



International
Labour
Organization



Formalizing
**DOMESTIC
WORK**

FORMALIZING **DOMESTIC WORK**

FORMALIZING
DOMESTIC WORK

International Labour Office - Geneva

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CONTENTS

ACKNOWLEDGMENTS	vii
FOREWORD	ix
FORMALIZING DOMESTIC WORK	xi
I. THE DOMESTIC WORK SECTOR	1
A major and expanding sector	3
II. INFORMALITY-FORMALITY OF EMPLOYMENT IN DOMESTIC WORK	7
1. DIVERSE MANIFESTATIONS OF INFORMALITY	9
2. INFORMALITY-FORMALITY CONTINUUM	12
3. THE EMPLOYMENT RELATIONSHIP: AT THE CENTRE OF FORMALIZATION ..	14
4. DRIVERS OF INFORMALITY AND FORMALITY IN DOMESTIC WORK	15
5. ROLE OF LABOUR REGULATIONS	16
6. SOCIAL INSURANCE SCHEMES	19
7. OTHER LABOUR MARKET INSTITUTIONS	20
7.1. Private recruitment and employment agencies	21
7.2. Corporate employers of domestic workers	21
7.3. Organizations of workers and employers	21
8. NORMS, VALUES, TRADITIONS, PERCEPTIONS	23
8.1. Private household, private sphere	23
8.2. Private households as employers	24
8.3. Extension of women's unpaid work; not a "real job"; job of last resort	25
8.4. Confluence of low social status, discrimination and inequality	26

III. APPROACHES TO FORMALIZATION	29
1. EXTENDING THE SCOPE OF LAW	32
1.1. Recognition of domestic workers' rights and extending labour and social protection	32
1.2. Special regulations for occasional, casual jobs	32
1.3. Regularizing the status of migrant domestic workers	34
1.4. How does law lead to formality?	35
2. THE DETERRENT APPROACH: DISSUADING INFORMALITY	38
3. ENABLING APPROACH	41
3.1. Information dissemination	41
3.2. Simplification measures	42
3.3. Reducing the cost of formalization; increasing financial incentives	44
3.4. Service voucher systems: simplifying and integrating registration, incentives and policy goals	46
3.5. Assessing the effectiveness of enabling instruments on formalization	49
3.6. Factors that enable or constrain instruments of formalization	50
IV. CONCLUSIONS	53
BIBLIOGRAPHY	57
ANNEX A	63

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FOREWORD

Many countries around the world are at the onset of a care crisis: with the ageing of the population, and continually increasing rates of female labour participation, families are increasingly turning to domestic workers to care for their homes, children, and ageing parents. While an increasing share of domestic work is part of the formal economy, domestic work remains one of the sectors with the highest share of informal employment.

Due to concern for cost, complexity, lack of information, or the belief that domestic work is not real work, many households do not make use of formal arrangements, resulting in high levels of informal employment. At the same time, the recent ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) recognizes that the informal economy is marked with severe decent work deficits, particularly among certain vulnerable groups and occupations that include domestic work. This is why the rate of informal employment is one of the indicators of achievement of SDG 8 on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

More than half of the world's workforce is estimated to be at work in the informal economy, and in some countries, domestic work represents a significant share of informal employment among women, particularly in urban areas. The vast majority of domestic workers are in informal wage employment. The creation of decent jobs in the formal economy, and the formalization of informal jobs in domestic work, therefore can improve working conditions of some 50 million domestic workers around the world and contribute to reduce the proportion of informal employment in non-agricultural employment, particularly among women.

The high rates of informality in general, and in the domestic work sector in particular, have increasingly driven governments to take action to promote transitions from the informal to the formal economy. The current report seeks precisely to synthesize these practical approaches, to serve as a tool to governments, workers and employers in their efforts to create full, decent, quality employment in the domestic work sector. Some of the strategies reviewed include both promotional and punitive measures, including fiscal incentives and subsidies to reduce the costs of domestic work, reducing the barriers to entry into the sector, extension of legal and effective labour and social protections to domestic workers, the simplification of registration to social security, and the development of simple standard contracts and other tools that facilitate formal employment arrangements.

It is our hope that this report will be of use to governments, workers' and employers' organizations to formalize domestic work, ensure decent work for these workers, and provide for a sufficient supply of domestic workers to meet the needs of households and societies.

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and Working Conditions Branch
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FORMALIZING DOMESTIC WORK

Nearly half the world's workforce is engaged in the informal economy. In its Preamble, the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) recognizes that the high incidence of the informal economy poses a major challenge for the rights of workers, and has a negative impact on public revenues and governments' scope of action, among others. This is the first international labour standard to focus on the informal economy in its entirety and diversity and to point clearly in the direction of transition to the formal economy as the means for realizing decent work for all and for achieving inclusive development. For these reasons, addressing the informal economy has become a significant area of focus for countries around the world.

Recommendation No. 204, of universal relevance, acknowledges the broad diversity of situations of informality including specific national contexts and priorities for the transition to the formal economy and provides practical guidance to address these priorities. It clearly defines a broad and detailed scope of application to all workers and economic units - including enterprises, entrepreneurs and households - in the informal economy.

While informality and many of its causes affect sectors across national economies, informal employment may be concentrated in particular sectors where sector-specific forms and drivers. In this case, a sector-based approach may be more effective than a general approach.

Domestic work is one such sector: it is characterised by high incidence of informal arrangements and contributes significantly to informality, especially among women. It is distinct from the rest of the informal economy for three principal reasons: the employment relationship takes place within the private sphere, the household; it can be blurred or disguised by social norms and highly personalised contexts; and it falls outside the conventional regulatory frameworks of many countries. In designing coherent and integrated strategies to facilitate the transition from the informal to the formal economy, Recommendation No. 204 calls on Member States to pay special attention to domestic workers, as one group that is especially vulnerable to the most serious decent work deficits in the informal economy (para 7i).

Recommendation No. 204 provides thorough guidance to facilitate the transition from the informal to the formal economy; yet, achieving the transition remains complex. This policy paper aims to provide a framework for understanding and assessing informality in employment relationships in the domestic work sector, and presents approaches to formalizing the sector. It clarifies the various manifestations, indicators and drivers of informality and formality in the sector. It presents strategies and instruments that have been implemented in different countries in order to reduce informality and promote formalization in domestic work, based on available information regarding national experiences and outcomes.¹ Finally, it highlights emerging lessons.

¹ This paper presents a multitude of country examples to illustrate the various approaches to formalization. Information provided illustrates the functioning of a given system at a particular point in time, as documented by the references listed in the bibliography, or as accessed on the competent websites on a given date. Aspects of the systems described in this report may have changed since the time of these writings.

Recommendation No. 204 is built on a shared understanding and experience of ILO constituents that transitions to the formal economy are best facilitated through the adoption of integrated policy frameworks, which should include a broad range of approaches, implemented through institutional coordination (para 11). Rather than cover the full range of possible strategies, this policy paper will focus on a subset of these, namely, the establishment of an appropriate legislative and regulatory framework, the promotion of sectoral policies, the extension of social security coverage, and efficient and effective labour inspections. It is clear that governments take into account factors much broader than those covered in this report in order to assess the costs and benefits of particular approaches to formalization. While these were taken into account in selecting country examples, the paper does not engage in a discussion about the rationale and financing of particular formalization strategies, but rather focuses on describing the approaches and highlighting the ways in which they drive formalization.

The Recommendation also calls on Members to ensure coordination across different levels of government and cooperation between the relevant bodies and authorities, such as tax authorities, social security institutions, labour inspectorates, customs authorities, migration bodies and employment services, among others, depending on national circumstances (para 12). Such coordination mechanisms are covered in more depth in two existing ILO publications on social security and labour inspections in domestic work, and so will not be further elaborated in this paper.

I. THE DOMESTIC WORK SECTOR

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For this report, domestic work and domestic worker are defined according to the Domestic Workers Convention, 2011 (No. 189). Domestic work is “work performed in or for a household or households”, and a domestic worker is “any person engaged in domestic work within an employment relationship”.

In the context of this Convention, the term “domestic work” is inclusive, encompassing the wide variety of tasks that may be performed by persons working in and for private households. The variety of possible tasks carried out by domestic workers depends on the socio-economic situation of a particular area or country, which determines the kinds of household and personal services demanded by private households. Housework – cooking, laundering, house cleaning, and collecting firewood for cooking, – is usually equated with “domestic work”. However, caring for children, the frail, elderly, the sick and the physically disabled in private homes; driving the family car, taking care of the garden, and guarding private houses, all of which are generally thought of as “household work” or “personal care”, are also covered by the definition in Convention No. 189. Domestic workers thus provide services and goods that are socially necessary for the maintenance of households and the wellbeing of families, in other words, tasks that are crucial for social reproduction. Domestic workers’ labour permits members of the employing household (most often the female members) to shift their time and energies from unpaid household and care work to remunerative productive work, professional development, leisure, and social relations with family, friends and community. Thus, domestic workers also support the functioning of economies and communities.

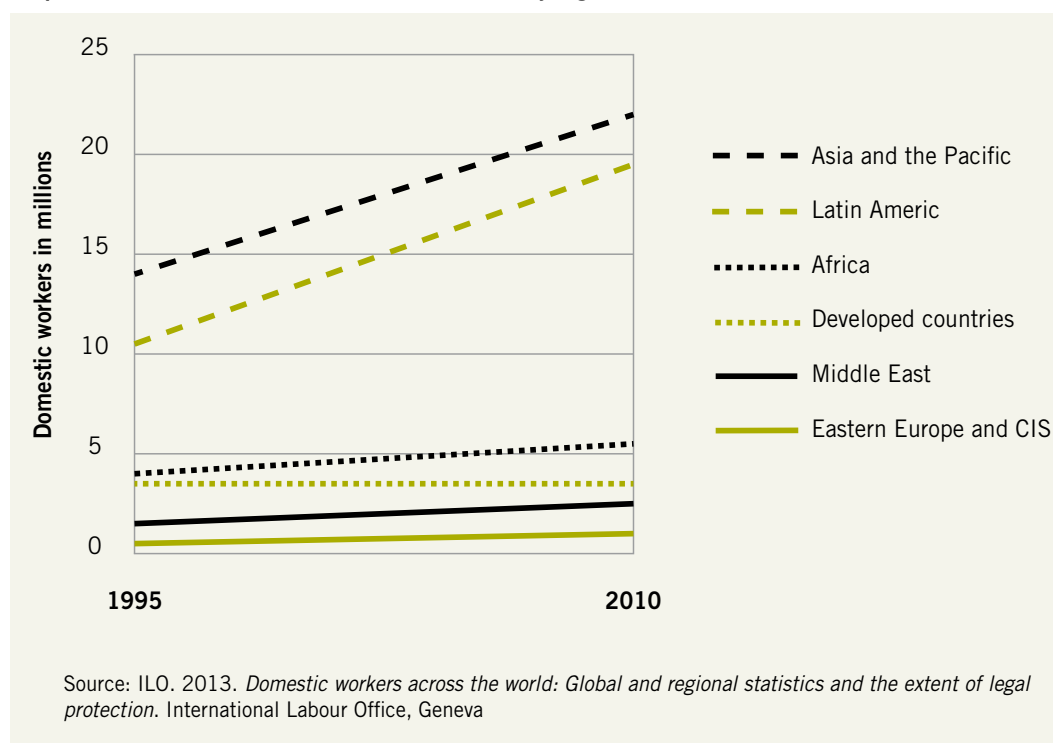
National terms for workers in domestic work may vary, such as *trabajadoras domésticas remuneradas* and *trabajadoras de hogares* in Latin America, household service workers and *kasambahay* in the Philippines, *collaboratore/trice familiare* for housework employees in Italy; and workers in personal and household services in the European Union. Domestic workers are also frequently referred to as “domestic servants”, “maids”, “housegirls” or “helpers”, whether or not they are regarded as workers under the law.

Under the broad definition of Convention No. 189, employers of domestic workers may be private households, who hire them directly, or may be private or public agencies that hire them and deploy them to private households for specific services or tasks. A domestic worker may have a single employer or multiple employers; may work full-time for one employer, or on a part-time basis for one or more employers; and may reside in the house of the employer (live-in) or elsewhere (live-out).

A major and expanding sector

Domestic workers comprise a significant segment of employed workers worldwide. ILO estimates put the number of domestic workers, aged 15 years and older, at 67 million globally as of 2013 (ILO, 2015c). This is a conservative number based on national official employment statistics. Many more may be performing domestic work for households, within

Graph 1: Number of domestic workers, in millions, by regions, from 1995 - 2010



an employment relationship, but escape official labour force and employment surveys and censuses for various reasons (Mehran, 2014).²

Domestic workers account for 2 per cent of global labour participation and 4 per cent of total female labour participation. For women, domestic work is an important source of income – as much as 14 per cent of female wage employment in Latin America and 11 per cent in Asia. The Asian and Latin American regions are also the biggest employers of domestic workers (Graph 1).

² National data generally refer to the working-age population, typically persons 15 years old and over, leaving out child domestic workers below 15 years of age. Available data usually refer to main job, and therefore miss domestic workers engaged in domestic work only as a secondary or subsidiary job (about 6% according to the ILO Tanzania survey on domestic workers 2012-13). Response errors - some domestic workers may not know that their activity is a form of employment especially if no cash payment is involved (almost one-third of the domestic workers were detected based on especially designed questions in the Tanzania domestic workers survey). Where domestic work has a social stigma, domestic workers would tend to refuse to identify themselves as domestic workers. Those who have been trafficked into domestic work or work in forced labour conditions are likely to be deliberately hidden.

As Graph 1 shows, the sector grew rapidly over a period of 15 years. By several indications, the demand for domestic workers to provide personal and household care services will continue to grow in future decades. Some of the main reasons for this projected increase include:

- Ageing populations and fewer multigenerational households. According to UN estimates, the number of people in the world aged 60 or above has doubled in the last 30 years (UN DESA, 2009). The proportion of people aged 60 or above will multiply by 1.8 by 2050 and by 2.3 by 2100, as compared to 2015 (UN DESA, 2015). The elderly will outnumber children aged 0 to 14 years. At the same time, multigenerational households are becoming less common around the world, meaning more and more of the elderly live alone, or in institutions, where these are available and affordable.
- Continued rise in women's economic participation, which continues to be promoted by national development and gender equality agendas. This means greater pressure on women with family responsibilities and young children to find alternative ways of coping with care work and housework.
- Home-based care for young children, the elderly and chronically ill is a preferred mode to institutional care, for several reasons: lower costs, greater independence, and the potential of assisted-living technology, limited public services in developing countries, and cuts in public expenditures (Eurofound, 2013b).

II. INFORMALITY- FORMALITY OF EMPLOYMENT IN DOMESTIC WORK

II. INFORMALITY-FORMALITY OF EMPLOYMENT IN DOMESTIC WORK

1. DIVERSE MANIFESTATIONS OF INFORMALITY

The incidence of informal employment among domestic workers is among the highest of all wage employees. The ILO estimate that about 50 million of the 67 million domestic workers worldwide are in informal employment. Graph 2 presents the incidence of informal employment (based on country-specific definition) among domestic workers, non-agricultural employees and agricultural employees in selected countries.

The informal employment situations found in different countries are widely diverse, as are the criteria used by governments to define and identify informal jobs or workers. The diversity of informality is a central theme of Recommendation No. 204, which encourages Member States to take into account the diversity of characteristics, circumstances and needs of workers and economic units in the informal economy in order to address such diversity with tailored approaches. Effective identification and diagnosis of informality is therefore a key first step to develop a strategy that facilitates transition from the informal to the formal economy.

Many countries identify whether jobs or workers are formal or informal according to whether or not they are registered in an employment-linked social security scheme. In Brazil, a formal employee is one who has a work booklet (*carteira de trabalho assinada*), signed by his/her employer, indicating the salary, function, admission date, and other key terms and conditions of employment, effectively registering the worker in the social security system, and obliging both the employer and the worker to pay required taxes and social security contributions. Some countries use entitlement to paid annual leave as the criterion of a formal job (ILO 2013e, p. 41).

In 2003, the International Conference of Labour Statisticians (17th ICLS) adopted a broad statistical definition of informal employment that captures these diverse situations and criteria. Waged workers are considered to be in an informal employment relationship if their employment, in law or in practice, meets one of the following criteria: not regulated by national labour legislation, not covered by social security, not subject to income taxation, or if it does not provide access to certain employment benefits (for example, advance notice of dismissal, severance pay, paid annual or sick leave, among others) (ILO, 2002b; ILO,

2003a).³ Many possible reasons, that often overlap may explain this informality: jobs are not declared to the relevant authorities by the employer and/or worker; the employment is temporary, casual, on-call, or irregular; the hours of work or wages are below a specified threshold (below that qualifying for social security contributions); the workers are employed by unincorporated enterprises or by persons in households; the employee's place of work is outside the premises of the employer's enterprise (such as outworkers without an employment contract); or regulations are not applied, not enforced or not complied with for any reason (ILO, 2003b: Para.3(5)).

