

~~Nursing~~
~~Cleaning~~
~~Ironing~~
~~Washing-up~~
~~Laundry~~
~~Cooking~~
 Autonomy
 Security
 Rest
 Reasonable working hours
 Paid holidays
 Privacy
 Social security
 Equality of treatment
 Freedom of association
 Collective bargaining
 Respect



INTERNATIONAL SEMINAR

REGULATING DECENT WORK FOR DOMESTIC WORKERS:
 INTERNATIONAL AND COMPARATIVE DIALOGUE CELEBRATING THE ILO
 AT 90 & PREPARING FOR STANDARD-SETTING INTO THE FUTURE

MARCH 29TH 2010

FACULTY OF LAW, MCGILL UNIVERSITY
 ROOM 316, NEW CHANCELLOR DAY HALL



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Abstracts and Biographies

International Seminar

**Regulating Decent Work for Domestic Workers:
International and Comparative Dialogue
Celebrating the ILO at 90 &
Preparing for standard-setting into the Future**

**Inter-university Research Centre on Globalization and Work (CRIMT)
and Labour Law and Development Research Laboratory (LLDRL)**

Sponsored by Human Resources and Skills Development Canada (HRSDC)

**Faculty of Law, McGill University,
Room 316 New Chancellor Day Hall
March 29th 2010**

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***Opening Plenary: “Citizenship at Work for Domestic
Workers”***

9h00-10h45

1.

**RECOGNIZING AND PROTECTING DOMESTIC WORKERS;
CONCEPTUAL, EMPIRICAL, AND REGULATORY CHALLENGES**

Martha Chen
Harvard Kennedy School
WIEGO Network

Abstract

This presentation draws on the work of the global research-policy network WIEGO (Women in Informal Employment: Globalizing and Organizing) and the International Domestic Workers Network that it supports. Although some domestic workers enjoy social or legal protection, most do not. In other words, most domestic work falls outside the formal regulatory framework. Is formalization of domestic work the answer? This presentation highlights key conceptual, empirical, and policy challenges to bringing domestic work under the formal regulatory framework, including the fact that most domestic workers do not have a worker identity, do not work in a conventional workplace, and are not engaged in a conventional employer-employee relationship. It makes the case for reforming the regulatory environment and empowering domestic workers.

Biographical note - Martha Chen

Martha Chen is a Lecturer in Public Policy at the Harvard Kennedy School and International Coordinator of the global research-policy network Women in Informal Employment: Globalizing and Organizing (WIEGO). An experienced development practitioner and scholar, her areas of specialization are employment, gender, and poverty. Before joining Harvard in 1987, she had two decades of resident experience in Bangladesh working with BRAC (now the world's largest non-governmental organization), and in India where she served as field representative of Oxfam America for India and Bangladesh. Dr. Chen received a Ph.D. in South Asia Regional Studies from the University of Pennsylvania.

2.

DECENT WORK FOR DOMESTIC WORKERS: AN ACHIEVABLE GOAL OR WISHFUL THINKING?

Manuela Tomei

ILO

Abstract

The work of caring and cleaning in the home is as old as the home, and has traditionally been precarious, insecure and flexible. The past two decades have witnessed a considerable rise in the demand for paid care services worldwide, as a consequence of women's growing participation in paid work, changes in demography and families' structures, often coupled by the lack or inadequacy of work-family public policies.

This has exposed the social value of the services rendered by domestic workers, while highlighting the need for improving their working conditions also to enhance the quality of their services. As demand for domestic labour and its quality depends heavily on the price of domestic services, a number of countries have tried to address labour demand constraints by making it easier for employers to comply with the law. These measures consist typically of simplified payment procedures aimed at reducing the transaction cost for employers and employees, that may or may not be accompanied by fiscal incentives. These schemes may cover either direct employment by private households and/or employees of enterprises-whether public or profit-oriented- that provide domestic services to private households.

This paper seeks to explore whether and, if so, under which circumstances, this strategy may offer a promising avenue to deliver decent work for domestic workers and facilitate their transition from informality to formality. Based on a review of experiences in select industrialized countries and a middle-income country, the paper shows that, while these systems help improve the regularization of casual and part-time domestic jobs, they are less effective in raising in a significant and sustained manner the quality of both these jobs and the services rendered. This seems to suggest that an exclusive focus on the demand side appears insufficient to tackle informal work among this workforce; the constraints and demands of domestic workers must also be acknowledged and addressed if initiatives aimed at curbing undeclared work are to yield significant and lasting results. While job quality remains an issue for all domestic workers, employees of enterprises providing services to the household appear, however, to command better working conditions. Finally, contrary to expectations, the growing

involvement of the market and the government in the regulation and supply of domestic and care services has not resolved the historic under-valuation of domestic work.

