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Domestic Workers: Vulnerable Workers in Precarious Work

Malcolm Sargeant *

1. Introduction

This paper begins by discussing the meaning of precarious work and vulnerable workers in order to place the issue of domestic work within this wider context and its literature. Domestic work can be classified as precarious work because of the nature of the contractual relationships in such employment and domestic workers can meet the definition of vulnerable workers in that there is a high likelihood that they do not have the same levels of employment protection afforded to other workers by law and practice. We then consider issues related to migrant workers and consider domestic work as precarious work and domestic workers as vulnerable workers.

2. Precarious Work

There is much valuable literature on the subject of vulnerable workers in the context of precarious work¹. These two terms are often used interchangeably, so sometimes the term “vulnerable workers” and sometimes “precarious workers” are used but also “vulnerable work” and “precarious work”. There is nothing intrinsically wrong with this except

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¹ See particularly the work of Professor Michael Quinlan and also Professor Felicity Lamm, but also Malcolm Sargeant and Maria Giovannone (eds) *Vulnerable workers: health, safety and well-being* Gower Publishing 2011 and Malcolm Sargeant and Marina Ori (eds) *Vulnerable workers and precarious work* Cambridge Scholars Publishing 2013

that sometimes the distinction can be useful, e.g. in considering occupational health and safety (OHS) matters for example. There are issues associated with various types of work which are distinct from OHS issues arising from the vulnerability of some of the workers who may carry out those tasks. This is true of domestic work where one can identify health and safety issues directly associated with the type of work in contrast to issues related to the vulnerability of, for example, female migrant workers who are often in domestic work. Here we distinguish between the two, although the focus is on vulnerable workers and, in particular, on migrant workers and domestic workers.

Precarious work is a term that has been around a long time and has been used quite regularly for hundreds of years, so, for example, in the nineteenth century, there are references in the UK to the precarious nature of the employment of dockworkers who were employed on a casual daily basis². The features of precarious or contingent work are that it comprises “uncertainty or irregularity with regard to ongoing employment which may include questions of hours of work and income”³. It is likely to be work for more than one employer, it is not “full-time” and is limited in duration⁴. Thus we have employment relationships that may be part time, fixed-term or temporary in nature⁵. It will include “casual, fixed-term contract or temporary workers (including those supplied by temporary employment agencies), own-account self-employed

² M. Quinlan, *The Pre-Invention of Precarious Employment: The Changing World of Work in Context* in *The Economic and Labour Relations Review* vol. 23, n. 4, 1-22.

³ M. Quinlan and P. Bohle, *Contingent Work and Safety* in J. Barling and M. Frone (eds.) *The Psychology of Workplace Safety*, American Psychological Association, Washington, 2004 81-106.

⁴ See D. C. Feldman, *Toward a New Taxonomy for Understanding the Nature and Consequences of Contingent Employment*, in *Career Dev. Int.* 2006, vol. 11, n. 1, 28–47, 2006; cited in P. Bohle, C. Pitts and M. Quinlan, *Time to Call it Quits? The Safety and Health of Older Workers* in *International Journal of Health Services*, 2010, vol. 40, n. 1, 23–41

⁵ Part-time work and work of limited duration may be work selected by the worker as meeting their needs at a particular time, although there is evidence that the current recession has forced many people into this type of work because of the lack of full time alternatives. Figures in the UK show that some 37 per cent of those doing temporary work and some 15 per cent of those doing part time work were doing so because they could not find a full time job. This amounts to about one million people working part time who would like to work full time and some 426,000 people in temporary work because they could not find permanent jobs. See *Flexible Working: Working for Families, working for business* A report by the Family Friendly Working Hours Taskforce; www.dwp.gov.uk/docs/family-friendly-task-force-report.pdf

subcontractors, teleworkers and home-based workers, including those doing homecare”⁶.

There are a number of employment relationships which have been described as coming within the term “precarious work”. Professor Quinlan et al.⁷ categorised them into five groups⁸ and others⁹ have identified as many as twelve categories¹⁰. Quinlan also found an association between precarious employment and negative indicators on occupational health and safety which led them to the view that the “introduction, presence, or growth of precarious employment commonly leads to more pressured work processes and more disorganised work settings”¹¹.

3. Vulnerable Workers

One possible definition of a vulnerable worker¹² is “someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse”. A further alternative is that proposed by the UK Health and Safety Executive¹³, namely “those at risk of having their workplace entitlements denied, and who lack the capacity or means to secure them”.