Recommendation No. 204

Para 36. Members should, in consultation with employers' and workers' organizations, on a regular basis:

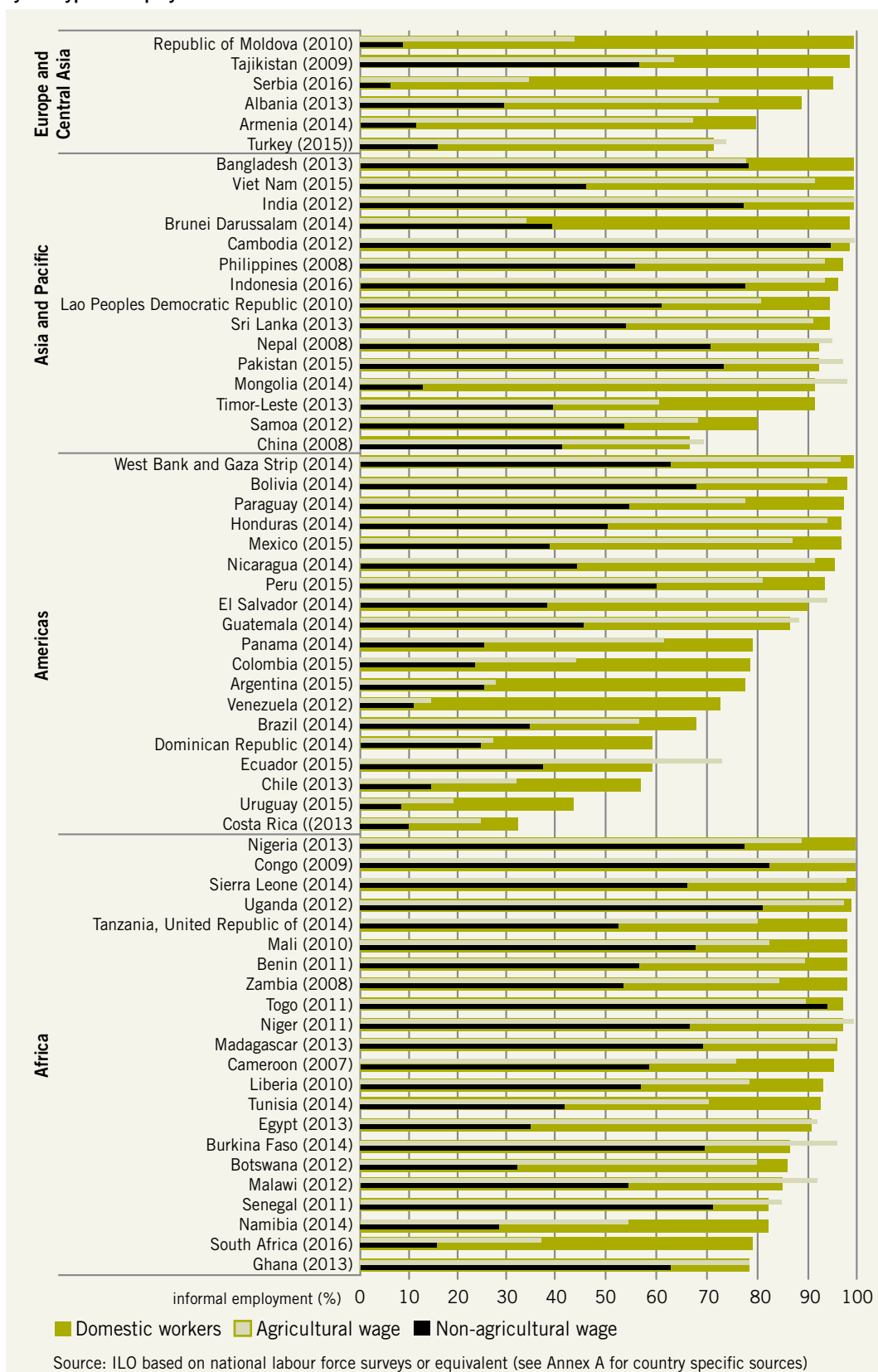
- (a) where possible and as appropriate, collect, analyse and disseminate statistics disaggregated by sex, age, workplace, and other specific socio-economic characteristics on the size and composition of the informal economy, including the number of informal economic units, the number of workers employed and their sectors; and
- (b) monitor and evaluate the progress towards formalization.

Para 37. In developing or revising the concepts, definitions and methodology used in the production of data, statistics and indicators on the informal economy, Members should take into consideration relevant guidance provided by the International Labour Organization, in particular and as appropriate, the guidelines concerning a statistical definition of informal employment adopted by the 17th International Conference of Labour Statisticians in 2003 and their subsequent updates.

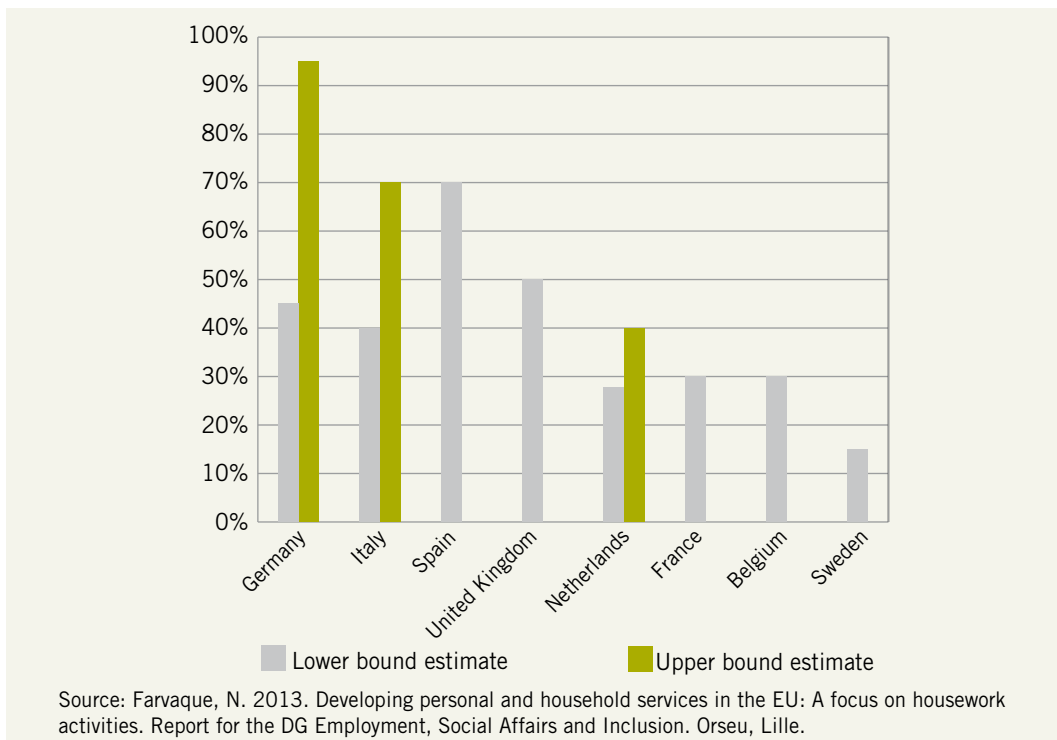
The concept of “undeclared work”, which is a focus of policy in the OECD countries, especially in the EU, falls within the ILO broad definition of informality. The EC defines undeclared work as “paid activities that are lawful as regards their nature but not declared to the public authorities” as may be required by the specific regulations of Member States (EC, 1998: 3; ILO, 2013b). This includes concealing a job by the employer and/or worker, such as when a migrant employee does not possess the proper residential status or work permit, or when one party or both wish to avoid social security contributions and income tax, or when a job means loss of eligibility to unemployment benefits. High shares of undeclared work have been found in domestic services in the European Union (Graph 3) (Williams et al, 2008; FRA, 2011; EU and IWAK 2011; Farvaque, 2013).

³ Own account workers, employers and members of producers' cooperatives are considered to have an informal job if the production unit is informal. All contributing (unpaid) family workers are considered to have informal jobs. Activities of persons engaged in the production of goods for own final use, are also considered informal jobs. Note that the ILO defines the broader informal economy as consisting of “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.” (ILO, 2002a: Para. 3). It encompasses a wide diversity of enterprises, jobs and types of workers. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) recognizes the diversity of the informal economy across member States, and recommends that the competent authority should identify the nature and extent of the informal economy, as described in the document.

Graph 2: Incidence of informality. Informal wage employment as a percentage of total wage employment by the type of employment



Graph 3: Incidence of undeclared domestic work in selected European countries



2 INFORMALITY-FORMALITY CONTINUUM

Informality or formality, and the process of transition from one to the other, may be conceived as a continuum. In the domestic work sector, the informality extreme of the continuum is represented by the absence of employee status and lack of any minimum rights and entitlements, such as social security and paid annual leave. At the other extreme is absolute formality in terms of social security access and registration, public registration of the employment contract, and written employment records (such as contracts or pay slips). In between these poles are found the varying forms and degrees of informality or formality.

Table 1 presents the dimensions in which a job held by a domestic worker may be characterised as informal or formal, depending on the national situation. A job may be informal in one dimension or one indicator of that dimension, but formal in another dimension and indicator.

The continuum of informality-formality becomes clear when legal frameworks provide entitlements for domestic workers, yet are ineffective in practice. The scarcity of contractual records, such as written contracts and pay slips that record the wage rate, deductions and working hours, reinforce the informality of employment relationships in the domestic work sector. In Brazil, Chile and Uruguay, where domestic workers are covered by the general pension systems, the percentage of female domestic workers who contribute to pension schemes is at best 15-20 percentage points lower than that of all employed women (ILO, 2012a). In Latin America, the probability of domestic workers being covered by social security is 7.4 per cent lower than wage employees in a micro-enterprise, and 1.6 per cent

Table 1: Dimensions and Indicators of informality-formality of employment in domestic work

Dimensions	Indicators	Informality	Formality
Labour rights legal framework	i) Legal recognition of employee status with associated entitlements as an employee	Not recognized by law; or partly recognized	Recognized and governed by law
Social security rights legal framework⁴	i) Legal recognition of social security coverage of domestic workers ⁵ Note: Exclusions may still occur due to differences in entry and eligibility requirements (for example in case of exclusion of some categories of part-time workers, those with multiple employers, or those who work less than a certain number of hours per employer.)	Not recognized by law	Recognized and covered by law
Declaration & registration with public authorities (social security and administrative units depending on national regulatory system)⁶	i) Social security registration	Not registered	Registered
	ii) Payment of contributions to the social security system	Not paying	Paid
	iii) Registration with administrative unit (depends on national regulations)	Not registered; undeclared work	Declared work
Formal employment practices	i) Employment contract with terms of employment (tasks, wage, hours)	No agreement	Oral or written contract
	ii) Record of payment; payslip	No payslip	Payslip

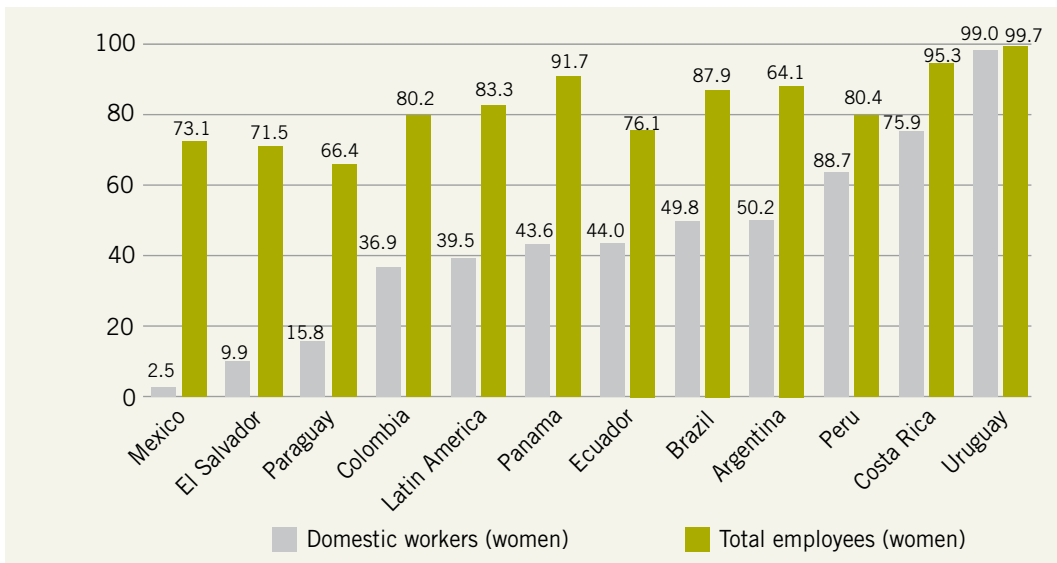
lower than own-account workers, who are themselves much less likely to be covered than employees in large enterprises. Moreover, domestic work is one of the top five categories of workers in which the largest deficit in health care and pension coverage has been observed (Graph 4).

⁴ While acknowledging that the terms “social protection” and “social security” are used in different ways in different national contexts, for the purposes of this report, the term social security will be used, and refers to employment-linked contributory social security instruments, namely, social insurance. (For a full glossary of terms, see ILO, 2014b: 161).

⁵ Measuring social security coverage is complex with its own methodologies. For the purposes of this report, social security will be dealt not in its entirety, but primarily as an indicator of informality/formality. While this may mask variations in the scope, extent and level of coverage, it serves the purpose of explaining how social security fits within the framework of formalization. The report will also cover issues of effective social security coverage, which is usually lower than legal coverage because of non-compliance, problems with enforcement of legal provisions, or other deviations of actual policies from the text of the legislation, each of which act as their own drivers of informalization (see ILO, 2014b: 165-168).

⁶ In countries where domestic workers are legally entitled to social security coverage, a proportion of them might not be actually registered with social security and/or may not be active social security members due to non-payment/non-remittance of contributions by their employers or by themselves; thus their employment is informal on this indicator.

Graph 4: Social security coverage, % of urban population with access to health and/or pensions 2014



3. THE EMPLOYMENT RELATIONSHIP: AT THE CENTRE OF FORMALIZATION

The recognition of the existence of an employment relationship is critical for formalization. It is through this relationship that workers and employers gain access to the regulations meant to protect their respective rights.

Recommendation No. 204 explicitly includes workers in unrecognized or unregulated employment relationships in its scope, and includes among its strategies of formalization, the need to put in place appropriate mechanisms to ensure compliance with national laws and regulations, including but not limited to ensuring recognition and enforcement of employment relationships (para 26).

As stated in Part I, in domestic work, the employer may be a private individual or household that directly employs a domestic worker, or may be an organization (private or public, for profit or not), which then sells the services of domestic workers by deploying them to private households. In the first employment model, the private household is both employer and consumer of the outputs of the tasks performed by domestic workers. In the second model, the private household is only a consumer whose contractual relationship is with the service-providing organisation, although the workplace continues to be the private home.

In some triangular employment arrangements (involving a domestic worker, a household and an agency or third party service provider), it may not be so clear who bears the employer obligations towards the domestic worker. There may be cases where the householder gives the instructions to the worker and controls the performance of duties, but it is an agency that issues the paychecks and pays the social security contributions. Sometimes it may be necessary to test where the employer obligations reside. As regards the direct employment model, the prevalence of informal practices and influence of social norms and traditions (discussed below) could easily conceal or disguise the existence of an employment relationship.

Box 1: Determining the existence of an employment relationship

→ The “employment relationship” is a legal notion that refers to the relationship between an employee and an employer for whom the employee performs work in return for remuneration, which may be in cash and/or in kind (ILO, 2006). The presence of hierarchical power between employee and employer has been traditionally established, either statutorily or by case law, as the distinctive element of wage employment in contrast to self-employment. Hierarchical power consists of three related elements: the employer’s power to give orders and directives to the domestic worker; the employer’s power to control and monitor how the domestic worker performs the work or complies with the orders; and the employer’s power to sanction or discipline the worker for poor performance or non-compliance with tasks given (Bignami et al, 2013).

Countries have various ways of and indicators for determining an employment relationship. The Employment Relationship Recommendation, 2006 (No. 198) recognizes that this may sometimes be problematic, and suggests specific indicators that Member States may consider.

→ **Recommendation No. 198, Paragraph 13:**

13. Members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include:

- (a) the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker’s availability; or involves the provision of tools, materials and machinery by the party requesting the work;
- (b) periodic payment of remuneration is made to the worker; such remuneration constitutes the worker’s sole or principal source of income; provision of payment is made in kind, such as food, lodging or transport; recognition is given of entitlements such as weekly rest and annual holidays; payment is made by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk is ensured for the worker.

4. DRIVERS OF INFORMALITY AND FORMALITY IN DOMESTIC WORK

One may group the factors that drive formalization and informalization of employment in the domestic work sector into four themes:

- **Labour regulatory frameworks:** Exclusion from, or falling outside the scope of regulatory frameworks, is a key manifestation of informality. Such frameworks include labour and labour migration laws and policies, as well as the institutions that enforce these regulations, such as the labour inspectorate, and grievance and dispute-settlement machinery. Depending on their design, scope and manner of implementation in a given country context, these regulations may facilitate and encourage (incentivise), or hamper and discourage, formal or informal practices. These may cause a shift of jobs, or workers, from formal to informal arrangements and vice versa. Real and perceived costs (financial, time and effort) and benefits of formality and informality exert differential pressures on employers and workers. These aspects of regulations will be discussed further below.