Biographical note - Manuela Tomei

A sociologist of the University of Turin, Manuela Tomei is the Director of the Conditions of Work and Employment of the International Labour Office in Geneva. She is the lead Coordinator of the preparatory work towards the setting of international labour standards on decent work, an item placed on the agenda of the International Labour Conference in June 2011. She is the author of the two ILO's reports on the elimination of discrimination in employment and occupation released in 2003 and 2007, respectively, as a follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work. Before joining the ILO Headquarters, she had worked in Latin America for the ILO as well as other institutions on policy projects on issues concerning informal work, gender, ethnicity and poverty.

3.

“SWEEPING CHANGE?”: A REVIEW OF RECENT REFORMS ON PROTECTIONS FOR MIGRANT DOMESTIC WORKERS IN ASIA AND THE MIDDLE EAST

Nisha Varia
Human Rights Watch
January 4, 2009

Abstract

Millions of women from Indonesia, Sri Lanka, the Philippines, Ethiopia, Nepal, India, and Bangladesh migrate to destinations in Asia and the Middle East to earn a living as domestic workers. In host countries, the combination of significant gaps in labor laws, overly restrictive immigration policies, and socially-accepted discrimination against an often darker-skinned “servant” class has contributed to alarming cases of exploitation and abuse. Host countries rely heavily on domestic workers’ household labor, and home countries on their remittances, yet only in recent years has the situation of these women gained significant political and media attention.

Increased civil society mobilization, attention from international bodies such as the International Labor Organization (ILO), and sustained media exposure has challenged the status quo that tolerates mistreatment of domestic workers. Several governments have started to deliberate and adopt reforms, acknowledging the need to improve protections for domestic workers and salvage national reputations. Yet such change often encounters stiff resistance from employers fearing higher costs and fewer entitlements, labor brokers profiting off a poorly-regulated system, and government officials who view migrants as a security threat.

In the context of a proposed ILO instrument on domestic workers’ rights, it is useful to analyze the experiences of reform at the national and regional level. In this article, based on six years of research and advocacy engagement by Human Rights Watch, I examine the patterns of reforms in four areas: labor protections, employer-based work permits, emergency services, and criminal justice. Drawing from experiences in Singapore, Malaysia, Saudi Arabia, Kuwait, Lebanon, and Jordan, this article looks at the emergence of standard employment contracts and the debates on amending labor laws. A comparative analysis shows that despite easing restrictions on changing employers when workers have suffered abuse, there has been slow movement to address systemic problems created when employers double as immigration sponsors.

Government reforms on responding to abuse have also been uneven. Migrants’ organizations, women’s groups, and embassies from sending countries continue to provide the bulk of crisis services, and governments have mixed records in facilitating their work or resolving individual

cases. Finally, despite setting precedents for successful prosecutions of abusive employers, formidable barriers continue to limit migrants' chances for redress through the justice system.

Biographical note - Nisha Varia

Nisha Varia is Senior Researcher in Human Rights Watch's Women's Rights Division. Human Rights Watch is an international nongovernmental organization working in more than 80 countries, and Nisha's work includes field research, raising awareness and pressure through the media, and advocacy with governments and multilateral institutions. Nisha has authored several reports including: "As if I am not Human": Abuses against Asian Domestic Workers in Saudi Arabia (July 2008), Maid to Order: Ending Abuses against Migrant Domestic Workers in Singapore (December 2005), and Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia (July 2004).

4.

REGULATING THE WORK OF CARE: CONTEXT, CONJUNCTURES AND DILEMMAS

Kerry Rittich
Faculty of Law,
University of Toronto

Abstract

Decent work for domestic workers has always been an elusive goal. While there are some truly distinctive aspects of domestic work that make this task a challenge, the search for decent work for domestic workers also engages some of the central normative, conceptual and practical issues around the regulation of work in the new in the new, post-industrial, globally integrated economy. For example, any transformative project concerning domestic work is destined to be shaped and inflected by broader labor force debates about the merits and limits of flexible labor markets; the ongoing utility of collective bargaining in both economy and society; the uses and nature of social protection; and the relative value of mandated versus negotiated rights and standards at work.

