these three countries reveals diverse uses of C189 linked with distinct approaches to regulating this activity and the features

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2 Mary Rosaria Goldsmith, *La experiencia de CONLACTRAHO como organización internacional de trabajadores y trabajadoras domésticas*, in Mary Rosaria Goldsmith, Rosario Baptista Canedo, Ariel Ferrari & María Celia Vence, *Hacia un fortalecimiento de derechos laborales en el trabajo de hogar: algunas experiencias de América Latina* (Friedrich-Ebert-Stiftung 2010).

3 *See* e.g. Mary Rosaria Goldsmith, *Los espacios internacionales de la participación política de las trabajadoras remuneradas del hogar*, 45 Revista de Estudios Sociales 233, 246 (2013); Helen Schwenken, *Mobilisation des travailleuses domestiques migrantes: de la cuisine à l'Organisation International du Travail*, 51 Cahiers du Genre 113, 265 (2011); Jennifer Fish, *Domestic Workers of the World Unite! A Global Movement for Dignity and Human Rights* (NYU Press 2017).

4 Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation*, Labour Law and Labour Relations Programme, Working Paper n. 2 (International Labour Office 1998); Adelle Blackett, *The Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201). Introductory Note*, 53 Int'l Legal Materials 250, 266 (2014).

of the labour market in each country. This means that during the law-making process in each country C189 was read, interpreted and translated differently into national legislation with the goal of filling the legal gaps associated with the protection of domestic workers. The aim of this article is to analyse how the principles and rights established in C189 are assimilated to different national contexts[5] while considering the common challenges facing legislators in these three countries.

In all three cases, legislators took decisive steps to change existing legislation. One key argument was the need to settle a historic debt owed to domestic workers.[6] According to the legislators, it was essential to recognize the social and labour rights long denied under domestic work regimes: in this regard, the principle behind the reform was non-discrimination. During the law-making process, legislators faced two main challenges. The first was to draft legislation that considered the specific nature of the domestic work while guaranteeing these workers the same rights granted to employees. The second challenge was to find ways to implement the law.

Informality tends to characterize domestic work because employers and workers conceive of it not as a labour relationship but as a form of personal assistance or help. The contemporary notion of domestic work is still based on the original servitude model that created jobs of this kind.[7] During the twentieth century, although domestic work changed due to increasing numbers of women in the labour market – especially in middle class jobs[8]– it continued to be women's work, without social value.[9] Since domestic work was seen as a natural activity for women, domestic workers were viewed as family members and

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5 Reports on how these countries are giving effect to the Convention remain to be examined by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). In relation to the report due from Argentina, the General Confederation of Labour of the Argentine Republic (CGT RA) submitted a comment that was transmitted to the Government on 19 Sept. 2016. A comment by the CEACR ILO Committee of Experts on the Application of Conventions and Recommendations may be expected. For an explanation of the role of the CEACR in the supervisory system, *see* ILO, *Rules of the Game: A Brief Introduction to International Labour Standards*, rev. ed. (ILO 2014).

6 *See* Francisca Pereyra & Lorena Poblete, *¿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)*, 30 Cuadernos del IDES 73,102 (2015).

7 Elizabeth Kuznesof, *Historia del servicio doméstico en la América hispana (1492–1980)*. In: Elsa Chaney & Mary Garcia Castro, *Muchacha, cachifa, criada, empleada, empregadinha, sirvienta y … nada más. Trabajadoras del hogar en América Latina y el Caribe* (Nueva Sociedad 1993).

8 *See* specially, Natalia Gherardi & Carla Zibecchi, *El derecho al trabajo y la ocupación de las mujeres: una visión regional para América Latina*, in *Género y empleo: iniciativas de la sociedad civil como modelos para la construcción de políticas públicas de empleo con mirada de género* (María Paula Di Pietro ed., Equipo Latinoamericano de Justicia y Género 2010).

9 *See* Bruno Lautier, *Las empleadas domésticas latinoamericanas y la sociología del trabajo: algunas observaciones acerca del caso brasileño*, 65 Revista Mexicana de Sociología 789, 814 (2003).

subject to the family's authority.[10] Even today, the notion of paid domestic work continues to be mixed with the traditional idea of service and servitude.[11] The social inequality that led workers from poor sectors – commonly from indigenous communities – to seek work in wealthy households contributes to reaffirming this model.

Thus, undeclared employment is the norm in this sector, meaning that labour rights are not applied and workers have no access to social benefits attached to the employment contract.[12] Given that the state has usually been unwilling or unable to ensure compliance with the law, informal arrangements govern this particular type of labour relation in most cases. Many employers say that they give their domestic workers more rights than required by law; as a result, it would be unnecessary for them to sign a contract.[13] Also, some domestic workers prefer informality when formality would mean forfeiting the benefits of social programs. Therefore, for the law to be implemented, employers and domestic workers have to engage in a contractual relationship. Hence, the ultimate challenge was to design legislation and labour institutions able to reshape labour practices historically governed by custom, where domestic work has been fashioned as a modern form of servitude.

This article is organized in four sections. The first two seek to introduce the reader to the cases studies, whereas the analysis is presented in the last two sections. The first offers a summary description of the domestic work sector, while the second presents a brief overview of the regulation of domestic work in each of these countries. The third provides an analysis of the main points of regulatory reforms, focusing on the bills debated in Congress, the controversial aspects of the reforms and the decisions made with regard to new regulations i.e. the first major challenge legislators faced. Finally, the fourth section examines how Argentina, Chile and Paraguay have dealt with the second challenge: the implementation of domestic work legislation.

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10 *See* e.g. Jurema Brites, *Afeto e desigualdade: gênero, geração e classe entre empregadas domésticas e seusc empregadores*, 29 Cadernos Pagu 91, 109 (2007); Bruno Lautier & Blandine Destremau, dossier *Femmes en domesticité. Les domestiques du Sud, au Nord et au Sud*, 170 Revue Tiers Monde 25, 113 (2002); Débora Gorbán & Ania Tizziani, *Inferiorization and Deference: The Construction of Social Hierarchies in the Context of Paid Domestic Labor*, 46 Women's Stud. Int'l F. 54, 62 (2014).

11 *See* specially, *Trabajo doméstico: un largo camino hacia el trabajo decente* (María Elena Valenzuela & Claudia Mora eds, OIT 2009).

12 *See* e.g. Martha Alter Chen, *Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges*, 23 Can. J. Women & L. 167, 184 (2011); Deirdre McCann & Jill Murray, *Prompting Formalisation Through Labour Market Regulation: A 'Framed Flexibility' Model for Domestic Work*, 43 Indus. L.J. 319, 348 (2014).

13 Francisca Pereyra, *El acceso desigual de los derechos laborales en el servicio doméstico argentino: una aproximación desde la óptica de las empleadoras*, 45 Estudios Sociales 54, 66 (2013).