⁶ M. Quinlan, *The Pre-Invention of Precarious Employment: The Changing World of Work in Context*, in *The Economic and Labour Relations Review* vol. 23, n. 4, 1-22.

⁷ M. Quinlan, C. Mayhew and P. Bohle, *The Global Expansion of Precarious Employment, Work Disorganization and Consequences for Occupational Health: A Review of Recent Research in International Journal of Health Services*, 2001, vol. 31, n. 2, 335-414.

⁸ These were temporary workers; including short fixed-term contracts and casual workers; workers subject to organisational change; including re-structuring, downsizing and privatisation; outsourcing; including home working; part-time working; and workers in small businesses; including self-employment.

⁹ S. Dex and A. McCulloch, *Flexible Employment in Britain: A Statistical Analysis*, Equal Opportunities Commission Research Discussion Series, Manchester, 1995.

¹⁰ Self-employment, part-time work, temporary work, fixed-term contract work, zero hours contracts of employment, seasonal work, home working, teleworking, term time only working, Sunday working and job sharing.

¹¹ Quinlan et al.; supra n. 6

¹² Department for Trade and Industry *Success at Work* (now Department for Business and Innovation) 2006; <http://webarchive.nationalarchives.gov.uk/+/http://www.dti.gov.uk/employment/employment-legislation/success-at-work/index.html>

¹³ Health and Safety Executive <http://www.hse.gov.uk/vulnerable-workers/index.htm>
The HSE has 5 categories of vulnerability, in relation to health and safety; these are race and migrant workers, disabled people, gender, older workers and those new to a job.

The common features of these definitions are that the worker is at risk of exploitation or abuse and that they lack the means to protect themselves from that exploitation and abuse. The link with precarious work is apparent in that such exploitation and abuse is more likely when the type of contractual relationship is a temporary or casual one.

There are a large number of vulnerable workers; one report for the UK Trades Union Congress (TUC) found that some 20 per cent of the work force was vulnerable.¹⁴ The TUC set up a Commission on Vulnerable Employment (CoVE) to carry out a major investigation of the causes of, and solutions to, “vulnerable employment”. The TUC report defined vulnerable employment¹⁵ as being at risk of continuous poverty and injustices resulting in an imbalance of power in the employer-worker relationship. The report quotes a trade union official as saying

Many vulnerable workers suffer because they do not legally count as “employees” with a contract of employment. Those considered simply as “workers” or who have been forced into bogus self-employment not only have few rights, but lack any security, meaning that employers can sack them if they complain. Working through an agency can also create similar uncertainty and precariousness at work. Immigration status is complex and can act to make workers more vulnerable by making them entirely dependent on their employers.

Particular categories of vulnerable workers identified¹⁶ were temporary employees, migrant workers, workers in the informal sector and homeworkers:

- (1) Temporary employees; according to the Labour Force Survey there are 1.2 million temporary employees in the UK of whom 226,000 are agency employees. Around a third of these meet the vulnerable worker definition. This is almost certainly an underestimate as the most vulnerable will not show up in official statistics.
- (2) Migrant workers are clearly subject to exploitation, and are often denied even their legal rights.
- (3) Workers in the informal sector; (working for cash in hand) are unlikely to show in official statistics, precisely because their employers are

¹⁴ Policy Studies Institute, *The Hidden One-in-Five - Winning a Fair Deal for Britain's Vulnerable Workers*, 2006
http://www.psi.org.uk/news/pressrelease.asp?news_item_id=188.

¹⁵ *Hard Work Hidden Lives*
http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf.

¹⁶ <http://www.tuc.org.uk/social/tuc-12380-f0.cfm>.

trying to avoid paying tax, national insurance and legal responsibilities. But the Small Business Council estimates the grey economy is worth £75 billion a year.

- (4) Homeworkers who also do not show up in official statistics, but even these reveal that nearly half a million earn less than one third the median hourly wage. Low paid homeworkers typically do jobs such as packing, component assembly and data entry.

The report's authors stated that

While we expected to find poor treatment, its extent has stunned us all. Worst of all, much of it took place within a legal framework that fails to prevent exploitation. We have met production-line agency staff working long days and nights for less pay than permanent colleagues. Homeworkers have told us about lifetimes of poverty, being paid less than £1 per item of clothing they sewed, and receiving no paid holiday or sickness leave. We have heard from construction workers who had been injured at work but were not entitled to welfare protection or sick pay because of their contractual and immigration status. Office cleaners on casual contracts told us that they had no choice but to keep working when they were ill, as they could neither afford to lose a day's pay nor risk the sack.