Decent work for domestic workers will not be achieved by fiat, by ‘technical fix’, by more and better enforcement of labour standards, or by empowering women to help themselves. Instead, it requires attention to the exceptional status of care, both as work and as employment, and the troubled and unsettled interface between family and market work. In addition, there are reasons to think that it requires structural change to the regimes that organize and facilitate collective action by workers; a re-evaluation of the conventional assumptions about the nature of productive versus unproductive work; a reallocation of the costs and responsibilities for care work among public and private actors and institutions; a serious effort to come to grips with the upheaval generated by the feminization of the labor force; and rather than ‘flexible’ markets that simply respond to market signals, a willingness to interrupt the processes by which market forces transmit and reinforce social and cultural norms about the relative status and worth of different types of work and workers.

Biographical note – Kerry Rittich

Professor Kerry Rittich teaches at the Faculty of Law, the School of Public Policy and Governance, and the Women and Gender Studies Institute at the University of Toronto. She teaches and writes in the areas of labor law, international law and international institutions, law and development, human rights, and feminist and critical theory. She is a co-author of Atleson, Compa, Rittich, Sharpe and Weiss, *International Labor Law: Cases and Materials on Workers’ Rights in the Global Economy* (West Publishing, 2008). Among her other publications are *Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform* (The Hague:

Kluwer Law International, 2002); (with Joanne Conaghan, University of Kent), *Labour Law, Work and Family: Critical and Comparative Perspectives*, (Oxford University Press, 2005); "Core Labour Rights and Labour Market Flexibility: Two Paths Entwined?", Permanent Court of Arbitration/Peace Palace Papers, *Labor Law Beyond Borders: ADR and the Internationalization of Labor Dispute Resolution*, (Kluwer Law International, 2003); "The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social" in David M. Trubek and Alvaro Santos eds., *The New Law and Economic Development: A Critical Appraisal* (Cambridge, U.K.: Cambridge University Press, 2006). Her current projects concern the relationship between new governance and good governance and the regulation of informal labor markets. Professor Rittich was the Mackenzie King Visiting Professor of Canadian Studies at Harvard Law School and the Weatherhead Center for International Affairs, Harvard University in 2004; a Jean Monnet fellow at the European University Institute in 2005; and a Visiting Professor at the Centre for Transnational Legal Studies in London during the fall of 2008 and the Watson Institute for International Studies at Brown University in the spring of 2009.

***Plenary No. 2: “Migration, Agencies and Minimum
Standards for Domestic Work”***

11h00-12h45

1.

EMPLOYMENT AGENCIES AND THE REGULATION OF DOMESTIC WORKERS IN GHANA: FIXING INFORMALITY?

Dzodzi Tsikata

Institute of Statistical, Social and Economic Research (ISSER) and
Centre for Gender Studies and Advocacy (CEGENSA),
University of Ghana

Abstract

Domestic workers come from economically deprived regions and households in Ghana, and the majority of them are female. Like other informal workers, domestic workers are largely undocumented and unregulated in Ghana. This is in contrast with the situation in Southern Africa and elsewhere where domestic work is more formalised, visible and regulated. Factors such as the fact that domestic work is carried out in private homes, the use of under-age domestic workers, and the practice of having poor family relations as unpaid domestic workers all constitute challenges to a proper determination of the numbers of domestic workers in Ghana. As a result, labour statistics contradict what is common knowledge about the prevalence of domestic work. Although domestic work in Ghana is implicitly covered by most of the provisions of the country's labour laws, domestic workers generally do not enjoy the protection of labour legislation and labour institutions. As a result of the informal nature of domestic work and its recruitment processes, domestic workers work and live under very difficult conditions- poor or little pay, unacceptable conditions of service- long hours, uncertainties in off and leave periods, poor housing and the lack of health benefits. Many also suffer physical and psychological abuse. In spite of their conditions, domestic workers make critical contributions to the reproductive activities of households and to the care economy, thus underlining their importance to the economy and social system in many countries. Therefore, the conditions of domestic work should concern researchers and policy makers in a period of renewed interest in employment conditions worldwide.

