

<p><b>Institution: University of Manchester</b></p>
<p><b>Unit of Assessment: 20 (Law)</b></p>
<p><b>Title of case study:</b>  <b>Decent Work for Domestic Workers: Equality and Protection under International Law</b></p>
<p><b>1. Summary of the impact</b></p> <p>The research programme Decent Work for Domestic Workers (DWDW), led from the University of Manchester (UoM), has mapped regulatory strategies for the protection of domestic workers, generating a conceptual framework and set of techniques for the legal regulation of working time. These legal guidelines have informed global policy debates on domestic work, and helped to shape the 2011 International Labour Organization (ILO) ‘Domestic Workers Convention’ (No. 189) and ‘Recommendation’ (No. 201). The research findings have also influenced policy debates in individual jurisdictions, including Australia, Chile and Hong Kong, where research has been utilised in order to both advance a set of rationales for legal intervention, and as a source of techniques that can be incorporated into labour law instruments (i.e. both legislation and collective agreements).</p>
<p><b>2. Underpinning research</b></p> <p>The research is part of an ongoing research programme that began in January 2010. The key researchers are Dr Deirdre McCann (Senior Lecturer, School of Law, UoM, 2009-2012) and Dr Jill Murray (Reader and Associate Professor, Faculty of Law and Management, University of LaTrobe, Australia). The research programme was led from UoM by Dr McCann, and facilitated by a period spent by Dr Murray as a visitor to the School of Law.</p> <p>DWDW draws upon the collaborators’ expertise on the regulation of working conditions and precarious work [E]. A focus was placed on the working time dimensions of domestic work, noting that across the globe – as outlined in the ILO report ‘Decent Work for Domestic Workers’ (2010) – domestic work is characterised by working hours that are both excessive and highly unpredictable. DWDW consequently sought to address and identify the most effective regulatory mechanisms, noting that the issue had become increasingly pressing in the light of both the ongoing growth of ‘global care chains’, and an increased awareness of the habitual mistreatment of domestic workers (noted, for example, in the Human Rights Watch report <i>As If I am Not Human</i>, 2008).</p> <p>Hours of work are central to domestic workers’ experience of working life, and also a key concern when seeking to improve the quality of domestic work. However, prior to the DWDW programme existing research on effective regulatory models was limited. Within most labour law regimes, domestic work had predominantly been subject to an ‘exclusionary model’ under which transnational and domestic labour laws either entirely excluded domestic workers, or limited their range of entitlements (see, for example, the European Union Working Time Directive, 2003). In contrast, the DWDW programme put forward an original <b>conceptual framework</b> for the regulation of working time in domestic work, clearly establishing a set of policy objectives that can be used to underpin legal standards [C][D]. As outlined below, the research programme also generated a model <b>regulatory framework</b> that could be drawn upon by policy actors in the designing of legislative instruments or collective agreements.</p> <p>In summary, the research generated <u>three principal outcomes</u>:</p> <ol style="list-style-type: none"> <li><b>1. A conceptual framework centred on a set of key imperatives for policy actors:</b> <ul style="list-style-type: none"> <li>• To recognise work/family reconciliation as an objective of working time law</li> <li>• To isolate and address the working time dimensions of precariousness</li> <li>• To conceptualise the temporal dimensions of domestic work as an unrestrained form of working time flexibility</li> </ul> </li> <li><b>2. The research proposed a set of principles to underpin legal reforms:</b> <ul style="list-style-type: none"> <li>• The legal recognition of the value of care-work</li> <li>• The value of work/family reconciliation for domestic workers</li> </ul> </li> </ol>

## Impact case study (REF3b)

- The universality of legal protection
- The importance of regulated flexibility
- The need for innovative forms of regulation

3. **The research generated a ‘model law’ that pioneered a ‘framed flexibility’ framework.** This is based on the needs and vulnerabilities of domestic workers, and the demand for their labour, and encompasses:

- **Framing Standards** within which working time flexibility is constrained by limits on working hours, mandated rest periods and designated periods of ‘unsocial’ hours
- **Flexibility Standards** that both address the unpredictable requirements that can arise in certain domestic work occupations, by permitting periods of on-call work; and respond to workers’ needs to combine paid labour with their family and community lives, by allowing them to adjust their working hours and take emergency family leave
- **Monitoring Standards** that both regularize the documentation of domestic workers’ hours of work, and integrate domestic work into national regulatory systems for the monitoring and enforcement of workplace laws
- **Incentives to Bargain** consisting of a set of provisions that offer additional flexibility to the employer, provided they are attained with the approval of a designated ‘representative organisation’ of domestic workers

### 3. References to the research (all references available upon request - AUR)

The ‘policy report’ for the ‘Conditions of Work and Employment Programme’ [D] forms the central pillar of this research, and represents a substantial and original contribution to the labour law literatures on working time and precarious work. It was complimented by a subsequent ‘policy brief’ [C] and an academic paper [A].