This exploitation and abuse takes place within an environment where there is extensive protection against unfair practices in employment¹⁷. It is clear that a significant number of workers fail to be protected by this legislation and there is still the situation where "vulnerable employment also places workers at greater risk of experiencing problems and mistreatment at work, through fear of dismissal by those in low-paid sectors with high levels of temporary work means they are often unable to challenge it"¹⁸.

The report, drawing extensively on other published research and literature, suggests the following reasons for the increase in workers in vulnerable employment: (a) jobs available are changing. While there is still a demand for low skilled jobs, these are increasingly in service work. It has been suggested that there is a polarisation of jobs¹⁹; (b) more workers

¹⁷ In the UK, for example, there are measures to prevent unfair dismissal, provide for equal treatment of temporary agency workers, those on fixed-term contracts and in temporary work. The Equality Act 2010 also provides that direct and indirect sex and race discrimination, amongst other protected characteristics, is unlawful

¹⁸ *Hard Work Hidden Lives* supra.

¹⁹ The report notes: M. Goos and A. Manning, *Lousy and Lovely Jobs; the Rising Polarization of Work in Britain*, in *The Review of Economics and Statistics*, MIP Press, 2007, vol. 89 n. 1, 118-133 and Kaplanis, *The Geography of Employment Polarisation in Britain*, Institute for Public Policy Research, London, 2007.

are employed by small businesses. Over 40% of the workforce is now employed in a business that employs less than 100 workers; (c) the increasing proportion of agency work; as a proportion of all temporary work; agency work comprised 17.1 per cent of all temporary work in autumn 2007 as compared to 13 per cent in 1997²⁰; (d) the informal cash in hand economy; it is suggested this involves billions of pounds²¹; (e) an increased reliance on migrant workers; (f) the employment of women who, on average, are being paid 17.2 per cent less than men²² and about 40 per cent of women are in part time employment²³. Women working part-time earn about 60 per cent of the average hourly earnings of men working full time²⁴; (g) there is a relationship between low income and job insecurity²⁵; (h) working long hours – whilst women may only be part-time in paid employment they often have additional responsibilities as carers. Men tend to work long hours even when they have family responsibilities.

4. Migrant Workers

The migration of workers across national borders in order to find work is not a new phenomenon. It has been happening for centuries²⁶ and “there is no continent, no region of the world, which does not have its contingent of migrant workers”²⁷. It is, therefore, an international phenomenon that has affected many states both as exporters, and as importers, of labour. It is reported that the United Nations (UN) estimates that there are some 200 million international migrant workers

²⁰ Labour Force Survey, *Autumn 2007 and Autumn 1997*.

²¹ HMT, *The Informal Economy: a Report by Lord Grabiner QC*, HMT, London, 2000.

²² Press release, *TUC Response to the ONS Hours and Earnings Survey*, 7th November 2007.

²³ Equal Opportunities Commission, *Facts About Women and Men in Great Britain*. London EOC, London, 2006, 15.

²⁴ S. Fredman, *Women at Work: The Broken Promise of Flexicurity* in *Industrial Law Journal*, 2004, vol. 33 n. 4, 302.

²⁵ A. Evans, A. Rossiter, K. Mueller and V. Menne, *Anglo-Flexicurity: a Safety Net for UK Workers*, Social Market Foundation, London, 2008.

²⁶ C. Hahmovitch, *Creating Perfect Immigrants: Guest Workers of the World in Historical Perspective*, in *Labor History*, 2003, vol. 44 n. 1, 69.

²⁷ United Nations, *Fact Sheet 24 Concerning the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, Adopted by the General Assembly of the United Nations by Resolution 45/158. Office of the High Commissioner for Refugees, New York, 18 December 1990, Available at www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/generalcomments/unfactsheets/No. 24 Rightsofmigrantworkers/.

and their families²⁸. This figure excludes those who are involuntary migrants resulting from fear of persecution or violence. The majority of migrants live in the richer countries of North America and Europe. In Europe one in eight people of working age is a migrant and in North America this figure becomes one in four.