- **Social insurance schemes:** The vast majority of domestic workers do not enjoy effective social security coverage. Domestic workers may be covered by legislation on working conditions but not by social insurance. Entitlement to social insurance may be provided for within labour or social security laws, which define the terms of coverage for domestic workers. These may include minimum thresholds with regard to the length of employment, minimum hours of work, or minimum earnings, which may exclude some categories of domestic workers who do not reach these thresholds. The legislation usually also sets out further parameters, such as the level of contributions and the portability of benefits. Even when domestic workers are covered by the legislation, decisions of employers and workers on whether or not to comply with the legislation are also influenced by their awareness about rights and obligations, the accessibility of administrative procedures (registration, payment of contributions), and the credibility and efficiency of the system. All of these factors may influence the employers' decision to hire formally or informally, or the workers' decision to declare their job or not.
- **Other labour market institutions:** Aside from regulations and labour standards, there are other institutions that operate in the domestic work sector and shape employment relationships, and which, therefore can promote or impede formality. Prominent among these institutions are: i) private and public agencies that recruit and place domestic workers; enterprises, government agencies and non-profit organizations that directly provide households and individuals in their homes with personal care (such as home-based elderly care) and household services (such as cleaning); and ii) domestic workers' organizations and trade unions, and organizations of employers of domestic workers and national employers' organizations that represent the interests of the domestic work sector in national policy dialogues, tripartite bodies and collective bargaining.
- **Social dimensions - norms, values, traditions, attitudes and perceptions:** While the above-mentioned drivers of informality and formality in the domestic work sector do seem similar to those affecting other sectors, certain norms, values, traditional practices, attitudes and perceptions influence employment relationships in the sector because of its particular characteristics. First, the workplace is the private home, and, very often, the employer is the private householder. Second, interactions between the worker and members of the household take place in close proximity and intimate surroundings, and tend to be highly personalised. Moreover, it has historical roots in slavery and feudal servitude.

Macroeconomic policy frameworks (such as fiscal policies, investment and industrial policies) play an important role in shaping the capacity of national economies to create quality, formal jobs.⁷ These macro policies, therefore, are a key driver of informality and formality. This paper will not cover these policy frameworks but recognizes that these are part of the broader context of domestic work.

5. ROLE OF LABOUR REGULATIONS

Informality of employment in domestic work is closely linked to the scope and implementation of labour and social security regulations. Without legal recognition of domestic workers as workers with rights, and in the absence of a regulatory framework for employment relationships in

⁷ Unpublished technical note of the ILO team for the Area of Critical Importance (ACI6), "Formalization of the Informal Economy. Concept Note", February 2014.

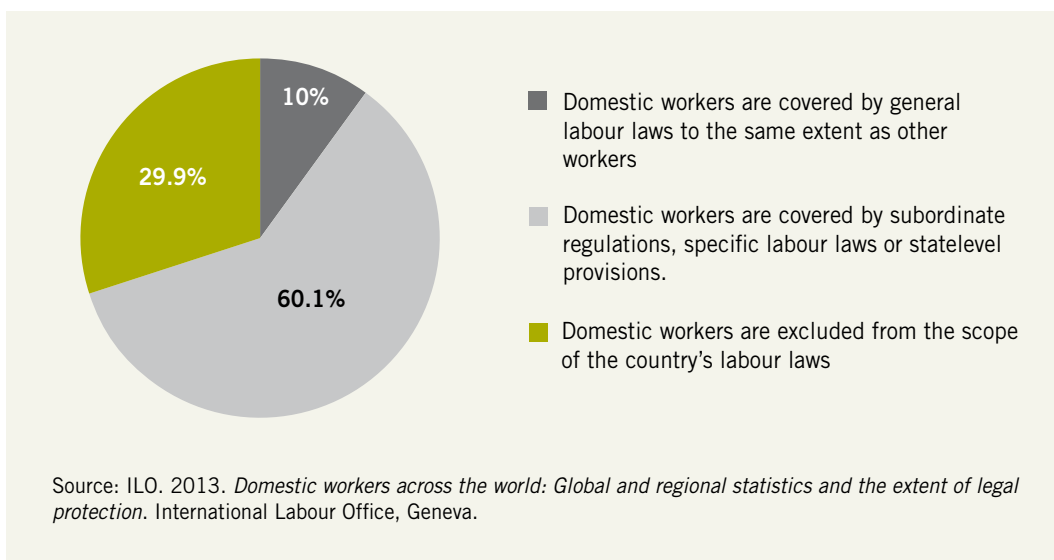
domestic work, formalization would not be possible. However, even where appropriate regulations exist, these may, de facto, totally or partially exclude domestic workers from labour rights and social security.

Recommendation No. 204

Para 9: “Members should adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units.”

As Graph 5 below shows, almost a third of all domestic workers across the world in 2010 were completely excluded from the scope of national labour legislation. Only 10 per cent were covered by general labour legislation to the same extent as other workers; and the rest were covered by regulations specific to domestic workers. In Asia and the Pacific, the world’s largest employer of domestic workers, virtually the entire sector is presumed to be informal from lack of legislation regulating the employment of domestic workers (ILO, 2013a).

Graph 5: Extent of legal protection of domestic workers



There are situations where national labour regulations cover domestic workers generally, but exclude particular sub-groups of domestic workers. For example, in the USA, under the 2013 Department of Labor regulations, live-in homecare workers who are privately paid by employing households are excluded from federal overtime protection (Goldberg, 2015). More often, non-standard employment arrangements (such as casual and part-time domestic workers, workers with multiple employers) are not easily reconciled with the provisions of national labour regulations. In Brazil, the jurisprudence current in 2015 was that domestic workers who work two days or less for a household do not have an employment relationship with said employer, (although the recently enacted Enabling Law 150 is silent on this). Such an employer thus would not have an obligation towards the worker to contribute to her/his social insurance (IPEA, 2015).

There are, nonetheless, a few examples where the diversity of employment arrangements is fully recognized and covered by regulations. In the Swiss Canton of Geneva, the standard

Box 2: Regulatory frameworks in relation to domestic workers

Possible issues:

- Total or partial exclusion from labour and social security coverage
- Partial exclusion of certain categories of domestic workers, directly or indirectly due to design elements.
- Weak enforcement institutions, inadequate capacities; ineffective or unsuitable procedures; no accessible mechanisms for receiving and addressing complaints from employers or workers; no accessible procedures for resolving grievances and disputes
- Weak or no measures to inform the public about the regulations, to assist the public to comply

Potential constraints and disincentives:

- Complicated and time-consuming procedures for compliance; high transaction costs
- Compliance is seen as costly – unaffordable contributions to social security, social charges, legal minimum wage, among other concerns.
- Public administration is unfamiliar or threatening for household-employer and/or worker.
- Lack of confidence in social security institution
- Public mistrust in enforcement agencies and their officers

contract defines ‘workers in the domestic economy’ as both full-time and part-time workers, employed regularly or occasionally according to an agreed schedule, which might be hourly, half day, full day or weekly. The legislation of Uruguay on domestic work (Act No. 18.065, section 1) and of Burkina Faso (Decree No. 77-311PRES/FPT of 17 August 1997) recognises that a domestic worker may have multiple employers.

For international migrant domestic workers, immigration laws and controls constitute another regulatory layer that could promote informality or formality. These regulations produce different migration statuses, which are associated with different rights, freedoms, and restrictions in respect of staying in the host country and participating in its labour market (Fudge, 2011; Fudge 2012; Gallotti and Mertens, 2013). These in turn have an impact on the types of employment relationships and working conditions that migrants end up experiencing in host countries. Precarious migrant status (such as having no right to permanent residence; “permanent temporariness”; dependence on a third party for one’s right to residence) often means vulnerability to poor terms and conditions of employment. In many countries, undocumented or irregular migrant domestic workers are excluded from the scope of labour legislation, or immigration policies may be inconsistent with the intentions of labour legislation, which is to provide adequate working conditions to all workers.

The specific design of laws and the ways they are implemented may be inappropriate to the predominant characteristics of the domestic work sector. For example, live-in domestic workers, who may account for a large segment of domestic workers in a country (around 30 per cent in the Philippines, and up to 75 per cent in Tanzania) may have little or no time to go to government offices during normal opening hours or to devote to lengthy administrative procedures. Administrative forms may be in a language unknown to the migrant worker or

employer, and inaccessible to workers and employers with low literacy. Costs of registration and other legal obligations attached to it (minimum wage, overtime payment, weekly day-off) may be seen as unaffordable.

6. SOCIAL INSURANCE SCHEMES

Even when covered by labour and social protections, domestic workers may not enjoy effective access to social insurance schemes. Based on a recent ILO study (ILO, 2016), which mapped 163 countries, 63 per cent (70 countries) have provisions that extend some form of social insurance to domestic workers, at least in one of the contingency areas of social security listed in the Social Security (Minimum Standards) Convention, 1952 (No. 102).⁸ The scope of the social security regimes differs across these countries in many ways. Some have included domestic workers in the general social security system while others are special schemes specifically designed for domestic workers. Affiliation is obligatory in some systems, but purely voluntary in a few others. The number of contingency areas applicable to domestic workers may be limited. Foreign or migrant domestic workers may not be eligible. Financing and contribution arrangements also vary.

Recommendation No. 204

Para 20: Through the transition to the formal economy, Members should progressively extend the coverage of social insurance to those in the informal economy, and, if necessary, adapt administrative procedures, benefits and contributions, taking into account their contributory capacity.

Certain design elements of social security schemes may, indirectly, exclude particular categories of domestic workers. For example, social security eligibility requirements and contribution structures might be appropriate for workers with single employers or who are employed on a full-time basis, but not for workers with multiple employers or for employers with part-time workers. In the Philippines, the current social security system does not provide a way for multiple employers of a domestic worker to contribute pro-rata according to hours worked and wage rates paid to the worker. For migrant workers who do not have permanent residency or regular status, affiliation to social security in the host country, even if permitted by law, may be not be worthwhile or too costly if this is not portable.⁹

The extension of social insurance coverage to domestic workers may require not only their inclusion into the legal frameworks, but also the adaptation of administrative procedures, benefits and contributions to the needs and circumstances of domestic workers. This may require specific measures to account for the contributory capacity of domestic workers, to facilitate registration and the payment of contributions, and to adapt inspection procedures.¹⁰

⁸ The areas of social security in C102 are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit (ILO, 2016).

⁹ In the case of Switzerland, foreign workers without a regular residence permit are allowed to be paid through Chèque Service, which grants them all the corresponding entitlements. However, such a system deters migrant workers from declaring the full amount of hours worked as the risk of deportation does not guarantee them the receipt of the accumulated benefits. (Tomei, 2011).

¹⁰ Examples of successful extension of social insurance to domestic workers have followed a comprehensive approach in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202) and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). Both recommendations also highlight the importance of nationally-defined social protection floors, which guarantee at least a basic level of social security to all, and which are particularly relevant for vulnerable workers, such as domestic workers.

Box 3: Social Insurance and domestic work

While social security coverage is a key indicator of formality, domestic workers face multiple barriers for accessing legal and effective social security coverage. An ILO report identified the main institutional barriers. Beyond legal exclusion, specific elements that might drive informality in domestic work include:

- **Voluntary coverage.** Voluntary coverage is ineffective because it burdens domestic workers with the difficult task of convincing their employers to register them in a social security programme.
- **Coverage is limited to fulltime workers.** This is a barrier where many domestic workers are employed part-time, by the day or by the hour.
- **Restrictive definition of domestic work in legislation.** These can exclude certain occupations within domestic work.
- **Exclusion resulting from the characteristics of domestic work.** In some countries, social security schemes establish differentiated access conditions for domestic workers, such as placing a minimum threshold of earnings or hours worked with a single employer to be able to access some social security benefits.
- **Contribution rates equal to those of other occupational categories.** Although they seek the same coverage as other workers, domestic workers often have low contributory capacity and are often paid in-kind, which limits their capacity to pay contributions.
- **Complexity of administrative procedures.** Procedures that are burdensome, costly or difficult to understand act as disincentives to registration.
- **Inadequacy of administrative mechanisms for registration and receiving benefits.** The absence of mechanisms to register workers who work on an hourly basis, those who have more than one employer and those who work abroad, for example, exclude this population from access to social security benefits.
- **Benefits under the responsibility of employers.**
- **Lack of information and organization.** The highly isolated and decentralized nature of the workforce makes it difficult for individual workers to meet and exchange information on rights and entitlements to seek out.

Source: ILO. 2016. Social protection for domestic workers. Key policy trends and statistics. Social Protection Department, Social Protection Policy Papers No. 16 (Geneva).

Nonetheless, examples of successful extension of social insurance to domestic workers do exist. Countries such as Argentina, Uruguay, Italy, Spain, Belgium, and France, which have instituted mandatory coverage, allow for differentiated contributions, cover workers with multiple employers and part-time workers, and use service vouchers under a unified administration, are shown to have some of the highest levels of effective coverage (ILO, 2016).

7. OTHER LABOUR MARKET INSTITUTIONS

Apart from regulatory institutions, organizations and entities may be involved in mediating and facilitating the supply of domestic workers and the demand for household and personal care services. Under the right conditions, these could engender formalization.

7.1. Private recruitment and employment agencies

These agencies have played an increasingly major role in the recruitment and deployment of migrant domestic workers across national borders, especially from Asia and Africa to the Arab States and Asia. Being formal, legal entities, usually regulated by national governments, there is a general expectation that these agencies would engender formal employment practices, such as written contracts and official registration of workers at points of departure or entry of migration corridors. However, regulations governing their operation can be so complex (on top of complex immigration rules) and compliance so difficult and costly that agencies, workers and/or employers resort to irregular channels, practices and migration status (Fudge, 2011; Fudge, 2012; Gallotti and Mertens, 2013). Illegal and unethical practices are also known to be common, and such practices can channel migrant domestic workers into irregular situations, exploitative and abusive labour conditions, and forced labour.

In contrast, private agencies play a much lesser role in the hiring of domestic workers within their own countries. They are most prominent in home care giving in the USA and the UK.

In most other cases, informal means of recruitment, such as through networks of friends and relatives, informal agents and “word-of-mouth”, are still the most commonly preferred method in most countries, developed and developing. Informal recruitment practices often imply informal employment arrangements.

7.2. Corporate employers of domestic workers

In some countries, there are private, public and/or non-profit agencies that employ domestic workers who provide household and personal services to private households. Their function is not the same as the recruitment and placement agencies described above, although some agencies may be performing all these different functions. Their operations are publicly visible and are regulated by government. Examples of these corporate employers are found in France, Belgium and Sweden (Box 4). They operate alongside direct employment models, where households are the employers, and informal recruitment and employment arrangements. The contractual relationship between these agencies and the private household, which is purchasing the service, is covered by a service agreement, while the relationship between the agency and the worker is an employment contract and governed by labour legislation. Needless to say, the regulation of the operation of similar agencies in different countries may vary. Problems arise when there is a lack of clarity in the employment relationship, and over which party (the agency or the private household) carries the employer obligations. Similar challenges occur when domestic workers are considered as independent, own-account service providers, when, in fact, they provide only their labour and are in dependent, hierarchical relationships vis-à-vis the agency, the household, or both.

7.3. Organizations of workers and employers

Domestic workers and their employers are rarely organized into representative organizations that would assist in promoting legal recognition of their employment relationship, protecting their rights, and making work that takes place in private homes more socially visible.

Recommendation No. 204

Para 31: Members should ensure that those in the informal economy enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing;

Para 32: Members should create an enabling environment for employers and workers to exercise their right to organize and to bargain collectively and to participate in social dialogue in the transition to the formal economy;

Para 33: Employers' and workers' organizations should, where appropriate, extend membership and services to workers and economic units in the informal economy.

Box 4: Service providers in France, Belgium and Sweden (2015)

- **France:** Private householders have the option to purchase services from a licensed company (“*organisme prestataire*”), which employs a team of domestic workers. A contract of service (“*contrat de prestations*”) between the household and the company defines the services to be provided by the company and the applicable conditions. The organization chooses the employees who will intervene, and plans and supervises interventions. The domestic workers work under the direct authority of the supervisor who sends the workers on missions to customers’ homes. At the end of the service provided, the household pays for the services usually through an invoice provided by the agency. The employment relationship between the firm and the domestic worker is recognized in the labour code and national collective agreements (ILO, 2015a).¹¹ There is also a circular that guides the certification of the organizations that participate within the sector (See <http://vosdroits.service-public.fr/particuliers/F1692.html>. Labour Code: Articles L7232-1 to L7232-5 Declaration and accreditation of service organizations to the person; Labour Code: Article L7232-6: Implementation of activities by agents and service organizations; National collective agreement de la Branche de l’Aide à domicile; Circular No. 1-2012 of 26 April 2012 on the declaration and certification of service organizations.)
- **Belgium:** Registered service companies also employ domestic workers and deploy them to private households. Under a service agreement between the company and private household, the company puts in place a worker in the home of the user. The service agreement identifies the task to be performed, products used, obligations of the worker, and obligations of the user/household, hours worked, replacement in case of sickness, access to the home, pauses, theft or lost items, and other key terms. After the service has been provided, the agency issues an invoice for the services provided, which the user pays for by cash, card or voucher (*Titres-Service*), and which carries a government subsidy for the cost of the service. The minimum employment conditions of the domestic worker are assured by the service company: a standard employment contract with all the regular rights of workers in other sectors, which may be fixed term or open ended, full-time or part-time. The company has an obligation to transform fixed-term contracts into open-ended contracts if the worker has been employed for more than three months. See <http://www.titres-services-onem.be/utilisateurs/?lang=fr>.
- **Sweden:** The employment of domestic workers hired by a service company is regulated by the general labour legislation, i.e., the Employment Protection Act (1982:80), the Working Time Act (1982:673), the Working Environment Act (1977:1160) and the Co-determination Act (1976:580), and sometimes applicable collective agreements, unlike domestic workers who are directly employed by the household who are governed by the Domestic Work Act (Calleman, 2007; Gavanoas, 2010).