There are many ways in which domestics are recruited, and this, in some cases is thought to affect the terms and conditions of work agreed. Individuals and informal employment agents have long been part of the process of procurement of domestic workers. In the last decade, formal employment agencies have also entered the business. How effective agents and agencies have been in improving conditions of domestic work is a function of the weaknesses of the overall institutional and legal context for domestic work, which is still largely informal. The aim of this article is to provide an overview of the legal and institutional regime governing domestic work in Ghana, paying particular attention to the role of both formal and informal

employment agencies in negotiating terms and conditions. The article will explore whether agencies by their activities are formalising domestic work or rather fixing the informality of domestic work.

Biographical note – Dzodzi Tsikata

Dzodzi Tsikata is a Senior Research Fellow at Institute of Statistical, Social and Economic Research (ISSER) and Head of the Centre for Gender Studies and Advocacy (CEGENSA) at the University of Ghana. Her research interests are the areas of gender and livelihoods, informalisation and informal work; gender and development policy and practice and land and resource tenures. She has several publications on these subjects including a book chapter, “the Informal Economy and Urban Women’s Livelihoods in Sub-Saharan Africa in the 1990s”, in Razavi (ed) 2009. *The Gendered Impacts of Liberalization*, Routledge; and a technical paper, “Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice”, *Conditions of Work and Employment Series No. 23*, Geneva, ILO. She is the lead researcher in a three year study of Employment Agencies and Women’s work in the domestic and banking sectors in Ghana which is being supported by the IDRC of Canada.

2.

THE (NON)REGULATION OF DOMESTIC WORK IN THE NETHERLANDS

Sarah van Walsum,
Associate Professor in Migration Law,
Faculty of Law, VU University Amsterdam

Abstract

Migrant domestic workers in the Netherlands have for many years been campaigning for a better legal position, starting with a legal residence status. Since 2006, they have had support from the Dutch trade unions, with increasing effect. With decent work for domestic workers high on the ILO agenda, the time seems ripe for a more focussed campaign on the national level, putting forward concrete demands. Before these can be formulated however, a number of choices need to be made.

In my paper, I shall sketch the position of migrant domestic workers in Amsterdam, based on my own empirical research. I shall explore how and to what extent immigrant status influences their position, and what other legal issues they have to contend with. Finally I shall reflect on the possibilities that Dutch immigration law might, or might not, offer to better their position. First however I will give a brief sketch of the broader legal context of paid household services in the Netherlands. As I shall argue in my paper, any scheme to regularise the position of undocumented migrants working in this sector should take that context into account.

Biographical note – Sarah van Walsum

General background

Sarah van Walsum was born in Canada. She received her BA in History and French at Middlebury College, Vermont, her Law degree at the University of Amsterdam and her Phd. at the Erasmus University in Rotterdam. The topic of her doctoral thesis was Dutch immigration law and transnational family obligations. She has worked for the Clara Wichmann Institute (Academic Institute for Women and the Law) as a policy officer and, later, as a free-lance legal researcher; and as a senior clerk in the Circuit Court of Amsterdam.

Current research

Her current research includes an EU sponsored comparative research project on the position of migrant domestic workers in Germany, the Netherlands, the UK and Ireland: "Migration and

Networks of Care in Europe". She is also involved in two other research projects: one on migration and national, international and transnational regulation of social security: "Cross border welfare state", the other on "Transnational Child Raising arrangements between Ghana and the Netherlands".

She played a leading role in organising the following conferences: 'Gendered Borders; International Conference on Women and Immigration Law in Europe'. Amsterdam 30 September to 2 October 2004, with Professor Jacqueline Bhabha as keynote speaker; 'Shaking Up Citizenship, International Conference on Nation, State and Transnational Actors', Amsterdam 20-21 April 2007, with Saskia Sassen as keynote speaker; 'Transnational Domestic Workers and the National Welfare State', Amsterdam 4-6 December, 2008, with Rhacel Parreñas as keynote speaker.

She publishes widely on the issues of immigration law and family life and gender and immigration law. She took part in the 2004 UN World Survey on the Role of Women in Development. She has been editor of *Nemesis*, a Dutch academic journal on women and the law, and is presently on the editorial board of *Rechtspraak Vreemdelingenrecht*, an annual review of leading Dutch case law in the field of immigration law, and of *Oordelen en commentaar*, an annual review of and commentary on decisions of the Commissie gelijke behandeling (Dutch committee on equal treatment).