Despite the contribution that they make to their host countries, migrants often face serious labour market disadvantages²⁹. In many countries, migrant workers are more likely to work on fixed-term contracts, and less likely to be retained in employment. Some countries have a policy of issuing short-term work permits: hence, workers can only take jobs of limited duration. Many migrants work in seasonal sectors, and in some countries temporary employment agencies are a key recruiter of migrant workers. The vulnerability of migrant workers needs to be put into a wider context of course. It is linked to factors that are not simply to do with being a migrant worker. “Just because one is a migrant doesn’t mean that one stops being, for instance, young, or female, or black”³⁰

An ILO report³¹ stated that there were two aspects of health issues for migrant workers. The first is related to occupational health and safety at the workplace; and the second concerns the general health condition of the migrant worker and her family. Health is an important issue because, as the report states, migrant workers tend to be employed in high risk occupations; secondly that there are language and cultural barriers to OHS communication, in particular OHS training and instruction; and, thirdly, many of the migrant workers overwork and/or suffer from poor general health, and so are susceptible to occupational injuries and work-related diseases. The report also states that

Occupational accident rates are about twice as high for migrant workers as for native workers in Europe, and there is no reason to believe that the situation is any different in other parts of the world.

²⁸ Figures are for 2010; see <http://UK.oneworld.net/guides/migration>.

²⁹ *Counting the Cost: Working Conditions of Migrants* <http://www.eurofound.europa.eu/pubdocs/2008/893/en/1/EF08893EN.pdf>.

³⁰ H. Jayaweera and B. Anderson, *Migrant Workers and Vulnerable Employment: A Review of Existing Data*, Report for TUC Commission on Vulnerable Employment <http://www.vulnerableworkers.org.uk/wp-content/uploads/2008/08/analysis-of-migrant-worker-data-final.pdf>.

³¹ International Labour Conference, *Towards a Fair Deal for Migrant Workers in the Global Economy*, 92nd Session, 2004; <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>.

One report by the UK Citizens Advice Bureau, *Rooting out the Rogues*, whilst highlighting the problem of bad employers in general terms, emphasised the vulnerability of migrant workers:

Whilst the vast majority of employers try hard to meet their legal obligations to their workforce, there are still far too many unscrupulous or rogue employers (and employment agencies) prepared to flout the law and so profit from exploitation³².

In terms of seeking assistance, temporary workers, and in particular migrants in an irregular status, are often not able to access social security benefits such as those relating to employment injuries and occupational illnesses. They often do not seek medical treatment because “of the cost, inability to take time off work, lack of childcare, and problems of transportation. Many are unfamiliar with the local health-care systems and may have linguistic or cultural difficulties in communicating their problems”.

One report³³, based upon a qualitative analysis of some 200 migrant workers, found amongst other issues, that, firstly, migrant workers often worked mainly with other migrant workers (sometimes of the same nationality, but not always); secondly, that their most likely method of accessing work was through word of mouth; thirdly, that the general pattern of migrant work consisted of long working hours³⁴; fourthly, that more than a third of the migrants interviewed had not received any training in health and safety and for the remaining two-thirds the training that had been offered was generally limited to a short session at induction; fifthly, among those interviewees who were undocumented the fact that they were working without documentation meant that they were at greater risk of dismissal where the employer feared an immigration raid. The effect could drive undocumented workers further into forms of work that presented greater risks to their health and safety; sixthly, that one of the issues migrant workers raised in the course of the interviews was their experience of discriminatory treatment at work, often related to their nationality or status. Many of the workers interviewed believed that they

³² <http://www.citizensadvice.org.uk/rooting-out-the-rogues.pdf>.

³³ Dr S. McKay, M. Craw, D. Chopra, *Migrant Workers in England and Wales. An assessment of Migrant Worker Health and Safety Risks*, HSE Books, 2006.

³⁴ There were a variety of reasons for this. First, in some of the sectors in which they were employed, for example agriculture, long working hours are routine. Second, migrant workers were more willing to work long hours because in this way they could increase their earnings and their primary aim in coming to the UK was after all to earn money.

and migrant workers generally were often allocated to the worst shifts, were denied concessions that were available to local workers and had less favourable terms and conditions; and, finally, that women were more likely to report that they had not been given any induction training. They were also more likely to believe that their health, both physical and mental was being compromised by the work they were doing and they were more likely to say that they had experienced discrimination at work.

5. Domestic Work

Article 1 of the ILO Convention on Domestic Workers³⁵ defines the term “domestic work” as work performed in or for a household or households and a “domestic worker” as any person engaged in domestic work within an employment relationship. There are clearly a variety of types of domestic work with perhaps varying levels of vulnerability and precariousness. These can range from a person with single or multiple part time domestic cleaning jobs to the full time live in domestic help. Not all domestic workers are migrants of course and there is much variety internationally, e.g. in Latin America, the Caribbean and Asia there is much domestic migration within the region; whilst in other regions, such as the industrialised north and the USA, migrant workers from other parts of the world make up a significant proportion of the domestic work force³⁶. In Europe the biggest employers of migrant domestic workers are Spain, France and Italy. In Spain some 36 per cent of all migrant women workers find work as domestic workers. The figures for France and Italy are 21.1 per cent and 27.9 per cent respectively. In the UK there are some 138,000 domestic workers who worked in private households with a lower proportion of females, at 61 per cent, than many other countries³⁷.