Unlike factory and office workers with a standard workplace around which organizations can coalesce, domestic workers are located in dispersed, individualized workplaces. Live-in workers with little or no rest days are the most isolated (Bonner and Spooner, 2011). Domestic workers who organize themselves, creating a collective identity, and undertaking collective actions face numerous challenges, not only legal barriers but social and logistical

¹¹ The first collective agreement was signed in 1999 by the FEPEM and the CFDT, CGT, CFTC and FO trade union confederations. As the agreement covered only privately paid workers who are employed by individual households (68% of the workforce), two more agreements were signed. First, a 2012 agreement, signed by the six unions and two employers’ organizations, covers domestic workers placed in private homes by non-profit intermediaries. Secondly, a 2014 agreement signed by three unions and two employers’ organizations that represented private companies, covers domestic workers who are employed by private enterprises. However, the CGT objected to the agreement with the representatives of private companies, arguing that it mischaracterized the employment relationship by treating employers as service-users. The FO also decided against signing the agreement because they believed it would lead to the deterioration of working conditions in the sector, partly because of the employment relationship model.

ones. Nonetheless, organizations and collective initiatives of domestic workers, within and outside the trade union movement, exist across the world and have been expanding in recent years (ILO, 2012b; Hobden, 2015).¹² Many are behind processes of legal reforms extending coverage to domestic workers.

Private household employers of domestic workers are equally dispersed, do not necessarily see themselves as employers, and have little time to organise. In France, Italy and Uruguay, collective agreements, negotiated by organizations representing domestic workers and employers of domestic workers, set the terms and conditions of employment for the sector. For example in France, the *Fédération des Particuliers Employeurs* (FEPEM), an association for private employers of domestic workers founded in 1948, represents the interests of its members vis-à-vis government and trade unions, including through collective bargaining on terms and conditions of employment of domestic workers. It also promotes the access of households to quality household and personal care services, as well as and the professionalization of the sector.¹³ Similar organizations exist in other countries, sometimes representing both household employers, and public or private intermediaries (ILO, 2015a).

8. NORMS, VALUES, TRADITIONS, PERCEPTIONS

Legal exclusion is a driver of informality for many categories of workers, for example workers labouring in informal construction sites, fishermen who are not on the crew list of commercial fishing vessels, and homeworkers producing garments for clothing enterprises. So, what makes the legal exclusion of domestic workers different?

The domestic work sector has particular characteristics which explain and reinforce the exclusion of domestic workers and which should be addressed by strategies for formalization. The workplace is the private home, and, very often, the employer is the private householder, who is also the direct recipient or user of the work performed by the domestic worker. These features are neither part of people's conventional notions of employee-employer relationships nor the focus of State regulation. The provision of household and personal care services within the home often involves highly personalised relationships. For these reasons, norms and values regarding family and home, and the gender division of labour in the home, influence perceptions, attitudes and behaviour regarding domestic workers and the relationship between worker and the private householder.

8.1. Private household, private sphere

First, pre-conceptions about the private home carry the notion that it is not a “real workplace”, unlike the factory site or office: what happens within the household is a private matter and outside State regulation; the privacy of the household is sacrosanct, and regarded as off-limits to labour inspectors.

Recommendation No. 204

Para 4(c): This Recommendation applies to all workers and economic units – including enterprises, entrepreneurs and households – in the informal economy, in particular employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households”.

¹² See also the website of the International Federation of Domestic Workers (IDWF): www.idwfed.org.

¹³ See website of FEPEM: www.fepeem.fr.

Thus, conditions of employment of domestic workers, even if these may be regulated by labour law, are “invisible” to the public, and non-compliance with formal rules could go undetected or ignored.

Secondly, there is a tendency among employers to regard their domestic worker (especially in the case of live-in workers) not as an employee, but rather as a “member of the family”, under the responsibility and protection of the household head. The relationship is imbued with paternalistic qualities. A study on domestic work in Turkey used the term “imaginary kinship relations” to describe the relationship between employers and workers. In the Philippines, domestic workers, especially those whose job is all-around housework – cleaning the house and premises, laundry and cooking –, are referred to as “*katulong*”, the Tagalog term for “helper”. The employers, the heads of the family, often the husband and wife or mother and father, are usually addressed “*kuya*” or “*ate*”, which are Tagalog terms for addressing an older brother or older sister. In focus group discussions with employers of domestic workers and domestic workers in Tanzania, Zambia, and the Philippines, employers who were proud about how well they treated their domestic workers likened it to how they would treat one’s own daughter or son (Ipsos, 2014; Kweka, 2013). Domestic workers who felt they were treated like a family member were proud of it, clearly finding a higher social status in being treated like family than in being considered a “mere” worker. This shows that domestic work is largely believed to be within the realm of the family, outside of the mercantilist logic of the labour market, as well as outside of State surveillance (D’Souza, 2010).

As a result there is a common expectation that the services performed by the domestic worker should be done out of affection and duty to the family or persons cared for, not on the basis of a (purely) contractual relationship. Undeniably, special bonds of attachment develop between employers, domestic workers, and family members being cared for over a long period of time. There are anecdotes of employers who have given their female domestic worker away in marriage, put their workers’ children in school, or cared for a worker who has grown old with the family. These stories are not uncommon, but nor are they the general rule.

Thirdly, traditional arrangements of mutual assistance and interdependence between relatives, friends and members of the same community have been used by urban households to obtain the service of domestic workers from poorer sides of the clan and communities, mostly in rural areas.¹⁴ Food and accommodation, payment of school fees, financial assistance to the parents or family of the worker provided in exchange for domestic services to the household, are not be considered as remuneration but a form of reciprocity. The arrangement may also take on the characteristics of a master-servant relationship, an extension of colonial practice and, sometimes, of local customs.

8.2. Private households as employers

Heads and members of households accept and perform their roles as employers with difficulty. They are generally unfamiliar with labour laws and regulations, and with administrative authorities. Even if they know the laws, drawing up employment contracts, registering with social security, complying with administrative requirements, and calculating social security

¹⁴ An example of this is child fostering, or otherwise known as “confiage” in West Africa and “vidomegon” in Benin, whereby children from rural areas are taken in by family members in the cities. In Tanzania, urban middle-class women have drawn on the tradition of “*undugu*” (a Swahili term meaning “kinship”) as a means of obtaining the labour of “house-girls” from rural areas, while fulfilling their moral obligations to care for the extended family.

contributions are often complex procedures, which may be difficult to understand or apply. This problem, combined with the difficulty of enforcement, means that a majority of domestic work is still kept off books (Farvaque, 2013).

As a result, employers turn to informal arrangements, which - although simpler - often result in poor working conditions and/or abusive situations. In certain cases, this means the denial of the employment relationship and the treatment of the domestic worker as an own-account worker, responsible for her/his own social security.

Because of the personalized and “trust” aspects of the relationship, employers largely rely on word of mouth, personal contacts and referrals for the recruitment and hiring of domestic workers, practices which, in turn, favour informal employment (Erdoğdu and Toksöz, 2013; Kweka, 2013; Ipsos, 2014). The use of private recruitment agencies is generally rare in the domestic work sector, but is predominant in certain destination countries where entry of foreign domestic workers is highly regulated and organized, such as Singapore, Malaysia, and the GCC countries. In some countries, personal and household services are delivered through public agencies, in which case the government sometimes acts as employer.

8.3. Extension of women’s unpaid work; not a “real job”; job of last resort

Traditionally performed by women and girls in their own households, without formal training and without pay, paid domestic work is often regarded as not being a “real job” or a “real profession”.

There is a perception that the sector is for workers who have been unsuccessful in obtaining other employment or who lack skills and education. This is embodied in policies in Europe that promote the domestic sector in combination with activation of difficult-to-reach groups, such as the low-skilled and long-term unemployed (for example in Belgium, where at a certain time, the *Titres-Services* system required that 60 per cent of eligible workers should be either unemployed or receiving a subsidy). In some countries (such as Zambia, Tanzania, Philippines), the sector has an over-concentration of very young women and men, who have not managed to finish basic schooling. Domestic work is sometimes seen as a stepping-stone into the urban labour market, or a means to “save money” for further education. In many areas, it is a survival strategy for women of poor households and those who have no access to other jobs. In the aftermath of the steep economic downturn of 2008, the share of private households with domestic employees in the Philippines increased (King Dejardin, 2010).

There is a common notion that as soon as women can afford to hire a domestic worker, they will outsource the more tedious and heavy tasks, such as hand washing clothes, collecting firewood, scrubbing floors and cleaning the house, to a domestic worker. In India, some tasks are considered “dirty”, “manual” and thus carry social stigma, and women from better off families or of higher castes would not personally perform these tasks, but would rather employ female domestic workers from lower castes to perform them at very low pay.

Labour legislation that sets lower wages and benefits for jobs in domestic work as compared to other jobs reflects, as well as reinforces, the low valuation of domestic work. In most countries where a minimum wage for domestic workers has been legislated, it is quite often set below the minimum wage for other sectors (ILO, 2013a). For example, in October 2014, Paraguay’s Senate approved a bill that established the minimum wage for domestic

workers at 60 per cent of the general minimum wage, contrary to the original bill, which had proposed putting the minimum wage of domestic workers to the same level as that of other workers.¹⁵ In India, minimum wage rates are set by task, and reflect the lowest social status assigned to tasks deemed unclean and performed by scheduled tribes and scheduled castes (Neetha, 2015).

Because the alternative to outsourcing household and personal care services to someone on the market is self-provisioning (i.e. unpaid work), which has no financial cost, “any paid service which might replace women’s domestic labour will never be ‘cheap enough’” (Windebank, 2010). The low social value of domestic work plus the relative cost of hiring a domestic employee or affordability of doing so in relation to an employer’s income and need, affect decision-making not only as to whether or not and how much domestic work to purchase, but whether to do so formally or informally.¹⁶

8.4. Confluence of low social status, discrimination and inequality

Because of the low social status of domestic work, individuals who perform paid domestic work tend to come from poor areas and population groups who are already facing discrimination and inequality on grounds of sex, ethnicity, race and nationality, which in turn further reinforce the social stigma of domestic work. Poverty, lack of employment options, unequal access to available formal jobs for lack of education, skills and resources, and discrimination in the job market, push many to take on low-paying, low-status and precarious jobs, such as domestic work, in the informal economy.

In Latin America, indigenous peoples and people of Afro-descent are overrepresented among domestic workers. Given the difficulties for indigenous women to enter the labour market in Mexico, Guatemala, Peru and Chile, they are often found in specific jobs and sectors, such as domestic services. In Chile, the proportion of *mapuche* women in domestic work was 28 per cent (Bello and Rangel, 2002), while in Bolivia, a large proportion of domestic workers are women from the Quechua, Aymara or other indigenous communities (D’Cunha and Lewis, 2013). In Guatemala, 70 per cent of domestic workers are indigenous (D’Souza, 2010). Domestic workers in Chiapas, Mexico, are migrants from indigenous communities in Guatemala as well as from El Salvador (UN Women, 2015).¹⁷ They are predominantly young, single women with low education levels who are looking for better wages. This is also true for the Afro-descendent populations in Latin America, who, due to inequalities in education and discrimination also suffer from labour market segregation. In the metropolitan region of Rio de Janeiro, about 40 per cent of black or mixed race women work as domestic workers while only 15 per cent of white women do. In India, caste plays an important role in determining who is engaged for which form of domestic work. Thus, cooking, on the one hand, and waste removal, on the other, are tasks assigned to persons that are at the two ends of the caste hierarchy - Brahmins and Balmikis respectively (D’Souza, 2010).

¹⁵ http://noticias.lainformacion.com/mano-de-obra/legislacion-laboral/senado-paraguay-aprueba-que-empleadas-domesticas-ganen-60-de-salario-minimo_Sk9HJTvCGJ8q6E2pd4ts91/

¹⁶ Studies in France, Sweden and UK have documented the sensitivity of personal choices of users of domestic services to changes in their income and in cost (or tax reductions) of using these services (see Farvaque, 2013). In France, Flipo and Hourriez conducted a study in 1995, which analysed the elasticity of demand to income using panel data which estimated an income elasticity equal to 3 (cited in Farvaque, 2013; see also Stancanelli and Stratton, 2010).

¹⁷ Most domestic workers in the city of San Cristobal de las Casas in the State of Chiapas, are female, indigenous, poor and migrants. (<http://womennewsnetwork.net/2011/02/27/chiapas-domestics-education/>)

Recent ILO estimates show that 17 per cent of domestic workers are cross-border migrants (ILO 2015c). Foreign-born and migrant domestic workers make up a huge majority of domestic workers in the Arab States, Northern America, Northern, and Southern and Western Europe, and in select countries in other regions. In Southern European countries, the increased demand for domestic services due to the increasing entrance of women into the labour market and to the ageing of the population, has combined with the lack of a developed and regulated market for domestic service to attract increasing immigration, leading to the overrepresentation of poor immigrant women in domestic work (Gallotti and Mertens, 2013: 8-9, 11-12; Triandafyllidou, 2013:1; King and Zontini, 2000:43, 45-46). In the MERCOSUR countries, while past migration was primarily from rural areas to urban centres, more recently, the domestic sector has seen the presence of cross-border migration. Often, there is a high concentration of immigrants from one country of origin, such as Peruvians in Chile, Nicaraguans in Costa Rica, Paraguayans in Brazil and Haitians in the Dominican Republic (Tokman, 2010). This has also been observed in Africa, where, for example, there is a dominance of Zimbabwean migrants in the domestic sector of South Africa.

Visa requirements and work permits tied to specific employers, restricting workers from changing employer, or giving employers the unilateral right to revoke them, render the balance of bargaining power between worker and employer highly asymmetrical in favor of the employer. In addition to employer-tied visas, the precarious situation of undocumented or irregular status of migrant workers obliges them to accept poor working conditions in exchange for regular employment status and a residence permit (Farvaque, 2013). In Latin America, there are significant differences between natives and immigrants in terms of working conditions and social protection coverage.¹⁸

¹⁸ Native-born workers have more access to formal jobs while migrants tend to concentrate in informal jobs including domestic work, resulting in lower protection (Tokman 2010). Tokman, citing a previous study, Tokman 2008: These differences are also reflected in the availability of labor contracts and the type of contracts. Even under the same contractual situation, nationals are more likely to have social protection coverage than immigrants.”

III. APPROACHES TO FORMALIZATION

III. APPROACHES TO FORMALIZATION

Formalization processes are those by which jobs, workers or economic units move under the coverage of formal arrangements, in law and in practice. Recommendation No. 204 puts forward that formalization of jobs can occur in three ways: (i) facilitating the transition of workers and economic units from the informal to the formal economy (undeclared jobs become declared; unregistered jobs become registered), such as through establishment and registration of employment contracts, registration with social security, declaration of formerly undeclared jobs, immigration regularization scheme; (ii) promoting the creation, preservation and sustainability of enterprises and decent jobs in the informal economy; and (iii) preventing the informalization of formal economy jobs. In the domestic work sector, the vast majority of employment is informal, and the continuing expansion of the domestic work sector in developed and developing countries means that there are real opportunities for creating new formal jobs in the sector.¹⁹ This section will therefore focus on the first two formalization processes put forward by the Recommendation.

In both strategies, an appropriate regulatory framework, one that covers the various types of employment relationships in the domestic work sector, will be necessary. But as said previously, putting in place a regulatory framework is not sufficient. There are many barriers to compliance and, thus, to formalizing an employment contract on the side of both employer and worker. There are also benefits to informal employment for both the domestic worker and the employer. Therefore, the conditions of moving from informal arrangements to formal ones, or of hiring domestic workers formally, should be accessible and attractive to employers and workers. Approaches to formalization should therefore ensure that their respective needs and concerns are addressed; that transaction and real costs of formality are relatively lower than that of informality; that the benefits of formality are worthwhile and that those of informality are much less so; and that formal institutions, systems and procedures are trustworthy, transparent and efficient. Moreover, the social dimensions of domestic work – its workplace, the personalised employment relationships, and the social norms, values and perceptions embedded in these relationships – demand non-legal interventions aimed at encouraging a change in attitudes, perceptions, and behaviours.