Most recent publications in languages other than Dutch:

- 'Déni de statut. La non-régulation des soins et services domestiques dans les foyers néerlandais'. In: Alain Morice and Swanie Potot (eds.): *De l'ouvrier immigré au travailleur sans papiers. Les étrangers dans la modernisation du salariat*. Paris: Karthala (2010).
- 'Against All Odds: How Single and Divorced Migrant Mothers were Eventually able to Claim their Right to Respect for Family Life', in: *European Journal for Migration and Law* 11 (2009), p. 295-311.
- 'Transnational Mothering, National Immigration Policy, and European Law'. In: Seyla Benhabib & Judith Resnik (eds.): *Migrations and mobilities: Gender, Citizenship, Borders*. New York: New York University Press (2009);
- *The Family and the Nation. Dutch Family Migration Policies in the Context of Changing Family Norms*. Newcastle Upon Tyne: Cambridge Scholars Publishing (2008);
- (Together with Thomas Spijkerboer): *Women and Immigration Law. New variations on classical feminist themes*. London: Routledge-Cavendish (edited volume: 2007)

3.

REGULATION OF DOMESTIC WORK IN THE EYES OF HUMAN RIGHTS WATCH – THE CASE OF SWEDEN

Catharina Calleman
Department of Law,
Umeå University

Abstract

For about two generations, paid domestic work was very rare in Sweden. The disappearing of domestic work from private households was widely considered important from an equality perspective. In the past two decades the demand for household-services has however increased, because of cuts in institutions and other social services and increasing wage differential. In the same time, globalisation and particularly the enlargement of the EU, has led to increased access to labour from countries with considerably lower wages than Sweden.

Regulation in tax, immigration or labour law aiming specifically at domestic services has produced a wide variety of employment relations. Public and private domestic services and various ways of organizing work exist side by side in the Swedish market. Values like privatisation, deregulation and increasing employment rates have been prioritized to equality, good working conditions and dignity at work. The free movement and commercial law have encroached on labour law. All of this has consequences for the distribution of power, resources and participation in domestic work.

In this article the historical background of today's regulation of paid domestic work in Sweden is described. Secondly it is analysed how existing governance of paid domestic work is producing inequality and diversity in forms through deregulation, individualisation and privatisation. Thirdly, the existing Swedish regulation is discussed from a rights and access to justice perspective. As a starting point for this discussion I will utilize some key elements of the ILO Convention.

Swedish regulation concerning domestic work does not live up to some of the recommendations of the ILO. Thus, general labour legislation has not been extended to domestic workers to ensure equal protection under the law, and this inequality has been maintained or strengthened through the implementation of EC directives. Further, recruiting and labour immigration is to a diminishing extent administered through centralized labour authorities and workers' immigration status is strongly tied to their employers. There is, finally, no registration and monitoring mechanisms to ensure that employers and placement agencies comply with their legal obligations. This means legislation *gives room* for precarious conditions in domestic work. It seems very likely that there is increased use of this room in times of unemployment and abundant labour from countries with low wages.

In domestic work there is also a lack of infrastructure in the form of trade unions and guidelines and information from authorities. The total lack of trade unions for employees in the employer's household - and weakness of unions as regards home-service companies in domestic work - means an absence of an efficient "Swedish model" for the ensuring of negotiations and rights.

Biographical note - Catharina Calleman

I am working at the Department of Law, University of Umeå, Sweden, where I am an assistant professor since 2006. I teach mainly labour law: I am responsible for the *In Depth Course of Labour Law* and for *Law* in the personnel administration programme.

I do research on labour law, both general labour law issues and issues with a gender perspective. My doctoral thesis, '*Seniority rules by dismissal*' (1999), concerned the application of seniority rules in the Swedish Employment Protection Act.

In 2005 I started a research project named *Labour Law in the twilight zone between Private Law and Public Law*. This project had the purpose to analyze how different interests were balanced against each other in the regulation of care work performed in private homes according to the Social Services Act and the Act on Support and Service to certain Disabled Persons. The investigation concerned the limits of labour law to work performed within family relations, to self-employment and different allowances. This work has resulted in among others a book with the title '*A real job? - on the regulation of household services.*' Ongoing research concerns Au Pair Work in the Nordic Countries.