According to the ILO analysis there were (in 2010) some 52.6 million men and women employed in domestic work. This is an increase from 33.2 million just 15 years earlier in 1995. The gendered nature of this work is evident when the analysis shows that, of the 52.6 million, some 43.6 million are female domestic workers, compared to some 8.3 million men. Women’s share of domestic work ranges from some 63 per cent in the

³⁵ ILO, 2011, (No. 189).

³⁶ All this data comes from ILO. *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* ILO, Geneva, 2013.

³⁷ ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, ILO, Geneva 2013.

Middle East to some 92 per cent in Latin America. In fact, one in every 13 female wage workers globally is a domestic worker (some 7.5 per cent of the total).

An ILO report states³⁸ that migrant women domestic workers are among the world's most vulnerable workers:

Most are women moving from poorer to richer countries for economic reasons, and most leave their children behind, often in the care of relatives or a hired local maid, creating global care chains. The availability of foreign maids, in turn, allows women with children in destination countries to work for wages, so that many of the world's women between the ages of 15 and 64 years are able to pursue paid employment outside the home.

A more recent ILO report³⁹ stated that

Many domestic workers are still excluded from provisions that other workers take for granted with respect to essential working conditions, such as paid annual leave, working time, minimum wage coverage and maternity protection.

Some domestic workers are treated as members of their employer's family, while others are exploited and subjected to conditions "which in some cases amount to virtual slavery and forced labour".

Domestic workers often have to work long or even excessive hours of work (on average, 15-16 hours per day), with no rest days or compensation for overtime; they generally receive low wages, and have inadequate health insurance coverage. Domestic workers are also exposed to physical and sexual harassment and violence and abuse, and are in some cases trapped in situations in which they are physically or legally restrained from leaving the employer's home by means of threats or actual violence, or by withholding of pay or identity documents. In many countries, labour, safety, and other laws do not cover domestic workers, so that there are no legal norms for their treatment or offices and inspectors to enforce them. Even if they are protected by legislation, it can be very difficult for domestic workers to learn about or benefit from available protections, the result being widespread violations of protective labour laws.

As part of its aim at resolving these problems, the ILO has adopted the Domestic Workers Convention⁴⁰ and an accompanying Domestic

³⁸ ILO. *Towards a Fair Deal for Migrant Workers in the Global Economy*, International Labour Conference, 92nd Session, 2004; <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>

³⁹ ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, ILO, Geneva 2013.

⁴⁰ ILO, 2011, (No 189),

Workers Recommendation⁴¹ but it is not clear how many countries will eventually ratify these labour protection measures.⁴²

Article 3(1) of the Convention states that

Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

This is to include the elimination of discrimination in respect of employment and occupation.⁴³ Specifically Article 10 provides that

1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

The reality is that in many countries, including the UK, domestic workers are excluded from employment protection legislation and there is a reluctance of legislators to intervene in the relationships that exist within the family home. This appears to be the essence of the problem is respect of extending employment protection, received by workers generally, to domestic workers. If domestic workers are part of the family structure, to what extent should the state intervene in this personal relationship.

⁴¹ ILO, 2011, (No. 201)

⁴² The UK did not vote in favour of the convention. The UK government has argued that the convention goes against its Health and Safety law. However, on 22nd January 2013, Italy became the 4th ILO Member State and the first EU member State to ratify the Convention. Notably, the European Commission has also presented a proposal for a Council Decision authorising Member States to ratify the Convention. Gov.UK, *Explanatory Memorandum on European Council Document 7939/13, COM (2013) 152*, Cabinet Office, London, <http://europeanmemorandum.cabinetoffice.gov.uk/files/2013/04/7939-13.pdf>

European Commission, *Proposal for Council Decision, COM(2013) 152 final*, Brussels, 2013.

⁴³ Article 3(2)(d).

6. Domestic Work as Precarious Work

For the purposes of including domestic work within the framework of precariousness and vulnerability, we briefly consider here domestic work as precarious work. Domestic work is, of course, only one aspect of what can be called “household services”. There is a Eurofound study entitled ‘Employment in Household Services’⁴⁴ which is concerned with this sector. Household services, in this context, means child care, eldercare, domestic cleaning, home maintenance and catering. The research addresses concerns about the quality of this employment and the working conditions, as well as highlighting the implications for equal opportunities and social inclusion. In terms of job satisfaction the report found that

work in household services (especially in child care and eldercare) is satisfying and rewarding for the more motivated workers. The most valued aspects are the opportunity to develop meaningful relationships with people, to help those in need and to use one’s creativity.