Recommendation No. 204 includes in its Guiding principles the importance of designing coherent and integrated strategies to facilitate the transition to the formal economy. In doing so, it recognizes the need for a balanced approach combining incentives with compliance measures (paragraph 7k).

¹⁹ The development of the domestic services sector in Europe has been actively promoted by national governments as well as by the European Commission since the 1990s. On one hand, the sector could absorb unemployed low-skilled workers; on the other hand, the availability of affordable (cheaper than institutional care) household, child care and elderly care services would free high-skilled workers from unpaid household and family care responsibilities and sustain “high productivity” jobs. Morel, N. 2012. *The political economy of domestic work in France and Sweden in a European perspective*. HAL archives-ouvertes. HAL Id: hal-01070392.

To aid in the implementation of this balanced approach, this section will focus on three principal approaches to promoting the transition from informality to formality and to creating new formal jobs are presented and elaborated in the subsequent sections: extending the scope of law; deterring informal arrangements; and enabling formal arrangements.

1. EXTENDING THE SCOPE OF LAW

Extending the scope of labour legislation and social security to cover domestic workers is a fundamental step towards formality. It recognizes domestic workers as workers, extends to them labour and employment rights, and defines the rights and obligations of the employment relationship.

1.1. Recognition of domestic workers' rights and extending labour and social protection

Since the adoption of the Domestic Workers Convention No. 189 and Recommendation No. 201 in June 2011, an increasing number of countries have adopted policy, legislative and institutional reforms aimed at extending or improving the protection of domestic workers' labour and social rights, and working conditions. Some of these reforms are comprehensive, addressing all domestic workers in an employment relationship, and many aspects of the terms and conditions of employment. Recent examples are the Royal Decree 1602/2011 and Ley 27/2011 on social security of Spain passed in 2011, the Domestic Workers Act signed into law in January 2013 in the Philippines, and the law passed in Argentina in March 2013 (see Box 5). Others have introduced or reformed labour standards in one or several aspects of the conditions of employment, such as remuneration or working time. For instance, in the USA, in 2013, the scope of coverage of the federal minimum wage and working time protections were extended to care givers (Goldberg, 2015); in Switzerland, in 2011, a national standard employment contract was adopted that set a minimum wage for domestic workers (Graf, 2013); in Chile, in 2014, the labour law was reformed to limit working time of live-in domestic workers²⁰; in Singapore, in 2013, domestic workers were granted a weekly rest day; and in Thailand, in 2012, a Ministerial Order was adopted that provides paid annual leave, paid holidays, and weekly rest to domestic workers. While of limited concerns, these measures reinforce the legal recognition of jobs in domestic work as work like any other, involving an employment relationship under State surveillance, not a private matter.

1.2. Special regulations for occasional, casual jobs

In several European countries, special laws have been adopted specifically to focus on casual jobs, which fall short of the standard forms of employment (such as, for example, work that is full time, or for a minimum number of regular hours per week) that are entitled to full employment and social benefits within the national legal context. Many of these occasional,

²⁰ In September 2014, the Chilean Commission of Labour approved a bill of rights for domestic workers and the ratification of the ILO Domestic Workers Convention No. 189. The bill of rights provides important legislation for domestic workers in Chile, for example the reduction of weekly working hours from 75 to 45 as well as Saturday and Sunday as obligatory rest periods.

Box 5: Legal reforms extending recognition of domestic workers' labour rights

- **Argentina**, 2013: The new domestic work law, Law 26,844, extended the benefits enjoyed by other workers to domestic workers. It provides for maximum working hours of 48 hours per week, a weekly rest period, overtime pay, annual vacation days, sick leave, maternity protections, and a minimum age of employment. Furthermore, the law also provides additional protections for live-in domestic workers, such as a provision for breaks and a furnished room.²¹ This reform also repealed the former discrimination of the status of domestic workers according to the number of hours worked, by now considering any number of hours worked in a private household as domestic work (Groisman and Sconfienza, 2013).
- **Philippines**, 2013: The Domestic Workers Act (2013) is a comprehensive law that provides for the protection of domestic workers against abuse, debt bondage, and worst forms of child labour. The Act sets minimum standards for wages, hours and days of rest, and other benefits for domestic workers; extends social security, public health insurance and a low-income housing scheme to the sector; and provides for mechanisms for labour dispute resolution and quick response to abuses.²²
- **Spain**, 2011: The Royal Decree 1620/2011 set out requirements for a minimum wage, weekly and annual leave, maternity leave, and compensation for stand-by time. This new regulation put domestic workers on par with employees on issues such as wages (which must be not less than the minimum inter-professional wage), while limiting the statutory working week of 40 hours and 12 hours consecutive rest. Furthermore, it regulates the amount that can be deducted from the wage for accommodation and maintenance. Spain also incorporated social security for domestic workers into its General Social Security Scheme (Eurofound, 2013a).

casual, or mini jobs are found in the domestic work sector, and are often undeclared. These special legal regimes are aimed at encouraging employers and/or workers to declare these jobs by reducing the cost of declaration (for example, through income tax exemption and reduced social security premium) and guaranteeing workers a minimum wage or a minimum package of social benefits. The secondary aim of some of these schemes is to encourage unemployed and economically inactive persons (such as students or housewives) to take up these jobs.

Although formalized, the employment protections and benefits associated with these jobs usually fall below those accorded to standard, regular jobs. A major critique against these special legal regimes is that these legitimize and promote poor quality, substandard jobs and further trap and segregate marginalised workers, who are not able to access formal jobs, into poor segments of labour markets. One could thus ask whether this is a worthwhile formalization strategy, and whether there should be a trade-off between formality and decent working conditions.

²¹ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/210000-214999/210489/norma.htm> (last accessed 4 August, 2016).

²² ILO. 2013. "Philippines enact new law protecting domestic workers". Available at http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_167021.pdf

Examples of these legal instruments are found in Slovenia, Italy, Germany and the Netherlands. In Slovenia in the 2000s, a new employment category called “small work” was created for workers who were not participating in full-time employment, i.e. working up to a maximum of 20 hours a week or 40 hours a month with a wage not exceeding 50 per cent of minimum wage (Eurofound, 2009b). It exempted the employer from drawing up a contract as long as he registered the employee for social security and wage-related contributions, and reduced the cost of health and pension contributions, which was covered by the Employment Service instead. In Italy, the voucher system *Buoni Lavoro per lavoro occasionale accessorio* is principally a measure to regulate occasional labour. It limits the supply of labour in terms of income up to €5,000 earned from all the different employers (Farvaque, 2013). The domestic worker benefits from social security coverage and accident insurance. In Germany, the *mini-jobs* scheme promotes employment through a reduced level of social security contributions, both for employers and employees, and income tax reduction and a simplified form to register the worker (Eurofound, 2009c; EFSI, 2013a). Only employees earning under €450 euro per month, as of 2013, may participate.

1.3. Regularizing the status of migrant domestic workers

Restrictions or high barriers to obtaining regular residence and/or employment status prevent migrant workers or their employers from declaring their jobs. Demand for migrant domestic workers may be high, but regular migration channels may be few and stringent. In the EU, controls and sanctions against employers of irregular migrant workers from third or non-EU countries have become very strict. However, recognizing that migrants can fulfil the demand for domestic services, some countries have taken measures to regularize the status of migrant domestic workers.

Recommendation No. 204

Para 15(e): Members should promote the implementation of a comprehensive employment policy framework, based on tripartite consultations, that may include labour migration policies that take into account labour market needs and promote decent work and the rights of migrant workers.

Italy, which has among the highest number of domestic workers in Western Europe and an increasing number of migrant domestic workers employed by private individuals and households, has carried out three regularization campaigns since 2002 that aimed, in part, at migrant domestic workers (Castagnone et al, 2013). The campaign began in 2002 and was meant to address exclusively migrant domestic or care workers. It came in response to pressure from civil society and Catholic organizations lobbying for regularization of the “*badanti*” (local colloquial term), who care for thousands of elderly in need of constant assistance. Although the campaign was extended to other sectors, half of all applications received concerned domestic and family assistants or homecare workers; almost 90 per cent concerned women workers; and more than 90 per cent were regularized. Another campaign, in 2009, which exclusively targeted workers in the domestic sector, was carried out as a response to high demand (despite the economic crisis), and to prevent the imposition of serious legal sanctions on a large number of families employing irregular domestic workers.²³ Under this campaign, 61 per cent of housekeepers or babysitters, and 39 per cent of family assistants were regularised.

²³ A new law making irregular stays a criminal offence and introducing harsh sanctions for employers of irregular workers.

In Spain, the adoption of Royal Decree No. 5/2011 (26 May 2011), which brought domestic workers within the purview of general labour legislation, provided employers with the motive and means to regularize undeclared work situations. They were invited to sign labour contracts lasting at least six months, and to register workers with social security by 31 July 2011, on the promise that no sanctions would be imposed, nor backdated social contributions demanded. However, after this deadline, stringent sanctions would be applied (ILO, 2013b: 38).

1.4. How does law lead to formality?

The legal recognition of domestic workers' labour and employment rights is necessary for formalization but not sufficient. A legal obligation does not always translate into contract registration and social security affiliation, or to compliance. Many factors shape actual behaviours and employment practices of employers and workers, including how laws are enforced, the capacity of regulatory institutions, whether or not parties understand regulations, whether parties trust the state institutions, and the monetary and non-monetary costs of compliance. The social dimensions of employment relationships in domestic work (presented in Part II) play a major role in shaping actual behaviour, in spite of what the regulations might say.

Box 6 presents a framework for understanding the process of transitioning from regulations to actual behaviour of domestic workers and their employers. The “black box” is an inter-play of socio-economic-political forces within the domestic work sector and external to it.

The experiences of countries with which the International Labour Office has worked, since 2011, to improve national regulatory frameworks for domestic workers demonstrate the practical challenges in implementing laws and reforms (ILO, 2013d). Depending on specific national needs and contexts, the ILO has supported awareness-raising and advocacy campaigns to foster commitment among domestic workers, their employers, and the public in general, to the principles embodied in laws. The ILO has also provided support with designing instruments in specific policy areas (for example minimum wage fixing; social security provision); enhancing capacities and tools of implementing institutions in new areas of work; and strengthening organizations of domestic workers as well as of employers of domestic workers to represent their respective constituencies in tripartite and collective bargaining mechanisms.

Debates over the benefits and costs of new legal entitlements for domestic workers reflect the differing and opposing views between interest groups. The most commonly used argument against new and higher labour standards is cost - that this would make household and home-based care services unaffordable to families and individuals in need, i.e., middle-income families, working and single mothers, physically dependent elderly and sick persons – which would lead to job losses; reduction in working hours as a means to reduce costs or avoid costs related to formal employment; or higher rates of informality.

The Philippines is an example of the tough challenges in formalizing employment in domestic work once the comprehensive law on domestic workers was passed in January 2013 (Box 7).

Recommendation No. 204

Para 34: In designing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalization, Members should consult with and promote active participation of the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy.

Box 6: Theory of change: from social security registration to formality and employment outcomes

Reform/Intervention Legal obligation for paid domestic workers to be registered with the social security system		
Characteristics of the intervention		
Design <ul style="list-style-type: none"> • Package benefits • Financing • Other legislated benefits & obligations connected to social security registration, e.g. minimum wage, paid leave, other monetary benefits, income tax declaration or deduction, • Voluntary and compulsory affiliation. 	Institutional mechanism for registration, contribution & claiming of benefits <ul style="list-style-type: none"> • Who is required to initiate registration - employer or worker? • Administrative procedures, including degree of complexity, length and time of processing, location and accessibility of offices, transaction language • Enforcement mechanisms 	Actual implementation <ul style="list-style-type: none"> • Geographical and/or group coverage • Phased or not • Measures taken to promote and disseminate registration • Operational issues



Incentives	
Costs/Benefits <ul style="list-style-type: none"> • Benefits are valued by domestic workers • Benefits are valued by household employers • Subsidies • Co-financing of contributions 	Procedures <ul style="list-style-type: none"> • Easy and simple procedures • Short transaction time • Low transaction and real costs
Disincentives	
Costs/Benefits <ul style="list-style-type: none"> • Benefits are not valued by domestic workers • Benefits are not valued by household employers • Contribution is too high vis-à-vis benefits • Contribution is too high versus cash wage for domestic workers • Contribution is too high versus household employer disposable income 	Procedures <ul style="list-style-type: none"> • Procedures and transactions are long, complicated, not easy to understand, and time-consuming • Inaccessible offices • No monitoring of compliance • No or minimal penalty for non-compliance
Intermediating Factors	
Demand-side factors <ul style="list-style-type: none"> • Employers' knowledge of regulation • Total cost of employing a domestic worker • Disposable income and capacity to pay • Need for a domestic worker • Employers' attitudes: towards law, towards domestic workers' employment rights, value of domestic work vis-à-vis cost • Social or peer pressure, and public opinion 	Supply-side factors <ul style="list-style-type: none"> • Domestic workers' knowledge of regulation • Whether paid domestic work becomes more attractive to jobseekers • Whether many want a job regardless of benefits • Whether domestic workers have a higher preference for cash wage than social security benefits • Domestic workers' attitudes: towards law, towards domestic workers' employment rights • Social or peer pressure, and public opinion
Context	
Socio-economic context of domestic work in given country; Macro-economic policy framework; Organization and structure of employment in domestic work; Socio-demographic characteristics of domestic workers and employers of domestic workers; Overall state of the labour market, labour regulation and social security coverage	



Behaviour	
HOUSEHOLD EMPLOYERS Current employer... ...complies; registers current domestic worker; selectively registers some domestic workers; hires new domestic worker; does not comply; does not register current or new domestic worker; or dismisses current domestic worker. New employer... ... hires domestic worker; registers and hires domestic worker; does not register domestic worker. Other households... ...decide not to hire domestic worker.	DOMESTIC WORKERS Current domestic worker... ...complies; registers; insists on the employer to be registered; does not comply; refuses employer to be registered. New domestic worker... ...complies; accepts only registered/declared jobs; does not comply; accepts only unregistered/undeclared jobs; accepts any job.
Outcomes and measurement	
→ Domestic workers registered with social security system: <ul style="list-style-type: none"> • Number and share of domestic workers who are registered with the social security scheme • Number and share of domestic workers who are actively contributing members and number who effectively receive benefits when needed → Employment contracts (oral, written) Note: Numerical indicators disaggregated by main characteristics of registered and contributing domestic workers, and characteristics of employers of registered domestic workers.	
Impact	
Employment of domestic workers <ul style="list-style-type: none"> • Number and share of employed domestic workers • Domestic work – principal or secondary job 	Conditions of employment <ul style="list-style-type: none"> • Wage • Working hours • Contractual status
Note: Impact indicators disaggregated by characteristics of DWs and characteristics of employers of DWs	

Box 7: The Philippines**Domestic work sector: 1.9 million workers (2010)**

Since 2013, the Department of Labour and Employment and the national tripartite-plus Technical Working Group on Domestic Work have taken steps to define new guidelines, set up new systems, and synchronize efforts of mandated agencies.

Changing prevailing mind-sets is one of their principal objectives. The following arguments against the ratification of the Domestic Workers Convention (No. 189) and adoption of the Domestic Workers Act reflect socio-cultural barriers:

- Employers of domestic workers cannot afford the cost of the new standards
- Women of middle-income & minimum wage-earning families will be forced to dismiss their domestic workers and stop working.
- Rules in the industrial setting cannot apply in the household. The nature of work is different; the needs of the family are flexible; the relationship is based on trust.
- The law will destroy the family-like and harmonious relationship between worker and employer.
- The law cannot be enforced because households cannot be the subject of labour inspection.

In respect of institutions, two of the greatest immediate barriers to formalization of employment are: (i) absence of a functional registration system at the barangay (lowest administration unit) level for domestic workers' employment contracts and affiliation in three mandated social security schemes; and (ii) the current social security regime that makes it very costly for employers to declare previously undeclared workers and that does not have a suitable registration and payment mechanism for domestic workers who are employed by multiple employers.

Source: Ana Valencia (National Project Coordinator on Domestic Work), presentation at the ITC Academy on Formalization of the Informal Economy, November 2014, ITC, Turin.

Few studies have examined the effects of labour regulations regarding domestic work on informality, employment and working conditions. More impact assessment studies would be useful.²⁴ Three studies concerning South Africa, which adopted a specific regulation concerning domestic workers in 2002, show that the effects of new labour standards were not singly positive or negative, but had differentiated manifestations (see Box 8).

In general, the role and impacts of labour regulations have been well debated in the past two-three decades. Since the 1990s, this debate has been dominated by the neo-classical view, i.e., that labour laws interfere with the (perfect) operation of labour markets and cause inefficiencies. The commonly accepted "truth" is that, in spite of their good intentions, labour regulations will have unintended negative consequences. As regards to the effects of labour regulations on informality, the influential view is that these cause more informality, thus questioning the very role of labour legislation in formalization.

However, recent comprehensive reviews of empirical studies show that the real impacts of labour regulations are not as negative or as strong as the neo-classical views have argued

²⁴ As of this writing, the ILO has commissioned case studies of the effects of legal reforms regarding domestic workers in Uruguay, Spain and Brazil, which are being finalised and expected to provide new insights into the process.