2 DOMESTIC WORK SECTOR IN ARGENTINA, CHILE AND PARAGUAY

These two challenges vary since domestic work has distinctive features in each national context. In Argentina, there are one million paid domestic workers (representing 7% of the workforce and 17% of working women); in Chile, there are approximately 400,000 (representing 5% and 9%, respectively); and in Paraguay, 230,000 (7% and 16%). In the past fifteen years, while the number of domestic workers has risen in Argentina, it has remained relatively stable in Paraguay and dropped in Chile.[14]

Domestic workers in Chile and in Argentina are older than their counterparts in Paraguay: 46, 42 and 33 years old on average, respectively. Although the number of young domestic workers has been declining in the region,[15] domestic workers ages 15 to 24 represent 5% in Chile, 17% in Argentina and 30% in Paraguay.[16] In the latter, the traditional institution of *criadazgo* is still in place. Condemned by many as a form of modern-day slavery, *criadazgo* is the practice of poor families – frequently rural families – handing 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.[17] Twenty-one per cent of minors aged from ten to seventeen work in Paraguay, and 30% of female minors are employed as domestic workers.[18] Among young domestic workers (under the age of 20), 95% are employed as live-in workers.[19]

In both Paraguay and Argentina, most domestic workers come from impoverished or rural areas of the country. Many Paraguayan domestic workers migrate to other countries in the region, especially Argentina.[20] Migrant domestic workers

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14 OIT, *Panorama Laboral 2016* (OIT/Oficina Regional para América Latina y el Caribe 2016).

15 In Latin America, domestic workers represent only 9.7% of all young working women (ages 15–24). OIT, *supra* n. 14.

16 OIT, *supra* n. 14. *See* UNICEF, *Edades mínimas legales y la realización de los derechos de los y las adolescentes. Una revisión de la situación en América Latina y el Caribe* (UNICEF 2014); Hugo Valiente, Lilian Soto & Line Bareiro, *Necesarias, invisibles, discriminadas: las trabajadoras del servicio doméstico en el Paraguay* (OIT/IPEC 2005).

17 OIT, *Prevención y eliminación del trabajo infantil doméstico en Sudamérica – Paraguay* (OIT/IPEC 2001).

18 CONAETI & OIT, *Estrategia Nacional de Prevención y Erradicación del Trabajo Infantil y Protección del Trabajo Adolescente del Paraguay, 2010–2015* (Ministerio de Trabajo de Paraguay/OIT 2010).

19 María Victoria Heikel, *Trabajo doméstico remunerado en Paraguay* (OIT 2014).

20 Patricio Dobrée, Myrian González & Clyde Soto, *Perfil de Paraguay con relación al trabajo doméstico de personas migrantes en Argentina* (UNESCO/OIT/UE 2015); Giuseppe Messina, *Inserción de las trabajadoras domésticas paraguayas a partir de las reformas laborales y migratorias en Argentina*, Documento de trabajo no.10 (OIT 2015).

represent 6% of all domestic workers in Chile (commonly from Peru),[21] and 15% in Argentina.[22]

Contractual arrangements also differ substantially. In Chile, domestic workers who live in their employer's household account for 15% of the sector, while in Paraguay this group accounts for 10% and in Argentina less than 2%. Before the reform, live-in domestic workers in Argentina and Chile had 12 hours of daily rest, while Paraguayans had just 9. Hence, domestic workers in Paraguay dedicate 45 hours to their jobs each week on average: 20% more than in Chile (36 hours per week) and almost twice the average in Argentina (25 weekly hours).[23]

In all three countries, domestic workers earned less than the legal minimum wage. In Argentina, wages varied frequently, representing nearly 80% of the legal minimum wage. In Chile, the law[24] established that domestic workers' wages had to be 83% of the legal minimum wage in 2008, 92% in 2009 and equal to the minimum wage in 2011. The situation was quite different in Paraguay, where the Labour Code laid down that domestic workers must be paid 40% of the legal minimum wage.

In Latin America in general, and in these countries in particular, informality is a common feature of the labour market. In 2017, in Argentina, almost 35% of employees were in an unregistered employment relationship.[25] In Chile the same year, the informality rate stood at 30%.[26] Paraguay had the highest rate of informality: 71% in 2016.[27] In Argentina, although informal domestic work has diminished significantly in the last fifteen years, formal domestic workers remain a

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21 Claudia Órdenes Carvajal, *Servicio doméstico en Chile: caracterización, evolución y determinantes de su participación laboral*, Tesis de maestría, Universidad de Chile (2016).

22 Francisca Pereyra & Ania Tizziani, *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*, 23 Revista Trabajo y Sociedad 5, 25 (2014).

23 OIT, *Panorama Laboral 2012* (OIT/Oficina Regional para América Latina y el Caribe 2012).

24 Law 20279, 1 July 2008, Chile.

25 Ministerio de Trabajo, Empleo y Seguridad Social, Argentina. *Boletín de Estadísticas Laborales*, http://www.trabajo.gob.ar/estadisticas/Bel/index.asp. In Argentina, the rate of informal work corresponds to the percentage of employees who made no contributions to social security. Domestic workers are included in this statistic.

26 INE (Instituto Nacional de Estadísticas) de Chile. *Informalidad*, fn. 1 (31 Jan. 2018), http://www.ine.cl/docs/default-source/boletines/informalidad-laboral/2017/español/bolet%C3%ADn-informalidad-laboral-ond-2017.pdf?sfvrsn=4.
The informality rate corresponds to the number of people in informal activities as a percentage of the total of working people. It includes employees and domestic workers without access to social security benefits associated with a labour relationship; unpaid family members; and employers and self-employed workers not registered with the tax agency.

27 Ministerio de Trabajo, Empleo y Seguridad Social, Paraguay. *Ocupación Informal en Paraguay. Evolución, características y acciones públicas* (2016), http://sinafocal.gov.py/application/files/7014/9623/5077/Ocupacion_Informal_en_Paraguay.pdf.
The definition of informality is the same as the one used in Argentina i.e. only employees are included. That means that if the Chilean definition were used in Argentina and Paraguay, their informality rates would be higher.

tiny minority: while in 2003, 5% of Argentina's domestic workers were enrolled in the retirement system, this number had risen to 25% by 2016.[28] In Chile, informal domestic workers represented 76% of nationwide domestic workers in 2017,[29] and in Paraguay 95%.[30] Thus, the specifics of each labour market shaped the priorities of legislators in each country and guided the decision-making process.