Those who work in household services, however, are also exposed to the risk of physical and mental stress. Self-employed workers have greater difficulty handling such stress because they are more isolated; however, even those individuals who work in specialist facilities often receive inadequate support. The other issues were, as one would perhaps expect, low pay, long working hours and reconciling work and family life. In particular, the report reveals a division between some relatively well protected workers and those with little social protection. The first were mostly working in the government and third sectors, whilst the latter tended to be self-employed workers across the whole sector. The report also notes that “workers who are forced to work long or atypical hours fill niches left uncovered by the market; and these are the workers most likely to experience a conflict between work and family commitments”.

The ILO Encyclopaedia on Health and Safety⁴⁵ states that the physical hazards arising from domestic work include: ‘long working hours, insufficient rest time and sometimes insufficient food, exposures to hot and cold water, exposure to hot kitchen environments, musculoskeletal problems, especially back and spinal pain, from lifting children and furniture, and kneeling to clean floors. Precautions include limitations of working hours, adequate rest and food breaks, gloves for dishwashing and

⁴⁴ <http://www.eurofound.europa.eu/pubdocs/2001/02/en/1/ef0102en.pdf>.

⁴⁵ http://www.ilo.org/safework_bookshelf/english.

other water immersion, training in proper lifting techniques, mechanised carpet cleaners and floor polishers to minimize the time spent on the knees and provision of knee pads for occasional tasks.

Particular hazards include, firstly, chemical hazards by exposure to a wide variety of acids, alkalis, solvents and other chemicals in household cleaning products which can cause dermatitis. Domestic workers may not know enough about the materials they use or how to use these products safely. Secondly, there are biological hazards arising from responsibility for the care of young children which can result in a greater risk of becoming infected with a variety of illnesses, especially from changing diapers, and from contaminated food and water. Thirdly, there are psychological and stress hazards, including isolation from one's family and community; lack of paid vacation and sick or maternity leave; inadequate protection of wages; rape, physical and mental abuse; over-extended working hours; and general lack of benefits or contracts.

There is a major issue about the recognition that domestic work is 'work' and that the worker should have a contract of employment and the same rights as workers outside the domestic sphere. As it takes place in the domestic sphere there seems to be an assumption that it should be treated differently. An IRENE/IUF conference demanded "recognition that domestic work is 'work' and that those who do it are 'workers' with the rights that all workers have including the right to be heard"⁴⁶. This perhaps should include an appreciation of why people do domestic work⁴⁷:

For me one of the most startling aspects is the complete non-comprehension by the employer that these women are workers first and foremost needing to earn a living wage. The fact that they live in on the job should not detract from that reality. Many of the employers in this survey are business people and professionals themselves who wouldn't dream of treating their business staff in this way.

⁴⁶ Domestic Worker Rights, *Respect and Rights: Protection for Domestic/Household Workers*, 2008, published by IRENE and IUF http://www.domesticworkerrights.org/sites/default/files/report_en.pdf.

⁴⁷ M. Healey, *Exploring the Slavery of Domestic Work in Private Households*, unpublished MA thesis University of Westminster cited in Anderson, 1994, Bridget, *Doing the Dirty Work? The Global Politics of Domestic Labour*, London and New York, Zed Books, 2000.

7. Migrant Domestic Workers as Vulnerable Workers

The fact that domestic work takes place in private households means that “that they are less visible than other workers and are vulnerable to abusive practices”⁴⁸. Migrant domestic workers are especially vulnerable because “their often precarious legal status in the destination country, and their lack of knowledge of the local language and laws, make them especially vulnerable to abusive practices”⁴⁹. The development of domestic work within the home was crucial for its exclusion from labour law and initially governed by family law. Fudge points out “the ideologies of domesticity and privacy have historically combined to provide a justification for exempting these workers from some of the basic legal entitlements available to other workers”⁵⁰. Fudge studied the laws in 60 different countries and found that 19 had enacted specific laws or regulations dealing with domestic work; a further 19 had devoted specific chapters or sections of labour codes or acts concerning contracts of employment; 17 countries had no specific employment legislation with respect to such workers; and 9 countries excluded domestic work from the labour code. Only a small number of the national laws analysed require the conclusion of a written contract of employment for domestic work, and only rarely do national laws on domestic work refer to standards and specifications to be dealt with in those contracts. In addition, some countries either exclude domestic work from the requirement of establishing a written contract, or allow such contracts to be of an oral nature. As a result, this legal situation tends to generate uncertainty and create problems in determining and enforcing the conditions of work agreed upon by the parties. The ILO study points out that “even where domestic workers are covered by labour laws, migrant domestic workers might be excluded from the provisions, or they may lack any realistic means of insisting that their employer respect their rights”⁵¹.