4.

DOMESTIC WORK IN INDIA: MOVING TOWARDS A COMPREHENSIVE LAW

Bharti Birla,
Project Coordinator
ILO Subregional Office for South Asia

Abstract

Work is central to people's well-being. In addition to providing income, work can pave the way for broader social and economic advancement, strengthening individuals, their families and communities. People's access to amenities to lead a productive and healthy life is intricately related to their employment and as such on the labour laws and how they treat regulation of work conditions, such as health insurance, maternity benefits, old age pension, and disability allowance etc. In India, close to 45 labour legislations exists for 7% of the organized sector workers. However, the vast majority i.e. 93% of the unorganized sector workforce remains unprotected and vulnerable because of lack of similar regulatory or welfare mechanisms. Even when some protection or benefits exists, it mostly follows a fragmented approach. Careful analysis of the laws points out that most enactments deal with either regulation of work and work conditions including grievance mechanism or provide social security and/or enable the workers to take benefits of the welfare schemes (social assistance) implemented by the state. A comprehensive approach integrating all the above three elements into a single piece of legislation is generally not seen. Most workers are daily wage earners or self employed. There is no unemployment insurance, and worker cannot afford to be out of job even for a day. Also, because of the complexity and the nature of work in unorganized sector, there is a tendency to look for individualistic solutions for each category of occupation. For example, in India, we have separate enactments for *Beedi* Workers (tobacco rolled in tendu leaf), Construction workers, and Agricultural workers, Mine workers. On the same lines, civil society movement in India is also pushing for a separate legislation for domestic workers in India rather than mere inclusion in existing labour laws.

While paid domestic work was once a male dominated occupation in pre-independence India (Neetha 2004), today women constitute 71 percent of this sector. The NSS data 2004-05 suggests 4.75 million workers were employed in private households of which 3.05 million were urban women. Because of the gendered nature of work, and excessive feminization of the sector, there is further devaluation of domestic work. In India, domestic work is not seen as a work either by employer or the worker. For the very first time, domestic workers were recognized as workers in the Unorganized Sector Social Security Act, 2008.

Women, who enter domestic work come from vulnerable communities, are illiterate, unskilled labour migrating from one state to another and facing multiple challenges, ranging from caste, religion, gender discrimination to trafficking and harassment at the hands of the placement agencies. Domestic workers are not covered under any labour laws. The NCEUS (2007) report points out how an overwhelming majority of women domestic help – about 84 per cent and 92 per cent in urban and rural areas respectively – get wages much below the minimum wage. Only 5 states in India have notified minimum wages for domestic workers.

The proposed law for domestic workers in India by National Commission for Women, Govt. of India is under review by different stakeholders. It should also be mentioned that there are more than six versions of a bill in circulation drafted by various actors. If we are to make substantive progress towards realizing decent work for domestic workers in law and practice there is a need to streamline existing approaches. Further, there is a requirement for a comprehensive law, which includes not just the regulatory aspects, but also the social security issues, the welfare measures, training and skill development and the grievance resolution mechanism, which is fast, effective, approachable and is not cost intensive. The resources necessary for implementation of the law, including finances, implementation machinery and trained human resource are essential, which need to be visualized simultaneously with the proposed law.

Biographical note - Bharti Birla

Bharti Birla is the Project Coordinator, Equality and Decent Work Promotion For South Asian Women Program at ILO Sub Regional Office for South Asia, New Delhi. Bharti is coordinating the work of promoting decent work for domestic workers in South East Asian Countries of India, Nepal and Bangladesh. She is also a member of the Task Force on Domestic Workers, constituted by Government of India (GOI), Ministry of Labour and Employment (MoLE). She is also involved in the skill development initiative for domestic workers, aimed at professionalizing domestic work. This pilot program is being implemented by MoLE, GOI, Government of Delhi, and ILO.

Before joining ILO, Bharti worked as Director India Operations and Senior Technical Trainer for Global Institute of Intellectual Property, a premier training and services institute in the field of Patents and Intellectual Property Rights, co-headquartered in San Jose, California. Earlier, she worked in Centre For Social Research, a leading women's organization working on gender issues. She is also a founder member of WomenPowerConnect (WPC), a women's lobbying body. She has worked on gender laws and policies and formulated recommendations for submission to Govt. of India and other policy making bodies. She has worked on research, training and development projects funded by international and government funding agencies, including UNDEF, USAID, DFID, ICCO, JICA, American Embassy, IFES, SARi/Q, UNCTAD, ILO, MohFW, DST, etc.