3 LEGISLATION ON DOMESTIC WORK IN ARGENTINA, CHILE AND PARAGUAY

In Argentina, the Special Regime on Domestic Work,[31] enacted in 1956, was the only legislation governing domestic work until new legislation was passed over a half century later. The 1956 regime covered only a fraction of these labourers: domestic workers rendering at least 4 hours of work, 4 days a week, in a single household. All other contractual arrangements were excluded, placing countless workers outside the scope of the law. In 1999, Congress introduced a new social security regime[32] drafted specifically to extend benefits to domestic workers working more than 6 and less than 16 hours a week for the same employer.[33] In spite of granting these social security benefits, the law did not allow domestic workers working fewer than 16 hours per week to claim the labour rights established in the 1956 regime. One additional milestone was the prohibition of domestic work under the age of sixteen, passed in 2008.[34]

Domestic work in Paraguay is covered by the Labour Code.[35] In 1995, new legislation ensured an annual bonus, severance pay in case of unjustified dismissal, and a rest period of 12 hours per day, but no other limits were placed on the number of working hours. Paraguay's Labour Code establishes a shorter period of notice for dismissal. In addition, in 2013, domestic workers gained the right to enrol in the pension system for self-employed workers.[36]

In Chile, domestic work is also covered by the Labour Code,[37] which differentiates between live-in and live-out arrangements. Both regimes stipulate

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[28] Francisca Pereyra, *Trabajadoras domésticas y protección social en Argentina: avances y desafíos pendientes*, Serie de Trabajo n. 15 (OIT 2017).
[29] INE, *infra* n. 83.
[30] Horacio Santander, *Paraguay: situación actual de las mpymes y las políticas de formalización*. OIT Cono Sur, informe técnico n. 3 (OIT 2017).
[31] Presidential Decree 326/56, 14 Jan. 1956, Argentina.
[32] Law 25239, 31 Dec. 1999, Argentina.
[33] Lorena Poblete, *New Rights, Old Protections: The New Regulation for Domestic Workers in Argentina*, McGill/ Labour Law and Development Research Laboratory working paper series 5 (2015).
[34] Law 26390, 25 June 2008, Argentina. This law established sixteen years as the minimum age for signing an employment contract in all sectors.
[35] Paraguayan Labour Code (division I, s. III 'Special Contracts', Ch. IV).
[36] Law 4933, 5 June 2013, Paraguay.
[37] Chilean Labour Code, division I, s. II 'Special Contracts,' Ch. V).

salary payment methods (cash and in kind) and a two-week trial period, though each has its own cap on working hours. Chilean domestic workers are entitled to severance pay under a system specific to the sector[38]; likewise, the social security and healthcare contributions for domestic workers are subject to a special calculation regime. In recent years, domestic workers in Chile were granted the right to maternity leave,[39] social security benefits from the New Solidarity Pillar, [40] the minimum wage,[41] and one day off each week.[42]

As Goldsmith[43] has noted, although there were some minor amendments to domestic worker legislation in the 1990s, broader changes did not occur until the adoption of C189. Paraguay, for example, partially amended the legislative framework for domestic work in 1995, however new rights were incorporated into the regime a decade later. Argentina had the oldest existing legislation and did not modify the 1956 regime until 2013. During this period, only the 1999 special social security regime was introduced. Chile is the most noteworthy case of the three countries, since legislators began amending the sector's normative framework in 1998, continued in 2007, and finally passed new legislation in 2014.[44] Hence, the regulatory innovations proposed in C189 encountered diverse national normative contexts.

4 DOMESTIC WORK REGULATORY REFORMS

Regulatory reforms in all three countries were guided by the principles established in Article 3 of C189. Legislators would promote and protect human rights including the fundamental principles and rights at work, such as freedom of association and the right to collective bargaining; 'the elimination of all forms of forced or compulsory labour; the abolition of child labour; and, the elimination of discrimination in respect of employment and occupation'.[45] However, in each country, amendments to legislation targeted different issues. While Argentina's regulatory reform focused on expanding the scope of the law and

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38 Chilean Labour Code, Art. 161.
39 Law 19591, 9 Nov. 1998, Chile.
40 Law 20255, 17 Mar. 2008, Chile. This law reforms the pension system.
41 Law 20279, 1 July 2008, Chile.
42 Law 20336, 3 Apr. 2009, Chile.
43 Goldsmith, *supra* n. 2.
44 Law 20,786, 27 Oct. 2014, Chile. In the case of Chile, 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 worker rights. In spite of political differences, the draft 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.
45 ILO C189, Art. 3.

social security benefits, Chilean reform sought to ensure non-discriminatory practices regarding access to public spaces, working time and wages. In contrast, Paraguay engaged in a comprehensive reform, recognizing various labour and social rights.

4.1 Broad reform in argentina

In 2007, two different political groups presented bills concerning the Work Hazards Act[46] and its coverage of domestic workers. The bills, however, made no headway in Congress because at that point, the rights of domestic workers were not on the political agenda.[47] New bills would not be presented until the ILO standard-setting process was underway. Between 2009 and 2011, thirteen different bills were formally introduced in Congress. Some bills proposed to amend the 1956 regime, while others recommended a new special regime or suggested incorporating domestic workers into the Employment Contract Act[48] covering private sector employees. The bill that guided the congressional debate was introduced by the Executive in March 2010. It advanced a new special regime that would ensure to all domestic workers – regardless of the number of hours they work – the same rights acknowledged under the Employment Contract Act while also including rights based on the specific nature of domestic work.

Following Article 10 of C189, the law approved in 2013[49] establishes the right to an annual bonus, regular leave, special leave, overtime pay and severance pay equal to that granted to employees. Although some of these rights were included in the 1956 regime, others appear for the first time in the new legislation – such as maternity leave – while others still became equivalent to those stipulated in the Employment Contract Act – such as severance pay, overtime pay and annual holidays. The 2013 act establishes collective bargaining rights in line with R201 (paragraph 2), and provides for insurance against occupational hazards.

By acknowledging the specific nature of domestic work, the Act provided these workers with additional rights: recognizing caregivers as domestic workers, establishing additional protection for younger workers (aged sixteen to eighteen), and redefining the trial period. Although in practice caregiving tasks often

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46 Law 24557, 4 Oct. 1995, Argentina.

47 *See* Lorena Poblete, *When the ILO Domestic Workers Convention Meets Latin American Regulatory Reforms. A Comparative Study of Argentina, Chile and Paraguay*, Labour Law Research Network (LLRN) Conference, University of Toronto (2017).

48 Law 20744 (Employment Contract Act), 27 Sept. 1974, Argentina.

49 Law 26844 (Special Regime of Employment Contract for Domestic Workers), 12 Apr. 2013, Argentina.

accompanied cleaning responsibilities,[50] only childcare was considered as part of domestic work under the 1956 regime. With regards to young workers, in line with R201 (paragraph 5), the new law limits their working time[51] and prohibits live-in arrangements.[52] It also establishes that employers have to ensure that the workers are able to attend high school.[53] In terms of the trial period, the new Act reduces the ninety-day trial period specified in both the 1956 domestic work regime and the Employment Contracts Act. Under the new Act, the trial period is limited to thirty days for live-in workers and fifteen days for those working by the hour under a live-out arrangement.[54]

Although it recognizes new labour rights, the 2013 Act maintains some of the limitations inherent in the previous legislation, specifically with regard to social security benefits. Following several proposals for including domestic workers in the general social security regime, the final version of the Act stipulates that the Special Social Security Regime established in 1999[55] will continue in effect. This regime establishes a difference between those working more than 16 hours per week for a single employer, granting them direct access to social security (health insurance and pensions), and those working fewer than 16 hours per week, who have to supplement the employer's contributions in order to access the same benefits.[56] Concerning family allowances, the bill approved in the Chamber of Deputies, in 2011, only acknowledged domestic workers' right to the maternity allowance. Later, the bill approved in the Senate in 2012 conferred the right to all benefits established under the Family Allowances Act.[57] However, the final bill included only three types of allowances: pregnancy, maternity and 'universal child allowance'.