The conflict between domestic work taking place in the home and the need for the law to provide protection at work results in limits on the protection offered to domestic workers. Examples of this include issues

⁴⁸ *Ibid.* Note 33.

⁴⁹ *Supra* Note 33.

⁵⁰ J. Fudge, *Little Victories and Big Defeats: The Rise and Fall of Collective Bargaining Rights for Domestic Workers in Ontario*, in A. B. Bakan and D. Stasiulus (eds.) *Not one of the family: Foreign domestic workers in Canada* University of Toronto Press, 1997.

⁵¹ ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* ILO, Geneva, 2013.

related to working time. There seems to be a clear correlation between working hours, night work, shift work and irregular distribution of working time with OHS outcomes⁵². These are especially important for young workers and for women during and after pregnancy. Despite the Domestic Workers Convention requiring equal treatment between domestic workers and others in respect of working hours etc., the “working hours of domestic workers around the world are among the longest and most unpredictable for all groups of workers”, The average hours worked per week range from 65.9 hours in Malaysia and 63.7 hours in Saudi Arabia to 24.5 hours in New Zealand and 19.7 in Australia to as low as 15.1 hours in Austria. Live in domestic workers tended to work longer hours than live out ones and a common practice is for the employer to assume that the domestic worker will be available whenever their services are needed.

A second example concerns pay and the fact that the pay of domestic workers is lower than for other workers. Domestic workers typically earn around 40 per cent of average wages ranging from 63.8 per cent in Honduras and 61 per cent in Vietnam to only 14 per cent in Botswana and 21.2 per cent in Bahrain. This comes from a traditional under valuing of domestic and caring work and is very much a gender issue. Work in the home, usually done by women, is unpaid or underpaid. Sometimes it can be compounded by other factors such as gender and ethnicity. The ILO report gives the example of South Africa where most domestic workers are black and female and these are factors leading to low pay. Another reason is, of course, the weak bargaining position of domestic workers because they tend to be isolated from other workers and often have a total dependency on their employer.

A third issue is related to maternity as some 80 per cent of domestic workers are women and many are of child bearing age, the importance of maternity help and protection cannot be undervalued. Yet more than a third of domestic workers are excluded from important maternity protection provisions, such as maternity leave and an income during pregnancy, so “pregnancy therefore often entails job losses for domestic workers”. The gender bias of the occupation is important and, of course, needs to be placed in the context of discrimination against women

⁵² P. Tucker and S. Folkard, *Working Time, Health and Safety: A Research Synthesis Paper*, ILO, Geneva, 2012.

generally. Women are less likely than men to be in employment and, when employed, working shorter hours than men⁵³, but

Domestic responsibilities are not the only reason for women's lower employment rates. Women have higher unemployment rates than men in many countries, and segregated employment patterns and lack of equal treatment means that once employed they have lower earnings, inferior employment conditions and poorer promotion prospects⁵⁴.

8. Migrant Domestic Workers and Abuse

Domestic workers are especially vulnerable to discrimination, exploitation and abuse, without this necessarily being trafficking or forced labour⁵⁵. There are a number of issues to be dealt with. Firstly, when many domestic workers lose their employment, they sometimes also lose resident status. Examples of tackling this given are Canada, where a "bridge extension" has been introduced whereby a two month interim work permit may be issued during the period when the worker is looking for another job; and Israel where a worker may obtain a 30 day tourist visa to cover this period. In contrast the UK has introduced rules which only grant work visas to live in domestic workers when they stay with the importing employer⁵⁶. Secondly, providing safe houses as temporary accommodation, accompanied by an efficient support network, is crucial. Some countries have done this in other States where their nationals are employed as domestic workers. Thirdly, work permits should not have a

⁵³ C. Fagan, T. Warren and I. McAllister, *Gender, Employment and Working Time Preferences in Europe*, European Foundation for the Improvement of Living and Working Conditions, 2001, <http://www.eurofound.europa.eu/publications/htmlfiles/ef0145.htm>.

⁵⁴ *Ibid.*

⁵⁵ www.kalayaan.org.uk.