Bharti has worked in varied capacities in Alembic Ltd, Wave Pharmaceuticals, NIIT Ltd., and Waqalatarbitartion.com (a B2B legal portal, now legalsolutions.org). Ms. Birla has been a visiting faculty (Law) at Skyline Business School. She is also a registered Patent Agent with Indian Patent Office. In Pharmaceutical industry, her key area of work has been in marketing, technical & export documentation of pharmaceuticals. She has published/presented papers in journals and conferences. Currently she is pursuing Ph. D. in Management from GGS IP University, Delhi.

***Plenary No. 3 : “ Working Conditions, Compliance and
Enforcement in Comparative Perspective”***

14h30-16h15

1.

THE PITFALLS OF HOME: PROTECTING THE HEALTH AND SAFETY OF PAID DOMESTICS

Peggie Smith
College of Law
University of Iowa

Abstract

This Article explores the implications of the longstanding divide between home and work as it relates to efforts to regulate the health and safety of domestic service workers in the United States for whom the home space is also a workplace. Despite the view of the home as a safe haven, studies indicate that domestic service exposes workers to a wide range of unhealthy and hazardous job conditions. Key obstacles to improving the health and safety of domestic service include the isolated and invisible character of the work, the perception of the job as unskilled women's work, the difficulties of enforcing labor standards in the private setting of the home, and the often competing interests between domestics and their employing clients. While formidable, these challenges are not insurmountable. The Article explores strategies, including the use of formal contracts and the formation of housecleaning cooperatives that can effectively promote the health and safety of domestics employed on an individual basis as well as those employed by third-party employers such as home-care agencies.

Biographical note - Peggie Smith

Professor Smith joined the law faculty in the fall of 2003. Prior to joining the Iowa faculty, she taught at the Chicago-Kent College of Law, Illinois Institute of Technology. Professor Smith received her bachelor's and master's degrees from Yale University, and has started her Ph.D. work in American Studies. She is a 1993 graduate of Harvard Law School where she was Editor in Chief of the Harvard Women's Law Journal. Professor Smith clerked for the Honorable Michael Boudin of the U.S. Court of Appeals for the First Circuit in 1994-95, before returning to Harvard as a Charles Hamilton Houston Fellow in Law Teaching. A former visiting fellow at Cornell's School of Industrial Labor Relations, Professor Smith presently teaches Contracts, Employment Relationships, and a seminar on Gender and Work. Her research focuses on the legal implications caused by the separation between race and gender, home and work, and work and family. Professor Smith has written extensively on the legal treatment of in-home care work and workers. Her scholarship on private paid household workers, published in the North Carolina Law Review and Wisconsin Law Review, highlights the interlocking roles of race, gender, and class in the historical development of labor standards. Articles on the unionization of home care workers and family child care providers have appeared in various publications

including the Minnesota Law Review and Iowa Law Review. Other articles, which have explored legal models that can help workers forge an acceptable balance between work responsibilities and family obligations, have appeared in the Michigan Journal of Law & Reform and the Berkeley Journal of Employment & Labor Law. Professor Smith is currently working on projects relating to work-family accommodation theory, caregiving, and the school desegregation case of *Briggs v. Elliot*. During the summer of 2003, Professor Smith was a visiting professor at the University of Trento, Faculty of Jurisprudence, in Trento, Italy where she taught Comparative Employment Discrimination Law.

2.

FORMAL AND SUBSTANTIVE RIGHTS OF DOMESTIC WORKERS IN SOUTH AFRICA: EFFECTIVE ENFORCEMENT OR QUIET ADR?