4.2 Gradual reform in chile

In 1998, Chilean legislators introduced maternity leave for domestic workers, a right that had not been recognized in many countries in the region at the time.[58] Almost a decade later came a series of amendments that intensified as a result of the ratification of ILO C189. In 2008, domestic workers were granted the right to join

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50 *See* Valeria Esquivel, *Care Workers in Argentina: At the Crossroads of Labour Market Institutions and Care Services*, 149 Int'l Lab. Rev. 477, 493 (2010).
51 Law 26844, Art. 11, 12 Apr. 2013, Argentina.
52 Law 26844, Art. 13, 12 Apr. 2013, Argentina.
53 Law 26844, Art. 12, 12 Apr. 2013, Argentina.
54 Law 26844, Art. 7, 12 Apr. 2013, Argentina.
55 Law 25239, 31 December 1999, Argentina.
56 Poblete, *supra* n. 33.
57 Law 24714, 18 Oct. 1996, Argentina.
58 Hugo Valiente, *Regímenes jurídicos sobre trabajo doméstico remunerado en los estados del MERCOSUR* (OXFAM 2010).

the New Solidarity Pillar[59] and were to be gradually incorporated into the minimum wage regime.[60] In 2009, in order to address discrimination against workers who lived with their employers, a one-day mandatory rest period was granted. In addition, domestic workers now have the right to the day off on national holidays.[61] All of these provisions were in accordance with C189.

The three bills presented in 2011 and 2012 aimed to further the reforms introduced between 2008 and 2009. All of the bills acknowledged the unique characteristics of domestic work, but stipulated that legislation could not discriminate against domestic workers because of them. Citing Article 19 of the Chilean Constitution, Article 2 of the Labour Code and C189, the drafters of these bills proposed that domestic work should be incorporated into the general labour regime. Presented in June 2011, the first bill – which proposed to prohibit the use of uniforms in public for domestic workers – led to a series of amendments. The proposal came after a controversy regarding the rules at a golf club (Las Brisas de Chicureo) where domestic workers were required to wear a uniform so they could be easily identified.[62] The Household Workers Union, with the support of a legislator and the Labour Ministry, filed for an injunction against the golf club. When the court refused to grant the injunction, a group of legislators joined forces to enact a law that would protect domestic workers from this kind of social discrimination. The new act established that: 'An employer cannot make the hiring, remaining on the job or contract renewal of domestic workers … conditional on the use of uniforms, aprons or any other identifying clothing or accessory in public'.[63]

The second bill presented in 2011 and the 2012 Executive bill aimed to eliminate discriminatory legislation with regard to working time, weekly rest periods and salary structure. The Labour Code stipulated that live-out workers could work up to 12 hours per day, 6 days a week.[64] Following C189 Article 10, the Executive bill proposed incorporating these workers into the general working-time regime, implementing the law over two years, up to a maximum of 45 hours per week.[65] However, considering that domestic work requires flexible hours in order to adapt to the needs of the employer's family, the Executive proposed allowing up to 15 additional hours per week, with 50% more pay,[66] in keeping

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59 Law 20255, 17 Mar. 2008, Chile.
60 Law 20279, 1 July 2008, Chile.
61 Law 20336, 3 Apr. 2009, Chile.
62 *See* the press service of the Chilean House of Representatives, https://www.camara.cl/prensa/noticias_detalle.aspx?prmid=47836; UChile, La Segunda, El Mostrador, La Voz, 26 Dec. 2011.
63 Law 20786, 27 Oct. 2014, Chile, Art. 151 bis.
64 Chilean Labour Code, Art. 149 and Art. 34.
65 Chilean Labour Code, Art. 149, s. (a).
66 Chilean Labour Code, Art. 149, s. (e).

with the overtime regulations stipulated in the Labour Code. For live-in workers, the Labour Code only stipulated a minimum rest period of 12 hours per day, including at least 9 straight hours, and 1 day off per week, which could be divided into two half days, as established in the 2009 Act.[67] In order to match the rest period of the general regime, the Executive proposed making Sunday a mandatory day off and adding two more days off per month.

The debate on salary components took place as the deadline neared for guaranteeing domestic workers the full minimum wage. In line with C189 (Article 11) and R201 (paragraph 14), the 2014 Act integrates domestic workers in the general regime[68] and prohibits employers from deducting room and board from their salaries.[69] This practice was widespread in Chile.

Two elements related to the institutionalization of labour relations between employer and domestic worker not included in the initial bills were incorporated in the Act. In addition to establishing the requirement of a written employment contract to be registered with the Labour Office, section 146 established the need to indicate in the employment contract the type of work to be performed and the domicile where work is to be rendered. This procedure would facilitate the labour inspection proposed by C189 and R201.

4.3 Ambitious reform in paraguay

In Paraguay, legislative reform drew extensively on C189. Paraguay had ratified the Convention in 2012,[70] and the congressional bill was not introduced until July 2013. Legislators highlighted the need to adopt a more precise definition of domestic work in order to establish clearly which workers would fall within the scope of the law. They also agreed on the right to a contract of employment with the guarantees established in the Labour Code. However, they disagreed with regard to setting a minimum age; recognizing the minimum wage; establishing social security and healthcare insurance as mandatory; defining working time; and regulating work on holidays.

The proposed minimum age was eighteen, as established in the Labour Code.[71] However, the Act adopted by Congress finally allowed minors aged sixteen and seventeen to work, in accordance with the Childhood and Adolescence Code.[72] The Executive vetoed this provision considering that minors performing domestic work contravened ratified ILO Conventions 138, 182 and

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67 Law 20336, 3 Apr. 2009, Chile.
68 Chilean Labour Code, Art. 54.
69 Chilean Labour Code, Art. 151.
70 Law 4819, 10 December 2012, Paraguay.
71 Paraguayan Labour Code, Art. 35.
72 Law 1680 (Childhood and Adolescence Code), 30 May 2001, Paraguay.

189.[73] The main goal was to abolish the *criadazgo*. As a result, the 2015 Act prohibited domestic work by anyone under the age of eighteen.

The most critical moment in the congressional debate came when the topic of incorporating domestic workers into the minimum wage regime was introduced. The Labour Code establishes that the salary of domestic workers cannot be less than 40% of the legal minimum wage. Some legislators recommended raising this minimum to 60%, while other legislators suggested setting it at 70% or matching domestic worker salaries to the legal minimum wage. However, the 2015 Act stated that domestic workers' salaries paid in cash cannot be lower than 60% of the legal minimum wage. Based on Article 12(2) of C189, legislators justified their decision, arguing that with the room and board, domestic workers would have equal pay.[74] This interpretation of C189 diverges from the one made by Chilean legislators concerning the same issue. In this case they based their decision to forbid the deduction of room and board from the salary on Article 11 of C189 and paragraph 14 of R201.