⁵⁶ Since April 2012, a change in the UK immigration policy towards domestic workers has led to the deletion of ODW visas previously issued under part 5 of the UK Immigration Rules. Considering that the total number of migration flows to the UK in 2011 is estimated at 566,000, the 16,432 visas issued to ODWs will represent approximately 3% of migration flows to the UK. Given that migrant domestic workers constitute a small fraction of migration flows to the UK, it is not clear how the eradication of ODW visas would assist the government in meaningful migration curtailment. OECD: International Migration and the United Kingdom Report of the United Kingdom SOPEMI Correspondence to the OECD, 2012. Available online <http://www.geog.ucl.ac.uk/research/transnational-spaces/migration-research-unit/pdfs/sopemi-report-2012>.

condition that requires the worker to live in the employer's home. This can be an encouragement to forced labour. Fourthly abuse by some employment agencies need to be controlled.

Approximately 16,000 migrant domestic workers enter the UK each year⁵⁷. They are entering the UK typically accompany wealthy employers including businessmen, diplomats, tourists and expatriates returning from abroad. Information provided by Kalayaan⁵⁸ show some of the abuse of migrant domestic workers in the UK. The percentages are of those clients that registered with Kalayaan.

Control

Not allowed out unaccompanied	60% (n=284)
Passport was withheld	65% (n=290)

Abuse

Psychological abuse	54% (n=285)
Physical abuse/assault	18% (n=283)
Sexual abuse/harassment	3% (n=239)
Did not receive regular/ sufficient food	26% (n=279)
Did not have own room (e.g. sleeping on kitchen or living room floor)	49% (n=281)

Exploitation

Working seven days a week with no time off	67% (n=287)
Had to be available 'on call' 24 hours	58% (n=239)
Worked 16 hours a day or more per day	48% (n=252)
Received a salary of £50 or less per week	56% (n=238)

⁵⁷ M. Lalani, *Ending the Abuse: Policies that Work to Protect Migrant Domestic Workers*, Kalayaan, 2011

<http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>.

⁵⁸ Kalayaan is an NGO in the UK working for justice for migrant domestic workers.

The particular issues that seem to have been raised in the various reports considered here, which relate to migrant domestic workers, suggest that the health and safety issues raised are:

- Unsuitable sleeping arrangements
- Long working hours
- Insufficient rest time
- Musculoskeletal problems
- Insufficient nourishment
- Dangerous cleaning products
- Social and cultural isolation
- Lack of, or insufficient, health insurance
- Restricted freedom of movement
- Inability to access medical care

9. Conclusion

In “Making domestic work visible: The case for specific regulation”⁵⁹ the author states that there are three common elements found amongst domestic workers worldwide. These are:

- Domestic workers are usually employed in private households, and also live in with their employer’s family;
- The overwhelming majority of domestic workers are women; the work has traditionally been regarded as ‘women’s work’;
- Most domestic workers have to leave their own families behind, moving from economically poor areas to richer, usually urban, ones.

There needs to be specific regulation dealing with the needs of domestic workers; just to expect domestic workers to fit their work into the regulations concerning employment in general is inadequate.

The ILO report suggests that there are examples of best practice to improve working conditions for migrant workers. These include

⁵⁹ U. Huws and S. Podro, *Employment of Homeworkers: Examples of Good Practice*, ILO, Geneva, 1995. 33, ISBN 92-2-110005-7. Available from the ILO Conditions of Work Branch: <http://www.ilo.org/public/english/dialogue/ifpdial/publ/infocus/domestic/>.

- Having competent institutions to supervise recruitment and migration;
- Encouraging migrants to sign contracts that have been approved by competent national authorities;
- Including migrant workers in work-related health programmes;
- Use of bridging arrangements
- Establishing agencies to monitor and seek to reduce discrimination.

The example of domestic workers shows the importance of examining the precarious nature of the jobs done as well as the vulnerability of many of the people that carry out this work. The precarious nature of the jobs, as illustrated here, include irregular working hours, low pay and, indeed, the lack of recognition that a “real” job of work is being done. Domestic jobs are often individualised at specific locations so workers do not have the support of collective networks or representation. When added to this is the vulnerability of the people that do the work, then one can see the scope for exploitation and abuse.

Perhaps the most important aspects of vulnerability in this respect are the gendered nature of the work, the migration status of many of the workers and issues related to ethnicity and living in poor conditions in a foreign country alone.

Adapt International Network



ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with DEAL – the Centre for International and Comparative Studies on Law, Economics, Environment and Work, the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

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