Box 8: South Africa

The Basic Conditions of Employment Act covers domestic workers. In 2002, the South African Government issued the Sectoral Determination Act No. 7, which fixed minimum wages for domestic workers, entitled them to the Unemployment Insurance Fund (UIF), and re-affirmed their rights to protection in respect of working hours, overtime and paid holidays.

→ Key findings of three studies on the effects of Sectoral Determination No. 7:

Dinkelman and Ranchhod (2012) compared the change in wages and hours of work of domestic workers in places where their pre-regulation median wage was far below the new wage floor (high wage gap areas) to those in places with low wage gaps. Sixteen months after the issuance of the new regulation, wages had increased by 20 per cent. Of this, 13-15 per cent was accounted for by the new regulation. Hours of work were hardly affected. The probability of having a job contract increased by 18 per cent. The share of domestic workers whose employers contributed to the Unemployment Insurance Fund (UIF) increased by 18 to 20 percentage points.

Hertz (2004) studied macro trends between February 2002 and September 2003. Unlike Dinkelman and Ranchhod, Hertz found that hours of work declined by 4 per cent for domestic workers although these were constant for other workers. The proportion of workers who reported having a written contract rose from 7 per cent to 25 per cent, and the number who reported receiving UIF contributions rose from 3 per cent to 25 per cent.

The micro study by Matjeke et al (2012) of two settlements in Pretoria showed an increase in part-time working time arrangements, resulting from minimum wage legislation.

(Betcherman, 2012).²⁵ With respect to effects on informal employment, Kucera and Roncolato's review (2008) does not find sufficient empirical evidence to support the inverse relationship between labour regulations and shares of formal employment. In fact, some of the "statistically strongest results" in the literature show a positive relationship between labour regulations and shares of formal employment. The evidence suggests that the debate should not be regulation versus no or less regulation; rather, it should be about the optimal design and implementation of labour regulations and social protection schemes in country- and time-specific contexts. The results of laws depend not only on their scope and manner of implementation, but also on the understandings and beliefs among "market actors" beyond the scope of the legal system, and on time- and area-specific contextual factors (Deakin, 2011).

2. THE DETERRENT APPROACH: DISSUADING INFORMALITY

What is the likelihood that an unregistered domestic worker or undeclared job would be detected by public authorities? Is the cost of not declaring one's job or one's domestic worker

²⁵ Betcherman's review (2012) covered over 150 studies on the impacts of four types of labour market institutions - minimum wages, employment protection regulation, unions and collective bargaining, and mandated leave benefits. It had particular emphasis on developing countries, and looked at impacts on living standards (employment and earnings), productivity and social cohesion to the extent that these had been analysed. On balance, the studies indicate that the impact of labour regulations and collective bargaining on productivity and on employment/unemployment is modest, with most studies showing no effect or small negative effects and some finding positive effects.

greater than that of formalizing it? What is the likelihood that one of the parties - employer or worker - would insist on registering the contract or would report non-compliance?

While Recommendation No. 204 acknowledges that “most people enter the informal economy not by choice but as a consequence of a lack of opportunities in the formal economy, and in the absence of other means of livelihood” (preamble), it also encourages Member States to “prevent and sanction deliberate avoidance of, or exit from, the formal economy for the purpose of evading taxation and the application of social and labour laws and regulations” (Para 7(I)). Without measures to enforce and monitor compliance, labour regulations would have little effect on employment practices. Standard government measures include labour inspections, complaints mechanisms, and dispute settlement systems.

Several barriers to enforcing labour standards in the private home have been widely identified. Private homes often fall outside the scope of actions of labour inspectorates because of legal limits on house inspection visits. The conditions and procedures for carrying out labour inspections may not be defined, and labour officials may not be prepared to undertake them. Most of all, governments’ resources are not enough to cover such a widely dispersed sector. Even where the law permits labour inspections to be conducted in response to a worker’s complaint, workers rarely file complaints with public authorities.²⁶ Domestic workers might not know their rights under the law, might not have the time, freedom or money to file or call in their complaints, might not know where or whom to call, or might not trust the public authority. They might also prefer to retain their job in spite of contract violations rather than risk losing it altogether; or, they may prefer to leave the employer and find another job.

In spite of these challenges, a few countries provide examples of practices adopted by labour inspectorates to monitor and enforce compliance in the domestic work sector (Box 9). A common rule is making access of labour inspectors to private households dependent on the consent of the householder or on prior judicial authorization. In the case of allegations of serious rights violations that constitute a criminal offence, for instance child labour, forced labour, the police department can normally gain access to the household. Another practice is to use labour inspection as a way of reaching and educating employers and workers on their legal rights and obligations, and eliciting compliance through advice rather than through the immediate imposition of penalties when violations of minimum labour standards are found.

South Africa demonstrates alternative methods of monitoring compliance (ILO, 2015b:34). In the Western Cape, labour inspectors summon employers and domestic workers in neutral places for interviews, especially when investigating complaints. In Cape Town and other areas of the Western Cape, inspections to monitor compliance in the domestic work sector were conducted during five days in January 2011. Out of a total of 215 households employing domestic workers, only 46 per cent were fully compliant. Written undertakings were secured from the non-compliant employers to fulfil their legal obligations. Follow-up inspections found that 84 out of the 93 previously non-compliant employers had become fully compliant.

²⁶ ILO case studies on dispute resolution in relation to domestic work sector in Argentina, Jordan, Spain, Italy, France, Massachusetts (USA), Tanzania, Zambia and the Philippines, which were carried out by research consultants in 2015 under the supervision of the ILO’s Labour Law Unit, GOVERNANCE, and the Inclusive Labour Markets, Labour Relations and Working Conditions Branch, show that complaints and disputes filed with conciliation and mediation institutions and labour administrations are very few.

Box 9: Some practices adopted by labour inspectorates

- **Spain:** The Law 36/2011 regulating the labour jurisdiction provides that the Inspectorate General of Labour and Social Security may, in addition to controls related to fundamental rights or freedoms, request judicial authorization to inspect home premises if the owner refuses it, or if the risk of such refusal exists, provided that the inspection is related to administrative procedures that subsequently can be brought to the social jurisdiction.
- **Ireland:** The National Employment Rights Agency (NERA) was created in 2007 to secure compliance with employment rights legislation, including in the domestic work sector. NERA has piloted a method that consists of asking employers' to give the labour inspector access to the household when a visit takes place via letters mailed to them. If this is refused, the employer has to provide an alternative place for the meeting.
- **Uruguay:** Law No. 18.065 sets out that household inspections can be conducted in the face of a presumption of non-compliance of labour or social security law for which a warrant shall be issued by the Court of first instance. Within 48 hours of intervention, a report shall be sent to the court. To implement this law, Uruguay set up a specialized section to monitor compliance with domestic work legislation.
- **Ecuador:** Ex officio action, such as the organization of blitz visits to selected neighbourhoods, is organized to identify abuses, particularly undeclared domestic work.
- **South Africa:** The labour inspectorate uses a calling card system, which consists of distributing letters that request employers to grant access to their households (but with low response rate). Inspectors carry out door-to-door campaigns to secure appointments.

Source: ILO. 2015b. Labour inspection and other compliance mechanisms in the domestic work sector. Introductory guide. LABADMIN/OSH (Geneva)

The imposition of administrative or criminal sanctions for violations of labour regulations is hardly discussed in relation to domestic work. However, these often exist within labour legislation, either directly within the labour code, or indirectly, in relation to forced labour, bodily harm, and other violations (ILO, 2012c). The penalties can be directed to the household (employer) or its members, or to the recruitment agencies infringing the law, including the prohibition of agencies engaging in fraudulent practices and abuses. South Africa's Sectoral Determination 7, section 23(4), as applicable in 2015, echoes the prohibition of forced labour set forth in the Constitution and the Basic Conditions of Employment Act (section 48) and applies the penalties established in section 93 of the Act (maximum three years imprisonment). In Singapore, the Penal Code, section 72, provides for specific offences against the integrity of domestic workers.

In the EU in recent years, sanctions of an administrative and criminal nature have increasingly been used to address undeclared work, including that by foreign workers with irregular status.²⁷ In Hungary, for example, a penalty exists for non-compliance with the declaration of domestic

Recommendation No. 204

Para 30: Members should provide for preventive and appropriate corrective measures to facilitate the transition to the formal economy, and ensure that the administrative, civil or penal sanctions provided for by national laws for non-compliance are adequate and strictly enforced.

²⁷ Sanctions for employers accepting workers from third countries with irregular status have become stricter as an effect of EU Directive 2009/52, covering all activities that are or ought to be remunerated, undertaken for or under the direction and/or supervision of an employer, irrespective of the legal relationship. In most countries, the use of irregular migrant workers creates criminal responsibility both for employers and undeclared migrant workers. It should be noted that sanctions do not mean disregard for migrant workers' rights, for example, an employer should be required to pay to the third country national any outstanding remuneration for the work undertaken, any outstanding taxes, and social security contributions (ILO, 2013b).

work under Act XC. To detect undeclared work, some countries crosscheck different sets of information. In Belgium, a portal to crosscheck data about a worker's nationality, immigration status and registration for social security and tax purposes is available to the labour inspectorate. While this practice may be an effective way to detect undeclared work, it raises the question of whether labour inspectorates should play a role in detecting irregular migrant workers. The ILO Regional Knowledge-sharing Forum on "Labour Inspection and the domestic work sector", held in Lisbon in October 2012, addressed this issue.²⁸ The forum reported that several labour inspection services were found to be cooperating with authorities responsible for immigration. Even where labour inspectorates were not responsible for enforcing immigration policies, they may nevertheless have an obligation to report undocumented migrant workers to competent authorities. In Spain and Portugal, the labour inspectors play a role in the procedures allowing undocumented migrant workers to regularize their immigration status. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stressed that the functions of labour inspectorates are intended to secure workers' rights under relevant laws rather than concerning themselves with the lawful nature of their employment, and that workers should not be excluded from protection on account of their irregular employment status (ILO, 2015b).²⁹

3. ENABLING APPROACH³⁰

The enabling approach focuses on removing barriers to the formalization of jobs and strengthening the benefits of formal jobs. While the deterrent approach uses sanctions and increase of the costs and risks of being detected, the enabling approach focuses on facilitating and encouraging compliance. This is a fundamental strategy outlined for the formalization of micro and small economic units in Recommendation No. 204, and is equally applicable to households. In this regard, paragraph 25 of the Recommendation calls on Member States to reduce registration costs and the length of the procedure, improve access to services, reduce compliance costs by introducing simplified tax and contributions assessment and payment regimes, and improving access to inclusive financial services, skills training and social security coverage. The various enabling strategies could be grouped into three categories: (i) information dissemination and awareness-raising about regulations and the importance of compliance; (ii) reduction of the financial costs entailed in formal arrangements; and (iii) simplification of procedures to cut transaction costs. Often, these strategies are combined.

3.1. Information dissemination

Information dissemination about laws is a standard function of labour ministries and other enforcement agencies; however, typically actions might not go beyond the simple announcement of new laws on public media. To promote compliance in domestic work, awareness-raising campaigns, hotlines, and call centres are among the most common options of labour inspectorates (ILO, 2015b: 30-31). In Chile, the Labour Directorate is the institutional body that is legally mandated to oversee the enforcement of laws guaranteeing workers' social rights. It does so by disseminating information online as well as via telephone

²⁸ Based on ILO report on this regional forum; INWORK files.

²⁹ Taken from 2008 observation on the application of Labour Inspection Convention, 1946 (No. 81) in France as well as the 2006 General Survey on Labour Inspection (para. 150).

³⁰ The term "enabling" is borrowed from Williams and Renooy (2008). It is an appropriate descriptor for measures aimed at helping and motivating employers and workers to comply with the laws and to formalize as opposed to traditional measures of sanctions and threats of sanctions.

hotlines (Velásquez et. al., 2013). Some governments put much more effort and creativity into using various channels and media. For example, the New York State's Domestic Workers' Bill of Rights (passed in 2010) contains a state obligation to plan and implement an outreach strategy, which has come to include working closely with community groups and organisations, and employing varied communication channels.³¹

Domestic workers' organizations and trade unions are very active in conducting rights awareness campaigns in many countries across the world.³² In addition to printed information materials and radio programmes, they reach domestic workers through phone messaging, Facebook and other social media, and area-based fairs.³³ While few, measures taken by organizations of employers of domestic workers include the highly elaborated, detailed website of FEPEM (France)³⁴, and the Facebook page of *Liga de Amas de Casa* of Uruguay.³⁵ In 2012, the Zambian Federation of Employers, in collaboration with the labour ministry and trade unions, produced a code of conduct presenting the legal entitlements of domestic workers in Zambia.

National tripartite committees on domestic work, in collaboration with national labour ministries, implement national communication strategies to create awareness and compliance with new regulations. For example, in Zambia, the Ministry of Labour and Social Security and the members of the Domestic Work Sector Communication Sub-Committee of the national tripartite-plus committee on domestic work developed an "Advocacy and Communication Strategy to Support the Domestic Workers Rights in Zambia Domestic work", dated February 2015.³⁶ Twelve radio programmes were aired over a 12-week period in 2015, focused on the provisions of Statutory Instrument No. 45 on Minimum Wages and Conditions of Employment (Domestic Workers) (Amendment) Order of 2012. In the Philippines, the Department of Labor and Employment and member organizations of the national Tripartite-plus Technical Working Group on Decent Work for Domestic Workers have launched intensive information campaigns on the new Domestic Workers Act since 2013, via print and online information materials, radio programmes, and "infomercials" at cinemas.³⁷

3.2. Simplification measures

Complex, long bureaucratic procedures mean big transaction costs for employers and workers, are not easily accessible for low literacy populations, and discourage those unfamiliar with administrative offices. Simplifying administrative procedures is thus an important way of helping and motivating parties to comply with regulations and formalize their employment arrangements. These methods do not entail huge fiscal implications, as in the case of subsidies and tax deductions (covered in section 3.3).

³¹ Department of Labor, State of New York, Domestic Workers' Bill of Rights, <https://labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>.

³² See website of the International Domestic Workers Federation <http://idwfed.org/en>

³³ Examples are: fairs in La Paz and other regional centres of Bolivia conducted by FENATRAHOB; the "Dada Jitambue" campaign by the Conservation, Hotel, Domestic and Allied Workers (CHODAWU) of Mainland Tanzania in 2014-15.

³⁴ Fédération des Particuliers Employeurs de France <http://www.fepem.fr/accueil>.

³⁵ <http://www.facebook.com/pages/Liga-de-Amas-de-Casa-del-Uruguay/444290175639449>

³⁶ Based on reports from ILO Country Office in Lusaka.

³⁷ Reports from ILO Manila on advocacy plans and campaigns, undertaken within the framework of the Philippine Decent Work Country Programme in 2012-13 and 2014-15.

Following are some ways of reducing the administrative burden of formalizing employment on employers of domestic workers and/or domestic workers.

Simplified registration and payment systems

Luxembourg simplified the registration of domestic workers in 1999 (ILO, 2013b). Under the system, the employer paid the net wage to the domestic worker, filled in a single declaration, and sent it to the social security institution (CCSS), which directly calculated the gross salary and collected the contribution from the employer. Every month, a declaration would be sent to both parties of the employment relationship with information of what has been paid. The worker in turn would receive a statement every 6 months of what has been paid (ILO, 2013b).

In Hungary, under the Simplified Employment Act (2010/LXXV), a simplified employment model lowered administrative procedures for both employee and employer: the employment status has to be stated in a mutually agreed simplified work contract, which can be declared either by a simple text message (SMS) or electronically via the so called client gate system (Eurofound, 2013c).³⁸ It covers two categories of simplified employment: seasonal agricultural work, which includes seasonal tourism services, and other casual/temporary work, including domestic work. With regards to domestic work, the employer pays a flat rate daily tax regardless of hours worked and actual wage paid. By entering codes into a text message or into the internet-based client gate system, all obligations can be fulfilled at once, namely notification, reporting, and payment. However, as per Act XC of 2010, which regulates the employment of domestic workers, the registration of domestic workers into the system does not (as of 2011) entitle the workers to social security benefits or health care.³⁹

Guiding tools

In order to make it easy for employers and workers to comply with regulations, countries have often developed guides or instructions on how to conclude an employment contract and calculate the social contributions. These can be found on the sites of the labour ministries of Argentina, Canada, Colombia, Portugal, Singapore, South Africa, and Uruguay. Some are synthetic (Argentina) while others are voluminous explaining laws in detail (South Africa, Portugal and Uruguay). Some include the precise formula for calculating the wage and various social contributions (Colombia, Portugal, South Africa, Uruguay). Some of these guides are structured in a question and answer format (Portugal) and as an “Employers check list” (State of New York, USA).