One new aspect of the bill in Paraguay was that it endorsed making social security mandatory for all domestic workers, encompassing the Sickness-Maternity Fund and the Retirement Pension Fund.[75] However, in the implementation of the law, the criterion of 'regularity' was added with regard to domestic workers and their access to social security.[76] It refers to 'the performance of domestic work for at least twelve hours per week or forty-eight hours per month in the home or room of a single employer'.[77] Following the definition of domestic work provided by C189 (Article 1), in Paraguay as in Argentina, social security benefits are guaranteed for those who perform domestic work 'on an occupational basis'. Thus, occasional or sporadic work is excluded from these benefits. Nevertheless, the frontier between occasional and regular work in live-out per hour arrangement is not always clear. As a result, some domestic workers are excluded de facto from social security benefits in these countries.

With regard to working hours, the 2015 Act established that live-out workers would be integrated into the general working-time regime.[78] There is no such limit for live-in workers, who continue to be entitled to 12 hours of daily rest. In the case of working on holidays, Congress also took the most conservative stance,

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[73] Presidential Decree 3458/15, 26 May 2015, Paraguay. The Decree referred to the ILO Convention 138 (Minimum Age Convention, 1973), Convention 182 (Worst Forms of Child Labour Convention, 1999), and Convention 189 (Decent Work for Domestic Workers).

[74] Poblete, *supra* n. 47.

[75] Law 375, Gazeta Oficial no. 334, 1956, at 4. Biblioteca y Archivo Central del Congreso de la Nación. http://www.bacn.gov.py.

[76] Resolution 233/16, Ministry of Labour, Art. 15, 22 Apr. 2016, Paraguay.

[77] Resolution 233/16, Ministry of Labour, Art. 2, s. IV, 22 Apr. 2016, Paraguay.

[78] Law 5407, Art. 13, 12 Oct. 2015, Paraguay.

that is, paying domestic workers double their normal salaries on these days, though without entitling them to another day off in compensation. The new law thus set limits on working time, while also creating an option for exceeding these limits. Although in compliance with the provisions of C189, flexibility in working time could be a source of abusive practices.

The law that passed in 2015[79] included provision for a mandatory written contract and labour inspection to ensure compliance. The questions that had been a source of dispute among the legislators were resolved on the floor in different ways. In most cases, the most conservative option prevailed, with the exception of expanding access to social security and healthcare insurance.

4.4 Transposing convention 189 into national regulations

Despite the localized aspects of the congressional debates in each country, regulatory reforms in Argentina, Chile and Paraguay particularly focused on Articles 4, 7, 10, 11 and 14 of C189.

Article 10 was at the centre of the debate. Legislators were preoccupied with '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'.[80] All three countries implemented the general working-time regime for domestic workers. Although weekly rest was guaranteed for domestic workers, the length of the period varied from country to country: in Paraguay, domestic workers have 1 day off per week; in Argentina, 35 hours; and in Chile, two days per week. Concerning overtime compensation, domestic workers in the three countries follow the general regime, even though in Chile there is a special overtime regime of 15 hours per week for domestic workers.

The integration of domestic workers into the general working-time regime has different implications in these three countries. In Argentina, where the general regime is 48 weekly hours, only 22% of domestic workers work more than 35 hours per week, while half of all domestic workers in the country works less than 20 hours per week.[81] For that reason, placing a limit on working time was not an issue during the law-making process. In Paraguay, however, 42% of all domestic workers do more than 48 hours of work per week.[82] As a result, establishing a

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79 Law 12 Oct. 5407, 2015, Paraguay.

80 ILO C189, Art. 10.

81 INDEC (Instituto Nacional de Estadísticas y Censos), EPH (Encuesta Permanente de Hogares) 2016 www.indec.gov.ar.

82 UNFPA (Fondo de Población de las Naciones Unidas), *Conociendo una realidad invisible. Características y condiciones del trabajo doméstico remunerado en Paraguay,* Documento de Trabajo n. 10 (UNFPA-Programa OPORTUNIDADES, 2013).

maximum of 48 weekly hours was important to improve working conditions, though it also proved a controversial aspect of the debate. In Chile, which has a general regime of 45 hours, almost half of domestic workers (44%) work between 31 and 45 hours per week. Only 14% of domestic workers do more than 46 hours of work per week. Within this group, half work between 46 and 50 hours per week; 30% between 51 and 60 hours, and 20% more than 61 hours per week.[83] However, introducing the general working-time regime in domestic work legislation proved controversial during the congressional debate. That is why the 2014 bill proposed reducing the number of working hours over a two-year period to gradually implement the general regime of 45 hours per week. Following the passage of the new law, domestic workers could work no more than 60 hours per week, and during the following year, no more than fifty-four. However, considering that domestic work requires flexible hours in order to adapt to the needs of the employer's family, the law allows for up to 15 additional hours per week. Domestic workers would receive 50% more for these hours, in keeping with the overtime regulations stipulated in the Labour Code. Thus, if employers required these additional hours, they could extend the work day of domestic workers, though by setting the overtime premium at 50%, legislators sought to dissuade the practice.

Article 11 of the Convention establishes that 'Each 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 Argentina and Chile, domestic workers – like the majority of employees – were included in the minimum wage regime. Paraguay interpreted C189 in a different way: the salary paid in cash represents 60% of legal minimum wage, because room and board is considered to cover the remaining 40%. This decision can be attributed to the fact that in Paraguay only 55% of employees working in the private sector earn at least the legal minimum wage.[84]

In accordance with Article 14 of C189, the three countries grant domestic workers access to the social security system. Although some exclusions remain, all domestic workers became eligible for healthcare insurance and pension benefits as a result of the legislative amendments. In all cases, contributions provided the workers with social security benefits. In Argentina and Paraguay, access to social security for domestic workers was made conditional on 'regular' work: 12 hours per week for the same employer in Paraguay, and 16 hours per week in Argentina.

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[83] INE (Instituto Nacional de Estadísticas) de Chile, ENE (Encuesta Nacional de Empleo) 2017 www.ine.cl.

[84] DGEEC (Dirección General de Estadísticas, Encuestas y Censos) de Paraguay, EPH (Encuesta Permanente de Hogares) 2016 http://www.dgeec.gov.py.

Concerning child labour, Paraguay and Argentina established new provisions. Domestic work by anyone under eighteen was forbidden in Paraguay. This decision aimed to abolish the common practice of *criadazgo*. In Argentina, young domestic workers between the ages of sixteen and eighteen were allowed to work in live-out arrangements but, in keeping with paragraph 5 of R201, working hours are limited and the live-in arrangement is forbidden. Also, in line with Article 4(2) of C189, the employer must ensure that these domestic workers are able to finish high school.

Although Article 7 of C189 was introduced in all three cases, Chile and Paraguay follow its specifications more to the letter, as well as paragraph 6 (3) and (4) of R201. A written and signed contract specifying working conditions was established, and models of contracts of employment were available. In Argentina, the 2013 Act did not make written contracts mandatory. However, the process of online enrolment obliges employers to define the employment relationship – specifying working hours, activities performed, the date of commencement, and salary. This provision aims to avoid a verbal contract between domestic workers and their employers, and therefore to establish a legal document serving to guarantee the rights recognized by the law.