- [A] (2012) McCann, D. ‘New Frontiers of Regulation: Domestic Work, Working Conditions and the Holistic Assessment of Non-standard Work Norms’ *Comparative Labor Law and Policy Journal* 34(1) pp.167-192 doi:10.2139/ssrn.2171807
- [B] (2011) Lee, S. & McCann, D. (eds.) *Regulating for Decent Work. New Directions in Labour Market Regulation* (Palgrave/International Labour Organization) (inc. Ch. 7 w/ Lee, S) (AUR)
- [C] (2011) McCann, D. ‘International Labour Office Domestic Work Policy Brief (No 2): Working Hours in Domestic Work’ (May) International Labour Organization, Geneva (AUR)
- [D] (2010) McCann, D. & Murray, J. ‘The Legal Regulation of Working Time in Domestic Work’ International Labour Organization, Geneva (AUR)
- [E] (2010) McCann, D. “Decent Working Hours as a Human Right: Intersections in the Regulation of Working Time” in Fenwick, C. & Novitz, T. *Human Rights at Work* (Hart: Oxford) 509-528 (AUR)

### 4. Details of the impact

The findings of DWDW are reflected within laws and legal policy debates at both the international and national levels. The research has provided rationales for legal intervention, made the case for new legislation, and offered legal models and techniques that have been incorporated into national laws. The research findings have been incorporated in specific provisions of international law, and have shaped the content of national laws and the global policy debates through dissemination by the United Nations, direct intervention by national-level policy actors, and the raising of awareness among academics and other experts. The programme has ultimately contributed towards ensuring safe and decent working hours for domestic workers, improving the lives of working women, and designing new regulatory techniques suited to the informal economies of low-income countries.

At the **international-level**, the research fed into the ILO (United Nations Specialist Agency) ‘Domestic Workers Convention and Recommendation’. The ILO identified a need for guidance on ‘identifying, limiting and appropriately calculating’ working time in domestic work, within the initial meeting of the committee responsible for drafting the international treaty. McCann and Murray were subsequently asked by the ILO to author a report [D] that would respond to this demand

## Impact case study (REF3b)

which provided the theoretical grounding for the working time elements of new international standards (treaties) on domestic work: the ILO Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201) [1]. Suggestions for legal drafting contained in the 'policy report' were incorporated in the drafts of the Convention and Recommendation put before the ILO International Labour Conference (Decent Work for Domestic Workers, July 2011). The 'policy report', alongside a summary version, was widely circulated by the ILO including to Committee delegates, with the ILO noting that *"Dr McCann's study has been indispensable to the ILO. It shaped the international standards and is influencing ILO policy at the international-level and in countries across the world"* [2]. The research underpins key provisions within international laws, specifically Article 10 of ILO Convention 189 and Articles 9-13 of Recommendation 201:

- the requirement for equal treatment in hours limits
- compensation and rest periods
- the 24 hour weekly rest period
- the classification of 'on-call' hours as working time

At the **national level**, the Convention standards are binding on ratifying states (i.e. the provisions of the Convention must be reflected in national laws), with the convention having thus far been ratified by: the Plurinational State of Bolivia, Italy, Mauritius, Nicaragua, the Philippines and Uruguay. The Recommendation provides additional context and guidance for legislators. These international norms therefore directly influence the content of new legal standards adopted in domestic jurisdictions, such as in the Philippines – 'An Act Instituting Policies for the Protection and Welfare of Domestic Workers (Republic Act 10361)' [3]. In addition, the research is shaping policy debates and substantive legal reforms at the national level, in part through the ILO's efforts to promote ratification and implementation of the new Convention and Recommendation to Ministries of Labour, national-level employers' organisations and trade unions. The 'policy brief' [C] and subsequent guide to designing labour laws [4] is used by the ILO's network of regional offices (Africa, Latin America and the Caribbean, Arab States, Asia and the Pacific, Europe and Central Asia) when advising governments on how to reform their laws [2]. Accordingly, the provisions of the Convention have been incorporated into national legislation even in countries that have yet to ratify the Convention, including in the Spanish Royal Decree 1620' (2011) on work in private households [3], and Thailand Ministerial Regulation No. 14 (B.E. 2555)' [3]. The Principle of Universality devised by McCann and Murray [D] (p.14) and incorporated in Convention No. 189, Article 10(1), is also inspiring legal reform in Chile where statutory hours limits traditionally exclude domestic workers. On the advice of the ILO – derived from the research – this exclusion has: *"been determined by the government to be discriminatory and therefore in breach of the Convention. A Bill pending adoption in the Chilean Parliament will extend the general weekly hours limits to domestic workers"* [2]. In Hong Kong: *"the ILO's guidance on unpredictability and intensity of working hours, drawn from the policy brief [C] is informing an ongoing debate... the Hong Kong administration is considering a new regulation that would establish a limit on normal weekly hours"* [2].