Model contracts and payslips

Drawing up a contract according to the labour legislation, without forgetting any clauses, can be burdensome to any employer. Many countries (Canada, Chile, Netherlands, Philippines, South Africa, Spain, Switzerland) have developed model contracts to simplify the need to draw up a contract for their domestic worker. In other countries (Argentina, Philippines,

³⁸ The Simplified Employment Act was introduced on 1 August 2010 and amended on 29 December 2011. See <http://www.eurofound.europa.eu/observatories/emcc/case-studies/tackling-undeclared-work-in-europe/simplified-employment-act-hungary>.

³⁹ “The basics of labour law - possible forms of employment” downloaded 6 August 2016. <http://www.npk.hu/public/kiadvanyaink/2011/cd/mappa/LABOUR2011.pdf>.

South Africa, Uruguay), the authorities have also drawn up model payslips. These model contracts can often be found on the competent authority's webpage.

3.3. Reducing the cost of formalization; increasing financial incentives

Cost is a major barrier to formalization, for both worker and employer. To address this barrier, several instruments have been crafted and applied in various countries to reduce the cost or enhance the benefits of formal arrangements. Among others, such methods include income tax reductions or tax credits, VAT reduction (for company service providers), wage subsidies, reduced social security contributions, and exemptions. These vary in terms of (i) the target group of the benefit; and (ii) the level of the cost reduction.

The target recipients may be private households in general or only specific sub-categories of private households, such as households of a set income level, or individuals, such as those aged 65 and over. They may be companies that employ and deploy domestic workers. They may be domestic workers in general or only workers or jobs under certain thresholds of earnings and working hours. In some instances, these incentives may be limited to certain types of household and personal care tasks.

Both the choice of target recipients of incentives, and the decision whether, and how, to combine incentives with other measures, depend largely on policy objectives. The discussion below will show that formalizing previously undeclared or under-declared jobs/workers, and creating new formal jobs in the domestic work sector, are not always the only objectives of formalization instruments. They have also been used to assist those families and individuals with special needs for domestic services to gain access to these services using formal arrangements, to help the unemployed re-enter the labour market, or to ensure that households get quality services. The policy objectives may be a combination of these, and more.

For private households, a cost reduction means a lower final price for domestic work. If the cost of formal arrangements is lower than the cost of informal employment arrangements, one would expect that, all other things being constant, formalizing and declaring a job/worker would be more attractive than not doing so. For domestic workers, reduced levels of social security contribution and income tax mean higher "take home pay", and thus may be attractive to workers as well, under certain conditions. However, they may imply a lower level of social security, which would reduce the quality of employment.

Income tax deductions or tax credits, for households that employ domestic workers or pay for domestic services (such as in Belgium, Denmark, Finland, France, Germany, Italy, and Sweden) are the most common fiscal instrument used to make formal jobs cost-attractive. Other measures such as reduced VAT charges on domestic services provided by enterprises (France and Netherlands), and reductions or exemption from social security contributions for domestic workers or employers (France, Germany) also exist. Levels vary and a cap on the amount of deduction may be set. France and Sweden have been reported to have very generous tax reduction policies for employers or users of domestic services, with up to 50 per cent of the cost of services being deducted from income tax, while tax deductions are much lower in Belgium, at 30 per cent, and in Germany, at 20 per cent. These countries applied ceilings on tax deductions (Farvaque, 2013).

Supporting specific or wide-ranging activities:

Belgium's *Titres-Service* voucher scheme covered only housework services, not personal care services (discussed further below). In Hungary, the tax credit was set for a wide range of

activities at 30 per cent of expenses (with maximum of €300 per year).⁴⁰ France's CESU (discussed further below) is not limited to any particular type of service. Luxembourg's tax reduction scheme covered the purchase of housework services and care services for dependent persons or childcare, up to a maximum rebate of €3,000 per year, and which cannot exceed €300 per month (Farvaque, 2013).

Finland's 'tax credit for domestic help' is a tax deduction scheme available to households that pay for services such as cleaning or home repairs, or the care of an elderly person or a child in the home, provided by either a formal private company, a self-employed independent contractor, or an individual worker under an employment contract (Eurofound, 2009a). As of December 2014, a household could deduct 45 per cent of the VAT-inclusive total cost of services with a ceiling of 2,400 euros from his/her taxable personal income. The tax deduction rate and ceiling had sharply increased from 10 per cent in 2003 to 30 per cent of wage costs and 60 per cent of payment to an enterprise in 2009.⁴¹

Supporting particular groups of employers:

In Denmark, a previous tax incentive scheme allowed for 50 per cent deduction of the costs (up to around 2,000 euro per year) on a range of activities, such as cleaning, gardening, child-minding, reparation and renovation.⁴² At first, it benefited anyone purchasing the specified activities, but as it evolved, the scheme was restricted to people aged 65 and over, reflecting a greater emphasis on the elderly population. The *Titres-Services* of Belgium give a higher fiscal benefit to particular groups - single-parent families, disabled people, parents with children with disabilities, and elderly people who are receiving a dependency allowance for the elderly. These groups can purchase up to 2000 vouchers per year, while others are allowed a maximum of 500 vouchers per year and pay about one euro more for vouchers beyond 400 units. Each single "titre-service" unit is entitled to a tax deduction.⁴³

Targeting particular types of employment contracts:

Financial incentives may also be directed to specific non-standard forms of employment, such as occasional and casual jobs, as was the case of the Netherlands and Germany. Both had adopted special regulations to deal with this category of jobs (presented in the previous section). In Germany, the *Mini-jobs* scheme applied a reduced level of social security payments both for employers and employees. These measures aimed at formalizing casual jobs, which are very often undeclared, while also encouraging the unemployed to take up these small jobs, and providing workers with a minimum level of protection under a special regime. In Brazil, under Law No. 11.324 of 2006, employers of domestic workers were eligible for tax benefits, provided they could prove the regularity of their workers in the social security system (Tomei, 2011). The amount paid by the employer towards the domestic worker's social security contribution could be deducted from their income tax, according to the limits set by law, up to an amount of R \$ 1,078.08 (BRL), including 13th salary and holiday.

⁴⁰ Activities included: renovation of properties, modernization of services, babysitters, childcare, housekeeping, homecare, household appliance maintenance and repair, heating systems, flue gas discharge systems, hot and cold pipes, waste water systems, maintenance and repair.

⁴¹ See also Finnish Tax Administration Website: [https://www.vero.fi/en-US/Individuals/Deductions/Deductions_you_must_claim\(35230\)](https://www.vero.fi/en-US/Individuals/Deductions/Deductions_you_must_claim(35230))

⁴² The scheme was first implemented in 1994, then changed in 1999 and 2002, and restricted in 2004. A new scheme was established in 2011, which was later abolished in 2013.

⁴³ <http://www.titres-services-onem.be/utilisateurs/avantages-fiscaux/> (Accessed on 6/08/2016).

Supporting companies as service providers:

Financial incentives may be specifically aimed at companies/agencies that employ domestic workers and deploy them to households, in effect promoting their role as employers and service providers. Reducing the VAT rate also reduces the final price of domestic work for the private household. This cost-cutting measure has been practiced in France and the Netherlands. In Germany, domestic services contracted through the *Mini Jobs* scheme were fully exempted from the VAT.

In Belgium⁴⁴, private household-users can obtain a *Titres-Services* voucher only from registered companies. Through this voucher system, not only do private households (as consumers or users of domestic services) qualify for tax deduction; the registered company that deploys the domestic worker to the household also receives a government subsidy. The subsidy consists of the difference between the minimum hourly wage the company is obligated to pay the domestic worker, and the price of an hour's voucher paid by the private household. In sum, the *Titres-Services* scheme not only offers financial incentives to users and employers of domestic workers to use formal arrangements; it also promotes corporate service providers as employers of domestic workers in a triangular employment relationship, and liberates private households from employer obligations, at least in the case of housework services. More information on the *Titres-Services* scheme is given below.

In Sweden, users of the *RUT-avdraget* benefitted from a 50 per cent tax reduction (up to a certain limit) of labour cost per year, and per person or per household. It covers services performed in the taxpayer's home or in their parents' home, but only when purchased from a registered company or self-employed person (EFSI, 2013a: 30).

Offering support to the whole domestic work sector:

In contrast to many of the examples above, France has offered a system of financial incentives that appears to be the most open of those reviewed, offering the widest range of options for users and domestic workers. Private households and individuals can apply the tax incentive on the purchase of care and non-care services, whether they buy the service directly from a company or employ directly a domestic worker, and whether or not they use the CESU voucher system (explained below).

3.4. Service voucher systems: simplifying and integrating registration, incentives and policy goals

Vouchers have long been used by governments as an instrument for channelling subsidies to users of social services, thus promoting people's use of these services and reaching development goals. For instance, some governments provide education subsidies through school vouchers, which users can use in either public or private schools, to increase enrolments and education levels. Over the course of the 2000s, various voucher schemes for domestic work have emerged in the EU and in a few countries elsewhere.

⁴⁴ Information on Belgium was drawn from several sources: Favarque, 2013; EFSI, 2013; and <http://www.titres-services-onem.be> (accessed several times in 2015 and 6 August 2016). The information provided illustrates the functioning of the system at a particular point in time. Aspects of the system may have changed since the time of these writings.

Some voucher schemes aim principally to facilitate the formal declaration of a job or worker and ensure payment of social security contributions. The Canton of Geneva introduced an employment voucher system, known as *Chèque Service*, in 2004, which enables an employer to pay social insurance charges for workers providing “proximity” services within the employer’s home (for example housekeeping, gardening, guarding), even if these workers are in Switzerland in an irregular status (Grumiau, 2013). Since January 2008, the voucher system has been managed by a private social enterprise, PRO. Payment via *chèques services* makes it simpler for employers to declare their domestic workers’ wages to the compulsory social insurance schemes (the employers could complete these formalities themselves, but the complexity of the Swiss social security system makes it difficult to cope with), while promoting the social protection of domestic workers. The employer pays the net salary to the worker and communicates the salary paid to the *Chèque Service*, while disbursing an advance on the social security charges. The employer does not need to calculate social charges, as it is done automatically, and deducted from the advance. The worker benefits from an annual wage statement and the provision of a standard employment contract applicable to the sector (including payment of minimum wage). In Italy, the nominal purchase price of a *Buoni Lavoro per il lavoro occasionale accessorio* voucher includes the contribution (13 per cent) to the National Social Security Institute (INPS), covering INAIL accident insurance (7 per cent) and service costs of INPS (5 per cent).⁴⁵ In Austria, by paying for the service with the *Dienstleistungsschecks*, the employer fulfils all social insurance obligations (EFSI, 2013a).

In some countries, the voucher system serves a wider set of purposes: in addition to paying domestic workers and declaring the worker and the job to public authorities, vouchers also serve to guarantee the domestic worker the stipulated minimum wage and social security coverage, and channel financial incentives and government subsidies to the target populations. This approach makes it possible to combine and interconnect various measures and policy objectives while also simplifying the administrative procedure of registration and declaration for private households, employers and workers.

The EU examples show that the voucher system could be used to meet social policy objectives and restructure the labour market by defining who is eligible to purchase or use the vouchers and for which tasks, type of job, or employer. Good examples of this approach are Belgium’s *Titres-Services* voucher and France’s *Chèque Emploi Service Universel* (both explained in detail below).

Belgium – Titres-Services/Dienstencheques⁴⁶

Created by law in July 2001 and modified in December 2003, the *Titres-Services* system continues to be implemented as of this writing. Private individuals can purchase one hour or more of a domestic worker’s time by using a voucher in paper or electronic form. This scheme is limited to housecleaning, laundry and ironing, sewing, meal preparation, and transport for less mobile persons. Services can only be provided by domestic workers employed by registered companies. Users purchase the voucher from the issuing agency. For work rendered, the user dates and signs the voucher (or vouchers) corresponding to the number of hours worked, and hands the voucher(s) to the worker who has performed the

⁴⁵ See also <http://www.inps.it/portale/default.aspx?itemdir=5592> (last accessed on 6 August, 2016).

⁴⁶ Information drawn from several sources: Favarque, 2013; EFSI, 2013; and <http://www.titres-services-onem.be> (last accessed on 6 August 2016). The information provided illustrates the functioning of the system at a particular point in time. Aspects of the system may have changed since the time of these writings.

tasks. The worker passes the vouchers to the registered company, which in turn sends these to the issuing agency responsible for refunding the value of the service voucher.

As of 2015, a voucher costs users €9 an hour for up to 400 vouchers, and €10 for the next 100 units. Individuals who use the scheme benefit from a 30 per cent tax deduction. When tax deduction is applied, the hourly cost of domestic services declines to €6.30 without further invoice or administrative fee. In 2013, the price of the voucher was reported to be “very close” to the price of the undeclared market (EFSI, 2013a). As mentioned above, users can buy only a maximum of 500 vouchers a year, while special groups, such as single-parent families and persons with disabilities, are allowed to buy up to 2000 service vouchers per year at the same unit price. There are a few other administrative procedures but these are relatively simple, and registered companies, which sell the services, assist individual users through the system.⁴⁷

The registered company also benefits from a government subsidy. For example, in 2013, for every voucher worth €8.50, the registered company received €22.04, or 160 per cent more than the wage paid to the service voucher worker.

Domestic workers employed by registered companies under this scheme have a written “titres-services” employment contract with the registered company - a fixed-term contract for the first three months of employment, and an indefinite contract at the start of the fourth month with the same company. They receive salaries based on prevailing scales, and comprehensive social insurance against accidents. The Belgian social dialogue mechanism ensures that agreements covering working conditions and wages are negotiated every two years.

Workers under this scheme also have access to professional training. To promote the quality of services offered to private individuals, Belgium has set up social funds to enable registered companies to reimburse costs of vocational training given to their employees. In 2011, 38 per cent of service voucher workers benefited from professional training (EFSI, 2013a).

France - Chèque emploi service universel (CESU)⁴⁸

Introduced in 2006⁴⁹, the CESU system simplified the hiring of a domestic worker by a private household for some hours a week, while reducing the final cost of the service. It does this through two types of CESU: (i) The *CESU déclaratif*, a cheque for private households, enables them to benefit from a 50 per cent tax deduction or credit for the purchase of personal and household services, with a yearly ceiling that varies per type of household (i.e. lowest ceiling for a household without any dependents, a higher ceiling for a household with one or several dependent children, and highest ceiling for a household with dependent adults). Social security contributions are deducted automatically. (ii) The *CESU préfinancé* is a cheque that companies and work councils can give to their employees, as a non-monetary bonus to pay for domestic services (CESU-RH), or that local authorities and social insurance

⁴⁷ For example, see TM Titres-Services <http://www.titresservices.info> (accessed in 2015) and Aaxe Titres-Services <http://www.aaxe.be> (last accessed on 6 August 2016).

⁴⁸ Information drawn from several sources: Favarque, 2013; EFSI 2013; and EU and IWAK, 2011. The information provided illustrates the functioning of the system at a particular point in time. Aspects of the system may have changed since the time of these writings.

⁴⁹ But it builds upon previous measures since 1991.

funds could distribute to people in need, such as senior citizens, persons requiring nursing care, or disabled persons (Social CESU). Companies using the CESU benefit from exemptions from social security contributions, deductibility of charge and tax credit.

The CESU could be used for a wide range of services, which may be grouped into three categories: (i) family services, including child minding, childcare outside the home, transport assistance for children, school help, home lessons; (ii) home services, including housework, ironing, gardening, preparing and delivering meals, delivering ironed clothes and groceries, home maintenance, and video assistance; and (iii) services for the elderly, dependents and the disabled, including nursing (except medical care), beauty care, pet care and walks, minding mobility and transport assistance, driving the beneficiary's vehicle, and transport assistance outside the home.

In addition, the CESU system has promoted the training of domestic workers to improve the quality of services to private households. Domestic workers have the right to 20 hours of training per year, dependent on continuous payment of remuneration. Different institutions, such as FEPEM (an organization of private individuals who are employers of domestic workers) developed specialised courses for the sector. Corporate service providers, local authorities and companies were also encouraged to set up national platforms to link up clients with accredited service providers.

3.5. Assessing the effectiveness of enabling instruments on formalization

There are few evaluations of fiscal incentives, vouchers and simplification procedures, and most are about schemes in Europe. Three major reports consolidate and compare outcomes of European schemes (EU and IWAK, 2011; Farvaque, 2013; EFSI, 2013a). In Latin America, Brazil and Uruguay have monitored the sector and thus also have more information on the effects of their policies. While these various sources provide indications of the potential impacts of enabling and incentivising instruments, the variation in methodologies and indicators used to assess impacts, and the unevenness of available information make it impossible to compare findings. There is also little information about the profile of households that use the schemes, and of domestic workers employed as a result of the schemes.

The potential direct effects of enabling instruments on employment may be classified into four categories: (i) the magnitude of the demand-response to the scheme, measured by the number of households or individuals who have availed themselves of the scheme (for example, users of service vouchers, as employers of domestic workers); (ii) in some countries, the number of companies or service providers that have participated and used the scheme; (iii) the number of formal jobs created, and/or the number of workers employed, and to what extent these resulted in a decline in informal or undeclared jobs; and (iv) the quality of jobs created, such as the level of social security enjoyed by workers under the scheme, regularity and security of the job, and working hours.