Hence, the inclusion of C189 provisions into national regulations was made conditional on consensus as well as reflecting opposing positions in each national context. The new laws resulted from a compromise between the ideal regulation – for which the reference was C189 – and the regulatory innovations that legislators were able to defend as acceptable. Thus, the main challenge for legislators was to create legislation that would allow for the transformation of an employment relationship historically governed by customary practices. The relationship between the domestic worker and the employer family has been socially represented as work built on emotional bonds, intimacy and affection. Hence, this kind of employment relationship proves difficult to institutionalize.

5 FORMALIZATION AS A MAJOR CHALLENGE

In all three countries, a core concern in the congressional debates was whether the law could be effectively implemented. The aim was to develop different mechanisms to formalize this particular employment relationship, which generally develops in an informal manner. 'Formalization' – understood as the opposite of informality – thus became the keyword during the law-making process.

Like the concept of informality proposed by the ILO, formalization often proves ambiguous. As Davidov has highlighted,[85] this ambiguity can be attributed

[85] Guy Davidov, *Enforcement Problems in 'Informal' Labor Markets: A View from Israel*, 27 Comp. Lab. L. & Policy J. 3, 26 (2005).

to the overlapping of two different issues. On the one hand, informality refers to the exclusion of certain categories of workers from the law: this casts light on gaps in the existing legislation, which does not cover all of the positions in the labour market. On the other hand, informality is presented as a question of noncompliance with the law – or even fraud. As a result, state intervention can take two very different paths: it must expand the legal framework on the one hand, and implement effective enforcement mechanisms on the other. Legislators in these three countries tackled informality by taking both paths simultaneously, making legislation more inclusive while also focusing on the development of enforcement mechanisms.

The main difficulty in terms of enforcement arose from the characteristics of this particular workplace: the employer's residence. The inviolability of the home reduces to a certain extent the state's ability to verify compliance with these laws.[86] Innovative control mechanisms were needed to 'resolve the tension between two conflicting rights: the employer's right to protect his or her private domain and the worker's right to decent working conditions'.[87]

Various strategies appear in the range of policy solutions of the three countries under examination. Strategies for compliance include information campaigns, mechanisms for simplifying enrolment in social insurance schemes and the addition of advantages or benefits – like tax breaks for employers. In terms of enforcement strategies, there are systems for filing reports, mediation, workplace inspections, penalties for noncompliance, accessible labour courts and a process of *ex officio* formalization. Given the difficulty of implementing laws in a sector traditionally regulated by personal relations – based on the 'domestic world logic',[88] and guided by the local criteria of fairness and duty – legislators from these three countries sought to design innovative mechanisms while attempting to involve classical labour institutions. The situation was different in each country, leading to variations in the diagnosis of the problem of informality, the proposals on formalizing domestic work, and the set of strategies put into practice.

5.1 Formalization, a guiding principle of the 2015 act in Paraguay

Formalization was the main goal of legislative reform in Paraguay. During the congressional debate, legislators expressed the need to break away from the

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[86] *See*: María Gabriela Loyo & Mario D. Velásquez, *Aspectos jurídicos y económicos del trabajo doméstico remunerado en América Latina*, in *Trabajo doméstico: un largo camino hacia el trabajo decente* (María Elena Valenzuela & Claudia Mora eds, OIT 2009); María Luz Vega Ruiz, *L'administration et l'inspection du travail dans le domaine du travail domestique: les expériences de l'Amérique latine*, 23 (1) Can. J. Women & L. 341, 358 (2011).

[87] Janine Rodgers, *Cambios en el servicio doméstico en América Latina*, in *Trabajo doméstico: un largo camino hacia el trabajo decente* 104 (María Elena Valenzuela & Claudia Mora eds, OIT 2009).

[88] Luc Boltanski & Ève Chapello, *Le nouvel esprit du capitalisme,* (Paris: Fayard 1999).

paradigm of domestic work fashioned on servitude. Several senators referred to a 'cultural system of servitude', while others cited relationships 'akin to slavery', or described employers as feudal lords. As a result, the legislation was intended to instigate a cultural change, transforming the servility that traditionally characterized domestic work into a contractual relationship protected by law. For some legislators, it was important to comply with international conventions. For others, the goal was to protect domestic workers from the abuses associated with informal regulation of this kind of work. While no one came out against formalization, several legislators argued that moving too quickly in acknowledging worker rights could perpetuate informal relationships. One congressman asked:

> Do domestic workers deserve better treatment? Of course, they do. I agree they shouldn't work more than eight hours and that they shouldn't be woken up at one in the morning because the employer has arrived in a bad mood and wants some supper. Situations like these need to be remedied. And should their tasks in the households be clarified? Yes, they should. In fact, their tasks have to be clarified because otherwise the employers can be taken advantage of, treating workers in completely inhumane manner. I leave you with one thought, however: Could this be a vicious circle? Might our goals prove counter-productive? I wouldn't want us to slip further into the informality suffered by our domestic servants today.

The logic underpinning this argument is that the legislation needs to strike a balance between the recognition of domestic workers' rights and the risks and responsibilities inherent to employers. Considering that a domestic labour relationship differs from the classical employment relationship because the employer is not a firm but a family, the share of risks and responsibilities[89] that each party has to assume must also depart from the traditional model. If the law did not successfully strike this balance, employers would opt not to formalize the labour relationship and legislation would fail to expand the labour and social rights of these workers.

Those more resistant to changing the model argued that replacing a trust-based relationship between worker and employer with a contractual arrangement would only lead to legal conflicts. According to one congressman, 'It's going to be a field day for lawyers: clients will be banging down their doors to sue bosses who didn't pay them overtime, or this, that, the other'. 'Lawsuit industry', was another term the legislators used to express their opposition to the specific regulation of labour conditions.

In keeping with C189, the 2015 Act ultimately included several clauses that protect the employment relationship as well as mechanisms for inspection. First, the Act states that contracts are valid only when in writing and signed before a

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[89] Marie-Laure Morin, *Partage des risques et responsabilité de l'emploi. Contribution au débat sur la réforme du droit du travail*, 7/8 Droit Social 730, 738 (2000).

notary public.[90] The contract must specify the domestic worker's personal information, the address of the location where work will be performed, the contractual arrangement, the number of hours, and the salary. Both parties must receive a signed copy of the contract, with a third copy filed at the Ministry of Labour.[91] In cases in which there is no written contract, the specific provisions for possible means of proof of a contract of employment are those contained in the Labour Code.[92] The law establishes the presumption of an employment contract when the worker goes to the same household to work on set days of the week and at regular hours; when the worker remains in the employer's household even if the employer is not at home; and when the worker performs the regular tasks listed in section 3 of the Act for the employer or his/her family members.[93]

The law also includes mechanisms for reporting noncompliance and inspections based on the procedures established by the Labour Code in relation to other activities. If a worker or third party lodges a complaint, the Ministry of Labour can order an inspection. 'The inspections will take place at the employer's home in order to ascertain whether there has in fact been an instance of noncompliance with labour standards'.[94] The 2015 Act also contemplates that in the case of a formal complaint alleging that a domestic worker is not enrolled with the Social Welfare Institute, then it 'shall be notified to carry out the enrolment *ex officio*'.[95] This institute has also established a simplified online enrolment system with a hotline to facilitate the process. Public information campaigns promoting the rights of domestic workers were launched in a coordinated effort involving the Ministry of Labour and the local ILO office. These campaigns targeted both domestic workers working in Paraguay as well as those looking to migrate to Argentina.