Sarah Christie
Institute of Development and Labour Law,
University of Cape Town

Abstract

The focus of the presentation will be

1. A summary of substantive and procedural rights conferred on domestic workers by the Labour Relations Act of 1995 and the 2002 Sectoral Determination on minimum conditions of work for domestic workers and identifying weaknesses in certain enforcement mechanisms by the Department of Labour which is the primary enforcement agency.
2. Overview of the unfair labour practice/unfair dismissal protections and the enforcement mechanisms through the Commission for Conciliation Mediation and Arbitration (CCMA) and the Labour Courts (together with an overview of the split jurisdiction between the CCMA and the Labour Courts and the extent to which these agencies empower/enforce the disempowered – focusing on the well-known tension between efficiency demands to settle and rights demands of adjudication and norm creation.
3. Substantive remedies in security of employment –
 - a. appropriateness of the remedies (description of substantive remedies);
 - b. accessibility of process

I am not a social scientist so my observations about the changing nature of domestic service from status to contract will be brief and I imagine would be covered by others speakers. But in the context of SA, the major differences which have occurred in the last few years, which I am not competent/qualified to deal with other than anecdotally is the impact of regional migration on domestic service.

Biographical note - Sarah Christie

Ms Christie practices as an arbitrator and mediator in employment law in South Africa and is an Associate in the Institute of Development and Labour Law at the University of Cape Town. She has consulted to a number of public international organisations: the International Monetary Fund, World Health Organization, United Nations and the European Bank for Reconstruction and Development (EBRD) on their internal justice and dispute resolution systems. She is a Judge on the Administrative Tribunal of the EBRD and from 2002 to 2009 was a judge on the World Bank Administrative Tribunal. She lives in Cape Town.

3.

Regulatory Challenges in Domestic Work: The Case of Brazil

Ana Virginia Moreira Gomes
Faculty of Law,
Santos Catholic University

Abstract

In recent years, there have been significant improvements in the Brazilian law that now recognizes new rights for domestic workers. This process is still not complete since the law does not guarantee the same rights to domestic workers as it does to other workers. Moreover, domestic workers still bear a heavy cost due to lack of enforcement and frequent violation of their fundamental rights. The objective of this paper is to undertake a critical analysis of policy responses with a view of identifying gaps in the regulation concerning responses to problems facing domestic workers.

The paper begins by analyzing the Brazilian system of regulation of domestic work. It then analyzes the major gaps in the legal regulation of domestic work: informality, domestic child labour, discrimination and violence against domestic workers. It concludes by identifying ways in which legal policy in Brazil could respond to the specific problems that affect domestic workers.

Biographical note - Ana Virginia Moreira Gomes

Ana Gomes is Professor of International Labor Law in the Master in Law Program at the Santos Catholic University, in Santos, Brazil. She earned a Ph.D. in Labor Law at the University of São Paulo and a LLM in the Faculty of Law at the University of Toronto.

4.

DOMESTIC WORKERS IN INDIA: ORGANISATIONAL AND LEGISLATIVE CHALLENGES

Neetha Narayana Pillai and Rajni Palriwala
Centre for Women's Development Studies,
New Delhi

Abstract

Though there has been a phenomenal growth in paid domestic service in India, domestic workers are largely absent from state policy – be it in labour laws or social policy. The paper examines the growth in the sector based on available macro data and set out possible explanations for this trend. Various systems of recruitment and placement and changes in the work organisation of domestic work are highlighted alongside an analysis of the changing work relations and conditions of work. The poverty, illiteracy, caste, migrant status, lack of alternative work, and the exigencies of life of domestic workers make them the most vulnerable categories within informal sector work. The paper argues that apart from the personalised and informal nature of the service, the fact that domestic worker's workplace is the private household has been central in keeping domestic workers outside the purview of any intervention. This is a critical factor in their exclusion from labour laws, the lack of national, legal norms in their wage fixation, and the lack of entitlements to various social security benefits. Collective struggles and pressure of varied organisations and groups could only bring in limited legal interventions with counter pressures mounting from the vast expanding 'servant' employing households. The paper calls for rules and laws that recognise domestic workers as workers and private households as workplaces, which would not only improve conditions of domestic workers but also impact other informal sector occupations and the nature of social policy in India.

Biographical note – Neetha Narayana Pillai

Neetha Narayana Pillai is Senior Fellow (Associate Professor) at the Centre for Women's Development Studies, New Delhi. Prior to her joining the Centre, she was Associate Fellow and Coordinator, Centre for Gender and Labour at the V.V. Giri National Labour Institute, NOIDA, India. She has many years of research experience in the labour and gender studies. Her work focuses on the analysis of women's employment, issues of women workers in the informal sector, domestic workers and women in the export processing zones. She has several publications in reputed journals and books.

She is part of the Indian research team on the UNRISD project on *The Political and Social Economy of Care*.