The capacity to assess these effects is sometimes constrained by the lack of information about the profile of households that use the schemes and of domestic workers employed as a result of the schemes. Available assessments in the EU pay much greater attention to formal job creation and to the reduction of undeclared work, rather than to the quality of jobs. This emphasis seems to be a reflection of the policy objectives of the schemes, namely, the development of the domestic work sector and generation of jobs, formalization of undeclared

work, and labour market integration of the unemployed. Some assessments in the EU also highlight the “earn-back” effects of formalizing jobs, which tend to be forgotten. These include increased social security contributions and income tax revenues, reduced payment of unemployment benefits, and other secondary effects, such as new management jobs in service providers, and increased consumption due to increase in employment. All of these secondary effects can compensate the government for funding the schemes (EFSI, 2013b; Farvaque, 2013; EU and IWAK, 2011).

3.6. Factors that enable or constrain instruments of formalization

Certain studies have attempted to assess the effectiveness of various schemes. Taken together, these studies suggest which factors may enable or constrain the enabling instruments of formalization, and under what conditions.

Cost matters, but...

Tax deductions and other state subsidies have evidently made it affordable for households to outsource previously unpaid household tasks and family care work to domestic workers, resulting in new job generation and expansion of the domestic work sector. They have also promoted formalization of informal jobs by encouraging households that previously hired undeclared workers to declare them or shift to formal arrangements. For example, in Sweden, the number of households using the *RUT* tax deduction scheme (introduced in 2007) increased from 2.6 per cent of all households in 2009, to 4.5 per cent in 2010 (Farvaque, 2013). Many more formal jobs were created through the *ROT* tax deduction scheme, for instance for home renovations and repairs. In Denmark, a survey in 2001 showed that 75 per cent of households that availed themselves of subsidised housework services under the home service scheme (*Hjemmeserviceordningen*) had not previously outsourced household cleaning services, while only 10 per cent had previously employed undeclared workers (Farvaque, 2013).

However, reports show that the magnitude of job creation and the decline in informality vary. For example, Austria's *Dienstleistungsscheck* voucher scheme has had a relatively low impact on demand and on job creation. In 2012, around 2,870 people were purchasing vouchers per month, adding up to a total number of 427,709 vouchers purchased in that year. It is estimated that the scheme has contributed to the formalization of only 1.55 million work hours since its introduction (EFSI, 2013a). The low impact of the scheme has been attributed to the high nominal value of the voucher (€10) compared to the cost of an hour of domestic work in the informal market (€7) (EU and IWAK, 2011). With the subsidies offered under Belgium's *Titres-Services*, the final price of an hour of domestic work has been estimated to be close to the price in the informal market, but with better working conditions for workers and employers (EFSI, 2013a).

Taking into account other drivers of informality

While cost undoubtedly matters to whether one will engage domestic workers formally or informally, there are other factors that influence this decision. Among these are the scope and target population of the intervention, the labour market context, and socio-cultural practices.

In the case of Austria's voucher scheme, two factors other than cost have limited its impact on informality: (i) the fact that most household services were carried out by foreign nationals without any work permit and who were excluded from the scope of the scheme (Eurofound,

2009e); and (ii) the restricted use of the voucher to job contracts of one month and falling below a certain threshold of earnings.

In Italy too, despite the simplification of procedures and obligations of the employer and the reduction of costs, the results were limited when it came to domestic services. Only 10 per cent of the 1.5 million vouchers sold were used for domestic services. With the high proportion of undocumented migrants in the Italian labour market, the tolerance for undeclared domestic workers might have been too high to be countered by the fiscal incentives and simplification of procedures.

In Hungary, the incentive was not strong enough to shift housework tasks away from the black market, a problem whose roots have been traced to the public confidence in the effectiveness of the state and the bureaucratic procedures (Farvaque, 2013).

Brazil's tax incentive (deduction of social security contribution from personal income tax) has shown little effect on formalization rates. According to the data from the Ministry of Social Security, the number of domestic workers (15 to 59 years old) with *carteira assinada* and thus entitled to social security, has increased only by 1 percentage point, representing 28 per cent of the total number (Tomei, 2011). A study conducted by INSPER suggests that this may be due to the countervailing force exerted by a steady increase in the real minimum wage, acting as a disincentive to formalization (Madalozzo and Bertaluzzo, 2011).

Packaging financial incentives with other measures

Both France and Belgium have integrated cost reduction and simplification of administrative procedures within a package of other measures, including support of skills training and promotion of service providers with the aim of developing the domestic work sector beyond the formalization of undeclared jobs. Both countries show relatively substantial positive results.

In Belgium, between 2008 and 2011, the number of *Titres-Services* users increased from 557,482 to 834,959, and employees under the scheme increased from 103,437 to 149,827 (EFSI, 2013a). Some 17 per cent of all households in Belgium were using *Titres-Services* vouchers. One study estimates the number of full-time jobs increased from 56,000 in 2011 to 63,000 in 2012 (Farvaque, 2013).

The expansion of the demand and scale of formal job creation in France, as a result of its CESU system, has been especially massive. Between 2003 and 2010, the number of employees increased by 47 per cent to 1.5 million, which included some 500,000 fulltime jobs (Farvaque, 2013). The number of direct employer-households increased by 63 per cent (2.15 million). By 2011, there were 1.9 million workers, of which 0.97 million were in direct employment relationships, 170,000 employed by companies, and 440,000 were alternating between the two states. This is equivalent to 900,000 full-time jobs or 4 per cent of all full-time jobs in the French economy.⁵⁰ A total of 1.82 billion hours were worked in 2011, with a value of €17.6 billion, or 1 per cent of GDP.⁵¹ The impact of the CESU on formalization also looked strong. Of the number of households using domestic work, it was estimated that

⁵⁰ Information available at: http://www.fesp.fr/sites/default/files/attachments/presentation_bipe_seminaire_sap_07_03_2012.pdf

⁵¹ Ibid.

one third were households using domestic services for the first time, but two-thirds were households who had declared a previously undeclared employee (Farvaque, 2013).

Formalization and the quality of jobs

Information about the quality of formal jobs created and promoted by various schemes is scarce. However, there are indications that most are of poorer quality, and more precarious than other formal jobs.

Part of the reason is that some schemes were specifically aimed at very short-term, casual jobs, on the one hand to encourage the unemployed to take up these jobs, for which there was a real demand, and on the other hand to ensure that such jobs were declared. Examples of these schemes are Austria's voucher scheme, Germany's *Mini Jobs* scheme, and Italy's *Bouni Lavoro per il lavoro occasionale accessorio*. In Germany, employment in household services is one of the sectors characterised by a high degree of precariousness (Farvaque, 2013). Workers employed under Austria's voucher scheme have short-term employment and minimal social security coverage, excluding unemployment, sickness and pension benefits (EFSI, 2013a). The unions in Austria have criticised this scheme describing it as a second-rate employment relationship without sufficient protective provisions, and mainly affecting women, who represent the overwhelming majority of workers in this sector (Eurofound, 2009e).

In Belgium, although the design of the programme established the same benefits as those of employees on classic work contracts, salaries based on scales in force, and comprehensive social insurance against accidents (Farvaque, 2013), the number of workers who work below the 600 hours per year threshold remained high. According to the National Social Security Office, 63 per cent of workers in the scheme were working under this threshold, while the annual evaluation reports recorded a decline from 20 per cent in 2005 to 11 per cent in 2007 (Tomei, 2011). Although the reported data vary, these indicate that the scheme may have encouraged part-time work.

Some exceptions exist: in France for instance, nearly 90 per cent of workers in personal and household services are in open-ended contracts, for various reasons: (i) Due to perceived shortage of labour in the sector, employers immediately recruit under open-ended contracts so as to attract new employees. (ii) The use of the CESU voucher supposes an open-ended contract, though this contract can very easily be broken. (iii) It is compulsory to write a labour contract if the employee works more than 8 hours a week for the household (or 4 successive weeks during the year). (iv) Enterprises from the social sector are more likely to issue employment contracts without a definite limit, and to secure their employees a number of hours of work that is above the average among public enterprises and profit-seeking private companies (Farvaque, 2013; Tomei, 2011).

IV. CONCLUSIONS

The domestic work sector is characterised by a high incidence of informal arrangements and contributes significantly to informality, especially among women. This situation is the result of a combination of socio-legal-economic factors: the private household as its workplace; historical and persistent exclusion – de jure and de facto – of domestic workers from labour regulations and social security frameworks; and social norms and traditions that blur or disguise the contractual relationship between worker and employer.

Informality in the domestic work sector has multiple dimensions and levels. At one extreme end, it may be the absence of employee status with the corresponding minimum rights and entitlements of an employee under national legislation, or the absence of legal rights to social security. The informality of employment in domestic work is closely linked to the scope and implementation of labour and social security regulations. But while domestic workers may have legal recognition as employees with same rights as other workers, the incidence of social security registration, contributions to social security, and written employment contracts may be low. And indeed, this is the situation in Latin American countries where domestic workers have the same social security entitlements as other workers.

Extending the scope of labour and social security legislation to cover domestic workers is a fundamental step towards formality. It recognizes domestic workers as workers, extends labour and employment rights to them, and defines the rights and obligations of the employment relationship. Five years after the adoption of the Domestic Workers Convention No. 189 and Recommendation No. 201 in June 2011, some 30 countries have adopted policy, legislative and institutional reforms aimed at extending or improving the protection of domestic workers' labour rights and working conditions.

However, putting the regulatory frameworks in place is only the first step. There remain many practical challenges to ensure compliance and formalizing jobs, including (i) setting up appropriate mechanisms to implement, monitor compliance with, and enforce the law; (ii) designing efficient systems to register domestic workers; (iii) training government staff in new mandates and (iv) fostering a commitment among the target population to comply with the new standards.

At present, the most common employment model (notwithstanding some EU countries that promote companies as service providers) is one where the private household directly hires and supervises a domestic worker. This model of direct employment can, nonetheless, mask an employment relationship, if it is not formally recognized. In addition, three employment arrangements tend to be at risk of being excluded: (i) domestic workers who have multiple employers, because some regard them as self-employed or independent contractors; (ii) domestic workers who are relatives of the householders, because social practices are used to define their relationship; and (iii) domestic workers where an agency and private household have unclear obligations towards the worker. Under these models, the recognition and identification of the employment relationship between the domestic worker and the private

household is critical for formalization, as it is the means by which domestic workers and employers gain access to the regulations meant to protect their respective rights.

The effects of legal reforms on informality and the employment of domestic workers have not been investigated to any substantive and systematic extent. A few studies of South Africa's Sectoral Determination Act No. 7 show that the effects of new labour standards were not singly positive or negative, but had differentiated manifestations in terms of employment level, working hours, written contracts and insurance contributions. But these used different research methodologies and covered a pre-2007 period. More empirical studies in this area are necessary, not only to determine the macro net effects on employment, formality or working time, but to understand the socio-political-economic process of decision making at the level of the household and worker.

Where domestic workers are covered by labour and social protections, countries have used two basic approaches, often in tandem, to promote compliance, and shift the employment of domestic workers from informal to formal arrangements.

One approach is detection, deterrence and sanctions. Without measures that monitor and enforce compliance, labour regulations have little effect on employment practices. Government measures include information dissemination, labour inspection, complaints mechanisms, dispute settlement systems, as well as a range of advisory and support services to assist parties to the employment relationship. However, for the most part, these government mechanisms have not been designed with the private household and domestic worker in mind, and official staff have not been trained to adapt their methods to the private and personalised workplace setting. In spite of these challenges, South Africa, Ireland and Uruguay provide examples of more appropriate practices adopted by labour inspectorates to monitor and enforce compliance in the domestic work sector with encouraging positive results.

The second approach is the enabling approach, which focuses on removing barriers to the formalization of jobs, and strengthening the benefits and incentives of formal jobs. One way of doing this is to reduce the cost of formalization, which is seen as a major barrier, through income tax deductions or tax credits, VAT reductions (for company service providers), wage subsidies, lower social security contributions and exemptions. Simplification of procedures is another method, which takes into account that time-consuming bureaucratic procedures also mean high transaction costs for employers and workers, and which has fewer budget implications than subsidies and tax deductions. Methods under the enabling approach tend to be more effective when packaged with simplification procedures.

There are few evaluations of fiscal incentives, vouchers and simplification procedures, and most are of schemes in Europe. The variation in methodologies and indicators used to assess impacts, and the unevenness of available information make it impossible to compare their findings. The various sources provide indications of the potential impacts of enabling and incentivising instruments on formal job creation and on the reduction of undeclared jobs. Some positive results, such as those of France, are impressive; but some are of limited impact.

Nonetheless, as positive measures that encourage (not threaten) and assist (not penalise) private households, cost reduction and subsidies are highly attractive. One should note however, that the results of the various schemes are dependent on their specific design

elements and policy objectives. The schemes reviewed here varied with respect to (i) target recipients of benefits, who may be private households in general, or only a specific sub-category of private households and individuals, companies that employ domestic workers, domestic workers, or only workers or jobs under certain earnings and working hours thresholds; and (ii) eligible types of household and personal care tasks. The choice of target recipients of incentives, and whether and how incentives have been combined with other measures, reflect policy objectives. Formalizing previously undeclared or under-declared jobs/workers and creating new formal jobs in the domestic work sector are not always singular objectives of formalization instruments. They have also been used to assist those families and individuals with special needs for domestic services to access them using formal arrangements, to help the unemployed re-enter the labour market, or to ensure that households get quality services. The aims may be a combination of these objectives and more.

Finally, it bears repeating that formalization strategies are found to be more effective when they take into account contextual factors, such as predominant social practices, the incidence of workers with an irregular status, and other labour market factors.

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Annex A.

Detailed sources for Graph 2

Country	Year	Survey name
Albania	2013	Labour force survey
Argentina	2015	Encuesta Permanente de Hogares - EPH
Armenia	2014	Living conditions survey
Bangladesh	2013	Labour force survey
Benin	2011	Enquête Modulaire Intégrée sur les Conditions de Vie des ménages - EMICOV
Bolivia	2014	Encuesta de Hogares - EH
Botswana	2012	Labour force survey
Brazil	2014	Pesquisa Nacional por Amostra de Domicílios - PNAD
Brunei Darussalam	2014	Labour Force Survey
Burkina Faso	2014	Enquête multisectorielle continue
Cambodia	2012	Labour force survey
Cameroon	2007	Enquête Camerounaise Aupres des Menages - ECAM
Chile	2013	Encuesta de Caracterización Socioeconómica Nacional - CASEN
China	2010	ILO STATISTICS
Colombia	2015	Encuesta de Calidad de Vida
Congo	2009	Enquête sur l'emploi et le secteur informel — EESIC
Costa Rica	2013	Encuesta Nacional de Hogares - ENAHO
Dominican Republic	2014	Labour force survey (Encuesta de fuerza de trabajo)
Ecuador	2015	Encuesta Nacional de Empleo, Desempleo y Subempleo - ENEMDU
Egypt	2013	Labour force survey
El Salvador	2014	Encuesta de Hogares de. Propósitos Múltiples - EHPM
Ghana	2013	Ghana Living Standards Survey - GLSS
Guatemala	2014	Encuesta Nacional de Empleo e Ingresos - ENEI
Honduras	2014	Encuesta de Hogares de Propósitos Múltiples - EHPM
India	2012	Employment and unemployment survey
Indonesia	2016	Labour force survey - SAKERNAS
Lao Peoples Democratic Republic	2010	Labour force survey
Liberia	2010	Labour force survey

Country	Year	Survey name
Madagascar	2013	Enquête nationale sur le suivi des objectifs du millénaire pour le développement à Madagascar
Malawi	2012	Labour force survey
Mali	2010	Enquête Permanente Auprès des Ménages - EPAM
Mexico	2015	Encuesta Nacional de Ocupación y Empleo - ENOE
Republic of Moldova	2010	Labour force survey
Mongolia	2014	Labour force survey
Namibia	2014	Labour force survey
Nepal	2008	Labour force survey
Nicaragua	2014	Encuesta Nacional de Hogares para la Medición del Nivel de Vida — ENMV
Niger	2011	LSMS
Nigeria	2013	Living standards and monitoring survey
Pakistan	2015	Labour force survey
West Bank and Gaza Strip	2014	Labour force survey
Panama	2014	Labour force survey
Paraguay	2014	Encuesta Permanente de Hogares - EPH
Peru	2015	ENAHO
Philippines	2008	ILO STATISTICS
Samoa	2012	Labour force survey
Senegal	2011	Enquête suivi de la pauvreté
Serbia	2016	Labour force survey
Sierra Leone	2014	Labour force survey
South Africa	2016	Labour force survey
Sri Lanka	2013	Labour force survey
Tajikistan	2009	Living Standards Monitoring Survey (LSMS)
Tanzania, United Republic of	2014	Integrated labour force survey
Timor-Leste	2013	Labour force survey
Togo	2011	QUIBB
Tunisia	2014	Labour market survey panel
Turkey	2015	Labour force survey
Uganda	2012	Labour force and child labour survey
Uruguay	2015	Encuesta Continua de Hogares - ECH
Venezuela	2012	Encuesta de Hogares por Muestreo - EHM
Viet Nam	2015	Labour force survey
Zambia	2008	Labour force survey

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