With the exception of the campaigns, most of the strategies developed in Paraguay have been focused on enforcement. In order to ensure compliance, the 2015 Act contemplated traditional institutions like the labour courts, workplace inspections, mechanisms for social security '*ex-officio* enrolment' and sanctions for noncompliance.

5.2 Innovative mechanisms in argentina

In the case of Argentina, legislators strove to ensure that expanded rights would not discourage formalization, although there was a clear consensus on the need for it.

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90 Law 5407, Art. 7, 12 Oct. 2015, Paraguay.
91 Resolution 233/16, Ministry of Labour, Art. 6, 22 Apr. 2016, Paraguay.
92 Paraguayan Labour Code (book II, division VI, s. III 'Special Contracts', Ch. II).
93 Law 5407, Art. 9, 12 Oct. 2015, Paraguay.
94 Resolution 233/16, Ministry of Labour, Art. 20, 22 Apr. 2016, Paraguay.
95 Resolution 233/16, Ministry of Labour, Art. 25, 22 Apr. 2016, Paraguay.

Specifically, the debates focused on two distinct items: employer contributions to the social security system and the incompatibility between formal domestic work and the 'universal child allowance',[96] one of several benefits included in the family allowance regime. According to legislators, the increase in employer contributions could discourage them from enrolling workers and the incompatibility with the child allowance could lead domestic workers to keep their employment relation informal in order to maintain the benefit. The argument here is basically economic: formalization must be economically appealing for both the employer and the domestic worker.

Although Occupational Hazard Insurance generated an intense debate,[97] the question of costs was not an issue in this case. During legislative sessions, the legislators highlighted that domestic workers are exposed to multiple hazards due to the nature of their work, as well as the risks they might incur while travelling to and from work. Hence, it was important for both the domestic worker and the employer to be insured. With regard to social security, according to some legislators, the employer – conceived as 'another worker' – cannot bear all the labour costs as the 'employer' referred in the Employment Contract Act. For this reason, the 2013 Act establishes several mechanisms that aim to distribute risks in the case of more than one employer, transfer the responsibilities to the domestic workers themselves, or share the burden with the state through subsidies.[98]

During the congressional debate, the discussion surrounding family allowances was heated. Many legislators were vociferously against excluding domestic workers from the family allowances regime. The exclusion of such workers was connected to the contributory logic on which this regime is based, stating that a contribution by the employer is equivalent to 80% of the salary. According to some legislators, mandatory contributions to the social security system by employers constitute a hurdle to domestic workers' registration. For this reason, the legislators decided that, especially in the case of domestic workers, they would participate in the non-contributory regime. Such a decision was made in a context where the need to formalize the employment relationship and the intention of effectively extending social protection collide. Thus, the 2013 Act allows domestic workers to have

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[96] The 'universal child allowance' is a benefit from the non-contributory regime within the family allowance system established by an amendment to Law 24,714 in 2009 (Presidential Decree 1602/09). Structured as a conditional cash transfer program, the allowance provides a monthly per-child stipend to unemployed parents and informal workers who earn less than a legal minimum wage – thus excluding employees because they are covered by the contributory regime established by the same law.

[97] Domestic workers were added to the 'Occupational Hazard Insurance System' in the 2013 law, and it was implemented in Sept. 2014.

[98] Poblete, *supra* n. 33; Lorena Poblete, *Vers la protection du travail informel. Le regime du 'monotribut' en Argentine (1998–2013)*, 3 Revue Française des Affaires Sociales 120,136 (2015).

access to the 'universal child allowance' even when they are registered or if their income exceeds the minimum wage.[99]

In Argentina, ensuring the implementation of labour law is the responsibility of the Ministry of Labour as well as the Federal Tax Agency. Thus, the Federal Tax Agency has developed three different strategies: simplifying the paperwork (a common obstacle to formalization), offering tax incentives, and setting up a compulsory enrolment system for domestic workers who were presumed to be working informally.

The incorporation of new information technologies has contributed significantly to simplifying the regime. In 2002, the Federal Tax Agency launched an online system to simplify both enrolment and the payment of social security contributions. Following the passage of the 2013 Act, three easy enrolment options were offered: on the public treasury website, by phone, or through home banking services.[100] The goal was to make enrolling domestic workers as easy as a mouse-click. Like the 1956 regime, the 2013 Act established that domestic workers must have a work registration book (*libreta de trabajo*),[101] though online registration prevails in most of the provinces.

Second, for the purpose of promoting the enrolment of domestic workers, the 2013 Act establishes a tax exemption for employment providers. Subject to the limit prescribed by the Federal Tax Agency, employers of a domestic worker may be able to deduct the total amount of social contributions and even the worker's wages on their income tax returns. Since 2005, this measure has proved highly effective and for this reason, the tax incentives have remained in force. During the first year, formal employment in the sector almost tripled, soaring from 52,150 domestic workers enrolled in 2004 to 142,200 in 2006.[102]

Third, a special procedure was established in order to estimate which households might be employing domestic workers informally and then encourage employer compliance. In keeping with the legislation on social security fraud of 1970[103] (and its amendment in 2006[104]) and based on a formula for estimating the social security debts of employers in the textile industry and construction sector,[105]

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[99] These are the two principles for exclusion from the non-contributory regime of family allowance.

[100] Law 26844, Art. 17, 12 Apr. 2013, Argentina.

[101] *'Libreta de trabajo'* is a labour document that serves to identify the worker, listing the name of the employer and working conditions. Although it was established by the 1956 Regime (Art. 11), and in the 2013 act (Art. 16), only two provinces included it in local legislation (Buenos Aires and Salta). However, Salta is the only one to implement it.

[102] José Salim & Walter D'Angela, Evolución de los Regímenes Simplificados para Pequeños Contribuyentes en la República Argentina (AFIP 2006).

[103] Law 18820, 4 Nov. 1970, Argentina.

[104] Law 26063, 5 December 2005, Argentina.

[105] Federal Tax Agency Resolution 2927/10, 21 Oct. 2010, Argentina.

the Minimum Domestic Work Indicator was established in 2013.[106] This indicator was based on gross annual income and personal assets (especially real estate) as declared by the taxpayer. In cases in which the gross annual income and the value of the home exceeded the minimum established by the indicator, the state would assume that there was a domestic worker who had not yet been enrolled. In these cases, the Federal Tax Agency would send a written warning to the taxpayers, giving them a certain period of time to formalize the status of the presumed employee. If the taxpayer did not enrol a domestic worker within that period, the Federal Tax Agency would proceed to collect the corresponding social security contributions. This measure, which became known as 'presumption of a domestic worker', was controversial but effective, at least for the first year. In 2016, considering that the indicators designed to detect informal domestic workers in a household were insufficient, the measure was repealed.[107]

Finally, another strategy for reducing informality in the sector involved public information campaigns on the rights of domestic workers and the obligations of employers. In collaboration with the ILO, the Ministry of Labour developed parallel campaigns that targeted domestic workers and employers; in some cases, the campaigns also targeted domestic workers in other countries who were planning to migrate to Argentina and those who had migrated recently.