Additionally, the research has been used by influential policy organisations, most notably in the joint work of the WageIndicator Foundation – an independent non-profit organization active in more than sixty countries that promotes transparency in conditions of work – and Decisions For Life (a campaign of the International Trade Union Confederation), which raises awareness of employment and career opportunities for young female workers in 14 developing countries (including Brazil, India and South Africa). These organizations promoted the research findings as a model for national laws and working life in publications that disseminated to a range of policy actors (national governments, trade unions, national-level NGOs, etc.) [5]

The research is having a particularly substantial impact in **Australia** as part of efforts at both the federal and state levels to design regulatory frameworks for 'non-standard' work. In particular, the report [D] was utilised by the United Voice union as part of its wage justice campaign for workers in the aged care sector [6]. The union used the Model Law in determining its position on the first review of the modern awards [labour standards] by the Australian Fair Work Commission (January 2012, onwards), specifically, the 'Aged Care Award' and 'Social Community Home Care and Disability Services Award'. The research also informed the work of the Australian Council of Trade

Unions' (ACTU) 'Independent Inquiry into Insecure Work' [7]. The inquiry was conducted by a panel of experts and community members, and was chaired by former Deputy Prime Minister Brian Howe. A submission, drawn from the DWDW program, informed the Committee's support for the principles of decent work and universality of protection and the associated call for an expansion of the Australian National Employment Standards [8]. As a member of the panel of experts attests: *"I used McCann and Murray's Model Law extensively - both in the discussion and on the panel - to advocate for minimum standards on non-standard work... I believe that the Decent Work for Domestic Workers research is invaluable as a benchmark against which to assess how effectively labour laws protect domestic workers, other care workers as well as non-standard workers more generally. It has also been particularly valuable in developing concrete international norms that can be used in the development of national level regulation"* [9].

The research has also been drawn upon by Australian policy actors to influence legal policy debates in less economically-developed settings in the region. In **Timor-Leste**, the legal policy advice outlined in the 'policy report' was disseminated in September 2011 to the fourth Women and Industrial Relations Conference 'Our Work Our Lives' (Dili). As a result: *"findings subsequently entered the debates on the 2012 Timor-Leste Labour Code and its potential extension to domestic workers through the efforts of the Working Women's Centre Timor-Leste"* [9]. The Working Women's Centre Timor-Leste is a not-for-profit community organisation supporting female workers. The centre seeks to encourage female labour market participation, thereby improving both income and quality of life. The 'policy brief' has been successfully incorporated into the centre's campaign work, including in their discussions with government, labour organisations and other NGOs.

Finally, **the research findings have been circulated** to a wide range of policy actors. Firstly, the research was disseminated through the Regulating for Decent Work (RDW) Network, a global interdisciplinary network of researchers and policy-makers co-ordinated by Dr McCann. The findings were presented at the RDW Network's 2011 Conference – organised by the ILO, in collaboration with UoM's Fairness at Work (FaW) Research Group and the University of Melbourne's Centre for Employment and Labour Relations Law (CELRL) –to around 300 participants, including representatives from governments and social partners from regions involved in domestic legal reform [10]. Secondly, the findings have been presented in a range of settings, to mixed research and policy audiences, including: University of Oxford, University of Melbourne Centre for Employment and Labour Relations Law, Australia National University College of Law and the Hebrew University of Jerusalem Minerva Center for Human Rights.

#### 5. Sources to corroborate the impact (all claims referenced in the text)

- [1] (2011) ILO 'Convention 189 & Recommendation 201 on Decent Work for Domestic Workers' (November)
- [2] Testimonial from Director, Labour Protection Department (PROTRAV), International Labour Office (11<sup>th</sup> July 2013)
- [3] National Laws (2013) ILO 'Philippines enact new law protecting domestic workers' (Secs. 20-21); (2012) ILO 'Spain Approves New Regulations for Domestic Employees' (Article 9); (2013) ILO 'Thailand: New Ministerial Regulation offers Better Protection of Domestic Workers' Rights' (Section 28)
- [4] (2012) ILO 'Effective Protection for Domestic Workers: A Guide to Designing Labour Laws' International Labour Organization, Geneva
- [5] (2011) Tijdens, K. & van Klaveren, M. 'Domestic Workers: Their Wages and Work in 12 Countries' WageIndicator Foundation, Amsterdam (October)
- [6] (2011) United Voice 'Working in Aged Care...' (p.10)
- [7] (2012) Murray, J. 'Submission to ACTU Independent Inquiry into Insecure work (January)
- [8] (2012) ACTU 'Lives on Hold: Unlocking the Potential of the Australian Workforce' (Ch. 2)
- [9] Testimonial from Member of the Panel of Experts, Australian Council of Trade Unions' Independent Inquiry into Insecure Work (11<sup>th</sup> July 2013)
- [10] (2011) ILO 'ILO to host high-level conference on the state of labour market regulation' International Labour Organization, Geneva (June)