5.3 Chile prioritizes inspections to enforce domestic worker legislation

In Chile, formalization was one of the key points of the legislative reform: two tools for inspection were proposed. The first was the creation of a national registry of employment contracts, 'to allow the Labour Department to request information and thus ensure compliance'.[108] Second, the Act established a mandatory contract, to be signed and filed with the Labour Department. The bill[109] establishes that 'the employer who receives a visit at the registered domicile from a labour inspector who is there to assess the working conditions of the domestic worker(s) can allow the inspector to enter the domicile or request that a date and time be scheduled for him/her to deliver the requested documentation to the labour inspection offices'.[110] This inspection system was based on pilot experiences in two cities in southern Chile (Temuco and Coyhaique).

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106 Federal Tax Agency Resolution 3492/13, 30 Apr. 2013, Argentina.
107 Federal Tax Agency Resolution 3828/16, 19 Feb. 2016, Argentina.
108 Labour and Social Security Committee's report, bills on domestic work, 28 Aug. 2012.
109 In the case of Chile, the three bills presented in Congress were merged into a single bill that was later discussed in committees and on the floor. The article cited here, Art. 2, does not appear in any of the three original bills but is included in the first report by the Labour and Social Security Committee, 28 Aug. 2012.
110 Labour and Social Security Committee's report, bills on domestic work, 28 Aug. 2012.

Arguments for and against this type of inspection appeared both in committee discussions and during the congressional debate. Some legislators questioned the feasibility of inspections given the lack of the institutional and legal resources. With regard to institutional resources, legislators emphasized that not all cities had labour offices capable of carrying out such inspections. In terms of legal resources, other representatives warned that household inspections could conflict with the inviolability of the home. Still others, however, stated that 'there is currently no law, administrative order or legal precedent that prohibits inspections'.[111]

Another objection to the inspection mechanism set forth in the law had to do with its limitations, that is, its weakness. In the words of one legislator, 'Unfortunately, the inspection proposed here is timorous: in every case, there is a potential conflict with the employer's right to privacy, allowing employers to refuse the inspection and instead go personally to the labour office with the required document.'[112] Putting forward a similar argument, another legislator argued that the Act 'overemphasises the documentation associated with the employment relationship, that is, the sole purpose of inspections is merely to check to see whether the employer and worker have the required documents. In other words, labour inspectors would be kept from carrying out their principal task: checking working conditions to ensure they reflect the contents of the documentation'.[113]

In spite of the legislators' qualms, the household visits were included in the Act with virtually no modifications. The implementing decree establishes that the employer must file the contract of employment with the labour office within fifteen days after commencing the employment relationship. To facilitate the process, the ministry made available a website with model contracts, answers to frequently asked questions, and a form for online filing. With regard to household inspections, the decree establishes that the inspector can enter the household only if authorized by the employer. 'Provided the employer does not agree to the inspection visit, this will be duly noted, and the employer will be summoned to the Labour Office and fined in the case he/she does not appear for the summons'.[114] In addition to this inspection mechanism, the government and workers' associations joined forces in a wide-ranging public information campaign on the rights of domestic workers.

These different mechanisms show how Articles 16 and 17 of C189 and Paragraphs 20, 21 and 24 of R201 were translated to each local context. In all

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111 Labour and Social Security Committee's new report, bills on domestic work, 4 Aug. 2014, at 20.
112 Chile, Chamber of Deputies, Diary of Sessions, Term 362, session 76, 7 Oct. 2014, at 29.
113 Labour and Social Security Committee's new report, bills on domestic work, 4 Aug. 2014, at 20.
114 Office of Labour, bylaw 4268/ 068, 30 Oct. 2014. http://www.dt.gob.cl/legislacion/1611/w3-article-104299.html

countries, worker enrolment and employer contributions were simplified and expanded to include domestic workers with multiple employers, particularly through the use of online platforms.[115] Legislators from the three countries have tried to guarantee access to courts and mediation in the case of individual labour disputes.[116] Also, legislators have attempted to find ways to introduce the principles enshrined in Article 17, i.e.: (1) to 'establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers'; (2) 'to develop and implement measures for labour inspection, enforcement and penalties'; (3) [to ensure that] 'such measures … specify the conditions under which access to household premises may be granted, having due respect for privacy'.[117]

6 CONCLUDING REMARKS

During the law-making process, legislators from Argentina, Chile and Paraguay faced two major challenges. They had to draft legislation that considered the specific nature of domestic work, while also guaranteeing these workers the same rights granted to employees. Furthermore, they needed to innovate regarding enforcement mechanisms to ensure compliance with new laws.

When drafting new legislation, legislators used C189 and R201 as models for changes. The limits faced in translating this international standard involved the way this particular labour relation has been fashioned and put into practice in each country. In Paraguay, where domestic work remains mainly regulated by traditional and hierarchical rules based on social class and ethnic differences, legislators embraced a more conservative reading of C189. Although various legislators denounced the servant system in place and the dangers of maintaining the traditional *criadazgo,*[118] they did not take measures against it. Only the Executive was willing to go out on a limb for innovative changes in legislation, such as forbidding child labour, in line with the international commitments undertaken by ratifying C189.[119]

In Argentina, whose outdated legislation reflected the realities of domestic work in 1956, legislators aimed to include all domestic workers within the scope of the law. More concerned with striking a balance between workers' rights and labour costs, Argentine legislators chose legal formalism. They introduced almost

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115 ILO Recommendation 201, Art. 20.
116 ILO C189, Art. 16.
117 ILO C189, Art. 17.
118 Although UNICEF has called on Paraguay to prohibit *criadazgo*, the proposal to ban the deeply rooted practice has met with resistance among legislators.
119 Paraguay has also ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), which prohibits, inter alia, all forms of slavery or practices similar to slavery (Art. 2(a)).

all labour rights stipulated in C189, while limiting social security rights that required employer contributions.

In Chile, where legislation was largely aligned with C189, legislators have continued to show a more progressive attitude. They trusted that the law could change practices, even though existing practices limit how innovative the law can be. Forbidding wearing a uniform in public places is an example of how law can change practices, while by contrast, the 15-hour overtime regime reveals the limits of innovative legislation.

To implement the regulatory reforms, each country followed the same pattern observed during the legislative amendments. In Paraguay, legislators established a labour inspection procedure by law but not in practice. In Argentina, formalization was limited to enrolment through the Federal Tax Agency website, without any workplace inspection or verification of contributions to the social security system. Pushing the envelope, Chilean legislators attempted to move forward with effective labour inspections.

In different ways, legislators sought to change the cultural notion of domestic work – historically forged since colonial times – in order to transform this familiar relationship based on care and trust into a contractual employment relationship regulated by the law. As legislators reiterated several times during the congressional debates, the new laws needed to revolutionize the social and cultural order. This was the ultimate challenge for regulatory reforms on domestic work legislation in these countries. Hence, the old question remains: How can law change cultural norms and what legal resources are available to transform social practices? In particular, can the law transform labour practices like those associated with domestic work where the law is not acknowledged as the governing principle?